

**PROFESSIONAL SERVICES AGREEMENT
FOR ASPHALT GRINDING**

THIS AGREEMENT is made and entered into this _____ day of May, 2010 (“Effective Date”), by and between the CITY OF COSTA MESA, a municipal corporation (“City”), and LINDY’S COLD PLANING, a sole proprietor (“Consultant”).

W I T N E S S E T H :

- A. WHEREAS, City proposes to have Consultant perform asphalt grinding and cold planning on various streets 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 "B," attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant's compensation shall in no case exceed Fifty-Two Thousand Five Hundred Dollars (\$52,500.00).

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 April 30, 2013, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

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

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

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

5.0. INSURANCE

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

- (a) Comprehensive general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.
- (b) Automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.
- (c) Workers' compensation insurance as required by the State of California.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

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

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

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

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

6.0. GENERAL PROVISIONS

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

over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

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

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

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

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

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

IF TO CONSULTANT:

Lindy's Cold Planing
P. O. Box 385
La Habra, CA 90631

Tel: 562-697-2266
Fax: 562-697-2039
Attn: Brianna Trump-Borg

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: 714-327-7473
Fax: 714-327-7558
Attn: Rick Simons

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 "C" 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. Prevailing Wage: Consultant shall comply in all respects with Title 40 U.S.C. Section 276a, also known as "The Davis-Bacon Act," where Federal government funds are involved, and Consultant shall also comply in all respects with California Labor Code, Sections 1770 et seq., including the keeping of all records required by the provisions of Labor Code Section 1776.

Contractor, who is engaged in the construction, prosecution, completion or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the Federal government, shall furnish each week to City a statement with respect to the wages of each of its employees during the preceding weekly payroll period.

6.23. 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.

6.24. 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.

6.25. 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: _____

LINDY'S COLD PLANING

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:

Kimberly Hall Barlow

City Attorney

Date: 4/19/10

APPROVED AS TO INSURANCE:

Risk Management

Date: _____

APPROVED AS TO CONTENT:

Project Manager

Date: _____

EXHIBIT A

CITY'S REQUEST FOR PROPOSAL



CITY OF COSTA MESA

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

FINANCE DEPARTMENT
PURCHASING

CITY OF COSTA MESA

INVITATION FOR BIDS

ASPHALT GRINDING – COLD PLANING

BID ITEM NO. 1133

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 April 05, 2010. It shall be the responsibility of the bidder to deliver their bid to the City Clerk Office by the herein stated 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 April 05, 2010 in the Council Chambers.

A pre-bid meeting will take place on Wednesday, March 17, 2010 at 10:00 a.m. at the City of Costa Mesa City Hall, 77 Fair Drive, Costa Mesa, California 92626 in Meeting Room 1A. Attendance at the pre-bid meeting is not mandatory.

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: March 01, 2010

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INTRODUCTION

The purpose of this bid is to establish a three-year contract to provide the services of a contractor to perform asphaltic grinding – cold planing services on various streets throughout the City of Costa Mesa.

TERM OF CONTRACT

It is the intent of the City to enter into a three-year price agreement for asphalt grinding – cold planing 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 May 04, 2010, City Council meeting and shall continue through April 30, 2013 with three additional one-year optional renewals thereafter. This contract will not exceed 6 years.

DESCRIPTION OF WORK

The work is to be performed on various streets and other locations throughout the City and shall include, but not be limited to: grinding (cold planing) of entire surface of specified areas of pavement to depths up to 1-1/2" in the areas designated by the City Representative. Contractor is to provide all equipment, labor, materials and services as may be necessary for completing the work identified in the Scope of Work Standards and Specifications.

LOCATION OF WORK

All work to be performed hereunder is located within the City of Costa Mesa, County of Orange on various streets and other locations to be assigned by the City Representative.

MINIMUM QUALIFICATIONS

Bidders must demonstrate that they have the resources, capacity 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 services performed.
- Bidders must be bonded and must provide proof of bonding.

LICENSE REQUIREMENT: Prior to the award of the contract the Prime Contractor must be licensed in the State of California with a valid Class A license or other appropriate and legal designation. In accordance with California Public Contract Code 20103.5, if and when federal funds are involved in local agency contracts, no bid shall be invalidated by the failure of the bidder to be licensed in California at the time of bid opening. However, at the time of award, the selected contractor shall be properly licensed in accordance with the laws of the State.

SCOPE OF WORK STANDARDS AND SPECIFICATIONS

SCOPE OF WORK

The contractor shall provide all labor, supervision, equipment, materials and supplies needed for removal of asphaltic concrete pavement surfaces by cold milling to specific levels from 0" to 1-1/2" as designated and/or required by the City of Costa Mesa. Contractor is to provide all equipment, labor and related services as may be necessary for completing the work identified in the Scope of Work Standards.

No personnel shall be employed on any work under these specifications that are found to be incompetent, disorderly, troublesome, intemperate, or otherwise objectionable. Any employee who fails or refuses to perform the work properly and acceptably, as determined the City's Representative, shall be immediately removed from work on the City contract.

The city anticipates 12 to 15 individual street projects during the upcoming year, and each year thereafter over the term of the contract. Pricing is to be quoted on a per square surface foot basis. Average street dimensions are 775' X 37' or a per project total average square surface feet area to be milled as 28,675 sq. ft. at the depths stated herein.

Working hours shall be between 8:00 a.m. and 4:00 p.m. Monday thru Friday on non-arterial streets. Working hours on arterial streets shall be between 8:30 a.m. and 4:00 p.m. Monday thru Friday.

Safety and Traffic Control: All traffic control is to be provided by the City. However, Contractor must provide to contractor's own staff all safety apparel, such as reflective vests and breathing equipment, as per OSHA requirements. Traffic safety vests must be worn by all contractor employees at all times while on the job site. All pedestrian control is to be provided by the City. "Sidewalk Closed" or other appropriate warning signs should be placed by City staff at each end of the work area during all grinding operations. City staff is to cone off work areas to public access.

Equipment / Equipment Capabilities: Each internal combustion engine used for any purpose on the job or related to the job shall be equipped with a muffler of a type recommended by the manufacturer of such equipment. No internal combustion engine shall be operated on the project without said muffler.

SPECIFICATIONS

Work shall consist of removal of asphaltic concrete pavement by cold milling on residential streets within the City of Costa Mesa limits. The pavement surface shall be removed by cold milling to the specified depth, width, grade, and cross section as stated herein or as directed by the City Representative. Cold milling of asphaltic concrete pavement shall be performed in a manner which reasonably prevents the tearing and breaking of underlying and adjacent pavement. City is to provide disposal of milled residue materials. Contractor will provide all equipment and operators to load all milled product into City owned trucks being operated only by City staff. Contractor personnel are not at any time authorized to operate City equipment.

Specifications are as follows: mill up to 1-1/2" in depth at the gutter edge of the street to 0" inches, 13 ft. out perpendicular to the gutter. The contractor's cold planning machines shall have a cutter head width no less than 6.5 feet (78 inches) and no more than 6.7 feet (80 inches), and a GVW not to exceed 73,000lbs. The number of passes required to achieve the specified width and depth shall be determined by the Contractor. Also included will be two end, or header cuts, consistent with the depth of other milling. The included milling is to expose frames of an average of 2 manholes and 3 water valves to the required depth of milling. All hand grinding of manholes, water valves and other detailed areas is to be included in pricing.

The equipment used should be equipped with means to effectively control dust generated by the cutting operation. The City is to provide a water source, on-site water meter and open access to water and meter.

Contractor will provide all equipment and operators to sweep and remove all grinding residue. Contractor will completely remove all grinding residue by motorized sweeper at the end of each working day. Equipment for removing any loose material during the sweeping operation shall have the capability to effectively remove the material from the milled and/or adjacent roadway. Grinding residue shall not be permitted to flow or travel into gutters, onto adjacent street surfaces or parkways. The use of water for washing of milling residue into storm drains or any other drainage structures will not be permitted.

It can be reasonably anticipated that traffic will be routed onto milled surfaces for short intervals prior to placement of the final asphaltic concrete surface. If the milled surface is to be used by traffic, the texture produced by the cold planing operation should be characterized by uniform, discontinuous longitudinal striations or other patterns which will, in the opinion of the City Representative, provide satisfactory skid resistance and a safe riding surface. When pavement removal is to be completed across the entire roadway width, it shall be completed to a uniform termination point in any given working day.

In the event that the end of any milling operations results in a vertical longitudinal face, creating an abrupt change in the roadway elevation, both perpendicular and parallel transitions may be achieved by placement of temporary ramps fashioned from hot mix asphalt. All temporary asphalt ramps must be removed just prior to final asphaltic concrete base and placement of final course surface.

Upon completion of milling operations on corners where wheelchair ramps are located, contractor shall place temporary ramps fashioned from hot mix asphalt to facilitate safe use by handicapped pedestrians. All temporary asphalt wheelchair ramps must be removed within two (2) hours prior to final paving.

Billing shall be submitted "per project" and shall include the quantity of square surface feet completed, as well as a stated location designation, such as the street name, or other acceptable information that would clearly identify the project.

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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 are 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 ten (10) 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 Purchasing Buyer. 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 ten (10) 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 Buyer, 77 Fair Drive, Costa Mesa, California, 92626, by facsimile at (714) 754-5040, or via e-mail at: dstocker@ci.costa-mesa.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 WITH 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 Bidder's Information Form, the Independent Price Determination Certification and the Bid Form and any solicitation amendments must be signed and returned with the bid.

- C. The Bid Form signature page shall be signed by the person authorized to submit a bid. An authorized signature on the Bidder's Information Form, Independent Price Determination Certification, the Bid Form and any Amendment(s) 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 Bidder's Information Form, Independent Price Determination Certification, Bid Form, and any accompanying 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.
- 19. EXECUTION OF CONTRACT.** A Professional Services Agreement will be created by the City Attorney's Office (See Sample Attachment A). The bid document, the bid submittal, and the Professional Services Agreement will become incorporated as the complete contract. The Successful Bidder shall execute the contract, including but not limited to signing all necessary documents and submitting all required evidences of insurance, within ten (10) days after personal delivery of the notice or within fifteen (15) days after such notice has been deposited in the United States mail. In case of failure of the successful bidder to execute and return the contract and all required documents within the time allowed, the City of Costa Mesa may, at its option, consider that the bidder has abandoned the contract.

(SEE STANDARD AND WORK ORDER CONDITIONS ON PAGE 14) - ALSO PRINTED ON THE BACK OF THE PURCHASE ORDER)

TERMS AND CONDITIONS

- A. No guarantee may be given as to the estimated annual square surface feet of cold planing grinding. 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 is not required 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 Buyer. For further information, contact Don Stocker at (714) 754-5227. 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. 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 will apply. The contractor, and any subcontractor, shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract. The responsibility of compliance with the provisions of the California Labor Code, Section 1770 et seq. shall be with the prime contractor, and as such, is responsible for ascertaining and complying with all applicable general prevailing wage rates for trade workers, and any rate changes that may occur during the term of the contract.
- 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. 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 B 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 job site or in preparing or delivering materials or equipment to and/or from the job site shall be at the risk of contractor alone.

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

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

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

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

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

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

INSURANCE

Contractor shall not commence work under this contract until he/she 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.

Name of Insurance Company/Broker

Address

Insurance Company/Broker Contact

Telephone

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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. Over shipments and under shipments 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 therefore; 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.

BIDDER'S INFORMATION FORM

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 and joint venture 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: (_____) _____
Area Code

Fax: (_____) _____
Area Code

Length of time in business: _____

Federal Tax I.D. Number: _____ Incorporated: Yes _____ No _____

Authorized Signature: _____

Circle One: Owner Partner Officer Other

Print Signature Name: _____

Title: _____

Vendor Contact Person: _____

Telephone: (_____) _____
Area Code

E-mail address: _____

REFERENCES

The Bidder is required to state what work of the same character to that included in the proposed contract he/she has successfully performed, especially for public agencies, and give references which will enable the City to judge his/her responsibility, experience, skill, and business and financial standing. Include at least three references in California 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.

Firm Name: _____

Address: _____

Contact Person: _____ Phone: _____

Contract Amount: _____

Firm Name: _____

Address: _____

Contact Person: _____ Phone: _____

Contract Amount: _____

Firm Name: _____

Address: _____

Contact Person: _____ Phone: _____

Contract Amount: _____

BID FORM

To: City of Costa Mesa
Purchasing Office Room 100
77 Fair Drive City
Costa Mesa, CA 92626

From: _____
Name of Bidder

Mailing Address

City, State, & Zip

Responding to Invitation for **Bid No. 1133 due Monday, April 05, 2010 at 10:00am**, the undersigned Bidder agrees to provide asphaltic concrete grinding services as described herein for the City of Costa Mesa on a time, labor and materials used basis as needed. I/We have stated herein the price(s) at which we will provide the services described in this document (pages 4-5). Bidder further agrees; in addition to the terms and conditions specified herein the following terms and conditions that are a part of this bid and any resulting contract:

Award 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.

To be considered for award, this bid form shall be signed by an authorized representative of the bidder.

Where applicable, the City of Costa Mesa will calculate the California Sales Tax at 8.75% (Orange County rate) on parts/materials and pay it to the Successful Bidder(s) who are California suppliers. Where applicable, the City of Costa Mesa will pay the State Sales Tax directly to the State of California when the Successful Bidder(s) is not registered with the state to collect it. The City of Costa Mesa is exempt from Federal Excise Tax.

The Contractor shall complete the requested work within the time period designated by the City and submit written billing within 30 days of completion. The written billing shall be submitted in duplicate. Billing shall be submitted "per project" and shall include the quantity of square surface feet completed, as well as a stated designation, such as the street name, to identify the project.

Please quote your most competitive pricing, INCLUDING ANY GOVERNMENT OR CO-OPERATIVE AGREEMENT PRICING. Bids that are not filled out completely will be ruled nonresponsive 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 the same prices, terms, and conditions of his bid will be extended 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 attach and/or include any additional information that will assist us in determining the total cost of the service/materials stated.

BID FORM continued

CONTRACT SERVICES BID PRICING LIST

Unless specified with options, bid pricing should be submitted on a “per square surface foot” basis. *Each street (project) is an average of 775ft X 37ft or 28,675 square surface feet. *The city anticipates 12 to 15 individual street projects during the upcoming year, and each year thereafter over the term of the contract. Quoted pricing is to include all milling, hand grinding and sweeping work as stated in the Scope of Work and Specifications section on pages 4-5. Quoted pricing is to include any and all move-in charges for all pieces of equipment.

Description of Work	Est. Qty	Billing Unit	Price/Unit	Extension
Cold Mill Grinding and removal of asphaltic concrete and residue per the Scope of Work Specifications	*28,675 sq ft Per project	per square surface foot	\$	\$
Total of <u>*15 projects</u> anticipated during each year of contract.	*X 15	**Grand Total	\$	
Please state in clock hours the estimated time for your company to complete <u>one project</u> of the dimensions stated herein.	project size = 28,675 sq ft			Total hours =

*The stated estimates of quantities of work herein are given only as a basis for comparison of bids. The City does not expressly or by implication agree that the estimated amount of work will correspond with any class or portion of the actual work.

**This amount shall be the not to exceed amount per year of the contract.

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BID FORM continued

Independent Price Determination

Authorized signature below certifies that this bid is made without prior understanding, arrangement, agreement, or connection with any corporation, firm or person submitting a bid for the same materials, supplies, or equipment, and is in all respects fair and without collusion of fraud. Authorized signature below certifies that no arrangements or agreements have been entered into with any City of Costa Mesa public officer. Authorized signature below acknowledges understanding that collusive bidding is a violation of State and Federal law and can result in fines, prison sentences, and civil damage awards. Authorized signature below indicates agreement to abide by all conditions of this bid and certifies that individual signing is authorized to sign this bid for the Bidder/Contractor.

Term of Offer: Authorized signature below verifies understanding and agreement that this bid may not be withdrawn for a period of ninety- (90) days from the Bid Submittal Deadline, and at no time in the case of the successful Bidder.

Bidder's Acknowledgement of Understanding of the Terms and Conditions.

Authorized signature below verifies that Bidder has read, understands, and agrees to the conditions contained herein and on all of the attachments and agenda.

Statement of Ability to Meet Insurance Requirements

Authorized signature below verifies We/I have reviewed the attached City of Costa Mesa Insurance Requirements with my insurer and am able to provide verification of coverage after award of the contract.

Statement of Acknowledgement of Drug-Free Workplace Policy

Authorized signature below acknowledges that he has read and understands the City of Costa Mesa's Council Policy #100-5 in a "Drug-Free Workplace" included as Attachment - A and hereby agrees to comply with required policy.

Representations Made Under Penalty Of Perjury

The representations herein are made under penalty of perjury. We hereby offer to provide the services/materials to the City of Costa Mesa the prices stated herein and under the terms and conditions herein, attached, or incorporated by referenced.

Bidder Name (Person, Firm, Corp.)

Signature of Authorized Representative

Address

Printed Name of Authorized Representative

City, State, Zip Code

Title of Authorized Representative

Telephone Number

Facsimile Number

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2008 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and _____, a ("Consultant").

WITNESSETH:

- A. WHEREAS, City proposes to have Consultant perform the services 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 Invitation for Bids ("IFB") attached hereto as Exhibit "A" and incorporated herein by reference and Bidder's Response to City's IFB (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 “_,” attached hereto and made a part of this Agreement (the “Fee Schedule”). Consultant’s compensation shall in no case exceed _____ Dollars (\$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 the 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 will commence upon notification/request by the City representative as described in the Scope of Work and Standards section on page 3 of this Agreement. Said services shall be performed in strict compliance with the Scope of Work and Standards as stated herein. The Project Schedule may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this agreement.

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

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of two (2) years, ending on February 28, 2011 and can be renewed on an annual basis for three additional one year periods, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

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

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

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

5.0. INSURANCE

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

- 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 insured: "The City of Costa Mesa and its elected and appointed boards, officers, agents, and employees are additional insured 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 coverage 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:

IF TO CITY:

Tel:
Fax:
Attn:City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: 714-327-7558
Fax: 714-327-7492
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 "A" 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 qualifies 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. Prevailing Wage. Consultant shall comply in all respects with Title 40 U.S.C. Section 276a, also known as "The Davis-Bacon Act," where Federal government funds are involved and Consultant shall also comply in all respects with California Labor Code, Sections 1770 et seq., including the keeping of all records required by the provisions of Labor Code Section 1776.

Contractor who is engaged in the construction, prosecution, completion or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the Federal government, shall furnish each week to City a statement with respect to the wages of each of its employees during the preceding weekly payroll period.

6.23. 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, and then both parties agree to substitute such provision(s) through good faith negotiations.

6.24. 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.

6.25. 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

CONSULTANT

Signature

Date

Name and Title

Social Security or Taxpayer ID Number

ATTEST:

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

Council Policy – Drug-Free Workplace

<p><u>CITY OF COSTA MESA, CALIFORNIA</u></p> <p>COUNCIL POLICY</p>			
<p>SUBJECT</p> <p style="text-align: center;">DRUG-FREE WORKPLACE</p>	<p>POLICY NUMBER</p> <p style="text-align: center;">100-5</p>	<p>EFFECTIVE DATE</p> <p style="text-align: center;">8/08/89</p>	<p>PAGE</p> <p style="text-align: center;">1 OF 3</p>
<p><u>BACKGROUND</u></p> <p>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.</p>			
<p><u>PURPOSE</u></p> <p>It is the purpose of this Policy to:</p> <ol style="list-style-type: none"> 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 non-profit organizations receiving funds from the City of Costa Mesa share the commitment to a drug-free workplace. 			
<p><u>POLICY</u></p> <p>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.</p> <ol style="list-style-type: none"> 1. Contractor or sub-grantee hereby certifies that it will provide a drug-free workplace by: <ol style="list-style-type: none"> A. Publishing a statement notifying employees that the unlawful manufacture, 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 taken against the employees for violation of such prohibition; B. Establishing a Drug-Free Awareness Program to inform employees about: <ol style="list-style-type: none"> 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 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 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 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.

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 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 having 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, or 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 B
RESPONSE, SCOPE OF SERVICES
and
FEE SCHEDULE



CITY OF COSTA MESA

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

COPY

FINANCE DEPARTMENT
PURCHASING

CITY OF COSTA MESA

INVITATION FOR BIDS

ASPHALT GRINDING – COLD PLANING

BID ITEM NO. 1133

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 April 05, 2010. It shall be the responsibility of the bidder to deliver their bid to the City Clerk Office by the herein stated 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 April 05, 2010 in the Council Chambers.

A pre-bid meeting will take place on Wednesday, March 17, 2010 at 10:00 a.m. at the City of Costa Mesa City Hall, 77 Fair Drive, Costa Mesa, California 92626 in Meeting Room 1A. Attendance at the pre-bid meeting is not mandatory.

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: March 01, 2010

Contractor will provide all equipment and operators to sweep and remove all grinding residue. Contractor will completely remove all grinding residue by motorized sweeper at the end of each working day. Equipment for removing any loose material during the sweeping operation shall have the capability to effectively remove the material from the milled and/or adjacent roadway. Grinding residue shall not be permitted to flow or travel into gutters, onto adjacent street surfaces or parkways. The use of water for washing of milling residue into storm drains or any other drainage structures will not be permitted.

It can be reasonably anticipated that traffic will be routed onto milled surfaces for short intervals prior to placement of the final asphaltic concrete surface. If the milled surface is to be used by traffic, the texture produced by the cold planing operation should be characterized by uniform, discontinuous longitudinal striations or other patterns which will, in the opinion of the City Representative, provide satisfactory skid resistance and a safe riding surface. When pavement removal is to be completed across the entire roadway width, it shall be completed to a uniform termination point in any given working day.

In the event that the end of any milling operations results in a vertical longitudinal face, creating an abrupt change in the roadway elevation, both perpendicular and parallel transitions may be achieved by placement of temporary ramps fashioned from hot mix asphalt. All temporary asphalt ramps must be removed just prior to final asphaltic concrete base and placement of final course surface.

Upon completion of milling operations on corners where wheelchair ramps are located, contractor shall place temporary ramps fashioned from hot mix asphalt to facilitate safe use by handicapped pedestrians. All temporary asphalt wheelchair ramps must be removed within two (2) hours prior to final paving.

Billing shall be submitted "per project" and shall include the quantity of square surface feet completed, as well as a stated location designation, such as the street name, or other acceptable information that would clearly identify the project.

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TERMS AND CONDITIONS

- A. No guarantee may be given as to the estimated annual square surface feet of cold planing grinding. 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 is not required 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 Buyer. For further information, contact Don Stocker at (714) 754-5227. 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. 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 will apply. The contractor, and any subcontractor, shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract. The responsibility of compliance with the provisions of the California Labor Code, Section 1770 et seq. shall be with the prime contractor, and as such, is responsible for ascertaining and complying with all applicable general prevailing wage rates for trade workers, and any rate changes that may occur during the term of the contract.
- 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. 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 B 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 job site or in preparing or delivering materials or equipment to and/or from the job 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/she 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.

Golden Eagle Ins.
Name of Insurance Company/Broker
Chris Torrez
Insurance Company/Broker Contact

P.O. 8534 SANDIEGO, 92186-5831
Address
949-450-5941
Telephone

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