

CITY OF MENIFEE
PROFESSIONAL SERVICES AGREEMENT
FY 2021/22 ON-CALL STORMWATER MANAGEMENT
PROGRAM SERVICES (RECOVERABLE)

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and effective this ____ day of _____, 2021 (“Effective Date”) by and between the CITY OF MENIFEE, a California municipal corporation, (“City”) and **CG RESOURCE MANAGEMENT & ENGINEERING**, a A California Corporation (“Consultant”). City and Consultant may sometimes herein be referred to individually as a “Party” and collectively as the “Parties.”

SECTION 1. SERVICES.

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

1.1 Term of Services. The term of this Agreement shall begin on **July 1, 2021** and shall end on **June 30, 2022** unless the term of this Agreement is otherwise terminated or extended as provided for in Section 8. The time provided to Consultant to complete the Services required by this Agreement shall not affect City’s right to terminate this Agreement, as provided for in Section 8.

1.2 Standard of Performance. Consultant represents and warrants that Consultant is a provider of first class work and services and Consultant is experienced in performing the Services contemplated herein and, in light of such status and experience, Consultant shall perform the Services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession and to the sole satisfaction of the Contract Administrator.

1.3 Assignment of Personnel. Consultant shall assign only competent personnel to perform the Services pursuant to Agreement. 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, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

1.4 Time. Consultant shall devote such time to the performance of the Services pursuant to this Agreement as may be reasonably necessary to satisfy Consultant’s obligations hereunder.

1.5 Authorization to Perform Services. Consultant is not authorized to perform any of the Services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

1.6 Covid-19 Safety. If Consultant enters City property or meets in person with City employees during the performance of the Services, Consultant shall comply with all State, County, and local emergency orders, directives, protocols, and best practices related to the COVID-19 pandemic, including, but not limited to: (A) wearing facial coverings, (B) maintaining adequate physical distancing when possible, (C) regular hand washing, and (D) regular hand sanitizing.

SECTION 2. COMPENSATION.

City hereby agrees to pay Consultant a sum not to exceed **TEN THOUSAND DOLLARS AND ZERO CENTS (\$10,000.00)** notwithstanding any contrary indications that may be contained in Consultant's proposal, for the Services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Exhibit A, regarding the amount of compensation, this Agreement shall prevail. City shall pay Consultant 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 Consultant for the Services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized in advance by City, Consultant shall not bill City for duplicate services performed by more than one person.

2.1 Invoices. Consultant 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. Invoices shall contain the following information:

- 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 Consultant and each employee, agent, and subcontractor of Consultant performing the Services hereunder necessary to complete the Services described in Exhibit A;
- f. Receipts for expenses to be reimbursed;
- g. The Consultant Representative's signature.

Invoices shall be submitted to:

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

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for the Services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 Final Payment. City shall pay the last five percent (5%) of the total amount due pursuant to this Agreement within sixty (60) days after completion of the Services and submittal to City of a final invoice, if all of the Services required have been satisfactorily performed.

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

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

2.6 Reimbursable Expenses. Reimbursable expenses are included within the maximum amount of this Agreement.

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

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

SECTION 3. FACILITIES AND EQUIPMENT.

Except as otherwise provided, Consultant shall, at its sole cost and expense, provide all facilities and equipment necessary to perform the services required by this Agreement. City shall make available to Consultant only physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be

required to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

SECTION 4. INSURANCE REQUIREMENTS.

Before beginning any work under this Agreement, Consultant, at its own cost and expense, shall procure the types and amounts of insurance checked below and provide Certificates of Insurance, indicating that Consultant has obtained or currently maintains insurance that meets the requirements of this section and which is satisfactory, in all respects, to City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in Consultant's compensation. Consultant shall not allow any subcontractor, consultant or other agent to commence work on any subcontract until Consultant 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. Consultant acknowledges the insurance policy must cover inter-insured suits between City and other Insureds.

4.1 Workers' Compensation. Consultant 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 Consultant 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, Consultant 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 Consultant, 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. Consultant, 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, 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. 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:

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

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

4.3 Professional Liability Insurance.

a. General requirements. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing the Services pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall be shown on the Certificate. If the deductible or self-insured retention exceeds TWENTY-FIVE THOUSAND DOLLARS (\$25,000), it must be approved by City.

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

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

b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after the expiration or termination of this Agreement or completion of the Services, so long as commercially available at reasonable rates.

c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the Effective Date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five (5) years after the expiration or termination of this Agreement or the completion of the Services. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the Services under this Agreement. City shall have the

right to exercise, at Consultant's sole cost and expense, any extended reporting provisions of the policy, if Consultant cancels or does not renew the coverage.

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

4.4 All Policies Requirements.

a. Acceptability of insurers. 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.

b. Verification of coverage. Prior to beginning the Services under this Agreement, Consultant 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: **FY 2021/22 ON-CALL STORMWATER MANAGEMENT PROGRAM SERVICES (RECOVERABLE)**. 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 Consultant.

c. Notice of Reduction in or Cancellation of Coverage. Consultant 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.

d. 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 Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant, as applicable; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by Consultant 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.

e. Deductibles and Self-insured Retentions. Consultant 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, Consultant 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 Consultant 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.

f. Subcontractors. Consultant 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.

g. 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 Consultant 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 Consultant'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 Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- c. Terminate this Agreement.

SECTION 5. INDEMNIFICATION.

5.1 Indemnification for Professional Liability. Where the law establishes a professional standard of care for performance of the Services, to the fullest extent permitted by law, Consultant 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 Consultant fails to provide a defense for City, the legal costs of counsel retained by City) and any judgment (collectively, "Claims") to the extent same are caused in whole or in part by any negligent or wrongful act, error, or omission of Consultant, its officers, agents, employees, or subcontractors (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

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

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.

SECTION 6. STATUS OF CONSULTANT.

6.1 Independent Contractor. At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of the Services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes the Services rendered pursuant to this Agreement. The personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents is in any manner officers, officials, employees, or agents of City. Consultant 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 Consultant as provided in this Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing the Services hereunder for City. City shall not be liable for compensation or indemnification to Consultant 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, Consultant 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.

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. Consultant and any subcontractor shall comply with all applicable local, state, and federal laws and regulations applicable to the performance of the work hereunder. Consultant 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. Any and all work subject to prevailing wages, as determined by the Director of Industrial Relations of the State

of California, will be the minimum paid to all laborers, including Consultant's employee and subcontractors. It is understood that it is the responsibility of Consultant to determine the correct scale. The State Prevailing Wage Rates may be obtained from the California Department of Industrial Relations ("DIR") pursuant to California Public Utilities Code, Sections 465, 466, and 467 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. Consultant 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 liability, loss, damage, cost or expenses (including but not limited to reasonable attorneys' fees, expert witness fees, court costs, and costs incurred related to any inquiries or proceedings) arising from or related to (i) the noncompliance by Consultant 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 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 Consultant or any party performing the 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 Services, including, without limitation, any and all public works (as defined by applicable law), Consultant 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. Consultant acknowledges and agrees that it shall be independently responsible for reviewing the applicable laws and regulations and effectuating compliance with such laws. Consultant shall require the same of all subcontractors.

7.3 Licenses and Permits. Consultant represents and warrants to City that Consultant 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. Consultant represents and warrants to City that Consultant 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. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.

SECTION 8. TERMINATION AND MODIFICATION.

8.1 Termination. City may cancel this Agreement at any time and without cause upon written notification to Consultant.

8.2 Termination by Consultant. Consultant may cancel this Agreement upon 30 days' written notice to City.

8.3 Consequences of Termination. In the event of termination, Consultant shall be entitled to compensation for the Services performed up to the date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or City in connection with this Agreement.

8.4 Extension. City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

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

8.6 Assignment and Subcontracting. City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant'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 Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in Consultant's proposal, without prior written approval of the Contract Administrator. In the event that key personnel leave Consultant's employ, Consultant shall notify City immediately.

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

8.8 Options upon Breach by Consultant. If Consultant materially breaches any of the terms of this Agreement, 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 Consultant pursuant to this Agreement;
- c. Retain a different consultant to complete the Services described in Exhibit A; and/or
- d. Charge Consultant the difference between the cost to complete the Services described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the Services.

SECTION 9. KEEPING AND STATUS OF RECORDS.

9.1 Records Created as Part of Consultant's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of City. Consultant hereby agrees to deliver those documents to City upon the expiration or termination of this Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement 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 Consultant. City and Consultant 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.

9.2 Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, rights of reproduction, and other intellectual property embodied in 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 Consultant under this Agreement ("Documents and Data"). Consultant 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 Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents and Data. Consultant makes no such representation and warranty in regard to Documents and Data which were prepared by design professionals other than Consultant or provided to Consultant by the 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 Agreement shall be at City's sole risk.

9.3 Consultant's Books and Records. Consultant 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 Services or expenditures and disbursements charged to City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible.

9.4 Inspection and Audit of Records. Any records or documents that Section 9.3 of this Agreement requires Consultant 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. 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.

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 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.

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

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

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

10.5 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term 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 Consultant Representative. All matters under this Agreement shall be handled for Consultant by Cynthia Gabaldon ("Consultant's Representative"). The Consultant's Representative shall have full authority to represent and act on behalf of Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

10.8 City Contract Administration. This Agreement shall be administered by a City employee, Run Chen, Sr Engineer ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his designee. 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, Consultant shall not accept direction or orders from any person other than the Contract Administrator or his designee.

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

CG RESOURCE MANAGEMENT & ENGINEERING
Attn: Cynthia Gabaldon
2105 Foothill Blvd Suite B-135
La Verne, CA 91750

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

City of Menifee
29844 Haun Road
Menifee, CA 92586
Attn: Run Chen, Sr Engineer

with a copy to:

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

10.10 Professional Seal. Where applicable in the determination of the Contract Administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled “Seal and Signature of Registered Professional with report/design responsibility,” as in the following example.

Seal and Signature of Registered Professional with report/design responsibility.

10.11 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.

10.12 Integration. This Agreement, including the scope of services attached hereto and incorporated herein as Exhibit A, represents the entire and integrated agreement between City and Consultant 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.

10.13 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.

10.14 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.

10.15 Nondiscrimination. Consultant 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.

10.16 No Third Party Beneficiaries. With the exception of the specific provisions set forth in this Agreement, there are no intended third-party beneficiaries under this Agreement and no such other third parties shall have any rights or obligations hereunder.

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

10.18 No Undue Influence. Consultant 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 Consultant, or from any officer, employee, or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement.

10.19 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 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

CONSULTANT

Armando G. Villa, City Manager

Cynthia Gabaldon , President

Attest:

Sarah A. Manwaring, City Clerk

Approved as to Form:

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

Jeffrey T. Melching, City Attorney

EXHIBIT A
SCOPE OF SERVICES

Consultant shall provide the following services:

- Comprehensive Stormwater Plan Check and Review Services as requested by City of Menifee Public Works/Engineering staff, including but not limited to:

Inspections, document/plan review, representation at technical meetings, and other storm water consultation services for the City of Menifee

In the amount not to exceed **TEN THOUSAND DOLLARS AND ZERO CENTS (\$10,000.00)**

SCOPE OF SERVICES

Included in this Section is a list of possible service scopes which could be assigned to CGRME.

1) WQMP Reviews

Based on a discussion with City staff it is understood that electronic copies of the WQMP submittals will be provided to the consultant. The reviews will need to be completed using electronic plan check software similar to Blue Beam or another method so that pdf edits can be provided.

Plan checks are reviewed based on an agreed format and approach with City staff. Discussion will include approved BMPs, City-specific requirements and common conditions of approval. These details will be agreed on before an initial submittal review.

CGRME's approach to WQMP reviews starts with a Pre-Submittal letter. This letter is project specific but is based on a template letter. This Pre-Submittal letter is provided to the project proponent/engineer before the first PWQMP and FWQMP are submitted. The Pre-Submittal letter provides a section-by-section description of what the City will require for the WQMP. This letter provides the basis for the applicant's submittal and is the starting point for the plan check. With each submittal, the items on the review letter should reduce.

Typical turn-around time for reviews is two weeks for both PWQMP and FWQMP reviews.

Task 1 – Preliminary WQMP Assessment

1.1 Preliminary WQMP (P-WQMP) Assessment of Project and Programs

The first phase of the work shall consist of a complete assessment of the demands of the project, based upon meetings with city staff and review of appropriate plans and documents.

1.2 Preliminary Water Quality Management Plan Review

The Consultant shall completely and accurately review all narratives, supporting studies, maps, exhibits, documents and specifications submitted in conjunction with the P-WQMP document. The Consultant shall provide complete, accurate and timely written comments, as well as "redlined" drawings of submitted plans and supporting documents that are found to be unacceptable or incomplete.

If requested, Consultant shall prepare a complete, accurate and timely written set of planning Conditions of Approval, utilizing the City's standardized format, describing the specific requirements necessary for approval of any site-specific P-WQMP found to be acceptable to the City. The Consultant shall provide assistance to the City, and project applicant as it relates to all comments, redlines and/or conditions of approval prepared by Consultant.

1.3 P-WQMP General Services and Requirements and Responsibilities

- Consultant shall prepare and maintain a "Schedule of Performance" to include realistic periods for initial reviews, final design review, and submittal of conditions of approval.
- Consultant shall submit invoices to the City at 100% percent completion of the project. Each invoice will be itemized and show tasks performed, and the percentage of completion lump sum payment due.

- Consultant shall be available to answer questions regarding the project scope, documents, milestones, plans, specifications, etc. through various methods including meetings, telephone calls, e-mails, and/or written correspondence.

Task 2 - Final WQMP Assessments

2.1 Final WQMP Assessment of Project and Programs

The first phase of the work shall consist of a complete assessment of the demands of the project, based upon meetings with city staff and review of appropriate plans and documents. Consultant services shall include but not be limited to the following items:

- Consultant shall analyze regional and local plans and documents deemed pertinent to the review of the proposed F-WQMP including the Santa Ana River Basin Plan, TMDL for Canyon Lake and Lake Elsinore, Riverside County Water Quality Management Plan for Urban Run-Off, and Board Order R8-2010-0033 NPDES Permit # CAS618033, and other documents as deemed appropriate. Any changes since P-WQMP approval shall be documented.

2.2 Final Water Quality Management Plan Review

The Consultant shall completely and accurately review all narratives, supporting studies, maps, exhibits, documents and specifications submitted in conjunction with the F-WQMP document. The Consultant shall provide a redlined set of plans and corresponding correction list, in the event that the F-WQMP is found to be unacceptable.

2.3 F-WQMP Red-Line Plan Comments and/or Conditions of Approval

The Consultant shall provide complete, accurate and timely written comments, as well as "redlined" drawings of submitted plans and supporting documents that are found to be unacceptable or incomplete. Consultant shall prepare a complete, accurate and timely written set of Conditions of Approval, utilizing the City's standardized format, describing the specific requirements necessary for approval of any site-specific WQMP found to be acceptable to the City. The Consultant shall provide assistance to the City, and project applicant as it relates to all comments, redlines and/or conditions of approval prepared by Consultant.

2.4 Final WQMP Approvals and Conditions of Approval

COAs can be provided if requested by the City. When a project specific WQMP is approved, if requested by the City, COA's and an internal approval memo will be prepared. The COAs can be provided to the applicant for signature and scanning onto the WQMP Plan COA page. This page is then returned to the City for inclusion into the final document. The internal approval letter is provided to both City Building and Safety and Engineering. This task typically completes the WQMP approval process. This process can be either handled on-site or via email.

2.5 Project Specific WQMP Related Administrative Follow Up

When a project moves forward into construction there are WQMP related tasks that need to be completed:

- Coordination with the Planners at the time of the Final Map approval that CC&Rs are complete, approved and provided.
- Remind the owner/builder that all elements of the WQMP must be implemented and approved before project will receive clearance.



3.0 Final WQMP General Services and Requirements and Responsibilities

Consultant services for this phase of work, shall include but not be limited to, the following items:

- Consultant shall prepare and maintain a "Schedule of Performance" to include realistic periods for initial reviews, final design review, and submittal of conditions of approval.
- Consultant shall be available to answer questions regarding the project scope, documents, milestones, plans, specifications, etc. through various methods including meetings, telephone calls, e-mails, and/or written correspondence.

Other Services: WQMP Training – In-House Staff

CGRME Staff can also provide WQMP Construction Inspection training to the Menifee staff. It is recommended to have three inspection visits to a site including:

- At beginning of Project, within first few weeks of construction: Introductions and WQMP review
- Mid Construction Inspection: review of on-going construction. Usually based on on-going discussions with contractor. Also discuss probable final inspection and remaining steps.
- Final Inspection: Confirm all the BMPs have been installed. Work on final paperwork with contractor and owner.
- Provide Project acceptance documentation

Due to the distance and, typically, last minute calls for inspections, CGRME recommends training in-house City staff for this requirement.

1) Annual WQMP Inspections

As is required in the MS4 Permit, constructed WQMP sites, need to have inspections on a scheduled basis. At this time, a site needs an "annual" inspection once every three years. A log will be prepared and the inspections completed will be included.

Fees are on an hourly basis dependent on the number of sites inspected. Efforts are made to minimize expenses for this task (combine in one day, sequence the locations, etc.). A four-hour minimum would be required. Travel time would be charged for travel between the inspection sites.

Depending on the scheduling requirements, a sub-consultant may be used for this scope; either Cynthia Gabaldon or Miguel Puente could be assigned to this task.

2) Commercial/Industrial Inspections

The key to compliance with this NPDES Permit requirement is organization and efficient staff. CGRME has access to a team who are Qualified Industrial SWPPP Practitioners (QISPs). The approach to the inspections would require a meeting with the City, review of the available inventory and then analysis of the priorities.

A subcontractor, Lynn Merrill and Associates, will need to be used for this scope of work. The Merrill team completes the task on a full-time schedule, meaning that the inspections are scheduled in the most efficient manner as possible. The Subcontractor description and resumes are included as an attachment to this proposal. This team has completed

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thousands of industrial/commercial inspections. As a result, we have learned to present ourselves to the business owners as "teaching inspectors". Our goal is to gain compliance, not to penalize.

The team has inspection options concerning documentation. Electronic inspection capture is available. Paper inspections can also be done if the City does not have the capability to utilize the electronic inspections. We highly recommend bundled inspections, meaning planning multiple inspections in one area. This is the most efficient method.

3) Regional NPDES Meeting Representation

CGRME can represent the City at Regional NPDES meetings, primarily the Regional TMDL meetings. These meetings are typically once a month in either Lake Elsinore or Riverside. Cynthia can provide a post meeting summary of the actions and will notify City staff of specific needs or required tasks as part of the TMDL implementation.

4) Assistance with Permittee Meetings

Assist in-house staff with attendance at the Permit required Permittee meetings located at Riverside County Flood Control District. This scope is expected to include providing support to understanding meeting discussions and reviewing meeting notes. Cynthia will discuss attendance needs with the assigned staff and review the meeting notes taken.

5) Annual Report Assistance

As part of the MS4 Permit requirements an Annual Report submittal is required each year. CGRME can provide staffing assistance concerning streamlining the annual report process. This would include reviewing City Program procedures and providing spreadsheets and documentation methods to be used throughout the year. Annual Reporting analysis and documentation usually occurs August through September of each year. Currently the City submits data using the Riverside County NPDES Program template. It is probable that with the next revised MS4 Permit, the annual reporting will be submitted on-line. The time spent on the Annual Report is dependent on City documentation. If the City is organized and well-prepared, the Riverside County NPDES Program forms typically require 16 to 24 hours to prepare. If there is research or document preparation required, that time would be dependent on the scope. Ms. Gabaldon would be the staff for this task.

6) Additional Tasks

A range of additional tasks may be included in the future. These may include staff training, assisting with task delegation to existing City staff, review and development of City Local Implementation Plan (LIP), review of quality assessment and control procedures, and tracking needs. Development of the specific tasks will be on an as-requested basis. No specifics are included in this proposal.

It is recommended that a schedule be prepared to review the City's LIP, current processes and listen to ideas to make the LIP and the implementation more streamlined and user friendly. A schedule can be prepared to review the sections of the LIP, possibly on a monthly basis, so that the workload is not overwhelming for City staff. This will provide the current NPDES staff an opportunity to understand and fine-tune the City-specific program.



Project Schedule

When tasks are assigned, execution will be completed at a "full-time" capacity. Task specific schedules will be discussed on a case- by-case basis. At that time any clarifications and concerns will be presented and schedule adjustments agreed upon.

Miguel Puente is available for specific inspection tasks; his schedule allows for Friday and Saturday field work.

F E E S

CGRME has based these fees on previous experience. Typical annual fees for the WQMP scope of work has historically been approximately \$20,000 per year. This total is a function of the number of the WQMPs reviewed. Total inspection fees are a function of the number of locations visited. Depending on the needs of the City and the total scope of services requested, additional fees may be necessary.

Personnel Charges

The charge for all on-call and special projects required in the performance of the Scope of Service, including office, field and travel time, will be approximately at the Unit Price Hourly rates set forth below for the labor classifications indicated below:

Labor Classification	Hourly Rate
Senior Project Engineer/Manager	\$135
Staff Scientist/Engineer	\$105
Senior Inspector	\$90
Staff Inspector	\$85

Travel time and mileage will be charged for meetings and deliveries. These rates are to be used for assignments, analysis and deliverables other than the WQMP plan checks and the industrial/commercial inspections.

Vehicle and Mileage

The mileage charge for personal autos will be the then current mileage rate established by the Internal Revenue Service (which is \$.58 per mile in 2019).



Industrial Inspections

Industrial and Commercial Inspections will be charged on a fixed cost per facility. This includes a follow up inspection when necessary.

	NPDES Priority	Price Per Facility
Industrial, Commercial and Restaurants	Low - 1 inspection	\$ 97.50
	Medium – 1 inspection, 1 re-inspection	\$227.50
	High - 1 inspection, 1 re-inspection	\$227.50

Follow-up and re-inspections are included in the prices. Mileage and travel is also included in the fixed cost.

WQMP Plan Checks

WQMP plan checks fees are based on the project acreage and type of project. This scope of work is billed on a lump sum basis.

Preliminary WQMPs - \$2,200.00

If there is an approved PWQMP, FWQMP fees are:

Final WQMPs	Commercial	Industrial	Residential	
Basic	8	5	19	3,200
Standard	23	18	50	4,000
Complex	>23.1	>18.1	>50.1	4,000
	acres	Acre	acres	

If there is not an approval PWQMP, the FWQMP will be:

Final WQMPs	Commercial	Industrial	Residential	
Basic	8	5	19	3,200
Standard	23	18	50	4,000
Complex	>23.1	>18.1	>50.1	5,060
	acres	Acre	acres	

WQMP projects will be billed upon acceptance of the review or when it is known the project has been pulled from processing by the applicant.

Subcontractors and Reimbursables

The cost of services subcontracted by CGRME to others and other costs incurred by CGRME, for other than industrial inspections or WQMP plan checks, will be charged at cost plus 5%. This includes reproduction and graphic costs. It is also understood that any subcontractors used by CGRME will be vetted by City before deemed qualified to provide services.

Mark-up is included into the industrial/commercial inspections fixed fee price.

This fee schedule contains confidential business information and is not intended to be copied or purpose other than the use intended in this contract or proposal.