

## PROFESSIONAL SERVICES AGREEMENT

This agreement ("Agreement") is made as of April 14, 2026, by and between the **City of Commerce**, a municipal corporation ("City") and E.B. Construction Inc. ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as a "Party" and collectively referred to as the "Parties."

### RECITALS

WHEREAS, City desires to utilize the services of Consultant as an independent contractor for the preparation of PS&E (Plans, Specifications, and Estimates) and construction support services for Camp Commerce deck replacement project located at 465 S. Hwy 173, Lake Arrowhead as set forth in the Scope of Services attached hereto as **Exhibit A**; and

WHEREAS, Consultant represents that it is fully qualified to perform such consulting services by virtue of its experience and the training, education and expertise of its principals and employees.

NOW, THEREFORE, in consideration of performance by the parties of the covenants and conditions herein contained, the parties hereto agree as follows:

**1. Company's Scope of Services.** The nature and scope of the specific services to be performed by Consultant are as described in **Exhibit A**.

**2. Term of Agreement.** This Agreement shall commence on April 14, 2026 (the "Commencement Date") and shall remain and continue in effect until tasks described in **Exhibit A** are completed, but in no event later than June 30, 2028, unless sooner terminated pursuant to the provisions of this Agreement.

**3. Compensation.**

A. City agrees to compensate Consultant for services under this Agreement in compliance with the schedule set forth in **Exhibit A**. Consultant shall submit proper monthly invoices in the form and manner specified by City. Each invoice shall include a monthly breakdown of all monthly services performed together with the hours spent on each service. Consultant shall maintain appropriate and necessary documentation supporting the monthly invoices detailing the type of service provided. It shall be available for review by the City at all reasonable times upon request.

B. Total payment to Consultant pursuant to this Agreement shall not exceed \$350,000.

C. If at the request of the City, Consultant is required to incur out of pocket expenses (including but not limited to, out-of-town travel and lodging) which are above and beyond the ordinary expenses associated with performance of this Agreement, Consultant shall be entitled to reimbursement of such expenses. Consultant shall only

be reimbursed for those expenses which: (I) appear on Consultant's monthly invoices; (II) are accompanied by a copy of the City's written authorization for Consultant to incur such expenses; and (III) receipts documenting such expenses.

**4. General Terms and Conditions.** The General Terms and Conditions set forth in **Exhibit B** are incorporated as part of this Agreement. In the event of any inconsistency between the General Terms and Conditions and any other exhibit to this Agreement, the General Terms and Conditions shall control unless it is clear from the context that both parties intend the provisions of the other exhibit(s) to control.

**5. Addresses.**

**City of Commerce**

City of Commerce  
2535 Commerce Way  
Commerce, CA 90040  
Attn: Ernie Hernandez, City Manager

**E.B. Construction Inc.**

E.B. Construction Inc.  
P.O. Box 6004  
Blue Jay, CA 92317  
Attn: David Esparza Blanco, President

**6. Exhibits.** All exhibits referred to in this Agreement are listed here and are incorporated and made part of this Agreement by this reference.

**Exhibit A** – Scope of Services and Compensation Schedule

**Exhibit B** – General Terms and Conditions

**SIGNATURES ON FOLLOWING PAGE**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates written below.

**CITY**

**CITY OF COMMERCE**

By: \_\_\_\_\_  
Kevin Lainez, Mayor

\_\_\_\_\_  
Date

**CONSULTANT**

**E.B. Construction Inc.**

By:   
\_\_\_\_\_  
David Esparza Blanco, President

**March 12, 2026**  
\_\_\_\_\_  
Date

**ATTEST:**

By: \_\_\_\_\_  
Pat Jacquez-Nares, Interim City Clerk

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Noel Tapia, City Attorney

\_\_\_\_\_  
Date

**EXHIBIT A**  
**SCOPE OF WORK**

# TECHNICAL PROPOSAL

## Preparation of PS&E for Camp Commerce Deck Replacement

**Submitted to:** City of Commerce – Department of Public Works

**Project Location:** 465 S. Hwy 173, Lake Arrowhead, CA 92352

**Proposer:** E.B. Construction Inc.

**Contact:** David Esparza Blanco, President/Owner

(909)744-0065, [Davidesparza.de@gmail.com](mailto:Davidesparza.de@gmail.com)

# TECHNICAL PROPOSAL

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(909)744-0065, Davidesparza.de@gmail.com

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### Cover Letter / Executive Summary

E.B. Construction Inc. is pleased to submit this Technical Proposal for the Preparation of Plans, Specifications, and Estimates (PS&E) for the Camp Commerce Deck Replacement Project. We are a Lake Arrowhead-based construction and design firm with over 18 years of hands-on experience building and rehabilitating decks in mountain environments subject to snow loads, freeze-thaw cycles, high winds, wildfire risk, and steep terrain.

We take significant pride in the quality of our work and in delivering projects that are not only code-compliant, but durable, safe, and thoughtfully constructed for long-term use. Our firm regularly works on custom homes and custom-designed deck systems where precision, craftsmanship, and problem-solving are essential. In many instances, we have been brought in specifically to correct deficiencies and construction failures left behind by contractors unfamiliar with mountain conditions. This experience has reinforced our commitment to designing and building systems correctly the first time.

Building in the San Bernardino Mountains requires a fundamentally different approach than standard urban construction. Seasonal snow accumulation, rapid weather changes, soil movement, drainage challenges, and wildfire mitigation requirements must be addressed at the design level, not during construction. Our firm specializes in deck systems because nearly all mountain structures rely on elevated decks, stairs, and walkways for access and safety. This project aligns directly with our core expertise.

Our approach emphasizes constructability, durability, ADA compliance, wildfire resistance, and long-term maintenance reduction. We will deliver a complete, agency-approved PS&E Bid Package that is clear, buildable, cost-effective, and ready for competitive bidding within the City's preferred six-month timeframe.

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1. Approach and Scope of Work
2. Project Schedule
3. Project Team and Key Personnel
4. Relevant Project Experience
5. Firm Qualifications
6. Review of Professional Services Agreement

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# 1. Approach and Scope of Work

## Project Understanding

The Camp Commerce Deck Replacement Project involves replacing deteriorated wood decks, stairs, walkways, and rail systems with fire-resistant composite decking systems, incorporating ADA-compliant ramps, slip-resistant surfaces, and underdeck drainage systems. The site consists of multiple cabins connected by elevated walkways on sloped terrain, requiring careful coordination of structural, accessibility, and fire-safety requirements.

Based on review of the RFP and site photos, the project includes multiple deck elevations, support conditions, and access paths that must remain safe and functional during phased construction. Design solutions must account for snow load requirements, lateral wind forces, drainage away from structures, and wildfire hardening principles.

## Methodology

Our firm will execute the PS&E phase using a practical, field-informed methodology:

- Conduct a detailed on-site assessment of all deck locations, supports, stairs, and walkways
- Evaluate existing structural conditions and identify required repairs or replacements
- Verify ADA routes, slopes, landings, handrail heights, and transitions
- Develop standardized but site-adaptable deck and railing details to control costs
- Specify fire-resistant composite decking and ignition-resistant assemblies
- Integrate underdeck drainage systems designed for snow melt and heavy runoff
- Coordinate early with San Bernardino County Building and Fire Departments
- Prepare a complete PS&E Bid Package ready for construction advertisement

## Flexibility and Responsiveness

Because we are locally based in Lake Arrowhead, we can respond quickly to City staff, attend meetings on short notice, and address field conditions as they arise. Our designs are informed by how these decks are actually built and maintained in mountain conditions, reducing change orders and delays during construction.

## Detailed Scope of Services

### Conceptual Design and PS&E Phase

- Site investigations and field measurements
- Evaluation of existing deck framing and foundations
- ADA-compliant ramp and access design
- Deck, stair, walkway, and railing design details

- Structural framing layouts and foundation plans
- Slip-resistant surface specifications
- Underdeck drainage system design
- Technical specifications and bid-ready drawings
- CEQA documentation (as separate task)
- Submittal to San Bernardino County and Fire Department
- Response to plan check comments and revisions

### **Bidding Phase**

- Attendance at pre-bid meeting
- Responses to bidder questions and clarifications

### **Construction Phase Support**

- Review of shop drawings and submittals
- Design clarification support to City Construction Manager
- Participation in construction meetings
- Change order review assistance
- Punch list walkthroughs
- Preparation of as-built drawings

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## 2. Project Schedule

Our proposed schedule delivers a complete PS&E Bid Package within approximately **5–6 months** from Notice to Proceed, meeting the City’s preferred timeline.

- Site Assessment and Concept Refinement: 4 weeks
- Preliminary Design and Agency Coordination: 6 weeks
- Draft PS&E Submittal: 8 weeks
- Agency Review Cycle (3 reviews assumed): 8–10 weeks
- Final PS&E and Bid Package: 4 weeks

Critical path items include agency review durations and plan check responses, which will be actively managed to minimize delays.

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## 3. Project Team and Key Personnel

### **Prime Consultant / Project Manager / Lead Designer:**

**David Blanco**, President/Owner, E.B. Construction Inc.

With over 18 years of mountain construction experience based in Lake Arrowhead, Mr. Blanco specializes in deck systems, structural framing, hillside access solutions, hillside access solutions, and rehabilitation of existing deck infrastructure in snow-load and wildfire-prone environments.

**Structural Engineering Subconsultant:  
Kadtec Engineering**

Kadtec Engineering will provide structural analysis, calculations, and stamped drawings as required for elevated deck systems, foundations, stairs, and ADA-accessible structures. Kadtec has experience supporting hillside and elevated structures subject to snow loads, lateral forces, and California Building Code requirements.

**ADA & Code Compliance Support:**

Qualified accessibility and code consultants will be utilized as needed to ensure full ADA compliance and coordination with San Bernardino County Building and Fire Departments.

The proposed team has worked together on similar hillside and deck-intensive projects, resulting in efficient coordination and reduced design revisions.

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## 4. Relevant Project Experience

- Mountain residential deck replacement projects (Lake Arrowhead, Crestline, Big Bear)
- Fire-resistant deck retrofits in high wildfire severity zones
- ADA-compliant ramp and access upgrades on sloped sites
- Multi-structure deck and walkway rehabilitation projects

Detailed references will be provided upon request.

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## 5. Firm Qualifications

Our firm's primary advantage is real-world mountain construction expertise. We design projects that contractors can actually build, that inspectors will approve, and that owners can maintain. Our familiarity with San Bernardino County requirements, fire safety standards, and mountain weather conditions reduces risk and increases project success.

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## 6. Review of City Professional Services Agreement

We have reviewed the City of Commerce's Standard Professional Services Agreement and find it generally acceptable. Any requested clarifications or comments will be submitted separately, if necessary.

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**Respectfully submitted,**

David Esparza Blanco  
President/Owner  
E.B. Construction Inc.



# FEE PROPOSAL

## Preparation of PS&E for Camp Commerce Deck Replacement

**Submitted to:** City of Commerce – Department of Public Works

**Project:** Camp Commerce Deck Replacement – PS&E

**Prime Consultant:** E.B. Construction Inc.

**Owner / Project Manager:** David Esparza Blanco

**Structural Engineering Subconsultant:** Kadtec Engineering

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### Fee Structure Overview

E.B. Construction Inc. proposes to provide professional services for the Camp Commerce Deck Replacement Project on a **lump-sum, not-to-exceed (NTE) basis**. The proposed fee is structured by project phase in accordance with the Request for Proposals and reflects the complexity of multi-structure deck systems, ADA compliance, wildfire hardening requirements, and coordination with multiple reviewing agencies.

The proposed Not-to-Exceed amount provides sufficient capacity to address anticipated agency coordination, plan check revisions, and project management demands while maintaining cost certainty for the City.

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### Lump-Sum Fee by Phase

#### Phase 1 – Conceptual Design & PS&E Phase Services

**Lump Sum Fee: \$225,000**

Includes all professional services required to prepare a complete, bid-ready PS&E package.

**Included Services:** - Detailed site investigations and field verification of all decks, stairs, walkways, and supports

- Evaluation of existing structural conditions and constructability constraints
- Structural coordination, calculations, and stamped drawings by Kadtec Engineering
- Deck, stair, walkway, railing, and ADA ramp design
- Fire-resistant composite decking system specifications
- Slip-resistant surfaces and underdeck drainage system design
- Preparation of construction drawings and technical specifications
- ADA-compliant path-of-travel analysis and documentation
- Bi-weekly coordination meetings with City staff

- Submittals to San Bernardino County Building Department and Fire Department
  - Response to plan check comments and revisions through final approval
- 

## Phase 2 – Bidding Phase Services

**Lump Sum Fee: \$30,000**

- Included Services:**
- Attendance at one (1) pre-bid meeting
  - Responses to bidder inquiries
  - Preparation of clarifications and addenda, as required
- 

## Phase 3 – Construction Phase Support Services

**Lump Sum Fee: \$60,000**

- Included Services:**
- Design clarification support to the City’s Construction Manager
  - Review and approval of shop drawings and contractor submittals
  - Attendance at construction meetings, as requested
  - Review of change order requests related to design intent
  - Project walk-throughs and punch list assistance
  - Preparation of record drawings (as-builts)
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## Separate Task – CEQA Compliance Services

**Lump Sum Fee: \$35,000**

CEQA services are proposed as a separate task in accordance with the RFP and include preparation and coordination of required environmental documentation.

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## Total Proposed Fee

Phase	Lump Sum Fee
Phase 1 – Conceptual Design & PS&E	\$225,000
Phase 2 – Bidding Phase	\$30,000
Phase 3 – Construction Phase Support	\$60,000
CEQA Compliance (Separate Task)	\$35,000
<b>Estimated Fee Based on Detailed Hours:</b>	<b>\$341,350</b>
<b>Total Not-to-Exceed Fee</b>	<b>\$350,000</b>

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## Fee Justification

The proposed Not-to-Exceed fee of \$350,000 reflects the complexity and scale of the Camp Commerce Deck Replacement Project, which involves multiple elevated deck structures, stairs, and walkways on steep terrain in a high wildfire severity zone. The fee accounts for intensive field verification, structural engineering coordination, ADA-compliant access design, fire-resistant materials specification, and multiple agency review cycles with the City of Commerce, San Bernardino County Building Department, and Fire Department. Additionally, the fee provides appropriate capacity to address mountain-specific conditions such as snow loads, drainage, and weather-related constraints while minimizing risk of design revisions and construction change orders. This fee structure offers the City cost certainty, responsiveness, and a complete, buildable PS&E package that represents best value within the City's established project budget. This approach emphasizes early coordination and constructability to reduce downstream change orders and construction delays.

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## Fee Assumptions and Conditions

- Fees are proposed on a **lump-sum, not-to-exceed basis** based on the scope defined in the RFP and current understanding of project conditions.
  - **Permit fees, plan check fees, and third-party agency fees are excluded** and are assumed to be paid directly by the City unless otherwise directed.
  - Should unforeseen conditions arise or additional services be required beyond the scope described herein, such services shall be performed only upon **written authorization by the City through an approved amendment**.
  - Prevailing wage requirements will be complied with as applicable.
  - The proposed fee provides flexibility to address extended agency review durations, additional coordination, or regulatory requirements without exceeding the Not-to-Exceed amount.
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## Detailed Fee Breakdown

To provide additional transparency regarding the distribution of effort across the project phases, E.B. Construction has prepared a detailed breakdown of estimated labor hours and associated billing rates. The table below summarizes anticipated hours by task and staff role.

**E.B. Construction Inc.****Estimated Labor Rates**

<b>Staff Role</b>	<b>Hourly Rate</b>
Principal / Project Manager – David Blanco	\$165
Structural Engineer – Kadtec	\$180
Designer / CAD	\$120
Field Technician	\$95
Administrative Support	\$75

<b>Phase / Task</b>	<b>Principal (hrs)</b>	<b>Structural Eng (hrs)</b>	<b>CAD / Designer (hrs)</b>	<b>Field Tech (hrs)</b>	<b>Admin (hrs)</b>	<b>Subtotal</b>
Project Management & Coordination	120	20	0	0	40	\$26,400
Site Investigation & Field Verification	40	20	0	120	10	\$22,350
Existing Conditions Documentation	30	20	80	40	10	\$22,700
Concept Design & Layout Development	40	60	120	0	10	\$32,550
Structural Design Coordination	20	120	80	0	5	\$34,875
ADA Access Evaluation	30	20	80	0	5	\$18,525
Construction Drawings & Specifications	20	80	320	0	20	\$57,600
Agency Submittals & Plan Check Responses	20	40	60	0	10	\$18,450
Bid Phase Support	30	20	40	0	10	\$14,100
Construction Support & Site Visits	80	40	60	80	10	\$35,950
Shop Drawing / RFI Review	40	30	60	0	5	\$19,575
Punch List & Project Closeout	20	10	40	20	5	\$12,175
CEQA Documentation & Coordination	40	20	120	0	20	\$26,100
<b>Totals</b>	<b>530</b>	<b>500</b>	<b>1060</b>	<b>260</b>	<b>160</b>	<b>\$341,350</b>

*The estimated hours shown above represent anticipated effort for planning and contract administration purposes. Actual hours billed will reflect work performed but will not exceed the total contract amount of \$350,000 without written authorization from the City.*

**Total Estimated Fee Based on Current Hours:**

\$341,350

**Proposed Not-to-Exceed Fee:**

\$350,000

**Submitted by:**

A handwritten signature in black ink, appearing to read 'David Blanco', with a stylized flourish at the end.

**David Blanco**

Owner / Prime Consultant

E.B. Construction

**EXHIBIT B  
GENERAL TERMS AND CONDITIONS**

**1. Status as Independent Contractor.**

A. Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of the City of Commerce or otherwise act on behalf of Commerce as an agent. Neither the City of Commerce nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the City of Commerce.

B. Consultant agrees to pay all required taxes on amounts paid to Consultant under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interests asserted against City by reason of the independent Consultant relationship created by this Agreement. In the event that City is audited by any Federal or State agency regarding the independent status of Consultant and the audit in any way fails to sustain the validity of a wholly independent Consultant relationship between City and Consultant, then Consultant agrees to reimburse City for all costs, including accounting and attorney's fees, arising out of such audit and any appeals relating thereto.

C. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Section 1.

D. Consultant represents to the City, and City relies on Consultant's representations, that Consultant shall serve solely in the capacity of an independent contractor to the City. Neither the City nor any of its agents will have control over the conduct of Consultant or any of Consultant's employees, except as otherwise set forth in the Agreement. Consultant may not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the City. The City has no duty, obligation, or responsibility to the Consultant's agents or employees, including the Affordable Care Act coverage requirements. Consultant is solely responsible for any tax penalties associated with the failure to offer affordable coverage to its agents and employees under the Affordable Care Act with respect to Consultant's agents and employees. Consultant warrants and represents that the City will not be responsible and will not be held liable for issues related to Consultant's status as an independent contractor, including Consultant's failure to comply with Consultant's duties, obligations, and responsibilities under the Affordable Care Act. Consultant further agrees to defend, indemnify, and hold the City harmless

for any and all taxes, claims, and penalties against the City related to Consultant's obligations under the Affordable Care Act.

## **2. Standard of Performance**

Consultant shall perform all work to the highest professional standards and in a manner reasonably satisfactory to the City Manager or his/her designee. No additional or different tasks or services shall be performed by Consultant other than those specified in **Exhibit A**.

## **3. Indemnification.**

A. Consultant is skilled in the professional calling necessary to perform the services and duties agreed to be performed under this Agreement, and City is relying upon the skill and knowledge of Consultant to perform said services and duties.

B. City and its respective elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "Indemnities") shall have no liability to Consultant or any other person for, and Consultant shall indemnify, defend, protect and hold harmless Indemnities from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "Claims"), which Indemnities may suffer or incur or to which Indemnities may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or other loss occurring as a result of or allegedly caused by Consultant's performance of or failure to perform any services under this Agreement or by the negligent or willful acts or omissions of Consultant, its agents, officers, directors, subcontractor, sub consultant or employees, committed in performing any of the services under this Agreement. Notwithstanding the foregoing, the provisions of this subsection shall not apply to Claims occurring as a result of the City's sole negligence or willful acts or omissions.

C. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this Section from each and every subcontractor, sub consultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required in this Section, Consultant agrees to be fully responsible according to the terms of this Section. Failure of the City to monitor compliance with these requirements imposes no additional obligations on City and will in no way serve as a waiver of any rights hereunder. This obligation to indemnify and defend Indemnities as set forth herein shall survive the termination of this Agreement and is in addition to any rights which City may have under the law. This indemnity is effective without reference to the existence or applicability of any insurance coverage which may have been required under this Agreement or any additional insured endorsements which may extend to

City.

**4. Insurance.**

A. Without limiting Consultant's indemnification of Indemnities pursuant to Section 3 of this Agreement, Consultant shall obtain and provide and maintain at its own expense during the term of this Agreement the types and amounts of insurance as described below:

(I) Consultant shall maintain Commercial General Liability Insurance with coverage at least as broad as Insurance Services Office Commercial General Liability Form CG 00 01 in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

(II) Consultant shall maintain Business Auto Coverage on ISO Business Auto Coverage Form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

(III) Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with on a state approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for all covered losses;

(IV) Consultant shall maintain Professional Liability or Errors and Omissions Insurance that covers the services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this Agreement.

B. City, its officers, officials, employees and volunteers shall be named as additional insureds on the policy(ies) as to commercial general liability and automotive liability.

C. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger)

in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

D. All insurance policies shall provide that the insurance coverage shall not be non-renewed, canceled, reduced, or otherwise modified (except through the addition of additional insureds to the policy) by the insurance carrier without the insurance carrier giving City thirty (30) days' prior written notice thereof. Any such thirty (30) day notice shall be submitted to CITY via certified mail, return receipt requested, addressed to "Director of Human Resources & Risk Management," City of Commerce, 2535 Commerce Way, Commerce, California, 90040. Consultant agrees that it will not cancel, reduce or otherwise modify said insurance coverage.

E. Consultant shall submit to City (I) insurance certificates indicating compliance with the minimum worker's compensation insurance requirements above, and (II) insurance policy endorsements indicating compliance with all other minimum insurance requirements above, not less than one (1) day prior to beginning of performance under this Agreement. Endorsements shall be executed on City's appropriate standard forms entitled "Additional Insured Endorsement".

F. Consultant's insurance shall be primary as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees and volunteers shall be excess of Consultant's insurance and shall not contribute with it.

G. Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, and such insurance is available at a reasonable cost. City may take out the necessary insurance and pay the premium thereon, and the repayment thereof shall be deemed an obligation of Consultant's and the cost of such insurance may be deducted, at the option of City, from payments due Consultant.

## **5. Release of Information/Confidentiality.**

A. Consultant in the course of its duties may have access to confidential data of City, private individuals, or employees of the City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City Manager, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena. Consultant's covenant under this section shall survive the termination of this Agreement.

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

## **6. Ownership of Work Product.**

A. Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by the City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of the City or its designees at reasonable times to such books and records; shall give the City the right to examine and audit said books and records; shall permit the City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

B. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

## **7. Conflict of Interest.**

A. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the services to be performed by Consultant under this Agreement, or which would conflict in any manner with the performance of its services hereunder. Consultant further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Consultant shall avoid the appearance of having any interest which would conflict in any manner with the performance of its services pursuant to this

Agreement.

B. Consultant covenants not to give or receive any compensation, monetary or otherwise, to or from the ultimate vendor(s) of services to City as a result of the performance of this Agreement, or the services that may be procured by the City as a result of the recommendations made by Consultant's covenants under this section shall survive the termination of this Agreement.

**8. Termination.** Notwithstanding any other provision, this Agreement may be duly terminated at any time by the City at its sole discretion with or without cause by serving upon the consultant at least ten (10) days prior written notice ("Notice of Termination"). Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. Unless expressly agreed upon in writing by the City, the City shall not be obligated to pay for any services rendered nor any costs or expenses paid or incurred after the date of termination. The effective date of termination shall be upon the date specified in the written Notice of Termination. Consultant agrees that in the event of such termination, Consultant must refund the City its prorated share, except for services satisfactorily rendered prior to the effective date of termination. Immediately upon receiving written Notice of Termination, Consultant shall discontinue performing services, preserve the product of the services and upon payment for services, turn over to City the product of the services in accordance with written instructions of City.

In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City.

**9. Personnel.** Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services under this Agreement. All of the services required under this Agreement will be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Consultant reserves the right to determine the assignment of its own employees to the performance of Consultant's services under this Agreement, but City reserves the right, for good cause, to require Consultant to exclude any employee from performing services on City's premises.

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

A. Consultant shall not discriminate as to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation, in the performance of its services and duties pursuant to this Agreement, and will comply with all rules and regulations of City relating thereto. Such nondiscrimination shall include but not be limited to the following: employment, upgrading, demotion, transfers, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training,

including apprenticeship.

B. Consultant will, in all solicitations or advertisements for employees placed by or on behalf of Consultant state either that it is an equal opportunity employer or that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

C. Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement except contracts or subcontracts for standard commercial supplies or raw materials.

**11. Assignment.** Consultant shall not assign or transfer any interest in this Agreement nor the performance of any of Consultant obligations hereunder, without the prior written consent of City, and any attempt by Consultant to assign this Agreement or any rights, duties, or obligations arising hereunder shall be void and of no effect.

**12. Performance Evaluation.** For any Agreement in effect for twelve months or longer, the City Manager may require a written annual administrative performance evaluation within ninety (90) days of the first anniversary of the effective date of this Agreement, and each year thereafter throughout the term of this Agreement. The work product required by this Agreement shall be utilized as the basis for review, and any comments or complaints received by City during the review period, either orally or in writing, shall be considered. City shall meet with Consultant prior to preparing the written report. If any noncompliance with the Agreement is found, City may direct Consultant to correct the inadequacies, or, in the alternative, may terminate this Agreement as provided herein.

**13. Compliance with Laws.** Consultant shall keep itself informed of State, Federal and Local laws, ordinances, codes and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. Consultant shall at all times comply with such laws, ordinances, codes and regulations. The City, its officers and employees shall not be liable at law or in equity occasioned by failure of Consultant to comply with this Section.

**14. Licenses.** At all times during the term of this Agreement, Consultant shall have in full force and effect all licenses (including a City business license) required of it by law for performance of the services hereunder.

**15. Non-Waiver of Terms, Rights and Remedies.** Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by City of any payment to Consultant constitute or be construed as a waiver by City of any breach of covenant, or any default which may then exist on the part of Consultant, and the making of any such payment by City shall in no way impair or prejudice any right or remedy available to City with regard to such breach or default.

**16. Attorney's Fees.** In the event that either party to this Agreement shall commence any legal or equitable action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorney's fees and costs, including costs of expert witnesses and Consultant.

**17. Notices.** Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during Consultant regular business hours or by facsimile before or during Consultant regular business hours; or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses heretofore set forth in the Agreement, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this section.

**18. Governing Law.** This Agreement shall be construed and interpreted both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California. However, the Parties may agree to submit any dispute to non-binding arbitration.

**19. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument.

**20. Severability.** If any provision or any part of any provision of this Agreement is found to be invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

**21. Entire Agreement.** This Agreement, and any other documents incorporated herein by specific reference, represents the entire and integrated agreement between Consultant and City. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the Parties which expressly refers to this Agreement. Amendments on behalf of the City will only be valid if signed by the Mayor and attested by the City Clerk.

**22. Authority.** The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

**23. Force Majeure.** A Party's performance of any obligation under this Agreement shall be suspended if, and to the extent that, the Party is unable to perform because of any event of Force Majeure. In any such event, the Party unable to perform shall be

required to resume performance of its obligations under this Agreement upon the termination of the event or cause that excused performance hereunder. "Force Majeure" herein means an event which is beyond the reasonable control of a Party, including without limitation, (a) acts of God including flood, fire, earthquake, hurricane or explosion, pandemic; (b) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (c) government order or law that prevents either Party from performing its obligations as set forth in this Agreement; (d) actions, embargoes or blockades in effect on or after the date of this Agreement; (e) action by any governmental authority that prevents either Party from performing its obligations as set forth in this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns or other industrial disturbances, other than those involving the affected parties employees; (h) shortage of adequate power or transportation facilities.

Neither Party shall be liable for any delay or default in, or failure of, performance resulting from or arising out of any Force Majeure event, and no such delay, default in, or failure of performance shall constitute a breach by either Party hereunder. Where a Force Majeure event gives rise to a failure or delay in either Party performing its obligations under this Agreement (other than obligations to make payment), those obligations will be suspended for the duration of the Force Majeure event. A Party who becomes aware of a Force Majeure event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under this Agreement, will forthwith notify the other and inform the other of the period for which it is estimated that such failure or delay will continue. The affected Party shall take reasonable steps to mitigate the effects of the Force Majeure event.