

ORDINANCE NO. 04-52 AC CMS

AN ORDINANCE ACCEPTING THE BID OF EDWARD'S TREE SERVICE, INC., OF AMHERST, OHIO, FOR FORESTRY SERVICES FOR THE CITY OF OBERLIN, OHIO, FOR THE 2005 CALENDAR YEAR AND DECLARING AN EMERGENCY

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the bid of Edward's Tree Service, Inc., of Amherst, Ohio, for forestry services for the City of Oberlin, Ohio, for the 2005 calendar year, being the lowest and best bid submitted, is hereby accepted, and the City Manager is hereby authorized and directed to enter into a contract accordingly, for the per item prices set forth in the attached exhibit.

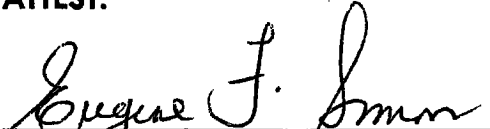
SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, and safety of the citizens of the City of Oberlin, Ohio, to wit:

"to accept a forestry bid as soon as possible in order to ensure emergency tree clearing and removal services and to provide for the usual daily operation of a municipal department", and shall take effect immediately upon passage.

PASSED: 1st Reading - July 12, 2004 (E)
 2nd Reading -
 3rd Reading -

ATTEST:


CLERK OF COUNCIL


CHAIR OF COUNCIL

POSTED: 7/13/2004

EFFECTIVE DATE: 7/13/2004



OBERLIN MUNICIPAL LIGHT AND POWER SYSTEM ♦ 289 SOUTH PROFESSOR STREET ♦ OBERLIN, OHIO 44074

Phone (440)775-7260

Fax (440)775-1546

MEMORANDUM

To: Rob DiSpirito, City Manager

Re: Tree Bid 2004/05

From: Steve Dupee, Director

A handwritten signature in black ink, appearing to read "SD", is written over the "From:" line.

Date: June 14, 2004

On June 9th, one (1) bid was received from Edwards Tree Service for the 2004/2005 City tree work and electric line clearance needs. Attached is the bid tabulation for your review. For your information, I have also attached a list of tree trimming firms that we endeavored to solicit bids from for this year's tree work. Of the nine (9) firms listed, six (6) received a bid invitation and three (3) received bid specifications. One of the firms, Asplundh Tree Service, sent us a letter stating that they would not be submitting a pricing proposal for the tree work. I spoke to a Mr. Pete Fengler at Asplund who explained that Asplund simply did not have available crews for working in Oberlin due to their heavy work load.

Edwards Tree Service has been working with the City for approximately 11 years and our experience with their work has been very good. I respectfully request that Edwards Tree Service of Amherst, Ohio be awarded the tree service contract for the prices set forth in "Exhibit A" attached to the draft ordinance. An EEO review has been performed and attached is a memorandum of approval from Marshall Whitehead. I respectfully request that City Council consider this item at their July 12, 2004 meeting on emergency due to the 60 day withdraw provision in the bid document.

If you have any questions, please call me.

/sd

Bid Tabulation Sheet

BID FOR TREE WORK

Bid Opening: June 9, 2004

City Hall Conference Room

BIDDERS NAME: Edwards Tree Service

BID FORM:

(1). Tree Pruning: Unit Prices

0 - 9.9 DBH	<u>\$42.00</u>
10 - 19.9 DBH	<u>\$98.50</u>
20 - 24.9 DBH	<u>\$132.00</u>
25 - 29.9 DBH	<u>\$185.00</u>
+30.0 DBH	<u>\$258.00</u>

(2). Tree Removal: Unit Prices

0 - 9.9 DBH	<u>\$78.00</u>
10 - 19.9 DBH	<u>\$250.00</u>
20 - 24.9 DBH	<u>\$402.00</u>
25 - 29.9 DBH	<u>\$523.00</u>
+30.0 DBH	<u>\$865.00</u>

with Stump

(3). Line Clearance: \$37,450.00

(4). Unscheduled Line Clearance: Crew Hour Rate \$124.00

(5). Emergency Storm Work: Crew Hour Rate \$168.00

(6). Storm Clean-up Work: Crew Hour Rate \$124.00

(7). 20 Ton Crane with Operator: Crew Hour Rate \$ 75.00

BID GUARANTY INCLUDED: Yes

DELINQUENT PERSONAL PROPERTY TAX AFFIDAVIT INCLUDED: Yes

EEO FORMS COMPLETED: Yes

EXPERIENCE STATEMENT COMPLETED: Yes

**Oberlin Municipal Light & Power Systems
2004 Tree Work**

Date Faxed/Mailed/Called	Company	Phone	Fax	Comments
5/18/2004 - Mailed	Edwards Tree Service 40909 Cooper Foster Rd., Amherst, OH 44001			Came to pre-bid mtg.
5/18/2004 - Mailed	Davey Resource Group 1500 N. Mantua St., Kent, OH 44240			
5/18/2004 - Mailed	Asplund 800 W. Maple Street, Suite G, Hartville OH 44632	330-877-8655	330-877-8653	
5/18/2004 - Faxed	Barnes Nursery		419-433-3555	
5/18/2004 - Faxed	Richard's Tree Service		327-8149	
5/18/2004 - Faxed	Seymour Tree Service		440-519-7107	
5/18/2004 - Called/Left Message	Myers Tree Service	330-225-9043		
5/18/2004 - Called/Left Message	Cherokee Tree Service	440-967-0884		
5/18/2004 - Called/Left Message	North Coast Tree Service	965-7883		

Steve

ASPLUNDH

MUNICIPAL DIVISION

708 BLAIR MILL ROAD, WILLOW GROVE, PA 19090-1784 • AREA CODE 215 • TELEPHONE 784-4384 • FAX 784-1366 • 800-248-8733

June 4, 2004

Mr. Robert DiSpirito
City Manager
City of Oberlin
85 South Main Street
Oberlin, OH 44074

Dear Mr. DiSpirito:

The Asplundh Tree Expert Company appreciates the opportunity it has been afforded to bid on the 2004 Tree Work. Unfortunately, we are unable to submit a price proposal at this time.

However, we wish to remain on your bidders' list and would appreciate the opportunity to bid on future specifications for tree trimming and/or tree removal for the City of Oberlin.

Thank you for your time and consideration.

Sincerely,



Phyllis Visco
Administrative Assistant

ORDINANCE NO.

AN ORDINANCE APPROVING THE BID OF EDWARD'S TREE SERVICE, INC., OF AMHERST, OHIO, FOR FORESTRY SERVICES FOR THE CITY OF OBERLIN, OHIO AND DECLARING AN EMERGENCY

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, and the State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

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SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of public peace, health, and safety of the citizens of the City of Oberlin, Ohio, or to provide for the usual daily operations of a municipal department, to wit:

"to accept a forestry bid as soon as possible in order to ensure emergency tree clearing and removal services and to provide for the usual daily operation of a municipal department", and shall take effect immediately upon passage.

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2nd Reading -
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ATTEST:

CHAIR OF COUNCIL

CLERK OF COUNCIL

POSTED:

EFFECTIVE DATE:

Exhibit A

BIDDERS NAME: Edwards Tree Service

BID FORM:

- (1). Tree Pruning: Unit Prices
- | | |
|---------------|-----------------|
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- (6). Storm Clean-up Work: Crew Hour Rate \$124.00
- (7). 20 Ton Crane with Operator: Crew Hour Rate \$ 75.00

City of
Oberlin

85 S. Main Street, Oberlin, Ohio 44074

MEMORANDUM

DATE: June 9, 2004
TO: Steve Dupee, OMLPS Director
FROM:  Marshall Whitehead, Contract Compliance Officer
RE: EEO REVIEW - 2004 Tree Work

I have reviewed the EEO data submitted with the above bid and find the following:

Approved

Edwards Tree Service

/skp

cc: Sharon Pearson, Assistant to the Administration
Eugene Simon, City Clerk
Robert DiSpirito, City Manager
File

S:\CODEADM\EE0\2002 FILES\BID.DOC

NOTICE OF AWARD

To: Edwards Tree Service of Ohio, LLC
49090 Cooper Foster Road
Amherst, Ohio 44001

The City of Oberlin, Ohio, having considered the Bid submitted by you for **2004 TREE WORK** in response to the Advertisement for Bids dated 5/18/2004 & 5/25/2004 and in the amount not exceed \$70,000 does hereby notify you that your

Bid has been accepted by City Ordinance No. 04-52-ACCMS

The following variations from the Specifications and Bid Instructions have been allowed:

None

You are required to execute the Agreement within ten (10) calendar days from the date of this Notice to you. If you fail to execute said Agreement within ten (10) calendar of the date of this Notice, the City of Oberlin will be entitled to consider all your rights arising out of the City's acceptance of your Bid as abandoned and as a forfeiture of your Bid Bond. The City of Oberlin will also be entitled to such other rights as may be granted by law.

City of Oberlin, Ohio

By: 

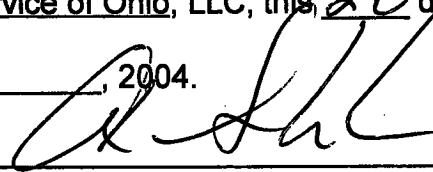
Title: CITY MANAGER Date: 7/13/04

Acceptance of Notice of Award

Receipt of the above Notice of Award is hereby acknowledged by

Edwards Tree Service of Ohio, LLC, this 28 day of

July, 2004.

By: 

Title: Sales Manager

AGREEMENT

This Agreement, made this 13th day of July, 2004, by and between the City of Oberlin, Ohio, hereinafter called the "City", acting herein through its City

Manager, and Edwards Tree Service of Ohio, LLC, doing business as

(a corporation) (~~a partnership~~) (~~an individual~~) in the City of Amherst,

County of Lorain, and State of Ohio, hereinafter called the "Contractor."

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The Contractor will furnish equipment in accordance with the terms of the Contract Documents.
2. The following variations from the Contract Documents and or options have been agreed to:

None

3. The term "Contract Documents" means and includes the following:

- a) Advertisement for Bids
- b) Instruction to Bidders
- c) General Conditions
- c) EEO and MBE Documentation
- d) Bid including all attachments thereto.
- e) Bid Bond
- f) Delinquent Personal Property Tax Affidavit
- g) Notice of Award
- h) Agreement (with Legal & Fiscal Officers' Certificates)
- i) Specifications
- j) Addenda:
No. _____, dated _____, 2004.
No. _____, dated _____, 2004.
No. _____, dated _____, 2004.

4. The City will pay to the Contractor in the manner and at such times as set forth in the Contract Documents, such amounts as required by this Agreement.

AGREEMENT (pg 2)

5. City's engagement of the Contractor is based upon the Contractor's representations to the City that the Contractor:
 - . has reviewed all documents pertinent to its portion or scope of the work and has found them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient;
 - . is an organization experienced in and qualified, willing and able to provide equipment of the nature and type necessary to perform its portion or scope of the Work
 - . is authorized and licensed to do business in Ohio;
 - . has the expertise and ability to meet the City's objectives and requirements.
6. The Contractor shall furnish services and labor which expeditiously and economically and properly complete its particular scope of the Work in the manner most consistent with the City's interests and objectives; in accordance with the Contract Documents, and in accordance with the highest standards currently practiced by persons and entities performing comparable labor and services on projects of similar size and complexity.
7. The Contractor expressly warrants and guarantees to the City that all goods, products, materials, equipment, and systems incorporated in its particular scope of the Work conform to applicable Specifications, descriptions instructions, Drawings, data and samples; be new (unless otherwise specified or permitted and without apparent damage; be of quality equal to or higher than that required by the Bid Documents; be merchantable ; and free from defects
8. The Contractor expressly warrants and guarantees to the City that all labor and services required for its particular scope of Work shall comply with the Bid Documents; be performed in a workmanlike manner; and be free from defects.
9. All warranties and guarantees set forth above shall be in addition to all other warranties, express, implied or statutory, and shall survive payment for, acceptance or inspection of, or failure to inspect the Work.
10. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.
11. With respect to the intent and interpretation of this Contract, the City and the Contractor agree as follows:
 - (A) This Contract, together with the Contractor's and Surety's performance and payment bonds for the Project, if any, constitute the entire and exclusive agreements between the parties with reference to the Project, and said Contract supersedes any and all prior discussions, communications, representations, understandings, negotiations, or agreements.

AGREEMENT (pg 3)

(B) Anything that may be required, implied or inferred by the documents which make up this Contract, or any one or more of them, shall be provided by the Contractor for the Contract Price;

(C) Nothing contained in this Contract shall create, nor be interpreted to create, privity or any other relationship whatsoever between the City and any person except the Contractor;

(D) When a word, term, or phrase is used in this Contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage;

(E) The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation";

(F) The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract;

(G) The Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract, shop drawings, and other submittal and shall give written notice to the City of any conflict, ambiguity, error or omission which the Contractor may find with respect to these documents before proceeding with the affected work. The express or implied approval by the City of any shop drawings or other submittal shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The City has requested the Distribution Superintendent to only prepare documents for the Project, including the plans and specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. HOWEVER, THE City MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS. The Contractor again hereby acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representations or warranties by the City concerning such documents, as no such representations or warranties have been or are hereby made;

(H) In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Contract, the following shall control:

- (1) As between figures given on plans and scaled measurements, the figures shall govern;
- (2) As between large scale plans and small scale plans, the large scale plans shall govern;

AGREEMENT (pg 4)

- (3) As between plans and specifications, the requirements of the specifications shall govern;
 - (4) As between this document and the plans or specifications, this document shall govern.
12. The Contractor shall perform all of the work required, implied or reasonably inferable from this Contract including, but not limited to, the following:
- (A) Construction of the Project;
 - (B) The furnishing of any required surety bonds and insurance;
 - (C) The provision or furnishing, and prompt payment therefor, of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, or other utilities, required for construction and all necessary building permits and other permits required for the construction of the Project;
 - (D) The creation and submission to the City of detailed and comprehensive as-built drawings depicting all as-built construction. Said as-built drawings shall be submitted to the City upon final completion of the Project and receipt of same by the City shall be a condition precedent to final payment to the Contractor.
 - (E) Neither payment to the Contractor, utilization of the Project for any purpose by the City, nor any other act or omission by the City shall be interpreted or construed as an acceptance of any work of the Contractor not strictly in compliance with this Contract;
 - (F) Prior to being entitled to receive final payment, and as a condition precedent thereto, the Contractor shall furnish the City, in the form and manner required by City, if any, with a copy to the Engineer:
 - (1) An affidavit that all of the Contractor's obligations to subcontractors, laborers, equipment or material suppliers, or other third parties in connection with the Project, have been paid or otherwise satisfied;
 - (2) If required by the City, separate releases of lien or lien waivers from each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who has, or might have a claim against the City or the City's property;
 - (3) If applicable, consent(s) of surety to final payment;
 - (4) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of the Contractor, or expressly required herein, as a part of or prior to Project closeout;

13. Termination by the Contractor

If the City repeatedly fails to perform its material obligations to the Contractor for a period of thirty (30) days after receiving written notice from the Contractor of its intent to terminate hereunder, the contractor may terminate performance under this Contract by written notice to the City. In such event, the Contractor shall be entitled to recover from the City as though the City had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 19(A) hereunder.

14. City's Right to Suspend Contractor's Performance

The City shall have the right at any time to direct the Contractor to suspend its performance, or any designated part thereof, for any reason whatsoever, or without reason, for a cumulative period of up to (10) calendar days. If any such suspension is directed by the City, the Contractor shall immediately comply with same.

In the event the City directs a suspension of performance under this Paragraph, through no fault of the Contractor, the City shall pay the Contractor as full compensation for such suspension the Contractor's reasonable costs, actually incurred and paid, of:

- (A) demobilization and remobilization, including such costs paid to subcontractors;
- (B) preserving and protecting work in place;
- (C) storage of materials or equipment purchased for the Project, including insurance thereon;
- (D) performing in a later, or during a longer, time frame than that contemplated by this Contract.

15. Termination by the City

The City may terminate this Contract in accordance with the following terms and conditions:

- (A) The City may, for any reason whatsoever, terminate performance under this Contract by the Contractor for convenience. The City shall give written notice of such termination to the Contractor specifying when termination becomes effective. The Contractor shall incur no further obligations in connection with the work and the Contractor shall stop work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Contractor to assign the Contractor's right, title and interest under termination orders or subcontracts to the City or its designee. The Contractor shall transfer title and deliver to the City such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has. When terminated for convenience, the Contractor shall be compensated as follows:

AGREEMENT (pg 6)

- (1) The Contractor shall submit a termination claim to the City specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the City. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the Contractor, an amount derived in accordance with Subparagraph (3) below;
- (2) The City and the Contractor may agree to the compensation, if any, due to the Contractor hereunder;
- (3) Absent agreement to the amount due to the Contractor, the City shall pay the Contractor the following amounts:
 - (a) Contract prices for labor, materials, equipment and other services accepted under this Contract;
 - (b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for direct jobsite overhead and profit thereon (such profit shall not include anticipated profit or nonsequential damages); provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
 - (c) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph (A) of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Subparagraph 19(A) shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

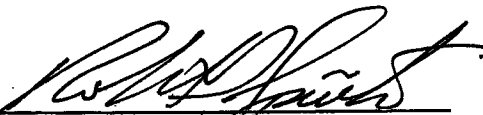
- (B) If the Contractor does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Contract, then the City, in addition to any other rights it may have against the Contractor or others, may terminate the performance of the Contractor and assume possession of the Project site and of all materials and equipment at the site and may complete the work. In such case, the Contractor shall not be paid further until the work is complete. After final completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the City of completing the work, including all costs and expenses of every nature incurred, has been deducted by the City, such remainder shall belong to the Contractor. Otherwise, the Contractor shall pay and make whole the City for such cost. This obligation for payment shall survive the termination of the Contract.

AGREEMENT (pg 7)

In the event the employment of the Contractor is terminated by the City for cause pursuant to this Subparagraph B) and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph A) and the provisions of Subparagraph (A) shall apply.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in three copies, each of which shall be deemed an original on the date first written above.

City of Oberlin, Ohio

By: 
Robert DiSpirito, City Manager

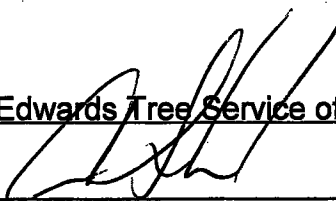
(Seal)

ATTEST:

City Clerk

(Witness)

Contractor: Edwards Tree Service of Ohio, LLC

By: 

Title: Sales Manager

Address: 49090 Cooper Foster Road, Amherst, OH 44001

(Seal)

ATTEST:

Phone: (440) 988-4470

(Secretary, if Corporation)

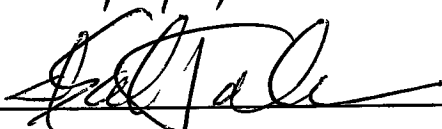
(Witness)

CITY OF OBERLIN, OHIO

FISCAL OFFICER'S CERTIFICATE

Project Identification: 2004 TREE WORK

I, Sal Talarico, City Auditor hereby certify that I am the qualified and acting fiscal officer of the City of Oberlin, Ohio, and that the amount of money, to wit not to exceed amount of \$ 70,000, required to meet the cost of the attached Agreement between the City of Oberlin and Edwards Tree Service of Ohio, LLC (Contractor) has been lawfully appropriated for the purpose of said Agreement and the money so appropriated is on deposit (in process of collection) to the credit of the appropriate fund free from any previous encumbrances.

Date 7/16/04
Signature 
Name Sal Talarico
Title City Auditor

CITY OF OBERLIN, OHIO

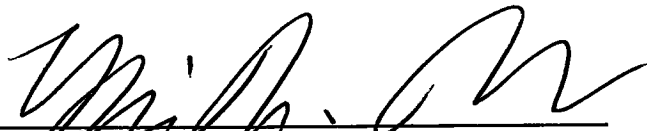
LEGAL OFFICER'S CERTIFICATE

Project Identification: 2004 TREE WORK

The foregoing Agreement between the City of Oberlin, Ohio, (City)
and Edwards Tree Service of Ohio, LLC (Contractor)
is approved as to form.

7-16-04

Date



Eric Severs, City Solicitor



NOTICE TO PROCEED

To: Edwards Tree Service of Ohio, LLC

Date: _____

49090 Cooper Foster Road

Project: 2004 TREE WORK

Amherst, Ohio 44001

You are hereby to commence WORK in accordance with the Agreement dated Monday, July 13, 2004, on or before Monday, July 26, 2004 and you are to complete the WORK within 365 consecutive calendar days thereafter. The date of completion of all WORK is, therefore, July 26, 2005.

Owner: City of Oberlin, Ohio

By: _____

Title: City Manager

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED is hereby acknowledged by _____

Edwards Tree Service of Ohio, LLC this 28 day of July 2004.

By: _____

Title: _____