

## PROFESSIONAL SERVICES AGREEMENT

This agreement ("Agreement") is made as of July 2, 2019 by and between the **City of Commerce**, a municipal corporation ("City") and **Matrix Consulting Group** ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as a "Party" and collectively referred to as the "Parties."

### RECITALS

WHEREAS, City desires to utilize the services of Consultant as an independent contractor to conduct a Police Services Alternative Analysis as set forth in the Proposal to Conduct a Police Service Alternatives Analysis attached hereto as **Exhibit A**; and

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

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

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

**2. Term of Agreement.** This Agreement shall commence on June 3, 2019 (the "Commencement Date") and shall remain and continue in effect until tasks described in **Exhibit A** are completed, but in no event later than December 2, 2019, unless sooner terminated pursuant to the provisions of this Agreement.

**3. Compensation.**

A. City agrees to compensate Consultant for services under this Agreement in compliance with the schedule set forth in **Exhibit A**. Consultant shall submit proper monthly invoices in the form and manner specified by City. Each invoice shall include a monthly breakdown of all monthly services performed together with the hours spent on each service. Consultant shall maintain appropriate and necessary documentation supporting the monthly invoices detailing the type of service provided. It shall be available for review by the City at all reasonable times upon request.

B. Total payment to Consultant pursuant to this Agreement shall not exceed \$69,000.

C. If at the request of the City, Consultant is required to incur out of pocket expenses (including but not limited to, out-of-town travel and lodging) which are above and beyond the ordinary expenses associated with performance of this Agreement, Consultant shall be entitled to reimbursement of such expenses. Consultant shall only be reimbursed for those expenses which: (I) appear on Consultant's monthly invoices; (II) are accompanied by a copy of the City's written authorization for Consultant to incur

such expenses; and (III) receipts documenting such expenses.

**4. General Terms and Conditions.** The General Terms and Conditions set forth in **Exhibit B** are incorporated as part of this Agreement. In the event of any inconsistency between the General Terms and Conditions and any other exhibit to this Agreement, the General Terms and Conditions shall control unless it is clear from the context that both parties intend the provisions of the other exhibit(s) to control.

**5. Addresses.**

**City of Commerce**

City of Commerce  
2535 Commerce Way  
Commerce, CA 90040  
Attn: Edgar P. Cisneros, City Manager

**Matrix Consulting Group**

201 San Antonio Circle, Suite 148  
Mountain View, CA 94040  
Attn: Richard P. Brady

**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** – Proposal to Conduct a Police Service Alternative Analysis including 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: \_\_\_\_\_  
John Soria, Mayor

\_\_\_\_\_  
Date

**CONSULTANT**

**Matrix Consulting Group**

By: \_\_\_\_\_  
Richard P. Brady

\_\_\_\_\_  
Date

**ATTEST:**

By: \_\_\_\_\_  
Lena Shumway, City Clerk

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Noel Tapia, City Attorney

\_\_\_\_\_  
Date

## EXHIBIT A

### SCOPE OF WORK

# 1 Project Scope of Work and Approach

The section, which follows, presents a detailed description of the analytical tasks we will complete to achieve the study objectives of this Police Service Alternatives Analysis.

## 1. Project Background and Scope of Work

The City of Commerce, a community of roughly 13,000, contracts for police services from the Los Angeles County Sheriff's Department. This is not remarkable – hundreds of communities in California and across the country contract for service with a neighbor or with a county sheriff. Contract service in California, and Los Angeles County specifically, has had a particularly strong history for communities recognizing that it can be cost effective because of shared overheads and fractional services.

However, there is another side to policing that is even more fundamental than how these services are organized, staffed and services delivered. Law enforcement today does not exist in a security vacuum. Community expectations are critical in law enforcement – everything that is policing today is based on a partnership between law enforcement and the community to solve problems. As a result planning for results and accountability are equally important to deployments and responses.

An environment of accountability for police services is important for any service approach – contract, shared service or municipal. This is important to the City of Commerce and, as a result, issues regarding service presence and consistency have led to questions about what service delivery alternatives exist. As a result, this study is designed to evaluate current law enforcement service delivery and potential alternatives to the delivery of these services. These alternatives include: Creating a municipal police department serving Commerce. Contracting with another municipality or a joint powers' authority. Potential partners include Vernon, Montebello and Bell Gardens.

This consulting effort will evaluate the feasibility of these alternative approaches to providing law enforcement for Commerce. The feasibility of these alternatives will be compared with the existing service in terms of service and cost effectiveness. **The study will also take into account projected future growth of the city and consider any staffing adjustments that should be considered in the future as a result.**

## 2. TASK PLAN

The task plan, which follows, provides a outline of the steps that the project team could take to conduct and complete this study. Following the task plan is a suggested schedule for completion of this study.

## **Task 1** | **Initiate the Project and Develop an Understanding of Background to the Current Contracting Environment.**

The purpose of this first task is to develop a thorough understanding of issues and expectations of the study. Completion of this task will include:

- Interview the City Administrator and, if desired, the City Council to explore:
  - Attitudes toward service levels and responsiveness of the Sheriff's Department.
  - Views toward any unmet law enforcement related needs.
  - Identification and views toward any viable alternatives.
  - Identification of issues regarding regional service delivery issues.
- Interview key Sheriff's Department representatives. These interviews would discuss:
  - How the Commerce is served.
  - Trends and issues that have arisen over the past few years.
- Make initial contact with the cities of Bell Gardens, Montebello and Vernon to understand the regional service delivery picture and views toward alternatives.

We would also begin to collect documents which assist in backgrounding for this study, including:

- Any periodic reports to the City from the Sheriff's Department.
- Any performance measures utilized by the Sheriff's Department for budget or service delivery purposes.
- The current contract between Commerce and the Sheriff's Department.
- Population and demographic information for the City.

### **TASK RESULT**

**The result of this task would be a final project work plan reflecting the project team's updated understanding of the project and the evolution of service issues in the past several years.**

## Task 2

### Document Law Enforcement Services, Staffing, Workloads and Service Levels in the City.

To establish a basis for structuring and evaluating law enforcement organization alternatives, we will develop a portrait of current workload and service demands in Commerce. We will gather and analyze information about crime, service levels and response times. We would document the following:

- Contract service requirements. Document how the contract 'works' from the perspective of generating base and supplemental costs.
- Mechanisms used by the LASD to partner with the community on law enforcement problems and service solutions.
- Community-generated calls for service (CFS) workloads by time of day and day of week; similarly, document deputy-initiated workloads. Develop long term trend data on calls for service and deputy-initiated activities.
- Crime rates and arrests (by type) over the past 10 years.
- Field deployment levels in Commerce and surrounding areas.
- The time elements on calls by priority of call.
- Document the types of deputy-initiated activities currently accomplished by field patrol personnel. Develop an understanding of the ways in which these activities are planned and staff help accountable.
- Other workloads of patrol (as well as other personnel) such as court appearances, public education, etc.
- Traffic enforcement workloads and traffic enforcement activities.
- Number of cases forwarded to investigative staff for follow-up as well as the outcomes of these cases.
- Nature and scope of crime prevention programs currently provided.

#### TASK RESULT

**These data will be profiled in a summary narrative and statistical portrait of law enforcement services in Commerce. This important first deliverable in the project will be reviewed with the City and the LASD to ensure accuracy.**

### **Task 3** | **Understand Community Views About Law Enforcement Services.**

It is critical for the project team to develop input regarding current law enforcement services as well as viable alternatives from the community. To provide a major avenue for input at the outset of the project, we plan to conduct two major study activities – a community online survey and a “Town Hall” meeting. The following subsection describes these efforts.

#### **(1) Survey for the Public.**

We would conduct an electronic survey that could be completed by any member of the public to provide additional feedback and input to the project team regarding law enforcement services. Information regarding the perceptions of the law enforcement services provided and the current satisfaction with these services will provide unique insight.

Questionnaires would be confidential and completed via an online survey instrument (SurveyMonkey).

#### **(2) “Town Hall” Meeting.**

Through the use of a “Town Hall” meeting for community stakeholders, the Matrix Consulting Group usually asks customers a number of pointed questions about their law enforcement service expectations and how well the LASD is meeting them; as well as openness to alternative service delivery approaches.

We propose to conduct one community stakeholder meetings early in the project. The participants would be led through a two hour discussion by the Matrix Consulting Group, to really understand why citizens feel the way they do about a particular issue of law enforcement services.

### **TASK RESULT**

**Summaries of the findings from the survey and the “Town Hall” meetings conducted – identifying major themes, comments received and suggestions for change.**

## Task 4

### Evaluate Law Enforcement Services Currently Provided to Commerce.

The results of the previous tasks will be analyzed to identify issues and improvement opportunities associated with current operations and services provided by the Los Angeles County Sheriff's Department to the City of Commerce. The analysis would focus on such areas as the following:

- How do existing service levels compare to generally accepted industry or prevailing approaches to productivity, response times, time available for proactive patrol, investigative caseloads, etc.?
- What are the appropriate quantitative and qualitative approaches to evaluating resource requirements in the City. For example, in patrol this would include an assessment of call for service workloads in the context of also needing proactive time to impact policing issues in the community.
- Are there areas where service needs to be improved in the City or services restructured in some way to improve service or cost effectiveness? Such as:
  - Does the City receive adequate patrol and investigative resources and the extent to which presence and dedicated resources are an issue?
  - Is community input effectively sought by the LASD?
  - How is the LASD accountable for its services?
  - Are communications between the LASD and the City adequate?
  - What opportunities exist for involvement in crime prevention programs?
  - Are the contract costs reasonable relative to the services provided?
  - Are there opportunities to provide selected law enforcement or support functions out of the contract.

#### TASK RESULT

**The project team will identify alternative contracting approaches and provide counsel on approaches to take to improve these services in the future if no change is made in service provider.**



## Task 5

### **Develop Assumptions for Use in the Analysis of Creating a New Municipal Police Service Provider – Either a City Police Department or a Contract with Another City.**

The project team will evaluate the feasibility of alternative approaches to providing law enforcement for Commerce. The feasibility of these alternatives will be compared, in terms of service and cost effectiveness, with the existing approach. Alternatives would include a contract with another city or the creation of a City Police Department.

The project team will review the results of the first four tasks and develop an issues list and a set of service level objectives that can be employed as a basis for structuring and costing alternative approaches to providing law enforcement services. Issue areas could include:

- Field deployment levels and practices.
- Proactivity targets.
- Use of civilian personnel.
- Scope of prevention and community programming.
- Level of investigative services.
- How support services should be handled.
- How alternatives would be organized, staffed and costs allocated.
- In a contract, assumptions developed regarding contract accountability.

#### **TASK RESULT**

**The project team will develop a set of assumptions for structuring and organizing alternative police service delivery systems in Commerce.**

## **Task 6** | **Identify the Resources Needed for Alternative Police Service Delivery.**

In this task, the project team will evaluate the feasibility of two alternative approaches to providing law enforcement services – a contract with another city and the creation of a municipal police department. In developing the analysis in this task, and for both alternatives, we will explore:

- Utilizing the results of our initial research and interviews as well as the community survey and “Town Hall” meeting to develop an initial / provisional community policing philosophy and set of strategies.
- The number of sworn staff required to handle each function based on workloads, service level targets and geography.
  - Patrol
  - Investigations
  - Administrative services
  - Support services
  - Command staffing
- The project team would analyze deployments in Commerce. The Matrix Consulting Group has an innovative approach to evaluating deployments. Information can be found on our web site at [www.matrixcg.net/beats](http://www.matrixcg.net/beats)
- While development of strategic goals and objectives are important for any law enforcement agency in an alternative service delivery system they are critical when they are externally provided.

This task will provide suggested contract benchmarks and community service targets for both a municipal department and a contract with the other potential service providers – Bell Gardens, Montebello and Vernon.

### **TASK RESULT**

**The product of this work task will be a detailed analysis of the staffing and organizational needs in creating municipal police department as well as alternative contracts with Bell Gardens, Montebello and/or Vernon. This analysis will be reviewed with the City.**

## **Task 7      Develop an Analysis of the Potential Operating Costs of a Municipal Police Department and Alternative Contracts**

It is important to develop and evaluate the police service alternatives' costs at a level of detail sufficient for the City to pursue the choice(s) with a level of confidence. As a result, we will structure and estimate the costs of a municipal agency or a contract, as follows:

- Summarize the number of line staff required, by position type; evaluate part time staff availability and use options.
- Develop plans of administrative, command, and support staffing necessary to support operations.
- Estimate the competitive labor costs associated with the staffing plan. Base the analysis on the following:
  - Prepare a likely compensation schedule, by position, for the staffing plan based on existing compensation.
  - Convert the staffing plans to estimated salary costs.
  - Estimate fringe benefit costs based on competitive local benefit packages.
- Then, develop detailed operating expense budgets by cost component for the service delivery alternative.
- For the municipal department, we would identify the 'indirect' costs associated with assuming a new police service. This will include such costs as vehicles, technologies, facilities, and the provision of support services (e.g., HR, IT, etc.).
- Alternative cost allocation approaches would be identified, costed and evaluated for a contract with another city.

### **TASK RESULT**

**The results of the above would be pro-forma operating budgets for a municipal service delivery approach as well as with contracts with a neighboring community. The results of these analyses of operating costs would be reviewed with the City.**

## Task 8 | Identify Start-Up and Transitional Requirements.

This work task will involve developing capital budget and transition strategies for a municipal police department and, as needed, for a contract with another city. This would include:

- Determining the types and numbers of equipment needed.
- How to transition service responsibility from the LASD to a new service to ensure services are maintained, yet duplication minimized.
- What interim operational steps could be taken to move from current approaches to any new service delivery model adopted.
- A schedule for implementation.

### TASK RESULT

**The results of this task will be capital budget and transition plan for police service alternatives.**

## Task 9 | Provide the Results of the Feasibility Study

With the completion of the previous tasks the project team will develop draft and final reports. Each alternative organizational approach to police services would be analyzed in terms of the following:

- How each compares on a cost effectiveness basis.
- How each would be implemented.
- How each would impact other municipal services.
- The advantages and disadvantages of each.

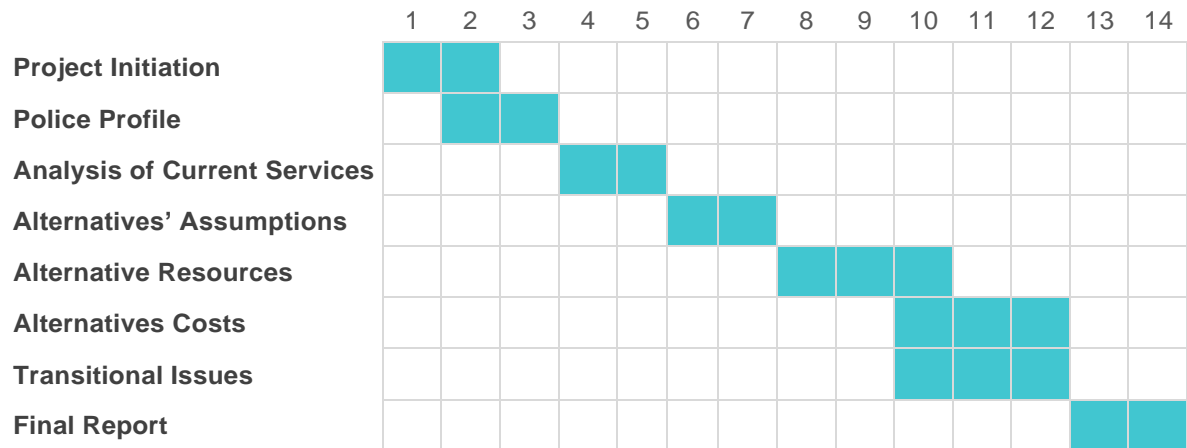
Once the draft report has been reviewed by the project steering committee we would be prepared to present the results to the City in a City Council meeting.

### TASK RESULT

**The public safety feasibility assessment would provide the cost-benefit analysis of services, description of advantages and disadvantages of each service alternative, reasons for recommending (or not), etc.**

### **3. Project Schedule**

The table, below, graphically displays the tentative schedule to conduct the Police Service Alternatives Analysis. The chart shows the sequencing of each proposed work task, the elapsed time it would take to complete each task. As can be seen from the chart, we are proposing that the study be completed in 14 weeks (about four months).



As described in the task plan earlier in this proposal there would be a deliverable associated with each project task.

## 2 Project Cost

The Matrix Consulting Group proposes to conduct the Public Safety Feasibility Study for a fixed price of **\$69,000**. The detailed calculations of our pricing structure are provided below.

	BradyR	Pipkin / Mathews	BradyI	Hours / Cost
<b>Project Initiation</b>	8	0	0	8
<b>Police Profile</b>	4	24	12	40
<b>Analysis of Contract</b>	4	4	8	16
<b>Assumptions</b>	4	24	12	40
<b>Resource Needs</b>	4	8	4	16
<b>Operating Costs</b>	8	48	24	80
<b>Start-up Costs</b>	8	16	16	40
<b>Final Report</b>	8	16	16	40
Total Hours	<b>\$200</b>	<b>\$175</b>	<b>\$150</b>	<b>372</b>
Hourly Rate	<b>\$12,000</b>	<b>\$32,900</b>	<b>\$18,600</b>	
Total Professional Fees	<b>\$200</b>	<b>\$175</b>	<b>\$150</b>	<b>\$63,500</b>
Project Expenses				<b>\$5,500</b>
<b>Total Project</b>				<b>\$69,000</b>

We typically contract on a fixed price basis with monthly billings representing our progress on the project. We are, however, open to other approaches for payment.

**EXHIBIT B**  
**GENERAL TERMS AND CONDITIONS**

**1. Status as Independent Contractor.**

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

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

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

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



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

## **2. Standard of Performance**

Consultant shall perform all work to the highest professional standards and in a manner reasonably satisfactory to the City Manager or his/her designee. No additional or different tasks or services shall be performed by Consultant other than those specified in **Exhibit A**.

## **3. Indemnification.**

A. Consultant is skilled in the professional calling necessary to perform the services and duties agreed to be performed under this Agreement, and City is relying upon the skill and knowledge of Consultant to perform said services and duties.

B. City and its respective elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "Indemnities") shall have no liability to Consultant or any other person for, and Consultant shall indemnify, defend, protect and hold harmless Indemnities from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "Claims"), which Indemnities may suffer or incur or to which Indemnities may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or other loss occurring as a result of or allegedly caused by Consultant's performance of or failure to perform any services under this Agreement or by the negligent or willful acts or omissions of Consultant, its agents, officers, directors, subcontractor, sub consultant or employees, committed in performing any of the services under this Agreement. Notwithstanding the foregoing, the provisions of this subsection shall not apply to Claims occurring as a result of the City's sole negligence or willful acts or omissions.

C. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this Section from each and every subcontractor, sub consultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required in this Section, Consultant agrees to be fully responsible according to the terms of this Section. Failure of the City to monitor compliance with these requirements imposes no additional obligations on City and will in no way serve as a waiver of any rights hereunder. This obligation to indemnify and defend Indemnities as set forth herein shall survive the termination of this Agreement and is in addition to any rights which City may have under the law. This indemnity is effective without reference to the existence or applicability of any insurance coverage which may have been required under this Agreement or any additional insured endorsements which may extend to

City.

**4. Insurance.**

A. Without limiting Consultant's indemnification of Indemnities pursuant to Section 3 of this Agreement, Consultant shall obtain and provide and maintain at its own expense during the term of this Agreement the types and amounts of insurance as described below:

(I) Consultant shall maintain Commercial General Liability Insurance with coverage at least as broad as Insurance Services Office Commercial General Liability Form CG 00 01 in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

(II) Consultant shall maintain Business Auto Coverage on ISO Business Auto Coverage Form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

(III) Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with on a state approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for all covered losses;

(IV) Consultant shall maintain Professional Liability or Errors and Omissions Insurance that covers the services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this Agreement.

B. City, its officers, officials, employees and volunteers shall be named as additional insureds on the policy(ies) as to commercial general liability and automotive liability.

C. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger)

in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

D. All insurance policies shall provide that the insurance coverage shall not be non-renewed, canceled, reduced, or otherwise modified (except through the addition of additional insureds to the policy) by the insurance carrier without the insurance carrier giving City thirty (30) days' prior written notice thereof. Any such thirty (30) day notice shall be submitted to CITY via certified mail, return receipt requested, addressed to "Director of Human Resources & Risk Management," City of Commerce, 2535 Commerce Way, Commerce, California, 90040. Consultant agrees that it will not cancel, reduce or otherwise modify said insurance coverage.

E. Consultant shall submit to City (I) insurance certificates indicating compliance with the minimum worker's compensation insurance requirements above, and (II) insurance policy endorsements indicating compliance with all other minimum insurance requirements above, not less than one (1) day prior to beginning of performance under this Agreement. Endorsements shall be executed on City's appropriate standard forms entitled "Additional Insured Endorsement".

F. Consultant's insurance shall be primary as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees and volunteers shall be excess of Consultant's insurance and shall not contribute with it.

G. Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, and such insurance is available at a reasonable cost. City may take out the necessary insurance and pay the premium thereon, and the repayment thereof shall be deemed an obligation of Consultant's and the cost of such insurance may be deducted, at the option of City, from payments due Consultant.

## **5. Release of Information/Confidentiality.**

A. Consultant in the course of its duties may have access to confidential data of City, private individuals, or employees of the City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City Manager, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena. Consultant's covenant under this section shall survive the termination of this Agreement.

B. Consultant shall promptly notify City should Consultant, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response

## **6. Ownership of Work Product.**

A. Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by the City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of the City or its designees at reasonable times to such books and records; shall give the City the right to examine and audit said books and records; shall permit the City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

B. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

## **7. Conflict of Interest.**

A. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the services to be performed by Consultant under this Agreement, or which would conflict in any manner with the performance of its services hereunder. Consultant further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Consultant shall avoid the appearance of having any interest which would conflict in any manner with the performance of its services pursuant to this

Agreement.

B. Consultant covenants not to give or receive any compensation, monetary or otherwise, to or from the ultimate vendor(s) of services to City as a result of the performance of this Agreement, or the services that may be procured by the City as a result of the recommendations made by Consultant's covenants under this section shall survive the termination of this Agreement.

**8. Termination.** Notwithstanding any other provision, this Agreement may be duly terminated at any time by the City at its sole discretion with or without cause by serving upon the consultant at least ten (10) days prior written notice ("Notice of Termination"). Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. Unless expressly agreed upon in writing by the City, the City shall not be obligated to pay for any services rendered nor any costs or expenses paid or incurred after the date of termination. The effective date of termination shall be upon the date specified in the written Notice of Termination. Consultant agrees that in the event of such termination, Consultant must refund the City its prorated share, except for services satisfactorily rendered prior to the effective date of termination. Immediately upon receiving written Notice of Termination, Consultant shall discontinue performing services, preserve the product of the services and upon payment for services, turn over to City the product of the services in accordance with written instructions of City.

In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City.

**9. Personnel.** Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services under this Agreement. All of the services required under this Agreement will be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Consultant reserves the right to determine the assignment of its own employees to the performance of Consultant's services under this Agreement, but City reserves the right, for good cause, to require Consultant to exclude any employee from performing services on City's premises.

**10. Non-Discrimination and Equal Employment Opportunity.**

A. Consultant shall not discriminate as to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation, in the performance of its services and duties pursuant to this Agreement, and will comply with all rules and regulations of City relating thereto. Such nondiscrimination shall include but not be limited to the following: employment, upgrading, demotion, transfers, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training,

including apprenticeship.

B. Consultant will, in all solicitations or advertisements for employees placed by or on behalf of Consultant state either that it is an equal opportunity employer or that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

C. Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement except contracts or subcontracts for standard commercial supplies or raw materials.

**11. Assignment.** Consultant shall not assign or transfer any interest in this Agreement nor the performance of any of Consultant obligations hereunder, without the prior written consent of City, and any attempt by Consultant to assign this Agreement or any rights, duties, or obligations arising hereunder shall be void and of no effect.

**12. Performance Evaluation.** For any Agreement in effect for twelve months or longer, the City Manager may require a written annual administrative performance evaluation within ninety (90) days of the first anniversary of the effective date of this Agreement, and each year thereafter throughout the term of this Agreement. The work product required by this Agreement shall be utilized as the basis for review, and any comments or complaints received by City during the review period, either orally or in writing, shall be considered. City shall meet with Consultant prior to preparing the written report. If any noncompliance with the Agreement is found, City may direct Consultant to correct the inadequacies, or, in the alternative, may terminate this Agreement as provided herein.

**13. Compliance with Laws.** Consultant shall keep itself informed of State, Federal and Local laws, ordinances, codes and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. Consultant shall at all times comply with such laws, ordinances, codes and regulations. The City, its officers and employees shall not be liable at law or in equity occasioned by failure of Consultant to comply with this Section.

**14. Licenses.** At all times during the term of this Agreement, Consultant shall have in full force and effect all licenses (including a City business license) required of it by law for performance of the services hereunder.

**15. Non-Waiver of Terms, Rights and Remedies.** Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by City of any payment to Consultant constitute or be construed as a waiver by City of any breach of covenant, or any default which may then exist on the part of Consultant, and the making of any such payment by City shall in no way impair or prejudice any right or remedy available to City with regard to such breach or default.

**16. Attorney's Fees.** In the event that either party to this Agreement shall commence any legal or equitable action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorney's fees and costs, including costs of expert witnesses and Consultant.

**17. Notices.** Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during Consultant regular business hours or by facsimile before or during Consultant regular business hours; or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses heretofore set forth in the Agreement, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this section.

**18. Governing Law.** This Agreement shall be construed and interpreted both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California. However, the Parties may agree to submit any dispute to non-binding arbitration.

**19. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument.

**20. Severability.** If any provision or any part of any provision of this Agreement is found to be invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

**21. Entire Agreement.** This Agreement, and any other documents incorporated herein by specific reference, represents the entire and integrated agreement between Consultant and City. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the Parties which expressly refers to this Agreement. Amendments on behalf of the City will only be valid if signed by the Mayor and attested by the City Clerk.

**22. Authority.** The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.