

**CITY OF COSTA MESA
MAINTENANCE SERVICES AGREEMENT
WITH
BPR, INC.**

THIS MAINTENANCE SERVICES AGREEMENT (“Agreement”) is made and entered into this 6th day of June, 2023 (“Effective Date”), by and between the City of Costa Mesa, a municipal corporation (“City”), and BPR, Inc. a California corporation (“Contractor”).

W I T N E S S E T H :

A. City proposes to utilize the services of Contractor as an independent contractor to provide maintenance of City property, as more fully described herein; and

B. Contractor represents that it has the experience and expertise to properly perform such services and holds all necessary licenses to practice and perform the services; and

C. City and Contractor desire to contract for the services and desire to set forth their rights, duties and liabilities in connection with the performance of such services; and

D. No official or employee of City has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

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

1.0. SERVICES PROVIDED BY CONTRACTOR

1.1. Scope of Services. Contractor shall provide the services described in the City’s Invitation for Bids (“IFB”), attached hereto as Exhibit “A,” and Contractor’s response to City’s IFB (the “Proposal”) attached hereto as Exhibit “B,” both incorporated herein (the “Services”).

1.2. Prevailing Wage Requirements.

(a) Prevailing Wage Laws. Contractor is aware of the requirements of Chapter 1 (beginning at Section 1720 et seq.) of Part 7 of Division 2 of the California Labor Code, as well as Title 8, Section 16000 et seq. of the California Code of Regulations (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on “public works” and “maintenance” projects. This project is a “maintenance” project and requires compliance with the Prevailing Wage Laws. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

(b) Payment of Prevailing Wages. Contractor shall pay the prevailing wage rates for all work performed under this Agreement. When any craft or classification is omitted from the general prevailing wage determinations,

Contractor shall pay the wage rate of the craft or classification most closely related to the omitted classification. A copy of the general prevailing wage rate determination is on file in the Office of the City Clerk and is incorporated into this Agreement as if fully set forth herein. Contractor shall post a copy of such wage rates at all times at the project site(s).

- (c) Legal Working Day. In accordance with the provisions of Labor Code Section 1810 et seq., eight (8) hours is the legal working day. Contractor and any subcontractor(s) of Contractor shall comply with the provisions of the Labor Code regarding eight (8)-hour work day and 40-hour work week requirements, and overtime, Saturday, Sunday, and holiday work. Work performed by Contractor's or any subcontractor's employees in excess of eight (8) hours per day, and 40 hours during any one week, must include compensation for all hours worked in excess of eight (8) hours per day, or 40 hours during any one week, at not less than one and one-half times the basic rate of pay. Contractor shall forfeit as a penalty to City Twenty-Five Dollars (\$25.00), or any greater penalty set forth in the Labor Code, for each worker employed in the execution of the work by Contractor or by any subcontractor(s) of Contractor, for each calendar day during which such worker is required or permitted to the work more than eight (8) hours in one calendar day or more than 40 hours in any one calendar week in violation of the Labor Code.
- (d) Apprentices. Contractor shall comply with the provisions of Labor Code Section 1777.5 concerning the employment of apprentices on public works projects. Contractor shall be responsible for ensuring compliance by its subcontractors with Labor Code Section 1777.5.
- (e) Payroll Records. Pursuant to Labor Code Section 1776, Contractor and any subcontractor(s) shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any subcontractor in connection with this Agreement. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following: (1) The information contained in the payroll record is true and correct; and (2) The employer has complied with the requirements of Sections 1771, 1881, and 1815 of the Labor Code for any work performed by his or her employees on this project. The payroll records shall be certified and shall be available for inspection at all reasonable hours in accordance with the requirements of Labor Code Section 1776.
- (f) Registration with DIR. Contractor and any subcontractor(s) of Contractor shall comply with the provisions of Labor Code Section 1771 and Labor Code Section 1725.5 requiring registration with the DIR.

1.3. Performance to Satisfaction of City. Contractor agrees to perform all the work to the complete satisfaction of City. Evaluations of the work will be done by City's Maintenance Services Manager or his or her designee. If the quality of work is not satisfactory, City in its

discretion has the right to:

- (a) Meet with Contractor to review the quality of the work and resolve the matters of concern;
- (b) Require Contractor to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Compliance with Applicable Law. Contractor warrants that it shall perform the services required by this Agreement in compliance with all applicable federal and state employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other applicable federal, state and local laws and ordinances applicable to the services required under this Agreement. Contractor shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Contractor's performance under this Agreement.

1.5. Non-Discrimination. In performing this Agreement, Contractor shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status, except as permitted pursuant to section 12940 of the Government Code.

1.6. Non-Exclusive Agreement. Contractor acknowledges that City may enter into agreements with other contractors for services similar to the Services in this Agreement or may have its own employees perform services similar to those Services contemplated by this Agreement.

1.7. Delegation and Assignment. Contractor may not delegate or assign this Agreement, in whole or in part, to any person or entity without the prior written consent of City. Contractor may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Contractor's sole cost and expense.

2.0. COMPENSATION AND BILLING

2.1. Compensation. Contractor shall be paid in accordance with the fee schedule set forth in Exhibit B. Contractor's total compensation shall not exceed One Hundred Fifty Thousand Dollars annually (\$ 150,000.00). In the event the term of this Agreement is extended, Contractor may request, no less than 60 days prior to commencement of the renewal term, an increase to its fees using the Consumer Price Index for All Items, Not Seasonally Adjusted, for the Los Angeles-Riverside-Orange County area (CPI) for the year preceding the adjustment shall take effect.

2.2. Additional Services. Contractor shall not receive compensation for any services provided outside the Scope of Services set forth in this Agreement without amending this Agreement as provided herein. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. Contractor may submit invoices to the City for approval on a progress basis, but no more often than two times a month. Said invoice shall be based on the total of all Contractor's services which have been completed to City's sole satisfaction. City shall pay Contractor's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the Services performed, the date of performance, and the associated time for completion.

2.4. Records and Audits. Records of Contractor's Services shall be maintained in accordance with generally recognized accounting principles and shall be made available to City for inspection and/or audit at mutually convenient times throughout the term of this Agreement through three (3) years after its termination.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The Services shall commence on July 1, 2023, and shall be performed in strict compliance with Exhibits A and B and. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, pandemics (excluding COVID-19) or any other conditions beyond the reasonable control of a party.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of two years, ending on June 30, 2025, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. This Agreement may be extended up to a maximum of three additional one-year periods upon mutual written agreement of both parties.

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

4.3. Compensation. In the event of termination, City shall pay Contractor for reasonable costs incurred and Services satisfactorily performed up to and including the date of City's written notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein.

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Contractor shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00) per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00) combined single limit per accident for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. Contractor agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Contractor for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of Contractor pursuant to its contract with City; products and completed operations of Contractor; premises owned, occupied or used by Contractor; automobiles owned, leased, hired, or borrowed by Contractor."
- (b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City."
- (c) Other insurance: "Contractor's insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."
- (d) Any failure to comply with the reporting provisions of the policies shall not

affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.

- (e) Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

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

5.5. Non-limiting. The insurance provisions contained in this Agreement shall not be construed as limiting in any way, the indemnification provisions contained in this Agreement, or the extent to which Contractor may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

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

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

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

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

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

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile

or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONTRACTOR:

BPR, Inc.
461 Las Palomas Drive
Port Hueneme, CA 93401
Tel: (805) 290-5548
Attn: Bryan P. Rifly, Jr.

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-
Attn: Robert Ryan

Courtesy copy to:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: Finance Dept. | Purchasing

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

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

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

6.8. Assignment. Contractor shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Contractor's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Contractor of Contractor's obligation to perform all other obligations to be performed by Contractor hereunder for the term of this Agreement.

6.9. Indemnification and Hold Harmless. Contractor agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Contractor's sole expense, from and against any and all claims, actions, suits or other legal

proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Contractor, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Contractor, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Contractor, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Contractor, its employees, and/or authorized subcontractors under this Agreement, whether or not the Contractor, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Contractor shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Contractor's Proposal, which shall be of no force and effect.

6.10. Independent Contractor. Contractor is and shall be acting at all times as an independent contractor and not as an employee of City. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Contractor shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Contractor and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Contractor shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contractor further agrees to indemnify and hold City harmless from any failure of Contractor to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.11. PERS Eligibility Indemnification. In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to

any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.12. Cooperation. In the event any claim or action is brought against City relating to Contractor's performance or services rendered under this Agreement, Contractor shall render any reasonable assistance and cooperation which City might require.

6.13. Conflict of Interest. Contractor and its officers, employees, associates and subcontractors, if any, will comply with all conflict of interest statutes of the State of California applicable to Contractor's services under this Agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Contractor and its officers, employees, associates and subcontractors shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Contractor is not currently performing work that would require Contractor or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

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

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

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

6.17. Binding Effect. This Agreement binds and benefits the parties and their respective permitted successors and assigns.

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

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

6.20. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement and have had an adequate opportunity to review each and every provision of the Agreement and submit the same to counsel or other consultants for review and comment. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

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

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

6.23. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

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

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

[Signature page follows.]

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

CONTRACTOR

Signature

Date: _____

[Name and Title]

Signature

Date: _____

[Name and Title]

CITY OF COSTA MESA

Lori Ann Farrell Harrison
City Manager

Date: _____

ATTEST:

Brenda Green
City Clerk

APPROVED AS TO FORM:

Kimberly Hall Barlow
City Attorney

Date: _____

APPROVED AS TO INSURANCE:

Ruth Wang
Risk Management

Date: _____

APPROVED AS TO CONTENT:

Robert Ryan
Project Manager

Date: _____

DEPARTMENTAL APPROVAL:

Raja Sethuraman
Public Works Director

Date: _____

APPROVED AS TO PURCHASING:

Carol Molina
Finance Director

Date: _____

EXHIBIT A
INVITATION FOR BIDS



INVITATION FOR BID

FOR

UPLIFTED CONCRETE SIDEWALK GRINDING & GUTTER FLOW LINE GRINDING

IFB NO. 23-16



Public Works Department

CITY OF COSTA MESA

March 27, 2023

**IFB NO. 23-16
FOR
UPLIFTED CONCRETE SIDEWALK GRINDING & GUTTER FLOW LINE GRINDING**

The City of Costa Mesa (hereinafter referred to as the "City") is requesting bids from a qualified public entity or private firm, to establish a contract **on a as needed basis** for uplifted concrete sidewalk grinding and gutter flow line grinding services. The term is expected to be for three (3) years with two (2) one-year options to renew.

I. GENERAL INFORMATION

The City of Costa Mesa is a general law city, which operates under the council/manager form of government with an annual General Fund budget of over \$206 million and a total budget of \$163.5 million for fiscal year 2022-2023.

The City of Costa Mesa, incorporated in 1953, has an estimated population of 115,000 and has a land area of 16.8 square miles. It is located in the northern coastal area of Orange County, California, and is bordered by the cities of Santa Ana, Newport Beach, Huntington Beach, Fountain Valley and Irvine.

The City is a "full service city" providing a wide range of services. These services include: police and fire protection; animal control; emergency medical aid; building safety regulation and inspection; street lighting; land use planning and zoning; housing and community development; maintenance and improvement of streets and related structures; traffic safety maintenance and improvement; and full range of recreational and cultural programs.

The City of Costa Mesa is home of the Segerstrom Center for the Arts, Orange County Fairgrounds, South Coast Repertory Theater and the South Coast Plaza Shopping Center, which is the single largest commercial activity center in the City. The volume of sales generated by South Coast Plaza secures its place as the highest volume regional shopping center in the nation.

1. Important Notice: The City has attempted to provide all information available. It is the responsibility of each Bidder to review, evaluate, and, where necessary, request any clarification prior to submission of a bid. **Bidders are not to contact other City personnel with any questions or clarifications concerning this Invitation for Bid (IFB).** Any City response relevant to this IFB other than through or approved by City's Purchasing Department is unauthorized and will be considered invalid.

If clarification or interpretation of this solicitation is considered necessary by City, a written addendum shall be issued and the information will be posted on PlanetBids. Any interpretation of, or correction to, this solicitation will be made only by addendum issued by the City's Purchasing Department. It is the responsibility of each Proposer to periodically check PlanetBids website to ensure that it has received and reviewed any and all addenda to this solicitation. The City will not be responsible for any other explanations, corrections to, or interpretations of the documents, including any oral information.

2. **Bid Validity:** Bids will be valid for a period of 120 days after the IFB closing date.
3. **Bidder's Minimum Requirements:** Interested and qualified Bidders that can demonstrate their ability to successfully provide the required services outlined in **Appendix A, Scope of Services**, of this IFB are invited to submit a bid, provided they meet the following requirements. All requirements must be met at the time of the bid due date. **If these requirements are not met, the bid may not receive further consideration, as determined in the sole discretion of the City.**
- Bidder must have a Planning/Project Manager/Supervisor assigned to the Contract with five (5) years of experience, within the last 8 years, providing services equivalent or similar to the services identified in **Appendix A, Scope of Services**.
 - Bidder will be required to abide by the prevailing wage laws as required by state law, **Appendix C**.
 - Bidder must be registered with the Department of Industrial Relations for the electronic submission of their certified payroll for prevailing wage.
 - Bidder shall be required to comply with all NPDES Permit requirements, AQMD requirements and all other applicable federal, state, county or city ordinances dealing with sweeping of streets, water quality, air quality, hazardous wastes and rubbish disposal.
4. **Schedule of Events:** The invitation for bid will be governed by the following schedule:

Release of IFB	March 27, 2023
Deadline for Written Questions	April 4, 2023 by 11:00 am
Responses to Questions Posted on City's Website	April 6, 2023
Bids Due	April 10, 2023 by 2:00 pm
Approval of Contract	TBD

II. GENERAL INSTRUCTIONS AND PROVISIONS

1. Before submitting a bid, Bidders shall carefully examine the solicitation contents, including the sample maintenance services agreement, conditions and **Scope of Services, Appendix A**. Bidders shall include in their bid response a monetary sum to cover the cost of all items included in the agreement. The sample agreement contained in this solicitation is the proposed agreement for execution. Upon award, awarded Bidder will be required to sign and submit contract for execution.
2. **Cover Letter:** A cover letter, not to exceed three pages in length, should summarize key elements of the Bid. An individual authorized to bind the Contractor must sign the letter. Indicate the address and telephone number of the contractor's office located nearest to Costa

Mesa, California, and the office from which the project will be managed. And include proposed working relationship among the offering agency and subcontractors, if applicable.

3. **Background and Project Summary Section:** The Background and Project Summary Section should describe your understanding of the City, the work to be done, and the objectives to be accomplished. Refer to **Appendix A, Scope of Services** of this IFB.
4. **Bid (Appendix B):**
 - Bid prices quoted shall be firm for the full term of the contract. The bid price(s) shall include all fees, including, shipping, freight, transportation, travel and any other fees. **No additional compensation will be allowed.**
 - Bid prices offered shall reflect all addendum(s) issued by the City.
 - Bids shall be submitted only for the items and/or services as stated in the Scope of Work; bids for other than the items and/or services listed will not be considered.
 - The City will only consider firm price bids.
 - The net amount of profit will remain firm during the period of the contract. Contract adjustments which increase Contractor's profit will not be allowed.
 - All price/rate decreases will automatically be extended to the City.
 - Bids must be provided for each item separately; "all-or-none" bids will not be accepted unless in the best interest of the City.
5. **Substitutions:** Bids offering equivalent items meeting the standards of quality specified in the solicitation may be considered, unless otherwise specified, providing the bid clearly describes the article offered and how it differs from the specified brand. Unless Bidder specifies otherwise, it is understood that the Bidder is offering the brand item as specified in the solicitation. If Bidder bids an "equal," Bidder must state the brand name and must submit complete specifications and/or provide samples with the bid. Determination of equality shall be at the sole discretion of the City, and the City reserves the right to request a sample for determining equality with the specified brand. If it has been justified and accepted by the requesting agency/department and/or a City standards committee that only one brand can meet the City's requirements, "**no exceptions**" shall be noted in the specifications.
6. **Accuracy of Bids:** Bidders shall take all responsibility for any errors or omissions in their bids. Any discrepancies in numbers or calculations shall be interpreted to reflect the lowest price to the City.

If prior to contract award, a Bidder discovers a mistake in their bid which renders the Bidder unwilling to perform under any resulting contract, the Bidder must immediately notify the facilitator and request to withdraw the bid. It shall be solely within the City's discretion as to

whether withdrawal will be permitted. If the solicitation contemplated evaluation and award of "all or none" of the items, then any withdrawal must be for the entire bid. If the solicitation provided for evaluation and award on a line item or combination of items basis, the City may consider permitting withdrawal of specific line item(s) or combination of items.

7. Responsibility of Bidders: The City shall not be liable for any expenses incurred by potential Contractors in the preparation or submission of their bids. Pre-contractual expenses are not to be included in the Contractor's Pricing Sheet. Pre-contractual expenses are defined as, including but not limited to, expenses incurred by Bidder in:

- Preparing its bid in response to this IFB;
- Submitting that bid to the City;
- Negotiating with the City any matter related to the bid; and,
- Any other expenses incurred by the Bidder prior to the date of the award and execution, if any, of the contract.

8. Submission of Bids: Complete written Bids must be submitted electronically in PDF file format via the planetbids.com website not later than **12:00 p.m. (P.S.T) on April 10, 2023**. Bids will not be accepted after this deadline. Bids received after the scheduled closing time will not be accepted. It shall be the sole responsibility of the Bidder to see that the bid is received in proper time. Faxed or e-mailed Bids will not be accepted. **NO EXCEPTIONS.**

9. Inquiries: Questions about this IFB must be posted in the Q & A tab on Planetbids no later than **April 6, 2023 at 2:00 P.M.** The City reserves the right not to answer all questions.

The City reserves the right to amend or supplement this IFB prior to the Bid due date. All addendum(s), responses to questions received, and additional information will be posted to the Costa Mesa Procurement Registry, Costa Mesa-Official City Web Site, Business-Bids & RFP's. Proposers should check this web page daily for new information.

From the date that this IFB is issued until a firm or entity is selected and the selection is announced, firms or public entities are not allowed to communicate outside the process set forth in this IFB with any City employee other than the contracting officer listed above regarding this IFB. The City reserves the right to reject any Bid for violation of this provision. No questions other than posted on Planetbids will be accepted, and no response other than written will be binding upon the City.

10. Conditions for Bid Acceptance: This IFB does not commit the City to award a contract or to pay any costs incurred for any services. The City, at its sole discretion, reserves the right to accept or reject any or all bids received as a result of this IFB or to cancel this IFB in part or in its entirety. The City may waive any irregularity in any bid. All bids will become the property of

the City of Costa Mesa. If any proprietary information is contained in the bid, it should be clearly identified by Bidder

11. Acceptance/Rejection/Award

- Bids submitted in response to this IFB may become subject to public disclosure under the California Public Records Act, and other applicable law. The City shall not be liable in any way for disclosure of any such records. Additionally, all bids shall become the property of the City.
- The lowest, responsive and responsible, Bidder will be recommended for contract award.
- Bids will be reviewed by the City for responsiveness to all requirements. The City has the right to reject any bid deemed unresponsive or lacking the resources or experience to adequately perform the services described herein.
- Only those responsible and responsive bids that meet all solicitation requirements and specifications, shall be further reviewed for consideration for award. Award shall be based on the lowest, responsive, responsible bid.
- Please take notice that non-acceptance of City terms and conditions may deem a bid non-responsive. The City will not accept any other terms, conditions, or provisions contrary to those contained within this solicitation.
- By submitting a response to this solicitation, Bidders agree to accept the decision of the City as final.

12. Checklist of Forms to Accompany Bid: As a convenience to Bidders, following is a list of the Form, (Appendix E) included in this IFB, which should be included with Bids:

1. Vendor Application Form
2. Company Profile & References
3. Ex Parte Communications Certificate
4. Disclosure of Government Positions
5. Disqualifications Questionnaire
6. Bidder/Applicant/Contractor Campaign Contribution

13. Protests: Failure to comply with the rules set forth herein may result in rejection of the protest. Protests based upon restrictive specifications or alleged improprieties in the bid procedure, which are apparent or reasonably should have been discovered prior to receipt of bids shall be filed in writing with the City's Purchasing Department at least 10 calendar days prior to the deadline for receipt of bids. The protest must clearly specify in writing the grounds and evidence on which the protest is based.

Protests based upon alleged improprieties that are not apparent or that could not reasonably have been discovered prior to submission date of the bids, such as disputes over the staff

recommendation for contract award, shall be submitted in writing to the City's Purchasing Department, within 48 hours from receipt of the notice from the City advising of City's recommendation for award of contract. The protest must clearly specify in writing the grounds and evidence on which the protest is based. The City's Purchasing Department will respond to the protest in writing at least 3 days prior to the meeting at which City's recommendation to the City Council will be considered. Should Bidder decide to appeal the response of the City's Purchasing Department, and pursue its protest at the Council meeting, it will notify the City's Purchasing Department of its intention at least 2 days prior to the scheduled meeting.

- a. **Procedure** – All protests shall be typed under the protester's letterhead and submitted in accordance with the provisions stated herein. All protests shall include at a minimum the following information:
- The name, address and telephone number of the protester;
 - The signature of the protester or the protester's representative;
 - The solicitation or contract number;
 - A detailed statement of the legal and/or factual grounds for the protest; and
 - The form of relief requested.

14. Confidentiality: The California Public Records Act (Cal. Govt. Code Sections 6250 et seq.) mandates public access to government records. Therefore, unless information is exempt from disclosure by law, the content of any request for explanation, exception, or substitution, response to this IFB, protest, or any other written communication between the City and Bidder, shall be available to the public. The City intends to release all public portions of bid submissions following the evaluation process at such time as a recommendation is made to the City Council.

If Bidder believes any communication contains trade secrets or other proprietary information that the Bidder believes would cause substantial injury to the Bidder's competitive position if disclosed, the Bidder shall request that the City withhold from disclosure the proprietary information by marking each page containing such proprietary information as confidential. Bidder may not designate its entire bid as confidential nor designate its Price Bid as confidential.

Submission of a bid shall indicate that, if Bidder requests that the City withhold from disclosure information identified as confidential, and the City complies with the Bidder's request, Bidder shall assume all responsibility for any challenges resulting from the non-disclosure, indemnify and hold harmless the City from and against all damages (including but not limited to attorneys' fees and costs that may be awarded to the party requesting the Bidder information), and pay any and all costs and expenses related to the withholding of Bidder information. Bidder shall not make a claim, sue, or maintain any legal action against the City or its directors, officers, employees, or agents concerning the disclosure, or withholding from disclosure, of any Bidder information. If Bidder does not request that the City withhold from

disclosure information identified as confidential, the City shall have no obligation to withhold the information from disclosure and may release the information sought without any liability to the City.

15. Ex Parte Communications: Bidders' representatives should not communicate with the City Council members about this IFB. In addition, Bidders, and Bidders' representatives, should not communicate outside the procedures set forth in this IFB with an officer, employee or agent of the City, including any member of the evaluation panel, with the exception of the IFB facilitator, regarding this IFB until after contract award. This solicitation requires due process and therefore set-forth herein must be explicitly complied with. Bidders and their representatives are not prohibited, however, from making oral statements or presentations in public to one or more representatives of the City during a public meeting.

A "Bidder" or "Bidder's representative" includes all of the Bidder's employees, officers, directors, consultants and agents, any subcontractors or suppliers listed in the Bidder's bid, and any individual or entity who has been requested by the Bidder to contact the City on the Bidder's behalf. Bidders shall include the Ex Parte Communications form (**Appendix D**) with their bids certifying that they have not had or directed prohibited communications as described in this section.

16. Conflict of Interest: The Bidder warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code, Sections 1090, et seq., or sections 87100 et seq., during the performance of services under any contract awarded. The Bidder further covenants that it will not knowingly employ any person having such an interest in the performance of any Agreement awarded. Violation of this provision may result in any awarded contract being deemed void and unenforceable.

17. Disclosure of Governmental Position: In order to analyze possible conflicts that might prevent a Bidder from acting on behalf of the City, the City requires that all Bidders disclose in their bids any positions that they hold as directors, officers, or employees of any governmental entity. Additional disclosure may be required prior to contract award or during the term of the contract. Each Bidder shall disclose whether any owner or employee of the firm currently hold positions as elected or appointed officials, directors, officers, or employees of a governmental entity or held such positions in the past 12 months using the attached "Disclosure of Government Positions Form." (**Appendix E**)

18. Sample Maintenance Services Agreement: The firm selected by the City will be required to execute a Maintenance Service Agreement with the City. A sample of the Agreement is enclosed as **Appendix D**, but may be modified to suit the specific services and needs of the City. If a Bidder has any exceptions or conditions to the Agreement, these must be submitted for consideration with the Bid. Otherwise, the Bidder will be deemed to have accepted the form of Agreement.

19. Upon recommendation of contract award, Contractor will be required to submit the following documents with ten (10) days of City notification, unless otherwise specified in the solicitation:

- **Insurance** - City requires that licensees, lessees, and vendors have an approved Certificate of Insurance (not a declaration or policy) or proof of legal self-insurance on file with the City for the issuance of a permit or contract. Within ten (10) consecutive calendar days of award of contract, successful Bidder must furnish the City with the Certificates of Insurance proving coverage as specified in the sample contract.
- **W-9** – Current signed form W-9 (Taxpayer Identification Number & Certification) which includes Contractor's legal business name(s).

20. Disqualification Questionnaire: Bidders shall complete and submit, under penalty of perjury, a standard form of questionnaire inquiring whether a Bidder, any officer of a Bidder, or any employee of a Bidder who has a proprietary interest in the Bidder, has **ever** been disqualified, removed, or otherwise prevented from proposing on, or completing a federal, state, or local government project because of a violation of law or safety regulation and if so, to explain the circumstances. A bid may be rejected on the basis of a Bidder, any officer or employee of such Bidder, having been disqualified, removed, or otherwise prevented from proposing on, or completing a federal, state, or local project because of a violation of law or a safety regulation. See **(Appendix D)**.

21. Standard Terms and Conditions: The City reserves the right to amend or supplement this RFP prior to the Proposal due date. All addendum(s) and additional information will be posted on the planetbids.com website. Proposers should check this web page daily for new information.

APPENDIX A SCOPE OF SERVICES

The contractor shall provide all labor, supervision, equipment, materials and supplies needed for repairing concrete sidewalk trip hazards by grinding concrete sidewalks to specified levels, and the grinding of gutter displacements to re-establish flow line for water flow as designated and/or required by the City of Costa Mesa. Contractor is to provide all equipment, labor and services as may be necessary for completing the work identified in the Scope of Work Standards.

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

If, in the judgment of the City, the level of maintenance is less than specified herein, the City shall, at its option, in addition to or in lieu of other remedies provided herein, withhold appropriate payment from the Bidder until services are rendered in accordance with specifications set forth within this document and providing no other arrangements have been made between the Bidder and the City. Failure to notify of a change and/or failure to perform an item or work on a scheduled day may result in deduction of payment for that date or week. Payment will be retained for work not performed until such time as the work is performed to City standards.

Working Hours

Working hours shall be between 7:00 a.m. and 3:30 p.m. Monday thru Friday on non-arterial streets. Working hours on arterial streets shall be between 7: a.m. and 3:30 p.m. Monday thru Friday.

Safety and Traffic Control

Contractor must provide all safety apparel, such as reflective vests and breathing equipment, as per OSHA requirements. Traffic safety vests must be worn by all contractor employees at all times while on the job site. "Sidewalk Closed" or other appropriate warning signs must be placed at each end of the work area during all grinding operations. Work areas are to be coned off to public access.

Equipment / Equipment Capabilities

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

Except for hand-held grinders, all grinding machines shall be equipped with a vacuum dust control system. At no time shall water be used as a dust control agent.

All grinding operations will be performed on City sidewalks and gutters. No private property shall be affected. Damage caused to public or private improvements by the Contractor's operations shall be repaired or replaced at the City's direction to the satisfaction of the City's Representative, and at no cost to the City.

Sidewalk and gutter grinding will be performed in compliance with the California Storm Water best management practices for saw-cutting and/or grinding surfaces. Storm drain perimeters will be blocked so as to prevent polluted water from entering storm drains. Discharge of any polluted water into storm drains is strictly prohibited.

Sidewalk Grinding

Uneven sidewalks in relation to other sidewalks, curbs, aprons and utility covers are to be ground.

All sidewalk grinding locations shall be ground so as to provide a smooth transition between concrete slabs. Sidewalk grinding will be performed so as to provide complete trip hazard abatement for the full width of the sidewalk. Vertical offsets from three/eighths (3/8") up to one and one half inches (1 1/2") will require grinding. The minimum taper width should be six inches (6"). Offsets shall be ground so as to produce a finished product that is a non-skid surface and free of rough or sharp edges.

Contractor agrees to notify and alert the City Representative of all sidewalk locations with vertical offsets exceeding one and one half (1 1/2") inches.

Grinding residue shall not be left on sidewalk or in nearby parkway areas. All grinding residue shall be the responsibility of the contractor and is to be removed and disposed of by the contractor in a manner prescribed by law. Contractor is required to sweep, remove and dispose of any debris resulting from grinding operations; with acute care being given to locate and remove visible fragments from lawn areas where they might pose a hazard to the public during grass cutting operations.

Gutter Flow Line Drilling and Grinding

To relieve ponding water condition at gutter/curb displacements and/or vertical offsets.

The gutter flow line drilling-grinding shall be performed using a Flowline II (2) or equivalent piece of equipment which should be capable of grinding a channel two (2") inches wide and up to four (4") inches deep, flush with the curb's vertical face. The equipment must be capable of operating with no water usage. At no time shall water be used as either a dust control agent or a residue management agent by washing grinding residue into storm drains.

APPENDIX B BID SHEET

Provide quantity of Sidewalk Grinds along with estimated unit*pricing in accordance with the City's current requirements, as set forth in the Scope of Work. Also provide the Bidder's proposed Staffing Plan on a separate sheet of paper. Bidder should use a separate form to state pricing for any added value.

Pricing shall remain firm for a minimum of two (2) years. Any and all invitations for pricing adjustments for follow-on contract renewal periods shall be provided no later than sixty (60) days prior to the end of the contract period. Any such proposed price adjustments shall not exceed The Bureau of Labor Statistics Consumer Price Index (CPI) data for Los Angeles-Riverside-Orange County, CA, All Items, Not Seasonally Adjusted, "annualized change comparing the original Bid month and the same month in the subsequent year. (This information may be found on the U.S. Department of Labor's website at www.bls.gov.)

*Unless specified with options, bid pricing should be submitted on a "per location" basis with each location being up to 5 feet in width/length.

Description of Work	Est. Qty	Billing Unit	Price/Unit
Uplifted Concrete Sidewalk Grinding per the Scope of Work Specifications	5	Linear foot	\$
Grinding of Gutter Flow line per the Scope of Work Specifications	5	Linear foot	\$
Total Bid Amount			

TO THE CITY OF COSTA MESA:

The Undersigned hereby offers and shall furnish the material, labor, special equipment and permits or service in compliance with all terms, scope of work, conditions, specifications, and amendments in the Invitation for Bid which is incorporated by reference as if fully set forth herein.

All material is guaranteed to be as specified, all work to be completed in a workmanlike manner according to standard practices, according to terms and conditions on the attached hereon and made a part thereof. A Purchase Order will not be issued until the insurance certificate is approved by Risk Management.

For clarification of this offer, contact:

Company Name

Name: _____

Address

Title: _____

City State Zip

Phone: _____

Signature of Person Authorized to Sign

Fax: _____

Printed Name

E-mail: _____

Title

APPENDIX C PREVAILING WAGE

1. This Contract calls for work to be performed constituting public works. Contractor and all subcontractors shall pay the general prevailing rate of per diem wages as determined and as published by the State Director of the Department of Industrial Relations pursuant to Article 2 of Chapter 1 of Part 7, of Division 2 of the State Labor Code, including, but not limited to, Sections 1770, 1771, 1773, 1773.2 and 1774.
2. This is a public work and requires the payment of prevailing wages for the work or craft in which the worker is employed for any public work done under the contract by Contractor or by any subcontractor pursuant to Section 1771 of the Labor Code. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this contract from the Director of the Department of Industrial Relations. These rates are on file with the City or may be obtained at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Contractor shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Contractor shall comply with the provisions of Sections 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. Pursuant to the provisions of 1775 of the Labor Code, Contractor shall forfeit to the City, as a penalty, not more than \$200.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this Contract, by him or by any subcontractor under him, in violation of the provisions of this Agreement.
3. Contractors and subcontractors who are ineligible to bid for work on, or be awarded, a public works project pursuant to Labor Code Sections 1777.1 and 1777.7 are prohibited from bidding on, being awarded, or performing work as a subcontractor, on this Project pursuant to Public Contract Code Section 6109.
4. Contractor's attention is directed to the provisions in Sections 1774, 1775, 1776, 1777.5 and 1777.6 of the Labor Code. Contractor shall comply with the provisions in these Sections. The statutory provisions for penalties for failure to comply with the State's wage and hours laws will be enforced. Pursuant to Section 1775 of the Labor Code, the Contractor and any subcontractors, shall, as a penalty to the City forfeit the prescribed amounts per calendar day, or portion thereof, for each worker paid less than the prevailing wage rates.
5. Pursuant to Labor Code Section 1771.4, the Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

6. Each Contractor and subcontractor shall furnish the records specified in Labor Code Section 1776 directly to the State Labor Commissioner at least monthly in the format prescribed by the State Labor Commissioner.
7. Sections 1774 and 1775 require the Contractor and all subcontractors to pay not less than the prevailing wage rates to all workmen employed in the execution of the Contract and specify forfeitures and penalties for failure to do so. The minimum wages to be paid are those determined by the State Director of the Department of Industrial Relations. Section 1776 requires the Contractor and all subcontractors to keep accurate payroll records, specifies the contents thereof, their inspection and duplication procedures and certain notices required of the Contractor pertaining to their location.
8. Section 1777.5 of the Labor Code requires Contractor or subcontractor employing workers in any apprenticeable occupation to apply to the Joint Apprenticeship Committee nearest the site of the public works project, which administers the apprenticeship program in that trade for a certificate of approval. The certificate will also fix the ratio of apprentices to journeymen to be used in the performance of the Contract. The Contractor is required to make contributions to funds established for the administration of apprenticeship programs if he employs registered apprentices or journeymen in any apprenticeable trade and if other contractors on the public works site are making such contributions. Information relative to apprenticeship standards, contributions, wage schedules and other requirements may be obtained from the State Director of Industrial Relations or from the Division of Apprenticeship Standards. Section 1777.6 of the Labor Code provides that it shall be unlawful to refuse to accept otherwise qualified employees as registered apprentices solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age.
9. Eight hours labor constitutes a legal day's work, as set forth in Labor Code Section 1810. The statutory provisions for penalties for failure to comply with the State's wage and hour laws will be enforced as set forth in Labor Code Section 1813.

APPENDIX D
SAMPLE MAINTENANCE SERVICES AGREEMENT

**CITY OF COSTA MESA
MAINTENANCE SERVICES AGREEMENT
WITH**

THIS MAINTENANCE SERVICES AGREEMENT ("Agreement") is made and entered into this ___ day of _____, 202_ ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and _____, a [state] [type of corporation] ("Contractor").

WITNESSETH:

A. City proposes to utilize the services of Contractor as an independent contractor to provide maintenance of City property, as more fully described herein; and

B. Contractor represents that it has the experience and expertise to properly perform such services and holds all necessary licenses to practice and perform the services; and

C. City and Contractor desire to contract for the services and desire to set forth their rights, duties and liabilities in connection with the performance of such services; and

D. No official or employee of City has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

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

1.0. SERVICES PROVIDED BY CONTRACTOR

1.1. Scope of Services. Contractor shall provide the services described in the City's Request for Proposal ("RFP"), attached hereto as Exhibit "A," and Contractor's response to City's RFP (the "Proposal") attached hereto as Exhibit "B," both incorporated herein (the "Services").

1.2. Prevailing Wage Requirements.

(a) Prevailing Wage Laws. Contractor is aware of the requirements of Chapter 1 (beginning at Section 1720 et seq.) of Part 7 of Division 2 of the California Labor Code, as well as Title 8, Section 16000 et seq. of the California Code of Regulations ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. This project is a "maintenance" project and requires compliance with the Prevailing Wage Laws. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

(b) Payment of Prevailing Wages. Contractor shall pay the prevailing wage rates for all work performed under this Agreement. When any craft or classification is omitted from the general prevailing wage determinations,

Contractor shall pay the wage rate of the craft or classification most closely related to the omitted classification. A copy of the general prevailing wage rate determination is on file in the Office of the City Clerk and is incorporated into this Agreement as if fully set forth herein. Contractor shall post a copy of such wage rates at all times at the project site(s).

- (c) Legal Working Day. In accordance with the provisions of Labor Code Section 1810 et seq., eight (8) hours is the legal working day. Contractor and any subcontractor(s) of Contractor shall comply with the provisions of the Labor Code regarding eight (8)-hour work day and 40-hour work week requirements, and overtime, Saturday, Sunday, and holiday work. Work performed by Contractor's or any subcontractor's employees in excess of eight (8) hours per day, and 40 hours during any one week, must include compensation for all hours worked in excess of eight (8) hours per day, or 40 hours during any one week, at not less than one and one-half times the basic rate of pay. Contractor shall forfeit as a penalty to City Twenty-Five Dollars (\$25.00), or any greater penalty set forth in the Labor Code, for each worker employed in the execution of the work by Contractor or by any subcontractor(s) of Contractor, for each calendar day during which such worker is required or permitted to the work more than eight (8) hours in one calendar day or more than 40 hours in any one calendar week in violation of the Labor Code.
- (d) Apprentices. Contractor shall comply with the provisions of Labor Code Section 1777.5 concerning the employment of apprentices on public works projects. Contractor shall be responsible for ensuring compliance by its subcontractors with Labor Code Section 1777.5.
- (e) Payroll Records. Pursuant to Labor Code Section 1776, Contractor and any subcontractor(s) shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any subcontractor in connection with this Agreement. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following: (1) The information contained in the payroll record is true and correct; and (2) The employer has complied with the requirements of Sections 1771, 1881, and 1815 of the Labor Code for any work performed by his or her employees on this project. The payroll records shall be certified and shall be available for inspection at all reasonable hours in accordance with the requirements of Labor Code Section 1776.
- (f) Registration with DIR. Contractor and any subcontractor(s) of Contractor shall comply with the provisions of Labor Code Section 1771 and Labor Code Section 1725.5 requiring registration with the DIR.

1.3. Performance to Satisfaction of City. Contractor agrees to perform all the work to the complete satisfaction of City. Evaluations of the work will be done by City's Maintenance Services Manager or his or her designee. If the quality of work is not satisfactory, City in its

discretion has the right to:

- (a) Meet with Contractor to review the quality of the work and resolve the matters of concern;
- (b) Require Contractor to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Compliance with Applicable Law. Contractor warrants that it shall perform the services required by this Agreement in compliance with all applicable federal and state employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other applicable federal, state and local laws and ordinances applicable to the services required under this Agreement. Contractor shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Contractor's performance under this Agreement.

1.5. Non-Discrimination. In performing this Agreement, Contractor shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status, except as permitted pursuant to section 12940 of the Government Code.

1.6. Non-Exclusive Agreement. Contractor acknowledges that City may enter into agreements with other contractors for services similar to the Services in this Agreement or may have its own employees perform services similar to those Services contemplated by this Agreement.

1.7. Delegation and Assignment. Contractor may not delegate or assign this Agreement, in whole or in part, to any person or entity without the prior written consent of City. Contractor may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Contractor's sole cost and expense.

2.0. COMPENSATION AND BILLING

2.1. Compensation. Contractor shall be paid in accordance with the fee schedule set forth in Exhibit B. Contractor's total compensation shall not exceed _____ Dollars (\$ _____.00).

2.2. Additional Services. Contractor shall not receive compensation for any services provided outside the Scope of Services set forth in this Agreement without amending this Agreement as provided herein. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. Contractor may submit invoices to the City for approval on a

progress basis, but no more often than two times a month. Said invoice shall be based on the total of all Contractor's services which have been completed to City's sole satisfaction. City shall pay Contractor's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the Services performed, the date of performance, and the associated time for completion.

2.4. Records and Audits. Records of Contractor's Services shall be maintained in accordance with generally recognized accounting principles and shall be made available to City for inspection and/or audit at mutually convenient times throughout the term of this Agreement through three (3) years after its termination.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The Services shall be performed in strict compliance with Exhibits A and B. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, pandemics (excluding COVID-19) or any other conditions beyond the reasonable control of a party.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of _____ years, ending on _____, 20____, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

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

4.3. Compensation. In the event of termination, City shall pay Contractor for reasonable costs incurred and Services satisfactorily performed up to and including the date of City's written notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein.

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Contractor shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00) per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00) combined single limit per accident for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. Contractor agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Contractor for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of Contractor pursuant to its contract with City; products and completed operations of Contractor; premises owned, occupied or used by Contractor; automobiles owned, leased, hired, or borrowed by Contractor."
- (b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City."
- (c) Other insurance: "Contractor's insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.
- (e) Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

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

5.5. Non-limiting. The insurance provisions contained in this Agreement shall not be construed as limiting in any way, the indemnification provisions contained in this Agreement, or the extent to which Contractor may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

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

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

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

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

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

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

IF TO CONTRACTOR:

Tel: _____
Attn: _____

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-
Attn:

Courtesy copy to:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: Finance Dept. | Purchasing

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

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

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

6.8. Assignment. Contractor shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Contractor's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Contractor of Contractor's obligation to perform all other obligations to be performed by Contractor hereunder for the term of this Agreement.

6.9. Indemnification and Hold Harmless. Contractor agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Contractor's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Contractor, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Contractor, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the

Contractor, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Contractor, its employees, and/or authorized subcontractors under this Agreement, whether or not the Contractor, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Contractor shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Contractor's Proposal, which shall be of no force and effect.

6.10. Independent Contractor. Contractor is and shall be acting at all times as an independent contractor and not as an employee of City. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Contractor shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Contractor and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Contractor shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contractor further agrees to indemnify and hold City harmless from any failure of Contractor to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.11. PERS Eligibility Indemnification. In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.12. Cooperation. In the event any claim or action is brought against City relating to Contractor's performance or services rendered under this Agreement, Contractor shall render any reasonable assistance and cooperation which City might require.

6.13. Conflict of Interest. Contractor and its officers, employees, associates and subcontractors, if any, will comply with all conflict of interest statutes of the State of California applicable to Contractor's services under this Agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Contractor and its officers, employees, associates and subcontractors shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Contractor is not currently performing work that would require Contractor or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

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

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

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

6.17. Binding Effect. This Agreement binds and benefits the parties and their respective permitted successors and assigns.

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

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

6.20. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement and have had an adequate opportunity to review each and every provision of the Agreement and submit the same to counsel or other consultants for review and comment. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

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

6.22. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a

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

6.23. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

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

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

[Signature page follows.]

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

CONTRACTOR

Signature

Date: _____

[Name and Title]

Signature

Date: _____

[Name and Title]

CITY OF COSTA MESA

Lori Ann Farrell Harrison
City Manager

Date: _____

ATTEST:

Brenda Green
City Clerk

APPROVED AS TO FORM:

Kimberly Hall Barlow
City Attorney

Date: _____

APPROVED AS TO INSURANCE:

Ruth Wang
Risk Management

Date: _____

APPROVED AS TO CONTENT:

[Name]
Project Manager

Date: _____

DEPARTMENTAL APPROVAL:

[Name]
[Title]

Date: _____

APPROVED AS TO PURCHASING:

Carol Molina
Finance Director

Date: _____

EXHIBIT A
REQUEST FOR PROPOSALS

EXHIBIT B
CONTRACTOR'S PROPOSAL

EXHIBIT C

CITY COUNCIL POLICY 100-5

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

BACKGROUND

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

PURPOSE

It is the purpose of this Policy to:

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

POLICY

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

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

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

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

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

- g. Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 1 A through 1 F, inclusive.
2. Contractor and/or sub-grantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:
 - a. Contractor and/or sub-grantee has made a false certification under paragraph 1 above;
 - b. Contractor and/or sub-grantee has violated the certification by failing to carry out the requirements of subparagraphs 1 A through 1 G above;
 - c. Such number of employees of Contractor and/or sub-grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor and/or sub-grantee has failed to make a good faith effort to provide a drug-free workplace.
 3. Should any contractor and/or sub-grantee be deemed to be in violation of this Policy pursuant to the provisions of 2 A, B, and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, and local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a contractor and/or sub-grantee, the contractor and/or sub-grantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the contractor and/or sub-grantee, the contractor and/or sub-grantee shall be eligible for compensation as provided by law.

**APPENDIX E
FORMS**

**Vendor Application Form
Ex Parte Communications Certification
Disclosure of Government Positions
Disqualification Questionnaire
Company Profile & References
Bidder/Applicant/Contractor Campaign Contribution**



**VENDOR APPLICATION FORM
FOR
IFB NO. 23-16 UPLIFTED CONCRETE SIDEWALK GRINDING & GUTTER FLOW LINE
GRINDING**

TYPE OF APPLICANT: NEW CURRENT VENDOR

Legal Contractual Name of Corporation: _____

Contact Person for Agreement: _____

Title: _____ E-Mail Address: _____

Business Telephone: _____ Business Fax: _____

Corporate Mailing Address: _____

City, State and Zip Code: _____

Contact Person for Proposals: _____

Title: _____ E-Mail Address: _____

Business Telephone: _____ Business Fax: _____

Is your business: (check one)

- NON PROFIT CORPORATION FOR PROFIT CORPORATION

Is your business: (check one)

- CORPORATION LIMITED LIABILITY PARTNERSHIP
 INDIVIDUAL SOLE PROPRIETORSHIP
 PARTNERSHIP UNINCORPORATED ASSOCIATION

Names & Titles of Corporate Board Members

(Also list Names & Titles of persons with written authorization/resolution to sign contracts)

Names	Title	Phone
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Federal Tax Identification Number: _____

City of Costa Mesa Business License Number: _____

(If none, you must obtain a Costa Mesa Business License upon award of contract.)

City of Costa Mesa Business License Expiration Date: _____

EX PARTE COMMUNICATIONS CERTIFICATION

Please indicate by signing below one of the following two statements. **Only sign one statement.**

I certify that Proposer and Proposer's representatives have not had any communication with a City Councilmember concerning **IFB NO. 23-16 UPLIFED CONCRETE SIDEWALK GRINDING & GUTTER FLOW LINE GRINDING** at any time after **March 27, 2023**.

Signature

Date: _____

Print

OR

I certify that Proposer or Proposer's representatives have communicated after **March 27, 2023** with a City Councilmember concerning **IFB NO. 23-16 UPLIFTED CONCRETE SIDEWALK GRINDING & GUTTER FLOW LINE GRINDING**. A copy of all such communications is attached to this form for public distribution.

Signature

Date: _____

Print

DISQUALIFICATION QUESTIONNAIRE

The Contractor shall complete the following questionnaire:

Has the Contractor, any officer of the Contractor, or any employee of the Contractor who has proprietary interest in the Contractor, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or safety regulation?

Yes _____ No _____

If the answer is yes, explain the circumstances in the following space.

DISCLOSURE OF GOVERNMENT POSITIONS

Each Proposer shall disclose below whether any owner or employee of Contractor currently hold positions as elected or appointed officials, directors, officers, or employees of a governmental entity or held such positions in the past twelve months. List below or state "None."

COMPANY PROFILE & REFERENCES

Company Legal Name:

Company Legal Status (corporation, partnership, sole proprietor etc.):

Active licenses issued by the California State Contractor's License Board:

Business Address:

Website Address:

Telephone Number:

Facsimile Number:

Email Address:

Length of time the firm has been in business:

Length of time at current location:

Is your firm a sole proprietorship doing business under a different name: ___Yes
___No

If yes, please indicate sole proprietor's name and the name you are doing business under:

Federal Taxpayer ID Number:

Regular Business Hours:

Regular holidays and hours when business is closed:

Contact person in reference to this solicitation:

Telephone Number:

Facsimile Number:

Email Address:

Contact person for accounts payable:

Telephone Number:

Facsimile Number:

Email Address:

Name of Project Manager:

Telephone Number:

Facsimile Number:

Email Address:

COMPANY PROFILE & REFERENCES (Continued)

Submit the company names, addresses, telephone numbers, email, contact names, and brief contract descriptions of at least three clients, preferably other municipalities for whom comparable projects have been completed or submit letters from your references which include the requested information.

Company Name:

Contact Name:

Contract Amount:

Email:

Address:

Brief Contract Description:

Company Name:

Telephone Number:

Contact Name:

Contract Amount:

Email:

Address:

Brief Contract Description:

Company Name:

Telephone Number:

Contact Name:

Contract Amount:

Email:

Address:

Brief Contract Description:

Company Name:

Telephone Number:

Contact Name:

Contract Amount:

Email:

Address:

Brief Contract Description:

Company Name:

Telephone Number:

Contact Name:

Contract Amount:

Email:

Address:

Brief Contract Description:



BIDDER/APPLICANT/CONTRACTOR CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Proposer/Consultant/Applicant is required to identify any campaign contribution or cumulative contributions greater than \$249 to any city council member in the twelve months prior to submitting an application, proposal, statement of qualifications or bid requiring approval by the City Council.

Date	Name of Donor	Company/Business Affiliation	Name of Recipient	Amount

Except as described above, I/we have not made any campaign contribution in the amount of \$250 or more to any Costa Mesa City Council Member in the twelve months preceding this Application/Proposal.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Bidder/Applicant/Proposer

Date

EXHIBIT B
CONTRACTOR'S PROPOSAL

April 7, 2023

City of Costa Mesa
77 Fair Drive
Attn: Public Works Department
Costa Mesa, CA

Invitation For Bid
Uplifted Concrete Sidewalk Grinding & Gutter Flow Line Grinding
IFB NO. 23-16

BPR Inc. would like to introduce our company to you as a potential candidate to perform Sidewalk Grinding in your city.

We have been in business since 1997. Along the way, we have become a leader in Trip Hazard Repairs.

With years of experience our technique uniformly tapers edge differences of up to 2 inches to the ADA minimum required 1:8 slope. Our equipment is fully self-contained; from making the Grind while a self-contained vacuum picks up the debris and dust, disposing it into a sealed container. Once the crew returns to our shop, it is disposed of. Our methods take very little time, and the result is a safe, clean-cut walking path. Our crews have been with us for many years and have completed numerous City and County contracts throughout California.

Not only does BPR Inc. perform Sidewalk Grinding, we expanded into the Trip Hazard Saw Cutting method as well. This process is usually used in the private sector. We are a member of the Department of Industrial Relations (DIR) – Public Works Contractor Registration. We are aware of the Prevailing Wage requirements to work on a Public Works Project and can provide the Certified Payroll to all agencies.

We have had, and currently have two and three year contracts with the surrounding cities. Our Shop is located in Ventura, CA. and even though we may work in cities that are two or four hours away, our crews will secure lodging close to the on-going work in your city so they are only 15 – 30 minutes away.

BPR Inc. looks forward to the opportunity to work with your city and its employees. We hope you will keep all of our experience in mind and our competitive pricing to complete your Sidewalk Grinding and Gutter Flow Line Grinding work.

Respectfully,



Bryan P. Rifley Jr.
President, Owner

APPENDIX B BID SHEET

Provide quantity of Sidewalk Grinds along with estimated unit pricing in accordance with the City's current requirements, as set forth in the Scope of Work. Also provide the Bidder's proposed Staffing Plan on a separate sheet of paper. Bidder should use a separate form to state pricing for any added value.

Pricing shall remain firm for a minimum of two (2) years. Any and all invitations for pricing adjustments for follow-on contract renewal periods shall be provided no later than sixty (60) days prior to the end of the contract period. Any such proposed price adjustments shall not exceed The Bureau of Labor Statistics Consumer Price Index (CPI) data for Los Angeles-Riverside-Orange County, CA, All Items, Not Seasonally Adjusted, "annualized change comparing the original Bid month and the same month in the subsequent year. (This information may be found on the U.S. Department of Labor's website at www.bls.gov.)

*Unless specified with options, bid pricing should be submitted on a "per location" basis with each location being up to 5 feet in width/length.

Description of Work	Est. Qty	Billing Unit	Price/Unit
Uplifted Concrete Sidewalk Grinding per the Scope of Work Specifications	5	Linear foot	\$13.00
	1	Per Location	\$35.00
Grinding of Gutter Flow line per the Scope of Work Specifications	5	Linear foot	\$10.00
Total Bid Amount			\$75.00

TO THE CITY OF COSTA MESA:

Total Bid Amount - Per Location \$45.00

The Undersigned hereby offers and shall furnish the material, labor, special equipment and permits or service in compliance with all terms, scope of work, conditions, specifications, and amendments in the Invitation for Bid which is incorporated by reference as if fully set forth herein.

All material is guaranteed to be as specified, all work to be completed in a workmanlike manner according to standard practices, according to terms and conditions on the attached hereon and made a part thereof. A Purchase Order will not be issued until the insurance certificate is approved by Risk Management.

For clarification of this offer, contact:

BPR, Inc
Company Name
461 Las Palomas Dr
Address
Port Hueneme Ca 93041
City State Zip
[Signature]
Signature of Person Authorized to Sign
Pat Rifley
Printed Name
President
Title

Name: Pat Rifley
Title: President
Phone: 805 290-5548
Fax: _____
E-mail: pat@bpr1.com

**APPENDIX E
FORMS**

**Vendor Application Form
Ex Parte Communications Certification
Disclosure of Government Positions
Disqualification Questionnaire
Company Profile & References
Bidder/Applicant/Contractor Campaign Contribution**



**VENDOR APPLICATION FORM
FOR
IFB NO. 23-16 UPLIFTED CONCRETE SIDEWALK GRINDING & GUTTER FLOW LINE
GRINDING**

TYPE OF APPLICANT: NEW CURRENT VENDOR

Legal Contractual Name of Corporation: BPR INC.

Contact Person for Agreement: Bryan P. Rifley Jr. (Pat)

Title: President E-Mail Address: pat@bpr1.com

Business Telephone: 855-804-7336 Business Fax: 855-814-7336

Corporate Mailing Address: 461 Las Palomas DRIVE

City, State and Zip Code: Port Hueneme, CA 93041

Contact Person for Proposals: Bryan P. Rifley Jr.

Title: President E-Mail Address: pat@bpr1.com

Business Telephone: 855-804-7336 Business Fax: 855-814-7336

Is your business: (check one)

NON PROFIT CORPORATION FOR PROFIT CORPORATION

Is your business: (check one)

CORPORATION LIMITED LIABILITY PARTNERSHIP

INDIVIDUAL SOLE PROPRIETORSHIP

PARTNERSHIP UNINCORPORATED ASSOCIATION

Names & Titles of Corporate Board Members

(Also list Names & Titles of persons with written authorization/resolution to sign contracts)

Names	Title	Phone
Bryan P. Rifley Jr.	President	805-290-5548

Federal Tax Identification Number: 

City of Costa Mesa Business License Number: none

(If none, you must obtain a Costa Mesa Business License upon award of contract.)

City of Costa Mesa Business License Expiration Date: _____

EX PARTE COMMUNICATIONS CERTIFICATION

Please indicate by signing below one of the following two statements. **Only sign one statement.**

I certify that Proposer and Proposer's representatives have not had any communication with a City Councilmember concerning **IFB NO. 23-16 UPLIFED CONCRETE SIDEWALK GRINDING & GUTTER FLOW LINE GRINDING** at any time after **March 27, 2023**.

B. R.

Signature

Date: 4/7/23

Bryan P. Rife Jr.

Print

OR

I certify that Proposer or Proposer's representatives have communicated after **March 27, 2023** with a City Councilmember concerning **IFB NO. 23-16 UPLIFED CONCRETE SIDEWALK GRINDING & GUTTER FLOW LINE GRINDING**. A copy of all such communications is attached to this form for public distribution.

Signature

Date: _____

Print

DISQUALIFICATION QUESTIONNAIRE

The Contractor shall complete the following questionnaire:

Has the Contractor, any officer of the Contractor, or any employee of the Contractor who has proprietary interest in the Contractor, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or safety regulation?

Yes _____ No

If the answer is yes, explain the circumstances in the following space.

DISCLOSURE OF GOVERNMENT POSITIONS

Each Proposer shall disclose below whether any owner or employee of Contractor currently hold positions as elected or appointed officials, directors, officers, or employees of a governmental entity or held such positions in the past twelve months. List below or state "None."

NONE

COMPANY PROFILE & REFERENCES

Company Legal Name: **BPR Inc.**Company Legal Status (corporation, partnership, sole proprietor etc.): **Corporation**

Active licenses issued by the California State Contractor's License Board:

Business Address: **461 Las Palomas Dr., Port. Hueneme, CA 93041**Website Address: **www.bpr1.com**Telephone Number: **855-804-7336** Facsimile Number: **855-814-7336**Email Address: **pat@bpr1.com**Length of time the firm has been in business: **26 years**Length of time at current location: **26**Is your firm a sole proprietorship doing business under a different name: Yes
 No

If yes, please indicate sole proprietor's name and the name you are doing business under:

Federal Taxpayer ID Number: **27-1178321**Regular Business Hours: **7:00 AM - 4:00 pm**Regular holidays and hours when business is closed: **for after hours & holidays****Contact person in reference to this solicitation:** **Call 805-290-5548 or email pat@bpr1.com**Telephone Number: **805-290-5548** Facsimile Number: **855-814-7336**Email Address: **pat@bpr1.com****Contact person for accounts payable:** **PAT RIFLEY**

Telephone Number: Facsimile Number:

Email Address: **same as above****Name of Project Manager:**Telephone Number: **PAT RIFLEY** Facsimile Number:Email Address: **same as above**

COMPANY PROFILE & REFERENCES (Continued)

Submit the company names, addresses, telephone numbers, email, contact names, and brief contract descriptions of at least three clients, preferably other municipalities for whom comparable projects have been completed or submit letters from your references which include the requested information.

Company Name: See Attached

Contact Name:

Contract Amount:

Email:

Address:

Brief Contract Description:

Company Name:

Telephone Number:

Contact Name:

Contract Amount:

Email:

Address:

Brief Contract Description:

Company Name:

Telephone Number:

Contact Name:

Contract Amount:

Email:

Address:

Brief Contract Description:

References

City of Santa Ana

20 Civic Center Plaza

Santa Ana, Ca 92701

Antonio Munoz

(714) 309-8277

Project: Removal of Sidewalk Trip Hazards

City of Mission Viejo

Mission Viejo, Ca

Brendan Carpenter

(949) 470-8473

Concrete Grinding

City of Santee

Santee, Ca

Victor Michelle

(619) 572-6949

Citywide Trip Hazard repair

City of Camarillo

601 Carmen Dr

Camarillo, Ca 93010

Tony Sota

805-823-3965

Citywide Sidewalk Grinding





BIDDER/APPLICANT/CONTRACTOR CAMPAIGN CONTRIBUTION

DISCLOSURE FORM

Proposer/Consultant/Applicant is required to identify any campaign contribution or cumulative contributions greater than \$249 to any city council member in the twelve months prior to submitting an application, proposal, statement of qualifications or bid requiring approval by the City Council.

Date	Name of Donor	Company/Business Affiliation	Name of Recipient	Amount

Except as described above, I/we have not made any campaign contribution in the amount of \$250 or more to any Costa Mesa City Council Member in the twelve months preceding this Application/Proposal.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Pat Rifley B D
Bidder/Applicant/Proposer

4/7/23
Date

EXHIBIT C

CITY COUNCIL POLICY 100-5

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

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

PURPOSE

It is the purpose of this Policy to:

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

POLICY

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

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

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

- b. Establishing a Drug-Free Awareness Program to inform employees about:
 - 1. The dangers of drug abuse in the workplace;
 - 2. Contractor's and/or sub-grantee's policy of maintaining a drug-free workplace;
 - 3. Any available drug counseling, rehabilitation and employee assistance programs; and
 - 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

- c. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph A;

- d. Notifying the employee in the statement required by subparagraph 1 A that, as a condition of employment under the contract, the employee will:
 - 1. Abide by the terms of the statement; and
 - 2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

- e. Notifying the City of Costa Mesa within ten (10) days after receiving notice under subparagraph 1 D 2 from an employee or otherwise receiving the actual notice of such conviction;

- f. Taking one of the following actions within thirty (30) days of receiving notice under subparagraph 1 D 2 with respect to an employee who is so convicted:
 - 1. Taking appropriate personnel action against such an employee, up to and including termination; or
 - 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency;

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

- g. Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 1 A through 1 F, inclusive.
- 2. Contractor and/or sub-grantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:
 - a. Contractor and/or sub-grantee has made a false certification under paragraph 1 above;
 - b. Contractor and/or sub-grantee has violated the certification by failing to carry out the requirements of subparagraphs 1 A through 1 G above;
 - c. Such number of employees of Contractor and/or sub-grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor and/or sub-grantee has failed to make a good faith effort to provide a drug-free workplace.
- 3. Should any contractor and/or sub-grantee be deemed to be in violation of this Policy pursuant to the provisions of 2 A, B, and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, and local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a contractor and/or sub-grantee, the contractor and/or sub-grantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the contractor and/or sub-grantee, the contractor and/or sub-grantee shall be eligible for compensation as provided by law.