

## ATTACHMENT 2

### ON-CALL AGREEMENT FOR ASPHALT AND CONCRETE MAINTENANCE SERVICES BETWEEN THE CITY OF RIALTO, CALIFORNIA AND HARDY AND HARPER INC.

This On-Call Agreement for Asphalt and Concrete Maintenance Services (“**Agreement**”) is entered into as of April 22, 2025 (“**Effective Date**”) between the City of Rialto, a municipal corporation (“**City**”) and Hardy and Harper Inc., a California Corporation (“**Contractor**”) (collectively the “**Parties**”). In consideration of the mutual promises and covenants made by the parties and contained here and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

#### RECITALS

A. City has sought contractors for the performance of the services defined and described particularly in Section 1 of this Agreement.

B. Contractor was selected by the City to be eligible to perform those services as needed and requested by the City.

C. During the Term of this Agreement, the City may initiate or continue various projects for which Contractor’s services may be used. For a given project, the City may award a Task Order for the project based on availability and schedule. Contractor understands and acknowledges that this Agreement provides no guarantee that Contractor will be selected to perform any volume or work for the City.

D. Pursuant to Chapter 2.48 of the Rialto Municipal Code, City has authority to enter into and execute this Agreement.

E. The Parties desire to formalize the selection of Contractor for the performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

#### SECTION 1. SCOPE OF SERVICES

**Term.** Subject to the termination provisions of this Agreement, the Term of this Agreement is for three (3) years, commencing on the date first ascribed above. City may extend the Term of this Agreement two times for one year each time, for a total potential term of five years.

1.1 **Contractor Services.** Subject to the terms and conditions of this Agreement, Contractor agrees to perform for City those services specified in the Scope of Services attached hereto and incorporated herein by reference as Exhibit “A” Scope of Services (“**Services**”), as requested by the City. When the City desires to utilize Contractor for the Scope of Services, the City will issue a Task Order that includes a Scope of Services to be performed and the

compensation to be paid for the Services within the Task Order. Each Task Order is made a part of this Agreement by this reference and encompassed within the Scope of Services of this Agreement.

Contractor agrees to furnish, for the compensation provided in the Task Order, all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately perform and complete the Services. The Services shall be subject to inspection and approval by City. Contractor agrees to work closely with City staff in the performance of the Services and shall be available to City's staff and consultants at all reasonable times.

**1.2 Extra Work.** City shall have the right at any time during the performance of the Services under an individual Task Order, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from said work. No such extra work or change may be undertaken unless a written order is first given by the Contract Officer to the Contractor, describing in detail the extra work or change and the reason(s) therefor and incorporating therein any adjustment in (i) the Task Order sum for the actual cost of the extra work or change, and/or (ii) the time to perform the Task Order, which said adjustments shall be reflected in an amendment to the Task Order subject to the written approval of the Parties. Any amendment to a Task Order shall be reviewed and approved by the City Manager. In accordance with Rialto Municipal Code section 2.48.180, increases in compensation for a Task Order may be approved by the City Manager provided: (a) the initial Task Order amount was less than One Hundred Thousand Dollars (\$100,000) and the amended Task Order sum when considering any or all amendments will not exceed One Hundred Thousand Dollars (\$100,000); or (b) the Task Order was approved by the City Council and the increases in compensation taken either separately or cumulatively do not exceed One Hundred Thousand Dollars (\$100,000). Any greater increases, taken either separately or cumulatively must be approved by the City Council. Payment for additional services rendered by Contractor under a given Task Order requires the submission of the actual costs of Contractor's performance of the extra work with the invoice(s) for the extra work claim(s), as provided in Section 2.4. It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors.

No claim for an adjustment in the contract amount or time for performance shall be valid unless the procedures established in this Section are followed.

**1.3 Schedule of Performance.** Contractor agrees to diligently perform and complete the Services for a particular Task Order in accordance with the Schedule of Completion attached to that Task Order. Modifications to the Schedule of Completion must be agreed upon in writing in advance by the City Manager pursuant to Section 9.19 [Administration and Implementation] and Contractor.

**1.4 General Warranty.** Contractor warrants all Services under this Agreement (which for purposes of this Section shall be deemed to include unauthorized Extra Work which has not been removed and any non-conforming materials incorporated into the Services) to be of good quality and free from any defective or faulty material and workmanship. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the

Services, whether express or implied, are deemed to be obtained by Contractor for the benefit of City, regardless of whether or not such warranties and guarantees have been transferred or assigned to City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of City.

**1.5 Repair of Defects.** Contractor agrees that for a period of one (1) year from and after final acceptance of the Services, or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Services, whichever is later, Contractor shall within ten (10) days after being notified in writing by City of any defect in the Services or non-conformance of the Services, commence and prosecute with due diligence all work and services necessary to fulfill the terms of the warranty at its sole cost and expense. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the work, facilities, fixtures, or materials damaged by its defective Services or which becomes damaged in the course of repairing or replacing defective Services. For any Services so corrected, Contractor's obligation hereunder to correct defective Services shall be reinstated for an additional one-year period, commencing with the date of acceptance of such corrected Services. Contractor shall perform such tests as City may require to verify that any corrective actions are adequate to remedy the defective condition. In the event that Contractor fails to perform its obligations under this Section to the reasonable satisfaction of City, then City shall have the right to correct and replace any defective, non-conforming, or damaged Services at Contractor's sole expense. Contractor shall be obligated to fully reimburse City for any expenses incurred hereunder upon demand.

**1.6 Contractor's Representative.** Contractor hereby designates the representative named in Exhibit "C" Christiana Cook, or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. Contractor's Representative shall supervise and direct the Services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

**1.8 Contract Documents.** The following documents shall be referred to collectively as the "Contract Documents," each of which is incorporated into and made part of this Agreement by reference:

- Approved and fully executed change orders (if any)
- Addenda (if any)
- This Agreement
- All exhibits to this Agreement
- Task Orders
- Notice Inviting Bids
- Instructions to Bidders, and any documents referenced therein Bid
- Forms (including Contractor's Bid Schedule)
- Payment and Performance Bonds, if required

The Contract Documents are intended to be complementary, and a requirement in one document is as effective as if it appeared in all of the Contract Documents. In the event of a conflict between any of the Contract Documents, the documents shall be given effect in the order set forth above.

## **SECTION 2. COMPENSATION AND METHOD OF PAYMENT**

**2.1 Compensation.** City and Contractor acknowledge and agree that the Services required by this Agreement will vary dependent upon the number, type, and extent of the Services the Contractor shall provide; and no guarantee of the extent or the type of Services required of Contractor under the terms of this Agreement is made by the City. The annual or total level of Services required by this Agreement is unknown, and may significantly increase or decrease from year to year. In acknowledgement of the fact that the number and type of projects requiring the Contractor's Services has not been identified for this Agreement, City and Contractor acknowledge and agree that a specific "Maximum Contract Amount" shall be imposed on each separate project that the City may assign Contractor as provided in Section 1.2 and in this Section 2.1. Each such separate project shall be identified as a Task Order authorized by the City Manager or designee as provided in this Section 2.1. The Maximum Contract Amount of this Agreement is undefined, and is subject to the number and type of projects requiring the Contractor's Services throughout the duration of the term of this Agreement, if any. Contractor's compensation shall be limited to the Maximum Contract Amount identified on each separate, individually authorized Task Order corresponding to a project requiring the Services of the Contractor and fees for Services referenced in Exhibit "B" Compensation. Subsequent approval of individual Task Orders shall be approved in accordance with the provisions of Chapter 2.48 of the Rialto Municipal Code.

**2.2 Payment of Compensation.** Unless otherwise specified by the Task Order, Contractor shall submit monthly invoices together with an itemized statement of Services provided. The statement shall describe the Services provided, the percent of work completed by item, together with such other reasonable detail and supporting documentation as may be required by the City Manager, or his/her designee. City will review the statement and pay, with the exception of any charges for work performed or expenses incurred by Contractor which are disputed by City, within 30 days of receiving such statement, all approved charges thereon. Payment by City shall release City from any further obligation for payment to Contractor, for Services performed or expenses incurred as of the date of the invoice. Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defect in work performed by Contractor.

## **SECTION 3. RESPONSIBILITIES OF CONTRACTOR**

**3.1 Control and Payment of Subordinates; Independent Contractor.** Contractor agrees that all Services shall be performed by Contractor or under its supervision. The personnel performing the Services under this Agreement on behalf of Contractor shall at all times be under the Contractor's exclusive direction and control. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. Contractor is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Contractor shall have no authority to bind City in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, healthcare or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor may have to any such rights. Contractor shall make payments promptly, as due, to all persons supplying labor or materials for the Services. Contractor shall not permit any lien or claim to be filed or

prosecuted against the City on any account of any labor or material furnished for the Services. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person as such claim becomes due, City may pay such claim and charge the amount of the payment against funds due or to become due the Contractor. The payment of the claim in this manner shall not relieve Contractor or their surety from obligation with respect to any unpaid claims.

**3.2 Standard of Care and Licenses.** Contractor agrees that all Services shall be performed in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and warrants that it, its employees and subcontractors shall have sufficient skill and experience to perform the Services and that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained in good standing throughout the term of this Agreement.

**3.3 Required Corrections.** Contractor shall perform, at its own expense and without reimbursement from the City, any work necessary to correct errors or omissions that are caused by the Contractor's failure to comply with the standard of care provided for herein.

**Law and Regulations.** Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services.

**3.4 Safety.** Contractor shall perform the Services, and maintain its work area, so as to avoid injury or damage to any person or property and shall otherwise exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

**3.5 Labor Code and Prevailing Wage Requirements.**

**3.5.1 Apprenticeable Crafts.** To the extent applicable, Contractor shall comply with the provisions of Section 1777.5 of the Labor Code with respect to the employment of properly registered apprentices upon public works.

**3.5.2 Hours of Work.** Contractor shall comply with the legal days work and overtime requirements of Section 1813 of the Labor Code.

**3.5.3 Payroll Records.** In accordance with the requirements of Labor Code Section 1776, Contractor shall keep accurate payroll records which are either on forms provided by the Division of Labor Standards Enforcement or which contain the same information required by such forms. Contractor shall make all such records available for inspection at all reasonable hours.

**3.5.4 Prevailing Wage Laws.** Contractor represents and warrants that it is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("**Prevailing Wage Laws**"), which

require the payment of prevailing wage rates and the performance of other requirements on “Public Works” and “Maintenance” projects. If the Services are being performed as part of an applicable “Public Works” or “Maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor’s principal place of business and any location where the Services are performed.

**3.6 Equal Opportunity Employment.** Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant, in any way, in the employment of persons to perform the Services in violation of any federal or state law prohibiting discrimination in employment, including based on the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, of any person, except as provided under California Government Code section 12940.

## **SECTION 4. INDEMNIFICATION**

**4.1 Indemnity.** Except as to the sole negligence, active negligence, gross negligence or willful misconduct of City, Contractor expressly agrees to, and shall, indemnify, defend, release, and hold City, and its respective officials, officers, employees, agents, and contractors harmless from and against any Action, liability, loss, damage, entry, judgment, order, lien, and Costs and Expenses which arises out of, or are in any way related to, any act or omission of Contractor, or its officers, directors, employees, agents, or contractors, connected with the performance or failure to perform under this Agreement, notwithstanding that City may have benefited therefrom, or any challenge to this Agreement. This Section shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Contractor’s officers, directors, employees, agents and contractors, including but not limited to acts or omissions in any way related to, the release, treatment, use, generation, transportation, storage, or disposal in, on, under, to, or from the location at which work under this Agreement is performed of any Hazardous Substances by Contractor or its officers, directors, employees, agents, and subcontractors. The Parties expressly agree that any payment, or Costs and Expenses City incurs or makes to, or on behalf of, an injured employee under City’s workers’ compensation or other insurance, is included as a loss or Costs and Expenses for the purpose of this Section. City shall not be responsible for any acts, errors or omissions of any person or entity except City and its officers, agents, servants, employees or contractors. The Parties expressly agree that the obligations of Contractor under this Section shall survive the expiration or early termination of the Agreement.

**4.2 Action.** For purposes of this Agreement, “**Action**” shall mean any suit (whether legal, equitable, or declaratory in nature), proceeding or hearing (whether administrative or judicial), arbitration or mediation (whether voluntary, court-ordered, binding, or non-binding), or other alternative dispute resolution process, and the filing, recording, or service of any process, notice, claim, demand, lien, or other instrument which is a prerequisite or prelude to commencement of the Action.

**4.3 Costs and Expenses.** For purposes of this Agreement, “**Costs and Expenses**” shall mean all costs and expenses, to the extent reasonable in amount, actually and necessarily incurred by a Party in good faith in the investigation, prosecution or defense of an Action, including, but not limited to, court costs, filing, recording, and service fees, copying costs, exhibit production costs, special media rental costs, attorney’s fees, consultant fees, fees for investigators, witness fees (both lay and expert), travel expenses, deposition and transcript costs, and any other costs or expenses, the award of which a court of competent jurisdiction may determine to be just and reasonable.

**4.4 Hazardous Substances.** For purposes of this Agreement, “Hazardous Substances” shall mean any and all of the following:

a. any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or for which liability arises for misuse, pursuant to the Comprehensive Environmental Response Compensation and Liability Act (“CERCLA”), 42 U.S.C. §9601, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, *et seq.*; the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §6901, *et seq.*; the Toxic Substances Control Act, 15 U.S.C.S. §2601, *et seq.*; the Clean Water Act, 33 U.S.C. §1251, *et seq.*; the Insecticide, Fungicide, Rodenticide Act, 7 U.S.C. §136, *et seq.*; the Superfund Amendments and Reauthorization Act, 42 U.S.C. §6901, *et seq.*; the Clean Air Act, 42 U.S.C. §7401, *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §300f, *et seq.*; the Solid Waste Disposal Act, 42 U.S.C. §6901, *et seq.*; the Surface Mining Control and Reclamation Act, 30 U.S.C. §1201, *et seq.*; the Emergency Planning and Community Right to Know Act, 42 U.S.C. §11001, *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. §§655 and 657; the Hazardous Waste Control Act, California Health and Safety Code (“H.&S.C.”) §25100, *et seq.*; the Hazardous Substance Account Act, H.&S.C. §25330, *et seq.*; the California Safe Drinking Water and Toxic Enforcement Act, H.&S.C. §25249.5, *et seq.*; the Underground Storage of Hazardous Substances, H.&S.C. §25280, *et seq.*; the Carpenter-Presley-Tanner Hazardous Substance Account Act, H.&S.C. §25300, *et seq.*; the Hazardous Waste Management Act, H.&S.C. §25170.1, *et seq.*; the Hazardous Materials Response Plans and Inventory, H.&S.C. §25001, *et seq.*; the Porter-Cologne Water Quality Control Act, Water Code §13000, *et seq.*, all as they may from time to time be amended; and

b. any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or for which liability for misuse arises pursuant to any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree due to its hazardous, toxic or dangerous nature.

## **SECTION 5. RECORDS AND DOCUMENTS**

### **5.1 Accounting Records.**

**5.1.1 Maintenance and Inspection.** Contractor shall maintain complete and accurate records with respect to all expenses incurred under this Agreement. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the Services provided by Contractor pursuant to this Agreement. All such records shall be clearly identifiable.

5.1.2 **Inspection and Copying.** Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement. At no cost to City, Contractor shall provide copies of such documents or records directly to the City for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at Contractor's address indicated for receipt of notices in this Agreement.

5.2 **Ownership of Documents.** All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by Contractor in the course of providing the Services shall become the sole property of City and may be used, reused or otherwise disposed of by the City and may be used, reused or otherwise disposed of by the City without the permission of the Contractor. Upon completion, expiration or termination of this Agreement, Contractor shall turn over to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents without the permission of the Contractor. completion, expiration or termination of this Agreement, Contractor shall turn over to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents

## **SECTION 6. INSURANCE**

6.1 **Maintenance of Insurance.** Prior to the beginning of and throughout the term of this Agreement, Contractor will maintain insurance in conformance with requirements established by City for the type of Services being performed. Contractor acknowledges that prior to the Effective Date of this Agreement, City provided to Contractor the applicable insurance requirements, a copy of which are attached hereto as Exhibit "D" City of Rialto Insurance Requirements. Contractor acknowledges that the insurance coverage and policy limits provided by City constitute the minimum amount of coverage required. Any insurance proceeds in excess of the limits and coverage required in this Agreement and which are applicable to a given loss, will be available to the City.

6.2 **Subcontractors Insurance.** Contractor agrees to ensure that subcontractors, and any other party involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Contractor agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to City for review.

6.3 **Modification of Insurance Provisions.** The City Manager may make reasonable amendments to the insurance requirements of this section, with the written concurrence of the Finance Director or Risk Manager, in accordance with Section 9.19 [Administration and Implementation] after considering the Scope of Services, potential liabilities, and the required level of insurance to adequately protect the City.



## **SECTION 7. BONDS**

**7.1 Performance and Payment Bonds.** If required by law or specifically required by City for a particular Task Order, Contractor shall execute and provide to City concurrently with Contractor's acceptance of the Task Order, a Performance Bond and/or a Payment Bond in the amount of the total, not-to-exceed compensation indicated in the Task Order, and in a form provided or approved by the City.

**7.2 Bond Provisions.** Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Agreement until any replacement bonds required by this section are accepted by the City. To the extent, if any, that the total compensation is increased in accordance with the Agreement, the Contractor shall, without further notice from City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. To the extent available, the bonds shall further provide that no change or alteration of the Agreement (including, without limitation, an increase in the total compensation, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety.**Surety Qualifications.** Only bonds executed by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety with a current A.M. Best's rating no less than A:VIII and satisfactory to the City. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

**7.3 Surety Qualifications.** Only bonds executed by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety with a current A.M. Best's rating no less than A:VIII and satisfactory to the City. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

## **SECTION 8. TERMINATION.**

**8.1 Termination by City.** City may, by written notice to Contractor, terminate with or without cause, and without any prior notice of default or right to cure by Contractor, the whole or any part of this Agreement at any time and by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least five (5) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those non-disputed Services that have been adequately rendered to City, and Contractor shall be entitled to no further compensation.

**8.2 Termination by Contractor.** Contractor may, by written notice to City, terminate this Agreement based upon City's failure to timely cure a default under this Agreement as provided herein. At least forty-five (45) days prior to termination, Contractor shall provide City with a

written notice specifying City's alleged default and providing City with a forty-five (45) day period to cure the default. Should City timely cure such default, the Agreement shall continue. Should City fail to timely or adequately cure such default, Contractor may terminate this Agreement by issuance of written notice to City.

## **SECTION 9. GENERAL PROVISIONS**

**9.1 Assignment or Transfer.** Contractor shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

**9.2 Loss and Damage.** Contractor shall be responsible for all loss and damage which may arise out of the nature of the Services agreed to herein, or from the action of the elements, or from any unforeseen difficulties which may arise or be encountered in the prosecution of the Services until the same is fully completed and accepted by City.

**9.3 Liquidated Damages.** The Parties agree that City has a legitimate interest in ensuring that Contractor provides the Services (including performance of all duties and responsibilities) required under this Agreement and each Task Order in a consistent and reliable manner, and that Contractor's failure to timely provide such Services or to provide them in an inadequate manner will cause City to suffer damages and that it is, and will be, impractical and extremely difficult to ascertain and determine the exact amount of damages or to calculate actual damages. Therefore, in addition to City's right to treat such non-performance as a material breach of, and to terminate, this Agreement, the Parties agree that liquidated damages, as provided herein, represent a reasonable estimate of the monetary damages that reasonably could be anticipated and that proof of actual damages would be costly or impractical. The Parties specifically confirm the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made. Therefore, in lieu of actual damages, Contractor is subject to payment of \$500 per failure to perform, per day. City may, at its election, deduct any assessed liquidated damages from payment due, or that will become due, to Contractor from City.

**9.4 Excusable Delays.** Contractor shall not be liable for damages, including liquidated damages, if any, caused by delay in performance of failure to perform due to causes beyond the control of Contractor. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of City, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this Agreement shall be equitably adjusted for any delays due to such causes.

**9.5 Cooperation; Further Acts.** The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of the Agreement.

**9.6 Governing Law.** This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of San Bernardino. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Eastern Division of the Central District

of California, located in San Bernardino, California.

**9.7 Integration.** This Agreement, including the attached Exhibit “A” through Exhibit “D”, is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Contractor and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding.

**9.8 Severability.** If a term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

**9.9 Prohibited Interests.** Contractor represents and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement.

**9.10 Amendments.** No amendment to or modification of this Agreement shall be valid unless made in writing and approved by Contractor and City. The City Manager shall have the authority to approve any amendment to this Agreement if the total compensation under this Agreement, as amended, would not exceed the City Manager’s contracting authority under the Rialto Municipal Code. All other amendments shall be approved by the City Council. The Parties agree that the requirement for amendments or modifications to be in writing cannot be waived and that any attempted waiver shall be void.

**9.11 No Third Party Beneficiaries.** There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

**9.12 Delivery Of Notices.** All notices required or permitted to be given under this Agreement shall be in writing and shall be given to the respective parties at the addresses listed in Exhibit “C”, or at such other address as the respective parties may provide in writing for this purpose. Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

**9.13 Binding Effect.** This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

**9.14 Waiver.** Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party or any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any Services by Contractor shall not constitute a waiver of any of the provisions of this Agreement.

**9.15 Attorney's Fees, Costs and Expenses.** In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees and Costs and Expenses, in addition to any other relief to which it may be entitled.

**9.16 Subcontracting.** Contractor shall not subcontract any portion of the Services, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions of this Agreement.

**9.17 Counterparts.** This Agreement may be signed in counterparts, each of which shall constitute an original.

**9.18 Authority To Execute.** The person or persons executing this Agreement on behalf of Contractor represents and warrants that he/she/they has/have the authority to so execute this Agreement and to bind Contractor to the performance of its obligations hereunder.

**9.19 Administration and Implementation.** This Agreement shall be administered and executed by the City Manager or his or her designated representative. The City Manager shall have the authority to issue interpretations and to make amendments to this Agreement, including amendments that commit additional funds, consistent with the City Manager's contracting authority under the Rialto Municipal Code.

[SIGNATURES ON FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the City and the Contractor have caused this Agreement to be executed the day and year first above written.

**CITY OF RIALTO, CALIFORNIA, a municipal corporation**

**(HARDY AND HARPER, INC., a California corporation**

By \_\_\_\_\_  
Tanya Williams  
City Manager

By \_\_\_\_\_  
[Name]  
Hardy and Harper, Inc.

**ATTEST:**

By \_\_\_\_\_  
Barbara A. McGee  
City Clerk

By \_\_\_\_\_  
[Name]  
Hardy and Harper, Inc.

**APPROVED AS TO FORM:**

Burke, Williams & Sorensen, LLP

By \_\_\_\_\_  
Eric S. Vail  
City Attorney

**\*\*Two signatures are required if a corporation\*\***

**EXHIBIT “A”**  
**SCOPE OF SERVICES**

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Contractor shall provide On-Call Asphalt and Concrete Maintenance Services. Specifically, Consultant shall provide those services as outlined in its proposal dated March 11, 2025, included on the following pages.

**EXHIBIT "B"**  
**COMPENSATION**

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Pricing must be inclusive of all costs, including but not limited to, direct and indirect costs for labor, overhead, insurance, business expenses, incidentals, mileage, fuel/fuel surcharges, or any other miscellaneous charges. This contract is subject to prevailing wages. Any scope of work not listed on this form requested to be performed shall be agreed to by the Contractor and City of Rialto.

Item No.	Description	Unit	Unit Price
1	Emergency Call Out Fee (Contractor to respond within 24 hours)	Each (EA)	<u>\$3,500.00</u>

Potholes

Item No.	Description	Unit	Unit Price
1	Full Burden Day Rate per Minimum 7 Tons of PG 64-10 HMA Asphalt	Lump Sum (LS)	<u>\$8,400.00</u>

Asphalt

Item No.	Description	Unit	Unit Price
1	Cold milling (2") 50-500 SF	Square Foot (SF)	<u>\$ 2.00</u>
2	Cold milling (2") 500-1000 SF	Square Foot (SF)	<u>\$ 1.50</u>
3	Cold milling (2") 1001-2000 SF	Square Foot (SF)	<u>\$ 1.00</u>
4	Cold milling (2") 2000-5000 SF	Square Foot (SF)	<u>\$ .75</u>
5	Cold milling (2") 5000+ SF	Square Foot (SF)	<u>\$ .65</u>
6	Crack Sealing (1/4" to 1.5") 4-hour min	Hour (HR)	<u>\$ 1,500.00</u>
7	Type II Slurry Seal (10,000 SF min)	Square Foot (SF)	<u>\$ .75</u>
8	Unclassified Excavation (1-500 CY)	Cubic Yards (CY)	<u>\$ 200.00</u>
9	Unclassified Excavation (500+ CY)	Cubic Yards (CY)	<u>\$ 150.00</u>
10	Adjustment of Existing Water Valve Boxes and Covers to Grade (1-5)	Each (EA)	<u>\$ 1,200.00</u>
11	Adjustment of Existing Water Valve Boxes and Covers to Grade (5+)	Each (EA)	<u>\$ 1,050.00</u>
12	Adjustment of Existing Manhole Frame and Covers to Grade (1-5)	Each (EA)	<u>\$ 1,500.00</u>
13	Adjustment of Existing Manhole Frame and Covers to Grade (5+)	Each (EA)	<u>\$ 1,100.00</u>

Item No.	Description	Unit	Unit Price (HMA PG 64-10 Type B)	Unit Price (ARHM GG-C)
1	Asphalt 1-5 Tons	Tons (TN)	\$ 700.00	\$ 715.00
2	Asphalt 5-10 Tons	Tons (TN)	\$ 650.00	\$ 665.00
3	Asphalt 10-20 Tons	Tons (TN)	\$ 600.00	\$ 615.00
4	Asphalt 20-50 Tons	Tons (TN)	\$ 550.00	\$ 565.00
5	Asphalt 50-100 Tons	Tons (TN)	\$ 450.00	\$ 465.00
6	Asphalt 100-500 Tons	Tons (TN)	\$ 280.00	\$ 295.00
7	Asphalt 500-1000 Tons	Tons (TN)	\$ 160.00	\$ 175.00
8	Asphalt 1000+ Tons	Tons (TN)	\$ 140.00	\$ 155.00

Concrete – 560-C-3250

Item No.	Description	Unit	Unit Price
1	Remove and Construct 4" PCC Sidewalk (16-80 SF)	Square Foot (SF)	\$ 40.00
2	Remove and Construct 4" PCC Sidewalk (80-320 SF)	Square Foot (SF)	\$ 35.00
3	Remove and Construct 4" PCC Sidewalk (320-640 SF)	Square Foot (SF)	\$ 30.00
4	Remove and Construct PCC Driveway	Cubic Yard (CY)	\$ 35.00
5	Remove and Construct PCC Curb Ramp per Caltrans A88A or A88B	Square Foot (SF)	\$ 35.00



**EXHIBIT “C”  
REPRESENTATIVES**

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**CITY’S REPRESENTATIVE**

City of Rialto  
Public Works Department  
Matt Bennett  
150 S. Palm Avenue Rialto, CA 92376  
Phone: 909-820-2602  
Email Address: [MBennett@rialtoca.gov](mailto:MBennett@rialtoca.gov)

**CONTRACTOR’S REPRESENTATIVE**

Hardy & Harper, Inc.  
Christiana Cook  
32 Rancho Circle, Lake Forest, CA 92630  
Phone: 714-444-1851  
Email Address: [ccook@hardyandharper.co](mailto:ccook@hardyandharper.co)

**EXHIBIT "D"**  
**INSURANCE REQUIREMENTS FOR CITY OF RIALTO**

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**The City requires a certificate of insurance, including an underwriter's endorsement, prior to commencement of the Services.**

**The insurance policies are to include additional endorsements that contain the following provisions:**

1. That the City of Rialto and its respective elected officials, officers, employees, agents and representatives are additional insureds under the policy;
2. The policies are primary and non-contributory to any insurance that may be carried by City;
3. The City is entitled to thirty (30) days' prior written notice of cancellation, material reduction, or non-renewal of the policy or policies.
4. The insurance shall be carried only by responsible insurance companies that have rated "A-" and "V" or better by the A.M. Best Key Rating Guide, that are licensed to do business in the State of California. City will accept insurance provided by non-admitted "surplus lines" carriers only if the carrier is authorized to do business in the State of California.

**Only the following "marked" requirements are applicable:**

  **X**   **Commercial General Liability (CGL):** Insurance written on an occurrence basis to protect Contractor and City against liability or claims of liability which may arise out of this Agreement in the amount of one million dollars (\$1,000,000) per occurrence and subject to an annual aggregate of two million dollars (\$2,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. additional insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

  **X**   **Vehicle Liability Insurance:** Contractor shall also procure and shall maintain during the term of this Agreement vehicle liability insurance in an amount not less than \$1,000,000 for injuries, including accidental death, to any one person, and subject to the same minimum for each person, in an amount not less than one million dollars (\$1,000,000) for each accident, and property damage insurance in an amount of not less than one million dollars (\$1,000,000).

  **X**   **Workers' Compensation Insurance:** For all of Contractor's employees who will provide Services under this Agreement and to the extent required by applicable state or federal law, Contractor shall keep in full force and effect a Workers' Compensation policy that includes a minimum of one million dollars (\$1,000,000) of employers' liability coverage. Contractor shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives. In the event a claim under the provisions of the California Workers' Compensation Act is filed against City by a bona fide employee of Contractor participating under this Agreement, Contractor is to defend and indemnify the City from such claim.