

CITY OF MENIFEE

CONTRACT SERVICES AGREEMENT

ON-CALL GUARDRAIL REPLACEMENT AND REPAIR SERVICES

THIS CONTRACT SERVICES AGREEMENT (“Agreement”) is made and effective this _____ day of _____, 2024 by and between the CITY OF MENIFEE, a California municipal corporation, (“City”) and **GENTRY GENERAL ENGINEERING, INC.**, a California Corporation (“Contractor”). City and Contractor are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties”.

City sought, by issuance of a Request for Proposals or Invitation for Bids, for the performance of the services defined and described particularly in this Agreement. Contractor, following submission of a proposal or bid for the performance of the services defined and described particularly in this Agreement, was selected by City to perform those services. Pursuant to the City of Menifee’s Municipal Code, City has authority to enter into this Agreement and the City Manager has authority to execute this Agreement. The Parties desire to formalize the selection of Contractor for performance of those services defined and described particularly in this Agreement and desire that the terms of that performance be as particularly defined and described herein.

SECTION 1. SERVICES.

1.1 Scope of Services. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the services described in the Scope of Services, attached hereto as Exhibit B, “Scope of Services” and incorporated herein by this reference (the “Services”). Contractor will perform subsequent task orders as requested by the Contract Administrator (as defined below), in accordance with the Scope of Services. The Scope of Services incorporates Contractor’s scope of work or bid for the Services. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit B, this Agreement shall prevail.

1.2 Term of Services. The term of this Agreement shall begin on **February 12, 2024**. Unless earlier terminated in accordance with Section 8 of this Agreement, this Agreement shall continue in full force and effect until final written approval and acceptance of the work performed under this Agreement by the Contract Administrator. The time provided to Contractor to complete the Services required by this Agreement shall not affect City’s right to terminate this Agreement, as provided for in Section 8.

1.3 Standard of Performance.

a. Quality of Work. As a material inducement to City entering into this Agreement, Contractor represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the Services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the Services contemplated herein. Contractor shall at all times faithfully, competently, and to the best of its ability, experience, and talent, perform all Services described herein. Contractor covenants that it shall follow the highest professional standards in performing the Services required hereunder and that

all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase “highest professional standards” shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances, and to the sole satisfaction of the Contract Administrator.

b. Care of Work. Contractor shall adopt reasonable methods during the term of this Agreement to furnish continuous protection to the Services, and the equipment, materials, papers, documents, plans, studies, and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the Services by City, except such losses or damages as may be caused by City’s own negligence.

c. Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out the Services, Contractor shall at all times be in compliance with all applicable local, state, and federal laws, rules and regulations, and shall 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. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

d. Warranty. Contractor warrants all work under this Agreement (which for purposes of this Subsection 1.3 shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one (1) year (or the period of time specified elsewhere in this Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by City of any defect in the work or non-conformance of the work to this Agreement, commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty at Contractor’s sole cost and expense. Contractor shall act sooner as requested by City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the work (or work of other contractors) damaged by Contractor’s defective work or which becomes damaged in the course of repairing or replacing defective work. For any work so corrected, Contractor’s obligation hereunder to correct defective work shall be reinstated for an additional one (1) year period, commencing with the date of acceptance of such corrected work. Contractor shall perform such tests as City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of this Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of Contractor. All warranties and guarantees of subcontractors, suppliers, and manufacturers with respect to any portion of the work, 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. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of City, City shall have the right to correct and replace any defective or non-conforming work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse City for any expenses incurred hereunder upon demand.

e. Skilled and Trained Workforce. Contractor, for itself and its subcontractors at every tier, hereby provides an enforceable commitment to comply with California Public Contract Code section 2600 et seq., which requires use of a skilled and trained workforce to perform all work on the agreements that fall within an apprenticeable occupation in the building and construction trades.

f. Inspection and Final Acceptance. The Services shall be performed to the satisfaction of City. City may inspect and accept or reject any of Contractor's work under this Agreement, during performance and/or when completed. City shall reject or finally accept Contractor's work within forty five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud, and such gross mistakes as amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Section 4 and Section 5, pertaining to insurance and indemnification, respectively.

1.4 Assignment of Personnel. Contractor shall assign only competent personnel to perform the Services. Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the Services. Contractor shall notify City of any changes in Contractor's staff and subcontractors, if any, assigned to perform the Services, prior to and during any such performance. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Contractor shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

1.5 Time. Time is of the essence in the performance of this Agreement. Contractor shall devote such time to the performance of the Services pursuant to this Agreement as may be reasonably necessary to satisfy Contractor's obligations hereunder. Contractor shall commence the Services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all Services within the time period(s) established in the Scope of Services. When requested by Contractor, extensions to the time period(s) specified in the Scope of Services may be approved in writing by the Contract Administrator but not shall not exceed one hundred eighty (180) days cumulatively.

1.6 Force Majeure. The time period(s) specified in the Scope of Services for performance of the Services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including City, if Contractor

shall within ten (10) days of the commencement of such delay notify the Contract Administrator in writing of the causes of the delay. The Contract Administrator shall ascertain the facts and the extent of delay, and extend the time for performing the Services for the period of the enforced delay when and if in the sole judgment of the Contract Administrator such delay is justified. The Contract Administrator's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Contractor be entitled to recover damages against City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of this Agreement pursuant to this Section.

1.7 Suspension of Services. The City Engineer of City ("Engineer") shall have the authority to suspend the Services, wholly or in part, for such period as the Engineer may deem necessary, due to unsuitable weather or to such other conditions as are considered unfavorable for the suitable prosecution of the Services, or for such time as the Engineer may deem necessary due to the failure on the part of Contractor to carry out orders given or to perform any provisions of the Services. Contractor shall immediately comply with the written order of the Engineer to suspend the Services wholly or in part and shall not resume the Services until ordered to do so in writing by the Engineer. Such suspension shall be without liability to Contractor on the part of City. In the event a suspension of work is ordered because of failure on the part of Contractor to carry out orders given or to perform any provisions of the Services, such suspension of the Services shall not relieve Contractor of responsibility to complete the Services within the time limit set forth herein and shall not be considered cause for extension of the time for completion and, further, such suspension of the Services shall not entitle Contractor to any additional compensation.

1.8 Familiarity with Work and Worksite. By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the Services, (ii) has carefully considered how the Services should be performed, and (iii) fully understands the facilities, difficulties, and restrictions attending performance of the Services. 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 the Services hereunder. Should Contractor discover any latent or unknown conditions, which will materially affect the performance of the Services hereunder, Contractor shall immediately inform City of such fact and shall not proceed until written instructions are received from the Contract Administrator.

1.9 Further Responsibilities of the Parties. Both Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both Parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless otherwise specified in this Agreement, neither Party shall be responsible for the service of the other.

1.10 Special Requirements. Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit A and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit A and any other provisions of this Agreement, the provisions of Exhibit A shall govern.

SECTION 2. COMPENSATION.

2.1 Contract Amount. City hereby agrees to pay Contractor a sum not to exceed **One Hundred Eighty Thousand Dollars and Zero Cents (\$180,000.00)** notwithstanding any contrary indications that may be contained in Contractor's proposal or bid, for the Services to be performed and reimbursable costs incurred under this Agreement. This compensation may be administratively adjusted pursuant to Section 8.4 herein. In the event of a conflict between this Agreement and Exhibit B, regarding the amount of compensation, this Agreement shall prevail. City shall pay Contractor for the Services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified in this Section 2 shall be the only payments from City to Contractor for the Services rendered pursuant to this Agreement. Contractor shall submit all invoices to City in the manner specified herein.

2.2 Method of Compensation. The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the Services, (iii) payment for time and materials based upon Contractor's rates as specified in the Scope of Services, provided that time estimates are provided for the performance of subtasks, or (iv) such other methods as may be specified in the Scope of Services. In no event shall compensation exceed the amount set forth in Subsection 2.1.

2.3 Invoices. Contractor shall submit invoices monthly during the term of this Agreement, based on the cost for the Services performed and reimbursable costs incurred prior to the invoice date. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and subcontractor contracts. Subcontractor charges shall also be detailed by such categories. Invoices shall contain:

- a. Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- b. The beginning and ending dates of the billing period;
- c. A "Task Summary" containing the original contract amount, the amount of prior billings, the total due this period, the balance available under this Agreement, and the percentage of completion;
- d. At City's option, for each item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person performing the Services, the hours spent by each person, a brief description of the Services, and each reimbursable expense;
- e. The total number of hours of work performed under this Agreement by Contractor and each employee, agent, and subcontractor of Contractor performing the Services hereunder necessary to complete the Services described in Exhibit B;
- f. Receipts for expenses to be reimbursed;
- g. The Principals' signatures.

Invoices shall be submitted to:

City of Menifee
Attn: Accounts Payable
29844 Haun Road
Menifee, CA 92586

2.4 City Payment of Invoices. City shall independently review each invoice submitted by Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. City will use its best efforts to cause Contractor to be paid within thirty (30) days of receipt of Contractor's correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor for correction and resubmission. Pursuant to California Public Contract Code Section 20104.50, Contractor is notified that for public works Services, City's failure to pay undisputed and properly submitted invoices within thirty (30) days shall be subject to interest at the legal rate set forth in Code of Civil Procedure Section 685.010. Any invoice for public works Services determined not to be a proper invoice suitable for payment shall be returned to the Contractor as soon as practicable, but not later than seven (7) days, after receipt. An invoice returned pursuant to the foregoing shall be accompanied by a writing stating the reasons why the invoice is not proper.

2.5 Retention of Funds, Final Payment.

a. Contractor hereby authorizes City, in the sole discretion of the Contract Administrator, to retain and deduct from any amount payable to Contractor not exceeding five percent (5%) of the total compensation. The retained funds shall be paid to Contractor within sixty (60) days after final acceptance of the Services by the City and after Contractor has furnished City with full release of all undisputed payments under this Agreement. In the event there are any claims specifically excluded by Contractor from the operation of the release, City may retain proceeds of up to one hundred fifty percent (150%) of the amount in dispute. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of Contractor to insure, indemnify, and protect City as provided in this Agreement.

b. Notwithstanding Paragraph a, California Public Contract Code Section 22300 permits the substitution of securities for any retention monies withheld by City for public works Services. At the request and expense of Contractor, securities equivalent to the monies withheld shall be deposited with City, or with a state or federally chartered bank in California as the escrow agent, who shall then pay such monies to Contractor. City retains the sole discretion to approve the bank selected by Contractor to serve as escrow agent. Upon satisfactory completion of the Services, the securities shall be returned to Contractor. Securities eligible for investment shall include those listed in Government Code Section 16430. Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon. In the alternative, under California Public Contract Code Section 22300, Contractor may request City to make payment of earned retention monies directly to the escrow agent at the expense of Contractor. Also at Contractor's expense, Contractor may direct investment of the payments into securities, and Contractor shall receive interest earned on such investment upon the same conditions as provided for securities deposited by Contractor. Upon satisfactory completion of the

Services, Contractor shall receive from the escrow agent all securities, interest and payments received by escrow agent from City pursuant to the terms of California Public Contract Code Section 22300.

2.6 Total Payment. City shall not pay any additional sum for any expense or cost whatsoever incurred by Contractor in rendering the Services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement. In no event shall Contractor submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entirety of the Services performed pursuant to this Agreement, unless this Agreement is modified in writing prior to the submission of such an invoice.

2.7 Hourly Fees. Fees for the Services performed by Contractor on an hourly basis shall not exceed the amounts shown on the fee schedule included with Exhibit B.

2.8 Reimbursable Expenses. Reimbursable expenses are included within the maximum amount of this Agreement. Reimbursable expenses not listed in Exhibit B must be approved in advance by the Contract Administrator, in his or her sole discretion. Contractor shall not be entitled to any additional compensation for the attendance of meetings reasonably deemed necessary by City for the execution of the Services.

2.9 Payment of Taxes. Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any federal or state taxes.

2.10 Payment upon Termination. In the event that City or Contractor terminates this Agreement pursuant to Section 8, City shall compensate Contractor for all outstanding costs and reimbursable expenses incurred for Services satisfactorily completed and for reimbursable expenses as of the date of written notice of termination. Contractor shall maintain adequate logs and timesheets in order to verify costs and reimbursable expenses incurred to that date.

2.11 No Waiver. Payment to Contractor for Services performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

SECTION 3. FACILITIES AND EQUIPMENT.

3.1 Contractor Provides Facilities and Equipment. Except as otherwise provided, Contractor shall, at its sole cost and expense, provide all facilities and equipment necessary to perform the services required by this Agreement. In no event shall City be required to furnish any facility or equipment that may involve incurring any direct expense.

3.2 Utility Relocation. Where applicable, pursuant to California Government Code Section 4215, City is responsible for removal, relocation, or protection of existing main or trunkline utilities to the extent such utilities were not identified in the invitation for bids or specifications. City shall reimburse Contractor for any costs incurred in locating, repairing damage not caused by Contractor, and removing or relocating such unidentified utility facilities. Contractor shall not be assessed liquidated damages for delay arising from the removal or relocation of such unidentified utility facilities.

3.3 Trenches or Excavations. Pursuant to California Public Contract Code Sections 6705 and 7104, in the event the work included in this Agreement requires excavations more than four (4) feet in depth, the following shall apply.

a. Contractor shall promptly, and before the following conditions are disturbed, notify City, in writing, of any: (1) material that Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (2) subsurface or latent physical conditions at the site different from those indicated by information about the site made available to bidders prior to the deadline for submitting bids; or (3) unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.

b. If the Services involve an estimated expenditure in excess of Twenty-Five Thousand Dollars (\$25,000) for the excavation of any trench or trenches five (5) feet or more in depth, Contractor shall submit for acceptance by the City Engineer, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

c. City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work shall issue an order or amendment for additional services pursuant to Subsection 8.4 or 8.5 of this Agreement.

d. If a dispute arises between City and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by this Agreement, but shall proceed with all work to be performed under this Agreement. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the Parties.

SECTION 4. INSURANCE AND BOND REQUIREMENTS.

Before beginning any work under this Agreement, Contractor, at its own cost and expense, shall procure the types and amounts of insurance listed below and provide certified copies of insurance policies and original endorsements, indicating that Contractor has obtained or currently maintains insurance that meets the requirements of this Section and which is satisfactory, in all respects, to City. Contractor shall also deliver the payment and performance bonds required by this Section 4 with City. Contractor shall maintain the insurance policies required by this Section throughout the term of this Agreement. The cost of such insurance shall be included in Contractor's compensation. Contractor shall not allow any subcontractor, Contractor or other agent to commence work on any subcontract until Contractor has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City, and has delivered the required bonds to City. Verification of the required insurance shall be submitted and made part of this

Agreement prior to execution. Contractor acknowledges the insurance policy must cover inter-insured suits between City and other insureds. Contractor agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which Contractor may be held responsible for the payment of damages to any persons or property resulting from Contractor's activities or the activities of any person or persons for which Contractor is otherwise responsible nor shall it limit Contractor's indemnification liabilities as provided in Section 5. Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide, or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Contract Administrator in the Contract Administrator's sole discretion. If this Agreement continues for more than three (3) years duration, or in the event the Contract Administrator determines that the Services to be performed under this Agreement creates an increased or decreased risk of loss to City, Contractor agrees that the minimum limits of the insurance policies and the performance bond required by Section 4 may be changed accordingly upon receipt of written notice from the Contract Administrator; provided that Contractor shall have the right to appeal a determination of increased coverage by the Contract Administrator to the City Council of City within ten (10) days of receipt of notice from the Contract Administrator.

4.1 Workers' Compensation. Contractor shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor pursuant to the provisions of the California Labor Code. Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident, ONE MILLION DOLLARS (\$1,000,000.00) disease per employee, and ONE MILLION DOLLARS (\$1,000,000.00) disease per policy. In the alternative, Contractor may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or Contractor, if a program of self-insurance is provided, shall waive all rights of subrogation against City and its officers, officials, employees, and authorized volunteers for loss arising from the Services performed under this Agreement. Pursuant to California Labor Code Section 1860, Contractor is required to secure the payment of compensation to Contractor's employees. Pursuant to California Labor Code Section 1861, Contractor hereby submits to City the following:

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Contractor Initial: _____

4.2 Commercial General and Automobile Liability Insurance.

a. General Requirements. Contractor, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in

an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage, for risks associated with the Services contemplated by this Agreement, TWO MILLION DOLLARS (\$2,000,000.00) general aggregate, and TWO MILLION DOLLARS (\$2,000,000.00) products/completed operations aggregate. If a Commercial General Liability Insurance or an Automobile Liability Insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Services to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from the Services contemplated under this Agreement, including the use of hired, owned, leased, and non-owned automobiles.

b. Minimum Scope of Coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 Code 2, 8, and 9 including “any auto” and endorsement CA 0025 or equivalent). No endorsement shall be attached limiting the coverage.

c. Additional Requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

(i) The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

(ii) The policy must cover inter-insured suits and include a “Separation of Insureds” or “severability” clause which treats each insured separately.

(iii) The insurance must be maintained for at least one (1) year following the completion of the Services or the expiration or termination of this Agreement.

(iv) Any failure of Contractor to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

4.3 Professional Liability Insurance.

a. General Requirements. Contractor, at its own expense, shall maintain professional liability insurance appropriate to Contractor’s profession. This coverage may be written on a “claims made” basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of, or related to the Services performed under this Agreement. The insurance must be maintained for at least five (5) consecutive years following the completion of the Services or the expiration or termination of this Agreement. During this additional five (5)-year period, Contractor shall annually and upon request of City submit written evidence of this continuous coverage.

b. Claims-Made Limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

(i) The retroactive date of the policy must be shown and must be no later than the commencement of the Services.

(ii) If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the Effective Date of this Agreement, Contractor must provide extended reporting coverage for a minimum of five (5) years after the expiration or termination of this Agreement or the completion of the Services. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the Services under this Agreement. City shall have the right to exercise, at Contractor's sole cost and expense, any extended reporting provisions of the policy, if Contractor cancels or does not renew the coverage.

(iii) A copy of the claim reporting requirements must be submitted to City prior to the commencement of the Services under this Agreement.

4.4 Pollution Liability Insurance. Contractor, at its own expense, shall maintain pollution liability insurance written on a per occurrence for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per pollution incident and ONE MILLION DOLLARS (\$1,000,000.00) in the general aggregate. The policy shall apply to any incidents at or from any location on which Contractor performs the Services under this Agreement. The insurance must be maintained for at least one (1) year following the completion of Contractor's services or the expiration or termination of this Agreement.

4.5 All Policies Requirements.

a. Verification of Coverage. Prior to beginning the Services under this Agreement, Contractor shall furnish City with certificates of insurance, additional insured endorsement or policy language granting additional insured status complete certified copies of all policies, including complete certified copies of all endorsements. All copies of policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. The certificate of insurance must include the following reference: **ON-CALL GUARDRAIL REPLACEMENT AND REPAIR SERVICES.** The name and address for additional insured endorsements, certificates of insurance and notice of cancellation is: City of Menifee, 29844 Haun Road, Menifee, CA 92586. City must be endorsed as an additional insured for liability arising out of ongoing and completed operations by or on behalf of Contractor.

b. Notice of Reduction in or Cancellation of Coverage. Contractor shall provide written notice to City within ten (10) working days if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self insured retention is increased. In the event any of said policies of insurance are cancelled, Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 4 to the Contract Administrator.

c. Additional Insured; Primary Insurance. City and its officers, employees, agents, and authorized volunteers shall be covered as additional insureds with respect to each of

the following: liability arising out of the Services performed by or on behalf of Contractor, including the insured's general supervision of Contractor; products and completed operations of Contractor, as applicable; premises owned, occupied, or used by Contractor; and automobiles owned, leased, or used by Contractor in the course of providing the Services pursuant to this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or authorized volunteers. The insurance provided to City as an additional insured must apply on a primary and non-contributory basis with respect to any insurance or self-insurance program maintained by City. Additional insured status shall continue for one (1) year after the expiration or termination of this Agreement or completion of the Services.

A certified endorsement must be attached to all policies stating that coverage is primary insurance with respect to City and its officers, officials, employees, and volunteers, and that no insurance or self-insurance maintained by City shall be called upon to contribute to a loss under the coverage. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against City, its officers, employees, agents, authorized volunteers, and their respective insurers.

d. Deductibles and Self-Insured Retentions. Contractor shall obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the Services. During the term of this Agreement, only upon the prior express written authorization of the Contract Administrator, Contractor may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The Contract Administrator may condition approval of an increase in deductible or self-insured retention levels with a requirement that Contractor procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

e. Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

f. Variation. The Contract Administrator may, but is not required to, approve in writing a variation in the foregoing insurance requirements, upon a determination that the coverage, scope, limits, and forms of such insurance are either not commercially available, or that City's interests are otherwise fully protected.

4.6 Payment and Performance Bonds. Concurrently with execution of this Agreement, Contractor shall deliver to City a payment (labor and materials) bond and a performance bond, each in the sum of the amount of this Agreement, in the forms provided by the City Clerk, which secure the faithful performance of this Agreement. The bonds shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bonds shall be unconditional and remain in force during the entire term of this Agreement and shall be null and void only if Contractor promptly and faithfully performs all terms and conditions of this Agreement. Payment and performance bonds shall be secured from a surety company rated Grade "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide, or in the Federal Register, and only if they are of a financial

category Class VII or better, unless such requirements are waived by the Contract Administrator due to unique circumstances, and shall be authorized to write such bonds in the State of California. Contractor shall pay all bond premiums, costs, and incidentals. Pursuant to California Public Contract Code Section 22300, substitution of eligible equivalent securities for any moneys withheld to ensure performance under this Agreement may be permitted at the request and expense of Contractor. Without limiting the foregoing, Contractor understands that Civil Code Section 9550 requires a payment bond for all public works contracts involving an expenditure of more than Twenty-Five Thousand Dollars (\$25,000).

4.7 Remedies. In addition to any other remedies at law or equity City may have if Contractor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option, exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Contractor's breach:

- a. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under this Agreement;
- b. Order Contractor to stop work under this Agreement or withhold any payment that becomes due to Contractor hereunder, or both stop work and withhold any payment, until Contractor demonstrates compliance with the requirements hereof; and/or
- c. Terminate this Agreement.

SECTION 5. INDEMNIFICATION.

5.1 Indemnification for Professional Liability. Where the law establishes a professional standard of care for performance of the Services, to the fullest extent permitted by law, Contractor shall indemnify, protect, defend (with counsel selected by City), and hold harmless City and any and all of its officers, employees, officials, volunteers, and agents from and against any and all claims, losses, costs, damages, expenses, liabilities, liens, actions, causes of action (whether in tort, contract, under statute, at law, in equity, or otherwise) charges, awards, assessments, fines, or penalties of any kind (including costs and expenses incurred by City and reasonable consultant and expert fees and expenses of investigation, costs of whatever kind and nature and, if Contractor fails to provide a defense for City, the legal costs of counsel retained by City) and any judgment (collectively, "Claims") to the extent same are caused in whole or in part by any negligent or wrongful act, error, or omission of Contractor, its officers, agents, employees, or subcontractors (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of professional services under this Agreement.

5.2 Indemnification for Other than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Contractor shall indemnify, protect, defend (with counsel selected by City), and hold harmless City, and any and all of its officers, employees, officials, volunteers, and agents from and against any and all Claims, where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Contractor or by any individual or entity for which Contractor is legally liable, including but not limited to officers, agents, employees or

subcontractors of Contractor. Contractor will promptly pay any judgment rendered against City, its officers, agents, or employees for any such Claims arising out of or in connection with the performance of or failure to perform such Services, operations or activities of Contractor hereunder.

5.3 Subcontractors. Contractor shall incorporate similar indemnity agreements with its subcontractors. Contractor shall be fully responsible to indemnify City, and failure of City to monitor compliance with these provisions shall not be a waiver hereof.

5.4 Limitation of Indemnification. The provisions of this Section 5 do not apply to claims occurring as a result of City's sole or active negligence. The provisions of this Section 5 shall not release City from liability arising from gross negligence or willful acts or omissions of City or any and all of its officers, officials, employees, and agents acting in an official capacity. In the event any applicable law contains a limitation on indemnification under this Agreement, such limitation shall supersede the provisions herein only to the extent required by said law.

SECTION 6. INDEPENDENT CONTRACTOR.

At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee of City. City shall have the right to control Contractor only insofar as the results of the Services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.4; however, otherwise City shall not have the right to control the means by which Contractor accomplishes the Services rendered pursuant to this Agreement. The personnel performing the Services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Contractor shall not at any time or in any manner represent that it is or any of its officers, employees, or agents are in any manner officers, officials, employees, or agents of City. Contractor shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner. Except for the fees paid to Contractor as provided in this Agreement, City shall not pay salaries, wages, or other compensation to Contractor for performing the Services hereunder for City. City shall not be liable for compensation or indemnification to Contractor for injury or sickness arising out of performing the Services hereunder. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System ("PERS") as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits. Contractor shall perform all Services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

SECTION 7. LEGAL REQUIREMENTS.

7.1 Governing Law. The laws of the State of California shall govern this Agreement.

7.2 Compliance with Applicable Laws. Contractor and any subcontractor shall comply with all applicable local, state, and federal laws and regulations applicable to the performance of the work hereunder. Contractor shall not hire or employ any person to perform work within City or allow any person to perform the Services required under this Agreement unless such person is properly documented and legally entitled to be employed within the United States. Contractor acknowledges and agrees that it shall be independently responsible for reviewing the applicable laws and regulations and effectuating compliance with such laws. Contractor shall require the same of all subcontractors.

7.3 Prevailing Wages. Contractor acknowledges and agrees that it shall be independently responsible for reviewing the applicable prevailing wage laws and regulations and effectuating compliance with such laws, including, but not limited to the prevailing wage and related requirements set forth in this Subsection 7.3. Contractor shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of California Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law.

a. Public Work. Contractor hereby expressly acknowledges and agrees that City has never previously affirmatively represented to Contractor, its employees or agents in writing or otherwise that the Services are not a “public work,” as defined in Section 1720 of the California Labor Code. It is agreed by the Parties that, in connection with the development, construction (as defined by applicable law) and operation of the Services, including, without limitation, any public work (as defined by applicable law), if any, Contractor shall bear all risks of payment or non-payment of state and/or federal prevailing wages and/or the implementation of California Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, and/or any other provision of law. To the extent applicable, City will enforce all penalties required by law for Contractor’s failure to pay prevailing wages.

b. California Labor Code. The Contractor’s attention is directed to Division 2, Part 7, Chapter 1 of the California Labor Code and especially to Article 2 (Wages); and Article 3 (Working Hours), thereof.

(i) In accordance with Sections 1773 and 1773.2 of the California Labor Code, City has found and determined the general prevailing rates of wages in the locality in which the public work is to be performed are those determined by the Director of Industrial Relations and available at <https://www.dir.ca.gov/OPRL/2022-1/PWD/Southern.html>. Copies of the prevailing rates of wages are maintained with City’s principal office and are available to any interested party on request. Contractor shall post a copy of the prevailing rate of per diem wages at each job site.

(ii) Contractor is aware of and will comply with the provisions of California Labor Code Section 1776, including the keeping of payroll records and furnishing certified copies thereof in accordance with said Section. Pursuant to California Labor Code Section 1771.4, Contractor must submit certified payroll records to the Labor Commissioner using the Department of Industrial Relations’ electronic certified payroll reporting (eCPR) system.

(iii) Pursuant to California Labor Code Section 1810, it is stipulated hereby that eight (8) hours labor constitutes a legal day's work hereunder.

(iv) Pursuant to California Labor Code Section 1815, work performed by employees of contractors in excess of eight (8) hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than 1 ½ times the basic rate of pay.

(v) Pursuant to California Labor Code Section 1813, it is stipulated hereby that Contractor shall, as a penalty to City, forfeit twenty-five dollars (\$25) for each worker employed in the execution of this Agreement by Contractor or by any subcontractor hereunder for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one (1) calendar week in violation of the provisions of Article 3 (commencing with Section 1810), Chapter 1, Part 7, Division 2 of the California Labor Code.

(vi) Contractor is aware of and will comply with the provisions of California Labor Code Sections 1777.5 and 1777.6 with respect to the employment of apprentices. Pursuant to Section 1777.5 it is hereby stipulated that Contractor will be responsible for obtaining compliance therewith on the part of any and all sub-consultants or subcontractors employed by Contractor in connection with this Agreement.

(vii) Pursuant to California Labor Code Section 1775, it is hereby stipulated that Contractor shall, as a penalty to City, forfeit not more than two-hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for the Services by Contractor or any sub-consultant or subcontractor.

c. Bidding Eligibility. Pursuant to California Labor Code Section 1771.1, no contractor or subcontractor (or consultant or subconsultant) may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations. Pursuant to California Public Contract Code Section 6109, Contractor may not perform any Services hereunder with a subcontractor who is ineligible to perform the Services pursuant to Section 1777.1 or 1777.7 of the California Labor Code.

d. DIR Monitoring. Pursuant to California Labor Code Section 1771.4, Contractor is hereby notified that this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

e. Indemnification Related to Prevailing Wages. Section 5, Indemnification, specifically encompasses Claims arising from or related to (i) the noncompliance by Contractor or any party performing the Services of any applicable local, state, and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, the requirement to pay state prevailing wages and hire apprentices); (ii) the implementation of California Labor Code Sections 1726 and 1781, as the same may be amended from time to time, or any other similar law; and/or (iii) failure by Contractor or any party performing the Services to

provide any required disclosure or identification as required by California Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law.

7.4 Licenses and Permits, Fees, and Assessments. Contractor represents, warrants, and covenants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions, and perform the Services. Contractor represents, warrants, and covenants to City that Contractor and its employees, agents, and subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions, and perform the Services. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement valid business licenses from City. Contractor shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Contractor's performance of the Services, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed, or imposed against City hereunder.

7.5 Conflicts of Interest. Contractor represents, warrants, and covenants that Contractor presently has no interest, direct or indirect, which would interfere with or impair in any manner or degree the performance of Contractor's obligations and responsibilities under this Agreement. Contractor further agrees that while this Agreement is in effect, Contractor shall not acquire or otherwise obtain any interest, direct or indirect, that would interfere with or impair in any manner or degree the performance of Contractor's obligations and responsibilities under this Agreement.

7.6 Unfair Business Practices Claims. In entering into this Agreement, Contractor offers and agrees to assign to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials related to this Agreement. This assignment shall be made and become effective at the time City renders final payment to Contractor without further acknowledgment of the Parties.

7.7 Annual Appropriation of Funding. In accord with Article 16 Section 18 of the California Constitution, payment of compensation under this Agreement is contingent upon annual appropriation of funds by City for that purpose. Contractor acknowledges and agrees that to the extent that the Services extend beyond one (1) fiscal year, payment for such Services is expressly conditioned on City's annual appropriation of funds for such Services for each year. If no funds are appropriated then this Agreement shall be terminated. City pledges and agrees to process such appropriation requests annually and in good faith. Nothing in this Subsection shall be construed to limit the right of either Party to terminate this Agreement as provided herein.

7.8 Liquidated Damages. Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, Contractor and its sureties shall be liable for and shall pay to City the sum of FIVE HUNDRED DOLLARS (\$500.00) as liquidated damages for each working

day of delay in the performance of any of the Services. City may withhold from any monies payable on account of the Services performed by Contractor any accrued liquidated damages.

SECTION 8. TERMINATION AND MODIFICATION.

8.1 Termination. City may terminate this Agreement at any time and without cause upon thirty (30) days' written notification to Contractor. City may also terminate this Agreement pursuant to Subsection 8.8.

8.2 Termination by Contractor. Contractor may terminate this Agreement upon sixty (60) days' written notice to City.

8.3 Consequences of Termination. In the event of termination, Contractor shall be entitled to compensation for the Services satisfactorily performed up to the date of termination; City, however, may condition payment of such compensation upon Contractor delivering to City any or all materials provided to Contractor or prepared by or for Contractor or City in connection with this Agreement. Upon receipt of any notice of termination, Contractor shall immediately cease all Services hereunder except such as may be specifically approved by the Contract Administrator.

8.4 Administrative Change Orders. City shall have the right at any time during the performance of the Services, 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 may be undertaken unless a written change order is first given by the Contract Administrator to Contractor, incorporating therein any adjustment in (i) the total compensation, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of Contractor. Any increase in compensation of up to five percent (5%) of the total compensation or TWENTY-FIVE THOUSAND DOLLARS (\$25,000), whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved in writing by the Contract Administrator. Contractor understands and agrees that, if City grants an extension in time without additional work, City shall have no obligation to provide Contractor with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Contractor for any otherwise reimbursable expenses incurred during the extension period. All other extensions or modifications to this Agreement shall require a written amendment pursuant to Subsection 8.5.

8.5 Amendments. The Parties may amend this Agreement only by a writing signed by all the Parties. The Contract Administrator shall have the authority to execute amendments to this Agreement which do not materially change the terms hereof, in the Contract Administrator's discretion, to the extent permitted by applicable federal, state, and local law. The Contract Administrator may refer any proposed amendment to the City Council for review and approval.

8.6 Assignment and Subcontracting. City and Contractor recognize and agree that this Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the

professional reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the Scope of Services, without prior written approval of the Contract Administrator. In the event of any unapproved assignment, including in connection with any bankruptcy proceeding, this Agreement shall be void. No approved assignment shall release Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

8.7 Survival. All obligations arising prior to the expiration or termination of this Agreement and all provisions of this Agreement allocating liability between City and Contractor shall survive the expiration or termination of this Agreement.

8.8 Disputes, Default. In the event that Contractor is in default under the terms of this Agreement, City shall not have any obligation or duty to continue compensating Contractor for any of the Services performed after the date of default. Instead, City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, in the sole discretion of the Contract Administrator. During the period of time that Contractor is in default, City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Contractor does not cure the default, City's remedies shall include, but not be limited to, any or all of the following:

- a. Immediately terminate this Agreement;
- b. Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Contractor pursuant to this Agreement;
- c. Retain a different contractor to complete the Services; and/or
- d. Charge Contractor the difference between the cost to complete the Services that is unfinished at the time of breach and the amount that City would have paid Contractor pursuant to Section 2 if Contractor had completed the Services.

Any failure on the part of City to give notice of Contractor's default shall not be deemed to result in a waiver of City's legal rights or any rights arising out of any provision of this Agreement.

8.9 Claims by Contractor. Claims, as that term is defined in California Public Contract Code Section 9204, by Contractor and, where applicable, any subcontractor, in connection with a public works project shall be subject to the mediation procedure in California Public Contract Code Section 9204.

SECTION 9. KEEPING AND STATUS OF RECORDS.

9.1 Documents and Data. All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents, and other materials plans,

drawings, estimates, test data, survey results, models, renderings, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings, digital renderings, or data stored digitally, magnetically, or in any other medium (the "Documents and Materials") prepared or caused to be prepared by Contractor, its employees, subcontractors, and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Administrator or upon the expiration or termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the Documents and Materials hereunder. Any use, reuse or assignment of such completed Documents and Materials for other projects and/or use of uncompleted documents without specific written authorization by Contractor will be at City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, revise, or assignment. Contractor may retain copies of such Documents and Materials for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any Documents and Materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom.

9.2 Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, rights of reproduction, and other intellectual property embodied in the Documents and Materials. Contractor shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for the Documents and Materials the subcontractor prepares under this Agreement. Contractor represents and warrants that Contractor has the legal right to license any and all of the Documents and Materials. Contractor makes no such representation and warranty in regard to the Documents and Materials which were prepared by design professionals other than Contractor or provided to Contractor by City. City shall not be limited in any way in its use of the Documents and Materials at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

9.3 Records. Contractor shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports (including but not limited to payroll reports), studies, or other documents relating to the disbursements charged to City and the Services performed hereunder (the "Books and Records"), as shall be necessary to perform the Services required by this Agreement and enable the Contract Administrator to evaluate the performance of such Services. Any and all such Books and Records shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Administrator shall have full and free access to such Books and Records at all times during normal business hours of City, including the right to inspect, copy, audit, and make records and transcripts from such Books and Records. Such Books and Records shall be maintained for a period of three (3) years following completion of the Services hereunder, and City shall have access to such Books and Records in the event any audit is required. In the event of dissolution of Contractor's business, custody of the Books and Records may be given to City, and access shall be provided by Contractor's successor in interest. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), this Agreement shall be subject to the examination and

audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under this Agreement.

9.4 Reports. Contractor shall periodically prepare and submit to the Contract Administrator such reports concerning the performance of the Services required by this Agreement as the Contract Administrator shall require. Contractor hereby acknowledges that City is greatly concerned about the cost of the Services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the Services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Administrator of said fact, circumstance, technique, or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

9.5 Confidentiality. City and Contractor agree that, until final approval by City, all data, plans, specifications, reports, and other documents are confidential and will not be released to third parties without prior written consent of both Parties unless required by law. Contractor, its officers, employees, agents, or subcontractors, shall not, without prior written authorization from the Contract Administrator or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement. If Contractor, or any officer, employee, agent, or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Contractor for any Claims caused by or incurred as a result of Contractor's conduct. Contractor shall promptly notify City should Contractor, its officers, employees, agents, or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any party regarding this Agreement and the Services performed thereunder. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing, or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response. Response to a subpoena or court order shall not be considered a voluntary disclosure so long as Contractor gives City notice of such court order or subpoena as provided herein.

SECTION 10. MISCELLANEOUS PROVISIONS.

10.1 Attorneys' Fees. If either Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees and expenses including costs, in addition to any other relief to which that Party may be entitled; provided, however, that the attorneys' fees awarded pursuant to this Subsection shall not exceed the hourly rate paid by City for legal services multiplied by the reasonable number of hours spent by the prevailing Party in the conduct of the litigation. The court may set such fees in the same action or in a separate action brought for that purpose.

10.2 Applicable Law, Venue. The laws of the State of California shall govern this Agreement. In the event that either Party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in Riverside County.

10.3 Severability. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

10.4 Section Headings and Subheadings. The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

10.5 No Implied Waiver of Breach. 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 of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

10.6 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.

10.7 Contractor Principals and Representatives. The following principals of Contractor ("Principals") are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

_____ (Name)	_____ (Title)
_____ (Name)	_____ (Title)
_____ (Name)	_____ (Title)

It is expressly understood that the experience, knowledge, capability, and reputation of the Principals were a substantial inducement for City to enter into this Agreement. Therefore, the Principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the Services hereunder. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City.

10.8 City Contract Administration. This Agreement shall be administered by a City employee, **Chris Gehrki, Management Analyst** (“Contract Administrator”). All correspondence shall be directed to or through the Contract Administrator or his designee. It shall be Contractor’s responsibility to assure that the Contract Administrator is kept informed of the progress of the performance of the Services and Contractor shall refer any decisions which must be made by City to the Contract Administrator. Unless otherwise provided by applicable law, the Contract Administrator shall have the power to act on behalf of City for all purposes under this Agreement. Unless otherwise provided in this Agreement, Contractor shall not accept direction or orders from any person other than the Contract Administrator or his designee.

10.9 Notices. Any written notice to Contractor shall be sent to:

Attn: Brenton Gentry, President
320 W. Tropica Rancho Rd.
Colton, CA 92324

Any written notice to City shall be sent to the Contract Administrator at:

City of Menifee
29844 Haun Road
Menifee, CA 92586
Attn: Chris Gehrki, Management Analyst

with a copy to:

City Clerk
City of Menifee
29844 Haun Road
Menifee, CA 92586

Any notice, demand, request, document, consent, approval, or communication either Party desires or is required to give to the other Party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail. Either Party may change its address by notifying the other Party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

10.10 Rights and Remedies. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

10.11 Integration, Interpretation. This Agreement, including Exhibits A and B, represents the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed

for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

10.12 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

10.13 Execution of Contract. The persons executing this Agreement on behalf of each of the Parties hereto represent and warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) that entering into this Agreement does not violate any provision of any other agreement to which said Party is bound.

10.14 Nondiscrimination. Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that in the performance of this Agreement there shall be no discrimination against or segregation of, any person or group of persons on account of any impermissible classification including, but not limited to, race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry.

10.15 No Third Party Beneficiaries. There are no intended third-party beneficiaries under this Agreement and no such other third parties shall have any rights or obligations hereunder.

10.16 Nonliability of City Officers and Employees. No officer, official, employee, agent, representative, or volunteer of City shall be personally liable to Contractor, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

10.17 No Undue Influence. Contractor declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of City shall receive compensation, directly or indirectly, from Contractor, or from any officer, employee, or agent of Contractor, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement.

10.18 No Benefit to Arise to City Employees. No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or has responsibilities with respect to this Agreement during his/her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for the Services to be performed under this Agreement.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties hereto have executed and entered into this Agreement as of the Effective Date.

CITY OF MENIFEE

CONTRACTOR

Rebekah Kramer, Acting City Manager

Brenton Gentry, President

Attest:

Sarah A. Manwaring, City Clerk

Approved as to Form:

[Note: 2 officer's signatures required if Contractor is a corporation, unless provided with a certificate of secretary in-lieu]

Jeffrey T. Melching, City Attorney

EXHIBIT A
SPECIAL REQUIREMENTS

Notwithstanding Section 1.2, the Services and this Agreement shall end on June 30, 2026.

EXHIBIT B

SCOPE OF SERVICES

Services shall include **ON-CALL GUARDRAIL REPLACEMENT AND REPAIR SERVICES**, including labor, materials, services and equipment is the total amount of all lump sum items and of all unit price sums, determined by multiplying the unit price for each item times the actual quantity of each such item, in the amount not to exceed **One Hundred Eighty Thousand Dollars and Zero Cents (\$180,000.00)** as further detailed in the attached pages (if any). If the Services include Services pursuant to a request for proposals or bid, the Services shall include the work contemplated by the entire "Bid Package" or "Request for Proposals" for the Services, including all plans, addenda, documentation, and specifications attached thereto. A copy of the Bid Package and/or Request for Proposals, as applicable shall be retained with a copy of this Agreement. Contractor shall keep a copy of the same for at least three (3) years following termination of this Agreement.

The numerical reference for the Bid Package or Request for Proposals is: NIB 2024-04.

While this Agreement will terminate as provided in Section 1.2 of this Agreement, in no event shall the total compensation invoiced or paid to Contractor hereunder exceed **Sixty Thousand Dollars and Zero Cents (\$60,000.00)** for each and any calendar fiscal year this Agreement is in effect.

**BIDDER'S PROPOSAL
PW 24-04 ON-CALL GUARDRAIL REPLACEMENT AND REPAIR SERVICES**

The undersigned hereby proposes to furnish any and all labor, materials, and equipment for the **ON-CALL GUARDRAIL REPLACEMENT AND REPAIR SERVICES, PW 24-04** and appurtenant work in connection therewith, said work to be done and materials to be furnished in strict conformity with the plans, specifications, all other referenced documents and all codes and regulations the prices shown on this proposal.

The undersigned has examined the location of the proposed work and is familiar with the plans and specifications and the local conditions at the place the work is to be done, and also understands that the project will be completely constructed in turn-key condition acceptable to the Owner be for the price of the proposal, including all fees and sales tax upon any materials so furnished. The undersigned has also carefully checked all of the figures given and understands that the Owner will be responsible for any errors or omissions on the part of the undersigned in submitting this proposal.

The Contractor confirms that his/her bid is submitted with respect to the changes to the contract included in all addenda issued by the Owner.

Receipt is hereby acknowledged of Addenda No.(s)_____

The undersigned has examined the current State of California schedule of prevailing wage rates for the types of work to be done on this project and agrees to pay not less than these rates.

Bid Forms/Documentation Requirements Checklist

- ☒ BIDDER'S PROPOSAL / ADDENDA ACKNOWLEDEMENT
- ☒ BID SCHEDULE FORM (SCHEDULE)
- ☒ CERTIFICATE REGARDING CONTRACTOR'S LICENSE
- ☒ BID SECURITY. CASHIER'S CHECK OR BID BOND
- ☒ NON-COLLUSION AFFIDAVIT
- ☒ CONTRACTOR'S REFERENCE LIST
- ☒ DESIGNATION OF SUBCONTRACTORS
- ☒ CONTRACTOR'S CERTIFICATE OF WORKER'S COMPENSATION INSURANCE
- ☒ DEBARMENT AND SUSPENSION CERTIFICATION
- ☒ CERTIFICATION OF NON-DISCRIMINATION AND AFFIRMATIVE ACTION
- ☒ COPY OF CA DEPT OF INDUSTRIAL RELATIONS (DIR) REGISTRATION.

All Bidders are REQUIRED to use unit prices where indicated and to complete this schedule.

All items shall be complete and in place per plans (if applicable) and these Bid and Contract Documents.

ON-CALL GUARDRAIL REPLACEMENT AND REPAIR SERVICES
BIDDER'S PROPOSAL (continued)
PW 24-04

BID SCHEDULE

Guardrail Replacement Description	Quantity	Unit	Unit Charge
13'-6 1/2" Rail Element	01	EA	\$1,300.00
6" x 12" x 1'-2" Wood Block	01	EA	\$277.00
6" x 8" x 6'-0" Wood Post	01	EA	\$912.00
Wood Block & Post Installation	01	EA	\$1,050.00
Rail Element End Cap	01	EA	\$948.00
Required Hardware for Rail Splice	01	LS	\$1,240.00
End Cap Installation Hardware	01	EA	\$488.00
Traffic Control - Single Lane Closure	01	LS	\$2,780.00
Mobilization and Demobilization	01	LS	\$2,650.00
Public Notifications (If applicable)	01	LS	\$646.00
Total			\$12,291.00

Note: Total for each description shall correspond to the unit price range listed.

Mobilization shall be compensated per Appendix 4 - A.3. Contractor shall mobilize and complete each work order within 21 calendar days. All mobilization costs shall be considered included in the compensation for the associated bid items. Failure to respond may result in incurred costs, payment deductions, and/or contract termination.

In the event of a variation between the unit price and extended total, the unit price will be used and the corrected extension will be considered as the amount bid. If the bid is illegible and cannot be reconciled it will be considered non-responsive and will not be considered for award.

The lowest responsive bidder shall be determined by comparing sum of the base bid amount. If equal low bids are received from responsible and responsive bidders the selection shall be made by drawing lots, or other similar random blind method selected by the Owner. If only one responsive bid is received from a responsible bidder, the award shall not be made unless the price can be determined to be reasonable based on an analysis by the Owner. The Owner's determination as to the reasonableness of any such bid shall be final.

All bids received shall be recorded on an abstract (tabulation) of bids, and then made available for public inspection.

The quantities listed in the bid proposal are provided to give a general indication of the scope of the work and for the comparison of bids. No warranty is made, either expressed or implied, that the actual quantities of work to be done will correspond therewith. Item numbers followed by "(S)" are designated as specialty items.

**ON-CALL GUARDRAIL REPLACEMENT AND REPAIR SERVICES
BIDDER'S PROPOSAL (continued)
PW 24-04**

By signing and submitting this bid the Contractor confirms that they are familiar with the work site and all existing conditions that may affect their work and that they have read and agree to all the terms, conditions and requirements contained or referenced herein and that all the aforementioned has been included in the bid prices listed above including items of work that may not have a specific pay line item and that there shall be no additional costs to the Owner.

WARNING: If an addendum or addenda have been issued by the Owner and not noted above as being received by the bidder, this Bid may be rejected.

Will Contractor mobilize and perform as-needed work for this bid that is less than \$2,000.00 for any particular mobilization? Yes or No No

What is your minimum amount of work that bidder will accept for a single mobilization?

\$7,500.00

Complete the following:

Gentry General Engineering, Inc

Legal name of the business

corporation

Business Type (Corporation, Partnership, Sole Proprietor)

n/a

DBA (if any)

Brenton Gentry, President

Name and title of the owner

Brenton Gentry, Secretary

Name and title of second partner or officer

320 W Tropica Rancho Rd, Colton, CA 92324

Business Address

(909) 330-1128

Telephone number

(909) 330-1129

Facsimile number

gentrygeneral@gmail.com

Email address of primary contact

**ON-CALL GUARDRAIL REPLACEMENT AND REPAIR SERVICES
BIDDER'S PROPOSAL (continued)
PW 24-04**

n/a

Company web address

 December 5, 2023
Signature of Prime Contractor Date

Brenton Gentry, President

Print name and title

 December 5, 2023
Signature of Prime Contractor Date

Brenton Gentry, Secretary

Print name and title

(If the Prime Contractor is a corporation two signatures of corporate officers are required.)

CERTIFICATE REGARDING CONTRACTOR'S LICENSE

1. Contractor is required to possess the following State Contractor's License:

State of California Class "A" Contractor's License

2. A failure to possess the required license, a failure to truthfully set forth the following information, or a failure to execute this Certificate renders the proposal nonresponsive and requires the City to reject the proposal. (Business and Professions Code Section 7028.15)

3. Contractor declares, under penalty of perjury, that he possesses the required Contractor's license(s) which:

a. Bears the license number(s): 974279

b. Expires on: June 30, 2024

 December 5, 2023
Signature of Prime Contractor Date

Brenton Gentry, President

Print name and title

 December 5, 2023
Signature of Prime Contractor Date

Brenton Gentry, Secretary

Print name and title

(If the Prime Contractor is a corporation two signatures of corporate officers are required.)

This required license determination has been made by the Owner. Any Contractor holding a different license who feels he is qualified to bid on this work must so advise the owner at least seven (7) days prior to the bid opening. A review of the contemplated work will be made and the Owner's decision as to the required license will be final.