

## CITY OF MENIFEE

### PROFESSIONAL SERVICES AGREEMENT

#### CIP 23-09 MENIFEE ROAD/FIRE STATION NO. 76 ENTRANCE TRAFFIC SIGNAL PROJECT FOR DESIGN PLANS, SPECIFICATIONS, AND ESTIMATE SERVICES

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and effective this \_\_\_\_\_ day of \_\_\_\_\_, 2023 (“Effective Date”) by and between the CITY OF MENIFEE, a California municipal corporation, (“City”) and **NV5, INC.**, a California C-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 **April 19, 2023** and shall end on **June 30, 2024** 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 **FORTY ONE THOUSAND FOUR HUNDRED SEVENTY DOLLARS AND ZERO CENTS (\$41,470.00)** 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 ten percent (10%) 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: **CIP 23-09 MENIFEE ROAD/FIRE STATION NO. 76 ENTRANCE TRAFFIC SIGNAL PROJECT FOR DESIGN PLANS, SPECIFICATIONS, AND ESTIMATE SERVICES.** The name and address for Additional Insured endorsements, Certificates of Insurance and Notice of Cancellation is: City of Menifee, 29844 Haun Road, Menifee, CA 92586. City must be endorsed as an additional insured for liability arising out of ongoing and completed operations by or on behalf of 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 for Design Professionals. Notwithstanding any provision of this Section 5 to the contrary, design professionals are required to defend and indemnify City only to the extent permitted by Civil Code Section 2782.8. The term “design professional” as defined in Section 2782.8, is limited to licensed architects, licensed landscape architects, registered professional engineers, professional land surveyors, and the business entities that offer such services in accordance with the applicable provisions of the California Business and Professions Code.

5.4 Limitation of Indemnification. The provisions of this Section 5 do not apply to claims occurring as a result of City’s sole or active negligence. The provisions of this Section 5 shall not release City from liability arising from gross negligence or willful acts or omissions of City or any and all of its officers, officials, employees, and agents acting in an official capacity.

## **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 Carmen Kasner, Senior Vice President ("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, Jenny McConville, Management Analyst I (“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:

NV5, INC  
Attn: Carmen Kasner, Senior Vice President  
15092 Avenue of Science, Suite 200  
San Diego, CA 92128

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

City of Menifee  
29844 Haun Road  
Menifee, CA 92586  
Attn: Jenny McConville, Management Analyst I

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.
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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

\_\_\_\_\_  
Carmen Kasner, Senior Vice President

Attest:

\_\_\_\_\_  
Kay Vinson, Acting City Clerk

\_\_\_\_\_  
MaryJo O'Brien, Board Secretary

Approved as to Form:

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

[Corporation must have two signatures]

## **EXHIBIT A**

### **SCOPE OF SERVICES**

Services shall include Civil Design Plans, Specifications, and Estimate (“PS&E”) for CIP 23-09 Menifee Road/Fire Station No.76 Entrance Traffic Signal Project in the amount not to exceed **FORTY ONE THOUSAND FOUR HUNDRED SEVENTY DOLLARS AND ZERO CENTS (\$41,470.00)** as further detailed in the following page(s).



## City of Menifee: Request for Proposal

(Informal Request for Professional Services)

### Bidder Response Form

**Project Name:** CIP 23-09 Menifee Road and Fire Station No. 76 Entrance Traffic Signal Design (Civil Design Plans, Specifications, and Estimate (PS&E) Services)

**Response Deadline:** March 17, 2023, at 2:00 p.m.

**Goods/Service Requested (Short Description):** The primary objective is to obtain professional services in completing the design, improvement plans, specification, construction bid documents, and engineering support during construction for this Traffic Signal Project.

*Please note, response to this informal request for proposal is not an offer, or a binding contract. A contract will be established only when the firm accepts an offer from the City of Menifee. Once the City has selected a firm, the selected entity MUST receive a Purchase Order (PO) from the City before services are rendered.*

Company Name: NV5, Inc.

Address: 15092 Avenue of Science, Suite 200

City: San Diego State: CA Zip Code: 92128

Email Address: sdbdgroup@nv5.com Phone: 858-385-0500

Applicable License(s): ☒ N/A Description: \_\_\_\_\_ License Number: \_\_\_\_\_

DIR Registration Number\* (#): 1000007705 ☐ N/A

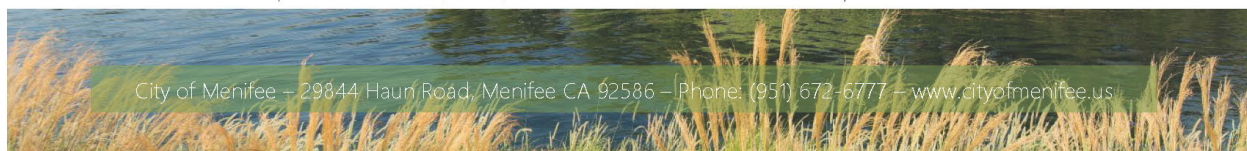
\* Required for projects which involve construction, alteration, demolition, installation, maintenance, or repair work that requires payment of prevailing wages AND are greater than \$25,000 for new construction, alteration, installation, demolition or repair OR greater than \$15,000 for maintenance work

#### Total Cost for Requested Services:

Proposed cost is to contain all direct and indirect costs, including all out-of-pocket expenses, including transportation, labor, materials, and equipment used in performing the services described herein.

Description	Unit Type (Lump Sum or Each)	Unit Quantity	\$ Amount
PS&E Services	Attach Cost Estimate and Schedule of Fees	1	\$41,470
<b>TOTAL</b>			<b>\$ 41,470</b>

\*Total must equal the total costs for Professional Services and Reimbursable Expenses



City of Menifee – 29844 Haun Road, Menifee CA 92586 – Phone: (951) 672-6777 – [www.cityofmenifee.us](http://www.cityofmenifee.us)

## City of Meniffee: Request for Proposal

(Informal Request for Professional Services)

### BREAKDOWN OF COST

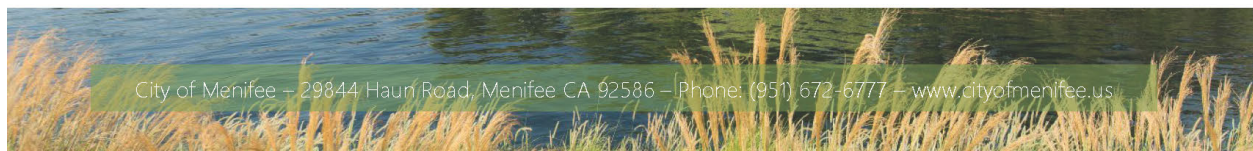
#### Professional Services

Hourly rates must reflect the firm's cost proposal submitted in response to the subject project

Name	Title	Estimated Hours	*Hourly Rate	Total
James Miller	Traffic Manager	36	\$230	\$8,280
David Niknafs	Project Director	29	\$230	\$6,670
Art Bischocho	Project Engineer	76	\$135	\$10,260
Matthew Ronquillo	CAD Designer	30	\$100	\$3,000
BenJetta Johnson	Traffic Engineer	96	\$135	\$12,960
TOTAL				\$ 41,170

#### Reimbursable Expenses

Description	\$ Amount
Other Direct Costs	\$300
TOTAL	\$ 300



City of Meniffee – 29844 Haun Road, Meniffee CA 92586 – Phone: (951) 672-6777 – [www.cityofmeniffee.us](http://www.cityofmeniffee.us)

## City of Meniffee: Request for Proposal

(Informal Request for Professional Services)

Additional Quote Details (inclusions/exclusion etc):

Please see the attached exemptions/exclusions listed in the attached proposal.

Additional Attachments (Optional): Please briefly describe any attachments included with the response.

We have included a project understanding, project approach, scope of services, organization chart, resumes, project experience, and a schedule for the City's consideration.

Contact Person: James Miller, PE

Title: Director of Traffic Services

Undersigned agrees to furnish the services stipulated herein, any addendum(s) issued, and any applicable attachments at the price and terms stated within the solicitation. In addition, undersigned agrees to provide any applicable insurance requirements as identified with this request.

Authorized Signature:  Date: March 17, 2023



City of Meniffee – 29844 Haun Road, Meniffee CA 92586 – Phone: (951) 672-6777 – [www.cityofmeniffee.us](http://www.cityofmeniffee.us)



March 17, 2023  
 City of Menifee  
 Attn: Jennifer Dominguez  
 29714 Haun Road  
 Menifee, CA 92586

**SUBJECT: CIP 23-09 Menifee Road and Fire Station No. 76 Entrance Traffic Signal Design (Civil Design Plans, Specifications, and Estimate (PS&E) Services)**

Dear Ms. Dominguez,

NV5, Inc. is excited to have the opportunity to provide Design Services to the City of Menifee (City) for its CIP 23-09 Menifee Road and Fire Station No. 76 Entrance Traffic Signal Design Project (project). Our team has the technical knowledge and experience to deliver your project in the most cost-efficient and cost-effective manner and offers the following:

**PROJECT UNDERSTANDING**

We have reviewed the Request for Price/Quotation (Informal Bid Request for Professional Services) issued by the City for this project. In addition, we have completely familiarized ourselves with the project goals and requirements. This groundwork provides a comprehensive understanding of key issues anticipated for the requested professional services and will enable our team to execute the design services promptly and efficiently. We have a thorough understanding of the requested professional services, project requirements, and demands. The work includes the preparation of civil design plans, specifications, and cost estimates for the project. This project proposes installing a new 3-way traffic signal at the intersection of Menifee Road and Fire Station No. 76 to provide safety to the fire responders of Station 76 as they exit the fire station to respond to emergencies. Additional emergency preemption devices will be installed in the apparatus bay (i.e., drop-down button hardwired to the signal controller) and across the street from the bay driveway (i.e., Opticom or equivalent device) by reducing response time.

**PROJECT APPROACH**

NV5's approach to each project is specifically tailored to the established goals, objectives, and schedules identified by our clients. Our work plans are detailed and specific to each project's unique requirements. However, fundamental core values and principals are integrated and employed on each project undertaken. Project development begins at the Request for Price/Quotation stage and culminates in the creation of final design documents. We have thoroughly reviewed the Request for Price/Quotation to assess the technical requirements of the work and the project delivery schedule. We will deliver the work within the time constraints established by the City. We can make these commitments and assurances because of our highly experienced and diverse staff and our corporate organization which allows us to quickly respond to requests and organize resources when needed. Each phase is important and essential to overall project success. NV5 has extensive local experience in all aspects of traffic signal and street improvements projects.

**SCOPE OF WORK**

The proposed scope of work below summarizes the tasks associated with the preparation of improvement plans for the proposed curb and gutter, sidewalk, curb ramps and spandrel. The project plan set will also include signing/stripping plans and traffic signal design plans. In total, NV5 will prepare plans, specifications, and estimates (PS&E) as outlined in the Scope of Work.

The design plans will be prepared according to the City of Menifee ("The City") requirements and will be consistent with the APWA Standard Specifications for Public Works Construction ("Greenbook"), State of California Department of Transportation Standard Plans and Specifications, and the current edition of the California Manual on Uniform Traffic Control Devices (MUTCD).

This Proposal assumes the following:

- The City will make any readily available information available to NV5. This includes all pertinent on-site and off-site improvement plans, to-scale drawings and existing aerial photographs, as-built plans, utility information and survey of the area.
- Any changes or revisions in project access locations, project scope, or design schemes, once our design effort has begun will be considered to be outside the current Scope of Work and will require an addition to the Design Fee maximum.

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15092 Avenue of Science, Suite 200 | San Diego, CA 92128 | [www.nv5.com](http://www.nv5.com) | Office: 858-385-0500



## SCOPE OF SERVICES

- The project is located within the limits of the City of Menifee. The City of Menifee will be the sole reviewing and approving agency.
- The plans, specifications, and probable construction cost estimates will be prepared using English units of measurement.

### SCOPE OF SERVICES

NV5's scope of services for this project includes:

#### Task 1. Project Mobilization

1.1 Coordinate with The City to obtain and review pertinent information, such as the as-built plans for the intersection and the survey (CAD & PDF) files for the project to be provided by the City. Our base map will show the existing improvements including curb and gutter, sidewalk, curb ramps, and spandrel. The main objective is to have the existing improvements accurately depicted in our base map so that all constraints are considered during our design of the project.

#### Task 2. Improvement Plans

2.1 Prepare final improvement plans for the proposed curb and gutter, sidewalk, curb ramps, and spandrel.

Our plans will be prepared at 20 scale (1" = 20') using AutoCAD drafting software on 24" x 36" City Title Block Mylars. Our plans will include The plan will show the existing and proposed curb and gutter, sidewalk, curb ramps, and spandrel. At the project limits to the east, west, north and/or south, we will reference in existing conditions from the survey and information from the field review.

#### Task 3. Signing and Striping Plans

3.1 Prepare final signing and striping plans for the following intersection:

- Menifee Road and Diamond Road: Our plans will be prepared at 40 scale (1" = 40') using AutoCAD drafting software on 24" x 36" City Title Block Mylar. Our plans will include all new signs and striping, pavement markings, pavement legends, sign and striping removals. At the project limits to the east, west, north and/or south, we will reference in existing striping based on topographic information and field review.

#### Task 4. Traffic Signal Plan

4.1 Prepare traffic signal plans for the following intersections:

- Menifee Road and Diamond Road (signal installation): The traffic signal plans will be prepared at 20 scale (1"=20') using AutoCAD drafting software on a 24" x 36" City Title Block. The traffic signal plans will incorporate all aspects of the traffic signal, including existing and new signal standards, signal heads, loop detectors, conduits, Opticom devices, battery backup system, signal interconnect, controller assembly/service point locations, and proposed signing and striping modifications. Additional emergency vehicle preemption devices will be installed across the street from the apparatus bay driveway as well as hard wired button adjacent to the bay stalls for emergency responders to manually activate prior to exiting the apparatus bays. We will show all related street/intersection improvements on our plans. Our traffic signal design package will contain one (1) plan sheet.

#### Task 5. Traffic Signal Interconnect Plan

5.1 Prepare a traffic signal interconnect plan for the following street segments:

- Menifee Road, between Newport Road and Diamond Road
- Menifee Road, between Rockport Road and Newport Road

The traffic signal interconnect plan will be prepared at 40 scale (1"=40') using AutoCAD drafting software on 24" x 36" City Title Block Mylar. We anticipate that our interconnect plan set will contain two (2) sheets.

#### Task 6. Traffic Signal Timing Plans

6.1 Prepare traffic signal timing plans to be programmed with the McCain Omni software for the 2070 ATC Controller.

#### Task 7. Project Special Provisions and Construction Cost Estimates

7.1 Prepare Technical Special Provisions, if necessary, for the project according to the City. NV5 is assuming that sample contract documents will be obtained from the City, to which appropriate modifications will be made. It should be noted that the anticipated modifications are assumed to be minor and will not require extensive re-writing of the provided contract documents.

## SCOPE OF SERVICES

7.2 Prepare a construction cost estimate for the civil improvements, signing/stripping, traffic signal, and interconnect improvements for bidding and bonding purposes.

### Task 8. Plan Processing

8.1 Submit a pdf set of plans at the 30% preparation level to The City for first (1st) plan check review.

8.2 Revise plans, special provisions, and cost estimate per City comments and submit a second (2nd) plan set of reproducible prints at the 60% and 90% preparation levels to the City for plan check review.

8.3 Revise plans, special provisions, and cost estimate per City comments and submit a 100% Final mylar plan set to the City for final check and approval.

### OPTIONAL SCOPE OF SERVICES

#### Task 9. Bidding and Construction Support

9.1 In support of project processing and as part of project coordination, NV5 will prepare for and attend coordination meetings with the City.

9.2 During the bidding process, NV5 will be available to answer any technical questions from prospective bidders related to any plans, special provisions or cost estimates prepared by NV5.

9.3 During the construction phase, NV5 will be available to respond to any Contractor Requests for Information (RFIs) related to plans, special provisions or cost estimates prepared by NV5.

9.4 Upon completion of the construction phase, NV5 will prepare as-built plans for all required project locations. NV5 will also field verify the plans and make any necessary changes to reflect what was actually constructed. Electronic files will also be available for review and approval.

Fees for this optional scope of services are included in the total cost of services.

### ADDITIONAL SERVICES

This Scope of Services does not include:

- The preparation of a signal warrant analysis and signal operations analysis
- Right of way acquisition, appraisal services and title reports
- The preparation of easement plans (legal descriptions) or processing
- Inspection services of any kind
- Landscaping & Irrigation plans
- Application fees, permit fees, coordination and processing through agencies, utility companies, etc.
- Turning movement counts

Most of the above services can be provided via an amendment to the proposed project fee.

**Proposal Validity:** This proposal will remain valid for a period of 90 days from the date of this submittal.

NV5 looks forward to the opportunity to work with the City and help you achieve your goals and objectives. If you need further information, we may be reached by phone at (858) 385-0500, or electronically at james.miller@nv5.com and jeff.cooper@nv5.com. Thank you for your time and consideration.

Sincerely,  
NV5



James Miller, PE  
Director of Traffic Services



Jeffrey M. Cooper, PE  
Senior Vice President

## SCHEDULE

