

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES is made and entered into this [REDACTED] day of [REDACTED], 2022, by between the CITY OF LANCASTER, a municipal corporation and charter city, ("City"), and Enso Advisory Services LLC, a New York Corporation ("Consultant") (collectively, sometimes referred to hereinafter as the "Parties").and

RECITALS

WHEREAS, the City desires to engage a Consultant to perform certain technical and professional services, as provided herein, identified as:

Project Advisor of Clean Energy Ministerial / DOE H2 Twin Cities Mentor-Mentee Program (THE "SERVICES")

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. CITY: City of Lancaster
- B. CONSULTANT: Enso Advisory Services, LLC

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.

CITY City of Lancaster
Attn: Jason Caudle, City Manager
44933 North Fern Avenue
Lancaster, California 93534

CONSULTANT Enso Advisory Services
Attn: Lex Heslin, CEO
39 Broadway, Suite 3010
New York, NY 10006

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. **Description of Work.** The City hereby engages Consultant, and Consultant accepts such engagement, to perform the technical and professional services set forth in the “Scope of Services and Rates Schedule,” attached hereto as Exhibit “A” and incorporated herein by reference. Consultant shall perform and complete, in a manner satisfactory to the City, all work and services set forth in Exhibit “A.” The City Manager or his 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 City Manager, or his designee.

5. **Obligations of the City.**

A. The City shall pay Consultant an amount not to exceed \$288,000 for all work necessary to complete the Services, as described in the Scope of Services and Rates Schedule. Payments shall be due within thirty (30) days following submittal of an invoice detailing the services performed, at the monthly rates set forth in “Exhibit A”.

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

6. **Obligations of the Consultant.**

A. Consultant shall perform as required by this Agreement and in accordance with the Scope of Services and Rates Schedule set forth in Exhibit A.

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

C. Consultant shall not subcontract any of the work required to perform the Services without the express prior written approval of the City.

7. **Hold Harmless and Indemnification.** Consultant agrees to indemnify and hold harmless the City, its elected officials, officers and employees, from and against any and all third party claims, losses, obligations, or liabilities whatsoever, including reasonable attorney’s fees, incurred to the extent 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 the City, its officers and employees, using counsel of the City’s choosing, from and against any and all claims covered by the indemnity in the preceding sentence.

8. **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 City and Consultant.

9. **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. The City 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.

10. **Term; Effective Date.** 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 eighteen (18) months, unless the Agreement is sooner terminated in accordance with this Agreement; provided, however, that the City and the Consultant may mutually agree in writing to extend the Term of this Agreement.

11. **Termination.**

A. For Convenience. The City may terminate this Agreement at any time without cause by giving ninety (90) days written notice to the other party of such termination and specifying the effective date thereof. In the event of termination of this Agreement, Consultant will be paid for work completed through the date of termination within thirty (30) days following submittal of a final invoice.

B. For Cause. 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, Consultant shall correct such failure within ten (10) days (or such longer period that the City may authorize in writing) after receipt of notice from the City specifying such failure. Should the failure not be corrected within this time period, the City may immediately terminate the Agreement by written notice to Consultant.

C. In the event of termination, whether for convenience or cause, reports, plans, studies and other documents (collectively, "documents") related to the Services shall become the City's property. Consultant shall provide all documents to the City that have not yet been within ten (10) calendar days after termination of the Agreement.

12. **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 City. It is expressly understood between the Parties to this Agreement that no employee/employer relationship is intended.

13. **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	\$1,000,000
Per Project General Aggregate	\$2,000,000
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	\$1,000,000
<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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Employers’ 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 & Employers’ Liability policies)</i>	

Professional Liability

Each Occurrence	\$1,000,000
General Aggregate	\$1,000,000

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 and/or cyber 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 name the City, its elected officials, officers, employees and volunteers as additional insured, and 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:

**"Project Advisor of Clean Energy Ministerial/DOE H2 Twin Cities
Mentee Program**

Mentor-

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.

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

15. **Data Provided to Consultant.** City shall provide to Consultant, without charge, all data, including reports, records, maps and other information, now in the City's possession which may facilitate the timely performance of the work described in Exhibit A.

16. **Consultant's Warranties and Representations.**

Consultant warrants and represents to City 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, City 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 City 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 City, 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.

17. **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.

C. If any action at law or in equity is brought to enforce or interpret any provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable attorney’s fees, cost and necessary disbursements, in addition to such other relief as may be sought and awarded.

18. **Exhibits.**

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

Exhibit “A” Scope of Services and Rates Schedule

20. **Governing Law.**

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

21. **Effective Date.**

This Agreement shall become effective as of the date set forth below on which the last of the parties, whether City or Consultant, executes said Agreement.

[Signatures begin on next page.]

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

CITY OF LANCASTER
LANCASTER, CALIFORNIA

By: _____
Jason Caudle, City Manager

Dated: _____

Enso Advisory Services, LLC

By: _____
Lex Heslin, CEO

Dated: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

SCOPE OF SERVICES AND RATES SCHEDULE

Enso's Scope of Work (SOW) as Advisor on the Clean Energy Ministerial / United States Department of Energy H2 Twin Cities Mentor-Mentee Program:

1. Interact closely with Lancaster officials and provide support for the City in achieving the measurable goals outlined in the application to the CEM / DOE of May 25, 2022, that include developing the Hydrogen Five-Year plan focused on personal impact on Lancaster citizens, hydrogen infrastructure and environmental benefits; developing the workforce including engagement with community partners in higher education system, labor and original equipment manufacturers to directly promote workforce training; providing analysis of end-users and beneficiaries of hydrogen to city staff; tracking the number of jobs created by the hydrogen industry and number of passengers and commercial fuel cell vehicles on the road; and tracking the environmental impact of hydrogen deployment via greenhouse gas emission reductions.
2. Develop advisory committee, governance structure and oversee administrative functions required to maintain the grant budget provided to the Cities, including providing quarterly reports and updates to the City.
3. Facilitate exchange between the DOE Mentor/Mentee cities of Lancaster, CA, Hawai'i County, Hawai'i and Namie Town, Japan ("the Cities") to support project investment and development in hydrogen, including increasing the number of hydrogen fueling stations (ongoing deliverable). Enso will deliver to Lancaster an analysis of development tools, such as a checklist of considerations for environmental justice, and other development and training tools, including manuals, brochures, case studies, and lesson-learned fact sheets.
4. Apply for additional grants and subsidies to expand the program, including grant applications to DOE, CEM state agencies, private sector companies and NPO's (ongoing deliverable).
5. Support deeper project involvement between the Cities (encouraging hydrogen companies in Namie to develop projects in Lancaster for example). Enso will invite and arrange for key partners, including community groups, private businesses, non-profit entities and academic institutions, to take part.
6. Facilitate public- and private-sector knowledge and concept sharing to educate and connect the Cities.
7. Progress reports to the City Council every six months regarding accomplishments and progress toward goals.

Enso's fee for the above services will be \$16,000.00 per month, including expenses, to be paid by the City monthly.