

SECTION 1300

AGREEMENT

THIS CONTRACT, by and between the CITY OF CATHEDRAL CITY, a municipal corporation, herein referred to as "City," and HARDY AND HARPER, INC., herein referred to as, "**Contractor.**"

W I T N E S S E T H:

In consideration of their mutual covenants, the parties hereto agree as follows:

1. Contractor shall furnish all necessary labor, material, equipment, transportation and services for **DATE PALM DRIVE STREET IMPROVEMENTS, I-10 TO VARNER ROAD BID NO. B15-02E, CITY PROJECT NO. 8668**, in the City of Cathedral City, California pursuant to the Invitation to Bid, dated May 15, 2015, and Contractor's Bid, dated June 3, 2015, all of which documents shall be considered a part hereof as though fully set herein.

Should any provisions of Contractor's Bid be in conflict with the Notice Inviting Bids, Specifications, or this Contract, then the provisions of said Contract, Specifications, and Invitation to Bid shall be controlling, in that order of precedence. The time frame for construction work shall be in accordance with that specified in the Invitation to Bid.

2. Contractor shall comply with all Federal, State, County, and Cathedral City Municipal Code, which are, as amended from time to time, incorporated herein by reference.

3. All work shall be done in a manner satisfactory to the City Engineer.

4. Contractor shall commence work after the issuance of a written Notice to Proceed and agrees to have all work completed within the specified **20 working days** completion time period.

5. In consideration of said work, City agrees to pay Contractor such sums as shall be approved by the City Engineer at lump sums and/or unit prices stated in the Contractor's Bid, the base consideration **THREE HUNDRED EIGHTY-SIX THOUSAND, ONE HUNDRED SIXTY-FIVE DOLLARS (\$386,165.00)**. All payments shall be subject to approval by the City Engineer and shall be in accordance with the terms, conditions, and procedures provided in the Specifications.

6. The Contractor shall not knowingly pay less than the higher of the Federal minimum wage rate or the general prevailing rate for per diem wages, as determined by the State of California Department of Industrial Relations and referred to in the Invitation to Bid, to any workman employed for the work to be performed under this contract; and the Contractor shall forfeit as a penalty to the City the sum of Twenty-Five Dollars (\$25.00) for each calendar day, or fraction thereof, for such workman paid by him or by any subcontractor under him in violation of this provision (Sections 1770-1777, Labor Code of California).

7. Concurrently with the execution of this Contract, Contractor shall furnish bonds of a surety satisfactory to City, as provided in said Specifications or Invitation to Bid, the cost of which shall be paid by Contractor.

8. Contractor agrees to indemnify, hold harmless, release and defend (even if the allegations are false, fraudulent or groundless), to the maximum extent permitted by law, the City, its City Council, the County of Riverside, its Board of Supervisors, and each member thereof, and its officers, employees, commission members and representatives, from any and all liability, loss, suits, claims, damages, costs, judgments and expenses (including attorney's fees and costs of litigation) which in whole or in part are claimed to result from or to arise out of the usage or operation, including the malfunctioning of, or, any injury caused by, any product purchased herein; or any acts, errors or omissions (including, without limitation, professional negligence) of Contractor, its employees, representatives, subcontractors, or agents in connection with the performance of this Contract.

This agreement to indemnify includes, but is not limited to, personal injury (including death at any time) and damage to property (including, but without limitation, contract or tort or patent, copyright, trade secret or trademark infringement) sustained by any person or persons (including, but not limited to, companies, or corporations, Contractor and its employees or agents, and members of the general public).

9. Except as otherwise required, Contractor shall concurrently with the execution of this contract, furnish the City satisfactory evidence of insurance of the kinds and in the amounts provided in said Specifications. This insurance shall be kept in full force and effect by Contractor during this entire contract and all premiums thereon shall be promptly paid by it. Each policy shall further state that it cannot be canceled without 30 days unconditional written notice to the City and shall name the City and the County of Riverside as additional insured. Contractor shall furnish evidence of having in effect, and shall maintain, Workers Compensation Insurance coverage of not less than the statutory amount or otherwise show a certificate of self-insurance, in accordance with the Workers Compensation laws of the State of California. Failure to maintain the required amounts and types of coverage throughout the duration of this Contract shall constitute a material breach of this Contract.

10. Contractor shall forfeit as a penalty to City \$25.00 for each laborer, workman, or mechanic employed in the execution of this Contract by said Contractor, or any subcontractor under it, upon any of the work herein mentioned, for each calendar day during which such laborer, workman, or mechanic is required or permitted to work at other than a rate of pay provided by law for more than 8 hours in any one calendar day and 40 hours in any one calendar week, in violation of the provisions of Sections 1810-1815 of the Labor Code of the State of California.

11. In accepting this Contract, Contractor certifies that in the conduct of its business it does not deny the right of any individual to seek, obtain and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex or age as provided in the California Fair Employment Practice Act (Government Code Sections 12900, et seq.) Contractor agrees that a finding by the State Fair Employment Practices Commission that Contractor has engaged during the term of this Contract in any unlawful employment practice shall be deemed a breach of this Contract and Contractor shall pay to City \$500.00 liquidated damages for each such breach committed under this contract.

12. Contractor also agrees that for contracts in excess of \$30,000 and more than 20 calendar days duration, that apprentices will be employed without discrimination in an approved program in a ratio established in the apprenticeship standards of the craft involved (Sections 1777.5 and 1777.6, Labor Code of California). Contractors who willfully fail to comply will be denied the right to bid on public projects for a period of six months in addition to other penalties provided by law.

13. This Contract shall not be assignable by Contractor without the written consent of City.

14. Contractor shall notify the City Engineer (in writing) forthwith when the Contract is deemed completed.

15. In accepting this Contract, Contractor certifies that no member or officer of the firm or corporation is an officer or employee of the City except to the extent permitted by law.

16. Contractor certifies that it is the holder of any necessary California State Contractor's License and authorized to undertake the above work.

17. The City, or its authorized auditors or representatives, shall have access to and the right to audit and reproduce any of the Contractor records to the extent the City deems necessary to insure it is receiving all money to which it is entitled under the contract and/or is paying only the amounts to which Contractor is properly entitled under the Contract or for other purposes relating to the Contract.

18. The Contractor shall maintain and preserve all such records for a period of at least four years after termination of the contract.

19. The Contractor shall maintain all such records in the City of Cathedral City. If not, the Contractor shall, upon request, promptly deliver the records to the City or reimburse the City for all reasonable and extra costs incurred in conducting the audit at a location other than at City offices including, but not limited to, such additional (out of the City) expenses for personnel, salaries, private auditors, travel, lodging, meals and overhead.

20. The further terms, conditions, and covenants of the Contract are set forth in the Contract Documents, each of which is by this reference made a part hereof.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates stated below.

"CITY"

**CITY OF CATHEDRAL CITY,
a California municipal corporation**

**By: _____
CHARLES P. McCLENDON, City Manager**

Dated: _____

ATTEST:

**_____
GARY HOWELL, City Clerk**

Dated: _____

APPROVED AS TO FORM:

**_____
CHARLES GREEN, City Attorney**

Dated: _____

"CONTRACTOR"

Dated: _____

By: _____

Name:

Title:

Dated: _____

By: _____

Name:

Title:

"CONTRACTOR"

(If corporation, affix seal)