

Multi-Year Professional Services RFP 529-08  
Pre-Qualified List of Consultants  
2008-2010

<b>Service Group Category</b>		<b>Consultant</b>
1. Roadway and Structures	1	Boyle Engineering
	2	Bureau Veritas
	3	Harris & Associates
	4	Huitt-Zollars
	5	Penfield & Smith
2. Traffic Engineering	1	Hall & Foreman
	2	Penfield & Smith
	3	RBF
3. Utility Engineering	1	Boyle Engineering
	2	Penfield & Smith
	3	RMC
4. Environmental Remediation	1	H.T. Harvey
	2	Leighton Group
	3	The Source Group
5. Survey, Mapping, Real Prop	1	DMR
	2	Penfield & Smith
	3	Quality Construction
6. Geotechnical Engineering, Materials Testing & Inspection	1	Converse Consultants
	2	Earth Systems
	3	Leighton Group
7. Develop Plan Check & Insp	1	Bureau Veritas
	2	Harris & Associates
	3	Vali Cooper & Associates
8. Landscape Arch & Park Dsgn	1	RHA
	2	Withers & Sandgren LTD

AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES

THIS AGREEMENT is made and entered into in the City of Lancaster on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the CITY OF LANCASTER, a municipal corporation, hereinafter referred to as OWNER, and \_\_\_\_\_ hereinafter referred to as CONSULTANT and shall be in force for a period not to exceed two years.

RECITALS

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

**Multi Year Professional Services  
Services Category Group \_\_\_\_\_**

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. **Term.** The term of this AGREEMENT shall be from \_\_\_\_\_ through \_\_\_\_\_. Either party may terminate this AGREEMENT at any time prior to the expiration date by giving thirty (30) days advance written notice thereof to the other party.

3. **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              (Name, Title)  
                                    (Company name)  
                                    (Address)  
                                    (City, state zip)

4. **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 assignment without said consent shall be void.

5. **Incorporation by Reference.** The Request for Proposals and the CONSULTANT'S Proposal are hereby incorporated in and made a part of this AGREEMENT. CONSULTANT agrees to comply with all of the requirements set forth therein.

6. **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 \_\_\_ pages excluding paragraph 5
- Second: The Request for Proposals
- Third: The CONSULTANT'S Proposal

7. **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 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.

8. **Obligations of the OWNER.**

A. After CONSULTANT has performed the services specified in a Task Order, OWNER will pay and CONSULTANT shall receive therefore payments based upon actual services received by OWNER and the fees charged by CONSULTANT at the rates established as a part of this AGREEMENT.

B. Payments to the CONSULTANT shall be made within 30 days after receipt of an original invoice from the CONSULTANT and acceptance of the services.

9. **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 will 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 includes completing the Employment Eligibility Verification Form (I-9). The CONSULTANT shall establish appropriate procedures and controls so no services or products under the AGREEMENT will be performed or manufactured by any business or individual who is not legally eligible to perform such service or employment.

10. **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.

11. **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 the 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.

12. **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.

13. **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.

14. **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.

15. **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 from 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 11.

16. **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 the no employee/employer relationship is intended; CONSULTANT is an independent contractor.

17. **Insurance.** The CONSULTANT shall furnish OWNER with proof of the insurance specified in the Request for Proposals Terms and Conditions as well as Errors and Omissions coverage in the amount of \$1,000,000. Coverage shall also include an additional insured endorsement covering the OWNER, its agents and employees, and shall include an unequivocal clause stating that none of the required insurance shall be canceled or materially changed without thirty (30) days prior written notice to the OWNER.

18. **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 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.

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. **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, non-contractual, 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.

21. **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.

22. **Exhibits.**

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

Exhibit "A"            Rate Schedule

23. **Governing Law.**

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

24. **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

Approved by Dept. Head \_\_\_\_\_

By: \_\_\_\_\_  
Mark V. Bozigian, City Manager

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

"CONSULTANT"

(Company Name)

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

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

ATTEST:

\_\_\_\_\_  
Geri K. Bryan, CMC  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
David R. McEwen  
City Attorney