

**Invitation to Bid (ITB) No. 740-0521-25A
FOR
COLD STORAGE UNIT**

CITY OF ANTIOCH

200 "H" Street
Antioch, California 94531-5007

ITB Contract Person: Patrick Wentz and Eric Strongman

Key ITB Dates:

Invitation to Bid Issued	May 12, 2025
Submit Bids	May 21, 2025

NOTICE TO BIDDERS

COLD STORAGE UNIT

Notice is hereby given that the City of Antioch, hereinafter referred to as the "City", will receive, no later than 2pm on May 21, 2025, sealed bids for the award of a contract for the purchase of Cold Storage Unit.

Such bids shall be received at the following address:

Office of the City Clerk of the City of Antioch
Antioch City Hall
200 "H" Street
Antioch, California 94509

Bids must be clearly identified with the ITB number identified above. Bids received timely shall be opened and read aloud at the above stated time and place.

Patrick Wentz and Eric Strongman shall act as the City Representative on this procurement.

Each proposal must conform with and be responsive to this ITB, the Information for Bidders, the specifications, and all other pertinent contract documents.

The City reserves the right to reject any or all bids, to accept or reject any one or more items of a bid, or to waive any irregularities or informalities in the bids.

Any person, corporation, firm or other entity submitting a bid in response to this ITB is referred to herein as a "Bidder". No Bidder may withdraw their bid for a period of sixty (60) days after the date set for the opening of bids.

Patrick Wentz
pwentz@antiochca.gov
APD Admin
City of Antioch

Eric Strongman
estrongman@antiochca.gov
Facilities Leadworker
City of Antioch

INSTRUCTIONS TO BIDDERS COLD STORAGE UNIT

In order to be entitled for consideration, all bids must be made in accordance with the following instructions:

1. Examination of Documents

Before submitting a bid, Bidders shall:

- a. Carefully examine all specifications contained in this ITB.
- b. Fully inform themselves as to the facilities, conditions and limitations related to this ITB.
- c. Include in their bid/proposal all required items described in this ITB.

2. Interpretation

Should a Bidder find discrepancies in, or omissions from, the specifications or any term or condition of this ITB, or be in doubt as to their meaning, Bidder shall promptly notify the City Representative, who will send written instructions or addenda to all Bidders. The City will not make/give oral interpretations to any Bidder. All addenda issued shall be incorporated into the contract, as applicable.

3. Signature

Each bid must be signed by a legal representative authorized to bind the Bidder with their usual signature where indicated on the Bid Sheet attached hereto. Bids by partnerships must be signed by one of the partners in the name of the partnership, followed by the designation of the partner signing. Bids by corporations must be signed with the legal name of the corporation, followed by the name of the state of incorporation, date of incorporation, and the signature of the president, secretary or other person authorized to bind it in the matter. The name of each person signing shall be typed or printed below the signature of president, secretary or other person authorized to bind the corporation.

4. Submission of Bids

Bids shall be enclosed in an envelope with “**ITB No. 740-0521-25A**” and the Bidder’s name identified in the lower left-hand corner and delivered in accordance with the Notice To Bidders. Any bids received after the bid opening time will be returned to the Bidder unopened.

5. Modifications/Medium for Submission of Bids.

No oral, telephonic or telegraphic bids or modifications shall be considered. No fax transmissions will be accepted. Hard copies of bids shall be delivered pursuant to the bidding instructions herein.

6. Basis Of Award:

The City will award the contract to the lowest responsive responsible Bidder based on the total price indicated on the Bid Sheet.

7. Withdrawal of Bids

Any Bidder may withdraw its bid either personally or by written request at any time prior to the time set for bid opening. No bid may be withdrawn or modified after the time for bid opening unless and until award of the contract has been delayed for a period exceeding sixty (60) days.

8. Notice of Award

Within ten (10) days after the notice of award, the successful Bidder shall enter into a formal contract(s) using the City's standard form purchase agreement/contract ("Contract") which is attached hereto as Exhibit "B".

In the event the Bidder to whom an award is made fails or refuses to execute the Contract and provide required documents within fifteen (15) calendar days after notification of the award, the City may award the Contract to the next lowest responsive responsible Bidder or reject all bids.

9. Non-Collusion Declaration

Pursuant to Public Contract Code Section 7106, each bid shall be accompanied by a Non-Collusion Declaration, the form of which is included in the bid documents.

10. Proprietary information

The City and this ITB are subject to the California Public Records Act ("PRA"), and Bids may be considered public records. However, the City understands that due to the competitive nature of this ITB and the contractual terms and conditions that remain to be refined/negotiated and/or the proprietary nature or details that may exist, bids may be partially withheld or restricted from public disclosure if possible under the PRA. Bidders must communicate to the City in their bid any request regarding specific items requiring confidentiality and the City will attempt to accommodate such requests, if permitted under the PRA. The City shall not be liable to Bidder for any disclosure of a bid, or any portion thereof, made by the City pursuant to a PRA request, or as otherwise required by law.

11. Statement of Qualifications/References

Each Bidder shall include with its bid a list of references. References, if possible, should be to other public agencies that have purchased similar equipment from the Bidder. Bidder shall include the reference's name, address, contact, phone, and any relevant information such as dollar amount of current contract, etc.

BID SPECIFICATIONS

COLD STORAGE UNIT

1. BACKGROUND:

The City of Antioch currently desires to procure Cold Storage Unit. The purpose of this bid is to solicit prices for the City for the Cold Storage Unit listed in the quantities and meeting the minimum specifications set forth in Exhibit "A".

2. GENERAL PROVISIONS/CONDITIONS

A. Bid Response Mandatory Requirements

Bidders are to submit a complete written bid consisting of the following:

- a. Bid Form
- b. Bid Sheet with Additional Information attached
- c. Statement of Qualifications/References
- d. Non-Collusion Declaration

Bidders not submitting complete bids in accordance with the requirements of this ITB may be determined to be non-responsive.

B. Additional Information Required to be Attached

Each Bid Sheet submitted shall also include the following to be attached to the bid:

Equipment Technical Specifications: Complete description of the technical specifications of the proposed Cold Storage Unit, including verification that the equipment meets all of the required specifications set forth in Exhibit "A" as well as information on any specific warranty or maintenance requirements.

C. Specified Equipment- Substitutions.

Bidders must submit a bid including the specific Cold Storage Unit listed in Exhibit "A" unless the Bidder obtains approval of its proposed equipment as an equal. All requests for substitution of any equipment as an "equal" must be submitted in writing with appropriate documentation substantiating that is an equal to the specified equipment. All requests for substitution must be submitted with the Bidder's bid. The City Representative retains sole discretion to approve or disapprove of a request for substitution of a product/equipment.

3. MISCELLANEOUS PROVISIONS

A. Right of Rejection

The City reserves the right to reject any or all bids, to accept or reject any one or more items of a bid, or to waive any irregularities or informalities in the bid.

B. Insurance & Indemnification

The successful Bidder shall be required to provide insurance as indicated in the Contract, as well as indemnify and hold the City harmless, pursuant to the terms of the Contract.

C. Model Contract

Bidders shall review the City's standard form purchase agreement/contract ("Contract") which is attached hereto as Exhibit "B". Submission of a bid evidences Bidder's acceptance of the terms of the Contract, and Bidder's agreement to execute the Contract if selected for award.

BID FORM
COLD STORAGE UNIT

To: City of Antioch, herein called the "City":

1. Pursuant to and in compliance with the City's Notice to Bidders and other documents relating thereto, the undersigned Bidder, having reviewed the terms of the Contract, the information for Bidders, specifications and all other pertinent Contract documents, hereby proposes and agrees to perform within the time stipulated, the Contract, including all of its component parts and everything required to be performed, all in strict conformity with the specifications and other Contract documents, including addenda numbers _____, _____, and on _____ file at the offices of the City (collectively, the "Contract Documents") for the prices set opposite the articles listed on the bid sheet.
2. It is understood that the City reserves the right to reject this bid in whole or in part, to waive informalities in the bid or in the bidding, and that this bid shall remain open and not be withdrawn for a period of sixty (60) days from the date prescribed for the opening of this bid.
3. It is understood that the successful Bidder will be required to provide for purchase by the City the equipment as outlined in the specifications and the Contract Documents.
4. It is understood and agreed that if written notice of the acceptance of this bid is mailed, telegraphed, or delivered to the undersigned within sixty (60) days after the opening of the bid, or at any time thereafter before this bid is withdrawn, the undersigned agrees that they will execute and deliver to the City a Contract in the form included with the Contract Documents in accordance with the bid as accepted, all within ten (10) day after the receipt of notification of award, and that performance of the Contract shall be commenced immediately by the undersigned bidder, upon due execution.
5. Notices related to this bid should be addressed to the undersigned as stated below.

Legal Name of Bidder

Authorized Officer or agent

Address

Telephone number

Email address

BID SHEET
COLD STORAGE UNIT

NAME OF BIDDER: _____

The undersigned, hereby declare that we have carefully examined the bid documents for ITB No. 740-0521-25A, and have read and examined the Contract Documents, including all specifications, and all addenda, if any, for the following:

The purchase, delivery and installation of the COLD STORAGE UNIT set forth in Exhibit “A.”

We hereby propose to furnish all labor, materials, equipment, tools, transportation, and services, and to discharge all duties and obligations necessary and required to perform and complete the Project for the following TOTAL BID PRICE:

	UNIT PRICE	QUANTITY	SUBTOTAL BID PRICE (Quantity X Unit Price)
Cold Storage Unit		1	

TOTAL BID PRICE: In words: _____

In numbers: _____

In case of discrepancy between the written price and the numerical price, the written price shall prevail.

STATEMENT OF QUALIFICATIONS/REFERENCES

Please provide a list of references. Preferably, references should be other public agencies that have purchased similar products and services from Bidder. Include the reference's name, address, contact, phone, and any other relevant information. Attach additional sheets if necessary.

1. Reference name: _____
Address: _____
Contact Person Name: _____
Phone Number: _____
Other relevant Information:

2. Reference name: _____
Address: _____
Contact Person Name: _____
Phone Number: _____
Other relevant Information:

3. Reference name: _____
Address: _____
Contact Person Name: _____
Phone Number: _____
Other relevant Information:

NON-COLLUSION DECLARATION

TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

The undersigned declares:

I am the _____ of _____, the Bidder making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. Bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. Bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of Bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. Bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____[date], at _____[city], _____[state].

(Signature)

(Print Name)

(Print Title)

(Date)

EXHIBIT “A” TO ITB

Specifications for COLD STORAGE UNIT

[Specifications Attached Behind This Page]

EXHIBIT “A”

Scope of Work:

1. Procurement & Permitting

- Contractor will procure a new cold storage unit, including all necessary components, materials, and accessories.
- Dimensions of the new cold storage unit shall be determined based on measurements of the existing concrete slab to ensure a proper fit.
- The cold storage room will include two (2) access doors, designed for durability and thermal efficiency.
- Existing power rating at the electrical panel will be assessed to confirm compatibility with the new refrigeration equipment and ensure compliance with electrical requirements
- Provide stamped construction drawings for permitting requirements.
- Customer will be responsible for submitting permit applications and obtaining necessary approvals.

2. Demolition & Site Preparation

- Dismantle and remove the existing cold storage room, ensuring all debris is properly disposed of in compliance with local regulations.
- Thoroughly wash the existing concrete slab to remove dirt, debris, and contaminants in preparation for the installation of the new cold storage room.

3. Receiving & Unpacking of Equipment

- Receive, inspect, and unpack all components of the new cold storage room, including refrigeration equipment, to verify completeness and condition before installation.

4. Seismic Anchoring

- Install manufacture specified seismic bracing for the cold storage room to ensure compliance with structural safety requirements.
- Secure all concrete anchors to manufacturer specifications and prepare for city inspection and approval.

5. Cold Storage Room Construction

- Assemble and install new cooler panels, ensuring a secure connection to the pre-installed seismic anchors. If applicable apply a protective layer (coating, membrane, Ect) to the roof of the cold storage room to enhance durability and resistance to environmental conditions.

6. Refrigeration System Installation

- Position and securely fasten the refrigeration condensing unit onto the concrete slab using concrete anchors.
- Install and ceiling-mount the evaporator coil within the cold storage room.
- Connect the condensing unit to the evaporator coil using a rigid, insulated copper refrigerant line set.

7. Refrigerant System Testing & Charging

- Conduct a high-pressure leak test verify system integrity.
- Perform system evacuation vacuum, test to confirm there are no leaks.

EXHIBIT "A"

- Charge the refrigeration system with refrigerant in accordance with manufacturer specifications.
- 8. Electrical Upgrades & Connections**
- The city will have a 50-amp circuit available to the replacement location. If bidder determines that the equipment load will exceed 50 amps, replace the existing outdoor sub-panel with a new, weather-rated sub-panel to support the refrigeration systems.
 - Install electrical circuits to provide power connections for both the evaporator coil and condensing unit.
 - Confirm that all electrical wiring and connections comply with local codes and manufacturer requirements.
- 9. Drainage & Lighting Installation**
- Install and route the evaporator coil's condensate drain line to the nearest planter bed for proper water disposal.
 - Upgrade and install new interior lighting within the cold storage room to enhance visibility and efficiency.
- 10. Start up and Warranty**
- Energize and start up the system verifying all components power on correctly in accordance with the manufactures guidelines.
 - Set the cold storage room to the specified temperature range and allow the system to reach and maintain the target temperature, verifying stable performance.
 - Provide the manufacturer maximum warranty covering all refrigeration components as per the manufacturer's terms.
- 11. Customer Training/Handover, Maintenance**
- Conduct an on-site training session to familiarize the customer with system operation, troubleshooting, and maintenance best practices.
 - Provide manufacturer documentation, including user manuals, maintenance schedules, and warranty details.
 - Ensure the customer is informed about emergency procedures and how to contact support for service needs.

EXHIBIT “B” TO ITB

Equipment Purchase Agreement

[Agreement Attached Behind This Page]

EXHIBIT “B”

CITY OF ANTIOCH EQUIPMENT PURCHASE AGREEMENT

This Equipment Purchase Agreement ("Agreement") is entered into this _____ day of _____, 20____, by and between the City of Antioch ("City"), and [***INSERT NAME***], a [***INSERT TYPE OF ENTITY - CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP OR OTHER LEGAL ENTITY***] with its principal place of business at [***INSERT ADDRESS***] ("Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

Section 1. DEFINITIONS.

- A. "Equipment" means all machinery, equipment, items, parts, materials, labor or other services, including design, engineering and delivery services, provided by Contractor as specified in Exhibit "A," attached hereto and incorporated herein by reference.
- B. "Delivery Date(s)" means that date or dates upon which the Equipment is to be delivered to City, ready for approval, testing and/or use as specified in Exhibit "B."

Section 2. MATERIALS AND WORKMANSHIP.

When Exhibit "A" specifies machinery, equipment or material by manufacturer, model or trade name, no substitution will be made without City's written approval. Machinery, equipment or material installed in the Equipment without the approval required by this Section 2 will be deemed to be defective material for purposes of Section 4. Where machinery, equipment or materials are referred to in Exhibit "A" as equal to any particular standard, City will decide the question of equality. When requested by City, Contractor will furnish City with the name of the manufacturer, the performance capabilities and other pertinent information necessary to properly determine the quality and suitability of any machines, equipment and material to be incorporated in the Equipment. Material samples will be submitted at City's request.

Section 3. INSPECTIONS AND TESTS.

City shall have the right to inspect and/or test the Equipment prior to acceptance. If upon inspection or testing the Equipment or any portion thereof are found to be nonconforming, unsatisfactory, defective, of inferior quality or workmanship, or fail to meet any requirements or specifications contained in Exhibit "A," then without prejudice to any other rights or remedies, City may reject the Equipment or exercise any of its rights under Section 4.C. The inspection, failure to make inspection, acceptance of goods, or payment for goods shall not impair City's right to reject nonconforming goods, irrespective of City's failure to notify Contractor of a rejection of nonconforming goods or revocation of acceptance thereof or to specify with particularity any defect in nonconforming goods after rejection or acceptance thereof.

Section 4. WARRANTY.

- A. Contractor warrants that the Equipment will be of merchantable quality and free from defects in design, engineering, material and workmanship for a period of two (2) years, or such longer period as provided by a manufacturer's warranty or

EQUIPMENT PURCHASE AGREEMENT

as agreed to by Contractor and City, from the date of final written acceptance of the Equipment by City as required for final payment under Section 7. Contractor further warrants that any services provided in connection with the Equipment will be performed in a professional and workmanlike manner and in accordance with the highest industry standards.

- B.** Contractor further warrants that all machinery, equipment or process included in the Equipment will meet the performance requirements and specifications specified in Exhibit "A" and shall be fit for the purpose intended. City's inspection, testing, approval or acceptance of any such machinery, equipment or process will not relieve Contractor of its obligations under this Section 4.B.
- C.** For any breach of the warranties contained in Section 4.A and Section 4.B, Contractor will, immediately after receiving notice from City, at the option of City, and at Contractor's own expense and without cost to City:
 - 1. Repair the defective Equipment;
 - 2. Replace the defective Equipment with conforming Equipment, F.O.B. City's plant, office or other location of City where the Equipment was originally performed or delivered; or
 - 3. Repay to City the purchase price of the defective Equipment.

If City selects repair or replacement, any defects will be remedied without cost to City, including but not limited to, the costs of removal, repair and replacement of the defective Equipment, and reinstallation of new Equipment. All such defective Equipment that is so remedied will be similarly warranted as stated above. In addition, Contractor will repair or replace other items of the Equipment which may have been damaged by such defects or the repairing of the same, all at its own expense and without cost to City.

- D.** Contractor also warrants that the Equipment is free and clear of all liens and encumbrances whatsoever, that Contractor has a good and marketable title to same, and that Contractor owns or has a valid license for all of the proprietary technology and intellectual property incorporated within the Equipment. Contractor agrees to indemnify, defend and hold City harmless against any and all third party claims resulting from the breach or inaccuracy of any of the foregoing warranties.
- E.** In the event of a breach by Contractor of its obligations under this Section 4, City will not be limited to the remedies set forth in this Section 4, but will have all the rights and remedies permitted by applicable law, including without limitation, all of the rights and remedies afforded to City under the California Commercial Code.

Section 5. PRICES.

Unless expressly provided otherwise, all prices and fees specified in Exhibit "C," attached hereto and incorporated herein by reference, are firm and shall not be subject to change without the written approval of City. No extra charges of any kind will be allowed unless specifically agreed to in writing by City's authorized representative. The total price shall include

EQUIPMENT PURCHASE AGREEMENT

(i) all federal, state and local sales, use, excise, privilege, payroll, occupational and other taxes applicable to the Equipment furnished to City hereunder; and (ii) all charges for packing, freight and transportation to destination.

Section 6. CHANGES.

City, at any time, by a written order, and without notice to any surety, may make changes in the Equipment, including but not limited to, City's requirements and specifications. If such changes affect the cost of the Equipment or time required for its performance, an equitable adjustment will be made in the price or time for performance or both. Any change in the price necessitated by such change will be agreed upon between City and Contractor and such change will be authorized by a change order document signed by City and accepted by Contractor.

Section 7. PAYMENTS.

- A.** Terms of payment, are net thirty (30) days, less any applicable retention, after receipt of invoice, or completion of applicable Progress Milestones. Final payment shall be made by City after Contractor has satisfied all contractual requirements. Payment of invoices shall not constitute acceptance of Equipment.
- B.** If Progress Milestones have been specified Exhibit "B," then payments for the Equipment will be made as the requirements of such Progress Milestones are met. Progress payments for the Equipment will be made by City upon proper application by Contractor during the progress of the Equipment and according to the terms of payment as specified in Exhibit "B." Contractor's progress billing invoice will include progress payments due for the original scope of work and changes. Each "Item for Payment" shown in Exhibit "B" and each change order will be itemized on the invoice. Invoices for cost plus work, whether part of Exhibit "B" or a change order, must have subcontractor and/or supplier invoices attached to Contractor's invoice. Other format and support documents for invoices will be determined by City in advance of the first invoice cycle.
- C.** Payments otherwise due may be withheld by City on account of defective Equipment not remedied, liens or other claims filed, reasonable evidence indicating probable filing of liens or other claims, failure of Contractor to make payments properly to its subcontractors or for material or labor, the failure of Contractor to perform any of its other obligations under the Agreement, or to protect City against any liability arising out of Contractor's failure to pay or discharge taxes or other obligations. If the causes for which payment is withheld are removed, the withheld payments will be made promptly. If the said causes are not removed within a reasonable period after written notice, City may remove them at Contractor's expense.
- D.** Payment of the final Progress Milestone payment or any retention will be made by City upon:
 - 1. Submission of an invoice for satisfactory completion of the requirements of a Progress Milestone as defined in Exhibit "B" and in the amount associated with the Progress Milestone;

2. Written acceptance of the Equipment by City;
3. Delivery of all drawings and specifications, if required by City;
4. Delivery of executed full releases of any and all liens arising out of this Agreement; and
5. Delivery of an affidavit listing all persons who might otherwise be entitled to file, claim or maintain a lien of any kind or character, and containing an averment that all of the said persons have been paid in full.

If any person refuses to furnish an actual release or receipt in full, Contractor may furnish a bond satisfactory to City to indemnify City against any claim or lien at no cost to City.

- E.** Acceptance by Contractor of payment of the final Progress Milestone payment pursuant to Section 7.D will constitute a waiver, release and discharge of any and all claims and demands of any kind or character which Contractor then has, or can subsequently acquire against City, its successors and assigns, for or on account of any matter or thing arising out of, or in any manner connected with, the performance of this Agreement. However, payment for the final Progress Milestone by City will not constitute a waiver, release or discharge of any claims or demands which City then has, or can subsequently acquire, against Contractor, its successors and assigns, for or on account of any matter or thing arising out of, or in any manner connected with, the performance of this Agreement.

Section 8. SCHEDULE FOR DELIVERY.

- A.** The time of Contractor's performance is of the essence for this Agreement. The Equipment will be delivered in accordance with the schedule set forth in Exhibit "B." Contractor must immediately notify City in writing any time delivery is behind schedule or may not be completed on schedule. In addition to any other rights City may have under this Agreement or at law, Contractor shall pay City the sum of \$[INSERT AMOUNT] per item of Equipment for each calendar day for which the item of Equipment is unavailable beyond the scheduled delivery date(s) specified in Exhibit "B."
- B.** In the event that the Equipment is part of a larger project or projects that require the coordination of multiple contractors or suppliers, then Contractor will fully cooperate in scheduling the delivery so that City can maximize the efficient completion of such project(s).

Section 9. TAXES.

- A.** Contractor agrees to timely pay all sales and use tax (including any value added or gross receipts tax imposed similar to a sales and use tax) imposed by any federal, state or local taxing authority on the ultimate purchase price of the Equipment provided under this Agreement.
- B.** Contractor will withhold, and require its subcontractors, where applicable, to

withhold all required taxes and contributions of any federal, state or local taxing authority which is measured by wages, salaries or other remuneration of its employees or the employees of its subcontractors. Contractor will deposit, or cause to be deposited, in a timely manner with the appropriate taxing authorities all amounts required to be withheld.

- C. All other taxes, however denominated or measured, imposed upon the price of the Equipment provided hereunder, will be the responsibility of Contractor. In addition, all taxes assessed by any taxing jurisdiction based on Contractor property used or consumed in the provision of the Equipment such as and including ad valorem, use, personal property and inventory taxes will be the responsibility of Contractor.
- D. Contractor will, upon written request, submit to City written evidence of any filings or payments of all taxes required to be paid by Contractor hereunder.

Section 10. INDEPENDENT CONTRACTOR.

Contractor enters into this Agreement as an independent contractor and not as an employee of City. Contractor shall have no power or authority by this Agreement to bind City in any respect. Nothing in this Agreement shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the Contractor are employees, agents, contractors or subcontractors of the Contractor and not of City. City shall not be obligated in any way to pay any wage claims or other claims made against Contractor by any such employees, agents, contractors or subcontractors or any other person resulting from performance of this Agreement.

Section 11. SUBCONTRACTS.

Unless otherwise specified, Contractor must obtain City's written permission before subcontracting any portion of the Equipment. Except for the insurance requirements in Section 13.A, all subcontracts and orders for the purchase or rental of supplies, materials or equipment, or any other part of the Equipment, will require that the subcontractor be bound by and subject to all of the terms and conditions of the Agreement. No subcontract or order will relieve Contractor from its obligations to City, including, but not limited to Contractor's insurance and indemnification obligations. No subcontract or order will bind City.

Section 12. TITLE AND RISK OF LOSS.

Unless otherwise agreed, City will have title to, and risk of loss of, all completed and partially completed portions of the Equipment upon delivery, as well as materials delivered to and stored on City property which are intended to become a part of the Equipment. However, Contractor will be liable for any loss or damage to the Equipment and/or the materials caused by Contractor or its subcontractors, their agents or employees, and Contractor will replace or repair said Equipment or materials at its own cost to the complete satisfaction of City. Notwithstanding the foregoing, in the event that the City has paid Contractor for all or a portion of the Equipment which remains in the possession of Contractor, then City shall have title to, and the right to take possession of, such Equipment at any time following payment therefor. Risk of loss for any Equipment which remains in the possession of Contractor shall remain with Contractor until such Equipment has been delivered or City has taken possession thereof. Contractor will have risk of loss or damage to Contractor's property used in the construction of

the Equipment but which does not become a part of the Equipment.

Section 13. INDEMNIFICATION.

- A.** Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence or willful misconduct of Contractor, its officials, officers, employees, agents, subcontractors and subconsultants arising out of or in connection with the Equipment or the performance of this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses except such loss or damage which was caused by the sole negligence or willful misconduct of the City.
- B.** Contractor's defense obligation for any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the City, its officials, officers, employees, agents or volunteers shall be at Contractor's own cost, expense and risk. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse City and its officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.
- C.** Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees, agents or volunteers.

Section 14. INSURANCE.

- A.** General. Contractor shall take out and maintain, and shall require that its subcontractors take out and maintain, insurance meeting the City's requirements as set forth in Exhibit "D" attached to this Agreement and incorporated herein by reference.
- B.** Freight. Contractor shall ensure that third party shippers contracted by Contractor have adequate insurance coverage for the shipped Equipment.

Section 15. LIENS.

- A.** Contractor, subcontractors and suppliers will not make, file or maintain a mechanic's or other lien or claim of any kind or character against the Equipment, for or on account of any labor, materials, fixtures, tools, machinery, equipment, or any other things furnished, or any other work done or performance given under, arising out of, or in any manner connected with the Agreement (such liens or claims referred to as "Claims"); and Contractor, subcontractor and suppliers expressly waive and relinquish any and all rights which they now have, or may subsequently acquire, to file or maintain any Claim and Contractor, subcontractor and suppliers agree that this provision waiving the right of Claims will be an

independent covenant.

- B. Contractor will save and hold City harmless from and against any and all Claims that may be filed by a subcontractor, supplier or any other person or entity and Contractor will, at its own expense, defend any and all actions based upon such Claims and will pay all charges of attorneys and all costs and other expenses arising from such Claims.

Section 16. TERMINATION OF AGREEMENT BY CITY.

- A. Should Contractor at any time refuse or fail to deliver the Equipment with promptness and diligence, or to perform any of its other obligations under the Agreement, City may terminate Contractor's right to proceed with the delivery of the Equipment by written notice to Contractor. In such event City may obtain the Equipment by whatever method it may deem expedient, including the hiring of another contractor or other contractors and, for that purpose, may take possession of all materials, machinery, equipment, tools and appliances and exercise all rights, options and privileges of Contractor. In such case Contractor will not be entitled to receive any further payments until the Equipment is delivered. If City's cost of obtaining the Equipment, including compensation for additional managerial and administrative services, will exceed the unpaid balance of the Agreement, Contractor will be liable for and will pay the difference to City.
- B. City may, for its own convenience, terminate Contractor's right to proceed with the delivery of any portion or all of the Equipment by written notice to Contractor. Such termination will be effective in the manner specified in such notice, will be without prejudice to any claims which City may have against Contractor, and will not affect the obligations and duties of Contractor under the Agreement with respect to portions of the Equipment not terminated.
- C. On receipt of notice under Section 16.B, Contractor will, with respect to the portion of the Equipment terminated, unless the notice states otherwise,
 - 1. Immediately discontinue such portion of the Equipment and the placing of orders for materials, facilities, and supplies in connection with the Equipment,
 - 2. Unless otherwise directed by City, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to City; and
 - 3. Deliver only such portions of the Equipment which City deems necessary to preserve and protect those portions of the Equipment already in progress and to protect material, plant and equipment at the Equipment site or in transit to the Equipment site.
- D. Upon termination pursuant to Section 16.B, Contractor will be paid a pro rata portion of the compensation in the Agreement for any portion of the terminated Equipment already delivered, including material and services for which it has made firm contracts which are not canceled, it being understood that City will be

breach, whether of the same or other covenant or condition. No waiver, benefit, privilege or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

- F.** Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Contra Costa County.
- G.** Interpretation. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party.
- H.** No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.
- I.** Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right and authority to make this Agreement and bind each respective Party.
- J.** Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- K.** Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.
- L.** City's Right to Employ Other Contractors. City reserves its right to employ other contractors in connection with the Equipment.
- M.** Entire Agreement. This Agreement constitutes the entire agreement between the Parties relative to the Equipment specified herein. There are no understandings, agreements, conditions, representations, warranties or promises with respect to this Agreement, except those contained in or referred to in the writing.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR EQUIPMENT PURCHASE AGREEMENT

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY OF ANTIOCH

Approved By:

*****INSERT CONTRACTOR NAME*****

Bessie Marie Scott
City Manager

Signature

Name

ATTEST:

Title

Melissa Rhodes
City Clerk

ATTEST:

By: _____

Its: _____

Approved As To Form:

Derek Cole
Interim City Attorney

EXHIBIT "A" TO EQUIPMENT PURCHASE AGREEMENT
EQUIPMENT SPECIFICATIONS

[TO BE INSERTED FROM ITB]

EQUIPMENT PURCHASE AGREEMENT
Exhibit A

EXHIBIT "B" TO EQUIPMENT PURCHASE AGREEMENT
DELIVERY SCHEDULE

[TO BE INSERTED]

EQUIPMENT PURCHASE AGREEMENT
Exhibit B

EXHIBIT "C" TO EQUIPMENT PURCHASE AGREEMENT

FEE SCHEDULE

[TO BE INSERTED]

EXHIBIT "D" TO EQUIPMENT PURCHASE AGREEMENT
INSURANCE REQUIREMENTS

Please refer to the insurance requirements listed below. **Those that have an "X" indicated in the space before the requirement apply to Contractor's Agreement.**

Contractor shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, its agents, representatives, employees or subcontractors.

Contractor shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Contractor shall furnish City with copies of original endorsements affecting coverage required by this Exhibit D. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Contractor's insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL):

 X Coverage at least as broad as Insurance Services Office ("ISO") Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$2,000,000.00** 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. The required insurance limits may be met if an umbrella insurance provision explicitly supplements both the CGL and general aggregate limits to reach the required threshold.

 Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$1,000,000.00** 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. The required insurance limits may be met if an umbrella insurance provision explicitly supplements both the CGL and general aggregate limits to reach the required threshold.

 Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$5,000,000.00** 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. The required insurance limits may be met if an umbrella insurance provision explicitly supplements both the CGL and general aggregate limits to reach the required threshold.

Automobile Liability:

X Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than **\$1,000,000.00** combined single limit for bodily injury and property damage.

___ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than \$5,000,000.00 combined single limit for bodily injury and property damage.

___ Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Contractor, regardless of where the vehicles are kept or driven.

Professional Liability (Errors and Omissions):

___ Insurance appropriate to the Contractor's profession, with limit no less than \$1,000,000.00 per occurrence or claim, \$2,000,000.00 aggregate.

___ (If Design/Build), with limits no less than \$1,000,000.00 per occurrence or claim, and \$2,000,000.00 policy aggregate.

___ Insurance appropriates to the Contractor's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

X Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000.00** per accident for bodily injury or disease. *(Not required if Contractor provides written verification it has no employees. Waiver needed.)*

The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Builder's Risk (Course of Construction):

___ Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions. If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

Contractor's Pollution Legal Liability:

EQUIPMENT PURCHASE AGREEMENT
Exhibit D

____ Contractor's pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000.00 per occurrence or claim and \$2,000,000.00 policy aggregate.

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 City.

Cyber Liability Insurance

____ Cyber Liability Insurance with limits not less than \$1,000,000 per claim.

Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security.

The policy shall provide coverage for breach response costs as well as regulatory fines and penalties, and credit monitoring expenses with limits sufficient to respond to these obligations.

Surety Bonds:

Contractor shall provide the following Surety Bonds:

____ Bid Bond
____ Performance Bond
X Payment Bond

The Payment Bond and Performance Bond shall be in a sum equal to the contract price, or as otherwise specified and agreed to by the City in writing in its sole discretion pursuant to Section 3.2.13.5. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain the following provisions:

X **Additional Insured Status and Primary/Non-Contributory Language:**

Contractor's general liability and automobile liability policies shall be primary and shall not seek contribution from the City's coverage and be endorsed to add the City and its officers, officials, employees, and agents as additional insureds under such policies using Insurance Services Office form CG 20 10 (or equivalent) on the general liability policy. For construction projects, an endorsement providing completed operations

coverage for the additional insured on the general liability policy, ISO form CG 20 37 (or equivalent), is also required.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

___ Loss Payee Status – Builder's Risk/Course of Construction Insurance (applicable to Construction Contracts only)

Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the City as a loss payee as their interest may appear.

X Notice of Cancellation, Suspension or Otherwise Voiding Policies:

Each insurance policy required above shall contain or be endorsed to contain that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice by certified mail, return receipt requested to the City.

X 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. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Contractor, its employees, agents and subcontractors.

___ Completed Operations

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS

Deductibles and Self-Insured Retentions ("SIR"):

Any deductibles or self-insured retentions must be declared to and approved by 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. At the

EQUIPMENT PURCHASE AGREEMENT

Exhibit D

option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise acceptable to City.

Claims Made Policies: (note - should be applicable only to professional liability, see below)

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of contract of work.
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 work.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors:

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

Verification of Coverage:

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.

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.

Failure to Comply:

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Applicability of Coverage:

Each insurance policy required above shall contain or be endorsed to contain that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.