

**PROFESSIONAL SERVICES AGREEMENT
FOR TREE MAINTENANCE**

THIS AGREEMENT is made and entered into this 20th day of January, 2009 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and WEST COAST ARBORISTS, INC., a California corporation ("Consultant").

WITNESSETH:

- A. WHEREAS, City proposes to have Consultant perform tree root pruning and installation of root barriers as needed within the City 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 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 Thirty Two Thousand Dollars (\$32,000.00).

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. 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) years, ending on January 5, 2012, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. City, at its sole option, may extend this Agreement for three (3) additional one (1) year periods.

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:

West Coast Arborists, Inc.
2200 E. Via Burton Street
Anaheim, CA 92806
Tel: 714-991-1900
Fax: 714-991-1027
Attn: Victor Gonzalez

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: 714-327-7492
Fax: 714-327-7558
Attn: Dean Rodia

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: _____

WEST COAST ARBORISTS, INC.

Signature

Date: _____

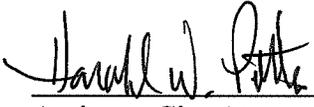
Name and Title

Social Security or Taxpayer ID Number

ATTEST:

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

APPROVED AS TO FORM:



Assistant City Attorney

Date: December 4, 2008

APPROVED AS TO INSURANCE:



Risk Management

Date: 12/22/08

APPROVED AS TO CONTENT:



Project Manager

Date: 12/23/08

WEST COAST ARBORISTS, INC.

Signature

Date: _____

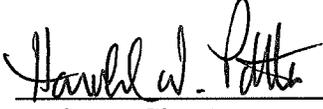
Name and Title

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ATTEST:

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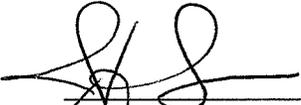
APPROVED AS TO FORM:



Assistant City Attorney

Date: December 4, 2008

APPROVED AS TO INSURANCE:



Risk Management

Date: 12/22/08

APPROVED AS TO CONTENT:



Project Manager

Date: 12/23/08

EXHIBIT A

CITY'S REQUEST FOR PROPOSAL



CITY OF COSTA

77 FAIR DRIVE, P.O. BOX 1200, COSTA MESA, CA 92628-1200

FINANCE DEPARTMENT
PURCHASING

CITY OF COSTA MESA

INVITATION FOR BIDS

ROOT PRUNING AND INSTALLATION OF ROOT BARRIERS

BID ITEM NO. 1125

NOTICE IS HEREBY GIVEN that sealed bids will be received by the City of Costa Mesa to wit: The City Clerk, P.O. Box 1200, Costa Mesa, California 92628-1200, on or before the hour of 10:00 a.m. on November 17, 2008. It shall be the responsibility of the bidder to deliver his bid to the City Clerk Office by the proper announced time. Delivery Location: City of Costa Mesa, 77 Fair Drive, Room 101, Costa Mesa, California 92626.

Bids shall be returned to the attention of the City Clerk, within said time limit, in a sealed envelope identified on the outside with the Bid Item Number and the Opening Date. Bids will be publicly opened and read aloud at 10:00 a.m. or as soon thereafter as practicable on October 20, 2008 in the Council Chambers.

The *Invitation for Bid* may be obtained by authorized vendors at the Office of the Purchasing Supervisor, 77 Fair Drive, Room 100, Costa Mesa, California 92626, 714/754-5212 or online at www.ci.costa-mesa.ca.us.

Dated: October 20, 2008

INTRODUCTION

The purpose of this bid is to establish an annual contract for root pruning and the installation of root barriers to trees through out the City of Costa Mesa on an as needed basis. The City of Costa Mesa has initiated a root pruning and root barrier installation program in an effort to minimize future damage to public sidewalks and curbs and gutters.

TERM OF CONTRACT

It is the intent of the City to enter into a three-year price agreement for root pruning services. The City reserves the right to extend this contract up to three (3) additional one-year (1) terms at its sole discretion and upon mutual agreement of the parties. The services under this contract will commence as soon as possible following the December 2, 2008, City Council meeting and shall continue through December 1, 2011 with three additional one-year optional renewals. This contract will not exceed 6 years.

SCOPE OF WORK

The work to be performed hereunder is located in the City of Costa Mesa, County of Orange. Specific trees and locations will be provided to the contractor by a City representative upon award of contract. The awarded Contractor will be provided a listing of trees to be root pruned. The list shall include the location of the tree, tree species, lineal feet to be root pruned and area to be pruned such as sidewalk or curb and gutter.

For the current budget year, the Parks Division has budgeted \$32,000 for root pruning services.

Roots shall be pruned adjacent to the edge of the sidewalk, curb and gutter or other improvements as indicated. Root pruning cuts adjacent to the sidewalk shall be four (4) inches wide, twelve (12) inches deep, and a minimum of eight (8) feet in each direction from the centerline of the tree as measured from the top of the sidewalk or other improvements. Root pruning cuts adjacent to the curb shall be four (4) inches wide, eighteen (18) inches deep, and a minimum of eight (8) feet in each direction from the centerline of the tree as measured from the top of the curb or other improvements.

Root pruning equipment shall be specifically designed for this purpose with cutting teeth sharpened adequately to sever roots in a clean manner and equipped with padded tracks or rubber tires to prevent scraping or marking the sidewalk.

After the pruning cut has been completed, the Contractor shall install the appropriate amount of root pruning barrier by Deep Root Corporation, or an approved equal. All cuts shall be backfilled immediately upon completion of root pruning and barrier installation at each location. Backfill material shall consist of soil and/or mulch from root pruning and shall be free of rocks and other debris. All debris generated by these operations shall be immediately removed from the site and properly disposed of by the Contractor.

The Contractor shall repair or replace all utility service connections or sprinkler systems within the right-of-way that are damaged or removed as a result of the root pruning operation. Repairs shall be implemented immediately and completed by the end of the same working day. Repairs and replacements shall be at least equal quality and configuration to existing improvements and shall match them in finish and dimension.

The Contractor shall be responsible for contacting Underground Service Alert (USA) 1-(800) 422-4133 for locating underground utilities prior to beginning the pruning operation.

The Contractor shall submit a lineal foot cost for the root pruning and root barrier installation. The cost of providing all labor, tools, equipment and materials necessary for performing the specified work will be included in this bid price and no additional compensation will be allowed.

MINIMUM QUALIFICATIONS

Bidders must demonstrate that they have the resources and capability to provide the materials and services described herein. All bidders shall submit documentation with their proposal indicating compliance with the minimum qualifications. Failure to include any of the required documentation may be cause for proposal to be deemed non-responsive and rejected.

- Bidders must demonstrate they have been in business providing similar service for at least the last three (3) years.
- Bidders shall provide, at a minimum, references and descriptions of three (3) projects that are similar in nature and have been completed within the last two (2) years. These references shall indicate the firm (and all contact information) and a thorough description of the moving services performed.

LICENSE REQUIREMENT: The classification of the contractor's license in the company's name required in the performance of this contract is a C61, D49 (Tree Service). Contractor is to submit a copy of this license with bid documents.

INSTRUCTIONS TO BIDDERS

1. DEFINITION OF KEY WORDS USED IN THE SOLICITATION:

For purposes of this solicitation and subsequent contract, the following definitions shall apply:

Bidder: The individual, partnership, or corporation who submits a bid in response to a solicitation.

City: The City of Costa Mesa, California.

Contract: The legal agreement executed between the City and the Contractor/Consultant. The Contract shall include this IFB document incorporated herein by reference, all terms, conditions, specifications, scope of work, Amendments and the Contractor's bid as accepted by the City.

Contractor/Consultant: The individual, partnership, or corporation who, as a result of the competitive solicitation process, is awarded a contract by the City.

Contract Representative: The City employee or employees who have specifically been designated to act as a contact person or persons to the Contractor, and is responsible for monitoring and overseeing the Contractor's performance under this Contract.

May: Indicates something that is not mandatory but permissible.

Shall, Will, Must: Indicates a mandatory requirement. Failure to meet these mandatory requirements, if they constitute a substantive requirement, may, at the City's sole discretion, result in the rejection of the bid as non-responsive.

Should: Indicates something that is recommended but not mandatory. If the Bidder fails to provide recommended information, the City may, at its sole option, ask the Bidder to provide the information or evaluate the bid without the information.

2. **PRE-BID CONFERENCE:** If scheduled, the date and time of a Pre-Bid conference is indicated on the cover page of this document. Attendance at this conference is not mandatory. Written minutes and/or notes will not be available, therefore attendance is encouraged. If a Bidder is unable to attend the Pre-Bid Conference questions may be submitted in writing. Bidders are encouraged to submit written questions, via electronic mail or facsimile, at least five days prior to the Invitation for Bid due date to the listed above. The purpose of this conference will be to clarify the contents of this Invitation for Bid in order to prevent any misunderstanding of the City's position. Any doubt as to the requirements of this Invitation for Bid or any apparent omission or discrepancy should be presented to the City at this conference. The City will then determine the appropriate action necessary, if any, and may issue a written amendment to the Invitation for Bid. Oral statements or instructions will not constitute an amendment to this Invitation for Bid.
3. **INQUIRIES:** Any question related to an Invitation for Bid shall be directed to the Buyer whose name appears above. A bidder shall not contact or ask questions of the department for whom the requirement is being procured. The Purchasing Supervisor may require any and all questions to be submitted in writing. Bidders are encouraged to submit written questions, via electronic mail or facsimile, at least five days prior to the bid due date. Any correspondence related to a solicitation should refer to the appropriate Invitation for Bid number, page, and paragraph number. An envelope containing questions should be identified as such otherwise it may not be opened until after the official bid due date and time. Oral interpretations or clarifications will be without legal effect. Only questions answered by a formal written Amendment to the Invitation for Bid will be binding. 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, by facsimile at (714) 754-5040, or via e-mail at: dcasper@ci.costamesa.ca.us. The person submitting such a request shall be responsible for its prompt delivery.
4. **AMENDMENT OF INVITATION FOR BID:** 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 bidder shall acknowledge receipt of an Invitation for Bid Amendment by signing and returning the document by the specified due date and time. The City is not responsible for any oral instruction and will not acknowledge any other interpretation of the bid document.
5. **FAMILIARIZATION OF SCOPE OF WORK:** Before submitting a bid, each bidder shall familiarize itself with the requirements, laws, regulations and other factors affecting contract performance. The Bidder shall be responsible for fully understanding the requirements of the subsequent Contract and otherwise satisfy itself as to the expense and difficulties accompanying the fulfillment of contract requirements. The submission of a bid will constitute a representation of compliance by the Bidder. There will be no subsequent financial adjustment, other than that provided by the subsequent Contract, for lack of such familiarization.
6. **PREPARATION OF BID:**

- A. All bids shall be on the forms provided in this Invitation for Bid package. It is permissible to copy these forms as required. Bidder must submit **one (1) original bid and two (2) complete copies of the bid**. Copies must be marked "copy" on the first page. Facsimile or electronic mail bids shall not be considered. Incomplete bids will be rejected.
 - B. The Bid form, the Price Page and any solicitation amendments must be signed and returned with the bid.
 - C. The Bid form page shall be signed by the person authorized to submit a bid. An authorized signature on the Notice Page, Offer and Acceptance page, Bid Amendment(s), or cover letter accompanying the bid documents shall constitute an irrevocable offer to sell the good and/or service specified herein. Bidder shall submit any additional requested documentation, signifying intent to be bound by the terms of the agreement.
 - D. The authorized person signing the bid shall initial erasures, interlineations, or other modifications in the bid.
 - E. In case of error in the extension of prices in the bid, unit price shall govern. No bid shall be altered, amended or withdrawn after the specified bid due time and date.
 - F. Periods of time, stated as a number of days, shall be in calendar days.
 - G. It is the responsibility of all bidders to examine the entire Invitation for Bid package and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting a bid. Negligence in preparing a bid confers no right of withdrawal after due date and time.
 - H. The City shall not reimburse the cost of developing, presenting, submitting or providing any response to this solicitation.
 - I. Submission of additional terms, conditions or agreements with the bid document may result in bid rejection.
 - J. Bidder must list any subcontractors to be utilized in the performance of the contract specified herein.
- 7. BID OPENINGS 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 website: 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. Award of this bid will be made by the City of Costa Mesa City Council. Subsequent to Council award, and receipt by successful bidder of the City of Costa Mesa purchase order, successful bidder shall order and deliver the goods or services. The bid award will be posted on the website after the contract is awarded by the City Council.
- 8. PAYMENT TERMS:** Subsequent to receipt of goods, the vendor 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, description of the goods provided and price. Payment shall be made within thirty (30) days after receipt of invoice. Invoices are to be submitted in arrears for goods 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) or more days. Payment discounts must be clearly indicated on the Bid Form. Payment discount periods shall be computed from the date of receipt of the material/service or correct invoice, whichever is later, to the date City's warrant is mailed.
- 9. PUBLIC RECORD:** All bids submitted in response to this invitation shall become the property of the City and shall become a matter of public record available for review subsequent to the contract award.
- 10. CERTIFICATION:** By signature on the Notice Page, Offer page, solicitation Amendment(s) or cover letter accompanying the bid documents, bidder certifies:
- A. The submission of the offer did not involve collusion or other anti-competitive practices.
 - B. The Bidder shall not discriminate against any employee, or applicant for employment in violation of Federal or State law.
 - C. The Bidder has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, meal or service to a public servant in connection with the submitted offer.
 - D. The Bidder hereby certifies that the individual signing the bid is an authorized agent for the bidder and has the authority to bind the Bidder to the Contract.
 - E. 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. Submittal of brochure or other manufacturer literature is desirable but shall not be an acceptable substitution for this requirement. Supplier shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this contract.

11. **LATE BIDS:** Late bids shall be rejected.
12. **OFFER AND ACCEPTANCE PERIOD:** In order to allow for an adequate evaluation, the City requires a bid in response to this solicitation to be valid and irrevocable for ninety (90) days after the bid due date and time.
13. **TAXES:** The City of Costa Mesa is exempt from federal excise tax.
14. **LAWS GOVERNING CONTRACT:** All bids shall comply with current federal, state, local and other laws relative thereto. 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. All articles delivered under this contract must conform to the Safety Orders of the State of California, Division of Industrial Safety. Supplier shall comply with all Cal-OSHA Standards, air pollution control, water pollution, Safety and Health Ordinances and statues, which apply to the work performed or supplies provided pursuant to this contract including, but not limited to, any requirements specified in State government codes.
15. **AWARD OF CONTRACT:**
 - A. Unless otherwise provided within the IFB, the City reserves the right to award by individual line item, by group of line items, or as a total, whichever is deemed most advantageous to the City.
 - B. Notwithstanding any other provision of the Invitation for Bid, the City reserves the right to:
 - (1) waive any immaterial defect or informality; or
 - (2) reject any or all bids, or portions thereof; or
 - (3) reissue an Invitation for Bid.
 - C. A response to the Invitation for Bid is an offer to contract with the City based upon the terms, conditions, and Specifications contained in the City's Invitation for Bid. Bids do not become Contracts unless and until they are executed by the City Council. All of the terms and conditions of the Contract are contained in the Invitation for Bid, unless any of the terms and conditions are modified by an IFB Amendment, a Contract Amendment, or by mutually agreed terms and conditions in the Contract documents.
 - D. 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.
 - E. 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.
16. **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.
17. **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.
18. **INDEPENDENT PRICE DETERMINATION:** 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. By signing this bid document, the bidder certifies they have not entered into any arrangement or agreement with any City of Costa Mesa public officer. It is understood that collusive bidding is a violation of State and Federal law and can result in fines, prison sentences, and civil damage awards. The bidder agrees to abide by all conditions of this bid and certify they are authorized to sign this bid for the bidder.

(SEE STANDARD AND WORK ORDER CONDITIONS ON PAGE 12, ALSO PRINTED ON THE BACK OF THE PURCHASE ORDER)

TERMS AND CONDITIONS

- A. No guarantee may be given as to the estimated annual usage amount. Contractor agrees to supply items/services as needed by the City, at the price listed upon purchasing document regardless of usage.
- B. 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. This contract may be renewed, on an annual basis, by mutual agreement of both parties. The City does not have to give a reason if it elects not to renew.
- C. Contractor agrees to supply items and/or services listed, as needed by the City, at prices listed herein, regardless of item usage. No price increase will be permitted during the first contract year. All decreases will automatically be extended to the City. Requests for price increase in the second or third year will require thirty days written notice to the Purchasing Division and include bona fide proof of cost increase. The net dollar amount of profit will remain firm during the period of the contract. 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.
- D. 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.
- E. A purchase order resulting from this Invitation for Bid will include all City of Costa Mesa specifications, terms and conditions contained herein unless specifically modified by the City of Costa Mesa prior to the award. The City of Costa Mesa's terms and conditions will take precedence over other terms and conditions.
- F. All changes in specifications will be issued in writing. The City of Costa Mesa is not responsible for any oral instruction.
- G. Conflict of Interest: Supplier/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 supplier/contractor's employees, agents, relatives, sub-tier contractors, and third parties associated with accomplishing the work hereunder. Supplier/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 the City. In addition, the awarded supplier/contractor shall not employ any regular employee of the City of Costa Mesa while this contract is in effect.
- H. Supplier/Contractor shall comply with all air pollution control, water pollution, Safety and Health Ordinances and statues, which apply to the work performed or supplies provided pursuant to this contract including, but not limited to, any requirements specified in State government codes.
- I. Patent/Copyright Materials: Supplier/Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this contract.
- J. This contract shall be constructed and interpreted according to the laws of the State of California.

- K. Any correspondence referring to the terms, prices and conditions of this contract must be directed to the Purchasing Office to the attention of the Purchasing Supervisor. For further information, contact Debbie Casper at (714) 754-5212. Under no circumstances shall the Contractor contact the using department without first clearing it through the Purchasing Office. Any changes beyond this document shall occur only when ordered in writing by the City of Costa Mesa Purchasing Supervisor. In absence of such written order, any such product supplied or work done shall be considered unauthorized and will not be paid.
- L. Contractor agrees that if there is a change in ownership prior to completion of this price agreement, the new owners will be required under terms of sale to assume this contract and complete it to the satisfaction of the City.
- M. In accordance with the provisions of Section 1773 of the California Labor Code, the general prevailing rates of per diem wages and holiday and overtime work in the locality in which the work is to be performed has been obtained from the Director of the Department of Industrial Relations. The contractor, and any subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract. Contractor shall abide by the provisions of the California Labor Code, Section 1770 et seq.
- 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, and injury leave or other leave benefits.
- O. Assignment or Subcontracting: No performance of this contract 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 contract without express written consent of the City shall be invalid and shall constitute a breach of this contract. Whenever the contractor is authorized to subcontract or assign, the terms thereof shall incorporate by reference and not conflict with this contract.
- P. The contractor warrants that all persons employed have satisfactory past records indicating their ability to accept the kind of responsibility anticipated in this type of work. All employees shall be required to wear uniforms, badges or other means of identification which are to be furnished by the contractor and must be worn at all times while working on City property.
- Q. Whenever the contractor's operations create a condition hazardous to traffic or to the public, he shall furnish, erect and maintain at his expense and without cost to the City of Costa Mesa, flagman and/or control devices as are necessary to prevent accidents or damage or injury to the public. Signs, lights, flags, and other warning and safety devices shall conform to the requirements set forth in the current Work Area Traffic Control Handbook, published by Building News, Inc., on behalf of the City of Los Angeles.
- R. The contractor acknowledges that he has read and understands the City of Costa Mesa's Council Policy #100-5 "Drug-Free Workplace" included as Attachment 1 and hereby agrees to comply with the required policy.

INDEMNIFICATION

Contractor shall protect and indemnify the City of Costa Mesa, 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, of 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.

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.

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.

LIABILITY INSURANCE COVERAGE

- A. Contractor shall obtain and maintain during the life of this contract the following insurance coverage:
 - Commercial General Liability, including coverage for premises-operations, products/completed operations hazard, blanket contractual, broad form property damage, and independent contractors, personal injury.
 - Automobile liability, including owned, hired, and non-owned vehicles.
- B. The above insurance coverage 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:
 - **Additional insured:** (For Commercial General Liability only)
"The City of Costa Mesa and its elected and appointed boards, officers, agents, and employees are additional insured with respect to the subject project and agreement."
This needs to be done by an endorsement to the policy.
 - **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."
 - **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.

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 and/or Risk Management.

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 or 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.

(5146-22)

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 by 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 or responsible parties. 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.

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

Firm Name:

Address:

Telephone: (____) _____ Fax: (____) _____

E-mail address: _____

Length of time in business: _____ Length of time at current location: _____

Federal Tax I.D. Number: _____ Incorporated: ____Yes ____No

Signature: _____

Circle One: Owner Partner Officer

Print Signature's Name: _____

Title: _____

Date:

Vendor's Contact Person: _____

Telephone

Costa Mesa Business License: _____

REFERENCES

The bidder is required to state what work of the same character to that included in the proposed contract he has successfully performed, especially for public agencies, and give references which will enable the City to judge his responsibility, experience, skill, and business and financial standing. Include at least three references with the name of the firm, address, contact person, phone number, and dollar amount of the contract. Detail any involvement, past or current, relative to litigation or other disputes, if any, concerning your performance. References shall not be within the bidder's own organization or subsidiary. The City of Costa Mesa reserves the right to contact all references.

BIDDER'S STATEMENT OF PAST CONTRACT DISQUALIFICATIONS

The bidder is required to state any and all instances of being disqualified, removed, or otherwise prevented from bidding on or completing any contract for construction.

1) Have you ever been disqualified from any contract? _____ Yes _____ No

2) If yes, explain the circumstance:

OFFER PAGE

To: City of Costa Mesa
Purchasing Division
77 Fair Drive
Costa Mesa, CA 92626

From: _____
Name of Bidder

Mailing Address

City, State, & Zip

Responding to **Invitation for Bid No. 1125 due Monday, November 17, 2008 at 10:00 a.m.**, the undersigned Bidder agrees to furnish and deliver root pruning services, per the specifications herein. I/We have stated hereon the price(s) at which we will furnish and deliver the services and will accept as full payment therefore the amount shown below.

Bidder further agrees to, 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.

"PIGGYBACK" CLAUSE. Bidder shall indicate below if he will extend the same prices, terms, and conditions of his bid to other public agencies: ___ Yes ___ No. Bidder's response to this question will not be considered in award of bid. When the Bidder extends the prices, terms, and conditions of this bid to other public agencies, the contract shall be between Bidder and the other agencies, and the City of Costa Mesa shall bear no responsibility or liability for the contracts.

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

Costa Mesa Business License. Include a copy of your current Costa Mesa Business License if you have one. Bidder will be required to obtain a Costa Mesa Business License prior to rendering services upon award of the contract.

OFFER PAGE – (continued)

Annual total estimated cost includes the cost for all labor, materials, permits, special equipment, licenses, hauling and disposal fees necessary to complete the contract requirements. Root pruning and installation shall be done on an “as needed” basis per Department’s requirement.

- A. Root Pruning and installation of 12 inch root barrier:
\$ _____ per lineal foot

- B. Root Pruning and installation of 18 inch root barrier:
\$ _____ per lineal foot

- C. Root Pruning and installation of BioBarrier. Product depth will vary from 12” – 30” and could include horizontal applications.
\$ _____ per lineal foot

Annual total not to exceed cost of **\$32,000.00** (A Total + B Total + C Total)

Term Of Offer. It is understood and agreed that this bid may not be withdrawn for a period of **ninety-(90) days** from the Bid Submittal Deadline, and at no time in case of successful Bidder.

Bidder's Acknowledgement Of His Understanding Of The Terms and Conditions. Signature below verifies that Bidder has read, understands, and agrees to the conditions contained herein and on all of the attachments and agenda.

Representations Made Under Penalty Of Perjury. The representations herein are made under penalty of perjury. We hereby offer to sell the City of Costa Mesa the above item(s) at the prices shown and under the terms and conditions herein, attached, or incorporated by referenced.

Bidder Name (Person, Firm, Corp.)	Signature of Authorized Representative
Address	Name of Authorized Representative
City, State, Zip Code	Title of Authorized Representative
Telephone Number	Facsimile Number

CITY OF COSTA MESA, CALIFORNIA

COUNCIL POLICY

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8/08/89	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 subgrantee 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 subgrantee hereby certifies that it will provide a drug-free workplace by:
 - A. Publishing a statement notifying employees that the unlawful manufacturer, distribution, dispensing, possessing, or use of a controlled substance is prohibited in Contractor's and/or subgrantee'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;
 - B. Establishing a Drug-Free Awareness Program to inform employees about:
 1. The dangers of drug abuse in the workplace;

CITY OF COSTA MESA, CALIFORNIA

COUNCIL POLICY

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8/08/89	2 OF 3

2. Contractor's and/or subgrantee'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 violation.
- 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.
- G. Making a good faith effort to maintain a drug-free workplace through implementation of Subparagraph 1.A through 1.F, inclusive.
2. Contractor and/or subgrantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:
- A. Contractor and/or subgrantee has made a false certification under Paragraph 1 above.

ATTACHMENT A

CITY OF COSTA MESA, CALIFORNIA

COUNCIL POLICY

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8/08/89	3 OF 3

B. Contractor and/or subgrantee 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 subgrantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the Contractor and/or subgrantee has failed to make a good faith effort to provide a drug-free workplace.

3. Should any Contractor and/or subgrantee 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, or local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a Contractor and/or subgrantee, the Contractor and/or subgrantee 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 subgrantee, the Contractor and/or subgrantee shall be eligible for compensation as provided by law.

EXHIBIT B
RESPONSE AND SCOPE OF SERVICES



Tree Care Professionals Serving Communities Who Care About Trees

www.WCAINC.com

November 14, 2008

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

RE: BID ITEM NO. 1125 – ROOT PRUNING AND INSTALLATION OF ROOT BARRIERS

DUE: Monday, November 17, 2008 @ 10:00am

To Whom It May Concern:

Thank you for allowing us the opportunity to submit a proposal for the root pruning and installation of root barriers services project for the City of Cost Mesa. Enclosed please find our bid package for the above mentioned project.

Our company has been in business since 1972. We are licensed by the California State Contractors License Board under license #366764. We have held this license in good standing since 1976. The license specializes in Class C61 (Tree Service) as well as Class C27 (Landscaping). Also, we have an A+ rating from the bonding board. Among our 500 employees, we currently employ nearly 40 Certified Arborists and 100 Certified Tree workers, as recognized by the Western Chapter of the International Society of Arboriculture. We perform all work with WCA employees. We will not use subcontractors for this project.

Once again thank you for the opportunity. We look forward to working with the City of Costa Mesa on this very important project. If you have any questions or require additional information, please do not hesitate to call me at (800) 521-3714.

Sincerely,

Victor M. Gonzalez
Vice President/Marketing



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 by 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 or responsible parties. 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.

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

Firm Name: West Coast Arborists, Inc.

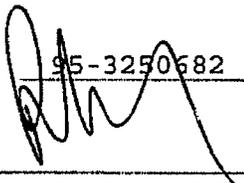
Address: 2200 E. Via Burton Street
Anaheim, CA 92806

Telephone: (714) 991-1900 Fax: (714) 991-1027

E-mail address: vgonzalez@wcainc.com

Length of time in business: 36 yrs. Length of time at current location: 15 yrs.

Federal Tax I.D. Number: 95-3250682 Incorporated: Yes No

Signature: 

Circle One: Owner Partner Officer

Print Signature's Name: Patrick Mahoney

Title: President

Date: November 14, 2008

Vendor's Contact Person: Victor Gonzalez 714/991-1900
Telephone

Costa Mesa Business License: BL009442

REFERENCES

The bidder is required to state what work of the same character to that included in the proposed contract he has successfully performed, especially for public agencies, and give references which will enable the City to judge his responsibility, experience, skill, and business and financial standing. Include at least three references with the name of the firm, address, contact person, phone number, and dollar amount of the contract. Detail any involvement, past or current, relative to litigation or other disputes, if any, concerning your performance. References shall not be within the bidder's own organization or subsidiary. The City of Costa Mesa reserves the right to contact all references.

Please See Attached References

BIDDER'S STATEMENT OF PAST CONTRACT DISQUALIFICATIONS

The bidder is required to state any and all instances of being disqualified, removed, or otherwise prevented from bidding on or completing any contract for construction.

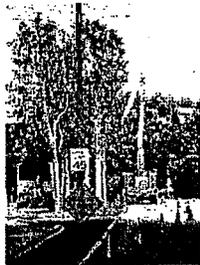
1) Have you ever been disqualified from any contract? _____ Yes X No

2) If yes, explain the circumstance:

REFERENCES

CURRENT CONTRACT WORK EXPERIENCE

City of Newport Beach



West Coast Arborists provides complete tree maintenance services. After an in depth study of the City's General Services Department, the City reviewed and agreed to seek out cost saving measures while maintaining an expected level of service to the community. Under this contract, we prune approximately 8,000 trees annually and perform other various services including but not limited to removals, planting and emergency urban forestry services.

Annual Budget: \$1,000,000
Contact: Dan Sereno

Since December 1993
Total to date: \$7,900,000
Phone: 949/644-3069

City of Riverside

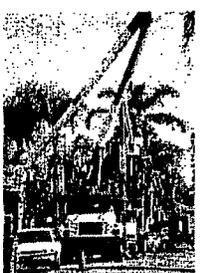


This contract is unique in that WCA provides complete tree maintenance services for the City's Park and Recreation Department, and utility line clearance tree trimming for their Public Utilities Department. The combined tree population is approximately 200,000 trees. Both departments entered into a joint management agreement relating to a line clearance program for utility lines. Tree inventory updates are provided along with the billing.

Annual Budget: \$1,950,000
Contact: Robert Filiar

Since July 1997
Total to date: \$15,400,000
Phone: 951/351-6112

City of Santa Ana

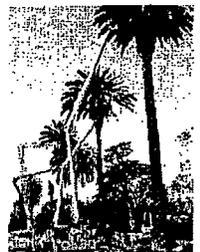


We currently maintain the City's entire urban forest consisting of nearly 45,500 street trees and the trees located at local parks. We perform tree maintenance on a grid basis developed by West Coast Arborists and approved by the City. Based on the positive letters the City has received, we have gained a reputation as a conscientious tree maintenance firm capable of performing high quality service.

Annual Budget: \$815,000
Contact: Bill Hayes

Since July 1997
Total to date: \$7,200,000
Phone: 714/647-3301

City of Santa Monica



WCA provides complete pruning services based on tree species. We take pride in our responsibility for the City's tree population of nearly 35,000 street trees. In addition, as part of the City's comprehensive tree planting program, we acquire and plant trees for the City. Approximately 2,000 trees are scheduled for this year alone.

Annual Budget: \$750,000
Contact: Walt Warriner

Since July 1994
Total to date: \$6,000,000
Phone: 310/458-8974

City of Fullerton



As part of the tree care service, WCA updates the City's own tree inventory. As part of this program, we collect and provide to the City an automated record of the work completed and submit it to the City for updates. Together, we are able to prune trees more efficiently, while the City is able to maintain accurate work records and monitor predictable tree trimming schedules and guarantee the residents and businesses top quality tree care.

Annual Budget: \$900,000
Contact: Dennis Quinlivan

Since July 1998
Total to date: \$6,800,000
Phone: 714/738-6805

REFERENCES

CURRENT CONTRACT WORK EXPERIENCE

West Coast Arborists understands the challenge that many cities face to reduce the cost of tree maintenance services, while increasing the level of performance. Utilizing our services as a valuable, cost-effective resource, cities are able to provide better services to their community. These contracts cover a range of services from providing emergency response to maintaining the City's entire urban forest.

Below is a brief summary of work performed in these cities:

City of Davis



Since July 2001
We provide complete urban forestry management for more than 20,000 selected City-owned trees, including tree pruning, removals, planting, and emergency services. In an effort to maintain a sustainable urban forest, we also provide services to other City Departments. Inventory updates to work history are done in conjunction with bi-weekly invoicing. We have performed successfully in the City for five years.

Annual Budget: \$150,000
Contact: Rob Cain

Total to date: \$750,000
Phone: 530/681-6539

City of Culver City



Since October 1993
We recently completed a citywide street tree inventory using our tree inventory software program. We currently maintain the City's entire urban forest and perform tree maintenance on a specie-by-specie basis. WCA has gained a reputation as a competent, conscientious tree maintenance firm and City staff has been impressed with the professionalism and high quality tree maintenance services from our Supervisors and field crew.

Annual Budget: \$280,000
Contact: Heustace Lewis

Total to date: \$2,600,000
Phone: 310/253-6444

City of Fresno

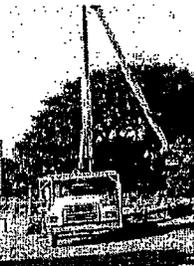


Since April 1994
We provide complete urban forestry management for the more than 200,000 trees, including tree pruning, removals, planting, and emergency services. In an effort to maintain a sustainable urban forest, we also provide inventory updates to the City's own inventory database. We have performed successfully in the City for six years.

Annual Budget: \$700,000
Contact: Rick Katen

Total to date: \$8,500,000
Phone: 559/621-1314

City of San Diego



Since July 2001
We currently perform tree removals and tree planting as part of the City's reforestation program. The project also includes tree maintenance at City Parks. This project is an annual contract. Together, we are able to maintain trees more efficiently while guaranteeing the residents and businesses top quality tree care.

Annual Budget: \$250,000
Contact: Drew Potocki

Total to date: \$1,100,000
Phone: 619/527-5486

REFERENCES

LETTERS OF REFERENCE

County of Orange



"I would like to extend my appreciation to West Coast Arborists for providing annual tree services with the County of Orange. Your company has always shown exemplary service and professionalism while performing their duties. The dedication your staff shows in providing service and expertise to the County is outstanding. Another area where WCA has assisted the County is in the method of your tree trimming. As you know, much of the County is trimmed by grids as a cost-effective approach. Because of WCA's advice and input, the trees are now being trimmed on a maintenance program rather than a generic trim. This has been extremely appreciated by the County's private residents, and it has also reduced the amount of down limbs that require emergency attention thus saving future costs. It is with my pleasure that we will continue to contract with WCA for another five years".

- Peter Dalquist, *Maintenance Engineering*

City of Riverside - Public Utilities



"Starting July 1, 1997, the City of Riverside Public Utilities Electric Department through the City Park and Recreation Department has contracted with West Coast Arborists, Inc. to do our Line Clearance Program. Our tree related electrical outages have been substantially reduced because of WCA's efforts. They do trimming, tree removal, and stump grinding and have a 24 hour, 7 day response for emergencies. When paged, WCA calls back within 5 minutes".

- Thomas Gibbins, *Riverside Public Utilities*

City of Costa Mesa



"I want to take this opportunity to express my gratitude for the excellent service that you and your staff have provided the City of Costa Mesa for the past several years. From the outset of our association, WCA did everything possible to make the transition of going from in-house service to contract service smooth and efficient. All of the work performed by your company has been of the highest quality and consistent with industry standards. Your staff conducts themselves in a very professional and efficient manner in the performance of their duties and demonstrates the ability and desire to provide high quality work and maintain excellent customer relations. Thank you for assistance and excellent service".

- Joe Bogart, *former Senior Maintenance Supervisor*

City of Santa Fe Springs



"We would like to thank you and your staff on the excellent tree trimming work for our City. This is a reflection of your company and the outstanding work you have done for the City of Santa Fe Springs. Thank you".

- Al Aguilera, *former Superintendent of Grounds*

City of Orange



"On behalf of the City of Orange, I want to acknowledge your company, West Coast Arborists, Inc., for their professional work performed in our City. The contracts has been handled on a timely basis and is considered a successful undertaking by the City. I would recommend your firm to other municipalities in Southern California for contracting tree maintenance work".

- Jess Garcia, *former Parks/Street Tree Superintendent*

REFERENCES

LETTERS OF REFERENCE



City of La Canada Flintridge

"West Coast Arborists, as contractors for the City of La Canada Flintridge, provides pruning, removal, planting, emergency service, computer data information, site survey information and any other duties necessary for a successful Tree Maintenance Program. The City has been recently awarded the 5 Year Tree City USA plaque which certainly testifies to the quality of tree maintenance West Coast Arborists has and is providing to our City. The City of La Canada Flintridge would certainly like to offer it's recommendation to any agency that may be considering contracting for Professional Tree Maintenance Services which will provide a high level of quality and effective operations".

- Fullmer Chapman, *former Director of Public Works*



City of Mission Viejo

"Our current contract is of broad scope, in which West Coast Arborists, Inc. has demonstrated exceptional ability to comply with all demands and specifications. The City's scope includes tree trimming, removals, stump grinding, root pruning, emergency response, traffic control and more. All of which are performed at a high professional level. It is always a pleasure to work with professionals, since they are rarely able to compete with non-professional in today's economical climate".

- Tom Levene, *Urban Forest Inspector*



City of Buena Park

"On behalf of the City of Buena Park, I would like to acknowledge West Coast Arborists, Inc. for the professional work performed in our City. Our present contract services have been completed in a timely and orderly fashion with little or no complaints from the public. The City of Buena Park is privileged and proud to have such a contractor on board. I would recommend your firm to other municipalities for contracting tree maintenance work".

- Rudy Cisneros, *Street Superintendent*



City of Tustin

"I would like to commend you for the fine job West Coast Arborists has done and continues to do for the City of Tustin. As I am in continual communication with residents and businesses throughout the city, I have had the opportunity to hear your praises sung often. I thank you, West Coast Arborists, in making Tustin an attractive community. Your professionalism and outstanding customer service is noticed and appreciated".

- Jim Potts, *former Councilmember*



City of Beverly Hills

"On behalf of the City of Beverly Hills I would like to thank you and your wonderful and very talented staff for the development of the new Guide Map to City Street Trees. The support of West Coast Arborists to the City of Beverly Hills in so many different areas in the management of the City's urban forest has been terrific. It has added to the overall quality and beauty of this world class City."

- Steve Miller, *Director of Recreation and Parks*

OFFER PAGE

To: City of Costa Mesa
Purchasing Division
77 Fair Drive
Costa Mesa, CA 92626

From: West Coast Arborists, Inc.
Name of Bidder
2200 E. Via Burton Street
Mailing Address
Anaheim, CA 92806
City, State, & Zip

Responding to Invitation for Bid No. 1125 due Monday, November 17, 2008 at 10:00 a.m., the undersigned Bidder agrees to furnish and deliver root pruning services, per the specifications herein. I/We have stated hereon the price(s) at which we will furnish and deliver the services and will accept as full payment therefore the amount shown below.

Bidder further agrees to, 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.

"PIGGYBACK" CLAUSE. Bidder shall indicate below if he will extend the same prices, terms, and conditions of his bid to other public agencies: Yes ___ No. Bidder's response to this question will not be considered in award of bid. When the Bidder extends the prices, terms, and conditions of this bid to other public agencies, the contract shall be between Bidder and the other agencies, and the City of Costa Mesa shall bear no responsibility or liability for the contracts.

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

Costa Mesa Business License. Include a copy of your current Costa Mesa Business License if you have one. Bidder will be required to obtain a Costa Mesa Business License prior to rendering services upon award of the contract.

EXHIBIT C
FEE SCHEDULE

OFFER PAGE - (continued)

Annual total estimated cost includes the cost for all labor, materials, permits, special equipment, licenses, hauling and disposal fees necessary to complete the contract requirements. Root pruning and installation shall be done on an "as needed" basis per Department's requirement.

- A. Root Pruning and installation of 12 inch root barrier:
\$ 13.00 per lineal foot
- B. Root Pruning and installation of 18 inch root barrier:
\$ 20.00 per lineal foot
- C. Root Pruning and installation of BioBarrier. Product depth will vary from 12" - 30" and could include horizontal applications.
\$ 20.00 per lineal foot

Annual total not to exceed cost of \$32,000.00 (A Total + B Total + C Total)

Term Of Offer. It is understood and agreed that this bid may not be withdrawn for a period of **ninety-(90) days** from the Bid Submittal Deadline, and at no time in case of successful Bidder.

Bidder's Acknowledgement Of His Understanding Of The Terms and Conditions. Signature below verifies that Bidder has read, understands, and agrees to the conditions contained herein and on all of the attachments and agenda.

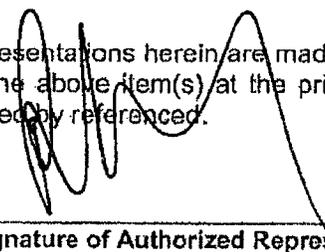
Representations Made Under Penalty Of Perjury. The representations herein are made under penalty of perjury. We hereby offer to sell the City of Costa Mesa the above item(s) at the prices shown and under the terms and conditions herein, attached, or incorporated by referenced.

West Coast Arborists, Inc.
Bidder Name (Person, Firm, Corp.)

2200 E. Via Burton Street
Address

Anaheim, CA 92806
City, State, Zip Code

714/991-1900
Telephone Number


Signature of Authorized Representative

Patrick Mahoney
Name of Authorized Representative

President
Title of Authorized Representative

714/991-1027
Facsimile Number

EXHIBIT D

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

- 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 E
CERTIFICATES OF INSURANCE

CITY OF COSTA MESA BUSINESS LICENSE

NOT TRANSFERABLE

THIS BUSINESS LICENSE TAX CERTIFICATE DOES NOT GUARANTEE COMPLIANCE WITH STATE OR FEDERAL LICENSING REQUIREMENTS. Issuance of this certificate indicates that the person, firm, or corporation named below has paid the applicable business tax, pursuant to Title 9, Chapter 1, of the Costa Mesa Municipal Code, for the business, enterprise, trade, calling, profession, exhibition, or occupation described below. Issuance of this Certificate is not an endorsement, nor certification of compliance with other ordinances or laws.

Business License Tax Certificate No. **BL009442**

Business Name: **WEST COAST ARBORISTS INC.**

Business Location:

Principal's Name: **MAHONEY, PATRICK O President**

Contractor License #: **366764 C61**

Standard Industrial Class Code: **1799 Special Trade Contractor**

Expiration Date: **07/31/2009**

TO BE POSTED IN A PLACE VISIBLE TO THE PUBLIC-THIS IS YOUR CURRENT TAX CERTIFICATE

This certificate is executed by Liberty Mutual Insurance Group as respects such insurance as is afforded by those companies.

Certificate of Insurance

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate is not an insurance policy and does not affirmatively or negatively amend, extend, or alter the coverage afforded by the policies listed below. Policy limits are no less than those listed, although policies may include additional sublimits not listed below. Policy limits may be reduced by claims or other payments.

This is to certify that (Name and address of Insured)

WEST COAST ARBORISTS, INC
2200 EAST VIA BURTON
ANAHEIM, CA 92806



is, at the issue date of this certificate, insured by the Company under the policy(ies) listed below. The insurance afforded by the listed policy(ies) is subject to all their terms, exclusions and conditions and is not altered by any requirement, term or condition of any contract or other document with respect to which this certificate may be issued.

Expiration Type	Eff./Exp. Date(s)	Policy Number(s)	Limits of Liability	
			Coverage afforded under WC law of the following states:	Employers Liability
<input type="checkbox"/> Continuous* <input type="checkbox"/> Extended <input checked="" type="checkbox"/> Policy Term	04/01/2008 / 04/01/2009	WA2-16D-039499-068	CA	Bodily Injury By Accident \$1,000,000 Each Accident Bodily Injury By Disease \$1,000,000 Policy Limit Bodily Injury By Disease \$1,000,000 Each Person
Workers Compensation				
General Liability <input type="checkbox"/> Claims Made <input checked="" type="checkbox"/> Occurrence Retro Date <input type="text"/>	04/01/2008 / 04/01/2009	TB2-161-039499-018	General Aggregate-Other than Prod/Completed Operations \$2,000,000 Products/Completed Operations Aggregate \$2,000,000 Bodily Injury and Property Damage Liability \$1,000,000 Personal and Advertising Injury \$1,000,000 Other Liability FIRE DAMAGES \$100,000	Per Occurrence Per Person / Organization Other Liability MEDICAL PAYMENTS \$5,000
Automobile Liability <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Non-Owned <input checked="" type="checkbox"/> Hired	04/01/2008 / 04/01/2009	AS7-161-039499-038	Each Accident - Single Limit - B. I. and P. D. Combined \$1,000,000 Each Person Each Accident or Occurrence Each Accident or Occurrence	

C O M M E N T S RE: All jobs performed by the named insured during the policy term. Additional Insured(s): The City of Costa Mesa, on the General Liability policy listed above (per attached CG 2010 0704 endorsement).

IMPORTANT If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s). IF SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsements. The following applies only with respect to insurance for motor carriers registered in Florida: As provided for in Fla. Stat. § 320.02(5)(c), the listed insurance policy may not be cancelled on less than 30 days written notice by the insurer to the Department of Hwy Safety & Motor Vehicles, such 30 days notice to commence from date notice is received by the Department.

Notice of cancellation: (not applicable unless a number of days is entered below). Before the stated expiration date the company will not cancel or reduce the insurance afforded under the above policies until at least 30 days notice of such cancellation has been mailed to:

Office: ORANGE, CA Phone: 714-937-1400

Certificate Holder:
Attn: Debbie Dobrott, Purchasing Supervisor
City of Costa Mesa
PO Box 1200
Costa Mesa, CA 92628

Silvia Vela
SILVIA VELA
Authorized Representative

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
The City of Costa Mesa	RE: Tree Maintenance
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

This endorsement is executed by the company below designated by an entry in the box opposite its name

Premium

Effective Date: 04/01/2008 Expiration Date: 04/01/2009

For attachment to Policy No.: TB 2-161-039499-018
Audit Basis:

Issued to: West Coast Arborists, Inc.

- LIBERTY MUTUAL INSURANCE COMPANY
- LIBERTY MUTUAL FIRE INSURANCE COMPANY
- LIBERTY INSURANCE CORPORATION
- LM INSURANCE CORPORATION
- THE FIRST LIBERTY INSURANCE CORPORATION

Dexter R. Lagan
SECRETARY

Edmund F. Hoff
PRESIDENT

Countersigned by.....
Authorized Representative

Issued: 04/01/2008 Sales Office and No. Pleasanton, CA / 0600

Certificate of Insurance

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate is not an insurance policy and does not affirmatively or negatively amend, extend, or alter the coverage afforded by the policies listed below. Policy limits are no less than those listed, although policies may include additional sublimits not listed below. Policy limits may be reduced by claims or other payments.

This is to certify that (Name and address of Insured) **This voids and supercedes the certificate issued on 04/01/2008.**

WEST COAST ARBORISTS, INC
2200 EAST VIA BURTON
ANAHEIM, CA 92806



is, at the issue date of this certificate, insured by the Company under the policy(ies) listed below. The insurance afforded by the listed policy(ies) is subject to all their terms, exclusions and conditions and is not altered by any requirement, term or condition of any contract or other document with respect to which this certificate may be issued.

Expiration Type	Eff./Exp. Date(s)	Policy Number(s)	Limits of Liability	
			Coverage afforded under WC law of the following states:	Employers Liability
<input type="checkbox"/> Continuous*	04/01/2008 / 04/01/2009	WA2-16D-039499-068	CA	Bodily Injury By Accident \$1,000,000 Each Accident
<input type="checkbox"/> Extended				Bodily Injury By Disease \$1,000,000 Policy Limit
<input checked="" type="checkbox"/> Policy Term				Bodily Injury By Disease \$1,000,000 Each Person
Workers Compensation				
General Liability <input type="checkbox"/> Claims Made <input checked="" type="checkbox"/> Occurrence Retro Date	04/01/2008 / 04/01/2009	TB2-161-039499-018	General Aggregate-Other than Prod/Completed Operations \$2,000,000	
			Products/Completed Operations Aggregate \$2,000,000	
			Bodily Injury and Property Damage Liability \$1,000,000	Per Occurrence
			Personal and Advertising Injury \$1,000,000	Per Person / Organization
			Other Liability FIRE DAMAGES \$100,000	Other Liability MEDICAL PAYMENTS \$5,000
Automobile Liability <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Non-Owned <input checked="" type="checkbox"/> Hired	04/01/2008 / 04/01/2009	AS7-161-039499-038	Each Accident - Single Limit - B. I. and P. D. Combined \$1,000,000	
			Each Person	
			Each Accident or Occurrence	
			Each Accident or Occurrence	

C O M M E N T S
RE: All jobs performed by the named insured during the policy term. Additional Insured(s): The City of Costa Mesa, its elected and appointed boards, officers, agents and employees on the General Liability policy listed above (per CG 2010 0704 and LG 3219 endorsements).
This insurance shall be excess over any other coverage available to the additional insured, unless a written agreement obligates the named insured to provide insurance to the additional insured on another basis. In that event, this policy will apply on the basis required by the written agreement.

IMPORTANT If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s). If SUBROGATION IS WAIVED, subject to the forms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsements. The following applies only with respect to insurance for motor carriers registered in Florida: As provided for in Fla. Stat. § 320.02(5)(e), the listed insurance policy may not be cancelled on less than 30 days written notice by the insurer to the Department of Hwy Safety & Motor Vehicles, such 30 days notice to commence from date notice is received by the Department.

Notice of cancellation: (not applicable unless a number of days is entered below). Notice of Cancellation does not apply when policy(ies) are canceled due to non-payment of premium. Before the stated expiration date the company will not cancel or reduce the insurance afforded under the above policies until at least 30 days notice of such cancellation has been mailed to the below listed Certificate Holder.

Office: ENGLEWOOD, CO Phone: 800-332-7611

Certificate Holder:

Attn: Debbie Dobrott, Purchasing Supervisor
City of Costa Mesa
PO Box 1200
Costa Mesa, CA 92628

Sandra G. Fox

SANDRA FOX

Authorized Representative

135200800486100044

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
ANY PERSON OR ORGANIZATION WITH WHOM YOU HAVE AGREED, THROUGH A WRITTEN CONTRACT, AGREEMENT OR PERMIT, EXECUTED PRIOR TO THE LOSS, TO PROVIDE ADDITIONAL INSURED COVERAGE.	ALL COVERED LOCATION
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your negligent acts or omissions; or
2. The negligent acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above. There is no coverage for the additional insured for "bodily injury", "property damage" or "personal and advertising injury" arising out of the sole negligence of the additional insured or by those acting on behalf of the additional insured.

B. Exclusions

With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

135200800486100045

C. Other Insurance

This insurance shall be excess over any other insurance available to the additional insured, whether such insurance is on an excess, contingent or primary basis, unless the written agreement with you requires that the insurance provided for the additional insured be primary concurrent or primary non-contributory. In

comparison to the additional insured's own policy or policies.

To the extent that the additional insured would have had the right to pursue any other insurance carrier for coverage, including a defense, we shall share that right with the additional insured.

This endorsement is executed by the LIBERTY MUTUAL FIRE INSURANCE COMPANY

Premium \$

Effective Date

Expiration Date

For attachment to Policy No.

TB2-161-039499-018

Audit Basis

Issued To

Dexter R. Lipp
SECRETARY

Edward F. Kelly
PRESIDENT

Countersigned by

Authorized Representative

Issued

Sales Office and No.

End. Serial No. 22