

**PROFESSIONAL SERVICES AGREEMENT FOR
BLOOD WITHDRAWAL TESTING**

THIS AGREEMENT is made and entered into this _____ day of _____, 2005 (“Effective Date”), by and between the CITY OF COSTA MESA, a municipal corporation (“City”), and CALIFORNIA FORENSIC PHLEBOTOMY, INC., a California corporation (“Consultant”).

W I T N E S S E T H :

- A. WHEREAS, City proposes to have Consultant perform blood withdrawal and testing as described herein below; and
- B. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated within California Government Code, Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and
- C. WHEREAS, City and Consultant desire to contract for specific services in connection with the project described below (the “Project”) and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and
- D. WHEREAS, no official or employee of City has a financial interest, within the provisions of California Government Code, Sections 1090-1092, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Services. Consultant shall provide the professional services described in the City’s Request for Proposal (“RFP”) attached hereto as Exhibit “A” and incorporated herein by reference (“RFP”) and Consultant’s Response to City’s RFP (the “Response”). A copy of said Response is attached hereto as Exhibit “B” and incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant’s performance of this Agreement.

1.3. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers’ compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands,

payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

1.4. Non-discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code. Violation of this provision may result in the imposition of penalties referred to in Labor Code, Section 1735.

1.5 Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.6. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

2.0. COMPENSATION AND BILLING

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "C," attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant's compensation shall in no case exceed Seventy Five Thousand Dollars per year (\$75,000.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Response unless the City or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. Consultant may submit invoices to City's Project Manager for approval on a progress basis, but no more often than monthly. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times for a period of three (3) years from the Effective Date.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Said services shall be performed in strict compliance with the Project Schedule approved by City as set forth in Exhibit "D," attached hereto and incorporated herein by this reference. The Project Schedule may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of three (3) year(s), ending on September 30, 2008, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination. Compensation for work in progress shall be prorated as to the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant.

4.4 Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain and maintain during the life of this Agreement all of the following insurance coverages:

- (a) Comprehensive general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual

liability, independent contractors, personal injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.

- (b) Automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.
- (c) Workers' compensation insurance as required by the State of California.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

5.2. Endorsements. The comprehensive general liability insurance policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to this subject project and contract with City."
- (b) Notice: "Said policy shall not terminate, nor shall it be cancelled, nor the coverage reduced, until thirty (30) days after written notice is given to City."
- (c) Other insurance: "Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."

5.3. Certificates of Insurance: Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement.

5.4. Non-limiting: Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

6.1. Entire Agreement: This Agreement constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The City Manager or his designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement.

Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices: Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

California Forensic Phlebotomy, Inc
25012 Marguerite Parkway, Suite H-235
Mission Viejo, CA 92692
Fax: 949-858-4636
Tel: 949-858-4222
Attn: Russ Liedholm

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Fax: 714-754-5191
Tel: 714-754-4808
Attn: Lt. Tom Curtis

6.5. Drug-free Workplace Policy. Consultant shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit "E" and incorporated herein by reference. Consultant's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.

6.6. Attorneys' Fees: In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.7. Governing Law: This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

6.8. Assignment: Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's

consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.9 Indemnification and Hold Harmless: Consultant shall protect, defend, indemnify and hold harmless City and its elected and appointed officials, officers, and employees from any and all claims, liabilities, expenses, including attorney fees, damage to property or injuries to or death of any person or persons or damages of any nature including, but not by way of limitation, all civil claims or workers' compensation claims arising out of or in any way connected with the intentional or negligent acts, error or omissions of Consultant, its employees, agents or subcontractors in the performance of this Agreement.

6.10. Independent Contractor: Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall secure, at his expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder.

6.11 Ownership of Documents: All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

6.12 Public Records Act Disclosure: Consultant has been advised and is aware that all reports, documents, information and data including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 et. seq.). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.13. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other

Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

6.14. Prohibited Employment: Consultant will not employ any regular employee of City while this Agreement is in effect.

6.15. Order of Precedence: In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of the RFP or the Response, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over both the Response and the RFP and the Response shall govern over the RFP.

6.16. Costs: Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.17. No Third Party Beneficiary Rights: This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.18. Headings: Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.19. Construction: The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.20. Amendments: Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.21. Waiver: The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.22. Severability: If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial

benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.23. Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.24. Corporate Authority: The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so, the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF COSTA MESA,
A municipal corporation

Mayor of the City of Costa Mesa

Date: _____

CALIFORNIA FORENSIC PHLEBOTOMY, INC.

Signature

Date: _____

Name and Title

Social Security or Taxpayer ID Number

ATTEST:

Deputy City Clerk and ex-officio Clerk
of the City of Costa Mesa

APPROVED AS TO FORM:

City Attorney

Date: _____

APPROVED AS TO CONTENT:

Project Manager

Date: _____

EXHIBIT A

CITY'S REQUEST FOR PROPOSAL



**CALIFORNIA
FORENSIC
PHLEBOTOMY
INCORPORATED**

25012 Marguerite Parkway • Suite H-23:
Mission Viejo, California 9269:
E-mail cvc23158@aol.com
24 Hour Technician Response (714) 529-051:
Administration (949) 858-463:
Fax (949) 858-422:

September 14, 2005

CITY OF COSTA MESA
Office of the Purchasing Supervisor
77 Fair Drive
Costa Mesa, California 92626

COPY

RE: Blood Withdrawal Testing Services Bid # 1086

Sirs:

We would like to take this occasion to thank you and the City of Costa Mesa Police Department for relying upon our services over the past 2 decades. Our proven track record now includes over 23 years of tried and true services. Our services continue to be provided exclusively to Orange County law enforcement agencies. Not only does your agency depend upon our services, but also so does every other law enforcement agency acting here in Orange County.

We would like to take this opportunity to detail many of the factors that have contributed to our continued success in providing prompt, dependable, and economical services. These factors include:

- We are involved in only one type of business – the business of providing blood withdrawals and conducting breath tests for Orange County law enforcement agencies. Our efforts are not divided between other business adventures or other out-of-county services. This allows us to focus all of our efforts and energies into providing the complex and intricate service that Orange County law enforcement demands.
- We have continually refined and improved our services over the past 23 years. During our 23 year tenure we have amassed tremendous knowledge and expertise in the specific needs and requirements of the City of Costa Mesa Police Department and the OCSD Blood Alcohol Program. This 23 year exclusive commitment to Orange County has allowed us to develop extremely sound policies and procedures specifically designed for the Orange County law enforcement agencies we serve. Our current policy and procedure manual is over 200 pages in length. We take great pride in the fact that no criminal case has ever been lost due a flawed company policy or procedure.
- Our services are provided, and have always been provided, in strict compliance with Section 23158 of the California Vehicle Code. As you

know, competitors based outside of Orange County have knowingly and willfully violated this law for years in order to maximize their profits. Their willful acts has led to the dismissal of numerous cases and potentially thousands upon thousands more cases. Several of these cases have already been ruled upon by the appellate courts and it is anticipated that the Supreme Court will most likely become involved. In addition to the monumental impact their actions have had upon these criminal cases a federal lawsuit has also been filed. Although these vendors may allege they are now in compliance, their actions will most certainly eventually cost the agencies they served, including the associated prosecutor's offices, literally millions of dollars and the loss of countless criminal cases – some of these criminal cases involved the loss of life of innocent victims. Defense attorneys here in Orange County would most certainly welcome the use of vendors with a history of such a total and complete disregard for the law in order to be more profitable. We doubt the Orange County District Attorney's Office would be as welcoming.

- Conducting nearly a thousand tests a year for your agency alone, all on a 24/7 STAT basis is a truly remarkable achievement. Our impressive record is due in part to our utilization of our extensive network of full time employees. By providing service to all Orange County law enforcement agencies, we are able to strategically place numerous full time personnel throughout the county. Our employee's sole responsibility is the collection of forensic blood samples. We utilize over 2,000 man-hours per month to achieve the impressive results required by the agencies we serve. We are confident that our extensive and far-reaching network of personnel currently in place here in Orange County will easily allow us to continue to meet your maximum response time requirements. Would-be vendors would have an all but impossible task meeting the response time requirements without this extensive network of qualified staff throughout Orange County.
- Our current staff has in excess of 80 years of combined experience in supplying services to Orange County law enforcement agencies. Our highly specialized staff has literally taken years to build to this level of expertise. Our company president has personally obtained over 40,000 samples. Each one of our staff members receives a minimum of 72 hours of one-on-one training with an experienced field supervisor in the proper collection of evidence. Our employees are considered, without a doubt, the best phlebotomists in the county. It takes us, on the average, more than 3 months to recruit a single new employee. Prospective employee's phlebotomy skills must already be considered in the top 5%. We then take the best phlebotomists and work with them extensively to make them in the top 1%. It is critical they possess this high level of skill due to the importance of the service we provide and the types of individuals we are required to obtain samples from such as IV drug abusers, trauma patients, uncooperative subjects, etc. Nationally, phlebotomists are unable to obtain

samples in excess of 10% of the time. Our employees possess a phenomenal 99.7% success rate. Anything less would be disastrous.

- We continue to improve and refine our court-related services provided to the District Attorney's Office and the Department of Motor Vehicles Division of Driver Safety. Our court-related services, provided at no charge to your agency include:
 - Weekly letters sent to the District Attorney's office at each of the Justice Centers, the DMV, and the OCSD Crime Laboratory detailing employee availability and vacation schedules;
 - Subpoenas returned on a weekly basis for former personnel with detailed forwarding information on said personnel;
 - Extensive program to assure employee availability;
 - Company management readily available to testify to business records as needed;
 - Continued increased dialog with District Attorney's Office and the DMV;
 - Continued increase in employee retention rate;
 - Soliciting increased feedback from the District Attorney's Office and the DMV;
 - Continued promotion of a company wide attitude of overall importance of the criminal courts and the DMV Division of Driver Safety Program.

We are very confident that we can continue to provide your agency with the high quality of service you require. As in the past, we will continue to provide you with the best possible service available and further continue to be open and responsive to all of your special needs and concerns. We are confident that your evaluation of our services and their associated costs, against would-be vendors with either a lack of experience or experience they wish they could hide from, will lead to you same conclusion that all of the other Orange County law enforcement agencies have made. Should you or any member of the City or the City of Costa Mesa Police Department wish to meet to discuss any technical aspects or concerns of our operations, please feel free to contact us at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell A. Liedholm", written over a white background.

Russell A. Liedholm,
President

I. INSTRUCTIONS TO BIDDERS

BIDDER IS REQUESTED TO READ BID COMPLETELY BEFORE CALLING PURCHASING WITH QUESTIONS

- A. **BID FORMS.** Bid must be completed in its entirety on the City's "Invitation For Bids" form. Incomplete bids will be rejected. **Bidder must submit one (1) original bid and two (2) complete copies of the bid. (Copies must be marked "COPY" on Page 1).**
- B. **BID SUBMITTAL DEADLINE.** The Bid Submittal Deadline is September 19, 2005, at 10:00 a.m. Bids must be submitted in sealed envelopes and properly identified with the bid number and bid submittal deadline. Bids must arrive in the City Clerk's Office, 77 Fair Drive Room 101, Costa Mesa, California, 92626, by September 19, 2005 at 10:00 a.m. local time. Telephone, telegraphic, facsimile, electronic, and late bids will not be accepted or considered. It is the Bidder's responsibility to ensure their bids have sufficient time to be received by the Costa Mesa City Clerk before the Bid Submittal Deadline. Bids received after the Bid Submittal Deadline are late. Late bids will be returned to Bidders unopened.
- C. **BID OPENING AND BID RESULTS.** Bids are opened publicly in the City Council Chambers and read on the date and time published in the bid document. Interested parties are invited to attend the bid opening. **Award shall be made in accordance to Section 2-166 of the City of Costa Mesa Municipal Code, to the lowest, responsive, responsible Bidder and in accordance with Section 2-171 (e) and Resolution 03-69 in which the City Council established a Costa Mesa vendor preference.** A tabulation of bids received will be available within a reasonable time after the bid opening and the Bid Results will be posted on the City's web site: www.ci.costa-mesa.ca.us. The City of Costa Mesa reserves the right to postpone the date and time of the bid opening by announcing the postponement at any time prior to the date and time announced in this document.
- D. **INFORMED BIDDERS/QUESTIONS AND COMMENTS.** Before submitting bids, Bidders must understand the conditions, requirements, and specifications of the work/services to be performed. Failure to do so will be at the Bidders' own risk and they cannot secure relief on the plea of error. If any potential Bidder is in doubt as to the meaning of any part of the bid documents, finds discrepancies in, or omissions from the specifications, Bidder may request a written interpretation or correction thereof, either by mail to the City of Costa Mesa, Purchasing Supervisor, 77 Fair Drive, Costa Mesa, California, 92626, or by facsimile at (714) 754-5040. The person submitting such a request shall be responsible for its prompt delivery. All interpretations or corrections of the bid document will be made by addenda only and duly issued to each submitter's last address of record. The City will not acknowledge any other interpretation of the bid document.
- E. **BIDDER'S ACKNOWLEDGEMENT.** By submitting the bid, the Bidder acknowledges that they have thoroughly and carefully read and understand the bid documents; agrees to furnish the work/services at the prices, quantities, and terms and conditions stated; and hereby certifies the information contained in the bid to be true and complete to the best of the Bidder's knowledge.
- F. **PRICES, NOTATIONS, AND MISTAKES.** All prices and notations must be in ink or typewritten. No erasures permitted. Mistakes may be crossed out and corrections typed or printed adjacent to the mistake and initialed in ink by the person who signs the bid. Prices shall be stated in units and quotations made separately on each item. In case of conflict between unit prices and total price, unit prices will govern. In case of a conflict between words and figures, words will govern. Bidders will take all responsibility for any

- G. errors or omissions in their quotation. Any discrepancies in numbers or calculations will be interpreted to reflect the lowest price to the City of Costa Mesa.
- H. PAYMENT TERMS. Discounts for payments made twenty (20) days or more from receipt of invoice will be considered in award of bid. Payment discounts must be clearly indicated on the Bid Form.
- I. TERMS OF THE OFFER. The City of Costa Mesa's acceptance of Bidder's offer shall be limited to the terms herein unless expressly agreed in writing by the City of Costa Mesa prior to Bid Opening.
- J. BIDDER AGREEMENT TO TERMS AND CONDITIONS. Submission of a signed bid will be interpreted to mean Bidder has agreed to all the terms and conditions set forth in the pages of this solicitation.
- K. CANCELLATION OF CONTRACT. The City of Costa Mesa may cancel this contract WITHOUT CAUSE at any time by giving thirty (30) days written notice to the supplier/contractor. The City of Costa Mesa may cancel this contract WITH CAUSE at any time by giving ten (10) days written notice to the supplier/contractor. Cancellation for cause shall be at the discretion of the City of Costa Mesa and shall be, but is not limited to, failure to supply the materials, equipment or service specified within the time allowed or within the terms, conditions or provisions of this contract. The successful Bidder may not cancel this contract without prior written consent of the Purchasing Supervisor.
- L. COMPLIANCE OR DEVIATION TO SPECIFICATIONS. Bidder hereby agrees that the material, equipment or services offered will meet all the requirements of the specifications in this solicitation unless deviations from them are clearly indicated in the Bidder's response. Bidder may submit an attachment entitled "Exceptions to Specifications", which must be signed by Bidder's authorized representative. An explanation must be made for each item to which an exception is taken, giving in detail the extent of the exception and the reason for which it is taken. Bids failing to comply with this requirement will be considered non-responsive.
- M. COMPLIANCE WITH LAWS. All bids shall comply with current federal, state, local and other laws relative thereto.
- N. FORCE MAJEURE. If execution of this contract shall be delayed or suspended and if such failure arises out of causes beyond the control of and without fault or negligence of the Contractor, the Contractor shall notify the City of Costa Mesa, in writing, within twenty-four (24) hours, after the delay. Such causes may include but are not limited to acts of God, war, acts of a public enemy, acts of any governmental entity in its sovereign or contractual capacity, fires, floods, epidemics, strikes and unusually severe weather.
- O. FORMATION OF CONTRACT. Bidder's signed bid and the City of Costa Mesa's written acceptance shall constitute a binding contract.
- P. LAWS GOVERNING CONTRACT. This contract shall be in accordance with the laws of the State of California. The parties stipulate that this contract was entered into in the County of Orange, in State of California. The parties further stipulate that the County of Orange, California, is the only appropriate forum for any litigation resulting from a breach hereof or any questions risen here from.
- Q. NOMENCLATURES. The terms Successful Bidder, supplier, vendor, and contractor may be used interchangeably in this solicitation and shall refer exclusively to the person, company, or corporation with whom the City of Costa Mesa enters into a contract as a result of this solicitation.
- R. REJECTION OF BIDS. The City of Costa Mesa reserves the right to reject any bids, all bids, or any part of a bid. The City of Costa Mesa reserves the right to reject the bid of any Bidder who previously failed to perform adequately for the City of Costa Mesa or any other governmental agency. The City of Costa Mesa expressly reserves the right to reject

the bid of any Bidder who is in default on the payment of taxes, licenses, or other monies due the City of Costa Mesa. Award may be issued in any combination most beneficial to the City, including no award. False, misleading, incomplete or unresponsive statements in connection with the submittal may be deemed sufficient cause for rejection. The City shall be the sole judge in making such determinations. By participating in this solicitation, Bidder agrees to accept the decision of the Purchasing Supervisor as final. All opened bids received will be of public record.

- S. SAFETY. All articles delivered under this contract must conform to the Safety Orders of the State of California, Division of Industrial Safety.
- T. SELL OR ASSIGN. The successful Bidder shall not have the right to sell, assign, or transfer, any rights or duties under this contract without prior specific written consent of the City of Costa Mesa.
- U. SEVERABILITY. If any provisions, or portions of any provisions, of this contract are held invalid, illegal, or unenforceable, they shall be severed from the contract and the remaining provisions shall be valid and enforceable.
- V. TAXES, FEDERAL EXCISE. The City of Costa Mesa is exempt from Federal Excise Tax.
- W. TAXES, SALES. California Sales Tax must be shown separately on the Bid Form, when and where indicated.
- X. WAIVER OF INFORMALITIES. The City of Costa Mesa reserves the right to waive informalities, technicalities in bids or clerical error in the bid document, and to negotiate with any qualified source.

II. TERMS AND CONDITIONS

(SEE STANDARD AND WORK ORDER CONDITIONS ON PAGE 10, ALSO PRINTED ON THE BACK OF THE PURCHASE ORDER)

Initial Term: Three (3) years, effective: October 2005 through September 30, 2008.

- A. This contract may be renewed two times on an annual basis, by mutual agreement of both parties. The City does not have to give reason if it elects not to renew. Contract not to exceed five years.
- B. No guarantee may be given as to estimated annual usage amount. Contractor agrees to supply services and supplies, as needed by the City, at prices listed upon this purchase document regardless of usage.
- C. The City of Costa Mesa reserves the right to cancel this contract without cause with a 30-day written notice, or with cause, immediately.
- D. No price increases will be permitted during the first contract year. Requests for price increases in the second or third contract year will require thirty days written notice to Purchasing Division and include bona fide proof of cost increases. The net dollar amount of profit will remain firm during the period of contract. Adjustments increasing contractor's profit will not be allowed.

The City of Costa Mesa reserves the right to accept, negotiate or refuse the increase request, rebid the contract, or take any other action it deems appropriate in lieu of granting contract price increases.

- E. Default: In the event of contractor's default, the City of Costa Mesa may procure from other sources and hold the original bidder liable for any resulting increased costs.
- F. Contractor agrees that if there is a change in ownership prior to completion of this contract, the new owners will be required under terms of sale to assume this contract and complete it to the satisfaction of the City.
- G. Unless otherwise expressly provided in this contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this contract.
- H. Conflict of Interest: Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interest of the City. This obligation shall apply to contractor's employees, agents, relatives, subtier contractors, and third parties associated with accomplishing the work hereunder. Contractor's efforts shall include, but not be limited to, establishing precautions to prevent its employees or agents from making, receiving, providing, or offering gifts, entertainment, payments, loans, or other considerations which could be deemed to appear to influence individuals to act contrary to the best interest of City.
- I. Contractor's books, records, and plans or such part thereof as may be engaged in the performance of this contract, shall at all reasonable times be subject to inspection and audit by any authorized representative of the City.
- J. This contract is subject to and contingent upon applicable budgetary appropriations being made by the City of Costa Mesa's City Council for each fiscal year during the term of this contract. If such appropriations are not forthcoming, the contract will be terminated without penalty to the City.
- K. This contract shall be construed and interpreted according to the laws of the State of California.
- L. Any changes beyond this document shall occur only when ordered in writing by the City of Costa Mesa Senior Maintenance Supervisor. In absence of such written order, any such product supplied or work done shall be considered unauthorized and will not be paid.
- M. As applicable, all items furnished on this contract shall meet or exceed the standards established by the California Occupational Safety and Health Act of 1973 and current amendments thereto, provided the end use of the item is for the purpose for which the item is intended.
- N. Contractor is, for all purposes arising out of this contract, an independent contractor and shall not be deemed an employee of the City of Costa Mesa. It is expressly understood and agreed that the successful bidder shall in no event, as a result of this contract, be entitled to any benefits to which City of Costa Mesa employees are entitled including, but not limited to, overtime, any retirement benefits, worker's compensation benefits, injury leave, or other leave benefits.

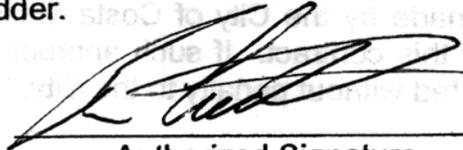
O. Assignment of Subcontracting: No performance of this agreement or any portion thereof may be assigned or subcontracted by the contractor without the express written consent of the City. Any attempt by the contractor to assign or subcontract any performance of this agreement without the express written consent of the City shall be invalid and shall constitute a breach of this agreement. Whenever the contractor is authorized to subcontract or assign, the terms thereof shall incorporate by reference and not conflict with this agreement.

P. All changes in specifications and/or contract requirements will be issued in writing. The City of Costa Mesa is not responsible for any oral instruction.

Q. In submitting the bid, the bidder acknowledges that the bidder has thoroughly and carefully read and understands the bid document and attachments; agrees to furnish the service at the prices, quantities, and terms and conditions stated; and certifies that the information contained in the bid is true and complete to the best of the bidder's knowledge.

INDEPENDENT PRICE DETERMINATION

I certify that this bid is made without prior understanding, arrangement, agreement, or connection with any corporation, firm or person submitting a bid for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. I certify that I have not entered into any arrangement or agreement with any City of Costa Mesa public officer. I understand collusive bidding is a violation of State and Federal law and can result in fines, prison sentences, and civil damage awards. I agree to abide by all conditions of this bid and certify that I am authorized to sign this bid for the Bidder.



Authorized Signature

L. Any changes beyond this document shall occur only when ordered in writing by the City of Costa Mesa Senior Maintenance Supervisor. In absence of such written order, any supplies or work done shall be considered unauthorized and will not be paid.

M. As applicable, all items furnished on this contract shall meet or exceed the standards established by the California Occupational Safety and Health Act of 1973 and current regulations thereunder, provided the use of the items for the purpose for which the items are intended.

N. Contractor is, for all purposes arising out of this contract, an independent contractor and shall not be deemed an employee of the City of Costa Mesa. It is expressly understood and agreed that the successful bidder shall in no event as a result of this contract be entitled to any benefits to which City of Costa Mesa employees are entitled including, but not limited to, overtime, any retirement benefits, workers' compensation benefits, injury leave, or other leave benefits.

III. SPECIFICATIONS

SCOPE OF SERVICES:

The City of Costa Mesa would like to establish a three-year contract to provide blood withdrawal testing services to screen blood for alcohol, drug content, and genetic markers by obtaining blood samples from identified persons. Estimated blood withdrawals are eight hundred forty (840) tests annually. In addition, the Costa Mesa Police Department is requesting an hourly rate for a fixed post of blood withdrawal services at DUI checkpoints. The estimated DUI check points are five or six times annually.

CONTRACTOR RESPONSIBILITIES:

1. Contractor must be qualified, certified and licensed by appropriate Federal, State and local authorities to perform blood withdrawals.
2. Contractor must be a legally recognized corporation authorized to perform required services.
3. Contractor ensures employees providing services under contract with the City are to be licensed to draw blood in compliance with all laws and regulations of the State of California, including, but not limited to, California Vehicle Code section 23158 and in compliance with the State Department of Health Services uniform standards for blood withdrawal.
4. Contractor maintains records of blood withdrawals for five years with the exception of certain cases; i.e., homicides and murders, for which said records shall be maintained permanently and not destroyed or disposed of in any manner without the expressed written consent of the City.
5. Contractor maintains current liability insurance coverage according to the City's insurance requirements, as noted in the Request-For-Quote.

PERFORMANCE REQUIREMENTS:

1. Contractor to provide employees who shall remain available on an on-call basis at all times, seven (7) days per week, twenty-four (24) hours per day, three hundred sixty five (365) days a year, and agree to said employees to conduct tests identified in the City's agreement, as requested. Locations for the tests shall include, but not be limited to: 1) Costa Mesa Police Department, 2) local hospitals, 3) Orange County Jail, 4) field locations in and around the City of Costa Mesa. Contractor to provide related employees to appear and conduct requested tests within forty-five (45) minutes of such request. Failure to appear and/or conduct said tests within forty-five (45) minutes of a request would result in a No-Charge for the test and any associated costs. **Three (3) such failures by the Contractor, within a six (6) month period, shall constitute cause to cancel the contract with the City immediately. Determination of such failure shall be at the sole discretion of the City and shall be final.** The Contractor will not charge any fees should: 1) Any person refuse to submit to a blood test; 2) Any other reason, through no fault of the Contractor, that results in no blood testing being conducted. Contractor to provide twenty-four (24) hour access to a supervisor to remedy any problems or questions that may arise.
2. Contractor to provide medical supplies and equipment necessary to conduct tests at no cost to the City. Contractor to provide transportation for employees at no cost to the City.
3. Contractor's employees, upon request of the City and/or the Orange County District Attorney, shall take blood samples and appear in court or any other designated location, at no additional cost, for the purpose of discussion or testimony concerning collecting samples. Contractor's said

employees agree to appear in court at the time designated by the City and/or the Orange County District Attorney. The City and/or the Orange County District Attorney will provide at least one-hour notice prior to such appearance. **Failure to appear in court as scheduled by the City and/or the Orange County District Attorney shall constitute cause to cancel this contract immediately.**

4. In addition to applicable laws, all blood sample collection and subsequent handling shall be conducted in accordance with direction and procedures prescribed by the Orange County Sheriff Department Forensic Science Services Division (Note: Contact Marty Breen (714) 834-4510 for details). Only employees of the Contractor, deemed acceptable by the City, hereunder shall perform services; The City will refuse to permit blood samples to be collected by any employee of Contractor considered, by the City in its sole discretion, to be unacceptable.
5. All blood samples shall be refrigerated immediately and deposited by the Contractor at the County of Orange's refrigerated blood locker within six (6) hours of withdrawal. Contractor to provide, at Contractor's expense, supplies necessary to ensure that blood samples are properly refrigerated as directed by the Orange County Sheriff Department Forensic Science Services Division.
6. Upon request, with advanced notice, the City may require the Contractor to provide an employee at a fixed post (i.e. DUI checkpoint) to perform contracted services. Contractor shall charge a flat hourly rate, rather than an individual fee for each blood test conducted at the fixed post. A minimum of three (3) hours of service would be required.

IV. INDEMNIFICATION

Contractor shall protect and indemnify the City, the City Council, and all of its or their officers, agents and servants against any claim or liability arising from or based on bidder's violation of any existing or future State, Federal, and local laws, ordinances, regulations, orders or decrees pertaining to bidder's submittal.

All work covered by this contract done at the site of maintenance or in preparing or delivering materials to the site shall be at the risk of contractor alone.

Contractor agrees to protect, defend, indemnify, save and hold harmless the City and its elected and appointed boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorney fees, for injury to or death of any person (contractor's employees included), and for injury to any property, including consequential damages of any nature resulting there from, arising out of or in any way connected with the performance of this contract, except that the indemnity obligation of contractor shall be reduced by an amount proportional to the active negligence of City, if any.

Contractor shall comply with all of the provisions of the Workers' Compensation insurance laws and Safety in Employment laws of the State of California, including the applicable provisions of Divisions 4 and 56 of the California Labor Code and all amendments thereto and regulations promulgated pursuant thereto, and all similar State, Federal, or local laws applicable; and contractor shall indemnify and hold harmless City from and against all claims, liabilities, expenses, damages, suits, actions, proceedings and judgments, or every nature and description, including attorney fees, that may be presented, brought or recovered against the City for or on account of any liability under or failure to comply with any of said laws which may be incurred by reason of any work performed under this contract by contractor or any subcontractor or others performing on behalf of contractor.

The City does not, and shall not, waive any rights against contractor which it may have by reason of the above hold harmless agreements, because of the acceptance by the City or the deposit with the City by contractor of any or all of the required insurance policies.

The hold harmless agreements by contractor shall apply to all liabilities, expenses, claims, and damages of every kind (including but not limited to attorney fees) incurred or alleged to have been incurred, by reason of the operations of contractor or any subcontractor or others performing on behalf of contractor, whether or not such insurance policies are applicable.

Contractor shall require any and all subcontractors to afford the same degree of indemnification to the City of Costa Mesa and its elected and appointed boards, officers, agents, and employees that is required of contractor and shall incorporate identical indemnity provisions in all contracts between contractor and his subcontractors.

In the event that contractor and City are sued by a third party for damages caused or allegedly caused by negligent or other wrongful conduct of contractor, or by a dangerous condition of City's property created by contractor or existing while the property was under the control of contractor, contractor shall not be relieved of its indemnity obligation to City by any settlement with any such third party unless that settlement includes a full release and dismissal of all claims by the third party against the City.

V. INSURANCE

Contractor shall not commence work under this contract until he has obtained all insurance required under this section and the insurance has been approved by City as to form, amount, and carrier, nor shall contractor allow any subcontractor to commence any work until all similar insurance required of the subcontractor has been obtained and approved.

Neither the failure of contractor to supply specified insurance policies and coverage, nor the failure of City to approve same shall alter or invalidate the provisions of this contract.

VI. WORKERS' COMPENSATION INSURANCE

- A. Contractor shall obtain and maintain during the life of this contract workers' compensation insurance and, if any work is sublet, contractor shall require all subcontractors to obtain workers' compensation insurance.
- B. All workers' compensation insurance policies shall provide that the insurance may not be canceled without thirty (30) days advance written notice of such cancellation to City.
- C. Contractor is aware of the provision of Section 3700 of the Labor Code, which requires every employer to be insured against liability for Workman's Compensation or undertake self-insurance in accordance with the provisions of that Code, and will comply with such provisions before commencing the performance of the work of this contract.

VII. LIABILITY INSURANCE COVERAGE

- A. Contractor shall obtain and maintain during the life of this contract the following insurance coverage:
- 1) Commercial General Liability, including coverage for premises-operations, products/completed operations hazard, blanket contractual, broad form property damage, and independent contractors, personal injury.
 - 2) Automobile liability, including owned, hired, and non-owned vehicles.
- B. The above insurance coverages shall have limits of not less than one million dollars (\$1,000,000.00) combined single limit, per occurrence and aggregate.
- C. Endorsements to the policies providing the above insurance shall be obtained by contractor, adding the following three provisions:
- 1) Additional insureds: (For Commercial General Liability only)

“The City of Costa Mesa and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to the subject project and agreement.”
 - 2) Notice:

“Said policy shall not terminate, nor shall it be canceled nor the coverage reduced, until thirty (30) days after written notice is given to City.”
 - 3) Other Insurance:

“Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy.”
- D. All insurance carriers utilized by the contractor or any subcontractor under this contract shall be approved by the California Department of Insurance to transact business in the State of California. The types of services provided under this contract may further require contractor’s insurance carrier(s) to be admitted insurers in the State of California.

VIII. PROOF OF INSURANCE

Prior to award of the contract, contractor shall furnish City proof of compliance with the above insurance requirements in a form satisfactory to the City Attorney or Risk Management.

IX. PAYMENT

Subsequent to service, the contractor must submit an invoice for payment. Invoices shall be sent to: City of Costa Mesa, Accounts Payable, P. O. Box 1200, Costa Mesa, CA 92628-1200. Invoices shall include the purchase order number, department organization number, description of the service provided and price.

Payment shall be made within thirty (30) days after receipt of invoice. Invoices are to be submitted in areas for services provided. Any “prompt payment discounts” will be taken by the City of Costa Mesa, if possible, and will be included in the bid evaluation if the terms offered are for twenty (20) days or longer.

CONDITIONS. The following standard conditions are always applicable, and the following work order conditions are also applicable when this order provides for performance of any work.

STANDARD CONDITIONS

1. **Law:** This contract is governed by the laws of the State of California. The provisions of the Uniform Commercial Code shall apply except as otherwise set forth in this contract.
2. **Contract:** This order, when accepted by SELLER either in writing or by the shipment of any article or other commencement of performance hereunder, constitutes the entire contract between SELLER and the CITY, no exceptions, alternates, substitutes or revisions are valid or binding on the CITY unless authorized by the CITY in writing. The SELLER acknowledges that he has read and agrees to all terms and conditions of this contract/purchase order. The only terms and conditions that will be applicable to the interpretation of this contract are those issued by the City of Costa Mesa.
3. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California State sales or use tax. The City is exempt from Federal excise tax.
4. **Delivery:** Time of delivery is the essence of this contract. The CITY reserves the right to refuse any goods and to cancel all or any part of the goods not delivered by the due date and/or not conforming to applicable specifications, drawings, samples or descriptions. Acceptance of any part of the order shall not bind CITY to accept future shipments, nor deprive it the right to return goods already accepted, at SELLER'S expense. Overshipments and undershipments shall be only as agreed to by CITY.
5. **Risk of Loss:** Delivery shall not be deemed to be complete until goods have been actually received and accepted by CITY. Payment shall be made after satisfactory acceptance of shipments by the CITY.
6. **Warranty:** SELLER expressly warrants that the goods covered by this order are of merchantable quality, satisfactory and safe for consumer use, and are fit for the particular purpose as set forth in the CITY'S specification. Acceptance of this order shall constitute an agreement upon SELLER'S part to indemnify and hold harmless from liability, loss, damage and expense, including reasonable attorney fees, incurred or sustained by CITY, its officers, employees and agents, by reason of the failure of the goods to conform to such warranties, faulty work performance, negligent or unlawful acts, and noncompliance with any applicable local, State or Federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law. Inspection by the City of Costa Mesa or its agents or employees and acceptance of the articles, materials and work covered by this contract shall not constitute release or waiver of the City of Costa Mesa's rights by reason of failure of Contractor to comply with any of the warranties contained herein. Warranties herein expressed or implied shall be construed as consistent with each other and as cumulative and, where in conflict, the specifications of the City of Costa Mesa shall be paramount.
7. **Infringement:** SELLER shall indemnify and defend CITY, at SELLER'S expense, against all claims, demands, suits, liability and expense on account of alleged infringement of any patent, copyright or trademark, resulting from or arising in connection with the manufacture, sale, normal use or other normal disposition of any article or material furnished hereunder.
8. **Assignment:** Neither this order nor any claim against CITY arising directly or indirectly out of or in connection with this order shall be assignable by SELLER or by operation or law, nor shall SELLER subcontract any obligations hereunder, without CITY'S prior written consent.
9. **Default:** If SELLER or any subcontractor breaches any provision hereof, or becomes insolvent, enters bankruptcy, receivership or other like proceeding (voluntarily or involuntarily) or makes assignment for the benefit of creditors, CITY shall have the right, in addition to any other rights it may have hereunder or by law, to terminate this order by giving SELLER written notice whereupon (a) CITY shall be relieved of all further obligation hereunder, except to pay the reasonable value of SELLER'S prior performance, but not more than the contracted price, and (b) CITY may procure the articles or services from other sources and may deduct from unpaid balance due the vendor or may collect against the bond or surety, or may invoice the vendor for excess cost so paid. The price paid by CITY shall be considered prevailing market price at the time such purchase is made.
10. **Labor Disputes:** Whenever any actual or potential labor dispute delays or threatens to delay the timely performance of this order, SELLER shall immediately give written notice thereof to CITY.
11. **Nondiscrimination:** In the performance of the terms of any contract resulting from this order, SELLER agrees that they will not engage nor permit such subcontractors, where applicable as he may employ, from engaging in discrimination in employment of persons because of the race, color, sex, national origin or ancestry, disability or religion of such person.
12. **Termination:** The CITY reserves the right to terminate this contract without penalty and without cause after 30 days' written notice unless otherwise specified.

WORK ORDER CONDITIONS

13. **Performance:** SELLER shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all labor, supervision, machinery, equipment, materials and supplies necessary therefor; shall obtain and maintain all building and other permits and licenses required by public authorities in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors. SELLER shall conduct all operations in SELLER'S own name and as independent contractor, and not in the name of, or as an agent for CITY.
14. **Indemnification:** The Contractor hereby agrees to defend at his own cost and to indemnify and hold harmless the City of Costa Mesa, its officers, agents and employees, from and against any and all liability, damages, costs, losses, claims and expenses, howsoever caused, resulting directly or indirectly from or connected with the performance of the contract (including but not limited to such liability, costs, damage, loss, claim, or expense arising from the death or injury to an agent or employee of the Contractor, subcontractor, or the City of Costa Mesa or loss of, damage to, or destruction of the property of Contractor, subcontractor, or of the City of Costa Mesa, or of any agent or employee of the Contractor, subcontractor, or of the City of Costa Mesa), except where such liability, damages, costs, losses, claims or expenses are caused solely by the negligent or wrongful acts of the City of Costa Mesa or any of its agents or employees other than negligent omission or commissions of the City of Costa Mesa, its agents or employees, in connection with the general supervision or direction of the work to be performed hereunder. The Contractor, in addition to the foregoing, specifically shall indemnify and save harmless the City of Costa Mesa, any and all of the City of Costa Mesa's officers, agents, and employees, from any liability by reason of California safe place statutes or similar provisions pertaining to the workplace or safety of materials or equipment supplied by the City of Costa Mesa or others at the direction of the City of Costa Mesa and used in the performance of the work hereunder.
15. **Insurance:** SELLER shall maintain in full force during the term of this contract the following insurances, in a form and with companies as approved by the CITY, with limits not less than those specified: (a) Worker's Compensation and Employer's Liability complying with any statutory requirements; (b) Commercial General Liability insurance including broad form property damage, products/completed operations and contractual liability coverage, with a \$1,000,000 combined single limit each occurrence; Endorsements to the Commercial General Liability insurance shall be obtained by contractor, adding the following three provisions: (1) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to the subject project and agreement." (2) Notice: "Said policy shall not terminate, nor shall it be cancelled nor the coverage reduced, until thirty (30) days after written notice is given to City." (3) Other insurance: "Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy." (c) Comprehensive Auto Liability (including the owned, nonowned and hired automobile hazards) with \$1,000,000 combined single limit each occurrence. If the CITY so desires, these limits may be increased or decreased.
16. **Bills and Liens:** SELLER shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. SELLER shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, SELLER shall promptly procure its release and indemnify CITY against all damages and expense incident thereto.
17. **Bonds:** If the CITY so desires, SELLER shall provide payment and performance bonds as required.
18. **Changes:** SELLER shall make no change in the work or perform any additional work without the CITY'S specific written approval.

MISCELLANEOUS CONDITIONS

19. All plants and materials must be free of pests and disease. If any are found, the material will be rejected and refused. Vendor will pick up at no cost to the CITY.
20. Vendor is required to provide a completed MSDS (Material Safety Data Sheet) for hazardous substances as required by Labor Code Sections 6390; General Industrial Safety Order, Section 5194; and Title 8, California Admins. Code. MSDS sheet for each specified item shall be sent to place of shipment, and a copy sent to the Purchasing Division.

DEFINITION

Whenever used herein, "CITY" shall mean, City of Costa Mesa, a political subdivision of the State of California.

X. BIDDER'S INFORMATION

Each bid shall set forth the full names and residences of all persons and parties interested in the proposal. If the bid is provided by a corporation, state the names of the officers who can sign an agreement on behalf of the corporation and whether more than one officer must sign. If the bid is by a partnership or a joint venture, state the names and addresses of all general partners and joint venturers. If the Bidder is a sole proprietorship or another entity that does business under a fictitious name, the bid shall be in the real name of the Bidder with a designation following showing "DBA (the fictitious name)"; provided, however, no fictitious name shall be used unless there is a current registration with the Orange County Recorder of Orange County, California.

The undersigned, as Bidder, declares that all documents regarding this bid have been examined and accepted and if awarded, will enter into a contract with the City of Costa Mesa.

Firm California Forensic Phlebotomy, Inc. Name: _____

Address: 26012 Marguerite Parkway, Suite H-235

Mission Viejo, CA 92692

Telephone: (949) 858-4636 Fax: (949) 858-4222
Area Code Area Code

Length of time in business: 23 years

Federal Tax I.D. Number: 33-0172894 Incorporated: Yes No

Signature: 

Circle One: Owner Partner Officer

Print Signature's Name: Russell A. Liedholm

Title: President

Vendor's Contact Person: Russell A. Liedholm (949) 858-4636
Telephone

California Forensic Phlebotomy, Inc. is the sole-source provider for all Blood Withdrawal Testing Services for the following law enforcement agencies:

Anaheim Police Department

Brea Police Department

Buena Park Police Department

Costa Mesa Police Department

California Highway Patrol – San Juan Capistrano Office

California Highway Patrol – Santa Ana Office

California Highway Patrol – Westminster Office

Cypress Police Department

California State University at Fullerton Campus Police

Federal Bureau of Investigation

Fountain Valley Police Department

Fullerton Police Department

Garden Grove Police Department

Huntington Beach Police Department

Irvine Police Department

Laguna Beach Police Department

La Habra Police Department

La Palma Police Department

Newport Beach Police Department

Orange Police Department

Orange County District Attorney's Office

Orange County Sheriff-Corner Department

Placentia Police Department

Santa Ana Police Department

Seal Beach Police Department

State of California Parks and Recreation Department

Tustin Police Department

University of California at Irvine Campus Police

Westminster Police Department

There is no law enforcement agency in Orange County not utilizing our services.

EXHIBIT C
FEE SCHEDULE

XII. BID FORM

To: City of Costa Mesa
77 Fair Drive City Clerk's Office Room 101
Costa Mesa, CA 92626

From: California Forensic Phlebotomy, Inc.

Name of Bidder
26012 Marguerite Pkwy., Suite H-235

Mailing Address
Mission Viejo, CA 92692

City, State, & Zip

Responding to **Invitation for Bid No. 1086 due September 19, 2005 at 10:00 a.m.**, the undersigned Bidder agrees to furnish blood withdrawal testing services per the specifications. I/We have stated hereon the price(s) at which we will furnish the specified service and will accept the cost per service as shown below.

Bidder further agrees, in addition to the terms and conditions specified herein the following terms and conditions that are a part of this bid and any resulting contract:

Award. Bid award will be based on the lowest responsible bid price including any transportation charges, as well as any other criteria indicated in these specifications.

Signatures. All information submitted by Bidder, including signatures, must be original. Copies will not be accepted.

Please quote your most competitive pricing, INCLUDING ANY GOVERNMENT OR CO-OPERATIVE AGREEMENT PRICING. Bids that are not filled out completely will be ruled non-responsive and will not be evaluated. Bidder is to complete and include all requested information, including signatures, and return all pages of the bid as the bid submittal.

For Technical questions, please call Tom Curtis at (714) 754-5191.

Item	Unit	Description	Unit Price
1.	EA	Blood Withdrawal Testing Services (Estimated 840 tests annually)	\$ <u>79.75</u>
			Hourly Rate
2.	HR	Hourly rate for fixed Post Rates (Estimated five or six times annually)	\$ <u>105.00</u>

Please check your calculations before submitting your bid; the City of Costa Mesa will not be responsible for Bidder miscalculations.

CONTRACTOR TO SEND COPIES OF ALL LICENSES WITH BID

EXHIBIT D

PROJECT SCHEDULE

EXHIBIT E

CITY COUNCIL POLICY 100-5

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	1 of 3

BACKGROUND

Under the Federal Drug-Free Workplace Act of 1988, passed as part of omnibus drug legislation enacted November 18, 1988, contractors and grantees of Federal funds must certify that they will provide drug-free workplaces. At the present time, the City of Costa Mesa, as a sub-grantee of Federal funds under a variety of programs, is required to abide by this Act. The City Council has expressed its support of the national effort to eradicate drug abuse through the creation of a Substance Abuse Committee, institution of a City-wide D.A.R.E. program in all local schools and other activities in support of a drug-free community. This policy is intended to extend that effort to contractors and grantees of the City of Costa Mesa in the elimination of dangerous drugs in the workplace.

PURPOSE

It is the purpose of this Policy to:

1. Clearly state the City of Costa Mesa’s commitment to a drug-free society.
2. Set forth guidelines to ensure that public, private, and nonprofit organizations receiving funds from the City of Costa Mesa share the commitment to a drug-free workplace.

POLICY

The City Manager, under direction by the City Council, shall take the necessary steps to see that the following provisions are included in all contracts and agreements entered into by the City of Costa Mesa involving the disbursement of funds.

1. Contractor or Sub-grantee hereby certifies that it will provide a drug-free workplace by:
 - a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Contractor’s and/or sub-grantee’s workplace, specifically the job site or location included in this contract, and specifying the actions that will be taken against the employees for violation of such prohibition;

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	2 of 3

- b. Establishing a Drug-Free Awareness Program to inform employees about:
 - 1. The dangers of drug abuse in the workplace;
 - 2. Contractor's and/or sub-grantee's policy of maintaining a drug-free workplace;
 - 3. Any available drug counseling, rehabilitation and employee assistance programs; and
 - 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- c. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph A;
- d. Notifying the employee in the statement required by subparagraph 1 A that, as a condition of employment under the contract, the employee will:
 - 1. Abide by the terms of the statement; and
 - 2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- e. Notifying the City of Costa Mesa within ten (10) days after receiving notice under subparagraph 1 D 2 from an employee or otherwise receiving the actual notice of such conviction;
- f. Taking one of the following actions within thirty (30) days of receiving notice under subparagraph 1 D 2 with respect to an employee who is so convicted:
 - 1. Taking appropriate personnel action against such an employee, up to and including termination; or
 - 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency;

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	3 of 3

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g. Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 1 A through 1 F, inclusive.

2. Contractor and/or sub-grantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:

a. Contractor and/or sub-grantee has made a false certification under paragraph 1 above;

b. Contractor and/or sub-grantee has violated the certification by failing to carry out the requirements of subparagraphs 1 A through 1 G above;

c. Such number of employees of Contractor and/or sub-grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor and/or sub-grantee has failed to make a good faith effort to provide a drug-free workplace.

3. Should any contractor and/or sub-grantee be deemed to be in violation of this Policy pursuant to the provisions of 2 A, B, and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, and local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a contractor and/or sub-grantee, the contractor and/or sub-grantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the contractor and/or sub-grantee, the contractor and/or sub-grantee shall be eligible for compensation as provided by law.

EXHIBIT F

CERTIFICATE OF INSURANCE

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID JL
CALI-10

DATE (MM/DD/YYYY)
12/01/04

PRODUCER
ISU Ins Srv - Fullerton Agency
1150 E Orangethorpe Ave, #101
Placentia CA 92870
Phone: 714-577-5800 Fax: 714-577-5888

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
California Forensic Phlebotomy
Russ
26012 Marguerite Pkwy H235
Mission Viejo CA 92692

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Lloyds of London	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY				EACH OCCURRENCE \$ 1000000
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY	HP28175204	11/17/04	11/17/05	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50000
		<input checked="" type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR				MED EXP (Any one person) \$ excluded
		<input checked="" type="checkbox"/> Prof Liab	HGL8172504	11/17/04	11/17/05	PERSONAL & ADV INJURY \$ 1000000
		10-17-97 retro	LIMITS SHOWN BELOW			GENERAL AGGREGATE \$ 2000000
		GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG \$ Included
		<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				2500 ded
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident) \$
		<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
		<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
		<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
		<input type="checkbox"/> HIRED AUTOS				
		<input type="checkbox"/> NON-OWNED AUTOS				
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
		<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC \$
						AUTO ONLY: AGG \$
		EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE \$
		<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$
		<input type="checkbox"/> DEDUCTIBLE				\$
		<input type="checkbox"/> RETENTION \$				\$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATU-TORY LIMITS OTHER
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT \$
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE \$
		OTHER				E.L. DISEASE - POLICY LIMIT \$
A		Professional Liab	HPS8175204	11/17/04	11/17/05	Agg Limit 2000000
		\$2500 Deductible				Medical 1000000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
10 day notice of cancellation for non payment of premium.

CERTIFICATE HOLDER
City of Costa Mesa
fax 714 754-5040
Attn: Cindi West
PO Box 1200
Costa Mesa CA 92628-1200

CANCELLATION
CITYCM- SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL *30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
AUTHORIZED REPRESENTATIVE
Kevin P. McCarthy *K. McCarthy*

POLICYHOLDER COPY

SG



P.O. BOX 420807, SAN FRANCISCO, CA 94142-0807

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

ISSUE DATE: 10-01-2005

GROUP:
POLICY NUMBER: 0853723-2005
CERTIFICATE ID: 3
CERTIFICATE EXPIRES: 10-01-2008
10-01-2005/10-01-2008

CITY OF COSTA MESA
BLDG & SAFETY DEPT CINDY WEST
77 FAIR DRIVE
COSTA MESA, CA 92626

SG

JOB: ALL OPERATIONS

This is to certify that we have issued a valid Workers' Compensation insurance policy in a form approved by the California Insurance Commissioner to the employer named below for the policy period indicated.

This policy is not subject to cancellation by the Fund except upon 30 days advance written notice to the employer.

We will also give you 30 days advance notice should this policy be cancelled prior to its normal expiration.

This certificate of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policy listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate of insurance may be issued or to which it may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions, and conditions, of such policy.

[Signature]

[Signature]

AUTHORIZED REPRESENTATIVE

PRESIDENT

EMPLOYER'S LIABILITY LIMIT INCLUDING DEFENSE COSTS: \$1,000,000 PER OCCURRENCE.

ENDORSEMENT #1500 - RUSSELL LIEDHOLM, PRES, SEC, TRES - EXCLUDED.

ENDORSEMENT #2055 ENTITLED CERTIFICATE HOLDERS' NOTICE EFFECTIVE 10-01-1990 IS ATTACHED TO AND FORMS A PART OF THIS POLICY.

EMPLOYER

CALIFORNIA FORENSIC PHLEBOTOMY INC.
DBA: CALIFORNIA FORENSIC PHLEBOTOMY C F P
26012 MARGUERITE PKWY # H-235
MISSION VIEJO CA 92692

SG



STATE FARM INSURANCE COMPANY
 State Farm Mutual Automobile Insurance Company
 900 Old River Road
 Bakersfield CA 93311-0001

4 J -7870 A

CALIFORNIA FORENSIC
 PHLEBOTOMY INC
 26012 MARGUERITE PKY STE H235
 MISSION VIEJO CA 92692-3263



Your premium is based on the following . . . If not correct, contact your agent.
 NON OWNED VEHICLE

Class 66000000

Employer's non-ownership.

POLICY NUMBER V61 6946-C11-75S	
SEP 11 2005 to MAR 11 2006	
DATE DUE	PLEASE PAY THIS AMOUNT
SEP 11 2005	\$16.40

Coverages and Limits	Premium
A Liability 1,000,000 Bodily Injury & Property Damage	16.40



State Farm Mutual Automobile Insurance Company
 900 Old River Road Bakersfield CA 93311-0001
 INSURED CALIFORNIA FORENSIC
 PHLEBOTOMY INC

MU
VO

POLICY NUMBER V61 6946-C11-75S EFFECTIVE
 YR MAKE NONOWNED SEP 11 2005 TO MAR 11 2006
 MODEL HENRY JONES VIN
 AGENT HENRY JONES
 PHONE (714)526-3344 NAIC # 25178
 COVERAGE PROVIDED BY THE POLICY MEETS THE MINIMUM LIABILITY LIMIT
 PRESCRIBED BY LAW.
 COVERAGES A

SEE THE REVERSE SIDE FOR AN EXPLANATION.

CONVENIENT PAYMENT OPTION: You may use one of State Farm's alternate payment plans which divides your present premium into two separate payments.

You may pay one half of the amount due, \$8.20, plus a handling charge of \$2.00. The amount due on SEP 11 2005 will be \$10.20.

The remaining half will be due on NOV 10 2005. We'll send you a reminder notice.

Thanks for letting us serve you...

Agent HENRY JONES
 Telephone (714)526-3344 or (310)516-9996

79 7759 7281

See reverse side for important information
 Please keep this part for your record.

Prepared JUL 01 2005