

GENERAL CIVIL ENGINEERING
PROFESSIONAL SERVICE AGREEMENTS

(RENEWALS)

- BkF Engineers
- Elie Farah, Inc.
- JM Diaz, Inc.
- Stantec Consulting Services, Inc.
 - Transtech Engineers, Inc.

DESIGN PROFESSIONAL SERVICES AGREEMENT ON-CALL FOR GENERAL CIVIL ENGINEERING

This agreement ("Agreement") is made as of _____, 2019 by and between the **City of Commerce**, a municipal corporation ("City") and **BkF Engineers ("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 **February 2, 2019** (the "Commencement Date") and shall remain and continue in effect until **February 1, 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

BkF Engineers
Attn: Chris Rideout
4675 MacArthur Court, Suite 400
Newport Beach, CA 92660

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

B&F Engineers

By: 
Chris Rideout

3/26/19
Date

ATTEST:

By: _____
Lena Shumway, City Clerk

Date

APPROVED AS TO FORM:

By: _____
Noel Tapia, City Attorney

Date

EXHIBIT A
SCOPE OF WORK

BKF Engineers (BKF) appreciates the extension of our 3-Year On-Call contract with the City of Commerce. BKF provides civil engineering, land surveying, and land planning services for government agencies, institutions, developers, architects, contractors, school districts, and corporations. Our markets include transportation, public works, health care, education, residential, commercial, industrial, and corporate. We provide a number of specialty services including sustainable design, site accessibility consulting, hydrology and hydraulics, traffic signal design, and 3D laser scanning.

For this On-Call, BKF will provide services, as listed below:

- » Project Management
- » Agency and Utility Coordination
- » Roadway/Highway Design
- » Hydrology and Hydraulics Analysis and Report
- » Drainage Design
- » Traffic Signal Design
- » Sewer and Water Design
- » Surveying and Mapping
- » Right of Way Engineering
- » Prepare and Sign Plat Maps and Legal Descriptions
- » Safe-Route to School (ADA Compliant Design)
- » Pavement Delineation Design
- » Construction Staging and Traffic Control
- » Construction Management

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

PROFESSIONAL PERSONNEL SERVICE FEES
VALID FROM JANUARY 1, 2019 - DECEMBER 31, 2021

PERSONNEL

HOURLY RATES

ENGINEERING

Senior Associate	\$233.00
Associate	\$227.00
Project Manager	\$216.00 - \$223.00
Engineer IV	\$201.00
Engineer I, II, III	\$142.00 - \$163.00 - \$185.00
Engineering Assistant	\$87.00
Junior Engineer	\$74.00

PLANNING

Planner I, II, III, IV	\$142.00 - \$163.00 - \$185.00 - \$201.00
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SURVEYING

Senior Associate	\$233.00
Associate	\$227.00
Project Manager	\$216.00 - \$223.00
Surveyor I, II, III, IV	\$142.00 - \$163.00 - \$185.00 - \$201.00
Survey Party Chief	\$186.00
Survey Chainman	\$120.00
Apprentice I, II, III, IV	\$74.00 - \$99.00 - \$109.00 - \$116.00
Instrumentman	\$159.00
Surveying Assistant	\$87.00
Junior Surveyor	\$74.00
Utility Locating Superintendent	\$187.00
Utility Locator I, II, III	\$97.00 - \$137.00 - \$164.00
BIM Specialist I, II, III	\$142.00 - \$163.00 - \$185.00

DESIGN AND DRAFTING

Technician I, II, III, IV	\$136.00 - \$144.00 - \$157.00 - \$171.00
Drafter I, II, III, IV	\$106.00 - \$117.00 - \$125.00 - \$140.00

CONSTRUCTION ADMINISTRATION/QSP-QSD

Senior Construction Administrator	\$210.00
Resident Engineer	\$156.00
Field Engineer I, II, III	\$142.00 - \$163.00 - \$185.00
Senior Consultant	\$243.00

SERVICES AND EXPENSES

Project Assistant	\$87.00
Clerical/Administrative Assistant	\$74.00

Principals' time on projects is chargeable at \$260.00 per hour.

Charges for outside services, equipment, and facilities not furnished directly by BKF Engineers will be billed at cost plus 10%. Such charges may include, but shall not be limited to printing and reproduction services; shipping, delivery, and courier charges; subconsultant fees and expenses; special fees, permits, and insurance; transportation on public carriers, meals, and lodging; and consumable materials. Mileage will be charged at the prevailing IRS rate per mile. Monthly invoices are due within 30 days from invoice date. Interest will be charged at 0.833% per month on past due accounts. Expert witness/litigation rates are available upon request.

DESIGN PROFESSIONAL SERVICES AGREEMENT ON-CALL FOR GENERAL CIVIL ENGINEERING

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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 February 2, 2019 (the "Commencement Date") and shall remain and continue in effect until February 1, 2022, unless sooner terminated pursuant to the provisions of this Agreement.

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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.

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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

Elle Farah, Inc.

By: _____
Elle Farah

1-16-2019

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

EXHIBIT "A"

Elie Farah, Inc.
Certified Small Business Enterprise #1443340
Civil & Environmental Engineering
Land Surveying & Construction Management
REG. ENGINEER #1095310
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:

- ✓ Street and Highway Design
- ✓ Pavement Reconstruction and Resurfacing plans
- ✓ Grading Design and Earthwork Analysis
- ✓ Erosion control plans
- ✓ Utility Relocation plans
- ✓ Storm Drain plans
- ✓ Water line (domestic & fire lines) plans
- ✓ Sanitary sewer improvement Plans
- ✓ Water Quality Management Plans (WQMP) plans
- ✓ Storm Water Pollution Plans (SWPPP)/NPDES plans
- ✓ Low Impact Development design

2. Prepare supporting documents for the following:

- ✓ Hydrology and Hydraulics reports
- ✓ Fire Flow, pressure, and velocity calculations
- ✓ Sewer Capacity studies
- ✓ Pavement Design
- ✓ Quantity and cost estimates
- ✓ Feasibility studies
- ✓ Retaining walls design
- ✓ Alignment Studies

3. Provide other services such as the following:

- ✓ QSD/QSP services
- ✓ Permit processing
- ✓ Civil Plan check
- ✓ Field Surveys related to design

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, Corps of Engineer, State Department of Fish & Wildlife, Water Quality Board, Caltrans 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, legal descriptions 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.

EXHIBIT B-FEE SCHEDULE

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 1/7/2019

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	\$145	\$145	\$145	1/1/2019 1/1/2019	\$145		Not Applicable
Senior Design Engineer**	\$121	\$121	\$121	1/1/2019 1/1/2019		\$	121.00
Draftsmen				1/1/2019 1/1/2019		\$	80.00
Land Surveyor *				1/1/2019 1/1/2019		\$	110.00
Technician				1/1/2019 1/1/2019		\$	70.00

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 EFl 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

Contract No. _____

SCHEDULE OF OTHER DIRECT COST ITEMS

1 List direct cost items with estimated costs. These costs should be competitive in their respective industries and supported with appropriate documentations.

- for them as a direct cost.

**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 GENERAL CIVIL ENGINEERING

This agreement ("Agreement") is made as of _____, 2019 by and between the **City of Commerce**, a municipal corporation ("City") and JM Diaz, 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 February 2, 2019 (the "Commencement Date") and shall remain and continue in effect until February 1, 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

JM Diaz, Inc.
Attn: Juan M. Diaz
18645 East Gale Ave., Suite 212
City of Industry, CA 91748-1363

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

JM Diaz, Inc.

By:  _____
Juan M. Diaz

1/17/19

Date

ATTEST:

By: _____
Lena Shumway, City Clerk

Date

APPROVED AS TO FORM:

By: _____
Noel Tapia, City Attorney

Date

EXHIBIT A
SCOPE OF WORK

Services

JMD will provide the following General Civil Engineering services:

Studies

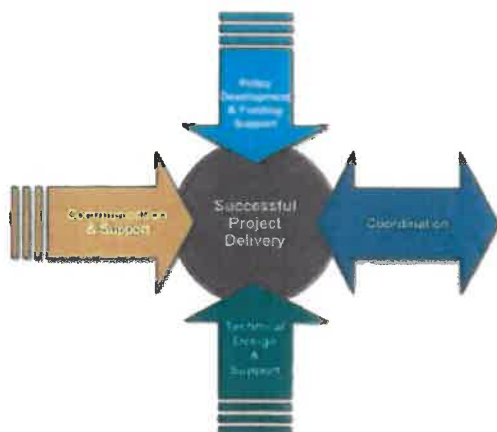
- Roadway Feasibility Studies
- Grade Separation Feasibility Studies
- Traffic Signal Warrant Analysis
- Stop Sign Warrant Analysis
- Project Study Reports (Caltrans)
- Project Reports (Caltrans)
- Parking Studies

Design

- Street Improvement Plans
 - Pavement Overlay and Reconstruction
 - Beautification/Streetscapes
- Intersection Plans and Details
- Interchange Improvement Plans
- Bikeway Facilities
- Parking Facilities
- Grade Crossing Plans
- Bus/Rail Transit Facilities
- Drainage Plans and Details
- Utility Relocation Plans and Details
- Signing and Striping
- Traffic Signal Design
- Traffic Lighting Plans
- Traffic Control Design

Approach

JMD's approach is to be **Service-Oriented**, as it has done to date in Commerce, and keep the City informed throughout the project. We will meet with City staff early to verify the City's expectations for the project and our proposed scope, schedule and process.



The basic components of JMD's Scope are project/task definition and implementation.

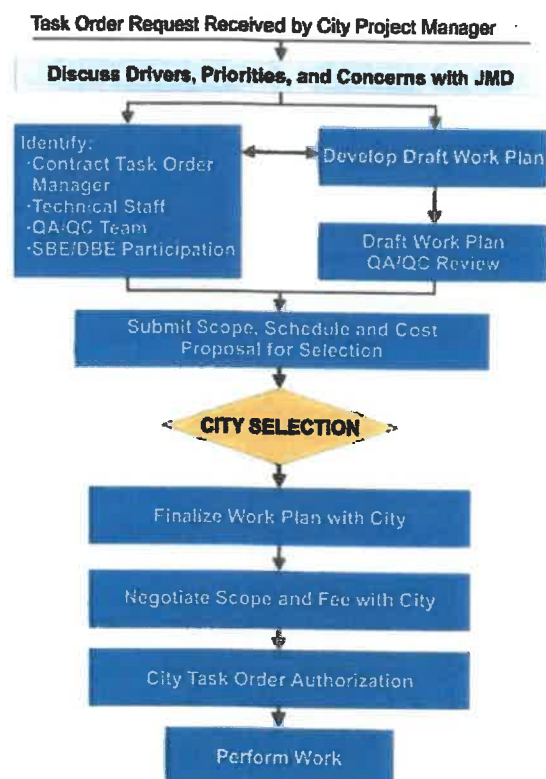
Project/Task Definition

Successful delivery begins with accurate project/task definition. JMD will meet with City staff early to define and verify the City's expectations for each task or project and our proposed scope, schedule and process.

Technical

The JMD Team's approach to this project begins with meeting early with the City to begin the contract task order (CTO) definition process (illustrated in Figure 1 below) in order to finalize scope, schedule and process.

Figure 1 – Contract Task Order Process



Once we have prepared the final scoping documents and are issued a Notice to Proceed (NTP), we will begin the conceptual phase of the project.

Design of transportation improvements on existing facilities in typically urban settings presents some unique issues and requires experienced design techniques. Based on our past experience, we understand the complexity of retrofitting existing transportation facilities while maintaining basic services, traffic flow and minimizing impacts to the roadway user. Specific items related to typical transportation improvement projects may include:

- Utility location and relocation

- Utility licenses, easements included those with protected rights by BNSF/UPRR/SPTCO agreements.
- Existing conditions and compliance with current standards (knowing when to upgrade existing facilities to current design standards and that impact on the project schedule and costs)
- Construction staging and traffic control
- Permits and approvals

Coordination between City staff and various impacted entities will be the key to our adherence to schedule, review time reduction and keeping those involved in the project informed of progress and issues which may need to be resolved to successfully complete the project. JMD has a long and successful history of coordinating and working with numerous parties involved in public works improvement projects.

All work tasks for the project will be accomplished through effective communication and coordination with the City, and proper management control, scheduling, and utilizing the project team's expertise to match the project requirements. Adopting the quality control and quality assurance program presently in use by JMD will provide the City with a quality, constructible and cost-effective product that is delivered on time, within budget and produced with minimal City staff effort.

We believe that the success of any project will depend up adequately addressing key issues during the project development process and preparation of conceptual plans. JMD will proactively anticipate to avoid issues which may result in budget and schedule impacts or scope creep. Once the preliminary phase work tasks have been completed, reviewed and approved by the City and any impacted agencies, JMD will incorporate comments and begin work on the final study or design phase, including final report or plans, specifications and estimates by following the City's design process and meeting agency requirements.

Scope of Work

JMD has developed a sample scope of services to illustrate depth of knowledge on project requirements for typical projects encountered by local agencies.

Sample Scope – Design of Roadway Improvements

Phase I – Design Development

Task I-1 – Project Administration, Meeting and Coordination

JMD will meet with City staff and confirm the project scope, establish key communication personnel, refine time schedules and finalize design criteria. After review of the process to be followed, agreement on the design concept and schedule will be reached. This will avoid confusion and delay later in the project development process and facilitate timely review and approval of submittals.

Meetings between the City and JMD will be held as often as necessary to keep all parties informed, resolve issues and successfully complete the project. Written progress reports will be prepared monthly to assess project progress, identify issues and outline planned work tasks and submittals.

We will prepare and obtain approval of Encroachment Permits from Caltrans for projects located within the State right-of-way.

Task I-2 – Research/Data Collection/Utility Coordination

JMD will obtain documentation available from the City and/or County records pertaining to this project. We will assemble, sort and review existing available information on the project area, including "as-built" plans, maps, studies, existing right-of-way and utility information in order to become familiar with the project, ascertain the completeness and accuracy of available information and determine additional information requirements. Field reviews and survey checks will be made, as necessary, to verify that existing information is correct.

JMD will coordinate with all utility companies to identify existing underground and overhead utility lines that may interfere with the location of traffic signal equipment. For electrical services, JMD will coordinate with Southern California Edison or other applicable agencies.

Task I-3 - Traffic Signal Warrants

Traffic signal warrants will be prepared utilizing current City standards as well as the California Manual on Uniform Traffic Control Devices. Accident data and traffic counts will be conducted at those intersections or locations selected by the City. The following traffic counts will be performed:

- **Manual Counts** - Manual counts will be of a 6-hour duration (3-hour a.m. and 3-hour p.m.), or a 9-hour duration (3-hour a.m. peak, 3-hour mid-day peak and 3-hour p.m. peak), tabulated in 15-minute intervals and will include counts for vehicular (cars and trucks separated) and pedestrian movements made.

- **Machine Counts** - Machine counts will provide a continuous sampling of vehicular traffic on each intersection approach. Output will provide a count of these movements in consecutive 15-minute increments for a typical 24-hour period. Mid-block counts can also be provided.

Task I-4 – Field Surveys and Base Plans

Field surveying for the project could consist of the following:

Each location will be field inventoried. Not only will the type of controller and operation be observed, but also the locations of all signal equipment, signing and striping adjacent to the intersection, right-of-way, curb and gutter, sidewalk and miscellaneous topographic features. City and affected agencies will be contacted to obtain their current timing plans and coordination plans, if any.

Any recommended additions or deletions to the project will be developed at this time. A recommendation will be made regarding improvements necessary to achieve the City's objectives for the location.

Along with the above-mentioned signal equipment inventory, a visual inspection of the integrity of the existing pavement will be performed. The areas where the pavement needs to be reconstructed/ resurfaced will be identified. This inventory will also identify potential utility conflicts.

After determination of the desired objectives for the signal modification, the City and affected agencies will be contacted regarding specific equipment requirements that they have (particularly controllers) and also if they have committed to signal improvements which would be implemented within the time frame of the City's project. Any concurrent projects encountered will be identified.

Task I-5 – Project Design 30% Concept (if necessary)

Upon completion of the detailed survey and data collection, JMD will develop a set of detailed recommendations for each location listed in the proposal. JMD will also arrange for predesign meetings with the affected agencies and provide base plans, which indicate existing conditions at those intersections where the recommended work requires a traffic signal plan. The final scope of work will be established at the predesign meeting.

Phase II – Construction Phase

Task II-1 - 60%, 90%, and Final (100%) Roadway Plans

After review and approval of the detailed recommendations, JMD will prepare 80%, 100% and final construction plans for the proposed improvements. Plans will comply with standard drawings and specifications of the City, County, Caltrans and other agencies, as applicable.

The following outlines the specific details of the traffic plans:

General: Improvement plans will be prepared using AutoCAD and furnished on 24" x 36" mylar. The plans will also include a title sheet which will show a vicinity map, project map, construction notes and general notes on the City's standard title sheet format, as well as a project key map showing locations for the various sheet numbers. We will prepare 60%, 90% and 100% complete plans for review and approval by the City. After all City reviews are completed, comments will be incorporated and the final plans submitted. Six (3) sets of the PS&E package will be furnished for each submittal. The final PS&E package submittal will include original mylars, all quantity calculations, the utility contact file and the electronic CAD files on CD.

Task II-2 - Traffic Signal Plans (New Installation or Modification) and Traffic Signal Interconnect Plans

Traffic signal modification plans and detail sheets will be prepared for the project intersections. The signal installation plan will show all poles, detectors and designations, controller equipment, conduit runs, phase diagram, cameras, and necessary notes and details. The traffic signal interconnect plan will show fiber optic cable routing, pull boxes, and conduit size.

Plans will be designed according to the latest edition of the City's Standard Plans and special provisions along with the State of California Standard Plans, Standard Specifications and the California Manual on Uniform Traffic Control Devices. The plans, including the controller, controller operation, signal phasing and detector pattern, shall be in conformance with normal City methodology. Minor striping modifications required can be shown on the signal plans. Striping modifications too complex to be clearly presented on the signal plan, or extend beyond the reach of the signal plan, will require a separate signing and striping plan. Traffic signal plans will be prepared in AutoCAD format.

After completion and approval of the plans, we will submit a construction estimate to the City. The estimate will include a total cost of the installation for each intersection as well as an item by item breakdown per City format.

Along with the original construction contract drawings, the following items will be submitted for approval:

- Photographs of each intersection quadrant
- All pertinent design correspondence
- Any other backup material and calculations to provide for a complete file on the project.

In addition, traffic signal timing synchronization simulation can be provided upon request.

Task II-3 - Signing and Striping Plans

Signing and striping modification plans will be prepared at a scale of 1"=40' at locations requested by the City. This plan will reflect modifications only after they have been agreed upon with the City. Field information and measurements necessary to complete the plan will be performed.

After completion and approval of the plans, we will submit a construction estimate to the City. The estimate will include a total cost to complete the plan as designed as well as an item by item breakdown per City format.

Tasks II-4 – Preliminary and Final Specifications and Special Provisions

The City of San Gabriel, State of California Standard Specifications and Standard Plans, latest edition, and California Manual on Uniform Traffic Control Devices (MUTCD) standards will be used for this project. JMD will prepare draft and final special provisions to cover items of work not addressed by these standard specifications for the PS&E package. Specifications and special provisions will be provided to the City with the final PS&E package submittal on CD in MS Word format.

For Federally and State funded projects, JMD will assist the City in preparing the necessary forms required for funding, design and construction of the project. Funding forms, such as those required for Hazard Elimination and Safety (HES) grants, would be prepared with the appropriate supporting data in a timely manner to meet funding deadlines, as appropriate.

In addition, contract specifications for Federally Funded projects would be customized to include the necessary forms required for procurement.

Tasks II-5 - Preliminary and Final Construction Cost Estimates

JMD will prepare preliminary and final construction cost estimates with quantities and unit prices for the PS&E package. Preliminary cost estimates will be provided at the 60%, 90% and 100% submittals, and a final engineer's estimate will be provided with submittal of the final approved plans. Back-up of cost estimate calculations showing quantities per sheet will be provided to the City for review with each submittal.

Tasks II-6 – Incorporate Comments and Submit Final PS&E Package

After incorporating review comments from the second plan check for the plans, specifications and cost estimates, JMD will submit sealed original ink on mylar plan sheets and digital engineering plans and drawings on CD in AutoCAD; sealed original hard copy and CD in MS Word of the

technical specifications; the utility response file; and calculations and notes generated by the project.

Tasks II-7 – Agency and Caltrans Coordination

JMD will coordinate with the City and local agencies to obtain the approval and signatures of preliminary and final plans, design documents and permits. All freeway ramp intersections will be coordinated with Caltrans, and Permit Engineering Evaluation Reports (PEER) and Fact Sheets will be prepared as necessary.

The process flow charts on the following pages illustrate proposed tasks and their sequence:

Innovative Solutions

The following are a couple of projects where innovative solutions were developed by JMD staff.

San Gabriel Blvd Rehabilitation Project

City of San Gabriel

In 2009, our Project Manager, Kamran Saber, introduced Full Depth Reclamation (FDR) as an alternative rehabilitation method for San Gabriel Boulevard (a busy and high-volume arterial used as an alternate route connecting I-10 and SR-210) that generated over 40% in cost savings to the City compared to conventional methods of using asphalt pavement only or asphalt on aggregate base.

FDR method utilizes the in-situ materials with added Portland cement to create a strong base layer for the top AC layer. This method can eliminate trucking, labor costs, and off-site processing fees. In addition, this technique drastically reduces project costs and schedule. Also, FDR conserves existing materials and protects against needless landfill waste - **a green approach**.

There are also positive benefits to the project's schedule as well as reducing the risk of impacting underground utilities by having less required structural section thickness.

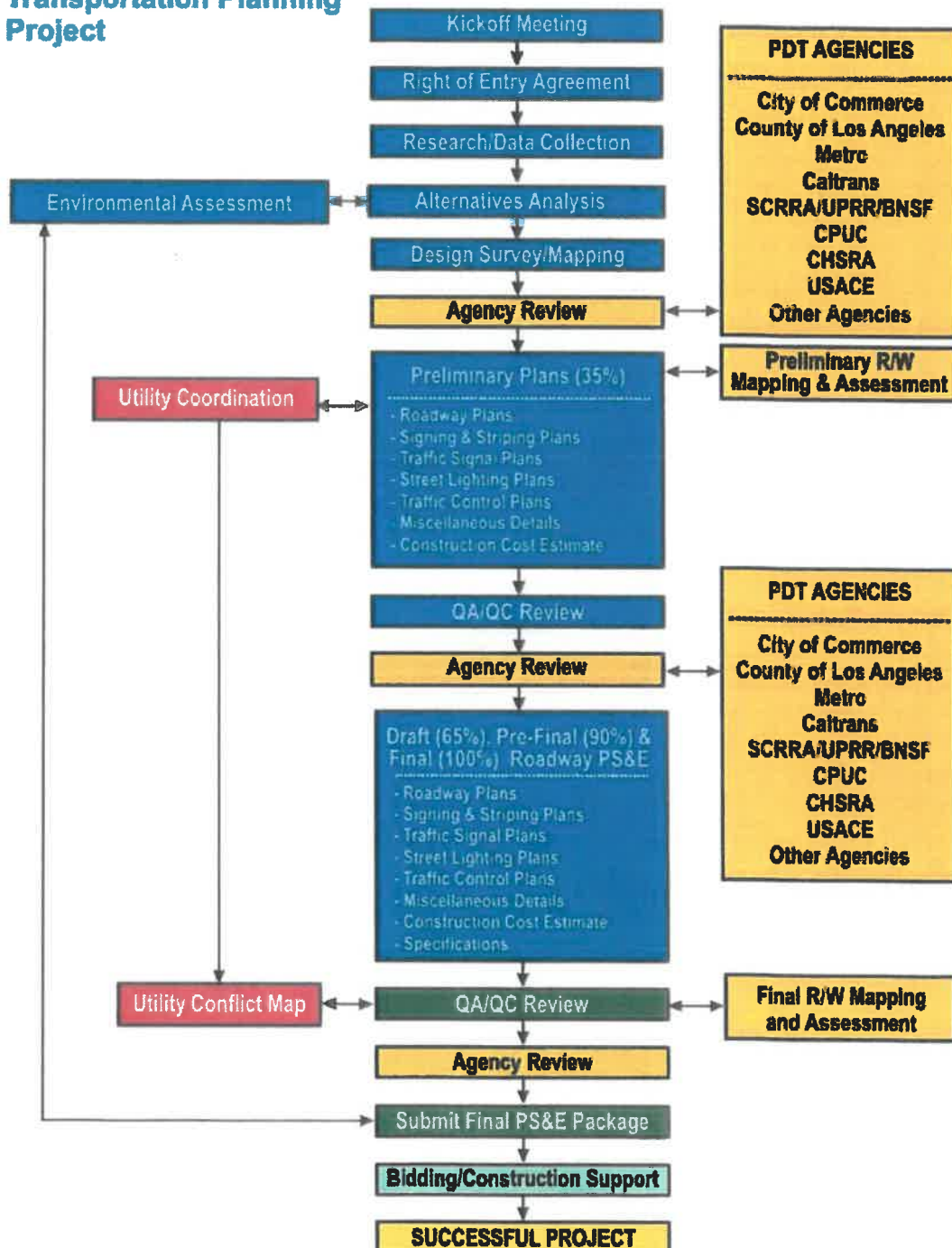
Annual Street Resurfacing Projects

City of Diamond Bar

The City of Diamond Bar had been using Asphalt Rubber Aggregate Membrane (ARAM) as one method of resurfacing the streets. However, ARAM is a proprietary method both in preparation and application of materials. In 2005, use of Rubberized Cape Seal (RCS) was introduced to the City by our project Manager and later, it was even more improved by switching to "Cationic" oil type which created a better paving material by creating a stronger adhesion (bonding) between positively charged emulsion (oil and water) particles and negatively charged aggregates, so much that the product was used on arterial streets such as Diamond Bar Boulevard with great results.

Since the RCS process and application are not proprietary, the City may benefit from competitive bidding, hence, achieving a lower cost of construction.

Traffic Engineering/ Transportation Planning Project





2019 Hourly Charge Rate and Expense Reimbursement Schedule*

Professional (Key Personnel)

Juan M. Diaz, PE, MBA	Project Manager/PIC	\$ 231.12
Jack Shah, RA, MSc.....	Technical Advisor/Constructability ..	\$ 225.00
Al Marciuska, PE, MBA	QA/QC Manager	\$ 202.50
Steve Itagaki, PE, TE, PTOE.....	Roadway/Grade Crossings.....	\$ 152.71
Ivan Salvatierra, PE, TE	Traffic and Lighting.....	\$ 141.28
Cesar Carrillo, PE.....	Drainage and Utilities	\$ 135.00
Ronie Dema-ala, PE.....	Rail.....	\$ 225.00
Daniel Villegas.....	CAD	\$ 101.25

Professional (Support)

Daniel T. Shieh.....	Roadway/Grade Crossings.....	\$ 157.50
Greg Andrade.....	Roadway/Grade Crossings.....	\$ 73.79
Peter Kim, PE, TE, PTOE.....	Traffic and Lighting.....	\$ 247.50
W. Bautista, PE, TE, PTOE	Traffic and Lighting.....	\$ 140.63
Joel Bareng, TE.....	Traffic and Lighting.....	\$ 135.00
Deepak Solanki	Drainage and Utilities	\$ 110.00
Gilberto Figueroa.....	CAD	\$ 68.32
Mike Chavez.....	Analyst	\$ 99.40
Alvin Abad	Engineer III.....	\$ 88.06
Sara Yazdi.....	Engineer II.....	\$ 66.10
.....	Expert Engineer/Witness.....	\$ 270.00

Administrative

Darlene Dominguez.....	Admin/Clerical	\$ 56.79
Katherine Beltran.....	Admin/Clerical	\$ 32.91

Reimbursable Costs

Photo Copies (B&W)	\$ 0.12/Each
Photo Copies (Color).....	\$ 0.20/Each
Bond Prints (24"x36")	\$ 4.00/Each
Mileage**	\$ 0.58/Mile

* All rates are effective through January 1, 2020. Contracts extending beyond January 1, 2020 will result in a negotiated increase (minimum of 3% per year) in rates.

**Mileage rate per IRS.

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 GENERAL CIVIL ENGINEERING

This agreement ("Agreement") is made as of _____, 2019 by and between the **City of Commerce**, a municipal corporation ("City") and **Stantec Consulting Services, 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 **February 2, 2019** (the "Commencement Date") and shall remain and continue in effect until **February 1, 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

Stantec Consulting Services, Inc.
Attn: Mohammad Heiat
38 Technology Drive
Irvine, CA 92618-5312

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

Stantec Consulting Services, Inc.

By: Mohammad Heiat 2/12/19
Mohammad Heiat Date

ATTEST:

By: _____
Lena Shumway, City Clerk Date _____

APPROVED AS TO FORM:

By: _____
Noel Tapia, City Attorney Date _____

EXHIBIT A
SCOPE OF WORK

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.

Contractor shall indemnify, defend with counsel acceptable to City and hold harmless City and its officials, officers, employees, members, agents and authorized volunteers from and against any and all losses, liabilities, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, damages and expenses of any kind, whether actual or threatened (including but not limited to attorneys' fees and costs, court costs, interest defense costs, and expert witness fees) where the same arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor or any individual or entity for which Contractor is legally liable, including but not limited to officers, agents, employees or subcontractors of Contractor. Such indemnification, defense and hold harmless extend to Contractor's provision, use, transport and storage of hazardous materials, as those commonly are defined under state and federal laws and regulations.

It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Contractor 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, Contractor 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.

EXHIBIT A – SCOPE OF SERVICES

Following is a summary of tasks provided for design phase 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.
- Collect record data related to the project from Agency and other Agencies as necessary. This effort is generally controlled by the agencies that have jurisdiction and control of the subject project area and availability of existing plans and information they can provide.
- 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 design approach that would be incorporated in the PS&E package, as well as for public convenience and safety.
- After review of office data, and field investigation surveys, discuss findings and preliminary approach with City staff and establish desired design parameters and methods to achieve City's goal.
- If required, conduct design survey of the project area as needed.
- Prepare Plans, Specifications and Cost Estimates (PS&E). Submit to City for review and comments. Revise/update as necessary. Provide final PS&E Bid package.
- When requested and needed, provide traffic and transportation planning/engineering as necessary.
- When requested and necessary, meet with City staff to review project, progress and relevant issues.
- Provide project management and administration for PS&E Phase.
- When requested and needed, assist the City with environmental studies.
- When requested and needed, assist the City with the coordination of encroachment permits required for the project from agencies such as Caltrans, County of Los Angeles, and other agencies having jurisdiction.
- When required and based on approved project specific scope, provide support to City during bidding and construction phases of the project.
- When a project is funded by federal funds, project will be managed and processed per Caltrans LAPM.

Following is a summary of tasks provided for construction phase services (these are general tasks,

City of Commerce On-Call for Construction Management and Inspection PAGE 1 OF 3
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

Stantec Consulting Service Inc.

Contract No. _____

Date 1/10/2019

Fringe Benefit %	+	Overhead %	+	General Administration %	=	Combined Indirect Cost Rate (ICR) %
54.08%	+	0.00%		114.41%		168.49%

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			
Mohammad Heiat	\$265.60	N/A	N/A	1/1/2019	12/31/2019	\$89.93	0
Contract Manager - PIC	\$276.22	N/A	N/A	1/1/2020	12/31/2020	\$93.53	4.00%
	\$287.27	N/A	N/A	1/1/2021	12/31/2021	\$97.27	4.00%
Sherry Weinmeier	\$275.58	N/A	N/A	1/1/2019	12/31/2019	\$93.31	0
Quality Control Manager	\$286.60	N/A	N/A	1/1/2020	12/31/2020	\$97.04	4.00%
	\$298.07	N/A	N/A	1/1/2021	12/31/2021	\$100.92	4.00%
Carlos Pineda	\$211.43	N/A	N/A	1/1/2019	12/31/2019	\$71.59	0
Design Manager	\$219.89	N/A	N/A	1/1/2020	12/31/2020	\$74.45	4.00%
	\$228.69	N/A	N/A	1/1/2021	12/31/2021	\$77.43	4.00%
Jeff Wilkerson	\$225.31	N/A	N/A	1/1/2019	12/31/2019	\$76.29	0
Roadway Design Manager	\$234.33	N/A	N/A	1/1/2020	12/31/2020	\$79.34	4.00%
	\$243.70	N/A	N/A	1/1/2021	12/31/2021	\$82.52	4.00%
Keith Rutherford	\$218.43	N/A	N/A	1/1/2019	12/31/2019	\$73.96	0
Traffic Engineering Manager	\$227.17	N/A	N/A	1/1/2020	12/31/2020	\$76.92	4.00%
	\$236.26	N/A	N/A	1/1/2021	12/31/2021	\$80.00	4.00%

- Names and classifications of consultant (key staff) team members must be listed. Provide separate sheets for prime and all subconsultant firms.
- Billing rate = actual hourly rate * (1 + ICR) * (1 + Fee). Agreed upon billing rates are not adjustable for the term of contract.
- 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

City of Commerce On-Call for Construction Management and Inspection PAGE 1 OF 3
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Consultant or Subconsultant

Stantec Consulting Service Inc.

Contract No. _____

Date 1/10/2019

Fringe Benefit % + Overhead % + General Administration % = Combined Indirect Cost Rate (ICR) %
 54.08% + 0.00% + 114.41% = 168.49%

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)	From	To			
Greg Sebourn	\$213.00	N/A	1/1/2019	12/31/2019	\$72.12	0	N/A
Survey Manager	\$221.52	N/A	1/1/2020	12/31/2020	\$75.00	4.00%	
	\$230.38	N/A	1/1/2021	12/31/2021	\$78.00	4.00%	
Daniel Villines	\$228.77	N/A	1/1/2019	12/31/2019	\$77.46	0	N/A
Drainage Design Manager	\$237.92	N/A	1/1/2020	12/31/2020	\$80.56	4.00%	
	\$247.44	N/A	1/1/2021	12/31/2021	\$83.78	4.00%	
Daryl Zerfass	\$257.65	N/A	1/1/2019	12/31/2019	\$87.24	0	N/A
Transportation Planning Manager	\$267.96	N/A	1/1/2020	12/31/2020	\$90.73	4.00%	
	\$278.68	N/A	1/1/2021	12/31/2021	\$94.36	4.00%	
Tessie Barraga	\$149.15	N/A	1/1/2019	12/31/2019	\$50.50	0	N/A
Survey Engineer	\$155.11	N/A	1/1/2020	12/31/2020	\$52.52	4.00%	
	\$161.32	N/A	1/1/2021	12/31/2021	\$54.62	4.00%	
John Dominguez	\$154.20	N/A	1/1/2019	12/31/2019	\$52.21	0	N/A
Surveyor	\$160.36	N/A	1/1/2020	12/31/2020	\$54.30	4.00%	
	\$166.78	N/A	1/1/2021	12/31/2021	\$56.47	4.00%	

- Names and classifications of consultant (key staff) team members must be listed. Provide separate sheets for prime and all subconsultant firms.
- Billing rate = actual hourly rate * (1+ ICR) * (1+ Fee). Agreed upon billing rates are not adjustable for the term of contract.
- 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

City of Commerce On-Call for Construction Management and Inspection PAGE 1 OF 3
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Consultant or Subconsultant

Stantec Consulting Service Inc.

Contract No. _____

Date 1/10/2019

Fringe Benefit %
54.08%+ Overhead %
0.00%+ General Administration %
114.41%

=

Combined Indirect Cost Rate (ICR) %

168.49%

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)	From	To			
Josh Park Traffic Engineer	\$127.79	N/A	1/1/2019	12/31/2019	\$43.27	0	N/A
	\$132.90	N/A	1/1/2020	12/31/2020	\$45.00	4.00%	
	\$138.22	N/A	1/1/2021	12/31/2021	\$46.80	4.00%	
Dan Hayes Structural Engineer	\$218.58	N/A	1/1/2019	12/31/2019	\$74.01	0	N/A
	\$227.32	N/A	1/1/2020	12/31/2020	\$76.97	4.00%	
	\$236.42	N/A	1/1/2021	12/31/2021	\$80.05	4.00%	
Dave Lew Civil Engineer	\$128.15	N/A	1/1/2019	12/31/2019	\$43.39	0	N/A
	\$133.27	N/A	1/1/2020	12/31/2020	\$45.13	4.00%	
	\$138.60	N/A	1/1/2021	12/31/2021	\$46.93	4.00%	
Austin Carline Assistant Engineer	\$90.08	N/A	1/1/2019	12/31/2019	\$30.50	0	N/A
	\$93.68	N/A	1/1/2020	12/31/2020	\$31.72	4.00%	
	\$93.68	N/A	1/1/2021	12/31/2021	\$32.99	4.00%	
Vijay Pampara Utilities Design Manager	\$142.97	N/A	1/1/2019	12/31/2019	\$48.41	0	N/A
	\$148.69	N/A	1/1/2020	12/31/2020	\$50.35	4.00%	
	\$148.69	N/A	1/1/2021	12/31/2021	\$52.36	4.00%	

- Names and classifications of consultant (key staff) team members must be listed. Provide separate sheets for prime and all subconsultant firms.
- Billing rate = actual hourly rate * (1 + ICR) * (1 + Fee). Agreed upon billing rates are not adjustable for the term of contract.
- 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

City of Commerce On-Call for Construction Management and Inspection PAGE 1 OF 3
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

Stantec Consulting Service Inc.

Contract No. _____

Date 1/10/2019

Fringe Benefit %	+	Overhead %	+	General Administration %	=	Combined Indirect Cost Rate (ICR) %
54.08%	+	0.00%	+	114.41%	=	168.49%

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)	From	To			
Roger Chung	\$177.79	N/A	1/1/2019	12/31/2019	\$60.20	0	N/A
Drainage Project Manager	\$184.91	N/A	1/1/2020	12/31/2020	\$62.61	4.00%	
	\$192.30	N/A	1/1/2021	12/31/2021	\$65.11	4.00%	
Phil Jones	\$203.78	N/A	1/1/2019	12/31/2019	\$69.00	0	N/A
Sr. Drainage Engineer	\$211.94	N/A	1/1/2020	12/31/2020	\$71.76	4.00%	
	\$220.41	N/A	1/1/2021	12/31/2021	\$74.63	4.00%	
Elizabeth Simon	\$92.29	N/A	1/1/2019	12/31/2019	\$31.25	0	N/A
BIT	\$95.99	N/A	1/1/2020	12/31/2020	\$32.50	4.00%	
	\$99.82	N/A	1/1/2021	12/31/2021	\$33.80	4.00%	
							N/A
							N/A
							N/A

- Names and classifications of consultant (key staff) team members must be listed. Provide separate sheets for prime and all subconsultant firms.
- Billing rate = actual hourly rate * (1 + ICR) * (1 + Fee). Agreed upon billing rates are not adjustable for the term of contract.
- 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

Date 1/10/2019

[illegible]

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.

DESIGN PROFESSIONAL SERVICES AGREEMENT ON-CALL FOR GENERAL CIVIL 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 February 2, 2019 (the "Commencement Date") and shall remain and continue in effect until February 1, 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

_____
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 tasks provided for design phase 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.
- Collect record data related to the project from Agency and other Agencies as necessary. This effort is generally controlled by the agencies that have jurisdiction and control of the subject project area and availability of existing plans and information they can provide.
- 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 design approach that would be incorporated in the PS&E package, as well as for public convenience and safety.
- After review of office data, and field investigation surveys, discuss findings and preliminary approach with City staff and establish desired design parameters and methods to achieve City's goal.
- If required, conduct design survey of the project area as needed.
- Prepare Plans, Specifications and Cost Estimates (PS&E). Submit to City for review and comments. Revise/update as necessary. Provide final PS&E Bid package.
- When requested and needed, provide traffic and transportation planning/engineering as necessary.
- When requested and necessary, meet with City staff to review project, progress and relevant issues.
- Provide project management and administration for PS&E Phase.
- When requested and needed, assist the City with environmental studies.
- When requested and needed, assist the City with the coordination of encroachment permits required for the project from agencies such as Caltrans, County of Los Angeles, and other agencies having jurisdiction.
- When required and based on approved project specific scope, provide support to City during bidding and construction phases of the project.
- When a project is funded by federal funds, project will be managed and processed per Caltrans LAPM.

Following is a summary of tasks provided for construction phase 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):

- Provide assistance during bidding.
- Conduct bid analysis.
- Provide management, RE and Inspection staff as necessary.
- Review/distribute submittals to appropriate parties.
- Conduct pre-construction meeting with the contractor, City, and other involved parties
- Conduct construction progress meeting with the contractor, City, and other involved parties. Prepare and distribute meeting minutes.
- Prepare and distribute notices, and respond to complaints and assisting in resolving problems as necessary.
- Track Requests for Information, submittals and shop drawings.
- Review contractor change order requests, and prepare necessary documentation for submittal and approval or denial by the City.
- Review contractor pay requests and prepare necessary documentation for submittal and approval by the City.
- Conduct project walk-through(s) and preparing punch list(s).
- Maintain project files and documentation.
- Coordinate close out of the project,
- When requested, provide public outreach, including setting up a construction information web site.
- When a project is funded by federal funds, project will be managed and processed per Caltrans LAPM.

EXHIBIT B – FEE SCHEDULE

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		\$75.00 - \$85.00
Sr. Engineer	\$182.19	\$273.28	\$364.37	1/1/2020	12/31/2020	3.00%	\$77.25 - \$87.55
Sr. Engineer	\$187.65	\$281.48	\$375.30	1/1/2021	12/31/2021	3.00%	\$79.57 - \$90.18
Project Manager	\$165.83	\$248.74	\$331.65	1/1/2019	12/31/2019		\$70.00 - \$80.00
Project Manager	\$170.80	\$256.20	\$341.60	1/1/2020	12/31/2020	3.00%	\$72.10 - \$82.40
Project Manager	\$175.92	\$263.89	\$351.85	1/1/2021	12/31/2021	3.00%	\$74.26 - \$84.87
Project Engineer	\$165.83	\$248.74	\$331.65	1/1/2019	12/31/2019		\$70.00 - \$80.00
Project Engineer	\$170.80	\$256.20	\$341.60	1/1/2020	12/31/2020	3.00%	\$72.10 - \$82.40
Project Engineer	\$175.92	\$263.89	\$351.85	1/1/2021	12/31/2021	3.00%	\$74.26 - \$84.87
Staff Engineer/Associate Engineer	\$143.72	\$215.57	\$287.43	1/1/2019	12/31/2019		\$60.00 - \$70.00
Staff Engineer/Associate Engineer	\$148.03	\$222.04	\$296.05	1/1/2020	12/31/2020	3.00%	\$61.80 - \$72.10
Staff Engineer/Associate Engineer	\$152.47	\$228.70	\$304.93	1/1/2021	12/31/2021	3.00%	\$63.65 - \$74.26
CADD Designer	\$121.61	\$182.41	\$243.21	1/1/2019	12/31/2019		\$50.00 - \$60.00
CADD Designer	\$125.25	\$187.88	\$250.51	1/1/2020	12/31/2020	3.00%	\$51.50 - \$61.80
CADD Designer	\$129.01	\$193.52	\$258.02	1/1/2021	12/31/2021	3.00%	\$53.05 - \$63.65
Sr. Planner	\$143.72	\$215.57	\$287.43	1/1/2019	12/31/2019		\$60.00 - \$70.00
Sr. Planner	\$148.03	\$222.04	\$296.05	1/1/2020	12/31/2020	3.00%	\$61.80 - \$72.10
Sr. Planner	\$152.47	\$228.70	\$304.93	1/1/2021	12/31/2021	3.00%	\$63.65 - \$74.26
Associate Planner	\$121.61	\$182.41	\$243.21	1/1/2019	12/31/2019		\$50.00 - \$60.00
Associate Planner	\$125.25	\$187.88	\$250.51	1/1/2020	12/31/2020	3.00%	\$51.50 - \$61.80
Associate Planner	\$129.01	\$193.52	\$258.02	1/1/2021	12/31/2021	3.00%	\$53.05 - \$63.65
Funds and Grants Manager	\$154.77	\$232.16	\$309.54	1/1/2019	12/31/2019		\$65.00 - \$75.00
Funds and Grants Manager	\$159.41	\$239.12	\$318.83	1/1/2020	12/31/2020	3.00%	\$66.95 - \$77.25
Funds and Grants Manager	\$164.20	\$246.29	\$328.39	1/1/2021	12/31/2021	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

EXHIBIT 10-H COST PROPOSAL (EXAMPLE #2) PAGE 2 OF 2

SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)

TRANSTECH ENGINEERS, INC.

Contract No.

Date 1/9/2019

[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.

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