

AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES

THIS AGREEMENT FOR CONSULTING SERVICES is made and entered into this _____ day of _____, 2011, by and between the CITY OF LANCASTER, a municipal corporation, hereinafter referred to as OWNER, and CALTROP CORPORATION, hereinafter referred to as CONSULTANT.

RECITALS

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

PROJECT 10-011 – STATE ROUTE 14 AND AVENUE I INTERCHANGE IMPROVEMENTS

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: Caltrop Corporation

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

CONSULTANT Mr. Alex Hashtroudi, General Manager
 Caltrop Corporation
 9337 Milliken Avenue
 Rancho Cucamonga, CA 91730

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 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 Document consisting of 49 pages excluding paragraph 5
- Second: The CONSULTANT'S Proposal

6. **Description of Work.** OWNER hereby engages CONSULTANT, and CONSULTANT accepts such engagement, to perform the technical and professional services set forth in the "Scope of Services" attached hereto as Exhibit "A". CONSULTANT shall perform and complete, in a manner satisfactory to OWNER, all work and services set forth in Exhibit "A". The Director of Public Works 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 Director of Public Works, or his designee.

7. **Obligations of the OWNER.**

A. The total compensation to be paid by OWNER to CONSULTANT for all work and services described in Exhibit "A" is not to exceed \$ 1,141,870.87. CONSULTANT'S fees and charges for the work and services performed shall in no event exceed those set forth in Exhibit "B" attached hereto and made a part hereof.

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.

C. CONSULTANT must verify the identity and employment eligibility of anyone to be hired, which at a minimum shall include completing the Employment Eligibility Verification Form (I-9) and complying with all verification procedures and requirements set forth in Chapter 5.50 of the Lancaster Municipal Code. The CONSULTANT shall establish appropriate procedures and control so no services or products under the Contract Documents will be performed or manufactured by any business or individual who is not legally eligible to perform such services or employment.

9. **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.

10. **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, it 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.

11. **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 Director of Public Works and CONSULTANT.

12. **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.

13. **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 (8%) of that amount for profit. In no event shall the amount payable upon termination exceed the total maximum compensation provided for in this AGREEMENT.

14. **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 herein 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 14.

15. **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.

16. **Insurance.**

A. (1) The CONSULTANT, at its expense, shall maintain in effect at all times during the performance of work under this AGREEMENT not less than 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 and that are admitted insurers in the State of California:

Commercial General Liability	
Each Occurrence	\$5,000,000
Per Project General Aggregate	\$10,000,000
Including Products/Completed Operations	
Including Contractual Liability/Independent Contractors	
Including Broad Form Property Damage	
 Commercial Automobile Liability	
Combined Single Limit per Accident for	
Bodily Injury and Property Damage	\$10,000,000
 Workers Compensation	
As Required by the State of California	Statutory Limits
 Employer's Liability	
Each Accident	\$1,000,000

Bodily Injury by Disease	\$1,000,000
Each Employee	\$1,000,000
Professional Liability	
Each Occurrence	\$10,000,000
General Aggregate	\$10,000,000

B. Insurance shall be at least as broad as ISO form CG 20 10 11 85 or CG 20 10 10 01 and CG 20 37 10 01 covering Commercial General Liability. Commercial Automobile coverage shall be at least as broad as ISO form CA 00 01.

C. 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.

D. A Waiver of Subrogation must be provided on behalf of the Certificate Holder for the Workers Compensation/Employers Liability policies and a copy of the endorsement must accompany the certificate.

E. Any deductibles or self-insurance retentions must be declared and approved by the City. At the option of the City, 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.

F. 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.

G. The coverage provided under this contract shall not contain any special limitations on the scope of protection afforded to the City insured entities.

H. Insurance provided and maintained by CONSULTANT must be placed with insurers with a rating of A-, VIII or better by Best's Key Rating Guide, latest edition, and that are admitted insurers in the State of California.

I. Insurance written on a "claims made" basis must be renewed for a period of five (5) 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.

J. CONSULTANT shall furnish the City with Certificates of Insurance and with original endorsements effecting coverage required by this contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

K. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City insured entities.

L. Certificates of Insurance must be deposited with the City of Lancaster for all coverage required by this contract. Certificates 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) by Certified Mail, return receipt requested to the City of Lancaster.

(2) List in the "Descriptions of Operations/Locations/Vehicles/Special Items" section:

The Certificate Holders, as well as their officers, agents, servants, and employees are included as additional insured as respect to liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied, or used by Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant. (This does not apply to Professional Liability policies.)

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

The City of Lancaster, the Lancaster Redevelopment Agency, the Lancaster Financing Authority, the Lancaster Housing Authority, the Lancaster Boulevard Corporation, the Lancaster Community Services Foundation, and the Lancaster Museum/Art Gallery Associates, as well as each of their officers, agents, servants, and employees, 44933 Fern Avenue, Lancaster, California 93534.

(4) List in the "Cancellation" section:

Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will mail 30 written notice (10 days written notice for non-payment) to the Certificate Holders named to the left.

M. 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.

N. The coverage shall contain no special limitations on the scope of protection afforded to the insured entities. The CONSULTANT'S insurance coverage shall be primary insurance as respects the City's insured entities.

17. **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 Director of Public Works or his designee, has issued the Notice to Proceed.

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

18. **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 14.

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.

19. **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 survey notes, 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.

20. **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 Exhibit "A".

21. **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.

22. **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.

23. **Exhibits.**

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

Exhibit "A" Scope of Services

Exhibit "B" Payment Clause

24. **Governing Law.**

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

25. **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: _____
Robert C. Neal, Director of Public Works

Dated: _____

By: _____
Mark V. Bozigian, City Manager

Dated: _____

"CONSULTANT"

CALTROP CORPORATION

By: _____
Alex Hashtroudi
General Manager

Dated: _____

ATTEST:

Geri K. Bryan, CMC
City Clerk

APPROVED AS TO FORM:

David R. McEwen
City Attorney