

(USE OF CITY
FORM REQUIRED)

**STREET SWEEPING
IN THE CITY OF WEST COVINA**

THIS CONTRACT SERVICES AGREEMENT (herein "Agreement"), is made and entered into this 18th day of June, 2002 by and between the CITY OF WEST COVINA, a municipal corporation, (herein "City") and Nationwide Environmental Services (herein "Contractor"). The parties hereto agree as follows:

RECITALS

A. City requires **STREET SWEEPING IN THE CITY OF WEST COVINA**. Contractor has represented to City that Contractor is qualified to perform said services and has submitted a proposal to City for same.

B. City desires to have Contractor perform said services on the terms and conditions set forth herein.

NOW, THEREFORE, based on the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, City and Contractor hereby agree as follows:

1. SERVICES OF CONTRACTOR

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Contractor shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that Contractor is a provider of first class work and services and Contractor is experienced in performing the work and services contemplated herein and, in light of such status and experience, Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended.

1.2 Documents Included in Contract. This contract consists of the Notice to Contractors and Instructions to Bidders, bid documents, Proposal, Proposal Schedule, Bid Bond (Bidder's Guarantee), Designation of Subcontractors, Non-Collusion Affidavit, Certification of Principal, Supplemental Information, specifications, this Contract Services Agreement, Faithful Performance Bond, Labor and Materials Bond, Tax Identification Form, Workers' Compensation certification, insurance certificates and endorsements, and any and all schedules and attachments to them which are incorporated as if fully set forth herein. In the event of an inconsistency, this Agreement shall govern.

1.3 Compliance with Law. All services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered. Contractor shall keep itself informed of City, State, and Federal laws, ordinances, and regulations, which in any manner affect the performance of its services pursuant to this Agreement. Neither the City nor its officers, agents or employees shall be liable at law or in equity as a result of Contractor's failure to comply with this section.

1.4 Licenses, Permits, Fees and Assessments. Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder. Contractor shall be responsible for all subcontractors' compliance with this Section 1.4.

1.5 Familiarity with Work. By executing this Contract, Contractor warrants that Contractor (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the City of such fact and shall not proceed except at Contractor's risk until written instructions are received from the Contract Officer.

1.6 Care of Work. Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own sole negligence.

1.7 Further Responsibilities of Parties. Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other. Contractor shall require all subcontractors to comply with the provisions of this agreement.

1.8 Additional Services. City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written change order is first given by the Contract Officer to Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of Contractor. Increases in compensation totaling up to twenty-five (25) percent

of the total cost of this Agreement may be approved by Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council. It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor.

1.9 Special Requirements. Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

2. COMPENSATION

2.1 Contract Sum. For the services rendered pursuant to this Agreement, the Contractor shall be compensated as specified herein, but not exceeding the maximum contract amount: Eight hundred eighty-five thousand dollars (\$ 885,000.00) (herein "Contract Sum"), except as provided in Section 1.8. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the City; Contractor shall not be entitled to any additional compensation for attending said meetings.

2.2 Progress Payments. City agrees to pay Contractor and Contractor agrees to accept as payment in full for the work to be performed hereunder, payments during the sixty (60)-month period of this Agreement of Fourteen thousand seven hundred fifty dollars (\$ 14,750.00) per month. Payments will only be made upon satisfactory completion and acceptance of the work by the Contract Officer and presentation of a monthly statement to the City. Prior to payment, Contractor will adhere to and provide upon request to the Maintenance Division, documented proof of compliance with Division 2, Part 7, Chapter 1, Article 2, of the Labor Code. If contractor fails to perform its obligations or fails to cure defaults within the time frames specified in Section 7.2 of this Agreement, in addition to liquidated damages specified in Section 7.7 of this Agreement, City may withhold payment to Contractor until such defaults are cured.

3. PERFORMANCE SCHEDULE

3.1 Time of Essence. Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance. Following receipt of a written notice to proceed, Contractor shall commence and perform the services pursuant to this Agreement upon the date specified and within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "C", if any, and incorporated herein by this reference. When requested by Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including City, if Contractor shall within ten (10) days of the commencement of such delay notify Contract Officer in writing of the causes for the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement.

3.4 Term. Unless earlier terminated in accordance with Section 7.8 of this Agreement, this Agreement shall continue in full force and effect for a period of sixty (60) months commencing on the date contractor commences work pursuant to Section 3.2 of this Agreement.

4. COORDINATION OF WORK

4.1 Representative of Contractor. The following principals of Contractor are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. For purposes of this Agreement, the foregoing principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City.

4.2 Contract Officer. The Contract Officer shall be such person as may be designated by the City Manager or Maintenance Operations Manager or Public Services Director of the City. It shall be Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein or required by applicable law, any approval of City required hereunder shall mean the approval of Contract Officer. The Contract Officer shall have authority to sign documents on behalf of City required hereunder to carry out the terms of this Agreement.

4.3 Prohibition Against Assignment. The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for City to enter into this Agreement. Neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of

City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

4.4 Independent Contractor. Neither City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its subcontractors, agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, subcontractors, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly shall not at any time or in any manner represent that it or any of its subcontractors, agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venture or a member of any joint enterprise with Contractor. City officers, employees; or agents shall not be deemed the officers, employees or agents of Contractor as a result of this Agreement.

4.5 Identity of Persons Performing Work. Contractor represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services set forth herein. Contractor represents that the tasks and services required herein will be performed by Contractor or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services.

5. INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance. Without limiting Contractor's indemnification, Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance:

<u>Coverage (Check if applicable)</u>	<u>Minimum Limits</u>
(x) Comprehensive General Liability Insurance (including premises and operations)	\$1,000,000 per occurrence combined single limit
() Contractual Liability Insurance Products Liability Insurance	\$1,000,000 limit
(x) Comprehensive Automobile Liability Insurance (including owned, non-owned, and hired automobile hazards)	\$1,000,000 per occurrence combined single limit
() Professional Liability Insurance (providing for a one year discovery period)	\$1,000,000 per occurrence combined single limit
(x) Workers' Compensation/Employers' Liability Insurance	Statutory \$1,000,000 per occurrence

Conditions:

(a) In accordance with Public Code Section 20170, the insurance of surety companies who provide or issue the policy shall have been admitted to do business in the State of California with a credit rating of A- or better and shall meet the requirements of Section 5.4 hereof.

(b) Any insurance maintained by City of West Covina shall apply in excess of and not combined with insurance provided by this policy.

(c) City, its officers, employees, representatives, attorneys, and volunteers shall be named as additional named insureds.

(d) Prior to commencement of any work under this contract, Contractor shall deliver to the City insurance endorsements confirming the existence of the insurance required by this contract, and including the applicable clauses referenced above. Such endorsements shall be signed by an authorized representative of the insurance company and shall include the signator's company affiliation and title. Should it be deemed necessary by the City, it shall be Contractor's responsibility to see that the City receives documentation, acceptable to the City, which sustains that the individual signing said endorsements is indeed authorized to do so by the insurance company.

(e) If Contractor fails to maintain the aforementioned insurance, or secure and maintain the aforementioned endorsements, City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement. However, procuring of said insurance by City is an alternative to other remedies City may have, and is not the exclusive remedy for failure of Contractor to maintain said insurance or secure said endorsements. In addition to any other remedies City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

(f) Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of or failure to perform the work covered under this Agreement.

(g) Each contract between Contractor and any subcontractor shall require the subcontractor to maintain the same policies of insurance that Contractor is required to maintain pursuant to this Section 5.1.

5.1.1 Liability Insurance: Without limiting Contractor's indemnification, Contractor shall secure from a good and responsible company or companies doing insurance business in Agreement, a policy of comprehensive general liability insurance, and shall furnish a Certificate of Liability Insurance to the Maintenance Operations Manager. Said policy shall provide:

(a) An endorsement naming City, its officers, agents and employees as additional insureds before execution of this Agreement by City.

(b) Contractor also shall maintain throughout the term of this Agreement, comprehensive automobile liability insurance (including owned, non-owned and hired automobile hazards) on the same terms and conditions. Notwithstanding any inconsistent statement in the policy or any subsequent endorsement attached thereto, the protection offered by the policy shall:

(c) Insure City, its officers, employees and agents, while acting within the scope of their duties under this Agreement, against all claims arising out of, or in connection with the Agreement.

(d) A combined single limit policy for both liability and property in the amount of \$1,000,000 per occurrence will be considered equivalent to the required minimum limits. Contractor may file insurance acceptable to City, covering more than one project.

(e) Bear an endorsement or shall have attached a rider providing that, in the event of expiration or proposed cancellation of such policy for any reason whatsoever, the Maintenance Operations Manager shall be notified by registered mail, postage prepaid, return receipt requested, not less than thirty (30) days before such expiration or cancellation is effective.

5.1.2 Workers' Compensation Insurance:

(a) By execution of this Agreement, Contractor agrees to the following certification: "I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work."

(b) Contractor shall also comply with Section 3800 of the Labor Code by securing, paying for and maintaining in full force and effect for the duration of this Agreement, complete Workers' Compensation Insurance, and shall furnish a Certificate of Insurance to the Maintenance Operations Manager before execution of this Agreement by City. City, its agents, officers and employees shall not be responsible for any claims in law or equity occasioned by the failure of Contractor to comply with this section.

(c) Every compensation insurance policy shall bear an endorsement or shall have attached a rider providing that, in the event of expiration or proposed cancellation of such policy for any reason whatsoever, the Maintenance Operations Manager shall be notified by registered mail, postage prepaid, return receipt requested, not less than thirty (30) days before such expiration or cancellation is effective.

5.2 Indemnification. Contractor shall indemnify, defend, and protect City, its officers, agents and employees against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, expenses, penalties, obligations, errors, omissions or liabilities, (herein "claims or liabilities") for any damage whatsoever, including but not limited to, bodily injury, death, or injury to property that may be asserted or claimed by any person, firm or entity arising or alleged to arise out of or in connection with the negligent performance of the work, act, omission, operations or activities of Contractor, its agents, employees, subcontractors, or invitees, provided for herein, or arising from the negligent acts or omissions of Contractor hereunder, or arising or alleged to arise from Contractor's negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, but excluding such claims or liabilities or portion of such claims or liabilities arising from the sole negligence or willful misconduct of City, its officers, agents or employees and in connection therewith:

(a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees and necessary disbursements incurred in connection therewith;

(b) Contractor will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising or alleged to arise out of or in connection with Contractor's (or its agents' employees', subcontractors' or invitees') negligent performance of or failure to perform such work, operations or activities hereunder; and Contractor agrees to save and hold City, its officers, agents, and employees harmless therefrom;

(c) In the event City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising or alleged to arise out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor shall pay to City, its officers, agents or employees, any and all costs

and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees for counsel acceptable to City.

(d) Contractor's duty to defend and indemnify as set out in this Section 5.2 shall include any claims, liabilities, obligations, losses, demands, actions, penalties, suits, costs, expenses or damages or injury to persons or property arising or alleged to arise from, in connection with, as a consequence of or pursuant to any local, County, State or Federal law or regulation regarding hazardous substances, including but not limited to the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), Resource Conservation and Recovery Act of 1976 ("RCRA"), the Hazardous and Solid Waste Amendments of 1984, the Hazardous Material Transportation Act, the Toxic Substances control Act, the Clean Air Act, the Clean Water Act, the California Hazardous Substance Account Act, the California Hazardous Waste Control Law or the Porter-Cologne Water Quality Control Act, as any of those statutes may be amended from time to time.

Contractor's indemnification obligations pursuant to this Section 5.2 shall survive the termination of this Agreement. Contractor shall require the same indemnification from all subcontractors.

5.3 Labor and Materials and Performance Bonds. Concurrently with execution of this Agreement, Contractor shall deliver to City both a labor and materials bond and a performance bond on the forms provided by the City Clerk, which secures the faithful performance of this Agreement. The bonds shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bonds shall be unconditional and remain in force during the entire term of the Agreement.

5.4 Sufficiency of Insurer or Surety. Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A-" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("Risk Manager") due to unique circumstances. In the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased risk of loss to City, Contractor agrees that the minimum limits of the insurance policies and the performance bond required by this Section 5 may be changed accordingly upon receipt of written notice from Risk Manager; provided that Contractor shall have the right to appeal a determination of increased coverage by Risk Manager to the City Council of City within ten (10) days of receipt of notice from Risk Manager.

5.5 Substitution of Securities. Pursuant to California Public Contract Code Section 22300, substitution of eligible equivalent securities for any moneys withheld to ensure performance under the contract for the work to be performed will be permitted at the request and expense of the successful bidder.

6. RECORDS AND REPORTS

6.1 Reports. Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto.

6.2 Records. Contractor shall keep, and require subcontractors to keep, such books and records (including but not limited to payroll records as required herein) as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required.

6.3 Ownership of Documents. All drawings, specifications, reports, records, documents and other materials prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership of the documents and materials hereunder. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom.

7. ENFORCEMENT OF AGREEMENT

7.1 California Law. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

7.2 Disputes. In the event either party fails to perform its obligations hereunder, the non-defaulting party shall provide the defaulting party written notice of such default. The defaulting party shall have ten (10) days to cure the default; provided that, if the default is not reasonably susceptible to being cured within said ten (10) day period, the defaulting party shall have a reasonable time to cure the default, not to exceed a maximum of thirty (30) days, so long as the defaulting party commences to cure such default within ten (10) days of

service of such notice and diligently prosecutes the cure to completion; provided further that if the default is an immediate danger to the health, safety and general welfare, the defaulting party shall take such immediate action as may be necessary. Notwithstanding the foregoing, the non-defaulting party may, in its sole and absolute discretion, grant a longer cure period. Should the defaulting party fail to cure the default within the time period provided in this Section, the non-defaulting party shall have the right, in addition to any other rights the non-defaulting party may have at law or in equity, to terminate this Agreement. Compliance with the provisions of this Section 7.2 shall be a condition precedent to bringing any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the dispute is not cured.

7.3 Retention of Funds. Not used.

7.4 Waiver. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.6 Legal Action. In addition to any other rights or remedies, either party may take legal action, at law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

7.7 Liquidated Damages. Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, Contractor and its sureties shall be liable for and shall pay to City the sum of two hundred dollars (\$200.00) as liquidated damages for each deficiency for each day of delay in excess of the time allowed for correction of deficiencies. In addition, liquidated damages may be assessed for failure to comply with the emergency call out requirements described in the scope of services (Exhibit "A"). The City may withhold from any moneys payable on account of services performed by Contractor any accrued liquidated damages.

7.8 Termination or Suspension of Contract.

(a) By Reasons of Contractor's Default: The contract may be terminated by the City at any time during the term and without prejudice to any other remedy to which City may be entitled at law, in equity or under the contract, if Contractor should:

- i. be judged bankrupt, become insolvent or have a receiver of his assets or property appointed because of insolvency, make a general assignment for the benefit of creditors, suffer any judgment against him to remain unsatisfied or unbonded of record for fifteen (15) days or longer, or institute or cause to be instituted any procedures for reorganization.
- ii. be judged incompetent as to lack of qualities needed to effectively provide the contractual obligation of this Agreement and fail to render satisfactory performance upon written notice from City within the time specified in such notice. Upon failure to cure any and all deficiencies within the time period established in the notice, City shall have a right to immediately terminate the contract.
- iii. abandon the work to be done under the contract, unnecessarily or unreasonably delay performance under the contract, violate any of the provisions of the contract, fail to follow the instructions of City, or fail to cure such default by rendering satisfactory performance upon written notice from City within the time specified in such notice. Upon failure to cure any and all deficiencies within the time period established in the notice, City shall have a right to immediately terminate the contract.

Determination whether Contractor has defaulted on the contract under the provisions of this subsection shall be made by the Maintenance Operations Manager or his representatives and his decision shall be binding on Contractor.

If termination is due to the failure of Contractor to fulfill its obligations under this Agreement, Contractor shall vacate any City owned property which Contractor is permitted to occupy hereunder and City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Contractor for the purpose of setoff or partial payment of the amounts owed City as previously stated.

(b) At the Option of City: This Section 7.8 (b) shall govern any termination of this Agreement except as specifically provided in the preceding Section 7.8 (d). The City reserves the right to terminate this Agreement at any time, with or without cause upon thirty (30) days written notice to Contractor. Upon receipt of notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event of termination without cause pursuant to this Section 7.8 (d), the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

(c) At the Option of Either Party: The City or Contractor may terminate the contract by giving sixty days prior written notice to the other party.

(d) By Mutual Consent of the Parties: The contract may be terminated by mutual consent of the City and Contractor at any time during the term.

7.9 Attorneys' Fees. If either party to this Agreement is required to initiate or defend or make a party to any action or proceeding to enforce or interpret this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

8. CITY OFFICERS AND EMPLOYEES; NONDISCRIMINATION

8.1 Non-liability of City Officers and Employees. No officer or employee of City shall be personally liable to Contractor, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest. Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination. Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. To the extent required by law, contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

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9. MISCELLANEOUS PROVISIONS

9.1 Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and shall be deemed to be given when served personally or deposited in the US Mail, prepaid, first-class mail, return receipt requested, addressed as follows:

To City: Attn: Maintenance Operations Manager
City of West Covina
Maintenance Division
825 South Sunset Avenue
West Covina, California 91793

To Contractor: _____

9.2 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

9.4 Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.5 Hiring of Illegal Aliens Prohibited. Contractor shall not hire or employ any person to perform work within the City of West Covina or allow any person to perform work required under this Agreement unless such person is properly documented and legally entitled to be employed within the United States.

9.6 Unfair Business Practices Claims. In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract.

Payment to Contractor without further acknowledgment by the parties. (Sec. 7103.5, California Public Contract Code).

9.7 Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first written above.

ATTEST:

CITY OF WEST COVINA,
a municipal corporation

By: *Sam Berg*
City Clerk

By: *Suzy*
Public Works Director/City Engineer

APPROVED AS TO FORM:

ALVAREZ-GLASMAN & COLVIN

Arnold M. Alvarez-Glasman
Arnold M. Alvarez-Glasman
City Attorney

CONTRACTOR:

By: NEVER SAMUELIAN
(Print)

By: SUZY SAMUELIAN
(Print)

Title: PRESIDENT

Title: CORPORATE SECRETARY

Address: 11914 FRONT STREET
NORWALK, CA 90650
(562) 860-0604

Address: 11914 FRONT STREET
NORWALK, CA 90650
(562) 860-0604

Signature: *Never Samuelian*

Signature: *Suzy Samuelian*

NATIONWIDE ENVIRONMENTAL SERVICES
JOE'S SWEEPING INC. & JNL BUILDING SERVICES

POLICY # CON37760049

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

**ADDITIONAL INSURED -- OWNERS, LESSEES OR
CONTRACTORS (FORM B)**

This endorsement modifies insurance provided under the following:

Name of Person or Organization:

CITY OF WEST COVINA

RE: CITY PROJECT NUMBER SS-02 STREET SWEEPING IN THE CITY OF WEST COVINA

(If no entry appears above, Information required to complete this endorsement will be shown in the Declaration applicable to this endorsement.)

WHO IS AN INSURED (Section II) Is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you

SIGNED BY: _____

Maria Duarte Navarro

(Insurance Carrier Representative)

ACORD™ CERTIFICATE OF LIABILITY INSURANCE DATE (MM/DD/YY)
6/20/2002

PRODUCER (310) 533-8842 Kiger & Associates, Inc. 367 Van Ness Way, Suite 611 Torrance CA 90501-	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURERS AFFORDING COVERAGE	
INSURED Nationwide Environmental Services Joe's Sweeping Inc., & JNL Building Services 11914 Front Street Norwalk, CA 90650	INSURER A: Northern Ins. Co. of New York (Zurich) INSURER B: Zurich Insurance Company INSURER C: National Union Fire Insurance Company INSURER D: Maryland Casualty Co. (Zurich) INSURER E:


COVERAGES

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

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/>	CON37760049	3/10/2002	3/10/2003	EACH OCCURRENCE \$ 1,000,000
					FIRE DAMAGE (Any one fire) \$ 100,000
					MED EXP (Any one person) \$ 5,000
					PERSONAL & ADV INJURY \$ 1,000,000
					GENERAL AGGREGATE \$ 2,000,000
					PRODUCTS - COMP/OP AGG \$ 2,000,000
					GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/>
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	CON37760049	3/10/2002	3/10/2003	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
					BODILY INJURY (Per person) \$
					BODILY INJURY (Per accident) \$
					PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
C	EXCESS LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE RETENTION \$	BE 8711617	3/10/2002	3/10/2003	EACH OCCURRENCE \$ 4,000,000
					AGGREGATE \$ 4,000,000
					\$
					\$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	TC256145320	3/10/2002	3/10/2003	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER
					E.L. EACH ACCIDENT \$ 1,000,000
					E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
					E.L. DISEASE - POLICY LIMIT \$ 1,000,000
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
 City of West Covina is named as Additional Insured per attached endorsement.

 Re: City Project Number SS-02 Street Sweeping in the City of West Covina

CERTIFICATE HOLDER <input checked="" type="checkbox"/> ADDITIONAL INSURED; INSURER LETTER: _____ City of West Covina City Clerk, City Hall, Room 317 1444 West Garvey Ave. South West Covina CA 91793	CANCELLATION Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the certificate holder named to the left. But failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.  AUTHORIZED REPRESENTATIVE
---	--

(USE OF CITY
FORM REQUIRED)

EQUALS

The undersigned desires to use the material, product, thing, or service described below, as "an equal" to such item as specified.

In accordance with the provisions under General Conditions, entitled EQUALS, if the City shall find any item so described equal to the respective item specified, then the undersigned may furnish such item so described equal to the respective item specified, then the undersigned may furnish such item, together with all necessary labor, materials, equipment and incidentals required to perform and complete the work.

NATIONWIDE ENVIRONMENTAL SERVICES
DIVISION OF JOE'S SWEEPING, INC.

06/20/02

Contractor's Name	Date:
11914 FRONT ST., NORWALK, CA 90650	(562) 860-0604

Address

Phone No.

Materials, apparatus or)	(Complete description of the materials,
equipment specified for)	(apparatus or equipment the bidder desires
which bidder proposes)	(to use as "an equal" and name of
"an equal")	(contractor if different

Specify page number

1.	
2.	
3.	

PROJECT NO. SS-02

CITY OF WEST COVINA

(USE OF CITY
FORM REQUIRED)

Premium Based on Final Contract Price
Bond No. 3SM 047 081 00
Premium: \$2,665.00

**FAITHFUL PERFORMANCE BOND
PUBLIC WORK (CALIFORNIA)**

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the Principal and the Obligees have entered into a written contract, hereinafter called the Contract, a copy of which is or may be attached hereto, dated the 18th day of June, 2002 for: STREET SWEEPING IN THE CITY OF WEST COVINA and all appurtenant work in accordance with Project No. SS-02, which agreement requires the Principal to provide Obligees with this bond.

Term : 7/1/02 to 6/30/03

Nationwide Environmental Services

NOW, THEREFORE, we, Division of Joe's Sweeping, Inc., as Principal, and American Motorists Insurance Company, a corporation organized under the laws of Illinois, and duly authorized to transact business in the State of California, as Surety, are held firmly bound unto the City of West Covina, as Obligees, in the sum of One Hundred Seventy Seven Thousand and 00/100's Dollars (\$ 177,000.00), lawful money of the United States of America, for the payment whereof well and truly to be made the Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that if the Principal, his or its heirs, executors, administrators, successors or assigns, and each of his or its subcontractors shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, then this obligation shall be void; otherwise to remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the obligee in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

IN WITNESS THEREOF, we have hereunto set our hands and seal this 21st day of June, 20 02.

(Corporate Seal)

**Nationwide Environmental Services
Division of Joe's Sweeping, Inc**

Principal

By *Neau Sumalee*

Title: President

(Corporate Seal)

American Motorists Insurance Company

Surety

By *Michael E. Cundiff*
Michael E. Cundiff

Title: Attorney-In-Fact

APPROVED AS TO FORM:

/s/ Arnold M. Alvarez-Glasman
City Attorney

(USE OF CITY
FORM REQUIRED)

**LABOR AND MATERIAL PAYMENT BOND
PUBLIC WORK (CALIFORNIA)**

KNOW ALL MEN BY THESE PRESENTS:

Nationwide Environmental Services

WHEREAS, **Division of Joe's Sweeping, Inc**, as Principal has entered into a contract, dated June 18th, 20 02, with the City of West Covina (Obligee), referred to and made a part hereof to perform the following work, to wit: STREET SWEEPING IN THE CITY OF WEST COVINA and all appurtenant work in accordance with Project No. SS-02, which requires Principal to file this bond to secure claims made under Civil Code Section 3082 et. seq. Term: 7/1/02 to 6/30/03

Nationwide Environmental Services

NOW THEREFORE, we, **Division of Joe's Sweeping, Inc**, as Principal, and **American Motorists Insurance Company** a corporation organized under the laws of Illinois and duly authorized to transact business in the State of California, as Surety, are held firmly bound unto the City of West Covina, as Obligee, and all subcontractors, laborers, material persons and other persons employed in the performance of the referenced Agreement, in the sum of One Hundred Seventy Seven Thousand and No/100's Dollars (\$ 177,000.00), lawful money of the United States of America, for the payment whereof well and truly to be made the Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

If the above bounden PRINCIPAL, his or its heirs, executors, administrators, successors, assigns, or any of his or its subcontractors, fails to pay for any materials, provisions, provender, or other supplies, or teams, implements or machinery, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor to persons named in Section 3181 or the Civil Code, thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to such work or labor deducted, withheld and paid over to the Employment Development Department from the wages of employees of the contractor and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, that the SURETY on this bond will pay the same, in an amount not exceeding the sum specified in this bond, AND ALSO, in case suit is brought upon this bond, a reasonable attorney's fee, which shall be awarded by the court to the prevailing party in said suit, said attorney's fee to be taxed as costs in said suit and to be included in the judgment herein rendered.

As part of the obligation secured hereby, the SURETY shall not be exonerated or released from the obligation of the bond by any change, alteration, or modification in or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement or pertaining or relating to the furnishing of labor, materials, or equipment therefor, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme of work of improvement, nor by any rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement, or under the bond, nor,

where the bond is given for the benefit of claimants, by any fraud practiced by any person other than the claimant seeking to recover on the bond.

This bond shall insure to the benefit of any and all persons, companies and corporations entitled to file claims under Civil Code Section 3082 so as to give them a right of action in a suit on this bond.

This bond is executed for the purpose of complying with the laws of the State of California designated as Title 15, Chapter 7, Works of Improvement, commencing with Section 3247 of the Civil Code of the State of California and all amendments thereto, and shall inure to the benefit of any of the persons named in Section 3181 of the Civil Code of the State of California.

IN WITNESS THEREOF, we have hereunto set our hands and seal this 21st day of June, 20 02.

(Corporate Seal)

**Nationwide Environmental Services
Division of Joe's Sweeping, Inc**

Principal

By *Nancy Sumbasi*

Title: *President*

(Corporate Seal)

American Motorists Insurance Company

Surety

By: *Michael E. Cundiff*
Michael E. Cundiff

Title: **Attorney-In-Fact**
(Calif. Civil Code Sections 3248, 3225)

APPROVED AS TO FORM:

/s/ Arnold M. Alvarez-Glasman
City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

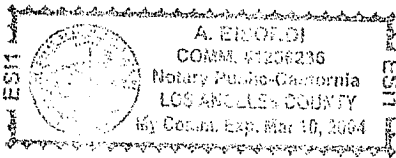
State of California
County of Los Angeles

On JUN 21 2002 before me, A. Bisordi, Notary Public,
NAME, TITLE OF OFFICER

personally appeared Michael E. Cundiff
NAME OF SIGNER

Personally known to me - OR -

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

A. Bisordi
(SIGNATURE OF NOTARY)

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SURETY

DESCRIPTION OF ATTACHED DOCUMENT

- INDIVIDUAL
- CORPORATE OFFICER

BOND(S)

TITLE OR TYPE OF DOCUMENT

- PARTNER(S) LIMITED
- GENERAL

NUMBER OR PAGES

- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER:

DATE OF DOCUMENT

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

American Motorists Insurance Company
Lumbermens Mutual Casualty Company
American Manufacturers Mutual Insurance Company
Lou Jones & Associates

SIGNER OTHER THAN NAME ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Los Angeles } ss.

On June 21, 2002, before me, Ani Kaprielian, Notary Public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Naver Samuelian
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.
Ani Kaprielian
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



POWER OF ATTORNEY

Know All Men By These Presents:

That the Lumbermens Mutual Casualty Company, the American Motorists Insurance Company, and the American Manufacturers Mutual Insurance Company, corporations organized and existing under the laws of the State of Illinois, having their principal office in Long Grove, Illinois (hereinafter collectively referred to as the "Company") do hereby appoint

Michael E. Cundiff, George Munana, Raymond E. Gail, David Z. Noddle, Susan E. Morales, Christina A. Clarkson and KeAna D. Conrad of Los Angeles, CA (EACH)

their true and lawful agent(s) and Attorney(s)-in-Fact, to make, execute, seal, and deliver from the date of issuance of this power for and on its behalf as surety, and as their act and deed:

Any and all bonds and undertakings

EXCEPTION: NO AUTHORITY is granted to make, execute, seal and deliver any bond or undertaking which guarantees the payment or collection of any promissory note, check, draft or letter of credit.

This authority does not permit the same obligation to be split into two or more bonds in order to bring each such bond within the dollar limit of authority as set forth herein.

This appointment may be revoked at any time by the Company.

The execution of such bonds and undertakings in pursuance of these presents shall be as binding upon the said Company as fully and amply to all intents and purposes, as if the same had been duly executed and acknowledged by their regularly elected officers at their principal office in Long Grove, Illinois.

This Power of Attorney is executed by authority of resolutions adopted by the Executive Committees of the Boards of Directors of the Company on February 23, 1988 at Chicago, Illinois, true and accurate copies of which are hereinafter set forth and are hereby certified to by the undersigned Secretary as being in full force and effect:

"VOTED, That the Chairman of the Board, the President, or any Vice President, or their appointees designated in writing and filed with the Secretary, or the Secretary shall have the power and authority to appoint agents and attorneys-in-fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings, obligatory in the nature thereof, and any such officers of the Company may appoint agents for acceptance of process."

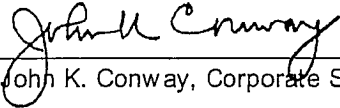
This Power of Attorney is signed, sealed and certified by facsimile under and by authority of the following resolution adopted by the Executive Committee of the Boards of Directors of the Company at a meeting duly called and held on the 23rd day of February, 1988:

"VOTED, That the signature of the Chairman of the Board, the President, any Vice President, or their appointees designated in writing and filed with the Secretary, and the signature of the Secretary, the seal of the Company, and certifications by the Secretary, may be affixed by facsimile on any power of attorney or bond executed pursuant to resolution adopted by the Executive Committee of the Board of Directors on February 23, 1988 and any such power so executed, sealed and certified with respect to any bond or undertaking to which it is attached, shall continue to be valid and binding upon the Company."

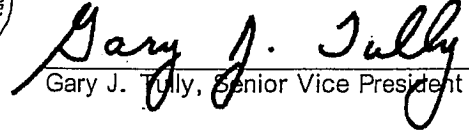
In Testimony Whereof, the Company has caused this instrument to be signed and their corporate seals to be affixed by their authorized officers, this December 21, 2001.

Attested and Certified:

Lumbermens Mutual Casualty Company
American Motorists Insurance Company
American Manufacturers Mutual Insurance Company


John K. Conway, Corporate Secretary

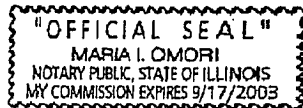


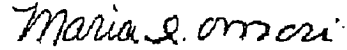

Gary J. Tully, Senior Vice President

STATE OF ILLINOIS SS

COUNTY OF LAKE SS

I, Maria I. Omori, a Notary Public, do hereby certify that Gary J. Tully and John K. Conway personally known to me to be the same persons whose names are respectively as Senior Vice President and Corporate Secretary of the Lumbermens Mutual Casualty Company, the American Motorists Insurance Company, and the American Manufacturers Mutual Insurance Company, Corporations organized and existing under the laws of the State of Illinois, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they being thereunto duly authorized signed, sealed with the corporate seals and delivered the said instrument as the free and voluntary act of said corporations and as their own free and voluntary acts for the uses and purposes therein set forth.




Maria I. Omori, Notary Public
My commission expires 9-17-03

CERTIFICATION

I, J. K. Conway, Corporate Secretary of the Lumbermens Mutual Casualty Company, the American Motorists Insurance Company, and the American Manufacturers Mutual Insurance Company, do hereby certify that the attached Power of Attorney dated December 21, 2001 on behalf of the person(s) as listed above is a true and correct copy and that the same has been in full force and effect since the date thereof and is in full force and effect on the date of this certificate; and I do further certify that the said Gary J. Tully, who executed the Power of Attorney as Senior Vice President, was on the date of execution of the attached Power of Attorney the duly elected Senior Vice President of the Lumbermens Mutual Casualty Company, the American Motorists Insurance Company, and the American Manufacturers Mutual Insurance Company.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the Lumbermens Mutual Casualty Company, the American Motorists Insurance Company, and the American Manufacturers Mutual Insurance Company on this JUN 21 2002 day of JUN 21 2002, 20 02.




John K. Conway, Corporate Secretary

This Power of Attorney limits the acts of those named therein to the bonds and undertakings specifically named therein and they have no authority to bind the Company except in the manner and to the extent herein stated.

Home Office: Long Grove, IL 60049

FK 09 75 (Ed. 09 01)

Page 2 of 2

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