

CITY OF MENIFEE

PROFESSIONAL SERVICES AGREEMENT

PROFESSIONAL SERVICES FOR CIP 22-08 NORMANDY ROAD IMPROVEMENTS

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and effective this _____ day of _____, 2022 ("Effective Date") by and between the CITY OF MENIFEE, a California municipal corporation, ("City") and **Kimley-Horn and Associates, Inc.**, a North Carolina 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 **September 26, 2022** and shall end on **June 30, 2023** 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 **TWENTY THREE THOUSAND SEVEN HUNDRED DOLLARS AND ZERO CENTS (\$23,700.00)** 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: **PROFESSIONAL SERVICES FOR CIP 22-08 NORMANDY ROAD IMPROVEMENTS.** 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 Kevin Thomas, Senior Environmental Manager ("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, Diego Guillen, Associate 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:

Kimley-Horn and Associates, Inc.
Attn: Kevin Thomas, Senior Environmental Manager
3880 Lemon Street, Suite 420
Riverside, CA 92501

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

City of Menifee
29844 Haun Road
Menifee, CA 92586
Attn: Diego Guillen, Associate 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

Dennis Landaal, Senior Vice President, PE
#50270

Attest:

Stephanie Roseen, Acting City Clerk

Leo Espelet, Assistant Secretary, PE #71532

Approved as to Form:

Jeffrey T. Melching, City Attorney

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

EXHIBIT A

SCOPE OF SERVICES

Services shall include Professional Services for CIP 22-08 Normandy Road Improvements in the amount not to exceed **TWENTY THREE THOUSAND SEVEN HUNDRED DOLLARS AND ZERO CENTS (\$23,700.00)** as further detailed in the following page(s).

Please find attached our proposal to prepare technical analyses for the Normandy Road Improvements Project CIP 22-08 (Project). This proposal also includes preparation of a cultural resources assessment, regulatory permits and a Determination of Biologically Equivalent or Superior Preservation (DBESP) Report.

Our scope, schedule, and fee is based on our understanding of the Project and City of Menifee (City) review process, the regulatory permitting and DBESP processes, and our current understanding of the Project and its complexity.

The City is proposing to construct a 10-foot wide pedestrian trail along the north (westbound) side of Normandy Road, from east of La Ladera Road to west of Berea Road, connecting existing pedestrian facilities. The trail would be separated from roadway traffic via 24-inch tall flexible delineator posts.

Noteworthy, is the Project's crossing at Salt Creek, where flows are currently directed beneath Normandy Road via six existing storm drain culverts. These culverts would be extended north beneath the proposed pedestrian trail. The culverts would cease at concrete headwalls and rip-rap set in place up to the existing right-of-way line. Rip-rap shall be either quarry stone or broken concrete (cobble are not acceptable). All proposed improvements would take place within existing right-of-way.

SCOPE OF WORK

Task 1. Mobilization

The Kimley-Horn environmental team will review available Project information, plans and studies, as well as other available relevant information. Kimley-Horn will confirm the overall approach and schedule with the City.

Task 2. Technical Analyses

Kimley-Horn will prepare the following technical analyses:

A) Cultural Resources Assessment

Research

The records search for cultural resources (archaeological and historical) will be conducted through the Eastern Information Center (EIC) at the University of California, Riverside. This research will characterize the status and extent of previous cultural resource studies completed in the project area (including a half-mile radius), and will review the status of any local historical resources.

Field Survey

BCR Consulting field staff will perform a pedestrian cultural resources survey of the project site. Professional archaeologists will walk a parallel transects at 15-meter intervals across 100 percent of the accessible project site. All soil exposures will be carefully inspected for evidence of cultural resources. This fieldwork will be completed under the supervision of a cultural resource professional that meets the United States Secretary of the Interior's Professional Qualifications Standards for Architectural History, and for Archaeology. The goal of this task will be to identify any cultural resources within the development portion of the project site, and to produce or update the necessary site records. For the purposes of this proposal, negative findings are anticipated. Should cultural resources be identified, a budget and schedule adjustment would be necessary.

Report

A cultural resources report will be produced consistent with Section 106 of the NHPA according to Army Corps of Engineers standards, and with CEQA according to City standards. The report will include a project description, cultural setting, methods, results, and recommendations sections. Relevant maps and photographs will be included in the report, and the appropriate Department of Park and Recreation (DPR) 523 site forms will be appended as necessary.

Paleontological Overview

BCR Consulting will request a paleontological overview for the project site from the Western Science Center. This overview will review previous paleontological resource studies completed in the area to assess potential for the project to impact any important fossils, and to make necessary recommendations for any preservation or mitigation efforts. The resulting report will be appended to the cultural resources report.

Native American Heritage Commission Sacred Lands File Search

During this task BCR Consulting will contact the Native American Heritage Commission (NAHC) to request a Sacred Lands File (SLF) Search. Results of the SLF Search will be appended to the report. The City will perform Assembly Bill (AB) 52 Consultation with the appropriate tribes. If requested to participate, BCR Consulting will be available to discuss any tribal concerns during one conference call. BCR Consulting will send notifications to Tribes for informational purposes only. The results of this correspondence will be summarized in the cultural report.

B) Determination of Biologically Equivalent or Superior Preservation Analysis

Section 6.1.2 of the MSHCP requires that an assessment be completed of the potentially significant effects of a project on Covered Species (up to four Covered Species could be present), and riparian/riverine habitat. The assessment of riparian/riverine habitat is independent from considerations given to waters of the U.S. and waters of the State under the Clean Water Act and the California Fish and Game Code. The MSHCP requires all riparian/riverine habitats be avoided. If these habitats cannot be avoided, a Determination of Biologically Equivalent or Superior Preservation (DBESP) analysis must be prepared. The documentation for the assessment shall include mapping and a description of the functions and values of the mapped areas with respect to the species listed in Section 6.1.2, protection of species associated with riparian/riverine areas.

In accordance with the MSHCP, if the project will impact riparian/riverine habitat, no matter how small the acreage of impact and an avoidance alternative is not feasible, then a DBESP analysis will be needed to ensure replacement of any lost functions and values associated with loss riparian/riverine habitat will be biological equivalent or superior to the existing habitat. The DBESP is separate from the regulatory permitting process. The regulatory permitting process address impacts to jurisdictional waters while the MSHCP process addresses impacts to sensitive habitats. The two processes are directed by separate state and federal regulations. Additionally, if a covered species such as burrowing owls, LAPM or one or both of the identified special-status plant species occur on the project site, the potential impacts to the species must be addressed in the DBESP analysis as well. A single DBESP report can be prepared to cover all required habitats/species.

A DBESP will be prepared that will include the following information:

- Definition of the project area;
- A written project description, demonstrating why an avoidance alternative is not possible;

- A written description of biological information available for the project site including the results of resource mapping;
- Quantification of unavoidable impacts to riparian/riverine areas, burrowing owl, LAPM and/or Narrow Endemic Plant Species associated with the project, including direct and indirect effects;
- A written description of project design features and mitigation measures that reduce indirect effects, such as edge treatments, landscaping, elevation difference, minimization, and/or compensation through restoration or enhancement;
 - Mitigation measures developed during the regulatory permit process with the USACE and CDFW will be used to offset impacts to riparian/riverine habitat as appropriate. If additional mitigation is necessary, for riparian/riverine habitat, additional mitigation measures will be included.
- A finding demonstrating that although the proposed project would not avoid impacts, with proposed design and compensation measures, the project would be biologically equivalent or superior to that which would occur under an avoidance alternative without these measures, based on one or more of the following factors:
 - Effects on Conserved Habitats;
 - Effects on the listed species; and
 - Effects on riparian Linkages and function of the MSHCP Conservation Area.

Prior to approval of the DBESP, the Wildlife Agencies (i.e., USFWS, CDFW, and the RCA) will be notified and provided a 60-day review and response period on the draft report. The proposed scope of services includes preparation of a DBESP to be reviewed by (1) the Client, and (2) the Wildlife Agencies. This task includes the response for two (2) sets of comments, and updates to the DBESP as appropriate.

C) Biological Report Update

The existing biological report will be updated with any new information for the proposed Project, and will be updated to ensure the report includes all of the information needed to support the regulatory approvals.

Task 3. Regulatory Permitting

❖ U.S. Army Corps of Engineers Section 404 Nationwide Permit Application

It is anticipated that the Project will result in a loss of waters of the United States; but that would not ultimately result in a permanent loss of non-wetland waters of the U.S. greater than a 1/2-acre; therefore, a Nationwide Permit (NWP) would be required for the proposed Project. Based

on a review of project area it is assumed that Project authorization would be eligible under an NWP as a result of discharge or fill within non-wetland waters of the U.S.

Kimley-Horn will prepare, submit, and coordinate a U.S. Army Corps of Engineers (USACE) Clean Water Act Section 404 Nationwide Permit (NWP) and PCN package (as applicable) for submittal to the USACE prior to construction.

The submittal package will include the following items:

- Application Cover Letter: The letter will be on letterhead and introduce the Project and define the submittal document.
- Pre-Construction Notification Form (if applicable): The most recent USACE PCN form will be utilized. An attachment may be provided so that the complete Project Description, location, and necessary detail is included. A detailed Project Description for improvements within jurisdictional areas will also be provided and a discussion of avoidance, minimization, and mitigation measures as well as a table of proposed permanent and temporary impacts to waters of the U.S. in linear feet and acres. Construction methods may also be included, if appropriate.
- Compliance Memo: Demonstrating compliance with NWP General Conditions checklist and USACE Los Angeles District NWP Regional Conditions.
- Copy of the Regional Board WQC application package: To be included in the USACE package for reference.
- Project Figures: Figures will illustrate key Project features and help clarify written text. Anticipated figures include: Regional Vicinity Map, Site Vicinity Map, USDA Soils Map, Site Photographs, Jurisdictional Map, Project Site Plan(s), and identification of both permanent and temporary impacts to waters of the U.S.
- Environmental Documentation: The environmental documentation section of the application package will include the Aquatic Resources Delineation Report, Preliminary Jurisdictional Determination (PJD) form (if appropriate), Biological/Habitat Assessment Report, DBESP, and Cultural Resources Assessment Report for compliance with Section 106 National Historic Preservation Act.
- CD of Electronic Files: A CD containing electronic files will be submitted with the Section 404 Pre-Construction Notification package, as needed.

Coordination will include required correspondence or telephone calls between the reviewing USACE staff related to the permit applications or points of clarification, if necessary. Typically, agency comments are responded to via email and telephone; however, this task includes two (2)

rounds of formal (written and hard copy submittal) response to comments related to the submitted application package.

Assumptions: This task assumes two (2) rounds of responses to comments on the Nationwide Permit application and one (1) round of response to comments on the draft Section 404 Pre-Construction Notification package with the Client.

Deliverables: Draft application package (PDF); PDF to the USACE and PDF to the Client for file.

❖ **Regional Water Quality Control Board Section 401 Water Quality Certification Application**

Discharge of dredged or fill material to waters of the state would require a Clean Water Act Section 401 Water Quality Certification (WQC) and/or Porter-Cologne Water Quality Control Act Waste Discharge Requirements (WDR) application. Kimley-Horn will prepare, submit, and coordinate an application package for a WQC and submit to the Santa Ana Regional Water Quality Control Board (RWQCB) for the proposed Project.

The application package would include the following:

- Application Cover Letter: The letter will be on letterhead and introduce the Project and define the submittal document.
- WQC application form: The most recent Regional Board application form will be utilized. An attachment may be provided so that the complete Project Description and necessary detail is included. Project Description/Project Purpose, Project Information, Project Location and Construction Methods will be detailed.
- Impact Calculation: Permanent and temporary impacts to waters of the state and/or state wetlands in linear feet and acres, including wetlands and non-wetlands.
- Copies of other Applications: Copies of the Corps Section 404 NWP Pre-Construction Notification and CDFW Section 1602 Lake or Streambed Alteration Agreement (LSAA) Notification will be provided.
- Best Management Practices (BMP)/Water Quality Design: The Project's BMPs will be described to verify that no water quality impacts will occur.
- Project Figures: Figures will illustrate key Project features and help clarify written text. Anticipated figures include: Regional Vicinity Map, Site Vicinity Map, USDA Soils Map, Site Photographs, Jurisdictional Map, Project Site Plan(s), Figures (including GIS data) depicting the Project's permanent and temporary impacts, and water diversion plan (if proposed).

- Environmental Documentation: The environmental documentation section will include the Aquatic Resources Delineation Report and Biological/Habitat Assessment Report.
- Permit Fee Schedule: Permit fee schedule utilizing the latest Dredge and Fee Calculator. Permit fees are excluded.

Coordination will include required correspondence or telephone calls between the reviewing RWQCB staff related to the permit applications or points of clarification, if necessary. Typically, agency comments are responded to via email and telephone; however, this task includes two (2) rounds of formal (written and hard copy submittal) response to comments related to the submitted application package.

Assumptions: This task assumes two (2) rounds of responses to comments on the draft WQC application package and one (1) round of response to comments on the draft WQC application package with the Client. Certification application fee to be provided by the Client.

Deliverables: Draft application package (PDF); PDF to Regional Board and the Client for file.

❖ **California Department of Fish and Wildlife Section 1602 Notification of Lake or Streambed Agreement Application**

Kimley-Horn will prepare, submit, and coordinate a notification for a Lake or Streambed Alteration (LSA) Agreement in compliance with Section 1602 of the California Fish and Game Code for submittal to the California Department of Fish and Wildlife (CDFW). An LSA Agreement is required when there is a change to the bed, channel, or bank of any river, stream, or lake; or use of materials from or deposit of materials into a river, stream or lake, as will occur for the proposed Project.

The notification package will describe the Project features, construction period, construction methods, impacts on vegetation, and fish and wildlife. The supporting biological reports will be submitted as part of the notification.

The application package would include the following:

- Notification Cover Letter: The letter will be on letterhead and introduce the Project.
- Notification Form: The most recent CDFW Notification form will be utilized. An attachment may be provided so that the complete Project description and necessary detail is included. A detailed Project description for improvements within jurisdictional areas Project Purpose, Project Information, Project Location and Construction Methods.
- Copies of other Applications: Copies of the Corps Section 404 Pre-Construction Notification and the Regional Board WQC Application package will be included.

- Project Figures: Figures will illustrate key Project features and help clarify written text. Anticipated figures include: Regional Vicinity Map, Site Vicinity Map, USDA Soils Map, Site Photographs, Jurisdictional Map, and Project Site Plan(s).
- Environmental Documentation: The environmental documentation section of the application package will include the Aquatic Resources Delineation Report and Biological/Habitat Assessment Report.

Assumptions: This task assumes two (2) rounds of responses to comments on the draft Section 1602 LSAA Notification package and one (1) round of response to comments on the draft Notification package with the Client. Application fee to be provided by the Client.

Deliverables: Draft application package (PDF); PDF to CDFW and PDF to the Client for file.

Note, the above permit apps will be submitted for City review, and following revision we assume that further City/agency comments will not require substantial revisions or new analyses

Task 4. Regulatory Approval Processing

Once the regulatory applications are submitted, Kimley-Horn will provide services for the processing of the applications through the Corps (assumes Nationwide Permit), Regional Board and CDFW. The processing shall include required correspondence or telephone calls between the reviewing staff related to the permit or points of clarification and coordination with the client, if necessary. Typically, agency comments are responded to via email and telephone; however, this task includes one (1) round of formal (written and hard copy submittal) response to comments per each application package.

Additionally, this task includes time for Kimley-Horn to coordinate with the RCA, CDFW, and the USFWS for approval of the DBESP analysis.

This task will be billed on a time and materials basis. Once approximately 80 percent of this task budget is expended, Kimley-Horn will notify the client to discuss remaining work efforts and determine whether additional budget will be required to finalize permitting efforts. Should additional time be required, the client will be notified, and work will continue upon receiving an authorized budget modification.

Task 5. Project Management

The Kimley-Horn team will be led by Ms. Meghan Karadimos will act as a Project Manager for the duration of the Project. Meghan has 14 years of CEQA/NEPA experience working with various cities in the Inland Empire, including projects in the City of Menifee. This task includes coordination efforts to oversee the timely submittal of technical analyses.

Kimley-Horn will complete this scope of work on a mutually agreed upon schedule. Following an initial kickoff meeting with the City, Kimley-Horn will prepare a CEQA review schedule to guide the Project through the City's CEQA review process.

Kimley-Horn will perform the Services in Tasks 1 through and 5 on a labor fee plus expense basis. Labor fee will be billed on an hourly basis according to our then-current hourly rates. Direct reimbursable expenses such as express delivery services, fees, and other direct expenses will be billed at 1.15 times cost. A percentage of labor fee (4.6 percent) will be added to each invoice to cover certain other expenses such as telecommunications, in-house reproduction, postage, supplies, Project related computer time, and local mileage. Administrative time related to the Project will be billed hourly. All permitting, application, and similar project fees will be paid directly by the City. Should the City request Kimley-Horn to advance any such Project fees on the City's behalf, a separate invoice for such fees, with a 15 percent markup, will be immediately issued to and paid by the City.

Task 1: Mobilization (T&M)	\$2,000
Task 2: Technical Studies (T&M)	\$11,700
A) <i>Cultural Resources Assessment</i>	\$5,200
B) <i>DBESP</i>	\$5,600
C) <i>Biological Report Update</i>	\$900
Task 3: Regulatory Permitting (T&M)	\$4,500
Task 4: Regulatory Approval Processing (T&M)	\$4,500
Task 5: Project Management (T&M)	\$1,000
Total Fee	\$23,700

We look forward to the opportunity to work with the City on this Project. Should you have any questions or require additional information, please contact Project Manager, Ms. Meghan Karadimos at (951) 335-8283 or via email at meghan.karadimos@kimley-horn.com.

Sincerely,



Meghan D. Karadimos, Project Manager



Kevin Thomas, CEP, ENV SP