

*County of Orange, OC Public Works
Hardy & Harper, Inc.*

*MA-080-20011803
JOC For Pavement Maintenance*

JOB ORDER CONTRACT AGREEMENT

This Job Order Contract Agreement MA-080-20011803, hereinafter referred to as "AGREEMENT", is made and entered into this _____ day of _____, 2020

by and between **the County of Orange**, a political subdivision of the State of California, and the **Orange County Flood Control District**, a body corporate and politic, together, hereinafter referred to as "COUNTY" and **HARDY & HARPER, INC.**, hereinafter referred to as "CONTRACTOR," that COUNTY and CONTRACTOR, for considerations hereinafter named, mutually agree as follows:

- I. CONTRACTOR shall accomplish to the satisfaction of ENGINEER, as defined in Section B of the JOC Special Provisions, all work described in AGREEMENT and JOC Special Provisions and shall provide and furnish all the labor, materials, necessary tools, expendable equipment, and all utility and transportation services required for the:

Job Order Contract for Pavement Maintenance, FY 2020-2021

Hereinafter referred to as PROJECT in accordance with this AGREEMENT. This AGREEMENT includes the following documents and their provisions which are incorporated herein by reference and made a part hereof as though fully set forth:

- A. Notice of Inviting Bids
- B. Proposal Form
- C. Proposal Requirements and Conditions (Section A of the JOC Special Provisions).
- D. Supplement to Part 1 of the Standard Specifications for Public Works Construction (Section B of the JOC Special Provisions).
- E. General Miscellaneous (Section C of the JOC Special Provisions).
- F. Permit Requirements (Section D of the JOC Specifications).
- G. Federal Requirements (Section E of the JOC Special Provisions).
- H. Job Order Contract Details (Section F of the JOC Special Provisions).
- I. Road Construction Task Order Special Provisions and OC Public Works JOC Unit Price List, March 2020 (Section G of the JOC Special Provisions), and
- J. All the appendices of JOC Special Provisions.

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2. The Contract is an indefinite-quantity contract for the maintenance repair and/or refurbishment of items so ordered, with no minimum amount and a maximum amount of **\$4.980 million**. COUNTY agrees to pay and CONTRACTOR agrees to accept in full payment for the work to be performed pursuant to AGREEMENT, the Unit Price List, Road Construction Special Provisions, and Adjustment Factors, as follows:

Normal Working Hours: 0.9220

Other Than Normal Working Hours: 0.9958

Subject to the conditions set forth in CONTRACTOR's proposal in accordance with AGREEMENT documents.

COUNTY will make one payment for all Task Orders that have a Task Order Completion Time of 22 days or less, or a Task Order Price of \$25,000 or less. For all other Task Orders, the COUNTY may make partial, monthly payments based on a percentage of the work completed.

Before submitting an Application for Payment (Final or Partial) the CONTRACTOR shall reach an agreement with the COUNTY concerning the percentage complete of the Detailed Scope of Work and the dollar value for which the Application for Payment may be submitted.

When applicable, COUNTY agrees to make work progress payments in accordance with the provisions of Section 7-3.2 "Partial and Final Payment" of the STANDARD SPECIFICATIONS, which sums shall be computed from the prices set forth in the Task Order Proposals submitted by CONTRACTOR.

Interest shall begin to accrue on any unpaid progress payment sixty (60) days after ENGINEER's approval of CONTRACTOR's progress payment request. Interest shall be equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure.

3. Term of Contract

Following the Contract's award by the Board of Supervisors, this Contract shall become effective August 18, 2020 if executed with all necessary signatures by this date, or upon the date of execution of all necessary signatures if execution occurs after August 18, 2020 ("Date of Commencement"); and shall be effective for one (1) year from the Date of Commencement or until the maximum Contract amount is expended, whichever occurs first; or unless otherwise terminated as provided herein.

4. CONTRACTOR agrees to commence construction of PROJECT within fourteen (14) calendar days after receipt of a Task Order Notice to Proceed issued by ENGINEER or his/her designee. CONTRACTOR shall notify ENGINEER at least five (5) working days in advance of starting work and agrees to continue construction of PROJECT in strict compliance with the Plans and Special Provisions, in a due and diligent workmanlike manner without interruption, and to complete construction thereof within agreed upon period from the date of commencement of work.

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5. Liquidated Damages; Extension of Time

Timely completion of Task Orders issued under this Contract is of the essence. In accordance with Government Code Section 53069.85, should CONTRACTOR fail to complete the work specified in the Task Order in accordance with the approved construction schedule, and provided CONTRACTOR has not previously obtained a written extension of time from COUNTY according to the General Conditions, a sum appropriate with the following schedule may be deducted from each succeeding request for payment as liquidated damages on each Task Order if applicable.

Schedule for Liquidated Damages

<u>Task Order Price</u>	<u>Liquidated Damages per Day</u>
Up to \$100,000	\$500
\$100,001 to \$500,000	\$1,000
Over \$500,000	\$1,000 plus 0.2% of Task Order Price over \$500,000

The applicability of liquidated damages shall be automatic on each Task Order. Liquidated Damages shall not apply if it is clearly noted on the Request for Proposal or executed Task Order. If CONTRACTOR fails to complete any part of the work in accordance with the work duration schedule, COUNTY agrees to have the right to complete that part of the work it deems necessary in order to maintain the work duration schedule. All direct and indirect costs of such work shall be paid by CONTRACTOR.

6. Change Orders

COUNTY, without invalidating the Task Order, may order changes in the work by altering, adding to or deducting from the work in which the Task Order cost shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Task Order. If additional work is necessary, a new Task Order will be issued. For deduction of work scope, a change order shall be executed, deducting the amount from the original Task Order cost. Credits for Pre-priced and Non Pre-priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. The result is that a credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original Price Proposal. CONTRACTOR shall make no changes in the work or perform any additional work without COUNTY's specific written approval.

7. Wage Rates and Payroll Records

All contractors and subcontractors must comply with the requirements of Labor Code Section 1771.1(a), pertaining to registration of contractors pursuant to Section 1725.5. Bids cannot be accepted from unregistered contractors except as provided in Section 1771.1. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. After award of the contract, CONTRACTOR and each Subcontractor shall furnish electronic payroll records directly to the Labor Commissioner in the manner specified in Labor Code Section 1771.4.

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Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, CONTRACTOR shall comply with the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime wages in this locality for each craft, classification or type of worker needed to execute the AGREEMENT. The rates are available from the Director of the Department of Industrial Relations at the following website: <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>. CONTRACTOR shall post a copy of such wage rates at the jobsite, and shall pay the adopted prevailing wage rates. CONTRACTOR shall comply with the provisions of Sections 1775 and 1813 of Labor Code.

Travel and subsistence payments to each workman needed to execute the work shall be made as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Section 1773.8 of the Labor Code.

CONTRACTOR shall comply with the provisions of Section 1774 of the Labor Code. Failure to comply with the subject section will subject CONTRACTOR to penalty and forfeiture provisions of Section 1775 of the Labor Code.

COUNTY will not recognize any claim for additional compensation because of the payment by CONTRACTOR of any wage rate in excess of the prevailing wage rate set forth in AGREEMENT. The possibility of wage increases is one of the elements to be considered by CONTRACTOR in determining his bid, and will not under any circumstances be considered as the basis of a claim against COUNTY on AGREEMENT.

CONTRACTOR and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. CONTRACTOR shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of COUNTY's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at www.dir.ca.gov. If the Contract is federally funded, CONTRACTOR and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.

CONTRACTOR and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide in part:

CONTRACTOR and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, 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(s) in connection with the work.

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:

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- (a) The information contained in the payroll record is true and correct.
- (b) The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.

The payroll records shall be certified and shall be available for inspection at the principal office of CONTRACTOR on the basis set forth in Labor Code Section 1776.

CONTRACTOR shall inform COUNTY of the location of the payroll records, including the street address, city and county, and shall, within five working days, provide a notice of any change of location and address of the records.

Pursuant to Labor Code Section 1776, CONTRACTOR and any Subcontractor(s) shall have 10 days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that CONTRACTOR or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to COUNTY, forfeit \$100, or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. CONTRACTOR acknowledges that, without limitation as to other remedies of enforcement available to COUNTY, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due CONTRACTOR. CONTRACTOR is not subject to a penalty assessment pursuant to this section due to the failure of a Subcontractor to comply with this section.

8. Apprentices

CONTRACTOR shall familiarize himself with the provisions of Section 1777.5 of the Labor Code regarding employment of apprentices, and shall be responsible for compliance therewith, including compliance by his Subcontractors.

CONTRACTOR agrees to comply with the provisions of Labor Code Section 1777.5 and any other applicable laws or regulations, including but not limited to, 8 California Code of Regulations, Section 230.1(A), pertaining to apprentices. Section 1777.5 shall not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than Thirty Thousand Dollars (\$30,000).

CONTRACTOR and Subcontractor shall comply with Section 1777.6 of the Labor Code which stipulates that an employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of the Labor Code and Section 12940 of the Government Code.

9. Antitrust Claims

In accordance with Public Contract Code Section 7103.5, by entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, CONTRACTOR or Subcontractor offers and agrees to assign to the awarding body all rights, title,

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and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act, Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code, arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to CONTRACTOR, without further acknowledgment by the parties. CONTRACTOR shall cause the above requirement to be inserted in all agreements with Subcontractors.

10. Auditor - Controller Inspection

CONTRACTOR agrees to permit COUNTY's Auditor-Controller, or his authorized representative (including auditors from a private auditing firm hired by COUNTY) or Director of OC Public Works, or his designee, herein referred to as "DIRECTOR", access during normal working hours to all books, accounts, records, reports, files and other papers or property of CONTRACTOR for the purpose of auditing any aspect of performance under AGREEMENT. CONTRACTOR agrees to maintain such records in Orange County, California, for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this AGREEMENT or by law. CONTRACTOR agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, CONTRACTOR agrees to include a similar right to COUNTY to audit records and interview staff of any Subcontractor related to performance of AGREEMENT.

Should CONTRACTOR cease to exist as a legal entity, CONTRACTOR's records pertaining to this AGREEMENT shall be forwarded to the surviving entity in a merger or acquisition, or in the event of liquidation, to the DIRECTOR.

11. Federally Assisted Contract

If AGREEMENT is funded in whole or in part by the Federal Government, CONTRACTOR agrees to comply with the Federal labor standards provisions set forth in the Special Provisions. If the Federal prevailing wage determinations differ from the State's, CONTRACTOR shall not pay less than the higher of the two rates.

12. State Audit

Pursuant to and in accordance with Section 8546.7 of the California Government Code, in the event that AGREEMENT involves expenditures of public funds aggregating in excess of Ten Thousand Dollars (\$10,000), the parties shall be subject to the examination and audit of the Auditor General of the State of California for a period of three (3) years after final payment under AGREEMENT.

CONTRACTOR shall maintain records for all costs connected with the performance of AGREEMENT including, but not limited to, the costs of administering the Contract, materials, labor, equipment, rentals, permits, insurance, bonds, etc., for audit or inspection by COUNTY, State, or any other appropriate governmental agency during the three (3) year period.

13. Successors and Assigns

The terms and provisions of AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

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14. Entirety

AGREEMENT contains the entire agreement between the parties with respect to the matters provided for herein.

15. Severability

If any part of AGREEMENT is held, determined, or adjudicated to be illegal, void, or unenforceable by a court of competent jurisdiction, the remainder of AGREEMENT shall be given effect to the fullest extent reasonably possible.

16. Governing Law and Venue

AGREEMENT has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret AGREEMENT, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure, Section 394.

The parties specifically agree that by soliciting and entering into and performing services under AGREEMENT, CONTRACTOR shall be deemed to constitute doing business within Orange County from the time of solicitation of work, through the period when all work under AGREEMENT is completed, and continuing until the expiration of any applicable limitations period. Furthermore, the parties have specifically agreed, as part of the consideration given and received for entering into AGREEMENT, to waive any and all rights to request that an action be transferred for trial to another County under Code of Civil Procedure, Section 394.

17. Charges, Fines, Penalties and Assessments

CONTRACTOR shall be responsible for any and all charges, fines, penalties, and/or assessments levied against COUNTY by any governmental entity, administrative or regulatory agency having jurisdiction, resulting from any action or omission of CONTRACTOR, CONTRACTOR's Subcontractor, suppliers, and/or employees, unless due to the sole and active negligence of COUNTY. COUNTY is authorized to deduct any such charge, fine penalty, or assessment from any payment COUNTY is otherwise required to make to CONTRACTOR.

If any such charge, fine, penalty, or assessment is levied against COUNTY subsequent to the completion of PROJECT as a result of any action or omission as set forth above, CONTRACTOR shall nevertheless be responsible to COUNTY for the entire sum of such charge, fine, penalty, or assessment and agrees to pay the full amount due within sixty (60) calendar days of receiving an invoice from COUNTY.

CONTRACTOR shall be liable to COUNTY for attorney's fees and costs incurred by COUNTY in enforcing the provisions of this paragraph.

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18. Amendments

No alteration or variation of the terms and conditions of AGREEMENT shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on COUNTY unless authorized by COUNTY in writing.

The 1997 amendments to California Public Contract Code Section 20128.5 provide that the maximum value for each Job Order Contract may be adjusted on an annual basis based on California Consumer Price Index (CPI).

In December 1997, the applicable CPI for Los Angeles-Riverside-Orange County Area was 161.2 and in December 2018, the applicable CPI was 267.631. The applicable CPI has increased by a net 66.0 percent from 1997 to 2018; thus increasing the annual maximum limit for each Job Order Contract from \$3,000,000 in 1997 to \$4,980,000 in 2020.

Increasing the annual limit will enable OC Public Works to keep up with the rising cost of construction and maintain the viability of JOC as an alternative constructing method. When the Contract reaches the maximum allowed amount before expiration, as the results of emergency repairs or unforeseen urgent maintenance or restoration, the amended increases will be effective only after COUNTY accepts CONTRACTOR's additional bonds (Performance Bond and Payment Bond) to cover 100 percent of the increased amount.

19. Acceptance

Unless otherwise agreed to in writing by COUNTY acceptance shall not be deemed complete unless in writing and until all the services have actually been received, inspected, and tested to the satisfaction of COUNTY.

20. Non-Discrimination

In the performance of AGREEMENT, CONTRACTOR agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any Subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. CONTRACTOR acknowledges that a violation of this provision shall subject CONTRACTOR to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.

21. Termination for Cause

A. If CONTRACTOR refuses or fails to prosecute the work with such diligence as will insure its completion within the time specified in AGREEMENT or any extension thereof, or fails to complete said work within such time, the Board of Supervisors may and in accordance with Paragraph 41 below (Breach of Contract) by written notice to CONTRACTOR, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event, COUNTY may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and

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necessary therefor. Whether or not CONTRACTOR's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to COUNTY resulting from his refusal or failure to complete the work within the specified time.

- B. If fixed and agreed liquidated damages are provided in AGREEMENT and if COUNTY is required to complete all or portion of the work under AGREEMENT pursuant to Paragraph 5 above or because of the default by CONTRACTOR as specified in Paragraph 42 (Default), the resulting damage will include, but not be limited to, such liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned by COUNTY in completing the work.
- C. CONTRACTOR's right to proceed shall not be so terminated nor CONTRACTOR charged with resulting damage if:
- 1) The delay in the completion of the work arises from causes beyond the control and without the fault or negligence of CONTRACTOR, including, but not limited to, acts of God, acts of the public enemy, acts of COUNTY, acts of another contractor in the performance of a contract with COUNTY, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, other than normal weather, and
 - 2) CONTRACTOR, within ten (10) days from the beginning of any such delays (unless DIRECTOR grants in writing a further period of time before the date of final payment under AGREEMENT), notifies DIRECTOR in writing of the causes of delay.
- DIRECTOR shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the delay is justified. DIRECTOR shall make written findings, and the findings of fact shall be final and conclusive on the parties, subject only to appeal as provided by law.
- D. The rights and remedies of COUNTY provided in this Section are in addition to any other rights and remedies provided by law or under AGREEMENT.

22. Termination for Convenience

Notwithstanding any other provision of AGREEMENT, COUNTY may, at any time, and without any cause, terminate this AGREEMENT in whole or in part, upon not less than seven (7) days' written notice to CONTRACTOR. Such termination shall be effected by delivery to CONTRACTOR of a notice of termination specifying the effective date of the termination and the extent of the work to be terminated. CONTRACTOR shall immediately stop work in accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by COUNTY. COUNTY shall pay CONTRACTOR for the work completed prior to the effective date of the termination, and such payment shall be CONTRACTOR's sole remedy under AGREEMENT. Under no circumstances will CONTRACTOR be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph. CONTRACTOR shall insert in all subcontracts that the sub-consultant shall stop work on the date of and to the extent specified in a notice of

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termination, and shall require sub-consultants to insert the same condition in any lower tier subcontracts.

23. Consent to Breach Not Waiver

No term or provision of AGREEMENT shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

24. Remedies Not Exclusive

The remedies for breach set forth in AGREEMENT are cumulative as to one another and as to any other remedy provided by law, rather than exclusive; and the expression of certain remedies in AGREEMENT does not preclude resort by either party from resorting to any other remedies provided by law.

25. Independent Contractor

CONTRACTOR shall be considered an independent CONTRACTOR and neither CONTRACTOR, its employees, nor anyone working under CONTRACTOR shall be considered an agent or an employee of COUNTY. Neither CONTRACTOR, its employees nor anyone working under CONTRACTOR shall qualify for workers' compensation or other fringe benefits of any kind through COUNTY.

26. Indemnification

CONTRACTOR agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, their elected and appointed officials, officers, employees, agents and those special districts and agencies which the County of Orange Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by CONTRACTOR pursuant to AGREEMENT. If judgment is entered against CONTRACTOR and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of COUNTY or COUNTY INDEMNITEES, CONTRACTOR and COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve CONTRACTOR of any insurance requirements of obligations created elsewhere in AGREEMENT.

27. Bills and Liens

CONTRACTOR shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. CONTRACTOR shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, CONTRACTOR shall promptly procure its release and, in accordance with the requirements of the indemnification paragraph above, indemnify, defend,

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and hold COUNTY harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.

28. Time Extension

CONTRACTOR shall provide a time extension request on completion of Task Order for delays caused by others (Permitting Agencies, COUNTY or Contract Cities, or unforeseen conditions such as inclement weather, etc.) and at no fault by CONTRACTOR, subject to approval by COUNTY. COUNTY will review the request and determine in its sole discretion whether the situation warrant a time extension at no-cost or with costs. If CONTRACTOR completes the Task Order beyond the stipulated completion date without COUNTY's specific written approval for time extension, CONTRACTOR will be subject to liquidated damages and may be construed as non-responsive, which may affect CONTRACTOR for considerations for future Task Orders or projects.

29. Changes of Ownership

CONTRACTOR agrees that if there is a change or transfer in ownership of CONTRACTOR's business prior to completion of AGREEMENT, the new owners shall be required under terms of sale or other transfer to assume CONTRACTOR's duties and obligations contained in AGREEMENT and complete them to the satisfaction of COUNTY.

30. Force Majeure

CONTRACTOR shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of AGREEMENT caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided CONTRACTOR gives written notice of the cause of the delay to COUNTY within thirty-six (36) hours of the start of the delay and CONTRACTOR avails himself of any available remedies.

31. Confidentiality

CONTRACTOR agrees to maintain the confidentiality of all COUNTY and COUNTY -related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of AGREEMENT. All such records and information shall be considered confidential and kept confidential by CONTRACTOR and CONTRACTOR's staff, agents and employees.

32. Compliance with Laws

CONTRACTOR represents and warrants that services to be provided under AGREEMENT shall fully comply, at CONTRACTOR's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by COUNTY in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by COUNTY. CONTRACTOR acknowledges that COUNTY is relying on CONTRACTOR to ensure such compliance, and pursuant to the requirements of the indemnification paragraph above, CONTRACTOR agrees that it shall defend, indemnify and hold COUNTY and COUNTY INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

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33. Waiver of Jury Trial

Each party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with AGREEMENT and/or any other claim of injury or damage.

34. Terms and Conditions

CONTRACTOR acknowledges that it has read and agrees to all terms and conditions included in AGREEMENT.

35. Headings

The various headings and numbers herein, the grouping of provisions of AGREEMENT into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

36. Calendar Days

Any reference to the word “day” or “days” herein means calendar day or calendar days, respectively, unless otherwise expressly provided.

37. Attorney Fees

In any action or proceeding to enforce or interpret any provision of AGREEMENT, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney’s fees, costs and expenses.

38. Interpretation

AGREEMENT has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this AGREEMENT. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing AGREEMENT by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in AGREEMENT against the party that has drafted it is not applicable and is waived. The provisions of AGREEMENT shall be interpreted in a reasonable manner to affect the purpose of the parties and AGREEMENT.

39. Limitation of Task Order’s Specific Design

The repair, remodeling, refurbishment or other repetitive work to be done according to unit prices shall not include design or contract drawings. When the work scope for each site specific or non-

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standard incidental design is required and is over \$45,000 but less than \$175,000, the design plan and specifications must be approved by ENGINEER or his designee. Unless otherwise directed by the ENGINEER, the CONTRACTOR shall solicit bids for the work scope for the non-standard or site specific incidental design in accordance with Public Works Contract Code Section 22032(b), unless these items have been included in the Unit Price List. When work scope requires detailed design by the CONTRACTOR, the work scope and/or design shall not exceed \$45,000 per Task Order.

40. Notices

Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

For CONTRACTOR: Name: Hardy & Harper, Inc.
 Address: 32 Rancho Circle
 City: Lake Forest, CA 92630
 Attn: Christiana Cook
 Phone: 714-444-1851
 Email: CCook@HardyandHarper.com

For COUNTY: Name: OC Public Works/OC Construction
 Address: 1152 E. Fruit Street, Building #6
 City: Santa Ana, CA 92701
 Attn: Javier Soto, P.E., JOC Manager
 Phone: (714) 227-1470
 E-mail Javier.Soto@ocpw.ocgov.com

41. Breach of Contract

The failure of CONTRACTOR to comply with any of the provisions, covenants or conditions of AGREEMENT shall be a material breach of AGREEMENT. In such event, COUNTY may, and in addition to any other remedies available at law, in equity, or otherwise specified in AGREEMENT:

- A. Afford CONTRACTOR written notice of the breach and three (3) calendar days or such shorter time that may be specified in AGREEMENT within which to cure the breach;
- B. Discontinue payment to CONTRACTOR for and during the period in which CONTRACTOR is in breach; and
- C. Offset against any monies billed by CONTRACTOR but yet unpaid by COUNTY those monies disallowed pursuant to the above.

42. Default

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In the event any equipment or service furnished by CONTRACTOR in the performance of AGREEMENT should fail to conform to the specifications therein within one (1) calendar year from COUNTY'S acceptance of the equipment or service, or any performance period specifically specified within the specifications or AGREEMENT, whichever is greater, COUNTY may reject same, and it shall become the duty of CONTRACTOR to reclaim and remove the items without expense to COUNTY and to immediately replace all such rejected equipment or service with others conforming to such specifications, provided that should CONTRACTOR fail, neglect or refuse to do so within one hundred and twenty (120) calendar days, COUNTY shall have the right to purchase on the open market a corresponding quantity of any such equipment or service and to deduct from any monies due or that may thereafter become due to CONTRACTOR the difference between the price specified in AGREEMENT and the actual cost to the COUNTY.

In the event CONTRACTOR shall fail to make prompt delivery as specified of any equipment or service, the same conditions as to the rights of COUNTY to purchase on the open market and to reimbursement set forth above shall apply, except as otherwise provided in AGREEMENT.

"Any loss or damage sustained by COUNTY in procuring any equipment or service which CONTRACTOR agreed to supply under AGREEMENT but, by reason of the default or breach by CONTRACTOR, failed to supply, shall be borne and paid for by CONTRACTOR. Default shall include failure to carry out any of the requirements of AGREEMENT, including, but not limited to not providing enough properly skilled workers or proper materials, persistently disregarding laws and or ordinances, not proceeding with the work as agreed to herein, or otherwise substantially violating any provision of AGREEMENT."

43. Conflict of Interest Contractor Personnel

CONTRACTOR shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of COUNTY. This obligation shall apply to CONTRACTOR; CONTRACTOR's employees, agents, and relatives; sub-tier contractors; and third parties associated with accomplishing work and services hereunder. CONTRACTOR's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of COUNTY.

44. Non-Employment of COUNTY Personnel

CONTRACTOR agrees that no employee of COUNTY or COUNTY INDEMNITEES who is involved in this PROJECT shall be given or offered employment by CONTRACTOR during the life of AGREEMENT regardless of the assignments said employee may be given or the days or hours employee may work. By accepting AGREEMENT, CONTRACTOR agrees, for the duration of this AGREEMENT, not to offer or discuss employment with any COUNTY or COUNTY INDEMNITEES employee involved in the performance of AGREEMENT.

45. Ownership of Documents

COUNTY has permanent ownership of all directly connected and derivative materials produced under AGREEMENT by CONTRACTOR. All documents, reports and other incidental or

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derivative work or materials furnished hereunder shall become and remain the sole properties of COUNTY and may be used by COUNTY as it may require without additional cost to the COUNTY. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by CONTRACTOR without the express written consent of COUNTY.

46. Title to Data

All materials, documents, data or information obtained from COUNTY data files or any COUNTY medium furnished to CONTRACTOR in the performance of this AGREEMENT will at all times remain the property of COUNTY. Such data or information may not be used or copied for direct or indirect use by CONTRACTOR after completion or termination of AGREEMENT without the express written consent of COUNTY. All materials, documents, data or information, including copies furnished to CONTRACTOR by COUNTY must be returned to COUNTY at the end of this AGREEMENT unless otherwise authorized in writing by ENGINEER.

47. Availability of Funds

The obligation of COUNTY is subject to the availability of funds appropriated for this purpose, and nothing herein shall be construed as obligating COUNTY to expend or as involving COUNTY in any contract or other obligation for future payment of money in excess of appropriations authorized by law.

48. Employee Eligibility Verification

CONTRACTOR warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under AGREEMENT meet the citizenship or alien status requirement set forth in Federal statutes and regulations. CONTRACTOR shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all covered employees for the period prescribed by the law. CONTRACTOR shall indemnify, defend with counsel approved in writing by COUNTY, and hold harmless, COUNTY, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against CONTRACTOR or COUNTY or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this AGREEMENT.

49. Contingency of Funding

CONTRACTOR acknowledges that funding or portions of funding for AGREEMENT may also be contingent upon receipt of funds from, and/or appropriation of funds by, the public entities. If such funding and/or appropriations are not forthcoming, or are otherwise limited, COUNTY may immediately terminate or modify AGREEMENT without penalty.

50. Effective Duration of Task Order

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CONTRACTOR shall acknowledge that all incomplete or pending Task Orders must be completed and closed out within 180 days from the expiration of AGREEMENT. COUNTY, however, may issue supplemental Task Orders to mitigate unforeseen conditions that occur while completing work past the expiration date. COUNTY will immediately terminate and close all pending and incomplete Task Orders on the 180th day from the expiration of this AGREEMENT without penalty.

51. Application of JOC Contracts

JOC is a flexible, cost effective unit price contracting method used by OC Public Works for the maintenance, repair, remodeling, and refurbishment of COUNTY facilities and infrastructure. JOC shall not be used for new construction. As required by California Public Contract Code 20128.5, JOCs are contracts of single year duration. The unit prices in the Unit Price List provide installation costs and demolition costs, along with quantity adjustments, owner supplied materials, position of work (confined or restricted working spaces) and the full cost of CONTRACTOR complying with all Federal and State requirements.

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IN WITNESS WHEREOF, the parties hereto have hereunto set their hand and seal the day and year first hereinabove written.

HARDY & HARPER, INC.
a California Corporation

Date: 5/27/2020

By Steve Kirschner
Signature

Steve Kirschner / Vice President

Print Name & Title

(If a corporation, the document must be signed by two corporate officers. The 1st must be either Chairman of the Board, President or any Vice President.)

Date: 5/28/2020

By Kristen S. Paulino
Signature

Kristen S. Paulino / Secretary

Print Name & Title

(If a corporation, the 2nd signature must be either the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer.)

COUNTY OF ORANGE,
a political subdivision of the State of California

Date: _____

By _____
County of Orange, California

ORANGE COUNTY FLOOD CONTROL
DISTRICT,
a body corporate and politic

Date: _____

By _____
County of Orange, California

APPROVED AS TO FORM
Office of the County Counsel
Orange County, California

By: Mark Sanchez

Print Name Mark Sanchez

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* Note: Pursuant to the requirements of the California Corporations Code Section 313, one of the following two methods must be used by a corporation when it enters into a contract:

- 1) Two people must sign the document. One of them must be the Chairman of the Board, the President or any Vice-President. The other must be the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer.
- 2) One corporate officer may sign the document, providing that written evidence of the officer's authority to bind the corporation with only his or her signature must be provided. This evidence would ideally be a corporate resolution.