

## **APPENDIX A**

### **SAMPLE AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES**

## AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES

THIS AGREEMENT FOR CONSULTING SERVICES (this “AGREEMENT”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF LANCASTER, a municipal corporation and charter city (the “OWNER”), and \_\_\_\_\_, (the “CONSULTANT”).

### RECITALS

WHEREAS, OWNER desires to engage CONSULTANT to perform certain technical and professional services, as provided herein, identified as:

#### **PUBLIC WORKS INSPECTION SERVICES – STAFF AUGMENTATION RFQ&P 806-24**

WHEREAS, the principal members of CONSULTANT are qualified and duly registered/licensed under the laws of the State of California, and CONSULTANT desires to accept such engagement;

NOW, THEREFORE, the parties agree as follows:

1. **Parties to the AGREEMENT.**

The parties to this AGREEMENT are:

- A. OWNER: City of Lancaster
- B. CONSULTANT: (Company Name)

2. **Notices.** All written notices required by or related to this AGREEMENT shall be sent by Certified Mail, Return Receipt Requested, postage prepaid and addressed as listed below. Neither party to this AGREEMENT shall refuse to accept such mail; parties to this AGREEMENT shall promptly inform the other party of any changes of address. All notices required by this AGREEMENT are effective on the day of receipt, unless otherwise indicated herein.

OWNER                      Public Works Director  
                                    City of Lancaster  
                                    44933 North Fern Avenue  
                                    Lancaster, California 93534

CONSULTANT    (Name)  
                         (Company Name)  
                         (Address)  
                         (City, State Zip)

3. **Successors and Assigns.** The terms hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided, however, that no party hereto shall assign any of the benefits and burdens hereunder, whether voluntarily or by operation of law, without prior written consent of the other party, and any such assignments without said consent shall be void.

4. **Incorporation by Reference.** The Request for Qualifications/Proposal – RFQ&P 806-24 Public Works Inspection Services, all executed Task Orders, and CONSULTANT’S Proposal is hereby

incorporated in and made a part of this AGREEMENT. CONSULTANT agrees to comply with all of the requirements set forth therein.

5. **Precedence of AGREEMENT Documents.** If there is a conflict between AGREEMENT documents, the document highest in precedence shall control. The precedence shall be:

- First: This AGREEMENT consisting of \_\_\_\_ pages
- Second: All executed Task Orders
- Third: Request for Qualifications and Proposal – RFQ&P 806-24 Public Works Inspection Services

6. **Description of Work.** OWNER hereby engages CONSULTANT, and CONSULTANT accepts such engagement, to perform the technical and professional services from time to time as requested by Owner, in writing and accepted by consultant pursuant to a Task Order issued under this Agreement. CONSULTANT shall perform and complete, in a manner satisfactory to OWNER, all work and services set forth in each Task Order. The Public Works Director or their designee shall have the right to review and inspect the work during the course of its performance at such times as may be specified by the Public Works Director, or their designee.

7. **Obligations of the OWNER.**

A. The total compensation to be paid by OWNER to CONSULTANT for all work and services associated with each assignment shall be specified in the Task Order in accordance with the Rate Schedule described in Exhibit “A”.

B. No payment made hereunder by OWNER to CONSULTANT, other than the final payment, shall be construed as an acceptance by OWNER of any work or materials, nor as evidence of satisfactory performance by CONSULTANT of its obligations under this AGREEMENT.

8. **Obligations of the CONSULTANT.**

A. CONSULTANT shall perform as required by this AGREEMENT. CONSULTANT also warrants on behalf of itself and all subcontractors engaged for the performance of this AGREEMENT.

B. CONSULTANT shall be responsible for payment of all employees' and subcontractor's wages and benefits, and shall comply with all requirements pertaining to employer's liability, workers' compensation, unemployment insurance, and Social Security.

9. **Senate Bill 854.** SB 854 bill signed into law on June 20, 2014, established a new public works contractor registration program to replace prior Compliance Monitoring Unit (CMU) and Labor Compliance Program (LCP) requirements for bond-funded and other specified public works projects. The Department of Industrial Relations (DIR) requires all contractors and subcontractors who bid or perform work on a public works project (as defined under the Labor Code) be subject to a registration and annual renewal fee. Contractors must apply online and meet minimum qualifications to be registered as eligible to bid and work on public works projects. The requirement to list only registered contractors and subcontractors on bids became effective on March 1, 2015. The requirement to only use registered contractors and subcontractors on public works projects applies to all projects awarded on or after April 1, 2015. This project shall comply with the requirement of SB 854.

Coverage is not limited only to work performed at the construction site by the traditional construction trades, but extends broadly to workers employed “in the execution of” the public works contract.

Survey and Geotechnical Services will only need to register if the scope of services provided would require the payment of prevailing wage and be considered to be covered under the *California Labor Code*. Even though survey and geotechnical services typically are viewed as consultants and generally do not necessarily fit the term “contractor,” compliance with section SB 854 will be required by the Department of Industrial Relations ("DIR"). Essentially, if the services provided by a survey or geotechnical services firm would be considered to be covered under the applicable *California Labor Code* sections, then they should register. It should be noted that only the firm needs to register and not individual licensed design professional(s).

Attention is directed to the revisions to Labor Code Section 4. 1725.5 and Section 5. 1771.1:

**A. SECTION 4 1725.5**

“A contractor (consultant) must be registered pursuant to this section in order to be qualified to bid on, be listed in a bid proposal pursuant to Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work that is subject to requirements of this chapter.

(a) To qualify for registration under this section, a contractor must do all of the following:

(1) Beginning July 1, 2014, register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial non-refundable application fee of \$400 to qualify for registration under this section and an annual renewal fee on or before July 1<sup>st</sup> each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.

(2) Provide such evidence, disclosures, or releases as are necessary to establish all of the following:

(A) Worker’s Compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker who the contractor will employ to perform work that is subject to prevailing wage requirements other than a contractor who, is separately registered under this section. Coverage may be evidenced by a current and valid Certificate of Workers’ Compensation Insurance or Certification of Self-Insurance required under Section 7125 of the Business and Professions Code.

(B) Where applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.

(C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages, or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

(D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.

(E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in

accordance with this section, within the preceding 12 months, or since the effective date of the requirements set forth in subdivision (f), whichever is shorter. For a contractor found to be in violation of the requirements of this paragraph only, the period of disqualification shall be waived if: (i) the contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months; and (ii) the contractor pays an additional non-refundable penalty registration fee of \$2,000.

- (b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established pursuant to Section 1771.3 and shall be used only for the purposes specified in subdivision (b) of Section 1771.3
- (c) The term “contractor,” as used in this section, shall include any subcontractor or “consultant”, as defined in Section 1722.1.
- (d) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or engaging in the performance of any contract for public work until once again registered pursuant to this section. A contractor who inadvertently fails to pay the renewal fee may retroactively renew its registration by paying an additional non-refundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the date of the renewal fee.
- (e) The requirements of this section shall not apply with respect to any contract, which as a result of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or decision by a court that classifies, after the time at which the body awarding the contract accepts the contractor’s bid or awards the contractor a contract, the work covered by the bid or contract as a “public work,” as defined in this chapter, to which Section 1771 applies, provided that:
  - (1) The body awarding the contract failed to identify as a public work, in the bid specification or in the contract documents that portion of the work that the determination or decision classifies as a “public work.”
  - (2) Within twenty (20) days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.
  - (3) The requirements of this section shall apply prospectively only to any bid, bid proposal, contract, or work performed after the awarding body is served with notice of the determination or decision referred to in paragraph (2) of this subdivision.
- (f) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work, as defined in this chapter, entered into on or after April 1, 2015.”

#### **B. SECTION 5 1771.1**

- (a) No contractor or subcontractor shall be qualified to bid on, be listed in a bid proposal pursuant to Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered to perform public work pursuant to Section 1725.5 It shall not be a violation of this section for an unregistered contractor to submit

a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Sections 10164 or 20103.5 of the public work pursuant to Section 1725.5 at the time the contract is awarded.

- (b) Notice of this requirement shall be included in all bid invitations and public works contracts, and no bid shall be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current eligibility to perform public work pursuant to Section 1725.5.
- (c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following requirements are met: (1) the subcontractor is registered prior to the bid opening; (2) within 24 hours after the bid opening the subcontractor is registered and has paid the penalty registration fee specified in paragraph (E) of subdivision (2) of Section 1725.5; or (3) the subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.
- (d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) of this Section shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.
- (e) The DIR shall maintain on its website a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.
- (f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation. However, no contract for public work shall be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.
  - A. This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015. **This project shall comply with the requirements of SB 854.**

#### 10. Payment of Prevailing Wage.

A. The State of California, Department of Industrial Relations, has ascertained the general prevailing rate of wages and employer payments for health and welfare, vacation, pension, and similar purposes applicable to the field work to be done, including mapping and surveying, geotechnical investigation, traffic control, and potholing services. These rates shall be the minimum wage rates for this project. These rates are on file with the City of Lancaster and copies will be made available to any interested party upon request.

Attention is directed to the provisions of Section 1777.5 (Chapter 1411, Statutes of 1968) and Section 1777.6 of the Labor Code concerning the employment of apprentices by the CONSULTANT or any subcontractor under him.

Section 1777.5, as amended, requires the CONSULTANT or subcontractor employing tradesmen in any apprenticeable occupation to apply to the joint apprenticeship committee nearest the site of the public works project and which administers the apprenticeship program in that trade for a certificate of approval. The certificate will also fix the ratio of apprentices to journeymen that will be used in the performance of the contract. The ratio of apprentices to journeymen in such cases shall not be less than one to five except:

- (A) When unemployment in the area of coverage by the joint apprenticeship committee has exceeded an average of 15% in the 90 days prior to the request for certificate; or
- (B) When the number of apprentices in training in the area exceeds a ratio of one to five; or
- (C) When the trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis statewide or locally; or
- (D) When the CONSULTANT provides evidence that he employs registered apprentices on all of his contracts on an annual average of not less than one apprentice to eight journeymen.

The CONSULTANT is required to make contributions to funds established for the administration of apprenticeship programs if he employs registered apprentices or journeymen in any apprenticeable trade on such contracts and if other Contractors on the public works site are making such contributions.

The CONSULTANT and any subcontractor under them shall comply with the requirements of Section 1777.5 and Section 1777.6 in the employment of apprentices.

Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

B. The provisions of subsection A above shall be included in all solicitations or advertisements placed by or on behalf of CONSULTANT for personnel to perform any services under this AGREEMENT. OWNER shall have access to all documents, data and records of CONSULTANT and its subcontractors for purposes of determining compliance with the Prevailing Wage provisions of this Section.

11. **Audit.** OWNER shall have the option of inspecting and/or auditing all records and other written materials used by CONSULTANT in preparing its statements to OWNER as a condition precedent to any payment to CONSULTANT.

12. **Hold Harmless and Indemnification.** CONSULTANT agrees to indemnify and hold harmless the OWNER, its officers and employees, from and against any and all claims, losses, obligations, or liabilities whatsoever, including reasonable Attorney's fees, incurred in or in any manner arising out of or related to CONSULTANT'S negligent or willful wrongful acts, errors or omissions, or those of its employees or agents. CONSULTANT agrees to defend OWNER, its officers and employees, from and against any and all claims arising from any alleged negligent or wrongful acts, errors or omissions on the part of CONSULTANT or on the part of its employees.

13. **Amendments.** Any amendment, modification, or variation from the terms of this AGREEMENT shall be in writing and shall be effective only upon mutual written approval by the Public Works Director and CONSULTANT.

14. **Non-Discrimination and Equal Employment Opportunity.**

A. In the performance of this AGREEMENT, CONSULTANT shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, religion, ancestry, sex, national origin, physical or mental disability or age. CONSULTANT will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment

without regard to their race, color, religion, ancestry, sex, national origin, physical or mental disability or age. Affirmative action relating to employment shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

B. The provisions of subsection A above shall be included in all solicitations or advertisements placed by or on behalf of CONSULTANT for personnel to perform any services under this AGREEMENT. OWNER shall have access to all documents, data and records of CONSULTANT and its subcontractors for purposes of determining compliance with the equal employment opportunity and non-discrimination provisions of this Section.

15. **Termination for Convenience.** The governing board of the OWNER may terminate this AGREEMENT at any time without cause by giving fifteen (15) days written notice to CONSULTANT of such termination and specifying the effective date thereof. In that event, all finished or unfinished documents and other materials shall, at the option of OWNER, become the OWNER's property. If this AGREEMENT is terminated by OWNER as provided herein, CONSULTANT will be paid a total amount equal to its costs as of the termination date, plus ten percent (10%) of that amount for profit. In no event shall the amount payable upon termination exceed the total maximum compensation provided for in this AGREEMENT.

16. **Termination for Cause.**

A. The governing board of the OWNER may, by written notice to CONSULTANT, terminate the whole or any part of this AGREEMENT in any of the following circumstances:

(1) If CONSULTANT fails to perform the services required by this AGREEMENT within the time specified in each Task Order or any authorized extension thereof; or

(2) If CONSULTANT fails to perform the services called for by this AGREEMENT or so fails to make progress as to endanger performance of this AGREEMENT in accordance with its terms, and in either of these circumstances does not correct such failure within a period of ten (10) days (or such longer period that OWNER may authorize in writing) after receipt of notice from OWNER specifying such failure.

B. In the event OWNER terminates this AGREEMENT in whole or in part as provided above in paragraph A of this Section, OWNER may procure, upon such terms and in such manner as it may deem appropriate, services similar to those terminated.

C. If this AGREEMENT is terminated as provided above in paragraph A, OWNER may require CONSULTANT to provide all finished or unfinished documents, data, studies, drawings, maps, photographs, reports, etc., prepared by CONSULTANT. Upon such termination, CONSULTANT shall be paid an amount equal to the contract amount, less the cost of hiring another CONSULTANT to complete CONSULTANT's services. In the event no new CONSULTANT is employed, CONSULTANT shall be paid an amount equal to the value of the work performed. In ascertaining the value of the work performed up to the date of termination, consideration shall be given to completed work and work in progress, complete and incomplete drawings, and other documents whether delivered to OWNER or in possession of CONSULTANT, and authorized reimbursement expenses.

D. If, after notice of termination of the AGREEMENT under the provisions of this Section, it is determined, for any reason, that CONSULTANT was not in default, or that the default was excusable,



then the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 15.

17. **Independent Contractor.** CONSULTANT is an independent contractor and shall have no power or authority to incur any debt, obligation or liability on behalf of the OWNER. It is expressly understood between the parties to this AGREEMENT that no employee/employer relationship is intended; CONSULTANT is an independent contractor.

18. **Insurance.**

A. The CONSULTANT, at its expense, shall maintain in effect at all times during the term of this AGREEMENT the following coverage and limits of insurance, which shall be maintained with insurers listed "A-, VIII" or better in the Best's Key Rating Guide:

**Commercial General Liability**

Each Occurrence	\$5,000,000
Per Project General Aggregate	\$10,000,000
Including Products/Completed Operations; Contractual Liability/Independent Contractors;	
Property Damage	
<i>(Coverage shall be at least as broad as ISO form CG2010 11/85 or CG2010 07/04 and CG2037 07/04 combined, or an equivalent providing ongoing and completed operations)</i>	

**Commercial Automobile Liability**

Combined Single Limit per Accident for	
Bodily Injury and Property Damage	\$10,000,000
<i>(Coverage shall be at least as broad as ISO form CA00 01)</i>	

**Workers Compensation**

As Required by the State of California	Statutory Limits
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**Employer's Liability**

Each Accident	\$1,000,000
Bodily Injury by Disease	\$1,000,000
Each Employee	\$1,000,000
<i>(A Waiver of Subrogation must be provided on behalf of the Certificate Holder for the Workers Compensation &amp; Employers' Liability policies)</i>	

**Professional Liability**

Each Occurrence	\$10,000,000
General Aggregate	\$10,000,000

B. The Consultant'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 insured's liability.

C. Professional liability insurance written on a "claims made" basis must be

renewed for a period of three (3) years after this contract expires or is terminated. Such insurance must have the same coverage and limits as the policy that was in effect during the term of this contract and will cover Consultant for all claims made by the City insured entities arising out of any acts or omissions of Consultant or its officers, employees, or agents during the time this Agreement was in effect.

D. Any deductibles or self-insurance retentions must be declared and approved by the City. At the City's option, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City insured entities or the insurer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

E. All insurance shall be primary and non-contributory as respects the City insured entities. Any insurance or self-insurance maintained by the City insured entities shall be in excess of the Consultant's insurance and shall not contribute with it.

F. Consultant shall furnish the City with Certificates of Insurance and with original endorsements effecting coverage required by this Agreement. Certificates of Insurance shall meet the following requirements:

- (1) Show that the insurance policy has been endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after 30 days prior written notice (10 days written notice for non-payment) to the City of Lancaster.
- (2) List in the "Descriptions of Operations/Locations/Vehicles" section:

**RFQ&P 806-24 - Public Works Inspections Services**

The City of Lancaster, its elected officials, officers, employees, and volunteers are included as additional covered parties, but only insofar as the operations under this contract are concerned."

- (3) List in the "Certificate Holder" section:

The City of Lancaster  
44933 Fern Avenue  
Lancaster, California 93534

G. Consultant shall include all subcontractors as an insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. Subcontractors are subject to the same insurance requirements as the Consultant.

19. **Commencement and Completion of Work.** The execution of this AGREEMENT by the parties does not constitute an authorization to proceed. The services of CONSULTANT shall commence when the OWNER, acting by and through its Public Works Director or their designee, has issued an executed Task Order for the work described therein.

CONSULTANT shall have no claim for compensation for any services or work which has not been authorized by the OWNER's Notice to Proceed.

20. **Extension of Time for Completion of Work.**

A. If, at any time, the work is delayed due to suspension order by OWNER, or due to any other cause which, in the reasonable opinion of the OWNER, is unforeseeable and beyond the control and not attributable to the fault or negligence of CONSULTANT, then CONSULTANT shall be entitled to an extension of time equal to said delay, subject to the OWNER's right to terminate this AGREEMENT pursuant to Section 15.

B. CONSULTANT shall submit to OWNER a written request for an extension of time within ten (10) days after commencement of such delay, and failure to do so shall constitute a waiver thereof. OWNER shall, in its sole discretion, determine whether and to what extent any extensions of time shall be permitted.

C. No extension of time requested or granted hereunder shall entitle CONSULTANT to additional compensation unless, as a consequence of such extension, additional work must be performed. In such event, OWNER shall in good faith consider any request for additional compensation submitted by CONSULTANT.

21. **Ownership of Documents.** All plans, specifications, reports, studies, tracings, maps and other documents prepared or obtained by CONSULTANT in the course of performing the work required by this AGREEMENT shall be the property of the OWNER. Basic sketches, charts, computations and similar data prepared or obtained by CONSULTANT under this AGREEMENT shall, upon request, be made available to OWNER without restriction or limitation on their use.

22. **Data Provided to CONSULTANT.** OWNER shall provide to CONSULTANT, without charge, all data, including reports, records, maps and other information, now in the OWNER's possession which may facilitate the timely performance of the work described in each Task Order.

23. **CONSULTANT's Warranties and Representations.**

CONSULTANT warrants and represents to OWNER as follows:

A. CONSULTANT has not employed or retained any person or entity, other than a bona fide employee working exclusively for CONSULTANT, to solicit or obtain this AGREEMENT.

B. CONSULTANT has not paid or agreed to pay any person or entity, other than a bona fide employee working exclusively for CONSULTANT, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the execution of this AGREEMENT. Upon any breach or violation of this warranty, OWNER shall have the right, in its sole discretion, to terminate this AGREEMENT without further liability, or, in the alternative, to deduct from any sums payable hereunder the full amount or value of any such fee, commission, percentage or gift.

C. CONSULTANT has no knowledge that any officer or employee of the OWNER has any interest, whether contractual, noncontractual, financial, proprietary, or otherwise, in this transaction or in the business of the CONSULTANT, and that if any such interest comes to the knowledge of CONSULTANT at any time, a complete written disclosure of such interest will be made to OWNER, even if such interest would not be deemed a prohibited "conflict of interest" under applicable laws.

D. Upon the execution of this AGREEMENT, CONSULTANT has no interest, direct or indirect, in any transaction or business entity which would conflict with or in any manner hinder the performance of services and work required by this AGREEMENT, nor shall any such interest be acquired during the term of this AGREEMENT.

24. **Resolution of Disputes.**

A. Disputes regarding the interpretation or application of any provisions of this AGREEMENT shall, to the extent reasonably feasible, be resolved through good faith negotiations between the parties.

B. If the parties cannot resolve the dispute through good faith negotiations, either party may give Notice of Dispute to the other party. The Notice of Dispute shall state the nature of the dispute and the corrective action necessary to remedy the dispute.

After Notice of Dispute, the parties shall first attempt to resolve any disputes by mediation. The parties shall agree on a single mediator. Mediation shall be conducted in Lancaster, California. Each party shall pay its own attorneys' fees and the costs of mediation shall be split equally between the parties.

If the dispute has not been resolved by mediation within 45 days after Notice of Dispute, or the parties are unable to agree to a mediator, within 15 days after Notice of Dispute, then, the dispute may, upon agreement of the parties be resolved by binding arbitration.

25. **Exhibits.**

The following exhibits to which reference is made in this AGREEMENT are deemed incorporated herein in their entirety:

Exhibit "A" Scope of Work

Exhibit "B" Term and Payment Clause

26. **Governing Law.**

This AGREEMENT shall be governed by the laws of the State of California.

27. **Effective Date.**

This AGREEMENT shall become effective as of the date set forth below on which the last of the parties, whether OWNER or CONSULTANT, executes said AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed and attested by their respective officers thereunto duly authorized.

“OWNER”  
CITY OF LANCASTER  
LANCASTER, CALIFORNIA

Approved By Department Head:

By: \_\_\_\_\_  
Marissa Diaz, Director – Public Works

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Jason Caudle, City Manager

Dated: \_\_\_\_\_

"CONSULTANT"  
(COMPANY NAME)

By: \_\_\_\_\_  
(Name, Title)

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Andrea Alexander  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Allison E. Burns, Esq.  
City Attorney

EXHIBIT “A”  
SCOPE OF SERVICES

**SEE ATTACHED**

**General Scope of Services**

Provide public works inspection services on various City awarded capital improvement projects in Lancaster on an as-needed basis. Projects may include new construction or renovation projects, program-wide projects, and/or infrastructure projects. The Public Works Inspector must have experience performing inspection services for direct contract construction projects and will provide support to the City's Construction Manager.

## **Public Works Inspector**

### **Purpose:**

To provide in person inspection services of various public improvement construction projects. Staff will report to City Hall daily for inspection assignments and bill per project as assigned.

Services could include, but are not limited to, inspect a variety of public works construction projects including streets, bridges, curbs, gutters, storm drains, sewers, water lines, traffic signals, grading, trenching, compaction, backfilling to ensure compliance with applicable codes, ordinances and regulations, contract document compliance, identify actual and potential problems associated with the construction project in consult with the project manager, review contractor prepared submittals and proposals, and coordinate shop drawing submittals with the project manager as necessary, provide project schedule analysis, cost estimating services and track and monitor the contractor's schedule on a weekly basis, prepare daily inspection records and weekly status reports, progress payments and other documentation as necessary to track the project correspondence related to all project activities, review plans and specifications, coordinate work with other city departments and city contacts, perform routine field tests, inspect materials for identification as conforming to specifications, inspect materials used, including reinforcing materials and the mix, slump and placement of concrete. Provide all necessary expertise and services to professionally and diligently prosecute the work authorized by each task order issued by the City.

### **Approach:**

Under supervision, the Public Works Inspector inspects the workmanship and materials used in a variety of public works construction projects. The Public Works Inspector must be prepared and equipped to provide such services in a timely manner and on relatively short notice so as to enable the City to meet critical, and at times unpredictable, time deadlines and schedules. Inspectors will document the Contractors' daily activities, manpower loading, on-site equipment and items considered pertinent to the project.

### **Assumptions:**

The Public Works Field Inspector must have an understanding of all applicable Health and Safety laws, guidelines, and requirements including Cal/OSHA Title 8, the EPA (Environmental Protection Agency), the Education Code, the CDE (California Department of Education), the DTSC (Department of Toxic Substances Control), and the California Division of State Architects (DSA) regulations, and local ordinances and/or other applicable zoning or planning ordinances/regulations, relative to the work to be undertaken as well as their ability to comply with same and the methodology by which they will do so. All inspections will be within the project limits.

### **Deliverables:**

1. Inspect a variety of public works construction projects including streets, bridges, curbs, gutters, storm drains, sewers, water lines, traffic signals and control, landscaping, city cash contracts, grading, trenching, compaction, backfilling, mixes of concrete or asphalt and etc. to ensure compliance with applicable codes, ordinances and regulations.
2. Prepare cost estimates, contract agreements and progress payment.
3. Perform inspections of public works facilities to ensure compliance with plans, specifications and standards for public works projects.
4. Perform Private Development Grading and Encroachment Permit inspections and Public Contract construction contract inspections.
5. Review plans and specifications for other city contracts.
6. Coordinate work with other city departments and utilities.
7. Perform routine field tests.
8. Inspect materials for identification as conforming to specifications.
9. Inspect materials used, including reinforcing materials and the mix, slump and placement of concrete; use equipment such as measuring rods, tapes, surveying transits and calculators to determine distance, location, dimension, depth and grade and calculate volume; take samples of materials for testing.
10. Observe work in progress and upon completion.
11. Record amounts of materials used and work performed; prepare necessary reports for progress payments and maintain field records including sketches, photographs, drafting and narrative notes; inspect tracts upon completion and process the necessary documents.
12. Act as the construction inspector on various subdivision projects and utility installations.
13. Meet and confer with contractors, public agencies and the general public; answer citizen complaints and requests for information; issue permits as required; monitor contractor safety practices and make on-site accident investigations as required.
14. Assist engineering with plans, specifications, and standards preparation.
15. Perform basic plan checking for subdivision, residential, and some commercial development; explain the limits and parameters of the work as required; perform various engineering technical support work, including drafting and acting as a member of a survey crew.
16. Build and maintain positive working relationships with co-workers, other City employees, and the public using principles of good customer service.
17. Perform related duties as required.



## EXHIBIT “B”

### TERM AND PAYMENT CLAUSE

#### Term

This Agreement shall become effective and shall be in full force and effect upon the execution of the Agreement by the City and the CONSULTANT. This Agreement shall continue in full force and effect for a period not to exceed three (3) years from the effective date of the Agreement (the “Term”), unless the Agreement is sooner terminated in accordance with the Terms and Conditions in the Agreement; provided, however, that the City and the CONSULTANT may mutually agree in writing to extend the Term of this Agreement.

#### Payment

The City of Lancaster shall reimburse the CONSULTANT for actual costs, including labor costs and employee benefits incurred by the CONSULTANT in performance of the work identified in a Task Order. Actual costs shall not exceed the estimated wage rates and other costs as set forth in this Agreement. Task Order proposal shall include a Fee Grid and source documentation supporting billed costs must be submitted with invoice. Each Task Order shall be invoiced separately, and invoices shall identify the purchase order. CONSULTANT shall provide a cost breakdown with hourly rates for each office and field function. Any additional work will require a separate Task Order Authorization for Consultant Services signed by both parties.

CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit, upon receipt by the City of itemized invoices. Invoices shall be submitted no later than forty-five (45) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone, on each project, as applicable. Invoices shall follow the format stipulated for the Cost Proposal and shall reference this contract number, task order number and project title. Final invoice must contain the final cost and all credits due City. The final invoice should be submitted within sixty (60) calendar days after completion of CONSULTANT’s work.

Consultant shall not be reimbursed for actual travel expenses incurred in the performance of the work.

The Consultant's hourly billing rates will remain fixed for the first year of the contract term after which the Consultant may request an escalation of hourly billing rates by November 1st each year based on the annual percentage change of the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers in the Los Angeles area published in September of that same year. Any escalation request must be submitted in writing to the City, and the Consultant must provide acceptable documentation supporting this request. In no event will the percentage increase be greater than three percent (3%). No retroactive contract price adjustments will be allowed. If an escalation is approved, it would become effective January 1<sup>st</sup> of the following year, e.g. if requested November 1, 2024, then the escalation would become effective January 1, 2025.

If a renewal offer is made by the City to the Consultant to extend the contract beyond the initial three (3) year contract term, then the Consultant may request a price adjustment to the hourly billing rates that would become effective as of the date of the renewal. Both parties must be in agreement and a written renewal offer signed, with the price adjustment terms included. The price for any product or service may not increase without written approval by the City.

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(Name, Title)  
Company Name

**APPENDIX B**  
**INSURANCE REQUIREMENTS**

City of Lancaster  
**RFQ&P 806-24 – Public Works Inspection Services**  
Consultant Insurance Requirements

The Consultant, at its expense, shall maintain in effect at all times during the term of this Agreement the following coverage and limits of insurance, which shall be maintained with insurers listed "A-, VIII" or better in the Best's Key Rating Guide:

**Commercial General Liability**

Each Occurrence	\$5,000,000
Per Project General Aggregate	\$10,000,000
Including Products/Completed Operations; Contractual Liability/Independent Contractors; Property Damage	
<i>(Coverage shall be at least as broad as ISO form CG2010 11/85 OR CG2010 07/04 AND CG2037 07/04, or an equivalent providing ongoing and completed operations)</i>	

**Commercial Automobile Liability**

Combined Single Limit per Accident for Bodily Injury and Property Damage	\$10,000,000
<i>(Coverage shall be at least as broad as ISO form CA00 01)</i>	

**Workers Compensation**

As Required by the State of California	Statutory Limits
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**Employer's Liability**

Each Accident	\$1,000,000
Bodily Injury by Disease	\$1,000,000
Each Employee	\$1,000,000
<i>(A Waiver of Subrogation must be provided on behalf of the Certificate Holder for the Workers' Compensation &amp; Employer's Liability policies)</i>	

**Professional Liability**

Each Occurrence	\$10,000,000
General Aggregate	\$10,000,000

**Pollution (Asbestos) Legal Liability**

Each Occurrence*	\$5,000,000
Per Project Aggregate*	\$10,000,000

\*Including Errors and Omissions

- 1) The Consultant'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 insured's liability.
- 2) Professional Liability insurance written on a "claims made" basis must be renewed for a period of three (3) years after this contract expires or is terminated. Such insurance must have the same coverage and limits as the policy that was in effect during the term of this contract and will cover Consultant for all claims made by the City insured entities arising out of any acts or omissions of Consultant or its officers, employees, or agents during the time this Agreement was in effect.

- 3) Any deductibles or self-insurance retentions must be declared and approved by the City. At the City's option, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City insured entities or the insurer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 4) All insurance shall be primary and non-contributory as respects the City insured entities. Any insurance or self-insurance maintained by the City insured entities shall be in excess of the Consultant's insurance and shall not contribute with it.
- 5) Consultant shall furnish the City with Certificates of Insurance and with original endorsements effecting coverage required by this Agreement. Certificates of insurance shall meet the following requirements:
  - A. Show that the insurance policy has been endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after 30 days' prior written notice (10 days' written notice for non-payment) to the City of Lancaster.

B. List in the "Descriptions of Operations/Locations/Vehicles/Special Items" section:

**RFQ&P 806-24 - Public Works Inspection Services**

The City of Lancaster, its elected officials, officers, employees, and volunteers are included as additional covered parties, but only insofar as the operations under this contract are concerned.

C. List in the "Certificate Holder" section:

The City of Lancaster  
44933 Fern Avenue  
Lancaster, California 93534

- 6) Consultant shall include all subcontractors as an insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. Subcontractors are subject to the same insurance requirements as the Consultant.

CERTIFIED EVIDENCE OF INSURANCE

TO BE SUBMITTED BY CONSULTANT WITH PROPOSAL

I, \_\_\_\_\_, \_\_\_\_\_ of  
Name of Individual Certifying Insert Title, (e.g. sole owner, partner, president)

\_\_\_\_\_, do hereby certify that we maintain  
Consulting Company Name

or have the ability to obtain insurance coverage consistent with Consultant Insurance Requirements and Consultant Insurance Limits stated in *City of Lancaster Consultant Insurance Requirements*. I further understand that insurance documents must be submitted with signed consultant agreements, and if upon review by the City of Lancaster I fail to comply strictly with the insurance requirements, the consultant agreement will not be executed and another consultant will be chosen.

Signed: \_\_\_\_\_

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
Title

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Seal of Notary