

## CITY OF MENIFEE

### MASTER AGREEMENT FOR PROFESSIONAL ON CALL SERVICES

THIS MASTER AGREEMENT FOR PROFESSIONAL ON CALL SERVICES (“Agreement”) is made and effective this \_\_\_\_\_ day of \_\_\_\_\_, «Year» (“Effective Date”) by and between the CITY OF MENIFEE, a California municipal corporation, (“City”) and «Consultant», a «Entity\_Type» (“Consultant”). City and Consultant may sometimes herein be referred to individually as a “Party” and collectively as the “Parties.”

#### SECTION 1. GENERAL PROVISIONS.

1.1 Purpose. Government Code Section 4525 *et seq* provides that agreements for professional services must be awarded based on the demonstrated competence and professional qualifications of consultants, subject to fair and reasonable cost. The City Council approved Resolution No. [INSERT], which authorized the City Manager to execute agreements with approved short lists of public works, engineering, and capital improvement program (CIP) consultants with demonstrated competence and qualifications in their fields to provide on-call professional services (“Services”) for privately funded and City projects which are exempt from bidding requirements for public contracting. The purpose of this Agreement is to designate Consultant as an approved consultant that may receive purchase orders for Services from the City Manager, subject to the terms and conditions herein (each a “Purchase Order”).

1.2 No Guaranteed Work. The Parties acknowledge that this Agreement serves as a master services agreement to establish Consultant as an approved consultant which may perform Services for the City pursuant to Purchase Order(s) issued in the discretion of the City Manager. This Agreement does not guarantee that Consultant will be issued any work from City, or any particular amount of work, including for any Services. By entering into this Agreement Consultant is obtaining the ability to receive Purchase Orders from the City Manager up to the compensation amount set forth in Section 3.1, and the City is obtaining the ability to issue Purchase Orders without a requirement for subsequent City Council approval.

1.3 Term. This Agreement shall become effective on [INSERT] and shall continue until [INSERT], unless otherwise terminated or extended by the Parties pursuant to the terms of this Agreement.

1.4 Termination. The City may terminate this Agreement at any time with or without cause by providing written notice to Consultant. The City may terminate this Agreement for any reason, including but not limited to the lack of budget allocation for or the revocation or modification of Resolution No. [INSERT].

1.5 Contract Administrator. <<CONTRACT ADMINISTRATOR>> (“Contract Administrator”) is the City’s primary contact representative for the purposes of this Agreement. Consultant shall contact the Contract Administrator for all communications related to this Agreement. City may change the Contract Administrator upon written notification to Consultant. Unless otherwise provided in this Agreement, Consultant shall not accept direction or orders from any person other than the Contract Administrator or designee.

1.6 Consultant Representative. <<**CONSULTANT REPRESENTATIVE**>> is Consultant's primary contact representative for the purposes of this Agreement. City shall contact the Consultant Representative for all communications related to this Agreement. Consultant may change the Consultant Representative upon written notification to City. Consultant's Representative shall have full authority to represent and act on behalf of Consultant for all purposes under this Agreement.

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

«Consultant»  
Attn: «Consultant\_Contact»  
«Address»  
«City», «State» «Zip\_Code»

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

City of Menifee  
29844 Haun Road  
Menifee, CA 92586  
Attn: «Staff\_Contact», «Staff\_Title»

with a copy to:

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

## **SECTION 2. SERVICES.**

2.1 Purchase Orders. Consultant agrees to furnish Services pursuant to Purchase Order(s) issued by the City Manager in the form attached hereto as Exhibit "A" which is attached hereto and incorporated herein by this reference. In no event shall compensation for Services exceed the "not to exceed" compensation amount set forth in the Purchase Order.

2.2 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.

2.3 Assignment of Personnel. Consultant shall assign only competent personnel to perform the Services. 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.

2.4 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.

2.5 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 a Purchase Order.

2.6 Warranty. By executing this Agreement, Consultant warrants that Consultant has thoroughly investigated and considered the Services, has considered how they should be performed, and fully understands the facilities, difficulties, and restrictions applicable to performance of the Services.

2.7 Facilities and Equipment. Consultant shall, at its sole cost and expense, provide all facilities and equipment necessary to perform the Services. 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 3. COMPENSATION.

3.1 Not to Exceed Compensation. Consultant shall be compensated for the Services and any approved reimbursable expenses as set forth in the relevant Purchase Order, and in no event shall City's compensation to Consultant for a Purchase Order exceed the amount set forth therein. Compensation pursuant to this Agreement shall be at the rates set forth in the City's Rate Schedule, attached hereto and incorporated herein by this reference as Exhibit "B" ("Rate Schedule"). The compensation set forth in the Purchase Order represents total compensation payable to Consultant without limitation to compensation for salary, overhead, benefits, fees, or other costs incurred by Consultant in performance of the Purchase Order. In no event shall the total, cumulative compensation paid to Consultant pursuant to this Agreement, including any and all Purchase Orders, exceed **<INSERT TYPED OUT COMPENSATION AMOUNT>** **<(INSERT IN NUMBERS)>**.

3.2 Invoicing. Upon completion of a Purchase Order, or monthly for Purchase Orders involving Services performed over periods of longer than one (1) month, Consultant shall submit invoices to City based on the Services performed and any reimbursable expenses approved by City in writing. Invoices shall comply with the City's "Invoicing Requirements" attached as Exhibit "C" hereto and incorporated herein by this reference, and 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 Purchase Order amount, the amount of prior billings, the total due this period, the balance available under the Purchase Order, 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;

f. Receipts for expenses to be reimbursed;

g. The Consultant Representative’s signature.

h. Invoices shall be submitted to:

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

3.3 Payment. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

3.4 Payment Holds. City may withhold payment of any invoice for Services not satisfactorily performed until such Services are performed to City’s satisfaction at no extra cost to City. City may hold payments reasonably in dispute under this Agreement until resolution of the dispute.

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

3.6 Payment Upon Termination. In the event City or Consultant terminates this Agreement, City shall compensate Consultant for all outstanding costs and reimbursable expenses incurred for Services satisfactorily completed and for preapproved 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. City 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.

#### **SECTION 4. INDEMNIFICATION.**

4.1 Indemnification for Professional Liability. Where the law establishes a professional standard of care for performance of this Agreement, 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.

4.2 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.

4.3 Limitation of Indemnification for Design Professionals. Notwithstanding any provision of this Section 4 to the contrary, design professionals, as that term is defined in Civil Code Section 2782.8, 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. This Subsection 4.3 shall only apply to Consultant if Consultant is a “design professional” as that term is defined in Civil Code Section 2782.8.

4.4 Limitation of Indemnification. The provisions of this Section 4 do not apply to claims occurring as a result of City’s sole or active negligence. The provisions of this Section 4 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.

4.5 Legal Requirements Related to Indemnification. If any applicable law would render any of the requirements of this Section 4 void or unenforceable, the requirements hereunder shall be construed to the greatest scope and applicability permitted by applicable law.

## **SECTION 5. INSURANCE.**

5.1 Insurance Required. As a condition of entering into this Agreement, Consultant, at its own cost and expense, shall procure the types and amounts of insurance specified below. 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.

a. 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.

b. Commercial General and Automobile Liability Insurance.

i) 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.

ii) 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.

iii) 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.

c. Professional Liability Insurance.

i) 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 TWO MILLION DOLLARS (\$2,000,000) 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.

ii) 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.

5.2 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.

5.3 Continuation of Insurance. Consultant shall maintain the insurance policies required by this Section throughout the term of this Agreement.

5.4 Additional Insured. City must be endorsed as an additional insured for liability arising out of ongoing and completed operations by or on behalf of Consultant. 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.

5.5 Subcontractors' Insurance. Consultant shall not allow any subcontractor, consultant or other agent to commence work on any subcontract pursuant to this Agreement until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City.

5.6 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.

5.7 Verification of Coverage. Prior to execution of this Agreement, Consultant shall furnish City with 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 name and address for endorsements and other insurance related matters is: City of Menifee, 29844 Haun Road, Menifee, CA 92586.

5.8 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.

5.9 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. The Contractor Administrator may, but is not required to approve in writing the submission of certificates of insurance in lieu of policy copies, in which case the Certificate of Insurance must include the following reference: **City of Menifee: Master Agreement for Professional On Call Services.**

5.10 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 6. 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 and assignment of personnel pursuant to Section 2.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes the Services. The personnel performing the Services 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 is or any of its officers, employees, or agents are 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 Purchase Orders, City shall not pay salaries, wages, or other compensation to Consultant for performing Services. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing the Services. 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 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 under this Agreement unless such person is properly documented and legally entitled to be employed within the United States. 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.

7.2 Prevailing Wages. The Parties have determined that prevailing wage laws do not apply to this Agreement because the Services do not include construction, alteration, demolition, installation, or repair work or are otherwise exempt under California's prevailing wage laws (Lab. Code, § 1720 *et seq.*). Notwithstanding the foregoing, it is agreed by the Parties that, in connection

with performance of this Agreement, 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 Sections 1726 and 1781, as the same may be amended from time to time, and/or any other similar law. Section 4, Indemnification, specifically encompasses Claims arising from or related to (i) the noncompliance by Consultant or any party performing 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 Labor Code Sections 1726 and 1781, as the same may be amended from time to time, or any other similar law; and/or (iii) failure by Consultant or any party performing under this Agreement to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law.

7.3 Licenses and Permits, Fees and Assessments. Consultant represents, warrants, and covenants 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, and perform the Services. Consultant represents, warrants, and covenants 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, and perform the Services. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business licenses from City. Consultant shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Consultant's performance of the Services, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed, or imposed against City hereunder.

7.4 Conflicts of Interest, Political Reform Act. Consultant represents, warrants, and covenants that Consultant presently has no interest, direct or indirect, which would interfere with or impair in any manner or degree the performance of Consultant's obligations and responsibilities under this Agreement. Consultant further agrees that while this Agreement is in effect, Consultant shall not acquire or otherwise obtain any interest, direct or indirect, that would interfere with or impair in any manner or degree the performance of Consultant's obligations and responsibilities under this Agreement. Consultant acknowledges that pursuant to the provisions of the Political Reform Act (Government Code Section 87100 *et seq.*), City may determine the Consultant to be a "consultant" as that term is defined by 2 California Code of Regulations Section 18700.3. In the event City makes such a determination, Consultant agrees to complete and file a "Statement of Economic Interest" with the City Clerk to disclose such financial interests as required by City. In such event, Consultant further agrees to require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" to disclose such other person's financial interests as required by City.

7.5 Amendments. The Parties may amend this Agreement and/or any Purchase Order only by a writing signed by all the Parties. The City Manager shall have the authority to execute amendments to this Agreement and any Purchase Order which extend the time for performance or modify the Services to be provided. Extensions of the time for performance of Services does not

entitle Consultant to additional compensation to the compensation initially provided in the applicable Purchase Order.

7.6 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.

7.7 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; and/or
- d. Charge Consultant the difference between the cost to complete the Services described in the relevant Purchase Order that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 3 if Consultant had completed the Services.

## **SECTION 8. KEEPING AND STATUS OF RECORDS.**

8.1 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.

8.2 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.

8.3 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 or expenditures and disbursements charged to City for Services under this Agreement, if any 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.

8.4 Inspection and Audit of Records. Any records or documents that Section 8.3 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 9. MISCELLANEOUS PROVISIONS.**

9.1 Attorneys’ Fees. If either Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing Party shall be entitled to reasonable attorneys’ fees and expenses including costs, in addition to any other relief to which that Party may be entitled; provided, however, that the attorneys’ fees awarded pursuant to this Subsection shall not exceed the hourly rate paid by City for legal services multiplied by the reasonable number of hours spent by the prevailing Party in the conduct of the litigation. The court may set such fees in the same action or in a separate action brought for that purpose.

9.2 Applicable Law, Venue. The laws of the State of California shall govern 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.

9.3 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.

9.4 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.

9.5 No Implied Waiver of Breach. Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

9.6 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.

9.7 Rights and Remedies. The rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

9.8 Integration. This Agreement, including the Exhibits attached hereto, 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. In the event of a conflict between this Agreement and any of the Exhibits, this Agreement shall control.

9.9 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.

9.10 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.

9.11 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.

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

9.13 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.

9.14 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.

9.15 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 any Services performed hereunder.

[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**

\_\_\_\_\_  
«City\_Signature»

\_\_\_\_\_  
«Consultant\_Signature\_1»

Attest:

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

\_\_\_\_\_  
«Consultant\_Signature\_2»

Approved as to Form:

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

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

**EXHIBIT A**  
**FORM OF PURCHASE ORDER**

This form of Purchase Order is provided for an example only, and none of the fields set forth herein are guaranteed for any particular Services. The fields of each Purchase Order will vary based on the Services required. In no event shall the total, cumulative compensation paid to Consultant pursuant to this Agreement, including any and all Purchase Orders, exceed **<INSERT TYPED OUT COMPENSATION AMOUNT> <(INSERT IN NUMBERS)>.**

EXHIBIT A.





**EXHIBIT B  
RATE SCHEDULE**

**(INSERT RATE SCHEDULE)**

## EXHIBIT C INVOICING REQUIREMENTS

As a government agency, the City of Menifee is responsible for monitoring all executed contract expenditures to ensure all expenses are within the approved contract budget, as well as monitor all work completed to ensure the scope of work requirements are being met on the approved contract timeline. At any time, project developers may request to view the invoices for their project and ask questions of City staff for items billed. To assist City staff and project developers, several items will be required to be submitted with each invoice in order to clearly and concisely standardize the information presented on all invoices provided by contracted consultants.

If multiple projects are being invoiced through a single billing submission, details of fiscal information for all projects are to be summarized in a table and included as part of the invoice. This table will have all projects listed with project name, project number or tract map number, purchase order number, the amount due on the current invoice for each project, the amount that was previously charged to each project purchase order, and the total amount billed to each project purchase order, as in the example below:

PROJECT NAME	CIP or TRACT NO.	IP / IS No.	PURCHASE ORDER NO.	PURCHASE ORDER VALUE	CURRENT AMOUNT DUE	PREVIOUS AMOUNT BILLED	TOTAL BILLED TO DATE
Sumac Ridge	PM37668	IS22-019	04123	\$ 50,000.00	\$ 5,700.00	\$ 10,000.00	\$ 15,700.00
Underwood Park	TM29835-2	IS21-032	04043	\$ 35,000.00	\$ 7,850.00	\$ -	\$ 7,850.00
Talavera	TM29777	IP15-084	03999	\$ 17,500.00	\$ 2,500.00	\$ 15,000.00	\$ 17,500.00
<b>TOTAL AMOUNT DUE FOR THIS INVOICE:</b>					<b>\$</b>		<b>16,050.00</b>

In addition, a full work detail is required to be included in each invoice. This detail will identify the project name/number that was worked on, project purchase order number, the name and title of staff conducting the work, detail of tasks/duties completed, date of work, number of hours, hourly rate, and total amount due for each staff member identified.

Task # 12.5					
Employee Name	Date	Comments	Hrs	Rate	Amount
<i>Assistant Engineer</i>					
Smith, John	1/5/2023	Updated schedule and prepared minutes	1.00	\$ 125.00	\$ 125.00
Smith, John	1/6/2023	Coordinated with subs and utility agencies	2.00	\$ 125.00	\$ 250.00
Smith, John	1/9/2023	Reviewed 90% design plans	2.00	\$ 125.00	\$ 250.00
<b>Assistant Engineer Totals</b>			<b>5.00</b>		<b>\$ 625.00</b>
<i>Associate Engineer</i>					
Doe, Jane	1/8/2023	Reviewed 60% plan comments	3.50	\$ 219.00	\$ 766.50
Doe, Jane	1/12/2023	Incorporated ADA comments into 90% plans	4.00	\$ 219.00	\$ 876.00
Doe, Jane	1/13/2023	Prepare 90% plans per 60% comments	32.00	\$ 219.00	\$ 7,008.00
Doe, Jane	1/23/2023	Submit cost breakdown request for additional fees	2.00	\$ 219.00	\$ 438.00
<b>Associate Engineer Totals</b>			<b>41.50</b>		<b>\$ 8,322.00</b>
<i>Senior Engineer</i>					
Miller, Jack	1/4/2023	Draft specifications and submit to City	6.00	\$ 269.00	\$ 1,614.00
Miller, Jack	1/12/2023	Prepare and provide 90% plans to City for review	8.00	\$ 269.00	\$ 2,152.00
<b>Senior Engineer Totals</b>			<b>14.00</b>		<b>\$ 3,766.00</b>

**These details will be required on all future invoices submitted.**