

**MASTER AGREEMENT FOR EMERGENCY CONTRACTOR PANEL  
(RFP NO. 1913)**

**STILWELL CONSTRUCTION, INC.**

This Master Agreement for Maintenance Services for Emergency General Contractor Panel (“Agreement” or “Master Agreement”), is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 (“Effective Date”) by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation (“City”), and STILWELL CONSTRUCTION, INC., a California corporation (“Contractor”), 1975 Chicago Avenue, Suite A, Riverside, CA 92507, California State Contractor’s License No. 615234 (“Contractor”) in accordance with the following facts:

**RECITALS**

A. The City of Riverside acting through the Risk Management Division of the City Manager’s Office issued a Request for Proposal (“RFP No. 1913”) for an Emergency General Contractor Panel to contractors for the purpose of creating a panel of qualified contractors (“Contractor Panel”) who are readily available to bid on and perform emergency repair work, including but not limited to concrete grinding, driveway, gutter and sidewalk replacement, mold cleaning, water leak detections, sewer line repair, snaking and jetting of lines, pot hole investigations, demolition, roofing, flooring installing, dry walling and painting.

B. Contractor submitted a response to the RFP demonstrating Contractor’s willingness and qualifications to perform such work.

C. City desires to include Contractor in its Contractor Panel who will be selected for specific work, on a rotational basis with other contractors, and Contractor desires to be included in such Contractor Panel.

D. City and Contractor desire to have this Agreement in place as a Master Agreement governing all Purchase Orders issued to Contractor for specific project work.

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein to this Master Agreement, and the following covenants and conditions, the parties agree as follows:

## **AGREEMENT**

### **ARTICLE I. CONTRACTOR'S DUTIES**

1.1 **Work Force and Equipment.** Contractor shall at all times maintain a work force and equipment capable of performing the work generally described in the RFP, and Contractor's response to the RFP, on an as-needed and/or emergency basis.

1.2 **Specific Work.** Contractor shall be selected to perform specific project work on a rotational basis ("Specific Work"). However, City reserves the right to select a single contractor outside the rotation when it is in the City's best interest to do so. Contractor shall provide all labor, equipment and materials for the Specific Work.

### **ARTICLE 2 – CONTRACT DOCUMENTS**

2.1 **Contract Documents.** Contract Documents for each Specific Work shall consist of this Master Agreement; Purchase Orders; Change Orders; and the 2012 Edition of the Standard Specifications for Public Works Construction ("Standard Specifications"). These Contract Documents are incorporated herein and are intended to be correlative and constitute Contractor's performance obligations.

2.2 **Entire Agreement.** This Agreement together with all other Contract Documents represents the entire and integrated agreement between City and Contractor and supersedes any prior written or oral agreements between them concerning the subject matter contained in the Contract Documents. There are no representations, agreements, arrangements or understandings, oral or written, between the Parties hereto, relating to the subject matter contained in the Contract Documents, which are not fully expressed herein.

### **ARTICLE 3 – CONTRACT PRICE AND PAYMENT**

3.1 **Contract Price.** The total contract price for all Specific Work assigned to a given Contractor will not exceed Seven Hundred Fifty Thousand Dollars (\$750,000) for each fiscal year.

3.2 **Invoicing and payments.** Contractors assigned Specific Work shall submit all invoices for work performed within twenty (20) calendar days of completion and acceptance of the work by Risk Management Division. All invoices shall be accompanied by dated photographs depicting the before and after conditions of the Specific Work site. Contractor's failure to timely submit invoices and/or provide proper documenting photographs shall constitute a material breach of this Master Agreement for which City, within its sole discretion, may terminate Contractor from the Panel without liability. To the maximum extent possible, disbursements will be made City's e-Payable program to reduce paper waste and decrease amount of time to pay Contractor. Participation in City's e-Payable is a requirement for participation in this panel.

## **ARTICLE 4 – TERM**

4.1 This Agreement shall begin on the Effective Date and shall expire on June 30, 2022. This Agreement may be extended for two (2) additional one (1) year terms, not to exceed five (5) years, subject to the approval of the City Manager, the availability of budgeted funds, and satisfactory performance by the Contractor.

## **ARTICLE 5 – LOCAL BUSINESS LICENSE, TAXES AND FEES**

5.1 **Business Tax Certificate and Governmental Approvals.** As a condition of this Agreement, Contractor and all subcontractors shall, during the term of this Agreement, secure and annually renew business tax certificates pursuant to Chapter 5.04 of the Riverside Municipal Code to operate in the City of Riverside, and shall also secure and maintain at all times during performance of the Work, any other licenses, fees, permits, or similar Governmental Approvals required by Applicable law.

5.2 **Offsets.** Contractor acknowledges and agrees that with respect to any business tax or penalties thereon, utility charges, invoiced fee or other debt which is owed, or which becomes owed, by Contractor to City, City reserves the right to withhold and offset said amounts from any payments, refunds or reimbursements owed by City to Contractor under the Contract. Notice of such withholding and offset shall promptly be given to Contractor by City in writing. In the event of a dispute as to the amount owed or whether such amount is owed to City, City will hold such disputed amount until either the appropriate appeal process has been completed or until the dispute has been resolved.

## **ARTICLE 6 – BONDS**

6.1 **Performance and Payment Bonds.** Prior to award of each Specific Work in excess of Twenty Five Thousand Dollars (\$25,000), Contractor shall furnish the City two (2) duly executed surety bonds using City forms, one (1) as security for the faithful performance of the Contract and one (1) as security for the payment of all persons performing labor and furnishing materials in connection with the Contract. Both bonds shall be in the amount of one hundred percent (100%) of the Contract Price for the Specific Work, and shall be subscribed by an Admitted Surety Insurer which is authorized to transact surety insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or larger. Should any bond or surety become insufficient, Contractor shall furnish City a new bond within ten (10) days after receiving notice from City. No payments will be due or paid under the Contract until any and all bond deficiencies have been remedied. Contractor, by execution of this Agreement acknowledges that the bonds are not Contract Documents, but are separate obligations.

## **ARTICLE 7 – WORKERS' COMPENSATION INSURANCE**

7.1 **Workers' Compensation Insurance Certificate.** By executing this Agreement, Contractor certifies that Contractor is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for

workers' compensation or to undertake self-insurance before commencing any of the Work. Contractor shall comply with Labor Code Section 1861 by signing and filing the workers' compensation certification attached hereto as Exhibit "A" and incorporated herein by reference.

**7.2 Evidence of Coverage.** Prior to the City's execution of this agreement, Contractor shall file with the City either 1) a certificate of insurance or self-insurance evidencing that such insurance is in effect, or that Contractor is self-insured for such coverage; or 2) a certified statement that Contractor has no employees, and acknowledging that if Contractor does employ any person, the necessary certificate of insurance will immediately be filed with City. Any Certificate filed with the City shall provide that City shall be given ten (10) days' prior written notice before modification or cancellation thereof.

**7.3 Carrier Rating.** Contractor's workers' compensation insurance carrier shall be authorized to transact insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or larger.

**7.4 Subcontractor Workers' Compensation Insurance.** Contractor shall require each of its Subcontractors to obtain and maintain for the duration of this Agreement, complete workers' compensation insurance, meeting or exceeding the coverages and amounts that California law requires.

## **ARTICLE 8 – CONTRACTOR'S LIABILITY INSURANCE**

**8.1 Minimum Scope.** Prior to City's execution of this Agreement and Contractor's commencement of Work, Contractor shall secure, submit proof of and shall thereafter maintain without interruption, until completion of the Contract, such commercial general and automobile liability insurance as shall protect Contractor, its Subcontractors and the Additional Insured's from any and all claims for damages for personal injury, including accidental death, as well as any and all claims for property damage which may arise from or which may concern operations under the Contract, whether such operations be by or on behalf of Contractor, any subcontractor or anyone directly or indirectly employed by, connected with or acting for or on behalf of any of them.

**8.2 Carrier Ratings.** All liability insurance shall be issued by an insurance company or companies authorized to transact liability insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or larger.

**8.3 Minimum Limits.** Contractor shall maintain minimum limits of insurance as follows:

**8.3.1 Commercial General Liability:** Contractor's commercial general liability insurance policy shall cover both bodily injury (including death) and property damage (including, but not limited to, premises operations liability, products-completed operations liability, independent contractor's liability, personal injury liability, and contractual liability) in an amount not less than \$1,000,000 per occurrence, an aggregate limit for products/completed operations in the amount not less than \$2,000,000.

8.3.2 Automobile Liability Insurance: Contractor's automobile liability policy shall cover both bodily injury and property damage in an amount not less than \$1,000,000 per occurrence and an aggregate limit of not less than \$1,000,000. All of Contractor's automobile and/or commercial general liability insurance policies shall cover all vehicles used in connection with Contractor's performance of this Agreement, which vehicles shall include, but are not limited to, Contractor owned vehicles, Contractor leased vehicles, Contractor's employee vehicles, non-Contractor-owned vehicles, and hired vehicles.

8.3.3 Miscellaneous Insurance Requirements.

Contractor acknowledges City may require additional insurance unique to each Specific Project Work as determined necessary by the City's Risk Manager:

8.3.3.1 Builder's Risk Insurance. Contractor acknowledges that the City retains its own builder's risk policy. Contractor may obtain their own builder's risk insurance. In any event, should an event occur that is caused by the negligence or willful misconduct of the Contractor or its agents, employees, subcontractors, hiree's or invitees, in which City must make a claim under its builder's risk policy, Contractor shall be responsible for the City's deductible.

8.3.3.2 Installation Floater Insurance. If required by City, Contractor shall maintain in force, at its own expense, Installation Floater insurance covering contractor's labor, materials and equipment to be installed for completion of the work performed under this Agreement. Coverage shall be against all risks of direct physical loss including theft, but excluding earthquake and flood. The policy is to include the City of Riverside as loss payee. Coverage is to include materials while at the Contractor's yard location, in transit, at any temporary storage location, and while at the jobsite during installation. The limit of insurance shall be equal to the full amount of the contract. Contractor shall be responsible for the City's deductible.

8.4 **Notice of Cancellation and Renewals**. The policies shall not be canceled unless thirty (30) days' prior written notification of intended cancellation has been given to City by certified or registered mail (this obligation may be satisfied in the alternative by requiring such notice to be provided by Contractor's insurance broker and set forth on its Certificate of Insurance provided to City). Contractor agrees that upon receipt of any notice of cancellation or alteration of the policies, Contractor shall procure within five (5) days, other policies of insurance similar in all respects to the policy or policies to be cancelled or altered. Contractor shall furnish to the City copies of any endorsements that are subsequently issued amending coverage or limits within fourteen (14) days of the amendment.

8.5 **All Coverages**. The insurance policy or policies shall also comply with the following provisions:

- a. Policies shall include premises/operations, products completed operations, independent contractors, owners and contractors' protection, explosion, collapse, underground hazard, broad form contractual, personal injury with employment exclusion deleted, and broad form property damage.

- b. The policy shall be endorsed to waive any right of subrogation against the City and its subconsultants, employees, officers, agents and directors for work performed under this Agreement.
- c. If policies are written on a claims made basis, the certificate should so specify and the policy must continue in force for **five (5) years** after completion of the Project. The retroactive date of the coverage must also be listed.
- d. The policy shall specify that the insurance provided by Contractor will be considered primary and not contributory to any other insurance available to the City of Riverside. Contractor shall provide Form No. CG 20010413 to City.
- e. All policies of insurance shall name the City as an Additional Insured and shall contain the following language: "Solely for work done by and on behalf of the name insured for the City of Riverside, it is agreed that the City of Riverside, and its officers and employees are added as additional insureds under this policy."

**8.6 Certificates of Insurance, Additional Insured Endorsements and Deductibles.** Prior to execution of the Agreement, and thereafter upon City's request, Contractor shall furnish City with original certificates of insurance and additional insured endorsements setting forth evidence of all insurance coverage required by this Article. Each certificate and endorsement is to be signed by a person authorized by that insurer to bind coverage on its behalf. The City of Riverside, its City Council and all of its respective officials, officers, directors, employees, managers, commission members, representatives, agents and council members shall be named as additional insured's under each policy.

**8.7 Contractor's Failure to Provide Required Insurance.** Failure to maintain required insurance at all times shall constitute a default and material breach. In such event, Contractor shall immediately notify City and cease all performance under this Contract until further directed by the City. In the absence of satisfactory insurance coverage, City may, at its discretion and sole option: (a) procure insurance with collection rights for premiums, attorneys' fees and costs against Contractor by way of set-off or recoupment from sums due Contractor; (b) immediately terminate or suspend Contractor's performance of the Contract; (c) pay Contractor's premiums for renewal of Contractor's coverage; or (d) self-insure the risk, with all damages and costs incurred, by judgment, settlement or otherwise, including attorneys' fees and costs, being collectible from Contractor, by way of set-off or recoupment from any sums due Contractor. Upon demand, Contractor shall repay City for all sums that City paid to obtain, renew, reinstate or replace the insurance, or City may offset the cost against any monies that the City may owe Contractor.

**8.8 Verification of Coverage.** City shall have the right to obtain complete and certified copies of Contractor's and Subcontractors' insurance policies (including, but not limited to, the declarations page, form list, and riders), endorsements or certificates required under the Contractor Documents, upon request (including, but not limited to, the declarations page, form list, and riders).

**8.9 Reassessment of Insurance Requirements.** At any time during the duration of this Contract, the City may require that Contractor obtain, pay for, and maintain more or less insurance depending on the City's assessment of any one or more of the following factors: (1) the City's risk of liability or exposure arising out of, or in any way connected with, Contractor's services under this Contract; (2) the nature or number of accidents, claims, or lawsuits arising out of, or in any way connected with, Contractor's services under this Contract; or (3) the availability, or affordability, or both, of increased liability insurance coverage.

**8.10 Contractor's Insurance for Other Losses.** The Contractor and its Subcontractors of every tier shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's (or Subcontractors') employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or Subcontractors as well as to any temporary structures, scaffolding and protective fences.

**8.11 No Limitation.** Contractor's maintenance of insurance as required by the Contract Documents shall not be construed to limit the liability of the Contractor or its Subcontractors of any tier to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

**8.12 Subcontractors' Insurance.** The Contractor shall include in all subcontracts a requirement that the Subcontractors of every tier shall obtain and maintain, at a minimum, all insurance required by Articles 9 and 10 of this Agreement except that the limits of liability and deductibles shall be in amounts determined by the Contractor, based on the degree of hazardous exposure according to the Work performed by each Subcontractor and the size of each subcontract.

Contractor shall ensure that any professional engineer retained on its behalf to provide supplemental plans and engineering calculations required in conjunction with the Specific Work, maintains professional liability insurance during the entire term of this Agreement. Such insurance shall be in the minimum amount of \$1,000,000 to protect City from claims resulting from the activities of the engineer(s). This minimum amount of coverage shall not constitute any limitation or cap on Contractor's indemnification obligations set forth herein.

The City reserves the right to request certificates of insurance from the Contractor for each Subcontractor. The Contractor acknowledges that regardless of insurance obtained by its Subcontractors, the Contractor will be responsible to the City for any and all acts of its Subcontractors.

## **ARTICLE 9 - INDEMNITY/DUTY TO DEFEND**

**9.1 Indemnity.** Except as to the sole negligence, active negligence or willful misconduct of the City, Contractor assumes liability for and agrees, at Contractor's sole cost and expense, to promptly and fully indemnify and hold the City, its City Council, and all of its respective officials, officers, directors, employees, managers, commission members, representatives, agents, council members, ("Indemnitees"), harmless from and against any and all loss, damage, claims, allegations, actions, suits, arbitrations, administrative proceedings, regulatory proceedings, or other legal proceedings, causes of action, demands, costs, judgments, liens, stop notices,

penalties, damages, losses, anticipated losses of revenue, expenses (including, but not limited to, any fees of accountants, attorneys, experts or other professionals, or investigation expenses), costs, or losses of any kind or nature whatsoever, whether actual, threatened or alleged, arising out of, resulting from or is in any way (either directly or indirectly) related to, or is in any manner connected with, the performance of Work, the Project, activities, operations or duties of Contractor, or anyone employed by or working under Contractor, and from all claims by anyone employed by or working under Contractor for services rendered to Contractor in the performance of this Agreement ("Indemnity Claims"), notwithstanding that the City may have benefited from their services. This indemnification provision shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Contractor or of anyone employed by or working under Contractor.

The parties expressly agree that any payment, attorneys' fees, costs, or expense that the City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense or cost for the purposes of this Section, and that this Section shall survive the expiration or early termination of the Agreement.

**9.2 Duty to Defend.** Contractor agrees, at its sole cost and expense, to promptly defend the Indemnitees from all Indemnity Claims. The duty of the Contractor to indemnify and hold harmless the Indemnitees includes the separate and independent duty to defend the Indemnitees, which duty arises immediately upon receipt by Contractor of the tender of any Indemnity Claim from an Indemnitee. The Contractor's obligation to defend the Indemnitees shall be at Contractor's sole expense, and not be excused because of Contractor's inability to evaluate liability or because the Contractor evaluates liability and determines that the Contractor is not liable. This duty to defend shall apply whether or not an Indemnity Claim has merit or is meritless, or which involves claims or allegations that any or all of the Indemnitees were actively, passively or concurrently negligent, or which otherwise assert that the Indemnitees are responsible, in whole or in part, for any Indemnity Claim. Contractor agrees to provide this defense immediately upon written notice from the City, and with well qualified, adequately insured and experienced legal counsel acceptable to the City.

**9.3 Subcontractor Requirements.** In addition to the requirements set forth hereinabove, Contractor shall ensure, by written subcontract agreement, that each of Contractor's Subcontractors of every tier shall protect, defend, indemnify, and hold harmless the Indemnitees with respect to Indemnity Claims arising out of, in connection with, or in any way related to each such Subcontractors' Work on the Project in the same manner in which Contractor is required to protect, defend, indemnify and hold the Indemnitees harmless. In the event Contractor fails to obtain such defense and indemnity obligations from others as required herein, Contractor agrees to be fully responsible to the Indemnitees according to the terms of this Article.

**9.4 No Limitation or Waiver of Rights.** Contractor's obligations under this Article are in addition to any other rights or remedies which the Indemnitees may have under the law or under the Contract Documents. Contractor's indemnification and defense obligations set forth in this Article are separate and independent from the insurance provisions set forth in the Agreement and do not limit, in any way, the applicability, scope, or obligations set forth in such insurance



provisions. The purchase of insurance by the Contractor with respect to the obligations required herein shall in no event be construed as fulfillment or discharge of such obligations. In any and all claims against the Indemnitees by any employee of the Contractor, any Subcontractor, any supplier of the Contractor or Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the obligations under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor or any supplier of either of them, under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. Failure of the City to monitor compliance with these requirements imposes no additional obligations on the City and will in no way act as a waiver of any rights hereunder.

**9.5 Withholding to Secure Obligations.** In the event an Indemnity Claim arises prior to final payment to Contractor, the City may, in its sole discretion, reserve, retain, or apply any monies due Contractor for the purpose of resolving such Indemnity Claims; provided, however, the City may release such funds if the Contractor provides the City with reasonable assurances of protection of the Indemnitees' interests. The City shall, in its sole discretion, determine whether such assurances are reasonable.

**9.6 Survival of Indemnity Obligations.** Contractor's obligations under this Article are binding on Contractor's and its Subcontractors' successors, heirs, and assigns and shall survive the completion of the Work or termination of the Contractor's performance of the Work.

**9.7 Independent Contractor.** Contractor shall at all times during its performance of the Work retain its status as an independent contractor. Contractor's employees and agents shall under no circumstances be considered or held to be employees or agents of City and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of Contractor or its employees and agents.

## **ARTICLE 10 – PREVAILING WAGES**

### **10.1 Public Work Project.**

This Project is a public work as defined in California Labor Code Section 1720. Contractor and all Subcontractors of any tier are required to pay all workers employed in the execution of the Work not less than the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations ("DIR") under Section 1720 et seq. of the California Labor Code and implemented by Resolution No. 13346 of the City Council of the City of Riverside. The Director's determination of prevailing rates is available on-line at [www.dir.ca.gov/dlsr/DPreWageDetermination.htm](http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm) and is referred to and made a part hereof; the wage rates therein ascertained, determined and specified are referred to and made a part hereof as though fully set forth herein. Per Senate Bill 854 (2014), Contractor and subcontractors shall register with the Department of Industrial Relations (DIR) in order to bid and perform public works projects. Contractors and subcontractors on all public works projects shall submit electronic certified payrolls to the Labor Commissioner and City unless excused from this requirement.

10.2 **California Labor Code.** Contractor is aware of and stipulates that Contractor will also comply with the following sections of the California Labor Code:

- a. Section 1775 prescribing sanctions for failure to pay prevailing wage rates;
- b. Section 1776 requiring the making, keeping and disclosing of detailed payroll records and prescribing sanctions for failure to do so;
- c. Section 1777.5 prescribing the terms and conditions for employing registered apprentices;
- d. Section 1810 providing that eight hours of labor shall be a day's work; and
- e. Section 1813 prescribing sanctions for violations of the provisions concerning eight-hour work days and forty-hour work weeks.
- f. Sections 1725.5 and 1771.1 requiring all general contractors and subcontractors to be registered with DIR. Registration can be accomplished through the DIR website by using this link: <http://www.dir.ca.gov/Public-Works/PublicWorks.html>.

#### **ARTICLE 11 – MISCELLANEOUS**

11.1 **Suspension from Panel.** The City's Risk Manager or other authorized City representative may suspend Contractor from participating in bids for Specific Work if Contractor has previously received correction notices for substandard or defective work under for Specific Work. Contractor may submit documentation to the City's Risk Manager or other authorized City representative confirming that changes in Contractor's personnel, policies, or practices have remedied the cause of the substandard or defective work. It is within the City's Risk Manager's or other authorized City representative's sole discretion to lift Contractor's suspension based upon Contractor's documentation or to proceed to termination of the Master Agreement.

11.2 **Termination.** The City may terminate Contractor's performance of this Master Agreement and/or Specific Work without liability for any of the following:

- (1) Contractor fails promptly to begin the Specific Work;
- (2) Contractor refuses or fails to supply enough properly skilled workers or proper materials;
- (3) Contractor fails to perform the Specific Work in accordance with the Contract Documents, including conforming to applicable standards set forth therein, or refuses to remove and replace rejected materials or unacceptable Specific Work;
- (4) Contractor discontinues the performance of the Specific Work;
- (5) Any representation or warranty made by Contractor in its response to the Request for Proposal shall have been false or materially misleading when made;

- (6) Contractor fails to make payment to subcontractors for materials or labor in accordance with the respective Contract Documents and applicable law;
- (7) Contractor disregards laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction;
- (8) Contractor otherwise is guilty of breach of a provision of the Contract Documents;
- (9) Contractor becomes insolvent, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors and fails to provide City with adequate assurances of Contractor's ability to satisfy its contractual obligations; or
- (10) A receiver, trustee, or other judicial officer shall not have any right, title, or interest in or to the Contract. Upon that person's appointment, City has, at its option and sole discretion, the right to immediately cancel the Agreement and declare it null and void.

**11.3 Independent Contractor.** Contractor shall at all times during its performance of any Specific Project Work retain its status as an independent contractor. Contractor's employees and agents shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or Contractor.

**11.4. Non-exclusive Agreement.** The City reserves the right to bid any Specific Project Work outside of the Panel, to enter into contracts with non-panel contractors and to add additional contractors to the Panel that satisfy the prequalification criteria, whenever the City deems it to be in its best interest.

**11.5 Non-Discrimination.** Except as provided in Section 12940 of the California Government Code, during Contractor's performance of the Agreement, Contractor shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex or sexual orientation, genetic information, gender, gender identity, or gender expression, military and veteran status, in the selection and retention of employees and subcontractors and the procurement of materials and equipment. Contractor shall also comply with the requirements of the Americans with Disabilities Act in the performance of the Agreement.

**11.6. Accounting Records.** Contractor shall maintain complete and accurate records with respect to costs incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date

of final payment under this Agreement.

**11.7 Notice.** Whenever any provision of the Contract Documents requires the giving of written notice, including notices, bills, invoices, or other documents required or permitted under this Agreement, service shall be sufficient if sent by one party to the other by overnight courier, or by registered, certified or United States first class mail, postage prepaid and addressed as follows:

City

City of Riverside  
City Manager  
3900 Main Street  
Riverside, CA 92522

Contractor

Stilwell Construction, Inc.  
Attn: Tom Stilwell  
P. O. Box 55106  
Riverside, CA 92517

**11.8 Venue.** Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in the Superior Court of the County of Riverside, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

**11.9 No Estoppel or Waiver by City.** No action or failure to act by the City shall constitute a waiver of any right or duty afforded City under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically provided in this Agreement or as may be otherwise agreed in writing. The waiver by the City of any breach or violation of any term, covenant, or condition of this Agreement or of any provision, ordinance, or law shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, or law or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance, or law. The subsequent payment of any monies or fee by the City which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by Contractor or any term, covenant, condition of this Agreement or of any applicable law or ordinance.

**11.10 Authority.** The individuals executing this Agreement and the instruments referenced herein on behalf of Contractor each represent and warrant that they have the legal power, right and actual authority to bind Contractor to the terms and conditions hereof and thereof.

**11.11 Severability.** Each provision, term, condition, covenant and/or restriction, in whole and in part, in this Agreement shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, in this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant and/or restriction of this Agreement and the remainder of the Agreement shall continue in full force and effect.

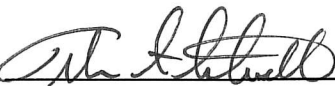
11.12 **Entire Agreement.** This Agreement contains the entire Agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, between the parties hereto, relating to the subject matter contained in this Agreement which are not fully expressed herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the day and year first above written.


CITY OF RIVERSIDE, a California  
charter city and municipal corporation

STILWELL CONSTRUCTION, INC.,  
a California corporation


By: \_\_\_\_\_  
City Manager

By:   
Printed Name: Thomas A. Stilwell  
Title: President


Attest: \_\_\_\_\_  
City Clerk

By:   
Printed Name: Thomas A. Stilwell  
Title: Secretary

APPROVED AS TO FORM:

By:   
Senior Deputy City Attorney

CERTIFIED AS TO FUNDS AVAILABILITY:

BY:   
Chief Financial Officer/City Treasurer

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

The selected Contractors shall provide pricing for the services noted in Exhibit A, rates shall account for current prevailing wage requirements. Contractor agrees to perform such emergency services as required by the City. The full scope of work shall include but not be limited to:

- Assist City staff on projects requiring work 10 (ten) feet below the surface.
- Assist City staff in responding to calls when the City's own equipment is down and unable to be used.
- Emergency cleanup, repair, and restoration including: concrete grinding, gutter and sidewalk replacement, mold removal, water leak detections, sewer line repair, plumbing, painting, snaking and jetting of lines, and pot hole investigations.
- Repair, remove, and/or install roofing, flooring and dry walls.
- Assist City staff in either stopping or restoring the flow of water.
- Assist the City's Water Division in replacing sections of City-owned tailpipe as required by an authorized staff member.
- Provide daily and/or continual cleanup of all refuse caused or created by this Subcontractor's work and/or its workmen.
- Assist City staff with administrative and project management duties as required.

**Job Safety Site Procedures:**

- No Alcohol or drugs will be used on the job at any time.
- Report all job accidents on the same day the accident occurs.
- Your employees will be responsible for keeping your work area and the job site clean and neat on a daily basis.
- Stored materials, equipment and tools must be kept in an orderly fashion.
- All power activated tools, equipment and ladders will be used in a safe manner and in compliance with governmental agency regulations.
- Do not remove or bypass any safety guards on any machinery at any time. Wear safety glasses.
- No hazardous or toxic substances will be disposed of on the job site.
- When operating loud power tools or machinery, wear ear plugs or ear mufflers.
- Follow all other written and spoken safety rules.


Contractor(s) or appropriate subcontractor(s) shall be properly licensed for testing and inspection that occurs prior to project completion as necessary per project. Contractor shall be responsible for obtaining all permits as required by City. Specific services will be coordinated with the City on a per project basis. No work will be done on privately owned property including but not limited to residential homes, apartment complexes, and commercial businesses. Upon request of the City, the Contractor will make such revisions in work done under this agreement as are necessary to correct errors or omissions appearing therein and make other minor revisions. Contractor acknowledges that the purpose of this Agreement is for emergency services only and agrees to provide staff with cost records and accounting pertaining to this agreement.

**WORKERS' COMPENSATION CERTIFICATION**

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

DATED: 10/9/2019

STILWELL CONSTRUCTION, INC.

By   
Thomas A. Stilwell, President  
Printed Name and Title

(Appropriate Certificate to be attached to Agreement for Construction)  
CERTIFICATE  
(if Corporation)

STATE OF            )  
                          )  
COUNTY OF        )        SS:

I, HEREBY, CERTIFY that during a meeting of the Board of Directors of the Stilwell Construction, Inc., a corporation existing under the laws of the State of California, held on October 9, 2019, the following resolution was duly passed and adopted:

“RESOLVED, that Thomas A Stilwell as President of the Corporation, be and is hereby authorized to execute the Agreement for RFP 1913 between the City of Riverside and this corporation and that his execution thereof and with the Corporate Seal affixed, shall be the official act and deed of this Corporation.”

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the corporation this 9, day of October, 2019.

Thomas A Stilwell  
Secretary

(SEAL)



**SUPPLEMENTAL AGREEMENT FOR ASSIGNED PROJECT**

Contractor: STILWELL CONSTRUCTION, INC.

Project Name: Master Agreement for Emergency General Contractor Panel (RFP No. 1913)

The Project Narrative for Master Agreement for Emergency General Contractor Panel (RFP No. 1913) ("Project"), a copy of which is attached hereto as Exhibit A" and incorporated herein by this reference, and Contractor's Proposal dated \_\_\_\_\_, a copy of which is attached hereto and incorporated herein by this reference, shall constitute a supplement to the Master Agreement for Emergency General Contractor Panel, by and between City and Contractor dated \_\_\_\_\_ (the "Agreement"). Contractor agrees to perform the services described in the Project Narrative within the time frame set forth in the Notice to Proceed for a fee amount of \$\_\_\_\_\_, unless otherwise modified by Change Order. Performance of the services shall be subject to the terms and conditions contained in the Agreement.

Dated this \_\_\_\_ day of \_\_\_\_\_.

CITY OF RIVERSIDE, a California charter city and municipal corporation

STILWELL CONSTRUCTION, INC., a California corporation

By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_  
Title: \_\_\_\_\_

CERTIFIED AS TO AVAILABILITY OF FUNDS:

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Chief Financial Officer

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Senior Deputy City Attorney

Attest: \_\_\_\_\_  
City Clerk