

Council Meeting of
August 18, 2009

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: Public Works – Approve Amendment to Public Works Agreement C2006-148 for the FY2009-11 Citywide Sidewalk Ramping/Grinding, I-101 Program. Expenditure: \$330,000

RECOMMENDATION

Recommendation of the Public Works Director that City Council approve a Third Amendment to Public Works Agreement C2006-148 with Hardy & Harper, Inc. that extends the term one-year until August 31, 2010 and increases the amount from \$1,175,510 to \$1,505,510 (a \$330,000 increase) to construct the FY2009-11 Citywide Sidewalk Ramping/Grinding, I-101 program.

Funding

\$330,000 is available from the FY2009-11 Citywide Sidewalk Ramping/Grinding, I-101 program.

BACKGROUND

The FY2009-11 Citywide Sidewalk Ramping/Grinding Program is a multi-year program included in the City's adopted Capital Budget as project I-101 ("I-101 Program"). The I-101 Program is a continuation of the recently completed Citywide Sidewalk Ramping/Grinding Program, I-55 ("I-55 Program") that began in FY1999-2000. The purpose of the I-55 Program, and now the I-101 Program, is to systematically remove displacements in City sidewalks for a temporary period until other capital improvement projects can provide permanent repairs (removal and replacement). The specifications require the contractor to inspect the sidewalks in the project area, repair vertical displacements, and submit detailed records on forms provided by the City. Vertical displacements between 3/8" and 1-1/2" are ground with vacuum-equipped grinders. Vertical displacements greater than 1-1/2" are repaired by constructing asphalt ramps. The new asphalt ramps are coated with cement to reduce the color contrast between the black asphalt and the gray concrete.

Since its inception, the I-55 Program has significantly reduced the number of pedestrian "trip and fall" incidents. The I-55 Program ended on June 30, 2009. However, the work will continue via the new I-101 Program. The I-101 Program will address sidewalk concerns in all areas of the City.

ANALYSIS

In July 2006, Council awarded Public Works Agreement C2006-148 to Hardy and Harper, Inc. ("Harper") for an amount of \$295,510 and authorized a 5% contingency for an amount of \$14,775 to perform sidewalk ramping/grinding services. Harper was one of only 3 bidders and the next lowest bid was \$347,582, which is \$52,072 higher than Harper's bid. In April 2007, Council approved a Change Order to the Agreement for an amount of \$150,000 to complete additional work. The Agreement amount increased from \$295,510 to \$445,510.

Harper's Public Works Agreement has a provision to allow up to four (4) extensions (extend the term and increase the contract amount), each for a new term of 12 months. The Agreement has previously been extended twice. The First Amendment was approved by Council on August 14, 2007 for an increase in the amount of \$400,000, thereby increasing the Agreement amount to \$845,510 and extended the term until August 31, 2008. The Second Amendment was approved by Council on August 12, 2008 for an increase in the amount of \$330,000, thereby increasing the Agreement amount to \$1,175,510 and extended the term until August 31, 2009. Harper has successfully performed work during the term of the Agreement and the two Amendments.

The extension provision stipulates the Agreement amount can be increased based on the change in the Construction Cost Index (CCI) for the County of Los Angeles area, as published by the Engineering News Record, McGraw-Hill Construction. For FY2009-10, Harper is entitled to a 0.2% increase; however, Harper has agreed to continue its services for FY2009-10 with no increase. Therefore, if the Third Amendment is approved, the City and Harper would be able to accomplish the same amount of sidewalk ramping/grinding work in FY2009-10 as it did in the previous fiscal year and at no additional cost.

The services provided for the I-101 Program are primarily labor services (sidewalk grinding) with little-to-no materials needed for the work. Although market conditions indicate cost reductions for construction materials, staff does not expect a reduction in labor-type services even if the I-101 Program is re-advertised for bid. Therefore, it is again desired to have Harper continue for another 12-month term and the Public Works Director recommends approval of the Third Amendment to Public Works Agreement C2006-148 with Harper.

The Third Amendment will extend the term until August 31, 2010 and increase the amount from \$1,175,510 to \$1,505,510 (a \$330,000 increase).

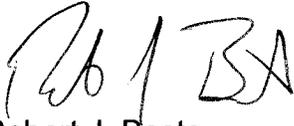
Respectfully submitted,

ROBERT J. BESTE
Public Works Director



By: Craig Bilezerian
Engineering Manager

CONCUR:



Robert J. Beste
Public Works Director



LeRoy J. Jackson
City Manager

Attachments:

- A. Third Amendment to Public Works Agreement (C2006-148)
- B. Public Works Agreement (C2006-148) with Hardy & Harper
- C. Change Order to Public Works Agreement (C2006-148)
- D. First Amendment to Public Works Agreement (C2006-148)
- E. Second Amendment to Public Works Agreement (C2006-148)

THIRD AMENDMENT TO AGREEMENT (C2006-148)

This Third Amendment to Agreement C2006-148 is made and entered into as of _____, 2009, by and between the CITY OF TORRANCE ("CITY"), a municipal Corporation, and Hardy & Harper, Inc., a California corporation ("CONTRACTOR").

RECITALS:

- A. CITY and CONTRACTOR entered into an Agreement as of July 18, 2006, whereby CONTRACTOR agreed to grind City sidewalk offsets, install new asphalt ramps, and patch damaged sidewalk as listed in its Bid attached as Exhibit A to the original agreement.
- B. CITY and CONTRACTOR executed a First Amendment to Agreement on August 14, 2007.
- C. CITY and CONTRACTOR executed a Second Amendment to the Agreement on August 12, 2008
- D. CITY wishes to continue these services and again extend the Agreement in accordance with Section 2 "TERM" of the original Agreement. CONTRACTOR has agreed to continue performing these services in accordance with the Scope of Services/Fee Proposal dated July 8, 2008 attached as Exhibit D to the Second Amendment. The additional work will cost an additional \$330,000.
- E. CITY wishes to increase the Agreement sum from \$1,175,510 to \$1,505,510, an increase of \$330,000, to complete the additional services.
- F. CITY wishes to extend the Agreement term from the Effective Date through August 31, 2010 to allow adequate time to complete the additional services.

AGREEMENT:

1. Paragraph 2, entitled "TERM" is amended to read in its entirety as follows:

"2. **TERM**

Unless earlier terminated in accordance with Paragraph 4 below, this Agreement will continue in full force and effect from the Effective Date through August 31, 2010. If mutually agreed, this Agreement may be extended 1 time, for up to 12 months. Unit costs shall be adjusted according to the change in the Construction Cost Index (CCI) for the County of Los Angeles area, as published by the Engineering News Record, McGraw-Hill Construction. The period used to establish the change in the CCI shall be from the Effective Date of the previous year's Agreement to the Effective Date of the current year's project."

2. Paragraph 3, subparagraph A, entitled "CONTRACTOR's Fee," is amended to read in its entirety as follows:

"3. **COMPENSATION**

A. CONTRACTOR 'S Fee.

For services rendered pursuant to this Agreement, CONSULTANT will be paid in accordance with the Compensation Schedule attached as Exhibit B and Scope of Services/Fee Proposals attached as Exhibits C, D and E, provided, however, that in no event will the total amount of money paid the CONTRACTOR, for services contemplated by this Agreement, exceed the sum of \$1,505,510 ("Agreement Sum"), unless otherwise first approved in writing by CITY."

3. In all other respects, the Agreement entered into as of July 18, 2006 and the amendments dated August 14, 2007 and August 12, 2008 between CITY and CONTRACTOR are ratified and reaffirmed and are in full force and effect.

CITY OF TORRANCE,
A Municipal Corporation

Hardy & Harper, Inc.
a California Corporation

By _____
Frank Scotto, Mayor

By _____
Steve Kirschner
Vice President

ATTEST:

Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By _____
Tatia Y. Strader
Deputy City Attorney

PUBLIC WORKS AGREEMENT

This PUBLIC WORKS AGREEMENT ("Agreement") is made and entered into as of July 18, 2006 (the "Effective Date"), by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and HARDY & HARPER, INC., a California corporation ("CONTRACTOR").

RECITALS:

- A. The CITY wishes to retain the services of an experienced and qualified CONTRACTOR to **grind City sidewalk offsets, install new asphalt ramps, and patch damaged sidewalks**; and
- B. In order to obtain the desired services, The CITY has circulated a Notice Inviting Bids for the **Citywide Sidewalk Ramping and Grinding Project Phase IX**, Notice Inviting Bids No. **B2006-25** (the "NIB"); and
- C. CONTRACTOR has submitted a Bid (the "Bid") in response to the NIB. CONTRACTOR represents that it is qualified to perform those services requested in the Plans and Specifications. Based upon its review of all Bids submitted in response to the NIB, The CITY is willing to award the contract to CONTRACTOR.

C 2 0 0 6 - 1 4 8

AGREEMENT:

1. SERVICES TO BE PERFORMED BY CONTRACTOR

CONTRACTOR will provide the services and install those materials listed in the Plans and Specifications, which are on file in the Engineering Department. The NIB and the Plans and Specifications are made a part of this Agreement. A copy of the Bid is attached as Exhibit A.

2. TERM

Unless earlier terminated in accordance with Paragraph 4 below, this Agreement will continue in full force and effect until September 18, 2007. If mutually agreed, this Agreement may be extended 4 times, for up to 12 months at a time. Unit costs shall be adjusted according to the change in the Construction Cost Index (CCI) for the County of Los Angeles area, as published by the Engineering News Record, McGraw-Hill Construction. The period used to establish the change in the CCI shall be from the Effective Date of the previous year's Agreement to the Effective Date of the current year's project.

ORIGINAL COPY

3. COMPENSATION

A. CONTRACTOR's Fee.

For services rendered pursuant to this Agreement, CONTRACTOR will be paid in accordance with CONTRACTOR's Bid; provided, however, that in no event will the total amount of money paid the CONTRACTOR, for services initially contemplated by this Agreement, exceed the sum of **\$295,510.00** ("Agreement Sum"), unless otherwise first approved in writing by the CITY.

B. Schedule of Payment.

Provided that the CONTRACTOR is not in default under the terms of this Agreement, upon presentation of an invoice, CONTRACTOR will be paid monthly, within 30 days after the date of the monthly invoice.

4. TERMINATION OF AGREEMENT

A. Termination by CITY for Convenience.

1. CITY may, at any time, terminate the Agreement for CITY's convenience and without cause.
2. Upon receipt of written notice from CITY of such termination for CITY's convenience, CONTRACTOR will:
 - a) cease operations as directed by CITY in the notice;
 - b) take actions necessary, or that CITY may direct, for the protection preservation of the work; and
 - c) except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.
3. In case of such termination for CITY's convenience, CONTRACTOR will be entitled to receive payment for work executed; and costs incurred by reason of such termination, along with reasonable overhead and profit on the work not executed.

B. Termination for Cause.

1. If either party fails to perform any term, covenant or condition in this Agreement and that failure continues for 15 calendar days after the nondefaulting party gives the defaulting party notice of the failure to perform, this Agreement may be terminated for cause; provided, however, that if during the notice period the defaulting party has promptly commenced and continues diligent efforts to remedy the

default, the defaulting party will have such additional time as is reasonably necessary to remedy the default.

2. In the event this Agreement is terminated for cause by the default of the CONTRACTOR, the CITY may, at the expense of the CONTRACTOR and its surety, complete this Agreement or cause it to be completed. Any check or bond delivered to the CITY in connection with this Agreement, and the money payable thereon, will be forfeited to and remain the property of the CITY. All moneys due the CONTRACTOR under the terms of this Agreement will be retained by the CITY, but the retention will not release the CONTRACTOR and its surety from liability for the default. Under these circumstances, however, the CONTRACTOR and its surety will be credited with the amount of money retained, toward any amount by which the cost of completion exceeds the Agreement Sum and any amount authorized for extra services.
3. Termination for cause will not affect or terminate any of the rights of the CITY as against the CONTRACTOR or its surety then existing, or which may thereafter accrue because of the default; this provision is in addition to all other rights and remedies available to the CITY under law.

C. Termination for Breach of Law.

In the event the CONTRACTOR or any of its officers, directors, shareholders, employees, agents, subsidiaries or affiliates is convicted (i) of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of a contract or subcontract; (ii) under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a public consultant or contractor; (iii) under state or federal antitrust statutes arising out of the submission of bids or proposals; or (iv) violation of Paragraph 19 of this Agreement; or for any other cause the CITY determines to be so serious and compelling as to affect CONTRACTOR's responsibility as a public consultant or contractor, including but not limited to, debarment by another governmental agency, then the CITY reserves the unilateral right to terminate this Agreement or to impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it deems proper. The CITY will not take action until CONTRACTOR has been given notice and an opportunity to present evidence in mitigation.

5. **FORCE MAJEURE**

If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions,

governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, then that party's performance shall be excused for a period equal to the period of such cause for failure to perform.

6. RETENTION OF FUNDS

CONTRACTOR authorizes the CITY to deduct from any amount payable to CONTRACTOR (whether or not arising out of this Agreement) any amounts the payment of which may be in dispute or that are necessary to compensate the CITY for any losses, costs, liabilities, or damages suffered by the CITY, and all amounts for which the CITY may be liable to third parties, by reason of CONTRACTOR's negligent acts or omissions or willful misconduct in performing or failing to perform CONTRACTOR's obligations under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by CONTRACTOR, or any indebtedness exists that appears to be the basis for a claim of lien, the CITY may withhold from any payment due, without liability for interest because of the withholding, an amount sufficient to cover the claim. The failure of the CITY to exercise the right to deduct or to withhold will not, however, affect the obligations of CONTRACTOR to insure, indemnify, and protect the CITY as elsewhere provided in this Agreement.

7. THE CITY'S REPRESENTATIVE

Robert J. Beste, Public Works Director, is designated as the "City Representative," authorized to act in its behalf with respect to the work and services specified in this Agreement and to make all decisions in connection with this Agreement. Whenever approval, directions, or other actions are required by the CITY under this Agreement, those actions will be taken by the City Representative, unless otherwise stated. The City Manager has the right to designate another City Representative at any time, by providing notice to CONTRACTOR.

8. CONTRACTOR REPRESENTATIVE(S)

The following principal(s) of CONTRACTOR are designated as being the principal(s) and representative(s) of CONTRACTOR authorized to act in its behalf with respect to the work specified in this Agreement and make all decisions in connection with this Agreement:

**Dan Maas, Vice President
Steve Kirschner, Vice President**

9. INDEPENDENT CONTRACTOR

The CONTRACTOR is, and at all times will remain as to the CITY, a wholly independent contractor. Neither the CITY nor any of its agents will have control over the conduct of the CONTRACTOR or any of the CONTRACTOR's

employees, except as otherwise set forth in this Agreement. The CONTRACTOR may not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the CITY.

10. BUSINESS LICENSE

The CONTRACTOR must obtain a City business license prior to the start of work under this Agreement, unless CONTRACTOR is qualified for an exemption.

11. OTHER LICENSES AND PERMITS

CONTRACTOR warrants that it has all professional, contracting and other permits and licenses required to undertake the work contemplated by this Agreement.

12. FAMILIARITY WITH WORK

By executing this Agreement, CONTRACTOR warrants that CONTRACTOR (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, CONTRACTOR warrants that CONTRACTOR has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services set forth in this Agreement. Should CONTRACTOR discover any latent or unknown conditions that will materially affect the performance of the services set forth in this Agreement, CONTRACTOR must immediately inform the CITY of that fact and may not proceed except at CONTRACTOR's risk until written instructions are received from the CITY.

13. CARE OF WORK

CONTRACTOR must adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and other components to prevent losses or damages, and will be responsible for all damages, to persons or property, until acceptance of the work by the CITY, except those losses or damages as may be caused by the CITY's own negligence.

14. CONTRACTOR'S ACCOUNTING RECORDS; OTHER PROJECT RECORDS

Records of the CONTRACTOR's time pertaining to the project, and records of accounts between the CITY and the CONTRACTOR, will be kept on a generally recognized accounting basis. CONTRACTOR will also maintain all other records, including without limitation specifications, drawings, progress reports and the like, relating to the project. All records will be available to the CITY

during normal working hours. CONTRACTOR will maintain these records for three years after final payment.

15. INDEMNIFICATION

CONTRACTOR will indemnify, defend, and hold harmless CITY, the City Council, each member thereof, present and future, its officers, agents and employees from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever, including, but not limited to, those arising from breach of contract, bodily injury, death, personal injury, property damage, loss of use, or property loss however the same may be caused and regardless of the responsibility for negligence. The obligation to indemnify, defend and hold harmless includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of CONTRACTOR, its officers, employees, agents, subcontractors or vendors. It is further agreed, CONTRACTOR's obligations to indemnify, defend and hold harmless will apply even in the event of concurrent negligence on the part of CITY, the City Council, each member thereof, present and future, or its officers, agents and employees, except for liability resulting solely from the negligence or willful misconduct of CITY, its officers, employees or agents. Payment by CITY is not a condition precedent to enforcement of this indemnity. In the event of any dispute between CONTRACTOR and CITY, as to whether liability arises from the sole negligence of the CITY or its officers, employees, agents, subcontractors or vendors, CONTRACTOR will be obligated to pay for CITY's defense until such time as a final judgment has been entered adjudicating the CITY as solely negligent. CONTRACTOR will not be entitled in the event of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

16. NON-LIABILITY OF THE CITY'S OFFICERS AND EMPLOYEES

No officer or employee of the CITY will be personally liable to CONTRACTOR, in the event of any default or breach by the CITY or for any amount that may become due to CONTRACTOR.

17. INSURANCE

A. CONTRACTOR must maintain at its sole expense the following insurance, which will be full coverage not subject to self insurance provisions:

1. Automobile Liability, including owned, non-owned and hired vehicles, with at least the following limits of liability:
 - a. Combined single limits of \$2,000,000 per occurrence.
2. General Liability including coverage for premises, products and completed operations, independent contractors, personal injury and

contractual obligations with combined single limits of coverage of at least \$3,000,000 per occurrence, with an annual aggregate of no less than \$5,000,000.

3. Workers' Compensation with limits as required by the State of California and Employers Liability with limits of at least \$1,000,000.
- B. The insurance provided by CONTRACTOR will be primary and non-contributory.
 - C. The CITY of Torrance, the City Council and each member thereof, members of boards and commissions, every officer, agent, official, employee and volunteer must be named as additional insureds under the automobile and general liability policies.
 - D. CONTRACTOR must provide certificates of insurance and/or endorsements to the City Clerk of the City of Torrance before the commencement of work.
 - E. Each insurance policy required by this Paragraph must contain a provision that no termination, cancellation or change of coverage can be made without thirty days notice to the CITY.
 - F. CONTRACTOR must include all subcontractors as insureds under its policies or must furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors will be subject to all of the requirements of this Paragraph 17.

18. SUFFICIENCY OF INSURERS

Insurance required by this Agreement will be satisfactory only if issued by companies admitted to do business in California, rated "B+" or better in the most recent edition of Best's Key Rating Guide, and only if they are of a financial category Class VII or better, unless these requirements are waived by the Risk Manager of the CITY ("Risk Manager") due to unique circumstances. In the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the CITY, the CONTRACTOR agrees that the minimum limits of any insurance policies and/or the performance bond required by this Agreement may be changed accordingly upon receipt of written notice from the Risk Manager; provided that CONTRACTOR will have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of the CITY within 10 days of receipt of notice from the Risk Manager.

19. CONFLICT OF INTEREST

- A. No officer or employee of the CITY may have any financial interest, direct or indirect, in this Agreement, nor may any officer or employee participate in any decision relating to the Agreement that effects the officer or employee's financial interest or the financial interest of any corporation, partnership or association in which the officer or employee is, directly or indirectly interested, in violation of any law, rule or regulation.
- B. No person may offer, give, or agree to give any officer or employee or former officer or employee, nor may any officer or employee solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any way pertaining to any program requirement, contract or subcontract, or to any solicitation or proposal.

20. NOTICE

- A. All notices, requests, demands, or other communications under this Agreement will be in writing. Notice will be sufficiently given for all purposes as follows:
1. Personal delivery. When personally delivered to the recipient: notice is effective on delivery.
 2. First Class mail. When mailed first class to the last address of the recipient known to the party giving notice: notice is effective three mail delivery days after deposit in an United States Postal Service office or mailbox.
 3. Certified mail. When mailed certified mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.
 4. Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service.
 5. Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice: notice is effective on receipt. Any notice given by fax will be deemed received on the

next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

6. Addresses for purpose of giving notice are as follows:

CONTRACTOR: **Hardy & Harper, Inc.**
 Dan Maas, Vice President
 1312 E. Warner Avenue
 Santa Ana, CA 92705
 Fax: (714) 444-2801

CITY: City Clerk
 City of Torrance
 3031 Torrance Boulevard
 Torrance, CA 90509-2970
 Fax: (310) 618-2931

- B. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.
- C. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

21. PROHIBITION AGAINST ASSIGNMENT AND SUBCONTRACTING

This Agreement and all exhibits are binding on the heirs, successors, and assigns of the parties. The Agreement may not be assigned or subcontracted by either the CITY or CONTRACTOR without the prior written consent of the other.

22. INTEGRATION; AMENDMENT

This Agreement represents the entire understanding of the CITY and CONTRACTOR as to those matters contained in it. No prior oral or written understanding will be of any force or effect with respect to the terms of this Agreement. The Agreement may not be modified or altered except in writing signed by both parties.

23. INTERPRETATION

The terms of this Agreement should be construed in accordance with the meaning of the language used and should not be construed for or against either

party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.

24. SEVERABILITY

If any part of this Agreement is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the Agreement will remain in full force and effect.

25. TIME OF ESSENCE

Time is of the essence in the performance of this Agreement.

26. GOVERNING LAW; JURISDICTION

This Agreement will be administered and interpreted under the laws of the State of California. Jurisdiction of any litigation arising from the Agreement will be in Los Angeles County, California.

27. COMPLIANCE WITH STATUTES AND REGULATIONS

CONTRACTOR will be knowledgeable of and will comply with all applicable federal, state, county and city statutes, rules, regulations, ordinances and orders.

28. WAIVER OF BREACH

No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default will impair the right or remedy or be construed as a waiver. A party's consent or approval of any act by the other party requiring the party's consent or approval will not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and will not be a waiver of any other default concerning the same or any other provision of this Agreement.

29. ATTORNEY'S FEES

Except as provided for in Paragraph 15, in any dispute, litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party will be awarded reasonable attorney's fees, together with any costs and expenses, to resolve the dispute and to enforce any judgment.

30. EXHIBITS

All exhibits identified in this Agreement are incorporated into the Agreement by this reference.

31. CONTRACTOR'S AUTHORITY TO EXECUTE

The persons executing this Agreement on behalf of the CONTRACTOR warrant that (i) the CONTRACTOR is duly organized and existing; (ii) they are duly authorized to execute this Agreement on behalf of the CONTRACTOR; (iii) by so executing this Agreement, the CONTRACTOR is formally bound to the provisions of this Agreement; and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the CONTRACTOR is bound.

CITY OF TORRANCE,
a Municipal Corporation

HARDY & HARPER, INC.
A California Corporation

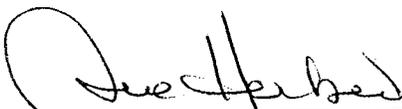


Frank Scotto, Mayor



By: ~~Steve Kirschner~~
Dan Maas, Vice President
Steve Kirschner

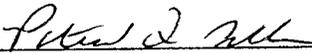
ATTEST:



Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: 

 Heather K. Whitham
Deputy City Attorney

Attachments: Exhibit A: Bid

Created: 4/16/97
Revised: 3/3/99

**BIDDER'S PROPOSAL
B2006-25**

Company: HARDY & HARPER, INC.
Total Bid: 295,510.00

**BID SCHEDULE
PROPOSAL, SPECIFICATIONS, BOND AND AFFIDAVIT
FOR THE CONSTRUCTION OF
CITYWIDE SIDEWALK RAMPING AND GRINDING PROJECT, PHASE IX**

Honorable Mayor and Members
of the Torrance City Council
Torrance, California

Members of the Council:

In accordance with the Notice Inviting Bids pertaining to the receiving of sealed proposals by the City Clerk of the City of Torrance for the above titled improvement, the undersigned hereby proposes to furnish all Work to be performed in accordance with the Plans, Specifications, Standard Drawings, and the Contract Documents, for the unit price or lump sum set forth in the following schedule:

Item No.	Approx Quantity	Units	Description	Unit Price	Bid Price
1.	49,820	LF	Concrete Grinding	5.50	274,010.00
2.	5,500	SF	Construct AC Ramps	1.00	5500.00
3.	10,000	SF	Repair Existing AC Ramps	1.50	15000.00
4.	1,000	SF	Patch Concrete	1.00	1000.00

TOTAL \$ 295,510.00

TOTAL: TWO HUNDRED NINETY FIVE THOUSAND FIVE HUNDRED TEN DOLLARS AND NO CENTS
(Words)*
295,510.00
(Figures)*

***BID MAY BE REJECTED IF TOTAL BID IS NOT SHOWN IN FIGURES AND WORDS.**

Note:

1. Unless earlier terminated in accordance with the provisions of the contract, these bid prices shall be used for the whole duration of the contract. If mutually agreed upon, the contract may be extended 4 times, for up to 18 months at a time. For any agreed extension of contract, the unit costs shall be adjusted according to the change in the Construction Cost Index (CCI) for the Los Angeles County area, as published by the Engineering News Record, McGraw-Hill Construction. The period used to establish the change in the CCI shall be from the Effective Date of the previous year's Agreement to the Effective Date of the current year's project.

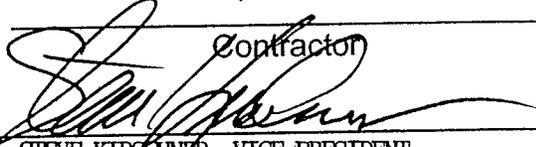
The undersigned furthermore agrees to enter into and execute a contract, with necessary bonds, at the unit prices set forth herein and in case of default in executing such contract, with necessary bonds, the check or bond accompanying this bid and the money payable thereon shall be forfeited thereby to and remain the property of the City of Torrance.

The above unit prices include all work appurtenant to the various items as outlined in the Specifications and all work or expense required for the satisfactory completion of said items. In case of discrepancies between unit prices and totals, the unit prices shall govern.

The undersigned declares that it has carefully examined the Plans, Specifications, and Contract Documents, and has investigated the site of the work and is familiar with the conditions thereon.

HARDY & HARPER, INC.

Contractor

Date: JUNE 21, 2006 By: 
 Contractor's State License Address: SIEVE KIRSCHNER, VICE PRESIDENT
215952 1312 E. WARNER AVE.
 No. SANTA ANA, CA. 92705
 Class A,C-8,C-12 Phone: (714)444-1851

FIRST AMENDMENT TO AGREEMENT (C2006-148)

This First Amendment to Agreement C2006-148 is made and entered into as of August 14, 2007, by and between the CITY OF TORRANCE ("CITY"), a municipal Corporation, and Hardy & Harper, Inc., a California corporation ("CONTRACTOR").

RECITALS:

- A. CITY and CONTRACTOR entered into an Agreement as of July 18, 2006, whereby CONTRACTOR agreed to grind City sidewalk offsets, install new asphalt ramps, and patch damaged sidewalk as listed in its Bid attached as Exhibit A to the original agreement.
- B. The original Agreement was increased from \$295,510 to \$445,510 by way of a change order approved by the City Council.
- C. CITY wishes to continue these services and extend the Agreement in accordance with Section 2 TERM of the original Agreement. CONTRACTOR has submitted its proposal and estimate in accordance with the Scope of Services/Fee Proposal dated July 26, 2007 attached as Exhibit C. The additional work will cost an additional \$400,000.
- D. CITY wishes to increase the Agreement sum from \$445,510 to \$845,510, an increase of \$400,000, to complete the additional services.
- E. CITY wishes to extend the Agreement term from the Effective Date through August 31, 2008 to allow adequate time to complete the additional services.

C2006-148

AGREEMENT:

1. Paragraph 2, entitled "TERM" is amended to read in its entirety as follows:

"2. **TERM**

Unless earlier terminated in accordance with Paragraph 4 below, this Agreement will continue in full force and effect from the Effective Date through August 31, 2008. If mutually agreed, this Agreement may be extended 3 times, for up to 12 months at a time. Unit costs shall be adjusted according to the change in the Construction Cost Index (CCI) for the County of Los Angeles area, as published by the Engineering News Record, McGraw-Hill Construction. The period used to establish the change in the CCI shall be from the Effective Date of the previous year's Agreement to the Effective Date of the current year's project."

2. Paragraph 3, subparagraph A, entitled "CONTRACTOR'S Fee," is amended to read in its entirety as follows:

"3. **COMPENSATION**

A. CONTRACTOR 'S Fee.

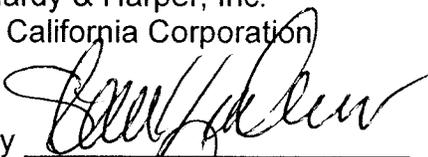
For services rendered pursuant to this Agreement, CONTRACTOR will be paid in accordance with CONTRACTOR'S Bid and the Scope of Services/Fee Proposal attached as Exhibit C; provided, however, that in no event will the total amount of money paid the CONTRACTOR, for services contemplated by this Agreement, exceed the sum of \$845,510 ("Agreement Sum"), unless otherwise first approved in writing by CITY."

3. In all other respects, the Agreement entered into as of July 18, 2006 between CITY and CONTRACTOR is ratified and reaffirmed and is in full force and effect.

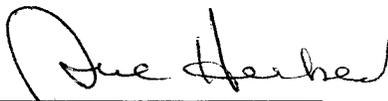
CITY OF TORRANCE,
A Municipal Corporation

By 
Frank Scotto, Mayor

Hardy & Harper, Inc.
a California Corporation

By 
Steve Kirschner
Vice President

ATTEST:


Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By 
Heather K. Whitham
Deputy City Attorney

EXHIBIT C

Scope of services/Fee Proposal



July 26, 2007

Mr. John Wisz
Mr. Henry Completo
City of Torrance
20500 Madrona
Torrance, CA 90503

Dear Henry:

This letter is to confirm our conversation concerning the escalation rate for the Annual Maintenance Contract.

After speaking with Dan Maas, CEO of Hardy & Harper, Inc. he agreed with the 3% escalation clause increase for the Annual Contract.

If you need any further assistance please contact our office immediately.

Sincerely,



Robin Coleman
Accts. Receivable/Collections
Phone: 714-352-7010
Fax: 714-352-7011

Cc: Annual File
Dan Maas
Steve Kirschner

ENR CONSTRUCTION COST INDEX LOS ANGELES AREA

YEAR	MONTH	CCI
2006	June	8546.72
	July	8563.22
	August	8570.22
	September	8572.47
	October	8868.32
	November	8893.07
	December	8878.97
2007	January	8871.09
	February	8870.59
	March	8873.09
	April	8874.82
	May	8888.82
	June	8854.77
	July	8861.27

Calculate Price Ratio:

$$\frac{\text{Price index in July 2007}}{\text{Price index in July 2006}} = \frac{8861.27}{8563.22} = 1.03$$

$$\begin{aligned} \text{Percentage price increase} &= (\text{price ratio}-1) \times 100\% \\ &= (1.03-1) \times 100\% = 3\% \end{aligned}$$

SECOND AMENDMENT TO AGREEMENT (C2006-148)

This Second Amendment to Agreement C2006-148 is made and entered into as of AUGUST 12, 2008, by and between the CITY OF TORRANCE ("CITY"), a municipal Corporation, and Hardy & Harper, Inc., a California corporation ("CONTRACTOR").

RECITALS:

- A. CITY and CONTRACTOR entered into an Agreement as of July 18, 2006, whereby CONTRACTOR agreed to grind City sidewalk offsets, install new asphalt ramps, and patch damaged sidewalk as listed in its Bid attached as Exhibit A to the original agreement.
- B. CITY and CONTRACTOR executed a First Amendment to Agreement on August 14, 2007.
- C. CITY wishes to continue these services and again extend the Agreement in accordance with Section 2 TERM of the First Amendment to Agreement. CONTRACTOR has submitted its proposal and estimate in accordance with the Scope of Services/Fee Proposal dated July 8, 2008 attached as Exhibit D. The additional work will cost an additional \$330,000.
- D. CITY wishes to increase the Agreement sum from \$845,510 to \$1,175,510, an increase of \$330,000, to complete the additional services.
- E. CITY wishes to extend the Agreement term from the Effective Date through August 31, 2009 to allow adequate time to complete the additional services.

C2006-148

AGREEMENT:

1. Paragraph 2, entitled "TERM" is amended to read in its entirety as follows:

"2. **TERM**

Unless earlier terminated in accordance with Paragraph 4 below, this Agreement will continue in full force and effect from the Effective Date through August 31, 2009. If mutually agreed, this Agreement may be extended 2 times, for up to 12 months at a time. Unit costs shall be adjusted according to the change in the Construction Cost Index (CCI) for the County of Los Angeles area, as published by the Engineering News Record, McGraw-Hill Construction. The period used to establish the change in the CCI shall be from the Effective Date of the previous year's Agreement to the Effective Date of the current year's project."

ORIGINAL COPY

- 2. Paragraph 3, subparagraph A, entitled "CONTRACTOR's Fee," is amended to read in its entirety as follows:

"3. **COMPENSATION**

A. CONTRACTOR 'S Fee.

For services rendered pursuant to this Agreement, CONSULTANT will be paid in accordance with the Compensation Schedule attached as Exhibit B and Scope of Services/Fee Proposals attached as Exhibits C and D, provided, however, that in no event will the total amount of money paid the CONTRACTOR, for services contemplated by this Agreement, exceed the sum of \$1,175,510 ("Agreement Sum"), unless otherwise first approved in writing by CITY."

- 3. In all other respects, the Agreement entered into as of July 18, 2006 between CITY and CONTRACTOR is ratified and reaffirmed and is in full force and effect.

CITY OF TORRANCE,
A Municipal Corporation

By Frank Scotto
Frank Scotto, Mayor

Hardy & Harper, Inc.
a California Corporation

By Steve Kirschner
Steve Kirschner
Vice President

ATTEST:

Sue Herbers
Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By John L. Fellows III
(Name)
Deputy City Attorney



RECEIVED

JUL 09 2008

Public Works Department

Via Fax 310 781-6902

July 8, 2008

Mr. John Wisz
Mr. Henry Completo
City of Torrance
20500 Madrona
Torrance, CA 90503

Dear Henry:

This letter is to confirm our conversation concerning the escalation rate for the Annual Maintenance Contract.

After speaking with Dan Maas, CEO of Hardy & Harper, Inc. he agreed with the 4% escalation clause increase for the Annual Contract.

If you need any further assistance please contact our office immediately.

Sincerely,



Steve Kirschner
Vice President

cc: Annual File