



## City of Lovington

214 S. Love St.  
PO Box 1268  
Lovington, NM 88260

Bus: 575-396-2884  
Fax: 575-396-6328  
jwilliams@lovington.org

DATE: October 1, 2020

TO: Gary Chapman, Finance Director

FROM: James R. Williams, Finance Director 

RE: Emergency Procurement – Youth Center

In order to preserve the necessary function of government and to ensure the health and safety of the public, I have authorized the purchase of the BioMist Units by emergency procurement. In addition, as we already have these unit in use at other City facilities, the purchase of additional compatible equipment would be from this sole source.



**CITY OF LOVINGTON**

PO Box 1269  
Lovington, NM 88260  
PH: (575) 396-2884  
FAX: (575) 396-6328

**PURCHASE ORDER**

**PO Number:** PO14478

**Date:** 09/28/2020

**Requisition #:** REQ17346

**Vendor #:** 10290

**ISSUED TO:** Biomist, Inc.  
573 North Wolf Road  
Wheeling, IL 60090

**SHIP TO:** City of Lovington NM  
Attn:City Hall  
P O BOX 1268  
Lovington, NM 88260

ITEM	UNITS DESCRIPTION	GL ACCT #	PROJ ACCT #	PRICE	AMOUNT
1	0 Biomist Units and Supplies RE Quote: 200903-3	101-1210-46011	OCAL CARES - EXP	0.00	49,974.65

Authorized by: 

<b>SUBTOTAL:</b>	49,974.65
<b>TOTAL TAX:</b>	0.00
<b>SHIPPING:</b>	0.00
<b>TOTAL</b>	49,974.65

- Original invoice with remittance slip must be sent to: City of Lovington, PO Box 1269, Lovington, NM 88260.
- Payment may be expected within 30 days of receipt of goods and invoice.
- C.O.D. shipment will not be accepted.
- Purchase Order numbers must appear on all shipping containers, packing slips and invoices. Failure to comply with the above request may delay payment.
- All goods are to be shipped F.O.B. Destination unless otherwise stated.
- All materials and services are subject to approval based on the description on the face of the purchase order or appendages thereof. Substitutions are not permitted without approval of the Requesting Department. Material not approved will be returned at no cost to the City.
- All goods and equipment must meet or exceed all necessary city, state and federal standards and regulations.
- Vendor or manufacturer bears risk of loss or damage until property received and/or installed.
- Seller acknowledges that the buyer is an equal opportunity employer. Seller will comply with all equal opportunity laws and regulations that are applicable to it as a supplier of the buyer. The City is exempt from all federal excise and state tax – ID# 85-60000604



# SS10 Mini Sanitizing System

**Biomist, Inc.**  
573 N. Wolf Road  
Wheeling, IL 60090

## Quotation/Purchase Agreement

**Company**            **City of Lovington**  
**Contact**            Chief Terrance Lizardo  
**Address**            213 South Love  
**City, St Zip**        Lovington, NM 88260

**Phone**                **Fax**  
**number**              **number**  
575-704-2380        505-396-7380

**E-mail**                [tlizardo@lovington.org](mailto:tlizardo@lovington.org)

**LOCAL OFFICE**  
**Biomist, Inc.**  
573 N. Wolf Road  
Wheeling, IL 60090

**Phone**                **Fax**  
**847-850-5530**        **847-850-5535**

QUOTE REFERENCE			
Date:	9/3/2020	Expires:	10/3/2020
Quotation #	200903-3		

BIOMIST REPRESENTATIVE	
Robert L. Cook	

INQUIRIES REGARDING THIS QUOTATION SHOULD  
BE DIRECTED TO THE LOCAL OFFICE

**SUBMIT PURCHASE ORDER TO:**  
**Biomist, Inc.**  
573 N. Wolf Road  
Wheeling, IL 60090

**Phone**                **Fax**  
**847-850-5530**        **847-850-5535**

Biomist, Inc., is pleased to submit the following quotation for the products and services described herein at the stated prices and terms, subject to your acceptance of the terms and conditions on the face and back hereof, and on any attachment hereto.

**TERMS OF PAYMENT:**  
Cash Orders: Payment Due in Advance, Net 30 Days on approval of credit.  
Financed Orders: Subject to Credit Approval. Payment due in full upon delivery. See additional details at end of quotation.

**DELIVERY:** Approximate delivery is 6 - 10 weeks from order validation.

**TAXES:** Taxes, if any, are payable upon receipt of invoice.

**WARRANTY:** See details at end of quotation.

**This constitutes my offer to purchase Biomist, Inc. products per the attached quotation dated:**

**September 3, 2020**

**at the total selling price of:**

**\$49,974.65**

**Authorized signature acknowledges payment will be remitted according to Biomist, Inc. payment terms stated herein for the products and services listed.**

SUBMITTED BY: \_\_\_\_\_  
NAME:                    Robert L. Cook  
TITLE:                    Vice President  
DATE:                    9/3/2020

BY: (signature)  \_\_\_\_\_  
NAME :                    James R. Williams  
TITLE :                    City Manager  
DATE :                    09/28/2020



**Biomist, Inc.**  
 573 N. Wolf Road  
 Wheeling, IL 60090

Company City of Lovington

QUOTE REFERENCE	
Date: 9/3/2020	Expires: 10/3/2020

CATALOG #	PRODUCT DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL
<b>BIOMIST SYSTEM</b>				
SS10	BIOMIST MINI SANITIZING SYSTEM (includes one CO2 cylinder)	5	\$ 8,990.00	\$ 44,950.00
<b>ACCESSORIES</b>				
ACC1b	BIOMIST CO2 CYLINDER	10	\$ 195.00	\$ 1,950.00
ACC51	BIOMIST EXTENSION GUN (23 inches, siphon)	0	\$ 899.00	-
<b>CHEMICAL SOLUTION</b>				
SSD1	BIOMIST SOLUTION FORMULA D2 (case of twelve 30 oz. bottles)	3	\$ 150.00	\$ 450.00
SSD2	BIOMIST SOLUTION FORMULA D2 (5 gallon pail)	0	\$ 180.00	-
SSD3	BIOMIST SOLUTION FORMULA D2 (50 gallon drum)	1	\$ 868.00	\$ 868.00
SSD3P	DRUM PUMP ( for flammable liquids, NFPA 30 & 77 Standards compliant)	1	\$ 415.00	\$ 415.00
<b>OTHER</b>				
	INCLUDES ONE YEAR WARRANTY	1		\$ -
	ON-SITE TRAINING		Not Included	Not Included
	SHIPPING & HANDLING	1	\$ 1,341.65	\$ 1,341.65

### Biomist Mini Sanitizing System

TOTAL SELLING PRICE	\$	49,974.65
	\$	-
NET SELLING PRICE	\$	49,974.65
QUOTATION EXPIRES		10/3/2020

**BILL TO:**

City of Lovington  
 P.O. Box 1269  
 Lovington, NM 88260  
 575-396-2884

**SHIP TO:**

City of Lovington  
 ATTN: James R. Williams, City Manager  
 214 S. Love St.  
 Lovington, NM 88260

**FINANCING:**

The equipment listed above may be financed through Biomist. Ask us about our full range of financial products that can be tailored to meet your business and cash flow requirements. Below are two options for your consideration (taxes not included):  
**Lease payments are subject to change.**

Months	Payment	End Of Lease
60	\$1,044	FMV
60	\$1,114	\$1.00 Buyout

For further information, please contact your local Sales Representative or the Financial Services Department at 1-847-850-5530.



## TERMS OF SALE

- 1. TERMS.** Biomist offers the products listed above under the following terms. Additional or different terms, or modifications to the terms proposed by Customer (whether in a document now or later submitted) will not be effective unless accepted by Biomist in writing. Any extended maintenance services sold in connection with the purchase of products shall be under the terms on Biomist's standard maintenance service contract. This quotation supersedes all previous quotations for the products, and is the entire and only offer between Biomist and Customer concerning the sale of products. Prices quoted assume product delivery within one hundred eighty (180) days from the quotation date. Quoted prices are subject to revision for products delivered after one hundred eighty (180) days from the quotation date. This quotation shall remain open for thirty (30) days from the quotation date, and is subject to change or withdrawal prior to acceptance. Submission of a purchase order shall constitute acceptance of the terms of this quotation. To accept this quotation, indicate shipping instructions above, sign the quotation, and return within the time for acceptance.
- 2. DEPOSIT.** On orders of 25 systems or less, twenty percent (20%) of the total purchase price of the products shall be paid with the purchase order. Biomist reserves the right to reject any purchase order not accompanied by the deposit.
- 3. TAXES.** Prices do not include applicable sales, excise, use, value added, or other taxes, duties, or fees (including customs duties and broker charges, if applicable) in effect or later levied which Biomist may be required to pay or collect in connection with the sale of products. All such taxes, duties, and fees shall be paid to Biomist by Customer upon receipt of an invoice from Biomist.
- 4. PAYMENT.** Unless otherwise stated on the invoice, each invoice shall be paid net thirty days from the invoice date. Overdue payments shall be charged interest at the lesser of eighteen percent (18%) per annum, or the maximum permitted by applicable law. Biomist shall have the right to offset amounts owed to Biomist from any amounts Biomist may owe Customer under any other agreement. Biomist reserves the right to require full payment for products sold under a trade-in arrangement until the trade-in product is received by Biomist, determined to be assessed accurately, and free of all liens and encumbrances.
- 5. DEFAULT.** If Customer fails to make payments when due, Biomist may recover all incidental and consequential damages caused by Customer's breach, including all fees paid to collection agencies, attorneys' fees, and costs. In addition, until Customer has paid the full amount due, without prior notice, Biomist may withhold service on the products and any other Biomist products owned by Customer.
- 6. SOLVENCY.** If Customer becomes insolvent, files for protection under the bankruptcy code, makes an assignment for the benefit of creditors, has a receiver or trustee appointed, or is unable to meet its financial obligations as they come due, Biomist may terminate this Contract, withhold delivery of products, stop delivery of products, and retain the deposit as liquidated damages. In any event, Biomist may demand full payment in advance of shipment. If Customer refuses to make such payment, Biomist may terminate this Contract and retain the deposit as liquidated damages.
- 7. SECURITY INTEREST.** Customer hereby grants Biomist a purchase order money security interest in the products, a security interest in the products, and the right to possession of the products upon Customer's default in payment until all payments have been made. Customer authorizes Biomist to sign on Customer's behalf and file any documents to perfect Biomist's security interest in the products.
- 8. CANCELLATION.** Customer may cancel the order upon written notice. For orders canceled within five (5) days following the date the order was placed but before shipment of the products, Biomist shall retain five percent (5%) of the purchase price from the deposit, and refund any excess deposit. For orders canceled more than five days from the date the order was placed but before shipment of the products, Biomist shall retain 10 percent (10%) of the total purchase price from the deposit, and refund any excess deposit. For any order canceled, Biomist shall also be entitled to recover the cost of any and all services provided to Customer including any educational services, and any costs incurred resulting from the return of products purchased from a third party on Customer's behalf. Customer agrees that such cancellation fees constitute fair and reasonable compensation for Customer's right of cancellation. Once shipment of substantially all the products has been made, the order cannot be canceled.
- 9. TITLE.** Products shall be delivered to Customer F.O.B. shipping point. Title to and risk of loss to the products shall pass to Customer upon delivery to the F.O.B. shipping point. Unless otherwise agreed in writing, all shipping costs shall be prepaid by Biomist and billed to Customer. Biomist shall have the right to make shipments in separate lots.
- 10. INSPECTION.** Customer will be deemed to have accepted the products as conforming and undamaged unless Customer gives written notice of rejection within ten (10) days of product receipt. Products shall be installed by an authorized Biomist representative and made operational according to Biomist's published specifications as determined by an authorized Biomist representative, unless sold to Customer for further distribution.
- 11. WARRANTY.** **Product: Biomist SS-10 Mini Sanitizing System      Warranty Period: One Year, commencement upon delivery**  
This warranty does not cover fuses, coiled hoses or electrical cords. Certain other components of this product may have extended warranty periods. Biomist will pass on to Customer all warranties of manufacturers of such components, providing it is possible to do so. This warranty is valid only if the System is maintained and used in accordance with Biomist's instructions. Biomist shall be released from all obligations under this warranty should a sanitizing or disinfecting solution or agent other than a Biomist supplied sanitizer be used with this product; or if a cylinder other than a Biomist CO2 Cylinder be used with this product; or if repairs or modifications are made by persons other than authorized service personnel; or if the warranty claim results from physical abuse or misuse of the product. No agent, employee or representative of Biomist has the authority to bind Biomist to any affirmation, representation or warranty concerning this product. It is expressly agreed that Customer's sole and exclusive remedy for breach of the above warranty, for any tortious conduct of Biomist, or for any other cause of action, shall be the repair and/or replacement at Biomist's option of any equipment or parts thereof, which after examination by Biomist is proven to be defective. Replacement equipment and/or parts will be provided at no cost to Customer, F.O.B. shipping point. Failure of Biomist to successfully repair any nonconforming product shall not cause the remedy established hereby to fail of its essential purpose.
- 12. EXCLUSION.** EXCEPT AS EXPRESSLY STATED HEREIN, BIOMIST MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE OF TRADE, OR SAMPLES PREVIOUSLY SUPPLIED. Biomist shall not be liable to Customer for any special, indirect, incidental, or consequential damages resulting from breach of warranty or any other provision of this Contract, or for any liability of Customer to any third party. Any action by Customer against Biomist arising out of this Contract must be brought within one year after delivery of the products.
- 13. PROPRIETARY INFORMATION.** Customer shall keep confidential all proprietary information furnished or disclosed by Biomist unless such information has become part of the public domain through no fault of Customer. Customer shall not use or disclose such confidential and proprietary information for any purpose except as necessary for the maintenance, repair, or operation of the products, without prior written consent of Biomist. Customer shall inform its employees and others with access to such confidential or proprietary information that it is confidential and subject to the restrictions described herein.
- 14. INTELLECTUAL PROPERTY.** Customer acknowledges that the products and all codes, programs, firmware, software, know-how, methods and concepts associated with the products and all manuals and other printed material relating to the products involve valuable copyright, patent, trademark, trade secret, and other proprietary rights of Biomist (collectively "intellectual property"). Biomist grants Customer a license to use the intellectual property only in connection with and to the extent necessary for the use of the products. Biomist reserves and retains all patent, copyright, trade secret, trademark and other proprietary rights related to the intellectual property. No title to or ownership of any intellectual property is transferred to Customer. Customer shall not infringe, contest, or violate Biomist's proprietary rights, and shall not copy, trace, disassemble, decompile, reverse engineer, or modify any products or methods, or cause or permit others to do so. Transfer of the products by Customer shall constitute a transfer of such license which shall not otherwise be transferable. Customer's license to use the intellectual property shall automatically terminate if Customer uses or permits use of intellectual property in any way not permitted by or in violation of this paragraph. Customer shall be bound by the terms of third party license agreements for third party software that may be used in the products.
- 15. EXPORT LICENSING.** Customer acknowledges that the products may be subject to licensing and other restrictions under United States law. Customer represents and warrants that the products are being acquired for ultimate use in the country of delivery by Biomist. Customer agrees: (a) to comply with all applicable laws and regulations regarding the export of products from the country of delivery; (b) not to export the products from the country of delivery without first obtaining any required license or authorization of the United States Government; and (c) to notify Customer's purchasers of any products of applicable export licensing and other restrictions under the laws of the United States, the country of delivery, or COCOM. Biomist makes no warranty for products shipped in violation of the provisions above.



## TERMS OF SALE

**16. UPGRADES.** The price of all upgrades assumes the immediate return of replaced components, free from all liens and encumbrances, in exchange for the upgrade components. Biomist will provide Customer with all software upgrades mandated by law. If replaced components are not returned, Biomist shall invoice Customer for all upgrade components at Biomist's list price.

**17. MANUFACTURE.** Biomist may change the construction or design of the products without notice to Customer as long as the function and performance of the products are not substantially altered. Biomist reserves the right to use refurbished components in the manufacture and repair of products. The components shall be subject to the same inspection and quality control procedures as all other materials used in the manufacture of products, and shall be warranted to the same extent as all other components under the warranty.

**18. LEASING.** Biomist may accept a purchase commitment from a leasing company for Customer's benefit provided the purchase commitment is submitted within thirty calendar days from the date of this Contract and is approved in writing by Biomist. Acceptance of a purchase commitment shall not relieve Customer of its obligations under this Contract should such leasing company fail, for whatever reason, to make full payment for the products purchased under this Contract. Customer shall be discharged from the obligations to pay only at such time as Biomist has received timely and full payment from such leasing company. If products are purchased by a leasing company for Customer's benefit, Biomist and the Customer shall be bound by Paragraphs 1, 9-17, and 19-22.

**19. EDUCATION SERVICES.** Customer's right to receive educational services obtained in conjunction with the purchase of products shall expire unless the services are used within twelve (12) months from the date the corresponding products are shipped.

**20. DELAY.** Biomist shall be excused from performance due to acts of God, perils of the sea, fire, flood, epidemic, war, civil disorder, government acts or restrictions, accidents, plant conditions, strikes, labor difficulties, failure of or delay in transportation, shortages of fuel, energy, damage to products in transport, failure of any supplier to perform, or any cause beyond Biomist's reasonable control.

**21. ASSIGNMENT.** No assignment of rights or delegation of duties under this Contract shall be binding upon Biomist without Biomist's prior written consent.

**22. APPLICABLE LAW.** This Contract shall be governed by the laws of the State of Illinois. Customer consents to jurisdiction and venue of the Circuit Court of Cook County, Illinois for all matters relating to this Contract.