

MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING (“MOU”) is made and effective on **July 17, 2024** (“Effective Date”) by and between the **CITY OF MENIFEE**, a California municipal corporation, (“City”) and **ARTS COUNCIL MENIFEE**, an Internal Revenue Code 501-c (3) charitable corporation (“Partner Organization”). City and Partner Organization may sometimes herein be referred to individually as a “Party” and collectively as the “Parties.”

SECTION 1. GENERAL TERMS.

1.1 Special Provisions. The Parties may agree to additional, supplementary, or modified terms and conditions to those contained in this MOU which shall be set forth in Exhibit A attached hereto and incorporated herein by this reference.

1.2 Term of MOU. The term of this MOU shall begin on **July 17, 2024** and shall end on **June 30, 2027** unless the term of this MOU is otherwise terminated or extended as provided in this MOU. This Section 1.2 shall not affect the Parties’ rights to terminate this MOU set forth in Sections 1.3 and 1.4.

1.3 Termination. Either Party may terminate this MOU upon ninety (90) days’ written notice to the other Party. Upon termination each Party shall deliver to the other Party all documents and materials, if any, prepared for that other Party up to the date of termination.

1.4 Remedies for Breach. In the event of a default of the terms of this MOU by either Party, the non-defaulting Party shall give ten (10) days written notice and opportunity to cure (the “Cure Period”) to the defaulting Party, and, if the default remains uncured at the end of the Cure Period, may terminate this MOU and shall have any and all rights and remedies available at law or in equity to recover for the uncured default. The Parties may agree in writing to a longer or shorter Cure Period. If a default cannot reasonably be cured in the Cure Period or presents a substantial risk to the health and safety of either Party or the public, the non-defaulting Party may immediately terminate this MOU and seek any and all rights and remedies available at law or in equity. Upon an uncured default by Partner Organization, City may secure an alternate Partner Organization to perform the Partner Organization Services and charge Partner Organization the difference between the cost to complete the Partner Organization Services that are unfinished at the time of breach and the cost to the City had no Partner Organization default occurred.

1.5 Agreement and Exhibits. The exhibits attached to this MOU are incorporated herein by this reference. In the event of any discrepancy between this MOU and any Exhibit, the order of precedence shall be: (1) Exhibit A, (2) this MOU, (3) Exhibit B, (4) Exhibit C.

1.6 City Contract Administration. This MOU shall be administered by a City employee, **Jonathan Nicks, Deputy City Manager** (“Contract Administrator”). All correspondence shall be directed to or through the Contract Administrator or their designee. The Contract Administrator shall have the power to act on behalf of the City for all purposes under this MOU. Unless otherwise provided in this MOU, Partner Organization shall not accept direction or orders from any person other than the Contract Administrator or his designee.

1.7 Correspondence. All matters under this MOU shall be handled for Partner Organization by Partner Organization’s President or designee (“Partner Organization’s Representative”). Partner Organization’s Representative shall have full authority to represent and act on behalf of Partner Organization for all purposes under this MOU. Partner Organization’s

Representative shall supervise and direct the Partner Organization Services, using their best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Partner Organization Services. All correspondence for City under this MOU shall be directed to or through the Contract Administrator or his designee. Except as set forth in Section 3.3, the Contract Administrator shall have the power to act on behalf of City for all purposes under this MOU. Unless otherwise provided in this MOU, Partner Organization shall not accept direction or orders from any person other than the Contract Administrator or his designee.

1.8 Notices. Written notices under this MOU shall be provided to the following addresses:

To City:

City of Menifee
29844 Haun Road
Menifee, CA 92586

Attn: Jonathan Nicks, Deputy City Manager

To Partner Organization:

Arts Council Menifee
PO Box 385
Menifee, CA 92586

Attn: Colleen Ackerman, President

With a Copy to:

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

SECTION 2. OBLIGATIONS OF THE PARTIES.

2.1 Partner Organization's Services. Subject to the terms and conditions set forth in this MOU, Partner Organization shall provide to City the services described in the Partner Organization Services, attached hereto as Exhibit B (the "Partner Organization Services"). If included in the Partner Organization Services, Partner Organization shall perform subsequent task orders as requested by the Contract Administrator.

2.2 City Services. Subject to the terms and conditions set forth in this MOU, City shall provide to Partner Organization the services described in the City Services, attached hereto as Exhibit C (the "City Services"). The Partner Organization Services and City Services shall collectively be referred to as the "Services."

2.3 Standard of Performance. Partner Organization represents and warrants that Partner Organization is experienced in performing the services contemplated herein and, in light of such status and experience, Partner Organization shall perform the Partner Organization Services in the manner and according to the standards observed by a competent practitioner of the profession in which Partner Organization is engaged in the geographical area in which Partner Organization practices its profession and to the sole satisfaction of the Contract Administrator. Partner Organization shall devote the time to the performance of the Partner Organization Services as may be reasonably necessary to satisfy Partner Organization's obligations hereunder.

2.4 Cooperation, Non-Interference. The Parties shall use best efforts to cooperate to accomplish the purposes of this MOU. Neither Party shall unreasonably interfere with the other Party's rights or obligations under this MOU. To the extent the Services involve performance of a specific or specialized activity or program, neither Party shall conduct competitive activities or programs at a time, in a location, or in a manner which may reasonably be expected to discourage participation in or otherwise detract from the activity or program conducted pursuant to the Services.

2.5 Personnel. Partner Organization shall assign only competent personnel to perform the Partner Organization Services. In the event that City, in its sole discretion, at any time during the term of this MOU, desires the reassignment of any such persons, Partner Organization shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons. This Section 2.5 shall not apply if the Partner Organization Services do not involve the assignment of Partner Organization personnel.

2.6 Materials and Equipment. Except as otherwise provided in the Partner Organization Services or City Services, each Party shall provide all materials, facilities, and equipment necessary for that Party's performance hereunder, at that Party's sole cost and expense.

2.7 Access to Facilities. Where the Services include one Party's use of or entry into any facility, real property, or other building granted by the other Party such right of use or entry shall be subject to and conditioned on the terms of this MOU only, including the rights and limitations set forth in the Exhibits hereto and any use policies included thereupon. Unless otherwise stated in the City Services or the Partner Organization Services, the rights of use or access granted pursuant to this MOU shall apply to the officers, employees, subcontractors, agents, and volunteers of the applicable Party provided that such persons shall be subject to the terms and conditions of this MOU. If Partner Organization enters City property or meets in person with City employees during the performance of the Partner Organization Services, Partner Organization shall comply with all applicable regulatory and City security and safety procedures, protocols, and practices, including but not limited to health procedures related to the COVID-19 pandemic.

2.8 Authorization. Partner Organization is not authorized to perform any of the Partner Organization Services or incur any costs whatsoever under the terms of this MOU until receipt of authorization from the Contract Administrator.

2.9 Insurance. Before beginning any work under this MOU, including directing or engaging others to work on Partner Organization's behalf, Partner Organization, at its own cost an expense shall procure the types and amounts of insurance set forth in this Section 2.8 for

the term of this MOU Verification of the required insurance as provided by Paragraph 2.8.3 shall be submitted and made part of this MOU prior to execution. Partner Organization acknowledges the insurance policy must cover inter-insured suits between City and other insureds. The insurance required by this Section is as follows:

- 2.8.1 Workers' Compensation. To the extent required by applicable State and Federal law.
- 2.8.2 Commercial General Liability Insurance. Commercial general liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage, for risks associated with the Partner Organization Services, TWO MILLION DOLLARS (\$2,000,000.00) general aggregate, and TWO

2.9 MILLION DOLLARS (\$2,000,000.00)

products/completed operations aggregate. If a Commercial General Liability Insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Partner Organization Services 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 Partner Organization Services, including the use of hired, owned, and non-owned automobiles. . Any failure of Partner Organization to comply with reporting provisions of the insurance policy required by this Paragraph shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

2.8.2 Requirements for Insurance Policies. Each insurance policy required by this Section 2.8 shall comply with the following:

- All insurance required by this Section is to be placed with insurers with a Bests' rating of no less than A:VII and admitted in California.
- Prior to beginning the Partner Organization Services, Partner Organization shall furnish City with certificates of insurance, additional insured endorsements 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 specifically reference this MOU. The name and address for additional insured endorsements, certificates of insurance, and notices 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 Partner Organization.
- Partner Organization 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.
- 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 Partner Organization Services, including the insured's general supervision of Partner Organization; products and completed operations of Partner Organization, as applicable; premises owned, occupied, or used by Partner Organization; and automobiles owned, leased, or used by Partner Organization in the course of providing the Partner Organization Services. 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 MOU or completion of the Partner Organization Services, whichever is later. 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.

- Partner Organization shall obtain the written approval of City for self-insured retentions and deductibles before beginning any of the Partner Organization Services. During the term of this MOU, only upon the prior express written authorization of the Contract Administrator, Partner Organization 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 Partner Organization 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.
- Partner Organization 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.

2.8.4 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.

2.10 Indemnification. Partner Organization 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 reasonable consultant and expert fees and expenses of investigation, costs of whatever kind and nature and, if Partner Organization 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 MOU by Partner Organization or by any individual or entity for which Partner Organization is legally liable, including but not limited to officers, agents, employees or subcontractors of Partner Organization. The provisions of this Section 2.10 do not apply to Claims occurring as a result of City's sole or active negligence. The provisions of this Section 2.10 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.

2.11 Compliance with Law. Partner Organization and any subcontractor shall comply with all applicable local, state, and federal laws and regulations applicable to the performance of the Services hereunder,

including obtaining and maintaining, at Partner Organization's sole expense, any licenses, permits, and other approvals required to perform the Partner Organization Services. Partner Organization shall not hire or employ any person to perform work within City or allow any person to perform the Partner Organization Services unless such person is properly documented and legally entitled to be employed within the United States. Any and all work subject to prevailing wages, as determined by the Director of Industrial Relations of the State of California

("DIR"), will subject to the minimum wage required to be paid to all laborers, including Partner Organization's employees subcontractors. It is understood that it is the responsibility of Partner Organization to determine the correct scale. The State Prevailing Wage Rates may be obtained from the DIR by calling 415-703-4774. Appropriate records demonstrating compliance with such requirement shall be maintained in a safe and secure location at all times, and readily available at City's request. Partner Organization shall indemnify, defend, and hold City and its elected and appointed boards, members, officials, officers, agents, representatives, employees, and volunteers harmless from and against any Claims arising from or related to (i) the noncompliance by Partner Organization or any party performing the Partner Organization 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 Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law; and/or (iii) failure by Partner Organization or any party performing the Partner Organization Services to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. It is agreed by the Parties that, in connection with performance of the Partner Organization Services, including, without limitation, any and all public works (as defined by applicable law), Partner Organization shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. Partner Organization acknowledges and agrees that it shall be independently responsible for reviewing the applicable laws and regulations and effectuating compliance with such laws. Partner Organization shall require the same of all subcontractors.

2.12 Records. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, specifications, records, files, or any other documents or materials, in electronic or any other form that Partner Organization prepares or obtains pursuant to the Partner Organization Services and that relate to the matters covered hereunder shall be the property of City. Partner Organization hereby agrees to deliver those documents to City upon the expiration or termination of this MOU. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared for City pursuant to this MOU are prepared specifically for City and are not necessarily suitable for any future or other use. Any use of such documents for other projects by City shall be without liability to Partner Organization. City and Partner Organization 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. Partner Organization shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for the Partner Organization Services, if any, for a minimum of three (3) years from the date of termination of this MOU, or for any longer period required by law. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Any records or documents this Section requires Partner Organization to

maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of City.

2.13 Licensing of Intellectual Property. This MOU 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 plans, specifications, studies,

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, which are prepared or caused to be prepared by Partner Organization under this MOU (“Documents and Data”). Partner Organization shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for any Documents and Data the subcontractor prepares under this MOU. Partner Organization represents and warrants that Partner Organization has the legal right to license any and all Documents and Data. Partner Organization makes no such representation and warranty in regard to Documents and Data which were prepared by design professionals other than Partner Organization or provided to Partner Organization by City. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this MOU shall be at City’s sole risk. This Section 2.13 shall not apply to art produced for display or for sell by independent artists at a City event, which intellectual property shall remain the property of the artist.

SECTION 3. MISCELLANEOUS PROVISIONS.

3.1 Independent Contractors. The Parties shall be independent contractors, and the relationship between the Parties shall not constitute a partnership, joint venture, or agency. Neither Party shall have the authority to make any statements, representations, or commitments of any kind, or to take any action, which shall be binding on the other Party, without the prior written consent of such other Party. Neither Party shall be an employee of the other Party. Except as expressly provided herein, the means by which the Parties perform the Services is within the exclusive direction and control of the performing Party. Neither Party shall ever represent that it or any of its officers, employees, or agents is in any manner officers, officials, employees, or agents of the other Party or have the power to incur any debt, obligation, or liability whatever against the other Party, or bind the other Party in any manner. Except as otherwise provided by this MOU, neither Party shall pay salaries, wages, or any compensation to the other Party for performing the Services. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Partner Organization and any of its employees, agents, and subcontractors providing services under this MOU 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.

3.2 Governing Law and Venue. The internal laws of the State of California shall govern the interpretation and enforcement of this MOU. In the event that either Party brings any action against the other under this MOU, the Parties agree that trial of such action shall be vested exclusively in Riverside County.

3.3 Amendment. The Parties may amend this MOU only by a writing signed by all the Parties. The City Manager or his or her designee may execute and approve amendments to this MOU which in the City Manager’s reasonable discretion do not substantially modify the terms and conditions of this MOU, provided, however, that the City Manager may instead require City Council for approval for any proposed amendment.

3.4 Assignment and Subcontracting. Neither Party may assign or subcontract any portion of this MOU without the prior written consent of the other Party.

3.5 Survival. All obligations arising prior to the expiration or termination of this MOU and all provisions of this MOU allocating liability between the Parties shall survive the expiration or termination of this MOU.

3.6 Attorneys' Fees. If either Party brings any action, including an action for declaratory relief, to enforce or interpret the provisions of this MOU, 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 Section 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.

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

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

3.9 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this MOU does not constitute a waiver of any other breach of that term or any other term of this MOU.

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

3.11 Rights and Remedies. 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.

3.12 Integration. This MOU, including the exhibits, represents the entire and integrated agreement between City and Partner Organization and supersedes all prior negotiations, representations, or agreements, either written or oral. The terms of this MOU 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 MOU or any other rule of construction which might otherwise apply.

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

3.14 Execution of MOU. The persons executing this MOU 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 MOU on behalf of said Party, (iii) by so executing this MOU, such Party is formally bound to the provisions of this MOU, and (iv) that entering into this MOU does not violate any provision of any other MOU to which said Party is bound.

3.15 Nondiscrimination. Partner Organization covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that in the performance of this MOU 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.

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

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

3.18 No Undue Influence. Partner Organization 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 MOU, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of City shall receive compensation, directly or indirectly, from Partner Organization, or from any officer, employee, or agent of Partner Organization, in connection with this MOU.

3.19 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 MOU 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.

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

CITY OF MENIFEE

PARTNER ORGANIZATION

Armando G. Villa, City Manager

Colleen Ackerman, President

Attest:

Stephanie Roseen, Acting City Clerk

Approved as to Form:

Jeffrey T. Melching, City Attorney

EXHIBIT A
SPECIAL PROVISIONS

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EXHIBIT A.

EXHIBIT B

PARTNER ORGANIZATION SERVICES

- For events listed herein, promote and assist the City in organizing live entertainment and interactive components. Promotion shall include distribution of event information to all organization members. Entertainment and vendors shall be pre-approved by the City and based on available budget.
 - Shakespeare in the Park
 - Art Pop up in the Park
 - Multicultural Festival
 - Day of the Dead
 - Music & Arts Festival
- Work with the City to create a judged art show or showcase
- Collaborate with City on setting annual event calendar
- Promote City events, programs and classes related to arts via:
 - Organization Membership Email list serv (400+ subscribers)
 - Website and Social Media
 - During Partner Organization Hosted Events

EXHIBIT C
CITY SERVICES

- Collaborate with Partner Organization on grant opportunities focused on the following areas:
 - Public Arts in Parks
 - Community Events, Programs, and Classes
- Work with partner organization to incorporate art into all Citywide special events
- Highlight partnership with partner organization in Menifee Matters and on City Social Media Platforms and Webpage
- Authorize one Partner Organization event or fundraiser per calendar year to rent a City facility deemed appropriate by City at no facility fee or City staff cost related to the rental. Partner Organization, at its sole cost, shall obtain all necessary insurance, permits, and approvals for such event.
- Allow the following opportunities to partner organization:
 - Ability to act as “seller” for artists at City events
 - Display art in lobbies of the Community Services Department, Kay Cenicerros Campus on quarterly basis
 - Operate an information booth at select City events