ALL ITEMS FOR CONSIDERATION BY THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION ARE AVAILABLE FOR PUBLIC VIEWING IN THE OFFICE OF THE OVERSIGHT BOARD SECRETARY AND THE CENTRAL LIBRARY

Agendas and other writings that will be distributed to the Board Members in connection with a matter subject to discussion or consideration at this meeting and that are not exempt from disclosure under the Public Records Act, Government Code Sections 6253.5, 6254, 6254.3, 6254.7, 6254.15, 6254.16, or 6254.22, are available for inspection following the posting of this agenda in the Oversight Board Secretary's Office, at Commerce City Hall, 2535 Commerce Way, Commerce, California, and the Central Library, 5655 Jillson Street, Commerce, California, or at the time of the meeting at the location indicated below.

AGENDA FOR THE REGULAR MEETING OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION

COUNCIL CHAMBERS
CITY HALL, CITY OF COMMERCE
5655 JILLSON STREET, COMMERCE, CALIFORNIA

WEDNESDAY, SEPTEMBER 5, 2012 – 5:00 P.M.

CALL TO ORDER Chairperson Leon

PLEDGE OF ALLEGIANCE Board Member Vasquez

ROLL CALL Secretary Olivieri

PUBLIC COMMENT

Citizens wishing to address the Oversight Board on any item on the agenda or on any matter not on the agenda may do so at this time. However, State law (Government Code Section 54950 et seq.) prohibits the Oversight Board from acting upon any item not contained on the agenda posted 72 hours before a regular meeting and 24 hours before a special meeting. Upon request, the Oversight Board may, in its discretion, allow citizen participation on a specific item on the agenda at the time the item is considered by the Oversight Board. Request to address Oversight Board cards are provided by the Secretary. If you wish to address the Oversight Board at this time, please complete a speaker's card and give it to the Secretary prior to commencement of the Oversight Board meeting.

Please use the microphone provided, clearly stating your name and address for the official record and courteously limiting your remarks to five (5) minutes so others may have the opportunity to speak as well.

To increase the effectiveness of the Public Comment Period, the following rules shall be followed:

No person shall make any remarks which result in disrupting, disturbing or otherwise impeding the meeting.

WRITTEN COMMUNICATIONS – None.

PRESENTATIONS – None.

CONSENT CALENDAR

Items under the Consent Calendar are considered to be routine and may be enacted by one motion. Each item has backup information included with the agenda, and should any Board Member desire to consider any item separately he/she should so indicate to the Chairperson. If the item is desired to be discussed separately, it should be the first item under Scheduled Matters.

1. Approval of Minutes

   The Board will consider for approval the minutes of the Regular Meeting of Thursday, July 5, 2012, held at 5:00 p.m.; Regular Meeting of Wednesday, August 1, 2012, held at 5:00 p.m. and Special Meeting of Wednesday, August 22, 2012, held at 5:00 p.m.

2. Use of Successor Agency-owned Real Properties by Craig Realty Group, et al./Citadel LLC for Special and Holiday Event Parking

   The Board will consider for approval the use of Successor Agency-owned [formerly Commerce Community Development Commission-owned] real properties located at 5801, 5819 and 5823 Telegraph Road; 2309, 2320 and 2366 Travers Avenue and 2240 Gaspar Avenue for customer and/or employee parking purposes for The Citadel's special and holiday events on various weekends from October 6, 2012, through Monday, December 31, 2012, inclusive, and on Thursday, November 22, 2012, and Friday, November 23, 2012, on a no-cost basis, with Craig Realty Group, et al./Citadel, LLC, to provide the requisite evidence of insurance for the use of said properties.

   For the past several years, the former Commission has permitted some, or all, of its properties in the vicinity of The Citadel to be used for parking

purposes for these special and holiday events on a no-cost basis and the Successor Agency is expected to approve the request at its regular meeting on September 4, 2012.

3. Resolution No. OB 2012-12 – A Resolution of the Oversight Board of the Successor Agency to the Commerce Community Development Commission Approving the Amended Recognized Obligation Payment Schedule for the Period Covering January-June 2013, as Required by Section 34180 of the *California Health and Safety Code*

At its meeting on August 22, 2012, the Board approved the Recognized Obligation Payment Schedule ("ROPS") for the period covering January 1, 2013, to June 30, 2012. However, the Board requested that the ROPS be amended to indicate, in a footnote, a brief explanation as to why the Successor Agency does not have firm numbers at this time for the expected cost of environmental remediation on various properties. The ROPS has been amended by staff to address this issue.

The Board will consider for approval and adoption proposed Resolution No. OB 2012-12, approving the Amended Recognized Obligation Payment Schedule for the period covering January 1, 2013, to June 30, 2013, with the amendment noted above.

SCHEDULED MATTERS

4. Resolution No. OB 2012-13 – A Resolution of the Oversight Board of the Successor Agency to the Commerce Community Development Commission Approving an Agreement With Block Environmental For Well Abandonment Services at the Property Located at 6300 East Washington Boulevard, Commerce, California

In 2008, the Commerce Community Development Commission (the "Commission") entered into negotiations with Costco Wholesale Corporation ("Costco") for the development of a business-to-business Costco store in the City of Commerce.

On March 18, 2008, the Commission and Costco entered into a Disposition and Development Agreement ("DDA") for the development of the Property at 6333 E. Washington Boulevard, Commerce, and the possible future development of the Satellite Parcel at 6300 E. Washington Boulevard, Commerce. The parties agreed that the Commission would continue its remediation efforts of the Satellite Parcel and that, when completed, Costco would be provided notice and have a certain amount of time to exercise the option to purchase the Satellite Parcel for $1,000,000.

On July 2, 2012, the Los Angeles Regional Water Quality Control Board ("Water Board") provided the Successor Agency with a No-Further Action Letter which concludes that the corrective actions required at the Satellite Parcel have been properly performed. The Water Board has advised that if the Satellite Parcel has groundwater wells or vapor extraction wells, the Successor Agency must take action to abandon the wells and that a report on the abandonment must be submitted to the Water Board by October 15, 2012.

The Board will consider for approval and adoption proposed Resolution No. OB 2012-13, approving an agreement between the Successor Agency and Block Environmental for well abandonment services at the property located at 6300 E. Washington Boulevard, Commerce, California.

5. Review of Impact of AB 1X 26 and AB 1484 on Loans Made by City of Commerce to Commerce Community Development Commission

The Board will consider for receipt and filing, and provide direction as deemed appropriate with respect to, the impact of AB 1X 26 and AB 1484 on loans made by the City of Commerce to the Commerce Community Development Commission.

6. Review of Future Agenda Items

The Board will review, and provide direction as deemed appropriate with respect to, future agenda items for consideration by the Board.

STAFF REPORTS AND INFORMATION ITEMS

CHAIR AND BOARD MEMBER REPORTS AND INFORMATION ITEMS

RECESS TO CLOSED SESSION

7. Pursuant to Government Code §54956.8,

A. The Board will confer with Successor Agency staff, Vilko Domic, Alex Hamilton, John Yonai and Eduardo Olivo, serving as its real property negotiators, with respect to real estate negotiations with Gatwick Group, LLC, aka Commerce VRG, LLC, including proposed price and other terms, concerning real property commonly referred to as the Cable property and/or Cable Trust property; real property owned separately by the Union Pacific Railroad, Burlington Northern Santa Fe Railway Company and Anne R. Klein Estate and Commission-owned real property located at 4957 Sheila Street and on the southeast corner of Washington Boulevard and Hepworth Avenue, APN 5244-033-900 (formerly known as 4800 Washington Boule-

vard), Commerce, California, with said properties bounded by Washington Boulevard on the north, Sheila Street on the south, Atlantic Boulevard on the east and the I-710 Freeway on the West.

8. Pursuant to Government Code §54957.9(b),

A. The Board will confer with Successor Agency legal counsel with respect to significant exposure to litigation in one potential case.

ADJOURNMENT

LARGE PRINTS OF THIS AGENDA ARE AVAILABLE UPON REQUEST FROM THE OVERSIGHT BOARD SECRETARY'S OFFICE, MONDAY-FRIDAY, 8:00 A.M. - 6:00 P.M.

AGENDA REPORT

OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION

DATE: September 5, 2012

TO: HONORABLE OVERSIGHT BOARD

FROM: SUCCESSOR AGENCY FINANCE DIRECTOR

SUBJECT: USE OF SUCCESSOR AGENCY-OWNED REAL PROPERTIES BY CRAIG REALTY GROUP, ET AL./CITADEL LLC FOR SPECIAL AND HOLIDAY EVENT PARKING

RECOMMENDATION:

Approve the use of Successor Agency-owned [formerly Commerce Community Development Commission-owned] real properties located at 5801, 5819 and 5823 Telegraph Road; 2309, 2320 and 2366 Travers Avenue and 2240 Gaspar Avenue for customer and/or employee parking purposes for The Citadel's special and holiday events on various weekends from October 6, 2012, through Monday, December 31, 2012, inclusive, and on Thursday, November 22, 2012, and Friday, November 23, 2012, on a no-cost basis, with Craig Realty Group, et al./Citadel, LLC, to provide the requisite evidence of insurance for the use of said properties.

MOTION:

Move to approve the recommendation.

BACKGROUND/ANALYSIS:

Craig Realty Group, et al./Citadel LLC, owner of The Citadel Outlets & Office Park, holds various special and holiday events at The Citadel during the last three months of each year. These events include the Shopping Extravaganza, Moonlight Madness and Tree Lighting as well as their holiday shopping weekends.

Craig Reality Group, et al./Citadel LLC is requesting the use of Successor Agency-owned [former Commission-owned] real property located at 5801, 5819 and 5823 Telegraph Road; 2309, 2320 and 2366 Travers Avenue and 2240 Gaspar Avenue for customer and/or employee parking purposes for its special and holiday events. These events will be held on weekends from October 6, 2012, through Monday, December 31, 2012, inclusive, and on Thursday, November 22, 2012, and Friday, November 23, 2012.

Craig Reality Group, et al./Citadel LLC will provide the requisite insurance coverage for the use of these properties.

For the past several years, the former Commission has permitted the use of some, or all, of its properties in the vicinity of The Citadel to be used for parking purposes for these special and holiday events on a no-cost basis.

The Successor Agency is expected to approve this matter at its regular meeting of September 4, 2012, and staff recommends that the Oversight Board also approve the use of the subject properties as stated herein.

FISCAL IMPACT:

This activity can be conducted without additional impact on the current operating budget.

Respectfully submitted,

Vilko Domic
Successor Agency Finance Director

Approved as to form

Eduardo Olivo
Successor Agency Legal Counsel

AGENDA REPORT

OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION

DATE: September 5, 2012

TO: HONORABLE OVERSIGHT BOARD

FROM: SUCCESSOR AGENCY FINANCE DIRECTOR

SUBJECT: RESOLUTION NO. OB 2012-12 – A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION APPROVING THE AMENDED RECOGNIZED OBLIGATION PAYMENT SCHEDULE FOR THE PERIOD COVERING JANUARY-JUNE 2013, AS REQUIRED BY SECTION 34180 OF THE *CALIFORNIA HEALTH AND SAFETY CODE*

RECOMMENDATION:

Review the Amended Recognized Obligation Payment Schedule for January-June 2013 and thereafter consider for approval and adoption Resolution No. OB 2012-12, as entitled above.

BACKGROUND AND OVERVIEW:

California Health and Safety Code Section 34177(a), contained in AB 1X 26 ("AB 26"), requires the City, as the Successor Agency to the Commerce Community Development Commission, to prepare a Recognized Obligation Payment Schedule ("ROPS"), which sets forth the minimum payment amounts and due dates of payments required by enforceable obligations for each six-month fiscal period.

At its first meeting on May 2, 2012, the Board received a presentation on the function of the ROPS, as determined by the provisions of *Health and Safety Code* Section 34177(a), and information about the required approval dates for the ROPS.

ANALYSIS AND DISCUSSION:

At its meeting of May 9, 2012, the Board approved the January-June 2012 ROPS, with the exception of all City loans referenced under each Project Area on Exhibit "A", identifying the payee as the *City of Commerce*, which staff was directed to line out and not reflect in the obligation totals. The City of Commerce, as the Successor Agency to the Commission, has referenced various enforceable obligations in the attached Recognized Obligation Payment Schedule ("ROPS") for the period of January 1, 2013, to June 30, 2013. Pursuant to AB 26 and AB 1484, the Successor Agency has referenced the City loan

obligations that, in the future, will become enforceable obligations. The Successor Agency has done so in order to assure that the City's rights are not waived.

The ROPS III, like the approved ROPS I and II, include line items for environmental investigation and remediation. The Successor and Oversight Boards have approved through the ROPS the allocation of remediation amounts that are estimated to achieve State of California Regional Water Quality Control Board (RWQCB), Department of Toxic Substance Control (DTSC), Los Angeles County and other oversight jurisdiction approvals. The estimates are based on information currently available. Site investigation and characterization is ongoing. Actual contract amounts are not yet available.

As the owner of the sites, the Successor Agency is responsible for investigation and remediation of the sites.

Whether the properties are the subject of a long range management plan after a Finding of Completion pursuant to AB 1484 or the properties become the subject of expeditious disposition, they must be remediated.

The properties were acquired as part of the Commission's efforts to eliminate blight, including environmental contamination, which still exists on many properties in the City as a result of the City's industrial history.

The properties have not been adequately characterized because AB 26 intervened in the redevelopment process after acquisition but before contracts for investigation were in place. Thereafter, the wind-up process precluded new contracts with environmental consultants.

These properties were acquired to accomplish long-term Community projects that the market and market rate developments could not financially support due to the ongoing risk, uncertainty and financial responsibility associated with adverse environmental conditions.

The properties require public participation in order to accomplish environmental remediation such as The Citadel (approximately $10M to assist in clean-up and encourage private participation and reuse of site) and the housing joint venture between Commerce and Bell Gardens Housing Development. Other sites include contractual obligations to complete clean-up such as the Costco site, or ongoing remediation at the former Futernick Dump site. The remaining sites that are being prepared for expeditious disposition under AB 26 and AB 1484 also require remediation of adverse environmental conditions at each location.

The set aside funds and reserved tax increment are necessary for clean-up as no further tax increment, other State or County resources will be allocated for environmental remediation. Without remediation, the sites may remain unsold and non-developable. The Successor Agency and Oversight Board have included in their disposition plans the use and allocation of the existing tax increment funds to achieve the highest possible sale price for each property.

On August 22, 2012, the Board approved the ROPS. However, the Board requested that the ROPS be amended to indicate, in a footnote, a brief explanation as to why the Successor Agency does not have firm numbers at this time for the expected cost of environmental remediation on various properties. The ROPS has been amended to address this issue. Successor Agency staff recommends approval of the attached ROPS at this time.

Respectfully submitted,

Vilko Domic
Successor Agency Finance Director

Approved as to form,

Eduardo Olivo
Successor Agency Legal Counsel

RESOLUTION NO. OB 2012-12

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION APPROVING THE AMENDED RECOGNIZED OBLIGATION PAYMENT SCHEDULE FOR THE PERIOD COVERING JANUARY-JUNE 2013, AS REQUIRED BY SECTION 34180 OF THE *CALIFORNIA HEALTH AND SAFETY CODE*

WHEREAS, the Commerce Community Development Commission operated as a redevelopment agency in the City of Commerce (the "City"), duly created pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the California *Health and Safety Code*)) (the "Redevelopment Law"); and

WHEREAS, Assembly Bill 1X 26 ("AB 26") and Assembly Bill 1X 27 ("AB 27"), were approved by the California Legislature on June 15, 2011, and signed by the Governor on June 28, 2011; and

WHEREAS, AB 26 and AB 27 added Parts 1.8, 1.85 and 1.9 of Division 24 to the California *Health and Safety Code*; and

WHEREAS, Part 1.85 of the *Health and Safety Code*, which is contained in AB 26, required all redevelopment agencies to dissolve as of October 1, 2011, and provided for the establishment of a successor entity to administer the enforceable obligations of the redevelopment agency; and

WHEREAS, Part 1.8 of the *Health and Safety Code*, which is also contained in AB 26, restricts activities of redevelopment agencies to meeting their enforceable obligations, preserving assets and meeting other goals in the interim period prior to dissolution; and

WHEREAS, Section 34169 of the *Health and Safety Code*, which is contained in AB 26, required the redevelopment agencies to adopt an Enforceable Obligations Payment Schedule; and

WHEREAS, Section 34167 of the *Health and Safety Code*, which is also contained in AB 26, prohibits redevelopment agencies from making any payment which is not listed on the Enforceable Obligations Payment Schedule; and

WHEREAS, on August 24, 2011, pursuant to Resolution No. 492, the Commerce Community Development Commission approved an Enforceable Obligations Payment Schedule; and

WHEREAS, on December 29, 2011, the Supreme Court issued its opinion in the *Matosantos* case largely upholding AB 26 and invalidating AB 27; and

WHEREAS, as a result of the Supreme Court's decision, on February 1, 2012, all redevelopment agencies were dissolved and replaced by successor agencies pursuant to *Health and Safety Code* Section 34173; and

WHEREAS, the City Council of the City of Commerce adopted Resolution No. 12-8 on January 17, 2012, pursuant to part 1.85, for the City to serve as the Successor

Agency for the Commerce Community Development Commission (the "Successor Agency"); and

WHEREAS, on January 31, 2012, pursuant to Resolution No. 498, the Commission adopted an amended Enforceable Obligations Payment Schedule; and

WHEREAS, *Health and Safety Code* Section 34177 (a), requires the City, as the Successor Agency to the Commission, to prepare a Recognized Obligation Payment Schedule, which sets forth the minimum payment amounts and due dates of payments required by enforceable obligations for each six-month fiscal period, and

Whereas, on April 24, 2012, pursuant to Resolution No. SA 12-4, the City Council, acting as the Governing Body for the Successor Agency to the Commission approved the Recognized Obligations Payment Schedule for July-December 2012, and

WHEREAS, *Health and Safety Code* Section 34180 requires the Oversight Board of the Successor Agency to approve the establishment of the Recognized Obligation Payment Schedule.

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD AS FOLLOWS:

Section 1. The recitals set forth above are true and correct.

Section 2. The Amended Recognized Obligation Payment Schedule, for the period January-June 2013, which is attached hereto as Exhibit "A", is hereby approved and adopted in accordance with the provisions of Section 34180 of the *Health and Safety Code*. The Director of Finance of the Successor Agency is hereby authorized and directed to transmit the Schedule to the Los Angeles County Auditor-Controller, the State Controller and the State Department of Finance in accordance with Section 34169 of the *Health and Safety Code*.

Section 3. The Oversight Board's Secretary shall certify to the passage of this Resolution and thereupon and thereafter the same shall be in full force and effect.

PASSED, APPROVED AND ADOPTED this 5TH day of September, 2012.

_____
Lilia R. Leon
Oversight Board Chairperson

ATTEST:

_____
Linda Kay Olivieri, MMC
Oversight Board Secretary

Name of Successor A: The Governing Body of the Successor Agency to the Commerce Community Development Commission
County: Los Angeles

RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROPS III) -- Notes (Optional)
January 1, 2013 through June 30, 2013

Item #	Notes/Comments
2, 3, 30, 42-44	These loans will again be enforceable obligations listed in the ROPS for July – Dec. 2013 pursuant to AB 1484 as codified in H&S Code §34191.4. Previously, AB 26 provided that the loans were not deemed valid. There is also a lawsuit pending contending that the existing loans represent a payable amount due to the City.
1,16, 17, 29, 36, 41	Amount requested includes reserve to meet debt service due as permitted by Health and Safety Code Section 34171(A) as amended by AB 1484. An additional $1.2 million was built into the Debt Service amounts to preclude a potential breach of contract with our bondholders as it relates to the Aug 2013 debt service payment. We were forced to draw from our reserves (approximately $745,000) in August 2011 to meet our debt service. In order to avoid the same scenario (and predicated on the fact that all of our reserves will be turned over to the State by April 2013), we are requesting that said funds be remitted during the Jan-June timeframe (ROPSIII) and kept in reserves so as to meet our August 2013 debt service obligation.
13,14,15,27,28,39, 40,55-59	The Successor Agency owned properties include Commission acquisitions of property within the industrial city that require public participation in order to accomplish environmental remediation, such as the Citadel (approximately $10m to assist in clean up and encourage private participation and reuse of site) and the housing joint venture between Commerce and Bell Gardens Housing Development. The remaining sites that are being prepared for disposition under AB26 and AB1484 require remediation of adverse environmental conditions at each location. These Commission acquisitions, were specifically acquired to achieve long term Community projects that the Market and market rate developments could not financially support due to the adverse environmental impacts and ongoing risk, uncertainty and financial responsibility.
	Disposition of the remaining sites, as described in the prepared and approved ROPS/EOPS, require that the set aside funds and reserved tax increment remain for cleanup allocation as no further tax increment, other State or County State or County resources will be allocated for environmental remediation. Without remediation the sites may remain unsold and non-developable. The Successor and Oversight Boards have included in their disposition plans the use and allocation of the existing tax increment funds to achieve the highest possible sale price for each property. The Successor and Oversight Boards have approved through the ROPS the allocation of remediation amounts that are estimated to achieve State of California Regional Water Quality Control Board (RWQCB), Department of Toxic Substance Control (DTSC), Los Angeles County and other oversight jurisdiction approvals prior to sale and development of each site.
	The ROPS III, like the approved ROPS I and II include line items for environmental investigation and remediation. The Successor and Oversight Boards have approved through the ROPS the allocation of remediation amounts that are estimated to achieve State of California Regional Water Quality Control Board (RWQCB), Department of Toxic Substance Control (DTSC), Los Angeles County and other oversight jurisdiction approvals. The estimates are based on information currently available. Site investigation and characterization is ongoing. Actual contract amounts are not yet available.
	As the owner of the sites, the Successor Agency is responsible for investigation and remediation of the sites.
	Whether the properties are the subject of a long range management plan after a Finding of Completion pursuant to AB1484 or the properties become the subject of expeditious disposition, they must be remediated.
	The properties were acquired as part of the Commission's efforts to eliminate blight, including environmental contamination, which still exists on many properties in the City as a result of the City's industrial history.
	The properties have not been adequately characterized because ABx1 26 intervened in the redevelopment process after acquisition but before contracts for investigation were in place. Thereafter, the wind-up process precluded new contracts with environmental consultants.
	These properties were acquired to accomplish long term Community projects that the market and market rate developments could not financially support due to the ongoing risk, uncertainty and financial responsibility associated with adverse environmental conditions.
	The properties require public participation in order to accomplish environmental remediation such as the Citadel (approximately $10M to assist in clean up and encourage private participation and reuse of site) and the housing joint venture between Commerce and Bell Gardens Housing Development. Other sites include contractual obligations to complete clean-up such as the Costco site, or ongoing remediation at the former Futernick Dump site. The remaining sites that are being prepared for expeditious disposition under AB26 and AB1484 also require remediation of adverse environmental conditions at each location.
	The set aside funds and reserved tax increment are necessary for cleanup as no further tax increment, other State or County resources will be allocated for environmental remediation. Without remediation the sites may remain unsold and non-developable. The Successor and Oversight Boards have included in their disposition plans the use and allocation of the existing tax increment funds to achieve the highest possible sale price for each property.

AGENDA REPORT

OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION

DATE: September 5, 2012

TO: HONORABLE OVERSIGHT BOARD

FROM: SUCCESSOR AGENCY FINANCE DIRECTOR

SUBJECT: RESOLUTION NO. OB 2012-13 – A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION APPROVING AN AGREEMENT WITH BLOCK ENVIRONMENTAL FOR WELL ABANDONMENT SERVICES AT THE PROPERTY LOCATED AT 6300 EAST WASHINGTON BOULEVARD, COMMERCE, CALIFORNIA

RECOMMENDATION

Approve and adopt Resolution No. OB 2012-13, as entitled above.

BACKGROUND:

In 2008, the Commerce Community Development Commission (the "Commission") entered into negotiations with Costco Wholesale Corporation ("Costco") for the development of a business-to-business Costco store in the City of Commerce. The Commission and Costco agreed that Costco would purchase and develop a 130,000 square foot Costco store on property owned by the Commission at 6333 Telegraph Road(the "Property"). The parties agreed that the development by Costco of a fast food type restaurant on another parcel of property owned by the Commission, which was located southwest of and adjacent to the Property at 6300 East Washington Boulevard (the "Satellite Parcel"), would be highly desirable.

The Commission was in the process of remediating environmental issues on the Satellite Property while the negotiations with Costco were taking place. Costco was concerned about unknown liabilities that might exist in connection with such environmental issues. In order to address these concerns, the parties agreed that, instead of proceeding with the sale of the Satellite Property to Costco at that time, Costco would have the option to purchase the Satellite Parcel after the Commission had accomplished such clean up goals.

On March 18, 2008, the Commission and Costco entered into a Disposition and Development Agreement ("DDA") for the development of the Property and the possible future development of the Satellite Parcel. The parties agreed that the Commission would

continue its remediation efforts and that, when completed, Costco would be provided notice and have a certain amount of time to exercise the option to purchase the Satellite Parcel for $1,000,000. [DDA § 24.3]

The Commission's remediation responsibilities were set forth in the following DDA sections:

Section 16.2 (Commission Obligation to Remediate Hazardous Materials)provided that:

> Commission shall be obligated to remove or otherwise remediate any Hazardous Substances affecting the Satellite Parcel at its sole cost and expense in accordance with Environmental Laws and pursuant to a further testing and remediation plan and a schedule approved by Developer and all applicable authorities; provided, however, that in no event shall Commission be obligated to expend in excess of Four Hundred Thousand Dollars ($400,000) on remediation of the Satellite Parcel.

Section 16.3.1 (Remediation Plan) provided that:

> Commission and Developer acknowledge the existence of soils located on the Satellite Parcel, and underlying groundwater, which are contaminated with hydrocarbons, and that the Los Angeles Regional Quality Control Board or California Department of Toxic Substance Control has primary jurisdiction over the remediation of such contamination. Commission shall, at its sole cost and expense, retain the services of a mutually acceptable consultant to develop a further testing and remediation plan for the cleanup of hydrocarbon-containing soil and groundwater which will comply with Environmental Agency's requirements regarding the contamination. The remediation plan as initially prepared by Commission's consultant shall provide for (a) the removal and disposal of soil from the areas on the Satellite Parcel shown in the Existing Environmental Reports and any subsequent tests or investigations performed by the Commission to contain hydrocarbons subsequent tests or investigations performed by the Commission to contain hydrocarbons and other compounds in excess of regulatory actionable levels and (b) such groundwater remediation as is customarily required under the applicable circumstances.

Section 16.6 (Coordination with Option) provides that:

> As soon as the remediation required under this Article 16 is completed, Commission shall provide Developer with evidence satisfactory to Developer (including, without limitation, closure documentation from applicable governmental authorities) that all the Hazardous Substances have been removed, transported and stored or otherwise remediated in accordance with the approved remediation plan and all Environmental Laws.

Costco's option rights were set forth in the following DDA sections:

Section 24.1 (Grant and Exercise of Option) provides that:

> Commission hereby grants to Developer the sole and exclusive right and option (the "Option") to purchase the Satellite Parcel, together with all Satellite Improvements located thereon, at the price and on the terms and conditions set forth below. To exercise the Option, Developer shall deliver written notice (the "Notice of Exercise") to Commission not later than 150 days after the "Trigger Date" set forth in Section 24.2 (the "Notice Period"). If the Notice of Exercise is not given during the Notice Period, the Option shall lapse and Developer shall have no further rights under this Option.

Section 24.2 (Trigger Date) provides that:

> The term "Trigger Date" means that date the matters set forth in Article 16 above have been satisfied including, without limitation, completion of the Remediation Plan and issuance of a No-Action Letter.
>
> Notwithstanding the foregoing, if upon the initial completion of the Remediation Plan pursuant to Section 16 above, the Environmental Agency has issued a No Action Letter which contains a requirement of additional testing or groundwater remediation after the date of the letter, Developer may elect to either: (a) consider the Trigger Date not to have occurred and to await the Commission's obtaining of a No Action Letter which does not require such further testing or work (b) notify the Commission that Developer wishes to acquire the Satellite Parcel in which event the Notice of Exercise must be given within 180 days following the date of the Trigger Date would have occurred if the No Action Letter had not been qualified by a requirement of additional testing or work. Developer's election to so acquire the Satellite Parcel shall not be deemed a waiver as limitation on the post-closing obligation or the commission under Section 16.3 above or elsewhere in this Agreement.

Pursuant to AB 1X 26, enforceable obligations include any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy. *Health & Safety Code* §§ 34167, 34171. The DDA is a legally binding and enforceable contract. Therefore, the Successor Agency to the Commission has been and continues to be required to take action to comply with the obligations imposed on the Commission by the DDA.

On July 2, 2012, after several years of remediation activities, the Los Angeles Regional Water Quality Control Board ("Water Board") provided the Commission with a No-Further Action Letter. The Water Board concluded that the Commission properly performed the corrective actions required at the Satellite Parcel. The Water Board has advised that if

Satellite Parcel has groundwater wells or vapor extraction wells, the City must comply with the following:

1. All wells must be located and properly abandoned.

2. Well abandonment permits must be obtained from the Los Angeles County Department of Public Health, Environmental Health Division, and all other necessary permits must be obtained from the appropriate agencies prior to the start of work.

3. A report must be submitted on the abandonment of the wells to the Water Board by October 15, 2012. This report must include, at minimum, a site map, a description of the well abandonment process, and copies of all signed permits.

The Satellite Property contains groundwater wells that must be removed pursuant to the directives of the Water Board. The abandonment report is due to the Water Board by October 15, 2012.

ANALYSIS:

On July 10, 2012, Successor Agency Staff obtained a cost estimate from Block Environmental for the well abandonment activities. Block Environmental is proposing the following work:

- Prepare a work plan for submittal to the Water Board.
- Obtain well abandonment permits from the Los Angeles County Department of Public Health for the destruction of 5 groundwater monitoring wells.
- Five groundwater monitoring wells located on the Satellite Parcel will be abandoned.
- Dispose of soil cuttings and auger rinse water generated during the well abandonment activities at appropriate facilities.
- Prepare a final well abandonment report.

Block Environmental estimates that the estimated cost for the well abandonment will be $24,555 and that waste disposal fees will cost an additional $7,500.

On September 4, the Successor Agency approved the Agreement with Block Environmental so that the Successor Agency can conclude the process of abandoning the wells at the Satellite Parcel. Pursuant to Section 24.1 of the DDA, Successor Agency staff will provide Costco with notice of the receipt of the No Further Action Letter. Costco may decide to delay the start of the option period until the well-abandonment work is completed or take action to exercise its option rights within 180 days from the date of the notice. Staff will report back on Costco's decision regarding the option.

FISCAL IMPACT:

The estimated cost for the well abandonment is $24,555. There will be an additional cost of $7,500 for waste disposal fees. The total cost is estimated to be $32,055. Funds are available in Account Number 88-9800-54027 for the tasks outlined in the Block estimate. This item was approved by the Oversight Board as part of the ROPS II July to December 2012, Project Area 4, Line Z "Costco Ongoing Site Evaluation/Testing". $80,000 was allocated for this expense.

Respectfully submitted,

Vilko Domic
Successor Agency Finance Director

Approved as to form,

Eduardo Olivo
Successor Agency Legal Counsel

RESOLUTION NO. OB 2012-13

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION APPROVING AN AGREEMENT WITH BLOCK ENVIRONMENTAL FOR WELL ABANDONMENT SERVICES AT THE PROPERTY LOCATED AT 6300 EAST WASHINGTON BOULEVARD, COMMERCE, CALIFORNIA

WHEREAS, in 2008, the Commerce Community Development Commission (the "Commission") entered into negotiations with Costco Wholesale Corporation ("Costco") for the development of a business-to-business Costco on Commission-owned property located at 6333 Telegraph Road (the "Property"). The parties agreed that the development by Costco of a fast food type restaurant on another parcel of property owned by the Commission, which was located southwest of and adjacent to the Property at 6300 East Washington Boulevard (the "Satellite Parcel"), would be highly desirable; and

WHEREAS, the Commission was in the process of remediating environmental issues on the Satellite Property while the negotiations with Costco were taking place; and

WHEREAS, because of liability concerns by Costco related to environmental issues on the Satellite Property, the parties agreed that Costco would have the option to purchase the Satellite Parcel after the Commission had accomplished its' clean-up activities; and

WHEREAS, on March 18, 2008, the Commission and Costco entered into a Disposition and Development Agreement ("DDA") for the development of the Property and the possible future development of the Satellite Parcel. The parties agreed that the Commission would continue its remediation efforts and that, when completed, Costco would be provided notice and have a certain amount of time to exercise the option to purchase the Satellite Parcel; and

WHEREAS, pursuant to AB 1X 26, enforceable obligations include any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy. *Health & Safety Code* §§ 34167, 34171. The DDA is a legally binding and enforceable contract. Therefore, the Successor Agency has been and continues to be required to take action to comply with the obligations imposed on the Commission by the DDA; and

WHEREAS, on July 2, 2012, the Los Angeles Regional Water Quality Control Board ("Water Board") provided the Successor Agency with a No-Further Action Letter which concludes that the corrective actions required at the Satellite Parcel have been properly performed. The Water Board has advised that if the Satellite Parcel has

groundwater wells or vapor extraction wells, the Successor Agency must take action to abandon the wells and that a report on the abandonment must be submitted to the Water Board by October 15, 2012; and

WHEREAS, Successor Agency Staff obtained a cost estimate from Block Environmental for the well abandonment activities; and

WHEREAS, on September 4, 2012, the Successor Agency approved the proposed agreement with Block Environmental for such work.

NOW, THEREFORE, THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. The Agreement between the Successor Agency and Block Environmental is hereby approved. Funds for such services are available in Account Number 88-9800-54027, which was approved by the Oversight Board as part of the Recognized Obligations Payment Schedule II for the period of July 2012 to December 2012 as Project Area 4, Line Z "Costco Ongoing Site Evaluation/Testing" ($80,000 was allocated for this expense).

PASSED, APPROVED AND ADOPTED this 5th day of September, 2012.

_____
Lilia R. Leon
Oversight Board Chairperson

ATTEST:

_____
Linda Kay Olivieri, MMC
Oversight Board Secretary

THIS AGREEMENT (the "Agreement") dated as of _____, 2012 (the "Effective Date") is made by and between Block Environmental ("Consultant") and the City of Commerce, a municipal corporation (the "City").

RECITALS

WHEREAS, Consultant represents that it is specially trained, experienced and competent to perform the special services that will be required by this Agreement; and

WHEREAS, Consultant is willing to render such Services, as hereinafter defined, on the terms and conditions below.

AGREEMENT

1. Scope of Services and Schedule of Performance.

Consultant shall perform the services (the "Services") set forth in Exhibit "A," which is attached hereto and incorporated herein by this reference, in accordance with the schedule set forth therein.

2. Term.

Except as otherwise provided by Section 20 hereof, the term of this Agreement shall be for a period commencing on the Effective Date until the completion by Consultant of all the Services, to the satisfaction of the City.

3. Compensation.

So long as Consultant is discharging its obligations in conformance with the terms of this Agreement, Consultant shall be paid a fee by the City in accordance with the fee schedule set forth in Exhibit A and with the other terms of this Agreement. The fees payable hereunder shall be subject to any withholding required by law.

Such fees shall be payable following receipt of an itemized invoice for services rendered. Consultant shall send and address its bill for fees, expenses, and costs to the City to the attention of the City Administrator. The City shall pay the full amount of such invoice; provided, however, that if the City or its City Administrator object to any portion of an invoice, the City shall notify Consultant of the City's objection and the grounds therefore within thirty (30) days of the date of receipt of the invoice; the parties shall immediately make every effort to settle the disputed portion of the invoice.

4. Financial Records.

Consultant shall maintain complete and accurate records with respect to fees and costs incurred under this Agreement. All such records shall be maintained on a generally accepted accounting basis and be clearly identified and readily accessible. Consultant shall keep, maintain and provide free access to such books and records to examine and audit the same, and to make transcripts thereof as necessary, and to allow inspection of all work data, documents, proceedings

and activities related to this Agreement for a period of three years from the date of final payments under this Agreement. All accounting records shall readily provide a breakdown of fees and costs charged to this Agreement.

5. Independent Contractor.

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

6. Consultant to Provide Required Personnel; Subcontracting.

Consultant shall provide and direct the necessary qualified personnel to perform the Services required of, and from, it pursuant to the express and implied terms hereof, with the degree of skill and judgment normally exercised by recognized professional firms performing services of a similar nature at the time the Services are rendered, and to the reasonable satisfaction of the City.

Consultant may not have a subcontractor perform any Services except for the subcontractors identified in Exhibit A as such. Such identified subcontractors shall perform only those Services identified in Exhibit A as to be performed by such subcontractor. All labor, materials, fees and costs of such identified subcontractors shall be paid exclusively by Consultant. No subcontractors may be substituted for any of the identified subcontractors except with the prior written approval of the City Administrator.

7. Responsible Principal and Project Manager.

Consultant shall have a Responsible Principal and a Project Manager who shall be principally responsible for Consultant obligations under this Agreement and who shall serve as principal liaison between the City and Consultant. Designation of another Responsible Principal or Project Manager by Consultant shall not be made without the prior written consent of the City. The names of the Responsible Principal and the Project Manager are listed in Exhibit A.

8. City Liaison.

Consultant shall direct all communications to the City Administrator or his designee. All communications, instructions and directions on the part of the City shall be communicated exclusively through the City Administrator or his designee.

9. Licenses.

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

10. Compliance with Laws.

Consultant shall, and shall ensure that its employees and its subcontractors, if any, comply with all applicable city, county, state, and federal laws and regulations (including occupational safety and environmental laws and regulations) in performing the Services and shall comply with any directions of governmental agencies and the City relating to safety, security, and the like.

11. Insurance.

Consultant shall maintain insurance and provide evidence thereof as required by Exhibit "B" hereto (the "Required Insurance") which is attached hereto and incorporated herein by this reference, for the term provided herein.

12. Warranty and Liability.

Consultant warrants that the Services provided under this Agreement will be performed with the degree of skill and judgment normally exercised by recognized professionals performing services of a similar nature at the time the services were rendered. Consultant shall be liable for injury or loss caused by the negligence of, or breach of this warranty by Consultant, its employees, its subcontractors, if any, and/or its agents hereunder. This warranty survives the completion and/or termination of this Agreement.

13. Indemnification.

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

14. Confidentiality.

Consultant shall maintain as confidential and not disclose to others, either before or after

the termination of this Agreement, any data, documents, reports, or other information provided to Consultant by the City, or employees or agents of the City, or any data, documents, reports, or other information produced by Consultant during its performance hereunder, except as expressly authorized in writing by the City, or to the extent required for: (1) compliance with professional standards of conduct for the preservation of the public safety, health, and welfare, but only after Consultant notifies the City of such need for disclosure; and (2) compliance with any court order or other government directive or requirement, but only after Consultant notifies the City of such an order, directive, or requirement. Consultant shall keep all "Confidential" materials received or generated under this Agreement in separate files marked "Confidential." Any non-compliance by Consultant with this part of the Agreement shall be deemed a material breach of this Agreement. The obligations of this paragraph shall survive the termination of this Agreement.

15. Ownership of Documents.

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

16. Data and Services to be Furnished by the City.

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

17. Covenant against Contingent Fees.

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

18. Conflict of Interest.

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

19. Other Agreements.

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

20. Termination.

This Agreement may be terminated, prior to the expiration of its term, only in the following manner:

a. by the written mutual agreement of the parties hereto; or

b. by the City, with or without cause, upon 5 days written notice to Consultant pursuant to Section 25 of this Agreement.

Upon receipt of a notice of termination, Consultant shall immediately cease all work and promptly deliver to the City the work product or other results obtained by Consultant up to that time. In the event of termination without cause by the City, the City shall pay Consultant for work completed prior to the date of such termination (based on the percentage of the overall work satisfactorily completed by Consultant in relation to the work required by the entire Agreement or the hours worked by Consultant, as applicable), provided such work is in a form usable by the City.

21. Waiver of Breach.

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

22. Assignment.

Neither this Agreement nor any rights or obligations hereunder may be assigned or otherwise transferred by Consultant, nor shall this Agreement inure to the benefit of any trustee in bankruptcy, receiver, or creditor or Consultant, whether by operation of law or otherwise, without the prior written consent of the City which may be withheld in its sole discretion. Any attempt to so assign or transfer this Agreement or any rights or obligations hereunder without such consent shall be void and of no effect.

23. Arbitration.

If any dispute arises out of or relates to this Agreement, or the breach thereof, and if such a dispute cannot be settled through direct discussions, the parties agree to settle any disputes involving only monetary amounts less than $100,000 by binding arbitration pursuant to the rules of the American Arbitration Association by an arbitrator sitting in Los Angeles County.

24. Attorneys' Fees.

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

25. Notices.

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

For the City:

City of Commerce
2535 Commerce Way
Commerce, California 90040
Attn: City Administrator

For Consultant:

Block Environmental
23 Musick, Suite 100
Irvine, California 92618
Attn: Erik M. Block, President

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

26. Governing Law.

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

27. Severability.

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

28. No Construction of Agreement against any Party.

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

29. Entire Agreement and Amendments to Agreement.

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

30. No Representations Except as Expressly Stated in this Agreement.

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

31. Counterpart Signatures.

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

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

CITY OF COMMERCE

DATED: _____, 2012

By:_____
Lilia R. Leon, Mayor

ATTEST:

_____
Linda K. Olivieri, MMC, City Clerk

CONSULTANT

DATED: _____, 2012

By:_____
Erick M. Block, President

APPROVED AS TO FORM

By: Eduardo Olivo
Title: City Attorney

EXHIBIT A

BLOCK ENVIRONMENTAL

July 10, 2012

Mr. Alex Hamilton
City of Commerce
2335 Commerce Way
Commerce, California 90040

SUBJECT: COST ESTIMATE FOR WELL ABANDONMENT ACTIVITIES

SITE: FORMER FIRESTONE #7182 (PRIORITY A-2 SITE)
6300 EAST WASHINGTON BOULEVARD
COMMERCE, CALIFORNIA
CASE NO. 1-04061A

Dear Mr. Hamilton:

Block Environmental submits this cost estimate for well abandonment activities for the above-mentioned property. Based on a "Case Closure" issued on July 2, 2012, by the Los Angeles Regional Water Quality Control Board (RWQCB), the following scope of work is proposed:

- Prepare a work plan for submittal to the Los Angeles RWQCB.
- Following approval, a site specific Health and Safety Plan will be generated, as required by Cal OSHA.
- Obtain well abandonment permits from the Los Angeles County Department of Public Health for the destruction of 5 groundwater monitoring wells.
- 5 groundwater monitoring wells located on the property will be abandoned (MW-1 through MW-5) according to standard procedures.
- Dispose of soil cuttings and auger rinse water generated during the well abandonment activities at appropriate facilities. Documentation of proper disposal will be included in the final well abandonment report. Estimate based on classification of hydrocarbon-affected soil and water as non-hazardous.
- Prepare a final well abandonment report for submission to the Los Angeles RWQCB including a site map, description of the well abandonment procedures, and copies of all signed permits.

23 Musick, Ste 100 • Irvine, CA 92618-1678 • TEL 949•455•0325 FAX 949•455•1958

WELL ABANDONMENT PROCEDURES

The following procedures will be applied:

- Use hollow stem augers to drill out well annulus and PVC well casings in 5 wells to a depth of 110 feet below grade;
- Place well annulus and well casing matetrials in 55 gallon drums;
- Backfill open borehole with bentonite grout or Portland cement to grade;
- Complete and submit all required forms.

COST ESTIMATE

The proposed tasks and estimated costs are listed below and are based on the January 1, 2012, Block Environmental Time and Material Pricing Schedule.

	Task	Estimated Cost
1.	Prepare a work plan outlining the well abandonment procedures for submittal to the RWQCB. Fixed Price:	$500.00
2.	Prepare a site specific Health and Safety Plan as required by Cal OSHA. Fixed Price:	$500.00
3.	Obtain well abandonment permits from the Los Angeles County Department of Public Health for the destruction of 5 groundwater monitoring wells. Estimate includes permit fees and labor:	$3,860.00
4.	Abandon 5 onsite groundwater monitoring wells according to standard procedures. Estimate includes drilling subcontractor fees and labor:	$18,555.00
5.	Sample annulus material for waste profiling. Costs include coordination with laboratory and disposal company. Laboratory fees for waste profiling will be direct billed by City of Commerce vendor (laboratory cost estimated at $750.00). Time and Material Estimate.	$1,000.00
6.	Dispose of soil cuttings and auger rinse water generated during the well abandonment activities at appropriate facilities. Estimate based on as many as 40 drums of waste material classified as non-hazardous. Documentation of proper disposal will be included in the well abandonment report. Disposal fees will be direct billed by City of Commerce vendor (disposal cost estimated at $7,500.00).	Direct Billed

7. Prepare a final well abandonment report for submission to the Los Angeles RWQCB including a site map, description of the well abandonment procedures, and copies of all signed permits. Fixed Price: $1,500.00

ESTIMATED TOTAL: $24,555.00

SCHEDULE

Client requested meetings; telephone conferences and additional documentation will be charged at on a time and material basis in addition to the costs above. This cost proposal is valid for a period of 60 days. If you are in agreement with this proposal, and Block Environmental Terms and Conditions, please acknowledge by endorsement below and return original copy to us.

Please call me at (949) 455-0325 if you have any questions concerning this proposal or require any additional information.

Sincerely,

BLOCK ENVIRONMENTAL

Erik M. Block, RG, REA
President

ACCEPTANCE

TO: Block Environmental

The undersigned hereby accepts the above proposal, Terms and Conditions, and acknowledges authorized site access for Block Environmental personnel, or their agents, to conduct the activities specified herein.

_____
Name

_____
Signature

_____
Position

_____
Company

_____
Date

BLOCK ENVIRONMENTAL

PRICE SCHEDULE

January 1, 2012

Professional Rates per hour:

Principal Geologist/Engineer	$200.00
Registered Geologist/Engineer	$190.00
Senior Project Geologist/Engineer	$175.00
Project Manager	$150.00
Project Geologist/Engineer	$125.00
Staff Geologist/Engineer	$105.00

Technical Rates per hour:

Senior Technician	$ 95.00
Technician	$ 85.00
Draftsperson	$ 85.00
Clerical Assistant	$ 75.00

Legal Testimony/Expert Witness:

Court appearances and depositions at professional rate plus 75% one-half day minimum.

Administrative, accounting, reproduction, and secretarial costs are included in the above rates.

Professional Travel:

Auto: $0.75 per mile plus the employee rate per hour.
Air Fares: Actual Cost.
Per Diem: $75 per day plus lodging ($150.00 minimum).

Permit fees, subcontracted services and equipment (drilling, laboratory analysis, e.g.): Actual cost plus 15%.

Equipment Rentals per day:

2" submersible pump with variable speed controller:	$150.00
Purge bailer:	$ 25.00
Teflon sampling bailer:	$ 15.00
Diaphragm pump:	$ 25.00
5000w generator:	$ 48.00
Survey equipment	$ 80.00
Combustible gas indicator:	$ 25.00
Electric jackhammer:	$ 85.00
pH, conductivity, temperature meter	$ 35.00
Infrared hydrocarbon analyzer	$ 75.00
Water level meter:	$ 25.00
Electronic interface probe:	$ 75.00
Photo ionization detector:	$ 80.00

Ancillary equipment: buckets, brushes, hand auger, hard hat, traffic cones, goggles, latex gloves, tyvek suit, and tyvek booties, respirator.

Supplies per unit:

Stainless steel or brass soil sample tubes	$ 6.00
Disposable Teflon sampling bailer	$ 10.00
Tedlar sampling bags	$ 20.00
4" Water-tight locking well cap with neoprene seal	$ 40.00
6" Water-tight locking well cap with neoprene seal	$ 75.00
Padlocks	$ 8.00
1" Well stinger	$ 20.00
55-Gallon DOT17H drums	$ 40.00
12" Monitoring well vault	$105.00
100 Lb. bag #3 filter pack sand	$ 10.00
Rapid set grout (per bag)	$ 12.00
Benonite chips/powder (per bag)	$ 12.00
Portland cement (per bag)	$ 8.00
Ready-mix concrete (per bag)	$ 10.00

BLOCK ENVIRONMENTAL

TERMS AND CONDITIONS
JANUARY 1, 2012

1. DEFINITIONS

A. Block Environmental shall be referred to hereafter as the "Company".

B. The "Client" shall mean any entity which has or proposes to contract for the services of the Company.

C. "Proposal" means the Company's latest written offer to perform services for Client.

2. COMPANY'S DUTIES - GENERAL

A. To direct and control work contracted for in accordance with all applicable codes, laws and regulations.

B. To supervise all Company employees and to direct the work of all Company's subcontractors.

C. To perform work in a safe and workmanlike manner.

D. To advise the Client promptly if concealed conditions are ascertained which require additional work and proceed in such event in accordance with this agreement.

E. To provide all field equipment and docked storage for tools or other property used by the Company in the performance of this agreement, unless otherwise agreed upon in writing.

F. To defend, indemnify, and hold harmless Client and its principal, employees, agents, subcontractors, and representatives from and against any and all claims, suits, causes of action, liabilities, losses, damages, injuries and deaths (including litigation costs and attorney fees actually incurred in connection therewith) directly resulting from, or arising out of, the presence of, or the performance of any work by, the Company or its Subcontractors on or about the job site. The above indemnification shall not apply to the limited extent, and only to the limited extent, that such claims, suits, causes of action, liabilities, losses, damages, injuries and death are the direct result of Client's principals' or employees' negligence or willful misconduct.

3. CLIENT'S DUTIES - GENERAL

A. To advise the Company of any conditions of the property which affects the Company's ability to perform.

B. To provide the Company access to all sites for drilling or other field services as required.

C. To provide the Company with correct and up-to-date maps, drawings and records depicting the exact locations of underground lines, pipes, utilities and tanks.

D. To reimburse the Company for any damages arising from the Client's failure to accurately locate underground facilities.

E. To protect Client's real and personal property, and third party property, by removal or covering while field services are being performed. The Company will not be responsible for property not adequately protected or for any damage to landscaping.

F. To defend, indemnify, and hold harmless Company and its principal, employees, agents, subcontractors, and representatives from and against any and all claims, suits, causes of action, liabilities, losses, damages, injuries and deaths (including litigation costs and attorney fees actually incurred in connection therewith) directly or indirectly resulting from, or arising out of, the presence of, or the performance of any work by, any person(s) on or about the job site, and/or the presence of any contamination or dangerous condition on or about the job site. The above indemnification shall not apply to the limited extent, and only to the limited extent, that such claims, suits, causes of action, liabilities, losses, damages, injuries and death are the direct result of Company's or Company's principals' or employees' gross negligence or willful misconduct.

G. To timely pay all amounts due Company in accordance with this agreement.

H. Client shall be entitled to make periodic inspections of the work site when accompanied by a representative of the Company provided such inspections do not interfere with the work and can, in the sole judgment of the Company, be made safely. All entry onto the work site shall be at the Client's own risk.

I. Reports prepared by the Company, which are required to be submitted to regulatory agencies, shall be submitted by Client unless otherwise agreed upon.

4. STANDARDS OF WORK

A. The Company will be responsible only for using reasonable professional judgment in the performance of this agreement. No warranty, express or implied, is given and no guarantee is made that specific levels of decontamination can be achieved or specific limits on contamination can be met.

B. The Company is responsible to perform in accordance with applicable law. Both the Client and the Company agree that this agreement shall be modified to comply with new and revised government regulations instituted during the term of this agreement and that Company shall receive reasonable compensation from Client for any additional work required as a consequence of any such new revised laws or regulations.

5. SUBCONTRACTORS

A. The Client acknowledges that Company shall select certain subcontractors, in its discretion, to complete this agreement. Any subcontractor selected by the Company shall have all requisite licenses for the work to be done by such subcontractor. The Company shall issue subcontracts in writing whose specifications are consistent with this agreement. The Company acknowledges that certain other contractors and subcontractors may be hired directly by the Client. The Company accepts no liability associated with contractors and subcontractors directly hired by Client.

B. Subject to Company's timely receipt of payments due from Client, Company shall pay its subcontractors on a timely basis and obtain any necessary documentation required to release their lien rights, if any, as work proceeds.

C. The Company shall exercise reasonable care in the selection of subcontractors and materials used by Company and its subcontractors, but shall not be responsible for latent or subsequently discovered defects in materials or damages not reasonably ascertainable at the time of installation.

6. EXTRAS - HIDDEN, CONCEALED AND UNFORESEEABLE CONDITIONS

Any extra work or materials desired by the Client shall be agreed upon in writing and upon such agreement; such extras shall become a part of this agreement. Unless otherwise agreed, extras shall be paid for as performed. Failure of the Client to sign an extra work or material order shall not preclude recovery of reasonable compensation for the same by Company and acceptance of said extra work and/or materials shall be presumed, unless there is written notice to the contrary. The Company shall advise Client at the time of agreement on any extra work or material as to any additional time required to perform this agreement. In the event the Company discovers a condition requiring any extra cost, the parties shall proceed as follows:

The Company shall notify the Client verbally, at once, to expedite agreements as to the charge to correct or cure such condition and provide a written estimate as soon as practical. The parties must agree in writing to such extra charges, or, at Company's election, this agreement may be canceled or Company may refrain from performing the extra work.

7. DELAYS

The Company shall not be responsible for delays or inability to perform caused by events beyond the reasonable control of the Company, including, but not limited to: lack of availability of necessary supplies, labor or transportation, stormy and inclement weather, strikes, war acts of God, riots and government orders, restrictions, laws and regulations. Delays caused by the Client's failure to make the sob site available shall likewise be an excusable delay. Delay time shall be added to the time for completion of Company's work by a fair and reasonable allowance. Any additional cost and expenses, including demurrage incurred as a consequence of any delay caused by non-availability of the job site to Company or its subcontractors or vendors shall be charged to the Client.

8. TERMINATION

This agreement may be terminated by the Client or the Company, without cause, provided that seven (7) days prior written notice of such termination is given. Client will pay all charges incurred up to the termination date. If Client terminates this agreement and any additional or further costs, expenses or charges incurred due to such termination, the Client will be responsible to pay all of such costs, expenses or charges.

9. PAYMENT

Payment is due net 30 days from the invoice date unless otherwise specified in the Proposal. Overdue payments will be charged interest at a rate of 1.5% per month on the outstanding invoice amount, or the maximum rate allowed by law, whichever is less. In the event any invoice is not paid on time, further work may be discontinued. Company's Price Schedule for all work got which a fixed price has not been agreed to, in writing, is subject to change upon 30 days written notice to Client.

10. MAXIMUM LIABLITIY

Liability of the Company and its employees shall not exceed $1,000,000 in the aggregate with respect to claims made by the Client and third party claims.

11. SEVERABILITY

If any portion of this agreement is found invalid or unenforceable, the remaining provisions shall remain in force between the parties.

12. ARBITRATION

All disputes arising under this agreement shall be subject to binding arbitration before the American Arbitration Association in Orange County, California, in accordance with the commercial rules of arbitration of such association. Any award of the arbitrator(s) may be entered and enforced as a judgment in any appropriate court of law.

13. TITLES AND HEADINGS

All title, section and paragraph headings in this agreement are for reference only and shall have no effect upon the terms and conditions set forth in this agreement.

14. NOTICES

Notices may be sent to either party or mailed by certified or registered mail. Any mailed notice shall be deemed given as the second day after mailing.

15. ENTIRE AGREEMENT

This agreement consists of these Terms and Conditions, the Company's Price Schedule and the Proposal. It can be modified only by further written agreement of both parties.

16. ATTORNEY FEES

In the event of any arbitration or litigation between the parties, the prevailing party shall be entitled to receive, in addition to any award from the arbitrators and/or court, its reasonable attorney fees and litigation/arbitration costs and expenses from the other party.

END OF TERMS AND CONTIONS

EXHIBIT B

REQUIRED INSURANCE

On or before beginning any of the Services called for by any term of this Agreement, Consultant, at its own cost and expense, shall carry, maintain for the duration of this Agreement, and provide proof thereof that is acceptable to the City of its procurement of the insurance specified below from insurers and under forms of insurance satisfactory in all respects to the City. Consultant shall not allow any subcontractor to commence work on any subcontract under this Agreement until all insurance required of Consultant have also been obtained for the or by the subcontractor. Such insurance shall not be in derogation of Consultant's obligations to provide indemnity under Section 13 of this Agreement.

1. Comprehensive General Liability and Automobile Liability Insurance Coverage.

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

Minimum coverage: Bodily injury limits of $1,000,000 for each person and $2,000,000 for each occurrence; property damage limits of $500,000 for each occurrence, $2,000,000 aggregate.

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

2. Errors and Omissions Insurance Coverage.

Consultant shall carry and maintain Errors and Omissions Coverage Insurance which provides a minimum coverage of at least $1,000,000 for each occurrence, $2,000,000 aggregate, triggered by manifestation of injury.

3. Worker's Compensation.

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

4. Additional Insureds.

The City, its officers, agents and employees must be named as additional insureds or as additional loss payees in all insurance policies required by this Agreement. An endorsement to this effect shall be delivered to the City prior to the commencement of any work. Satisfaction of

any deductible requirement shall be the responsibility of Consultant.

5. Cancellation Clause.

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

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

6. Severability Clause.

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

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

7. Qualifications of Insurer.

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

8. Approval of Insurer.

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

9. Payment of Premiums.

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

10. Evidence of Insurance and Claims.

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

AGENDA REPORT

OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION

DATE: September 5, 2012

TO: HONORABLE OVERSIGHT BOARD

FROM: SUCCESSOR AGENCY FINANCE DIRECTOR

SUBJECT: REVIEW OF THE IMPACT OF AB X1 26 AND AB 1484 ON LOANS MADE BY THE CITY OF COMMERCE TO THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION

RECOMMENDATION:

None.

MOTION:

Receive and file.

DISCUSSION:

1. The City of Commerce Had $17.8 Million In Outstanding Loans To The Commerce Redevelopment Agency/Commerce Community Development Commission At The Time AB X1 26 Was Enacted.

On March 14, 1974, the Commerce City Council established the City of Commerce Redevelopment Agency (the "Agency"). On November 3, 1992, the City Council created the Commerce Community Development Commission (the "Commission"). The Commission is the successor-in-interest to the Agency and was, since its creation, authorized to and had been engaged in activities necessary or appropriate to carry out the California Community Redevelopment Law (*Health & Safety Code* Sections 33000, *et seq.*) (the "CRL") within the City of Commerce (the "City").

The City loaned the Agency/Commission millions of dollars that were needed for the Agency/Commission to pursue its' redevelopment project goals, to assist in funding administrative and other expenses necessary for the implementation of the redevelopment plans, and for the purchase of properties required to implement the City's redevelopment programs. The following loans were outstanding and owed to the City as of the passage of AB X1 26:

- Loan No. 1 for $100,000. On June 16, 1986, the City approved a loan of $100,000 from the City's General Fund to the Agency at a rate of 7.5% per annum for expenses in connection with carrying out budgeted projects for the Agency. The loan and various extension requests/approvals were documented by City and Agency/Commission resolutions and were reported on the Commission's annual Statement of Indebtedness. The principal amount of the loan has not been repaid.

- Loan No. 2 for $6,500,000. On March 3, 1992, the City approved a loan of $6,500,000 from the City's General Fund to the Agency at a rate of 7.5% per annum to assist the Agency in paying expenses in connection with carrying out projects in Redevelopment Project Area No. 1. The loan and various extension requests/approvals were documented by City and Agency/Commission resolutions and were reported on the Commission's annual Statement of Indebtedness. In March of 1997, the Commission made a $500,000 principal payment to the City on this loan. The remaining principal amount of $6,000,000 has not been repaid.

- Loan No. 3 for $5,000,000. On November 2, 1999, the City approved a $5,000,000 loan from the City's General Fund to the Commission at a rate of 7.5% per annum to assist the Commission in paying administrative and overhead expenses. The loan and various extension requests/approvals were documented by City and Agency/Commission resolutions and were reported on the Commission's annual Statement of Indebtedness. The principal amount of the loan has not been repaid to the City.

- Loan No. 4 for $5,700,000. On April 16, 2002, the City approved a loan of $5,700,000 from the City's General Fund to the Commission at a rate of 6.5% per annum. This loan was specifically made for the purpose of enabling the Commission to pay for property known as the Stahl Trust Property that was to be redeveloped in the future. The loan and various extension requests/approvals were documented by City and Agency/Commission resolutions and were reported on the Commission's annual Statement of Indebtedness. The principal amount of the loan has not been repaid to the City.

- Loan No. 5 for $600,000. On June 16, 1986, the City approved a $600,000 loan from the City's General Fund to the Commission at a rate of 7.5% per annum to assist the Commission in paying administrative and overhead expenses in Redevelopment Project Area No. 1. The loan and various extension requests/approvals were documented by City and Agency/Commission resolutions and were reported on the Commission's annual Statement of Indebtedness. The principal amount of the loan has not been repaid to the City.

- Loan No. 6 for $400,000. On June 18, 2002, the City approved a loan of $400,000 from the City's General Fund to the Commission at a rate of 6.5% per annum to assist the Commission in paying administrative and overhead expenses. The loan and various extension requests/approvals were documented by City and Agency/Commission resolutions and were reported on the Commission's annual

Statement of Indebtedness. The principal amount of the loan has not been repaid to the City.

As of the effective date of AB X1 26, the Commission owed the City the principal amount of $17.8 Million for the above-referenced loans.

2. AB X1 26 Determined That The City Loans Were Not "Enforceable Obligations" And Would Therefore Not Be Re-paid.

On June 15, 2011, the California Legislature approved Assembly Bill X1 26 ("AB 26"), which added Parts 1.8 and 1.85 of Division 24 to the California *Health & Safety Code*. Part 1.85 of the *Health & Safety Code* required all redevelopment agencies to dissolve as of October 1, 2011, and provided for the establishment of a successor entity to administer the enforceable obligations of the redevelopment agency. Part 1.8 of the *Health & Safety Code* restricts activities of redevelopment agencies to meeting their enforceable obligations, preserving assets and meeting other goals in the interim period prior to dissolution. Pursuant to section 34177, each former redevelopment agency's "successor agency" is required to, among other things provide payment from the transferred assets for the "enforceable obligations" of the former redevelopment agency. After such enforceable obligation payments, the successor agency is required to remit the balance of any unencumbered funds of the former redevelopment agency to the local county auditor-controller. [*Health & Safety Code* §§ 34170- 34191]

An "enforceable obligation" is defined in *Health & Safety Code* § 34171. Section 34171(d) (2) provides that, once a redevelopment agency is dissolved, that agency's "enforceable obligations" do not include "any agreements, contracts, or arrangements between the city, county, or city and county that created the redevelopment agency and the former redevelopment agency." There are only two exceptions to this exclusion: (1) written agreements entered into at the time of issuance of "indebtedness obligations", if those agreements were entered on or before December 31, 2010, and solely for the purpose of securing or repaying those defined indebtedness obligations; and (2) loan agreements between a redevelopment agency and its sponsoring community that were entered into within two years after the agency was established." All other "agreements, contracts or arrangements" between cities and their redevelopment agencies are voided and unenforceable.

The $17.8 Million in City loans that are referenced above were not made within two years of the creation of the Agency or the Commission. Under the express language of Health & Safety Code Section 34171, they are not considered "enforceable obligations" that were required or allowed to be re-paid to the City.

On September 26, 2011, the City and several other cities filed a complaint in the case of *City of Cerritos, et. al. v. State of California, et. al.*, Case No. 34-2011-80000952. Among other things, the *Cerritos* lawsuit challenges the validity of *Health & Safety Code* § 34171 on the grounds that it violates the Contract Clauses of the state and federal constitutions by voiding city/redevelopment agency loans. This issue has not been addressed yet in the

Cerritos case. Nevertheless, new legislation has changed and added provisions to the *Health & Safety* Code that impact the status of the City loans.

3. Assembly Bill 1484 Allows For Re-payment Of The City Loans After The Department of Finance Issues A Finding of Completion

On June 27, 2012, Governor Brown signed Assembly Bill 1484 ("AB 1484") into legislation. AB 1484 added Section 34191.4 to the *Health & Safety* Code, which allows for a different treatment of the City loans if the Department of Finance (the "DOF") has issued a finding of completion to the successor agency. Subsection (b) (1) of Section 34191.4 provides, in part, that:

> Notwithstanding subdivision (d) of Section 34171, upon application by the successor agency and approval by the oversight board, loan agreements entered into between the redevelopment agency and the city...that created the redevelopment agency shall be deemed to be enforceable obligations provided that the oversight board makes a finding that the loan was for legitimate redevelopment purposes.

Section 34191.4 imposes the following repayment requirements and limitations:

(1) The accumulated interest on the remaining principal of the loan shall be recalculated from origination at the interest rate earned by funds deposited into the Local Agency Investment Fund;

(2) The loan shall be repaid to the city in accordance with a defined schedule over a reasonable term of years at an interest rate not to exceed the interest rate earned by funds deposited into the Local Agency Investment Fund;

(3) The loan repayments shall not be made prior to FY 2013–14;

(4) The monies received by the City for such repayments must first be used to retire any outstanding amounts borrowed and owed to the Low and Moderate Income Housing Fund of the former redevelopment agency for purposes of the Supplemental Educational Revenue Augmentation Fund and shall be distributed to the Low and Moderate Income Housing Asset Fund established by *Health & Safety* Code Section 34176 (d); and

(5) Twenty percent of any loan repayment shall be deducted from the loan repayment amount and shall be transferred to the Low and Moderate Income Housing Asset Fund after all outstanding loans from the Low and Moderate Income Housing Fund for purposes of the Supplemental Educational Revenue Augmentation Fund have been paid.

Pursuant to *Health & Safety Code* Section 34179.6 and 34183.5, the DOF will issue a finding of completion to a successor agency that pays the following amounts:

(1) The amount determined in the audit of the Low and Moderate Income Housing Fund;

(2) The amount determined in the audit of all other funds; and

(3) The amount (if any) owing to taxing entities from the December 2011 property tax payment.

Health and Safety Code §§ 34179.6 and 34183.5

CONCLUSION:

Based on AB 1484, the City will receive a portion of $17.8 Million in loans that it had made to the Commerce Redevelopment Agency/Commerce Community Development Commission.[1] The Successor Agency will take steps necessary to obtain the finding of completion from the DOF. At that time, staff will advise this Board and take the steps necessary to address the repayment of the City loans pursuant to the restrictions and requirements imposed by the law.

Respectfully submitted,

Vilko Domic
Successor Agency Finance Director

Approved as to form,

Eduardo Olivo by AWO

Eduardo Olivo
Successor Agency Legal Counsel

STAFF REPORT (IMPACT OF AB 26 AND AB 1484 ON CITY LOANS) - 09-05-2012.DOC

[1] Staff will be conducting a thorough audit in order to assure that all other loans that had been made by the City to the Agency or Commission were re-paid. Any additional amounts will be added to the outstanding loans totals.