

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT ("Agreement") entered into this 7th day of November, 2017, ("Effective Date") is by and between EFI Global ("CONSULTANT") located at 5261 West Imperial Highway, Los Angeles, California 90045 and the City of Commerce, a Municipal Corporation ("CITY") located at 2535 Commerce Way, Commerce, California 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 assist the City with environmental consulting, remediation, and monitoring and sampling activities.

WHEREAS, CONSULTANT 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, CONSULTANT 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

CONSULTANT 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

CONSULTANT 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 three years from the effective date. The City shall have the option to extend the Agreement at its discretion. If the City desires to exercise such option(s), the City shall advise CONSULTANT at least thirty (30) days prior to the expiration of the initial term.

4. Compensation and Payment

4.1. So long as CONSULTANT is discharging CONSULTANT's obligations in conformance with the terms of this Agreement, CONSULTANT shall be paid such compensation rates as are set forth in CONSULTANT's Proposal dated August 24, 2017 attached hereto as Exhibit A and incorporated herein by this reference. CONSULTANT 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. CONSULTANT shall send and address its bill for fees, expenses, and costs to City to the attention of the Environmental Services Manager upon completion of services invoiced to City on a monthly basis.

4.3. Payment by the City to CONSULTANT 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 objects to any portion of an invoice, City shall notify CONSULTANT 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

CONSULTANT 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. CONSULTANT 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 CONSULTANT with a thirty (30) day written notice.

6.2. CONSULTANT 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, CONSULTANT shall give City a written explanation of the reason that the CONSULTANT 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 CONSULTANT 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 CONSULTANT by the terms of this Agreement.

7. Independent CONSULTANT

CONSULTANT is and shall perform its services under this Agreement as a wholly independent CONSULTANT. CONSULTANT shall not act nor be deemed an agent, employee, officer or legal representative of City. Except as otherwise expressly set forth herein, CONSULTANT 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. CONSULTANT 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 CONSULTANT. None of the foregoing shall affect any privilege or protection against disclosure which applies to the services CONSULTANT undertakes under this Agreement.

8. CONSULTANT to Provide Required Personnel; Subcontracting

CONSULTANT 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. CONSULTANT may not have a subconsultant perform any services required under this Agreement without the prior written consent and approval by the City.

9. Responsible Principal and Project Manager

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

10. City Liaison

CONSULTANT 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

CONSULTANT 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.

12. Compliance with Laws

CONSULTANT shall ensure that its employees and sub-CONSULTANTs 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.

13. Insurance

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

14. Indemnification

14.1 CONSULTANT 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 or 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 CONSULTANT, its employees, its subconsultants or its agents in the performance of CONSULTANT's obligations under this Agreement. CONSULTANT 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, CONSULTANT 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.

14.2. City shall have the right to offset against the amount of any compensation due CONSULTANT under this Agreement any amount due City from CONSULTANT as a result of CONSULTANT's failure to pay City promptly any indemnification arising under this Section and related to CONSULTANT's

CONSULTANT failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

14.3. CONSULTANT agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 16 from each and every subconsultant or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. CONSULTANT 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 CONSULTANT's subconsultants or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.

14.4. City does not, and shall not, waive any rights that it may possess against CONSULTANT 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.

15. Confidentiality

CONSULTANT 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 CONSULTANT by City, or employees or agents of City, or any data, documents, reports, or other information produced by CONSULTANT 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 CONSULTANT notifies City of such need for disclosure; and (2) compliance with any court order or other government directive or requirement, but only after CONSULTANT notifies City of such an order, directive, or requirement. CONSULTANT shall keep all "Confidential" materials received or generated under this Agreement in separate files marked "Confidential." Any non-compliance by CONSULTANT 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.

16. 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 CONSULTANT except as prohibited by law. In the event that this Agreement is terminated by City or CONSULTANT, CONSULTANT 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 CONSULTANT. Notwithstanding such ownership, CONSULTANT shall be entitled to make and obtain copies or reproductions of such Products for its own files or internal reference.

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

18. Covenant Against Contingent Fees

CONSULTANT 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 CONSULTANT, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

19. Conflict of Interest

CONSULTANT 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. CONSULTANT 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 subconsultant of CONSULTANT, who has a conflict relating to City or the performance of services on behalf of City.

20. Other Agreements

CONSULTANT warrants that CONSULTANT is not a party to any other existing agreement that would prevent CONSULTANT from entering into this Agreement or that

would adversely affect CONSULTANT's ability to perform the services under this Agreement. During the term of this Agreement, CONSULTANT 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 CONSULTANT's obligations under this Agreement.

21. 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 CONSULTANT to satisfy a term, condition or covenant in no way waives that term or any remedies available for its breach.

22. No Discrimination

In the performance of this Agreement, CONSULTANT shall not discriminate against any employee, subconsultant, 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. CONSULTANT will take affirmative action to ensure that subconsultants 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.

23. 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).

24. Waiver

The waiver by City or CONSULTANT 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 CONSULTANT unless in writing.

25. 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.

26. Assignment

Neither this Agreement nor any rights or obligations hereunder may be assigned or otherwise transferred by CONSULTANT. Any attempt to so assign or transfer this Agreement or any rights or obligations hereunder without the City's prior written consent shall be void and of no effect.

27. 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.

28. 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:

For CONSULTANT:

Attn:

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.

29. 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.

30. 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.

31. 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.

32. 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 CONSULTANT and City.

33. 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.

34. 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

EFI GLOBAL

By: _____
Oralia Rebollo, Mayor

By: _____
Dennis Ironi, Vice President

ATTEST:

Lena Shumway
City Clerk

APPROVED AS TO FORM:

Noel Tapia
City Attorney

EXHIBIT B

REQUIRED INSURANCE

On or before beginning any of the services called for by any term of this Agreement, CONSULTANT, 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 CONSULTANT's obligations to provide indemnity under Section 18 of this Agreement.

1. Comprehensive General Liability And Automobile Liability Insurance Coverage

CONSULTANT 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

CONSULTANT 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, CONSULTANT 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”.

CONSULTANT 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 CONSULTANT or any subconsultant.

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 CONSULTANT. 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 CONSULTANT

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 CONSULTANT 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 CONSULTANT shall promptly furnish to City all renewal notices and all receipts of paid premiums. In the event of loss, CONSULTANT shall give prompt notice to the insurance carrier and City. City may make proof of loss if not made promptly by CONSULTANT.