

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

THIS MAINTENANCE SERVICES AGREEMENT ("Agreement") is made and entered into this 17th day of October, 2016 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and PENHALL COMPANY, a California corporation ("Contractor").

WITNESSETH:

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

WHEREAS, 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

WHEREAS, 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

WHEREAS, 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 Bid ("IFB"), attached hereto as Exhibit "A," and Contractor's response to City's IFB (the "Proposal") attached hereto as Exhibit "B," both incorporated herein by this reference (the "Services").

1.2. Performance to Satisfaction of City. Contractor agrees to perform all the work to the complete satisfaction of City and within the hereinafter specified. 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.

1.3. 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; prevailing wage laws set forth in California Labor Code sections 1770 *et seq.*, including the keeping of all records required by the provisions of Labor Code section 1776; 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. 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.

1.4. 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, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code.

1.5. 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.

1.6. 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 Contractor's Pricing set forth in Exhibit B. Contractor's annual compensation for the first year of this Agreement shall not exceed Forty-Nine Thousand Five Hundred Dollars (\$49,500.00). Thereafter, the annual compensation may be increased or decreased on an annual basis using the Consumer Price Index for All Urban Consumers for the Los Angeles – Riverside – Orange County area (CPI-U), based on an increase or decrease to the CPI-U for the twelve (12) month period preceding the anniversary date of this Agreement. Contractor may request an increase in the annual compensation based on an increase in the CPI-U following each anniversary date during the term of this Agreement by submitting a written request to City that includes documentation evidencing the increase ("Request for Increase"). If there is a decrease in the CPI-U, then City will provide Contractor with written notice of such decrease and documentation evidencing the decrease ("Notice of Decrease"). Following a Request for Increase or Notice of Decrease, the parties will enter into an amendment to this Agreement reflecting the adjustment to the total annual compensation. No adjustment to the annual compensation will be retroactive.

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, 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 one (1) year, ending on October 16, 2017, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. This Agreement may be renewed by three (3) additional one (1) 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), combined single limits, 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 limits, per occurrence 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. The certificates

of insurance shall be attached hereto as Exhibit "C" and incorporated herein by this reference.

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 CEO or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives, renewals, and/or extensions 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 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; or b) 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 Postal Service.

IF TO CONTRACTOR:

Penhall Company
1801 Penhall Way
Anaheim, CA 92801
Tel: (714) 772-6450
Attn: Jonathon Rymer

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-7470
Attn: Bruce Lindemann

With courtesy copy to:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: Finance Department

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 "D" 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 and Costs. 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. 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.

6.18. 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.

6.19. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

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

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

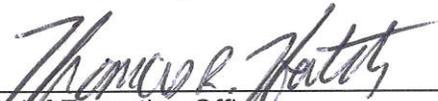
6.22. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other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

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

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

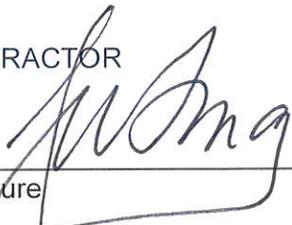
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF COSTA MESA,
A municipal corporation



Chief Executive Officer

Date: 10/7/16

CONTRACTOR


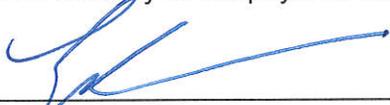
Signature
Jeffrey W. Long, President / CEO

Name and Title

Date: 9/28/16

33-0349226

Social Security or Taxpayer ID Number



Signature
Lynn Schrier-Behler, Vice President / CFO

Name and Title

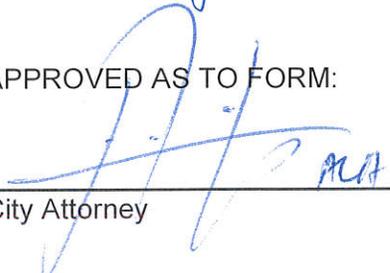
Date: 9/29/16

ATTEST:



City Clerk

APPROVED AS TO FORM:



City Attorney

Date: 10/6/16

APPROVED AS TO INSURANCE:



Risk Management

Date: 10-5-16

APPROVED AS TO PURCHASING:



Interim Finance Director

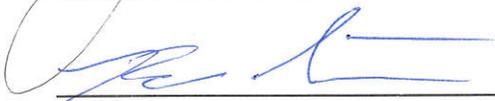
Date: 10.6.16

DEPARTMENTAL APPROVAL



Interim Public Services Director

Date: 10-5-16



Maintenance Services Manager

Date: 10-04-2016

EXHIBIT A
INVITATION TO BID



INVITATION FOR BID (IFB)

NO. 16-43

FOR

**UPLIFTED CONCRETE SIDEWALK GRINDING AND
GUTTER FLOW LINE GRINDING SERVICES**



Public Services Department

CITY OF COSTA MESA

July 20, 2016

IFB NO. 16-43
FOR
UPLIFTED CONCRETE SIDEWALK GRINDING AND
GUTTER FLOW LINE GRINDING SERVICES

The City of Costa Mesa (hereinafter referred to as the “City”) is requesting competitive bids from qualified companies or individuals (hereinafter referred to as “Bidder”). The awarded Contract, (hereinafter referred to as “Contractor”) in accordance with the sample contract terms, conditions and scope of work (Attachment A). Prior to submitting a bid, Bidders are advised to carefully read the instructions below, including the sample contract and any solicitation attachments/exhibits.

I. GENERAL INFORMATION

The City of Costa Mesa is a general law city, which operates under the council/manager form of government with a General Fund budget of over \$109 million and a total of over \$114 million of fiscal year 2014-2015.

The City of Costa Mesa, incorporated in 1953, has an estimated population of 110,757 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” and provides 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).** The City’s Purchasing Department contact set out in IFB, Section II, Subsection 10, will provide all official communication concerning this 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 the City’s website at www.costamesaca.gov. 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 Bidder to periodically check the City’s 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. Schedule of Events:** The invitation for bid will be governed by the following schedule:

Release of IFB	July 20, 2016
Mandatory Pre-Bid Meeting	July 27, 2016 at 10:00 a.m.
Deadline for Written Questions	August 2, 2016 at 10:00 a.m.
Responses to Questions Posted on City's Website	August 5, 2016 at 2:00 p.m.
Bids Due (No public bid opening)	August 10, 2016 at 11:00 a.m.
Approval of Contract	TBD

II. GENERAL INSTRUCTIONS AND PROVISIONS

1. Before submitting a bid, Bidders shall carefully examine the solicitation contents, including the sample contract terms, conditions and scope of work. Bidders shall include in their bid response a monetary sum to cover the cost of all items included in the contract. The sample contract contained in this solicitation is the contract proposed for execution. Upon award, awarded Bidder will be required to sign and submit contract for execution.
2. This solicitation consists of the following:
 - **Section I. General Information**
 - **Section II. General Instructions and Provisions**
3. Responsive bids shall include the following completed submittals:
 - 1) **Appendix A** – Sample Contract
 - 2) **Appendix B** – Company Profile & References
 - 3) **Appendix C** – Forms
 - 4) **Attachment A** – Scope of Work
 - 5) **Attachment B** – District Maintenance Map
 - 6) **Attachment C** - Contractor's Pricing
4. 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).
5. Pricing (Attachment C):
 - 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.
6. **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.
7. **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.

8. **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.
9. **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.

10. Submission of Bids: Complete written bids must be submitted in sealed envelopes marked and received no later than **11:00 AM. (P.S.T) on August 10, 2016** to the address below. Bids will not be accepted after this deadline. Faxed or e-mailed bids will not be accepted. **NO EXCEPTIONS.**

City of Costa Mesa
City Hall
Office of the City Clerk
77 Fair Drive
Costa Mesa, CA 92628-1200

RE: IFB NO. 16-43 UPLIFTED CONCRETE SIDEWALK GRINDING AND GUTTER FLOW LINE GRINDING SERVICES

Bids received at or before the time and date stated above, shall be opened publicly and read aloud in the Council Chambers at said address.

- 11. Number of Bids:** Submit one original, two (2) hard copies plus one electronic copy or flash drive of bid in sufficient detail. In the event of a conflict between the original and any hard copy or disk copy, the original shall control. City will not return disk copy or flash drive to Bidders.
- 12. Inquiries:** Questions about this IFB must be directed in writing, via e-mail to:

Buyer: **Stephanie Urueta** at stephanie.urueta@costamesaca.gov

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 & IFB's](#). Bidders should check this web page daily for new information. The City will endeavor to answer all timely received written questions before or no later than **August 2, 2016 at 10:00 a.m.** The City reserves the right not to answer all questions.

From the date that this IFB is issued until a Bidder is selected and the selection is announced, Bidders 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 written will be accepted, and no response other than written will be binding upon the City.

13. 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, to negotiate with any qualified source(s), 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.

14. 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.
- The lowest responsive and responsible bid(s) may be subject to further negotiations.
- Final award determination based upon the lowest responsive and responsible bid may also include a review of successful Bidder's qualifications, experience, and resources; Bidder's ability to meet the requirements and perform the services specified in this solicitation; Bidder's references and past performance; and Bidder's acceptance of City terms and conditions.
- By submitting a response to this solicitation, Bidders agree to accept the decision of the City as final.
- Awarded Bidder will be required to sign a contract upon award.

15. 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.

- 16. 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 C) with their bids certifying that they have not had or directed prohibited communications as described in this section.

- 17. 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.
- 18. 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." (See Appendix F.)
- 19. Conditions of Contract:** The selected Bidder will execute a contract with the City describing the Scope of Services to be performed, the schedule for completion of the services, compensation, and other pertinent provisions. The contract shall follow the sample form of sample contract provided as Appendix A to this solicitation, which may be modified by City. All Bidders are directed to particularly review the indemnification and insurance requirements set forth in the sample contract

The terms of the contract, including insurance requirements have been mandated by the City and can be modified only if extraordinary circumstances exist. Submittal of a bid shall be deemed acceptance of all the terms set forth in this IFB and the sample contract unless the Bidder includes with its bid, in writing, any conditions or exceptions requested by the Bidder to the proposed contract. In accordance with the Municipal Code, the City may consider the scope and number of conditions in evaluation bids and determining the lowest, responsive and responsible bidder.

- 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 C).
- 21. Standard Terms and Conditions:** The City reserves the right to amend or supplement this IFB prior to the bid due date. All addendum(s) and additional information will be posted to the Costa Mesa Procurement Registry, [Costa Mesa - Official City Web Site - Business - Bids & IFB's](#). Bidders should check this web page daily for new information.

**Appendix A
Sample Contract**

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

THIS MAINTENANCE SERVICES AGREEMENT ("Agreement") is made and entered into this ___ day of _____, 2016 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and _____, a [state] [type of corporation] ("Contractor").

WITNESSETH:

A. WHEREAS, 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. WHEREAS, 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. WHEREAS, 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. WHEREAS, 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 by this reference (the "Services").

1.2. Performance to Satisfaction of City. Contractor agrees to perform all the work to the complete satisfaction of City and within the hereinafter specified. 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.

1.3. 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. 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.

1.4. 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, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code.

1.5. 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.

1.6. 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, 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 _____ months, 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), combined single limits, 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 limits, per occurrence 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. The certificates of insurance shall be attached hereto as Exhibit "C" and incorporated herein by this reference.

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 CEO 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: _____
Fax: _____
Attn: _____

IF TO CITY:

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

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 "D" 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. 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.

6.18. 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.

6.19. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

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

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

6.22. Severability. If any provision of this Agreement is determined by a court of competent

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

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

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

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

CITY OF COSTA MESA,
A municipal corporation

[Mayor or Chief Executive Officer]

Date: _____

Interim Finance Director

Date: _____

Department Head

Date: _____

CONTRACTOR

Signature

Date: _____

Name and Title

Social Security or Taxpayer ID Number

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Date: _____

APPROVED AS TO INSURANCE:

Risk Management

Date: _____

DEPARTMENTAL APPROVAL

Project Manager

Date: _____

Appendix B
Company Profile & References

COMPANY PROFILE & REFERENCES

Company Profile

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: _____

Is your firm incorporated: ____ Yes ____ No If yes, State of Incorporation: _____

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 five clients, preferably other municipalities for whom comparable projects have been completed or submit letters from your references which include the requested information.

Company Name: _____ Telephone Number: _____
Contact Name: _____ Title: _____ Contract Amount: _____
Email: _____
Address: _____
Brief Contract Description: _____

Company Name: _____ Telephone Number: _____
Contact Name: _____ Title: _____ Contract Amount: _____
Address: _____
Email: _____
Brief Contract Description: _____

Company Name: _____ Telephone Number: _____
Contact Name: _____ Title: _____ Contract Amount: _____
Email: _____
Address: _____
Brief Contract Description: _____

Company Name: _____ Telephone Number: _____
Contact Name: _____ Title: _____ Contract Amount: _____
Address: _____
Email: _____
Brief Contract Description: _____

Company Name: _____ Telephone Number: _____
Contact Name: _____ Title: _____ Contract Amount: _____
Email: _____
Address: _____
Brief Contract Description: _____

**Appendix C
Forms**



**INVITATION FOR BID NO. 16-43
UPLIFTED CONCRETE SIDEWALK GRINDING AND
GUTTER FLOW LINE GRINDING SERVICES**

VENDOR APPLICATION FORM

TYPE OF APPLICANT: NEW CURRENT VENDOR

Legal Contractual Name of Corporation: _____

Contact Person for Agreement: _____

Corporate Mailing Address: _____

City, State and Zip Code: _____

E-Mail Address: _____

Phone: _____

Fax: _____

Contact Person for Bids: _____

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
FOR
IFB NO. 16-43**

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

I certify that Bidder and Bidder's representatives have not had any communication with a City Council Member concerning the **UPLIFTED CONCRETE SIDEWALK GRINDING AND GUTTER FLOW LINE GRINDING SERVICES** at any time after **July 20, 2016**

Signature: _____

Date _____

Print Name: _____

OR

I certify that Bidder or Bidder's representatives have communicated after **July 20, 2016** with a City Council Member concerning the **UPLIFTED CONCRETE SIDEWALK GRINDING AND GUTTER FLOW LINE GRINDING SERVICES**. A copy of all such communications is attached to this form for public distribution.

Signature: _____

Date _____

Print Name: _____

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 below.

DISCLOSURE OF GOVERNMENT POSITIONS

Each Bidder shall disclose below 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 twelve months. List below or state "None".

**ATTACHMENT A
SCOPE OF WORK**

- I. BACKGROUND:** 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.

The City of Costa Mesa is divided into thirty-one designated maintenance areas. Contractor shall be assigned work on a "per area" basis. Work is to begin within seven (7) days of assignment and each assigned area is to be completed within thirty (30) days of the work commencing. If the contractor is not able to complete the assigned work within the specified time, the City shall reserve the right to utilize a secondary contractor.

II. SCOPE OF SERVICES:

- A. Sidewalk Grinding:** Uneven sidewalks in relation to other sidewalks, curbs, aprons and utility covers are to be ground.
1. 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 one-half inch (1/2") up to two inches (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.
 2. Contractor agrees to notify and alert the City Representative of all sidewalk locations with vertical offsets exceeding two (2") inches.
 3. 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.
- B. Gutter Flow Line Drilling and Grinding:** To relieve ponding water condition at gutter/curb displacements and/or vertical offsets.

1. 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.

C. 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.

D. Equipment and Equipment Capabilities

1. 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.
2. 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.
3. 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.
4. Sidewalk and gutter grinding will be performed in compliance with the California Storm Water best management practices for saw-cutting and/or grinding surfaces (January 2003). 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.

III. CONTRACTOR MINIMUM REQUIREMENTS

A. Contractor shall comply with the following:

1. Contractor shall be required to comply with all NPDES permit requirements, AQMD requirements all other applicable federal, state, county or city ordinances dealing with sweeping of streets, water quality, air quality, hazardous wastes and rubbish disposal.
2. Contractor shall be registered with the Department of Industrial Relations for the electronic submitting of their certified payroll for prevailing wage.
3. The collection, transfer and/or of all debris collected shall be the responsibility of the contractor to dispose of in a legal manner that meets all City, State, County of Orange and Federal laws,

regulations, or other applicable statutes. The City of Costa Mesa assumes no responsibility for any violations, fines, fees or other liability that may arise from improper debris disposal practices.

4. The cleaning and maintenance of any machine may not take place on City property or public streets, except as may be included in an approved agreement allowing use of the City's yard facilities.
5. The contractor shall complete a monthly maintenance report indicating work performed and submit this completed report to assigned City Representative. This report should also contain a description of work performed, including man-hours, equipment, and any additional work, which the contractor deems to be beyond the scope of the contract. Payment for this work will not be authorized unless the additional work and the costs thereof are first approved by the City.
6. The contractor shall utilize the City's established maintenance districts for all regularly scheduled sidewalk grinding operations, unless otherwise directed. If at the invitation of the Bidder, the public or a City department it is necessary to make revisions to any schedule, the City shall provide a modified schedule to the Bidder a minimum of ten (10) working days prior to the effective date of the change. This is intended for long-term schedule changes and not for special invitations or emergencies.
7. The contractor shall permit the City to inspect and audit its books and records regarding City-provided services at any time with reasonable notice.

IV. CONTRACTOR PERFORMANCE

A. Contractor shall comply with the following:

1. No new work of any kind shall be considered an extra unless a separate estimate is given for said work and the estimate is approved by the City in writing before the work is commenced. The contractor will be required in the approved agreement to provide before and after photographs of safety items or emergency repairs required by the City. Documentation of contract compliance may be required at the discretion of the City.
2. This description of the Scope of Work is intended to cover all labor, material and standards of workmanship, including compliance with all AQMD and NPDES standards, to be employed in the work called for in the bid documents and in any approved agreement or reasonably implied by terms of same. Work or materials of a minor nature which may not be specifically mentioned, but which may be reasonably assumed as necessary for the completion of this work, shall be performed by the contractor as if described in the specifications.

V. WORKMANSHIP

A. All work shall meet with the approval of the Maintenance Superintendent or his designee. There shall be a minimum of one monthly meeting with the contractor and the City representative to determine progress. A

status report of activities performed and maintenance issues addressed by the contractor shall be submitted in writing to the assigned City Representative on weekly basis.

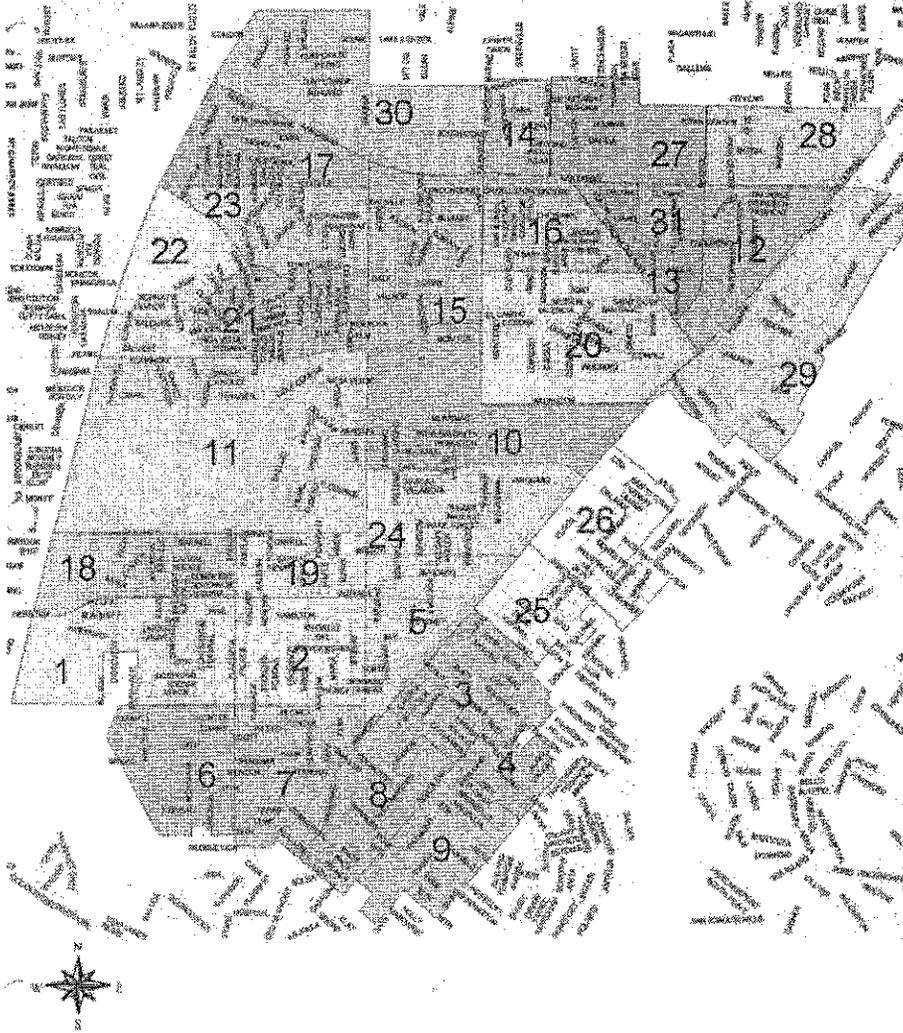
B. Any specific problem area which does not meet the conditions of the specifications set forth herein and in an approved agreement shall be called to the attention of the contractor and if not corrected, payment to the contractor will not be made for the deficient or disputed work until condition is corrected in a satisfactory manner as set forth in the specifications.

VI. SCHEDULE

1. Utilizing information provided by the City, the contractor shall provide an annual schedule indicating the time frames when items of work shall be accomplished per the performance requirements.
2. The contractor shall complete the schedule for each functional area in a manner which shall correspond to the schedule.
3. The annual schedule shall be submitted for City approval within fifteen (15) calendar days after effective date of the contract.
4. The contractor shall submit revised schedules when actual performance differs substantially from planned performance.
5. Monthly schedule forms shall be provided by the contractor indicating the major items of work to be performed in accordance with the performance requirements and further delineate the time frames for accomplishment by day of the week.
6. The contractor shall complete the schedule for each item of work and each area of work.
7. The initial schedule shall be submitted one week prior to the effective date of the contract. Thereafter, it shall be submitted monthly on the first Monday of the month for City approval, prior to scheduling work for the upcoming month.
8. Changes to the schedule shall be received by the Maintenance Superintendent other assigned agent at least twenty-four (24) hours prior to the scheduled time for the work.
9. Failure to notify of a change and/or failure to perform an item of work on a scheduled day may result in deduction of payment for that date or week.
10. The contractor shall adjust his/her schedule to compensate for all holidays and rainy days.
11. Working hours shall be between 8:00 a.m. and 4:00 p.m. Monday thru Friday on non-arterial streets. Working hours on arterial streets shall be between 8:30 a.m. and 4:00 p.m. Monday thru Friday.

ATTACHMENT B

DISTRICT MAINTENANCE MAP



**ATTACHMENT C
CONTRACTOR'S PRICING**

- I. COMPENSATION:** This is an all-inclusive, usage Contract between the City of Costa Mesa and Contractor for Uplifted Concrete Sidewalk Grinding and Gutter Flow Line Services on an as needed basis, as set forth in Attachment A "Scope of Work".

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, shipping/freight, labor and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. **The City shall have no obligation to pay any sum in excess of the fixed prices and rates and Not-To-Exceed Contract Amount specified herein unless authorized by amendment in accordance with which may require approval by the City.**

Provide quantity of Sidewalk Grinds along with estimated unit*pricing in accordance with the City's current requirements, as set forth in Attachment A "Scope of Work".

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	Extension
Uplifted Concrete Sidewalk Grinding per the Scope of Work Specifications	3000	Location*	\$	\$
Drilling/Grinding of Gutter Flow line per the Scope of Work Specifications	500	Linear foot	\$	\$
* Per location billing unit shall include a grind up to 5 feet in length.				
Total Bid Amount			\$ _____	

The Bidder agrees that for requested and/or required changes in the scope of work, including additions and deletions on work not performed, the Contract Sum shall be adjusted in accordance with the following unit prices, where the City elects to use this method in determining costs.

Bidder is advised that the unit prices will enter into the determination of the contract award. Unreasonable prices may result in rejection of the entire bid Bid. Unit prices listed below refer to all items installed and the Construction Documents and include all costs connected with such items; including but not limited to, materials, labor, overhead, and profit for the Bidder.

The unit prices quoted by the Bidder shall be those unit prices that will be charged or credited for labor and materials to be provided regardless of the total number units and/or amount of labor required for added or deleted items of work.

All work shall be performed in accordance with the specifications.

WORK DESCRIPTION	Unit Price
Uplifted Concrete Sidewalk Grinding per the Scope of Work Specifications, Five (5) foot unit price.	\$ _____
Drilling/Grinding of Gutter Flow line per the Scope of Work Specifications, Linear foot.	\$ _____

II. SERVICES ON AN AS-NEEDED BASIS:

EMERGENCY CALL OUT CHARGE	UNIT	UNIT PRICE
Rate for Normal Hours, Monday-Friday, 8:00a.m.-4:30p.m.	per call	\$ _____
After Normal Business Hours & Saturday, after 4:30 p.m. and Saturday	per call	\$ _____
Sundays & Holidays	per call	\$ _____

CONTRACTOR Lawful Name: _____

Bidder's Name: _____ Bidder's Initials: _____

BIDDER License No. _____ Expiration: _____

BIDDER Taxpayer I.D. Number: _____

Signature: _____ Date: _____

BIDDER Address: _____

Telephone Number:(_____) _____

Fax Number:(_____) _____

24-Hour Emergency Contacts:

_____ Telephone No.: (_____) _____

Name

_____ Telephone No.: (_____) _____

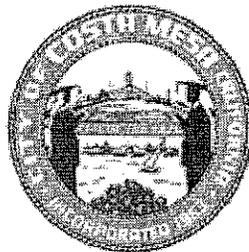
Name

_____ Telephone No.: (_____) _____

Name

The Bidder agrees that the City will not be held responsible if any of the approximate quantities shown in the foregoing Bid shall be found incorrect, and he shall not make any claim for damages or for loss of profits because of a difference between the quantities of the various classes of work as estimated and the work actually done. If any error, omission or misstatements shall be discovered in the estimated quantities, it shall not invalidate this contract or release the Bidder from the execution and completion of the whole or part of the work herein specified, in accordance with the specifications and the plans herein mentioned and the prices herein agreed upon and fixed therefore, or excuse him from any of the obligations or liabilities hereunder, or entitle him to any damages or compensation otherwise than as provided for in this contract.

The Bidder agrees that the City shall have the right to increase or decrease the quantity of any item or portion of the work or to omit portions of the work as may be deemed necessary or expedient, and that the payment for incidental items or work, not separately provided in the Bid shall be considered included in the price bid for other various items or work.



INVITATION FOR BID

FOR

**UPLIFTED CONCRETE SIDEWALK GRINDING AND GUTTER
FLOW LINE GRINDING SERVICES**

IFB No. 16-43



PUBLIC SERVICES DEPARTMENT

CITY OF COSTA MESA

Released on July 28, 2016

The referenced document has been modified as per the attached Addendum No. 1

Please sign this Addendum where designated and return the executed copy with submission of your bid. This addendum is hereby made part of the referenced bid as through fully set forth therein. Any questions regarding this addendum should be addressed to Stephanie Urueta, email stephanie.urueta@costamesaca.gov

Replace Attachment C Contractor’s Pricing with attached revised Attachment C Contractor’s Pricing.

REVISED

**ATTACHMENT C
CONTRACTOR’S PRICING**

- I. COMPENSATION:** This is an all-inclusive, usage Contract between the City of Costa Mesa and Contractor for Uplifted Concrete Sidewalk Grinding and Gutter Flow Line Services on an as needed basis, as set forth in Attachment A “Scope of Work”.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, shipping/freight, labor and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. **The City shall have no obligation to pay any sum in excess of the fixed prices and rates and Not-To-Exceed Contract Amount specified herein unless authorized by amendment in accordance with which may require approval by the City.**

Provide quantity of Sidewalk Grinds along with estimated unit*pricing in accordance with the City’s current requirements, as set forth in Attachment A “Scope of Work”.

Unless specified with options, bid pricing should be submitted on a "per location" basis with each location being up to 5 feet in length and a 1 inch lift.

Description of Work	Est. Qty	Billing Unit	Price/Unit	Extension
Uplifted Concrete Sidewalk Grinding per the Scope of Work Specifications	3000	Location*	\$	\$
Drilling/Grinding of Gutter Flow line per the Scope of Work Specifications	500	Linear foot	\$	\$
* Per location billing unit shall include a grind up to 5 feet in length and 1 inch lift.				
Total Bid Amount			\$ _____	

The Bidder agrees that for requested and/or required changes in the scope of work, including additions and deletions on work not performed, the Contract Sum shall be adjusted in accordance with the following unit prices, where the City elects to use this method in determining costs.

Bidder is advised that the unit prices will enter into the determination of the contract award. Unreasonable prices may result in rejection of the entire bid Bid. Unit prices listed below refer to all items installed and the Construction Documents and include all costs connected with such items; including but not limited to, materials, labor, overhead, and profit for the Bidder.

The unit prices quoted by the Bidder shall be those unit prices that will be charged or credited for labor and materials to be provided regardless of the total number units and/or amount of labor required for added or deleted items of work.

All work shall be performed in accordance with the specifications.

WORK DESCRIPTION	Unit Price
Uplifted Concrete Sidewalk Grinding per the Scope of Work Specifications, five (5) foot long and 1 inch lift unit price.	\$ _____
Drilling/Grinding of Gutter Flow line per the Scope of Work Specifications, Linear foot.	\$ _____

II. SERVICES ON AN AS-NEEDED BASIS:

EMERGENCY CALL OUT CHARGE	UNIT	UNIT PRICE
Rate for Normal Hours, Monday-Friday, 8:00a.m. -4:30p.m.	per call	\$ _____
After Normal Business Hours & Saturday, after 4:30 p.m. and Saturday	per call	\$ _____
Sundays & Holidays	per call	\$ _____

CONTRACTOR Lawful Name: _____

Bidder's Name: _____ Bidder's Initials: _____

BIDDER License No. _____ Expiration: _____

BIDDER Taxpayer I.D. Number: _____

Signature: _____ Date: _____

BIDDER Address: _____

Telephone Number:(_____) _____

Fax Number:(_____) _____

24-Hour Emergency Contacts:

_____ Telephone No.: (_____) _____

Name

_____ Telephone No.: (_____) _____

Name

_____ Telephone No.: (_____) _____

Name

The Bidder agrees that the City will not be held responsible if any of the approximate quantities shown in the foregoing Bid shall be found incorrect, and he shall not make any claim for damages or for loss of profits because of a difference between the quantities of the various classes of work as estimated and the work actually done. If any error, omission or misstatements shall be discovered in the estimated quantities, it shall not invalidate this contract or release the Bidder from the execution and completion of the whole or part of the work herein specified, in accordance with the specifications and the plans herein mentioned and the prices herein agreed upon and fixed therefore, or excuse him from any of the obligations or liabilities hereunder, or entitle him to any damages or compensation otherwise than as provided for in this contract.

The Bidder agrees that the City shall have the right to increase or decrease the quantity of any item or portion of the work or to omit portions of the work as may be deemed necessary or expedient, and that the payment for incidental items or work, not separately provided in the Bid shall be considered included in the price bid for other various items or work.

All other provisions of the invitation of this bid shall remain in their entirety.

*Vendors hereby acknowledge receipt and understanding of the above Addendum.
Complete and submit this Addendum with your bid.*

Signature

Date

Company Name

Typed Name and Title

Address

City

State

Zip

EXHIBIT B
CONTRACTOR'S BID



Concrete Sawing, Drilling and Breaking

Invitation For Bid / No. 16-43

Uplifted Concrete Sidewalk Grinding & Gutter Flow Line Grinding Services

Public Services Department
City of Costa Mesa, CA

Prepared By,
Jonathon Rymer

COMPANY PROFILE & REFERENCES

Company ProfileCompany Legal Name: Penhall CompanyCompany Legal Status (corporation, partnership, sole proprietor etc.): CorporationActive licenses issued by the California State Contractor's License Board: 568673Business Address: 1801 Penhall Way, Anaheim, CA 92801Website Address: www.penhall.comTelephone Number: 714-772-6450 ext. 5551 Facsimile Number: 714-349-3238Email Address: jrymer@penhall.comLength of time the firm has been in business: 59 years 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: _____Is your firm incorporated: Yes No If yes, State of Incorporation: CaliforniaFederal Taxpayer ID Number: 33-0349226Regular business hours: 24 hoursRegular holidays and hours when business is closed: State holidays, variesContact person in reference to this solicitation: Jonathon Rymer, Accountant ManagerTelephone Number: 714-772-6450 Facsimile Number: 714-349-3238Email Address: jrymer@penhall.comContact person for accounts payable: Fred ThompsonTelephone Number: 714-578-3280 Ext. 5161 Facsimile Number: 714-999-1715Email Address: sthompson@Penhall.comName of Project Manager: Jonathon RymerTelephone Number: 714-349-3238 Facsimile Number: 714-999-1715Email Address: Jrymer@penhall.com

COMPANY PROFILE & REFERENCES

(Continued)

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

Company Name: Caltrans-RTE, 86, CA Telephone Number: 916-227-6300
 Contact Name: _____ Title: _____ Contract Amount: \$2,612,741
 Email: _____
 Address: 1727 30th Street, Sacramento, CA 95816
 Brief Contract Description: Grinding

Company Name: Myers & Sons RTE405, CA Telephone Number: 916-283-9950
 Contact Name: _____ Title: _____ Contract Amount: \$888,018
 Address: 4600 Northgate Blvd., #100 Sacramento, CA 95834
 Email: _____
 Brief Contract Description: Dowell Bar Retro & Grind

Company Name: Flatiron Constructors Telephone Number: 303-485-4050
 Contact Name: _____ Title: _____ Contract Amount: \$2,420,362
 Email: _____
 Address: 385 Interlocken Blvd. Ste. 900, Broomfield, CO 80021
 Brief Contract Description: Jointseal

Company Name: Texas Dept. of Transportation Telephone Number: 512-416-2429
 Contact Name: _____ Title: _____ Contract Amount: \$1,301,136
 Address: 125 East 11 Street, Austin, TX 78701
 Email: _____
 Brief Contract Description: Grinding

Company Name: Hasse-Eddy CO Telephone Number: 505-242-9226
 Contact Name: _____ Title: _____ Contract Amount: \$864,628
 Email: _____
 Address: 3327 Tower Road, SW, Albuquerque, NM 87121
 Brief Contract Description: Polyester Concrete



INVITATION FOR BID NO. 16-43
UPLIFTED CONCRETE SIDEWALK GRINDING AND
GUTTER FLOW LINE GRINDING SERVICES

VENDOR APPLICATION FORM

TYPE OF APPLICANT: NEW CURRENT VENDOR

Legal Contractual Name of Corporation: Penhall Company

Contact Person for Agreement: Jonathon Rymer

Corporate Mailing Address: 1801 Penhall Way

City, State and Zip Code: Anaheim, CA 92801

E-Mail Address: Jrymer@Penhall.com

Phone: 714-349-3238 Fax: 714-999-1715

Contact Person for Bids: Jonathon Rymer

Title: Project Manager E-Mail Address: Jrymer@Penhall.com

Business Telephone: 714-772-6450 Business Fax: 714-999-1715

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
<u>Jeff Long</u>	<u>President and CEO</u>	<u>714-772-6460</u>
<u>Lynn Behler</u>	<u>Vice President and CFO</u>	<u>714-772-6460</u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>

Federal Tax Identification Number: 33-0349226

City of Costa Mesa Business License Number: 00640

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

City of Costa Mesa Business License Expiration Date: September 30, 2016

EX PARTE COMMUNICATIONS CERTIFICATION
FOR
IFB NO. 16-43

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

I certify that Bidder and Bidder's representatives have not had any communication with a City Council Member concerning the UPLIFTED CONCRETE SIDEWALK GRINDING AND GUTTER FLOW LINE GRINDING SERVICES at any time after July 20, 2016

Signature: 
Print Name: Rick Viechnaus

Date 8/9/2016

OR

I certify that Bidder or Bidder's representatives have communicated after July 20, 2016 with a City Council Member concerning the UPLIFTED CONCRETE SIDEWALK GRINDING AND GUTTER FLOW LINE GRINDING SERVICES. A copy of all such communications is attached to this form for public distribution.

Signature: _____
Print Name: _____

Date _____

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 - see below No

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

"The Penhall Company was debarred in New York State from 9/07/2013 to 9/07/2014 due to inadequate Workers Compensation Disability insurance. Upon discovery, Penhall immediately rectified the situation and is now in compliance with the required insurance levels. Penhall was pre-qualified for work in the state of New York on 09/10/2014."

**ATTACHMENT C
CONTRACTOR'S PRICING**

- I. COMPENSATION:** This is an all-inclusive, usage Contract between the City of Costa Mesa and Contractor for Uplifted Concrete Sidewalk Grinding and Gutter Flow Line Services on an as needed basis, as set forth in Attachment A "Scope of Work".

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, shipping/freight, labor and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. The City shall have no obligation to pay any sum in excess of the fixed prices and rates and Not-To-Exceed Contract Amount specified herein unless authorized by amendment in accordance with which may require approval by the City.

Provide quantity of Sidewalk Grinds along with estimated unit*pricing in accordance with the City's current requirements, as set forth in Attachment A "Scope of Work".

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	Extension
Uplifted Concrete Sidewalk Grinding per the Scope of Work Specifications	3000	Location*	\$ 39.80	\$ 119,400
Drilling/Grinding of Gutter Flow line per the Scope of Work Specifications	500	Linear foot	\$ 7.96	\$ 3,980
*Per location billing unit shall include a grind up to 5 feet in length.				
Total Bid Amount			\$ <u>123,380</u>	

The Bidder agrees that for requested and/or required changes in the scope of work, including additions and deletions on work not performed, the Contract Sum shall be adjusted in accordance with the following unit prices, where the City elects to use this method in determining costs.

Bidder is advised that the unit prices will enter into the determination of the contract award. Unreasonable prices may result in rejection of the entire bid Bid. Unit prices listed below refer to all items installed and the Construction Documents and include all costs connected with such items; including but not limited to, materials, labor, overhead, and profit for the Bidder.

The unit prices quoted by the Bidder shall be those unit prices that will be charged or credited for labor and materials to be provided regardless of the total number units and/or amount of labor required for added or deleted items of work.

All work shall be performed in accordance with the specifications.

WORK DESCRIPTION	Unit Price
Uplifted Concrete Sidewalk Grinding per the Scope of Work Specifications, Five (5) foot unit price.	\$ <u>39.80</u>
Drilling/Grinding of Gutter Flow line per the Scope of Work Specifications, Linear foot.	\$ <u>7.96</u>

II. SERVICES ON AN AS-NEEDED BASIS:

EMERGENCY CALL OUT CHARGE	UNIT	UNIT PRICE
Rate for Normal Hours, Monday-Friday, 8:00 a.m. -4:30 p.m.	per call	\$ <u>125.00</u>
After Normal Business Hours & Saturday, after 4:30 p.m. and Saturday	per call	\$ <u>200.00</u>
Sundays & Holidays	per call	\$ <u>295.00</u>

CONTRACTOR Lawful Name: Penhall Company

Bidder's Name: Jonathan Rymer Bidder's Initials: JR

BIDDER License No. 568673 Expiration: May 2017

BIDDER Taxpayer I.D. Number: 33-0349226

Signature:  Date: August 8, 2016

BIDDER Address: 1801 Penhall Way, Anaheim, CA 92801-6450

Telephone Number: (714) 772-6450

Fax Number: (714) 999-1715

24-Hour Emergency Contacts:

Jonathan Rymer Telephone No.: (714) 349-3238

Name Dispatch On Call / 24 hours Telephone No.: (714) 476-3993

Name Scott Sherman Telephone No.: (714) 318-1379

Name

The Bidder agrees that the City will not be held responsible if any of the approximate quantities shown in the foregoing Bid shall be found incorrect, and he shall not make any claim for damages or for loss of profits because of a difference between the quantities of the various classes of work as estimated and the work actually done. If any error, omission or misstatements shall be discovered in the estimated quantities, it shall not invalidate this contract or release the Bidder from the execution and completion of the whole or part of the work herein specified, in accordance with the specifications and the plans herein mentioned and the prices herein agreed upon and fixed therefore, or excuse him from any of the obligations or liabilities hereunder, or entitle him to any damages or compensation otherwise than as provided for in this contract.

The Bidder agrees that the City shall have the right to increase or decrease the quantity of any item or portion of the work or to omit portions of the work as may be deemed necessary or expedient, and that the payment for incidental items or work, not separately provided in the Bid shall be considered included in the price bid for other various items or work.



INVITATION FOR BID

FOR

**UPLIFTED CONCRETE SIDEWALK GRINDING AND GUTTER
FLOW LINE GRINDING SERVICES**

IFB No. 16-43



PUBLIC SERVICES DEPARTMENT

CITY OF COSTA MESA

Released on July 28, 2016

The referenced document has been modified as per the attached Addendum No. 1

Please sign this Addendum where designated and return the executed copy with submission of your bid. This addendum is hereby made part of the referenced bid as through fully set forth therein. Any questions regarding this addendum should be addressed to Stephanie Urueta, email stephanie.urueta@costamesaca.gov

Replace Attachment C Contractor's Pricing with attached revised Attachment C Contractor's Pricing.

REVISED

**ATTACHMENT C
CONTRACTOR'S PRICING**

- I. **COMPENSATION:** This is an all-inclusive, usage Contract between the City of Costa Mesa and Contractor for Uplifted Concrete Sidewalk Grinding and Gutter Flow Line Services on an as needed basis, as set forth in Attachment A "Scope of Work".

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, shipping/freight, labor and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. **The City shall have no obligation to pay any sum in excess of the fixed prices and rates and Not-To-Exceed Contract Amount specified herein unless authorized by amendment in accordance with which may require approval by the City.**

Provide quantity of Sidewalk Grinds along with estimated unit*pricing in accordance with the City's current requirements, as set forth in Attachment A "Scope of Work".

Unless specified with options, bid pricing should be submitted on a "per location" basis with each location being up to 5 feet in length and a 1 inch lift.

Description of Work	Est. Qty	Billing Unit	Price/Unit	Extension
Uplifted Concrete Sidewalk Grinding per the Scope of Work Specifications	3000	Location*	\$39.80	\$119,400
Drilling/Grinding of Gutter Flow line per the Scope of Work Specifications	500	Linear foot	\$7.96	\$3,980
* Per location billing unit shall include a grind up to 5 feet in length and 1 inch lift.				
Total Bid Amount			\$	<u>123,380</u>

The Bidder agrees that for requested and/or required changes in the scope of work, including additions and deletions on work not performed, the Contract Sum shall be adjusted in accordance with the following unit prices, where the City elects to use this method in determining costs.

Bidder is advised that the unit prices will enter into the determination of the contract award. Unreasonable prices may result in rejection of the entire bid Bid. Unit prices listed below refer to all items installed and the Construction Documents and include all costs connected with such items; including but not limited to, materials, labor, overhead, and profit for the Bidder.

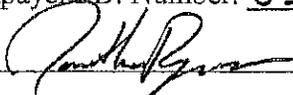
The unit prices quoted by the Bidder shall be those unit prices that will be charged or credited for labor and materials to be provided regardless of the total number units and/or amount of labor required for added or deleted items of work.

All work shall be performed in accordance with the specifications.

WORK DESCRIPTION	Unit Price
Uplifted Concrete Sidewalk Grinding per the Scope of Work Specifications, five (5) foot long and 1 inch lift unit price.	\$ <u>39.80</u>
Drilling/Grinding of Gutter Flow line per the Scope of Work Specifications, Linear foot.	\$ <u>7.96</u>

II. SERVICES ON AN AS-NEEDED BASIS:

EMERGENCY CALL OUT CHARGE	UNIT	UNIT PRICE
Rate for Normal Hours, Monday-Friday, 8:00a.m.-4:30p.m.	per call	\$ <u>125.00</u>
After Normal Business Hours & Saturday, after 4:30 p.m. and Saturday	per call	\$ <u>200.00</u>
Sundays & Holidays	per call	\$ <u>295.00</u>

CONTRACTOR Lawful Name: Penhall CompanyBidder's Name: Jonathon Rymer Bidder's Initials: JRBIDDER License No. 568673 Expiration: May 2017BIDDER Taxpayer I.D. Number: 33-0349226Signature:  Date: August 8, 2016BIDDER Address: 1801 Penhall Way, Anaheim CA 92801-6450Telephone Number: (714) 772-6450Fax Number: (714) 999-1715

24-Hour Emergency Contacts:

Jonathon Rymer Telephone No.: (714) 349-3238Name
Dispatch On Call / 24/7 Telephone No.: (714) 476-3993Name
Scott Sherman Telephone No.: (714) 318-1379

The Bidder agrees that the City will not be held responsible if any of the approximate quantities shown in the foregoing Bid shall be found incorrect, and he shall not make any claim for damages or for loss of profits because of a difference between the quantities of the various classes of work as estimated and the work actually done. If any error, omission or misstatements shall be discovered in the estimated quantities, it shall not invalidate this contract or release the Bidder from the execution and completion of the whole or part of the work herein specified, in accordance with the specifications and the plans herein mentioned and the prices herein agreed upon and fixed therefore, or excuse him from any of the obligations or liabilities hereunder, or entitle him to any damages or compensation otherwise than as provided for in this contract.

The Bidder agrees that the City shall have the right to increase or decrease the quantity of any item or portion of the work or to omit portions of the work as may be deemed necessary or expedient, and that the payment for incidental items or work, not separately provided in the Bid shall be considered included in the price bid for other various items or work.

All other provisions of the invitation of this bid shall remain in their entirety.

*Vendors hereby acknowledge receipt and understanding of the above Addendum.
Complete and submit this Addendum with your bid.*


Signature 8/8/16
Date

Jonathon Rymar, PM
Typed Name and Title

Penhall Company
Company Name

1801 Penhall Way
Address
Anheim CA 92801
City State Zip