

**MASTER AGREEMENT FOR
ASPHALT AND CONCRETE REPAIR SERVICES FOR PUBLIC UTILITIES
DEPARTMENT, WATER DIVISION AT VARIOUS CITY LOCATIONS,
ON AN AS-NEEDED BASIS**

This Master Agreement for Asphalt Paving Work for Water Utility at Various City Locations On An As-Needed Basis (“Agreement” or “Master Agreement”), is made and entered into this 10th day of July, 2024, by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation (“City”), and HARDY & HARPER, INC., a California corporation, 32 Rancho Circle, Lake Forest, CA 92630, State Contractor’s License No. 215952 (“Contractor”) in accordance with the following facts.

RECITALS

A. The City issued an open Request for Proposals for Asphalt and Concrete Repair Services for Public Utilities Department, Water Division at Various City Locations, on an As-Needed Basis, RFP No. 2289 (“Asphalt and Concrete Repair Services”).

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

C. City and Contractor desire to have this Agreement in place as a Master Agreement governing all contracts awarded to Contractor for work on specific projects, in order to facilitate the award of contracts for such work.

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

AGREEMENT

1. 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 and non-emergency basis.

1.2 Specific Work. From time to time, Contractor shall be assigned to perform specific project work as defined in the Scope of Work (“Specific Project Work”). Contractor shall provide all labor, equipment and materials for the Specific Project Work.

1.3 Insurance. At all times during the term of this Agreement, Contractor shall maintain the insurance required in Sections 15 and 16 of this Agreement.

1.4 Bonds. At all times during the term of this Agreement, Contractor shall maintain the performance and payment bonds required in Section 14 of this Agreement.

1.5 **Master Agreement.** Contractor understands and agrees that all Contracts for Project Work awarded to Contractor pursuant to the Request for Proposals for Asphalt and Concrete Repair Services for Public Utilities Department, Water Division at Various City Locations, on an As-Needed Basis, shall be governed by, and Contractor shall perform all Work in accordance with this Master Agreement and the Contract Documents.

1.6 **Contract Documents.** Contract Documents for each Contract awarded to Contractor shall consist of the following: Notice Inviting RFP Proposals; RFP; Contractor's Proposal (including any documentation accompanying the Proposal and any post-RFP Proposal documentation submitted prior to City's execution of the Master Agreement); Supplemental Agreements (if any); this Master Agreement; All Modifications issued after the Notice of Bid Award; Change Orders; the Notice of Bid Award; Contractor's Bid Proposal (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice of Bid Award); RFB Addenda; RFB including all attached plans and specifications; City's Special Provisions for Providing Water Division Work for Various Locations on an As-Needed Basis ("Special Provisions") attached to the RFP; the 2012 Edition of the "Green book" Standard Specifications for Public Works Construction ("Standard Specifications") written by the Public Works Standards, Inc.; Standard Plans; Standard Specifications; the Bonds as defined in the Special Provisions; the Reference Specifications; and all other documents, maps, texts and items referred to in the foregoing documents. These Contract Documents are intended to be correlative and constitute Contractor's performance obligations.

2. **Work.**

2.1 Contractor shall provide all labor, equipment, and materials (when specified in the Request for Bid) for, and shall complete Specific Project Work for all Contracts awarded to Contractor. Contractor understands and agrees that such Specific Project Work may include without limitation To Perform Permanent Asphalt Trench Resurfacing/Paving Work for existing project sites at various City locations on an as-need basis, including emergencies.

3. **Effective Date.** This Agreement shall be effective on July 2, 2024 ("Effective Date").

4. **Termination Date.** This Agreement shall terminate three (3) years from the Effective Date, unless earlier terminated as provided herein. This agreement may, subject to mutual consent, be extended for one operation two-year extension.

5. **Utilization of City's Resources.** City reserves the right to reduce bid quantities for any uncompleted Project items at any time and to use its own personnel, machinery and equipment, to do any and all Project Work which it deems to be in its best interest to perform.

6. **Completion and Acceptance of Work.**

6.1 **Inspection.** The Project Work will be inspected by the Engineer for acceptance, upon receipt of Contractor's written assertion that the Project Work has been completed.

6.2 **Contractor's Guarantee.** All Project Work shall be guaranteed by the Contractor against defective workmanship and materials furnished by the Contractor for a period of one year from the date the Project Work is completed. The Contractor shall replace or repair any such defective Project Work in a manner satisfactory to the Engineer, after notice to do so from the Engineer, and within the time specified in the notice. If the Contractor fails to make such replacement or repairs within the time specified in the notice, the City may perform this work and Contractor's sureties shall be liable for the cost thereof.

7. **Interpretation.**

7.1 Except as expressly modified in this Agreement, the capitalized terms used in this Agreement shall have the meanings defined in the Special Provisions.

7.2 In the event of any contradictory or inconsistent provisions, terms or conditions of the various Contract Documents, the specific terms and conditions in the Contract Documents in the following order of precedence, listed from highest to lowest, shall control in questions of interpretation and have precedence: Master Agreement, Modifications, Contractor's Bid Proposal, RFB, Special Provisions, Standard Specifications, RFP, Contractor's RFP Proposal, and Reference Specifications.

8. **Payment.**

8.1 **Contract Price.** City shall pay Contractor the Contract Price as indicated on the City's Purchase Order issued by City's Purchasing Manager or his designee ("Purchase Order"), which includes all California sales or use tax and County and City taxes, for the performance of all of the Project Work, the completion of the improvements in strict conformity with the provisions hereof, and the guarantee of the Project Work and improvements for the periods set forth in the Contract Documents ("Contract Price"). **The cumulative compensation for all Specific Project Work under this agreement shall not exceed \$1,500,000 per contract year ("Authorized Not to Exceed Amount").**

8.2 **Contractor Certification - Contract Price.** Contractor hereby certifies that:

8.2.1 Contractor shall carefully examine the requirements of each Request for Bids, including the Notice Inviting Bids, Bid Proposal form, Scope of Work, job site description, Plans and Specifications, Instructions to Bidders and Contract Addenda;

8.2.2 Contractor has examined the requirements of the Work specifications;

8.2.3 Contractor understands that all items to be furnished shall be for the Contract Price, as set forth in City's Purchase Order;

8.2.3 Contractor has checked all figures and acknowledges the understanding that neither RPU, nor any officer thereof will be responsible for any errors or omissions in submitting the Contract Price.

8.3 Contractor understands and agrees that City shall not be obligated to compensate Contractor for any expenses or costs Contractor may incur in maintaining its status as the Asphalt and Concrete Repair Services, including without limitation, Contractor's cost of maintaining the insurance and Bonds required by this Master Agreement. Contractor's sole compensation, if any, shall be the Contract Price for any Contract awarded to Contractor.

8.4 Payment of Contract Price. City shall pay Contractor the Contract Price, less ten percent (10%), within thirty (30) days of the date City receives Contractor's invoice for Project Work performed and acceptance of the Project Work, in accordance with the Contract Documents. Each payment shall be subject to this ten percent (10%) retention ("Retention"). The Retention will be based on the invoiced amount. Final payment of all sums invoiced and unpaid, including all Retentions shall be made within thirty (30) days after the Work is fully performed and accepted by the City.

9. **Compensation--Payment of Contractor's Employees.** Contractor shall be solely responsible for the payment of its employees assigned to perform Work for City pursuant to this Agreement, including wages, benefits, payroll deductions, unemployment and worker's compensation, as well as the employer's share of Social Security.

9.1 Prevailing Wages. Pursuant to Section 1720, et seq. of the California Labor Code, Contractor and all subcontractors shall pay the general prevailing rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations ("Director") and implemented by Resolution No. 13346 of the City Council of the City of Riverside. The Director's determination of prevailing wage rates is on file and open to inspection in the office of the City Clerk; the specified wage rates are referred to, and made a part hereof as though fully set forth herein.

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

- a. Section 1773.8 requiring workers' travel and subsistence payments;
- b. Section 1775 prescribing sanctions for failure to pay prevailing wage rates;
- c. Section 1776 requiring the making, keeping and disclosing of detailed payroll records and prescribing sanctions for failure to do so;
- d. Section 1777.5 prescribing the terms and conditions for employing registered apprentices;
- e. Section 1810 providing that eight hours of labor shall be a day's work; and

- f. Section 1813 prescribing sanctions for violations of the provisions concerning eight-hour work days and forty-hour work weeks.

10. **Licenses, Permits and Business Tax.** As a condition of this Agreement, Contractor and all subcontractors shall secure and maintain at all times, a business license to operate in the City of Riverside, and shall also secure and maintain at all times, any other licenses or permits which may be required. Contractor understands that its performance of the services will constitute doing business in the City of Riverside, and it shall, therefore, register for and pay a business tax pursuant to Chapter 5.04 of the Riverside Municipal Code.

11. **Business Taxes, Charges or Penalties.** Contractor acknowledges and agrees that City shall withhold and offset said amounts from any amounts the City owes to Contractor for unpaid business tax, tax penalties, utility charges, invoiced fees or other outstanding debt under this Agreement. The City shall give Contractor written notice of such withholding and offset. In the event of any dispute as to amounts owed to City, City will hold such disputed amount throughout an appeal process and resolution of the dispute over the amount owed.

12. **Consent for Amounts in Excess of Contract Price.** Contractor hereby agrees that it shall not be compensated for any extra materials used or time expended, over and above the Contract Price, unless prior written approval for the same has been granted by City in the form of a Modification.

13. **Work Deadline.**

13.1 Contractor hereby agrees that Contractor shall complete all Work as defined in the Contract Documents, within thirty (30) days of receipt of project location from the City.

13.2 Failure of Contractor to complete the Work within the time specified in the Contract Documents and the City's Notice to Proceed will result in damages being sustained by City. Such damages are, and will continue to be impracticable and extremely difficult to determine. For each consecutive calendar day in excess of the time specified for the completion of the Work, as adjusted in accordance with Section 6-6 of the Standard Specifications, Contractor shall pay to City, or, at City's sole option, have withheld from monies due Contractor, the sum of One Thousand Dollars (\$1000) per day.

13.3 Execution of this Agreement shall constitute agreement by City and Contractor that said sum is the minimum value of the costs and actual damage caused by the failure of Contractor to complete the Work within the allotted time. Such sum is a liquidated damage and shall not be construed as a penalty, and may be deducted from payments due Contractor if such delay occurs.

14. **Performance and Payment Bonds.**

14.1 Prior to City's execution of this Agreement, Contractor shall furnish City completed forms for two (2) surety bonds in the forms attached to the Special Provisions. Contractor shall provide a Performance Bond, as security for the performance of each Contract and a Payment Bond, as security for the payment of all persons performing labor and furnishing materials in connection with the Contract. Each Bond shall be in the minimum amount of the contractor's bonding capacity up to the Authorized Not to Exceed Amount, and shall be subscribed by a corporate surety which is authorized to transact surety insurance business in the **State of California, with a policyholders rating of A or higher and a financial class of VII or larger.**

14.2 Contractor hereby agrees that the Performance Bond and the Payment Bond shall furnish the City in connection with this Agreement shall be effective for the full term of the Agreement, which is, from the date the Agreement is executed through the date listed in section 4 hereof, unless earlier terminated under any provision herein.

14.3 City has the option to require Contractor to provide Performance and Payment Bonds in excess of the Authorized Not to Exceed Amount, to cover Work for multiple Specific Projects for which the City may contract with Contractor where the cumulative value may be greater than the Authorized Not to Exceed Amount. Cumulative Contracts will not be granted to Contractor until Contractor has furnished sufficient Performance and Payment Bonds for the cumulative value of currently awarded uncompleted work plus proposed work described in the request for Bid. Additional Bonds are required within (10) days of the City's notice to Contractor that the existing Bonds are insufficient. Payments for Work performed shall not be made to Contractor until sufficient Bonds have been submitted to the City.

14.4 In accordance with Section 22300 of the California Public Contract Code, Contractor may substitute securities for any moneys withheld by City to ensure performance of the Contract. Such substitution shall be made at the request and expense of the Contractor. Securities equivalent to the amount withheld may be deposited with the City or with a California or federally chartered bank as escrow agent. Securities eligible for substitution shall include those listed in Section 16430 of the Government Code. Securities must be state or federally insured and within the top three ratings of a nationally recognized rating service.

15. **Workers' Compensation Insurance.**

15.1 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.

15.2 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.

15.3 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.

15.4 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.

16. Contractor's Liability Insurance.

16.1 Minimum Scope. Prior to City's execution of this Agreement, Contractor shall secure, submit proof of and shall thereafter maintain without interruption, until termination of the Agreement, 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 Agreement, 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.

16.2 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.

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

16.3.1 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.

16.3.2 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.

16.3.3 Installation Floater Insurance. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Agreement, a Builder's Risk Installation Floater for coverage of Contractor's labor, materials and equipment to be used for completion of the work performed under this Agreement. The minimum amount of coverage to be carried shall be equal to the full amount of the Contractor's labor, equipment, materials, or fixtures to be installed, in transit, or stored off-site or on-site during the performance of this Agreement. The policy shall include as loss payee, the City of Riverside, the Contractor, and its sub-contractors as their interest may appear. The City shall not be responsible for the theft of any materials, equipment in the possession and control of Contractor.

16.4 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.

16.5 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 with respect to 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.”

16.6 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.

16.7 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.

16.8 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).

16.9 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.

16.10 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.

16.11 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.

16.12 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 Sections 15 and 16 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 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 engineer(s) activities. 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.

17. Indemnification/Duty to Defend.

17.1. 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, including attorneys' fees, 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.

17.2. 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.

17.3 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 Specific Construction Project Work 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.

17.4 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.

17.5 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.

17.6 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.

18. Independent Contractor. Contractor shall at all times during its performance of the services retain its status as 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.

19. Non-exclusive Agreement. The City reserves the right to formally bid any work and enter into Contracts with other contractors whenever the City deems it to be in the City's best interest.

20. Nondiscrimination. 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.

21. 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.

22. **Notices.** Service of any notices, bills, invoices or other documents required or permitted under this Agreement shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

<u>City</u>	<u>Contractor</u>
Public Works Department City of Riverside Attn: Public Works Director 3900 Main Street Riverside, CA 92522	Hardy & Harper, Inc. Attn: Morgan Churnock 32 Rancho Circle Lake Forest, CA 92630

23. **Severability.** Each Agreement provision, term, condition, covenant and/or restriction, in whole and in part, 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.

24. **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.

25. **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, and Contracts entered into pursuant to this Agreement, shall be tried in a court of competent jurisdiction in 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 of state.

26 **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.

27. **Digital and Counterpart Signatures.** Unless Contractor is unable to use digital signatures, each party to this Agreement intends and agrees to the use of digital signatures that meet the requirements of the California Uniform Electronic Transactions Act (Civil Code §§ 1633.1, et seq.), California Government Code § 16.5, and California Code of Regulations Title 2 Division 7 Chapter 10, to execute this Agreement. The parties further agree that the digital signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures for purposes of validity, enforceability, and admissibility. For purposes of this section, a “digital signature” is defined in subdivision (d) of Section 16.5 of the Government Code and is a type of “electronic signature” as defined in subdivision (h) of Section 1633.2 of the Civil Code. This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument. Each certified or authenticated electronic copy of an encrypted digital signature shall be deemed a duplicate original, constituting one and the same instrument and shall be binding on the parties hereto.

28. **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.

[signatures on following page]

IN WITNESS WHEREOF City and Contractor 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

HARDY & HARPER, INC., a California
corporation

By: Charles Mike Futrell
City Manager

By: Michael Murray
Michael Murray (May 20, 2024 08:20 PDT)
Michael Murray
[Printed Name]
VP/GM
[Title]

Attest: [Signature]
City Clerk

Certified as to Availability of Funds:

By: [Signature]
Chief Financial Officer

By: [Signature]
Kristen S. Paulino
[Printed Name]
Corporate Secretary
[Title]

Approved as to Form:

By: [Signature]
Ruthann Salera
Deputy City Attorney

(Appropriate Certificate to use if a Corporation)

CERTIFICATE

STATE OF)
) SS:
COUNTY OF)

I, HEREBY, CERTIFY that during a meeting of the Board of Directors of the _____, a corporation existing under the laws of the State of _____, held on _____, 20____, the following resolution was duly passed and adopted:

“RESOLVED, that _____, as _____ of the Corporation, be and is hereby authorized to execute the Agreement for _____ 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 ____ day of _____, 20____.

Secretary

(SEAL)

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: _____

HARDY & HARPER, INC., a California corporation

By: _____

[Printed Name and Title]