

PROFESSIONAL SERVICES AGREEMENT

This agreement ("Agreement") is made as of December 9, 2025, by and between the **City of Commerce**, a municipal corporation ("City") and Kimley-Horn and Associates, 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 to provide engineering design services for the Citywide Fiber Optic Interconnect Installation Project 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 December 9, 2025 (the "Commencement Date") and shall remain and continue in effect until tasks described in **Exhibit A** are completed, but in no event later than December 31, 2027, 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 \$451,973.51.

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

Kimley-Horn and Associates, Inc.

Kimley-Horn and Associates, Inc.
660 S Figueroa St #2050
Los Angeles, CA 90017
Attn: Jean Fares, P.E., Sr. Vice 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: _____
Ivan Altamirano, Mayor

Date

CONSULTANT

Kimley-Horn and Associates, Inc.

By: Jean Fares
Jean Fares, P.E., Sr. Vice President

11/20/2025
Date



ATTEST:

By: _____
Melanie Park, Deputy City Clerk

Date

APPROVED AS TO FORM:

By: _____
Noel Tapia, City Attorney

Date

EXHIBIT A

SCOPE OF WORK



October 17, 2025

Shahid Abbas
City of Commerce
2535 Commerce Way
Commerce, CA 90040

Re: Letter Agreement for Professional Services for City of Commerce Fiber Optic Installation Project

Dear Mr. Shahid Abbas,

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") is pleased to submit this Letter Agreement ("Agreement") to the City of Commerce ("Client") for providing engineering services for the Fiber Optic Installation Project ("Project").

Project Understanding

The City of Commerce is looking to upgrade their existing copper signal interconnect to fiber optic cable, connecting all signalized intersections through fiber to a traffic management center at City Hall. There are currently 54 signalized intersections throughout the City. Table 1 and Figure 1 shows these 54 signalized intersections and connection to copper signal interconnect or fiber optic cable.

Table 1: Existing Communication Segments

Corridor	Corridor Limits	Linear Feet	Communication Type
Atlantic Boulevard	Sheila Street to Telegraph Road	5,200 feet	Copper SIC
Eastern Avenue	Atlantic Boulevard to Commerce Way	4,100 feet	Copper SIC
Eastern Avenue	Rickenbacker Road to 61 st Street	3,200 feet	Copper SIC
Garfield Avenue	Flotilla Street to Randolph Street	11,900 feet	Copper SIC
Slauson Avenue	Eastern Avenue to Gage Avenue	11,800 feet	Copper SIC
Telegraph Road	Citadel Drive to Tubeway Avenue	3,200 feet	Copper SIC
Telegraph Road	Washington Boulevard to Home Depot	600 feet	Copper SIC
Washington Boulevard	Telegraph Road to Yates Avenue	4,700 feet	Copper SIC
Washington Boulevard	Indiana Street to Arco Gas Station	14,400 feet	Fiber Optic

Scope of Services

Kimley-Horn will provide the services specifically set forth below.

TASK 1: PROJECT MANAGEMENT AND MEETINGS

Kimley-Horn will attend a kick-off meeting with City staff after the award of contract to conduct introductions, go over scope of work, request information and documents needed from various City departments, review overall schedule, and discuss next steps. After the kick-off meeting, monthly progress meetings will be scheduled as well as meetings to review the 60%, 90%, and 100% submittals with City staff.

Kimley-Horn will coordinate with Bear Electric, the City's signal technicians, to collect information on existing conditions.

Task 1 Submittals:

- Meeting Agenda, Minutes, and Project Schedule

TASK 2: FIELD INVESTIGATION

Task 2.1 – Records Research

Kimley-Horn will request copies of readily available records from the City, including street plans, traffic signal plans, signing and striping plans, fiber optic installation plans, street improvement plans, and other similar records that the City knowingly has in its possession.

Task 2.2 – Field Investigation for New Conduit Locations

Before 60% design, Kimley-Horn will take digital photos and field notes along the corridors listed in Table 3 where new conduit will be installed. The Kimley-Horn team will take note of above-ground elements in the sidewalk.

Task 2.3 – Field Review with Bear Electric

After 60% design is completed, Kimley-Horn will meet with the City's signal technicians in the field at the locations listed in Table 2. We will collaborate with the signal technicians in opening up signal cabinets, pull boxes, and verify conduit health and consistency with our design. We will visually inspect the conduits with the signal technicians where fiber optic, CCTV, vehicle detection cables are proposed.

We will verify that our plans match the existing conditions in the field. Any deviations from the plan will be implemented into the 90% design.

TASK 3: FIBER OPTIC PLANS, SPECIFICATIONS, & ESTIMATE (PS&E)

Task 3.1: Fiber Optic Plans

Kimley-Horn will prepare design plans for proposed fiber optic cable in the existing conduit locations listed in Table 2, CCTV installation, vehicle detection installation, and equipment installed inside signal cabinets.

The plans will show elements necessary for the proposed design using aerial images extracted from

NearMap as the base map and record drawings provided by the City.

Table 2: Corridors with Existing Conduits

Corridor	Corridor Limits	Linear Feet
Atlantic Boulevard	Sheila Street to Telegraph Road	5,200 feet
Eastern Avenue	Atlantic Boulevard to Commerce Way	4,100 feet
Eastern Avenue	Rickenbacker Road to 61 st Street	3,200 feet
Garfield Avenue	Flotilla Street to Randolph Street	11,900 feet
Slauson Avenue	Eastern Avenue to Gage Avenue	11,800 feet
Telegraph Road	Citadel Drive to Tubeway Avenue	3,200 feet
Telegraph Road	Washington Boulevard to Home Depot	600 feet
Washington Boulevard	Telegraph Road to Yates Avenue	4,700 feet
Washington Boulevard	Indiana Street to I-5	14,400 feet
Total		59,100 feet

The design will be prepared in accordance with the latest edition of the Standard Plans for Public Works Construction (SPPWC), the latest Caltrans Standard Plans, the 2014 California Manual on Uniform Traffic Control Devices (Revision 8), and other applicable design standards. This task assumes the designs can be implemented within existing City right-of-way and will not need third party coordination for design review. The plans will be reviewed and stamped by a licensed California Civil Engineer.

The plans will be prepared at 40-scale (1"=40') with one 1200 feet linear segment per full-size 24" x 36" sheets using AutoCAD 2024 software.

The project design plans will include the following sheets:

- Title Sheet
- City General Notes/Project Construction Notes Sheet
- Layout Sheet/Key Map
- Communication Design Plans at 1"=40' scale for approximately 59,100 linear feet
- Pull Box, Conduit, and Splicing Details

Task 3.1 Deliverables:

- One (1) set of 60% Plans in PDF electronic format
- One (1) set of 90% Plans in PDF electronic format
- One (1) set of 100% Plans in PDF electronic format

Task 3.2: Fiber Splicing Diagram and Network Diagram

Kimley-Horn will prepare fiber optic splicing diagrams and a network diagram for the proposed fiber optic improvements. Kimley-Horn will show the existing fiber along Washington Boulevard in the splicing diagrams and connection to the City's Traffic Management System (TMC) and Emergency Operating Center (EOC). The splice diagrams and network diagram will show the 54 signalized intersections. The sheets will be prepared not to scale (NTS) on full-size 24" x 36" sheets using AutoCAD 2024 or later.

This task includes the following sheets:

- Fiber Splicing Diagram with Connection to the City's TMC and EOC
- Network Diagram

This scope includes up to two submittals to the City and anticipates a single round of consolidated comments from the 90% submittal.

Task 3.2 Deliverables:

- One (1) set of 90% Fiber Splicing Diagram in PDF electronic format
- One (1) set of 90% Network Diagram in PDF electronic format
- One (1) set of 100% Fiber Splicing Diagram in PDF electronic format
- One (1) set of 100% Network Diagram in PDF electronic format

Task 3.3: Fiber Optic Opinion of Probable Construction Costs (OPCC)

Kimley-Horn will prepare an OPCC based on the 60%, 90%, and 100% Plans. The OPCC will be presented to show the proposed bid items, unit prices, contingencies, construction cost escalation, and an overall project cost.

The OPCC will be developed on Microsoft Excel.

Clients are specifically cautioned that unit prices for construction have been and remain unpredictable and escalating and clients should include significant contingencies and engage in independent contractor pricing exercises. Kimley-Horn will exercise reasonable efforts to overcome the challenges presented by current circumstances, but Kimley-Horn will not be liable to Client for any delays, expenses, losses, or damages of any kind arising out of the volatility of construction costs and unit prices.

Task 3.3 Deliverables:

- One (1) set of 60% OPCC in PDF electronic format
- One (1) set of 90% OPCC in PDF electronic format
- One (1) set of 100% OPCC in PDF electronic format

Task 3.4 Fiber Optic Technical Specifications

Kimley-Horn will prepare technical specifications for the 90% and 100% submittals. The technical specifications will refer to the 2024 Standard Specifications for Public Works Construction (SSPWC), the latest Caltrans Standard Specifications, and be amended by the City's Standard Provisions. It is assumed the City will provide boiler plate language for their Standard Provisions. Additional source documents may be used by Kimley-Horn to cover urban design and landscape, irrigation, and other project features not covered by the City Standard Provisions, the 2024 SSPWC, or the latest Caltrans Standard Specifications. A licensed professional engineer will stamp and sign the provisions.

Task 3.4 Deliverables:

- One (1) set of 90% technical specifications in PDF electronic format
- One (1) set of 100% technical specifications in PDF electronic format

TASK 4 – FIBER OPTIC INSTALLATION WITH NEW CONDUIT PS&E

The following locations in Table 3 require new conduits to be connected into the fiber optic network:

Table 3: Segments with Signal Interconnect Gaps

Location	Corridor Limits	Linear Feet
Olympic Boulevard and Gerhart Avenue	Gerhart Avenue from Ferguson Drive to Olympic Boulevard Ferguson Drive from Gerhart Avenue to Atlantic Boulevard	4,800 feet
Eastern Avenue and Randolph Street	Eastern Avenue from 61 st Street to Randolph Street	550 feet
Gage Avenue and Zindell Avenue	Gage Avenue from Zindell Avenue to Slauson Avenue	850 feet
Telegraph Road and Malt Avenue	Telegraph Road from Malt Avenue to Garfield Avenue	950 feet
Telegraph Road	Between Tubeway Avenue and Washington Boulevard	1,350 feet
Washington Boulevard	Between Telegraph Road and Arco Gas Station	1,200 feet
Total		9,700 feet

Task 4.1 - Utility Coordination

Kimley-Horn will notify utility owners provided by City for the locations listed in Table 3. We will coordinate with utility agencies to obtain readily available existing and proposed underground utilities. Utility information received from utility companies will be included in a project CAD base file.

Kimley-Horn will compile the utility information in a matrix format to include dates of notification, person/utility notified, and responses received from each utility company. Copies of this information will be updated upon completion and provided to the City during progress meetings.

Task 4.1 Deliverables:

- Utility Coordination Letters in PDF format
- Utility Coordination Matrix in Excel format

Task 4.2 - Fiber Optic Installation with New Conduit PS&E

Kimley-Horn will prepare design plans for proposed fiber in new conduit locations. For fiber optic installation in new conduit, right-of-way information (provided by others or taken from the Los Angeles County GIS database), and curb and gutter will be shown to create the base plan. Proposed conditions and existing equipment will be overlaid on top of the base plan to create the project design.

Anticipated proposed design elements include fiber optic cable, controller cabinet upgrades, video detection cameras, CCTV cameras, vehicle detection, splice enclosures, ethernet switches, and proposed conduits and conduit upgrades where needed within the project limits. For new conduit installation, plans will show utilities received by the utility companies in Task 4.1.

The design will be prepared in accordance with the latest edition of the Standard Plans for Public Works Construction (SPPWC), the latest Caltrans Standard Plans, the 2014 California Manual on Uniform Traffic Control Devices (Revision 8), and other applicable design standards. This task assumes the

designs can be implemented within existing City right-of-way and will not need third party coordination for design review. The plans will be reviewed and stamped by a licensed California Civil Engineer.

The plans will be prepared at 40-scale (1"=40') with one 1200 feet linear segment per full-size 24" x 36" sheets using AutoCAD 2024 software.

The project design plans will include the following sheets:

- Title Sheet (included in Task 3)
- City General Notes/Project Construction Notes Sheet (included in Task 3)
- Layout Sheet/Key Map (included in Task 3)
- Communication Design Plans at 1"=40' scale for approximately 9,700 linear feet
- Pull Box, Conduit, and Splicing Details
- Schematic Communication Block Diagram
- Fiber Assignments and Connection to the City's TMC

This scope includes up to three submittals to the City and anticipates up to two rounds of consolidated comments from the 60% and 90% submittals.

The OPCC and technical specifications will be included in Task 3.

Task 4.2 Deliverables:

- One (1) set of 60% Plans in PDF electronic format
- One (1) set of 90% Plans in PDF electronic format
- One (1) set of 100% Plans in PDF electronic format

TASK 5 – FUNDING ADMINISTRATION

This project is federally funded in construction, which requires compliance with the federal funding agency. The scope provided below is based on our assumption that the federal funding agency is Caltrans. Kimley-Horn will partner with **Avant Garde** to coordinate with and meet these federal requirements. Although the PS&E portion of the project is not federalized, our project must remain compliant for the Construction phase, and the environmental documentation, right of way documentation, and construction authorization are all required.

Task 5.1 – Environmental Documentation

CEQA Documentation

Kimley-Horn anticipates that the project would seek CEQA clearance under a Class 1 Categorical Exemption, assuming that there would be no increases in capacity. Kimley-Horn will prepare the Categorical Exception documents and coordinate with the City to receive approval. Kimley-Horn will prepare a memorandum to support the project's CEQA clearance using the Class 1 Categorical Exemption. The memorandum will provide a brief project description, summary of the findings, and citations to the CEQA Guidelines.

Kimley-Horn will respond to one set of consolidated comments from the City on the Categorical Exemption. After the City has approved the Categorical Exemption, Kimley-Horn will prepare and provide the final Categorical Exemption. Kimley-Horn will assist the City with preparing the Notice of Exemption (NOE) for the Project.

NEPA Documentation

The project is federally funded through Community Project Funding/Congressionally Directed Spending

(CPFCDS), administered through Caltrans; therefore, environmental documentation pursuant to the NEPA is required, and Caltrans would be the NEPA Lead Agency. The project would be processed through Caltrans' Local Assistance Program. The Kimley-Horn Team assumes that the project would be categorically excluded under the provisions of NEPA; technical studies would be required to support this determination.

Technical Studies as Required

The Kimley-Horn Team will initiate the Caltrans environmental review process through completion of the Preliminary Environmental Study (PES), a Caltrans checklist that helps with identifying the appropriate level of environmental review.

The PES will also identify federal, state and local agencies from which discretionary approval actions or permits would be required, identify efforts to comply with NEPA, and identify the anticipated NEPA pathway and rationale. Technical studies required for NEPA approval would be completed in accordance with the Caltrans' Standard Environmental Reference (SER) guidelines and Local Assistance Procedures Manual (LAPM).

The PES Form will be completed pursuant to Caltrans' SER and LAPM. The Kimley-Horn Team will submit the Draft PES to the City for review and approval. Once the Draft PES has been approved by the City, the Kimley-Horn Team will finalize the revisions, submit the PES to Caltrans. Once comments are received, the Kimley-Horn Team will revise the PES and resubmit the Final PES to Caltrans. The Kimley-Horn Team will complete a desktop review and complete the PES Form.

Task 5.1 Deliverables:

- One (1) Draft CEQA CE in PDF electronic format
- One (1) Final CEQA CE in PDF electronic format
- One (1) Draft NEPA CE in PDF electronic format
- One (1) Final NEPA CE in PDF electronic format
- One (1) Draft PES in PDF electronic format
- One (1) Final PES in PDF electronic format

Task 5.2 – Right of Way Documentation

Kimley-Horn understands the project will be completed within the public right-of-way. The project will not require any utility relocation or right-of-way acquisition or easements. If any other work will occur outside of the right-of-way in addition to what is anticipated in this scope of work, additional scope and fee would be required.

Kimley-Horn will fill out Caltrans LAPM Exhibit 13-A for the City to submit to the Caltrans District 7 Right-of-Way office. This will be completed after the 90% PS&E submittal.

Task 5.2 Deliverables:

- One (1) Draft Caltrans LAPM Exhibit 13-A
- One (1) Final Caltrans LAPM Exhibit 13-A

Task 5.3: Construction Authorization

The Kimley-Horn team will prepare a Request for Authorization (RFA) package to advance the project to construction using procedures outlined in the Caltrans Local Assistance Procedures Manual.

Task 5.3. Deliverables:

- RFA to Proceed with Construction Draft package
- RFA to Proceed with Construction Final package

Assumptions

Kimley-Horn's scope and fee are based on the following assumptions:

- It is assumed coordination with Bear Electric will be involved for the project. Bear Electric will provide existing conditions for the project, such as conduit location and health, existing copper signal interconnect locations, pull box locations, and signal cabinet inventory.
- Available record plans and documents will be provided by the City.
- It is assumed the contractor selected by the City to install the Traffic Management Center (TMC) will provide direction for how the fiber optic cables will connect into the TMC.
- Utility coordination for existing copper signal interconnect locations listed in Table 2 is not required.
- Coordination with UPRR is not required.
- Topographic survey is not required.
- Contractor will be responsible for integration into City's central management system.
- City, Utility Company, and Third-Party Agency permit or review fees are not included
- Caltrans Encroachment Permit is not required.
- Utility potholing is not included.
- Traffic Control Plans are not included.
- Civil, Striping, and Traffic Signal Modification Plans are not included.
- Caltrans intersections will not receive new timing.

If any of these assumptions are not correct, then the scope and fee will change.

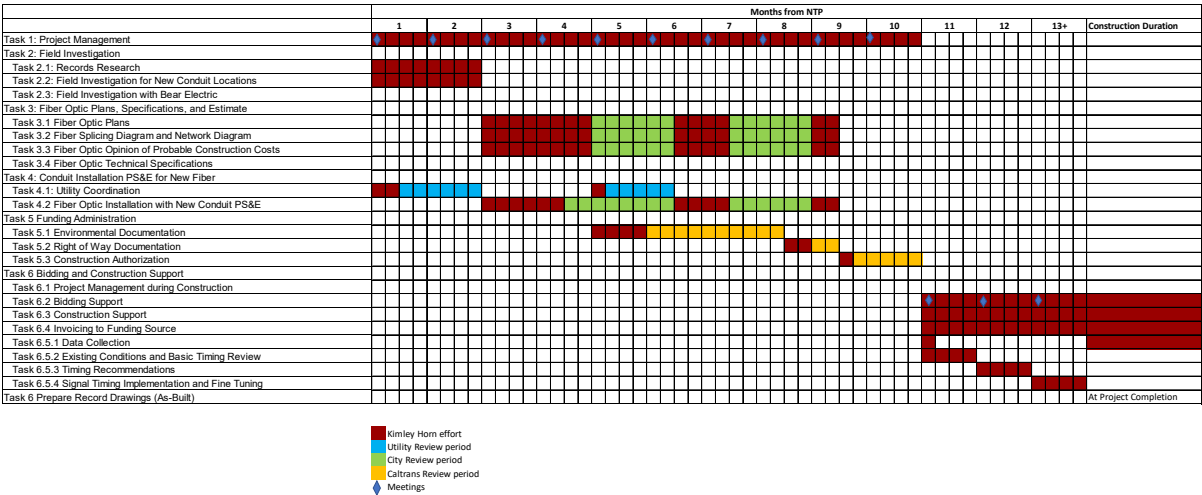
Information Provided By Client

Kimley-Horn shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives. The Client shall provide all information requested by Kimley-Horn during the project, including but not limited to the following:

- Existing condition of all conduits.
- Existing signal inventory at all intersections.
- Existing timing sheets at all intersections.
- Existing location of signal interconnect and conduits.
- Existing locations of fiber optic cables and conduits.
- Documentation for the federal funding application.

Schedule

Our draft project schedule, highlighting project tasks, durations, start and completion dates, and conservative time allocations for agency and utility company review, is provided on the following page. It is our intent to review this schedule with the City at the start of the project, make any desired adjustments, and track the project work as a progress schedule by providing regular updates.



Fee and Expenses

Kimley-Horn will perform the services in Tasks 1 – 5 for PS&E on a labor fee plus expense basis with the maximum labor fee shown in the following tables.

Kimley-Horn will not exceed the total maximum labor fee shown without authorization from the Client. However, Kimley-Horn reserves the right to reallocate amounts among tasks as necessary.

Labor fee will be billed on an hourly basis according to our then-current rates. All permitting, application, and similar project fees will be paid directly by the Client. Should the Client request Kimley-Horn to advance any such project fees on the Client's behalf, an invoice for such fees, with a fifteen percent (15%) markup, will be immediately issued to and paid by the Client.

Payment will be due within 30 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

Kimley-Horn and Associates, Inc.

197.39%	Overhead%		Sr. Professional II	Sr. Professional I	Professional II	Professional I	Analyst II	Analyst I	Project Support		
196.29%	Overhead% w/o FCCM	Category/Title								TOTAL HOURS	TOTAL COST
10%	Fee%	Direct Rate	\$133.29	\$82.92	\$73.39	\$61.54	\$54.03	\$49.28	\$42.96		
		Billing Rate	\$435.88	\$271.16	\$240.00	\$201.25	\$176.69	\$161.15	\$140.49		
Task 1	Project Management		15			60	30	5	20	130	\$ 27,529.28
Task 2	Field Investigation					104	140	45		289	\$ 52,918.08
2.1	Records Research					4	10	10		24	\$ 4,183.42
2.2	Field Investigation for New Conduit Locations						30	35		65	\$ 10,941.07
2.3	Field Investigation with Bear Electric					100	100			200	\$ 37,793.59
Task 3	Fiber Optic Plans, Specifications, and Estimate		47	35	45	130	380	825	20	1482	\$ 269,843.59
3.1	Fiber Optic Plans		20	25	35	55	225	775		1135	\$ 199,615.34
	60%		12	10	15	20	95	350		502	\$ 88,756.82
	90%		5	10	15	20	80	245		375	\$ 66,134.03
	100%		3	5	5	15	50	180		258	\$ 44,724.49
3.2	Fiber Splicing Diagram and Network Diagram		17			45	75			137	\$ 29,717.79
	90%		12			30	50			92	\$ 20,102.45
	100%		5			15	25			45	\$ 9,615.34
3.3	Fiber Optic Opinion of Probable Construction Costs		6	6	6	15	35	50		118	\$ 22,942.84
	60%		2	2	2	5	15	25		51	\$ 9,579.53
	90%		2	2	2	5	10	15		36	\$ 7,084.54
	100%		2	2	2	5	10	10		31	\$ 6,278.76
3.4	Fiber Optic Technical Specifications		4	4	4	15	45		20	92	\$ 17,567.62
	90%		2	2	2	10	35		10	61	\$ 11,495.54
	100%		2	2	2	5	10		10	31	\$ 6,072.09
Task 4	Conduit Installation PS&E for New Fiber		10	10	10	50	110	205	20	415	\$ 74,815.08
4.1	Utility Coordination					30	40	40	20	130	\$ 22,360.91
4.2	Fiber Optic Installation with New Conduit PS&E		10	10	10	20	70	165		285	\$ 52,454.17
	60%		5	5	5	10	45	90		160	\$ 29,202.63
	90%		3	3	3	5	15	55		84	\$ 15,361.23
	100%		2	2	2	5	10	20		41	\$ 7,890.31
Task 5	Funding Administration					6				6	\$ 1,207.48
5.1	Environmental Documentation					2				2	\$ 402.49
5.2	Right of Way Documentation					2				2	\$ 402.49
5.3	Construction Authorization					2				2	\$ 402.49
	TOTAL HOURS		72	45	55	350	660	1080	60	2322	
	Subtotal Labor:		\$31,383.62	\$12,202.39	\$13,199.96	\$70,436.62	\$116,614.32	\$174,047.36	\$8,429.24		\$ 426,313.51
	Other Direct Costs										\$ 25,660.00
	Avant Garde										\$ 25,660.00
	TOTAL COST:										\$ 451,973.51

Closure

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, "Kimley-Horn" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to the City of Commerce.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in a PDF. We can also provide a paper copy via regular mail if requested. Please include the invoice number and Kimley-Horn project number with all payments. Please provide the following information:


____ Please email all invoices to _____

____ Please copy _____

To ensure proper set up of your projects so that we can get started, please complete and return with the signed copy of this Agreement the attached Request for Information. Failure to supply this information could result in delay in starting work on this project. We appreciate the opportunity to provide these services. Please contact me if you have any questions.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.



Jean Fares, P.E.
Sr. Vice President
P.E. No.: TR2097



Vivian Chong, P.E.
Project Manager
P.E. No.: 95833

[CITY OF COMMERCE]

SIGNED: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____

Client's Federal Tax ID: _____

Client's Business License No.: _____

Client's Street Address: _____

Attachment – Request for Information
Attachment – Standard Provisions

Request for Information

Please return this information with your signed contract; failure to provide this information could result in delay in starting your project

Client Identification

Full, Legal Name of Client					
Mailing Address for Invoices					
Contact for Billing Inquiries					
Contact's Phone and e-mail					
Client is (check one)	Owner	<input type="checkbox"/>	Agent for Owner	<input type="checkbox"/>	Unrelated to Owner

Property Identification

	Parcel 1	Parcel 2	Parcel 3	Parcel 4
Street Address				
County in which Property is Located				
Tax Assessor's Number(s)				

Property Owner Identification

	Owner 1	Owner 2	Owner 3	Owner 4
Owner(s) Name				
Owner(s) Mailing Address				
Owner's Phone No.				
Owner of Which Parcel #?				

Project Funding Identification – List Funding Sources for the Project

Attach additional sheets if there are more than 4 parcels or more than 4 owners

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS

- 1) **Kimley-Horn's Scope of Services and Additional Services.** Kimley-Horn will perform only the services specifically described in this Agreement ("Services"). Any services that are not set forth in the scope of Services described herein will constitute additional services ("Additional Services"). If requested by the Client and agreed to by Kimley-Horn, Kimley-Horn will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay Kimley-Horn for any Additional Services an amount based upon Kimley-Horn's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
- 2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:
 - a. Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
 - b. Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
 - c. Provide Kimley-Horn all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which Kimley-Horn may rely upon.
 - d. Arrange for access to the site and other property as required for Kimley-Horn to provide its services.
 - e. Review all documents or reports presented by Kimley-Horn and communicate decisions pertaining thereto within a reasonable time so as not to delay Kimley-Horn.
 - f. Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
 - g. Obtain any independent accounting, legal, insurance, cost estimating, and feasibility services required by Client.
 - h. Give prompt written notice to Kimley-Horn whenever the Client becomes aware of any development that affects Kimley-Horn's services or any defect or noncompliance in any aspect of the project.
- 3) **Period of Services.** Unless otherwise stated herein, Kimley-Horn will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that Kimley-Horn does not control. If such delay or suspension extends for more than six months, Kimley-Horn's compensation shall be renegotiated.
- 4) **Method of Payment.** Client shall pay Kimley-Horn as follows:
 - a. Invoices will be submitted periodically for services performed and expenses incurred. Invoices are due and payable upon presentation. Client shall pay Kimley-Horn a time price differential of one and one-half percent (1.5%) of the outstanding amount of each invoice that is overdue for more than 30 days. The Client shall also pay any applicable sales tax. All retainers will be held by Kimley-Horn and applied against the final invoice. If the Client fails to make any payment due under this or any other agreement within 30 days after presentation, Kimley-Horn may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid, and may commence legal proceedings including filing liens to secure payment.
 - b. The Client will remit all payments electronically to:
Account Name: KIMLEY-HORN AND ASSOCIATES, INC.
Bank Name and Address: WELLS FARGO BANK, N.A., SAN FRANCISCO, CA 94104
Account Number: 2073089159554
ABA#: 121000248
 - c. The Client will send the project number, invoice number, and other remittance information by e-mail to payments@kimley-horn.com at the time of payment.
 - d. If the Client relies on payment or proceeds from a third party to pay Kimley-Horn and Client does not pay Kimley-Horn's invoice within 60 days of receipt, Kimley-Horn may communicate directly with such third party to secure payment.
 - e. If the Client objects to an invoice, it must advise Kimley-Horn in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
 - f. If Kimley-Horn initiates legal proceedings to collect payment, it shall recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings.

Such expenses shall include the cost, at Kimley-Horn's normal hourly billing rates, of the time devoted to such proceedings by its employees.

- g. The Client agrees that the payment to Kimley-Horn is not subject to any contingency or condition. Kimley-Horn may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of Kimley-Horn to collect additional amounts from the Client.
- 5) **Use of Deliverables.** All documents, data, and other deliverables prepared by Kimley-Horn are related exclusively to the services described in this Agreement and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of Kimley-Horn's deliverables, or any reuse of the deliverables without written authorization by Kimley-Horn will be at the Client's sole risk and without liability to Kimley-Horn, and the Client shall indemnify, defend and hold Kimley-Horn harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. Kimley-Horn's electronic files and source code remain the property of Kimley-Horn and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the deliverables prepared by Kimley-Horn, the hardcopy shall govern.
- 6) **Intellectual Property.** Kimley-Horn may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Kimley-Horn or its affiliates ("Intellectual Property") in the performance of this Agreement. Intellectual Property, for purposes of this section, does not include deliverables specifically created for Client pursuant to the Agreement and use of such deliverables is governed by section 5 of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Kimley-Horn maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Kimley-Horn and its affiliates. If Kimley-Horn's services include providing Client with access to or a license for Kimley-Horn's (or its affiliates') proprietary software or technology, Client agrees to the terms of the Software License Agreement set forth at <https://www.kimley-horn.com/khts-software-license-agreement> ("the License Agreement") which terms are incorporated herein by reference.
- 7) **Opinions of Cost.** Because Kimley-Horn does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. Kimley-Horn cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Kimley-Horn's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.
- 8) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. Kimley-Horn shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by Kimley-Horn as a result of such termination.
- 9) **Standard of Care.** The standard of care applicable to Kimley-Horn's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by Kimley-Horn's performance of services, and it is agreed that Kimley-Horn is not a fiduciary with respect to the Client.
- 10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and Kimley-Horn, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of Kimley-Horn and Kimley-Horn's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims,

losses, costs, attorneys' fees, or damages whatsoever arising out of or in any way related to the services under this Agreement from any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of Kimley-Horn or Kimley-Horn's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by Kimley-Horn under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section shall require the Client to indemnify Kimley-Horn.

- 11) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.
- 12) **Professional Liability Insurance.** Kimley-Horn will maintain a professional liability insurance policy for the services provided by Kimley-Horn during the course of this Agreement.
- 13) **Construction Costs.** Under no circumstances shall Kimley-Horn be liable for extra costs or other consequences due to changed or unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Kimley-Horn shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before Kimley-Horn has issued final, fully approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.
- 14) **Certifications.** All requests for Kimley-Horn to execute certificates, lender consents, or other third-party reliance letters must be submitted to Kimley-Horn at least 14 days prior to the requested date of execution. Kimley-Horn shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which Kimley-Horn does not have actual knowledge, or that would cause Kimley-Horn to violate applicable rules of professional responsibility.
- 15) **Dispute Resolution.** All claims arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.
- 16) **Hazardous Substances and Conditions.** Kimley-Horn shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Kimley-Horn's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. Kimley-Horn will notify the Client of unanticipated hazardous substances or conditions of which Kimley-Horn actually becomes aware. Kimley-Horn may stop affected portions of its services until the hazardous substance or condition is eliminated.
- 17) **Construction Phase Services.**
 - a. If Kimley-Horn prepares construction documents and Kimley-Horn is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against Kimley-Horn in any way connected thereto.
 - b. Kimley-Horn shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, equipment maintenance and inspection, sequence, schedule, safety programs, or safety practices, nor shall Kimley-Horn have any authority or responsibility to stop or direct the work of any contractor. Kimley-Horn's visits will be for the purpose of observing construction and reporting to the Client whether the contractors' work generally conforms to the construction documents prepared by Kimley-Horn. Kimley-Horn neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.
 - c. Kimley-Horn is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and Kimley-Horn for all claims and liability arising out of job site accidents; and that the Client and Kimley-Horn shall be made additional insureds under the contractor's general liability insurance policy.

- 18) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and Kimley-Horn, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and Kimley-Horn. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Kimley-Horn, without the written consent of Kimley-Horn. Kimley-Horn reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If Kimley-Horn exercises this right, Kimley-Horn will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.
- 19) **Confidentiality.** The Client consents to the use and dissemination by Kimley-Horn of photographs of the project and to the use by Kimley-Horn of facts, data and information obtained by Kimley-Horn in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, Kimley-Horn shall use reasonable care to maintain the confidentiality of that material.
- 20) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State of California. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by Kimley-Horn. If Client requires Kimley-Horn to register with or use an online vendor portal for payment or any other purpose, any terms included in the registration or use of the online vendor portal that are inconsistent or in addition to these terms shall be void and shall have no effect on Kimley-Horn or this Agreement. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

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 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 to the extent arising out of, pertaining to, or relating to 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 or active 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, nonowned 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 materially 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.