

TRAFFIC ENGINEERING PROFESSIONAL SERVICE AGREEMENTS

(RENEWALS)

- Elie Farah, Inc.
- Gibson Transportation Consulting, Inc.
 - Hartzog & Crabill, Inc.
 - LIN Consulting Services, Inc.
 - LSA Associates, Inc.
 - Transtech Engineers, Inc.
 - Transpo Group

DESIGN PROFESSIONAL SERVICES AGREEMENT ON-CALL FOR TRAFFIC ENGINEERING

This agreement ("Agreement") is made as of MARCH 6, 2019 by and between the **City of Commerce**, a municipal corporation ("City") and **Elie Farah, Inc.** ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as a "Party" and collectively referred to as the "Parties."

RECITALS

WHEREAS, City desires to utilize the services of Consultant as an independent contractor to [insert brief description of work] as set forth in the Scope of Services attached hereto as **Exhibit A**; and

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

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

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

2. Term of Agreement. This Agreement shall commence on April 20, 2019 (the "Commencement Date") and shall remain and continue in effect until April 19, 2022, 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 maintain appropriate and necessary documentation supporting the all invoices submitted to the City detailing the type of service provided. Such documentation shall be available for review by the City at all reasonable times upon request.

B. 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 Administrator

Company

Elie Farah, Inc.
Attn: Elie Farah
1593 Liberty Drive
Corona, CA 92881

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

By: _____
Edgar P. Cisneros, City Administrator

Date

CONSULTANT

Elie Farah, Inc.

By: _____
Elie Farah

3-6-2019

Date

ATTEST:

By: _____
Lena Shumway, City Clerk

Date

APPROVED AS TO FORM:

By: _____
Noel Tapia, City Attorney

Date

EXHIBIT A
SCOPE OF WORK

EXHIBIT "A"

Elie Farah, Inc.

Certified Small Business Enterprise #1443340

Civil and Traffic Engineering

Land Surveying & Construction Management

RCE 42080, TR 1926

LS 8258, RTB1095310

1593 Liberty Drive, Corona, CA. 92881

Tel. (951)-898-0772, Fax (951)-278-4110

email: efarah@eliefarahinc.com

Web: ElieFarahInc.com

Section 1: Scope of Services

1. Prepare Plans, Specifications & Estimate (PS&E) packages for the following:

- ✓ Traffic Signal and System Design
- ✓ Signing and Striping Design
- ✓ Traffic Control Plans
- ✓ Interconnect Design
- ✓ Lighting and Electric System Design
- ✓ Safe Route To School improvements Design
- ✓ Pedestrian and Bikeway Planning and Design
- ✓ Traffic Calming Measures design

2. Prepare supporting documents for the following;

- ✓ Parking Studies and Facility Design
- ✓ Traffic Impact Studies
- ✓ Reports to address pass thru traffic, traffic calming measures, sight distance, feasibility studies
- ✓ Project Reports, PEER reports, Feasibility Studies
- ✓ Engineering and Traffic (Speed) Surveys
- ✓ Circulation Element for City General Plan
- ✓ CMP Analysis.
- ✓ Warrant Analysis for Traffic Signals & Stop Signs
- ✓ Queue Studies and R/R queue cutters signals
- ✓ Feasibility studies
- ✓ Alignment Studies
- ✓ Quantity and cost estimates

3. Provide other services such as the following:

- ✓ Plan/reports checking services
- ✓ Permit processing

EXHIBIT "A"

(CONTINUED)

4. Coordinate closely with City staff at each stage of the work.
5. Process plans through regulatory agencies such as the County, Caltrans, Railroad, and other agencies as necessary to obtain permits or clearance.
6. Coordinate with utility companies to resolve utility conflicts with proposed work.
7. If utility services are required for the project, EFI will complete all applications to the appropriate utility companies and follow through to obtain the service in a timely manner. The City will pay any fees associated with the application, design and installation of the service.
8. Perform internal check of completed designs, specifications, cost estimates, and related work for accuracy and completeness.
9. Upon completion of design, the City will have an accurate and thorough PS&E package ready for the City bidding. Documents will be provided in hard copy and electronic format.
10. Provide Assistance during the bidding phase.
11. Provide as-needed project management services during construction as requested by the City.
12. Provide As-built plans after construction.
13. Provide traffic engineering review of proposed development projects, including reviews of precise plans of design, conditional use permits, tentative tract maps, and similar projects and making recommendations on traffic impact mitigations and on overall circulation patterns, parking design/layout, signing, striping, markings, and minor changes to existing facilities.
14. Review traffic engineering requests for services, route staff reports to appropriate reviewing personnel, and prepare letters regarding traffic engineering functions.
15. Investigate traffic engineering-related matters and prepare reports with alternatives and recommendations for consideration by the City.
16. Inspect traffic control devices and projects as they are being installed or constructed. Recommend bond amounts required for traffic engineering improvements and recommend release of bonds for completed traffic engineering facilities.
17. Provide input and assistance to City staff in developing the optimum capabilities and efficiency of the traffic engineering program.
18. Provide special traffic engineering studies which may be needed to augment both field observations and review of existing traffic accident, traffic speed, and traffic volume data.
19. Assist the City with grant applications available to the community for alleviating identified traffic related problems and advise the City of potential funding trades and exchanges with other agencies.
20. Administer funding applications/expenditures.

EXHIBIT 10-H COST PROPOSAL (EXAMPLE #2) PAGE 1 OF 2
SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)
 (CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Note: Mark-ups are Not Allowed
 Consultant or Subconsultant

Elie Farah Inc

Contract No. _____

Date 2/13/2019

Fringe Benefit 0 % + Overhead 0% + General Administration 120' = Combined Indirect Cost Rate (ICR) 120 %
 (= 0% if Included in OH) (= 0% if Included in OH)

FEE % = 10.00%

BILLING INFORMATION**CALCULATION INFORMATION**

Name/Job Title/Classification ¹	Hourly Billing Rates ²		Effective date of hourly rate		Actual or Avg. hourly rate ³	% or \$ increase	Hourly range - for classifications only
	Straight	OT(1.5x)	OT(2x)	From To			
Elie Farah – Project Manager	\$121	\$121	\$121	4/1/2019 4/1/2020	\$121		Not Applicable
Senior Design Engineer**	\$105	\$105	\$105	4/1/2019 4/1/2020		\$ 105.00	
Draftsmen				4/1/2019 4/1/2020		\$ 85.00	
Technician				4/1/2019 4/1/2020		\$ 75.00	

1. Names and classifications of consultant (key staff) team members must be listed. Provide separate sheets for prime and all subconsultant firms.

2. Billing rate = actual hourly rate * (1+ ICR) * (1+ Fee). Agreed upon billing rates are not adjustable for the term of contract.

3. For named employees enter the actual hourly rate. For classifications only, enter the Average Hourly Rate for that classification.

4. ** Before EFI can use unlisted personnel, he/she will be approved by the City Project Manager and their hourly rates will be agreed to prior to the start of work.

NOTES:

* Denote all employees subject to prevailing wage with an asterisks (*)

* For "Other Direct Cost" listing, see page 2 of this Exhibit

EXHIBIT 10-H COST PROPOSAL (EXAMPLE #2) PAGE 2 OF 2
SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)
(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Consultant or Subconsultant

Elie Farah Inc

Contract No.

Date 2/13/2019

SCHEDULE OF OTHER DIRECT COST ITEMS											
PRIME CONSULTANT				SUBCONSULTANT #1				SUBCONSULTANT #2			
DESCRIPTION OF ITEMS	UNIT	UNIT COST	TOTAL	DESCRIPTION OF ITEMS	UNIT	UNIT COST	TOTAL	DESCRIPTION OF ITEMS	UNIT	UNIT COST	TOTAL
Special Tooling				Special Tooling				Special Tooling			
A.				A.				A.			
B.				B.				B.			
C.				C.				C.			
Travel				Travel				Travel			
A.	Mile	\$0.58		A.				A.			
B.				B.				B.			
C.				C.				C.			
Printing & Shipping											
	Mylar	\$40									
	Bond	\$10									
PRIME TOTAL ODCs =			\$0	SUBCONSULTANT #1 ODCs =			\$0	SUBCONSULTANT #2 ODCs =			\$0

IMPORTANT NOTES:

1. List direct cost items with estimated costs. These costs should be competitive in their respective industries and supported with appropriate documentations.
2. Proposed items should be consistently billed directly to all clients (Commercial entities, Federal Govt., State Govt., and Local Govt. Agency), and not just when the client will pay for them as a direct cost.
3. Items when incurred for the same purpose, in like circumstance, should not be included in any indirect cost pool or in the overhead rate.
4. Items such as special tooling, will be reimbursed at actual cost with supporting documentation (invoice).
5. Items listed above that would be considered "tools of the trade" are not reimbursable as other direct cost.
6. Travel related costs should be pre-approved by the contracting agency.
7. If mileage is claimed, the rate should be properly supported by the consultant's calculation of their actual costs for company vehicles. In addition, the miles claimed should be supported by mileage logs.
8. If a consultant proposes rental costs for a vehicle, the company must demonstrate that this is their standard procedure for all of their contracts and that they do not own any vehicles purpose. that could be used for the same purpose.

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 Administrator 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. To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities, damages, costs and expenses, including reasonable attorney's fees and costs, to the extent they arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's duty to defend shall consist of reimbursement of defense costs incurred by City in direct proportion to the Consultant's proportionate percentage of fault. Consultant's percentage of fault shall be determined, as applicable, by a court of law, jury or arbitrator. In the event any loss, liability or damage is incurred by way of settlement or resolution without a court, jury or arbitrator having made a determination of the Consultant's percentage of fault, the parties agree to mediation with a third party neutral to determine the Consultant's proportionate percentage of fault for purposes of determining the amount of indemnity and defense cost reimbursement owed to the City.

B. Notwithstanding the foregoing and without diminishing any rights of City under Section 3(a), for any liability, claim, demand, allegation against City arising out of, related to, or pertaining to any act or omission of Consultant, but which is not a design professional service, Consultant shall defend, indemnify, and hold harmless City, its officials, employees, and agents ("Indemnified Parties") from and against any and all damages, costs, expenses (including reasonable attorney fees and expert witness fees), judgments, settlements, and/or arbitration awards, whether for personal or bodily injury, property damage, or economic injury, and arising out of, related to, any concurrent or contributory negligence on the part of City, except for the sole or active negligence of, or willful misconduct of City. If it is determined the City's negligence or willful misconduct contributed to the liability or damage, Consultant shall be required to provide indemnification to the City and reimbursement of defense costs incurred by City in direct proportion to the Consultant's proportionate percentage of fault.

C. It is understood that the duty of Consultant to indemnify and hold harmless is subject to and includes the duty to defend as set forth in Section 2782.8 of the California Civil Code as further addressed in Section 3(a) above. Acceptance by the City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless

clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

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 Administrator, 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 Administrator 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.

DESIGN PROFESSIONAL SERVICES AGREEMENT ON-CALL FOR TRAFFIC ENGINEERING

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

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

2. Term of Agreement. This Agreement shall commence on April 20, 2019 (the "Commencement Date") and shall remain and continue in effect until April 19, 2022, 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 maintain appropriate and necessary documentation supporting the all invoices submitted to the City detailing the type of service provided. Such documentation shall be available for review by the City at all reasonable times upon request.

B. 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 Administrator

Company

Gibson Transportation Consulting, Inc.
Attn: Helen Schorr
555 W. 5th Street, Ste. 3375
Los Angeles, CA 90013

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

By: _____
Edgar P. Cisneros, City Administrator

Date

CONSULTANT

Gibson Transportation Consulting, Inc.

By: _____
Helen Schorr

12 March 2019

Date

ATTEST:

By: _____
Lena Shumway, City Clerk

Date

APPROVED AS TO FORM:

By: _____
Noel Tapia, City Attorney

Date

EXHIBIT A
SCOPE OF WORK



EXHIBIT A

SERVICES

Gibson Transportation Consulting, Inc. was formed in 2009 to provide the highest quality traffic engineering, transportation planning, and parking consulting services to both public and private sector clients. We offer over 250 years of collective transportation analysis experience, most of which has been gained on projects located in Southern California and across the western United States. We specialize in the preparation of the transportation and parking sections of environmental documents for large and small development projects, general and specific plans, and regional and local transportation projects.

Our services include:

- access and circulation analyses
- bicycle and pedestrian studies
- city/traffic commission analyses
- Caltrans analyses and project study reports/project reports
- complete streets
- entitlement support
- event center, stadium and theme park planning
- financial pro forma analyses
- neighborhood traffic management
- mitigation monitoring
- parking demand and shared parking analyses
- parking garage/lot conceptual designs
- parking management plans
- parking occupancy studies
- peer reviews
- public / neighborhood outreach
- public planning
- signage and wayfinding
- specific plans
- sustainability studies
- traffic impact studies
- transit oriented development
- transit planning
- transportation demand management
- transportation engineering
- transportation conceptual design
- trip generation studies
- vehicle mode of travel
- visual simulations

Gibson Transportation Consulting is a certified Small (Micro) Business Enterprise with the State of California and a Local Small Business Enterprise with the County of Los Angeles.



RATE SHEET
Rates Effective June 1, 2017

President	\$325
Principal	\$295
Principal Associate	\$275
Senior Associate	\$195
Associate	\$150-\$175
Principal/Administrative Manager	\$160
Technician	\$130

Time spent in depositions and court testimony will be billed at 150% of the above rates.

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 Administrator 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. To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities, damages, costs and expenses, including reasonable attorney's fees and costs, to the extent they arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's duty to defend shall consist of reimbursement of defense costs incurred by City in direct proportion to the Consultant's proportionate percentage of fault. Consultant's percentage of fault shall be determined, as applicable, by a court of law, jury or arbitrator. In the event any loss, liability or damage is incurred by way of settlement or resolution without a court, jury or arbitrator having made a determination of the Consultant's percentage of fault, the parties agree to mediation with a third party neutral to determine the Consultant's proportionate percentage of fault for purposes of determining the amount of indemnity and defense cost reimbursement owed to the City.

B. Notwithstanding the foregoing and without diminishing any rights of City under Section 3(a), for any liability, claim, demand, allegation against City arising out of, related to, or pertaining to any act or omission of Consultant, but which is not a design professional service, Consultant shall defend, indemnify, and hold harmless City, its officials, employees, and agents ("Indemnified Parties") from and against any and all damages, costs, expenses (including reasonable attorney fees and expert witness fees), judgments, settlements, and/or arbitration awards, whether for personal or bodily injury, property damage, or economic injury, and arising out of, related to, any concurrent or contributory negligence on the part of City, except for the sole or active negligence of, or willful misconduct of City. If it is determined the City's negligence or willful misconduct contributed to the liability or damage, Consultant shall be required to provide indemnification to the City and reimbursement of defense costs incurred by City in direct proportion to the Consultant's proportionate percentage of fault.

C. It is understood that the duty of Consultant to indemnify and hold harmless is subject to and includes the duty to defend as set forth in Section 2782.8 of the California Civil Code as further addressed in Section 3(a) above. Acceptance by the City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless

clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

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 Administrator, 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

**City shall release Consultant from any liability for any revision, alteration or deviation to the work product made without Consultant's advice.*



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 Administrator 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.

4850-8686-0922, v. 1

DESIGN PROFESSIONAL SERVICES AGREEMENT ON-CALL FOR TRAFFIC ENGINEERING

This agreement ("Agreement") is made as of _____, 2019 by and between the **City of Commerce**, a municipal corporation ("City") and **Hartzog & Crabill, Inc. ("Consultant")**. City and Consultant are sometimes hereinafter individually referred to as a "Party" and collectively referred to as the "Parties."

RECITALS

WHEREAS, City desires to utilize the services of Consultant as an independent contractor to [insert brief description of work] as set forth in the Scope of Services attached hereto as **Exhibit A**; and

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

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

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

2. **Term of Agreement.** This Agreement shall commence on **April 20, 2019** (the "Commencement Date") and shall remain and continue in effect until **April 19, 2022**, 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 maintain appropriate and necessary documentation supporting the all invoices submitted to the City detailing the type of service provided. Such documentation shall be available for review by the City at all reasonable times upon request.

B. 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 Administrator

Company

Hartzog & Crabill, Inc.
Attn: Gerald Stock
17852 East 17th Street, Ste. 101
Tustin, CA 92780

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

By: _____
Edgar P. Cisneros, City Administrator

Date

CONSULTANT

Hartzog & Crabill, Inc.

By: _____
Gerald Stock

March 13 2019
Date

ATTEST:

By: _____
Lena Shumway, City Clerk

Date

APPROVED AS TO FORM:

By: _____
Noel Tapia, City Attorney

Date

EXHIBIT A
SCOPE OF WORK

Exhibit A

Hartzog & Crabill, Inc.
Traffic Engineering Consultants
17852 E. 17th Street, Suite 101
Tustin, CA 92780
Phone (714) 731-9455
Fax (714) 731-9498
Federal Tax ID #33-0575354
Website: Hartzog-Crabill.com

Attn: Mr. Trammell Hartzog, President
Email: trammell@hartzog-crabill.com

And/Or

Attn: Mr. Gerald J. Stock, PE, TE, Executive Vice President, RCE#52822, TE#2049
Email: jstock@hartzog-crabill.com

SCOPE OF SERVICES

Our overall services available to the City of Commerce include the following:

1. Provide traffic engineering design services.

- ✓ New traffic signal design and plan-check
- ✓ Traffic signal modification design and plan-check
- ✓ Traffic signal interconnect design and plan-check
- ✓ Signing and striping design and plan-check
- ✓ Technical provisions for all our traffic designs
- ✓ Engineer's estimates for all our traffic designs
- ✓ Traffic management plans (*traffic control plans*)

2. When requested, prepare written engineering reports related to pedestrian traffic patterns, traffic installations, and traffic control devices such as STOP signs, signals, crosswalks, speed zones, traffic control, and similar matters and make presentations to City's Committees or Commissions, as well as City Council.

- ✓ Warrant analyses for traffic control devices, such as traffic signals, multiway stop signs, crosswalks, in-roadway warning lights, RRFBs, flashing beacons, operational LOS analysis, protected left-turn phasing, queuing analysis
- ✓ Engineering and Traffic Surveys for establishing speed limits
- ✓ Preparation and review of traffic impact analyses, and their review
- ✓ Prepare exhibits and develop reports for traffic studies

Exhibit A

SCOPE OF SERVICES *(continued)*

3. Provide technical advice on traffic signal facilities, accident rates, new developments, and maintenance of traffic facilities.

- ✓ Provide technical advice on any traffic or transportation-related issue or facility to the City of Commerce

4. Review proposed improvements for conformance to the City's Traffic Standards.

- ✓ Review all proposed improvements, development, site, and traffic management plans (traffic control plans) for conformance to the City's standards, from both a traffic engineering and civil engineering perspective.

5. Work closely with City staff, Caltrans, Los Angeles County, and local law enforcement agencies in analyzing traffic-related issues and mitigation.

- ✓ HCI staff is able to quickly contact the correct person for project development, along with other similar individuals at Caltrans District 7 as well as the County of Los Angeles, in order to resolve traffic-related matters that affect our client cities.

6. Work with City staff and other Consultants in developing, monitoring and providing input into traffic services.

- ✓ Our experience and associations afford HCI the opportunity to learn and share new technologies, products and procedures with our client cities staff and other consultants.

7. When requested, advise the City regarding all traffic-related matters.

- ✓ Provide advice and recommendations on virtually any traffic issue. If a new or unique situation arises, HCI staff does not hesitate in performing the research necessary to determine an appropriate action or recommendation.

8. Work closely with schools and related traffic circulation issues.

- ✓ HCI staff has had the opportunity to work with many public and private schools in Los Angeles and Orange County over the past several years. Our staff has also worked closely with Police Services and elected officials on traffic-related issues.

Exhibit A

SCOPE OF SERVICES *(continued)*

9. Assist with preparation of the City's Annual Reports.

- ✓ HCI provides critical intersection calculations to several client city agencies on a bi-annual basis for compliance with the region's Congestion Management Program (CMP) and Highway Performance Monitoring System (HPMS). In regards to the CMP, HCI typically gathers peak-hour turning movement counts for the specified intersections, and applies these traffic volumes, number of lanes for each approach leg, and timing to obtain an intersection LOS. More specifically, HCI utilizes the Intersection Capacity Utilization (ICU) or the Highway Capacity Manual (HCM) methodologies, as appropriate, to complete peak-hour intersection level-of-service (LOS) calculations. Typically, HCI uses the HCM methodology to determine LOS at traffic signalized intersections using the latest Synchro Traffic Signal software, unless the ICU methodology is specified. HCI then reviews the results, determines applicable deficiencies, and provides a recommendations report to the City for improving LOS to acceptable standards, such as additional lanes, protected left-turns, overlap phases, and signal timing.

10. Assist with Traffic Signal Timing and Operations Support Services.

- ✓ Develop and implement traffic signal timing plans
- ✓ Develop, design and implement traffic signal coordination systems
- ✓ Remote and local (*off-site/on-site*) management of traffic signals
- ✓ Traffic signal operational analyses
- ✓ Coordination of activities of our client cities' traffic maintenance contractor
- ✓ HCI staff also drives each project arterial during peak-periods every month (or every other month) in order to verify and fine-tune coordination timing.
- ✓ Provide construction observation/management services on behalf of the City on all proposed traffic improvements, development, site and traffic management plans to ensure conformance with applicable standards (*City, AASHTO, Cal. MUTCD, etc.*)
- ✓ HCI staff continues our on-going excellent relationships with most traffic signal, lighting, and signal maintenance contractors (*and their technicians*), including Siemens (Republic ITS), Aegis (Team Econolite), and Computer Services Company (CSC), as well as with Caltrans and the County of Los Angeles for any shared City/State or City/County intersections.

Schedule of Hourly Rates
for City of Commerce
02/13/19

Classification	Hourly Rates
Expert Witness / Deposition.....	\$285
Litigation Consultation.....	\$255
Two-Person Survey Crew.....	\$255
Litigation Field Evaluation.....	\$230
Principal Consultant.....(Tram Hartzog & Jerry Stock, PE, TE).....	\$175
Project Manager.....	\$165
Registered Land Surveyor.....	\$160
Senior Engineer.....(Scott Ma, PE, TE & Bernie Dennis, TE).....	\$150
Storm Water Permit Compliance Engineer.....	\$150
Associate Engineer.....(Michael Vallado).....	\$145
Construction Manager.....	\$135
Traffic Signal System Supervisor...(Greg Cabey).....	\$135
Mural Artist.....	\$135
Senior Designer.....(Todd Hartzog & Dave Martorano).....	\$130
Traffic Signal Systems Specialist..(Dave Pickrell & Michael Powers).....	\$125
Assistant Engineer.....	\$120
Draftsperson.....	\$100
Technician.....	\$ 85
Word Processor.....	\$ 70
Clerical.....	\$ 55
* Traffic Counts (Cost, plus 10%).....	\$ *

Note: Out of pocket expenses (blueprinting, reproduction, printing and delivery service) will be invoiced at Cost. These other direct costs are included in the not-to-exceed values for the aforementioned scope of services. A 10% fee for administration, coordination and handling will be added to subcontracted services. **This Schedule of Hourly Rates is effective as of July 1, 2018.** Rates may be adjusted after that date to compensate for increases of inflationary trends. Mileage shall be per current IRS rate (rate can be found at the following link: <https://www.irs.gov/newsroom/standard-mileage-rates-for-2018-up-from-rates-for-2017>).

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 Administrator 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. To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities, damages, costs and expenses, including reasonable attorney's fees and costs, to the extent they arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's duty to defend shall consist of reimbursement of defense costs incurred by City in direct proportion to the Consultant's proportionate percentage of fault. Consultant's percentage of fault shall be determined, as applicable, by a court of law, jury or arbitrator. In the event any loss, liability or damage is incurred by way of settlement or resolution without a court, jury or arbitrator having made a determination of the Consultant's percentage of fault, the parties agree to mediation with a third party neutral to determine the Consultant's proportionate percentage of fault for purposes of determining the amount of indemnity and defense cost reimbursement owed to the City.

B. Notwithstanding the foregoing and without diminishing any rights of City under Section 3(a), for any liability, claim, demand, allegation against City arising out of, related to, or pertaining to any act or omission of Consultant, but which is not a design professional service, Consultant shall defend, indemnify, and hold harmless City, its officials, employees, and agents ("Indemnified Parties") from and against any and all damages, costs, expenses (including reasonable attorney fees and expert witness fees), judgments, settlements, and/or arbitration awards, whether for personal or bodily injury, property damage, or economic injury, and arising out of, related to, any concurrent or contributory negligence on the part of City, except for the sole or active negligence of, or willful misconduct of City. If it is determined the City's negligence or willful misconduct contributed to the liability or damage, Consultant shall be required to provide indemnification to the City and reimbursement of defense costs incurred by City in direct proportion to the Consultant's proportionate percentage of fault.

C. It is understood that the duty of Consultant to indemnify and hold harmless is subject to and includes the duty to defend as set forth in Section 2782.8 of the California Civil Code as further addressed in Section 3(a) above. Acceptance by the City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless

clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

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 Administrator, 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 Administrator 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.

4850-8686-0922, v. 1

DESIGN PROFESSIONAL SERVICES AGREEMENT ON-CALL FOR TRAFFIC ENGINEERING

This agreement ("Agreement") is made as of [REDACTED] 2019 by and between the City of Commerce, a municipal corporation ("City") and [REDACTED] Consulting, Inc. ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as a "Party" and collectively referred to as the "Parties."

RECITALS

WHEREAS, City desires to utilize the services of Consultant as an independent contractor to [insert brief description of work] as set forth in the Scope of Services attached hereto as **Exhibit A**; and

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

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

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

2. **Term of Agreement.** This Agreement shall commence on April 20, 2019 (the "Commencement Date") and shall remain and continue in effect until April 19, 2022, 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 maintain appropriate and necessary documentation supporting the all invoices submitted to the City detailing the type of service provided. Such documentation shall be available for review by the City at all reasonable times upon request.

B. 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 Administrator

Company

LN Consulting, Inc.
Attn: William Sun
1432 Edinger Ave., Ste. 230
Tustin, CA 92780

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 _____

By: _____
Edgar P. Cisneros, City Administrator Date _____

CONSULTANT

LIN Consulting, Inc.

By:  _____
William Sun Date 3/7/19 _____

ATTEST:

By: _____
Lena Shumway, City Clerk Date _____

APPROVED AS TO FORM:

By: _____
Noel Tapia, City Attorney Date _____

EXHIBIT A
SCOPE OF WORK

Exhibit A

Scope of Services

LIN Consulting, Inc. is prepared to complete any Traffic Engineering related task as requested by the City of Commerce (the "City") during the contract period of 3 years. Typical tasks include, but are not limited to, those listed below:

- Preparation of Plans, Specifications, and Engineer's Estimates, in accordance with the City's policies, the Standard Specifications for Public Works Construction, and Caltrans Standard Plans and Specifications. Representative projects involve traffic signal improvements, signing and striping modifications and street lighting modifications.
- Minimize construction claims as part of the design
- Assist the City in developing bid and contract documents for Public Works projects
- Assist the City with interpreting construction contract documents and in resolving disputes or uncertainties
- Review, track, and process shop drawings, submittals, RFIs, RFCs, etc., as needed by the City
- Recommend final project approvals to the City
- Coordinate and assist the City in obtaining pertinent permits
- Review of plans, specifications and cost estimates prepared by others
- Review of Traffic Impact Studies prepared by others
- Review of temporary traffic control plans
- Conduct traffic counts and prepare traffic operations analyses
- Review traffic accident data and develop mitigations as necessary
- Prepare Traffic and Engineering surveys and recommend changes in posted speed limits as appropriate
- Coordinate and/or attend meetings with other City Departments or outside agencies, as deemed necessary
- Conduct general traffic engineering investigations, including field review, data collection, preparation of field diagrams or photos, and provide findings and recommendations
- Assist the City in responding to City Council and/or public inquires or concerns regarding Traffic Engineering related matters

All developed material shall be the property of the City including electronic data compiled.

FEE SCHEDULE FOR YEARS 2019 - 2022

2019

STAFF LEVEL	HOURLY RATE
Principal	\$ 195
Senior Project Manager	\$ 185
Project Manager	\$ 175
Senior Engineer	\$ 165
Assistant Project Manager	\$ 155
Project Engineer	\$ 130
Assistant Engineer	\$ 105
Technical Support	\$ 85
Administrative Support	\$ 50

2020

STAFF LEVEL	HOURLY RATE
Principal	\$ 200
Senior Project Manager	\$ 190
Project Manager	\$ 180
Senior Engineer	\$ 170
Assistant Project Manager	\$ 160
Project Engineer	\$ 135
Assistant Engineer	\$ 110
Technical Support	\$ 90
Administrative Support	\$ 55

2021

STAFF LEVEL	HOURLY RATE
Principal	\$ 205
Senior Project Manager	\$ 195
Project Manager	\$ 185
Senior Engineer	\$ 175
Assistant Project Manager	\$ 165
Project Engineer	\$ 140
Assistant Engineer	\$ 115
Technical Support	\$ 95
Administrative Support	\$ 55

2022

STAFF LEVEL	HOURLY RATE
Principal	\$ 210
Senior Project Manager	\$ 200
Project Manager	\$ 190
Senior Engineer	\$ 180
Assistant Project Manager	\$ 170
Project Engineer	\$ 145
Assistant Engineer	\$ 120
Technical Support	\$ 100
Administrative Support	\$ 60

COST FOR MATERIALS AND INCIDENTAL SERVICES

Mileage	Federal Approved Rate
Parking	At-Cost
Reproductions	At-Cost
Mailings	At-Cost

STANDARD TERMS AND CONDITIONS

The hourly rates are effective to April 19th, 2022. After the date specified, the labor rates may be adjusted to compensate for labor adjustments and other increases in labor costs.

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 Administrator 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. To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities, damages, costs and expenses, including reasonable attorney's fees and costs, to the extent they arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's duty to defend shall consist of reimbursement of defense costs incurred by City in direct proportion to the Consultant's proportionate percentage of fault. Consultant's percentage of fault shall be determined, as applicable, by a court of law, jury or arbitrator. In the event any loss, liability or damage is incurred by way of settlement or resolution without a court, jury or arbitrator having made a determination of the Consultant's percentage of fault, the parties agree to mediation with a third party neutral to determine the Consultant's proportionate percentage of fault for purposes of determining the amount of indemnity and defense cost reimbursement owed to the City.

B. Notwithstanding the foregoing and without diminishing any rights of City under Section 3(a), for any liability, claim, demand, allegation against City arising out of, related to, or pertaining to any act or omission of Consultant, but which is not a design professional service, Consultant shall defend, indemnify, and hold harmless City, its officials, employees, and agents ("Indemnified Parties") from and against any and all damages, costs, expenses (including reasonable attorney fees and expert witness fees), judgments, settlements, and/or arbitration awards, whether for personal or bodily injury, property damage, or economic injury, and arising out of, related to, any concurrent or contributory negligence on the part of City, except for the sole or active negligence of, or willful misconduct of City. If it is determined the City's negligence or willful misconduct contributed to the liability or damage, Consultant shall be required to provide indemnification to the City and reimbursement of defense costs incurred by City in direct proportion to the Consultant's proportionate percentage of fault.

C. It is understood that the duty of Consultant to indemnify and hold harmless is subject to and includes the duty to defend as set forth in Section 2782.8 of the California Civil Code as further addressed in Section 3(a) above. Acceptance by the City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless

clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

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 Administrator, 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 Administrator 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.

4850-8686-0922, v. 1

DESIGN PROFESSIONAL SERVICES AGREEMENT ON-CALL FOR TRAFFIC ENGINEERING

This agreement ("Agreement") is made as of _____, 2019 by and between the **City of Commerce**, a municipal corporation ("City") and **LSA Associates** ("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 [insert brief description of work] as set forth in the Scope of Services attached hereto as **Exhibit A**; and

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

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

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

2. **Term of Agreement.** This Agreement shall commence on April 20, 2019 (the "Commencement Date") and shall remain and continue in effect until April 19, 2022, 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 maintain appropriate and necessary documentation supporting the all invoices submitted to the City detailing the type of service provided. Such documentation shall be available for review by the City at all reasonable times upon request.

B. 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 Administrator

Company

LSA Associates
Attn: Ken Wilhelm
20 Executive Park, Ste. 200
Irvine, CA 92614

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


By: _____
Edgar P. Cisneros, City Administrator

Date

CONSULTANT

LSA Associates

By: 
~~Ken Wilhelm~~ Rob McCann, CEO



Date

ATTEST:

By: _____
Lena Shumway, City Clerk

Date

APPROVED AS TO FORM:

By: _____
Noel Tapia, City Attorney

Date

EXHIBIT A
SCOPE OF WORK



PROJECT APPROACH

LSA is motivated and committed to meeting the City's expectations for task assignments within the desired time frames. It is LSA's intent that its staff play a consistent lead role from start to finish. Working under the direction of Mr. Petros, each key team member will be responsible for responding to project needs in his or her area of expertise and will direct qualified supporting staff, as necessary, to assist in accomplishing specific requested assignments. Through submission of this proposal, LSA guarantees that the key team members will be available to respond to requests in a timely manner.

LSA understands that an on-call assignment requires an "on-call" obligation. The team must **act quickly**; it must be **responsive**, **knowledgeable**, ready to use its experience for a myriad of possible requests, and **solution-oriented**. The firm's experience has led its staff to one common denominator when working under an on-call services contract: constant, clear, productive **communication**. If selected for this contract, LSA will be responsive and efficient, maintaining frequent and purposeful communication with City staff.

WORKING RELATIONSHIPS

LSA's project management approach is to assign responsibility for the delivery of a quality project on time and within budget to the Project Manager. Mr. Petros, LSA's Project Manager, will have total responsibility for maintaining an effective working relationship with the City and maintaining the technical performance of all team members throughout the life of this consulting engagement. Mr. Petros will review the performance of all assigned personnel from time to time with the City's Project Manager. If any problems are communicated by the City, corrective action will be taken immediately. Mr. Petros will ensure that the City is kept informed of all significant project information on a timely basis throughout the life of this assignment by way of informal and formal reporting via email or telephone conversation.

TEAM ORGANIZATION

As previously noted, the LSA Team members' expertise covers a broad spectrum of transportation and traffic engineering disciplines. LSA's management team is organized with Mr. Petros as the overall Principal in Charge and Project Manager, making him the primary point of contact, and he will be supported by experienced senior-level LSA staff members. Mr. Petros will be responsible for quality assurance and will ensure that LSA's Quality Control Plan is implemented on all aspects of this contract. LSA's depth of staffing resources beyond this core project team will enable the firm to respond to any number of task orders that may be requested over the 3-year period of the contract.

LSA anticipates the following types of task orders in association with this Master Agreement: traffic calming studies and implementation; non-motorized active transportation plans, studies, and designs (pedestrian, bicycle, and Americans with Disabilities Act facilities); Livable and Complete Streets policies, programs, and designs; and safe routes to schools. The following describes LSA's general approach for these types of tasks:

- **Public Participation:** LSA believes that public participation is an important part of any successful traffic calming initiative. Therefore, LSA will start the process by involving the public via interviews, walkability surveys, and needs assessment workshops.
- **Data Collection:** Data collected will include, but not be limited to: information related to pedestrian volumes, bicycle volumes, vehicular volumes, speed surveys, roadway widths, and signal timing.
- **Survey of Existing Facilities:** Concurrently, LSA will survey existing facilities and review plans for non-motorized transportation and will map them using geographic information systems (GIS) software.
- **Existing Conditions Analysis:** LSA will then conduct a bicycle and pedestrian level of service (LOS) assessment for existing conditions based on directness, continuity, street crossings, visual interest and amenities, and sense of security. Please note that although the method for determining pedestrian and bicycle LOS can be applied consistently throughout the City, the minimum standard or threshold for a given area or development type may vary. For example, the pedestrian needs of a mixed-use activity center are different from those of a school or pedestrian access to a transit stop.



- **Circulation Needs Assessment and Improvements:** LSA will then prepare a pedestrian and bicycle needs assessment report based on estimated trips, identification of destinations and missing links, and strategies to improve LOS.
- **Secondary Impacts of Proposed Plan:** LSA will evaluate secondary impacts to identify potential effects from implementation of such plans on the surrounding street network.
- **Preparation of Implementation Plan:** Depending on the scale of the project, an implementation plan will be prepared based on the above tasks and discussion with the City. Included in this task is a review of the existing jurisdictional funding programs for pedestrian and bicycle improvements and what funding programs are available.

PROJECT MANAGEMENT/QUALITY CONTROL APPROACH

LSA's Traffic Engineering staff is made up of traffic engineers, traffic modelers, and transportation planners, each of whom has specific skills and strengths. As work tasks are assigned by the City, each task will be evaluated by Mr. Petros and assigned to the most appropriate key personnel. In addition to assigning the most knowledgeable staff members to each task, LSA will use the appropriate level of technology in all assignments. LSA can use operational analysis methodologies, such as Highway Capacity Manual (2010) software, TRAFFIX, Vistro, Synchro, SimTraffic, and more. LSA holds licenses for both TranPlan and TransCAD should the company be called upon to assist with modeling exercises.

The following are LSA's methods and procedures for managing schedules and budgets and the LSA tactics employed to ensure that quality control is maintained:

- **Communication:** It has been LSA's experience that the single most critical element for the successful completion of a project is the early development of clear channels of communication between LSA's project management and all parties involved. At a minimum, monthly status reports are prepared by LSA's Project Managers. These reports include narrative descriptions of all major activities performed during the month. However, contact with the client typically occurs much more frequently.
- **Understanding the Issues:** Most of LSA's staff members have 5 or more years of professional experience with LSA. The staff has developed the ability to identify key issues and solutions, which assists in foreseeing problems and avoiding potential cost overruns or schedule delays. These skills are used to advise LSA's clients of impending issues and to assist in resolving those issues.
- **Product Review:** To ensure that LSA's product meets the best technical and professional quality sought by the highest industry standards, LSA has developed an internal document review program for each document that leaves the office. Once a document is prepared, it is reviewed and corrected by a professional editor and then receives technical review by a Principal prior to its release.
- **Budget Control:** Billing for LSA's projects is tracked by internal accounting software on a bimonthly schedule. Each Project Manager receives reports indicating the project budget status every 2 weeks to assist in maintaining tight control over project budgets.
- **Commitment of Senior Personnel:** LSA uses upper-level, experienced personnel not just as supervisors but also as the primary investigators and authors of technical analyses and planning documents. This use of upper-level staff eliminates the need for multiple internal reviews. LSA has found that in some situations, it is most efficient to use senior staff members qualified in their areas of expertise.
- **Commitment to Scheduling Needs:** LSA's commitment to meeting scheduling needs and project demands extends to doing whatever it takes to complete the job. LSA's work in the past has demanded staff time at nights and on weekends. LSA has also reduced handling time by using 24-hour reprographic houses capable of compiling, printing, packaging, and mailing completed documents in a single, efficient operation.
- **Quality Management:** LSA manages quality throughout the life of the project, not merely at the end of the project. LSA's overall goal is to improve quality on each subsequent project. This requires implementing strategies to improve quality at the very beginning of each project, then carrying those strategies throughout the duration of the project and beyond.

EXHIBIT 10-H2 COST PROPOSAL Page 1 of 4
SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)
(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Note: Mark-ups are Not Allowed
 Consultant: LSA Associates

Project No. _____ ☒ Prime Consultant ☐ Subconsultant ☐ 2nd Tier Subconsultant
 Contract No. _____ Participation Amount \$ _____ Date 2/21/2019

For Combined Rate	Fringe Benefit 81.44%	+	General & Administrative 115.54%	=	Combined ICR 196.98%
OR					
For Home Office Rate	Fringe Benefit 0.00%	+	General & Administrative 0.00%	=	Home Office ICR 0.00%
For Field Office Rate	Fringe Benefit 0.00%	+	General & Administrative 0.00%	=	Field Office ICR 0.00%
Fee					10.00%

BILLING INFORMATION

Name/Job Title/Classification ¹	Hourly Billing Rates ¹		Effective Date of Hourly Rate		Actual or Avg. Hourly Rate ²	% or \$ Increase	Hourly Range - for Classifications Only
	Straight	OT(1.5x)	From	To			
Tony Petros - Principal	\$228.28 \$239.70 \$251.68		4/20/2019 4/20/2020 4/20/2021	4/19/2020 4/19/2021 4/19/2022	\$69.88 \$73.37 \$77.04	5.00% 5.00%	Not Applicable
Ken Wilhelm - Principal	\$237.69 \$249.58 \$262.05		4/20/2019 4/20/2020 4/20/2021	4/19/2020 4/19/2021 4/19/2022	\$72.76 \$76.40 \$80.22	5.00% 5.00%	Not Applicable
Les Card - Principal	\$446.31 \$468.62 \$492.05		4/20/2019 4/20/2020 4/20/2021	4/19/2020 4/19/2021 4/19/2022	\$136.62 \$143.45 \$150.62	5.00% 5.00%	Not Applicable
Gary Dow - Associate/Graphics	\$161.05 \$169.10 \$177.56		4/20/2019 4/20/2020 4/20/2021	4/19/2020 4/19/2021 4/19/2022	\$49.30 \$51.77 \$54.35	5.00% 5.00%	Not Applicable
Ambarish Mukerjee - Associate	\$186.89 \$196.24 \$206.05		4/20/2019 4/20/2020 4/20/2021	4/19/2020 4/19/2021 4/19/2022	\$57.21 \$60.07 \$63.07	5.00% 5.00%	Not Applicable
Justin Roos - Associate/GIS	\$164.09 \$172.29 \$180.91		4/20/2019 4/20/2020 4/20/2021	4/19/2020 4/19/2021 4/19/2022	\$50.23 \$52.74 \$55.38	5.00% 5.00%	Not Applicable
Ravikumar Palakurthy - Senior Transportation Engineer	\$163.34 \$171.51 \$180.08	\$245.01 \$257.26 \$270.12	4/20/2019 4/20/2020 4/20/2021	4/19/2020 4/19/2021 4/19/2022	\$50.00 \$52.50 \$55.13	5.00% 5.00%	Not Applicable
Dean Arizabal - Associate	\$155.63 \$163.41 \$171.58		4/20/2019 4/20/2020 4/20/2021	4/19/2020 4/19/2021 4/19/2022	\$47.64 \$50.02 \$52.52	5.00% 5.00%	Not Applicable
Arthur Black - Associate	\$154.13 \$161.83 \$169.92		4/20/2019 4/20/2020 4/20/2021	4/19/2020 4/19/2021 4/19/2022	\$47.18 \$49.54 \$52.02	5.00% 5.00%	Not Applicable
Tom Flahive - Senior GIS Specialist	\$155.60 \$163.38 \$171.55		4/20/2019 4/20/2020 4/20/2021	4/19/2020 4/19/2021 4/19/2022	\$47.63 \$50.01 \$52.51	5.00% 5.00%	Not Applicable
Jim McPherson - Senior GIS Specialist	\$111.50 \$117.07 \$122.92		4/20/2019 4/20/2020 4/20/2021	4/19/2020 4/19/2021 4/19/2022	\$34.13 \$35.84 \$37.63	5.00% 5.00%	Not Applicable

Meridith Canterbury - GIS Specialist	\$128.32				4/20/2019	4/19/2020	\$39.28		Not Applicable
	\$134.74				4/20/2020	4/19/2021	\$41.24	5.00%	
	\$141.47				4/20/2021	4/19/2022	\$43.31	5.00%	
Matthew Phillips - Graphics Technician	\$137.92	\$206.89	\$275.85		4/20/2019	4/19/2020	\$42.22		Not Applicable
	\$144.82	\$217.23	\$289.64		4/20/2020	4/19/2021	\$44.33	5.00%	
	\$152.06	\$228.09	\$304.12		4/20/2021	4/19/2022	\$46.55	5.00%	
Kenneth Tan - Transportation Engineer	\$90.91				4/20/2019	4/19/2020	\$27.83		Not Applicable
	\$95.46				4/20/2020	4/19/2021	\$29.22	5.00%	
	\$100.23				4/20/2021	4/19/2022	\$30.68	5.00%	
Debmalya Sinha - Transportation Planner	\$97.55				4/20/2019	4/19/2020	\$29.86		Not Applicable
	\$102.42				4/20/2020	4/19/2021	\$31.35	5.00%	
	\$107.54				4/20/2021	4/19/2022	\$32.92	5.00%	
Beverly Inoles - Word Processor/Editor	\$121.65	\$182.48	\$243.31		4/20/2019	4/19/2020	\$37.24		Not Applicable
	\$127.74	\$191.61	\$255.48		4/20/2020	4/19/2021	\$39.10	5.00%	
	\$134.12	\$201.19	\$268.25		4/20/2021	4/19/2022	\$41.06	5.00%	
Liba Makkaufald - Support Staff	\$71.97	\$107.95	\$143.93		4/20/2019	4/19/2020	\$22.09		Not Applicable
	\$75.57	\$113.35	\$151.13		4/20/2020	4/19/2021	\$23.13	5.00%	
	\$79.34	\$119.02	\$158.69		4/20/2021	4/19/2022	\$24.29	5.00%	
Maria Perez - Support Staff	\$111.50	\$167.24	\$222.99		4/20/2019	4/19/2020	\$34.13		Not Applicable
	\$117.07	\$175.60	\$234.14		4/20/2020	4/19/2021	\$35.84	5.00%	\$500 - \$500
	\$122.92	\$184.39	\$245.85		4/20/2021	4/19/2022	\$37.63	5.00%	\$500 - \$500
Daniel Chuong - Transportation Engineer	\$125.64				4/20/2019	4/19/2020	\$38.46		Not Applicable
	\$131.92				4/20/2020	4/19/2021	\$40.38	5.00%	
	\$138.52				4/20/2021	4/19/2022	\$42.40	5.00%	
Shiva Delaparastaran - Transportation Engineer	\$114.66				4/20/2019	4/19/2020	\$35.10		Not Applicable
	\$120.40				4/20/2020	4/19/2021	\$36.86	5.00%	
	\$126.42				4/20/2021	4/19/2022	\$38.70	5.00%	
Ashley Barden - Assistant Transportation Planner	\$70.66	\$105.99	\$141.32		4/20/2019	4/19/2020	\$21.63		Not Applicable
	\$74.19	\$111.29	\$148.39		4/20/2020	4/19/2021	\$22.71	5.00%	
	\$77.90	\$116.85	\$155.81		4/20/2021	4/19/2022	\$23.85	5.00%	
Deepnath Majumder - Assistant Transportation Planner	\$85.20	\$127.80	\$170.40		4/20/2019	4/19/2020	\$26.08		Not Applicable
	\$89.46	\$134.19	\$178.92		4/20/2020	4/19/2021	\$27.38	5.00%	
	\$93.93	\$140.90	\$187.86		4/20/2021	4/19/2022	\$28.75	5.00%	
Karen Varela - Transportation Planner	\$106.79				4/20/2019	4/19/2020	\$32.69		Not Applicable
	\$112.13				4/20/2020	4/19/2021	\$34.32	5.00%	
	\$117.74				4/20/2021	4/19/2022	\$36.04	5.00%	
Zac Henderson - Principal/GIS	\$196.14				4/20/2019	4/19/2020	\$60.04		Not Applicable
	\$205.94				4/20/2020	4/19/2021	\$63.04	5.00%	
	\$216.24				4/20/2021	4/19/2022	\$66.19	5.00%	

(Add pages as necessary)

NOTES:

1. Key personnel must be marked with an asterisk (*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (**). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
2. The cost proposal format shall not be amended.
3. Billing rate = actual hourly rate * (1 - ICR) * (1 - Fee). Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans. All costs must comply with the Federal cost principles for reimbursement.
4. For named employees and key personnel enter the actual hourly rate. For classifications only, enter the Average Hourly Rate for that classification.

EXHIBIT 10-H2 COST PROPOSAL PAGE 3 OF 4
SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)
(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Consultant Project No. _____ Contract No. _____ ☐ Prime Consultant ☐ Subconsultant
 Date _____

SCHEDULE OF OTHER DIRECT COST ITEMS (Add additional pages as necessary)				
Description of Item	Quantity	Unit	Unit Cost	Total
Outside Printing	1	each	actual	
Fed Ex/USPS/UPS	1	each	actual	
Courier	1	each	actual	
CD Production	1	each	\$5.00	\$5.00
Plotting	1	per sq. ft	\$3.75	\$3.75
GPS Unit	1	per day	\$75.00	\$75.00
Total Station Surveying	1	per day	\$50.00	\$50.00
Level (Laser or Optical)	1	per day	\$25.00	\$25.00
Laser Rangefinder	1	per day	\$25.00	\$25.00
Sound Meter	1	per day	\$75.00	\$75.00
Aerial Photo	1	each	actual	
Boat Rental	1	per day	\$125.00	\$125.00
Water Quality Meter	1	per day	\$25.00	\$25.00
Reproduction (8.5x11) B/W	1	per page	\$0.07	\$0.07
Reproduction (8.5x11) Color	1	per page	\$0.40	\$0.40
Reproduction (11x17) B/W	1	per page	\$0.10	\$0.10
Reproduction (11x17) Color	1	per page	\$0.75	\$0.75

Note: Add additional pages if necessary.

NOTES:

1. List other direct cost items with estimated costs. These costs should be competitive in their respective industries and supported with appropriate documentation.
2. Proposed ODC items should be consistently billed regardless of client and contract type.
3. Items when incurred for the same purpose, in like circumstance, should not be included in any indirect cost pool or in the overhead rate.
4. Items such as special tooling, will be reimbursed at actual cost with supporting documentation (invoice).
5. Items listed above that would be considered "tools of the trade" are not reimbursable as other direct cost.
6. Travel related costs should be pre-approved by the contracting agency and shall not exceed current State Department of Personnel Administration rules.
7. If mileage is claimed, the rate should be properly supported by the consultant's calculation of their actual costs for company vehicles. In addition, the miles claimed should be supported by mileage logs.
8. If a consultant proposes rental costs for a vehicle, the company must demonstrate that this is its standard procedure for all of their contracts and that they do not own any vehicles that could be used for the same purpose.
9. The cost proposal format shall not be amended. All costs must comply with the Federal cost principles.
10. Add additional pages if necessary.
11. Subconsultants must provide their own cost proposals.

EXHIBIT 10-H2 COST PROPOSAL PAGE 4 OF 4

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. Title 23 United States Code Section 112 - Letting of Contracts
4. 48 Code of Federal Regulations Part 31 - Contract Cost Principles and Procedures
5. 23 Code of Federal Regulations Part 172 - Procurement, Management, and Administration of Engineering and Design Related Service
6. 48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

Prime Consultant or Subconsultant Certifying:Name: Rosie EvansTitle*: Chief Financial OfficerSignature: Date of Certification (mm/dd/yyyy) 2/21/2019Email: rosie.evans@lsa.netPhone Number (949) 553-0666Address: 20 Executive Park, Suite 200, Irvine, CA 92614

*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

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 Administrator 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. To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities, damages, costs and expenses, including reasonable attorney's fees and costs, to the extent they arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's duty to defend shall consist of reimbursement of defense costs incurred by City in direct proportion to the Consultant's proportionate percentage of fault. Consultant's percentage of fault shall be determined, as applicable, by a court of law, jury or arbitrator. In the event any loss, liability or damage is incurred by way of settlement or resolution without a court, jury or arbitrator having made a determination of the Consultant's percentage of fault, the parties agree to mediation with a third party neutral to determine the Consultant's proportionate percentage of fault for purposes of determining the amount of indemnity and defense cost reimbursement owed to the City.

B. Notwithstanding the foregoing and without diminishing any rights of City under Section 3(a), for any liability, claim, demand, allegation against City arising out of, related to, or pertaining to any act or omission of Consultant, but which is not a design professional service, Consultant shall defend, indemnify, and hold harmless City, its officials, employees, and agents ("Indemnified Parties") from and against any and all damages, costs, expenses (including reasonable attorney fees and expert witness fees), judgments, settlements, and/or arbitration awards, whether for personal or bodily injury, property damage, or economic injury, and arising out of, related to, any concurrent or contributory negligence on the part of City, except for the sole or active negligence of, or willful misconduct of City. If it is determined the City's negligence or willful misconduct contributed to the liability or damage, Consultant shall be required to provide indemnification to the City and reimbursement of defense costs incurred by City in direct proportion to the Consultant's proportionate percentage of fault.

C. It is understood that the duty of Consultant to indemnify and hold harmless is subject to and includes the duty to defend as set forth in Section 2782.8 of the California Civil Code as further addressed in Section 3(a) above. Acceptance by the City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless

clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

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 Administrator, 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 Administrator 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.

4850-8686-0922, v. 1

DESIGN PROFESSIONAL SERVICES AGREEMENT ON-CALL FOR TRAFFIC ENGINEERING

This agreement ("Agreement") is made as of _____, 2019 by and between the **City of Commerce**, a municipal corporation ("City") and **Transtech Engineers, Inc.** ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as a "Party" and collectively referred to as the "Parties."

RECITALS

WHEREAS, City desires to utilize the services of Consultant as an independent contractor to [insert brief description of work] as set forth in the Scope of Services attached hereto as **Exhibit A**; and

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

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

1. **Company's Scope of Services.** The nature and scope of the specific services to be performed by Consultant are as described in **Exhibit A**.
2. **Term of Agreement.** This Agreement shall commence on **April 20, 2019** (the "Commencement Date") and shall remain and continue in effect until **April 19, 2022**, 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 maintain appropriate and necessary documentation supporting the all invoices submitted to the City detailing the type of service provided. Such documentation shall be available for review by the City at all reasonable times upon request.

B. 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 Administrator

Company

Transtech Engineers, Inc.
Attn: Ali Cayir
13367 Benson Avenue
Chino, CA 91710

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

By: _____
Edgar P. Cisneros, City Administrator

Date

CONSULTANT

Transtech Engineers, Inc.

By: _____
Ali Cayir

03-07-2019

Date

ATTEST:

By: _____
Lena Shumway, City Clerk

Date

APPROVED AS TO FORM:

By: _____
Noel Tapia, City Attorney

Date

EXHIBIT A
SCOPE OF WORK

EXHIBIT A – SCOPE OF SERVICES

Following is a summary of various tasks that may be provided as part of Traffic Engineering Services. These are general tasks, and specific tasks and level of staffing will be adjusted and new tasks will be added per each specific project's needs and requirements:

- Discuss with City staff scope of the specific project. Develop a scope and budget for City's approval.
- Conduct a visual field review of project site to become familiar with the project area conditions, and to develop an efficient approach for design of the proposed improvements. In consultation with the City staff, and when required, prepare recommendations for consideration in the approach that would be incorporated in the reports, plans, etc.
- Conduct necessary data collection, field review and prepare reports on traffic related issues, and present them at Commission and/or Council Meetings.
- Prepare traffic safety and calming studies, stop and signal warrants/studies, traffic impact studies, speed survey studies.
- Respond to City requests, citizen complaints and attend Traffic Commission meetings.
- Review traffic impact studies submitted by developers, and provide traffic study guidelines to other consultants preparing TIA's and represent the City at planning commission and council meetings when these projects are reviewed and presented.
- Assess conditions for pedestrians, buses and bicycles by reviewing master plans completed for transit and bicycles as well as safe walk to school routes.
- If project involves plans, prepare necessary plans and specifications.
- When requested and necessary, meet with City staff to review project, progress and relevant issues.

Cost Proposal

EXHIBIT 10-H COST PROPOSAL (EXAMPLE #2) PAGE 1 OF 2
SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)
 (CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Note: Mark-ups are Not Allowed
 Consultant or Subconsultant

TRANSTECH ENGINEERS, INC.

Contract No. _____

Date **1/9/2019**

Fringe Benefit %
15%

+ Overhead % +
45%

General Administration % =
41%

Combined Indirect Cost Rate (ICR) %
101%

FEE % = **10%**

BILLING INFORMATION

CALCULATION INFORMATION

Name/Job Title/Classification ¹	Hourly Billing Rates ²			Effective date of hourly rate		Actual or Avg. hourly rate ³	% or \$ increase	Hourly range - for classifications only
	Straight	OT(1.5x)	OT(2x)	From	To			
Sr. Engineer	\$176.88	\$265.32	\$353.76	1/1/2019	12/31/2019	\$80.00		\$75.00 - \$85.00
Sr. Engineer	\$182.19	\$273.28	\$364.37	1/1/2020	12/31/2020	\$82.40	3.00%	\$77.25 - \$87.55
Sr. Engineer	\$187.65	\$281.48	\$375.30	1/1/2021	12/31/2021	\$84.87	3.00%	\$79.57 - \$90.18
Project Manager	\$165.83	\$248.74	\$331.65	1/1/2019	12/31/2019	\$75.00		\$70.00 - \$80.00
Project Manager	\$170.80	\$256.20	\$341.60	1/1/2020	12/31/2020	\$77.25	3.00%	\$72.10 - \$82.40
Project Manager	\$175.92	\$263.89	\$351.85	1/1/2021	12/31/2021	\$79.57	3.00%	\$74.26 - \$84.87
Project Engineer	\$165.83	\$248.74	\$331.65	1/1/2019	12/31/2019	\$75.00		\$70.00 - \$80.00
Project Engineer	\$170.80	\$256.20	\$341.60	1/1/2020	12/31/2020	\$77.25	3.00%	\$72.10 - \$82.40
Project Engineer	\$175.92	\$263.89	\$351.85	1/1/2021	12/31/2021	\$79.57	3.00%	\$74.26 - \$84.87
Staff Engineer/Associate Engineer	\$143.72	\$215.57	\$287.43	1/1/2019	12/31/2019	\$65.00		\$60.00 - \$70.00
Staff Engineer/Associate Engineer	\$148.03	\$222.04	\$296.05	1/1/2020	12/31/2020	\$66.95	3.00%	\$61.80 - \$72.10
Staff Engineer/Associate Engineer	\$152.47	\$228.70	\$304.93	1/1/2021	12/31/2021	\$68.96	3.00%	\$63.65 - \$74.26
CADD Designer	\$121.61	\$182.41	\$243.21	1/1/2019	12/31/2019	\$55.00		\$50.00 - \$60.00
CADD Designer	\$125.25	\$187.88	\$250.51	1/1/2020	12/31/2020	\$56.65	3.00%	\$51.50 - \$61.80
CADD Designer	\$129.01	\$193.52	\$258.02	1/1/2021	12/31/2021	\$58.35	3.00%	\$53.05 - \$63.65
Sr. Planner	\$143.72	\$215.57	\$287.43	1/1/2019	12/31/2019	\$65.00		\$60.00 - \$70.00
Sr. Planner	\$148.03	\$222.04	\$296.05	1/1/2020	12/31/2020	\$66.95	3.00%	\$61.80 - \$72.10
Sr. Planner	\$152.47	\$228.70	\$304.93	1/1/2021	12/31/2021	\$68.96	3.00%	\$63.65 - \$74.26
Associate Planner	\$121.61	\$182.41	\$243.21	1/1/2019	12/31/2019	\$55.00		\$50.00 - \$60.00
Associate Planner	\$125.25	\$187.88	\$250.51	1/1/2020	12/31/2020	\$56.65	3.00%	\$51.50 - \$61.80
Associate Planner	\$129.01	\$193.52	\$258.02	1/1/2021	12/31/2021	\$58.35	3.00%	\$53.05 - \$63.65
Funds and Grants Manager	\$154.77	\$232.16	\$309.54	1/1/2019	12/31/2019	\$70.00		\$65.00 - \$75.00
Funds and Grants Manager	\$159.41	\$239.12	\$318.83	1/1/2020	12/31/2020	\$72.10	3.00%	\$66.95 - \$77.25
Funds and Grants Manager	\$164.20	\$246.29	\$328.39	1/1/2021	12/31/2021	\$74.26	3.00%	\$68.96 - \$79.57

Funds Analyst	\$121.61	\$182.41	\$243.21	1/1/2019	12/31/2019	\$55.00		\$50.00 - \$60.00
Funds Analyst	\$125.25	\$187.88	\$250.51	1/1/2020	12/31/2020	\$56.65	3.00%	\$51.50 - \$61.80
Funds Analyst	\$129.01	\$193.52	\$258.02	1/1/2021	12/31/2021	\$58.35	3.00%	\$53.05 - \$63.65
Sr. Transportation Analyst	\$154.77	\$232.16	\$309.54	1/1/2019	12/31/2019	\$70.00		\$65.00 - \$75.00
Sr. Transportation Analyst	\$159.41	\$239.12	\$318.83	1/1/2020	12/31/2020	\$72.10	3.00%	\$66.95 - \$77.25
Sr. Transportation Analyst	\$164.20	\$246.29	\$328.39	1/1/2021	12/31/2021	\$74.26	3.00%	\$68.96 - \$79.57
Transportation Analyst	\$132.66	\$198.99	\$265.32	1/1/2019	12/31/2019	\$60.00		\$55.00 - \$65.00
Transportation Analyst	\$136.64	\$204.96	\$273.28	1/1/2020	12/31/2020	\$61.80	3.00%	\$56.65 - \$66.95
Transportation Analyst	\$140.74	\$211.11	\$281.48	1/1/2021	12/31/2021	\$63.65	3.00%	\$58.35 - \$68.96
Sr. Construction Manager	\$176.88	\$265.32	\$353.76	1/1/2019	12/31/2019	\$80.00		\$75.00 - \$85.00
Sr. Construction Manager	\$182.19	\$273.28	\$364.37	1/1/2020	12/31/2020	\$82.40	3.00%	\$77.25 - \$87.55
Sr. Construction Manager	\$187.65	\$281.48	\$375.30	1/1/2021	12/31/2021	\$84.87	3.00%	\$79.57 - \$90.18
Construction Manager	\$154.77	\$232.16	\$309.54	1/1/2019	12/31/2019	\$70.00		\$65.00 - \$75.00
Construction Manager	\$159.41	\$239.12	\$318.83	1/1/2020	12/31/2020	\$72.10	3.00%	\$66.95 - \$77.25
Construction Manager	\$164.20	\$246.29	\$328.39	1/1/2021	12/31/2021	\$74.26	3.00%	\$68.96 - \$79.57
Sr. Inspector, PW	\$143.72	\$215.57	\$287.43	1/1/2019	12/31/2019	\$65.00		\$60.00 - \$70.00
Sr. Inspector, PW	\$148.03	\$222.04	\$296.05	1/1/2020	12/31/2020	\$66.95	3.00%	\$61.80 - \$72.10
Sr. Inspector, PW	\$152.47	\$228.70	\$304.93	1/1/2021	12/31/2021	\$68.96	3.00%	\$63.65 - \$74.26
Inspector, PW	\$121.61	\$182.41	\$243.21	1/1/2019	12/31/2019	\$55.00		\$50.00 - \$60.00
Inspector, PW	\$125.25	\$187.88	\$250.51	1/1/2020	12/31/2020	\$56.65	3.00%	\$51.50 - \$61.80
Inspector, PW	\$129.01	\$193.52	\$258.02	1/1/2021	12/31/2021	\$58.35	3.00%	\$53.05 - \$63.65
Engineering Technician	\$88.44	\$132.66	\$176.88	1/1/2019	12/31/2019	\$40.00		\$35.00 - \$45.00
Engineering Technician	\$91.09	\$136.64	\$182.19	1/1/2020	12/31/2020	\$41.20	3.00%	\$36.05 - \$46.35
Engineering Technician	\$93.83	\$140.74	\$187.65	1/1/2021	12/31/2021	\$42.44	3.00%	\$37.13 - \$47.74
Admin/Clerical Support	\$77.39	\$116.08	\$154.77	1/1/2019	12/31/2019	\$35.00		\$30.00 - \$40.00
Admin/Clerical Support	\$79.71	\$119.56	\$159.41	1/1/2020	12/31/2020	\$36.05	3.00%	\$30.90 - \$41.20
Admin/Clerical Support	\$82.10	\$123.15	\$164.20	1/1/2021	12/31/2021	\$37.13	3.00%	\$31.83 - \$42.44
2-Man Survey Crew	\$265.32	\$397.98	\$530.64	1/1/2019	12/31/2019	\$120.00		\$120.00 - \$120.00
2-Man Survey Crew	\$273.28	\$409.92	\$546.56	1/1/2020	12/31/2020	\$123.60	3.00%	\$123.60 - \$123.60
2-Man Survey Crew	\$281.48	\$422.22	\$562.96	1/1/2021	12/31/2021	\$127.31	3.00%	\$127.31 - \$127.31

1. Names and classifications of consultant (key staff) team members must be listed. Provide separate sheets for prime and all subcontractant firms.

2. Billing rate = actual hourly rate * (1+ ICR) * (1+ Fee). Agreed upon billing rates are not adjustable for the term of contract.

3. For named employees enter the actual hourly rate. For classifications only, enter the Average Hourly Rate for that classification.

NOTES:

• Denote all employees subject to prevailing wage with an asterisks (*)

• For "Other Direct Cost" listing, see page 2 of this Exhibit

Cost Proposal

EXHIBIT 10-H COST PROPOSAL (EXAMPLE #2) PAGE 2 OF 2
SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)
(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Consultant or Subconsultant

Contract No.

Date 1/9/2019

SCHEDULE OF OTHER DIRECT COST ITEMS (None for this contract)											
PRIME CONSULTANT				SUBCONSULTANT #1				SUBCONSULTANT #2			
DESCRIPTION OF ITEMS	UNIT	UNIT COST	TOTAL	DESCRIPTION OF ITEMS	UNIT	UNIT COST	TOTAL	DESCRIPTION OF ITEMS	UNIT	UNIT COST	TOTAL
Special Tooling				Special Tooling				Special Tooling			
A.				A.				A.			
B.				B.				B.			
C.				C.				C.			
Travel				Travel				Travel			
A.				A.				A.			
B.				B.				B.			
C.				C.				C.			
PRIME TOTAL ODCs = #REF!				SUBCONSULTANT #1 ODCs = #REF!				SUBCONSULTANT #2 ODCs = #REF!			

IMPORTANT NOTES:

1. List direct cost items with estimated costs. These costs should be competitive in their respective industries and supported with appropriate documentations.
2. Proposed items should be consistently billed directly to all clients (Commercial entities, Federal Govt., State Govt., and Local Govt. Agency), and not just when the client will pay for them as a direct cost.
3. Items when incurred for the same purpose, in like circumstance, should not be included in any indirect cost pool or in the overhead rate.
4. Items such as special tooling, will be reimbursed at actual cost with supporting documentation (invoice).
5. Items listed above that would be considered "tools of the trade" are not reimbursable as other direct cost.
6. Travel related costs should be pre-approved by the contracting agency.
7. If mileage is claimed, the rate should be properly supported by the consultant's calculation of their actual costs for company vehicles. In addition, the miles claimed should be supported by mileage logs.
8. If a consultant proposes rental costs for a vehicle, the company must demonstrate that this is their standard procedure for all of their contracts and that they do not own any vehicles purpose. that could be used for the same purpose.

[illegible]

**EXHIBIT B
GENERAL TERMS AND CONDITIONS**

1. Status as Independent Contractor.

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

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

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

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

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

2. Standard of Performance

Consultant shall perform all work to the professional standards and in a manner reasonably satisfactory to the City Administrator 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. To the fullest extent permitted by law, Consultant shall indemnify and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including reasonable attorney's fees and costs, to the extent they arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's duty to defend shall consist of reimbursement of defense costs incurred by City in direct proportion to the Consultant's proportionate percentage of fault. Consultant's percentage of fault shall be determined, as applicable, by a court of law, jury or arbitrator.

B. Notwithstanding the foregoing and without diminishing any rights of City under Section 3(a), for any liability, claim, demand, allegation against City arising out of, related to, or pertaining to Consultant's operations or non-professional act or omission of Consultant, but which is not a design professional service, Consultant shall defend, indemnify, and hold harmless City, its officials, employees, and agents ("Indemnified Parties") from and against any and all damages, costs, expenses (including reasonable attorney fees and expert witness fees), judgments, settlements, and/or arbitration awards, whether for personal or bodily injury, property damage, or economic injury, and arising out of, related to, any concurrent or contributory negligence on the part of City, except for the sole or active negligence of, or willful misconduct of City. If it is determined the City's negligence or willful misconduct contributed to the liability or damage, Consultant shall be required to provide indemnification to the City and reimbursement of defense costs incurred by City in direct proportion to the Consultant's proportionate percentage of fault.

C. It is understood that the duty of Consultant to indemnify and hold harmless is subject to and includes the duty to defend as set forth in Section 2782.8 of the California Civil Code as further addressed in Section 3(a) above. Acceptance by the City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of

consideration.

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 or canceled (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. A ten (10) day written notice to City shall apply to non-payment of premium. Consultant shall provide thirty (30) days written notice to City prior to implementation of a reduction of limits or material change of insurance coverage as specified herein. Any such thirty (30) day notice shall be submitted to CITY via first-class mail, 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 General Liability and Automobile Liability 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 Administrator, 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 Administrator 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 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.

4850-8686-0922, v. 1

DESIGN PROFESSIONAL SERVICES AGREEMENT ON-CALL FOR TRAFFIC ENGINEERING

This agreement ("Agreement") is made as of March 11, 2019 by and between the City of Commerce, a municipal corporation ("City") and Transpo Group ("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 [insert brief description of work] as set forth in the Scope of Services attached hereto as **Exhibit A**; and

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

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

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

2. Term of Agreement. This Agreement shall commence on April 20, 2019 (the "Commencement Date") and shall remain and continue in effect until April 19, 2022, 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 maintain appropriate and necessary documentation supporting the all invoices submitted to the City detailing the type of service provided. Such documentation shall be available for review by the City at all reasonable times upon request.

B. 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 Administrator

Company

Transpo Group
Attn: Bruce Haldors
10866 Wilshire Blvd., 4th Floor
Los Angeles, CA 90024

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

By: _____
Edgar P. Cisneros, City Administrator

Date

CONSULTANT

Transpo Group

By: Bruce Haldors
Bruce Haldors

3/11/19
Date

ATTEST:

By: _____
Lena Shumway, City Clerk

Date

APPROVED AS TO FORM:

By: _____
Noel Tapia, City Attorney

Date

EXHIBIT A
SCOPE OF WORK

Exhibit A - Scope of Services

At Transpo, we're more than planners, designers, and engineers. We're communicators and problem-solvers. We're professionals who bring fresh perspective along with our experience and expertise, and it shows in the way we deliver our services. We plan and design transportation systems for people — not just drivers of cars and trucks, but also the pedestrians, cyclists and transit riders who share these systems. We create transportation solutions and context-sensitive designs that enable a more sustainable tomorrow for communities of all sizes. Below are the list of services we will offer the City of Commerce as part of the on-call:

Transportation Studies / Traffic Analysis

Transpo will work on analyzing network traffic operations and identifying safety issues. Our experts use a variety of specialized transportation planning and engineering tools to evaluate roadway and intersection issues and/or operating conditions. Projects range from the simple intersection level of service (LOS) to highly complex freeway interchanges and signal systems along a corridor or within a downtown grid system. Transpo also provides traffic simulation modeling for special events, ferry terminal operations, transit signal priority, transit centers/park- and-ride facilities, and HOV systems. By integrating traffic simulation technology into our analyses, we provide information clearly understood by both technical and non- technical audiences, and illustrating the trade-offs between potential solutions.

Multimodal Transportation Plans

Our transportation planning experts evaluate short-, mid-, and long-term transportation system needs. We integrate transportation and land use planning, capital facilities programming, public transportation policies, transportation demand strategies, transit facilities and operations, non-motorized systems, transportation systems management and financing into our solutions. Transpo integrates multimodal planning in our evaluations, considering a variety of transport modes and their interactions with jurisdictional land use plans as well as the vision, goals and policies of existing comprehensive plans. Our multimodal planning efforts help to identify specific transportation facility and service investments that will improve the efficiency and safety of overall transportation systems.

Travel Demand Modeling

Transpo uses innovative travel demand modeling software such as TransCAD, VISUM, EMME, and CUBE. We have built, applied and used many of the travel forecasting models in existence. We regularly integrate models into our transportation planning and design projects to estimate future travel forecasts for all modes of travel. We are experienced with transit ridership forecasting, and select link and select zone analyses. To keep our models accurate and relevant, we provide clients

with training manuals and lead workshops to train agency personnel how to use and maintain the models.

Non-Motorized Transportation Planning

Transpo assists cities and counties of all sizes in developing non-motorized plans and evaluating safety for pedestrians and cyclists. Based on the specific needs of the jurisdiction, Transpo's non-motorized plans typically include policy recommendations and design guidelines relating to pedestrian and bicycle system enhancements. All recommendations are developed with both local agency standards and Americans with Disabilities Act (ADA) compliance. Safety studies include mapping of high accident locations, or evaluating crosswalk treatments and new sidewalk locations. Transpo utilizes our own software program, ViaCity, to assess critical connections within neighborhoods and along corridors to determine the quality of connectivity for pedestrian and bicycle travel modes.

Transportation Financing / Impact Fees / Policy Development

Many agencies are facing decreased maintenance and capital revenues to fund needed transportation improvements. Many are exploring alternative funding solutions, such as transportation benefit districts or multi-modal impact fee programs to implement high priority projects. Transpo assists agencies in developing or updating transportation impact fee programs, transportation benefit districts, local improvement districts, or other funding mechanisms. Another component closely tied to transportation financing is developing or updating policies to support new funding strategies. Goal and policy development is a fundamental step in the transportation planning process.

Traffic Signals /Roundabouts /Illumination / Signing /Channelization

Our design staff provides traffic signal design, roundabout, channelization, street lighting, intersection and signing design. Other services include traffic control plan development, construction management, and project cost estimating.

From our experience, many agencies are considering roundabouts as alternatives to signals, as well as a gateway treatment or traffic calming feature. Transpo is continually assisting local, regional and state agencies with roundabout planning and design, including one-lane roundabouts and larger two-lane versions.

ITS Planning & Design

We offer a full range of Intelligent Transportation Systems (ITS) services from planning, architecture, design, systems development and deployment, and program implementation. Our staff has a wide range of experience in ITS technologies including traffic management centers

(TMC), transit signal priority, software systems integration, traveler information systems, communication infrastructure and equipment, and system operations.

Transpo has planned and implemented ITS applications for both the public and private sectors. We have developed relationships with many prominent vendors of ITS equipment. Through these relationships, Transpo has assembled an ITS lab that houses the latest ITS hardware and software. Our lab is an essential tool used to help our clients assess different hardware and software, and complete training before the systems are operational.

Parking Studies

Transpo Group has over 20 years of experience conducting parking occupancy studies and parking analyses. We understand parking issues as well as the implications that changes in parking policy can have on the community. Transpo has provided analysis support related to parking policies, regulations, and pricing.

Our parking studies range from schools to city wide studies. Transpo has provided large-scale parking data collection efforts for many cities. We have also led turn-key parking guidance systems that included occupancy monitoring, dynamic message sign placements, and back office system integration.

Active Modes Facilities

Transpo is a leader in the design of non-motorized facilities. We are experienced in providing a range of services, including trail signage and marking, on-road bicycle facilities, cycle tracks, traffic calming, and ITS for pedestrian/bike detection and control.

Transpo also provides innovative mid-block crossing treatments, including rectangular rapid flashing beacons (RRFB) and high-intensity activated crosswalk (HAWK) signals. By integrating national best practices from AASHTO, MUTCD, and NACTO with the latest ADA requirements and insight on future trends, Transpo ensures forward-thinking designs.

We are also experienced in leading design and implementation efforts for Safe Routes to School (SRTS) and Complete Streets plans, resulting in tailored, sustainable solutions that address the unique needs of a community.

Traffic Calming

Transpo facilitates neighborhood discussion, conducts focus groups, develops plans, and devises traffic calming measures for agencies, neighborhoods and institutions throughout the region.

Planning for and engineering a traffic calming solution requires a broader approach than traditional projects - the problem must be carefully defined and project stakeholders must be involved, including emergency response, transit, community, agency, law enforcement and government representatives.

Traffic calming is most often effectively achieved by using a mixed set of aesthetically pleasing, carefully- designed measures that are appropriate for each project-specific environment.

Transpo Billing Rate Range Schedule

Rates are effective July 7, 2018 through July 5, 2019

Category	Billing Rate Range	
	Min	Max
Engineer/Planner/Analyst/Principal/Director - Level 7	\$210	\$300
Engineer/Planner/Analyst/Proj Adm - Level 6	\$170	\$205
Engineer/Planner/Analyst/Proj Adm - Level 5	\$150	\$175
Engineer/Planner/Analyst/Proj Adm - Level 4	\$130	\$160
Engineer/Planner/Analyst/Proj Adm - Level 3	\$100	\$140
Engineer/Planner/Analyst/Proj Adm - Level 2	\$90	\$125
Engineer/Planner/Analyst/Proj Adm - Level 1	\$70	\$105

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 Administrator 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. To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities, damages, costs and expenses, including reasonable attorney's fees and costs, to the extent they arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's duty to defend shall consist of reimbursement of defense costs incurred by City in direct proportion to the Consultant's proportionate percentage of fault. Consultant's percentage of fault shall be determined, as applicable, by a court of law, jury or arbitrator. In the event any loss, liability or damage is incurred by way of settlement or resolution without a court, jury or arbitrator having made a determination of the Consultant's percentage of fault, the parties agree to mediation with a third party neutral to determine the Consultant's proportionate percentage of fault for purposes of determining the amount of indemnity and defense cost reimbursement owed to the City.

B. Notwithstanding the foregoing and without diminishing any rights of City under Section 3(a), for any liability, claim, demand, allegation against City arising out of, related to, or pertaining to any act or omission of Consultant, but which is not a design professional service, Consultant shall defend, indemnify, and hold harmless City, its officials, employees, and agents ("Indemnified Parties") from and against any and all damages, costs, expenses (including reasonable attorney fees and expert witness fees), judgments, settlements, and/or arbitration awards, whether for personal or bodily injury, property damage, or economic injury, and arising out of, related to, any concurrent or contributory negligence on the part of City, except for the sole or active negligence of, or willful misconduct of City. If it is determined the City's negligence or willful misconduct contributed to the liability or damage, Consultant shall be required to provide indemnification to the City and reimbursement of defense costs incurred by City in direct proportion to the Consultant's proportionate percentage of fault.

C. It is understood that the duty of Consultant to indemnify and hold harmless is subject to and includes the duty to defend as set forth in Section 2782.8 of the California Civil Code as further addressed in Section 3(a) above. Acceptance by the City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless

clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

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 Administrator, 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 Administrator 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.

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