

PROFESSIONAL SERVICES AGREEMENT

This agreement ("Agreement") is made as of June 13, 2023, by and between the **City of Commerce**, a municipal corporation ("City") and John G. Cataldo Architects ("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 prepare the plans for the complete renovation and upgrade of the Bandini Library 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 June 13, 2023 (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, 2025, 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 \$3.00.

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: Edgar P. Cisneros, City Manager

John G. Cataldo Architects

John G. Cataldo Architects
835 Mission Street
South Pasadena, CA 91030
Attn: John Cataldo A.I.A. C.S.I., Chief Executive Officer

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: _____
Hugo A. Argumedo, Mayor

Date

CONSULTANT

John G. Cataldo Architects

By: _____
John Cataldo A.I.A. C.S.I.,
Chief Executive Officer

Date

ATTEST:

By: _____
Lena Shumway, City Clerk

Date

APPROVED AS TO FORM:

By: _____
Noel Tapia, City Attorney

Date

EXHIBIT A
SCOPE OF WORK



JOHN G. CATALDO
A.I.A., C.S.I., ARCHITECT INC.

DEVELOPMENT/PLANNING
ARCHITECTURE/ENGINEERING

CONSTRUCTION MANAGEMENT
ENGINEERING CONSULTANTS

May 11, 2023

City of Commerce
ATTN: Gina Nila
Director of Public Works
2535 Commerce Way
Commerce, CA 90040

RE: RENOVATION OF BANDINI LIBRARY RFP

Dear Ms. Nila,

On behalf of John G. Cataldo Architects, it gives us great pleasure to present this proposal for the development of the Bandini Library located at 2269 South Atlantic Boulevard Commerce, 90040.

We truly believe that our combination of three-plus decades of commercial architecture expertise and community involvement in City of Commerce makes our team the leading candidate to bring the City's vision of an existing library to life as a much-needed additional resource in the community. Our goal is to provide educational support, resources, and equipment in a safe and productive space for children to learn.

As you review our team's qualifications and relationships, we believe that you will agree that we are best qualified to move your next phase of development forward. We look forward to meeting with you and your board to discuss the next steps.

Warmly,

John Cataldo A.I.A. C.S.I.
Chief Executive Officer
John Cataldo Architects

EXECUTIVE SUMMARY

PROJECT DESCRIPTION

The renovation of the existing Bandini Library located at 2269 South Atlantic Boulevard Commerce, 90040. The development will consist of 3 critical steps:

- Creation of a children's homework facility as part of the library.
- Enhancement/improvement of the façade, and necessary improvements to the existing parking lot and adjacent sidewalk areas.
- Upgrade the entire building's architectural, structural, seismic, mechanical, electrical, plumbing, HVAC, fire sprinklers, façade, utilities, interior spaces, and all necessary code compliance aspects.

PROJECT TEAM

Cataldo Architects has been involved with the City of Commerce for the past 40 years. Our firm has completed the design and construction of over 25 buildings within the city. We have aimed at providing strong functional solutions that express the cohesive sense of community embodied in the City of Commerce.

Our team, comprised of diverse designers, engineers, and architects, has focused on the specific zoning and planning aspects within the City of Commerce. We believe that this sensitivity will help foster a creative and functional solution of which the city can be proud.

PROJECT STRATEGY

Our approach will be based on interaction and involvement from the community to create an expression unique to the City of Commerce.

Over the years, we have found that Commerce has become a diverse, inclusive, and dynamic place to live and work, and the library needs to provide a sense of place, learning, warmth, and serve as an inviting place for the community to interact.

PROPOSED PRELIMINARY DESIGN - OPTION 1



PROPOSED PRELIMINARY DESIGN - OPTION 2



TABLE OF CONTENTS

1. Approach and Scope of Work.....	1
2. Schedule.....	4
3. Project Team, Key Personnel and Resumes.....	5
4. References.....	10
5. Firm Qualifications.....	14
6. City's Standard Professional Services Agreement.....	15

APPROACH AND SCOPE OF WORK

Provide your understanding of the project, and approach and a detailed scope of work and tasks how to accomplish the City's goal in the most efficient and cost effective manner:

Our approach to the project is to create a robust program that is developed in collaboration with the community to determine the most suitable uses and space requirements. We will gain a thorough understanding of the building structure and systems to ensure a fully immersive approach. Our goal is to create a setting that optimizes the existing systems and enhances the quality of the space.

To achieve this, our firm will conduct intensive community workshops. We are fully dedicated to conducting as many workshops as needed to ensure that the program's functions, materials, and building systems are customized to meet the unique needs and preferences of the community. Our commitment to these workshops is a testament to our unwavering focus on delivering an end result that truly reflects the community's vision and values.

Provide any special methods that your firm employs in executing similar projects and services, which in your opinion set your firm apart from other proposers for this project.

We have a track record of success in conducting similar workshops with community groups, resulting in highly effective solutions. Our experience in facilitating collaborative dialogue between community members, stakeholders, and our team allows us to leverage diverse perspectives and create innovative solutions that meet the unique needs of each project.

We have extensive experience working on all types of development projects, and we understand the importance of creating spaces that are welcoming, functional, and flexible. Overall, we believe that our experience, expertise, and collaborative approach make us uniquely qualified to take on the challenge of renovating a library.

Provide your approach of how you and your staff will be flexible in adapting to any adjustments as necessary as the project progresses for an effective, responsive and cost-effective service.

Our team is highly responsive and committed to exploring all possible suggestions and alternatives. We conduct a thorough analysis and provide comprehensive plan studies to evaluate the effectiveness of various options. We strive to deliver innovative

solutions that meet the unique needs of each project, and our ability to think creatively and adapt to changing circumstances is key to our success.

We understand that city requirements are an essential aspect of a successful project. The city has the knowledge and expertise to navigate complex regulations and zoning laws, and we are committed to working closely with city officials to ensure compliance.

We will provide a cost-effective service by taking several measures such as understanding the budget from the outset, creating an efficient design that maximizes the use of space, selecting cost-effective materials, streamlining the design process through the use of technology, collaborating with contractors to identify cost-saving opportunities, and providing ongoing cost analysis throughout the project. By using these measures, we will design and manage the project that will meet the requirements while staying within budget, thus providing a cost-effective service.

Provide your approach and methodology how you will provide a responsive service to City, and why your firm would be more responsive than other firms.

As an architectural firm, we believe that providing a responsive service to the City is paramount to the success of any project. Our approach and methodology would be to closely collaborate with City officials and stakeholders from the outset of the project, establishing open lines of communication and a shared understanding of the project goals and requirements. This would involve conducting thorough research and analysis to fully understand the City's regulatory and zoning requirements, as well as any other pertinent factors that may impact the project.

Our team would also prioritize flexibility and adaptability throughout the design process, remaining open to feedback and making adjustments as needed to ensure that the project meets all necessary requirements. We would also leverage our experience working with City officials to proactively anticipate any potential issues and address them before they become major roadblocks to progress.

We believe that our firm would be particularly responsive to City requests for several reasons. First, we have a deep understanding of the local regulatory landscape and have successfully navigated complex requirements on many previous projects. Second, we prioritize effective communication and collaboration throughout the design process, allowing us to quickly and effectively respond to any concerns or requests from City officials. Finally, our team is committed to problem-solving and innovation, meaning that we are always looking for new and creative ways to meet the needs of our clients while satisfying all necessary requirements.

Provide a detailed scope of services, and list project tasks that your firm thinks will be necessary and proposes to provide.

1. Conducting a site analysis to determine site constraints and opportunities
2. Developing a program that outlines the project requirements and objectives
3. Developing conceptual designs and options for the project
4. Preparing schematic designs, design development documents, and construction drawings
5. Coordinating with consultants such as engineers and surveyors
6. Conducting cost estimating and developing a project budget
7. Preparing project specifications and bid documents
8. Assisting with the contractor selection process
9. Conducting regular site visits to ensure that the project is being constructed according to the plans and specifications
10. Assisting with the preparation of construction change orders
11. Reviewing shop drawings and submittals
12. Coordinating with the client to ensure that the project meets their needs and expectations
13. Preparing as-built drawings and documents
14. Providing post-occupancy evaluations to ensure that the project is functioning as intended.

SCHEDULE

Phase 1: Pre-Design

Goal: Establish project scope, budget, and schedule. Determine feasibility and conduct site analysis.

Timeline: 4 weeks

Phase 2: Schematic Design

Goal: Develop preliminary designs that explore project requirements, design alternatives, and cost estimates.

Timeline: 8 weeks

Phase 3: Design Development

Goal: Refine the design and establish technical specifications for construction. Develop detailed drawings and specifications.

Timeline: 12 weeks

Phase 4: Construction Documents

Goal: Develop final detailed drawings and specifications for construction.

Timeline: 16 weeks

Phase 5: Bidding and Negotiation

Goal: Obtain competitive bids from contractors and negotiate the contract.

Timeline: 8 weeks

Phase 6: Construction Administration

Goal: Provide ongoing oversight of the construction process to ensure the project is built according to the design and specifications.

Timeline: 40 weeks

Total project timeline: 88 weeks

PROJECT TEAM, KEY PERSONNEL AND RESUMES

CATALDO ARCHITECTS

- John G. Cataldo AIA, CSI- Project Architect
- Nathan Battle AIA- Project Manager
- Natalya Lepskaya - Job Captain
- Francisco Contreras- Project Designer

Cataldo Architects and Engineers focuses undivided attention to our clients' needs, budget, and timeframe when creating problem-solving building solutions. As the business landscape evolves, we continually navigate and seek new ways to provide astute guidance to our network of clients and partners. We believe that making something that contributes to the world, honestly and fairly, drives us to be our best. Through the decades, our agile, multi-cultural, multi-skill approach has resulted in loyal clients who come back with larger and more challenging projects. In turn, we deliver award-winning, sustainable buildings on budget and on time.

ABOUT THE ARCHITECT JOHN CATALDO

John Cataldo is a licensed architect in ten states, practicing primarily in California, and he is the president and founder of Cataldo Architects and Engineers in South Pasadena. In his early years, Mr. Cataldo prioritized education, earning degrees from Pepperdine University in Business Administration; the University of Southern California in Architecture and University of Arizona in Architecture. He is affiliated with American Institute of Architects; the Construction Specifications Institute; the American Society of Interior Designers; the National Trust for Historic Preservation; the International Conference of Building Officials; and the National Council of Architectural Registration Boards.

Mr. Cataldo has distinguished himself in the design of more than 5,000 architectural projects. These represent five million square feet of built commercial, industrial, and residential developments.

Some examples of HOSPITALITY projects:

- 4-building, 880-room extended stay hotel complex on 22 acres in San Antonio, Texas
- 4-story, 121-room Courtyard by Marriot Hotel in Vista, California
- 5-story, 127-room Hampton Inn & Suites Hotel in Torrance, California
- 6-story, 160-room Hotel in Inglewood, California

Some examples of MIXED-USE projects:

- Commercial with 812 residential units on 17 acres Urban Village Park in Commerce, CA
- 14-story high rise 180,000 S.F. Mixed-Use Complex in Long Beach, CA
- Commercial with 86 residential units Mixed-Use Complex in Los Angeles, CA
- Commercial with 31 residential units Mixed-Use Complex in Los Angeles, CA

Prior to founding Cataldo Architects and Engineers, Mr. Cataldo was Director of Development and Construction Manager for Cadillac Fairview, California, with responsibility for:

- The 540-acre Los Angeles Commercial Center
- The 270-acre Pacific Gateway Center in Southern Los Angeles County
- The 238-acre Orange County Business Center in Irvine
- The 80-acre Haven Commerce Center in Ontario/San Bernardino
- The 40-acre Claremont Business Park in Claremont
- The 250 acre Fontana Commerce Center in Fontana

In these projects, Mr. Cataldo was responsible for project conception, administration, marketing, budgeting, financial analysis, design, planning, coordination, scheduling, and construction. He also managed budgets, schedules, approvals, permits, zoning, agency interface, value engineering, architects/engineers supervision, construction contract administration, tenant improvements, lease administration, and tenant relations.

ABOUT THE PROJECT MANAGER

NATHAN BATTLE

Professional Profile

Nathan Battle is a licensed architect in the State of California since 1983.

Professional Experience

JOHN CATALDO & ASSOCIATES INC.,

2000 – Present

South Pasadena, CA

Project Architect

- Work on all phases of a project preliminary, design and development, working drawings and field inspections. Project coordinator with engineers, contracts, and clients during all phases of a project.
- Type of Project: Industrial and commercial buildings, tenant improvement, residential.

CONCORDE CONSULTING GROUP,

1998 – 1999

South Pasadena, CA

Consulting Structural Engineer/ Construction Management

FIRST SELECTION CONSTRUCTION COMPANY,

1996 – 1999

Huntington Beach, CA

Contractor

DOREA CONSTRUCTION, INC.,

1993 – 1994

Cerritos, CA

Contractor

BILMAN AND BILMAN NATHAN C. BATTLE,

1988 – Present

South Pasadena, CA

Consulting Structural Engineers

OMER BILGE' & ASSOCIATES,

1988 – Present

Los Angeles, CA

Consulting Structural Engineers

LORAND WEST, INC.,

1972 – 1995

Burbank, CA

Architecture-Engineering-Planning

Education

University of California, 1976

Berkeley,

B.A. Architecture

East Los Angeles Junior College, 1974

A.A. Architecture

Affiliations:

1990 Member of Construction Specification Institute (CSI)

1997 Governor's Office of Emergency Service (O.E.S.), State of California

ABOUT THE JOB CAPTAIN

NATALYA LEPSKAYA

Professional Profile

Natalya Lepskaya is an accomplished architectural professional with the proven ability to complete projects on schedule and within budget. A visionary and creative with the ability to prioritize, organize and structure project details and milestones. Proven ability to coordinate, lead and “be hands on” during the development and production of multiple projects.

Professional Experience

John Cataldo & Associates Inc.,
South Pasadena, CA

2017 – Present

Architectural Project Manager

- Development of various project types, and sizes ranging from small to mid-size projects, specializing in commercial tenant improvements, retail, recreational, mercantile, public and community projects.
- Ability to lead and delegate tasks to supporting staff and drafting teams overseeing the production and development of the projects.
- Expertise in performing due diligence and code compliance analysis.
- Experienced at Programming, Schematic Design, Development and Production for all project assignments.
- Effective focal point for staff, Consultants, and Clients ensuring quality and utmost productivity for projects, efforts with the goal of increasing Firm's profitability.
- Excellent written and verbal communications with Clients, Staff and Consultants etc.
- Experienced at coordinating construction documents with Engineers, Vendors, Consultants, and staff for national and international project.
- Effectively facilitate on-site meetings, inspections, and construction administration duties.
- Detailed and focused when reviewing all submittals, such as architectural, engineering and shop drawings.
- Ability to work quickly and resolve design challenges or other technical issues, to meet the constraints of the budget and deadline.

Education

University of California, Berkeley, 2018

B.A. Landscape Architecture and Environmental Planning

Key Projects

- 121-suite hotel – 760 Shadowridge Drive, Vista, CA
Attained an entitlement for the project. Notably accomplished with very few setbacks.
- 83-suite extended stay hotel - 129 E Providencia Avenue, Burbank, CA
Successfully coordinated with client and all municipal departments to address all design and zoning regulations. Project is in process of obtaining a building permit.
- Haven Dispensaries
Completed 10+ locations from start to finish and currently working on multiple other locations. Lead project manager for all sites.

ABOUT THE PROJECT DESIGNER

FRANCISCO CONTRERAS

Professional Profile

Francisco Contreras joined Cataldo Architects & Engineers in 2021 and has since been responsible for supporting teams with projects in various phases. His duties include the development of conceptual/schematic designs, 3D modeling/rendering, and the creation of construction drawings.

Professional Experience

John Cataldo & Associates Inc.,
South Pasadena, CA

2021 – Present

Architectural Designer

- Design skills and knowledge
- Analytical thinking skills
- Detail-oriented
- Collaboration with design teams during development of various project types and sizes.
- Experienced with industrial/commercial, residential, mixed-used, and retail.
- Experienced with creating construction drawings.

Education

California State Polytechnic University,
Pomona, 2021
Bachelor of Architecture

Key Projects

- Goodwill Store
Tenant Improvement: Worked with client to coordinate store layout, developed construction drawings, obtained city permits.
- Costlow Store (Tenant Improvement)
Tenant Improvement: successfully coordinated with the team during the development of the project, ensuring that all aspects were executed according to plan and delivered on time.

REFERENCES

See pages 11-13.

Mark Giardino
4429 1/2 Morrpark Way
Toluca Lake, Ca 91602
818-266-9941
mark@giardinoconstruction.com

Project Description:

165,000 sq ft Phoenix headquarters for Industrial Metal Supply
Project is located on 10 acres and includes approximately 20,000 sq ft of retail space, 15,000 sq ft of office and 140,000 sq ft of warehouse/manufacturing /processing steel and metal products. Structure is equipped with several bays of bridge cranes, process equipment and storage racks. Architect held full responsibility for design and construction including all consultants, interiors and tenant relations.

Approximate total cost \$20 million.



Industrial Metal Supply Phoenix Headquarters
38th Street, Phoenix, CA

Summa Properties
Robert Burg
1355 Allenford Avenue
Los Angeles, CA 90049
310-502-5512
robertsburg@gmail.com

Project Description:

Client holds numerous commercial properties. Firm has been involved in refurbishment, upgrade and continuing redesign of numerous structures. Work for Summa Properties has been ongoing for the last 30 years.

Approximate total cost \$10 million.



1411 Santee Street, Los Angeles

New Spark Holdings
Gary Turpanjian
580 Silver Spur Road
Rancho Palos Verdes, CA 90275
garyt@sparkholdings.com
310-265-6725

Project Description:

Client holds numerous commercial projects. Architect recently completed refurbishment of company corporate offices. Recently completed work for Corporate Headquarters for Oriental Motors. New construction of 40,000 sq ft commercial building.

Approximate total cost 8 million.



Oriental Motors
570 Alaska Avenue, Torrance. CA

FIRM QUALIFICATIONS

- Expertise in renovation projects: Renovating an existing structure requires a particular set of skills and knowledge. We have extensive experience working on renovation projects, and we understand the challenges of working within an existing structure while still creating a design that meets all regulatory and zoning requirements.
- Collaborative approach: We believe that the key to a successful project is a collaborative approach. We are committed to working closely with our clients, as well as with all stakeholders involved in the project, to ensure that the final design meets the needs of everyone involved.
- Attention to detail: We understand the importance of attention to detail in all aspects of the design process. From space planning to material selection, we are committed to creating a design that is both beautiful and functional.
- Knowledge of sustainability: We believe in designing sustainable buildings that are energy-efficient and environmentally friendly. We have extensive knowledge of sustainable design practices and can incorporate these practices into the library renovation project.
- Use of technology: We use the latest technology to create accurate drawings and renderings, allowing clients to visualize the final design. We also use technology to streamline communication and collaboration throughout the project.

DEVELOPMENT BUDGET / FEE

As an architect with many years of experience in designing public buildings, I am confident that my team and I can create a beautiful and functional space that will serve the needs of the community, therefore I am interested in renovating the Bandini Library with my own funding for the A&E services.

My team and I are passionate about creating spaces that inspire and empower people, and we believe that a city library is an important resource for any community. With our expertise in design, project management, and construction, we are well-equipped to undertake this project.

PROPOSED FEE BREAKDOWN:

- | | |
|--|--------|
| 1. Conceptual Design and PS&E Phase Services | \$1.00 |
| 2. Bidding Phase Services | \$1.00 |
| 3. Construction Phase Services | \$1.00 |

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.