



**Invitation to Bid (ITB) No. 885-0501-24A
FOR
SUPPLY AND DELIVERY OF ANTI-SCALANT
MEGAFLUX**

ITB Contract Person: Benjamin Woodland

Key ITB Dates:

Invitation to Bid Issued	March 27, 2024
Request for Clarifications Due	April 17, 2024
Submit Bids	May 1, 2024, by 2:00 PM

CITY OF ANTIOCH
City Clerk's Office
200 "H" Street
Antioch, California 94531-5007

NOTICE TO BIDDERS

SUPPLY AND DELIVERY OF ANTI-SCALANT MEGAFLUX

Bid No. 885-0501-24A

Notice is hereby given that the City of Antioch, hereinafter referred to as the "City", will receive, no later than **2:00PM, on May 1st**, sealed bids for the award of a contract for the purchase of **ANTI-SCALANT MEGAFLUX**.

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 IFB number identified above. Bids timely received shall be opened and read aloud at the above stated time and place.

Benjamin Woodland shall act as the City Representative on this procurement.

Each proposal must conform with and be responsive to this IFB, 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 IFB 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.

Benjamin Woodland
Water Treatment Plant Supervisor
City of Antioch

INSTRUCTIONS TO BIDDERS

SUPPLY AND DELIVERY OF ANTI-SCALANT MEGAFLUX

Bid No. 885-0501-24A

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 IFB.
- b. Fully inform themselves as to the facilities, conditions and limitations related to this IFB.
- c. Include in their bid/proposal all required items described in this IFB.

2. Interpretation

Should a Bidder find discrepancies in, or omissions from, the specifications or any term or condition of this IFB, 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. **885-0501-24A**" 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 IFB 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 Supplies 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.

12. Manufacturer's Information

Bidders must submit with their bid contract documents the following:

- a. In accordance with Section 64590, Title 22 of the California Code of Regulations (CCR), no chemical or product shall be added to the drinking water by a water supplier unless the chemical or product is certified as meeting the specifications of NSF International/American National Standard Institute (NSF/ANSI) 60-2005 (Drinking Water Treatment Chemicals – Health Effects). Certification shall be from an ANSI accredited product certification organization whose certification system includes the criteria for ensuring the chemical or product meets NSF/ANSI Standard 60 per Section 64590 of the CCR. Bidders must include a statement by the chemical manufacturer, signed by an authorized representative on letterhead stationery, attesting to the affidavit's validity. In lieu of submitting an affidavit of compliance and letter attesting to the affidavit's validity, a current printout from the ANSI accredited product certification organization is acceptable.
- b. Bidder's manufacturing/blending facilities must be certified under the International Organization for Standardization ISO 9001 certification. A copy of the bidder's certification must be submitted.
- c. A representative analysis of the chemical to be supplied, as prepared by a reputable outside laboratory or bidder's in-house laboratory if ISO certified.
- d. Name and address of the chemical manufacturer.
- e. Product Bulletin and Typical Properties.
- f. Safety Data Sheet (SDS).

BID SPECIFICATIONS
SUPPLY AND DELIVERY OF ANTI-SCALANT MEGAFLUX
Bid No. 885-0501-24A

1. BACKGROUND:

The City of Antioch currently desires to procure **ANTI-SCALANT MEGAFLUX** as described herein. The purpose of this bid is to solicit prices for the City for the **SUPPLY AND DELIVERY OF ANTI-SCALANT MEGAFLUX** on an as needed basis listed in the estimated 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
- e. Manufacturer's Information

Bidders not submitting complete bids in accordance with the requirements of this IFB 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:

Supplies Technical Specifications: Complete description of the technical specifications of the proposed **ANTI-SCALANT MEGAFLUX**, including verification that the supplies meets all of the required specifications set forth in Exhibit "A" as well as information on any specific warranty or maintenance requirements.

C. Specified Supplies- Substitutions.

Bidders must submit a bid including the specific **ANTI-SCALANT MEGAFLUX** listed in Exhibit "A" unless the Bidder obtains approval of its proposed supplies as an equal. All requests for substitution of any supplies as an "equal" must be submitted in writing with appropriate documentation substantiating that is an equal to the specified supplies. 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/supplies.

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 which is attached hereto as Exhibit "B", and INSURANCE REQUIREMENTS which is attached hereto as Exhibit "D" 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

SUPPLY AND DELIVERY OF ANTI-SCALANT MEGAFLUX

Bid No. 885-0501-24A

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 Supplies 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

SUPPLY AND DELIVERY OF ANTI-SCALANT MEGAFLUX

Bid No. 885-0501-24A

NAME OF BIDDER: _____

The undersigned, hereby declare that we have carefully examined the bid documents for ITB No. 885-0501-24A, and have read and examined the Contract Documents, including all specifications, and all addenda, if any, for the following:

THE PURCHASE AND DELIVERY OF THE ANTI-SCALANT MEGAFLUX set forth in Exhibit "A."

We hereby propose to furnish the Supplies including all labor, materials, supplies, tools, transportation, and services, and to discharge all duties and obligations necessary and required to perform and complete the project for the following GRAND TOTAL BID PRICE:

THREE YEAR PRICING (JULY 1, 2024 - JUNE 30, 2027)

SUPPLIES	FISCAL YEAR	UNIT PRICE (\$/gal)	EST. QUANTITY (gal)	SUBTOTAL BID PRICE (Quantity X Unit Price)
ANTI-SCALANT MEGAFLUX AF 275-gal totes	FY24/25		0-10	
ANTI-SCALANT MEGAFLUX AF 275-gal totes	FY25/26		0-10	
ANTI-SCALANT MEGAFLUX AF 275-gal totes	FY26/27		0-10	

OPTIONAL: TWO YEAR EXTENSION PRICING (JULY 1, 2027 - JUNE 30, 2029)

SUPPLIES	FISCAL YEAR	UNIT PRICE (\$/gal)	EST. QUANTITY (gal)	SUBTOTAL BID PRICE (Quantity X Unit Price)
ANTI-SCALANT MEGAFLUX AF 275-gal totes	FY27/28		0-10	
ANTI-SCALANT MEGAFLUX AF 275-gal totes	FY28/29		0-10	

GRAND TOTAL FIVE YEAR 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

CITY OF ANTIOCH

SUPPLY AND DELIVERY OF ANTI-SCALANT MEGAFLUX

Bid No. 855-0501-24A

The undersigned declares:

I am the _____ of _____, the party 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. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The 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. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the 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. The 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].

Name of Bidder _____

Signature _____

Name _____

Title _____

END OF NON-COLLUSION DECLARATION

MANUFACTURER'S INFORMATION

Please provide the manufacturer's information as specified in pages 3 and 4, items "a" through "f" attached hereto and incorporated by reference. Attach additional sheets if necessary.

EXHIBIT "A" TO IFB

Specifications for SUPPLY AND DELIVERY OF ANTI-SCALANT MEGAFLUX

Bid No. 885-0501-24A

[Specifications Attached Behind This Page]

Antiscalant is added to the RO Feed Water to reduce the potential for scale to form on the RO membranes and inside the brine line. Two totes housed inside the chemical facility provide storage for the antiscalant. Two metering pumps operating in a duty/standby configuration supply antiscalant to the RO Feed Water Pipeline immediately downstream of the cartridge filters. Design criteria for the antiscalant dosage feed rate and storage is presented in Exhibit "A" Tables 1 and 2, respectively.

Exhibit "A", Table 1 [Antiscalant Criteria](#)

Parameter	Units	Minimum	Average	Maximum
Liquid, 100%, 12.08 lbs Antiscalant / gal (1) (2)				
Process flow rate	mgd	2	6	8
Chemical dosage	mg/L	1	1	1
Chemical usage	lb/day	16.7	50.0	66.7
Chemical feed rate	gpd	1.38	4.14	5.52
Chemical feed rate	gph	0.06	0.17	0.23
Chemical feed rate	gpm	0.001	0.003	0.004
Chemical feed rate	mL/min	3.63	10.89	14.52
Notes:				
(1) Density of Scale Inhibitor based on American Water Chemical's Megaflux AF Antiscalant. (Specific Gravity = 1.45.)				
(2) Antiscalant certified by NSF to NSF/ANSI Standard 60.				

Exhibit "A", Table 2 [Antiscalant Bulk Storage Criteria](#)

Parameter	Units	Value
Bulk storage totes	No.	2
Storage capacity (each tote)	gal	275
Storage capacity (total)	gal	550
Storage time (total) (1)	days	100
Delivery truck load (1 tote per load)	gal	275
Time between delivery	days	50
Notes:		
(1) Storage time assumes a chemical dosage rate of 1 mg/L and a process flow rate of 8 mgd.		
(2) Time between delivery assumes a chemical dosage rate of 1 mg/L, a process flow rate of 8 mgd, and totes delivered one at a time.		

- Antiscalant must be delivered in 275-gallon totes.
- Antiscalant must be Megaflux AF produced by American Water Chemicals, Plant City, FL. In addition, the antiscalant must meet the following requirements:
- Inhibits calcium carbonate scale up to a Calcium Carbonate Nucleation Index (CCNI) of 2.2.

EXHIBIT "A"

- Maintains good scale inhibition even in the presence of high levels of iron.
- Controls calcium sulfate, barium sulfate, strontium sulfate and silicate scales in waters with moderate scaling potential.
- Effectively disperses metal oxides and other inorganic particulates such as silt and clays.
- Stabilizes all metal ions to prevent metal hydroxide, metal phosphate, and metal silicate precipitation.
- Environmentally compatible and fully biodegradable.
- Certified by NSF to NSF/ANSI Standard 60.
- Halal certified.
- Kosher certified.

EXHIBIT "B" TO IFB

Supplies Purchase Agreement

[Agreement Attached Behind This Page]

SUPPLY PURCHASE AGREEMENT

ATTACHMENT "A"

SAMPLE

CITY OF ANTIOCH SUPPLY PURCHASE AGREEMENT

This Supply 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. "Supplies" means the chemicals [**UPDATE AS NEEDED**] labor and other related services, including 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 Supplies are 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 supplies or material by manufacturer, model or trade name, no substitution will be made without City's written approval. Supplies or material delivered without the approval required by this Section 2 will be deemed to be defective material for purposes of Section 4. Where supplies 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 supplies and material to be delivered. Supply or 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 Supplies prior to acceptance. If upon inspection or testing the Supplies 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 Supplies or exercise any of its rights under Section 4.A. 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 any services provided in connection with the Supplies will be performed in a professional and workmanlike manner and in accordance with the highest industry standards.
- B.** Contractor further warrants that Supplies will meet any 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 Supplies will not relieve Contractor of its obligations under this Section 4.B.
- C.** For any breach of the warranties contained in **Error! Reference source not found.** and **Error! Reference source not found.**, 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. Replace the defective Supplies with conforming Supplies, F.O.B. City's plant, office or other location of City where the Supplies were originally delivered; or
 - 2. Repay to City the purchase price of the defective Supplies.

If City selects replacement, any defects will be remedied without cost to City, including but not limited to, the costs of removal and replacement of the defective Supplies. All such defective Supplies that are replaced will be similarly warranted as stated above.

- D.** Contractor also warrants that the Supplies are 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 any proprietary technology and intellectual property incorporated within the Supplies. 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 (i) all federal, state and local sales, use, excise, privilege, payroll, occupational and other taxes applicable to the Supplies 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, make changes in the Supplies, including but not limited to, City's requirements and specifications. If such changes affect the cost of the Supplies 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 Supplies.
- B.** Payments otherwise due may be withheld by City on account of defective Supplies 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.
- C.** Acceptance by Contractor of payment of the payment 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, final payment 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 Supplies 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)** for each calendar day for which the Supplies are unavailable beyond the scheduled delivery date(s) specified in Exhibit "B."
- B.** In the event that the Supplies are 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 Supplies 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 Supplies 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 Supplies 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 this Agreement. Except for the insurance requirements in Section 13.A, all subcontracts and orders for the purchase or rental of supplies, materials or equipment required for performance of this Agreement, 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 the Supplies upon delivery, as well as materials delivered to and stored on City property which are intended to

become a part of the Supplies. However, Contractor will be liable for any loss or damage to the Supplies and/or the materials caused by Contractor or its subcontractors, their agents or employees, and Contractor will replace or repair said Supplies 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 Supplies which remains in the possession of Contractor, then City shall have title to, and the right to take possession of, such Supplies at any time following payment therefor. Risk of loss for any Supplies which remains in the possession of Contractor shall remain with Contractor until such Supplies 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 Supplies but which does not become a part of the Supplies.

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 Supplies 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 Supplies.

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 Supplies, 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 Supplies 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 Supplies by written notice to Contractor. In such event City may obtain the Supplies 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 Supplies is delivered. If City's cost of obtaining the Supplies, 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 Supplies 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 Supplies not terminated.
- C.** On receipt of notice under Section 16.B, Contractor will, with respect to the portion of the Supplies terminated, unless the notice states otherwise,

 - 1. Immediately discontinue such portion of the Supplies and the placing of orders for materials, facilities, and supplies in connection with the Supplies;
 - 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 Supplies as may be authorized by the City.
- D. Upon termination pursuant to Section 16.B, Contractor will be paid for the terminated Supplies already delivered. Upon determination of the amount of compensation, City will promptly pay such amount to Contractor upon delivery by Contractor of the releases of liens and affidavit, pursuant to Section 7.B.

Section 17. MISCELLANEOUS PROVISIONS.

- A. Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address or at such other address as the respective parties may provide in writing for this purpose:

CITY:

City of Antioch
P. O. Box 5007
Antioch, CA 94531-5007
Attn: Benjamin Woodland

CONTRACTOR:

INSERT NAME, ADDRESS & CONTACT PERSON

City of Antioch
P. O. Box 5007
Antioch, CA 94531-5007
Attn: City Attorney

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

- B. Assignment or Transfer. Contractor shall not assign or transfer any interest in this Agreement whether by assignment or novation, without the prior written consent of the City, which will not be unreasonably withheld. Provided, however, that claims for money due or to become due Contractor from the City under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer, whether voluntary or involuntary, shall be furnished promptly to the City.
- C. Successors and Assigns. This Agreement shall be binding on the successors

and assigns of the Parties.

- D. Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.
- E. Waiver. No waiver of any default shall constitute a waiver of any other default or 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 City's projects and operations, including other contracts for Supplies.
- M. Entire Agreement. This Agreement constitutes the entire agreement between the Parties relative to the Supplies 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 SUPPLY PURCHASE AGREEMENT

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

CITY OF ANTIOCH

[INSERT CONSULTANT]

By: _____
Kwame Reed, Acting City Manager

By: _____

Name

Title

ATTEST:
By: _____
Elizabeth Householder, City Clerk

ATTEST:
By: _____
Its: _____

APPROVED AS TO FORM:

By: _____
Thomas Lloyd Smith, City Attorney

EXHIBIT "A" TO SUPPLY PURCHASE AGREEMENT
SUPPLY SPECIFICATIONS

[TO BE INSERTED FROM IFB]

EXHIBIT "B" TO SUPPLY PURCHASE AGREEMENT
DELIVERY SCHEDULE

[SUPPLIES DELIVERED ON AN AS NEEDED BASIS]

EXHIBIT "C" TO SUPPLY PURCHASE AGREEMENT

FEE SCHEDULE

[TO BE INSERTED]

ATTACHMENT "B"

EXHIBIT "D" TO SUPPLY 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):

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.

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.

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.

Automobile Liability:

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.

SUPPLY PURCHASE AGREEMENT

Exhibit D

_____ 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 appropriate 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:

_____ 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
- Payment Bond

The Payment Bond and Performance Bond shall be in a sum equal to the contract price. 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:

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

SUPPLY PURCHASE AGREEMENT

Exhibit D

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 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, circumstances.

Failure to Comply:

Each insurance policy required above shall contain or be endorsed to contain that any 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 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