



REQUEST FOR PROPOSAL

**ASPHALT / STREET MATERIALS
BID NO. 745-0415-14F**

BID DUE DATE: Tuesday, April 15, 2014 at 2:00 pm

I. GENERAL CONDITIONS

1. General Information - The Public Works Department of the City of Antioch, California, will receive bid responses at its office located at 1201 W. 4th Street, Antioch, CA 94509.

It is the vendor's/contractor's responsibility to check the City of Antioch website ([Bid Documents](#)), for any addenda that may have been issued prior to the bid/proposal due date.

2. Form of Bid - The bid shall be made on the attached bidder's proposal form. If the form is deemed inadequate, additional information may be submitted with the proposal, via an attachment of catalogs, drawings, photographs, or a letter. Letters repeating prices and details from the City's specifications must be omitted. Bids shall be made only on this bid form, properly executed, and enclosed in a sealed envelope bearing the name of the bidder, the bid number, bid due date, and bid title. Proposals shall be written in ink, computer generated, or typewritten. Mistakes may be crossed out and corrections inserted adjacent thereto and must be initialed in ink by the person signing the bid. Bids are to be verified before submission as they cannot be corrected, altered, or signed after bids are opened.

3. Interpretation of Bids - Should a bidder find discrepancies in, or omissions from the specifications, or should bidder be in doubt as to their true meaning, bidder shall submit a written request to the Public Works Department for an interpretation thereof prior to the bid opening. The person submitting the request shall be responsible for its prompt delivery. Any interpretation of, or change in the proposed documents will be made only by an addendum published on the City's website, ([Bid Documents](#)), and shall become part of any contract awarded. The City will not be responsible for any other explanation or interpretations.

4. Addenda - Any addenda issued by the City during the time of bidding shall be covered in the bid and shall be made a part of the contract. It is the vendor's/contractor's responsibility to check the City of Antioch website ([Bid Documents](#)), for any addenda that may have been issued prior to the bid/proposal due date.

5. Bid Openings - Bids shall be delivered to the Public Works Department of the City of Antioch on or before the day and hour set for the opening of bids in the published Notice to Bidders. Each bid shall be enclosed in a separate sealed envelope bearing the description of the bid, the bid number, the name of the bidder, and the date and hour of the bid opening. A bidder may withdraw his bid, either personally or by written request, at any time prior to the scheduled time for opening of bids.

6. Late Bids - Any bids received after the scheduled time of opening will be clocked in, but will not be opened or considered.

7. No Bid - If a bid is submitted without an amount, it will not be considered.

8. Award or Rejection - The bid will be awarded based on the best value and benefit to the City. The City reserves the right to reject any or all bids, or to waive any minor irregularities or informalities in the bid. The City reserves the right to change quantities prior to the award. The City reserves the right to award the contract to the bid that represents the overall best value to the City and will be announced by way of publishing to the City's website ([Bid Documents](#)).

9. Terms and Conditions - The successful bidder must comply with the City's insurance requirements as set forth in this document and the attached Maintenance and Trade Services Agreement. The bidder shall not change the wording in the attached specifications or conditions. No words or comments shall be added to the general conditions or detailed specifications. Conditional bids cannot be accepted.

10. Alternatives - The make or brand and grade of the article on which the bid is submitted should be stated on the bid form. If alternates are bid, literature must be submitted with bid in order for the alternate to be considered. All items on which bids are submitted must in all cases be equal or better in quality and utility to those specified by the City. Determination of the acceptability of any product offered shall be solely at the discretion of the City of Antioch.

- 11. Payment Terms** - Must be indicated by filling in the proper blanks on the bid form. Cash discounts of less than 20 days will be considered net. The standard terms of the City of Antioch are Net 30 days. All invoices must include the Purchase Order number, job code and explanation of Services/Goods. The City shall make no payment until work has been inspected and approved by the City. The payment is contingent upon receiving proper invoice and delivery of the goods and/or services. Invoices must be mailed to City of Antioch, PO Box 5007, Attention Public Works, Antioch, CA 94531-5007.
- 12. FOB Point** - It is understood that the bidder agrees to deliver FOB Destination, with no freight charges to the City. All costs for packing, delivery, drayage, postage, freight, express, or for any other purpose are to be borne by the bidder.
- 13. Brand Names** – The use of the name of a manufacturer, or any special brand or make, in describing any item in the bid documents does not restrict bidders to that manufacturer or specific article. An equal of the named product will be given due consideration. Notwithstanding the foregoing, the City may impose additional restrictions in the Specification section of the documents.
- 14. Tax** - No bid shall include federal excise tax, inasmuch as the City is exempt per published IRS regulations concerning state/local governments. The City is obligated to pay applicable state sales or use taxes.
- 15. Samples** - When requested, bidders shall submit properly marked samples of the article(s) on which bid is made to the City. Any sample submitted must be clearly marked in such a manner that the marking is fixed, so that the identification of the sample is assured. Such marking shall state (1) Asphalt / Street Materials; (2) number of bid; and (3) item number. Samples, when required, must be furnished free of expense to the City, and if not destroyed by tests, will upon request, be returned at bidder's expense.
- 16. Inspection** - All work performed shall be subject to the inspection of the City, and unsuitable work may be rejected. Defective work shall be made good by the vendor/contractor in a manner satisfactory to the City. The City shall make no payment until work has been inspected and approved by the City.
- 17. Assignment** - No assignment by the contractor or any contract to be entered into hereunder or of any part thereof, except of funds to be received thereunder by the contractor, will be recognized by the City unless such assignment has had the prior written approval of the City.
- 18. Warranty** - Terms of any warranty offered by the manufacturer or the bidder shall be included with the bid.
- 19. Timely Delivery** - Time is of the essence, and the purchase order is subject to termination for failure to deliver on time. The acceptance by buyer of later performance with or without objection or reservation shall not waive the right to claim damage for such breach nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by the vendor/contractor.
- 20. Termination for Default** - The City may, by written notice of default to the vendor/contractor, terminate the contract in whole or in part should the vendor/contractor fail to make satisfactory progress, fail to deliver within time specified therein or fail to deliver in strict conformance to specifications and requirements set forth therein. In the event of such termination, the City reserves the right to purchase or obtain the supplies or services elsewhere, and the defaulting vendor/contractor shall be liable for the difference between the prices set forth in the terminated order and the actual cost thereof to the City. The prevailing market price shall be considered the fair repurchase price. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause. The rights and remedies of City provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under resulting order.

21. Termination for Convenience - The City may, by written notice stating the extent and effective date, terminate the contract for convenience in whole or in part, at any time. The City shall pay the vendor/contractor as full compensation for performance until such termination the unit or pro rate price for the delivered and accepted portion, and a reasonable amount, as costs of termination, not otherwise recoverable from other sources by the vendor/contractor as approved by the City, with respect to the undelivered or unaccepted portion of the order, provided compensation hereunder shall in no event exceed the total price. In no event shall the City be liable for any loss of profits on the resulting order or portion thereof so terminated. The rights and remedies of City provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under resulting order.

22. Fiscal Year - Obligation for payment of any contract beyond the current fiscal year end is contingent upon the availability of funding from which payment can be made. No legal liability shall arise for payment beyond June 30 of the calendar year unless funds are made available for such performance.

23. Business License – The City of Antioch requires that any vendor/contractor doing business within the city limits must hold a valid City of Antioch Business License prior to merchandise delivery (by vendor/contractor) or services provided. If required, the awarding vendor/contractor must contact the Finance Department, at (925) 779-7059 for more information or a [Business License Application](#).

24. Nondiscrimination and Equal Opportunity – Contractor shall not discriminate on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Contractor thereby.

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

25. Governing Law - This contract shall be construed and interpreted according to the laws of the State of California.

26. Questions relating to this bid should be submitted via email publicworks@ci.antioch.ca.us.

27. Successful bidder shall be expected to agree to and comply with all terms addressed in the attached Sample Maintenance and Trade Services Agreement.

II INSTRUCTIONS AND CONDITIONS

1. PREPARATION/SUBMISSION OF BIDS:

- Each bid must be submitted on this form in a sealed envelope with the bid number, closing date, and time on outside.
- All information shall be entered in ink or typewritten. Mistakes may be crossed out and corrections inserted before submission of your bid. Corrections shall be initialed in ink by the person signing the bid.
- Corrections and/or modifications received after the closing time specified will not be accepted.
- Time of delivery shall be stated as the number of calendar days following receipt of the order by the vendor/contractor to receipt of the goods or services by the City.
- Time of delivery may be a consideration in the award.
- Prices will be considered as net if no cash discount is shown.
- All bids shall be signed by an authorized officer or employee of the bidder.
- Bids must be submitted by the date and at, or prior to, the time specified to be considered. No late bids will be accepted in any format.
- If your quotation is on an "all or nothing" basis, please state on quotation form.

2. RIGHT TO AUDIT:

The City of Antioch reserves the right to verify, by examination of vendor's/contractor's records, all invoiced amounts when firm prices are not set forth in the purchase agreement.

3. ASSIGNMENT:

In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of part 2 of Division 7 of the Business and Professions Code), arising from the purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.

III CONTRACTOR'S INSURANCE REQUIREMENTS

Contractor shall procure and maintain for the duration of the contract 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, his agents, representatives, employees, or subcontractors.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01).
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

Minimum Limits of Insurance

- | | | |
|---|-------------|---|
| 1. General Liability
(including operations,
products, and
completed operations | \$1,000,000 | Per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location, or the general aggregate limit shall be twice the required occurrence limit. |
| 2. Automobile Liability | \$1,000,000 | Per accident for bodily injury and property damage. |
| 3. Workers'
Compensation | | As required by the State of California. |
| 4. Employer's Liability | \$1,000,000 | Per accident for bodily injury or disease |

If the contractor maintains higher limits than the minimums shown above, their entity shall be entitled to coverage for the higher limits maintained by the contractors.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Other Insurance Provisions

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

1. The City, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage shall be provided in the form of an Additional Insured endorsement (CG 20 10 11 85 or equivalent) to the Contractor's insurance policy, or as a separate owner's policy.

2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, and volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) day's prior written notice has been provided to the City.

Waiver of Subrogation

Contractor hereby agrees to waive subrogation which any insurer of contractor may acquire from contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the contractor, its employees, agents, and subcontractors.

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 by entity.

Verification of Coverage

Contractor shall furnish the City with original certificates and amendatory endorsements affecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

IV PREVAILING WAGES

Where labor is required for public work as part of this contract, pursuant to the provisions of the Labor Code of the State of California, contractors shall pay no less than the minimum wages established by the Director of the Department of Industrial Relations of the State of California.

It shall be mandatory upon the contractor to whom the contract is awarded, and his subcontractors to pay not less than the established prevailing rate of wages to all workers employed by the contractor or said subcontractors in the execution of the contract.

The Contractor shall post a copy of the general prevailing rate of per diem wages at the job site pursuant to Section 1773.2 of the Labor Code of the State of California.

Pursuant to the provisions of Division 2, Part 7, Chapter 1, Article 2, and any amendments thereof of the Labor Code of the State of California, the Contractor and any subcontractor under him shall pay not less than the specified prevailing rate of wages to all workers employed in the execution of the contract.

The Contractor shall, as a penalty to the State or the City forfeit Fifty Dollars for each calendar day, or portion thereof, for each workman paid less than the stipulated prevailing rates for any work or craft in which such workman is employed under the contract by the Contractor or by any subcontractor under him. The difference between such stipulated prevailing wage rates and the amount paid to such worker for each calendar day or portion thereof for which each workman was paid less than the stipulated prevailing wage rate shall be paid to each workman by the Contractor. The provisions of Section 1776 of the Labor Code of the State of California shall be complied with by the Contractor. For all classes of work not specified herein, the minimum wage shall be that specified for general laborer.

The specified wage rates are minimum rates only and the City will not consider and shall not be liable for any claims for additional compensation made by the Contractor because of payment by him of any wage rate in excess of the general prevailing rates. All disputes in regard to the payment of wages in excess of those specified herein shall be adjusted by the Contractor at its own expense.

The holidays upon which such rates shall be paid shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification, or type of workman employed on the project.

V APPEALS AND REMEDIES

Any actual or prospective bidder, service provider, or contractor that has a grievance in connection with any City solicitation or award of contract shall proceed pursuant to Chapter 4 of Title 3 of the Antioch Municipal Code.

VI SPECIFICATIONS – BID NO. 745-0415-14F

Terms and Conditions

1. The successful bidder must comply with the City's insurance requirements as set forth in this document and terms of the attached Maintenance and Trade Services Agreement.
2. The City of Antioch is currently soliciting bids to furnish Asphalt/Street Materials for the Maintenance Division, on an as-needed basis, for the period of 07/01/2014 thru 06/30/2017 with the option to renew two additional years upon acceptance by both parties. All asphalt will be billed as shipped. In order to be considered, each bidder submitting a bid must meet or exceed all specifications stated herein.
3. Prices shall be firm for a period not less than ninety (90) days from date of award. The contract period is effective through June 30, 2017, with an option to renew two additional years. Prices subject to change thereafter must be approved by the City of Antioch. The City must be notified in writing, not less than thirty days prior to increase. The City reserves the right to cancel the award and resolicit bids, if, in its opinion, the increased prices are greater than general market conditions warrant. All prices shall include any applicable freight charges. Price increases shall not exceed 6%. Freight charges listed as separate items will not be considered. This same principle will apply for any other charges, such as minimum load requirements, time requirement, etc. Include all applicable charges on additional sheet if not included in this bid.
4. The Contractor shall deliver the materials, equipment, supplies or services, or cause the work to be performed, within the time and in the manner specified in the contract. Times and dates stated herein are of the essence. If at any time, the contractor has reason to believe that deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay shall be given immediately to the City. Deliveries must be prepaid. C.O.D. shipments will not be accepted.
5. The City of Antioch offers a 10% preference to vendors offering recycled products. If your products contain recycled material, please provide detailed information for products identified as such. In addition, the City of Antioch requests that all efforts to develop and support the State of California's Recycled Product Requirement.
6. Delivery: Discharge of asphalt into City-owned or contracted trucks must commence within thirty (30) minutes of arrival at Contractor's plant.
7. Air Pollution Control: The Contractor shall not discharge smoke, dust or any other air contaminants into the atmosphere in such quantity that would violate the regulations of any governmental authority. The Contractor shall not violate any regulation adopted by the Bay Area Air Pollution Control District.
8. Award: Award of this contract will be made to the bidder that is most responsive to the needs of the City. Additional consideration will be given to vendors who operate in the Antioch area due to the nature of asphalt material. The City of Antioch reserves the right to reject any and all bids. The City may also elect to award the bid to a primary and secondary contractor. If your company does not wish to participate as a secondary vendor, please include a statement notifying the City of your intentions in this matter.
9. Submission of Bids: Bids shall be submitted on the forms provided and shall be delivered to the Public Works Department offices 1201 W. 4th Street, Antioch, CA no later than **2:00 p.m. on April 15, 2014.**

Should you have any questions regarding these specifications, please contact Mike Bechtholdt, Deputy Public Works Director at mbechtholdt@ci.antioch.ca.us

ASPHALT / STREET MATERIALS BID NO. 745-0415-14F

BID DUE DATE: **Tuesday, April 15, 2014 at 2:00 pm**

The undersigned bidder declares that it has carefully examined the locations of the proposed work, plans and specifications, special provisions and read the accompanying instructions to bidders.

Does proposed bid conform to all requirements listed in this document and drawings? _____
If NO, explain non-conforming specifications in detail on separate sheet.

Company Name _____

Contact Name _____

Title _____

Address _____

City/State/Zip _____

Telephone _____ FAX _____

Email Address _____

Contractor's License No. _____ Exp. Date _____

City of Antioch Business License No. _____ Exp. Date _____

Signature _____ Date _____

Bid must be submitted in a sealed envelope with the bid number, closing date, and time on the outside envelope.

Send via mail (sealed) to:

or

Deliver via courier (sealed) to:

City of Antioch/Public Works
BID NO. 745-0415-14F
P.O. Box 5007
Antioch, CA 94531-5007

City of Antioch Public Works
BID NO. 745-0415-14F
1201 W 4th Street
Antioch, CA 94509

ASPHALT / STREET MATERIALS BID NO. 745-0415-14F

THIS PAGE MUST BE NOTARIZED

NON COLLUSION AFFIDAVIT

The Bidder, by its officers and agents or representatives present at the time of filing this bid, being duly sworn on their oaths say, that neither they nor any of them have in any way directly or indirectly entered into any arrangement or agreement with any other bidder, or with any public officer of the CITY OF ANTIOCH whereby such affiant or affiants or either of them has paid or is to pay to such bidder or public officer any sum of money, or has given or is to give to such other bidder or public officer anything of value whatever, or such affiant or affiants or either of them has not directly or indirectly entered into any arrangement or agreement with any other bidder or bidders, which tends to or does lessen or destroy free competition in the letting of the contract sought for on the attached bids; that no bid has been accepted from any subcontractor or supplier through any bid depository, the By-Laws, Rules or Regulations of which prohibit or prevent the Contractor from considering any bid from any subcontractor or supplier which is not processed through said bid depository, or which prevent any subcontractor or supplier from bidding to any Contractor who does not use the facilities or accept bids from or through such bid depository; that no inducement of any form or character other than that which appears upon the face of the bid will be suggested, offered, paid or delivered to any person of the contract, nor has this bidder any agreement or understanding of any kind whatsoever, with any person whomsoever to pay, deliver to, or share with any other person in any way or manner, any of the proceeds of the contracts sought by this bid.

NAME _____

SIGNATURE _____

TITLE _____

Subscribed and sworn to before me by:

This _____ day of _____, 20_____

Notary Public

Bidder's Initials _____

ASPHALT / STREET MATERIALS BID NO. 745-0415-14F

QUOTE

To The City of Antioch:

In compliance with the annexed notice inviting sealed proposals, the undersigned hereby proposes to furnish all necessary tools and equipment, materials, labor, and supervision (including cost of Worker's Compensation Insurance and all payroll taxes on such labor) to complete the annual contract for purchase of asphalt and street materials as herein described in accordance with the special provision therefore, and agrees to enter into a contract therefore, at the listed prices.

All prices shall be F.O.B. Jobsite, Antioch, California. Sales tax should not be a part of the unit price.

Line Item	Quantity	Description	1 to 99 Tons Cost/Ton	100 to 399 Cost/Ton	400 and Over Cost/Ton
1	2,500 Tons	¼" PG64-16 or Equal Asphalt			
2	2,000 Tons	¾" PG64-16 or Equal Asphalt			
3	2,000 Tons	½" PG64-16 or Equal Asphalt			
4	800 Tons	¼" SC 800 Asphalt Cutback, Cold Mix			
5	2,000 Gals	SS-1 Oil	\$_____/gal		

All materials bid must comply with Caltrans Specifications

*City of Antioch is estimating a yearly budget of \$400,000 for these materials. The contract period is effective through June 30, 2017, with an option to renew two additional years.

*Do not include sales tax in your bid price.

*City of Antioch will pick up items on as needed basis.

The following cash discount will apply _____% _____ days.

Terms or Cash Discount (if other than net 30 days)_____

SAMPLE – KEEP FOR YOUR RECORDS

MAINTENANCE AND TRADE SERVICES AGREEMENT Annual Contract for XXXXXXX

THIS AGREEMENT is made and entered into this ## day of **Month Day, Year** between **Contractor Name** ("Contractor"), whose address is **XXXXX, City, CA zip**, and telephone number is **(###) ###-####**; and the CITY OF ANTIOCH, a municipal corporation ("City").

RECITALS

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

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

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

1. Services to be Performed. The work for the City of Antioch is described on the attached Quote from 'Contractor' (Exhibit A), which is attached and incorporated to the extent consistent with this Agreement.
2. Compensation. The total compensation under this Agreement shall not exceed, with the details set forth in Exhibit A, which is attached and incorporated to the extent consistent with this Agreement.
3. Term. The term of this Agreement will expire on **Month, Day, Year**
4. Method of Payment. Payment shall be made within thirty (30) days of receipt of Contractor's invoice and approval by City. Delivery shall not constitute acceptance of any goods.
5. Indemnification. Contractor shall indemnify, save and hold harmless from and defend the City, its officers, agents and employees, against any and all claims, costs, demands, causes of action, suits, losses, expense or liability arising from, or alleged to have arisen, from any acts or omissions of Contractor, its agents, sub-contractors, officials or employees, in connection with the execution of the work covered by this Agreement, as it may be amended, except for the sole negligence or willful misconduct of City. This indemnification includes any claim that the materials or equipment provided under this Agreement, or any tool, article or process used in manufacture of such tools or equipment, constitutes an infringement of any patent issued by the United States. This entire indemnification provision shall survive termination or cancellation of this Agreement.
6. Insurance. During the term of this Agreement, Contractor shall procure and maintain at its own cost and expense the following insurance coverage with insurers with an A.M. Best's rating of no less than A: VII:
 - a. General Liability and Bodily Injury Insurance. Commercial general liability insurance with limits of at least \$1,000,000 combined limit for bodily injury and property damage that provides that the City, its officers, employees and agents are named additional insureds under the policy. The policy shall state in writing either on the Certificate of Insurance or attached rider that this insurance will operate as primary insurance for work performed by Contractor and its subcontractors, and that no other insurance effected by City or other named insured will be called on to cover a loss.
 - b. Automobile Liability Insurance. Automobile liability insurance with limits not less than \$1,000,000 per person/per occurrence.
 - c. Workers' Compensation Insurance. Workers' Compensation Insurance for all of

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

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

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

e. Subcontractors. Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in this Agreement, including but not limited to naming additional insureds.

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

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

a. Meet all conditions of the Agreement;

b. Shall be free from all defects in design, material and workmanship; and

c. Shall be fit for the purposes intended.

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

9. Labor Code Prevailing Wage. To the extent applicable, Contractor shall comply with the requirements of the California Labor Code including but not limited to hours of labor, nondiscrimination, payroll records, apprentices, workers' compensation and prevailing wages.

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

10. Miscellaneous Provisions.

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

b. Contractor shall not assign or transfer this Agreement.

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

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

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

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

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

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

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

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

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

CITY OF ANTIOCH:

By: _____
Steve Duran, City Manager

CONTRACTOR:

By : _____
Title: _____

By: _____
Title: _____
(Second signature required if a corporation)

ATTEST:

Arne Simonsen, City Clerk

APPROVED AS TO TERMS:

Lynn Tracy Nerland, City Attorney