

**CONTRACT SERVICES AGREEMENT FOR
CITY OF MENIFEE
HOLIDAY LIGHTING AND DECORATING SERVICES**

THIS CONTRACT SERVICES AGREEMENT (“Agreement”) is made and effective this _____ day of _____, 2023 by and between the CITY OF MENIFEE, a California municipal corporation, (“City”) and **CLIPA, LLC DBA CELEBRATION HOLIDAY STUDIO** a California Limited Liability Company (LLC) (“Contractor”). City and Contractor are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties”.

R E C I T A L S

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Article 1 of this Agreement.

B. Contractor, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by City to perform those services.

C. Pursuant to the City of Menifee’s Municipal Code, City has authority to enter into this Contract Services Agreement and the City Manager has authority to execute this Agreement.

D. The Parties desire to formalize the selection of Contractor for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. SERVICES OF CONTRACTOR.

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Contractor shall provide those services specified in the “Scope of Services” attached hereto as Exhibit B” and incorporated herein by this reference, which services may be referred to herein as the “Services.” As a material inducement to City entering into this Agreement, Contractor represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the Services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the Services contemplated herein. Contractor shall at all times faithfully, competently, and to the best of its ability, experience, and talent, perform all Services described herein. Contractor covenants that it shall follow the highest professional standards in performing the Services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase “highest professional standards” shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Contractor's Proposal. The "Scope of Services" shall include Contractor's scope of work or bid which is attached as incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law. Contractor and any subcontractor shall comply with all applicable local, state, and federal laws and regulations applicable to the performance of the work hereunder. Contractor 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 Contractor's employee and subcontractors. It is understood that it is the responsibility of Contractor 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. Contractor 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 Contractor 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 Contractor 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), Contractor 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. Contractor acknowledges and agrees that it shall be independently responsible for reviewing the applicable laws and regulations and effectuating compliance with such laws. Contractor shall require the same of all subcontractors.

1.4 Licenses, Permits, Fees and Assessments. Contractor shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the Services required by this Agreement. Contractor 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 for the performance of the Services required by this Agreement. Contractor 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 Contractor's performance of the Services required by this Agreement, 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. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.

1.5 Familiarity with Work. By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the Scope of Services to be performed, (ii) has carefully considered how the Services should be performed, and (iii) fully understands the facilities, difficulties, and restrictions attending performance of the Services under this Agreement. If the Services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of the Services hereunder. Should Contractor discover any latent or unknown conditions, which will materially affect the performance of the Services hereunder, Contractor shall immediately inform City of such fact and shall not proceed until written instructions are received from the Contract Officer.

1.6 Care of Services. Contractor shall adopt reasonable methods during the life of this Agreement to furnish continuous protection to the Services, and the equipment, materials, papers, documents, plans, studies, and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the Services by City, except such losses or damages as may be caused by City's own negligence.

1.7 Warranty. Contractor warrants all work under this Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one (1) year (or the period of time specified elsewhere in this Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by City of any defect in the work or non-conformance of the work to this Agreement, commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty at Contractor's sole cost and expense. Contractor shall act sooner as requested by City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the work (or work of other contractors) damaged by Contractor's defective work or which becomes damaged in the course of repairing or replacing defective work. For any work so corrected, Contractor's obligation hereunder to correct defective work shall be reinstated for an additional one (1) year period, commencing with the date of acceptance of such corrected work. Contractor shall perform such tests as City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of this Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of Contractor. All warranties and guarantees of subcontractors, suppliers, and manufacturers with respect to any portion of the work, whether express or implied, are deemed to be obtained by Contractor for the benefit of City, regardless of whether or not such warranties and guarantees have been transferred or assigned to City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of City, City shall have the right to correct and replace any defective or non-conforming work and

any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse City for any expenses incurred hereunder upon demand. This provision may be waived in Exhibit A if the services hereunder do not include construction of any improvements or the supplying of equipment or materials.

1.8 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Sections 1720, *et seq.*, and 1770, *et seq.*, as well as California Code of Regulations, Title 8, Sections 1600, *et seq.*, ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is ONE THOUSAND DOLLARS (\$1,000) or more, Contractor agrees to fully comply with such Prevailing Wage Laws including, but not limited to, requirements related to the maintenance of payroll records and the employment of apprentices. A copy of the general prevailing wage rate determination is on file in the Office of the City Clerk and is hereby incorporated in this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at Contractor's principal place of business and at the project site. The statutory penalties for failure to pay prevailing wage or to comply with State wage and hour laws will be enforced. In accordance with the provisions of Labor Code Sections 1810 *et seq.*, eight (8) hours is the legal working day. Contractor must forfeit to City TWENTY FIVE DOLLARS (\$25.00) per day for each worker who works in excess of the minimum working hours when Contractor does not pay overtime. Contractor shall defend (with counsel selected by City), indemnify, and hold City, its elected officials, officers, employees, and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

1.9 Further Responsibilities of Parties. Both Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both Parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither Party shall be responsible for the service of the other.

1.10 Additional Services. City shall have the right at any time during the performance of the Services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from said work. No such extra work may be undertaken unless a written change order is first given by the Contract Officer to Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of Contractor. Any increase in compensation of up to five percent (5%) of the Contract Sum or TWENTY-FIVE THOUSAND DOLLARS (\$25,000), whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City Council of City. It is expressly understood by Contractor that the provisions of this Section shall not apply to work specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the Services to be provided pursuant to the Scope

of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefore.

1.11 Special Requirements. Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the “Special Requirements” attached hereto as Exhibit A and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit A and any other provisions of this Agreement, the provisions of Exhibit A shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum. Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts specified in the Scope of Services and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed **Two Hundred Fifty Thousand Thirty Four Dollars and Seventy Eight Cents (\$250,034.78)** (the “Contract Sum”), unless additional compensation is approved pursuant to Section 1.10.

2.2 Method of Compensation. The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the Services, (iii) payment for time and materials based upon Contractor’s rates as specified in the “Schedule of Compensation” in the Scope of Services, and incorporated herein by this reference, provided that time estimates are provided for the performance of subtasks, but not exceeding the Contract Sum, or (iv) such other methods as may be specified in the Schedule of Compensation.

2.3 Reimbursable Expenses. Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses with advance written approval by the Contract Officer, or actual subcontractor expenses of an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by City. Coordination of the performance of the Services with City is a critical component of the Services. If Contractor is required to attend additional meetings to facilitate such coordination, Contractor shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices. Each month Contractor shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City’s Director of Finance. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and subcontractor contracts. Subcontractor charges shall also be detailed by such categories.

City shall independently review each invoice submitted by Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, or as provided in Section 7.3, City will use its best efforts to cause Contractor to be paid within forty-five (45) days of receipt of Contractor’s correct and undisputed

invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor for correction and resubmission.

Invoices shall be submitted to:

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

2.5 Annual Appropriation of Funding. In accord with Article 16 Section 18 of the California Constitution, payment of compensation under this Agreement is contingent upon annual appropriation of funds by City for that purpose. Contractor acknowledges and agrees that to the extent that the Services provided under this Agreement extend beyond one (1) fiscal year, payment for such Services is expressly conditioned on City's annual appropriation of funds for such Services for each year. If no funds are appropriated then this Agreement shall be terminated. City pledges and agrees to process such appropriation requests annually and in good faith. Nothing in this Section shall be construed to limit the right of either Party to terminate this Agreement as provided herein.

2.6 Waiver. Payment to Contractor for Services performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

ARTICLE 3. PERFORMANCE SCHEDULE.

3.1 Time of Essence. Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance. Contractor shall commence the Services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all Services within the time period(s) established in Exhibit C ("Schedule of Performance") and incorporated herein by this reference as Exhibit D. When requested by Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the Services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including City, if Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the Services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Contractor be entitled to recover damages against City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of this Agreement pursuant to this Section.

3.4 Inspection and Final Acceptance. City may inspect and accept or reject any of Contractor's work under this Agreement, either during performance or when completed. City shall reject or finally accept Contractor's work within forth five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud, and such gross mistakes as amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Article 5, pertaining to indemnification and insurance, respectively.

3.5 Term of Services. The initial term of this Agreement shall be from **August 16, 2023** and shall end on **August 15, 2024** ("Initial Term"). Upon termination of the Initial Term, this Agreement shall automatically renew for one (1) additional one (1) year term ("First Renewal Term"), unless the term of this Agreement is otherwise terminated or extended as provided for in Article 7. Upon termination of the First Renewal Term, if it occurs, this Agreement shall automatically renew for one (1) additional one (1) year term ("Second Renewal Term"), unless the term of the Agreement is otherwise terminated or extended as provided for in Article 7. Upon termination of the Second Renewal Term, if it occurs, this Agreement shall automatically renew for one (1) additional one (1) year term ("Third Renewal Term"), unless the term of this Agreement is otherwise terminated or extended as provided for in Article 7. Upon termination of the Third Renewal Term, if it occurs, this Agreement shall automatically renew for one (1) additional one (1) year term ("Fourth Renewal Term"), unless the term of the Agreement is otherwise terminated or extended as provided for in Article 7. The Initial Term and any renewal term which actually occurs shall be referred to in this Agreement as the "term". The time provided to the Contractor to complete the Services required by this Agreement shall not affect the City's right to terminate this Agreement, as provided for in Article 7.

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Contractor. The following principals of Contractor ("Principals") are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

_____ (Name)	_____ (Title)
_____ (Name)	_____ (Title)
_____ (Name)	_____ (Title)

It is expressly understood that the experience, knowledge, capability, and reputation of the Principals were a substantial inducement for City to enter into this Agreement. Therefore, the Principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the Services hereunder. All personnel of Contractor, and any authorized agents, shall at all times be under the

exclusive direction and control of the Principals. For purposes of this Agreement, the Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City. Additionally, Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the Services required under this Agreement. Contractor shall notify City of any changes in Contractor's staff and subcontractors, if any, assigned to perform the Services required under this Agreement, prior to and during any such performance.

4.2 Status of Contractor. Contractor shall have no authority to bind City in any manner, or to incur any obligation, debt, or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees, or agents of City. City shall not be liable for compensation or indemnification to Contractor 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, Contractor 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. Contractor expressly waives any claim Contractor may have to any such rights.

4.3 Contract Officer. The "Contract Officer" shall be such person as may be designated by the City Manager of City. It shall be Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the Services and Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of City required hereunder to carry out the terms of this Agreement.

4.4 Independent Contractor. Neither City nor any of its employees shall have any control over the manner, mode, or means by which Contractor, its agents, or employees, perform the Services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision, or control of Contractor's employees, servants, representatives, or agents, or in fixing their number, compensation, or hours of service. Contractor shall perform all Services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

4.5 Prohibition Against Subcontracting or Assignment. The experience, knowledge, capability, and reputation of Contractor, its principals, and employees were a substantial inducement for City to enter into this Agreement. Therefore, Contractor shall not contract with

any other entity to perform in whole or in part the Services required hereunder without the express written approval of City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

4.6 Utility Relocation. City is responsible for removal, relocation, or protection of existing main or trunkline utilities to the extent such utilities were not identified in the invitation for bids or specifications. City shall reimburse Contractor for any costs incurred in locating, repairing damage not caused by Contractor, and removing or relocating such unidentified utility facilities. Contractor shall not be assessed liquidated damages for delay arising from the removal or relocation of such unidentified utility facilities.

4.7 Trenches or Excavations. Pursuant to California Public Contract Code Section 7104, in the event the work included in this Agreement requires excavations more than four (4) feet in depth, the following shall apply.

(a) Contractor shall promptly, and before the following conditions are disturbed, notify City, in writing, of any: (1) material that Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (2) subsurface or latent physical conditions at the site different from those indicated by information about the site made available to bidders prior to the deadline for submitting bids; or (3) unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.

(b) City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order per Section 1.10 of this Agreement.

(c) That, in the event that a dispute arises between City and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by this Agreement, but shall proceed with all work to be performed under this Agreement. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting Parties.

4.8 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out the Services, Contractor shall at all times be in

compliance with all applicable local, state, and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

4.9 Covid-19 Safety. If Contractor or subcontractor(s) enters City property or meets in person with City employees during the performance of the Services, Contractor 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.

ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance Coverage.

Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees, and agents of City:

(a) Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury, and property damage. Claims-made, modified, limited, or restricted occurrence forms are not acceptable without prior written consent from City. The policy of insurance shall be in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, TWO MILLION DOLLARS (\$2,000,000.00) in the general aggregate, and TWO MILLION DOLLARS (\$2,000,000.00) products/completed operations aggregate. The general aggregate limit shall apply separately to the Services to be performed under this Agreement.

The policy definition of “insured contract” shall include assumptions of liability arising out of both ongoing operations and products-completed operations hazard as set forth in “F” definition in form CG 0001, or equivalent.

The policy must cover inter-insured suits and include a “Separation of Insureds” or “severability” clause which treats each insured separately.

The insurance must be maintained for at least one (1) year following the completion of the Services or the expiration or termination of this Agreement.

(b) Worker’s Compensation Insurance. A policy of worker’s compensation insurance in such amount as will fully comply with the laws of the State of California, including Section 3700 of the California Labor Code, and which shall indemnify, insure, and provide legal

defense for both Contractor and City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Contractor in the course of carrying out the Services contemplated in this Agreement. The worker's compensation policy of insurance shall be in an amount 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.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00). Said policy shall include coverage for owned, non-owned, leased, and hired cars.

(d) Professional Liability. Professional liability insurance appropriate to Contractor's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of, or related to the Services performed under this Agreement. The insurance must be maintained for at least five (5) consecutive years following the completion of the Services or the expiration or termination of this Agreement. During this additional five (5)-year period, Contractor shall annually and upon request of City submit written evidence of this continuous coverage.

(e) Pollution Liability. A policy of pollution liability insurance written on a per occurrence for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per pollution incident and ONE MILLION DOLLARS (\$1,000,000.00) in the general aggregate. The policy shall apply to any incidents at or from any location on which Contractor performs the Services under this Agreement.

The insurance must be maintained for at least one (1) year following the completion of Contractor's services or the expiration or termination of this Agreement.

(f) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements in Exhibit A.

5.2 General Insurance Requirements. All of the above policies of insurance shall be primary insurance and shall name City, its elected and appointed officers, employees, agents, and authorized volunteers as additional insureds and any insurance maintained by City or its officers, employees, agents, or authorized volunteers shall apply in excess of, and not contribute with, Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against City, its officers, employees, agents, authorized volunteers, and their respective insurers.

Prior written consent from City is required if any of the said policies have a deductible or self-insured retention in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000).

Contractor 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. In the event any of said policies of insurance are cancelled, Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer.

No Services under this Agreement shall commence until Contractor has provided City with original endorsements effecting coverage set forth in this Article 5. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsement is to be on forms provided by or approved by City. As an alternative to City-approved forms, Contractor may provide complete certified copies of all required insurance policies, including endorsements affecting the coverage. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

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 Contractor, including the insured's general supervision of Contractor; products and completed operations of Contractor, as applicable; premises owned, occupied, or used by Contractor; and automobiles owned, leased, or used by Contractor 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. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees, and volunteers or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses, and claims. Contractor agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which Contractor may be held responsible for the payment of damages to any persons or property resulting from Contractor's activities or the activities of any person or persons for which Contractor is otherwise responsible nor shall it limit Contractor's indemnification liabilities as provided in Section 5.3.

In the event Contractor subcontracts any portion of the Services in compliance with Section 4.5 of this Agreement, the contract between Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that Contractor is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

5.3 Indemnification. To the full extent permitted by law, Contractor agrees to indemnify, defend, and hold harmless City, its officers, employees, agents, and volunteers ("Indemnified Parties") from and against any and all actions, either judicial, administrative, arbitration, or regulatory, damages to persons or property, losses, costs, penalties, obligations, errors, omissions, or liabilities whether actual or threatened ("Claims or Liabilities") that may be

asserted or claimed by any person, firm, or entity arising out of or in connection with the performance of the Services, operations, or activities provided herein of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Contractor is legally liable (“Indemnors”), or arising from Contractor’s reckless or willful misconduct, or arising from Contractor’s or Indemnors’ negligent performance of or failure to perform any term, provision, covenant, or condition of this Agreement, and in connection therewith:

(a) Contractor shall defend (with counsel selected by City) any action or actions filed in connection with any of said Claims or Liabilities and will pay all costs and expenses, including legal costs and attorneys’ fees incurred in connection therewith;

(b) Contractor will promptly pay any judgment rendered against City, its officers, agents, or employees for any such Claims or Liabilities arising out of or in connection with the performance of or failure to perform such Services, operations or activities of Contractor hereunder; and Contractor agrees to save and hold City, its officers, agents, and employees harmless therefrom;

(c) In the event City, its officers, agents, or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the performance of or failure to perform the Services, operation or activities of Contractor hereunder, Contractor agrees to pay to City, its officers, agents, or employees, any and all costs and expenses incurred by City, its officers, agents, or employees in such action or proceeding, including but not limited to, legal costs and attorneys’ fees.

Contractor shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Contractor shall be fully responsible to indemnify City, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes Claims or Liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Contractor in the performance of professional services hereunder. The provisions of this Section do not apply to Claims or Liabilities occurring as a result of City’s sole negligence or willful acts or omissions, but to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City’s negligence, except that design professionals’ indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness, or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Contractor and shall survive termination of this Agreement.

5.4 Payment and Performance Bond. Concurrently with execution of this Agreement, Contractor shall deliver to City a payment (labor and materials) bond and a performance bond, each in the sum of the amount of this Agreement, in the forms provided by the City Clerk, which secures the faithful performance of this Agreement. The bonds shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bonds shall be unconditional and remain in force during the entire term of this Agreement and shall be null and void only if Contractor promptly and faithfully performs all terms and conditions of this Agreement. Payment and performance bonds shall be secured from a surety company rated Grade A or better in the most recent edition of Best Rating Guide, The Key Rating Guide, or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Contract Officer due to

unique circumstances, and shall be authorized to write such bonds in the State of California. Contractor shall pay all bond premiums, costs, and incidentals.

5.5 Sufficiency of Insurer or Surety. Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide, or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Contract Officer due to unique circumstances. If this Agreement continues for more than three (3) years duration, or in the event the Contract Officer determines that the Services to be performed under this Agreement creates an increased or decreased risk of loss to City, Contractor agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.4 may be changed accordingly upon receipt of written notice from the Contract Officer; provided that Contractor shall have the right to appeal a determination of increased coverage by the Contract Officer to the City Council of City within ten (10) days of receipt of notice from the Contract Officer.

5.6 Substitution of Securities. Pursuant to Public Contract Code Section 22300, substitution of eligible equivalent securities for any moneys withheld to ensure performance under this Agreement may be permitted at the request and expense of Contractor.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION.

6.1 Records. Contractor shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports (including but not limited to payroll reports), studies, or other documents relating to the disbursements charged to City and the Services performed hereunder (the "Books and Records"), as shall be necessary to perform the Services required by this Agreement and enable the Contract Officer to evaluate the performance of such Services. Any and all such Books and Records shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such Books and Records at all times during normal business hours of City, including the right to inspect, copy, audit, and make records and transcripts from such Books and Records. Such Books and Records shall be maintained for a period of three (3) years following completion of the Services hereunder, and City shall have access to such Books and Records in the event any audit is required. In the event of dissolution of Contractor's business, custody of the Books and Records may be given to City, and access shall be provided by Contractor's successor in interest. 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.

6.2 Reports. Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the Services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that City is greatly concerned about the cost of the Services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the Services contemplated herein

or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique, or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents. All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents, and other materials plans, 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 (the "Documents and Materials") prepared or caused to be prepared by Contractor, its employees, subcontractors, and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the expiration or termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the Documents and Materials hereunder. Any use, reuse or assignment of such completed Documents and Materials for other projects and/or use of uncompleted documents without specific written authorization by Contractor will be at City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, revise, or assignment. Contractor may retain copies of such Documents and Materials for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any Documents and Materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom.

6.4 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 the Documents and Materials. Contractor shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for the Documents and Materials the subcontractor prepares under this Agreement. Contractor represents and warrants that Contractor has the legal right to license any and all of the Documents and Materials. Contractor makes no such representation and warranty in regard to the Documents and Materials which were prepared by design professionals other than Contractor or provided to Contractor by City. City shall not be limited in any way in its use of the Documents and Materials at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

6.5 Confidentiality and Release of Information.

(a) All information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Contractor, its officers, employees, agents, or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City

Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered voluntary so long as Contractor gives City notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent, or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs, and fees, including attorneys' fees, caused by or incurred as a result of Contractor's conduct.

(d) Contractor shall promptly notify City should Contractor, its officers, employees, agents, or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any party regarding this Agreement and the Services performed thereunder. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing, or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION.

7.1 California Law. This Agreement shall be interpreted, construed, and governed both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

7.2 Disputes; Default. In the event that Contractor is in default under the terms of this Agreement, City shall not have any obligation or duty to continue compensating Contractor for any of the Services performed after the date of default. Instead, City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Contractor is in default, City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Contractor does not cure the default, City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of City to give notice of Contractor's default shall not be deemed to result in a waiver of City's legal rights or any rights arising out of any provision of this Agreement.

7.3 Retention of Funds. Contractor hereby authorizes City to retain and deduct from any amount payable to Contractor not exceeding five percent (5%) of the Contract Sum (whether or not arising out of this Agreement) as security for performance of this Agreement. The retained

funds shall be paid to Contractor within sixty (60) days after final acceptance of the Services by the City Council of City and after Contractor has furnished City with full release of all undisputed payments under this Agreement. In the event there are any claims specifically excluded by Contractor from the operation of the release, City may retain proceeds of up to one hundred fifty percent (150%) of the amount in dispute. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of Contractor to insure, indemnify, and protect City as provided in this Agreement.

7.4 Waiver. 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 Contractor 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.

7.5 Rights and Remedies are Cumulative. 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.

7.6 Legal Action. In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct, or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

7.7 Liquidated Damages. Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, Contractor and its sureties shall be liable for and shall pay to City the sum of FIVE HUNDRED DOLLARS (\$500.00) as liquidated damages for each working day of delay in the performance of any of the Services required hereunder, as specified in the Schedule of Performance. City may withhold from any monies payable on account of the Services performed by Contractor any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term. This Section 7.8 shall govern any termination of this Agreement except as specifically provided in the following Section 7.9 for termination for cause. City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, Contractor reserves the right to terminate this Agreement at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of City, the period of notice may be such shorter time as Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all Services hereunder except such as may be specifically approved by the Contract Officer. Except

where Contractor has initiated termination, Contractor shall be entitled to compensation for all Services rendered prior to the effective date of the notice of termination and for any Services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event Contractor has initiated termination, Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating Party need not provide the non-terminating Party with the opportunity to cure pursuant to Section 7.2.

7.9 Termination for Default of Contractor. If termination is due to the failure of Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the Services and prosecute the same to completion by contract or otherwise, and Contractor shall be liable to the extent that the total cost for completion of the Services required hereunder exceeds the compensation herein stipulated (provided that City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to Contractor for the purpose of set-off or partial payment of the amounts owed City as previously stated.

7.10 Attorneys' Fees. If either Party to this Agreement is required to initiate or defend or made a Party to any action or proceeding in any way connected with this Agreement, the prevailing Party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees; 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. Attorneys' fees shall include attorneys' fees on any appeal, and in addition a Party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery, and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment. The court may set such fees in the same action or in a separate action brought for that purpose.

7.11 Suspension of Services. The City Engineer of City ("Engineer") shall have the authority to suspend the Services, wholly or in part, for such period as the Engineer may deem necessary, due to unsuitable weather or to such other conditions as are considered unfavorable for the suitable prosecution of the Services, or for such time as the Engineer may deem necessary due to the failure on the part of Contractor to carry out orders given or to perform any provisions of the Services. Contractor shall immediately comply with the written order of the Engineer to suspend the Services wholly or in part and shall not resume the Services until ordered to do so in writing by the Engineer. Such suspension shall be without liability to Contractor on the part of City. In the event a suspension of work is ordered because of failure on the part of Contractor to carry out orders given or to perform any provisions of the Services, such suspension of the Services shall not relieve Contractor of responsibility to complete the Services within the time limit set forth herein and shall not be considered cause for extension of the time for completion and, further, such suspension of the Services shall not entitle Contractor to any additional compensation.

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

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

8.2 Conflict of Interest. Contractor covenants that neither it, nor any officer or principal of it, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contractor's performance of the Services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the Contract Officer. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to this Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination. Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that 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 in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry.

8.4 Unauthorized Aliens. Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of the Services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices. Any notice, demand, request, document, consent, approval, or communication either Party desires or is required to give to the other Party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of City, to the City Manager and to the attention of the Contract Officer, CITY OF MENIFEE, 29844 Haun Road, Menifee, CA 92586 and in the case of Contractor, to the person at the address designated on the execution page of this Agreement. Either Party may change its address by

notifying the other Party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Unfair Business Practices Claims. In entering into this Agreement, Contractor offers and agrees to assign to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials related to this Agreement. This assignment shall be made and become effective at the time City renders final payment to Contractor without further acknowledgment of the Parties.

9.3 Interpretation. 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.

9.4 Article and Section Headings and Subheadings. The article and 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 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.6 Integration; Amendment. This Agreement including the attachments hereto is the entire, complete, and exclusive expression of the understanding of the Parties. It is understood that there are no oral agreements between the Parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings, if any, between the Parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by Contractor and by the City Council of City. The Parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.7 Severability. In the event that any one or more of the articles, phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable, such invalidity or unenforceability shall not affect any of the remaining articles, phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties hereunder unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

9.8 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.

9.9 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. This Agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the Parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and year first-above written.

AGENCY:

CITY OF MENIFEE

Armando G. Villa, City Manager

CONTRACTOR:

CLIPA, LLC DBA CELEBRATION HOLIDAY
STUDIO

By: _____
Chelsea Phernetton, Account Executive

By: _____
TBD

Contractor's City Business License

State Contractor License No.

Address:

22431 Antonio Parkway B160-513

Rancho Santa Margarita, CA 92688

ATTEST:

Sarah Manwaring, City Clerk

APPROVED AS TO FORM:

Jeffrey T. Melching, City Attorney

Two signatures are required if a corporation.

NOTE: APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONTRACTOR'S BUSINESS ENTITY.

EXHIBIT A

SPECIAL REQUIREMENTS

Section 5.4 (Payment and Performance Bond) and Section 7.3 (Retention of Funds) are hereby intentionally omitted from the Agreement and shall not apply to the Services provided hereunder.

EXHIBIT B
SCOPE OF SERVICES
CITY OF MENIFEE
HOLIDAY LIGHTING AND DECORATING SERVICES

Not-to-Exceed Two Hundred Fifty Thousand Thirty Four Dollars and Seventy Eight Cents (\$250,034.78)

The Contract Sum for performing all Services described in the Scope of Services, including labor, materials, services, and equipment is the total amount of all lump sum items and of all unit price sums, determined by multiplying the unit price for each item times the actual quantity of each such item, as determined by the City. The Contract Sum is further divided by the term of the Agreement, as more specifically defined in Section 3.5 of the Agreement. The Services provided pursuant to this Agreement shall not exceed the following amounts, which together constitute the Contract Sum. The amounts set forth below include compensation based on Contractor's proposal for the total cost of performing the Services, and includes the 5% annual markup percentage indicated in the Scope of Services or mutually agreed upon by the Parties:

- Initial Term: Forty-Five Thousand Two Hundred Fifty Dollars and Zero Cents (\$45,250.00).
- First Renewal Term: Forty-Seven Thousand Five Hundred Twelve Dollars and Fifty Cents (\$47,512.50) (Includes the 5% annual markup percentage)
- Second Renewal Term: Forty-Nine Thousand Eight Hundred Eighty-Eight Dollars and Twelve Cents (\$49,888.12) (Includes the 5% annual markup percentage)
- Third Renewal Term: Fifty-Two Thousand Three Hundred Eighty-Two Dollars and Fifty-Two Cents (\$52,382.52) (Includes the 5% annual markup percentage)
- Fourth Renewal Term: Fifty-Five Thousand One Dollars and Sixty-Four Cents (\$55,001.64) (Includes the 5% annual markup percentage)

Notwithstanding the foregoing, Contractor shall not be entitled to any compensation for work not actually performed.

The Scope of Services is further detailed on the following pages.

BEST AND FINAL OFFER TO REQUEST FOR PROPOSAL RFP 2023-20 HOLIDAY LIGHTING & DECORATING SERVICES

1.0 GENERAL REQUIREMENTS & RESPONSE SUBMITTAL

This Best and Final Offer (BAFO) is considered to be part of the Request for Proposal (RFP). All other terms of the RFP remain unchanged and in effect. This Best and Final Offer (BAFO) is intended to solicit bidder's best and final offer. Any information contained herein will be considered part of the Vendor's proposal and as such will be used in the evaluation of the bid responses.

The request in this BAFO is primarily the result of your company's RFP response to [RFP No. 2023-20 Holiday Lighting & Decorating Services](#).

To verify that you have received a copy of this BAFO, please sign the cover page of this BAFO and submit with your offer no later than 6/30/2023 12:00PM by email as a PDF with signature.

Please submit to:

Jennifer Christoffersen

Email: jchristoffersen@cityofmenifee.us

Procedures for Submitting Vendor's Response:

All responses must be submitted in accordance with the standards and specifications contained within this Best and Final Offers (BAFO).

The BAFO response shall be electronically delivered through email. Each page of the response must state "Best and Final Offer" in the footer or a similar location on each page. Responses must be clean and suitable for copying.

2.0 REQUESTED INFORMATION

The City of Menifee is requesting a best and final offer for Holiday Lighting & Decorating Services. The offer should integrate all elements of the Scope of Work from RFP 2023-20, as well as the change(s) listed below. Please submit your best and final offer for Task 1, Task 2, and the annual markup, taking into consideration the Department's budget.

- The Community Services Department's budget for this project is \$45,000.
- The City requests that the proposer suggest changes to the scope of work (as part of the best and final offer) in order to achieve the City's stated objectives and to stay within budget.
- Although open to suggested changes, the City would like to keep the following minimum elements:
 - One (1) Walk thru element
 - Two (2) 2-D elements
 - One (1) Unique element
 - Santa Area Photo Op
- Provide renderings of your proposed design based on the best and final offer.

BEST & FINAL OFFER: COST PROPOSAL

Please state the firm's rates based on the tasks listed in the scope of work. Each cost option shall include all possible direct and indirect costs, travel, insurance, overhead, labor, services fees, equipment rentals, and other expenses. The City reserves the right to add or remove services over the contract term. The City reserves the right to award the Service(s) listed on this solicitation "individually", by "groups", "all or none", or by any other method as deemed in the best interest of the City.

TASK 1: CITY FACILITIES

Facility	Total Cost for Year 1
City Hall	\$ 1,700.00
Community Services Department Campus	\$ 5,600.00
Lazy Creek	\$1,300.00
Town Center	\$3,900.00
Task 1 Total:	\$12,500.00

TASK 2: CHRISTMAS TREE LIGHTING AND HOLIDAY BAZZAR EVENT

Item	Total Cost for Year 1
Christmas Tree Setup and Removal (Includes Equipment Rental)	\$5,000.00
Christmas Tree Lights	\$2,500.00
Christmas Tree Ornaments	\$ 2,500.00
Task 2, Christmas Tree Lighting Total:	\$10,000.00

Item	Total Cost for Year 1
Holiday Bazaar Event Setup and Removal	\$ 5,800.00
On Site Maintenance Technician	\$50.00 per Hour
7' Lighted 2D Christmas Tree	\$ each

6' 2D Lighted Display 6 Foot LED Gift Box	\$ 3,250.00	each
5' 2D Lighted Display 4.9 Foot LED Ornament	\$ 1,750.00	each
50-watt color changing flood lights (RGB)	\$	each
10' Light Rod Sticks	\$	each
Façade Walls	\$	each
10' 2D Leblanc Illumination displays (Present Box, Snowflake, Ornament, Etc.)	\$	each
10' Tall Lighted Santa Chair for Photo Op (or likeness) 8FT Selfie Frame	\$3,000.00	each
16' Tall Multi-Color Micro LED Trees of Lights and Star Topper	\$	each
12' Tall Walk-Through Ornament Photo Op Display (or likeness)	\$ 2,500.00	each
Other: Lifesize RGB Bulbs - Set of 5	\$ 6,250.00	each
Other:	\$	each
Other:	\$	each
Other:	\$	each
Other:	\$	each

Annual Markup Percentage

Year 2 ⁵ _____ %

Year 4 ⁵ _____ %

Year 3 ⁵ _____ %

Year 5 ⁵ _____ %

Attach a list of additional items available through your company including Pricing.

celebration

HOLIDAY STUDIO

Celebration Holiday Studio
CLIPA, LLC DBA Celebration Holiday Studio
22431 Antonio Parkway B160-513
Rancho Santa Margarita, CA 92688
(888) 231-4623

Sales Consultant: Chelsea Phernetton Tel Direct: 949-504-8305 Email: Chelsea@celebrationholidaystudio.com		Sales Quote# W2023CME	Date: 7/13/2023 Time:
Bill To: City of Menifee 29995 Evans Road Menifee, CA 92586 Contact: Chelsea Bollinger Tel: (951) 723-3898 Email: cbollinger@cityofmenifee.us		Install: Install/Removal Location: City of Menifee Notes: BEST AND FINAL OFFER RFP 2023-20 HOLIDAY LIGHTING & DECORATING SERVICES	
Area	Description/Features	Cost for Year 1	
City Hall	Exterior C9 LED Lighting w/12" Spacing- Roof Edge lighting around the perimeter of the building on all 4 sides. Palm tree wrapped in LED lighting – 4 medium palm tree wrapped with approx.. 6" spacing wrapped approx.. 10'-12' high 2 left and 2 right of the front door.	\$1,700	
Community Services Dept Campus	Exterior Flood light LED RGB (50-100 Watt) - install a 100 watt slow color-changing flood light in the front of each building. Exterior C9 LED Lighting on roofline	\$5,600	
Lazy Creek	Exterior C9 LED Lighting on roofline	\$1,300	
Town Center	RGBWW - 16", 24" & 32" Spritzers Hung Below Town Center Sign and set to any color the City prefers. (4) Palm trees wrapped in warm white LED mini lights with 6" Spacing	\$3,900	
Christmas Tree Setup & Removal	Christmas Tree Setup & Removal	\$5,000	
Christmas Tree Lights	Christmas Tree Lights	\$2,500	
Christmas Tree Ornaments	Christmas Tree Ornaments	\$2,500	
Holiday Bazaar Event Setup & Removal	Holiday Bazaar Event Setup & Removal	\$5,800	
On Site Maintenance Tech	On Site Maintenance Tech- 4 Hours (\$50 per hour)	\$200	
6' 2D Lighted Display	6 Foot LED Gift Box	\$3,250	
5' 2D Lighted Display	4.9FT LED Ornament	\$1,750	
10' Tall Lighted Santa Chair for Photo	8FT Warm White LED Selfie Frame	\$3,000	
12' Tall Walk-Through Ornament Photo Op	12FT Walk Thru Ornament Ring w/ Custom Tag	\$2,500	
Other	Lifesize RGB Bulbs - Set of 5	\$6,250	
Pricing includes all materials and manpower for installation and removal. All lighting will be attached without any damage to the building/roof. No nails or staples are to be used. Celebration Holiday Studio will provide protective cord covers for all light installations; tape will not be used at Yearly Holiday Bazaar Event.			
		SUBTOTAL	\$45,250
Install Date:	TBD	Tax	
Install Time:		Total Due	\$ 45,250.00
Terms:	50% Deposit, 50% Day of Installation	50 % Due	\$ 22,625.00
Consultant		Remainder Due upon Install	\$ 22,625.00
Authorized By: _____			
Date _____			

City Facilities



Warm White LED C9 Roofline Lighting

All Lights will be attached with clips or magnetics. No Staples will be used. If the City prefers to use a different colored bulb no additional fees will be charged. (Colors Available: Warm White, Multi Color, Red, Blue, Green, Yellow, Or Orange)



Exterior Flood Light LED RGB

RGB LED Flood Lights that will slow color change in the front of the buildings. Control power, effects, intensity, and color options with the remote.

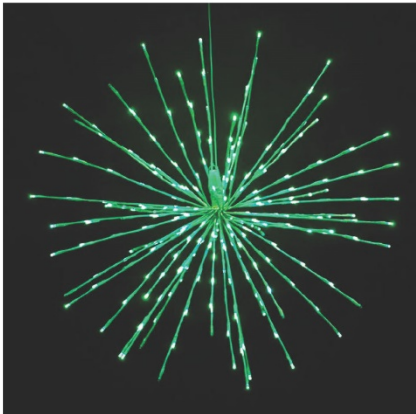


Palm Tree Lighting

Trees Wrapped in 6" Spacing
Warm White LED Mini Lights.

celebration
HOLIDAY STUDIO

Town Creek



RGBWW - 16", 24" & 32" Spritzers Hung Below Town Center Sign

Color Options: Red, Blue, Green, Warm White, Berry, Harvest, Aqua, Opal, and Multi (Colors on Spritzers will be set to City's preference; they Can all be different or the same; Change color with a remote)

Function: Steady, Color Change, Jump, Fade, Flash Warm White, Chase, Flash Out, and Flash Opal (Functions on Spritzers will be set to City's preference)



Palm Tree Lighting

Trees Wrapped in 6" Spacing
Warm White LED Mini Lights.

celebration
HOLIDAY STUDIO

Holiday Bazaar Tree Theme



(125) Silver Shatterproof
Ornaments



(125) Gold Finial Shatterproof
Ornaments



(125) Silver Bell Shatterproof
Ornaments



(125) Gold Shatterproof
Ornaments



(1) 4FT Animated Star
Topper



(36) Warm White LED
Twinkling Spritzer

celebration
HOLIDAY STUDIO

Holiday Bazaar



Walk Thru Element: 11FT Walk Thru Ornament
Ring with Custom Gift Tag



Unique Element: Lifesize LED RGB Bulbs
(set of 5)

celebration
HOLIDAY STUDIO

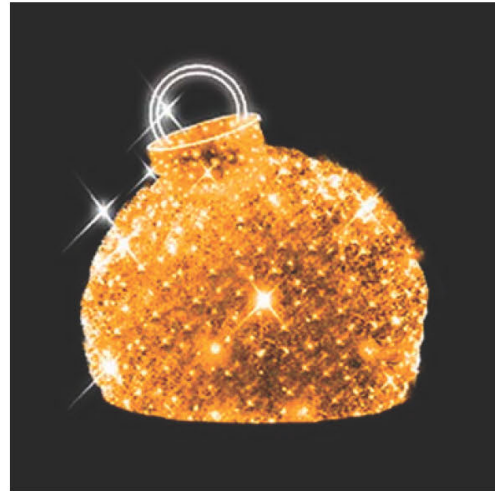
Holiday Bazaar



8FT Warm White LED Selfie Frame



6 Foot LED Gift Box



4.9 Foot LED Ornament

celebration
HOLIDAY STUDIO

EXHIBIT C

SCHEDULE OF PERFORMANCE

The services to be performed pursuant to this Agreement are to be completed on a timely basis, with an estimated completion date of no later than August 15, 2028.