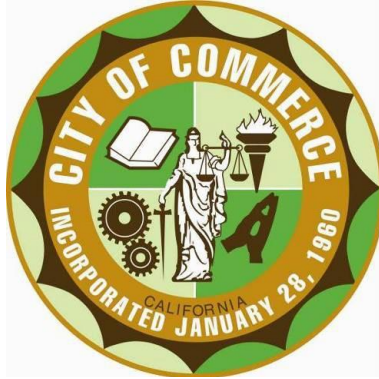


**CITY OF COMMERCE**  
**REQUEST FOR PROPOSAL (RFP)**  
**INDUSTRIAL HYGIENIST ABATEMENT**  
**OVERSIGHT PROFESSIONAL SERVICES**  
for  
**C.I.P. NO. 2016-12**  
**Veterans Park Building**  
**Shooting Range Lead Abatement/Demolition**



CITY OF COMMERCE  
2535 COMMERCE WAY  
COMMERCE, CA. 90040

**Prepared Under the Supervision of:**  
Maryam Babaki, P.E.  
Director of Public Works and Development Services

**Prepared and Issued by:**  
Public Works and Development Services Department

**Date Issued:**  
October 5, 2016

**PROPOSALS DUE: November 2nd by 12:00pm**

**Mandatory Pre-Bid Meeting: October 20<sup>th</sup> at 9:00 am**



## CITY OF COMMERCE NOTICE INVITING PROPOSALS

### **Veterans Park Building Shooting Range Lead Abatement/Demolition** **PROFESSIONAL SERVICES C.I.P. NO. 2016-12**

**PUBLIC NOTICE IS HEREBY GIVEN** that the City of Commerce ("City"), invites proposals for the above stated project and will receive such proposals in the office of the Public Works & Development Services Department, 2535 Commerce Way, City of Commerce, California 90040, **UP TO THE HOUR OF 12:00PM on November 2, 2016.**

Copies of the Request for Proposal and related documents are available for download at the City's website: <http://www.ci.commerce.ca.us/bids.aspx>.

In order to be considered in the selection process, interested parties shall submit three (3) copies of their proposal in conformance with instructions provided. Proposals shall be submitted in a sealed envelope plainly marked on the outside: **"VETERANS PARK BUILDING SHOOTING RANGE LEAD ABATEMENT/DEMOLITION – PROFESSIONAL SERVICES CIP #2016-012"**.

The work to be performed includes furnishing all labor, services, materials, tools, equipment, and incidentals necessary to conduct lead and asbestos monitoring, clearance inspections, re-establishment of work area and systems, submittal review and project completion documentation with final report. For the following:

- Approximately 10,925 square foot basement level footprint of the shooting range is to remove all range HVAC system components, range equipment, non-load bearing walls, wallcoverings, ceilings, flooring, base and mastic. All surfaces of the basement level including, stairs, elevator pit and shaft are to be abated of lead containing dust / paint chips.
- Approximately 126 square foot mechanical room footprint that encloses the shooting range exhaust fan. The exhaust fan and all ductwork are to be removed and cleaned / abated of lead dust / paint chips. All interior and exterior surfaces of this equipment room are to be cleaned/ abated.
- Approximately 1300 square feet of side yard at the West side of the building will require abatement of lead dust / paint chips from top of the pavement and mechanical room stairs and storm drains. Approximately 250 lineal feet of CMU block wall's interior face and top of wall will require abatement of lead dust.
- Approximately 8510 square feet of mezzanine corridor and two mechanical rooms require lead dust cleaning / abatement of all surfaces including ductwork, lockers, utility panels, stairs, access ladder, handrails and mechanical roof area.

A **MANDATORY** pre-proposal meeting will be held on: **October 20, 2016 at 9:00 A.M.** at the **City of Commerce, Veteran's Park Multi-Purpose Room**, located at 6364 Zindell Avenue, Commerce, CA. 90040. Please RSVP in writing via e-mail to Paul Banuelos, Project Manager (Consultant) at [pbanuelos@swinerton.com](mailto:pbanuelos@swinerton.com) with a copy to Gina Nila, Deputy Director of Public Works - Operations at [ginan@ci.commerce.ca.us](mailto:ginan@ci.commerce.ca.us). Please include company name, contact information and phone number.

All questions regarding this proposal shall be directed via email, no later than **October 25, 2016 at 10:00 am**, to Paul Banuelos, Project Manager (Consultant) at [pbanuelos@swinerton.com](mailto:pbanuelos@swinerton.com) with a copy to Gina Nila, Deputy Director of Public Works - Operations at [ginan@ci.commerce.ca.us](mailto:ginan@ci.commerce.ca.us). **It is the responsibility of the proposer to confirm transmission of correspondence.**

***The City reserves the right to reject any or all proposals, to waive any irregularity, and to take all proposals under advisement for a period of thirty (30) days.***

BY ORDER OF the City Council of the City of Commerce, California on **October 4, 2016.**

Gina Nila, Operations, Deputy Director of Public Works - Operations

DATE

**CITY OF COMMERCE**

Purchasing Division  
2535 Commerce Way  
Commerce, CA 90040  
(323) 722-4805

**REQUEST FOR PROPOSAL**

Issue Date: **10/05/16**

Closing Date: **11/02/16 at 12:00PM**

Gina Nila, Deputy Dir. of P.W Operations

E-mail: [ginan@ci.commerce.ca.us](mailto:ginan@ci.commerce.ca.us)

**REQUEST FOR PROPOSALS (RFP)  
INDUSTRIAL HYGIENIST ABATEMENT OVERSIGHT PROFESSIONAL SERVICES  
FOR CITY OF COMMERCE**

**Veterans Park Building Shooting Range Lead Abatement/Demolition**

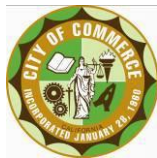
**PROFESSIONAL SERVICES C.I.P. NO. 2016-12**

## **INTRODUCTION AND DESCRIPTION**

The City of Commerce is soliciting Proposals (hereinafter referred to as RFP) from qualified firms to provide professional INDUSTRIAL HYGIENIST ABATEMENT OVERSIGHT PROFESSIONAL SERVICES for the **VETERANS PARK SHOOTING RANGE LEAD ABATEMENT/DEMO Project**. The Firing Range was in operation from approximately 1970 to 2009. Elevated lead-based paint and lead dust was detected on all surfaces and within the Shooting Range and the ventilation system. In addition, elevated lead dust was found on exterior surfaces immediately surrounding the Veteran's Park Recreational Building, located at 6364 Zindell Ave, Commerce, CA 90040. Lead dust, soil, paint and XRF sampling were performed. It is believed that the ventilation system used for the Range during weapons firing and trap cleaning actions are the primary source of lead dust contamination inside and immediately outside of the Range.

**Project Location:**

**Veteran's Park  
6364 Zindell Avenue  
Commerce, CA. 90040**



## SCOPE OF WORK

**Overview** - The project involves conducting lead and asbestos abatement monitoring, clearance inspections, re-establishment of work area and systems, submittal review and project completion documentation with final report.

The abatement and demolition scope that is to be documented:

- Approximately 10,925 square foot basement level footprint of the shooting range is to remove all range HVAC system components, range equipment, non-load bearing walls, wallcoverings, ceilings, flooring, base and mastic. All surfaces of the basement level including, stairs, elevator pit and shaft are to be abated of lead containing dust / paint chips.
- Approximately 126 square foot mechanical room footprint that encloses the shooting range exhaust fan. The exhaust fan and all ductwork are to be removed and cleaned / abated of lead dust / paint chips. All interior and exterior surfaces of this equipment room are to be cleaned/ abated.
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- Approximately 8510 square feet of mezzanine corridor and two mechanical rooms require lead dust cleaning / abatement of all surfaces including ductwork, lockers, utility panels, stairs, access ladder, handrails and mechanical roof area.

## TIMELINE (milestones)

- |                             |  |
|-----------------------------|--|
| • Pre-Proposal Meeting      | 10/20/2016 at 9:00 AM                  |
| • Pre-Proposal Inquires due | 10/25/2016                             |
| • Proposals due             | 11/02/2016 by 12:00 PM                 |
| • Award Notification by     | 12/07/2016                             |
| • Abatement / Demo          | 30 working days max.                   |
| • Final Report due          | 10 working days after clearance issued |

## GENERAL ADMINISTRATIVE INFORMATION

1. **SELECTED CONSULTANT:** The selected consultant will be required to sign a Professional Service Agreement with the City (sample is included as Attachment B) for this project. Each prospective consultant is expected to review the general terms and conditions and acknowledge their acceptance of the Attachment or their objections to specific parts as a mechanism to expedite the contract execution process.

## CITY OF COMMERCE

Purchasing Division  
2535 Commerce Way  
Commerce, CA 90040  
(323) 722-4805



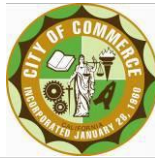
## REQUEST FOR PROPOSAL

Issue Date: **10/05/16**  
Closing Date: **11/02/16 at 12:00PM**  
Gina Nila, Deputy Dir. of P.W Operations  
E-mail: [ginan@ci.commerce.ca.us](mailto:ginan@ci.commerce.ca.us)

2. **PRE-PROPOSAL SUBMITTAL MEETING:** A **MANDATORY** pre-proposal meeting which will be held at the **City of Commerce, Veteran's Park Multi-Purpose Room**, located at 6364 Zindell Avenue, Commerce, CA. 90040 on **October 20, 2016 at 9:00 am**. Please RSVP in writing via e-mail to Paul Banuelos, Project Manager (Consultant) at [pbanuelos@swinerton.com](mailto:pbanuelos@swinerton.com) with a copy to Gina Nila, Deputy Director of Public Works - Operations at [ginan@ci.commerce.ca.us](mailto:ginan@ci.commerce.ca.us). Please include company name, contact information and phone number
3. **QUESTIONS:** All questions regarding this proposal shall be directed via email, no later than **October 25, 2016 at 10:00 am**, to Paul Banuelos, Project Manager (Consultant) at [pbanuelos@swinerton.com](mailto:pbanuelos@swinerton.com) with a copy to Gina Nila, Deputy Director of Public Works - Operations at [ginan@ci.commerce.ca.us](mailto:ginan@ci.commerce.ca.us). Responses will be distributed to all interested parties.
3. **REPLY FORMAT:** Proposal must follow the format as set in this request. Proposals must be returned by the due date to the indicated address. Individuals/firms must submit three (3) copies of the proposal. Please minimize the bulk of your proposal by only submitting one (1) copy of standard brochures and materials. You are free to organize your proposal as you wish, so long as it includes the requested information, including all of the forms contained in this request. Firms are required to clearly identify any limitations or exceptions to the requirements defined in this request. Alternative approaches will be given consideration if the approach clearly offers increased benefits to the City.
4. **PROPOSAL ACKNOWLEDGMENT AND RECEIPT:** A Proposal Acknowledgment form must be completed and submitted with proposal (see attachment A).
5. **FIRM QUALIFICATIONS:** The individual / firm shall have been in business doing this type of work in California for at least five years.
6. **RESPONSIVENESS AND SELECTION PROCESS:** The decision for selection will be made on a combination of criteria and the City reserves the right to reject any and all proposals or to waive any minor errors, discrepancies or irregularities. The selection will be at the discretion of the City and may be made in any manner that best meets the needs of the City.
7. **SUBCONTRACTORS:** The City prefers a proposal with a single or primary individual / firm. If you propose a multi-firm (one firm must be identified as the lead entity) or subcontracted approach, clearly identify the responsibilities of each party and the assurances of performance that your proposal includes.
8. **PROPOSED CONTRACT:** Attachment B of this request is a sample Professional Services Agreement that the City intends to use in awarding this contract. The individual / firm should review the terms and conditions contained in the Agreement and must note any exceptions, additions or modifications they would propose for consideration by the City. Blanket substitution of the individual / firm's standard contract or the Standard AIA Agreement in lieu of the City Agreement will not be permitted.
9. **INSURANCE REQUIREMENTS:** As indicated in Section 12 of the Professional Services Agreement included as Attachment B, the selected individual/firm will be required to provide proof of insurance for each of the insurance categories so noted. The individual/firm will be required to name the City of Commerce as additional insured.
10. **PAYMENT TERMS:** The City payment terms are, at a minimum, Net 30 days after receipt of all goods and/or services and receipt of an accurate invoice and associated warranties. The City may, at its discretion, agree on a phased approach to invoicing and payment

## CITY OF COMMERCE

Purchasing Division  
2535 Commerce Way  
Commerce, CA 90040  
(323) 722-4805



## REQUEST FOR PROPOSAL

Issue Date: **10/05/16**

Closing Date: **11/02/16 at 12:00PM**

Gina Nila, Deputy Dir. of P.W Operations

E-mail: [ginan@ci.commerce.ca.us](mailto:ginan@ci.commerce.ca.us)

based upon defined benchmarks agreed to by the City and the individual / firm.

11. **DELIVERY:** All goods and services shall be delivered to the City, F.O.B. Destination. The individual/firm shall deliver completely by the dates agreed to in this agreement. Failure to deliver in a timely fashion is cause for the City to terminate this agreement.
12. **FIRM PRICES:** All quotes shall be held firm for a minimum of sixty (60) days after the proposal due date to allow adequate time for the City to consider each proposal and make an award. All blanks for unit price and total price shall be completed. Any discrepancy between the unit price and the extended or total price shall be determined by taking the lower price. Upon receipt of this proposal by the City, the individual/firm shall be presumed to be thoroughly familiar with all aspects of this work. The failure or omission to examine any location, equipment, form, instrument or document shall in no way relieve the individual/firm from any obligation with respect to this proposal.
13. **LITIGATION:** In the event of litigation between the parties concerning this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and associated costs. The laws of the State of California shall govern this Agreement. If any provision of this Agreement becomes invalid or unenforceable, the remainder of the Agreement shall not be affected.
14. **ASSIGNMENT:** This Agreement, nor any part of this Agreement, may be assigned without the written consent of the other party.
15. **CANCELLATION CLAUSE:** The City may terminate and cancel any purchase order or contract that result from this project without obligation at any time prior to receipt of the goods or services.
16. **HOLD HARMLESS:** The individual/firm shall defend, indemnify and hold the City, its officers, employees and agents harmless from any liability for damage or claims of same, including, but not limited to, personal injury, property damage and death, which may arise from Firm or Firm's contractor, subcontractors, agents or employees operating under this Agreement, excepting suits and actions brought by Firm for default of this Agreement or to the extent the claim arises out of the sole negligent or willful misconduct of City. City shall cooperate reasonably in the defense of any action, and Firm shall employ competent counsel, reasonably acceptable to City Attorney.
17. **KICK-OFF MEETING AND PRESENTATIONS:** Kick-off Meeting – Individual / firm and project team shall meet with City personnel within five (5) business days of contract award to discuss project requirements, schedule, deliverables and expectations.
18. **PRESENTATIONS:** Individual / firm and project team must be available for a minimum of two (2) presentations of their proposal and or during the course of the project and upon the City's request for such a presentation.

## CONSULTANT SELECTION

The City will evaluate the proposals submitted, and select the most qualified consultant for the project. The proposals will be evaluated based upon several factors. These factors include the format, organization, and presentation of the proposal, the qualification and experience of the project staff, and the experience in the processes and procedures of the involved regulations.

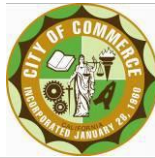
In evaluating the proposals, the City will consider the following factors:

- Completeness of the Proposals and compliance with the required format.



## CITY OF COMMERCE

Purchasing Division  
2535 Commerce Way  
Commerce, CA 90040  
(323) 722-4805



## REQUEST FOR PROPOSAL

Issue Date: **10/05/16**

Closing Date: **11/02/16 at 12:00PM**

Gina Nila, Deputy Dir. of P.W Operations

E-mail: [ginan@ci.commerce.ca.us](mailto:ginan@ci.commerce.ca.us)

- Project understanding, scope and approach to complete the project efficiently.
- Knowledge in Public Agency Procedures and Requirements.
- Experience in managing similar projects.
- Experience and qualifications of the firm and the project team members.
- Experience in Public Contract Procedures, Requirements, Laws and Construction Claims.
- Experience in working as an extension of City staff and providing turn-key services in similar capacities with minimal direction from City staff.
- Experience of Construction Manager and Specialty Inspector.
- References and performance records on similar assignments.

Upon receipt of Proposals, City may select the most qualified consultant as a 1 step process or may conduct additional interviews with the top 3 ranked consultants. The City will negotiate final scope and fee with the most qualified consultant.

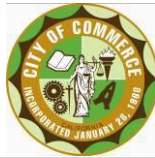
## REQUIRED FORMAT FOR PROPOSAL SUBMITTAL

The City of Commerce requests that interested individuals and firms send a detailed proposal to provide the requested services mentioned above. Three (3) copies of the proposal shall be submitted. Submittals shall be limited to a cover letter and 30 pages (one-sided) or 15 pages (double-sided), 8-1/2" x 11" in size, with pages distributed into each section as noted below. Facsimile copies will not be accepted. Proposals must contain the information listed below:

1. A cover letter including the name and address of the firm or individual, the telephone number to be used for contact, along with the name of the individual(s) who will be authorized to make presentations for the firm, and a statement regarding your firm's or individual capacity to perform the specific tasks outlined in this request. Also include statements regarding your firm's stability in the industry.
2. A statement on the individual / firm's project understanding and approach including a scope of work for each phase. The statement shall include a detailed scope and understanding of the process to undertake project and complete work in compliance with all applicable rules, regulations, standards and requirements.
3. A statement on the principal individual(s) who will be responsible for the assignments, along with their experience and qualifications. Statement shall include an organizational chart showing the names and responsibilities of key personnel. The proposed Professional Staff shall be licensed in California and shall have experience working with Public Agencies in similar assignments. It is important that the key project team members have served public agencies in various capacities, and are accustomed to working with governmental agencies, and have good understanding of public agency issues, procedures, and policies. The City is looking for a qualified team that can provide turn-key services, and be the single Point of Responsible Party representing the City in all aspects of the project. Provide resumes of key personnel identified in the organizational chart.
4. Examples of firm's or individual's previous work, relevant experience with similar construction and explanation on how the firm have kept current in general practice. Please include the scope of work, budget, date of completion and the principal for the listed projects. (Limit to 5 pages).
5. A list of at least five (5) references for which you or your firm have performed similar services. Include the project name, contact name, and address and telephone number for each reference.

## **CITY OF COMMERCE**

Purchasing Division  
2535 Commerce Way  
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## **REQUEST FOR PROPOSAL**

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6. Fee structure for services shall include:
  - a. A listing of standard hourly rates for assigned staff positions;
  - b. A brief explanation on how fees are determined.
7. Proposal shall include a time schedule for the completion of services, including a current estimate for the duration of each phase including the demolition and abatement period for the project.
8. Additional information may be provided to highlight or expand upon experience applicable to this request. (Limit to 8 pages).
9. The scope of work provided in this RFP will be used as a guideline only. It will be the selected consultant's responsibility to identify all necessary tasks and costs associated with the requested services and to ensure that each phase of the project is completed efficiently and in full compliance as required by applicable regulations and permits.

## **PRE-CONTRACTUAL EXPENSES**

All costs for the preparation of the proposal shall be borne by the proposing individual / firm. The City shall not be liable for any pre-contractual expenses incurred by any proposer or by any selected consultant. Each proposer shall protect, defend, indemnify, and hold harmless the City from any and all liability, claims, or expenses whosoever incurred by, or on behalf of, the entity participating in the preparation of its response to this RFP.

The City reserves the right to amend, withdraw and cancel this RFP. The City reserves the right to reject all responses to this request at any time prior to contract execution. The City reserves the right to request or obtain additional information about any and all proposals.

## **RFP ATTACHMENTS**

**A - Proposal Acknowledgment and Receipt**

**B – Professional Services Agreement**



# RFP - ATTACHMENT A

## Proposal Acknowledgment and Receipt

REQUEST FOR PROPOSALS (RFP)  
INDUSTRIAL HYGIENIST ABATEMENT OVERSIGHT SERVICES  
FOR  
CITY OF COMMERCE

**C.I.P. NO. 2016-12**  
**Veterans Park Building**  
**Shooting Range Lead Abatement/Demolition**

The undersigned proposes to furnish professional services to the City of Commerce California for the stated prices in accordance with the terms and conditions set in this Request for Proposal.

The undersigned understands and agrees that the conditions set forth in this Request for Proposal, together with the proposal and any other documents submitted in response to the foregoing, shall form a part of and be constructed as part of the purchase order/agreement.

**FIRM:**

---

Company Name

---

Street Address of Company

---

Signature of Officer

---

City, State, Zip Code

---

Printed Name of Officer

---

Telephone No./Fax No.

---

Title of Officer

---

Federal I.D. Tax Number

MUST BE COMPLETED AND SUBMITTED WITH PROPOSAL

**RFP - ATTACHMENT B**

**PROFESSIONAL SERVICES AGREEMENT**

**Between CITY OF**

**COMMERCE**

**And**

**ENTER FIRM NAME HERE**

**DATED: ENTER DATE HERE**

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## **ATTACHMENTS**

SCOPE OF WORK: ..... EXHIBIT A  
REQUIRED INSURANCE: ..... EXHIBIT B

# **ATTACHMENT 1** **SAMPLE CITY AGREEMENT**

## **PROFESSIONAL SERVICES AGREEMENT**

**THIS AGREEMENT** ("Agreement") entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, ("Effective Date") is by and between \_\_\_\_\_ ("Contractor") located at \_\_\_\_\_ and the City of Commerce, a Municipal Corporation ("CITY") located at 2535 Commerce Way, Commerce CA 90040;

### **WITNESSETH**

This Agreement is made and entered into with respect to the following facts:

WHEREAS, the City has determined that it requires the services of a professional that can provide professional architectural, engineering, and construction management services for the City's Emergency Operations Center Project;

WHEREAS, the City desires to have a contract in place for these services prior to implementation and construction of said project;

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

WHEREAS, Contractor further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

#### **1. Scope of Services and Schedule of Performance**

Contractor shall provide City with such professional services as are set forth in Exhibit A, "Scope of Services," which is attached hereto and incorporated herein by this reference. NOTE: the Appendices that are prepared in response to the RFP and/or the Proposal by the successful bidder will be used as the Scope of Services attachment.

#### **2. Warranty**

Contractor warrants that the services provided under this Agreement will be performed with the degree of skill and judgment normally exercised by recognized professionals performing services of a similar nature at the time the services were rendered.

#### **3. Term of Agreement**

The term of this Agreement shall be for an initial one year period. The City shall have the option to extend the Agreement for two one-year terms. If the City desires to exercise such option(s), the City shall advise Contractor at least thirty (30) days prior to the expiration of the initial term or the initial option period.

#### 4. Compensation and Payment

4.1. So long as Contractor is discharging Contractor's obligations in conformance with the terms of this Agreement, Contractor shall be paid such compensation rates as are set forth in Contractor's ***[insert Contractor's fee schedule date]*** fee schedule to City attached hereto as Exhibit B and incorporated herein by this reference. Contractor will not be eligible for any paid benefits for federal, social security, state workers' compensation, unemployment insurance, professional insurance, medical/dental, or fringe benefits offered by City.

4.2. Such fees shall be payable following receipt of an itemized invoice for services rendered submitted to City in a timely manner. Contractor shall send and address its bill for fees, expenses, and costs to City to the attention of the City Administrator upon completion of services invoiced to City on a monthly basis.

4.3. Payment by the City to Contractor shall be within 30-days of receipt of approved invoices. Payments will be based on approved invoices which include all required reports and detailed back-up information on all expenses. City shall pay the full amount of such invoice; provided, however, that if City or its City Administrator object to any portion of an invoice, City shall notify Contractor of City's objection and the grounds therefore within thirty (30) days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice.

#### 5. Financial Records

Contractor shall maintain complete and accurate records with respect to fees and costs incurred under this Agreement. All such records shall be maintained on a generally accepted accounting basis and be clearly identified and readily accessible for audit or examination. Contractor shall keep, maintain and provide free access to such books and records to examine and audit the same, and to make transcripts thereof as necessary, and to allow inspection of all work data, documents, proceedings and activities related to this Agreement for a period of four (4) years from the date of final payments under this Agreement. All accounting records shall readily provide a breakdown of fees and costs charged to this Agreement.

#### 6. Right of Termination

6.1. City may in its sole discretion terminate this Agreement by providing Contractor with a thirty (30) day written notice.

6.2. Contractor may terminate this Agreement by giving the City a 60-day advance written notice if such termination is necessary.

6.3. With the 60-day written notice of termination, Contractor shall give City a written explanation of the reason that the Contractor believes termination is necessary, and cooperate with the City in an effort to resolve the issue.

6.4. Termination by either party hereunder, shall not relieve Contractor from providing services required to be performed up to the effective date of such termination, nor relieve City of its duty to pay the approved costs, prorated as necessary, to the effective date of such termination, or any other reimbursements, fees or expenses to be paid to Contractor by the terms of this Agreement.

7. Independent Contractor

Contractor is and shall perform its services under this Agreement as a wholly independent contractor. Contractor shall not act nor be deemed an agent, employee, officer or legal representative of City. Except as otherwise expressly set forth herein, Contractor shall not at any time or in any manner represent that it or any of its agents, employees, officers or legal representatives are in any manner agents, employees, officers or legal representatives of City. Contractor has no authority to assume or create any commitment or obligations on behalf of City or bind City in any respect. This Agreement is not intended to and does not create the relationship of partnership, joint venture or association between City and Contractor. None of the foregoing shall affect any privilege or protection against disclosure which applies to the services Contractor undertakes under this Agreement.

8. Contractor to Provide Required Personnel; Subcontracting

Contractor shall provide and direct the necessary qualified personnel to perform the services required of and from it pursuant to the express and implied terms hereof, with the degree of skill and judgment normally exercised by recognized professional firms performing services of a similar nature at the time the services are rendered, and to the reasonable satisfaction of City. Contractor may not have a subcontractor perform any services required under this Agreement unless the subcontractor is first approved and authorized to perform such work by the City.

9. Responsible Principal and Project Manager

Contractor shall be required to identify a Project Manager for Contractor who shall be responsible for complying with Contractor's obligations under this Agreement and shall serve as principal liaison between City and Contractor. Designation of another responsible principal or project manager by Contractor shall not be made without the prior written consent of City.

10. City Liaison

Contractor shall direct all communications to the Director of Community Development of City or his designee. All communications, instructions and directions on the part of City shall be communicated exclusively through the Director of Community Development or the City Administrator of City or their designees.

11. Licenses

Contractor warrants that it and its employees have obtained all valid licenses and/or certifications generally required of professionals providing services such as the services required under this Agreement by all applicable regulating governmental agencies and are in good standing with such applicable regulating governmental agencies.

14. Compliance with Laws

Contractor shall, and shall ensure that its employees and sub-contractors comply with all applicable City, county, state, and federal laws and regulations (including occupational safety laws and regulations) in performing the services required under this Agreement, and shall comply with any directions of governmental agencies and City relating to safety, security, and



the like as they pertain to the performance of this Agreement.

15. Insurance

Contractor shall maintain insurance and provide evidence thereof as required by Exhibit C hereto (the "Required Insurance"). Contractor shall also require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.

16. Indemnification

16.1 Contractor shall indemnify and hold City and its respective officials, officers, agents and employees harmless from and against any and all liabilities, including but not limited to losses, damages, demands, claims, actions, fees, costs, and expenses City's respective officials, officers, agents and employees hereafter may suffer in connection with any claim, action, or right of action (at law or in equity) because of any injury (including death) or damage to person or property proximately caused by any negligent acts, errors, or omissions by Contractor, its employees, its subcontractors or its agents in the performance of Contractor's obligations under this Agreement. Contractor shall not be liable to the extent that any liability, loss, damage, cost, and expense is caused from an act of negligence or willful misconduct by City or its respective officials, officers, employees or agents. Upon demand, Contractor shall promptly provide a defense to such claims, actions or right of action (at law or equity) and shall promptly pay for all associated and resulting costs, damages, settlements, penalties, judgments, fees and expenses, including attorneys' fees and costs.

16.2. City shall have the right to offset against the amount of any compensation due Contractor under this Agreement any amount due City from Contractor as a result of Contractor's Contractor failure to pay City promptly any indemnification arising under this Section and related to Contractor's Contractor failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

16.3. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 16 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. Contractor agrees to be fully responsible and indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Contractor's subcontractors or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.

16.4. City does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

17. Confidentiality

Contractor shall maintain as confidential and not disclose to others, either before or after the termination of this Agreement, any data, documents, reports, or other information provided to Contractor by City, or employees or agents of City, or any data, documents, reports, or other information produced by Contractor during its performance hereunder, except as expressly authorized in writing by City, or to the extent required for: (1) compliance with professional standards of conduct for the preservation of the public safety, health, and welfare, but only after Contractor notifies City of such need for disclosure; and (2) compliance with any court order or other government directive or requirement, but only after Contractor notifies City of such an order, directive, or requirement. Contractor shall keep all "Confidential" materials received or generated under this Agreement in separate files marked "Confidential." Any non-compliance by Contractor with this part of the Agreement shall be deemed a material breach of this Agreement. The obligations of this paragraph shall survive the termination of this Agreement.

18. Ownership of Documents

All original documents, designs, drawings, methodological explanations, computer programs, reports, notes, data, materials, services and other products prepared in the course of providing the services under this Agreement (collectively, the "products") shall become the sole property of City except as prohibited by law, and City shall have authority to publish, disclose, distribute, use, reuse or disposed of the Products in whole or in part, without the permission of Contractor except as prohibited by law. In the event that this Agreement is terminated by City or Contractor, Contractor shall provide City with any finished or unfinished Products. No documents, designs, drawings, methodological explanations, computer programs, reports, notes, data, materials, services and other products prepared in whole or in part under this Agreement shall be the subject of an application for copyright or submitted for publication by or on behalf of Contractor. Notwithstanding such ownership, Contractor shall be entitled to make and obtain copies or reproductions of such Products for its own files or internal reference.

19. Data and Services to be Furnished by City

All information, data, records, reports and maps as are in possession of City and necessary for the carrying out of this work shall be made available to Contractor without charge. City shall make available to Contractor members of its staff for consultation with Contractor in the performance of this Agreement. City does not warrant that the information data, records, reports and maps heretofore to be provided to Contractor are complete or accurate and Contractor shall satisfy itself as to such accuracy and completeness. City and Contractor agree that City shall have no liability should any of the information, data, records, reports, and maps be inaccurate, incomplete or misleading.

20. Covenant Against Contingent Fees

Contractor warrants that it has not employed or retained any company or person to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee, commission or percentage from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to terminate this Agreement without liability, or in its discretion, to deduct from the consideration payable to Contractor, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

21. Conflict of Interest

Contractor covenants that neither it nor any officer or principal of its firm have any interests, nor shall they acquire any interest, directly or indirectly which will conflict in any manner or degree with the performance under this Agreement. Contractor further warrants its compliance with the Political Reform Act (Gov. Code § 81000, et seq.) and all other laws, if applicable, respecting this Agreement and that no services shall be performed by either an employee, agent, or a subcontractor of Contractor, who has a conflict relating to City or the performance of services on behalf of City.

22. Other Agreements

Contractor warrants that Contractor is not a party to any other existing agreement that would prevent Contractor from entering into this Agreement or that would adversely affect Contractor's ability to perform the services under this Agreement. During the term of this Agreement, Contractor shall not, without City's prior written consent, perform services for any person, firm, or corporation other than City if such services could lead to a conflict with Contractor's obligations under this Agreement.

23. Waiver of Breach

No waiver of any term, condition or covenant of this Agreement by City shall occur unless signed by the City Administrator of City and such writing identifies the provision which is waived and the circumstances or period of time for which it is waived. Such waiver shall be for the specified period of time only and shall not apply to any subsequent breach. In addition, such waiver shall not constitute a waiver of any other term, condition or covenant of this Agreement nor shall it eliminate any remedies available to City for any breaches of this Agreement which are not excused by such waiver. A delay in communicating a failure of Contractor to satisfy a term, condition or covenant in no way waives that term or any remedies available for its breach.

24. No Discrimination

In the performance of this Agreement, Contractor shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition or sexual orientation. Contractor will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition or sexual orientation.

25. Captions

The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such

substitution(s).

26. Waiver

The waiver by City or Contractor of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Contractor unless in writing.

27. Cumulative Remedies

Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. In the event legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be San Bernardino County, California.

28. Assignment

Neither this Agreement nor any rights or obligations hereunder may be assigned or otherwise transferred by Contractor. Any attempt to so assign or transfer this Agreement or any rights or obligations hereunder without such consent shall be void and of no effect.

29. Attorneys' Fees

In the event arbitration or a judicial proceeding is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable costs and attorneys' fees incurred in connection therewith.

30. Notices

Notices provided hereunder shall be delivered by certified First Class U.S. Mail, postage prepaid, or by personal service as required in judicial proceedings, directed to the address provided below:

For City:

City of Commerce

2535 Commerce Way

Commerce, California 90040

Attn: Gina Nila, Operations Deputy Director of Public Works & Development Services Department

For Contractor:  
XXXXX  
XXXXX  
XXXXX  
Attn: XXXXX

Notice shall be deemed received three (3) days after its mailing to the above address or upon actual receipt as indicated by return receipt, whichever is earlier. Personal service shall be deemed received the same day personal delivery is affected.

31. Governing Law

The validity, performance and construction of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California applicable to contracts made to be performed therein. Any litigation commenced by either party to this Agreement shall be venued in Los Angeles County, California.

32. Severability

Should any part of this Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement, absent the unexercised portion, can be reasonably interpreted to give effect to the intentions of the parties.

33. No Construction of Agreement Against any Party

Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, it shall not be construed against any Party on the basis such Party drafted this Agreement or any provision thereof.

34. Entire Agreement and Amendments to Agreement

This Agreement contains the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes all previous communications, negotiations, and agreements, whether oral or written, between the parties with respect to such subject matter, and no addition to or modification of this Agreement or waiver of any provisions of this Agreement shall be binding on either party unless made in writing and executed by Contractor and City.

35. No Representations Except as Expressly Stated in this Agreement

Except as expressly stated in this Agreement, no Party, nor its employees, agents or attorneys have made any statement or representation to any other Party or its employees, agents or attorneys regarding any fact relied upon in entering into this Agreement, and each Party does not rely upon any statement, representation and/or promise of any other Party, its respective employees, agents or attorneys in executing this Agreement.

36. Counterpart Signatures

This Agreement may be executed in one or more counterparts. When this Agreement has been properly signed by an authorized representative of each of the Parties hereto, it shall constitute a valid Agreement, though each of the signatories may have executed separate counterparts hereof.

**IN WITNESS WHEREOF**, the parties hereto have each executed or caused to be executed this Agreement as of the Effective Date.

**CITY OF COMMERCE**

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Ivan Altamirano  
Mayor

("CONTRACTOR")

XXXXXXX

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
XXXX

ATTEST:

\_\_\_\_\_  
Lena Shumway, City Clerk

**APPROVED AS TO FORM**

\_\_\_\_\_  
Eduardo Olivo  
City Attorney



## **EXHIBIT A**

**“Insert Scope of Services Here”**

## **EXHIBIT B**

### **REQUIRED INSURANCE**

On or before beginning any of the services called for by any term of this Agreement, Contractor, at its own cost and expense, shall carry, maintain for the duration of this Agreement, and provide proof thereof that is acceptable to City of its procurement of the insurance specified below from insurers and under forms of insurance satisfactory in all respects to City. Such insurance shall not be in derogation of Contractor's obligations to provide indemnity under Section 18 of this Agreement.

#### **1. Comprehensive General Liability And Automobile Liability Insurance Coverage**

Contractor shall carry and maintain Comprehensive General Liability and Automobile Liability Insurance which provides the following:

Minimum coverage: Bodily injury limits of \$2,000,000 for each person and \$2,000,000 for each occurrence; property damage limits of \$2,000,000 for each occurrence, \$2,000,000 aggregate.

If a Commercial General Liability Insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned real property and automobiles. Insurance coverage shall not be subject to any type of pollution exclusion or owned property exclusions.

#### **2. Errors And Omissions Insurance Coverage**

Contractor shall carry and maintain Errors and Omissions Coverage Insurance which provides a minimum coverage of at least \$2,000,000 for each occurrence, \$2,000,000 aggregate, triggered by manifestation of injury.

#### **3. Worker's Compensation**

Before execution of the Agreement, Contractor shall file with the City the following signed certification:

"I am aware of the provisions of Section 3700 Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Service Agreement".

Contractor shall carry and maintain worker's compensation as required by the California Labor Code for all persons employed directly or indirectly in connection with this Agreement by Contractor or any subcontractor.

4. Additional Insureds

The City of Commerce, their officers, agents and employees must be named as additional insureds or as additional loss payees in all insurance policies required by this Agreement. An endorsement to this effect shall be delivered to City prior to the commencement of any work. Satisfaction of any deductible requirement shall be the responsibility of Contractor. Such insurance shall be primary, and noncontributory with any other insurance by the City of Commerce.

5. Cancellation Clause

Each of the policies of insurance shall contain a clause substantially as follows:

It is hereby understood and agreed that this policy may not be canceled nor the amount of the coverage thereof be reduced until 30 days after receipt by the City Administrator of the City of Commerce of the written notice of such cancellation or reduction of coverage, as evidenced by receipt of a certified letter.

6. Severability Clause

Each of the policies of insurance shall contain a clause substantially as follows:

The insurance afforded by this policy applies separately to each insured against whom a claim or suit is made or suit is brought, except with respect to the limit of the insurer's liability.

7. Qualifications of Insurer

All policies of insurance shall be issued by an insurance company acceptable to City and authorized to issue said policy in the State of California.

8. Approval of Insurer

The insurance carrier providing the insurance shall be chosen by Contractor subject to approval by City, provided that such approval shall not be unreasonably withheld.

9. Payment of Premiums

All premiums on insurance policies shall be paid by Contractor making payment, when due, directly to the insurance carrier, or in a manner agreed to by City.

10. Evidence of Insurance and Claims

City shall have the right to hold the policies and policy renewals, and Contractor shall promptly furnish to City all renewal notices and all receipts of paid premiums. In the event of loss, Contractor shall give prompt notice to the insurance carrier and City. City may make proof of loss if not made promptly by Contractor.