

## CITY OF MENIFEE

### GENERAL SERVICES AGREEMENT

#### ON CALL POLICE VEHICLE UPFITTING SERVICES

THIS GENERAL SERVICES AGREEMENT ("Agreement") is made and effective this \_\_\_\_\_ day of \_\_\_\_\_, 2025 ("Effective Date") by and between the CITY OF MENIFEE, a California municipal corporation, ("City") and **DANA SAFETY SUPPLY, INC.**, a North Carolina Corporation ("Vendor"). City and Vendor are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties." In consultation with the California Public Contract Code, the California Labor Code, and other applicable laws relating to the performance of public work, the Parties agree that the services to be performed hereunder do not involve a "public work" as that term is defined in applicable law.

#### SECTION 1. SERVICES

1.1 Scope of Services. Subject to the terms and conditions set forth in this Agreement, Vendor shall provide to City the services described in the Scope of Services, attached hereto as Exhibit A, "Scope of Services" and incorporated herein by this reference (the "Services"). In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, this Agreement shall prevail.

1.2 Term of Services. This Agreement shall become effective on the Effective Date and shall continue until **June 30, 2027** ("Initial Term"). Upon termination of the Initial Term, this Agreement shall automatically renew for one (1) additional one (1) year term ("First Renewal Term"). Upon termination of the First Renewal Term, if it occurs, this Agreement shall automatically renew for one (1) additional one (1) year term ("Second Renewal Term"). None of the renewal terms provided hereunder shall occur if the term of this Agreement is otherwise terminated or extended as provided for in Section 8. The word "term" shall refer to the Initial Term and any renewal term which actually occurs. The time provided to Vendor to complete the Services required by this Agreement shall not affect City's right to terminate this Agreement.

1.3 Standard of Performance.

a. Quality of Work. As a material inducement to City entering into this Agreement, Vendor 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. Vendor shall at all times faithfully, competently, and to the best of its ability, experience, and talent, perform all Services described herein. Vendor 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. Vendor 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. Vendor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out the Services, Vendor 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. Vendor 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. Vendor 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, Vendor 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 Vendor's sole cost and expense. Vendor shall act sooner as requested by City in response to an emergency. In addition, Vendor shall, at its sole cost and expense, repair and replace any portions of the work (or work of other Vendors) damaged by Vendor's defective work or which becomes damaged in the course of repairing or replacing defective work. For any work so corrected, Vendor'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. Vendor 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 Vendor. 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 Vendor 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 Vendor agrees to enforce such warranties and guarantees, if necessary, on behalf of City. In the event that Vendor 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 Vendor's sole expense. Vendor shall be obligated to fully reimburse City for any expenses incurred hereunder upon demand.

e. Skilled and Trained Workforce. Vendor, 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 Vendor's work under this Agreement, during performance and/or when completed. City shall reject or finally accept Vendor'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. Vendor shall assign only competent personnel to perform the Services. Vendor shall make every reasonable effort to maintain the stability and continuity of Vendor's staff and subcontractors, if any, assigned to perform the Services. Vendor shall notify City of any changes in Vendor'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, Vendor 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. Vendor shall devote such time to the performance of the Services pursuant to this Agreement as may be reasonably necessary to satisfy Vendor's obligations hereunder. Vendor 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 Vendor, 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 Vendor, 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 Vendor 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 Vendor be entitled to recover damages against City for any delay in the performance of this Agreement, however caused, Vendor'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 Vendor to carry out orders given or to perform any provisions of the Services. Vendor 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 Vendor on the part of City. In the event a suspension of work is ordered

because of failure on the part of Vendor to carry out orders given or to perform any provisions of the Services, such suspension of the Services shall not relieve Vendor 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 Vendor to any additional compensation.

1.8 Familiarity with Work and Worksite. By executing this Agreement, Vendor warrants that Vendor (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, Vendor warrants that Vendor 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 Vendor discover any latent or unknown conditions, which will materially affect the performance of the Services hereunder, Vendor 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.

## **SECTION 2. COMPENSATION.**

2.1 Contract Amount. Vendor is one (1) of three (3) Vendors performing the Services on behalf of the City (each a "Performing Vendor,") and shall be compensated as provided herein for the Services performed by Vendor. Vendor hereby acknowledges that Vendor is one (1) of three (3) Performing Vendors and that no one (1) Performing Vendor is entitled to or guaranteed any particular quantity of work required for the Services. Notwithstanding any contrary indications that may be contained in Vendor's proposal, City hereby agrees to pay Vendor as follows, provided that the sums listed herein shall be the maximum compensation available to all Performing Vendors combined, in the aggregate for the initial, first, and second renewal terms:

a. Initial Term: An aggregate sum not to exceed **THREE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$300,000.00)**; and

b. First Renewal Term: For a maximum aggregate sum not to exceed **ONE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$100,000.00)**; and

c. Second Renewal Term: For a maximum aggregate sum not to exceed **ONE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$100,000.00)**.

2.2 Method of Compensation. In the event of a conflict between this Agreement and Exhibit A, regarding the amount of compensation, this Agreement shall prevail. City shall pay Vendor for the Services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Vendor for the Services rendered pursuant to this Agreement. Vendor shall submit all invoices to City in the manner specified herein. Except as specifically authorized in advance by City, Vendor shall not bill City for duplicate services performed by more than one person.

2.3 Invoices. Vendor 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 sub-contractor 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 Vendor and each employee, agent, and subcontractor of Vendor performing the Services hereunder necessary to complete the Services;
- 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 Vendor 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 Vendor to be paid within thirty (30) days of receipt of Vendor'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 Vendor for correction and resubmission.

2.5 Total Payment. City shall not pay any additional sum for any expense or cost whatsoever incurred by Vendor 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 Vendor 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.

2.6 Hourly Fees. Fees for the Services performed by Vendor on an hourly basis shall not exceed the amounts shown on the fee schedule included with Exhibit A.

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

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

2.9 Payment upon Termination. In the event that City or Vendor terminates this Agreement pursuant to Section 8, City shall compensate Vendor 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. Vendor shall maintain adequate logs and timesheets in order to verify costs and reimbursable expenses incurred to that date.

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

### **SECTION 3. FACILITIES AND EQUIPMENT.**

3.1 Contractor Provides Facilities and Equipment. Except as otherwise provided on Exhibit A, Vendor 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 Vendor for any costs incurred in locating, repairing damage not caused by Vendor, and removing or relocating such unidentified utility facilities. Vendor shall not be assessed liquidated damages for delay arising from the removal or relocation of such unidentified utility facilities.

### **SECTION 4. INSURANCE REQUIREMENTS.**

Before beginning any work under this Agreement, Vendor, 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 Vendor has obtained or currently maintains insurance that meets the requirements of this Section and which is satisfactory, in all respects, to City. Vendor shall maintain the insurance policies required by this Section throughout the term of this Agreement. The cost of such insurance shall be included in Vendor's compensation. Vendor shall not allow any subcontractor, Vendor or other agent to commence work on any subcontract until Vendor has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Vendor acknowledges the insurance policy must cover inter-insured suits between City and other insureds. Vendor agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which Vendor may be held responsible for the payment of damages

to any persons or property resulting from Vendor's activities or the activities of any person or persons for which Vendor is otherwise responsible nor shall it limit Vendor's indemnification liabilities as provided in Section 5. Insurance 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, Vendor agrees that the minimum limits of the insurance policies required by Section 4 may be changed accordingly upon receipt of written notice from the Contract Administrator; provided that Vendor 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. Vendor 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 Vendor 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, Vendor 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 Vendor, 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.

4.2 Commercial General and Automobile Liability Insurance.

a. General Requirements. Vendor, 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 Vendor to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

4.3 Pollution Liability Insurance. Vendor, 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 Vendor performs the Services under this Agreement. The insurance must be maintained for at least one (1) year following the completion of Vendor’s services or the expiration or termination of this Agreement.

#### 4.4 All Policies Requirements.

a. Verification of Coverage. Prior to beginning the Services under this Agreement, Vendor 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 POLICE VEHICLE UPFITTING 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 Vendor.

b. Notice of Reduction in or Cancellation of Coverage. Vendor 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, Vendor 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 Vendor, including the insured’s general supervision of Vendor; products and completed operations of Vendor, as applicable; premises owned, occupied, or used by Vendor; and automobiles owned, leased, or used by Vendor 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. Vendor 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, Vendor 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 Vendor 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. Vendor 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.

4.5 Remedies. In addition to any other remedies at law or equity City may have if Vendor 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 Vendor'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 Vendor to stop work under this Agreement or withhold any payment that becomes due to Vendor hereunder, or both stop work and withhold any payment, until Vendor demonstrates compliance with the requirements hereof; and/or

c. Terminate this Agreement.

## **SECTION 5. INDEMNIFICATION.**

5.1 Indemnification. To the full extent permitted by law, Vendor 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 Vendor fails to provide a defense for City, the legal costs of counsel retained by City) and any judgment (collectively, "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 Vendor or by any individual or entity for which Vendor is legally liable, including but not limited to officers, agents, employees or subcontractors of Vendor. Vendor 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 Vendor hereunder.

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

5.3 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, Vendor shall be an independent contractor and shall not be an employee of City. City shall have the right to control Vendor 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 Vendor accomplishes the Services rendered pursuant to this Agreement. The personnel performing the Services under this Agreement on behalf of Vendor shall at all times be under Vendor's exclusive direction and control. Vendor 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. Vendor 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 Vendor as provided in this Agreement, City shall not pay salaries, wages, or other compensation to Vendor for performing the Services hereunder for City. City shall not be liable for compensation or indemnification to Vendor 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, Vendor 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. Vendor shall perform all Services required herein as an independent Vendor 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 Vendor in its business or otherwise or a joint venturer or a member of any joint enterprise with Vendor.

## 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. Vendor and any subcontractor shall comply with all applicable local, state, and federal laws and regulations applicable to the performance of the work hereunder. Vendor 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. Vendor acknowledges and agrees that it shall be independently responsible for reviewing the applicable laws and regulations and effectuating compliance with such laws. Vendor shall require the same of all subcontractors.

7.3 Prevailing Wages. Vendor 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 applicable to public works contracts. Vendor 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. Section 5, Indemnification, specifically encompasses Claims arising from or related to (i) the noncompliance by Vendor 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 Vendor 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. Vendor represents, warrants, and covenants to City that Vendor 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. Vendor represents, warrants, and covenants to City that Vendor 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, Vendor and any subcontractors shall obtain and maintain during the term of this Agreement valid business licenses from City. Vendor 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 Vendor'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. Vendor represents, warrants, and covenants that Vendor presently has no interest, direct or indirect, which would interfere with or impair in any manner or degree the performance of Vendor's obligations and responsibilities under this Agreement. Vendor further agrees that while this Agreement is in effect, Vendor 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 Vendor's obligations and responsibilities under this Agreement.

7.6 Unfair Business Practices Claims. In entering into this Agreement, Vendor 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 Vendor 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. Vendor 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.

## **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 Vendor. City may also terminate this Agreement pursuant to Subsection 8.7.

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

8.3 Consequences of Termination. In the event of termination, Vendor 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 Vendor delivering to City any or all materials provided to Vendor or prepared by or for Vendor or City in connection with this Agreement. Upon receipt of any notice of termination, Vendor shall immediately cease all Services hereunder except such as may be specifically approved by the Contract Administrator.

8.4 Amendments. The Parties may amend this Agreement only by a writing signed by all the Parties.

8.5 Assignment and Subcontracting. City and Vendor recognize and agree that this Agreement contemplates personal performance by Vendor and is based upon a determination of Vendor'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 Vendor. Vendor may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Vendor 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 Vendor or any surety of Vendor of any liability hereunder without the express consent of City.

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

8.7 Disputes, Default. In the event that Vendor is in default under the terms of this Agreement, City shall not have any obligation or duty to continue compensating Vendor for any of the Services performed after the date of default. Instead, City may give notice to Vendor of the default and the reasons for the default. The notice shall include the timeframe in which Vendor 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 Vendor 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 Vendor 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 Vendor pursuant to this Agreement;
- c. Retain a different Vendor to complete the Services; and/or
- d. Charge Vendor 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 Vendor pursuant to Section 2 if Vendor had completed the Services.

Any failure on the part of City to give notice of Vendor'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.

## **SECTION 9. KEEPING AND STATUS OF RECORDS.**

9.1 Records. Vendor 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 Vendor's business, custody of the Books and Records may be given to City, and access shall be provided by Vendor'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.

9.2 Reports. Vendor 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. Vendor hereby acknowledges that City is greatly concerned about the cost of the Services to be performed pursuant to this Agreement. For this reason, Vendor agrees that if Vendor 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 Vendor is providing design services, the cost of the project being designed, Vendor shall promptly notify the Contract Administrator of said fact, circumstance, technique, or event and the estimated increased or decreased cost related thereto and, if Vendor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

9.3 Confidentiality. City and Vendor 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. Vendor, 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 Vendor, or any officer, employee, agent, or subcontractor of Vendor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Vendor for any Claims caused by or incurred as a result of Vendor's conduct. Vendor shall promptly notify City should Vendor, 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 Vendor or be present at any deposition, hearing, or similar proceeding. Vendor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Vendor. 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 Vendor 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 Venue. 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 Vendor 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 Vendor (“Principals”) are hereby designated as being the principals and representatives of Vendor 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 Vendor and devoting sufficient time to personally supervise the Services hereunder. All personnel of Vendor, 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 Vendor without the express written approval of City.

10.8 City Contract Administration. This Agreement shall be administered by a City employee, Denise Keith, Lieutenant (“Contract Administrator”). All correspondence shall be directed to or through the Contract Administrator or his designee. It shall be Vendor’s responsibility to assure that the Contract Administrator is kept informed of the progress of the performance of the Services and Vendor 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, Vendor shall not accept direction or orders from any person other than the Contract Administrator or his designee.

10.9 Notices. Any written notice to Vendor shall be sent to:  
DANA SAFETY SUPPLY, INC.  
Attn: David Russo, President  
4809 Koger Blvd.  
Greensboro, NC 27407

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

City of Menifee  
29844 Haun Road  
Menifee, CA 92586  
Attn: Denise Keith, Lieutenant

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 Exhibit A, represents the entire and integrated agreement between City and Vendor 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. Vendor 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. Vendor shall take affirmative action to ensure 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 Vendor, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Vendor or to its successor, or for breach of any obligation of the terms of this Agreement.

10.17 No Undue Influence. Vendor 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 Vendor, or from any officer, employee, or agent of Vendor, 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**

**VENDOR**

\_\_\_\_\_  
Armando Villa, City Manager

\_\_\_\_\_  
David Russo, President

Attest:

\_\_\_\_\_  
Sarah A. Manwaring, City Clerk

\_\_\_\_\_  
TBD

Approved as to Form:

\_\_\_\_\_  
Jeffrey T. Melching, City Attorney

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

## EXHIBIT A

### SCOPE OF SERVICES

Services shall include **ON CALL POLICE VEHICLE UPFITTING SERVICES**, in the combined aggregate amount not to exceed **THREE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$300,000.00)** for the initial term to all Performing Vendors, and **ONE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$100,000.00)** for each year of the First and Second Renewal Terms. Services shall include **ON CALL POLICE VEHICLE UPFITTING SERVICES** in the combined amount to both Performing Vendors not to exceed the following amounts, as further detailed on the following pages:

a. Initial Term: An aggregate sum not to exceed **THREE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$300,000.00)**; and

b. First Renewal Term: For a maximum aggregate sum not to exceed **ONE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$100,000.00)**; and

c. Second Renewal Term: For a maximum aggregate sum not to exceed **ONE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$100,000.00)**.

<b>Labor Rate(s)</b>	
Labor Rate / per Hour- In Shop	\$125.00 / hour
Labor Rate / per Hour- On Site	\$175.00/hour
Fabrication Labor Rate / per Hour	\$195.00/hour
Vehicle Down/Emergency	\$175.00/hour
Vehicle Transport (Utility/Tahoe)	\$200.00 per way
Vehicle Transport (Van/Truck)	\$250.00 per way
<b>Discount % off List Price</b>	
Range for Discounts off of the MSRP are from <b>5% to 55%</b> depending on the part brand and the timing of the order. Parts pricing not to exceed the MSRP amount.	

The City agrees and acknowledges that the hourly rates stated above may be increased each Renewal Term in the amount of up to 5% for labor not to exceed the percentage change in the Consumer Price Index published for the area of Los Angeles, Riverside, and Anaheim ("CPI") over the previous 12 months.

## EXHIBIT A