

**CITY OF COSTA MESA
PUBLIC WORKS AGREEMENT FOR
~~CITY PROJECT NO. _____~~**

THIS PUBLIC WORKS AGREEMENT ("Agreement"), dated August 1, 2024 ("Effective Date"), is made by the CITY OF COSTA MESA, a political subdivision of the State of California ("CITY"), and PROSURFACE, INC., a California Corporation ("CONTRACTOR").

WHEREAS, CITY desires to construct the public improvements described below under Paragraph 1, Scope of Work (the "Project"); and

WHEREAS, CITY has determined that CONTRACTOR is the lowest responsible bidder; and

WHEREAS, CITY now desires to contract with CONTRACTOR to furnish construction and related services for the Project; and

WHEREAS, CITY and CONTRACTOR desire to set forth their rights, duties and liabilities in connection with the services to be performed.

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

1. SCOPE OF WORK.

The scope of work generally consists of Sports Court resurfacing and repairs (the "Work").

The Work is further described in the "Contract Documents" referred to below.

The Project is known as the Sports Court Resurfacing and Repairs Project, ~~City~~
~~Project No. _____ (the "Project").~~

2. CONTRACT DOCUMENTS.

The complete Agreement consists of the following documents relating to the Project:

- (a) This Agreement;
- (b) CONTRACTOR's bid, attached hereto as Exhibit A and incorporated herein;
- (c) Bid package, including, but not limited to, notice inviting bids, complete plans, profiles, detailed drawings and specifications, general provisions and special provisions. The bid package is attached hereto as Exhibit B and

incorporated herein;

- (d) Drug-Free Workplace Policy, attached hereto as Exhibit C and incorporated herein; and
- (e) Provisions of the most current edition of The Greenbook: Standard Specifications for Public Works Construction ("The Greenbook"). Provisions of The Greenbook are incorporated by this reference as if fully set forth herein.

The documents comprising the complete Agreement will be referred to as the "Contract Documents."

All of the Contract Documents are intended to complement one another, so that any Work called for in one and not mentioned in another is to be performed as if mentioned in all documents.

In the event of an inconsistency in the Contract Documents, the terms of this Agreement shall prevail over all other Contract Documents. The order of precedence between the remaining Contract Documents shall be as set forth in The Greenbook.

The Contract Documents constitute the entire agreement between the parties and supersede any and all other writings and oral negotiations.

3. CITY'S REPRESENTATIVE.

The CITY's Representative is Robert S. Ryan, referred to herein as the Project Manager ("Project Manager").

4. CONTRACTOR'S PROJECT MANAGER; PERSONNEL.

(a) Project Manager. CONTRACTOR's Project Manager must be approved by City. Such approval shall be at CITY's sole discretion.

(b) Personnel. CITY has the right to review and approve any personnel who are assigned to perform work under this Agreement. CONTRACTOR shall remove personnel from performing work under this Agreement if requested to do so by CITY.

This Paragraph 4 is a material provision of the Agreement.

5. SCHEDULE.

All Work shall be performed in accordance with the schedule approved on behalf of CITY by the Project Manager, and in accordance with the time of performance set forth in Paragraph 11 (Time of Performance).

6. EQUIPMENT - PERFORMANCE OF WORK.

CONTRACTOR shall furnish all tools, equipment, apparatus, facilities, labor and materials necessary to perform and complete the Work in a good and workmanlike manner in strict conformity with the Contract Documents.

The equipment, apparatus, facilities, labor and material shall be furnished and such Work performed and completed as required in the plans and specifications to the satisfaction of the Project Manager or his or her designee, and subject to his or her approval.

7. COMPENSATION.

CITY shall pay CONTRACTOR in accordance with the fee schedule set forth in CONTRACTOR's bid. CONTRACTOR's total compensation shall not exceed one hundred twenty-two thousand seven hundred ninety-five dollars (\$122,795).

Compensation may also include a ten percent contingency of twelve-thousand two-hundred seventy-nine and 50/100 cents (\$12,279.50).

8. ADDITIONAL SERVICES.

CONTRACTOR shall not receive compensation for any services provided outside the scope of the Contract Documents unless such additional services, including change orders, are approved in writing by CITY prior to CONTRACTOR performing the additional services.

It is specifically understood that oral requests or approvals of such additional services, change orders or additional compensation and any approvals from CITY shall be barred and are unenforceable.

9. PAYMENTS TO CONTRACTOR.

On or before the last Monday of each and every month during the performance of the Work, CONTRACTOR shall meet with the Project Manager or his or her designee to determine the quantity of pay items incorporated into the improvement during that month. A "Progress Payment Order" will then be jointly prepared, approved, and signed by the Project Manager and the CONTRACTOR setting forth the amount to be paid and providing for a five percent (5%) retention. Upon approval of the progress payment order by the Project Manager, or his or her designee, it shall be submitted to CITY's Finance Department and processed for payment by obtaining approval from the City Council to issue a warrant.

Within three (3) days following City Council's approval to issue a warrant, CITY shall mail to CONTRACTOR a warrant for the amount specified in the progress payment order as the amount to be paid. The retained five percent (5%) shall be paid to

CONTRACTOR thirty-five (35) days after the recording of the Notice of Completion of the Work by the CITY with the Orange County Clerk-Recorder and after CONTRACTOR has furnished releases of all claims against CITY by persons who furnished labor or materials for the Work, if required by CITY.

Upon the request of CONTRACTOR and at its expense, securities equivalent to the amount withheld pursuant to the foregoing provisions may be presented to CITY for substitution for the retained funds. If CITY approves the form and amount of the offered securities it will release the retained funds and will hold the securities in lieu thereof. CONTRACTOR shall be entitled to any interest earned on the securities.

In the event that claims for property damage or bodily injury are presented to CITY arising out of CONTRACTOR's or any subcontractor's work under this Agreement, CITY shall give notice thereof to CONTRACTOR, and CONTRACTOR shall have thirty-five (35) days from the mailing of any such notice to evaluate the claim and to settle it by whole or partial payment, or to reject it, and to give notice of settlement or rejection to CITY. If CITY does not receive notice within the above-mentioned 35-day period that the claim has been settled, and if the Project Manager, after consultation with the City Attorney, determines that the claim is meritorious, CITY may pay the claim or a portion of it in exchange for an appropriate release from the claimant, and may deduct the amount of the payment from the retained funds that would otherwise be paid to CONTRACTOR upon completion of the Work; provided, however, that the maximum amount paid for any one claim pursuant to this provision shall be One Thousand Dollars (\$1,000.00), and the maximum amount for all such claims in the aggregate paid pursuant to this provision shall be Five Thousand Dollars (\$5,000.00).

10. PROMPT PAYMENT OF SUBCONTRACTORS.

CONTRACTOR agrees to pay each subcontractor under this Agreement for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the CONTRACTOR receives from CITY.

CONTRACTOR agrees further to release retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed.

Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the CITY.

11. TIME OF PERFORMANCE.

CONTRACTOR shall commence Work by the date specified in CITY's Notice to Proceed, unless a later date is agreed upon in writing by the parties. The Work shall be completed within forty (40) working/calendar days from the first day of commencement of the Work.

12. TERMINATION.

- (a) Termination for Convenience. CITY may terminate this Agreement at any time, with or without cause, by providing thirty (30) days' written notice to CONTRACTOR.
- (b) Termination for Breach of Contract.
 - (i) If CONTRACTOR refuses or fails to prosecute the Work or any severable part of it with such diligence as will ensure its timely completion, or if CONTRACTOR fails to complete the Work on time, or if CONTRACTOR, or any subcontractor, violates any of the provisions of the Contract Documents, the Project Manager may give written notice to CONTRACTOR and CONTRACTOR's sureties of the CITY's intention to terminate this Agreement; and, unless within five (5) days after the serving of that notice, such conduct shall cease and arrangements for the correction thereof be made to the satisfaction of the CITY, this Agreement may be terminated at the option of CITY effective upon CONTRACTOR's receipt of a second notice sent by the CITY indicating that the CITY has exercised its option to terminate.
 - (ii) If CONTRACTOR is adjudged bankrupt or files for any relief under the Federal Bankruptcy Code or State insolvency laws, this Agreement shall automatically terminate without any further action or notice by CITY.
 - (iii) If CONTRACTOR is in breach of any material provision of this Agreement, CITY may immediately terminate this Agreement by providing written notice to CONTRACTOR of same.

13. LIQUIDATED DAMAGES.

In the event the Work is not completed, for any reason, within the time required including any approved extensions of time, and to the satisfaction of the Project Manager, CITY may, in addition to any other remedies, equitable and legal, including remedies authorized by Paragraph 12 (Termination) of this Agreement, charge to CONTRACTOR or its sureties, or deduct from payments or credits due CONTRACTOR, a sum equal to seven-hundred (\$700.00) as liquidated damages for each calendar day beyond the date provided for the completion of such work.

The parties hereto agree that the amount set forth above, as liquidated damages constitutes a fair and reasonable estimate of the costs the CITY would suffer for each day that the CONTRACTOR fails to meet the performance schedule. The parties hereby agree and acknowledge that the delays in the performance schedule will cause CITY to incur costs and expenses not contemplated by this Agreement.

14. PERFORMANCE BY SURETIES.

In the event CONTRACTOR fails or refuses to perform the Work, CITY may provide CONTRACTOR with a notice of intent to terminate as provided in Paragraph 12 (Termination), of this Agreement. CITY shall immediately give written notice of such intent to terminate to CONTRACTOR and CONTRACTOR's surety or sureties, and the sureties shall have the right to take over and perform this Agreement; provided, however, that the sureties must, within five (5) days after CITY's giving notice of termination, (a) give the CITY written notice of their intention to take over the performance of this Agreement; (b) provide adequate assurances, to the satisfaction of the CITY, that the Work shall be performed diligently and in a timely manner; and (c) must commence performance thereof within five (5) days after providing notice to the CITY of their intention to take over the Work. Upon the failure of the sureties to comply with the provisions set forth above, CITY may take over the Work and complete it, at the expense of CONTRACTOR, and the CONTRACTOR and the sureties shall be liable to CITY for any excess costs or damages including those referred to in Paragraph 13 (Liquidated Damages), incurred by CITY. In such event, CITY may, without liability for so doing, take possession of such materials, equipment, tools, appliances, Contract Documents and other property belonging to CONTRACTOR as may be on the site of the Work and reasonably necessary therefor and may use them to complete the Work.

15. DISPUTES PERTAINING TO PAYMENT FOR WORK.

Should any dispute arise respecting whether any delay is excusable, or its duration, or the value of the Work done, or of any Work omitted, or of any extra Work which CONTRACTOR may be required to do, or respecting any payment to CONTRACTOR during the performance of this Agreement, such dispute shall be decided by the Project Manager, and his or her decisions shall be final and binding upon CONTRACTOR and its sureties.

16. SUPERINTENDENCE BY CONTRACTOR.

At all times during performance of the Work, CONTRACTOR shall give personal superintendence or have a competent foreman or superintendent on the worksite, with authority to act for CONTRACTOR.

17. INSPECTION BY CITY.

CONTRACTOR shall at all times maintain proper facilities and provide safe access for inspection by CITY to all parts of the Work and to all shops on or off-site where the Work or portions of the Work, are in preparation. CITY shall have the right of access to the premises for inspection at all times. However, CITY shall, at all times, comply with CONTRACTOR's safety requirements on the job site.

18. CARE OF THE WORK AND OFF-SITE AUTHORIZATION.

CONTRACTOR warrants that it has examined the site of the Work and is familiar

with its topography and condition, location of property lines, easements, building lines and other physical factors and limitations affecting the performance of this Agreement. CONTRACTOR, at CONTRACTOR's sole cost and expense, shall obtain any permission, and all approvals, licenses, or easements necessary for any operations conducted off the premises owned or controlled by CITY. CONTRACTOR shall be responsible for the proper care and protection of all materials delivered to the site or stored off-site and for the Work performed until completion and final inspection and acceptance by CITY. The risk, damage or destruction of materials delivered to the site or to Work performed shall be borne by CONTRACTOR.

19. CONTRACT SECURITY AND GUARANTEE.

CONTRACTOR shall furnish, concurrently with the execution of this Agreement, the following: (1) a surety bond in an amount equal to one hundred percent (100%) of the contract price as security for the faithful performance of this Agreement, and (2) a separate surety bond in an amount equal to at least one hundred percent (100%) of the contract price as security for the payment of all persons furnishing labor or materials in connection with the Work under this Agreement. Sureties for each of the bonds and the forms thereof shall be satisfactory to CITY. In addition, such sureties must be authorized to issue bonds in California; sureties must be listed on the latest revision to the U.S. Department of the Treasury Circular 570; and must be shown to have sufficient bonding capacity to provide the bonds required by the Contract Documents.

CONTRACTOR shall provide a certified copy of the certificate of authority of the surety issued by the Insurance Commissioner; a certificate from the clerk of the county in which the court or officer is located that the certificate of authority of the surety has not been surrendered, revoked, canceled, annulled, or suspended or, in the event that it has, that renewed authority has been granted; and copies of the surety's most recent annual statement and quarterly statement filed with the Department of Insurance pursuant to Article 10 (commencing with Section 900) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

CONTRACTOR guarantees that all materials used in the Work and all labor performed shall be in conformity with the Contract Documents including, but not limited to, the standards and specifications set forth in the most current edition of The Greenbook. CONTRACTOR shall, at its own expense, make any and all repairs and replacements that shall become necessary as the result of any failure of the Work to conform to the aforementioned Contract Documents, and/or standard specifications; provided, however, that CONTRACTOR shall be obligated under this provision only to the extent of those failures or defects of which CONTRACTOR is given notice within a period of twelve (12) months from the date that the Notice of Completion is recorded.

The rights and remedies available to CITY pursuant to this provision shall be cumulative with all rights and remedies available to CITY pursuant to statutory and common law, which rights and remedies are hereby expressly reserved, and neither the foregoing guarantee by CONTRACTOR nor its furnishing of the bonds, nor acceptance

thereof by CITY, shall constitute a waiver of any rights or remedies available to CITY against CONTRACTOR.

20. INDEMNIFICATION.

CONTRACTOR agrees to protect, defend, indemnify and hold harmless CITY and its elected and appointed boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury to or death of any person, and for injury or damage to any property, including consequential damages of any nature resulting therefrom, arising out of or in any way connected with the performance of 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.

CONTRACTOR shall comply with all of the provisions of the Workers' Compensation insurance laws and Safety in Employment laws of the State of California, including the applicable provisions of Divisions 4 and 5 of the California Labor Code and all amendments thereto and regulations promulgated pursuant thereto, and all similar State, Federal or local laws applicable; and CONTRACTOR shall indemnify and hold harmless CITY from and against all claims, liabilities, expenses, damages, suits, actions, proceedings and judgments, of every nature and description, including attorney fees, that may be presented, brought or recovered against CITY for or on account of any liability under or failure to comply with any of said laws which may be incurred by reason of any Work performed under this Agreement by CONTRACTOR or any subcontractor or others performing on behalf of CONTRACTOR.

CITY does not, and shall not, waive any rights against CONTRACTOR which it may have by reason of the above hold harmless agreements, because of the acceptance by CITY or the deposit with CITY by CONTRACTOR of any or all of the insurance policies described in Paragraph 21 (Insurance) of this Agreement.

The hold harmless agreements by CONTRACTOR shall apply to all liabilities, expenses, claims, and damages of every kind (including but not limited to attorneys' fees) incurred or alleged to have been incurred, by reason of the operations of CONTRACTOR

or any subcontractor or others performing on behalf of CONTRACTOR, whether or not such insurance policies are applicable. CONTRACTOR shall require any and all tiers of subcontractors to afford the same degree of indemnification to the CITY OF COSTA MESA and its elected and appointed boards, officers, agents, and employees that is required of CONTRACTOR and shall incorporate identical indemnity provisions in all contracts between CONTRACTOR and all tiers of its subcontractors.

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

21. INSURANCE.

(a) Minimum Scope and Limits of Insurance. CONTRACTOR shall not commence work under this Agreement until it has obtained all insurance required under this Paragraph 21 and CITY has approved the insurance as to form, amount, and carrier, nor shall CONTRACTOR allow any subcontractor to commence any Work until all similar insurance required of the subcontractor has been obtained and approved.

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:

- (i) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00) per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (ii) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00) combined single limit per accident for bodily injury and property damage.
- (iii) Workers' compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability insurance with a limit of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. 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.

- (iv) Umbrella or excess liability insurance that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall include the following terms and conditions:

- (1) A drop down feature requiring the policy to respond in the event that any primary insurance that would otherwise have applied proves to be uncollectable in whole or in part for any reason;
- (2) Pay on behalf of wording as opposed to reimbursement;
- (3) Concurrency of effective dates with primary policies;
- (4) Policies shall "follow form" to underlying primary policies; and
- (5) Insureds under primary policies shall also be insureds under the umbrella or excess policies.

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

- (i) 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 the CONTRACTOR pursuant to its contract with the City; products and completed operations of the CONTRACTOR; premises owned, occupied or used by the CONTRACTOR; automobiles owned, leased, hired, or borrowed by the CONTRACTOR."
- (ii) Notice: "Said policy shall not terminate, nor shall it be canceled nor the coverage reduced, until thirty (30) days after written notice is given to CITY."
- (iii) 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."

(c) Reporting Provisions. Any failure of CONTRACTOR 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.

- (d) Insurance Applies Separately. 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.

(e) 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.

(f) Proof of Insurance. Prior to commencement of the Work, CONTRACTOR shall furnish CITY, through the Project Manager, proof of compliance with the above insurance requirements in a form satisfactory to City's Risk Management.

(g) Non-Limiting. Nothing in this Paragraph 21 shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

22. PREVAILING WAGE REQUIREMENTS.

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

(b) Payment of Prevailing Wages. CONTRACTOR shall pay the prevailing wage rates for all work performed under this Agreement. When any craft or classification is omitted from the general prevailing wage determinations, CONTRACTOR shall pay the wage rate of the craft or classification most closely related to the omitted classification. A copy of the general prevailing wage rate determination is on file in the Office of the City Clerk and is incorporated into this Agreement as if fully set forth herein. CONTRACTOR shall post a copy of such wage rates at all times at the project site(s).

(c) Legal Working Day. In accordance with the provisions of Labor Code Section 1810 et seq., eight (8) hours is the legal working day. CONTRACTOR and any subcontractor(s) of CONTRACTOR shall comply with the provisions of the Labor Code regarding eight (8)-hour work day and 40-hour work week requirements, and overtime, Saturday, Sunday, and holiday work. Work performed by CONTRACTOR's or any subcontractor's employees in excess of eight (8) hours per day, and 40 hours during any one week, must include compensation for all hours worked in excess of eight (8) hours per day, or 40 hours during any one week, at not less than one and one-half times the

basic rate of pay. CONTRACTOR shall forfeit as a penalty to CITY Twenty-Five Dollars (\$25.00), or any greater penalty set forth in the Labor Code, for each worker employed in the execution of the Work by CONTRACTOR or by any subcontractor(s) of CONTRACTOR, for each calendar day during which such worker is required or permitted to the work more than eight (8) hours in one calendar day or more than 40 hours in any one calendar week in violation of the Labor Code.

(d) Apprentices. CONTRACTOR shall comply with the provisions of Labor Code Section 1777.5 concerning the employment of apprentices on public works projects. CONTRACTOR shall be responsible for ensuring compliance by its subcontractors with Labor Code Section 1777.5.

(e) Payroll Records. Pursuant to Labor Code Section 1776, CONTRACTOR and any subcontractor(s) shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by CONTRACTOR or any subcontractor in connection with this Agreement. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following: (1) The information contained in the payroll record is true and correct; and (2) The employer has complied with the requirements of Sections 1771, 1881, and 1815 of the Labor Code for any work performed by his or her employees on this Project. The payroll records shall be certified and shall be available for inspection at all reasonable hours in accordance with the requirements of Labor Code Section 1776. CONTRACTOR shall also furnish each week to CITY's Project Administration Division a statement with respect to the wages of each of its employees during the preceding weekly payroll period.

(f) Registration with DIR. CONTRACTOR and any subcontractor(s) of CONTRACTOR shall comply with the provisions of Labor Code Section 1771 and Labor Code Section 1725.5 requiring registration with the DIR.

23. COMPLIANCE WITH ALL LAWS.

CONTRACTOR shall, at its own cost and expense, comply with all applicable local, state, and federal laws, regulations, and requirements in the performance of this Agreement, including but not limited to laws regarding health and safety, labor and employment, and wage and hours.

24. DRUG-FREE WORKPLACE POLICY.

CONTRACTOR, upon notification of the award of this Agreement, shall establish a Drug-Free Awareness Program to inform employees of the dangers of drug abuse in the workplace, the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace, and the employee assistance programs available to employees. Each employee engaged in the performance of a CITY contract must be notified of this Drug-Free Awareness Program, and must abide by its terms.

CONTRACTOR shall conform to all the requirements of CITY's Policy No. 100-5, attached hereto. Failure to establish a program, notify employees, or inform the CITY of a drug-related workplace conviction will constitute a material breach of contract and cause for immediate termination of the contract by the CITY.

25. NON-DISCRIMINATION.

In performing this Agreement, CONTRACTOR will not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status or sex, or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code. Violation of this provision may result in the imposition of penalties referred to in Section 1735 of the California Labor Code.

26. PROVISIONS CUMULATIVE.

The provisions of this Agreement are cumulative and in addition to, and not in limitation of, any other rights or remedies available to CITY.

27. NOTICES.

It shall be the duty and responsibility of CONTRACTOR to notify all tiers of subcontractors and material men of the following special notice provision; namely, all preliminary 20-day notices or stop notices shall be directed only to the City Clerk and to no other department, and shall be either personally delivered or sent by certified mail, postage prepaid.

All other notices shall be in writing and delivered in person or sent by certified mail, postage prepaid. Notices required to be given to CITY pursuant to this Agreement shall be addressed as follows:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: Robert Ryan

Notices required to be given to CONTRACTOR shall be addressed as follows:

Prosurface, Inc.
P.O. Box 80878
Rancho Santa Margarita, CA 92688
Attn: Jeff Frantz, President

28. INDEPENDENT CONTRACTOR.

The parties hereto acknowledge and agree that the relationship between CITY and

CONTRACTOR is one of principal and independent contractor and no other. All personnel to be utilized by CONTRACTOR in the performance of this Agreement shall be employees of CONTRACTOR and not employees of the CITY. CONTRACTOR shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes. Nothing contained in this Agreement shall create or be construed as creating a partnership, joint venture, employment relations, or any other relationship except as set forth between the parties. The parties specifically acknowledge and agree that CONTRACTOR is not a partner with CITY, whether general or limited, and no activities of CITY or CONTRACTOR or statements made by CITY or CONTRACTOR shall be interpreted by any of the parties hereto as establishing any type of business relationship other than an independent contractor relationship.

29. 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.

30. VALIDITY.

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any of the other provisions of this Agreement.

31. GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any legal action relating to or arising out of this Agreement shall be subject to the jurisdiction of the County of Orange, California.

32. NO THIRD PARTY BENEFICIARY RIGHTS.

This Agreement is entered into for the sole benefit of the 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.

33. ASSIGNABILITY.

This Agreement may not be transferred or assigned by either party, or by operation of law, to any other person or persons or business entity, without the other party's written permission. Any such transfer or assignment, or attempted transfer or assignment, without written permission, may be deemed by the other party to constitute a voluntary termination of this Agreement and this Agreement shall thereafter be deemed terminated and void.

34. WAIVER.

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 referring expressly to this Paragraph. 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.

35. HEADINGS.

Section and subsection headings are not to be considered part of this Agreement, are included solely for convenience, and are not intended to modify or explain or to be a full or accurate description of the content thereof.

36. CONSTRUCTION.

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

37. COUNTERPARTS.

This Agreement may be executed in one or more counterparts by the parties hereto. All counterparts shall be construed together and shall constitute one Agreement.

38. CORPORATE AUTHORITY.

The persons executing this Agreement on behalf of the parties hereto warrant that

they are duly authorized to execute this Agreement on behalf of said parties and that by doing so, the parties hereto are formally bound to the provisions of this Agreement.

[Signature page follows.]

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

CITY OF COSTA MESA
A municipal corporation



Lori Ann Farrell Harrison
City Manager

Date: 8/27/24

CONTRACTOR – PROSURFACE, INC.



Signature

Date: 7/23/2024

Jeff Frantz, President

ATTEST:



Brenda Green
City Clerk



Date: 9/4/2024

APPROVED AS TO FORM:



Kimberly Hall Barlow
City Attorney

Date: 8/21/24

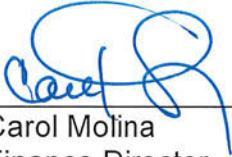
APPROVED AS TO INSURANCE:



Ruth Wang
Risk Management

Date: 7/30/24

APPROVED AS TO PURCHASING:



Carol Molina
Finance Director

Date: August 14, 2024

DEPARTMENTAL APPROVAL:



Raja Sethuraman
Public Works Director

Date: 8-5-24



Robert Ryan
Project Manager

Date: JULY 23, 2024

EXHIBIT A.

CONTRACTOR'S BID

PROSURFACE INC.

"The Sport Surface Specialists"

Phone: (714)348-6427

TERMS AND CONDITIONS

- Price subject to change if not accepted within 15 days.
- Customer has a "Three Day Right to Cancel" upon acceptance of this contract without penalty.
- Prices do not include project bonds, testing, permits, architectural drawings inspections or engineering costs.
- Payment requests; 50% deposit for custom materials and scheduling, 50% due upon completion. (Deposit amounts may vary, per agreement between parties).
- Any invoice not paid in 30 days is subject to a \$100.00 per day service charge.
- Foundation blemishing and structural conditions such as cracking, chipping, "heaving" or broken concrete may not be permanently eliminated and cannot be guaranteed. *Cracking will reoccur.* In some cases, cracks may return immediately after court resurfacing due to a wide range of temperatures (which will cause concrete to contract and expand), age of the slab, and moisture penetration. Crack filling will not fuse preexisting structural separation of concrete. Generally, cracks which reappear will start as hairline cracks, and overtime will return to their original size (unless maintained more frequently). Structural blemishes are result of the foundation and cannot be guaranteed. Regular scheduled court resurfacing/maintenance may help to contain courts imperfections, but will not permanently correct foundation blemishing.
- Surface detachment/peeling or bubbling is a result of underlying moisture conditions and cannot be guaranteed. This may occur when sub-surface water becomes excessive and/or is not properly drained away from the court, it can breathe through the slab in a vapor form and create hydrostatic pressure under the coatings, creating surface detachment/peeling or bubbles. Surface buildup from multiple court resurfacings can also trap moisture and cause the surface to detach from concrete or asphalt. Complete surface removal by Hydroblasting is the best means to minimize the likelihood of surface detachment (recommended for courts which have had several resurfacings). Diamond Grinding is also another effective technique of surface removal.
- ASR conditions and reoccurring efflorescence may not be permanently contained. Court materials may assist in delaying this occurrence, but will not act as a permanent barrier or seal to eliminate underlying conditions.
- Surface installation will not change the slope or pitch of the court. Court surfacing is primarily to provide a playable court speed, and a cosmetically attractive and safe playing surface. Court leveling can be provided to fill low areas or "bird baths", but is not included in the scope of work unless specified.
- Court repairs and resurfacing will be completed in a timely matter, with reasonable weather.
- Prosurface Inc honors a limited one-year warranty on materials in the event of unusual discoloration or failure of the surface under normal conditions. The one-year warranty is limited from the date of project completion.

Initial: _____ Date: _____

BID

We propose hereby to furnish material, labor, special equipment and delineation in accordance with the Scope of Work in its entirety.

| Site | Description | Cost |
|--|---|------------------|
| Costa Mesa Tennis Center 880 Junipero Drive Costa Mesa, CA 92626 | Repair and Resurface Tennis Courts 7, 8, 9 and 10. Convert Tennis Courts 11 and 12 to eight (8) regulation pickleball courts. All nets, posts and materials included. | \$122,795 |
| TOTAL: | | \$122,795 |

Bidder acknowledges by signing below that bidder has read, understands, and agrees to the conditions contained herein and on all of the attachments and addenda.

TO THE CITY OF COSTA MESA:

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

All material is guaranteed to be as specified, all work to be completed in a workmanlike manner according to standard practices, according to terms and conditions on the attached hereon and made a part thereof. A purchase order will not be issued until the insurance certificate is approved by Risk Management. Bid may be withdrawn by Contractor if not accepted within 30 days.

For clarification of this offer, contact:

PROSURFACE INC.
Company Name

P.O. Box 80878
Address (Mailing)

Rolling Santa Margarita, CA 92688
City, State, Zip

[Signature]
Signature of Person Authorized to Sign

JEFF FRANTZ
Printed Name

PRESIDENT
Title

JEFF FRANTZ
Name

PRESIDENT
Title

[Redacted]
Phone

N/A
Fax

JEFF@PROSURFACE.NET
E-mail

*** PLEASE NOTE PROSURFACE TERMS & CONDITIONS, ATTACHED.**

EXHIBIT B
BID PACKAGE



**CITY OF COSTA MESA
CALIFORNIA**

REQUEST FOR BID

This is not an order

INSTRUCTIONS:

1. Read terms and conditions on reverse side.
2. Bid must be on this form.
3. Complete and sign all pages of the bid.
4. Return this form plus all Attachments.
5. Bid on each item separately; all or none bids may not be accepted unless otherwise specified.
6. Price alone may not be the final determining factor.
7. Declaration - in the event you elect not to quote, please inform us on this form and return by the bid due date indicated.
8. Out of state vendors must include California sales tax permit number.

Date: June 17, 2024

BIDS DUE: July 8, 2024 @ 1:00pm

EMAIL: robert.ryan@costamesaca.gov

BIDS ARE REQUESTED FOR FURNISHING THE ITEMS DESCRIBED HEREIN IN ACCORDANCE WITH STATED TERMS AND CONDITIONS. RETAIN ONE COPY AND ALL BIDS MUST BE SIGNED.

**ALL BIDS MUST BE F.O.B. DESTINATION AND INCLUDE COST OF BOXING AND CARTAGE TO DELIVERY POINT STATED BELOW.
BIDS ARE TO INCLUDE ANY FREIGHT AND DELIVERY CHARGES IF APPLICABLE.**

**BID YOUR MOST COMPETITIVE PRICES
PREVAILING WAGE REQUIREMENTS APPLY TO PROJECTS OVER \$1,000**

FOR: Sports Court Resurfacing

CONTACT PERSON: Robert Ryan (714) 327-7499

VENDOR IS REQUIRED TO PROVIDE A COMPLETED MSDS (MATERIAL SAFETY DATA SHEET) FOR HAZARDOUS SUBSTANCES AS REQUIRED BY LABOR CODE SECTION 6390, GENERAL INDUSTRIAL SAFETY ORDER, SECTION 5194 AND CALIF. ADMINIS. CODE TITLE 8. MSDS SHEET FOR EACH SPECIFIED ITEM SHALL BE SENT TO PLACE OF SHIPMENT, AND A COPY SENT TO THE PURCHASING DIVISION.

**THE CITY OF COSTA MESA RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS.
LOWEST QUALIFIED BID MAY BE SUBJECT TO FURTHER NEGOTIATIONS.**

THE CITY OF COSTA MESA WILL ACCEPT CASH DISCOUNTS FOR PROMPT PAYMENT OF INVOICES IF THE LONGER TERM OFFERED IS FOR TWENTY (20) WORKING DAYS OR LONGER.

TERMS _____ % _____ DAYS

**PLEASE QUOTE YOUR BEST DELIVERY IN
CALENDAR DAYS: _____**

The undersigned, as bidder, declares that all documents regarding this bid have been examined and accepted and that, if awarded, will enter into a price agreement with the city of Costa Mesa.

PROSURFACE INC.

Company name as it appears on your invoices

PO Box 80878

Address

Telephone

Rancho Santa Margarita CA 92688

City

State

Zip

[Signature]

Authorized Signature

PRESIDENT

Title

[Redacted]

Federal I.D. Number

7/8/2024

Date

CONDITIONS: The following standard conditions are always applicable, and the following work order conditions are also applicable when this order provides for performance of any work.

STANDARD CONDITIONS

Law: This contract is governed by the laws of the State of California. The provisions of the Uniform Commercial Code shall apply except as otherwise set forth in this contract.

Contract: This order, when accepted by SELLER either in writing or by the shipment of any article or other commencement of performance hereunder, constitutes the entire contract between SELLER and the CITY, no exceptions, alternates, substitutes or revisions are valid or binding on the CITY unless authorized by the CITY in writing. The SELLER acknowledges that he has read and agrees to all terms and conditions of this contract/purchase order. The only terms and conditions that will be applicable to the interpretation of this contract are those issued by the City of Costa Mesa.

Taxes: Unless otherwise provided herein or by law, price quoted does not include California State sales or use tax. The City is exempt from Federal excise tax.

Delivery: Time of delivery is the essence of this contract. The CITY reserves the right to refuse any goods and to cancel all or any part of the goods not delivered by the due date and/or not conforming to applicable specifications, drawings, samples or descriptions. Acceptance of any part of the order shall not bind CITY to accept future shipments, nor deprive it the right to return goods already accepted, at SELLER'S expense. Over-shipments and under-shipments shall be only as agreed to by CITY.

Risk of Loss: Delivery shall not be deemed to be complete until goods have been actually received and accepted by CITY. Payment shall be made after satisfactory acceptance of shipments by the CITY.

Warranty: SELLER expressly warrants that the goods covered by this order are of merchantable quality, satisfactory and safe for consumer use, and are fit for the particular purpose as set forth in the CITY'S specification. Acceptance of this order shall constitute an agreement upon SELLER'S part to indemnify and hold harmless from liability, loss, damage and expense, including reasonable attorney fees, incurred or sustained by CITY, its officers, employees and agents, by reason of the failure of the goods to conform to such warranties, faulty work performance, negligent or unlawful acts, and noncompliance with any applicable local, State or Federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law. Inspection by the City of Costa Mesa or its agents or employees and acceptance of the articles, materials and work covered by this contract shall not constitute release or waiver of the City of Costa Mesa's rights by reason of failure of Contractor to comply with any of the warranties contained herein. Warranties herein expressed or implied shall be construed as consistent with each other and as cumulative and, where in conflict, the specifications of the City of Costa Mesa shall be paramount.

Infringement: SELLER shall indemnify and defend CITY, at SELLER'S expense, against all claims, demands, suits, liability and expense on account of alleged infringement of any patent, copyright or trademark, resulting from or arising in connection with the manufacture, sale, normal use or other normal disposition of any article or material furnished hereunder.

Assignment: Neither this order nor any claim against CITY arising directly or indirectly out of or in connection with this order shall be assignable by SELLER or by operation or law, nor shall SELLER subcontract any obligations hereunder, without CITY'S prior written consent.

Default: If SELLER or any subcontractor breaches any provision hereof, or becomes insolvent, enters bankruptcy, receivership or other like proceeding (voluntarily or involuntarily) or makes assignment for the benefit of creditors, CITY shall have the right, in addition to any other rights it may have hereunder or by law, to terminate this order by giving SELLER written notice whereupon (a) CITY shall be relieved of all further obligation hereunder, except to pay the reasonable value of SELLER'S prior performance, but not more than the contracted price, and (b) CITY may procure the articles or services from other sources and may deduct from unpaid balance due the vendor or may collect against the bond or surety, or may invoice the vendor for excess cost so paid. The price paid by CITY shall be considered prevailing market price at the time such purchase is made.

Labor Disputes: Whenever any actual or potential labor dispute delays or threatens to delay the timely performance of this order, SELLER shall immediately give written notice thereof to CITY.

Nondiscrimination: In the performance of the terms of any contract resulting from this order, SELLER agrees that they will not engage nor permit such subcontractors, where applicable as he may employ, from engaging in discrimination in employment of persons because of the race, color, sex, national origin or ancestry, disability or religion of such person.

Termination: The CITY reserves the right to terminate this contract without penalty and without cause after 30 days' written notice unless otherwise specified.

Labor Code Section 1771.1 (A): A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

WORK ORDER CONDITIONS

Performance: SELLER shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all labor, supervision, machinery, equipment, materials and supplies necessary therefor; shall obtain and maintain all building and other permits and licenses required by public authorities in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors. SELLER shall conduct all operations in SELLER'S own name and as independent contractor, and not in the name of, or as an agent for CITY.

Indemnification: The Contractor hereby agrees to defend at his own cost and to indemnify and hold harmless the City of Costa Mesa, its officers, agents and employees, from and against any and all liability, damages, costs, losses, claims and expenses, howsoever caused, resulting directly or indirectly from or connected with the performance of the contract (including but not limited to such liability, costs, damage, loss, claim, or expense arising from the death or injury to an agent or employee of the Contractor, subcontractor, or the City of Costa Mesa or loss of, damage to, or destruction of the property of Contractor, subcontractor, or of the City of Costa Mesa, or of any agent or employee of the Contractor, subcontractor, or of the City of Costa Mesa), except where such liability, damages, costs, losses, claims or expenses are caused solely by the negligent or wrongful acts of the City of Costa Mesa or any of its agents or employees other than negligent omission or commissions of the City of Costa Mesa, its agents or employees, in connection with the general supervision or direction of the work to be performed hereunder. The Contractor, in addition to the foregoing, specifically shall indemnify and save harmless the City of Costa Mesa, any and all of the City of Costa Mesa's officers, agents, and employees, from any liability by reason of California safe place statutes or similar provisions pertaining to the workplace or safety of materials or equipment supplied by the City of Costa Mesa or others at the direction of the City of Costa Mesa and used in the performance of the work hereunder.

Insurance: SELLER shall maintain in full force during the term of this contract the following insurances, in a form and with companies as approved by the CITY, with limits not less than those specified: (a) Worker's Compensation and Employer's Liability complying with any statutory requirements; (b) Commercial General Liability insurance including broad form property damage, products/completed operations and contractual liability coverage, with a \$1,000,000 combined single limit each occurrence; Endorsements to the Commercial General Liability insurance shall be obtained by contractor, adding the following three provisions; (1) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to the

subject project and agreement." (2) Notice: "Said policy shall not terminate, nor shall it be cancelled nor the coverage reduced, until thirty (30) days after written notice is given to City." (3) Other Insurance: "Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy." (c) Comprehensive Auto Liability (Including the owned, non-owned and hired automobile hazards) with \$1,000,000 combined single limit each occurrence. If the CITY so desires, these limits may be increased or decreased.

Bills and Liens: SELLER shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. SELLER shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, SELLER shall promptly procure its release and indemnify CITY against all damages and expense incident thereto.

Bonds: If the CITY so desires, SELLER shall provide payment and performance bonds as required.

Changes: SELLER shall make no change in the work or perform any additional work without the CITY'S specific written approval.

MISCELLANEOUS CONDITIONS

All plants and materials must be free of pests and disease. If any are found, the material will be rejected and refused. Vendor will pick up at no cost to the CITY.

Vendor is required to provide a completed MSDS (Material Safety Data Sheet) for hazardous substances as required by Labor Code Sections 6390; General Industrial Safety Order, Section 5194; and Title 8, California Admins. Code. MSDS sheet for each specified item shall be sent to place of shipment, and a copy sent to the Purchasing Division.

DEFINITION

Whenever used herein, "CITY" shall mean, City of Costa Mesa, a political subdivision of the State of California.

(5146-22)

City of Costa Mesa Insurance Requirements

If a vendor will be performing work on city premises, the vendor will need to furnish insurance certificates to the City prior to beginning work. The insurance that is required is the general liability with a separate endorsement page (detailed description below), automobile insurance and workers compensation.

A purchase order will not be issued until, insurance certificates are provided and the insurance is approved by Risk Management. It will be the responsibility of the department requesting the work to obtain the insurance certificates prior to submitting the purchase requisition to the Finance Department. Any questions about insurance dollar limits for select projects are to be directed to Risk Management prior to the bid process.

The following language is added to bids, price agreement/ contracts and purchase orders for technical and mechanical services:

Insurance

Contractor shall not commence work under this price agreement until he has obtained all insurance required under this section and the insurance has been approved by City as to form, amount, and carrier, nor shall contractor allow any subcontractor to commence any work until all required insurance has been similarly obtained by the subcontractor and approved by City.

Neither the failure of contractor to supply specified insurance policies and coverage, nor the failure of City to approve same shall alter or invalidate the provisions of this price agreement. Contractor shall obtain and maintain during the life of this contract the following insurance coverage:

General Liability Insurance Coverage

Commercial General Liability, including coverage for premises-operations, products/completed operations hazard, blanket contractual, broad form property damage, independent contractors, and personal injury. The above insurance coverage shall have limits of not less than one million dollars (\$1,000,000) combined single limit, per occurrence and aggregate.

General Liability Endorsement Page (*A separate policy endorsement must be provided)

Endorsements to the policies providing the above insurance shall be obtained by contractor, adding the following three provisions:

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

All insurance carriers utilized by the contractor or any subcontractor under this agreement shall be approved by the California Department of Insurance to transact business in the State of California. The types of services provided under this agreement may further require contractor's insurance carrier(s) to be admitted insurers in the State of California.

Workers' Compensation Insurance

Contractor shall obtain and maintain during the life of this contract workers' compensation insurance in statutory amount and, if any work is sublet, contractor shall require all subcontractors to obtain workers' compensation insurance in statutory amount.

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 Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

All workers' compensation insurance policies shall provide that the insurance may not be canceled without thirty (30) days advance written notice of such cancellation to City. Contractor is aware of the provision of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or undertake self-insurance in accordance with the provisions of that Code, and will comply with such provisions before commencing the performance of the work of this contract.

Automobile Insurance

Automobile insurance including owned, hired, and non-owned vehicles. The above insurance coverage shall have limits of not less than one million dollars (\$1,000,000) combined single limit, per occurrence and aggregate.

Proof of Insurance

Prior to award of the price agreement/contract, contractor shall furnish the department requesting the service proof of compliance with the above insurance requirements.

The insurance certificates must be approved by the Risk Management Division and a copy needs to be sent to the Finance Department with the purchase requisition. It is ultimately the responsibility of the department requesting the service, to obtain the required insurance.

If purchase requisition is received without appropriate insurance certificates, Purchasing may return the requisition to the department or contact the contractor and request the appropriate insurance certificates.

SCOPE OF WORK

SECTION 1. CONSTRUCTION DETAILS

1.01 SPECIFICATIONS - The work to be done shall be performed or executed in accordance with these Special Provisions, the General Provisions included herewith and the Standard Specifications, hereinafter referred to as the Greenbook Specifications, unless otherwise specified by representative of the City of Costa Mesa.

1.02 DESCRIPTION - Under the terms of the Contract, the work shall consist of furnishing all labor, materials, tools, equipment, and incidentals for the complete resurfacing of sports courts.

1.03 TIME LIMIT AND SPECIAL SCHEDULE REQUIREMENTS - The Contractor shall under the terms of the Contract, diligently prosecute the work to completion before the expiration of **FORTY (40) WORKING DAYS**. Working hours shall be from 7:00 AM to 5:00 PM Monday through Friday, excluding legal holidays.

The contractor is required to perform the resurfacing in such a manner that the Tennis Courts that are not subject to resurfacing under this project (Courts 1 - 6) are available for public use during the duration of the project. **The work shall include converting Tennis Center Courts 11 and 12 to eight (8) Pickleball Courts. The contractor may not proceed with the work on Courts 11 and 12 until the resurfacing on Tennis Courts 7 thru 10 has been completed, inspected, and accepted by the City.**

1.04 LIQUIDATED DAMAGES - The work shall be diligently prosecuted to completion before the expiration of the **WORKING DAYS** allocated for this project. The Contractor shall pay to the City the sum of **\$700.00 per day** for each calendar day's delay in finishing the work after expiration of the number of working days of the contract.

Liquidated Damages = Fifteen percent x Total Estimate / Working days 15% x
184,000/40 = \$700.00 (min. \$300 rounded up to nearest \$100).

1.05 PENALTY-WORK BY CITY FORCES BECAUSE OF NON-CONFORMANCE TO CONTRACT BY CONTRACTOR - continuous inspection shall be conducted by the City's representative. Deficiencies shall be called to Contractor's attention immediately.

Should the Contractor fail to complete the scheduled daily work due to equipment failure or unsuitable materials, the City shall be entitled to recover costs incurred for additional labor costs, and any other costs involved in rescheduling the affected areas.

1.06 REMOVALS - The Contractor shall be responsible for removing and disposing of all interfering materials within the work limits using methods approved by the City's representative so as to accommodate the construction of various work items described in the Specifications.

1.07 LANDSCAPE AND IRRIGATION SYSTEM - DAMAGE VIA CONTRACTOR - If any or all of an irrigation system is damaged or destroyed by the Contractor's operations, it must be restored or replaced at the Contractor's expense with an irrigation system and/or components of the same exact brand, size, quality, etc. as the existing system and the replacement shall be approved by the City's Project Manager or his/her designee. The contractor shall provide to the City detailed documentation showing all specified material used in the repair or replacement.

1.08 SURVEYING - All surveying necessary to complete this project shall be in accordance with Section 2-9 of the Greenbook Specifications and shall be provided by the Contractor. All costs prescribed by the Greenbook Specifications and these Special Provisions relative to Surveying shall be included in the individual unit price for each bid item included herein.

1.09 GUARANTEE - In addition to guarantees required elsewhere, the Contractor shall and hereby does guarantee all Work for a period of one (1) year after the date of acceptance of the Work by the City and shall repair and replace any and all such Work, together with any other work which may be displaced in so doing that may prove defective in workmanship and/or materials within the one (1) year period from date of acceptance, without expense whatsoever to the city, ordinary wear and tear and usual abuse or neglect excepted. In the event of failure to comply with the above-mentioned conditions within five (5) days after being notified in writing, the City is hereby authorized to proceed to have the defects repaired and made good at the expense of the Contractor, who shall pay the cost and charges therefore immediately upon demand.

SECTION 2. GENERAL CONDITIONS FOR CONSTRUCTION

2.01 LAYOUT OF WORK - The Contractor shall lay out the work to true lines and grades in full accord with the rules of the United States Tennis Association (Tennis Courts), USA Pickleball Association (Pickleball Courts). The Contractor shall provide coating and line size in the colors specified by City's Representative. Submit color samples for approval.

2.02 CORRECTIVE WORK - The Contractor shall secure proper written authorization for any corrective that the Contractor believes is the responsibility of the Owner.

2.03 ELECTRICAL POWER - The Contractor shall furnish electrical power at the construction site for the performance of the work. The contractor shall furnish, install, maintain, and remove any temporary wiring or piping that may be additionally required.

2.04 SUPERVISION AND DIRECTION - The Contractor shall be responsible for the supervision and direction of the work. The Contractor shall direct his authorized staff and/or subcontractors as deemed necessary and consistent with good construction practices.

2.05 MEANS AND METHODS - The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the work. Unless specifically noted otherwise, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction machinery and transportation necessary for proper execution and completion of the work.

2.06 PROTECTION OF THE PUBLIC - The Contractor shall erect and maintain temporary fencing, barricades, canopies, guards, lights, and warning signs to the extent required by law or reasonably necessary for the protection of the public.

2.07 PREMISES - The Contractor shall, at all times, keep the premises clean and free of accumulated waste materials and rubbish caused by the operations. At the final completion of the job, the Contractor shall restore all areas damaged in the course of the work to their pre-existing condition and is responsible for cleanup and removal of debris related to the work performed to complete this project.

The Contractor shall protect the work through whatever means necessary during the construction operations and shall bear the sole responsibility for protecting the work until completed and accepted by the City. Temporary fencing, barricades or other devices may be erected at the Contractor's cost with prior City approval.

SECTION 3. WORK DESCRIPTION

3.01 TENNIS COURTS – Provide materials and labor to refurbish courts 7, 8, 9 and 10 at the Costa Mesa Tennis Center located at 880 Junipero Drive, Costa Mesa, CA 92626. See Exhibit A. Work shall consist of the preparation of the existing Tennis Court surfaces, grinding existing lines and "floor sanding" the entire surface of the courts as required. Once prepped, SportMaster acrylic all weather wearing surface, including court lines, and pertaining thereto will be installed.

3.02 PICKLEBALL COURTS – Provide materials and labor to refurbish and convert Tennis Courts 11 and 12, at the Tennis Center, to 8 Pickleball Courts. Installation of Pickleball Nets and Dividing Nets per layout in Exhibit B. Work shall consist of the preparation of the existing Tennis Court Surface, removal of existing lines and the installation of the SportMaster acrylic all weather wearing surface, including court lines, layout and core drill for 16 Pickleball Net Posts, layout and core drill for 8 Dividing Net Posts and pertaining thereto. All lines shall be painted with an additional acrylic paint coating to ensure tennis lines are not visible through the pickleball court surface.

3.03 QUALIFICATIONS OF CONTRACTOR - The work involved in these specifications must be performed in a safe and workmanlike manner by a Contractor possessing all surface manufacturer's approved qualifications and approved under the City of Costa Mesa's criteria as set forth.

The contractor and workers who will complete the designated work shall be well acquainted with the requirements of the scope of work, be competent in their trade, and have sufficient experience to properly perform this work. Qualified supervision shall be on the job site during all working hours.

3.04 PICKLEBALL NET POST INSTALLATION- Pickleball Net Posts shall be anchored to the concrete slab with anchor bolts. A center-court anchor will be installed on each pickleball court, which is in the areas where the center net strap can be adjusted to 34".

3.05 DIVIDING NET POST INSTALLATION- Dividing Net Post shall anchored to the concrete slab with anchor bolts. The Dividing Net, located between the Pickleball Courts, center of Footings shall be placed 50 feet and 4 inches apart. The posts shall rest no higher than 1 inch above the net chord.

SECTION 4. PRODUCTS AND MATERIALS

4.01 SPECIFIED MATERIALS- All materials specified below are done so as to set a standard of quality and performance. Alternate materials may be substituted with the approval of the City or their representative following the guidelines established in the SUBMITTALS section.

4.02 ACRYLIC CRACK FILLING AND LEVELING MATERIAL – Cracks, low spots and 'pop-out' areas will be filled. A blend of Acrylic Patch Binder, cement and sand will be mixed in amounts to provide the required texture and adhesion qualities. All patches will be sanded or

grinded to ensure a flat and consistent finish.

4.03 ACRYLIC RESURFACER- One (1) SportMaster Acrylic Resurfacer base and sand coat shall be applied to the entire area to be surfaced. Wedron "round" 60 Silica Sand shall be mixed to the material in the amount as required to provide the necessary finish prior to applying the final color coating.

4.04 ACRYLIC COLOR COATING- The courts shall receive one (1) SportMaster Color Concentrate coating with #90 Wedron "round" silica sand to provide a surface with medium to low speed. The pickleball play areas will receive an additional color coat (3 coats total).

- Color of Interior Tennis and Pickleball Courts shall be Pacific Blue.
- Color of Outer Tennis and Pickleball Courts shall be Light Green.
- Color of Non-Volley Zone of Pickleball Courts shall be Light Blue.

4.05 LINE PAINT- Line paint shall be highly pigmented; 100% acrylic line marking paint for use on Tennis, Pickleball, Basketball and Racquetball courts or other recreational game markings.

4.06 PICKLEBALL NET, DIVIDING NET, POST AND SLEEVE PRODUCTS – The Pickleball Net shall be made of 3 mm braided polyethylene with a 23 oz vinyl headband steel cable and vinyl tape on sides and bottom. The Pickleball Net shall be 22 feet in length and 36 inches in height at the posts, and 34 inches in height at the center of the net. The steel cable shall be at least 27 feet long with ½ inch fiberglass dowels.

The Pickleball Net Posts shall be made of square steel and black in color, have a wall thickness of at least ¼ inch thick, have an outside diameter of at least 2-7/8 inch, and a 54 inch overall length. Removable aluminum Handle and Ratchet must also be provided with the Net Posts. PVC sleeves and caps shall be installed for use with Net Posts. PVC Sleeves shall match Net Posts in diameter and be approximately 2 feet in length.

4 (four) Dividing Nets shall be installed and made of 3 mm braided polyethylene with vinyl tape on sides and bottom. Each Dividing Net, located between the Pickleball Courts, shall be 22 feet in length and 48 inches in height. Dividing Net Posts shall be black and secured and anchored to the cement.

SECTION 5. SCOPE OF WORK

5.01 SURFACE PREPARATION- To allow for the proper bonding of all new materials, the Contractor shall clean all areas of each sports court with a pressure wash system, prior to start of work. Scrape and thoroughly clean entire surface area of courts utilizing a mechanical, commercial grade, air blowing equipment, scrapers and floor sanding where required, to provide a suitable, consistent, uniform base to install the new surface.

In areas where the existing surface coating shows signs of delamination, the Contractor shall remove all loose or delaminated surface coating by 10,000 PSI hydro-blasting. All water runoff and debris from hydro-blasting will need to be captured and vacuumed by the Contractor per NPDES requirements. Subsequent to the blasting process, the Contractor shall prime the surface in accordance to the coating manufacturer's specifications.

The Contractor shall remove all deteriorated or protruding caulking materials at construction joints on all courts and shall re-caulk all construction joints with Sika Flex 2C SL.

All surface preparation shall be approved by the City's Representative prior to commencing any sports court improvement work.

5.02 WATER TESTING AND COURT LEVELING/CRACK SEALING – Upon the completion of the surface scraping and cleaning, the entire surface area of each court shall be checked for low areas. This shall be accomplished by virtue of water testing. The area shall be flooded with water and allowed to drain for ninety minutes during a sunlit day with a minimum ambient air temperature of 70 degrees Fahrenheit. Any area over 1/8 inch in depth shall be considered a low area depression and unacceptable. All such low areas shall be outlined with a suitable marking implement.

All low areas, which have been outlined in accordance with the procedure provided in the above section, shall be patched with an approved Crack Filling and Leveling product for the purposes of minimizing low areas where water will collect. The manufacturer's specifications for the preparation and use of their product shall be followed.

Grind all humped and heaves areas, as well as any cracks which are not level, and patch to make as even as possible with surrounding surface area. The manufacturer's specifications for the preparation and use of their product shall be followed.

All cracks shall be thoroughly cleaned by whatever means necessary (the manufacturer's specifications for the preparation and use of their product shall be followed) to provide full access to the entire crack, thus allowing proper adhesion of the crack filling material. Any excess materials above and around the cracks on the court shall be removed.

5.03 APPLICATION OF ACRYLIC RESURFACER– After completion of the above preparation work, One (1) SportMaster Acrylic Resurfacer base and sand coat shall be applied to the entire area to be surfaced. Wedron "round" 60 Silica Sand shall be mixed to the material in the amount as required to provide the necessary finish prior to applying the final color coating.

S-5.04 APPLICATION OF ACRYLIC COLOR SEALER– After the completion of the SportMaster Acrylic Resurfacer base installation, the court shall be cleaned again in preparation for the application of the acrylic coatings.

Provide and install one (1) SportMaster Color Concentrate coating with #90 Wedron "round" silica sand to provide a surface with medium to low speed. The pickleball play areas will receive an additional color coat (3 coats total).

- Color of Interior Tennis and Pickleball Courts shall be Pacific Blue.
- Color of Outer Tennis and Pickleball Courts shall be Light Green.
- Color of Non-Volley Zone of Pickleball Courts shall be Light Blue.

Submit color samples to the City's Representative for approval prior to application of color sealer. See Exhibit C.

5.05 APPLICATION OF LINE PAINT– Layout, tape, seal hand paint playing lines per manufacturers specs. All court lines shall be accurately located and Tennis Courts shall be marked in accordance with the rules of the United States Tennis Association and Pickleball Court shall be marked in accordance with the rules of the USA Pickleball Association. All court layouts must be approved by the City's Representative prior to final painting. All lines shall match the dimensions of the pre-existing markings. All lines shall be painted with textured white.

See Exhibit D. Line paint provided by the approved manufacturer. Playing lines shall be tapes, and the tape sealed and then painted to provide straight lines with sharp edges.

5.06 STORAGE AND MIXING- Contractor is responsible for proper storage of the acrylic products, as well as the sand aggregate, to be used for this project. Contractor is also responsible for the proper mixing ratios for each product used and for the proper completion of this project. The approved acrylic products should all have specified and recommended mixing ratios, to be submitted to the City's Representative.

SECTION 6. SUBMITTALS

6.01 SUBMITTALS AND SUBSTITUTIONS – The materials, products and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution.

No substitutions will be considered unless written request for approval has been received by the City or the City's authorized representative within seven (7) days after the date of receipt of Bids. Such request shall include the name of the product to be substituted, manufacturer's information and a complete description of the proposed substitution.

A statement setting forth changes in the work of other contractors, that incorporate the proposed substitution would require, shall be included. The burden of proof of the merit of the proposed substitution is upon the proposer. The City or the City's authorized representative's decision of approval or disapproval of a proposed substitution shall be final. If the owner approves a proposed substitution prior to the receipt of bids, such approval shall be set forth in an Addendum. Bidders should not rely upon approvals made in any other manner. No substitutions shall be considered after the contract award unless specifically provided in the Contract Documents.

BID

We propose hereby to furnish material, labor, special equipment and delineation in accordance with the Scope of Work in its entirety.

| Site | Description | Cost |
|--|---|------------------|
| Costa Mesa Tennis Center 680 Junipero Drive Costa Mesa, CA 92626 | Repair and Resurface Tennis Courts 7, 8, 9 and 10. Convert Tennis Courts 11 and 12 to eight (8) regulation pickleball courts. All nets, posts and materials included. | \$122,795 |
| TOTAL: | | \$122,795 |

Bidder acknowledges by signing below that bidder has read, understands, and agrees to the conditions contained herein and on all of the attachments and addenda.

TO THE CITY OF COSTA MESA:

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

All material is guaranteed to be as specified, all work to be completed in a workmanlike manner according to standard practices, according to terms and conditions on the attached hereon and made a part thereof. A purchase order will not be issued until the insurance certificate is approved by Risk Management. Bid may be withdrawn by Contractor if not accepted within 30 days.

For clarification of this offer, contact:

PROSURFACE INC.
Company Name
PO BOX 80878
Address (mailing)
RANCHO SANTA MARGARITA, CA 92688
City, State, Zip
[Signature]
Signature of Person Authorized to Sign
JEFF FRANTZ
Printed Name
PRESIDENT
Title

JEFF FRANTZ
Name
PRESIDENT
Title
[Redacted]
Phone
N/A
Fax
JEFF@PROSURFACE.NET
E-mail

* PLEASE NOTE PROSURFACE TERMS & CONDITIONS, ATTACHED.

PROSURFACE INC.

"The Sport Surface Specialists"

Phone: (714)348-6427

TERMS AND CONDITIONS

- Price subject to change if not accepted within 15 days.
- Customer has a "Three Day Right to Cancel" upon acceptance of this contract without penalty.
- Prices do not include project bonds, testing, permits, architectural drawings inspections or engineering costs.
- Payment requests; 50% deposit for custom materials and scheduling, 50% due upon completion. (Deposit amounts may vary, per agreement between parties).
- Any invoice not paid in 30 days is subject to a \$100.00 per day service charge.
- Foundation blemishing and structural conditions such as cracking, chipping, "heaving" or broken concrete may not be permanently eliminated and cannot be guaranteed. *Cracking will reoccur*. In some cases, cracks may return immediately after court resurfacing due to a wide range of temperatures (which will cause concrete to contract and expand), age of the slab, and moisture penetration. Crack filling will not fuse preexisting structural separation of concrete. Generally, cracks which reappear will start as hairline cracks, and overtime will return to their original size (unless maintained more frequently). Structural blemishes are result of the foundation and cannot be guaranteed. Regular scheduled court resurfacing/maintenance may help to contain courts imperfections, but will not permanently correct foundation blemishing.
- Surface detachment/peeling or bubbling is a result of underlying moisture conditions and cannot be guaranteed. This may occur when sub-surface water becomes excessive and/or is not properly drained away from the court, it can breathe through the slab in a vapor form and create hydrostatic pressure under the coatings, creating surface detachment/peeling or bubbles. Surface buildup from multiple court resurfacings can also trap moisture and cause the surface to detach from concrete or asphalt. Complete surface removal by Hydroblasting is the best means to minimize the likelihood of surface detachment (recommended for courts which have had several resurfacings). Diamond Grinding is also another effective technique of surface removal.
- ASR conditions and reoccurring efflorescence may not be permanently contained. Court materials may assist in delaying this occurrence, but will not act as a permanent barrier or seal to eliminate underlying conditions.
- Surface installation will not change the slope or pitch of the court. Court surfacing is primarily to provide a playable court speed, and a cosmetically attractive and safe playing surface. Court leveling can be provided to fill low areas or "hird baths", but is not included in the scope of work unless specified.
- Court repairs and resurfacing will be completed in a timely matter, with reasonable weather.
- Prosurface Inc honors a limited one-year warranty on materials in the event of unusual discoloration or failure of the surface under normal conditions. The one-year warranty is limited from the date of project completion.

Initial: _____ Date: _____

EXHIBIT C

DRUG-FREE WORKPLACE POLICY

CONTRACTOR, upon notification of contract award, shall establish a Drug-Free Awareness Program to inform employees of the dangers of drug abuse in the workplace, the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace, and the employee assistance programs available to employees. Each employee engaged in the performance of a CITY contract must be notified of this Drug-Free Awareness Program and must abide by its terms. Failure to establish a program, notify employees, or inform CITY of a drug-related workplace conviction will constitute a material breach of contract and cause for immediate termination of the contract by CITY.

CONTRACTOR shall conform to all the requirements of this Drug-Free Workplace Policy.