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**AGENDA FOR THE CONCURRENT REGULAR MEETINGS OF
THE CITY COUNCIL OF THE CITY OF COMMERCE AND
THE CITY COUNCIL OF THE CITY OF COMMERCE AS SUCCESSOR
AGENCY TO THE COMMERCE COMMUNITY DEVELOPMENT
COMMISSION
COUNCIL CHAMBERS
5655 JILLSON STREET, COMMERCE, CALIFORNIA**

TUESDAY, APRIL 17, 2012 – 6:30 P.M.

CALL TO ORDER

Mayor Leon

PLEDGE OF ALLEGIANCE

Danilo Batson
Assistant Director of Public Services

INVOCATION

Councilmember Aguilar

ROLL CALL

City Clerk Olivieri

APPEARANCES AND PRESENTATIONS

PUBLIC COMMENT

Citizens wishing to address the City Council and City Council as Successor Agency to the Commerce Community Development Commission ("Successor Agency") 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 City Council/Successor Agency 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 City Council/Successor Agency may, in their discretion, allow citizen participation on a specific item on the agenda at the time the item is considered by the City Council/Successor Agency. Request to address City Council/Successor Agency cards are provided by the City Clerk. If you wish to address the City Council/ Successor Agency at this time, please complete a speaker's card and give it to the City Clerk prior to commencement of the City Council/Successor Agency meetings. 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.

CITY COUNCIL REPORTS

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 Councilmember desire to consider any item separately he/she should so indicate to the Mayor. If the item is desired to be discussed separately, it should be the first item under Scheduled Matters.

1. Approval of Minutes

The **City Council and City Council as Successor Agency to the Commerce Community Development Commission** will consider for approval, respectively, the minutes of the Concurrent Adjourned Special Meetings of Tuesday, April 3, 2012, held at 5:00 p.m.; Concurrent Regular Meetings of Tuesday, April 3, 2012, held at 6:30 p.m.; and Concurrent Adjourned Regular Meetings of Tuesday, April 10, 2012, held at 3:00 p.m.

2. Approval of Warrant Register No. 20

The **City Council and City Council as Successor Agency to the Commerce Community Development Commission** will consider for approval, respectively, the bills and claims set forth in Warrant Registers No. 20A, dated April 17, 2012, and No. 20B, for the period April 4, 2012, to April 12, 2012.

3. A Resolution of the City Council of the City of Commerce, California, Authorizing the City Administrator or His Designee to Execute Documents for the Purpose of Obtaining State Financial Assistance Provided by California Emergency Management Agency

The City of Commerce receives \$21,343 annually from the California Transit Security Grant Program. This program, created as part of the voter-approved Highway Safety, Traffic Reduction, Air Quality and Port Security Bond Act of 2006 (Proposition 1B), provides funding for transit safety and security capital improvements.

The **City Council** will consider for approval and adoption a proposed Resolution authorizing the City Administrator or his designee to execute documents for the purpose of obtaining State financial assistance provided by the California Emergency Management Agency.

4. A Resolution of the City Council of the City of Commerce, California, Approving the Following Agreements with ING National Trust: ING 457 Deferred Compensation Plan Administrative Services Agreement and Group Annuity Contract

The City maintains a 457 Deferred Compensation Plan for eligible City employees. The City previously entered into an agreement with ING Life Insurance and Annuity Company (“ING”) to provide investment options, recordkeeping and/or other administrative services to the Plan.

On March 6, 2012, the City Council approved a new 457(b) Deferred Compensation Plan, a 457(b) Specimen Adoption Agreement and a Contract Holder Direction and Acknowledgement Letter in order to implement certain Plan upgrades. On March 20, 2012, the City Council appointed ING National Trust as the Trustee of the City of Commerce Deferred Compensation Plan and approved the 457 Trust Agreement by and between the City and ING. The City was also required to approve ING 457 Deferred Compensation Plan Administrative Services Agreement

CONCURRENT REGULAR COUNCIL/SUCCESSOR AGENCY AGENDA

4/17/2012 – 6:30 p.m.

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and ING Group Annuity Contract in order to move forward with said upgrades.

The **City Council** will consider for approval and adoption a proposed Resolution ratifying the approval of the following Agreements with ING National Trust: ING 457 Deferred Compensation Plan Administrative Services Agreement and ING Group Annuity Contract for and on behalf of the City.

5. A Resolution of the City Council of the City of Commerce, California, Approving the First Amendment to the Services Agreement Between the City of Commerce and Adrian-Gaus Architects, Inc., for the Central Library Renovation Project

The First Amendment approves a Fee proposal for additional services for the Central Library re-scope and redesign for an amount not to exceed \$120,000.00.

The **City Council** will consider for approval and adoption a proposed Resolution approving the First Amendment to the Services Agreement between the City and Adrian-Gaus Architects, Inc., for the Central Library Renovation Project.

6. A Resolution of the City Council of the City of Commerce, California, Superseding Resolution No. 12-31 and Approving the Purchase of Data Management System Software from Transtrack Systems Using ARRA Funds

The **City Council** will consider for approval and adoption a proposed Resolution superseding Resolution No. 12-31 and approving the purchase of Data Management System Software from Transtrack Systems using ARRA Funds.

7. A Resolution of the City Council of the City of Commerce, California, Ratifying the Approval of an Agreement Between the City of Commerce and the Arthritis Foundation (AF) for Co-Sponsorship of an (AF) Walk with Ease Program

All classes will be taught by Arthritis Foundation certified instructors. The program focus is an increase in a range of motion. The program is open to all ages and will run for 6 weeks, meeting 3 times weekly at Bristow and Rosewood parks.

The **City Council** will consider for approval and adoption a proposed Resolution ratifying the approval of an Agreement between the City of Commerce and the Arthritis Foundation (AF) for Co-Sponsorship of an (AF) Walk with Ease Program.

8. A Resolution of the City Council of the City of Commerce, California, Acting as the Governing Body for the Successor Agency to the Commerce Community Development Commission (Pursuant to Part 1.85 F Division 24 of the California Health & Safety Code) Establishing Rules and Regulations for the Operations of the Successor Agency as a New Legal Entity Separate From the City and Taking Certain Actions in Connection Therewith

AB 1X 26, approved by the California Legislature on June 15, 2011; signed by the Governor on June 28, 2011, and upheld by the California Supreme Court on December 29, 2011, eliminated redevelopment in the State of California and, hence, the City of Commerce effective February 1, 2012.

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At its meeting of January 17, 2012, the City Council adopted Resolution No. 12-8 declaring the City's intent to become the Successor Agency of the Commerce Community Development Commission, pursuant to Health & Safety Code §34173, as enacted by AB 1X 26.

The **City Council, acting as the Governing Body for the Successor Agency to the Commerce Community Development Commission** (pursuant to Part 1.85 F Division 24 of the California Health & Safety Code), will consider for approval and adoption a proposed Resolution establishing rules and regulations for the operations of the Successor Agency as a new legal entity separate from the City and taking certain actions in connection therewith.

PUBLIC HEARINGS

9. Public Hearing – An Ordinance of the City Council of the City of Commerce, California, Adding Chapter 6.11 (“Commercial Recycling”) to Title 6 (“Health and Sanitation”) of the Commerce Municipal Code and Repealing Chapter 6.12 (“Solid Waste Disposal”) From Title 6 (“Health and Sanitation”) of the Commerce Municipal Code – First Reading

The **City Council** will conduct a public hearing on, and thereafter consider for first reading, a proposed Ordinance adding Chapter 6.11 (“Commercial Recycling”) to Title 6 (“Health and Sanitation”) of the Commerce Municipal Code and repealing Chapter 6.12 (“Solid Waste Disposal”) from Title 6 (“Health and Sanitation”) of the Commerce Municipal Code.

SCHEDULED MATTERS

10. General Fund Annual Operating Budget Deficit Plan for Fiscal Year 2012-2013

The **City Council** will consider, and provide appropriate action as deemed necessary with respect to, general fund annual operating budget deficit plan for fiscal year 2012-2013.

11. Comprehensive Annual Financial Report (CAFR), and Single Audit Report on Federal Awards for Fiscal Year Ended June 30, 2011

The **City Council** will consider for receipt and filing the Comprehensive Annual Financial Report (CAFR) and Single Audit Report on Federal Awards for fiscal year ended June 30, 2011.

12. Community Development Commission Annual Financial Report for Fiscal Year Ended June 30, 2011

The **City Council as Successor Agency to the Commerce Community Development Commission** will consider for receipt and filing the Community Development Commission Annual Financial Report for fiscal year ended June 30, 2011.

13. Request for Use of Teen Center Facility to Hold Youth Program Workshop Conducted by Torch Foundation

At the request of Councilmember Altamirano, the **City Council** will consider for approval the use of the Teen Center for the purpose of holding a Youth Program Workshop, to be conducted by the Torch Foundation. The two-day workshop is at no cost to Commerce youth and is proposed for Saturday, May 19, 2012, and Sunday, May 20, 2012, from, 10:00 a.m.–7:00 p.m.

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The Torch Foundation is a non-profit 501(c)(3) organization that offers leadership training to at-risk teens from low-income, underserved neighborhoods throughout California.

14. Blue Ribbon Advisory Panel Appointments

At its meeting of March 6, 2012, the City Council approved the re-establishment of the Blue Ribbon Advisory Panel with the task of examining and recommending new revenue sources to assist with the projected revenue shortfall for fiscal year 2012-2013.

The **City Council** will consider making the appropriate appointments to the Blue Ribbon Advisory Panel.

15. Commission and Committee Appointments

The **City Council** will make the appropriate appointments to the following Commissions and Committees: Community Services Commission, Education Commission, Library Commission, Parks & Recreation Commission, Planning Commission, Senior Citizens Commission, Traffic Commission, Youth Advisory Commission, Beautification Committee, Housing Committee, Pageant Steering Committee, I-710 Local Advisory Committee (Ad Hoc) and Environmental Justice Advisory Task Force.

16. Review of City Council Vehicle Use Policy

At the request of Councilmember Robles, the **City Council** will review, and take the appropriate action as deemed necessary with respect to, the City Council Vehicle Use Policy.

17. Report on and Setting Date for First Meeting of Commerce Oversight Board

The **City Council** will receive, and take the appropriate action as deemed necessary with respect to, a report from the City Administrator regarding the first meeting of the Commerce Oversight Board in May 2012.

ORDINANCES AND RESOLUTIONS

18. An Ordinance of the City of Commerce, California, Amending the Zoning Provisions of the Municipal Code to Change the Zoning (Zone Change No. 12-01) of Certain Parcels of Land to C-2 (Unlimited Commercial) – Second Reading

The **City Council** will consider for approval and adoption a proposed Ordinance amending provisions of the Municipal Code to change the Zoning of certain parcels of land (Zone Change No. 12-01) to C-2 (Unlimited Commercial).

The City's General Plan serves as the blueprint for future planning and development in the City. Zoning is one of the primary means of implementing a General Plan. The C-2 designation allows for the widest range of commercial uses, including retail businesses and restaurants. The properties subject to the proposed Zone Change are located along the Telegraph Road Corridor, ranging between the Commerce Hyundai location and Costco.

The proposed Ordinance was approved for first reading on April 3, 2012.

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- 19. An Ordinance of the City Council of the City of Commerce, California, Amending Title 19 (“Zoning”) of the Commerce Municipal Code, Table 19.09.010 A (Permitted Uses—Commercial Zone) to Permit Hotel Uses in the C-2 Zone with Approval of a Conditional Use Permit and Allow Parking Structures as a Permitted Use in the C-2 Zone – Second Reading**

The purpose of the City’s Commercial Zone is to allow for the establishment and operation of retail and businesses in conveniently located areas of the City. These uses are intended to provide a variety of goods and services necessary to meet the needs of the resident and business community. Uses allowed in the C-2 Zone include, but are not limited to, retail businesses, restaurants, personal services, offices, repair shops and parking lots. Hotels and parking structures are currently not permitted in the C-2 Zone.

The **City Council** will consider for approval and adoption a proposed Ordinance amending Title 19 (“Zoning”) of the Commerce Municipal Code, Table 19.09.010A (Permitted Uses—Commercial Zone) to permit hotel uses in the C-2 Zone with approval of a Conditional Use Permit and allow parking structures as a permitted use in the C-2 Zone.

The proposed Ordinance was approved for first reading on April 3, 2012.

CIP PROGRESS REPORT

RECESS TO CLOSED SESSION

ADJOURNMENT

Adjourn in memory of Richard “Rocky” Vasquez, longtime Commerce resident and son to former Councilmember Ricardo Vasquez, brother to City employee Michael Vasquez and brother-in-law to City employee Loida Vasquez; Ignacia Vega, grandmother of City employee Heriberto Valdes, and Jose Manuel Tamayo, father of City employee Angela Carbajal, to Wednesday, April 18, 2012, at 9:00 a.m. in the Council Chambers.

**LARGE PRINTS OF THIS AGENDA ARE AVAILABLE UPON REQUEST
FROM THE CITY CLERK’S OFFICE, MONDAY-FRIDAY,
8:00 A.M. - 6:00 P.M.**



AGENDA REPORT

Meeting Date: April 17, 2012

TO: Honorable City Council

FROM: City Administrator

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, AUTHORIZING THE CITY ADMINISTRATOR OR HIS DESIGNEE TO EXECUTE DOCUMENTS FOR THE PURPOSE OF OBTAINING STATE FINANCIAL ASSISTANCE PROVIDED BY THE CALIFORNIA EMERGENCY MANAGEMENT AGENCY

RECOMMENDATION:

Approve the Resolution and assign the number next in order.

MOTION:

Approve the recommendation.

BACKGROUND:

The City of Commerce receives \$21,343 annually from the California Transit Security Grant Program. This program, created as part of the voter approved Highway Safety, Traffic Reduction, Air Quality and Port Security Bond Act of 2006 (Proposition 1B), provides funding for transit safety and security capital improvements.

The City is required to pass Governing Body Resolution appointing agents authorized to execute any actions necessary for each application.

ANALYSIS:

California Transit Security Grant Program funds are used to upgrade security systems for the Commerce Transit System. Funds were previously used to upgrade the video surveillance system in the Transportation Center.

FISCAL IMPACT:

The proposed activity can be paid out of state transportation funds budgeted for transit security and local transit funds. Combined with all other reasonably known, planned and approved expenditures for this line item and cost center, the proposed activity can be absorbed within current budget limitations for the remainder of the fiscal year.

RELATIONSHIP TO 2009 STRATEGIC GOALS:

This agenda item relates to the 2009 strategic planning goal: "Make Financial and Economically Sound Decisions Consistent with Economic Conditions," as it will provide support to the Transportation Department with the upgrading of the security system already in place.

Recommended by:



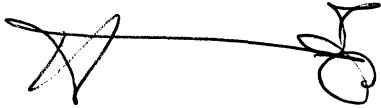
Claude McFerguson
Director of Transportation

Respectfully submitted,



Jorge Rifa
City Administrator

Budget Impact Review by:



Vilko Domic
Director of Finance

Approved as to Form:



Eduardo Olivo
Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, AUTHORIZING THE CITY ADMINISTRATOR OR HIS DESIGNEE TO EXECUTE DOCUMENTS FOR THE PURPOSE OF OBTAINING STATE FINANCIAL ASSISTANCE PROVIDED BY THE CALIFORNIA EMERGENCY MANAGEMENT AGENCY

WHEREAS, California Government Code §8879.57, establishes the eligible applicants and application of the Proposition 1B Transit Security Program:

WHEREAS, the City is required to pass Governing Body Resolution appointing agents authorized to execute any actions necessary for each application; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMMERCE DOES HEREBY RESOLVE, DECLARE AND DETERMINE AS FOLLOWS:

Section 1. The City Administrator or his designee is hereby authorized to execute for and on behalf of the City of Commerce, any documents necessary for the purpose of obtaining financial assistance provided by the California Emergency Management Agency.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2012.

Lilia R. Leon
Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk



AGENDA REPORT

DATE: April 17, 2012

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING THE FOLLOWING AGREEMENTS WITH ING NATIONAL TRUST: ING 457 DEFERRED COMPENSATION PLAN ADMINISTRATIVE SERVICES AGREEMENT AND ING GROUP ANNUITY CONTRACT

RECOMMENDATION:

Approve the Resolution and assign the number next in order.

MOTION:

Move to approve the recommendation.

BACKGROUND:

The City of Commerce (the "City") maintains a 457 Deferred Compensation Plan (the "Plan") for eligible City employees. The City previously entered into an agreement with ING Life Insurance and Annuity Company ("ING") to provide investment options, record keeping and/or other administrative services to the Plan.

On March 6, 2012, the City Council approved a new 457(b) Deferred Compensation Plan, a 457(b) Specimen Adoption Agreement, and a Contract Holder Direction and Acknowledgment Letter in order to implement certain Plan upgrades.

On March 20, 2012, the City approved a 457 Plan Trust Agreement, in order to move forward with the Plan upgrades. The City is required to approve two more agreements in order to move forward with the Plan upgrades. The agreements are as follows:

- ING 457 Deferred Compensation Plan Administrative Services Agreement; and
- ING Group Annuity Contract.

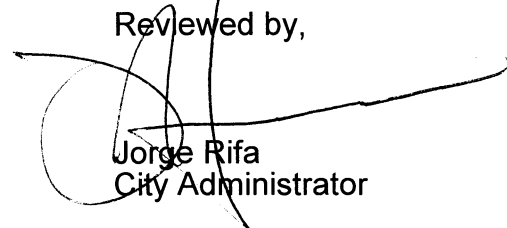
Thus, staff recommends that the City Council approve the above agreements between the City and ING National Trust.

FISCAL IMPACT:

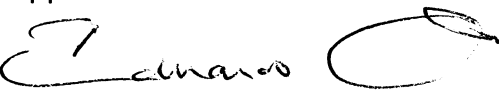
The City will not benefit monetarily from the upgrade from the current product; administratively, we should witness less paper transactions and thus less of a burden on finance staff. In addition, employees will experience a savings in their 457 accounts because they will no longer be paying the fees associated with the current platform.

Respectfully submitted,


Vilko Domic
Finance Director

Reviewed by,

Jorge Rifa
City Administrator

Approved as to form


Eduardo Olivo
City Attorney

Attachments: Resolution, ING 457 Deferred Compensation Plan Administrative Services Agreement, and ING Group Annuity Contract

DS/staff reports, city council/ING/ING Administrative Svcs Agmt etc. 4-17-12 VD-EO

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA,
APPROVING THE FOLLOWING AGREEMENTS WITH ING NATIONAL TRUST:
ING 457 DEFERRED COMPENSATION PLAN ADMINISTRATIVE SERVICES
AGREEMENT AND ING GROUP ANNUITY CONTRACT

WHEREAS, the City of Commerce (the "City") maintains a 457 Deferred Compensation Plan (the "Plan") for eligible City employees; and

WHEREAS, the City previously entered into an agreement with ING Life Insurance and Annuity Company ("ING") to provide investment options, record keeping and/or other administrative services to the Plan; and

WHEREAS, on March 6, 2012, the City Council approved a new 457(b) Deferred Compensation Plan, a 457(b) Specimen Adoption Agreement, and a Contract Holder Direction and Acknowledgment Letter in order to implement certain Plan upgrades; and

WHEREAS, on March 20, 2012, the City approved a 457 Plan Trust Agreement, in order to move forward with the Plan upgrades; and

WHEREAS, the City is now required to approve two more agreements in order to move forward with the Plan upgrades; and

WHEREAS, the agreements are as follows: ING 457 Deferred Compensation Plan Administrative Services Agreement and ING Group Annuity Contract; and

WHEREAS, staff recommends that the City Council approve the above agreements between the City and ING National Trust.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMMERCE DOES HEREBY RESOLVE AND ORDERS AS FOLLOWS:

Section 1. The ING 457 Deferred Compensation Plan Administrative Agreement between the City of Commerce and ING National Trust is hereby approved. The Mayor's execution of the Agreement for and on behalf of the City of Commerce is hereby approved and ratified.

Section 2. The ING Group Annuity Contract between the City of Commerce and ING National Trust is hereby approved. The Finance Director's execution of the Agreement for and on behalf of the City of Commerce is hereby approved and authorized.

PASSED, APPROVED and ADOPTED this 17th day of April, 2012.

Lilia R. Leon
Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk

**CITY OF COMMERCE 457 DEFERRED COMPENSATION PLAN
ADMINISTRATIVE SERVICES AGREEMENT**

CITY OF COMMERCE 457 DEFERRED COMPENSATION PLAN

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CITY OF COMMERCE 457 DEFERRED COMPENSATION PLAN

ADMINISTRATIVE SERVICES AGREEMENT

This Agreement is made and entered into this 15th day of **March, 2012**, by and between the **City of Commerce** (the “Plan Sponsor”) on behalf of the **City of Commerce 457 Deferred Compensation Plan**, (the “457 Plan”), (unless specified otherwise, referred to herein as the “Plan”). **ING Life Insurance and Annuity Company** (“ILIAC”), a corporation organized and existing under the laws of the State of Connecticut and **ING Financial Advisers, LLC** a limited liability company organized and existing under the laws of the State of Delaware and registered as a broker-dealer under the federal securities laws (the “Broker-Dealer”). ILIAC and the Broker-Dealer are hereinafter collectively called the “Contractor”. This Agreement is separate and apart from any other contract issued to the Plan, including any group annuity contract or funding agreement issued to the Plan Sponsor by ILIAC.

RECITALS

WHEREAS, the 457 Plan has been established as an “eligible deferred compensation plan” pursuant to Section 457(b) of the Internal Revenue Code (the “Code”) and the laws of the State of California; and

WHEREAS, the Plan Sponsor has selected certain investment products offered or otherwise made available by or through ILIAC or the Broker-Dealer, respectively, for the investment of the Plan’s assets (the “Program”); and

WHEREAS, the Plan Sponsor further wishes to engage the Contractor as an administrative service provider to facilitate the administration of the Plan by providing services that shall include without limitation, accounting for deferrals or contributions, disbursement of funds, withholding of taxes, investment education, retirement counseling, investment of assets in the appropriate Plan investment options and proper recordkeeping of participant accounts; and

WHEREAS, the Contractor wishes to provide such administrative services to the Plan.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties do hereby agree as follows:

Section 1. Services

- 1.01 Good Order: The Contractor and the Plan Sponsor acknowledge that for purposes of this Agreement “Good Order” is defined as the receipt at the Contractor’s designated location of instructions that are complete, accurate and in an acceptable format, and which do not require the Contractor to apply any research or discretionary judgment. To qualify as current business day instructions, instructions sent by telephone, facsimile or mail must be received by us no later than the close of the New York Stock Exchange (typically 4:00 p.m. ET).
- 1.02 Allocation of Contractor Responsibilities: The Broker-Dealer or other broker-dealers with which ING Financial Advisers, LLC has a selling agreement shall service or perform all marketing communications, enrollment and securities transactions settlement and processing functions assigned to the Contractor. ILIAC shall perform all other responsibilities assigned to the Contractor, including Plan and participant recordkeeping.
- 1.03 Scope of Services: The Contractor agrees to provide the Plan with the services listed on Schedule A for the term of this Agreement. Services offered pursuant to the Plan’s loan program will be subject to the terms specified in Schedule B.
- 1.04 Administrative Requirements: The Contractor agrees to comply with the requirements set forth on Schedule C in the performance of this Agreement. The Contractor and the Plan Sponsor will review these administrative requirements periodically and make adjustments as necessary and mutually agreed.
- 1.07 Selection of Investment Options: The Plan Sponsor acknowledges that it is responsible for choosing the investment options to be made available to participants under the Plan. The Contractor agrees to provide Plan participants with a selection of investment options as specified in Schedule D.
- 1.08 Investment Provider Minimum Standards: Subject to the minimum standards set forth in Schedule E, the Contractor will provide its administrative services in connection with the Plan Sponsor’s selection of investment products to fund the Plan.
- 1.09 Modification to Investment Options: The addition or removal of any investment option to the Plan must be mutually agreed to by the Contractor and the Plan Sponsor and will be made in accordance with a mutually agreed upon schedule for implementing the change.
- (1) Subject to mutual agreement between the parties to add an investment option;
- (i) The Plan Sponsor may direct the Contractor to add an investment option from the range of investment products the Contract currently offers, and that are currently available in the Program, upon forty-five (45) days written notice of the proposed change.

- (ii) The Plan Sponsor may direct the Contractor to add an investment option that the Contract does not currently offer or an investment option that the Contractor currently offers but is not currently available in the Program, upon at least ninety (90) days written notice of the proposed change. Any investment option additions made pursuant to this Subsection 1.07(1)(ii) will be made in accordance with the Contractor's scheduled quarterly fund updates.
 - (2) The Contractor reserves the right to reject any new investment option that imposes short-term trading (redemption) fees on participant accounts.
 - (3) To the extent an existing investment option imposes short-term trading (redemption) fees on Participant accounts, the Contractor reserves the right to discontinue offering the investment option or to deduct any such short-term trading (redemption) fees from participant accounts.
- 1.10 Limits Imposed by Underlying Funds: The Plan Sponsor understands and acknowledges that orders for the purchase of fund shares may be subject to acceptance by the fund. The Contractor reserves the right to reject, without prior notice, any allocation of payments to the variable investment products, including the NAV Funds, if the Contractor's purchase order for the corresponding fund is not acceptable by the fund for any reason.
- 1.11 Limits Imposed by Contractor on Frequent Transfers: The Plan Sponsor understands and acknowledges that the investment products offered or otherwise made available by or through the Contractor are not designed to serve as vehicles for frequent trading in response to short-term fluctuations in the market. Such frequent trading can disrupt management of a fund and raise its expenses. This in turn can have an adverse effect on fund performance. Accordingly, the Plan Sponsor agrees to adhere to the Contractor's current Excessive Trading Policy, as set forth in Schedule F (the "Excessive Trading Policy"). The Contractor reserves the right to modify the Excessive Trading Policy in whole or in part at any time and without prior notice, depending on the needs of the underlying fund(s), the best interest of contract owners and fund investors, and/or state or federal regulatory requirements.
- 1.12 Access to Investment Advice: The Contractor agrees to provide Plan participants access to an independent third party online investment advice provider, as specified in Schedule G.

Section 2. Participant Information

- 2.01 Provision of Certain Participant Information: The Plan Sponsor or its authorized representative shall facilitate the transmission to the Contractor of all current Plan participant level records including, but not limited to: name; address; social security number; active or terminated employment status; and deferral amount information. Over the term of this Agreement, the Contractor and the Plan Sponsor

will develop procedures for the Plan Sponsor to notify the Contractor of changes in employment status and, to the extent the Plan Sponsor has knowledge of the death of any participant, the Plan Sponsor will notify the Contractor of such death. The Plan Sponsor shall provide such information on a timely basis and use its best efforts to assure the accuracy and completeness of all information provided to the Contractor.

- 2.02 Changes in Deferral or Contribution Information; New Participant Deferral or Contribution Information: The Contractor and the Plan Sponsor will develop procedures to coordinate the processing of (i) changes in deferral or contribution amount information and (ii) initial deferral or contribution information pertaining to participants joining the Plan on or after the date the Contractor commences the provision of services under this Agreement.

Section 3. Compensation

- 3.01 Contractor's Compensation: The Contractor's services under the Agreement are rendered in connection with the Plan Sponsor's selection of certain investment products offered by or through the Contractor. The revenues paid to the Contractor from such investment products shall constitute one source of compensation for the services rendered under this Agreement. In addition, the Contractor shall assess a daily fee against the value of all participant accounts allocated to Plan investment options made available through direct purchases of registered investment company shares. The amount of this charge, expressed as an annual percentage, shall be 0.85%.

Any fees, products and services rendered in connection with this Agreement are contingent on the Contractor being the exclusive (or one of 2) providers of investment products and administrative services to the Plan during the Term of this Agreement and any subsequent renewal periods (as described in Section 4.01). The addition of any other provider or providers to the Plan during the Term of this Agreement and any subsequent renewal periods or changes in the Plan document may impact any fees, products and services under this Agreement.

This Agreement and fees are contingent on the Plan provisions in effect on the date of this Agreement. Any amendment to the Plan may impact this Agreement and fees.

The Plan Sponsor understands and acknowledges that the compensation to the Contractor is subject to the certain general provisions, as set forth in Schedule J (the "General Compensation Provisions"). The Contractor reserves the right to modify the General Compensation Provisions in whole or in part at any time and without prior notice, depending on the needs of the underlying fund(s), the best interest of contract owners and fund investors, and/or state or federal regulatory requirements.

- 3.02 Compensation Paid to Sales Professionals: The Contractor shall pay sales professionals compensation equal to 4.00% of participant's first year contributions; 1.00% of contributions in renewal participant years; 4.00% of increase contributions in renewal participant years; 2.00% transfer of assets at any time. The compensation paid to sales professionals will be derived exclusively from the Contractor's revenue. Sales professionals may also be eligible for additional expense reimbursement. Compensation may also be paid at the time of participant election of an annuitization distribution option and will be disclosed to the participant at the time the distribution option is elected.

Section 4. Term

- 4.01 Term: This Agreement shall commence on the Effective Date and continue for an initial term of 3 years. Unless either Plan Sponsor or Contractor provides written notice of intent to terminate this Agreement at least ninety (90) calendar days before the end of the initial term, the Agreement shall automatically renew thereafter for subsequent one-year terms; provided, however, that either Plan Sponsor or Contractor may terminate the Agreement as of the last day of any such one-year term by providing written notice of such termination at ninety (90) calendar days prior to the effective date of the termination. The Plan Sponsor and Contractor may mutually agree in writing to an earlier termination. This Agreement may be amended in writing if agreed to by both parties.
- 4.02 Termination: Notwithstanding Section 4.01, either party may terminate this Agreement at any time upon written notice "for cause". For this purpose, "for cause" shall mean: (1) failure of the other party to comply substantially with this Agreement and attached schedules hereto which, when called to the attention of the other party in writing has not been corrected within thirty (30) days; (2) the fraud or embezzlement on the part of the other party or provider of investment advice; (3) if the other party ceases to conduct business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of the rights of creditors; (4) failure of the other party to pay any fees under this Agreement; or (5) if pursuant to Section 1.07 the Plan Sponsor requests the addition or removal of an investment option under the Plans, that is reasonably anticipated by the Contractor to result in a reduction in revenues under the Plans and no mutual agreement is reached between the parties on the recoupment of such lost revenues, the Contractor shall have the right to terminate this Agreement.

Section 5. General

- 5.01 Circumstances Excusing Performance: Neither the Plan Sponsor nor the Contractor shall be liable to the other for any delays or damages or any failure to act due, occasioned, or caused by reason of restrictions imposed by any government or government agency, acts of God, strikes, labor disputes, action of the elements, or causes beyond the control of the parties affected thereby.
- 5.02 Business Recovery Plan: The Contractor acknowledges that it has a Business Recovery Plan in place for its computer environment, specifying steps to be taken in the event of a disaster. The plan is built around a worst-case scenario involving loss of the facility or loss of access to the facility. It is also adaptable to less severe disasters. Generally, there are three phases to the Contractor's Business Recovery Plan:
- ♦ Immediate response, damage assessment and critical notifications
 - ♦ Environmental and operation restoration
 - ♦ Operational readiness, testing and business resumption.

A critical part of this plan is the Contractor's System Recovery Plan, which itself has three components:

Hardware: the Contractor maintains a primary data center to support its mainframe applications and a portion of its mid-range and Intel based distributed environment. The Contractor has contracted with an outside vendor to provide hot site recovery capabilities for the primary data center in case of a site level disaster. The vendor maintains equipment that the Contractor will use to restore its applications in case of emergency. In addition, the Contractor has several data centers located throughout the U.S. with mid-range and distributed equipment to lessen the risk from any one site. On-site generators and UPS systems provide continuous power to the Contractor's facilities. A fully redundant wide area network connects all of the data centers in the U.S. as well as to the hot site vendor facility.

Application software: the Contractor secures program libraries, to tape cartridges weekly, storing them in both on-site and off-site vaults.

Production data: the Contractor's system and database files are backed up periodically, many on a daily basis, to tape cartridges stored in both on-site and off-site vaults.

The Contractor's internal auditors have reviewed its disaster recovery procedures. Portions of the plan are tested on an annual basis.

- 5.03 Ownership of Records: The Contractor agrees that all computer tapes, discs, programs and any records generated by the Contractor under this Agreement shall

be the property of the Plan. In the event of the termination of this Agreement, the Contractor shall provide all electronic and/or written data records to the Plan's designated representative or to a new contractor in an agreed upon format at no cost and within 180 days of written notice of intent to terminate this Agreement.

- 5.04 Parties Bound: This Agreement and the provisions thereof shall be binding upon the respective parties and shall inure to the benefit of the same.
- 5.05 Applicable Law: This Agreement shall be construed in accordance with the laws of the State of California. The Contractor and the Plan Sponsor shall comply with all state and federal laws and regulations applicable to the services to be performed.
- 5.06 Severability: If any provision of this Agreement shall be found to be illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of this Agreement and the remainder of this Agreement shall be construed and enforced as if said illegal or invalid provision had never been inserted herein. Neither party shall be required to perform any services under this Agreement which would violate any law, regulation or ruling.
- 5.07 Acknowledgment: The Plan Sponsor acknowledges that:
- (a) the Contractor is performing non-discretionary, ministerial administrative services at the direction of the Plan and its authorized representatives;
 - (b) the Plan Sponsor and its authorized representatives have sole authority for making all benefit determinations. The Plan Sponsor may delegate the day-to-day administration of initial benefit determinations to the Contractor as indicated in Schedule A;
 - (c) the Plan Sponsor and its authorized representative have the sole authority for the review and final disposition of a Plan Participant's appeal of any benefit determination made by the Contractor under the Plan;
 - (d) the Contractor does not directly provide any investment advice to the Plan Sponsor with respect to the Plan's assets;
 - (e) in performing services under this Agreement, the Contractor is entitled to rely on any information the Plan Sponsor, or its authorized representatives identified in Schedule L or the Plan participants provide. The Contractor has a reasonable duty to inquire as to the authenticity or the accuracy of such information or the actual authority of such person to provide it; and
 - (f) The Plan Sponsor will promptly provide to the Contractor any proposed amendments to the Plan for review and comment by the Contractor at least 90 days prior to the proposed amendment effective date.
- 5.08 Notices: Each party will promptly provide the other with notice and copy of any attempts to levy or attach amounts held under the Plan and/or any litigation

affecting the Plan of which it becomes aware and/or any notices or demands to be given under this Agreement. All such notices, demands or other communications hereunder shall be in writing and duly provided if sent certified mail, return receipt requested, addressed to the party to be notified or upon whom a demand is being made, at the addresses set forth in this Agreement or such other place as either party shall from time to time designate in writing. The date of service of a notice or demand shall be the receipt date on any certified mail receipt

Notices to the Contractor shall be sent to:

ING Life Insurance and Annuity Company
Attn: Associate General Counsel
Legal Department, CIS
One Orange Way
Windsor, CT 06095

Notices to the Plan Sponsor shall be sent to:

Vilko Domic
Director of Finance
City of Commerce 457 Deferred Comp Plan
2535 Commerce Way
Commerce, CA 90040

- 5.09 Copies of Agreement: This Agreement may be executed in any number of counterpart copies, each of which when fully executed shall be considered as an original.
- 5.10 Headings: Headings are for convenience of reference only. Headings do not limit or expand the scope of the text and are not intended to emphasize any portion thereof.
- 5.11 Independent Contractor: The Contractor is associated with the Plan Sponsor only for the purposes and to the extent specified in this Agreement, with respect to the performance of the contracted services pursuant to this Agreement, the Contractor shall have the sole right to supervise, manage, operate, control and direct performance of the details incident to its duties under this Agreement.
- 5.12 Contractor Primary Contact: The Contractor designates certain individual(s) to serve as the primary point of contact for the Agreement. These individuals are identified in Schedule J.
- 5.13 Licensed Representative: The Contractor agrees to provide licensed representatives to perform enrollment and education services, and to assist participants with account balance inquiries, investment selection changes, interfund transfers or exchanges, and transaction initiation. These individuals are identified in Schedule K.

- 5.14 Subcontracting: The Contractor agrees not to enter into any subcontracting agreements for work contemplated under the Agreement without first obtaining written approval from the Plan Sponsor. Any subcontractor shall be subject to the same terms and conditions as the Contractor. The Contractor shall be fully responsible for the performance of any subcontractor.
- 5.15 Contract Assignability: Without the prior written consent of the Plan Sponsor, the Agreement is not assignable by the Contractor either in whole or in part.
- 5.16 Licenses and Permits: The Contractor shall ensure that it has all necessary licenses and permits required by the laws of federal, state, and municipal laws, ordinances, rules and regulations. The Contractor shall maintain these licenses and permits in effect for the duration of this Agreement. The Contractor will notify the Plan Sponsor immediately of loss or suspension of any such licenses and permits. Failure to maintain a required license or permit may result in immediate termination of this Agreement.
- 5.17 Conflict of Interest: The Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, agents or subcontractors and the Plan Sponsor. The Contractor shall make a reasonable effort to prevent employees, consultants, or members of governing bodies from using their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others such as those with whom they have family, business, or other ties.
- 5.18 Improper Consideration: The Contractor shall not offer or be forced to provide (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, services, the provision of travel or entertainment, or any items of value to any officer, employee, group of employees, or agent of the Plan Sponsor in an attempt to secure favorable treatment or consideration.
- 5.19 Indemnification: The Contractor agrees to indemnify and hold the Plan Sponsor, its officers, employees and agents harmless from any loss, liability, claim, suit or judgment resulting from work or acts done or omitted by the Contractor's officers, employees or agents in carrying out the Contractor's responsibilities as set forth in this Agreement to the proportionate extent that it results from the negligence or wrongdoing of the Contractor or any of its officers, employees or agents. The Contractor agreements to indemnify shall not extend to any injury or damage which results from the Contractor's reliance on information transmitted by the Plan Sponsor.

The Plan Sponsor agrees to indemnify and hold the Contractor, its officers, employees and agents harmless from any loss, liability, claim, suit or judgment resulting from work or acts done or omitted by the Plan Sponsor's officers, employees or agents in carrying out the Plan Sponsor's responsibilities as set forth in this Agreement to the proportionate extent that it results from the negligence or wrongdoing of the Plan Sponsor or any of its officers, employees or agents.

- 5.20 Right to Monitor: The Plan Sponsor or any appointee thereof, shall have the right to review and audit all records, books, documents, and other pertinent items as requested, and shall have the right to monitor the performance of the Contractor in the delivery of services provided under this Agreement. Full cooperation shall be given by the Contractor in the implementation, and in any auditing or monitoring conducted.
- 5.21 Confidentiality: The Contractor acknowledges that all information made available by the Plan Sponsor about its employees shall be considered confidential. The Contractor agrees that it will not distribute, disclose or release to any third party any such confidential information except as may be necessary to the performance of services hereunder either during or at any time after the term of the Agreement, upon the prior written approval of the Plan Sponsor or as otherwise required by law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement (including all referenced and attached Schedules and Appendices) to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

CITY OF COMMERCE

ING LIFE INSURANCE AND ANNUITY COMPANY

By: 

By: _____

Printed Name: Lilia R. Leon

Printed Name: _____

Title: Mayor

Title: _____

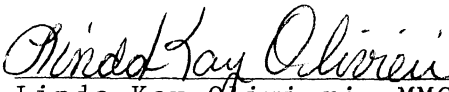
ING FINANCIAL ADVISERS, LLC

By: _____

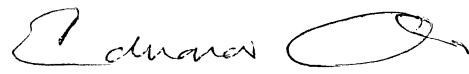
Printed Name: _____

Title: _____

ATTEST:


Linda Kay Olivieri, MMC
City Clerk

APPROVED AS TO FORM:


Eduardo Olivo
City Attorney

CITY OF COMMERCE 457 DEFERRED COMPENSATION PLAN
Schedule A: Scope of Contractor Services

The Contractor agrees to provide the Plan with the services listed within this Schedule for the term of this Agreement. For purposes of this Schedule, all references to “participant” are intended to apply equally to all account holders under the Plan. This includes participants, beneficiaries and alternate payees.

1. The one-time preparation and implementation of a Plan-specific product and service conversion or transition schedule which shall include notice to all Plan participants.
2. The initial installation of overall Plan records and individual Plan participant records.
3. To assist the Plan Sponsor and its legal counsel, the Contractor will provide a specimen governmental 457(b) and/or 401(a) plan document upon your request. As a specimen plan, you and your legal counsel may modify the document(s) to reflect your Plan design needs.
4. The development of Plan enrollment materials.
5. Conducting introductory on-site education and enrollment meetings for employees.
6. Ongoing allocation of Plan contributions to individual participant accounts, and reconciliation of Plan and participant activity on a daily basis.
7. Contractor will perform once each year a test on each participant account for the limit on elective deferrals pursuant to Code section 402(g) and/or 457(e)(15) and on the annual additions limit in accordance with Code section 415(c), if applicable. If the Plan Sponsor sponsors more than one plan, the Contractor will not aggregate the Plan covered by this Agreement with any other plan for testing purposes.
8. Ongoing maintenance of participant beneficiary designations under the Plan based upon mutually agreed upon procedures which shall be reflected in the Plan document. Participants may designate a beneficiary via the Contractor’s participant internet site or by speaking with a customer service representative via a toll free telephone line.

Community Property Edit

This optional feature of the online beneficiary maintenance service will take into account community property laws applicable in the Participant’s resident state at the time that he or she is making a beneficiary designation. When this service has been elected, the Contractor’s online beneficiary maintenance service will require any participant who has identified themselves as being married or in a registered domestic partnership or a civil union and who does not designate a person identified as his or her spouse or domestic partner as a primary beneficiary for at least the percentage prescribed under the community property laws to complete and submit a paper beneficiary designation form.

The Plan Sponsor elects to utilize the Contractor's Community Property Edit feature as described above.

9. Ongoing maintenance, recordkeeping of individual participant account records and processing in a timely manner of all transactions permitted under the Plan as authorized or approved by the Plan Sponsor. Any delegation of the Plan Sponsor's role of authorizing or approving transactions under the Plan to the Contractor will be as directed later within this Schedule or other written instrument between the parties. Such direction shall not be construed as delegating Contractor discretion with respect to such decision.

Recordkeeping Multiple Payroll Locations

As an optional service to the Plan Sponsor, the Contractor may maintain participant data by payroll location as provided by the Plan Sponsor.

The Plan Sponsor elects to utilize the Contractor's multiple payroll location recordkeeping service as described above.

10. Ongoing generation of periodic Plan activity reports for Plan Sponsor use, as mutually agreed upon, to be made available through a secure website.

If the Plan Sponsor has elected the Contractor's multiple payroll location recordkeeping service, the Contractor may segregate Plan Sponsor reporting (available via the Sponsor Web) by payroll location. Should the Plan Sponsor elect this optional service, the Participant's location code or indicator must be included in the census or payroll data files submitted by the Plan Sponsor. If the division / sub-location indicator for a participant is blank, a default indicator will be assigned to the Participant's account.

The Plan Sponsor elects to utilize the Contractor's plan sponsor reporting by payroll location service as described above.

11. Ongoing provision of necessary tax forms on a timely basis to participants who received taxable distributions during the previous year.
12. Ongoing provision of employee enrollment and education services, including the provision of communication packages which includes the necessary information for employees to enroll and make investment choices.
13. Establish and maintain an electronic interface with the Plan Sponsor for participant enrollment information (including automatic enrollments) and changes to the participant's contribution amount or rate, as provided in Appendix I, II and III to Schedule A.
14. Access to customer service representatives via a toll free telephone line to respond to Plan participant inquiries, provide information about participants' accounts and investment options, enroll an employee into the Plan and to distribute administrative forms.

15. Access to an automated voice response system via toll free telephone lines, through which participants may obtain updated account and investment information and initiate transactions permitted under the Plan.
16. Access to an internet site, through which participants may obtain updated account and investment information, and initiate transactions permitted under the Plan including enrollment or electing a new contribution amount or rate under the Plan and requesting forms for initiating certain transactions as permitted under the Plan.
17. Money Source Withdrawal Sequence
A withdrawal or liquidation sequence for money sources available to fund a withdrawal from the Plan must be identified. *The default sequence for a governmental 457(b) plan is shown below – if no change is made, this is the withdrawal sequence that will apply to participant withdrawals under the Plan.*

1st	Employee Elective Deferrals
4th	Rollovers from another 457 Plan
5th	Rollovers from a 401 or 403(b) Plan or IRA
6th	Designated Roth
7th	Roth Rollovers from another 457 Plan
8th	Roth Rollovers from a 401 or 403(b) Plan
	In Plan Roth Rollover
	Rollover of In Plan Roth Rollover from a 401 or 403(b) Plan
2nd	Other (Please specify) <u>Employer Contribution</u>
3rd	Other (Please specify) <u>Employer Match</u>

18. Incoming Rollovers / Transfers Authorization
Ongoing review and processing of participant-initiated incoming rollover or transfer requests, on behalf of the Plan Sponsor, shall be based on mutually acceptable procedures for the review, and processing of these types of requests. Incoming rollover and transfer requests determined to be in Good Order will be processed on the same business day as the assets are received by the Contractor.

At the Plan Sponsor's direction, participants who have had a request denied shall be given the opportunity to appeal to the Plan Sponsor for review and final disposition of the determination.

19. Unforeseeable Emergency Withdrawal Authorization
Ongoing review and processing of participant unforeseeable emergency withdrawal requests on behalf of the Plan Sponsor, based on the standard for the review, qualification and processing of these withdrawals as provided in Appendix IV to Schedule A.

The Contractor will make a determination (approval and/or denial) within 5 business days of receipt of the request, and supporting documentation, in Good Order. If the request approved, the request will be processed as of the date of favorable

determination; with payment being mailed or made available electronically through ACH.

20. Permissible Withdrawal Authorization

This paragraph pertains to the following participant-initiated withdrawals and/or transfers from a Participant account as permitted under the Plan (*check all that apply*):

- In-Service Withdrawal for Governmental 457(b) Plans (aka de minimus withdrawal)
- Purchase of Governmental Defined Benefit Plan Service Credit
- Normal Retirement Age – *identify the age level to allow withdrawal* _____
- Age Based Withdrawal – *identify the age level to allow withdrawal* _____

Ongoing review and processing of participant-initiated withdrawal or transfer requests, on behalf of the Plan Sponsor, shall be based on mutually acceptable procedures for the review and processing of these types of requests. Withdrawal or transfer requests are processed as of the date received in Good Order, with payment being mailed or made available electronically through ACH.

At the Plan Sponsor's direction, participants who have had a request denied shall be given the opportunity to appeal to the Plan Sponsor for a review and final disposition of the determination.

21. Domestic Relations Order Administration

Ongoing review and processing of Domestic Relations Orders (DRO) on behalf of the Plan Sponsor, based on the standard for the review, qualification and processing of DROs as provided in Appendix V to Schedule A.

The Contractor will make a determination within 5 business days of receipt of the domestic relations order in Good Order. If the request approved, the request will be processed as of the date of favorable determination; with confirmation being mailed.

If the domestic relations order is not received in good order, the Contractor will work with the respective parties until the order is presented in Good Order.

22. Benefit Payment Authorization

Ongoing review and processing of participant-initiated benefit payment requests (including annuity payments and death benefits) due to participant's separation from service or death, on behalf of the Plan Sponsor, based on mutually acceptable procedures for the review, qualification and processing of these requests. The Plan Sponsor is responsible for providing the Contractor with any and all participant termination data in the mutually agreed upon electronic format, within a reasonable time period following the participant's separation from service or death. The Contractor may not make the applicable benefit payment request transaction and/or paperwork available to the participant until the termination data is received from the Plan Sponsor in Good Order.

Benefit payment requests are processed as of the date received in Good Order; with payment being mailed or made available electronically through ACH.

At the Plan Sponsor's direction, participants who have had a request denied shall be given the opportunity to appeal to the Plan Sponsor for a review and final disposition of the determination.

23. Access to counseling by licensed agents or representatives for Plan participants, who are retiring or otherwise requesting a benefit payment from the Plan, based on mutually acceptable standards.
24. Ongoing processing of Required Minimum Distributions ("RMD") in accordance with the rules of Code Section 401(a)(9) for eligible Plan participants and their beneficiaries as follows:
 - a. Participants: In the absence of an affirmative election or instructions received in Good Order from the Participant on an annual basis for receiving the RMD, the Contractor is directed by the Plan Sponsor, to calculate and distribute the RMD amount. The Contractor shall calculate the RMD in the following manner.
 - i. For Participants with either (1) no beneficiary, (2) a non-spouse beneficiary, (3) a spouse beneficiary without a date of birth, or (4) a non-individual beneficiary (e.g., charitable organization), calculate the current year RMD by dividing the account balance on 12/31 of the prior year by the distribution period under the Uniform Lifetime Table using the Participant's age on 12/31 of the current year.
 - ii. For Participants with a spouse beneficiary more than 10 years younger than the Participant, calculate the current year RMD by dividing the account balance on 12/31 of the prior year by the combined life expectancy factor under the Joint and Last Survivor Table using the ages of the Participant and the spouse beneficiary on 12/31 of the current year.
 - b. Beneficiary(ies): In the absence of an affirmative election or instructions received in Good Order from the beneficiary (ies), the Plan Sponsor directs the Contractor to calculate the RMD amount in accordance with Code Section 401(a)(9) provided the Contractor has received in Good Order proper notification of the Participant's death and complete beneficiary(ies) information (including the complete name and address of the beneficiary(ies)). In situations where the life expectancy rules are not available for the calculation of the RMD either because the Contractor has not received the requisite information by the date for issuing RMD payments or the beneficiary is not entitled to receive RMD under the life expectancy rules, the Plan Sponsor directs the Contractor to apply the five-year payout rule and force out a lump sum by December 31st of the fifth year following the year of the Participant's death.

The Plan Sponsor acknowledges that the Contractor shall not be responsible for any tax penalties or excise taxes the Plan Sponsor, Plan Participants, or beneficiaries may incur as a result of the Contractor's failure to calculate and distribute the RMD amount where the failure is due to the Plan Sponsor's, the Plan Participant's or the beneficiaries' failure to provide the required information in a timely manner.

25. Ongoing facilitation of communications between the Contractor, the Plan Sponsor and the Plan participants based on mutually acceptable guidelines.

CITY OF COMMERCE 457 DEFERRED COMPENSATION PLAN

Appendix I to Schedule A:

Contribution Rate Services

Contribution Rate Change Service:

This service allows participants to make contribution rate changes via the Contractor's Participant internet site or by speaking with a customer service representative of the Contractor. Please note it is your responsibility to notify the Contractor of terminated employees. Contribution rate changes are allowed in fractional percentages. This service supports the older worker catch-up contribution elections (if available under the Plan). No other types of catch-up or make-up contribution options available under the Plan are supported by the service.

Plan Sponsor acknowledges that it is its responsibility for ensuring that the Contribution Rate Change Service complies with their state laws in regards to wage withholding. The payroll withholding laws of the Plan Sponsor's state should be reviewed prior to implementation of this program to determine if deductions, and/or contribution rate changes, without an employee's written consent are permitted. The service includes increases, decreases, stops and restarts, either based on participant direction, or as directed by the Plan as a result of loans or unforeseeable emergency withdrawals.

- The Plan Sponsor elects to utilize the Contractor's Contribution Rate Change service in accordance with the following criteria (*please check*).

Minimum and Maximum Contribution Schedule:

Pursuant to the Plan document, indicate the minimum and maximum contribution amount or rate a participant can elect.

- Percentage-based
Employee elective deferral contributions Minimum 1.00% Maximum 99.00%

- Dollar-based
Employee elective deferral contributions Minimum \$1.00 Maximum \$ N/A

CITY OF COMMERCE 457 DEFERRED COMPENSATION PLAN

Appendix II to Schedule A:

Payroll Feedback File

Payroll Feedback File

If the Plan Sponsor has elected the Eligibility Tracking service, Automatic Enrollment service, the Contribution Rate Change service or offers loans, the Contractor will provide a periodic payroll feedback file through an automated process. It is the responsibility of the Plan Sponsor to update its payroll system based upon the data contained in the payroll feedback file in accordance with applicable Code requirements and regulations governing the effective date of deferral elections to the Plan.

The payroll feedback file is a .csv format file which can be uploaded to most payroll systems. As an alternative, a payroll feedback report in a .pdf format can be printed and used for manual entry into a payroll system.

Electronic File Delivery:

Please select **one** of the following delivery types (*required*):

- Email:** Contractor will send files in an encrypted format (access information will be provided). Please provide one or more email addresses:

- FTP (File Transfer Protocol):** Contractor will send files via FTP. Please provide the FTP delivery address, ID and password:
FTP Delivery Address: ftp:// _____
FTP ID: _____
FTP Password: _____
- Sponsor Web/Archive:** Plan Sponsor will obtain reporting data through the Contractor's plan sponsor internet site.

The Contractor will send the periodic electronic payroll feedback file based on the information selected above until a change is provided, in writing, by the Plan Sponsor.

Reporting Frequency:

The Contractor will provide the automated contribution rate reporting data on the frequency that best meets the needs of the Plan Sponsor.

Notification of Report Availability:

The Plan Sponsor must identify an individual to receive notification of when the payroll feedback file is available. It is understood and acknowledged by the Plan Sponsor and Contractor that the individual designated below is responsible for accessing the file when notified of its availability.

CITY OF COMMERCE 457 DEFERRED COMPENSATION PLAN
Appendix III to Schedule A:

**Unforeseeable Emergency Withdrawal
Review and Approval Requirements**

The Contractor is responsible for the ongoing review and processing of participant unforeseeable emergency withdrawal requests on behalf of the Plan Sponsor. The Contractor's process is based on the following procedures for the review, qualification and processing of these withdrawals under 457(b) deferred compensation plans.

To request an unforeseeable emergency withdrawal, a participant must complete the relevant paperwork and provide the appropriate documentation to support the request.

The Contractor will review the request to determine whether it satisfies the IRS and Plan requirements for an unforeseeable emergency. Specifically, an unforeseeable emergency means extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant including:

- severe financial hardship of the participant resulting from an illness or accident of a participant, the participant's spouse or of a participant's dependent (as defined in Code Section 152(a))*;
- loss of the participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance); or
- other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

*Effective in 2007, the Pension Protection Act of 2006 expanded this definition to include the participant's designated primary beneficiary.

In its evaluation, The Contractor will limit the withdrawal to the amount reasonably necessary to satisfy the emergency need, which may include any amounts necessary to pay Federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution. In addition, a withdrawal shall be allowed only to the extent that such emergency is or may not be relieved through: 1) reimbursement or compensation from insurance or otherwise; 2) liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or 3) cessation of the participant's deferrals under the Plan.

The determination of whether a request qualifies as an unforeseeable emergency will be based on all the facts and circumstances of the participant's specific situation. While it is a subjective decision, the Contractor's process incorporates three underlying principles: consistent application of the IRS rules to similar situations; decisions must be reasonable and not arbitrary; and when there is a close call, we err on the conservative side.

The Contractor takes this review process very seriously and understands the importance of consistently administering the IRS and Plan requirements. The Contractor recognizes that failure to do so, and thus treating the Plan like a savings account, can result in adverse tax consequences to the participant and to the Plan.

Withdrawal requests will be reviewed in a timely manner. For requests which are approved, The Contractor will process the withdrawal as of the date of the approval. A

participant, who has had a withdrawal request denied because of insufficient documentation, can resubmit his or her request to the Contractor for re-review with all applicable documentation.

CITY OF COMMERCE 457 DEFERRED COMPENSATION PLAN

Appendix IV to Schedule A:

Domestic Relation Order Review and Approval Requirements

The Contractor is responsible for the ongoing review and processing of Domestic Relations Orders (DRO) on behalf of the Plan Sponsor. The Contractor's process is based on the following procedures for the review, qualification and processing of DROs which if followed as specified below shall constitute a valid Plan Sponsor direction to process the DRO.

Definition of a Domestic Relations Order

A Domestic Relations Order ("DRO" or "Order") is a court order, judgment, or decree issued under a state's domestic relations law that recognizes the right of a spouse, former spouse, child, or other dependent of a Participant in an employee benefit plan to receive all or part of the Participant's benefit in the plan.

A Qualified Domestic Relations Order ("QDRO") is a DRO that has met the specific requirements mandated by federal law and the provisions of the Plan as determined by the Plan Administrator or its designee. A QDRO requires a qualified plan to pay all or any part of a Participant's benefits to an Alternate Payee. An Alternate Payee is a spouse, former spouse, or dependent of the Participant who is entitled to a portion of the Participant's benefits.

Requirements for QDRO

For a domestic relations order to meet the Contractor's good order processing standards and for the DRO to be qualified and considered a QDRO, the order must comply with the following requirements. In addition, certain state rules may be imposed on domestic relations orders by statute.

1. The order must be an original or a court-certified copy of the original, signed by the judge or clerk of the court. A fax or a photocopy cannot be accepted as they are not in compliance with the Contractor's good order standards.
2. The order must create or recognize the existence of an alternate payee's right to, or assign to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under the plan.
3. The order must constitute a judgment, decree or order (including approval of a property settlement agreement) that relates to provisions of child support, alimony payments or marital property rights to a spouse, former spouse, child or other dependent of a participant, and is made pursuant to a state domestic relations law (including a community property law).
4. The order must clearly and unambiguously name each plan to which the order applies.

5. The order must clearly specify the name and last known mailing address of the participant and each alternate payee covered by the order. (If the alternate payee is a minor or is legally incompetent, the order must include the name and address of the alternate payee's legal representative.)

The order should identify the social security number (or tax identification number) and date of birth of the participant and each alternate payee covered by the order. If State or local law prevents the inclusion of such information in the court order, this data must be provided to the Contractor, in writing, by the party that drafts the court order, in order for good order processing standards to be met.

6. The order must be specific with respect to the dollar amount or percentage of the participant's benefits to be paid by the plan to each alternate payee or the manner in which the amount or percentage is to be determined. The calculation of this amount must be very clear and not subject to interpretation. If the amount ordered to be paid to the alternate payee's account is at all ambiguous, then the order cannot be accepted.
7. The order must specify the **exact date** when the account should be valued which should be a day the New York Stock Exchange (NYSE) is open. If the date provided is a date when the NYSE was not open, the Contractor will process the request, if received in good order, as of the preceding business date the NYSE is open.
8. The order must provide that the calculation of the amount of the participant's benefit to which the alternate payee is entitled to be readily calculable and according to records currently available to the Contractor. Pursuant to this requirement, the Contractor will not accept any order that requires calculations prior to the time the Contractor began providing services to the plan, unless the actual financial records necessary to make such calculation on a non-discretionary basis are provided to the Contractor.
9. If earnings prior to the effective date are also to be segregated on behalf of the alternate payee, the attorney representing the participant must provide the actual financial records necessary to make such calculation on a non-discretionary basis, if such records are not available to the Contractor.
10. If the order specifies a dollar amount to be paid to the alternate payee, such amount may not exceed the participant's vested balance in the plan.

Amounts payable to an alternate payee shall be **distributed proportionately** from the participant's account with the Contractor. Account values fluctuate with market conditions. If the dollar amount specified is above the current balance, the request may be rejected. When establishing the alternate payee's account, the Contractor shall first redeem amounts pro rata from all investment options other than non-core investment options (e.g., life insurance, self directed brokerage account, certificate of deposit, etc.), if applicable, held in the participant's account, and shall redeem amounts from non-core investment options, if applicable, only if necessary to

obtain the amount consistent with this Order.

11. A plan may specify a date as of which QDROs are allowed under the plan (such as orders dated after a specified date, e.g., January 1, 2002). Court orders which pre-date the allowance of QDROs under the plan may not be accepted.
12. The order must not require the plan to provide any type or form of benefit or any option, not otherwise provided under the plan.
13. The order must not require the plan to provide increased benefits (determined on the basis of actuarial value).
14. The order must not require any payment of benefits to an alternate payee that are required to be paid to another alternate payee under another order previously determined to be a QDRO.
15. The order must not provide for tax treatment of the account other than as required under federal law and regulations.

If the order meets all of the approval requirements listed above, it will be given effect and the Contractor will send notification of approval to the involved parties and their counsel.

If the order fails to meet one or more of the approval requirements listed above, it will be rejected. A letter notifying the involved parties of the rejection will be mailed, together with an explanation.

Administrative Hold on Participant's Account

When the Contractor receives a signed domestic relations order (DRO), or is notified that a legal action is pending in which a DRO will be sought, the Contractor will place an administrative hold on the participant's affected plan account(s) pending the determination of the qualified status of the DRO. During this period, the participant will be restricted from taking a distribution or loan until the QDRO has been processed.

CITY OF COMMERCE 457 DEFERRED COMPENSATION PLAN
Schedule B: Loan Program

Terms of Contractor's Loan Program ("Loan Program"):

This Loan Program is only available to the extent that the Plan Sponsor has established an automated contribution remittance process that is acceptable to the Contractor. Where a Plan remits contributions from multiple payroll locations, this Loan Program will only be available to participants at payroll locations that have established an automated contribution method acceptable to the Contractor.

- **Types of Loans Permitted** – select all that apply.
 - General Purpose
 - Residential
- **Maximum number of loans that may be outstanding at any time.**

1	General Purpose
1	Residential
2	Total (<i>regardless of type of loan</i>)
- **Minimum Loan Amount** - Indicate the minimum loan amount pursuant to this Loan Program \$1,000.
- **Maximum Loan Amount** - the maximum amount of a loan made pursuant to this Loan Program shall be an amount which, when added to the outstanding balance of any other loans to the participant from the Plan and any other qualified plan of the Employer, does not exceed the lesser of:
 - (i) \$50,000 reduced by the excess (if any) of
 - a) the highest outstanding balance of loans from the Plan to the participant during the one year period ending on the day before the date on which such loan is made, less
 - b) the outstanding balance of loans from the Plan to the participant on the date on which such loan was made, or
 - (ii) one-half (1/2) of the present value of the non-forfeitable accrued benefit of the participant under the Plan.
 - For purposes of this limit, all plans of the Employer shall be considered one plan, to the extent required by Section 72 of the Internal Revenue Code, and the balance of all loans under any plan of the Employer under which the individual participates must be aggregated in determining the maximum loan available from the Plan. The Employer will be responsible for confirming the accuracy of the loan amount available for participant and has an outstanding loan balance with an Employer sponsored plan that is not administered by ING.
 - All assets under the participant's Account with the Contractor will be considered in determining the maximum loan amount available.
 - Loan fee shall be deducted from the participant's total account balance before determining the maximum loan amount available.

- **Loan Interest Rate** – the interest rate used for loans from your Plan must be commensurate with interest rates currently charged by persons in the business of lending money for loans which would be made under similar circumstances.

The Contractor will set the loan interest rate on the first business day of each calendar month following the month in which a change in the loan interest rate index occurs. Changes to the loan rate will be applicable to loans issued on or after the first business day of the month following the month in which the rate is changed. The index for establishing the loan interest rate for the Plan is as follows. Select **one** of the following options:

- The Prime Interest Rate published in the Wall Street Journal on the last business day of each month.
- Moody's Corporate Bond Yield Average – Monthly Average Corporates, as published by Moody's Investors Service, Inc. on the last business day of each month.

The following adjustment factor is to be added to the indexed interest rate for loans issued under the Plan. Select **one** of the following options.

- No adjustment
- 0.5% (one-half percent)
- 1.0% (one percent)
- 1.5% (one and one-half percent)
- 2% (two percent)
- 2.5% (two and one-half percent)
- Other (specify)* _____

* Subject to the Contractor's underwriting review and approval.

- **Loan Repayment Frequency** - The loan repayment frequency will be used to amortize the loan and calculate loan repayments. The loan repayment frequency will be determined by the payroll frequency. Check all that apply. If more than one frequency is checked, indicate the payroll location name or number to which the frequency applies.

Frequency	Location Name or Number (list all that apply)
<input type="checkbox"/> Weekly	_____
<input checked="" type="checkbox"/> Bi-weekly	All Locations
<input type="checkbox"/> Semi-Monthly	_____
<input type="checkbox"/> Monthly	_____
<input type="checkbox"/> Annually	_____

- **Loan Repayment Method**

- Payroll deduction, subject to the Loan Repayment Following Separation from Service option shown below.

- **Loan Repayment Following Separation from Service** – Are participants that have separated from service permitted to continue loan repayments?

- Yes – Plan Sponsor understands and agrees to the conditions noted below.

No

Conditions:

1. Must be permitted under the Plan document.
 2. Plan Sponsor is responsible for providing the Contractor with any and all participant termination data in a mutually agreed upon electronic format.
 3. Loan repayments for participants that have separated from service will be made via ACH Debit to the participant's bank account.
 4. Should the participant take a full distribution of his or her account balance, the outstanding loan will be automatically defaulted.
- **Prepayment** - Prepayment of the full loan amount will be allowed at any time, without penalty.
 - **Maximum loan repayment period** – Internal Revenue Code section 72(p) requires a plan loan be repaid in full no later than 5 years from the date of the loan (except for a loan used to acquire a principal residence of the plan participant). Accordingly, it may be necessary to provide for a loan repayment term that is less than 60 months in order to meet the Code section 72(p) requirement (e.g., 57 or 58 months, etc.).
General Purpose 57 (maximum of 57 months.)
Residential 360 (maximum of 360 months.)
 - **Investment of Loan Repayments** - Loan repayments will be allocated in accordance with the participant's current contribution investment allocation instructions on the date a loan repayment is received in good order.
 - **Loan Default Restrictions** - If the participant defaults on any loan under the Plan, the participant shall not be allowed to initiate another loan of that type under the Plan until the defaulted amount is repaid.
 - **Loan Fee** - The Contractor shall charge a one-time fee to the Participant at the time of loan for services rendered under this Loan Program, in the amount of \$100 per loan.
 - **Money Source Withdrawal Sequence** – A withdrawal or liquidation sequence for money sources available to fund a loan from the Plan must be identified. Omit from the sequence the money-source(s) not available to fund a loan. *The default sequence for a governmental 457(b) plan is shown below – if no change is made, this is the withdrawal sequence that will apply to loans issued under the Plan.*

<u>1st</u>	Employee Elective Deferrals
<u>4th</u>	Rollovers from another 457 Plan
<u>5th</u>	Rollovers from a 401 or 403(b) Plan or IRA
<u>2nd</u>	Other (Please specify) <u>Employer Contribution</u>
<u>3rd</u>	Other (Please specify) <u>Employer Matching Contribution</u>
 - **Fund Withdrawal Sequence** – money will be withdrawn from participant investment options on a pro-rata basis.
 - **Spousal Consent** – indicate if spousal consent is required for loans from the Plan
 Yes
 No

- **Loan Authorization** – indicate who will be responsible for authorizing loan disbursements. Select **one** of the following options:
 Authorized Plan Sponsor representative
 the Contractor, based on the loan provisions of the Internal Revenue Code Section 72(p), corresponding regulations and terms of the Loan Program as identified in this Schedule.
- **Loan Default Monitoring** – Where the Contractor is recordkeeping loans under the Plan, the Contractor will perform loan default monitoring as described herein. The loan default process will occur on the next to last business day of each month. This schedule allows us to effectively monitor and take action on loans that risk default. The Plan Sponsor agrees that the Plan document shall identify the Grace Period as the last business day of the calendar quarter following the calendar quarter in which the loan repayment was due. You also agree to have the Contractor actively monitor and alert participants of potential loan defaults and defaulted loans.
- **Trust Requirement** - Loans extended under this Loan Program will be held in trust by ING National Trust.

Plan Sponsor Responsibilities:

- Ensure the Plan document and any applicable state/local law allows for loans to be administered in accordance with the terms of this Loan Program.
- An authorized Plan Sponsor representative will determine if a requested loan may be made under the Plan, and notify the Contractor electronically through a secure website or in writing by signing and submitting the participant Loan Request form to the Contractor.
- Establish payroll deduction of loan repayment amount for each participant with an approved loan.
- Remit loan repayment amounts via the payroll submission tool being utilized by the Plan Sponsor on behalf of each active participant with an approved loan. The data provided is to include the loan identifier and repayment amount.
- Notify the Contractor via the payroll submission tool being utilized by the Plan Sponsor of any participant with an outstanding loan who begins a non-paid leave of absence, either bona fide (for a period of not more than one year) or due to uniformed service (military duty) and for whom suspension of loan repayments will apply. The data provided is to include the type of leave, the start date and the end date.

Contractor Responsibilities:

- Process loans from a participant's account in accordance with the terms of the Loan Program and the loan request package.
- Deduct the loan amount from the participant's account based on the Money Source Withdrawal Sequence selected above, on a pro-rata basis across all current investment options within the participants account or such other method as agreed upon between Contractor and the participant.

- Generate reports, including a Loan Amortization Report, to be made available to the Plan Sponsor through a secure website. If the Plan Sponsor has elected to utilize the Contractor's plan sponsor reporting by payroll location service, the Loan Amortization Report will be segregated by payroll location.
- Furnish participants with quarterly account statements, reflecting loan activity since the prior statement date.
- Provide the Plan Sponsor with the loan repayment amount for each participant loan as determined by the level amortization calculation applicable to the amount of the loan, the repayment frequency, and selected repayment period. Loan repayment amounts will be provided through an automated periodic payroll feedback file as described in Appendix III to Schedule A.

Loans can be re-amortized only upon written direction from the Plan Sponsor and only if there has been a change in the borrower's payroll frequency or status. Outstanding loans cannot be refinanced.

- Upon notice from Plan Sponsor that a participant with an outstanding loan is on a qualifying leave of absence, loan repayments may be suspended for the maximum period permitted under IRS rules. Currently, IRS rules permit loan repayments to be suspended in the following circumstances:
 - A participant on a bona fide leave may suspend payments for up to one year if the pay received by the participant during this period is less than the amount of the installment payments required under the terms of the loan. However, the loan must still be repaid by the end of the loan term (i.e., the period of suspension will be less than one year if the loan was within one year of the final payment due date when the leave began).
 - A participant on a leave of absence due to performance of the uniformed services (as described under Internal Revenue Code Section 414(u)), may elect to suspend loan repayments for the period of uniformed service. In this situation, upon the participant's return from uniformed service, the loan repayment period will be extended by a period equal to the length of the uniformed service.

The Contractor will monitor loan repayments and perform default processing if there is an outstanding balance after the scheduled loan maturity date or there is more than one scheduled loan repayment not received by the end of the Grace Period. Should this occur, the entire loan will be in default. Each month, we will generate a warning notification to any participant who has missed more than one loan repayment during the previous quarter or has an outstanding balance after the scheduled loan maturity date. The notification will describe the implications of missing a loan repayment and the date on which the loan will be defaulted unless a repayment is promptly received. At the same time, we will generate a series of loan reports as noted below to be made available to the Plan Sponsor through a secure website. If the Plan Sponsor has elected to utilize the Contractor's plan sponsor reporting by payroll location service, these following reports will be segregated by payroll location.

1. Missed First Loan Payment Report – reflects loans with a first payment due during the current or previous month and have not had any loan payments applied.

2. Delinquent Loans Report – reflects loans that had any missing payments during the current month.
3. Loans Past Maturity Report – reflects loans that had a loan payoff/maturity date during the current month but have an outstanding loan balance.
4. Deemed/Offset Loans Report – reflects loans that were deemed or offset due to not being paid by the grace period applicable to the Plan.

On the last business day of the calendar quarter we will default any loan in which the grace period expires that day. A confirmation statement will be sent to participants for whom a loan default is processed.

- Compute and withhold federal and state income taxes, as required by law, for loan defaults or withdrawals from the Plan in order to repay outstanding loan amounts in full, in accordance with the Internal Revenue Code and applicable guidance. The Contractor will forward, within the applicable time limit, the appropriate information return reflecting the amount of the defaulted loan disbursement and taxes withheld to the appropriate taxing authority and to the participant.

CITY OF COMMERCE 457 DEFERRED COMPENSATION PLAN

Schedule C: Administrative Requirements

For purposes of this Schedule, all references to "participant" are intended to apply equally to all account holders under the Plan. This includes participants, beneficiaries and alternate payees.

1. Participant account statements and Plan Sponsor reports shall reflect accurate information with regard to contributions, allocations, earnings and withdrawals.
2. Under normal circumstances and unless otherwise authorized by the Plan Sponsor; participant quarterly statements shall be mailed within 15 days of the end of a calendar quarter.
3. Information on payout options, including a notice which satisfies the requirements of Internal Revenue Code Section 402(f), will be made available to participants through the internet or a toll free telephone number. Additionally, upon a terminated Participant's request, a licensed representative will provide to the Participant education and assistance on the available payout options.
4. Contributions determined to be in Good Order on any day that the New York Stock Exchange is open (a "Business Day"), and prior to the close of the exchange, shall be applied to the appropriate account on that day's close of business of the New York Stock Exchange. Contributions received at any other time will be applied to the appropriate account on the next succeeding Business Day. Written confirmation of receipt and deposit will be provided to the Plan Sponsor or its designee by mail. The Contractor shall notify the Plan Sponsor or its designee by telephone within two business days of discovery of transactions received not in Good Order. If after 5 business days, transactions remain not in Good Order, the Contractor will require the Plan Sponsor to provide written consent for the Contractor to continue holding the amount of the contributions related to the not in Good Order transactions in a non-interest bearing suspense account. If after 14 business days, the transactions remain not in Good Order, the amount of the contributions received not in Good Order will be refunded to the Plan Sponsor.
5. A calendar year-end report shall be delivered to the Plan Sponsor, by March 31st of the following year. The custom Plan Review book includes Plan-specific data on plan assets, participant counts and average balances, contribution and distribution activities, service utilization along with fund performance and Scorecard information. Industry benchmarking is available to help you compare your Plan to other comparable plans in the industry.

CITY OF COMMERCE 457 DEFERRED COMPENSATION PLAN
Schedule D: Plan Investment Options

The Contractor agrees to provide Plan participants with a selection of investment options as shown below. The Plan Sponsor acknowledges that it has chosen these investment options to be made available to participants under the Plan. The Plan Sponsor acknowledges receipt and has reviewed the prospectuses for each identified investment option.

Fund Number	Fund Name	Fund Legal Structure
004	ING Intermediate Bond Portfolio – Class I	Variable Annuity
043	ING Fixed Account 457/401	Fixed
081	ING MidCap Opportunities Portfolio – Class I	Variable Annuity
190	Oppenheimer Developing Markets Fund – Class A	Variable Annuity
193	Pax World Balanced Fund – Individual Investor Class	Variable Annuity
274	Wells Fargo Advantage Growth Fund – Class A	Variable Annuity
429	ING JPMorgan Mid Cap Value Portfolio – Initial Class	Variable Annuity
433	ING PIMCO Total Return Portfolio – Initial Class	Variable Annuity
572	American Funds The Growth Fund of America – Class R-4	Variable Annuity
573	American Funds EuroPacific Growth Fund – Class R-4	Variable Annuity
746	ING Solution 2015 Portfolio – Initial Class	Variable Annuity
761	ING Solution 2035 Portfolio – Initial Class	Variable Annuity
764	ING Solution 2045 Portfolio – Initial Class	Variable Annuity
767	ING Solution Income Portfolio – Initial Class	Variable Annuity
790	ING Solution 2025 Portfolio – Initial Class	Variable Annuity
818	American Funds New Perspective Fund – Class R-4	Variable Annuity
819	American Funds Washington Mutual Investors FundSM – R-4	Variable Annuity
821	Wanger USA	Variable Annuity
829	ING U.S. Stock Index Portfolio – Institutional Shares	Variable Annuity
1166	ING Solution 2055 Portfolio – Initial Class	Variable Annuity
1208	American Funds Fundamental InvestorsSM – Class R-4	Variable Annuity
1220	ING Pioneer High Yield Portfolio – Initial Class	Variable Annuity
1257	ING T. Rowe Price Capital Appreciation Portfolio – Inst	Variable Annuity
1560	ING Russell™ Mid Cap Index Portfolio – Class I	Variable Annuity
1563	ING Russell™ Small Cap Index Portfolio – Class I	Variable Annuity
1613	ING Clarion Global Real Estate Portfolio – Institutional	Variable Annuity
Variable Annuity 2016	ING Invesco Van Kampen Growth and Income Portfolio – Admin Class	Variable Annuity
2027 Variable Annuity	Wells Fargo Advantage Special Mid Cap Value Fund – Admin Class	Variable Annuity
2300	Diamond Hill Small Cap Fund – Class A	Variable Annuity
5041	Templeton Foreign Fund – Class A	Variable Annuity
5052	Templeton Global Bund Fund – Class A	Variable Annuity
9052	RidgeWorth Small Cap Value Equity Fund – Class I Shares	Variable Annuity

Plan Sponsor should consider the investment objectives, risks, and charges and expenses of the investment options carefully before choosing to make these options available to participants under the Plan. Fund prospectuses containing this and other information can be obtained by contacting your local representative. Please read the information carefully before signing this Agreement. You may also visit our website at www.ingretirementplans.com/sponsor to view your Plan on-line.

CITY OF COMMERCE 457 DEFERRED COMPENSATION PLAN
Schedule E: Investment Provider Minimum Standards Disclosure Statement

The following items summarize the minimum administrative requirements required in order for the Contractor to transact with an investment provider on the Plan's behalf:

1. Pricing Deadlines: The investment provider must furnish the Contractor with confirmed net asset value information as of the close of trading (generally 4:00 p.m., Eastern Time) on the New York Stock Exchange ("Close of Trading") on each business day that the New York Stock Exchange is open for business ("Business Day") or at such other time as the net asset value of the fund is calculated as disclosed in the relevant then current prospectus(es) in a format that includes (i) the fund's name and the change from the last calculated net asset value, (ii) dividend and capital gains information as it arises, and (iii) in the case of a fixed income fund, the daily accrual or the distribution rate factor. Such information shall be provided to the Contractor by 6:30 p.m. Eastern Time. "Net" means after all management, service and administrative expenses are deducted.
2. Pricing Error Reimbursements: The investment provider shall agree to hold the Plan harmless for any amounts erroneously credited to participant accounts due to (i) an incorrect calculation of the fund's daily net asset value ("NAV"), dividend rate, or capital gains distribution rate or (ii) incorrect or late reporting of the daily net asset value, dividend rate, or capital gains distribution rate of a fund, by reimbursing the Contractor, on the Plan's behalf. In addition, the fund shall be liable to the Contractor for systems and out of pocket costs incurred by the Contractor in making the Plan's or the participant's account whole, if such costs or expenses are a result of the fund's failure to provide timely or correct net asset values, dividend and capital gains or financial information and if such information is not corrected by 4:00 p.m. Eastern Time of the next Business Day after releasing such incorrect information provided the incorrect NAV as well as the correct NAV for each day that the error occurred is provided. If a mistake is caused in supplying such information, which results in a reconciliation with incorrect information, the amount required to make a Plan's or a Participant's account whole shall be borne by the investment provider providing the incorrect information, regardless of when the error is corrected.
3. Sales Literature: The investment provider will provide to the Contractor at least one complete copy of all prospectuses, statements of additional information, annual and semiannual reports and proxy statements, other related documents, and all amendments or supplements to any of the above documents that relate to the fund promptly after the filing of such document with the SEC or other regulatory authorities. The investment

provider agrees to provide to the Contractor, in electronic format, performance updates and portfolio updates for the fund within 10 business days after the end of each calendar quarter.

4. Advertising: Advertising and literature with respect to the fund prepared by the Contractor for use in marketing shares of the fund to the Plan shall be submitted to the investment provider for review and approval before such material is used with the Plan. The investment provider shall advise the Contractor in writing within three (3) Business Days of receipt of such materials of its approval or disapproval of such materials.
5. Expense Reimbursement: The investment provider shall make available for reimbursement certain out-of-pocket expenses the Contractor incurs in connection with providing shareholder services to the Plan. These expenses include actual postage paid by the Contractor in connection with mailing updated prospectuses, supplements and financial reports to participants, and all costs incurred by the Contractor associated with proxies for the fund, including proxy preparation, group authorization letters, programming for tabulation and necessary materials (including postage).
6. Excessive Trading: The investment provider shall use its best efforts and shall reasonably cooperate with the Contractor to generally prevent any market timing and frequent trading activity under the Plan. See the ING "Excessive Trading" Policy, Schedule F.

CITY OF COMMERCE 457 DEFERRED COMPENSATION PLAN
Schedule F: ING Excessive Trading Policy

The ING family of insurance companies (“ING”), as providers of multi-fund variable insurance and retirement products, has adopted this Excessive Trading Policy to respond to the demands of the various fund families which make their funds available through our variable insurance and retirement products to restrict excessive fund trading activity and to ensure compliance with Section 22c-2 of the Investment Company Act of 1940, as amended. ING’s current definition of Excessive Trading and our policy with respect to such trading activity is outlined below.

1. ING actively monitors fund transfer and reallocation activity within its variable insurance and retirement products to identify Excessive Trading.

ING currently defines Excessive Trading as:

- a. More than one purchase and sale of the same fund (including money market funds) within a 60 calendar day period (hereinafter, a purchase and sale of the same fund is referred to as a “round-trip”). This means two or more round-trips involving the same fund within a 60 calendar day period would meet ING’s definition of Excessive Trading; or
- b. Six round-trips within a twelve month period.

The following transactions are excluded when determining whether trading activity is excessive:

- a. Purchases or sales of shares related to non-fund transfers (for example, new purchase payments, withdrawals and loans);
 - b. Transfers associated with scheduled dollar cost averaging, scheduled rebalancing or scheduled asset allocation programs;
 - c. Purchases and sales of fund shares in the amount of \$5,000 or less;
 - d. Purchases and sales of funds that affirmatively permit short-term trading in their fund shares, and movement between such funds and a money market fund; and
 - e. Transactions initiated by a member of the ING family of insurance companies.
2. If ING determines that an individual has made a purchase of a fund within 60 days of a prior round-trip involving the same fund, ING will send them a letter warning that another sale of that same fund within 60 days of the beginning of the prior round-trip will be deemed to be Excessive Trading and result in a six month suspension of their ability to initiate fund transfers or reallocations through the Internet, facsimile, Voice Response Unit (VRU), telephone calls to the ING Customer Service Center, or other electronic trading medium that ING may make available from time to time (“Electronic Trading Privileges”). Likewise, if ING determines that an individual has made five round-trips within a twelve month period, ING will send them a letter warning that another purchase and sale of that same fund within twelve months of the initial purchase in the first round-trip in the prior twelve month period will be deemed to be Excessive Trading and result in a six month suspension of their Electronic Trading Privileges. According to the needs of the various business units, a copy of the warning letters may also be sent, as applicable, to the person(s) or entity authorized to initiate

fund transfers or reallocations, the agent/registered representative or investment adviser for that individual. A copy of the warning letters and details of the individual's trading activity may also be sent to the fund whose shares were involved in the trading activity.

3. If ING determines that an individual has used one or more of its products to engage in Excessive Trading, ING will send a second letter to the individual. This letter will state that the individual's Electronic Trading Privileges have been suspended for a period of six months. Consequently, all fund transfers or reallocations, not just those which involve the fund whose shares were involved in the Excessive Trading activity, will then have to be initiated by providing written instructions to ING via regular U.S. mail. During the six month suspension period, electronic "inquiry only" privileges will be permitted where and when possible. A copy of the letter restricting future transfer and reallocation activity to regular U.S. mail and details of the individual's trading activity may also be sent to the fund whose shares were involved in the Excessive Trading activity.
4. Following the six month suspension period during which no additional Excessive Trading is identified, Electronic Trading Privileges may again be restored. ING will continue to monitor the fund transfer and reallocation activity, and any future Excessive Trading will result in an indefinite suspension of the Electronic Trading Privileges. Excessive Trading activity during the six month suspension period will also result in an indefinite suspension of the Electronic Trading Privileges.
5. ING reserves the right to limit fund trading or reallocation privileges with respect to any individual, with or without prior notice, if ING determines that the individual's trading activity is disruptive, regardless of whether the individual's trading activity falls within the definition of Excessive Trading set forth above. Also, ING's failure to send or an individual's failure to receive any warning letter or other notice contemplated under this Policy will not prevent ING from suspending that individual's Electronic Trading Privileges or taking any other action provided for in this Policy.
6. Each fund available through ING's variable insurance and retirement products, either by prospectus or stated policy, has adopted or may adopt its own excessive/frequent trading policy. ING reserves the right, without prior notice, to implement restrictions and/or block future purchases of a fund by an individual who the fund has identified as violating its excessive/frequent trading policy. All such restrictions and/or blocking of future fund purchases will be done in accordance with the directions ING receives from the fund.

CITY OF COMMERCE 457 DEFERRED COMPENSATION PLAN
Schedule G: Investment Advisory Access Agreement

ING LIFE INSURANCE AND ANNUITY COMPANY PLAN SPONSOR
INVESTMENT ADVISORY ACCESS AGREEMENT

This Agreement ("Agreement") effective March 15, 2012, is between ING Life Insurance and Annuity Company ("ILIAC") and City of Commerce ("Sponsor"), the Sponsor of the City of Commerce 457 Deferred Compensation Plan (the "Plan"), ING Plan/Contract No. VFZ930, located at 2535 Commerce Way, Commerce, CA 90040.

BACKGROUND

- A. Sponsor maintains the Plan, and has entered into a separate written agreement with ILIAC to provide investment options, recordkeeping and/or other administrative service to the Plan (the "Plan Services Agreement"); and
- B. Morningstar Associates, LLC ("Morningstar") has developed proprietary, independent investment advice ("Managed by You") and managed account ("Managed by Morningstar") services, provided over the Internet through the Morningstar Retirement ManagerSM platform ("Retirement Manager"); and
- C. ILIAC has entered into agreements with Morningstar to allow ILIAC to provide access to Retirement Manager services for participants of plans in which ILIAC acts as investment product provider and/or recordkeeper (the "Morningstar Agreements"); and
- D. Sponsor desires to make available Retirement Manager services to participants in connection with the Plan; and
- E. Sponsor and Morningstar have entered into a separate agreement, the Plan Sponsor Investment Advisory Services Agreement, to provide Retirement Manager services to the Plan (the "Advisory Services Agreement"); and
- F. Pursuant to the Advisory Services Agreement, Morningstar will enter into an agreement (the "Participant Advisory Services Agreement") with Plan participants to provide them with investment advisory services through Retirement Manager.

Sponsor and ILIAC, in consideration of their mutual promises and covenants contained herein, and of other good consideration duly received, hereby agree as follows:

1. ILIAC SERVICES

1.1 Set-up and Maintenance

- (a) Set up services with Morningstar.
- (b) Maintenance services: refresh Plan business rules, participant information and profiles with Morningstar.
- (c) Standard reporting on participant activity.
- (d) Sponsor and participant customer service support services.

- 1.2 Retirement Manager Services Access.** ILIAC hereby agrees to facilitate Sponsor's participants' access to Retirement Manager services provided by Morningstar. Only participants for whom ILIAC maintains account records shall be entitled to access Retirement Manager.

- 1.3 Limited Duties.** ILIAC's duties under this Agreement are limited to facilitating access to Retirement Manager services and providing related administration and recordkeeping services. Sponsor agrees and acknowledges that ILIAC is not providing any investment advice under this Agreement, and that ILIAC is not responsible for any losses or claims arising or alleged to have arisen from the provision of investment advice by Morningstar.

2. SPONSOR RESPONSIBILITIES

- 2.1 Provision of Data.** Sponsor agrees to provide accurate and timely data and understands that ILIAC will transmit such data to Morningstar. ILIAC shall not have any liability for Sponsor's failure to timely inform ILIAC or Morningstar, as applicable, of any changes to the Plan or participant data. Specifically, Sponsor shall:
- (a) Provide Plan information and rules to ILIAC and Morningstar that are necessary for set-up and promptly update this information if changes are made; and
 - (b) Promptly provide to ILIAC any changes to Plan investment options or transaction rules.
- 2.2 Independent Decision.** Sponsor has made its own determination to enter into this Agreement and to utilize Retirement Manager services from Morningstar. Sponsor is solely responsible choosing to make Retirement Manager services available to its participants and has not relied upon ILIAC or any of its affiliates or its or their employees or representatives in making that decision.
- 2.3 Provision of Data to Morningstar.** In connection with making Retirement Manager available to participants, Sponsor acknowledges and agrees that:
- (a) ILIAC will provide Plan and participant data to Morningstar for its use in providing Retirement Manager services; and
 - (b) Morningstar is not required to continue to provide Retirement Manager if ILIAC terminates its relationship with Morningstar.
- 2.4 Sponsor Representations and Acknowledgments.** In connection with making Retirement Manager available to participants, Sponsor hereby represents that it has entered into an Advisory Services Agreement directly with Morningstar, pursuant to which Sponsor acknowledged and, where necessary, consented to the following:
- (a) The data and advice are produced solely on the Plan and participant data provided to Morningstar by ILIAC and Morningstar is not responsible for any errors or omissions or incomplete data provided by ILIAC.
 - (b) Retirement Manager services and the analysis, opinions and other information produced by Morningstar may only be used for purposes of assisting participants in making their retirement planning decisions and not for any other purposes.
 - (c) Morningstar is not required to continue to provide Retirement Manager services if the Plan Sponsor terminates its relationship with ILIAC.
 - (d) Morningstar will be a fiduciary to the Plan, as defined under ERISA (where applicable), with respect to the provision of investment advice and discretionary asset management under the Advisory Services Agreement and Participant Advisory Services Agreements, but Morningstar is not thereby a fiduciary to the Plan for any other purposes. In addition, Morningstar has no responsibility for any benefits due or claimed to be due under the Plan, for administering the Plan or determining whether the Plan is operated or administered in accordance with ERISA or other applicable laws, including (but not by way of limitation) any requirements governing delivery of information to participants under ERISA, regulations and interpretations under ERISA, or under any other applicable law or regulation.
 - (e) Morningstar uses commercially reasonable efforts to ensure that data, analysis, opinion or other information provided within Retirement Manager is correct. Data and other information are gathered from sources that Morningstar believes to be reliable. Timeliness of data is dependent on Morningstar schedule for collecting the data and cooperation of the sources, which is outside Morningstar's control. Morningstar does

not represent or warrant the accuracy, correctness, completeness, or timeliness of Retirement Manager.

- (f) Use of Retirement Manager is contingent on the Plan's investment options satisfying Morningstar's compatibility requirements. A plan has a sufficient set of funds if all of the following conditions are met:
1. There is at least one Large Blend fund **OR** there is at least one Large Value fund **AND** at least one Large Growth fund;
AND
 2. There is at least one Stable Value/Fixed fund **OR** there is at least one Cash fund **AND** at least one Bond fund.
- Only funds included in Morningstar's database are covered by the Morningstar Retirement Manager service.
- (g) If the Plan Sponsor wishes to make a change to the investment options available for the Managed by Morningstar Service, it shall provide ILIAC with forty five (45) days' prior written notice thereof. If custom data collection is required, an additional ten (10) weeks prior notice is required to provide data collection and maintenance of such funds.

3. FEES

There is no fee due from the Plan, the Plan Sponsor or Plan participants to either ING or Morningstar in connection with the use of the Managed by You service. For the Managed by Morningstar service, the fee schedule set forth below shall apply. ILIAC is hereby authorized to deduct fees from participant accounts in accordance with the following schedule:

Basis points payable to Morningstar:	Administrative and recordkeeping fee payable to ILIAC:
28 bp per annum	28 bp per annum

The fees will automatically be deducted from participant accounts on a periodic basis. The fees paid to Morningstar Associates and ILIAC are reviewed annually on or about the plan's contract anniversary and are subject to change (up or down) based on the overall level of assets in the plan at that time. While the fee paid to Morningstar is subject to change up or down, the administrative fee payable to ILIAC may be lowered, but will not be raised.

The above fees are based on plan participant balances at the end of each fee period (not including outstanding loan if available) and minus any balance in a self-directed brokerage account.

4. TERM AND TERMINATION

- 4.1 Term.** Except as otherwise provided herein, the term of this Agreement shall begin on the effective date and continue for an initial term of one (1) year unless terminated as forth in this Section. Upon expiration of the initial term, the Agreement will automatically renew for successive one (1) year terms unless otherwise terminated by either party pursuant to this Section, or unless one party notifies the other party in writing of their intent not to renew this Agreement within 90 days of the end of a term.
- 4.2 Breach.** If either party materially breaches in the performance of any provision of this Agreement or the Plan Service Agreement, or is otherwise in noncompliance with any provision of this Agreement, and such breach is not cured within thirty (30) days of written notice of breach to the breaching party, the party giving such notice may terminate this Agreement by providing the breaching party with written notice of such termination.
- 4.3 Automatic Termination.** The Agreement will automatically terminate upon written notice if (a) either party files a petition in bankruptcy, is adjudged bankrupt, or ceases to do business in the ordinary course; (b) Morningstar's registration as an investment adviser terminates, or is terminated, suspended, withdrawn or restricted so as to substantially impede performance of Retirement Manager hereunder; (c) this Agreement is assigned in violation of Section 7.7 or

(d) the Agreement between ILIAC and Morningstar expires or is terminated for any reason.

4.4 Termination of Morningstar Agreement or Plan Services Agreement. In addition to any other termination, this Agreement will terminate automatically upon the termination of the Morningstar Agreement between ILIAC and Morningstar or the Plan Services Agreement between ILIAC and Sponsor, or the full withdrawal/case surrender of all amounts invested with ING under the Plan.

4.5 Effect of Termination. Upon termination of this Agreement for any reason, Sponsor and participants shall no longer have to access to the Retirement Manager services. The Plan and Plan Participants' obligations to pay any fees accruing under this agreement before the effective date of termination, if applicable, will survive termination of this Agreement. Sections 5 and 6 hereof also shall survive the termination of this Agreement.

5. LIMITATION OF LIABILITY

SPONSOR WILL NOT BE LIABLE TO ILIAC FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS INCURRED BY ILIAC OR ANY THIRD PARTY, ARISING FROM OR RELATED TO THIS AGREEMENT OR RETIREMENT MANAGER, HOWEVER CAUSED AND WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER THEORY OF LIABILITY. ILIAC'S LIABILITY WILL IN NO EVENT EXCEED THE AMOUNT OF FEES PAID BY SPONSOR UNDER THIS AGREEMENT. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS IS A REASONABLE ALLOCATION OF RISK AND THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. FEDERAL AND STATE SECURITIES LAWS IMPOSE LIABILITIES UNDER CERTAIN CIRCUMSTANCES ON PERSONS WHO ACT IN GOOD FAITH, AND THEREFORE NOTHING IN THIS AGREEMENT ACTS TO WAIVE OR LIMIT ANY OF THESE RIGHTS.

6. INDEMNIFICATION

(a) ILIAC Indemnification. ILIAC agrees to hold harmless and indemnify Sponsor, Sponsor's agents, officers and employees when acting on Sponsor's behalf, from every claim and demand to the proportionate extent that it results from ILIAC's negligence or wrongdoing or the negligence or wrongdoing of its representatives acting in that capacity in connection with this Agreement.

(b) Sponsor Indemnification. Sponsor agrees to hold harmless and indemnify ILIAC, ILIAC's agents, officers and employees when acting on ILIAC's behalf, from every claim and demand to the proportionate extent that it results from Sponsor's negligence or wrongdoing or the negligence or wrongdoing of its representatives acting in that capacity in connection with this Agreement.

7. MISCELLANEOUS

7.1 Disclaimer. Sponsor agrees that ILIAC makes no warranties or guaranties of any kind regarding Retirement Manager, including access to Morningstar's web site. Sponsor shall not make any warranties or guarantees to participants with respect to Retirement Manager.

7.2 Notice. Each party will promptly provide the other with notice and copy of any litigation of which it becomes aware of involving the terms or Retirement Manager under this Agreement and/or any other notices or demands to be given under this Agreement. All such notices, demands or other communications hereunder shall be in writing and duly provided if sent certified mail, return receipt requested, addressed to the party to be notified or upon whom a demand is being made, at the addresses set forth in this Agreement or such other place as either party shall from time to time designate in writing. The date of service of a notice or demand shall be the receipt date on any certified mail receipt.

Notices to ILIAC shall be sent to:

ING Life Insurance and Annuity Company
One Orange Way
Attention Legal Department - C1S
Windsor, CT 06095

Notices to Sponsor shall be sent to:

Vilko Domic
City of Commerce/Director of Finance
2535 Commerce Way
Commerce, CA 90040

- 7.3 Governing Law; Jurisdiction.** This Agreement shall be governed by the laws of the State of Connecticut, without regard to its conflicts of law provisions. The parties agree that any and all actions relating to this Agreement will be brought exclusively in the state and/or federal courts located in Hartford County, Connecticut, and that each party is subject to the personal jurisdiction of those courts.
- 7.4 Force Majeure.** Neither party shall be liable to the other for any delays or damage or any failure to act due, occasioned, or caused by reason of restrictions imposed by any government or government agency, acts of God, strikes, labor disputes, action of the elements, or causes beyond the control of the party affected thereby.
- 7.5 Severability.** If any provision of this Agreement shall be found to be illegal or invalid for any reason, the illegality of invalidity shall not affect the remaining parts of this Agreement and the remainder of the Agreement shall be construed and enforced as if said illegal or invalid provision had never been inserted herein. No party shall be required to perform any services under this Agreement that would violate any law, regulation or ruling.
- 7.6 Waiver; Amendment.** A waiver or amendment of any provision of this Agreement or of a party's rights or remedies under this Agreement must be in writing and signed by an authorized representative of both parties to be effective. Any waiver of the terms of this Agreement shall be effective only in the specific instance and for the specific purpose.
- 7.7 Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other party; provided that ILIAC may assign the agreement to an affiliate. Any assignment or attempted assignment of this Agreement in violation of this section is void. This Agreement shall be binding upon and inure to the benefit of the parties' permitted successors and assigns.

WHEREFORE, the parties have signed below to indicate their acceptance of the terms and conditions of this Agreement.

ING Life Insurance and Annuity Company

Signature: Molly A. Garrett

Name: Molly Garrett

Title: Vice President, Administration

Date: _____

CITY OF COMMERCE

Signature: Lilia R. Leon

Name: Lilia R. Leon

Title: Mayor

Date: March 28, 2012

ATTEST:

Linda Kay Olivieri
Linda Kay Olivieri, MMC
City Clerk

APPROVED AS TO FORM:

Eduardo Olivo
Eduardo Olivo
City Attorney

CITY OF COMMERCE 457 DEFERRED COMPENSATION PLAN
Appendix 1 to Schedule G

PLAN SPONSOR INVESTMENT ADVISORY SERVICES AGREEMENT

This investment advisory services agreement and the exhibit(s) hereto (the "Agreement") is entered into as of **March 15, 2012** ("Effective Date") by and between Morningstar Associates, LLC, a Delaware limited liability company and an investment adviser registered under the Investment Advisers Act of 1940, with its principal place of business at 225 West Washington Street, Chicago, Illinois 60602 ("Morningstar"), and **City of Commerce**, ("Plan Sponsor") with its principal place of business at **2535 Commerce Way, Commerce, CA 90040**.

WHEREAS Plan Sponsor maintains the **City of Commerce 457(b) Deferred Compensation Plan** (the "Plan"), a defined contribution plan that is intended to comply with certain provisions of the Internal Revenue Code; and

WHEREAS Plan Sponsor has entered into a separate written agreement with ING Life Insurance and Annuity Company and/or an affiliate (the "Service Provider") to provide daily valuation, recordkeeping and other administrative services to the Plan, including access to Morningstar's investment advisory services, if Plan Sponsor so elects; and

WHEREAS Plan Sponsor wishes to have Morningstar provide certain investment advisory services to and for the benefit of the Participants in Plan Sponsor's Plan, and Morningstar is willing to provide Plan Sponsor with such investment advisory services, subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, Morningstar and Plan Sponsor hereby agree as follows:

1. **DEFINITIONS** The following definitions shall apply to this Agreement and to any exhibit(s) attached hereto.

- **Advice Service** shall mean Fund specific non-discretionary investment advisory service provided to a Participant by Morningstar.
- **Advisory Services** shall mean individually or collectively the Advice Service and the Managed Accounts Service, provided, however, that the Plan and Participants shall only receive those Advisory Services specifically selected by Plan Sponsor pursuant to this Agreement. The Advisory Services specifically exclude analysis of or advice regarding the potential local, state or federal tax consequences resulting from any investment advice or recommendation provided by Morningstar.
- **Initial Delivery Date** shall mean that date on which the Advisory Services are made available to the Plan and its Participants pursuant to the terms of this Agreement.
- **Managed Accounts Service** shall mean Fund specific discretionary investment advisory service provided to a Participant by Morningstar.
- **Morningstar Services** shall mean the services to be performed or delivered by Morningstar along with the Advisory Services, including the various modules described in this

Agreement. Morningstar Services shall not include Advice Service or Managed Accounts Service.

- **Participant** shall mean an individual who is enrolled or is eligible to enroll in any Plan offering the Advisory Services. The parties acknowledge and agree that Morningstar reserves the right to exclude any Participant whose current age is greater than his or her retirement age.

2. MORNINGSTAR OBLIGATIONS

a. Morningstar shall:

- (i) Provide the Advisory Services and the Morningstar Services to the Plan and its Participants pursuant to the terms and provisions of this Agreement;
- (ii) Act as a fiduciary to the Plan only to the extent of its provision of Advice Service or Managed Accounts Service to Participants, and not as a plan administrator or in any other capacity; and
- (iii) Retain final control and authority over the Advisory Services and Morningstar Services provided to the Participants.

b. No Liability for Plan Benefits. In providing the Advisory Services, Morningstar shall not be liable for any benefits due, or claimed to be due, under the Plan.

c. Standard of Care. Morningstar will provide the Advisory Services at all times in good faith, and will use reasonable care, consistent with industry practices of similarly situated advisors, in providing the Advisory Services. Morningstar does not guarantee that the Advisory Services will be delivered without interruption, timely, error-free, or secure. Errors may occur in the software-based Advisory Services as a result of programming errors, database errors, or other causes. Morningstar will provide the Advisory Services with that degree of prudence, diligence, care, and skill which a prudent person rendering similar services as an investment advisor would exercise under similar circumstances. The provisions of this Agreement shall not be interpreted to imply any other obligation on the part of Morningstar to observe any other standard of care. Under certain circumstances, the federal and state securities laws impose liabilities on persons who act in good faith and nothing contained in this Agreement should be construed as a waiver or limitation of your rights under such laws.

If Morningstar discovers any errors in providing the Advisory Services during the term of this Agreement, Morningstar shall investigate and correct such errors in a timely fashion. Morningstar shall promptly notify Plan Sponsor and Service Provider of such errors and the outcome of the investigation and action taken by Morningstar in accordance with our corporate Incident Management and Communications Policies.

3. PLAN SPONSOR OBLIGATIONS

a. Appointment of Morningstar as Investment Manager: Plan Sponsor, in its capacity as named fiduciary of the Plan, hereby appoints Morningstar as an "investment manager" with respect to any Participant who has an account within the Plan, and has elected to enroll in the Managed Account

Service. Morningstar shall provide Managed Account Services to such Participants by taking into account the Participant's age and the normal retirement age under the Plan, but shall not be required to take into account risk tolerances, other investments held outside the Plan, or other individual preferences of such Participant, unless such information is provided by the Participant.

b. Provision of Data Plan Sponsor agrees to provide or cause Service Provider to provide accurate and timely data and understands that Morningstar will rely on such data to provide the Advisory Services. Morningstar shall not have any liability for Service Provider's or Plan Sponsor's failure to timely inform Morningstar or Service Provider, as applicable, of any changes to the Plan or Participant data. Therefore, Plan Sponsor shall or shall cause Service Provider to:

- (i) Provide all necessary Participant census data and updates as requested by Morningstar or Service Provider in order for Morningstar to provide the services described in this Agreement;
- (ii) Provide Plan information and rules to Service Provider that are necessary for set-up services and promptly notify Service Provider with any updates to this information if changes are made; and
- (iii) Promptly provide to Service Provider any changes to Plan investment options or transaction rules.

c. Selection of Plan Investment Options Plan Sponsor shall:

- (i) Select investment options offered under the Plan;
- (ii) Monitor and periodically review Plan investment options; and
- (iii) Determine if changes to Plan investment options are necessary.

d. Cooperation Plan Sponsor shall fully cooperate with Morningstar in Morningstar's provision of the Advisory Services and Morningstar Services, in such manner as Morningstar may from time to time reasonably request. Such cooperation shall include accurately communicating to Participants the scope of the Advisory Services and Morningstar Services, and, in certain instances, the Participants' ultimate responsibility for investment decisions.

e. Disclosure to Participants In addition to any disclosure required of Plan Sponsor in the applicable exhibit(s), Plan Sponsor shall disclose, or will cause Service Provider to disclose, to Participants in the Plan (a) the amount of any charges to the Participant's Plan account, (b) whether or not such charges will be imposed if the Participant does not use the Advisory Services, and (c) that any such charges may be allocated among various service providers to the Plan, including but not limited to Morningstar, to compensate them for the services they provide to the Plan. Upon Morningstar's request, Plan Sponsor shall provide Morningstar with copies of such disclosure, or shall direct Service Provider to provide such copies.

f. Errors Plan Sponsor shall promptly notify Service Provider of any errors, incompleteness or untimeliness in any of the data, analyses, opinions or other information contained in the Advisory Services or the Morningstar Services about which Plan Sponsor becomes aware.

g. Fund Universe The initial universe of funds for the Plan (the "Fund Universe") must be provided (or have previously been provided) to Morningstar by the Service Provider, no later than twelve (12) weeks prior to the Initial Delivery Date. Plan Sponsor agrees and acknowledges that any funds not included in the Fund Universe shall not be included in the recommendation given by Morningstar, and that any funds added to the Fund Universe after such date may not be included within the Morningstar Services on the Initial Delivery Date.

If, after the Initial Delivery Date, Plan Sponsor intends to add funds to the Fund Universe or make a change to the investment options available for the Managed Accounts Service, it shall cause Service Provider to give Morningstar fourteen (14) days' prior written notice thereof, which notice shall include the name of the fund, the fund type (i.e. open-end fund or custom fund) and the fund identifier, such as the ticker symbol, cusip, or external fund identification number, as may be applicable. If custom data collection is required, Morningstar requires twelve (12) weeks prior notice.

A plan has a sufficient set of funds if all of the following conditions are met:

1. There is at least one Large Blend fund **OR** there is at least one Large Value fund **AND** at least one Large Growth fund;

AND

2. There is at least one Stable Value/Fixed fund **OR** there is at least one Cash fund **AND** at least one Bond fund.

Plan Sponsor acknowledges that all funds within a Plan's Fund Universe must be covered in Morningstar Inc.'s database in order for such Fund to be included in the Advisory Services. The Plan Sponsor acknowledges that the Service Provider may require additional time to complete the Fund Set Up.

h. Proxy Voting Plan Sponsor represents that with respect to proxies attributable to securities held in Plan accounts, the Plan provides that the Plan Sponsor, the Plan trustee or the Participants shall be responsible for voting such proxies. Plan Sponsor agrees that Morningstar shall have no responsibility or liability for such proxy voting.

4. USE AND PROMOTION

a. The Advisory Services shall be made available only to retirement plans duly established under the laws of the United States of America and to Participants that are citizens and/or legal residents of United States of America or its territories.

b. The Advisory Services, or any portion thereof, may be used by Plan Sponsor and its Participants only for effecting retirement planning for Participants that elect to receive the Advisory Services. Any other use by the Plan Sponsor, including commercial use for the benefit of another person, is prohibited under this Agreement and shall be a material breach of this Agreement. Plan Sponsor shall take all commercially reasonable actions to ensure that there is no unauthorized use by its employees, agents, independent contractors, vendors or other third parties. Plan Sponsor shall immediately notify Morningstar of any actual or potential unauthorized use of which Plan Sponsor becomes aware. Plan Sponsor agrees to cooperate and provide reasonable assistance to Morningstar in connection with preventing and stopping any unauthorized use, of the data,

analyses, opinions and other information contained in the Advisory Services or the Morningstar Services.

c. Plan Sponsor may not mention or refer to Morningstar, the Advisory Services, the Morningstar Services, any of Morningstar's Intellectual Property or any of Morningstar's web sites in any public announcements, advertising, marketing or promotional materials (collectively, the "Promotion Material") without Morningstar's prior written approval, except if such material was provided to Plan Sponsor by Morningstar or the Service Provider. This provision shall not be construed to prohibit Plan Sponsor from referring to Morningstar or the Advisory Services in any announcements or correspondence made directly to Participants.

5. CONFIDENTIALITY The parties acknowledge that in the course of their dealings hereunder, each may acquire information about the other, its business activities and operations, its technical information and its trade secrets, all of which are proprietary and confidential (the "Confidential Information"). Each party hereby agrees that: (a) all Confidential Information (including, but not limited to the terms of this Agreement) remains the exclusive property of the disclosing party; (b) it shall maintain, and shall use prudent methods to cause its employees and agents to maintain (and not to otherwise copy, publish, disclose or use other than as contemplated under this Agreement), the confidentiality and secrecy of the disclosing party's Confidential Information; and (c) it shall return or destroy all copies of the disclosing party's Confidential Information upon request of the disclosing party. Notwithstanding the foregoing, Confidential Information shall not include any information to the extent it: (i) is or becomes a part of the public domain through no act or omission on the part of the receiving party; (ii) is disclosed to third parties by the disclosing party without restriction on such third parties; (iii) is in the receiving party's possession, without actual or constructive knowledge of an obligation of confidentiality with respect thereto, at or prior to the time of disclosure under this Agreement; (iv) is independently developed by the receiving party without reference to the disclosing party's Confidential Information; (v) is released from confidential treatment by written consent of the disclosing party; or (vi) is required to be disclosed by court of competent jurisdiction; provided the receiving party gives the disclosing party prior written notice of such proposed disclosure sufficient to enable the disclosing party to obtain an appropriate protective order, if it so desires.

6. OWNERSHIP Notwithstanding the rights granted under this Agreement, Plan Sponsor acknowledges and agrees that: (i) Morningstar retains sole and exclusive ownership over and all data, analyses, opinions, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information or other information contained in the Advisory Services and the Morningstar Services ("Intellectual Property"), except the data referred to in (ii) below, and that the Advisory Services and the Morningstar Services and all data, analyses, opinions and other information contained in it include valuable copyrighted and proprietary material of Morningstar; (ii) Morningstar, Inc. retains sole and exclusive ownership rights in certain data contained within each the Morningstar Services and the Advisory Services (the "Morningstar Data") and that the Morningstar Data contain the valuable copyrighted and proprietary material of Morningstar, Inc. (iii) Morningstar or Morningstar, Inc, as applicable, retains sole and exclusive ownership over the Intellectual Property; (iv) the Morningstar Services and Intellectual Property are being made available to the Plan Sponsor for the express purposes and use set forth herein and nothing contained herein transfers to Plan Sponsor any ownership interest in the Intellectual Property or the Morningstar Services and any software, pictures, images, materials, changes, materials, or other works of authorship provided contained therein or Intellectual Property; and (v) Plan Sponsor shall not have any rights in and to the Morningstar Services and Intellectual Property,

except as specifically granted by this Agreement. Plan Sponsor has no right to make derivative works of the Morningstar Services, the Morningstar Data or the Intellectual Property in any form for use in any medium currently in existence or under development, now or in the future.

Plan Sponsor shall not, at any time during or after the term of this Agreement: (i) contest or assist any third party in contesting the validity or enforceability of Morningstar's ownership of all right, title and interest in and to the Morningstar Services and all corresponding intellectual property rights, or in Morningstar, Inc.'s ownership of all right, title and interest in and to the Morningstar Data and all corresponding intellectual property rights thereto; (ii) use the Intellectual Property, except as specifically authorized by this Agreement; (iii) use any trademark, service mark, trade name or corporate name that is a colorable imitation or confusingly similar to any of the Intellectual Property, except as expressly authorized by Morningstar in writing in advance; or (iv) contest or assist any third party in contesting the validity or enforceability of the Intellectual Property or the ownership of all right, title and interest in and to the Intellectual Property. To the extent Plan Sponsor is authorized to use any of the Intellectual Property, such use shall inure to the benefit of Morningstar or Morningstar, Inc., as appropriate. Plan Sponsor shall, at all times during or after the term of this Agreement, execute any documents and take such other actions reasonably requested by Morningstar to confirm or protect Morningstar's and Morningstar, Inc.'s right, title and interest in and to the Morningstar Data or the Intellectual Property, as applicable, and any corresponding intellectual property rights.

7. TERM AND TERMINATION

a. Term The term of this Agreement ("Initial Term") shall begin on the Effective Date and shall continue for one (1) year from the Initial Delivery Date unless the term ends earlier as otherwise provided for under this Section 7. This Agreement shall automatically renew for successive periods of one (1) year each ("Renewal Term") after the Initial Term and each Renewal Term unless either party provides written notice of non-renewal to the other party no later than ninety (90) days prior to the expiration of the Initial Term or any Renewal Term, as the case may be.

b. Termination Upon Default or Insolvency If either party defaults in the performance of, or is in non-compliance with, any provision contained in this Agreement (including, but not limited to, any uncured insolvency or the like), and such default is not cured within thirty (30) days after written notice thereof is given to the defaulting party, the party giving such notice may then give further written notice which shall terminate this Agreement as of the date specified in such notice.

c. Termination upon Termination of Agreement between Morningstar and Service Provider or Plan Sponsor and Service Provider This Agreement will terminate automatically upon (i) the termination of the agreement between Morningstar and the Service Provider under which Morningstar provides the Service Provider with certain retirement services, including, but not limited to, any of the Advisory Services or Morningstar Services described herein, or (ii) the termination of the agreement between Plan Sponsor and Service Provider under which Service Provider provides certain recordkeeping and administrative services to the Plan.

d. Effect of Termination Upon expiration or termination of this Agreement for any reason, all rights granted to Plan Sponsor hereunder shall terminate immediately and all Participants shall no longer have access to the Advisory Services or the Morningstar Services. Expiration or termination of this Agreement for any reason shall not affect Plan Sponsor's or their Participants'

obligation to pay any and all fees and other amounts due and payable or relieve Plan Sponsor of any liability for breach of this Agreement.

8. FEES AND BILLING

a. Fees During the term of this Agreement (including any Renewal Term), the Participants and/or the Plan Sponsor, as the case may be, shall pay the applicable fees that are set forth on Exhibit A attached hereto and made part hereof.

b. Collection Authorization and Payment Terms The parties hereby agree that Service Provider shall deduct all applicable fees from the Participant accounts and is hereby authorized to remit such fees to Morningstar. The parties agree and acknowledge that Service Provider shall deduct and remit the applicable Managed Accounts Fees in periodic installments in arrears.

9. REPRESENTATIONS AND WARRANTIES

a. Representations of Morningstar Morningstar represents and warrants to Plan Sponsor that it is an investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 and, to Morningstar's knowledge (a) it has all rights in and to all the Intellectual Property necessary to market, distribute the Advisory Services and the Morningstar Services in accordance with the terms of this Agreement; (b) this Agreement is binding on Morningstar; and (c) Morningstar's entry into this Agreement does not violate any prior obligation or agreement of Morningstar.

Morningstar represents and warrants to Plan Sponsor that the Advisory Services will (a) apply generally accepted investment theories; (b) be diversified to minimize risk of large losses; (c) be designed to provide varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income based on participant's age, retirement date or life expectancy; and (d) change the asset allocation and associated risk levels over time to become more conservative with increasing age.

b. Representations of Plan Sponsor Plan Sponsor represents and warrants to Morningstar that (a) Plan Sponsor has the authority and power to enter into and comply with its obligations under this Agreement and the rights and licenses necessary to enter into and perform its obligations under this Agreement; (b) this Agreement is binding on Plan Sponsor; (c) Plan Sponsor's entry into this Agreement does not violate any prior obligation or agreement of Plan Sponsor; (d) the individual signing this Agreement and any exhibit(s) thereto on behalf of Plan Sponsor is a named fiduciary of Plan or is authorized to sign on behalf of the Plan Sponsor in its capacity as a named fiduciary of Plan and is authorized to sign on behalf of the Plan Sponsor; (e) consistent with the terms and conditions contained in all governing documents of Plan Sponsor's Plan with respect to the voting of proxies, Plan Sponsor, the Plan Trustee or the Participants will vote proxies for securities held in any investment account for which Morningstar may provide advice hereunder, and (f) the instruments under which the Plan is maintained authorize the use of Plan assets to pay any fees for which the Participant is responsible as provided in this Agreement.

10. DISCLAIMERS

a. Data Disclaimer Morningstar will use commercially reasonable efforts to ensure that the data, analysis, opinion, and other information contained in the Advisory Services or the

Morningstar Services are correct. Although gathered from sources believed to be reliable, Plan Sponsor acknowledges that Morningstar cannot guarantee the accuracy of the data or information used to provide the Services. The completeness and timeliness of all data and information used to provide the Services is dependent upon the sources of such data and information, which are outside of Morningstar's control.

b. Disclaimer of Warranties EXCEPT AS EXPRESSLY SET FORTH IN SECTION 9 ABOVE, MORNINGSTAR PROVIDES NO WARRANTIES, EITHER EXPRESS, IMPLIED OR OTHERWISE WITH RESPECT TO THE SERVICES DELIVERED PURSUANT TO THIS AGREEMENT, OR THE SOFTWARE COMPRISING THE SERVICES, AND TO THE EXTENT PERMITTED BY LAW, MORNINGSTAR DISCLAIMS THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY WITH RESPECT TO SUCH SERVICES.

c. Acknowledgement of Limitations on Recommendations Plan Sponsor acknowledges and agrees that in formulating recommendations through the Advisory Services, Morningstar will only consider investment options offered by the Plan Sponsor's Plan. As a result, the Advisory Services may not be comprehensive because it may not recommend use of investment options that otherwise might be appropriate investments but that are not offered through Plan Sponsor's Plan.

11. LIMITATION OF LIABILITY The following Limitations of Liability shall be applicable:

a. Limitation of Damages EXCEPT AS OTHERWISE PROVIDED BY LAW, AND EXCEPT FOR DAMAGES ARISING AS A RESULT OF A PARTY'S WILLFUL MISCONDUCT OR BREACH OF FIDUCIARY DUTY, EACH PARTY'S AGGREGATE LIABILITY FOR ANY DIRECT DAMAGES ARISING UNDER OR IN ANY WAY RELATING TO THIS AGREEMENT, THE ADVISORY SERVICES, AND MORNINGSTAR SERVICES PROVIDED HEREUNDER (WHETHER ARISING IN CONTRACT, TORT, OR ANY OTHER LEGAL THEORY) SHALL BE LIMITED TO ONE MILLION DOLLARS (\$1,000,000).

EXCEPT AS OTHERWISE PROVIDED BY LAW, AND FOR DAMAGES ARISING FROM A PARTY'S WILLFUL MISCONDUCT, IN NO EVENT WILL THAT PARTY BE LIABLE TO THE OTHER FOR ANY PUNITIVE, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR SIMILAR DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

b. Plan Sponsor's Rights Under Securities Laws Nothing in this Agreement is intended to or shall waive any rights to which Plan Sponsor is specifically entitled under the securities laws of the United States.

12. ENHANCEMENTS AND MODIFICATIONS Morningstar reserves the right in its sole discretion to enhance, modify, or provide upgrades (collectively "Changes") of the Morningstar Services or Advisory Services from time to time.

13. ACCESS AND TECHNICAL REQUIREMENTS

Method of Access Morningstar shall provide Participants with access to Morningstar Retirement Manager via Service Provider's call center or via the Internet through an HTTP connection, which connection shall be established and maintained by Service Provider for Plan Sponsor's benefit.

Technical Requirements for access to Morningstar Retirement Manager:

Browsers:

- Microsoft® Internet Explorer 6.0 and above
- America Online 9.0 and above
- Apple Macintosh Safari
- Firefox 1.5 and above

System Requirements:

- Windows®
- Mac® OS X® with Safari browser
- JavaScript and Cookies must be enabled
- Adobe Acrobat (for printing reports from the Retirement Manager Web site)
- Sun's Java Plug-in - J2SE Java Runtime Environment (JRE) version 1.4.2 or higher

Security:

- 128 bit encryption

Pop-ups:

- In order to view certain pages in the Retirement Manager site, pop-ups must be enabled.

Morningstar reserves the right to change the above-referenced technical requirements as certain browser versions become obsolete or outdated or as new versions are released.

14. RESEARCH, EDUCATION, AND MEASUREMENT MODULES

Plan Sponsor will be provided access to Morningstar's Research Module, Education Module and Measurement Module. The Research Module will consist of reports and information concerning Funds within the Fund Universe. The Education Module will consist of articles, information and interactive planning tools. The Research Module and the Education Module will be made available to the Plan Sponsor and Participants that have agreed to receive the Advisory Services, and may not be offered outside of this Agreement. The Measurement Module will be made available to the Service Provider who may then provide access to the Plan Sponsor. Morningstar reserves the right in its sole discretion to modify, add, or delete data points in the Research Module, the Education Module, and the Measurement Module.

15. INVESTMENT PROCESS AND RESTRICTIONS

a. Investment Process Upon receipt from the Service Provider of personal and financial data for a Participant ("Participant Data"), if a Participant has selected the Advisory

Services, Morningstar will use the Funds made available by the Plan Sponsor to create a portfolio with an asset allocation composition (each a "Participant Portfolio").

Morningstar will analyze the Funds to determine which particular Funds will be assigned to a Participant Portfolio. If the Participant has indicated an instruction that his or her Participant Portfolio not include a particular Fund ("Restriction") which Morningstar deems unreasonable, Morningstar shall not be required to deliver a Participant Portfolio for that Participant.

b. Self-directed Brokerage Accounts Morningstar shall have no duty to provide the Advisory Services with respect to assets held within a Self-directed Brokerage Account.

16. PROPOSAL LETTER

Morningstar will provide information about the Advisory Services to the Participants through a Proposal Letter in its standard design with current supported plan types and functionality and any subsequent global modifications, enhancements, or upgrades. Plan Sponsor has authorized Service Provider to deliver to Morningstar such Participant data as is required to create and deliver the Proposal Letter to Participants. Morningstar agrees that it shall not use any such Participant data for any purpose other than providing the services expressly described herein.

17. MISCELLANEOUS

a. Notices All notices or other communications shall be in writing and be delivered in person, or sent by certified mail, return receipt requested, overnight courier service, facsimile or e-mail to such addresses or numbers as may be stipulated in writing by the parties pursuant hereto. Unless otherwise provided, notice will be effective on the date it is officially recorded as delivered by return receipt or equivalent or by facsimile confirmation date.

b. Entire Understanding; Partial Invalidity This Agreement, along with any exhibit(s) or other attachments hereto, sets forth the entire understanding between the parties and supersedes any and all oral or written agreements between the parties as to the subject matter of this Agreement. If any provision of this Agreement shall to any extent be held to be invalid or unenforceable, the remainder of the Agreement, or the application of such provisions as to which it is not held to be invalid or unenforceable, shall not be affected thereby, and each provision shall be valid and be enforced to the fullest extent permitted by law.

c. Modification This Agreement may be modified only in a document signed by both parties.

d. Assignment The parties' benefits and obligations in this Agreement shall not be assigned without the prior written consent of the other party. This Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and upon their permitted successors in interest and assigns. The parties acknowledge that there are no intended third party beneficiaries of this Agreement.

e. No Waiver; Force Majeure The failure of one party to require the other to perform hereunder shall in no way affect the first party's right to require such performance thereafter, nor

shall the waiver by either party of a breach of any Agreement provision be deemed a waiver of any succeeding breach of that provision or a waiver of the provision itself. In no event shall one party be liable to the other for any delay or failure to perform hereunder if the delay or failure is due to causes beyond the reasonable control of that party.

f. Injunctive Relief Each party acknowledges that the other's legal remedies (including the payment of damages) would not adequately compensate the non-breaching party for the other's breach of this Agreement regarding ownership, use, copying, distribution, confidentiality or nondisclosure, as applicable, of the Morningstar Services or the Advisory Services (or any part thereof), the Intellectual Property, or Confidential Information and that it would suffer continuing, irreparable injury as a direct result of such breach. Therefore, in the event of any such breach or threatened breach, the non-breaching party may seek entry of any injunctive relief necessary to prevent or cure such breach (including temporary and preliminary relief, and relief by order of specific performance), without posting of bond or other security or proof of irreparable harm.

g. Arbitration Any dispute under this Agreement shall be settled by binding arbitration in Chicago, Illinois before a panel of three impartial arbitrators under the rules of the American Arbitration Association. Such panel shall consist of an actuary, an attorney and an employee benefit consultant, each of whom shall have had at least ten (10) years of professional experience in the administration of participant-directed defined contribution plans similar to the Plan. In any such arbitration, each party shall bear its own costs, expenses and attorneys' fees. The arbitration award may be enforced in any court having jurisdiction over the parties and the subject matter of the arbitration, and the parties irrevocably submit to the nonexclusive jurisdiction of the Superior Court of the State of Illinois, and the United States District Court for the Northern District of Illinois, in any action to enforce an arbitration award.

h. Choice of Law and Venue Except as provided in Section 17(g), all disputes arising under this Agreement or its performance shall be determined exclusively under the laws of the State of Illinois without regard to its conflict of laws provisions.

i. Acknowledgment of Receipt of Morningstar's Disclosure Statement Plan Sponsor acknowledges that it has received Part II of Morningstar's Form ADV at least 48 hours prior to entering into this Agreement.

j. Survival of Rights Termination or cancellation of this Agreement for any reason shall not relieve either party of obligations that accrued prior to termination or cancellation, or of obligations that by their nature are intended to survive this Agreement, including but not limited to obligations in connection with warranties and confidential information.

k. Counterparts This Agreement may be signed in two counterparts, which together shall form a single agreement as if both parties had executed the same document.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date set forth above.

City of Commerce

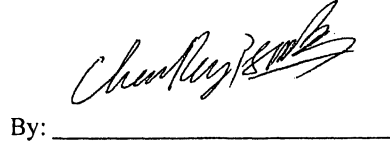
Morningstar Associates

By: 

Name: Lilia R. Leon

Title: Mayor

Date: March 28, 2012

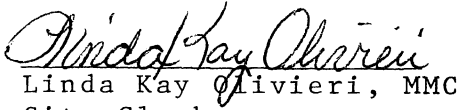
By: 

Name: Peng Chen

Title: President

Date: _____

ATTEST:


Linda Kay Olivieri, MMC
City Clerk

APPROVED AS TO FORM:

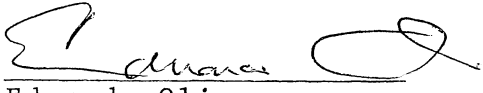

Eduardo Olivo
City Attorney

EXHIBIT A

There is no fee due from the Plan, the Plan Sponsor or Participants to either the Service Provider or Morningstar in connection with the use of the Managed by You service. For the Managed by Morningstar service, the following fee schedule, set forth below, shall apply. ILIAC is hereby authorized to deduct fees from participant accounts in accordance with the following schedule:

<i>Select one (X)</i>	Plan Asset Range	Basis points payable to Morningstar:
<u> </u>	Less than \$3 million	30 bp per annum
<u> X </u>	\$3 million to \$10 million	28 bp per annum
<u> </u>	Over \$10 million	25 bp per annum

In addition to the fees set forth above, the Plan, Plan Sponsor or Participants may also pay an administrative and recordkeeping fee to the Service Provider. The fees are reviewed annually at the Plan's contract anniversary and are subject to change (fees may be lowered but will not be raised) based on the overall level of assets in the plan at that time.

CITY OF COMMERCE 457 DEFERRED COMPENSATION PLAN
Schedule H: General Compensation Provisions

1. Direct and Indirect Compensation:
This Schedule describes compensation received by the Contractor for services rendered to the Plan and Plan participants, including fees and revenue derived from both direct and indirect sources.

Direct Compensation includes compensation paid directly by Plan Sponsor or the Plan to the Contractor for plan recordkeeping and administrative services including certain transaction fees that are charged directly to participant accounts.

Indirect Compensation includes compensation from sources other than direct fees that the Contractor may collect from third parties, including revenue derived from service arrangements with mutual funds, revenue sharing and other indirect compensation that may be generated in servicing the Plan.

2. Assumptions:
As provided in Section 1 of the Agreement, the Contractor has agreed to perform certain services. Based on the assumptions outlined in the Agreement and the Contractor's RFP Response, the Contractor agrees to supply the Services for the compensation specified in Section 3.01 of the Agreement, as supplemented by any additional compensation or transaction fees as specified within Schedule B with respect to administration of loans under the Plan and Schedule I with respect to Investment Advisory Services.

3. Fund Specific Revenue:
Indirect compensation received by the Contractor represents revenue from investment companies based on the investment of assets held in the Plan pursuant to agreements between the applicable investment companies and the Contractor. They represent fees payable from such investment companies for shareholder services, sub-transfer agency services, or pursuant to a 12b-1 plan adopted by such investment companies.

In the case of investment options of ILIAC affiliates or former affiliates, Contractor compensation represents revenue assumptions made by the Contractor's defined contribution business for purposes of product pricing. Gross revenues from such investment options generally include payments for investment management and for certain administrative services. Pricing assumptions are derived from gross fund revenues, less the internally transferred costs of fund management and administration. The pricing assumptions for certain investment options of ILIAC affiliates or former affiliates reflect the approximate weighted average of the net fund revenues of each portfolio within a given ILIAC fund complex.

In the case of the fixed income fund, the Contractor does not derive revenue at

a fixed rate. As is the case with similar insurance company general account investment options, over the long-term we expect to earn a spread between the investment return on the underlying general account assets and amounts credited to contracts that utilize the Fixed Account. This spread is intended to cover our investment related expenses, a portion of product administration expenses that would otherwise be covered by explicit charges, and the risks associated with the minimum monthly, annual (if applicable), and lifetime interest rate guarantees, including those associated with asset defaults, as well as to provide a profit margin for the Contractor.

4. Changes in Investment Options:

To the extent the Contractor's compensation is derived in whole or in part from revenue from the Plan Sponsor's selection of certain investment products offered by or through the Contractor, the Contractor reserves the right to amend the Agreement, including this Schedule, in the event such revenue is reduced by a change in the investment products or options available under the Plan.

CITY OF COMMERCE 457 DEFERRED COMPENSATION PLAN
 Schedule I: Authorized Plan Sponsor Representative

The Contractor is hereby authorized to act upon the directions, instructions, and any information provided by any of the Authorized Plan Sponsor Representatives listed below. These signatures will be accepted until the Contractor is notified of a change in writing. The following person(s) have the authority under the Plan to provide direction to the Contractor with respect to administration of the Plan including any benefit sensitive financial transactions permitted under the Plan and requests for contribution refunds. In the event that a Plan Sponsor Representative is removed or replaced, the Contractor must be notified immediately in writing - please contact the Contractor's designated Plan Manager to request the applicable administrative form to complete.

1.	Name (please type or print) Vilko Domic	Title Director of Finance
	Agency, Division or Location Name and Code (if applicable)	
	Authorized Plan Sponsor Representatives Signature 	
2.	Name (please type or print) Teresa McAllister	Title Director of HR
	Agency, Division or Location Name and Code (if applicable)	
	Authorized Plan Sponsor Representatives Signature 	
3.	Name (please type or print) Nancy Panting	Title Payroll Specialist
	Agency, Division or Location Name and Code (if applicable)	
	Authorized Plan Sponsor Representatives Signature 	
4.	Name (please type or print)	Title
	Agency, Division or Location Name and Code (if applicable)	
	Authorized Plan Sponsor Representatives Signature	

CITY OF COMMERCE 457 DEFERRED COMPENSATION PLAN
Schedule J: Contractor's Primary Contact

The Contractor designates the following individual(s) to serve as its primary point of contact to the Plan Sponsor with respect to this Agreement.

Carol Temporado
Plan Manager
ING Life Insurance and Annuity Company
One Orange Way
Windsor, CT 06095

CITY OF COMMERCE 457 DEFERRED COMPENSATION PLAN
Schedule K: Licensed Representatives

The Contractor designates the following individual(s) to serve as its licensed representatives with respect to this Agreement. Licensed representatives are designated as one of the following:

Agent, including Career Agent – Appointed with ING Life Insurance and Annuity Company, registered representative of ING Financial Partners, Inc. and receives commission based compensation.

Broker – (Non ING FA Only) – Appointed with ING Life Insurance and Annuity Company, but affiliated with a broker-dealer other than ING Financial Partners, Inc. and receives commission based compensation.

Salaried Enroller – ING Life Insurance and Annuity Company employees who will not receive commission based salary and are registered representatives of ING Financial Partners, Inc.

Agent Broker Salaried Enroller

Representative Name Darlene Pachot Last 4 Digits SSN _____

Broker Dealer Affiliation ING Financial Partners

Office Code 027 Rep # 036 % Participation 100%



AGENDA REPORT

MEETING DATE: April 17, 2012

TO: Honorable City Council

FROM: City Administrator

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING THE FIRST AMENDMENT TO THE SERVICES AGREEMENT BETWEEN THE CITY OF COMMERCE AND ADRIAN-GAUS ARCHITECTS, INC., FOR THE CENTRAL LIBRARY RENOVATION PROJECT

RECOMMENDATION:

Approve the Resolution and assign the number next in order.

MOTION:

Move to approve the recommendation.

BACKGROUND:

On April 21, 2009, the City Council approved a Service Agreement between the City and Adrian-Gaus Architects, Inc., (Adrian-Gaus Architects) for architectural design and support services for the renovation of the Central Library. The Agreement is for \$380,423.50 with a project contingency of \$31,542.35.

On October 18, 2011, the City Council approved the Project Plans and Specifications, as prepared by Adrian-Gaus Architects and Notice Inviting Sealed Bids.

On December 20, 2011, the City Clerk received and opened 14 bids for this project. The bids ranged from \$5,149,000 to \$7,736,000.

On December 21, 2011, the lowest bidder submitted a letter withdrawing its bid for the project.

On February 7, 2012, the City Council approved a resolution rejecting all bids submitted for the project.

On February 16, 2012, the City Council received a presentation from Adrian-Gaus Architects that contained several alternatives on the next step for this project. At the meeting, the City Council directed staff to proceed with an alternative project design and a reduced budget.

ANALYSIS:

Adrian-Gaus Architects has submitted for the City's consideration and approval a Fee Proposal for Additional Services for the Central Library Re-scope and Redesign for an amount not to exceed \$120,000. It is estimated that the re-scoping and redesigning of the project will require three to four months to complete, at which time the project will be ready for final City approval and advertisement for bids. The proposed work is significant; however, it is consistent with the City's goal and desire to modernize, upgrade and provide the residents of this community with an outstanding library and library services.

FISCAL IMPACT:

As part of the FY 2011/2012 Capital Improvement Project Budget, the City Council approved the following funding allocations:

- Central Library Renovation Project (040-5180-54043-10134).....	\$6,600,000
- Council Chambers/Sr. Ctr. Walkway Project (040-5180-57010-10144)..	\$ 500,000
Total Funding.....	\$7,100,000

Council Agenda Report – Meeting of 04/17/12
Resolution First Amendment to Services Agreement with Adrian-Gaus Architects for
Central Library Renovation Project
Page 2 of 2

As of January 9, 2012, the City has expended \$1,237,794 on this project, leaving a balance of \$5,862,206.

On February 16, 2012, the City Council approved Alternative 2 – Re-Design with the following funding allocation:

Admin. and Design Services Expenditures up to 1/09/12	\$1,237,794
Estimated Admin. and Design Services to complete Redesign	\$600,000
Estimated Construction Cost	\$3,000,000
TOTAL PROJECT BUDGET (ADJUSTED/REDUCED)	\$4,837,794

The Adrian-Gaus proposed fee of \$120,000 will be funded from the \$600,000 estimated for Administration and Design Services to complete the project redesign.

Finally, based on the approved FY 2011/2012 CIP allocation of \$7,100,000, redesigning the project will result in a project savings of \$2,262,206.

RELATIONSHIP TO 2009 STRATEGIC GOALS:

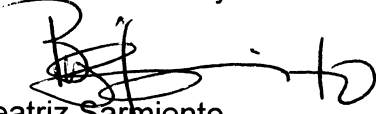
The issue before the Council is applicable to the following Council's strategic goal: "Protect and Enhance Quality of Life in the City of Commerce." Although, there are no specific objectives connected to this issue, the City is responsible for ensuring that city-owned buildings and grounds are in good and safe order for public and staff use.

Respectfully submitted,



Jorge Rifa
City Administrator

Recommended by:



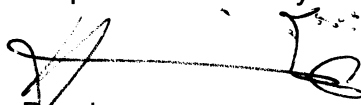
Beatriz Sarmiento
Interim Director of Library Services

Prepared and Recommended by:



Danilo Batson
Assistant Director of Public Services

Fiscal impact reviewed by:



Vilko Domic
Director of Finance

Approved as to form:



Eduardo Olivo
City Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE
CALIFORNIA, APPROVING THE FIRST AMENDMENT TO THE SERVICES
AGREEMENT BETWEEN THE CITY OF COMMERCE AND ADRIAN-GAUS
ARCHITECTS, INC., FOR THE CENTRAL LIBRARY RENOVATION PROJECT

WHEREAS, on April 21, 2009, the City of Commerce and Adrian-Gaus Architects, Inc., entered into a Services Agreement for architectural, engineering, project support and consultation services associated with the City's Central Library Renovation Project (the "Agreement"); and

WHEREAS, Adrian-Gaus has provided all necessary services required by the Agreement to prepare and complete the project Plans and Specifications; and

WHEREAS, On February 16, 2012, the City opted to proceed with an alternative project design and a reduced budget that is consistent with the City's goal and desire to modernize, upgrade and provide the residents of this community with an outstanding library and library services; and

WHEREAS, on February 16, 2012, Adrian-Gaus Architects, Inc., provided the City with a fee proposal to re-scope and redesign the project. Staff recommends that the City Council approve an amendment to the Agreement that would allow Adrian-Gaus Architects to perform the additional work that is required.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMMERCE DOES HEREBY RESOLVE, DECLARE AND DETERMINE AS FOLLOWS:

Section 1. The City Council hereby approves the First Amendment to the Services Agreement between the City of Commerce and Adrian-Gaus Architects, Inc. The Mayor is hereby authorized and directed to execute the First Amendment for and on behalf of the City of Commerce.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2012.

ATTEST:

Linda Kay Olivieri, MMC
City Clerk

Lilia R. Leon, Mayor

FIRST AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF COMMERCE AND ADRIAN-GAUS ARCHITECTS, INC., FOR THE
CENTRAL LIBRARY RENOVATION PROJECT

This First Amendment is made and entered into as of the ____ day of _____ 2012, ("Effective Date") by and between the CITY OF COMMERCE, a Municipal Corporation (the "CITY") and ADRIAN-GAUS ARCHITECTS, INC., ("CONSULTANT").

WITNESSETH

This First Amendment is made with reference to the following facts:

- A. On April 21, 2009, the CITY and CONSULTANT entered into a Services Agreement for Architectural Design and Support Services associated with the renovation of the City's Central Library (the "Agreement").
- B. Adrian-Gaus has provided all necessary services required under the Agreement in order to prepare and complete the project Plans and Specifications.
- C. On February 16, 2012, the CITY opted to proceed with an alternative project design and a reduced budget that is consistent with the CITY's goal and desire to modernize, upgrade and provide the residents of this community with an outstanding library and library services.
- D. On February 21, 2012, the CONSULTANT provided the CITY with a fee proposal to re-scope and redesign the project.
- E. CITY and CONTRACTOR need to modify the Scope of Services and Compensation set forth in the Agreement in order to address the changed conditions.

NOW, THEREFORE, in consideration of mutual promises, conditions and covenants herein contained, the parties hereto agree that the Agreement will be amended as follows:

1. Section 1: Scope of Services and Schedule of Performance

The Scope of Services that was set forth in Exhibit "A" and that was referenced in Section 1 of the Agreement is hereby expanded to include the Scope of Services set forth in the attached Exhibit "A-1" which is incorporated herein by reference.

2. Section 3: Compensation

The fees to be paid by the City for the additional services to be provided by CONSULTANT are also set forth in the attached Exhibit "A-1."

3. All other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have each executed or caused to be executed, this First Amendment on the dates set forth below.

CITY OF COMMERCE

Dated: _____

By: _____
Lilia R. Leon, Mayor

ATTEST:


APPROVED AS TO FORM:

Linda Kay Olivieri, MMC
City Clerk

Eduardo Olivo
City Attorney

Dated: 4/13/12

ADRIAN-GAUS ARCHITECTS, INC.

By: 
Xavier R. Adrian
Principal

ADRIAN-GAUS - FIRST AMENDMENT - 04-17-2012

4842-9159-6047, v. 1



Adrian.Gaus Architects

EXHIBIT A - SCOPE OF SERVICES

February 21, 2012

Danilo Batson
Assistant Director of Public Services
City of Commerce
2535 Commerce Way
Commerce, CA 90040

Regarding: **Proposal For Additional Services for Library Re-scope and Redesign**

Dear Mr. Batson,

Thank you for the opportunity to submit this fee proposal for professional architectural and engineering services for the library redesign per the City Council's direction on February 16, 2012.

A. SCOPE OF WORK

The goal is to maintain as many elements of the current library design as possible while reducing overall cost and minimizing the time required to re-bid the project.

Research & Investigation:

- Review current design, propose floor plan revisions
- Specify new finish materials, door and window systems
- Revise Furniture Package
- Redesign electrical system for streamlining of circuitry
- Two design meetings with library team
- One City Council presentation as required

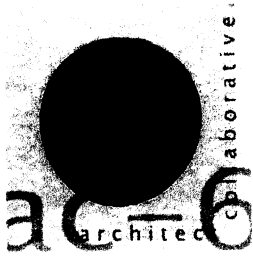
Drawings and Specification for plan check and bidding:

- New floor plans, elevations, finish schedules and ceiling plans
- New HVAC and plumbing plans
- New electrical plans
- Revised Specifications
- Revised structural drawings, coordinate with bid package
- Meet all plan check submittal requirements
- Procure Plan check approvals
- One meeting with library team
- Assist City staff in preparing bid documents
- One City Council presentation as required

Bidding and Negotiations:

- Answer Requests for information and substitutions
- Attend pre-bid conference
- Prepare Addenda as required

300 east state street , suite 620, redlands, california, 92373
phone 909.748.0444 fax 909.748.0559



- One meeting with library team
- One City Council presentation as required

B. SCHEDULE AND COMPENSATION

It is anticipated that the process will require three to four months. The services outlined in this proposal will be provided for a not-to-exceed fixed fee, calculated as follows:

Architectural, Structural, Mechanical, and Electrical Engineering Services @ 100 hrs/wk (2.5 Full-time equivalent) for 12 weeks at an average hourly rate of \$100.00 = **\$120,000.00** (One Hundred And Twenty Thousand Dollars).

If this proposal meets with your approval, you may sign below to authorize us to proceed with the work. Please feel free to call should you have any questions. Otherwise, please return one original for our records.

Sincerely Yours,

Xavier Adrian, Principal
Adrian Gaus Architects, Inc.

City of Commerce Representative (date)

300 east state street , suite 620, redlands, california, 92373
phone 909.748.0444 fax 909.748.0559



AGENDA REPORT

Meeting Date: April 17, 2012

TO: Honorable City Council

FROM: City Administrator

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, SUPERSEDING RESOLUTION NO. 12-31 AND APPROVING AN AGREEMENT FOR THE PURCHASE OF DATA MANAGEMENT SOFTWARE FROM TRANS TRACK SYSTEMS, INC.

RECOMMENDATION:

Move to approve and adopt the Resolution and assign the number next in order.

MOTION:

Move to approve recommendation.

BACKGROUND:

On December 6, 2011, City Council approved the issuance of a Request for Proposal (RFP) for the purchase of Transit Data Management Software. The software is designed to assist the Transportation Department in submitting operating and financial data to the Department of Transportation's National Transit Database (NTD) program.

The City of Commerce can only continue to receive federal transit capital grants if they participate in the NTD program. The City is estimated to receive \$438,380 in Federal 5307 Transit Capital Funds in FY 2013.

ANALYSIS:

The Request for Proposal (RFP) was advertised on the City Website and Eastern Group Publications. The RFP was sent to several companies including Edulog, Transfinder, Route Match and TransTrack Systems. TransTrack Systems was the only company to submit a bid.

The Federal Transit Administration (FTA) requires recipients to determine if there was an adequate level of competition. ¹ The City did not receive any comments from potential bidders that there was a restrictive specification or delivery requirement that only one bidder could meet.

Trans Track Systems, Inc.

Trans Track Systems was formed in 2002 and specializes in business intelligence software for the transit industry. Trans Track's *Transit Performance Manager* software is used by transit agencies to not only consolidate operating and financial data for NTD reports but also produces reports that allow transit managers to more effectively manage public transit systems.

Trans Track Systems®, Inc. is certified as a Minority Business Enterprise/Women's Business Enterprise (DBE/WBE).

¹ ETA Circular 4220-1E

Trans Track's *Transit Performance Manager* software is used by Montebello Bus Lines, Los Angeles Department of Transportation, Riverside County Transportation Commission (eight transit systems), Metropolitan Transit System (San Diego contract services), and eight other systems.

References were checked and were positive. The proposal was reviewed and approved by the IT Division.

FISCAL IMPACT:

The cost of the Data Management System shown below and a copy of the fee proposal from Trans Track Systems of January 17, 2012 is attached.

PRICING:

Item	Number	Cost
System Installation Cost	1	\$ 126,100
Annual License Fee & Support costs (Year 2)	1	\$ 20,000
Contingency		\$ 15,582
TOTAL		\$ 161,682

PROJECT FUNDING

FTA Grant CA-96-X072		\$ 161,682
TOTAL		\$ 161,682

The proposed activity can be paid for out of Federal Transit Administration (FTA) grant number CA-96-X072. This grant is funded by the American Recovery and Reinvestment Act of 2009 (ARRA).

Expenditures for the proposed activity will amount to \$161,682 for Fiscal Year 2011-12.

On April 3, 2012, the City Council approved the purchase of the Data Management Software from Trans Track Systems. Staff omitted the agreement required for the purchase and is now submitted the agreement for City Council review and approval.

RELATIONSHIP TO 2009 STRATEGIC GOALS:

This agenda item relates to the 2009 strategic planning goal: "Make Financial and Economically Sound Decisions Consistent with Economic Conditions," as it will support the Transportation Department in complying with Federal reporting requirements and improve how information is disseminated throughout Transit operations.

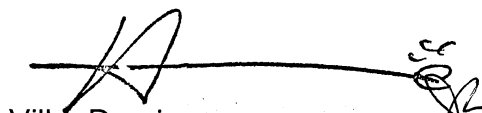
Recommended by:


Claude McFerguson
Director of Transportation

Respectfully submitted,


Jorge Rifa
City Administrator

Budget Impact Review by:


Vilko Domic
Director of Finance

Approved as to Form:


Eddie Olivo
Eduardo Olivo
City Attorney

Attachments: Proposal from Trans Track Systems Inc.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE,
CALIFORNIA, SUPERSEDING RESOLUTION NO. 12-31 AND APPROVING THE
PURCHASE OF DATA MANAGEMENT SYSTEM SOFTWARE FROM TRANSTRACK
SYSTEMS USING ARRA FUNDS

WHEREAS, the City of Commerce was awarded a transit capital project grant from the Federal Transit Administration (CA-96-X072); and

WHEREAS, the above grant is funded through the American Recovery and Reinvestment Act of 2009 (ARRA); and

WHEREAS, the above grant includes funding for Data Management System software; and

WHEREAS, on April 3, 2012, staff recommended the award of the contract to TransTrack Systems, Inc.; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMMERCE DOES HEREBY RESOLVE, DECLARE AND DETERMINE AS FOLLOWS:

Section 1: The Agreement between the City of Commerce and TransTrack Systems, Inc. for the purchase of Data Management System software is hereby approved.

Section 2: The Mayor of the City of Commerce is hereby authorized and directed on behalf of the City of Commerce to execute the Agreement for and on behalf of the City.

Section 3: Resolution No. _____ is hereby superseded.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2012.

Lilia R. Leon
Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk

This License and the use of the Software may not be assigned by the Licensee, without the prior written consent of the Licensor. The License, the Software, and user documentation and training materials may not be disclosed, sublicensed, published, released or transferred to another party by Licensee without the prior written consent of Licensor, or except as provided in this License, or by reason of law required of Licensee by State regulations.

2. Ownership Rights. The Software and the documentation related thereto ("Documentation") are proprietary to Licensor and title thereto remains in Licensor. All applicable rights to patents, copyrights, trademarks and trade secrets in the Software are and shall remain in Licensor.
3. Domain. Licensee agrees to access the Software through the Internet at the web address: www.transtrack.net. Access to this domain ("Domain") will be through a special pass code given to Licensee, which is personal to it and is granted through this License Agreement.
4. Restrictions. The Software may not be rented, loaned, leased, sublicensed, sold or distributed by Licensee to any person, entity, corporation, municipality or agency thereof, except for designated representatives of the City of Commerce. Licensee may not alter proprietary notices, labels, or markings on the Software whether on the Domain or elsewhere. Licensee may not modify, translate, reverse engineer, disassemble, or decompile the Software. Access to the Domain may not be assigned or utilized by any other entity or persons other than Licensee and designated representatives of the City of Commerce. Shared access to the Software will be provided with separate pass codes given by Licensor to the Licensee and representatives of the City of Commerce. The Licensee shall own data ("Data") input into the Software by the Licensee.
5. Documentation. Licensor shall supply complete Documentation necessary for Licensee to use the Software effectively. Documentation includes, but is not limited to, user manuals and file descriptions. Licensee shall have the right, as part of the License granted herein, to make as many additional copies of the Documentation for its own use as it may reasonably determine it needs.

ARTICLE II. TRAINING, IMPLEMENTATION AND SUPPORT SERVICES

1. Set-Up and Training Services. In connection with the grant of the License, Licensor shall provide Licensee with certain initial user training, implementation and initial set-up services so that the Software will conform to the organizational needs and business logic requirements of

the Licensee. These services are set forth in the Implementation Set-Up and Training Services described in Exhibit "B" attached hereto and incorporated by reference.

With respect to the Set-Up and Training Services, the Customization and Programming Services, and the Support Services which are set forth in Sections 1, 2, and 3 of this Article II, Licensor warrants that all such Services, which are more fully described in Exhibits B, C, and D of this License, shall be performed in a skillful and competent manner which meets or exceeds the industry standards for experienced consultants providing similar services to those provided hereunder. Licensor represents that its employees have all qualifications and approvals of whatever nature that are required to perform such Services.

2. Customization and Programming Services. Under this License, there may be some customization of Licensor's proprietary Software ("Customized Software"). The fees for the Customized Software are already included in the prices set forth in the Exhibits to this License. Should Licensee ask for additional custom features beyond the scope of what has been agreed upon by the Parties for functionality or "look and feel", Licensee shall make requests for such customization and Licensor will determine if it is able to perform such additional services and the fees that will be associated with those additional services. Aside from any intellectual property belonging to Licensee which is subsequently utilized in any customization, Licensor shall retain all right, title and interest in any elements of its existing Software that are incorporated into any customized product, including but not limited to, rights to patents, copyrights, trademarks, trade secrets, transferable technical data, know-how, source code, processes, future improvements, plans, drawings, specifications, and methods of manufacture incorporated in and to any Customized Software and programming services outlined in Exhibit "C" attached hereto and incorporated by reference. Subject to the rights of termination by Licensor, as specified in this License, any Customized Software shall be available to Licensee for Licensee's use during the one (1) year initial term and any additional renewal terms of the License, provided that Licensee and Licensor can agree on the scope of the Services to be provided and the then current rate for the annual maintenance fee for use of the Software.
3. Support Services. Licensor shall provide Internet Service Provider (ISP) and on-going technical assistance, training and back-up support services to the Licensee as described in Exhibit "D" attached hereto and incorporated by reference.

4. Reports. Licensor shall provide Licensee with the reports containing the information at the times and in accordance with the list provided in Exhibit "E" attached hereto and incorporated by reference. Licensor will prepare and deliver to Licensee such other reports in such formats and at such times as are reasonably requested by Licensee, provided that Licensee agrees to pay the related reasonable incremental costs incurred by Licensor for preparing these other reports, which costs shall be estimated by Licensor at Licensee's request. Licensee will review all reports delivered to it for accuracy within 14 days of delivery, as specified in Exhibit E, and will notify Licensor of any material errors, defined as errors, omissions or discrepancies discovered in any report referenced in Exhibit E. In the event of any material error in a custom report requested by Licensee, Licensor will use commercially reasonable efforts to correct the material error. In the event Licensor is unable to do so, after a reasonable period of time and in its sole discretion, it will return any fees already paid by Licensee for the customization and will not require payment of any fees related to correction of the error if already presented to Licensee in the form of an invoice. Notwithstanding anything contained herein with respect to damages, remedies and liability, THE RETURN OF FEES OR THE FORBEARANCE TO COLLECT ANY FEES RELATED TO ERROR CORRECTION IN CUSTOM REPORTS WILL BE THE SOLE AND EXCLUSIVE REMEDY OF LICENSEE FOR THE INABILITY OF LICENSOR TO CORRECT ERRORS.

ARTICLE III. FEES AND LICENSEE RESPONSIBILITIES

1. Payment of Fees and Costs. Licensee agrees to pay Licensor licensing and service fees as described in Exhibit "F", attached hereto and incorporated by reference. These licensing and service fees are for the License described in Article I, and training, set-up services, customized programming services, ISP and on-going support services described in Article II. All amounts due from Licensee shall be paid in accordance with the schedule referenced in Exhibit "F." Upon receipt of an invoice from Licensor, Licensee shall, within thirty (30) days, review the invoice and pay all approved charges for services that have been provided to Licensor and accepted for use on a time and materials basis.
2. Default by Licensee in Payment of Fees. Should Licensee either fail to make the payments set forth in Exhibit "F" within 30 days from the date of invoice to Licensee or dispute any charges on such statement, the Licensor shall send a written notice of delinquency in the manner set forth in Article IV, Section 8(K). If payment for undisputed charges has not been received after ten (10) days from the date of the written notice to Licensee specifying the delinquency, Licensor shall have the right to

terminate this License and all rights granted herein and seek damages and injunctive relief for the breach thereof.

3. Responsibilities of the Licensee. Licensee agrees to name a Project Manager/System Administrator with responsibility for taking reasonable action to ensure a timely implementation set-up and training by Licensor of Licensee's staff. Licensee is responsible for assigning security access to the Software and data of the Licensee. Licensee understands that satisfactory performance of the Software requires, at a minimum: A 17-inch monitor, Microsoft Internet Explorer 8 or higher, 128MB RAM, and Pentium 120MHz processing speed. Licensee is responsible for providing the hardware and appropriate software and operating systems specified herein.

ARTICLE IV. MISCELLANEOUS

1. Confidentiality.

- A. Definition of Confidential Information. The parties acknowledge that in connection with their respective rights and responsibilities under this License, each will have access to the others' confidential and proprietary information ("Confidential Information"). Licensor's Confidential Information is the Software and all copies and partial copies thereof, including its proprietary function, logic and structure. Licensee's Confidential Information includes the Data, as defined in Article I, Section 4 of this License Agreement, and any information of a competitive, sensitive or proprietary nature, such as, but not limited to, any non-public information relating to Licensee's internal procedures, customers, personnel, incidents, financial information and other results. For purposes hereof, the parties acknowledge and agree that, except as otherwise provided in subsection 1(D) of this Article IV, Licensee's Confidential Information includes any and all methodologies, business logic and technology utilized by Licensee in its business. This obligation of confidentiality applies to any Confidential Information that is proprietary to each Party as well as to information of third parties that either Party has an obligation to keep confidential, and will survive termination of this License. The Parties agree that, upon termination of this License, Licensor shall return to Licensee all copies of Licensee Confidential Information in Licensor's possession.

- B. Limitations on Disclosure and Use. Except as specifically provided for in this License or as required by law, each Party agrees not to use the other Party's Confidential Information for itself or for any

other party, or divulge or disclose the Confidential Information to any other party other than to authorized employees or consultants with a need to know, each of whom is made aware of and agrees to abide by these obligations. All confidentiality obligations contained in this Article IV shall be in full force and effect as to those entities. Each Party agrees to implement reasonable procedures to prevent unauthorized disclosure and to treat the other Party's Confidential Information with at least the same degree of care as it treats its own Confidential Information.

C. Compelled Disclosure. In the event that either Party becomes legally compelled to disclose the other Party's Confidential Information, the compelled Party shall provide the other Party with at least five (5) business days written notice (or, if such notice period is impracticable, prompt notice) so that the other Party may seek a protective order or other appropriate remedy.

D. Exclusions from Confidential Information. For purposes of this subsection, Confidential Information shall not be deemed to include any information that (i) is or subsequently becomes publicly available other than through either Party's breach of any duty owed the other Party; (ii) was lawfully known to the receiving Party prior to disclosure in connection with this License; or (iii) became known to the receiving Party from a third party other than by breach of a duty of confidentiality; or (iv) information that is required to be disclosed pursuant to the California Public Records Act.

2. Intellectual Property Warranty and Indemnification. Licensor represents and warrants that Licensor is the owner of the Software and has the right to grant the License granted herein. Licensor will defend and indemnify Licensee against a claim that the Software infringes a United States patent or copyright or any other proprietary right of a third party provided that: (i) Licensee promptly notifies Licensor in writing upon receipt of the claim or complaint, and does not prejudice the rights of Licensor within the context of any such action or claim; and (ii) Licensee provides Licensor, at Licensor's expense, with assistance, information and authority necessary for Licensor to perform its obligation under this Section 2. If the Software becomes, or in Licensor's reasonable judgment is likely to become, the subject of a claim based upon an alleged infringement of an intellectual property right of a third party, Licensor will notify Licensee and at Licensor's sole option, (i) procure for Licensee the right to continue to use the Software; or (ii) replace or modify the Software so that it is non-infringing; or (iii) require that Licensee, upon advance written notice, cease, with respect to all periods commencing on and after the date of such notice, use of the Software under this License for an indefinite period

or, at Licensor's sole discretion, for a period pending satisfaction by Licensor of clause (i) or (ii) immediately above in this Section 2 of Article IV. In the case of this clause (iii), Licensor shall credit the Licensee for fees paid with respect to the Software, calculated on a straight-line depreciation schedule based on the term of this License commencing from the date of Licensee's payment of the License Fees hereunder. Should Licensee be required to cease use of any Customized Software, Licensor shall reimburse Licensee for all customization fees paid by Licensor to Licensee, based on the same depreciation schedule. In addition to the return of the amortized fees already paid to Licensor, Licensor and Licensee shall have the right to terminate this License in its entirety without any obligations thereafter. These remedies, including termination of the License, as well as the indemnification obligations contained herein, shall be the sole and exclusive remedies of Licensee for Licensor's breach of its warranty of non-infringement.

3. Equitable Remedies. Each of the parties acknowledges and agrees that its failure to comply with the terms of Section 2, 3 and 4 of Article I and Section 1 of Article IV will result in immediate and irreparable damage to the other party. Each of the parties acknowledges and agrees that there is no adequate remedy at law available to the other party for such failure and in the event thereof, the non-breaching party shall be entitled to seek equitable relief in the way of a temporary restraining order, an injunction and such other relief as a court of competent jurisdiction may deem proper, without the necessity of posting a bond or similar security.
4. WARRANTY DISCLAIMER. EXCEPT FOR THE WARRANTY AGAINST NON-INFRINGEMENT CONTAINED IN SECTION 2 ABOVE, AND THE LIMITED WARRANTY WITH RESPECT TO THE SERVICES TO BE PERFORMED IN ACCORDANCE WITH ARTICLE II, SECTION 1 ABOVE, LICENSOR DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE, ANY THIRD PARTY SOFTWARE, ANY HARDWARE OR EQUIPMENT, THE SERVICES RENDERED BY ITS PERSONNEL, OR THE RESULTS OBTAINED FROM THE WORK OF ITS PERSONNEL, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY AGAINST INFRINGEMENT THAT MAY BE PROVIDED IN SECTION 2-312 OF THE UNIFORM COMMERCIAL CODE OR ANY COMPARABLE STATE STATUTE. LICENSEE FURTHER UNDERSTANDS AND AGREES THAT IT IS GRANTED THIS LICENSE ON AN "AS IS" "WHERE IS" BASIS.
5. LIMITATION OF LIABILITY. SUBJECT TO THE INSURANCE OBLIGATIONS OF LICENSOR AND THE OBLIGATIONS TO PAY FOR LEGAL COSTS AND EXPENSES AS SET FORTH BELOW IN THIS ARTICLE IV, IN NO EVENT SHALL LICENSOR BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL,

SPECIAL, OR INDIRECT DAMAGES FOR ANY CAUSE WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE BREACH OF THE WARRANTY OF INFRINGEMENT, INCLUDING ANY DAMAGES WHICH MAY BE CONTAINED IN SECTION 2-312 OF THE UCC OR COMPARABLE STATE STATUTE; PERFORMANCE OF ANY SERVICES, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA OR RECORDS, OR LOSS OF BUSINESS INFORMATION, OR FOR ACTS OF NEGLIGENCE THAT ARE NOT INTENTIONAL OR RECKLESS IN NATURE, REGARDLESS OF WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY SHALL NOT APPLY FOR ACTUAL DAMAGES RESULTING FROM BODILY INJURY OR PROPERTY DAMAGE, OR ANY LIABILITY WHICH IS COVERED THROUGH THE INSURANCE PROVISIONS SET FORTH IN PARAGRAPH 7(B) OF ARTICLE IV OR LEGAL COSTS AND EXPENSES SET FORTH IN PARAGRAPH 8(E) OF ARTICLE IV.

6. Term and Termination. This term of this License shall commence on the date of complete execution by both parties and continue through June 30, 2013. After June 30, 2013, the License may be renewed at the request of Licensee for an additional one (1) year period in exchange for the payment for an extension of the annual service and maintenance fees set forth in the attached Exhibits. Upon prior written notice, either party may terminate this License if the other party becomes insolvent, ceases doing business in its regular course, files a petition in bankruptcy or is subject to the filing of an involuntary petition for bankruptcy which is not rescinded within a period of ninety (90) days, or fails to cure a material breach of any term or condition of this License within thirty (30) days of receipt of written notice specifying such breach and demand for cure. Notwithstanding the foregoing, however, failure by Licensee to timely pay undisputed or disputed fees under this License shall be subject to shorter termination periods as specified in Article III, Sections 1 and 2 above.

A. Termination by Licensee. Within 120 days, of complete execution of the License by both parties, Licensee has the right to terminate the remaining portion of this License for no cause, upon ten (10) days written notice. In the event of such termination, Licensee will remain obligated to pay Licensor for all Services and reasonable expenses incurred to date in accordance with the terms of this License, as well as any reasonable costs incurred by Licensor in completing its tasks to terminate the ability of Licensee to access the Domain or remove any data from Licensor's servers. The Basic Software Application License Fee, identified in Exhibit F will be refunded within 30 days of receipt of written notice of termination.

7. Insurance and Escrow Agent

- A. Escrow. After execution of this License, and subject to payment of the appropriate fees by Licensee (set forth in Exhibit D), Licensor will deposit and maintain with an escrow agent the source code for the Software and related documentation ("Escrowed Materials"), pursuant to an agreement for escrow services with Iron Mountain Intellectual Property ("Escrow Agent"). Licensee shall be named a beneficiary under the agreement with the Escrow Agent. It shall be the responsibility of Licensee to procure third-party software in order to use the Escrowed Materials. The events which would allow Licensee to receive the Escrowed Materials from the Escrow Agent shall be: (i) the bankruptcy or dissolution of Licensor; (ii) a court order requiring the Escrow Agent to release the Escrowed Materials; or (iii) a request of Licensor. In the event of a release to Licensee of the Escrowed Materials, Licensee shall be granted a royalty free license to access, use, digitally perform and execute the Escrowed Materials in furtherance of the purpose of this License.
- B. Insurance. Licensor will obtain and maintain during the Term: (i) Commercial General Liability Insurance, including products, completed operations liability and personal injury, advertising liability and contractual liability with a minimum combined single limit of \$1,000,000 per occurrence; (ii) Commercial Automobile Liability Insurance with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage; and (iii) Errors and Omissions Insurance with a limit of liability not less than \$1,000,000. Licensor will also provide a program of Workers' Compensation insurance or a State-approved Self-Insurance Program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability, covering all persons providing services on behalf of the Licensor and all risks to such persons under this License. The foregoing Commercial General Liability and Commercial Automobile Liability insurance policies shall be endorsed to include the Licensee as an additional insured. The right of Licensee and its affiliated parties specified above to be named as additional insured parties under Licensor's stated coverage shall be in addition to the warranty for breach of intellectual property rights granted by Licensor to Licensee hereunder. Licensee shall be treated in the same manner as Licensor would be under similar circumstances. Any insurance coverage does not constitute a warranty by Licensor, and the obligations of Licensor for any claim, except as otherwise provided

herein, shall not exceed the policy limits. Any insurance or self insurance maintained by Licensee, its directors, officials, officers, employees and agents shall be excess of the Licensor's insurance and shall not be called upon to contribute with it in any way.

8. General.

- A. Relationship of the Parties. In performing their respective obligations hereunder, each of the parties shall operate as and have the status of an independent contractor and shall not act as or be an agent, partner, or employee of the other party. Neither party shall have any right or authority to assume or create obligations of any kind or to make any representations or warranties on behalf of the other party, whether express or implied, or to bind the other party in any respect whatsoever.
- B. Force Majeure. Neither party shall be deemed in default of this License to the extent that performance of the party's respective obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, act of government, or any other cause beyond the reasonable control of such party, provided that such party gives the other party written notice of the condition within ten (10) business days of discovery thereof. If proper notice is given, the time for performance or cure shall be extended for a period equal to the duration of the force majeure event or circumstance described in the notice.
- C. Assignment and Binding Effect. Licensee may not assign, bargain, sell, transfer, sublicense, convey, hypothecate or pledge the rights and licenses granted to it herein without the prior written consent of Licensor. Licensor may, with notice to Licensee, assign this License either in its entirety or in partial form to a successor in interest by way of merger, acquisition, spin-off, or consolidation, or to an entity with which it enters into an outsourcing agreement with respect to the maintenance and support obligations for the Software. This License shall be binding upon and inure to the benefit of any permitted successors or assigns.
- D. Sole License. This License, including the recitals and the attached exhibits and any other attachment incorporated herein by reference, sets forth the entire License and understanding of the parties relating to its subject matter, and supersedes and merges all prior and contemporaneous agreements, negotiations and understandings between the parties, whether oral or written. Neither Licensee nor Licensor shall be bound by any oral

agreement or representation irrespective of by whom or when made. No change or modification to this License will be binding unless it is in writing and signed by authorized representatives of Licensor and Licensee.

- E. Legal Costs and Expenses. If any action or proceeding, including non-binding mediation, is brought to enforce any of the terms of this License, the prevailing party shall be entitled to recover all of its reasonable costs and expenses incurred in such proceeding, including but not limited to, reasonable attorney's fees.
- F. Severability. In the event that any provision of this License is determined by a court of competent jurisdiction to be illegal, invalid, or otherwise unenforceable under applicable laws or regulations, either such provision shall be deemed amended to conform to such laws or regulations without materially altering the intention of the parties, or it shall be deleted and the parties shall negotiate in good faith to replace such provision. In such event, the remainder of this License shall continue in full force and effect unless, after the provisions deemed to be illegal, invalid or unenforceable are removed, the remainder of the License's terms make it commercially impracticable to continue in the opinion of either Party. In such event, the License will terminate without any liability on the part of either Licensee or Licensor.
- G. Waiver. The waiver of any right or default hereunder shall be effective only in the instance given and shall not operate as or imply a waiver of any similar right or default on any other occasion. Either party may elect to continue performance notwithstanding such breach by the other party, but such performance shall not constitute a waiver of such breach nor otherwise limit the non-breaching party's remedies. No waiver of any provision of this License shall be effective unless in writing and signed by the party against whom it is sought to be enforced.
- H. Authority. Licensor and Licensee warrant and represent that they are free to enter into and fully perform this License, that all required authorizations have been procured prior to execution of this License, and that the parties designated as signatories of Licensor and Licensee each have the requisite authority to do so.
- I. Alternative Dispute Resolution. Prior to commencement of any civil legal proceedings, specifically excluding injunctive relief authorized hereunder, to enforce the obligations of a party under the terms of this License, a party must submit the controversy or claim for

mediation to an independent mediator selected by the Judicial Arbitration and Mediation Services, Inc. ("JAMS"). All proceedings shall be administered by JAMS in accordance with their then current rules. If there is any inconsistency between the terms of this License and any such JAMS rule, the terms and procedures set forth herein shall control. Venue of the mediation shall be Los Angeles County, California. All statutes of limitation applicable to any claim or dispute hereunder shall apply to any mediation proceeding. All discovery activities shall be expressly limited to matters directly relevant to the dispute or claim being mediated. No provision hereof shall limit the right of any party to obtain provisional or ancillary remedies, including without limitation, injunctive relief, attachment, or the appointment of a receiver, from a court of competent jurisdiction before, after or during the pendency of any mediation. Mediators must be active members of the California State Bar or retired judges of the state or federal judiciary of California, with expertise in the substantive laws applicable to the subject matter brought before the mediator. To the maximum extent practicable, JAMS, the mediator, and the parties shall take all action required to conclude any mediation proceeding within 180 days of the filing of the dispute with JAMS. Should the parties be unable to resolve the dispute or claim in accordance with this stated procedure, a civil action may be commenced under the laws of the State of California. This alternative dispute resolution provision shall survive termination, amendment, or expiration of this License.

- J. Governing Law. This License shall be governed in accordance with the laws of the State of California. Venue shall be in Los Angeles County.
- K. Notices. Any notice required or permitted by this License shall be in writing and shall be properly addressed to the other party at the following address or to such other address as may be provided in writing by either party from time to time, shall be sent by any recognized commercial overnight courier or United States registered or certified mail, postage prepaid, return receipt requested, and shall be concurrently sent by facsimile:

To Licensor: TransTrack Systems®, Inc.
265 Belmont Avenue
Long Beach, CA 90803
Attention: Mary Sue O'Melia
Facsimile: (562) 987-4756

To Licensee: City of Commerce
2535 Commerce Way
Commerce, CA 90040
Attention: Martin Gombert
Facsimile: (323) 724-2776

L. Survival. Sections 1 through 5 as well as Sections 7 and 8 of this Article IV shall survive the termination of this License.

IN WITNESS WHEREOF the parties hereto have executed this End-User Software License, Training and Implementation Support Agreement as of the date and at the place first above noted.

LICENSOR:
TRANSTRACK SYSTEMS®, Inc.

LICENSEE:
CITY OF COMMERCE

By: _____
Mary Sue O'Melia

By: _____

Title: President

Title: _____

Date: _____

Date: _____

EXHIBIT "A"
**DESCRIPTION OF THE SOFTWARE APPLICATION AVAILABLE
ON-LINE**

TransTrack Manager® is the name of the Software application, available on-line, that is the subject of this License Agreement. Internet use of the TransTrack Manager® application ("Software") requires Licensee to have a web browser Microsoft Internet Explorer 8 or higher, 128MB RAM, and Pentium 120MHz processing speed. TransTrack Manager® is fully compatible with Microsoft Internet Explorer 8 and may not be fully compatible with other browser software. Viewing on-line information and data entry is greatly improved with a monitor of at least 17-inches. Modules available with this Software License are as follows.

- Organization
- Routes
- Farebox
- Operations
- Safety
- Fleet
- Finance
- Plan
- Personnel
- Feedback
- Support
- Utilities (e.g., User Security)

Functions available to Software users include:

- Edit (Add, Delete, Save, Cancel, Close)
- Show Filters
- Export
- Report

EXHIBIT "B"

SET-UP AND TRAINING SERVICES

Phase 1 – Business Assessment & Process Review. A total of 84 hours have been budgeted to review City of Commerce Transportation Department processes and assist the City in selecting modules and levels of data input appropriate for the City of Commerce Transportation Department.

Phase 2 – Implementation & Training. A successful implementation requires that Licensee make available to Licensor relevant information no later than 30 days prior to implementation. Much of the information necessary to configure the system will be collected during the Phase 1 Business Assessment. Activities associated with Phase 2 follow.

Set-Up Activities

A total of 40 hours will be spent in set-up activities. Views that will be configured by Licensor on behalf of Licensee for start-up include the following:

- **Organization Module** -- All Views necessary for start-up.
- **Routes Module** – Route Profiles in effect at the time of implementation.
- **Farebox Module** -- All Look-Up views.
- **Operations Module** -- All Look-Up views necessary to support management reporting.
- **Safety Module** -- All Look-Up views necessary for start-up.
- **Fleet Module** – All Look-Up views necessary for start-up, including the fleet inventory and mileage by vehicle as of June 30, 2010 and 2011.
- **Finance Module** -- All Look-Up and Revenue and Expense Crosswalk views will be configured, including the Expense and Revenue Allocation Method views.
- **Personnel Module** -- All Look-Up Views necessary for start-up, including a list of Personnel.
- **Plan Module** – Input of FY 2012 Performance Standards for KPIs.
- **Feedback Module** -- All Look-Up Views necessary for start-up.

- **Utilities Module** – Licensor will assign a System Administrator password to the Licensee, as well as initial passwords and security access to Licensee management and staff, as determined in Phase 1. Licensee is responsible for user security after the initial set-up.

An additional 60 hours have been budgeted for input/import of FY 2011 and FY 2012 historical data necessary for KPI reporting.

Training & On-Site Support

Licensor will provide 48 hours of training, based on a schedule agreed upon at the project start. All training will be conducted at City of Commerce facilities.

- **Basic Training** – Small group training sessions will be conducted to allow multiple users to learn how to log-on, produce reports, filter data, export data, and enter data into appropriate views.
- **System Administrator Training** – Individualized training on system security and import functions. This training is provided after the System Administrator has attended Basic Training.
- **User Group Training** – User groups, defined in Phase 1, will be trained in new processes, data input or import, validation and reporting. Training will be customized to Licensees user groups.
- **Follow-Up Training** – Follow-up training will be provided approximately six to eight weeks following implementation.

Training Category	Class Size	# Classes	Duration (Hours)	Training Hours	Days On-Site
System Administration Training	4-8	2	8	16	2
Basic/User Group Training – Contractor Staff	4-8	8	3	24	3
Follow-Up Training – City of Commerce & Contractor Staff	4-8	4	2	8	1
Total	--	14	--	48	6

Training Materials & Documentation

Licensors will use up to 32 hours customizing training material. This includes provision of hard copy handouts for all training sessions, based on advance sign-up sheets. Training materials are available on-line in the Support Module – Training Materials view. Other documentation is also available in the Support Module – Documentation view. This documentation does not include programming language, which is deposited into an Escrow Account.

EXHIBIT "C"
MODULAR ADD-ONS & CUSTOMIZED PROGRAMMING
SERVICES

Licensee shall have access to Modular Add-ons specified below. Fees associated with Modular Add-Ons are shown in Exhibit "F".

Modular Add-ons

- Daily Passenger Sheets
- Daily Operations Dispatch Log & Safety Statistics
- Daily Trip Sheets
- Vehicle Inventory & Roadcall Sheet
- Agency Employees
- GL Crosswalk & Cost Allocation
- Daily Customer Feedback
- Passenger Mile Calculations (Scheduled & Unscheduled Service)

Customized Programming

Additional Software Engineering services are available on a time and materials basis at the rate specified in Exhibit "F". The Licensee agrees to validate reports, imports and other customer applications and any subsequent revisions within 14 days of the report or revision being made available. Licensee is responsible for all validation, unless otherwise specified.

Licensee may request custom modifications to the Software to allow for customized reports. Licensor has agreed to review the request for the custom modifications ("Modifications"). If the parties agree to create the Modifications all terms and conditions of the License shall remain in full force and effect in addition to those listed in this Exhibit "C". If there is any conflict between the main body of the License and this Exhibit C, solely regarding the terms and conditions of the Services to create and maintain the Modifications, then the provisions of this Exhibit "C" shall prevail.

Modifications

Custom modifications include a budget of 40 hours for import of financial data from LOGOS System. Direct query or csv file, depending on data availability from Licensee.

1. All Services to create, consult, train, maintain and service the Modifications will be billed to Licensee on a time and materials basis as further set forth in the attached Exhibit "F".
2. Licensee will provide Licensor with specifications for the Modifications which shall include technical specifications, system requirements, end results desired, estimated time frame for completion and any other information Licensor deems necessary to evaluate its ability to create the Modifications.
3. Licensor will review all requested items included in #2 above and discuss with Licensee the ability of Licensor to produce, service and maintain the Modifications. Licensor will also provide an estimated price for all Services for initial creation as well as continuing service and support. Licensor shall also inform Licensee if its timetable for completion is reasonable and can be accomplished in a timely fashion.
4. Once Licensor has reviewed all of the above and discussed same with Licensee, a final time table shall be agreed upon as well as an estimate for a range of fees, which will be invoiced to Licensee for the Modifications. After that point, should Licensor receive other requests from Licensee for further changes to the current Software over and above what is initially reviewed and requested in #2 above, the time table for completion and cost will be subject to change based on Licensor's evaluation of the changes and its ability to create and maintain what Licensee has requested.
5. Licensor will need the cooperation and access to certain of the Licensee's employees or data to create the Modifications and to perform efficiently, correctly and in a timely manner. Any inability to provide the necessary advice, support or access to the people, data or materials necessary for Licensee's completion of the Modifications may require adjustments to the time table already agreed to as well as the costs for same.
6. After successful installation on the domain of the Modifications, Licensee shall have a fourteen (14) day testing/acceptance period ("Test Period") during which it shall utilize the Modifications and determine if they meet the specifications given to Licensor. During that period, Licensor shall

provide advice and assistance to Licensee as requested. The costs for Licensor's assistance shall also be on a time and materials basis but will have already been included in the range of costs for the entire project.

7. Should there be any problems with the Modifications performing their desired results for the custom reports, Licensee shall so notify Licensor during the Test Period with specificity to enable Licensor to correct the problems. After Licensor has completed its adjustments as necessary to ensure that the Modifications meet the specifications, Licensee will have an additional seven (7) days in which to test and accept the revised Modifications.
8. If after that additional time, Licensor is unable to meet the criteria listed in the specifications given to Licensor, Licensee shall be entitled to reject the Modifications in whole. After rejection of the Modifications for failure to meet the required specifications, Licensee shall be entitled to the return of all Fees paid for the Modifications within a reasonable period after rejection. Notwithstanding the foregoing however, Licensee may not unreasonably reject the Modifications.
9. Return of the Fees for the Modifications shall be the sole and exclusive remedy for the inability of Licensor to meet the specifications of Licensee. All terms related to disclaimers of warranties as well as limits on liability listed in the main body of this License contained in Article IV, Sections 4 and 5, shall also apply to the Services as they relate to the Modifications.
10. Licensee represents and warrants that it is the owner or licensee of the specifications or other information provided to Licensor for the creation of the Modifications and has the right to provide same to Licensor. Licensee shall defend, indemnify and hold harmless Licensor, its officers, employees and agents, from and against any claim that the specifications and information once provided to Licensor whether prior to or after creation of the Modifications and their integration into Licensee's system and network, infringe the intellectual property rights or breach any contract rights it may have with a third party. Such indemnity shall include all costs, expense and fees, including reasonable attorney's fees. All steps and obligations to obtain the full indemnification for any such claim as specified in Article IV, Section 2 of this License, as they relate to Licensee, shall now be the obligation of Licensor. There shall be no return of fees to Licensee in this event since, it will be the indemnitor. However, the parties shall have all termination rights specified in Section 2 of Article IV.

EXHIBIT "D"

SUPPORT SERVICES

Licensor will be the Internet Service Provider of the Software application, available to Licensee through the Internet at the web address: www.transtrack.net. Access to this domain will be through a special user name and password established for Licensee.

Licensed Software Uptime

Uptime means that all functionality of the Licensed Software specified herein are operational. The Software application shall be available 24 hours/day, 7 days/week, and 365 days/year. The Licensed Software as specified herein shall be available 98% of this time, excluding scheduled maintenance and factors associated with Licensee's Internet connection, as measured on a rolling 30-day period.

Procedures for Licensee users in the event that access is denied will be covered in training. This includes trouble-shooting to determine whether the problem is the Licensee's Internet connection or the server of the Licensor or the Software application itself. Licensor technical support staff, upon notification by Licensee staff, shall address problems with the server of the Licensor or Software application immediately. A voice mail system to alert Licensor technical support staff is in place.

Operations Support Response Time

Licensor will provide support and respond to inquiries during normal business hours (8:30 a.m. to 5:00 p.m. Pacific Time Monday – Friday). Licensor operations support will be prepared to research data and information of the Licensee and make this information available to Licensee as reasonably requested. Questions and requests for technical support may be made to Licensor, by Licensee staff, using the telephone or with our online help desk. Urgent and after-hour needs may be made known to Licensor using the paging system and answering service. Expanded technical assistance hours may be arranged in advance for special projects or periods of intense data input and analysis. Methods of obtaining help will be covered in training.

Technical problems will be investigated and fixed with due diligence. Activities and processes for which the Software application is designed are generally not time-critical. Those determined to be critical will be supported with a paper backup in the event of a system failure that cannot be repaired within 30 minutes.

Data Back-Up and Retention

Licensor will back-up all data on a nightly basis and keep a copy of the data for a 30-day period. Historical data will be retained in summary format for up to five (5) years.

Security Standards

Personnel (System Administrator) of the Licensee will be responsible for determining and maintaining security to access data of the Licensee on the Domain.

Licensor agrees that the security provided on the server will not allow unauthorized traffic to access Licensee data.

EXHIBIT "E"

REPORTS

"Working Reports" are those available as an option in the majority of Views in all Modules. Working reports primarily provide data in tabular format and may be exported in comma-delimited format. Reports may also be exported. Microsoft software products may be used by the Licensee to configure data in report exports.

"Custom Reports" are those that use information from more than one view or are designed to the specifications of the Licensee. Funds have been included in Exhibit F for Customized Reports, to be determined during Phase 1 and implemented at the discretion of the Licensee. A budget of 200 hours has been established for custom reports described below, pending completion of Phase 1 assessment:

- Council Report - Monthly Monitoring Report
- Four additional custom reports to be specified at a later date.

Software Engineering services required for development of Custom Reports are available on a time and materials basis at the rate specified in Exhibit "F". The Licensee agrees to validate reports and any subsequent revisions within 14 days of the report or revision being made available. Licensee is responsible for all validation, unless otherwise specified in the Custom Report price.

EXHIBIT "F"
FEE SCHEDULE

Deliverables	Amount	Payment Due
Software Licenses (Basic \$20,000 & Modular Add-Ons: Daily Passenger Sheet \$7,500; DR Trip Sheets \$7,500; Operations & Safety Logs \$5,000; Vehicle Inventory & Roadcalls \$5,000; Agency Employees \$5,000; GL Crosswalk \$10,000; Daily Feedback \$10,000; and Sched./Unsched. Passenger Miles \$10,000)	\$ 80,000	Contract Signing
Phase 1 Business Assessment & Process Review - Requirements Gathering (includes travel)	\$ 20,000	Completion of Phase 1 -- 90 Days from Contract Signing
Phase 2 Set-Up & Training Services (includes travel)	\$ 13,600	Completion of Task -- 180 Days from Contract Signing
Phase 2 One-Time Input of Historical Data for FY 2011 and FY 2012	\$ 7,500	Completion of Task -- 150 Days from Contract Signing
Custom Import of Financial Data & Validation (Time & Materials at a rate of \$125 per hour)	\$ 5,000	Completion of Task -- To Be Determined
Annual Maintenance & Support Services (FY 2013)	\$ 20,000	Net 30 Days Invoice Receipt
Total Contract Amount	\$ 146,100	
Options Included in Price Proposal	\$ Amount of Options	Options require EUL amendments prior to implementation
Five Custom Reports to Be Specified (Time & Materials at a rate of \$125 per hour)	\$ 25,000	
Annual Maintenance & Support Services (FY 2014)	\$ 20,000	
Annual Maintenance & Support Services (FY 2015)	\$ 20,600	
Annual Maintenance & Support Services (FY 2016)	\$ 21,218	
Hourly rates for additional services available on a Time & Material basis: Training \$150 per hour; Software Engineering \$125 per hour.		

Rates based on fewer than 51 active vehicles and modular functionality and set-up, training and support services defined in Exhibits A through E. If there are any changes requested by Licensee then the rate shall be increased in accordance with Licensor's then current published price list. With no changes in functionality or service levels, the annual Maintenance & Support Services fees for continued on-line service shall not increase by more than 15% per year.

In the event that the Licensee commences use of the Escrowed Materials defined in Article IV, Section 7A, it shall require that the Licensee procure third-party software at the expense of the Licensee.

Hourly rates for additional services are available on a Time & Materials basis: Training \$150 per hour; Software Engineer and Data Entry \$125 per hour.



AGENDA REPORT

Meeting Date: April 17, 2012

TO: Honorable City Council

FROM: Interim Director of Parks & Recreation

SUBJECT: A Resolution of the City Council of the City of Commerce, California, Ratifying and Approving an Agreement between the City of Commerce and the Arthritis Foundation for co-sponsorship of an AF Walk with Ease Program

RECOMMENDATION:

Approve the resolution and assign the number next in order.

MOTION:

Move to approve the recommendation.

BACKGROUND/ ANALYSIS:

The Pacific Region of the Arthritis Foundation (AF) agreed to co-sponsor a Walk with Ease Program in the City of Commerce. The program was scheduled for April 17, 2012. In order to proceed with the program, the AF required that the City execute an agreement that established the terms and conditions of the AF's co-sponsorship. The City was not required to incur any financial obligation under the agreement. The City Attorney approved the agreement. However, because of timing issues, staff was not able to submit the agreement in advance for City Council approval. After consultation with the City Attorney, the Mayor executed the agreement so that the program could proceed. The City Attorney has advised that the agreement should now be approved and ratified by the City Council.

FISCAL IMPACT: None.

Recommended by

Scott Wasserman
Interim Director of
Parks & Recreation

Respectfully submitted by

Jorge Rita
City Administrator

Approved as to Form:

Eduardo Olivo
City Attorney



RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE,
CALIFORNIA, RATIFYING THE APPROVAL OF AN AGREEMENT BETWEEN THE
CITY OF COMMERCE AND THE ARTHRITIS FOUNDATION FOR CO-
SPONSORSHIP OF AN AF WALK WITH EASE PROGRAM

WHEREAS, the Pacific Region of the Arthritis Foundation ("AF") agreed to co-sponsor a Walk with Ease Program in the City of Commerce (the "City"); and

WHEREAS, the program was scheduled for April 17, 2012; and

WHEREAS, in order to proceed with the program, the AF required that the City execute an agreement that established the terms and conditions of the AF's co-sponsorship; and

WHEREAS, the City was not required to incur any financial obligation under the agreement; and

WHEREAS, because of the timing issues, staff was not able to submit the agreement in advance for City Council approval; and

WHEREAS, after consultation with the City Attorney, staff executed the agreement so that the program could proceed; and

WHEREAS, the City Attorney has advised that the agreement should now be approved and ratified.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMMERCE DOES HEREBY RESOLVE, DECLARE, AND DETERMINE AS FOLLOWS:

Section 1.The Agreement between the City of Commerce and the Arthritis Foundation for co-sponsorship of an Arthritis Foundation Walk with Ease Program is hereby approved and ratified. The execution of the Agreement by the Mayor for and on behalf of the City of Commerce is hereby approved and ratified.

PASSED, APPROVED and ADOPTED this _____ day of _____, 2012.

Lilia R. Leon
Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk

The Arthritis Foundation ("AF"), **PACIFIC REGION** ("AF Local"), has agreed to co-sponsor the following AF programs: Arthritis Foundation Exercise Program, Arthritis Foundation Aquatic Program, Arthritis Self-Management Program, Arthritis Foundation Tai Chi Program, or Arthritis Foundation Walk with Ease Program at the **City of Commerce Parks and Recreation Centers** agency ("Co-sponsoring Agency" or "Agency"), with its facility location at Bristow Park / Rosewood Park in city of commerce (or various locations listed on Addendum A). This co-sponsorship is contingent upon the following conditions, to which the parties agree by the signatures of their representatives below:

I. The Co-sponsoring Agency will be responsible for the following:

1. Personnel and Training:

- a) Ensure that the AF programs are only taught by persons who have successfully met the pre-requisites, completed an approved leader/ instructor training workshop, and maintained their AF certification. Recertification training must be obtained by the leaders/ instructors every three years. If the approved leader/ instructor leaves the Agency, the program must be discontinued until a qualified leader/ instructor is obtained.
- b) Ensure that any program training workshops done in collaboration with the Agency include representatives of the AF and are conducted by AF program trainers approved by the AF. Agree that the leader/ instructor training workshops are only open to those who meet the pre-requisites and who have been prescreened and approved by the AF.

2. **Facility Standards:** Adhere to the minimum facility standards for the duration of the program as set forth in Exhibit A and made a part of this agreement. Provide any other reasonable accommodation that may be necessary to ensure that the program is accessible to people with disabilities.

3. Program Implementation:

- a) Ensure that Agency personnel follow the standardized program curriculum and that there is no variation in the approved program content or process described in the program leader/instructor manuals without prior written permission. The leaders/ instructors shall agree to such by forwarding a signed Statement of Understanding Form to the AF.
- b) Carry out program logistics as outlined in Exhibit B and made part of this agreement.
- c) Adhere to AF guidelines regarding program naming and use of AF logo. Use the full program name "Arthritis Foundation Exercise Program, Arthritis Foundation Aquatic Program, Arthritis Foundation Self-Help Program, "Arthritis Foundation Tai Chi Program" or "Arthritis Foundation Walk with Ease" (or "Walk with Ease" with appropriate use of the AF name and logo) as the official program titles and acknowledge and credit the AF in news releases, published reports, brochures and other program materials.

4. Program Monitoring, Participant Information and Evaluation:

- a) Monitor the AF programs to maintain safe, high-quality classes.
- b) Provide the AF with reasonable access to the facility for periodic site visits.
- c) Collect and submit the following to the AF within two weeks of course completion or end of quarter for ongoing classes:
 - 1) Participant Release Form signed by each new class participant. The form is set forth on attached Exhibit C and made part of this agreement.
 - 2) Program Information Forms or equivalent program data.
- d) Notify the AF of any changes in agency contact person, course schedules or leaders/ instructors within 30 days of their occurrence.

5. **Agency Contact Person(s):** The Co-sponsoring Agency shall designate a contact person within the Agency who will receive a copy of this agreement, help ensure that the above responsibilities are upheld, and maintain communication with the AF. This primary contact person's name and contact information is listed below. (A Co-sponsoring Agency with multiple delivery facilities shall indicate additional contact person names and information on Addendum A.)

Ann Berroteran, Senior Services Supervisor 323-887-4430
Name Phone Number

AnnC@ci.commerce.ca.us
Email

I. The AF Local will be responsible for the following:

1. Provide and/or participate in training and recertification training for class leaders/ instructors.
2. Provide certification to trained leaders/ instructors after they have taught a series of six class sessions (or six week Walk with Ease class series).
3. Make available marketing materials and/or assist in the promotion of the program to its members and recruitment of class participants.
4. Keep AF certified leaders/ instructors and the Co-sponsoring Agency informed of latest Arthritis Foundation information of interest to class participants or patrons.
5. Assist in ordering AF materials.
6. Assist in conducting site and program evaluations and providing compiled data back to the Agency.

III. Insurance and Liability:

1. The AF Local and the Co-sponsoring Agency shall each maintain comprehensive general liability insurance with limits of not less than One Million Dollars (\$1,000,000) combined single limit for personal injury and property damage. The Agency shall provide a current certificate of insurance or other evidence of such insurance coverage.
2. The AF Local shall indemnify and hold harmless the Co-sponsoring Agency, its officers, directors, employees, and volunteers from and against any and all actions, suits, judgments, damages, proceedings, claims, demands, losses, costs, and expenses, including reasonable legal costs and attorneys' fees, arising from or related to any negligence or willful misconduct on the part of the AF, the AF Local, or their respective officers, employees, agents or volunteers in connection with programs that are the subject of this agreement; provided, however, that the Co-sponsoring Agency acknowledges that Leaders/Instructors of the programs that are employees of or are contracted by the Agency are not employees, agents or volunteers of the AF or the AF Local. The Co-sponsoring Agency shall indemnify and hold harmless the AF, the AF Local, and their respective officers, directors, employees, and volunteers from and against any and all actions, suits, judgments, damages, proceedings, claims, demands, losses, costs, and expenses, including reasonable legal costs and attorneys' fees, arising from or related to: (i) any negligence or willful misconduct on the part of the Co-sponsoring Agency, its officers, employees, agents or contractors in connection with programs that are the subject of this agreement, or (ii) the condition or safety of the facility.

IV. Notices:

1. Any modification of this agreement shall be binding only if evidenced in writing signed by the authorized representative of both parties.
2. This Co-sponsorship Agreement will terminate **six months** from the date of signing and is subject to renewal at that time.
3. Either the AF Local, or the Co-sponsoring Agency, reserves the right to terminate this agreement with 30 days written notice delivered by certified mail. However, the AF may terminate the agreement immediately in writing if serious safety violations or apparent disregard for program guidelines is found.
4. Unless notified to the contrary, notices shall be provided as follows:

Arthritis Foundation, PACIFIC REGION:

800 W. Sixth Street Suite 1250
 Address
 Los Angeles, CA 90017
 City, State, Zip Code
 Isela Monterrosas
 Representative Name
 Sr. Program Director
 Representative Title
 949-585-0201 / imonterrosas@arthritis.org
 Representative Phone/E-mail
 Representative Signature
 Date

Co-sponsoring Agency: City of Commerce

2535 Commerce Way
 Address
 Commerce, CA 90040
 City, State, Zip Code
 Lilia R. Leon
 Representative Name
 Mayor, City of Commerce
 Representative Title
 rebecca@ci.commerce.ca.us
 Representative Phone/E-mail
 Representative Signature
 Date

ATTEST:

Linda Kay Olivieri
 Linda Kay Olivieri, MMC
 City Clerk

APPROVED AS TO FORM:

Eduardo Olivo
 Eduardo Olivo
 City Attorney

Optional Addendum A: Program Locations

A. Facility/ Location Name Street Address City, State, Zip	B. AF Programs To Be Offered At Site*					C. Facility Contact Person Name Title Phone Number Email Address
	AF Aquatic	AF Exercise	AF Self-Help	AF Tai Chi	AF Walk with Ease	
Commerce Senior Center 2555 Commerce Way, Commerce, CA 90040					x	Ann Berroteran Senior Services Supervisor 323-887-4430 AnnC@ci.commerce.ca.us
Bristow Park 1466 S. McDonnell Ave., Commerce, CA 90040					x	Ann Berroteran Senior Services Supervisor 323-887-4430 AnnC@ci.commerce.ca.us

*For optional use to indicate which programs are offered at different facilities if there is variation among facilities

In order to ensure their accessibility, safety and overall suitability, the host sites in which Arthritis Foundation (AF) Program classes are conducted must meet the following minimum characteristics and should make every reasonable effort to meet the "recommended" guidelines:

1. An accessible site consistent with the Americans with Disabilities Act, including reasonable accommodations such as:
 - a. Handicapped parking spaces or other designated parking within close proximity.
 - b. At least one building entrance with an easy-to-open door close to parking and useable by persons with disabilities. Entrances with steps must have railings.
 - c. Barrier-free exercise room, meeting room or pool that are accessible to people with disabilities.
 - d. Accessible changing and restroom facilities, with adequate provisions for seating, located near the exercise room or pool.
 - e. Entrance doors that are easily operable by people with upper extremity limitations in the locker room, locker and restroom.

2. Sites offering the Arthritis Foundation Exercise Program, the Arthritis Foundation Tai Chi Program, Arthritis Foundation Self-Help Program or Arthritis Foundation Walk with Ease Program must provide:
 - a. Trained leader/ instructor with CPR certification (required if offering the Arthritis Foundation Aquatic, Exercise, Tai Chi or Walk with Ease Program and recommended for the Arthritis Foundation Self-Help Program).
 - b. It is also recommended that sites provide an exercise/ meeting room set-up that facilitates safe, comfortable, effective group interaction and activity, with features such as:
 - Sufficient space for easy movement.
 - Sufficient space for assistive devices such as walkers and crutches.
 - Clutter-free space, to reduce chances of falls or other injuries.
 - Adequate acoustics so the instructor can be easily heard.
 - No other concurrent activities in the room.
 - Adequate lighting, to reduce chances of falls or other injuries.
 - Comfortable room temperature.
 - Sturdy chairs that do not slide easily, preferably of varying heights.
 - Carpeted floor or mats (if offering the AF Exercise Program and doing floor exercises)

3. Arthritis Foundation Aquatic Program sites must provide a pool with:
 - a. Water temperature maintained between 83 and 90 degrees Fahrenheit.
 - b. Readily available safety and water rescue equipment.
 - c. Clean and uncluttered deck area
 - d. Trained leader or instructor with CPR certification
 - e. In accordance with state law, provide a written emergency action plan and an instructor or other person at the pool with current lifeguard or water safety/ rescue certification. If a leader is teaching, it is recommended that there be a second person at the pool or immediately available to assist with water rescue.
 - f. It is also recommended that sites provide a safe, comfortable pool environment including:
 - Air temperature within five degrees of the water temperature.
 - Adequate pool depth and pool size to allow submergence of all joints being exercised and easy movement for all participants.

4. Allow classes to be open to the community unless specific arrangements have been made with the AF.

Exhibit B: Co-sponsoring Agency Responsibilities

The Co-sponsoring Agency and the AF Chapter agree to the following responsibilities (check all that apply):

Part 1: Program Logistics

Possible responsibilities and tasks	What Co-sponsoring Agency Has Agreed to Do (check all that apply)	What AF Has Agreed to Do (check all that apply)
Secure Course Location(s)/ Meeting Facilities	X	<input type="checkbox"/>
Schedule Class Dates and Times	x	<input type="checkbox"/>
Secure Leaders/ Instructors	x	X provide program training
Market Course Offering(s)	X	x
Register Participants	x	<input type="checkbox"/>
Collect Course Fees	X if applicable	<input type="checkbox"/>
Obtain Course Materials	<input type="checkbox"/>	X posters for program instruction
Provide Any Needed Equipment	<input type="checkbox"/>	<input type="checkbox"/>
Provide AF Consumer Publications/Resources to Participants	<input type="checkbox"/>	x books for participants
Collect and Report Participant Outcome Data/ Evaluations	X send to local Arthritis Foundation office	<input type="checkbox"/>
Compensate Leaders/ Instructors	<input type="checkbox"/>	X for each six week program implemented 3x a week by August 2012.
OTHER—List:	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>

Participant Release Form

I understand and agree that there are risks, both foreseeable and unpredictable, associated with any exercise or education program. I am aware of these risks and agree that my participation is at my own risk. I hereby agree that neither the Arthritis Foundation, nor any co-sponsoring agency or facility, nor their respective chapters, officers, directors, employees, agents, members or volunteers, shall assume or have any responsibility or liability for the expenses or medical treatment or for compensation for any injury I may suffer during or resulting from my participation in the Arthritis Foundation program, regardless of where any injury occurs or whether any such injury occurred in a formal or informal program. I do hereby, for myself, my heirs, executors and administrators, waive, release and forever discharge the Arthritis Foundation (and any related entities) and any co-sponsoring agency or facility (as well as their agents, employees and volunteers) from any and all rights and claims for damages that I may have or that may hereafter accrue to me arising out of or in any way connected with my participation in this or any future Arthritis Foundation program.

I understand that this Participant Release Form has important legal consequences and limits my ability to recover money if I am injured as a result of my participation in this program. I have been given the opportunity to discuss its terms and consequences with an attorney of my choosing if I wish to do so.

I also represent and warrant that I have been advised to seek consultation from my doctor about whether I can safely participate in this program and whether there are precautions or limitations to my participation.

I understand and agree that the goal of the Arthritis Foundation and the co-sponsoring facility is to provide a safe program environment free from disruption or harassment. To this end, the Arthritis Foundation and the co-sponsoring agency reserve the right to deny admission to those individuals whose behavior is disruptive, or who harass other program members or staff.

I understand and agree that a copy of this form will be provided to the Arthritis Foundation as well as any co-sponsoring agency or facility. The Arthritis Foundation (and any related entities) and any co-sponsoring agency or facility may rely upon this Participant Release Form.



**Arthritis Foundation and Anthem Blue Cross Foundation
Join Forces to Improve Lives of Those with Arthritis**

The **Arthritis Foundation, Pacific Region**, has received a significant grant from the **Anthem Blue Cross Foundation** to expand the Arthritis Foundation's Life Improvement Series programs. The goal is to engage people in regular physical activity in order to reduce the pain and disability of arthritis for thousands of Southern California residents in *Los Angeles, Riverside and Orange Counties*.

The Arthritis Foundation's Life Improvement Series classes are nationally recognized by the Centers for Disease Control and Prevention and the California State Department of Health. The program teaches people how to use physical activity to decrease the pain and physical limitations associated with arthritis. Exercises have been tested and proven to reduce arthritis pain by 18% and increase function by 25%.

The series offers three types of exercise programs: **Aquatics** for relief from pain and stiffness; **Exercise** for flexibility and strength; and **Walk With Ease** for increased function and confidence. The Life Improvement Series currently serves 11,000 people annually. The grant from Anthem Blue Cross Foundation will allow the Arthritis Foundation, Pacific Region, to serve another 9,000 people.

In addition to encouraging participation in Arthritis Foundation programs, the program's awareness campaign will inform the 2.4 million Southern California residents with arthritis about the importance of physical activity to their overall well-being. Currently, 47 percent of people with arthritis in California also have heart disease; 38 percent have high blood pressure; and 38 percent have diabetes. Moving just 30 minutes per day can help those with arthritis and other conditions ease joint pain, improve mobility and reduce fatigue.

- For individuals looking to participate in a class, visit our local website at: <http://www.arthritis.org/chapters/california/>. A listing of partners, program sites and additional information about the grant can be found.
- For corporate/community partners and instructors who wish to offer or teach one or more of the Life Improvement Series, please contact your local Program Director to discuss FREE training certification and program materials during this grant period.

The Arthritis Foundation

The Arthritis Foundation leads the way in helping people with arthritis live better today and create better tomorrows through new treatments, better access and, ultimately, cures. For more information about arthritis and the Arthritis Foundation, visit www.arthritis.org or call the Arthritis Foundation, Pacific Region office at **1.800.954.CURE (2873)**.



AGENDA REPORT

DATE: April 17, 2012

TO: HONORABLE CITY COUNCIL, IN ITS CAPACITY AS THE GOVERNING BODY OF THE SUCCESSOR AGENCY TO THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION

FROM: CITY ADMINISTRATOR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, ACTING AS THE GOVERNING BODY FOR THE SUCCESSOR AGENCY TO THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION (PURSUANT TO PART 1.85 F DIVISION 24 OF THE CALIFORNIA HEALTH & SAFETY CODE) ESTABLISHING RULES AND REGULATIONS FOR THE OPERATIONS OF THE SUCCESSOR AGENCY AS A LEGAL ENTITY SEPARATE FROM THE CITY AND TAKING CERTAIN ACTIONS IN CONNECTION THEREWITH

RECOMMENDATION:

Approve the Resolution and assign the number next in order.

MOTION:

Move to approve the recommendation.

BACKGROUND:

The Commerce Community Development Commission (the "Commission") was a redevelopment agency, duly created agency in the City of Commerce (the "City") 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").

On June 29, 2011, AB X1 26 and AB X1 27 were signed by the Governor of California, which changed the Redevelopment Law, including adding Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) ("Part 1.85") to Division 24 of the California Health and Safety Code ("*Health & Safety Code*").

Subsequently, the California Redevelopment Association and League of California Cities filed a lawsuit in the Supreme Court of California (*California Redevelopment Association, et al. v. Matosantos, et al.*, Case No. S194861) alleging that AB X1 26 and AB X1 27 were unconstitutional. On December 29, 2011, the Supreme Court issued its opinion in the *Matosantos* case largely upholding AB X1 26, invalidating AB X1 27, and holding that AB X1 26 may be severed from AB X1 27 and enforced independently. The Supreme Court generally revised the effective dates and deadlines for performance of obligations in Part 1.85 arising before May 1, 2012 to take effect four months later. As a result of the Supreme Court's decision, on February 1, 2012, all redevelopment agencies were dissolved and replaced by successor agencies established pursuant to *Health and Safety Code* Section 34173.

On January 17, 2012, the City Council of the City of Commerce adopted Resolution No. 12-8, pursuant to Part 1.85, thereby electing for the City to serve as the successor agency for the Commission upon the Commission's dissolution.

The City Council, acting as the governing board for the successor agency, must adopt a name for separate legal entity and establish rules and regulations that will apply to the governance and operations of the successor agency.

ANALYSIS:

Pursuant to City Council Resolution No. 12-8, by which the City elected to serve as the successor agency to the Commission under Part 1.85 of AB 1 X 26, upon the Commission's dissolution (the "Successor Agency"), and the Commission having been dissolved by operation of law on February 1, 2012, the Successor Agency was declared constituted.

The Successor Agency, as far as the City is concerned, will become a distinct and separate legal entity from the City, and will hereby be named the "Successor Agency to the Commerce Community Development Commission," the sole name by which it will exercise its powers and fulfill its duties pursuant to Part 1.85.

The Successor Agency will be governed as follows:

- (1) Board of Directors. The Successor Agency will be governed by a Board of Directors (the "Board"), which will exercise the powers and perform the duties of the Successor Agency. The Board will consist of the members of the City Council of the City of Commerce.
- (2) Board of Officers. The Board will have a Chairperson to preside at and conduct all meetings and a Vice Chairperson who will act in the absence of the Chair. The offices of the Chairperson and Vice Chairperson will be filled by the Mayor and Mayor Pro Tempore, respectively, of the City Council of the City.
- (3) Meetings of the Board. The Board will hold regular meetings on the first and third Mondays of the month. If a regular meeting falls on a City holiday, such meeting will be held on the immediately following day at 6:30 p.m. The Board may adopt such rules and procedures for conducting such meetings and other business as the Board deems appropriate. All meetings of the Board including, without limitation, regular, adjourned regular and special meetings will be called, noticed and conducted in accordance with the provisions of the Ralph M. Brown Act, Sections 54950 *et seq.* of the California *Government Code*.
- (4) Quorum. The presence of a majority of the Board members at a meeting will constitute a quorum for the transaction of Successor Agency business. Less than a quorum may adjourn or continue meetings from time to time.
- (5) Voting. Except as otherwise provided by law or resolution of the Board, decisions of the Board will be made by a majority of a quorum.
- (6) Executive Director. The City Administrator of the City will serve as Executive Director of the Successor Agency. The Executive Director may appoint City officers and employees as necessary to perform the duties of the Successor Agency. The Executive Director may also delegate the performance of his or her duties to other officers or employees.
- (7) Secretary. The City Clerk of the City will serve as Secretary to the Successor Agency.
- (8) Finance Officer. The Finance Director of the City will serve as Finance Officer of the Successor Agency. The Finance Officer will have the care and custody of all funds of the Successor Agency and will deposit the same in the name of the Successor Agency in such bank or banks as he or she may select. The Finance Officer also may enter into agreements on behalf of the Successor Agency with any bank or trust company authorized to accept deposits of public funds, providing for the transfer of funds between accounts maintained by the Successor Agency upon request by telephone. Such agreement also may provide for the investment upon request by telephone of funds maintained in such accounts.
- (9) Additional Duties. The officers of the Successor Agency will perform such other duties and functions as may from time to time be required or directed by the Board of the Successor Agency. The Chairperson or the Vice Chairperson and the Executive Director may sign, with the counter-signature of one other member of the Board, or the Finance Officer, all orders and checks for the payment of money. The Chairperson or Vice Chairperson in the absence of the

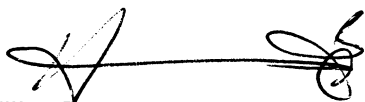
Chairperson, and the Executive Director may sign deeds, contracts and other instruments made by the Successor Agency.

- (10) Powers and Duties of the Successor Agency. The Successor Agency will have the authority to perform the functions and duties described in Part 1.85, including but not limited to making payments and performing obligations required by enforceable obligations and expeditiously winding down the affairs of the Agency. The Successor Agency also may exercise any other powers provided by statute or granted by law.
- (11) Successor Agency Funds and Obligations. All assets and monies held by or under the control of the Successor Agency will be maintained in funds and accounts established by the Successor Agency and will be kept separate and apart from the funds and accounts of the City.
- (12) Indemnification. The Successor Agency will defend, indemnify, and hold harmless the City, and its City Council, boards, commissions, officers, employees and agents, from any and all claims, losses, damages, costs, injuries and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, and omissions of the Successor Agency.
- (13) Liability. In accordance with *Health and Safety Code* Section 34173(e), the liability of the Successor Agency, acting pursuant to the powers granted under Part 1.85, will be limited to the extent of, and payable solely from, the total sum of property tax revenues it receives pursuant to Part 1.85 and the value of assets transferred to it as a successor agency for a dissolved redevelopment agency. The debts, assets, liabilities, and obligations of the Successor Agency shall be solely the debts, assets, liabilities, and obligations of the Successor Agency and not of the City.
- (14) Roster of Public Agencies Filing. The Secretary to the Successor Agency will file on the prescribed form the statement of public agency with the Secretary of State and County Clerk in accordance with *Government Code* Section 53051.

FISCAL IMPACT:

There will be no additional impact as a result the passage of the proposed resolution. The reimbursement for the City's actions as the Successor Agency is dictated by the provisions of AB 1 X 26.

Reviewed by,



Vilko Domic
Director of Finance

Respectfully submitted,



Jorge Rifa
City Administrator

Approved as to Form,



Eduardo Olivo
City Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, ACTING AS THE GOVERNING BODY FOR THE SUCCESSOR AGENCY TO THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION (PURSUANT TO PART 1.85 F DIVISION 24 OF THE CALIFORNIA HEALTH & SAFETY CODE) ESTABLISHING RULES AND REGULATIONS FOR THE OPERATIONS OF THE SUCCESSOR AGENCY AS A NEW LEGAL ENTITY SEPARATE FROM THE CITY AND TAKING CERTAIN ACTIONS IN CONNECTION THEREWITH

WHEREAS, the Commerce Community Development Commission (the "Commission") was 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, AB X1 26 and AB X1 27 were signed by the Governor of California on June 29, 2011, making certain changes to the Redevelopment Law, including adding Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) ("Part 1.85") to Division 24 of the California *Health & Safety Code* ("*Health & Safety Code*"); and

WHEREAS, the California Redevelopment Association and League of California Cities filed a lawsuit in the Supreme Court of California (*California Redevelopment Association, et al. v. Matosantos, et al.* (Case No. S194861)) alleging that AB X1 26 and AB X1 27 were unconstitutional; and

WHEREAS, on December 29, 2011, the Supreme Court issued its opinion in the *Matosantos* case largely upholding AB X1 26, invalidating AB X1 27, and holding that AB X1 26 may be severed from AB X1 27 and enforced independently; 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 established pursuant to *Health & Safety Code* Section 34173; and

WHEREAS, the City Council of the City of Commerce adopted Resolution No. 11-4219 on September 19, 2011, pursuant to Part 1.85, electing for the City to serve as the successor agency for the Commission upon the Commission's dissolution; and

WHEREAS, the City Council, acting as the governing board for the successor agency, hereby desires to adopt a name for that separate legal entity and establish rules and regulations that will apply to the governance and operations of the successor agency.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMMERCE, AS THE GOVERNING BODY OF THE SUCCESSOR AGENCY TO THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1.

Designated Successor Agency.

Pursuant to City Council Resolution No. 11-4219, by which the City elected to serve as the successor agency to the Commerce Community Development Commission under Part 1.85 upon the Commission's dissolution (the "Successor Agency"), and the Commission having been dissolved by operation of law on February 1, 2012, the Successor Agency is here by declared constituted as of February 1, 2012.

Section 2.

Separate Legal Entity.

The Successor Agency is a distinct and separate legal entity from the City, and is hereby named "Successor Agency to the Commerce Community Development

limited to making payments and performing obligations required by enforceable obligations and expeditiously winding down the affairs of the Agency. The Successor Agency also may exercise any other powers provided by statute or granted by law.

K. Successor Agency Funds and Obligations. All assets and monies held by or under the control of the Successor Agency shall be maintained in funds and accounts established by the Successor Agency and shall be kept separate and apart from the funds and accounts of the City.

Section 4. Indemnification and Liability.

A. Indemnification. The Successor Agency shall defend, indemnify, and hold harmless the City, and its City Council, boards, commissions, officers, employees and agents, from any and all claims, losses, damages, costs, injuries and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, and omissions of the Successor Agency.

B. Liability. In accordance with *Health and Safety Code* Section 34173(e), the liability of the Successor Agency, acting pursuant to the powers granted under Part 1 .85, shall be limited to the extent of, and payable solely from, the total sum of property tax revenues it receives pursuant to Part 1.85 and the value of assets transferred to it as a successor agency for a dissolved redevelopment agency. The debts, assets, liabilities, and obligations of the Successor Agency shall be solely the debts, assets, liabilities, and obligations of the Successor Agency and not of the City.

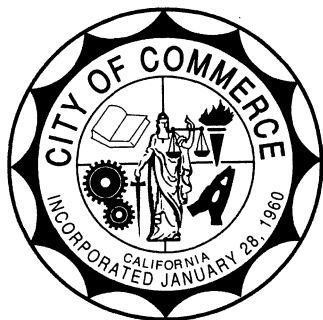
C. Roster of Public Agencies Filing. The Secretary to the Successor Agency shall file on the prescribed form the statement of public agency with the Secretary of State and County Clerk in accordance with *Government Code* Section 53051.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2012.

Lilia R. Leon, Chairperson

ATTEST:

Linda Kay Olivieri, MMC
Secretary



AGENDA REPORT

DATE: April 17, 2012

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: PUBLIC HEARING - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, ADDING CHAPTER 6.11 ("COMMERCIAL RECYCLING") TO TITLE 6 ("HEALTH AND SANITATION") OF THE COMMERCE MUNICIPAL CODE AND REPEALING CHAPTER 6.12 ("SOLID WASTE DISPOSAL") FROM TITLE 6 ("HEALTH AND SANITATION") OF THE COMMERCE MUNICIPAL CODE - FIRST READING

RECOMMENDATION:

Conduct a public hearing regarding the subject Ordinance, and then consider the proposed Ordinance for first reading.

MOTION:

1. Conduct the required public hearing.
2. Move to read the Ordinance by title only.
3. Move to approve the Ordinance for first reading.

BACKGROUND/ ANALYSIS:

On October 18, 2011, staff presented a report to the City Council regarding the State-Mandated Commercial Recycling Program effective July 1, 2012. This mandate:

1. Requires the City to adopt a Commercial Recycling Program by way of a policy or ordinance;
2. Effects all businesses generating more than four cubic yards of waste per week and multifamily residential units with at least five units;
3. Requires education, outreach, and monitoring for business compliance.
4. Does allow for *exemptions* such as due to zoning requirements, lack of storage space, and lack of markets or non-generation of recyclable materials.

Staff sent the first notification to businesses of the upcoming State Mandate (attached). The flyer was mailed with the annual business license renewal notification in November 2011. The Industrial Council was notified as well and provided with flyers for their board members. Staff intends to also notify businesses in the Focus on Business publication.

At this same Council meeting, staff recommended re-evaluating its existing commercial collection system for improved service and increased revenue potential. Staff will return with a separate report regarding this subject at a later time.

FISCAL IMPACT:

This activity can be carried out at this time without additional impact on the current operating budget.

RELATIONSHIP TO 2009 STRATEGIC GOALS:

This agenda report item complies with:

- Goal #1 – *Maintain and Diversify Local Economy;*
- Goal #2 – *Protect and Enhance Quality of Life in the City of Commerce; and*
- Goal #3 – *Make Financial and Economically Sound Decisions Consistent with Economic Conditions.*

Recommended by:


Alex Hamilton
Assistant Director of Community Development

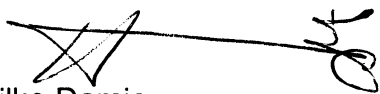
Respectfully submitted,


Jorge Rifa
City Administrator

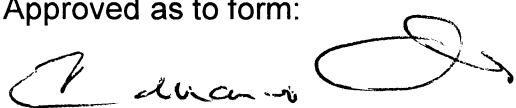
Prepared by:


Gina Nila
Environmental Services Manager

Financial impact reviewed by:


Vilko Domic
Director of Finance

Approved as to form:


Eduardo Olivo
City Attorney

Attachment: Commercial Recycling Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, ADDING CHAPTER 6.11 (“COMMERCIAL RECYCLING”) TO TITLE 6 (“HEALTH AND SANITATION”) OF THE COMMERCE MUNICIPAL CODE AND REPEALING CHAPTER 6.12 (“SOLID WASTE DISPOSAL”) FROM TITLE 6 (“HEALTH AND SANITATION”) OF THE COMMERCE MUNICIPAL CODE

WHEREAS, in 2006, the State of California adopted the California Global Warming Solutions Act of 2006, Assembly Bill 32 (AB 32); and

WHEREAS, the goal of this Act is to reduce Greenhouse Gas (GHG) emissions in California to 1990 levels by 2020, an 11% reduction with a targeted end goal of an 80% reduction by 2050; and

WHEREAS, the Air Resources Board (ARB) is the lead regulatory agency to develop an implementation plan and adopt regulations to implement the plan and the California Department of Resource Recovery and Recycling (CalRecycle) is the lead agency for monitoring compliance with the new refuse management requirements; and

WHEREAS, the City of Commerce promotes environmental programs and supports the increase of its recycling efforts; and

WHEREAS, the City determined that reducing the amount of solid waste entering the waste stream is in the overall interest of the community, and is required by State mandates under the Integrated Waste Management Act of 1989, the California Global Warming Solutions Act of 2006; and the Alternative Compliance Act of 2008; and

WHEREAS, the California Global Warming Solutions Act requires the City to adopt a Commercial Recycling Policy or Ordinance effective July 1, 2012, under the California Global Warming Solutions Act; and

WHEREAS, the City has drafted an ordinance incorporating the minimum requirements of the State Sample Commercial Recycling Ordinance..

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMMERCE DOES ORDAIN AS FOLLOWS:

SECTION 1: Chapter 6.11 (“Commercial Recycling”) is hereby added to Title 6 (“Health and Sanitation”) of the Commerce Municipal Code to read as follows:

“CHAPTER 6.11”

COMMERCIAL RECYCLING

Sections:

6.11.010	Title
6.11.020	Purpose and Intent
6.11.030	Definitions
6.11.040	Applicability
6.11.050	Exemptions
6.11.060	Implementation
6.11.070	Sanitary Zones
6.11.080	Transporting
6.11.090	Refuse Hauler/Recycler Provisions
6.11.100.	Compliance/Enforcement

6.11.010. TITLE

This Chapter shall be known as "Commercial Recycling" and may be so cited.

6.11.020. PURPOSE AND INTENT

The purpose of the City of Commerce Commercial Recycling Program is to:

- (A) Comply with the California Global Warming Solutions Act of 2006 which requires all municipalities to adopt a Commercial Recycling Policy or Ordinance effective July 1, 2012;
- (B) Establish requirements and a schedule for business participation in a State-mandated Commercial Recycling Program;
- (C) Reduce greenhouse gas emissions associated with the mining and manufacturing of goods from virgin materials and with disposal operations at landfills;
- (D) Promote and encourage recycling and conservation;
- (E) Promote public education regarding solid waste management; and
- (F) Provide exemptions for such reasons as zoning requirements, lack of storage space, and lack of markets or non-generation of recyclable materials.

6.11.030. DEFINITIONS

As used in this Chapter, the following definitions shall apply. For purposes of this Chapter, these definitions shall supersede any other definitions of the same terms in this Code.

AB 939 means the State Recycling Law, the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 and following).

Agency means the City of Commerce.

Agency Director means the City Administrator, including his or her designee.

Authorized Recycler means any person or business entity which lawfully collects, accepts, transports or otherwise processes recyclable materials from generators for a fee or profit through a proper permit, business license, agreement or other regulatory structure or authorization issued by Agency.

Business means any commercial entity, including, but not limited to: proprietorship, firm, partnership, person in representative or fiduciary capacity, association, venture, trust, corporation which is organized for financial gain or for profit; or non-profit corporation or entity, or industrial or manufacturing, restaurant, retail facility, office, markets, office buildings, hotels, motels, shopping centers, and theatres.

Collect or Collection means to take physical possession of and remove solid waste or recyclable materials at the place of generation.

Commercial Facility(ies) means any facility(ies) that is not a residential facility, including but not limited to, a commercial facility, restaurant, retail facility, office, manufacturing or industrial facility, markets, office buildings, hotels, motels, shopping centers, theatres, and multi-family dwelling units.

Compost is defined in State law (Public Resources Code Section 40116) as the product resulting from the controlled biological decomposition or organic wastes that are source separated from the municipal waste stream or which are separated at a centralized facility. Compost may also include the product of anaerobic digestion or other conversion technologies.

Compostable Material or Compostables mean green waste and other material that can be broken down into or otherwise become part of, usable Compost in a safe and timely manner, such as for use as soil conditioning material. Compostable Material includes also waste such as food scraps, soiled paper, and plant trimmings, vegetable, yard and wood wastes which are not hazardous waste, disposable plastic food service ware and bags if labeled "compostable" in accordance with the Department of Environment regulations for easy identification, meeting the ASTM Standard Specification (D6400) for compostable plastics, and consistent with State labeling law (California Public Resources Code Section 42359) that any plastic bag or food container labeled "compostable" must meet the ASTM Standard Specification for compostable plastics.

Customer means a generator that contracts for or receives solid waste/recycling removal services from a franchise refuse hauler or authorized recycler.

Disposal means the final disposition of solid waste at a permitted landfill or other permitted solid waste disposal facility, as defined in the California Public Resources Code Section 40192.

Diversion or Divert means the reduction or elimination of solid waste disposal in accordance with California Public Resources Code Section 41024.

Food Vendor means any and all sales outlets, stores, shops, vehicles or other places of business located or operating within the City of Commerce that operate primarily to sell or convey foods or beverages to consumers.

Franchise means a commercial solid waste collection franchise contracted for or issued by the City.

Franchised Hauler means a hauler holding a franchise, contract, license or permit issued by the City.

Generator means an owner or responsible party for a commercial facility(ies) or business, including non-residential property which generates recyclable or compostable materials as a result of its business, commercial facility(ies) or property activity. Generator may also include tenants, property managers for facilities with leased space, employees and contractors of Generator.

Hauler means any person or commercial entity which lawfully collects, hauls or transports solid waste for a fee.

Landfill means a permitted disposal site which accepts solid waste.

Multi-family Dwelling Units means a residential structure having multiple residences.

Recycle or Recycling means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste and returning them for use of reuse in the form of raw materials for new, used or reconstituted products which meet the quality standard necessary to be used in the market place as defined in the California Public Resources Code Section 40201.

Recyclable Materials means materials that have been separated from the solid waste stream prior to disposal and returning them for use or reuse in the form of raw materials for new, used or reconstituted products which meet the quality

standard necessary to be used in the market place and that are not landfilled. Recyclable materials include any materials identified by the Agency Director for which a market exists, including, but not limited to plastic bottles and jars, paper, cardboard, glass, newspaper, metal containers, cans, as well as compostable materials such as green waste or food waste.

Responsible Party means the individual or entity responsible for the Generator's management of solid waste and/or recycling at the Generator's Commercial Facility, Business or non-residential property.

Rubbish means non-putrescible solid waste such as ashes, paper, cardboard, tin cans, yard waste, wood, glass, bedding, crockery, plastics, rubber-by-products and litter.

Scavenging or Scavenger means the uncontrolled and unauthorized removal of recyclable materials at any point in the solid waste management system.

Self Haul or Self Hauling means a Generator or Responsible Party who transports his or her own recyclable or compostable materials to a recycling facility by using a vehicle owned by that Generator or Generator's employees or the Responsible Party rather than using the hauling services of a Franchise Hauler or Authorized Recycler.

Solid Waste means all putrescible and non-putrescible solid, semi-solid, and liquid wastes, including refuse, paper, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, dewatered, treated or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semi-solid wastes. Solid waste does not include hazardous waste or low-level radioactive waste defined in the California Health and Safety Code Section 25117 and 25141.

Source Separated or Source Separation means the process of removing recycling materials from solid waste at the place of discard generation, prior to collection, into separate containers that are separately designated for recyclables, compostable or refuse for the purpose of recycling.

Trash means material that is designated for landfill disposal by the collector and does not include either recyclable or compostable materials. The term refuse does not include hazardous waste, as defined in the California Health and Safety Code Sections 25117 and 25141.

6.11.040. APPLICABILITY

(A) This Chapter requires participation in a recycling service provided by their City authorized refuse hauler/recycler, source separate their recyclables, and/or self haul recyclables to a recycling facility. This Chapter shall apply to the following commercial refuse customers:

1. All businesses that generate 4 cubic yards or more of trash per week;
2. Multi-family residential with at least 5 units;

(B) This Chapter does not apply to:

1. Businesses that generate less than 4 cubic yards of trash per week;
2. Multi-family residential with less than 5 units; and
3. Single family residences.

6.11.050. Exemptions

A Generator may be exempt from the requirements of this Chapter by the Agency Director if it is determined that either:

- (A) There is inadequate storage space for the requisite containers for refuse and recyclables on site and that it is infeasible for the Generator to share containers for refuse and/or recyclables with another Generator.
- (B) Compliance with this Chapter will result in a violation of zoning codes or City regulations for minimum parking spaces.
- (C) There is no viable market or recycling facilities available for the recyclables.
- (D) The business/multi-family residence does not generate recyclables.

Businesses/Multi-family residences must direct a written request for an exemption to the Agency Director and state the reason for the exemption request. Exemptions may be granted by the Agency Director and shall be in writing and state the reason for the exemption.

6.11.060. Implementation

- (A) Each applicable Generator shall establish a recycling service through their City authorized refuse hauler/recycler, source separate their recyclables, and/or self haul recyclables to a recycling facility.
- (B) Each business shall determine with their refuse hauler/recycler what types of materials they can source separate and recycle.
- (C) Each refuse hauler/recycler shall encourage their customers to recycle and provide educational materials specific to commercial recycling programs/services available to them and provide all necessary containers for source separation and recycling.
- (D) Each refuse hauler/recycler shall report to the City of Commerce their customers' participation in the Commercial Recycling Program.

6.11.070 Sanitary Zones

The Council, in its discretion and pursuant to the provisions of this chapter, may establish, create and divide the City into sanitary zones for the purpose of regulating, collecting, and disposing of refuse and recyclables. The sanitary zones shall be fixed, determined and created by the Council by written resolution duly adopted by the Council.

6.11.080. Transporting

- (A) No person shall collect, carry, convey or transport refuse on or through any street, alley or public place in the City, except:
 - 1. A person who is an employee of the City;
 - 2. An employee of an authorized contractor/licensee of the City; or
 - 3. A person responsible for generation of the refuse from any residential unit, commercial or industrial business within the City.
- (B) No person shall haul, carry or transport any refuse through the City or along or over any public street or public place in the City except in motor vehicles that are so constructed and maintained that the contents thereof will not be odorous. The motor vehicles shall be so loaded and operated that none of their contents will fall or spill there from, and every vehicle used for such purpose shall be kept in a clean and sanitary condition. Should such transportation cause leakage or deposit

of said materials on or along City streets, public rights-of-way or other City property, the transporter shall be responsible for the cost of removal.

(C) City, Contractor or Licensee. To protect public health, safety and welfare and to control vectors, the collection, removal and disposal of all refuse and recyclables may be performed exclusively by the City. The City may use, for such purpose, City personnel or enter into contracts with any person with or without advertising for bids or both. The Agency Director or his or her designee may authorize any person to collect, remove and dispose of refuse and/or recyclables under such terms, conditions and limitations deemed necessary in the interest of public health, safety and welfare.

(D) Self-hauler Permit for Recyclables. A resident or property owner responsible for the generation or accumulation of recyclables on their premises in the City may apply for a Self-hauler Permit for their premise. Such person shall be liable for payment of the permit application in the sum of \$150 for each vehicle used in the transporting of recyclables. Vehicles used in the transporting of recyclables must be owned by the Generator or Generator's employee.

The Self-hauler Permit does not apply to refuse, is non-transferable and may be suspended or revoked if the Self-hauler does not comply with the following:

1. Provide to the City proof of ownership of the vehicles and/or bins/containers to be used in transporting recyclables.
2. Deliver recyclables to a recycling facility.
3. Self-hauler Reporting. Self-haulers shall, on a monthly basis, report to the City the type, quantity, volume, weight and destination of recyclables removed with copies of disposal receipts in a City-generated Self-Hauling form.
4. Keep their premises in the City clean and in sanitary condition, and shall not cause or permit any refuse, greenwaste or other combustible waste matter or any non-combustible recyclables to accumulate on the premises for a period in excess of more than fourteen days.
5. Keep motor vehicles, used for transporting recyclables, so loaded and operated that none of their contents will fall or spill there from and every vehicle used for such purpose shall be kept in a clean and sanitary condition.

Upon the revocation of a Self-hauler Permit for violation of any of the terms, conditions or limitations thereof, the City is authorized to require a Generator to obtain commercial recycling services from a City-authorized refuse/recycling hauler.

(G) Gardeners. Any person engaged in the business of gardening is authorized to collect, remove, and dispose of garden trimmings as may be required in such business with an authorized business license from the City.

6.11.090. Refuse Hauler/Recycler Provisions

Refuse Haulers/Recyclers shall:

- (A) Obtain and maintain a business license from the City.
- (B) Provide their customers with appropriate leak-proof containers for source separation and recycling services.
- (C) Provide their customers with public education materials on their recycling service, types of materials they can recycle, and procedures for establishing recycling service.

(D) Deliver recyclable materials to a recycling facility and/or an organics processing facility.

(E) Monitor and correct contamination of recyclables which may include issuing a written notice to said business/multi-family residence owner and/or tenant.

(F) Report to the Agency Director business participation in the recycling service provided in accordance with the reporting form required by the City.

(G) Failure of the Refuse Hauler's or authorized Recycler's to file the recycling reports to the Agency as required, may constitute cause for termination or suspension of its franchise and/or business license.

6.11.100. Compliance/Enforcement

The Agency Director or designee shall have the duty and authority to administer and enforce this Chapter. To the extent permitted by law, the Agency Director or designee may inspect any collection container at a commercial facility or multi-family residence for refuse and recycling service compliance.

Refuse Haulers/Recyclers shall be responsible for providing a recycling service to all businesses generating at least 4 cubic yards of trash per week and multi-family residences with at least 5 units. Refuse Haulers/Recyclers are responsible for monitoring and correcting contamination of recyclables, and for reporting customer recycling participation to the City.

SECTION 2. Severability

If any section, subsection, paragraph, sentence, clause or phrase of this Chapter is declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining Chapter, and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases or portions be declared invalid or unconstitutional.

SECTION 3. Effective Date

This Ordinance shall become effective July 1, 2012.

SECTION 4. Chapter 6.12 ("Solid Waste Disposal") of Title 6 ("Health and Sanitation") of the Commerce Municipal Code is hereby repealed.

SECTION 5. The City Clerk shall attest to the adoption of this Ordinance and shall cause this Ordinance to be posted in the manner required by law.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2012.

Lilia R. Leon
Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk



AGENDA REPORT

MEETING DATE: April 17, 2012

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: GENERAL FUND ANNUAL OPERATING BUDGET DEFICIT PLAN FOR FISCAL YEAR 2012-2013

RECOMMENDATION:

Council discretion

MOTION:

Council discretion

BACKGROUND:

Sadly, another severe and terrible budget cycle is ahead of the City in FY 2012/2013. It threatens to set back three years of painstaking budget decisions made by the City Council to move forward and recover from the "Great Recession."

The reason for this is the decision of the Governor and Legislature to bring to an end the California Redevelopment Law in order to try and correct the State's multibillion dollar deficit. In so doing, the State has laid to waste the City's primary economic engine for jobs, housing, infrastructure investment, environmental remediation, and revenues to the City's General Fund.

On January 24, 2012, Commerce held its last official meeting of its redevelopment agency (Commerce Community Development Commission in this case). On February 1, the City began operating as the Successor Agency. The Successor Agency's job is to primarily carry out and finish the projects that are in the pipeline and also dispose of the assets of the City's now defunct redevelopment program.

The immediate concerns are the potential impacts that the demise of redevelopment will have on the City's current and future operating budgets beginning in FY 2012/2013. Approximately **\$2.0 million** in personnel costs and **\$1.8 million** in lost revenue (interest income and in indirect costs) are associated with the administration of Commerce redevelopment and in turn the General Fund. These expenditures were funded through tax increment (and are no longer available).

When the FY 2012-13 budget process kicked off a few months back, the original projected shortfall was just under **\$4 million** (inclusive of the figures aforementioned).

ANALYSIS:

Since then, staff has made positive adjustments (**\$1,128,530**) to some revenue assumptions, decreasing the initial projected shortfall to **\$2,868,492**. Reminiscent of past budget cycles, the Council will incorporate several tools during this process in order to bridge the gap. A couple that are known at the present time are as follows:

Adjusted Projected Remaining Deficit	(\$3,868,492)
Net New Revenues	<u>\$1,128,530</u>
Projected Remaining Deficit	(\$2,868,492)

Budget Stabilization (Reserves)	\$ 500,000
Water Production Rights Lease	<u>\$ 345,000</u> (Council Approved Action)
Projected Remaining Deficit	(\$2,023,492)
Lay-Offs / Workforce Reductions	<u>\$ 780,858</u> (Council Agenda – April 24)
Projected Remaining Deficit	(\$1,242,634)
Modification of the YES Program	<u>\$ 81,377</u> (Council Approved Action)
Projected Remaining Deficit	(\$1,161,257)

[Note: There are several items yet to be addressed totaling \$385,000. If the City Council decides to act on all of them, the projected deficit would increase to \$1,546,257. The items are as follows: Senior Rent Subsidy (\$90,000), Health Coverage related to Employee Lay-Offs thru December 31, 2012 (\$45,000), and Capital Outlay Items (\$250,000).]

If the City Council approves the Lay-Offs / Workforce Reduction on April 24 as presented, that would leave a projected deficit of **\$1,161,257**.

How do we get there?...what is the next step?...the Council embarks down the path of reviewing departmental **5% and 10% reduction scenarios** on Wednesday, April 18 to assess what programmatic modifications may be implemented to further bridge the projected deficit. It is estimated that deliberation regarding this component of the process will go into early to mid May.

In addition, it is the hope of the City Council that the City personnel (represented and management) will agree to potential wage and/or benefit concessions to assist in addressing the projected deficit and bringing finality to this year's budget process sooner than later.

A power point presentation recapping the process and all City Council actions will be presented.

FISCAL IMPACT:

If the City Council takes action on April 24, the City will be facing a projected shortfall of **\$1,161,257 (or \$1,546,257 if the three items mentioned above are approved)**. This will be the figure that the City Council and staff needs to be addressed for the remainder of the FY 2012-13 budget process. Initially, the following components were applied a part of the proposed solution:

✓ Net New Revenue	\$1,128,530
✓ Cash from the reserves	\$ 500,000
✓ Water Rights Lease	\$ 345,000
✓ YES Program Modification	\$ 81,377

Regrettably, the ability to balance the budget is contingent upon the Council's approval of employee layoffs and workforce reduction on April 24.

Lastly, the following two components remain -- as one can see, the need is immediate; with the eventual implementation of these mechanisms in hopes of addressing the projected deficit for FY 2012-13.

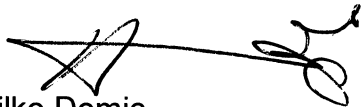
- ✓ Program Reductions
- ✓ Employee and Management Concessions

Mindful of the organizational and financial impact involving last years' budget process (FY 2011-2012), staff continues to make a concerted effort to minimize the impact to personnel in trying to bridge the FY 2012-2013 budget deficit.

RELATIONSHIP TO 2009 STRATEGIC GOALS:

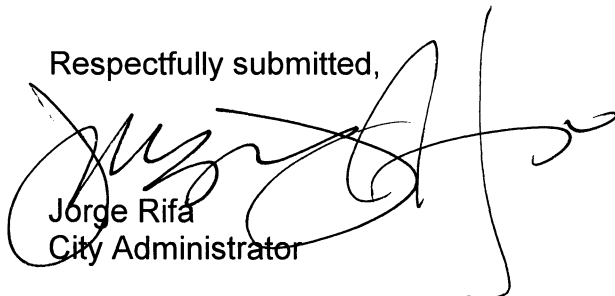
This item is associated with Council's goal of making financially and economically sound decisions consistent with economic conditions.

Recommended by:




Vilko Domic
Director of Finance

Respectfully submitted,



Jorge Rifa
City Administrator

Approved as to Form



Eduardo Olivo
City Attorney

**City of Commerce
General Fund Year-End Deficit Plan
FY 2012-13**

<i>Original Projected Deficit</i>	(3,997,022)	
Net New Revenue	<u>1,128,530</u>	A
<i>Projected Remaining Deficit</i>	(2,868,492)	

A This includes revenue growth as it relates to Sales Tax, Use Tax Audit, Card Club Revenues, and a Oil Pipeline Franchise Fee.

Budget Stabilization (Reserves)	500,000	←
Water Production Rights Lease	<u>345,000</u>	←
<i>Projected Remaining Deficit</i>	(2,023,492)	

Lay-Off and Work Force Reductions	<u>780,858</u>
<i>Projected Remaining Deficit</i>	(1,242,634)

City Council Action(s)	
Modification of the YES Program (April 3, 2012)	<u>81,377</u>
Revenues over Expenditures	(1,161,257) B

B This deficit could be addressed with the use of the following tools:

- Program Reductions
- Collective Bargaining / Employee Concessions
- Management Concessions

(NOTE: There are several items yet to be addressed by the City Council totaling \$385,000. If the City Council decides to act on all of them, the projected deficit would increase to to \$1,546,257.) The items are as follows:

- Sr Rent Subsidy Program (Approximate Cost -- \$90,000)
- Health Coverage for Employee Lay-Offs thru Dec 31, 2012 (Approx. \$45,000)
- Capital Outlay items (Approximate Cost -- \$250,000)

→ Signifies a One-Time application of funding (meaning that approximately \$845,000 will potentially need to be addressed during the following budget process)



AGENDA REPORT

MEETING DATE: April 17, 2012

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR), AND SINGLE AUDIT REPORT ON FEDERAL AWARDS FOR FISCAL YEAR ENDED JUNE 30, 2011

RECOMMENDATION:

Receive and file.

ACTION:

Receive and file.

BACKGROUND/ANALYSIS:

The following June 30, 2011, financial reports for the City of Commerce are presented herein – under separate cover:

1. Comprehensive Annual Financial Report (CAFR)
2. Single Audit Report on Federal Awards

FISCAL IMPACT:

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

RELATIONSHIP TO 2009 STRATEGIC GOALS:

The financial reports are associated with Council's goal of making financially and economically sound decisions consistent with economic conditions.

Recommended by:

Vilko Domic
Director of Finance

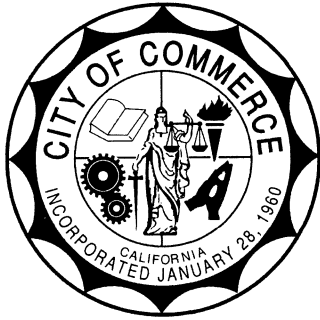
Respectfully submitted,

Jorge Rifá
City Administrator

Approved as to Form

Eduardo Olivo
City Attorney

DS/staff reports, city council/CAFR & Single Audit 2011 4-17-12 VD



AGENDA REPORT

MEETING DATE: April 17, 2012

TO: HONORABLE SUCCESSOR AGENCY

FROM: EXECUTIVE DIRECTOR

SUBJECT: COMMUNITY DEVELOPMENT COMMISSION ANNUAL FINANCIAL REPORT FOR FISCAL YEAR ENDED JUNE 30, 2011

RECOMMENDATION:

Receive and file.

ACTION:

Receive and file.

BACKGROUND/ANALYSIS:

The following June 30, 2011, annual financial report for the Commerce Community Development Commission, (transitioned to the Successor Agency on February 1, 2012) is presented herein – under separate cover:

1. Community Development Commission Annual Financial Report

FISCAL IMPACT:

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

RELATIONSHIP TO 2009 STRATEGIC GOALS:

The financial report is associated with Council's goal of making financially and economically sound decisions consistent with economic conditions.

Recommended by:

Vilko Domic
Director of Finance

Respectfully submitted,

Jorge Rifá
City Administrator

Approved as to Form

Eduardo Olivo
City Attorney

DS/staff reports, cdc/CDC Financial Report 2011 4-17-12 VD



AGENDA REPORT

MEETING DATE: APRIL 17, 2012

TO: Honorable City Council
FROM: City Administrator
SUBJECT: THE TORCH FOUNDATION

RECOMMENDATION:

At the request of Councilmember Altamirano, the City Council will consider for approval the use of the Teen Center to offer the Torch Foundation youth program to Commerce youth at no cost.

MOTION:

City Council discretion.

BACKGROUND:

The Torch Foundation is a non-profit 501 (c)(3) organization that offers leadership trainings to at-risk teens from low-income, underserved neighborhoods throughout California. The Foundation's mission is ambitious: it seeks to change the world by instilling in each child confidence, passion and desire to actively help create the life of their dreams and to produce amazing changes in their own communities.

According to the Foundation, the training is a two-day experiential leadership training designed to profoundly alter the lives of young adults. Its unique format allows the students to experience an environment of trust that fosters openness, honesty, and self-expression. In addition to the two day training, there is a two-month follow up component in which Torch Foundation staff follows up with participants via telephone. Telephone interactions between participants and Torch Foundation staff will be beyond the supervision of the Parks and Recreation Department.

ANALYSIS:

The Torch Foundation is requesting the use of the City of Commerce Teen Center to conduct a two day workshop on Saturday, May 19 and Sunday, May 20, 2012, from 10:00 a.m. – 7:00 p.m.

The two-day program will accommodate approximately 60 teens from Bell Gardens and Commerce. Accordingly, the City is being asked to allow non-residents to participate in the program. The Foundation will assist with the outreach effort to teens in the community, as well as outreach to teen mothers. If provided, Foundation flyers for this training program may be placed at all City public counters to help promote the event, along with a notice on the City local cable channel. The Torch Foundation will need to submit acceptable liability insurance to conduct the training.

Teen participation in the training program requires the submittal of a Torch Foundation program application with parental consent. Should Council approve the request, The Foundation would provide lunch for both days, along with a special dinner on Saturday, May 19. Access to the kitchen would be required.

Staff recognizes the wonderful work the Foundation provides to youth in under-served communities throughout California and would welcome establishing a dialogue with The Torch Foundation to gain a better understanding of the proposed teen program.

FISCAL IMPACT:

City expense calls for one of the following options:

1. A Senior Recreation Leader to open, supervise and close the facility for two days, at a cost of \$432.00 (24 hrs. (8:00 a.m. – 8:00 p.m.) X \$18.00). Under this model, the city is allowing the Torch Foundation to use the facility and conduct all training and follow up activities with minimal involvement from city staff. The Parks and Recreation Department would allow the Torch Foundation to conduct all recruitment activities and would not invite teen clubs from each park or control or restrict who attends, or
2. At greater staff expense, the City could employ a partnership model, in which teen clubs from each park are invited to the training and accompanied by teen club leaders. Teen club leaders would be present to supervise their teens at the program, respond to any disciplinary or emotional issues that arise, or contact parents, if appropriate. The cost of staffing teen leaders to supervise is \$288.00/per leader x 4 teen club leaders = \$1,152 (18 hrs. (10am-7pm) x \$16) for the weekend, or
3. Parks and Recreation and Community Services may coordinate their operating staff work week hours to have staff support present on the weekend. This entails adjusting staff schedules so that they are available to work on Saturday and Sunday, in lieu of their regularly scheduled days during the week.

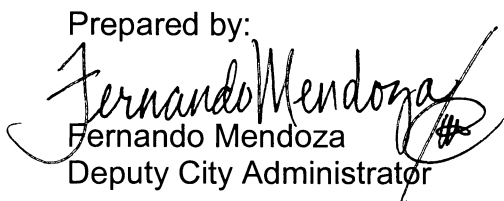
Option 1 and 2 noted above would require the allocation of funds from the General Fund contingency account to the Parks and Recreation Department for this specific program, while Option 3 would only require a staff workday schedule adjustment.

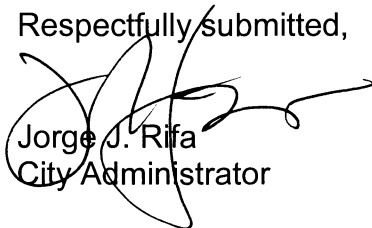
RELATIONSHIP TO STRATEGIC GOALS:

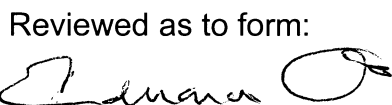
This recommendation before the City Council is applicable to the following Council strategic goal:

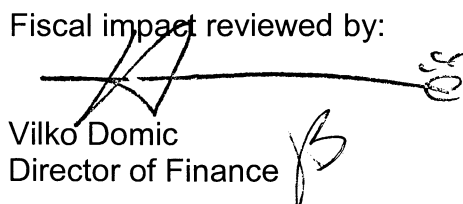
- *Protect and Enhance the Quality of Life in the City of Commerce*

Though the item has no specific objective related to this recommendation, it is connected to the City's interest to improve the quality of life of the community.

Prepared by:

Fernando Mendoza
Deputy City Administrator

Respectfully submitted,

Jorge J. Rifa
City Administrator

Reviewed as to form:

Eduardo Olivo
City Attorney

Fiscal impact reviewed by:

Vilko Domic
Director of Finance

WELCOME TO THE TORCH FOUNDATION

The Torch Foundation is a non-profit 501 (c)(3) organization that offers leadership trainings to at-risk teens from low-income, underserved neighborhoods throughout California. The Foundation's mission is ambitious: it seeks to change the world by instilling in each child confidence, passion and desire to actively help create the life of their dreams and to produce amazing changes in their own communities.

The Torch Training is a two-day experiential leadership training designed to profoundly alter the lives of young adults. Its unique format allows the students to experience an environment of trust that fosters openness, honesty, and self-expression.

The student will Discover:

- The honor of Keeping your Word
- Negative habits that hold you back from creating a life that you truly desire
- The freedom of Choice
- The joys of Conscious Living
- The value in accepting Responsibility
- Happiness as a state of Being vs. Doing

The students will Learn:

- How to create positive Relationships
- Effective Communication
- Productive Problem Solving Techniques
- Leadership skills
- How to be productive vs. reactive
- The power of living life based on Principles and Values

Through one on one, team, small group and "dyad" (a two person exercise), teens and youth experience themselves through the eyes of their peers and coaches. They are supported to look deep into themselves to find the answers for their future - to take responsibility for their lives.

The training provides a stimulating and nurturing, committed environment for shared exploration - together, we explore what is possible, what is "so" and what can be.

Be sure to click on the Spanish PSA Video Link [Click Here](#)

Student's Testimonials

For me taking this training was one of the best things that has ever happened to me. Taking the Torch Training was a wonderful experience. It was amazing to see how much I had changed in just two days. The most important thing I learned from this training was to appreciate life and the people you love because you don't know when you might lose them. The training also helped me be more confident and feel good about myself. I really recommend other teenagers to take the training.

-Claudia, age 14

The torch training was amazing. It taught me to not judge people and to love myself. It was only a 2 day program but it surely changed my life! I loved it here, we had fun, as well as learning to be a better person!

- Glori, age 16

In this training I learned that I can let go of all my anger and forgive myself and the others who hurt me. Today I can be anything I want to be and can do anything I want to and nothing can hold me back except myself. But now I have enough confidence to do anything by myself and don't need someone to help.

- Kayla, age 14

I learned how to be myself and not to be afraid of myself. I learned to be proud of myself and love myself. I learned to respect others and how important it is to be committed and keep your word. I learned how to understand and love others. I learned how to not judge people by the way they look, but by the way they are. I learned how to understand others. I learned the importance to not live for tomorrow but what you can do today. Not being afraid to tell someone how much you love them. I learned that we all share things with each other. I learned that what I believe I am; I am.



And most importantly: I learned that I'm MAGNIFICENT, and that no one is going to take that away from me.

- Janet, age 17

This training has really helped me because now I look at myself and I know that I'm magnificent. This Torch Training helped me realize that life is a choice and that no one could choose my life but me. It has also helped me understand that I shouldn't judge people by how they look but for who they are. It also helped me realize that if I don't let people know how I feel when I have the chance I might never get another one.

- Citlali, age 14

What I learned is that I could change if I want to and do what I want. So if you love a person tell them that you love them because they could die any time.

- Christopher, age 13

I came to this program not expecting much and now it's impacted my life. There are so many things to say about this program. It was very fulfilling, it helped me see life another way, it helped me figure out my life. It encouraged me to be better. There is so much to say but it's better if you experience it. Love always,
-Diana, age 15

I learned that you need to appreciate the people around you because they are all magnificent and they might not be there tomorrow or even 10 years from now.
-Colton, age 13

This experience has been amazing and was probably the best experience of my life. I thought that coming here would just be a lot of lectures and really boring. Man, I was wrong! This place rocked. Not only did I learn valuable keys to life but I also had fun doing it. I loved it. I made a lot of new friends. I learned valuable things, and I had fun. I personally can move on with my life and not just stand still. I learned things like self respect and how and why to express your feelings to your loved ones.
-Joshua, age 12

This program has changed my life for the second time. Last year I was also here. I recommended it to my friends and some of them came this year. It's a good experience. It's awesome. It feels good to be free of secrets. They showed us that we need to succeed in life and to not let good chances go. Life is short and it goes by really fast. I would like to know when the next program at Highland Park would be so I could come for a third time.
-Azucena, age 14

I learned a lot of self respect and respect for every one I learned to not be afraid of meeting new people and I feel really good and I would tell the world how good this program is it I could.
-Yosef, age 15

From this program I learned to be open minded to others and to listen to others and to work together.
-Jason, age 15

Crime Prevention Testimonials

"I attended the two day Torch Training as an observer. It was a very powerful program. I was amazed at the transformation these youths had in two days. They all shared their problems. They learned that many people have the same problems or worse. They also learned how to put their fears aside, open up and trust each other. How to help others by listening and not judging them. This training is wonderful and every youth will benefit tremendously from it. Thank you for giving these youths the opportunity to better their lives."

Deputy Beatriz Kraft
Safe Street Bureau/Gang Unit



"The Probation Office of Monterey County said 85% of teens who attended would like to go again if we returned. The teens got a lot out of the training and the probation officers found it very beneficial"

Tim Gregory
Chief Probation Officer
Monterey County

Testimonials from Schools and Government Officials

Adults who work professionally with children note dramatic transformations in kids who complete the training. Students are more introspective, aware, and desirous of processing their actions seem more content and focused. There have been no complaints about exams or schoolwork.

In my experience, youth seldom get excited about adults who think they need to be improved. The Torch training validates whom they are and what they have to give to each other and the world. It doesn't get much better than that!

Ms. Marylyn, Special Programs Coordinator in Ventura County



Marcia Simmons, M.S.

Licensed Marriage Family Therapist

License #MJ014945 • 154 Central Avenue • Salinas, CA • (831) 633-0519

7-10-04

Dear Ariana,

I am amazed! I have worked in the Family Therapy field for a long time. It is encouraging to discover a program designed to change kid's lives dramatically.

I watched as the program unfolded. I held my breath as the trainer, accompanied by her trainees and staff, facilitated the impossible. I watched at risk teens make a major shift in their lives in 2 days. I felt that this really could be the thread in the fabric of their lives powerful enough to change the way they think, act, and therefore finally, the direction of their lives.

Although I had confidence it would work, generally, I was a bit challenged by the kids who were "very" at risk. I must admit that I questioned if the kids would be fortunate enough to experience a significant shift. I saw it happen before my eyes. Everything you told me would be accomplished by the Torch training occurred. They were also so much happier at the end of the program.

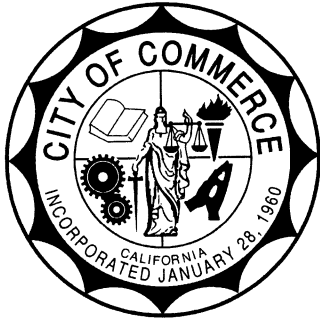
I am ecstatic! The counselor who attended the training who works exclusively with at risk kids was equally impressed. Because of her endorsement to the mayor, the mayor wants to bring the program to a larger audience in December. We all want to change statistics like January's. We had six deaths from teen shootings in that month alone. The Torch training is the very best way I have seen to reach this goal. I wished to bring it to Monterey County. I am glad my dream of helping this community came to fruition with your help.

I am exceedingly pleased with our association during the planning stages. What a great, unexpected benefit. The Torch Foundation has certainly recruited a fantastic executive director.

I commend you on your efforts to change the world, one teen at a time. I applaud your dedication. I join you wholeheartedly and enthusiastically to accomplish the same goal in Monterey County with a larger audience in December. The Probation Department, a local city administrator and local hospital with a drug and alcohol program join me.

Sincerely,

Marcia Simmons
Marcia Simmons
Licensed Marriage Family Therapist



AGENDA REPORT

Meeting Date: 04/17/2012

TO: Honorable City Council

FROM: City Administrator

SUBJECT: Blue Ribbon Advisory Panel Appointments

RECOMMENDATION:

Make appropriate appointments.

MOTION:

Council discretion.

BACKGROUND:

At its March 6, 2012, meeting, the Council directed the formation of a Blue Ribbon Advisory Panel to be tasked with examining and recommending new revenue sources, outside the scope give the first Panel in 2010, to assist with the projected \$3.5 million revenue shortfall in fiscal year 2012-2013.

At its March 20, 2012, meeting, the Council approved the "Working Blueprint" that will guide both the Panel and staff through the advisory process. The Council also determined to make a slight adjustment to the Panel membership, changing the number of Industrial Council members from three to two and Employee Association members from one to two. Finally, the Council commenced with the appointment of the nine Panel members.

ANALYSIS:

The following Panel members were appointed by the Council:

Councilmember Aguilar	Nancy Barragan
Councilmember Altamirano	Continued
Councilmember Robles	Annelle Grajeda
Mayor Pro Tempore Baca Del Rio	Sandra Jimenez
Mayor Leon	Angela Sandoval
Industrial Council	Eddie Tafoya, Executive Director, Commerce Industrial Council
Industrial Council	Jon R. Reno, Senior Vice President, Heger Industrial
City of Commerce Employees Association	Laura Tilley
City of Commerce Employees Association	Mario Moran

It is requested that the following Councilmember make the appointments at this time.

Councilmember Altamirano

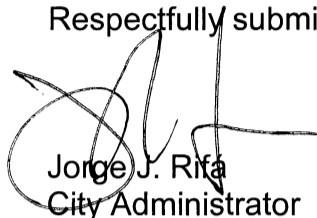
FISCAL IMPACT:

This matter can be carried out without further impact on the current operating budget.

RELATIONSHIP TO 2009 STRATEGIC GOALS:

This item is associated with the Council's goal of making financial and economically sound decisions consistent with economic conditions.

Respectfully submitted,

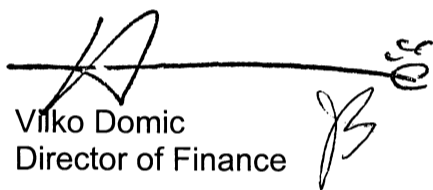


Jorge J. Rifa
City Administrator

Prepared by:

for *Victoria M. Alexander, Deputy*
Linda Kay Olivieri
City Clerk

Fiscal impact reviewed by:



Vilko Domic
Director of Finance

Reviewed as to form:

Eddie Olivo
Eduardo Olivo
City Attorney



AGENDA REPORT

DATE: April 17, 2012

TO: Honorable City Council
FROM: City Administrator
SUBJECT: Commission and Committee Appointments

RECOMMENDATION:

Make the appropriate appointments.

MOTION:

Council discretion.

BACKGROUND:

Pursuant to Resolution No. 97-15, as amended, each Councilmember makes one appointment to the various Commissions and Committees of the City, with the terms of office of each appointee being for a period not to exceed two years, expiring at the next General Municipal Election. The term of office shall continue until the appointment and qualification of successor appointees. The Council makes the appointments of any sixth or more members, industrial member and Council member of the applicable Commission and Committees.

ANALYSIS:

It is recommended that appointments be made to the following Commissions and Committees at this time, with all terms to expire March 19, 2013, unless otherwise indicated:

Community Services Commission

Councilmember Altamirano

Parks and Recreation Commission

Councilmember Altamirano

Traffic Commission

Councilmember Altamirano

Pageant Steering Committee

Councilmember Altamirano

Environmental Justice Advisory Task Force

Councilmember Altamirano

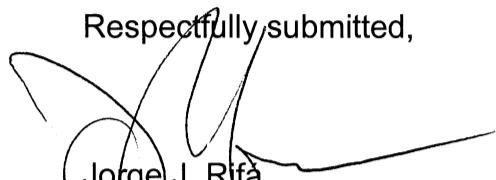
FISCAL IMPACT:

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

Recommended by:

Respectfully submitted,

for Victoria M. Alexander Deputy
Linda Kay Olivieri
City Clerk


Jorge J. Rifa
City Administrator

Prepared by:

Victoria M. Alexander
Victoria M. Alexander
Deputy City Clerk



AGENDA REPORT

Meeting Date: 04/17/2012

TO: Honorable City Council

FROM: City Administrator

SUBJECT: REVIEW OF CITY COUNCIL VEHICLE USE POLICY

RECOMMENDATION:

At the request of Councilmember Robles, the City Council will consider providing direction as deemed appropriate with respect to the City Council Vehicle Use Policy.

MOTION:

Council discretion.

BACKGROUND:

At its meeting of December 2, 2008, the City Council and Commerce Community Development Commission approved the following Vehicle Use Policy, which is a revised version of the February 2, 1987, policy:

“CITY COUNCIL/COMMISSION VEHICLE USE POLICY

Up to four passenger vehicles will be placed in a pool for the City Council/Commission for City/Commission business use only.

‘City/Commission business’ shall include attendance at local and regional meetings, appointments or events involving business affecting, or of interest to, the City or Commission; meetings, appointments or events of various boards and/or agencies of which the City or Commission is a member; City or Commission community events and meetings, appointments or events to which members of the City Council or Commission have been invited to participate in or attend in their official capacity as Councilmembers or Commissioners.

A sign-in and out log, along with the keys for the pool vehicles, will be maintained by Administration Department staff. Councilmembers/Commissioners will provide the date, time and purpose for the use of a City vehicle when it is signed out and the date and time the keys are returned at the end of the trip. At the end of each trip, vehicles are to be returned to the assigned parking area at City Hall for night parking.

Vehicles may be kept at home only if attending an evening, early morning or weekend meeting, appointment or event and must be checked in immediately following the meeting, appointment or event, but no later than the morning of the next business day, during normal business hours.

The vehicles are not to be used for personal business.

This policy shall take effect January 1, 2009.”

ANALYSIS:

Due to various interpretations of the terms in the policy referencing “City...business”, “local...meetings, appointments or events involving business affecting, or of interest to, the City” and/or “City...community events and meetings”, Councilmember Robles is requesting that the Council review the stated policy and provide direction as deemed appropriate to clarify these terms.

Further, Councilmember Robles is requesting that, due to the Councilmembers’ active schedules in attending outside meetings and events and visiting the various City facilities and members of the business community, the Council consider an adjustment to the number and/or type of vehicles assigned to the Council pool.

FISCAL IMPACT:

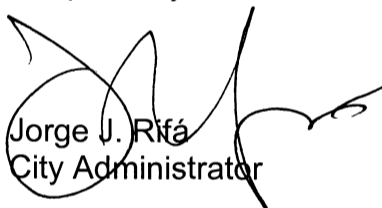
This item may be carried out without further impact on the current operating budget.

RELATIONSHIP TO 2009 STRATEGIC GOALS:

This item relates to the strategic planning goal: “Make Financial and Economically Sound Decisions Consistent with Economic Conditions”.

Although this item has no specific objective related to this recommendation, it is connected to the City’s interest in assuring that the day-to-day operations are consistent with the current economic conditions facing the City.

Respectfully submitted,


Jorge J. Rifa
City Administrator

Prepared by:


Linda Kay Olivieri
City Clerk

Budget impact reviewed by:


Vilko Domic
Director of Finance

Reviewed as to form:



Eduardo Olivo
City Attorney



AGENDA REPORT

Meeting Date: 04/17/2012

TO: Honorable City Council

FROM: City Administrator

SUBJECT: REPORT ON AND SETTING DATE FOR FIRST MEETING OF
COMMERCE OVERSIGHT BOARD

RECOMMENDATION:

Receive and file and provide direction as deemed appropriate.

MOTION:

Council discretion.

BACKGROUND/ANALYSIS:

The City Council will receive an oral report from the City Administrator regarding setting the date for the Commerce Oversight Board meeting.

FISCAL IMPACT:

This item may be carried out without further impact on the current operating budget.

Respectfully submitted,



Jorge J. Rifá
City Administrator



AGENDA REPORT

DATE: April 17, 2012

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: AN ORDINANCE OF THE CITY OF COMMERCE AMENDING THE ZONING PROVISIONS OF THE MUNICIPAL CODE TO CHANGE THE ZONING OF CERTAIN PARCELS OF LAND (ZONE CHANGE NO. 12-01) TO C-2 (UNLIMITED COMMERCIAL) – SECOND READING

RECOMMENDATION:

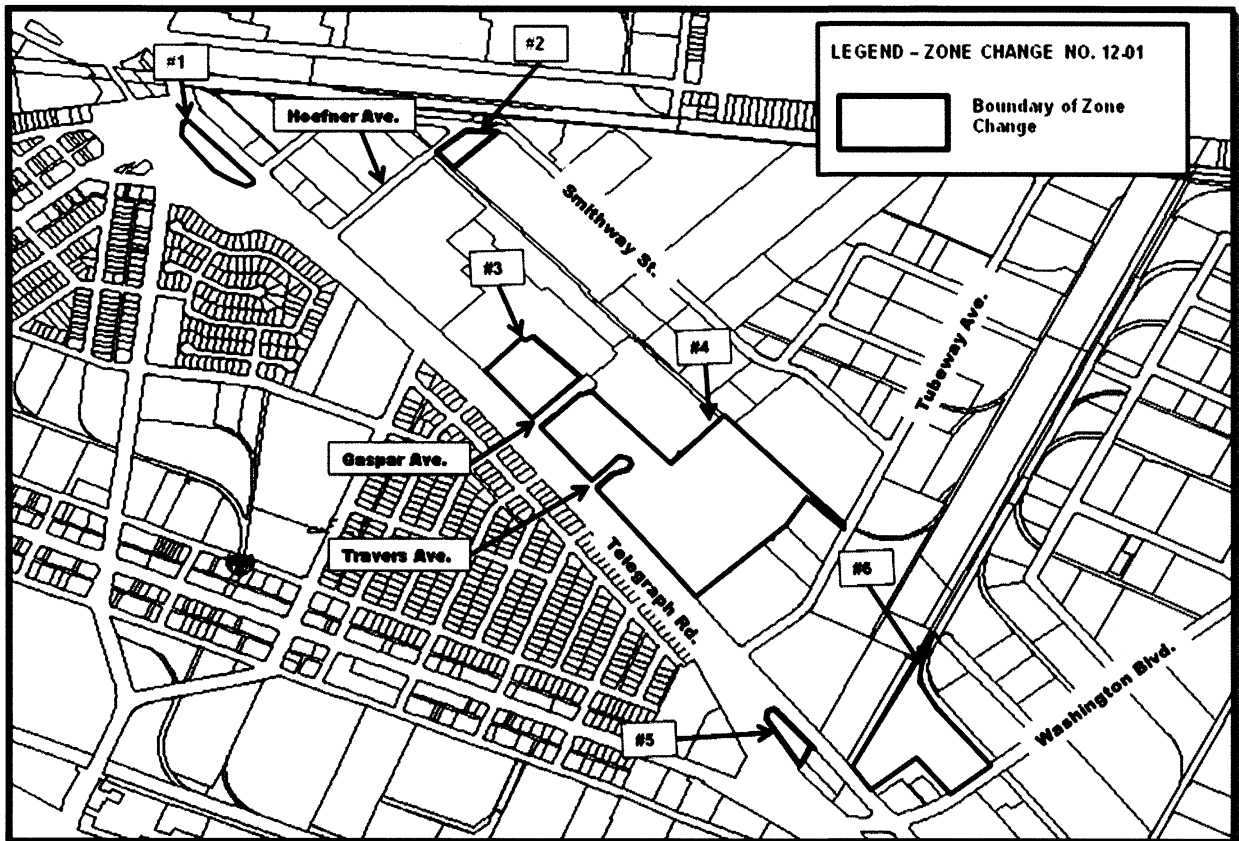
Move to approve and adopt the Ordinance.

MOTION:

1. Move to read the Ordinance by title only; and
2. Move to approve and adopt the Ordinance and assign the number next in order.

PROPERTY LOCATION:

The properties subject to the proposed zone change are shown on the following map and described in greater detail in this report and in the ordinance attached hereto.



BACKGROUND:

Zone Change No. 12-01 would change the zoning designations of a number of parcels to C-2 (Unlimited Commercial). The C-2 designation allows for the widest range of commercial uses, including retail businesses and restaurants. The purpose for allowing for these types of uses is to provide goods and services necessary for the Community (Additional information on the C-2 zone and other zoning designations discussed in this report is included in the Analysis section). The City's General Plan serves as the blueprint for future

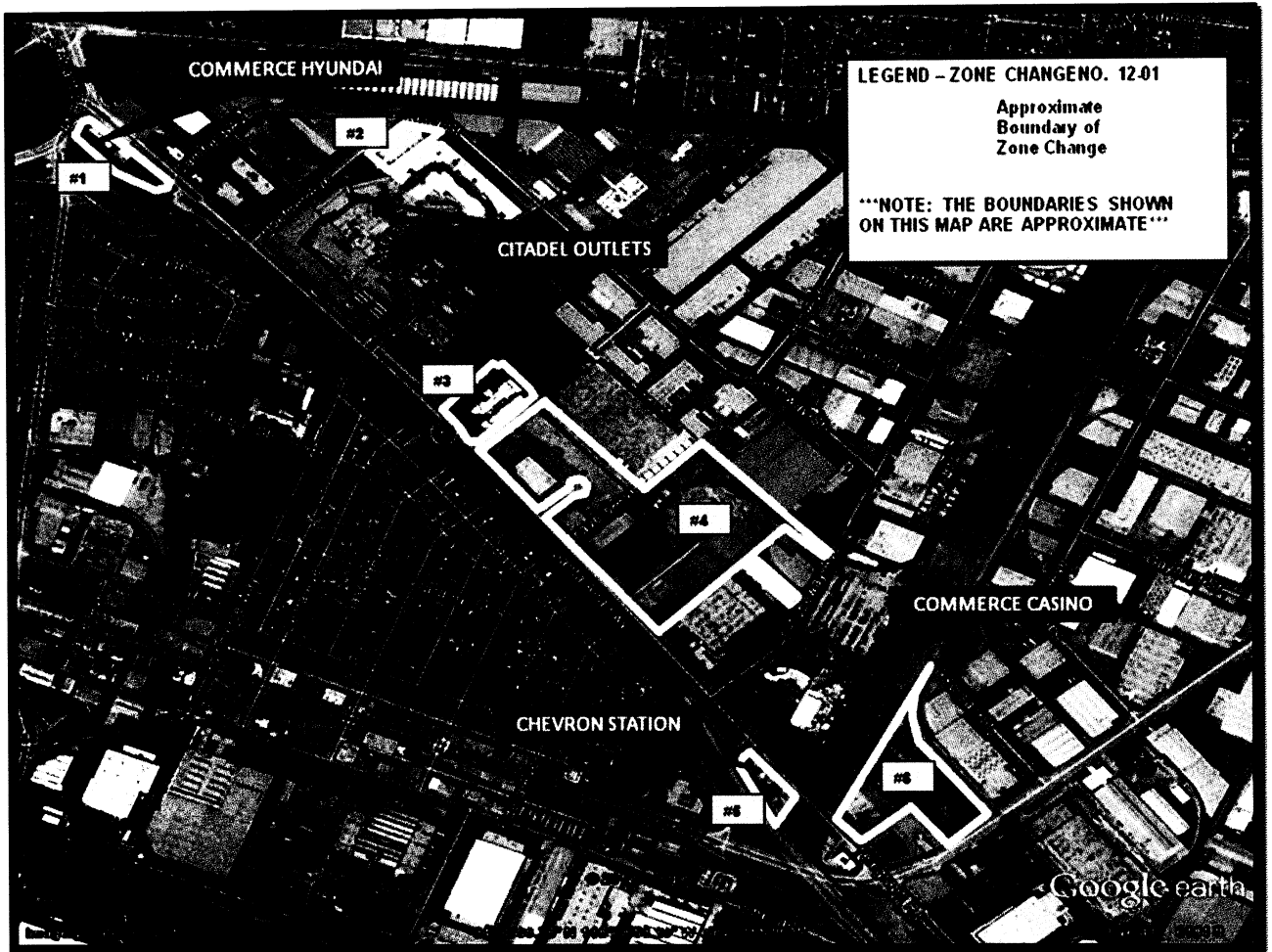
planning and development in the City. The City's vision for the future is expressed through the policies contained in the General Plan, which are designed to shape the physical development of the community. Such plans establish patterns of land use and development that promote the maintenance of established neighborhoods, while at the same time, accommodating future growth.

Zoning is one of the primary means of implementing a General Plan. In contrast to the long-term outlook of the General Plan, zoning classifies the specific, immediate uses of land. The typical zoning ordinance and zoning map regulate land use by dividing the community into districts or zones and specifying the uses that are to be permitted, conditionally permitted, and prohibited within each zone. The text and the map describe the distribution and intensity of land uses in categories such as residential, commercial, industrial and open space.

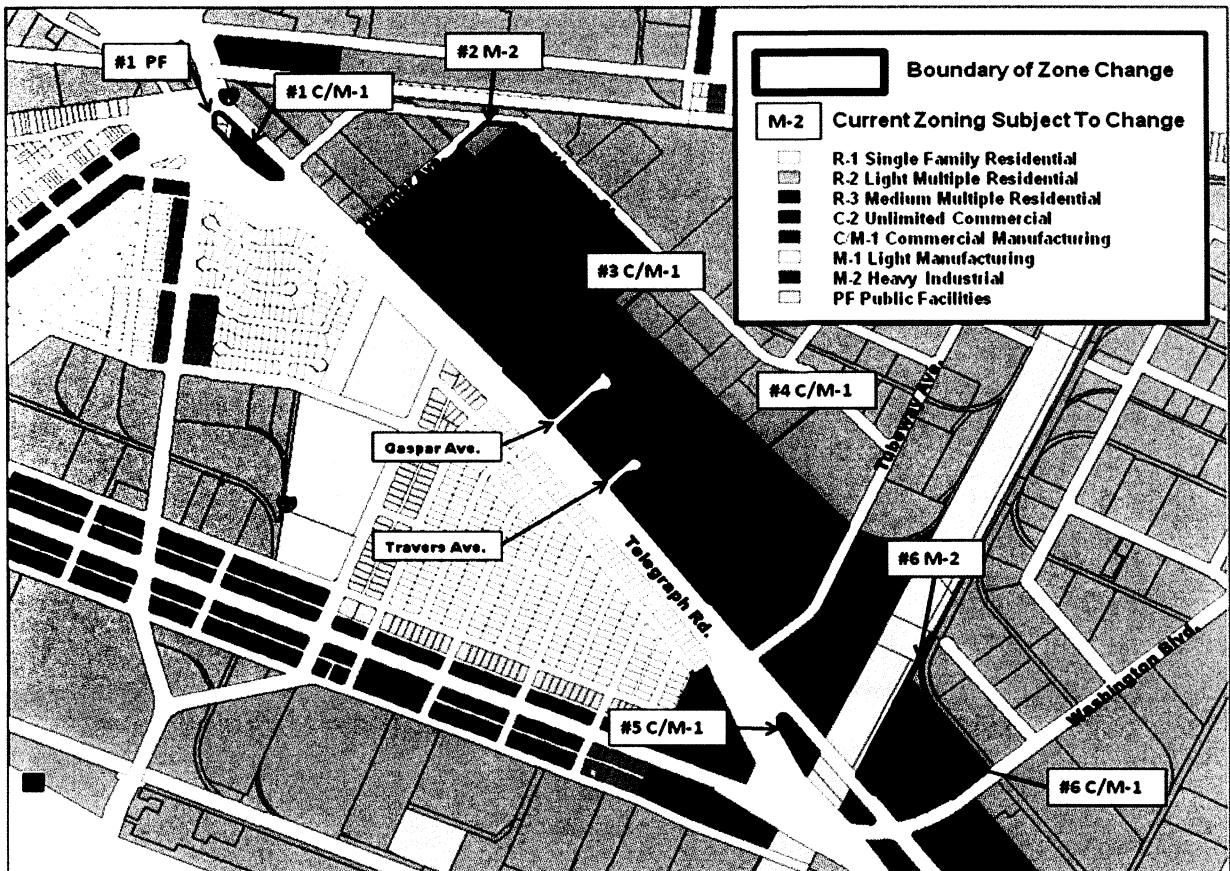
California statutory (*Government Code* Section 65860) and case law mandates a strong consistency doctrine, which requires that cities adopt an adequate General Plan and that all regulatory controls and development approvals, such as zoning ordinances, shall be consistent with the General Plan. One case has stated: "The requirement of consistency is the linchpin of California's land use and development laws. It is the principle which infused the concept of planned growth with the force of law." *De Bottari v. City of Norco* (1985) 171 Cal.App.3d 1204.

The City's last General Plan Update in 2008 sets forth certain policies and objectives. Many of these look to encourage an increase in entertainment uses along the City's Telegraph Road corridor. However, some properties in this area are currently zoned in a way that would not fully allow the City's vision, as set forth in the General Plan, to come to fruition. Therefore, the subject zone change was initiated. Because the City's General Plan contemplates the subject Zone Change, the proposal is consistent with the General Plan, is necessary to implement the goals, policies, and objectives contained therein and is required order to comply with the law.

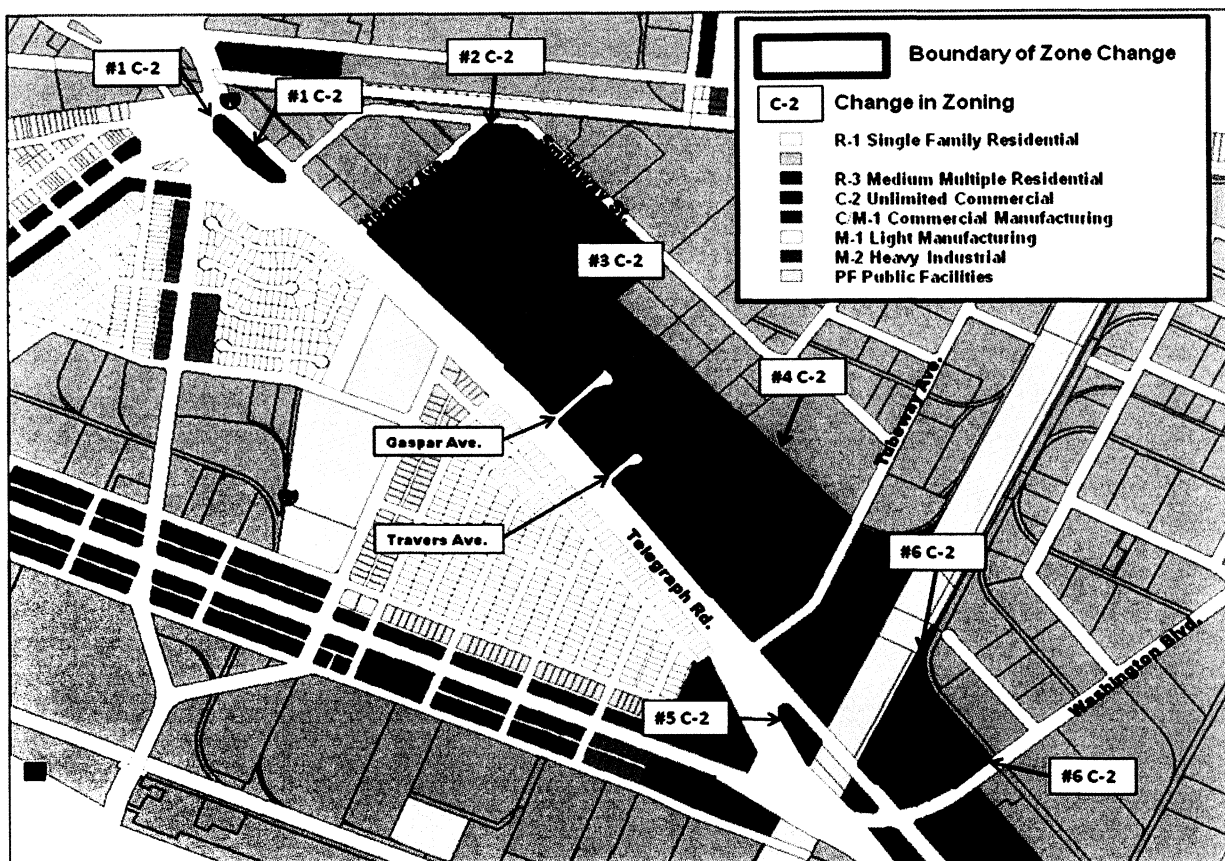
The following is an aerial image depicting the areas subject to Zone Change NO. 12-01 (PLEASE NOTE THE BOUNDARIES SHOWN ON FOLLOWING MAPS ARE APPROXIMATE):



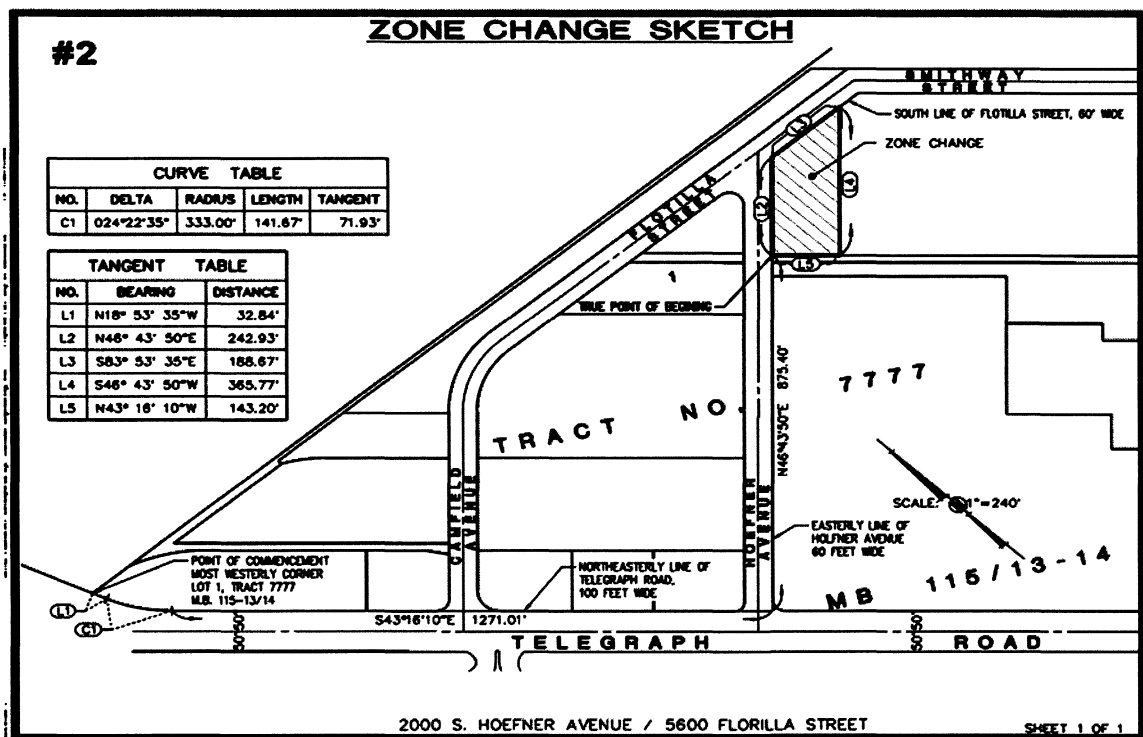
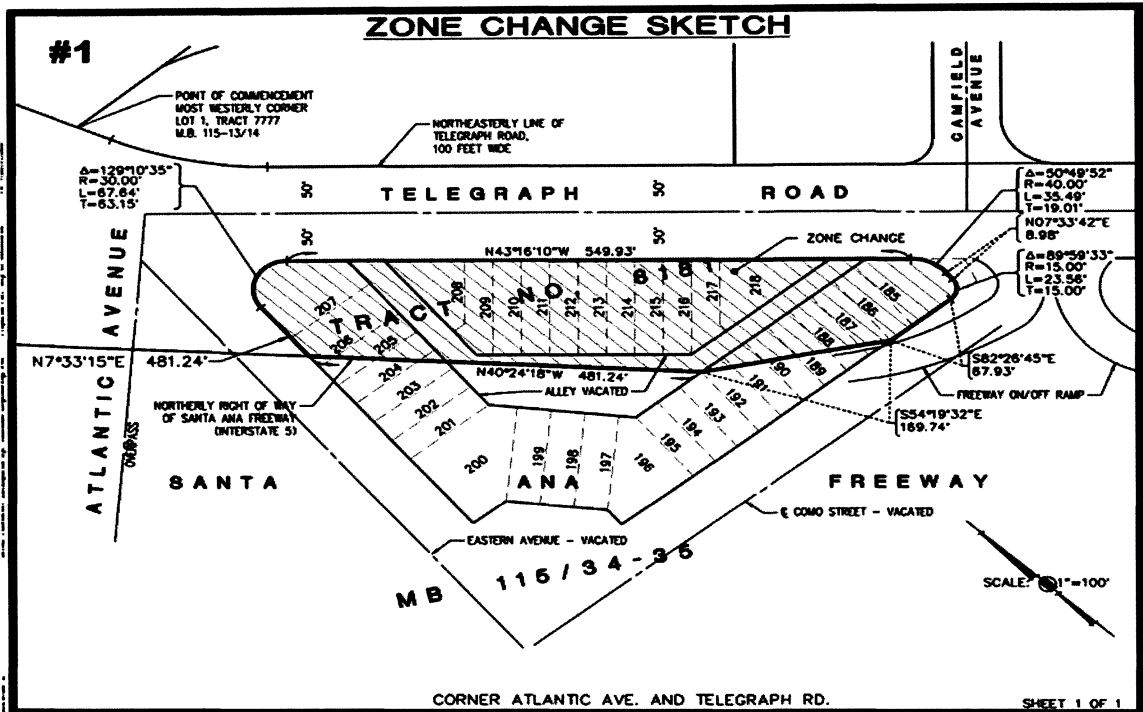
The map below shows the existing zoning designations of the properties subject to the zone change. As shown, the properties have zoning designations of PF (Public Facilities), M-2 (Heavy Industrial), and C/M-1 (Commercial Manufacturing). Each area impacted has also been assigned a number (#1, #2, etc).

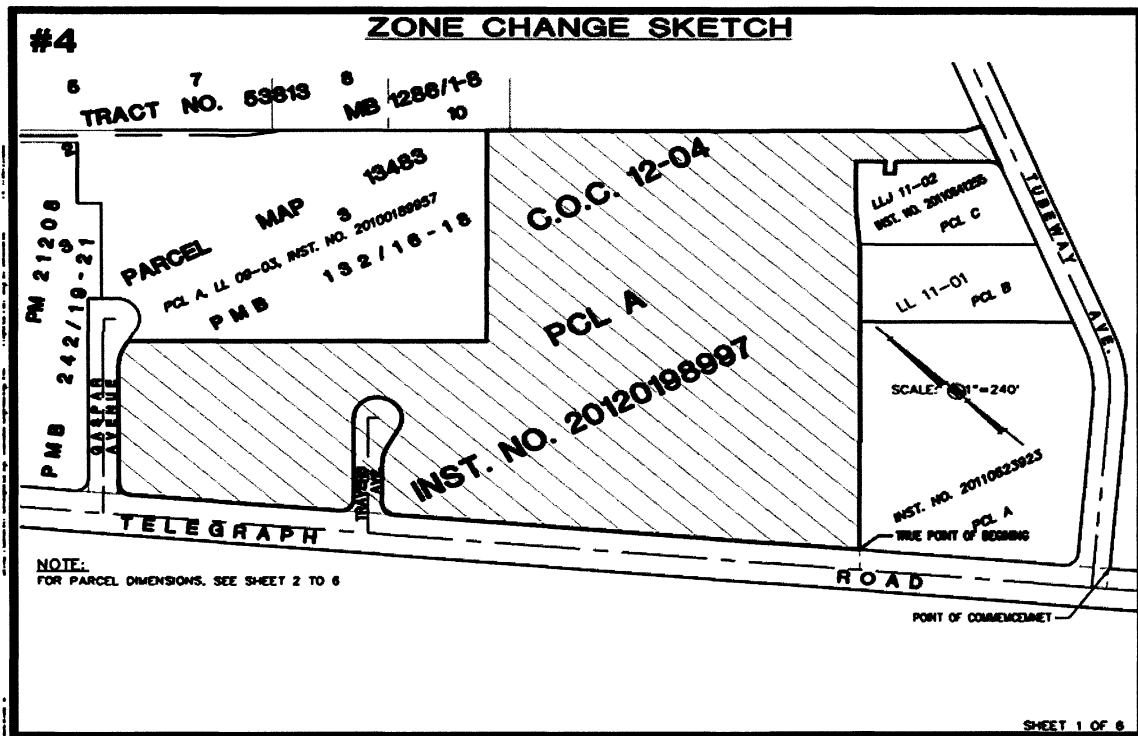
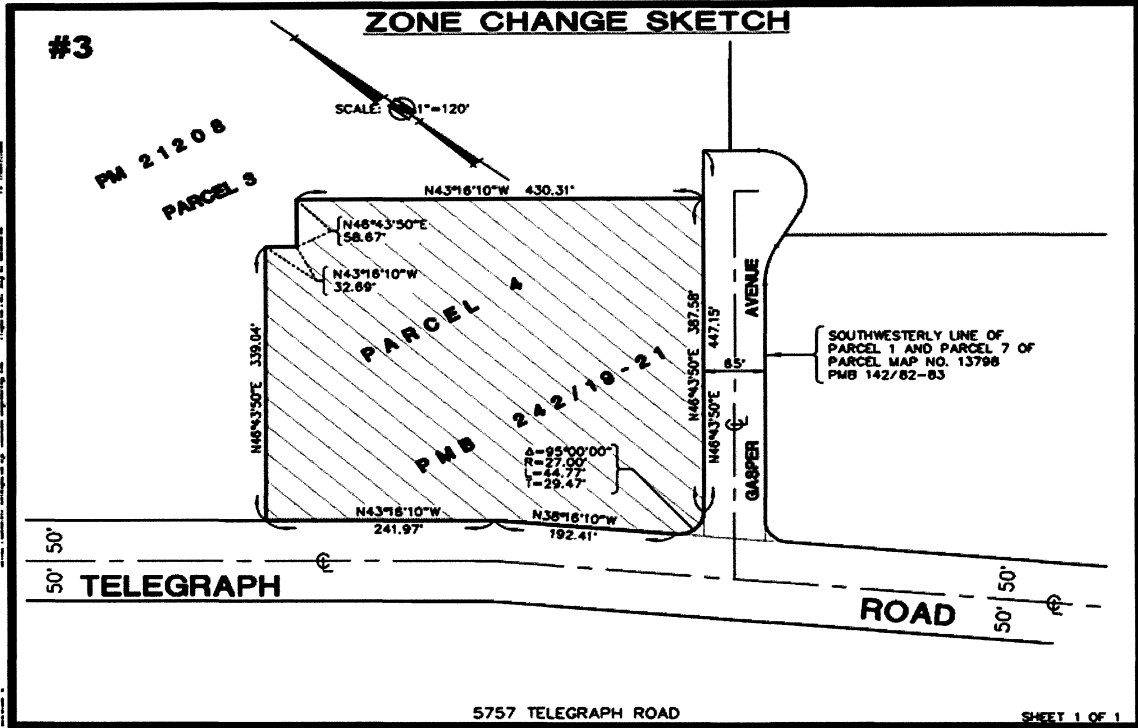


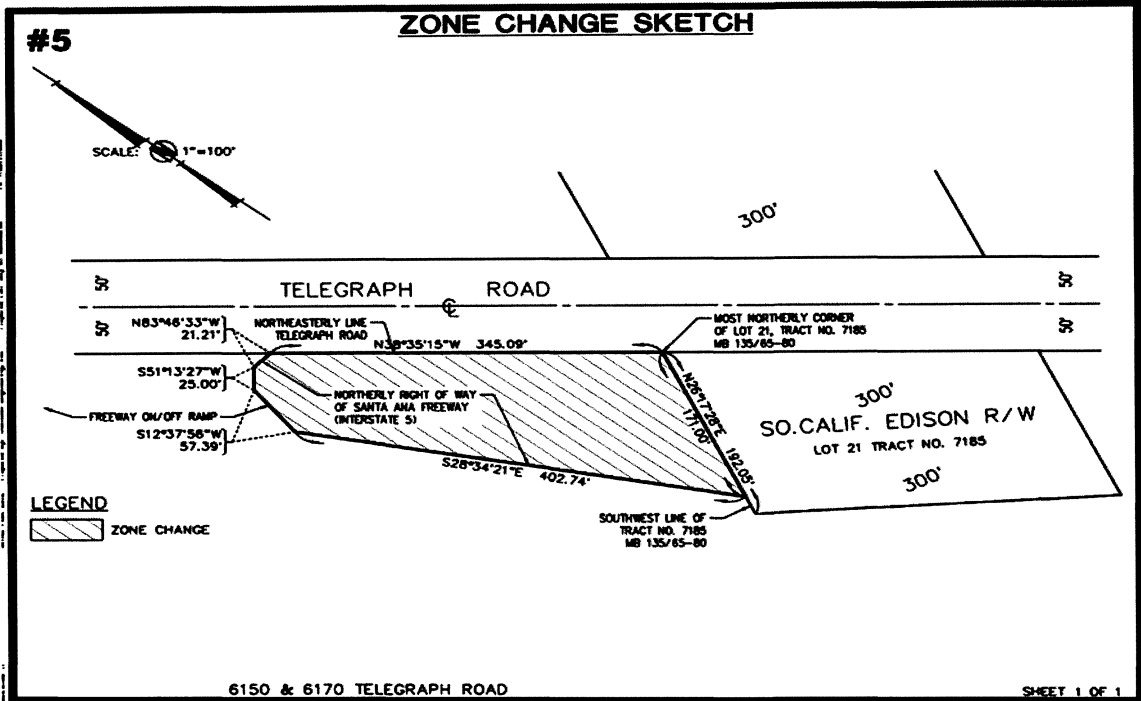
As stated earlier in this report, the properties subject to the Zone Change would have their zoning designations changed to C-2 (Unlimited Commercial). Therefore the City's official zoning map would change as shown on the map below:



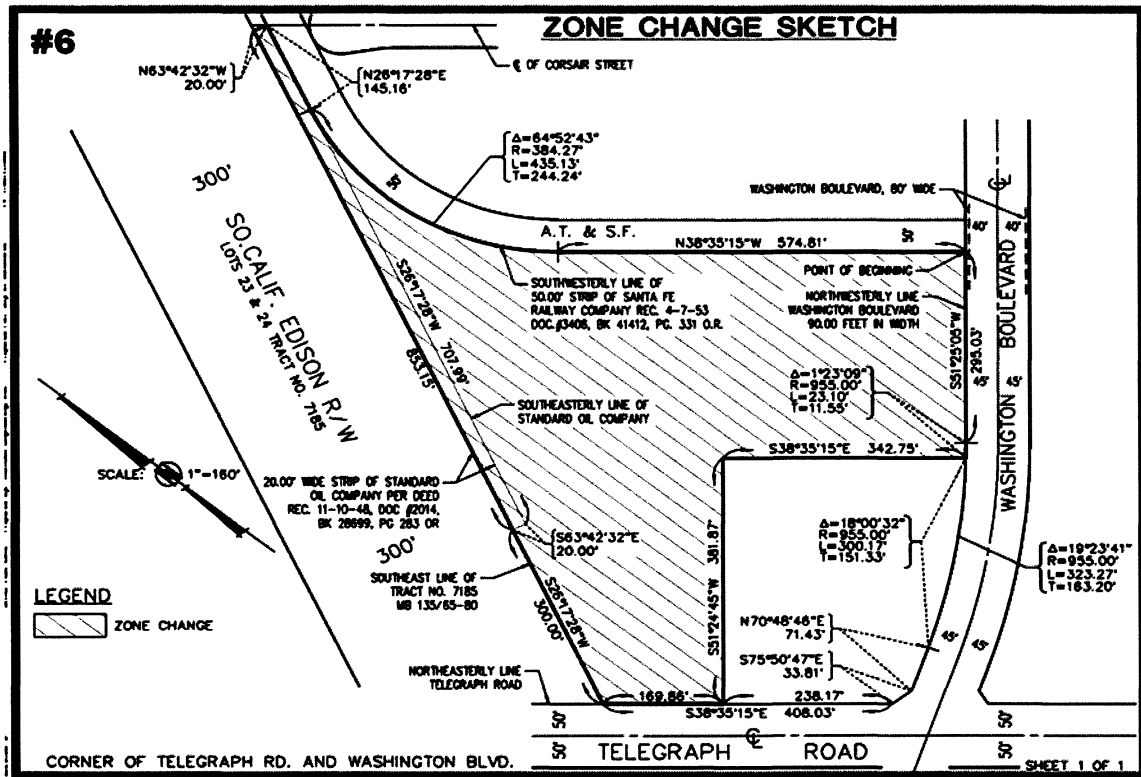
The maps above show the general areas to be impacted by the subject Zone Change. The following maps provide a detailed look at each of the properties that would have their zoning designations changed. The formal boundaries are shown on each map. The corresponding area number is located in the upper left hand corner of each map. Larger copies of the maps, along with their legal descriptions can be found in the ordinance attached to this report. These maps and their legal descriptions depict the true boundaries of the Zone Change.







Fr 3/2/2012



This item was before the Planning Commission at their March 21, 2012 meeting. At that time, they unanimously recommended approval to the City Council. Also, the Planning Commission received a letter from the Commerce Casino requesting that their properties be excluded from the subject Zone Change. Zone Change No. 12-01 does not include property owned by the Commerce Casino. In the future, if deemed necessary, additional properties may be subject to a zone change.

On April 3, 2012, the City Council conducted the required public hearing and approved the proposed Ordinance for first reading. The City Council will now consider the subject Ordinance for second reading and adoption.

ANALYSIS:

As mentioned in the Background Section, the City's General Plan sets forth a vision for the entire City, including the Telegraph Road corridor. The vision for this corridor includes promoting and encouraging entertainment, retail, and commercial uses. The General Plan policies that specifically promote this vision are as follows:

- Community Development Policy 2.1: The City of Commerce will encourage and promote the development of a quality retail and commercial entertainment district in the vicinity of Telegraph Road, north of the Santa Ana Freeway.
- Community Development Policy 2.2: The City of Commerce will encourage and promote the development of quality restaurants in the City to serve residents and visitors alike, and discourage the further proliferation of fast food restaurants in the City.
- Community Development Policy 2.3: The City of Commerce will promote the development of larger, more efficient, commercial retail shopping centers as opposed to smaller "strip commercial" centers.
- Community Development Policy 2.8: The City of Commerce will continue to encourage the development of a high-intensity, highly visible, commercial corridor consisting of offices, hotels, and retail and entertainment uses along Telegraph Road, extending from Hoefner Avenue to Vail Avenue.
- Community Development Policy 4.1: The City of Commerce will explore the feasibility of developing an area devoted to active family recreation.
- Community Development Policy 4.2: The City of Commerce will promote the development of commercial enterprises that provide family entertainment.
- Community Development Policy 4.3: The City of Commerce will continue to promote the development of the Citadel and neighboring areas as a focal point for family entertainment.

The policies above detail the City's desire to create an area that would become an entertainment and/or family destination center. As the document that sets forth the blueprint for the City's future, it is clear the General Plan has a specific goal for the Telegraph Road corridor.

Currently, the zoning designations for the parcels subject to the zone change are M-2 C/M-1 and PF. The purpose of the M-2 zone is to provide land suitable for heavy industrial uses. This zone is also the only zone where adult businesses and adult entertainment enterprises may be located in the City. The requirements of the zone are intended to provide safeguards and to establish adequate buffer distances between uses that pose potentially adverse public health, safety, and welfare impacts and land uses in adjacent, more

restrictive zone districts. This zone does not allow uses such as movie theaters, and only allows for many types of retail uses with approval of a conditional use permit.

As depicted on the map above, the northwest corner of the Citadel property is in the M-2 zone. This is a remnant left over from the former Uniroyal Tire plant operation at this location. M-2 zoning is not consistent with the current Citadel uses. The character of the M-2 zone as heavy manufacturing and the restrictions applicable to that zone, limit the City's ability to create a destination center along the Telegraph Road corridor, as envisioned in the General Plan.

The C/M-1 zone was established to provide for a wide variety of commercial uses and limited, compatible light industrial uses. The intent is to concentrate these uses along major arterials and in other areas that provide easy access and convenience. The industrial uses considered appropriate in the zone are limited to support services, such as machine shops and some light manufacturing. Commercial or industrial uses that might create offensive levels of noise, air pollution, glare, radioactivity or other nuisances are prohibited from this zone. Although less restrictive than the M-2 zone, the C/M-1 was developed to still allow for some lighter industrial uses. However, the General Plan does not contemplate industrial uses fronting Telegraph Road in this area.

The PF zone is intended to provide adequate space for public and quasi-public community facilities. These facilities are to be conveniently located to serve the needs of the community and protected from intrusion of other land uses. The types of uses allowed include municipal and other government buildings, public educational facilities, religious facilities, and recreational areas. Other uses, such as public service facilities, utilities and easements, and hospitals may be permitted under certain conditions. Similar to the M-2 and C/M-1 zones, this zone does not allow for entertainment type uses. As depicted on the maps in this report, a small portion of the site, which is the landscaped setback area for Commerce Hyundai is in the PF zone. This may have been a remnant from the "Mixmaster" realignment/reconstruction project several years ago. This PF zoning is not compatible with a commercial auto dealer use. Continuing to allow for the possibility for uses in the City's Zoning Ordinance, other than those contemplated in the General Plan, contradicts the General Plan's goals, policies and objectives and is contrary to the law.

The proposed change in zoning would reclassify the subject parcels as C-2 (Unlimited Commercial). The purpose of this zone is to allow for the establishment and operation of retail and business uses in conveniently located areas of the City. These uses are intended to provide a variety of goods and services necessary to meet the needs of the resident and business populations. Uses allowed in the C-2 zone include, but are not limited to, retail businesses, restaurants, personal services, offices, repair shops and parking. These uses are consistent with the vision the General Plan is promoting for the area. Therefore, the changes in zoning would be consistent with the goals and objectives of the City's General Plan and are necessary in order to implement its' goals and objectives.

FINDINGS:

Section 19.39.310 of the Commerce Municipal Code requires the following findings of fact to be made before approving a change of zone:

1. That the proposed change of zone is consistent with the goals, policies, and objectives of the General Plan. ***The City's General Plan sets forth goals and objectives for the future of the City. Specifically, the Commerce General Plan envisions the creation of an entertainment/destination center along Telegraph Road. The policies which set forth this vision are as follows:***

- **Community Development Policy 2.1:** The City of Commerce will encourage and promote the development of a quality retail and commercial entertainment district in the vicinity of Telegraph Road, north of the Santa Ana Freeway.
- **Community Development Policy 2.2:** The City of Commerce will encourage and promote the development of quality restaurants in the City to serve residents and visitors alike, and discourage the further proliferation of fast food restaurants in the City.
- **Community Development Policy 2.3:** The City of Commerce will promote the development of larger, more efficient, commercial retail shopping centers as opposed to smaller “strip commercial” centers.
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- **Community Development Policy 4.2** The City of Commerce will promote the development of commercial enterprises that provide family entertainment.
- **Community Development Policy 4.3:** The City of Commerce will continue to promote the development of the Citadel and neighboring areas as a focal point for family entertainment.

The subject zone change would allow for uses that are contemplated in the General Plan. The subject zone change is consistent with the General Plan, as it would help to further the City’s vision of creating an entertainment/destination center.

2. That the proposed change of zone will not adversely affect surrounding properties. *The area subject to the zone change already includes some entertainment type uses. During the last comprehensive update of the City General Plan, the City Council, as the lead agency, duly approved and certified the EIR, which concluded that approval and subsequent implementation of the General Plan: will not have the potential to degrade the quality of the environment; does not have the potential to achieve short-term goals to the disadvantage of long-term environmental goals; is not expected to have impacts, which are individually limited but cumulatively considerable when considering planned or proposed development in the immediate vicinity; and is not expected to have environmental effects that will adversely affect humans, either directly or indirectly.*

The subject Zone Change was contemplated and considered in the Final EIR, were designed to facilitate a continued transition of these areas to commercial and entertainment uses, as well as allow for greater flexibility in the event

these areas are redeveloped. The EIR concluded that the implementation of the policies and programs included in the General Plan will reduce the level of impact from future development to levels that are less than significant. The Zone Change is necessary in order to implement the General Plan. Thus, the Zone Change would not adversely impact surrounding properties.

There are no environmental effects that are peculiar to the proposed Zone Change that were not sufficiently analyzed in the EIR. Therefore, pursuant to CEQA Guidelines Section 15183, no additional CEQA analysis is required.

3. That the proposed change of zone promotes public health, safety, and general welfare and serves the goals and purposes of this Title 19. ***The proposed Zone Change promotes the public health, safety and welfare by implementing the City's goal of creating an entertainment/destination center along the Telegraph Road corridor. Transforming this area would bring quality uses to better serve the City's residents and visitors. Creating a viable commercial area would also help to contribute to the long-term economic viability of the City.***

ENVIRONMENTAL ASSESSMENT:

In January of 2008, the Commerce City Council approved and certified an Environmental Impact Report (the "EIR") regarding a comprehensive General Plan Update and approved the General Plan Update (the "Project"). The City Council, as the lead agency for the Project, found that approval and implementation of the General Plan Update: (1) will not have the potential to degrade the quality of the environment; (2) does not have the potential to achieve short-term goals to the disadvantage of long-term environmental goals; is not expected to have impacts, which are individually limited but cumulatively considerable when considering planned or proposed development in the immediate vicinity; (3) and is not expected to have environmental effects that will adversely affect humans, either directly or indirectly. The Final EIR was completed in compliance with the California Environmental Quality Act ("CEQA"). The City Council considered the information contained in the Final EIR prior to approving the Project.

CEQA Guidelines, Section 15183 provides for streamlined review of projects that are consistent with existing General Plans. That section provides that, when approving a project that is consistent with a general plan for which an environmental impact report has already been certified, a public agency need only examine those environmental effects that are peculiar to the project and were not analyzed or were insufficiently analyzed in the prior environmental impact report.

In this case, the subject Zone Change was contemplated in the Final EIR. The EIR discusses a zone change and General Plan Amendment that would impact parcels in the area of Zone Change No. 12-01. Such changes were designed and anticipated to facilitate a continued transition of these areas to commercial and entertainment uses, as well as to allow for greater flexibility in the event that these areas were redeveloped. The EIR concluded that that the implementation of the policies and programs included in the General Plan will reduce the level of impact from future development to levels that are less than significant. Since the subject Zone Change and its potential impacts were addressed in the EIR, pursuant to CEQA Guidelines, Section 15183, the City is only required to examine the effects that are peculiar to the proposed Zone Change that were not analyzed or were insufficiently analyzed in the EIR. There are no environmental effects that are peculiar to the proposed Zone Change that were not sufficiently analyzed in the EIR. On the contrary, Zone Change No. 12-01 is necessary to implement the policies contained in the General Plan and was anticipated and studied in the EIR. Therefore, pursuant to Section 15183, no additional CEQA analysis is required.

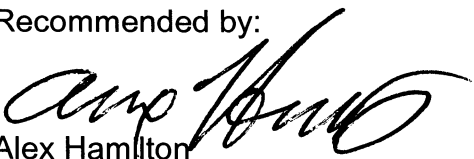
FISCAL IMPACT:

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

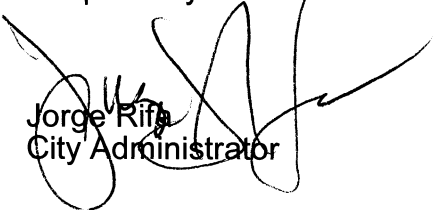
RELATIONSHIP TO 2009 STRATEGIC GOALS:

This agenda report relates to the 2009 strategic planning goal: *“Protect and Enhance the Quality of Life in the City of Commerce”*.

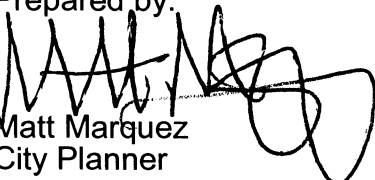
Recommended by:


Alex Hamilton
Assistant Director of Community Development

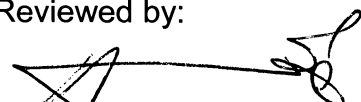
Respectfully submitted:


Jorge Rifa
City Administrator

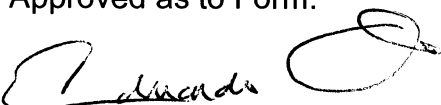
Prepared by:


Matt Marquez
City Planner

Reviewed by:


Vilko Domic
Director of Finance

Approved as to Form:


Eduardo Olivo
City Attorney

ORDINANCE NO. __

AN ORDINANCE OF THE CITY OF COMMERCE, CALIFORNIA, AMENDING THE ZONING PROVISIONS OF THE MUNICIPAL CODE TO CHANGE THE ZONING (ZONE CHANGE NO. 12-01) OF CERTAIN PARCELS OF LAND TO C-2 (UNLIMITED COMMERCIAL)

WHEREAS, in January of 2008, the City Council of the City of Commerce, as the lead agency, approved and certified an Environmental Impact Report ("EIR") regarding a comprehensive General Plan Update and also approved the General Plan Update; and

WHEREAS, the City's General Plan serves as the blueprint for future planning and development in the City. The City's vision for the future is expressed in the policies and plans contained in the General Plan and are designed to shape the physical development of the community; and

WHEREAS, zoning is one of the primary means of implementing a General Plan. In contrast to the long-term outlook of the General Plan, zoning classifies the specific, immediate uses of land; and

WHEREAS, California statutory (*Government Code* Section 65860) and case law mandates a strong consistency doctrine, which requires that cities adopt an adequate General Plan and that all regulatory controls and development approvals, such as zoning ordinances, shall be consistent with the General Plan; and

WHEREAS, the City's last General Plan Update in 2008 sets forth certain policies and objectives, many of which seek to encourage an increase in entertainment uses along the City's Telegraph Road corridor; and

WHEREAS, the General Plan Update and the EIR contemplated and evaluated a zone change that would allow for greater commercial development along Telegraph Road; and

WHEREAS, the properties that are subject to the proposed zone change are located along the Telegraph Road Corridor and are currently zoned in a way that would not fully allow the City's vision, as set forth in the General Plan, to come to fruition; and

WHEREAS, the proposed zone change was initiated because it is contemplated by, is consistent with, and is necessary to implement the goals, policies, and objectives contained in the General Plan; and

WHEREAS, the EIR concluded that implementation of the policies and programs included in the General Plan would reduce the level of impact from future development to levels that are less than significant; and

WHEREAS, the City Council concluded that approval and subsequent implementation of the General Plan: (1) will not have the potential to degrade the quality of the environment; (2) did not have the potential to achieve short-term goals to the disadvantage of long-term environmental goals; (3) is not expected to have impacts, which are individually limited but cumulatively considerable, when considering planned or proposed development in the immediate vicinity; and (4) is not expected to have environmental effects that will adversely affect humans, either directly or indirectly; and

WHEREAS, California Environmental Quality Act ("CEQA") Guidelines, Section 15183 provides for streamlined review of projects that are consistent with existing General Plans; and

WHEREAS, CEQA Guidelines, Section 15183, provides that, when approving a project that is consistent with a general plan for which an environmental impact report has already been certified, a public agency need only examine those environmental effects that

are peculiar to the project and were not analyzed or were insufficiently analyzed in the prior environmental impact report; and

WHEREAS, the subject zone change was contemplated and considered in the final EIR; and

WHEREAS, the City's Zoning Map must now be updated to implement the policies contained in the General Plan; and

WHEREAS, the Planning Commission held a public hearing on March 21, 2012, for the purpose of considering the subject zone change and recommended approval to the City Council; and

WHEREAS, the City Council held a public hearing on April 3, 2012, for the purpose of considering the subject zone change; and

WHEREAS, the City Council has now reviewed all facts concerning the subject request and has considered all evidence submitted at said public hearing.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA DOES HEREBY RESOLVE, DECLARE, AND DETERMINE AS FOLLOWS:

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

Section 2. Pursuant to Section 19.39.310 of Chapter 19.39, Title 19 of the Commerce Municipal Code the City Council further finds as follows:

1. That the proposed change of zone is consistent with the goals, policies, and objectives of the General Plan. ***The City's General Plan sets forth goals and objectives for the future of the City. Specifically, the Commerce General Plan envisions the creation of an entertainment/destination center along Telegraph Road. The policies which set forth this vision are as follows:***
 - **Community Development Policy 2.1: The City of Commerce will encourage and promote the development of a quality retail and commercial entertainment district in the vicinity of Telegraph Road, north of the Santa Ana Freeway.**
 - **Community Development Policy 2.2: The City of Commerce will encourage and promote the development of quality restaurants in the City to serve residents and visitors alike, and discourage the further proliferation of fast food restaurants in the City.**
 - **Community Development Policy 2.3: The City of Commerce will promote the development of larger, more efficient, commercial retail shopping centers as opposed to smaller "strip commercial" centers.**
 - **Community Development Policy 2.8: The City of Commerce will continue to encourage the development of a high-intensity, highly visible, commercial corridor consisting of offices, hotels, and retail and entertainment uses along Telegraph Road, extending from Hoefner Avenue to Vail Avenue.**
 - **Community Development Policy 4.1: The City of Commerce will explore the feasibility of developing an area devoted to active family recreation.**

- **Community Development Policy 4.2** The City of Commerce will promote the development of commercial enterprises that provide family entertainment.
- **Community Development Policy 4.3:** The City of Commerce will continue to promote the development of the Citadel and neighboring areas as a focal point for family entertainment.

The subject zone change would allow for uses that are contemplated in the General Plan. The subject zone change is consistent with the General Plan, as it would help to further the City's vision of creating an entertainment/destination center.

2. That the proposed change of zone will not adversely affect surrounding properties. ***The area subject to the zone change already includes some entertainment type uses. During the last comprehensive update of the City General Plan, the City Council, as the lead agency, duly approved and certified the EIR, which concluded that approval and subsequent implementation of the General Plan: will not have the potential to degrade the quality of the environment; does not have the potential to achieve short-term goals to the disadvantage of long-term environmental goals; is not expected to have impacts, which are individually limited but cumulatively considerable when considering planned or proposed development in the immediate vicinity; and is not expected to have environmental effects that will adversely affect humans, either directly or indirectly.***

The subject Zone Change was contemplated and considered in the Final EIR, were designed to facilitate a continued transition of these areas to commercial and entertainment uses, as well as allow for greater flexibility in the event these areas are redeveloped. The EIR concluded that the implementation of the policies and programs included in the General Plan will reduce the level of impact from future development to levels that are less than significant. The Zone Change is necessary in order to implement the General Plan. Thus, the Zone Change would not adversely impact surrounding properties.

There are no environmental effects that are peculiar to the proposed Zone Change that were not sufficiently analyzed in the EIR. Therefore, pursuant to CEQA Guidelines Section 15183, no additional CEQA analysis is required.

3. That the proposed change of zone promotes public health, safety, and general welfare and serves the goals and purposes of this Title 19. ***The proposed Zone Change promotes the public health, safety and welfare by implementing the City's goal of creating an entertainment/destination center along the Telegraph Road corridor. Transforming this area would bring quality uses to better serve the City's residents and visitors. Creating a viable commercial area would also help to contribute to the long-term economic viability of the City.***

Section 3. The subject Zone Change and its potential impacts were addressed in the EIR. Pursuant to CEQA Guidelines, Section 15183, the City is only required to examine the effects that are peculiar to the proposed Zone Change that were not analyzed or were insufficiently analyzed in the EIR. There are no environmental effects that are peculiar to the proposed Zone Change that were not sufficiently analyzed in the EIR. Thus, no additional CEQA analysis is required.

Section 4. Based upon the above findings, the proposed Zone Change No. 12-01 is hereby enacted and approved.

Section 5. The "Official Zoning Map" of the City, as adopted by Section 19.03.020 of Chapter 19.39, Title 19 of the Commerce Municipal Code and previously amended, is further amended by placing the properties described in Exhibit "A" of this Ordinance into the C-2 (Unlimited Commercial) zone.

Section 6. This Ordinance shall take effect on the thirty-first (31st) day after its adoption.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2012.

Lilia R. Leon, Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk

EXHIBIT A

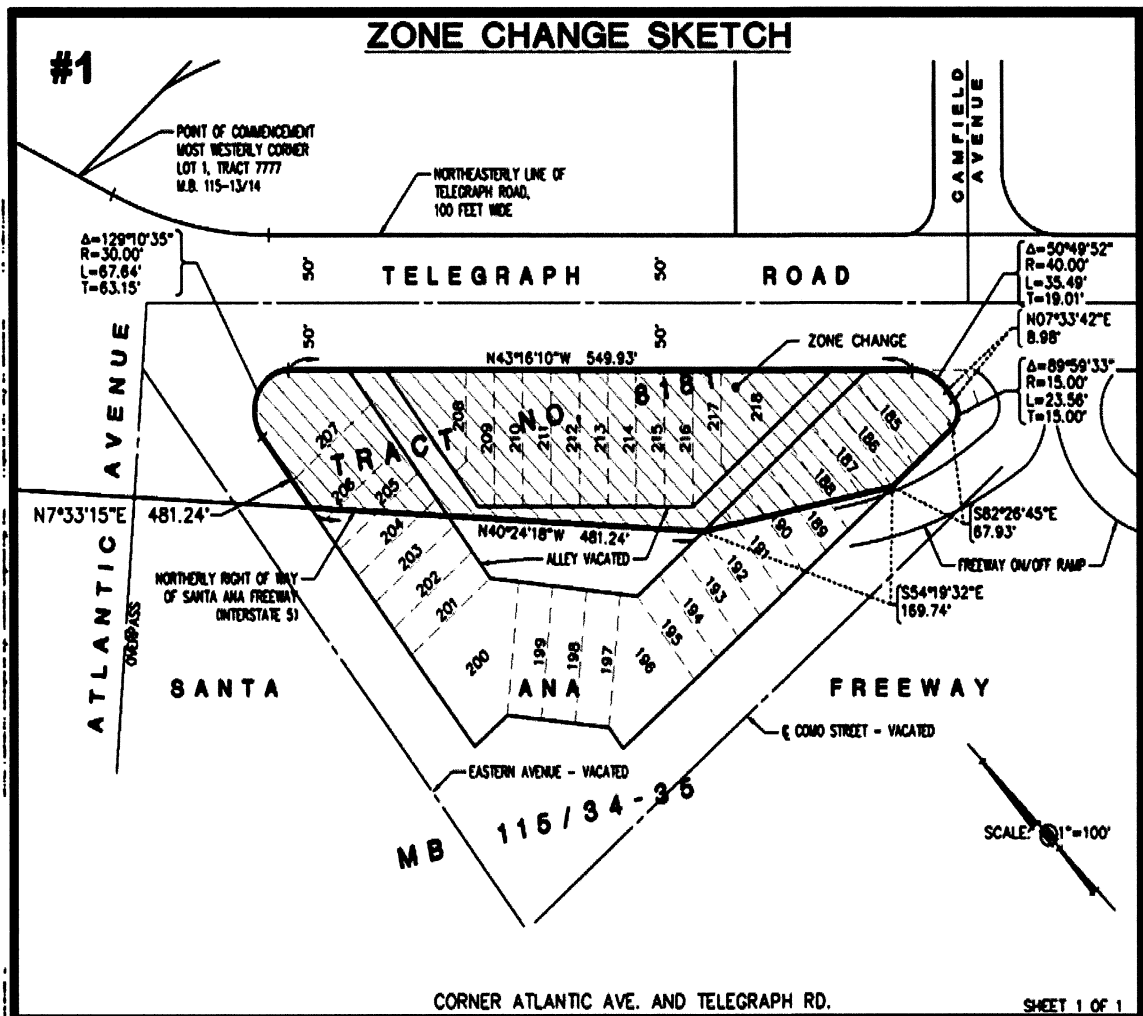
#1 THAT CERTAIN PARCEL OF LAND SITUATED IN THE CITY OF COMMERCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, BEING THAT PORTION OF LOTS 203 THROUGH 218 AND LOTS 185 THROUGH 192 OF TRACT NO. 8181, AS PER MAP RECORDED IN BOOK 115, PAGES 34 AND 35 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOTS 203 THROUGH 218 INCLUSIVE OF TRACT NO. 8181, AS PER MAP RECORDED IN BOOK 115, PAGES 34 AND 35 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

TOGETHER WITH THAT PORTION LOTS 185 THROUGH 192 INCLUSIVE OF SAID TRACT NO. 8181.

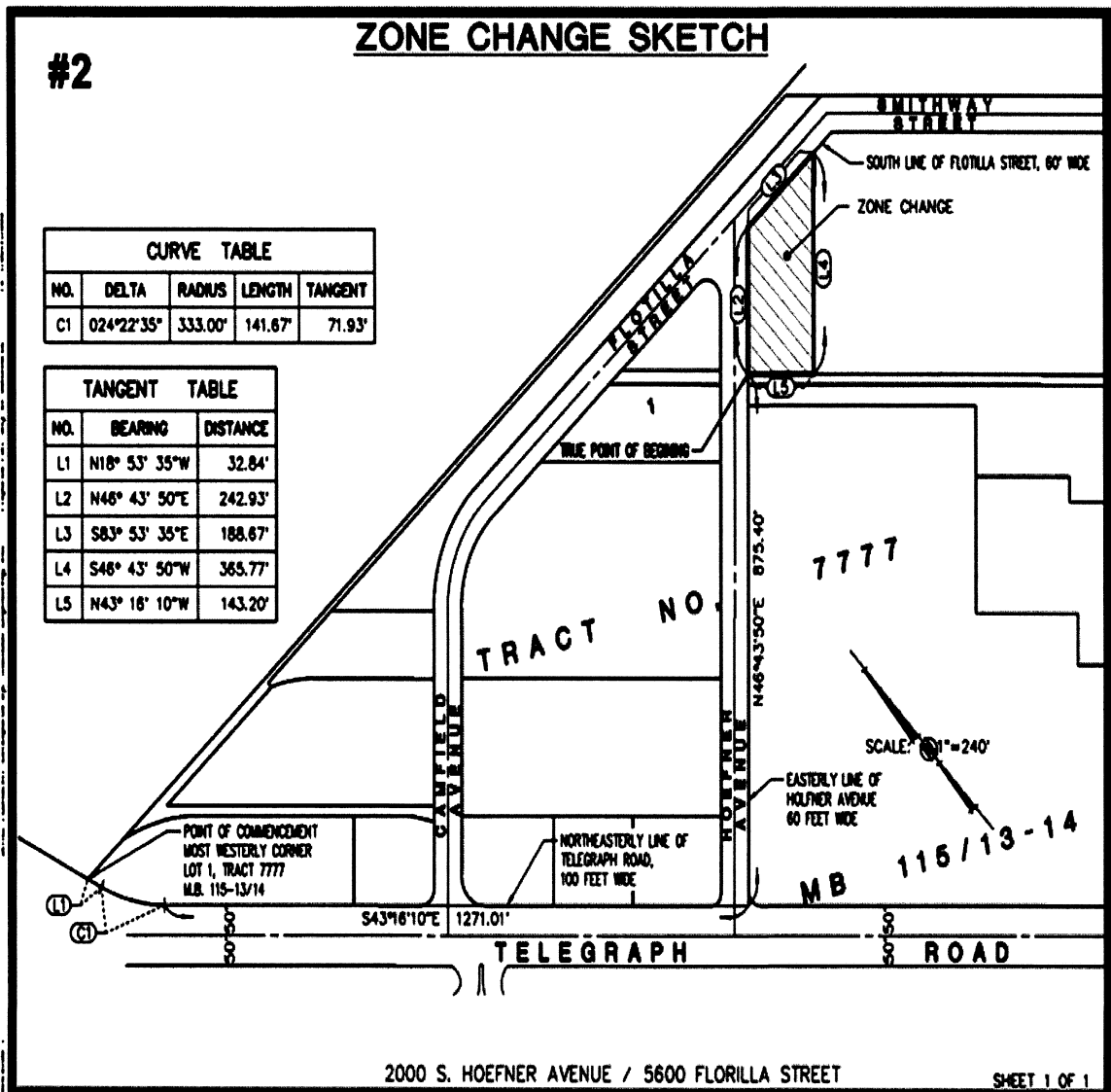
TOGETHER WITH THAT PORTION OF THE ALLEY AS SHOWN ON SAID TRACT NO. 8181 LYING ALONG THE WESTERLY BOUNDARY OF LOTS 208 THROUGH 218 OF SAID TRACT NO. 8181.

EXCEPT THEREFROM THAT PORTIONS LYING WITH THE INTERSTATE 5 FREEWAY, ALSO KNOWN AS THE SANTA ANA FREEWAY, RIGHT-OF-WAY AS IT NOW EXISTS.

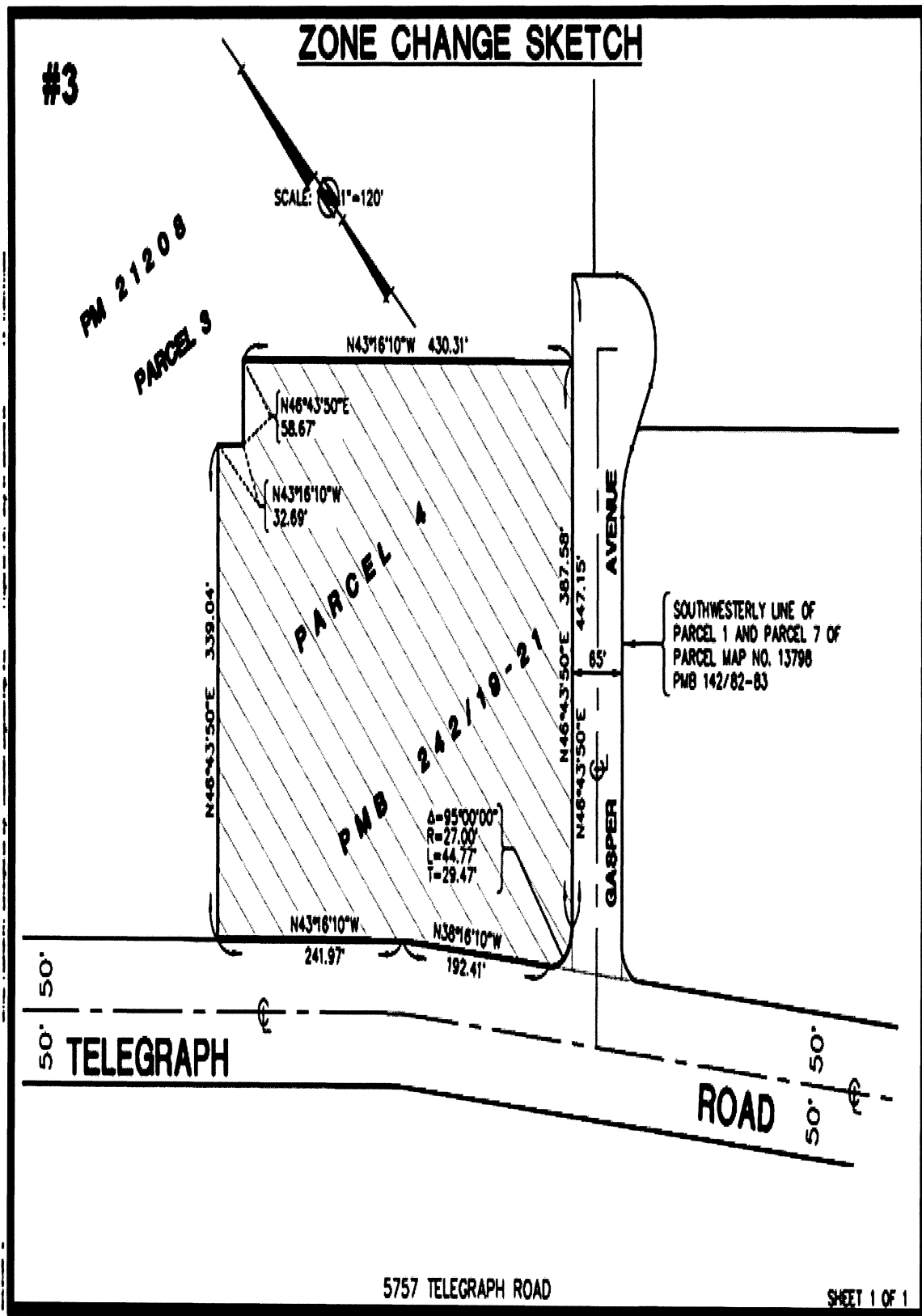


#2 THAT PORTION OF LOT 1, TRACT NO. 7777 IN THE CITY OF COMMERCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 115, PAGES 13 AND 14 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST WESTERLY CORNER OF SAID LOT 1; THENCE ALONG THE SOUTHWESTERLY LINE OF SAID LOT, SOUTH 18° 53' 35" EAST 32.84 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY, TANGENT TO SAID LAST MENTIONED COURSE AND HAVING A RADIUS OF 333.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE 141.67 FEET TO THE NORTHEASTERLY LINE OF TELEGRAPH ROAD, FORMERLY ANAHEIM-TELEGRAPH ROAD, 100 FEET IN WIDTH, AS WIDENED BY DECREE OF CONDEMNATION, A CERTIFIED COPY OF WHICH IS RECORDED IN BOOK 9983 PAGE 296, OFFICIAL RECORDS; THENCE TANGENT TO SAID CURVE AND ALONG THE SAID NORTHEASTERLY LINE OF TELEGRAPH ROAD, SOUTH 43° 16' 10" EAST 1,271.01 FEET TO THE PROLONGATION OF THE EASTERLY LINE OF HOEFNER AVENUE, 60 FEET WIDE; THENCE ALONG SAID EASTERLY LINE, NORTH 45° 43' 50" EAST 875.40 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE CONTINUING ALONG SAID EASTERLY LINE OF HOEFNER AVENUE, NORTH 46° 43' 50" EAST 242.93 FEET TO THE SOUTH LINE OF FLOTILLA STREET, 60 FEET WIDE; THENCE ALONG SAID SOUTH LINE OF FLOTILLA STREET, SOUTH 83° 53' 35" EAST 188.67 FEET ; THENCE LEAVE SAID FLOTTILA STREET SOUTH LINE, SOUTH 46° 43' 50" WEST 365.77 FEET; THENCE NORTH 43° 16' 10" WEST 143.20 FEET TO THE TRUE POINT OF BEGINNING.



#3 PARCEL 4 OF VESTING PARCEL MAP NO. 21208 IN THE CITY OF COMMERCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER THE MAP FILED IN BOOK 242, PAGES 19 AND 21, INCLUSIVE OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

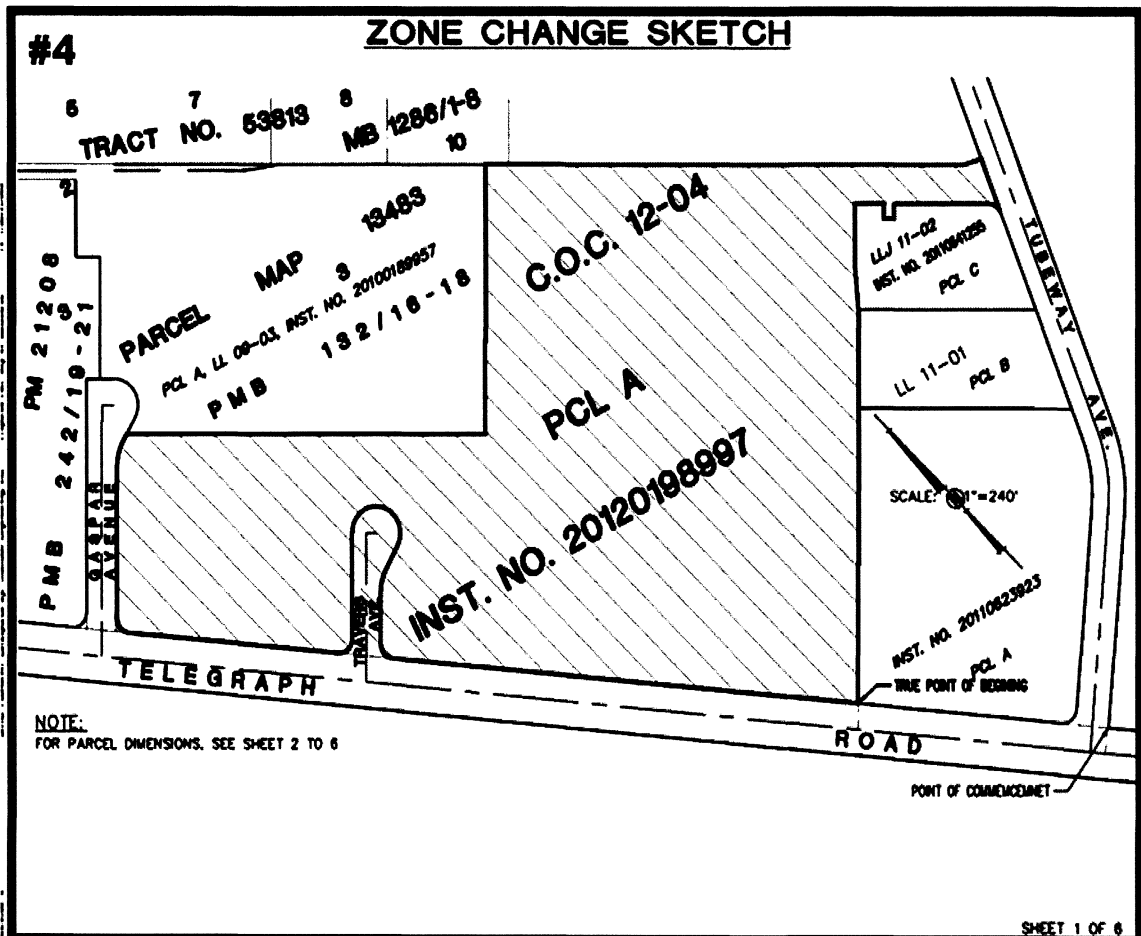


#4 THAT CERTAIN PARCEL OF LAND SITUATED IN THE CITY OF COMMERCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, BEING THAT PORTION OF LOT 1, TRACT NO. 7777, AS PER MAP RECORDED IN BOOK 115, PAGES 13 AND 14 OF MAPS, PARCEL 9 OF PARCEL MAP NO. 13483, AS PER MAP FILED IN BOOK 132, PAGES 16 THROUGH 18, INCLUSIVE OF PARCEL MAPS AND PARCELS 1, 2, 3, 4, 5, 6, AND 7 OF PARCEL MAP NO. 13798, AS PER THE MAP FILED IN BOOK 142, PAGES 82 AND 83, INCLUSIVE OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

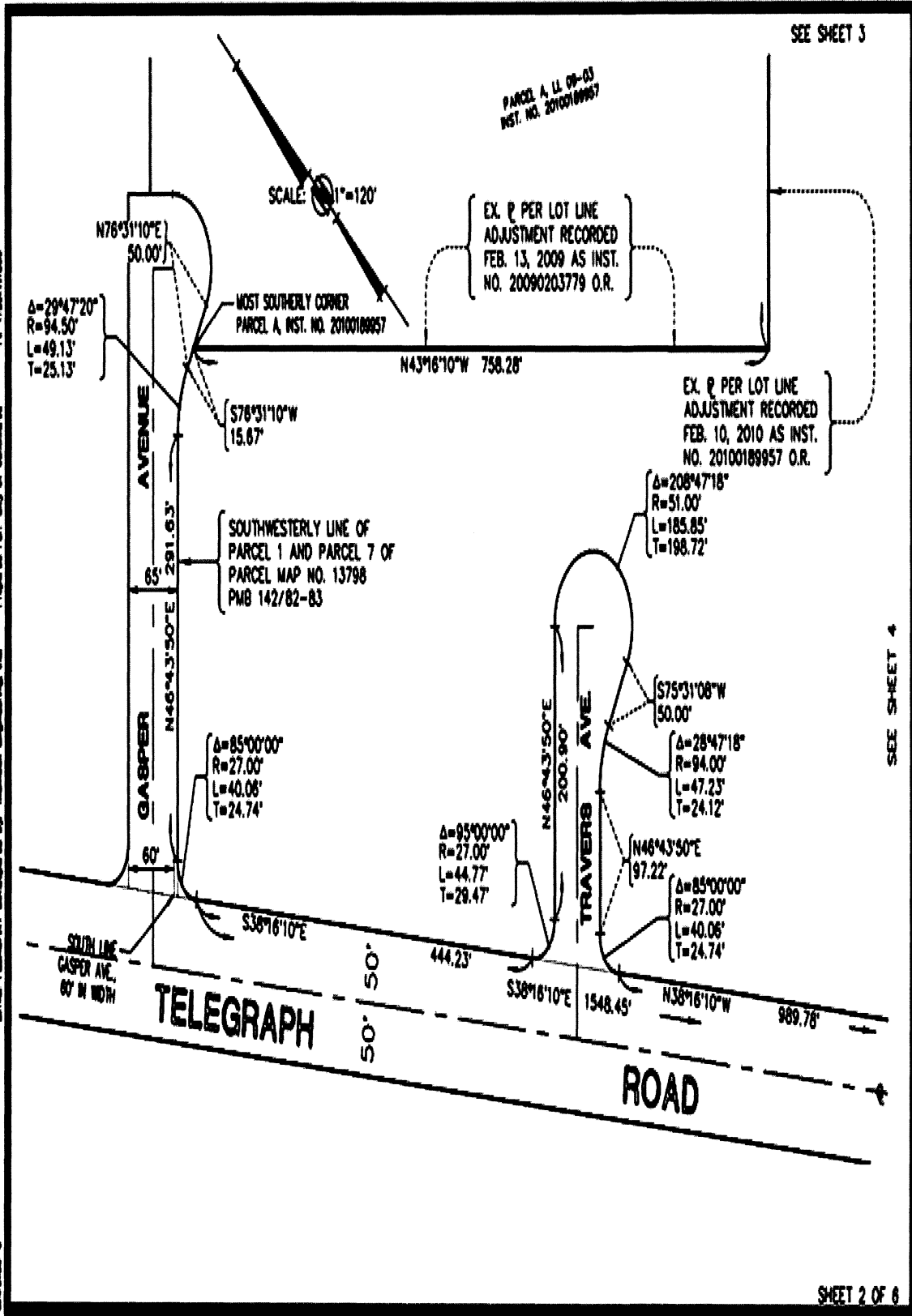
COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID LOT 1, SAID MOST SOUTHERLY CORNER ALSO BEING THE MOST SOUTHERLY CORNER OF THAT CERTAIN PARCEL NO.1, DESCRIBED IN EASEMENT TO CITY OF COMMERCE, FOR PUBLIC STREET PURPOSES, RECORDED IN BOOK D-2225, PAGE 404, OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG THE SOUTHWESTERLY LINE OF SAID LOT 1, NORTH 38° 35' 05" WEST, 3.15 FEET; THENCE NORTH 38° 16' 10" WEST 528.17 FEET TO THE **TRUE POINT OF BEGINNING**, ALSO BEING THE SOUTHWEST CORNER OF PARCEL A, CERTIFICATE OF COMPLIANCE (# 11-01), RECORDED APRIL 29, 2011, AS INSTRUMENT NO. 20110623923, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG THE NORTHWESTERLY LINE OF SAID CERTIFICATE OF COMPLIANCE (#11-01), NORTH 46° 43' 50' EAST 753.60 FEET TO THE MOST NORTHERLY CORNER OF PARCEL B OF SAID CERTIFICATE OF COMPLIANCE (#11-01); THENCE ALONG THE NORTHWESTERLY LINE OF PARCEL A, CERTIFICATE OF COMPLIANCE (#11-02), RECORDED MAY 04, 2011 AS INSTRUMENT NO. 20110641255, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, NORTH 42° 05' 15" EAST 83.86 FEET TO A LINE THAT IS PARALLEL TO THE NORTHEASTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF SAID PARCEL B, CERTIFICATE OF COMPLIANCE (#11-01); THENCE CONTINUING ALONG SAID PARALLEL LINE NORTH 46° 43' 50" EAST 119.35 FEET TO A POINT THAT IS 75.00 FEET SOUTHWESTERLY MEASURED AT RIGHT ANGLES FROM THE PROLONGATION OF THE SOUTHWESTERLY BOUNDARY LINE OF TRACT NO. 53813, RECORDED IN MAP BOOK 1286, PAGES 1 THROUGH 8 INCLUSIVE; THENCE ALONG SAID LINE PARALLEL LINE WITH THE PROLONGATION OF THE SOUTHWESTERLY BOUNDARY LINE OF SAID TRACT NO. 53183, SOUTH 43° 16' 10" EAST 61.00 FEET TO A LINE PARALLEL TO THE NORTHWESTERLY LINE OF SAID PARCEL A, CERTIFICATE OF COMPLIANCE (#11-01); THENCE CONTINUING ALONG SAID PARALLEL LINE SOUTH 46° 43' 50" WEST 28.00 FEET TO A LINE PARALLEL TO THE NORTHEASTERLY LINE OF SAID PARCEL A, CERTIFICATE OF COMPLIANCE (#11-01); THENCE CONTINUING ALONG SAID PARALLEL LINE SOUTH 43° 16' 10" EAST 22.00 FEET TO A LINE PARALLEL TO THE NORTHWESTERLY LINE OF SAID PARCEL A, CERTIFICATE OF COMPLIANCE (#11-01); THENCE CONTINUING ALONG SAID PARALLEL LINE NORTH 46° 43' 50" EAST 28.00 FEET TO THE INTERSECTION OF THE PROLONGATION OF NORTHEASTERLY LINE OF SAID PARCEL A; THENCE CONTINUING ALONG THE PROLONGATION OF SAID NORTHEASTERLY LINE SOUTH 43° 16' 10" EAST 201.70 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 25.00 FEET; THENCE SOUTHERLY ALONG SAID CURVE, AN ARC DISTANCE OF 29.79 FEET, THROUGH A CENTRAL ANGLE OF 68° 16' 40" TO A TANGENT LINE, ALSO BEING THE NORTHWESTERLY LINE OF TUBEWAY AVENUE, 70 WIDE, RECORDED IN BOOK D-2225, PAGE 404, OFFICIAL RECORDS OF SAID COUNTY; THENCE LEAVING SAID PARCEL LINE AND CONTINUING ALONG THE NORTHWESTERLY OF LINE OF SAID TUBEWAY AVENUE NORTH 25° 00' 30" EAST 110.90 FEET; THENCE LEAVING SAID NORTHWESTERLY LINE NORTH 61° 55' 35" WEST 38.39 FEET TO THE PROLONGATION OF THE SOUTHWESTERLY BOUNDARY LINE OF TRACT NO. 53813, AS PER MAP RECORDER IN BOOK 1286, PAGES 1 THROUGH 8 INCLUSIVE, THENCE CONTINUING ALONG THE PROLONGATION OF THE SOUTHWESTERLY BOUNDARY OF SAID TRACT NO. 53813, NORTH 43° 16' 10" WEST 1012.37 FEET TO THE MOST NORTHEASTERLY CORNER OF PARCEL A, CERTIFICATE OF COMPLIANCE (#09-03), RECORDED FEBRUARY 10, 2010 AS

INSTRUMENT NO. 20100189957, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL A, CERTIFICATE OF COMPLIANCE (#90-03) SOUTH 46° 43' 50" WEST 517.50 FEET TO THE MOST SOUTHERLY CORNER OF SAID PARCEL A, CERTIFICATE OF COMPLIANCE (#90-03); THENCE ALONG THE SOUTHWESTERLY LINE OF SAID PARCEL A, CERTIFICATE OF COMPLIANCE (#90-03) AND THE SOUTHWESTERLY LINE OF PARCEL A, CERTIFICATE OF COMPLIANCE (#90-01), RECORDED FEBRUARY 13, 2009 AS INSTRUMENT NO. 20090203779, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE NORTH 43° 16' 10" WEST 758.28 FEET TO THE NORTHEASTERLY SIDELINE OF GASPER AVENUE AND THE NORTHWESTERLY LINE OF PARCEL 7 OF SAID PARCEL MAP NO. 13798, ALSO BEING THE MOST SOUTHWESTERLY CORNER OF SAID PARCEL A, CERTIFICATE OF COMPLIANCE (#09-03); THENCE ALONG SOUTHWESTERLY LINES OF PARCEL 7 AND PARCEL 1 OF SAID PARCEL MAP NO. 13798, SOUTH 76° 31' 10" WEST, 15.67 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 94.50 FEET, THENCE SOUTH ALONG SAID LAST MENTIONED CURVE THROUGH A CENTRAL ANGLE OF 29° 47' 20", AN ARC DISTANCE OF 49.13 FEET; THENCE TANGENT TO SAID LAST MENTIONED CURVED AND ALONG THE EASTERLY LINE OF GASPAR AVENUE SOUTH 46° 43' 50' WEST 291.63 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 27.00 FEET; THENCE SOUTH ALONG SAID LAST MENTIONED CURVE THROUGH A CENTRAL ANGEL OF 85° 00' 00", AN ARC DISTANCE OF 40.06 FEET TO A TANGENT LINE ALSO BEING THE NORTHEAST LINE OF TELEGRAPH ROAD, 100 FEET WIDE AND THE SOUTHWESTERLY LINE OF PARCEL 1 OF SAID PARCEL MAP NO. 13798; THENCE ALONG SAID NORTHEASTERLY LINE OF SAID TELEGRAPH ROAD, SOUTH 38° 16' 10" EAST 1548.45 FEET TO THE TRUE POINT OF BEGINNING.

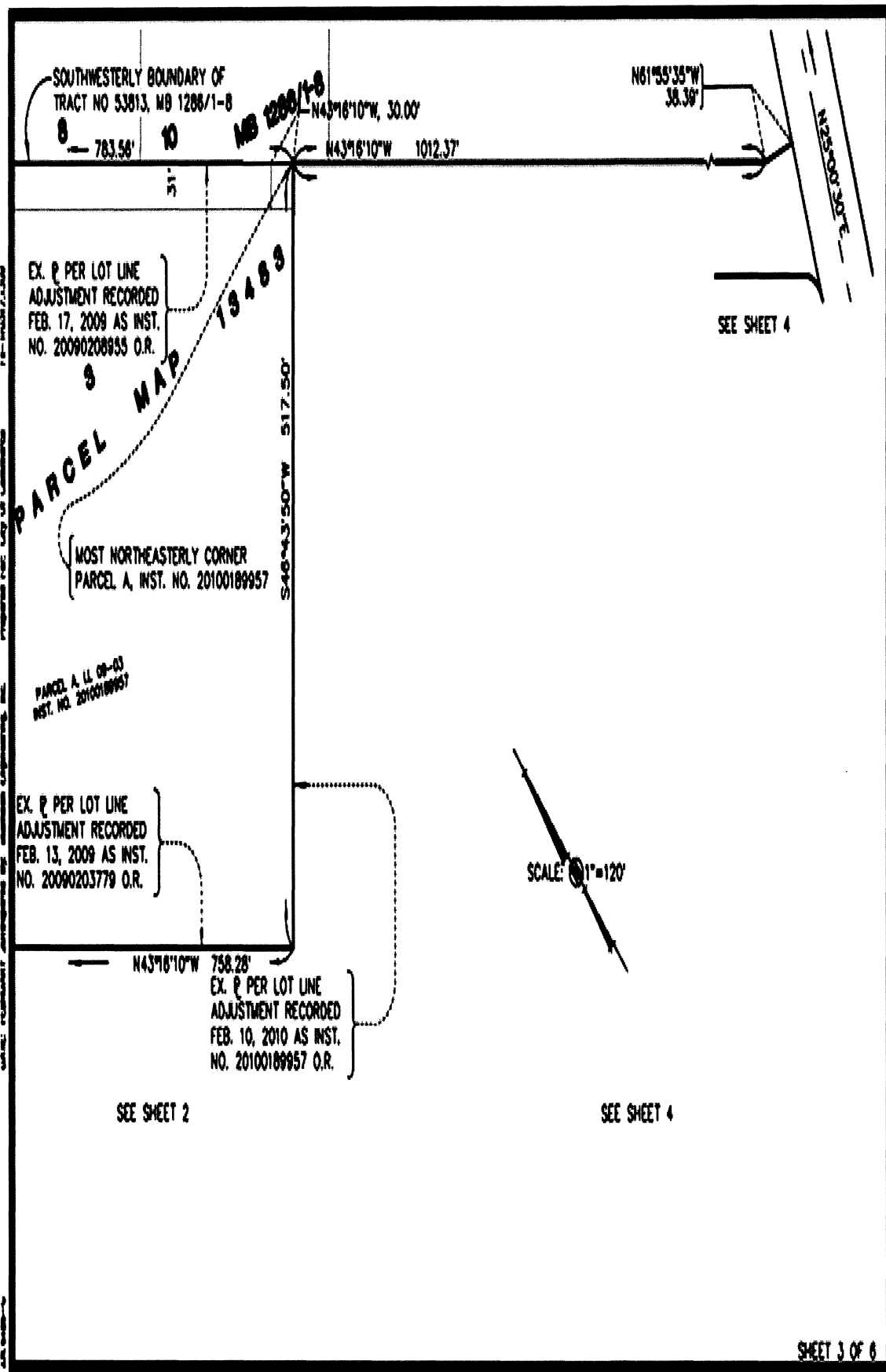
ALSO AS SHOWN AS PARCEL A IN THE CERTIFICATE OF COMPLIANCE (#12-04) RECORDED FEBRUARY 03, 2012 AS INSTRUMENT NO. 20120198997, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

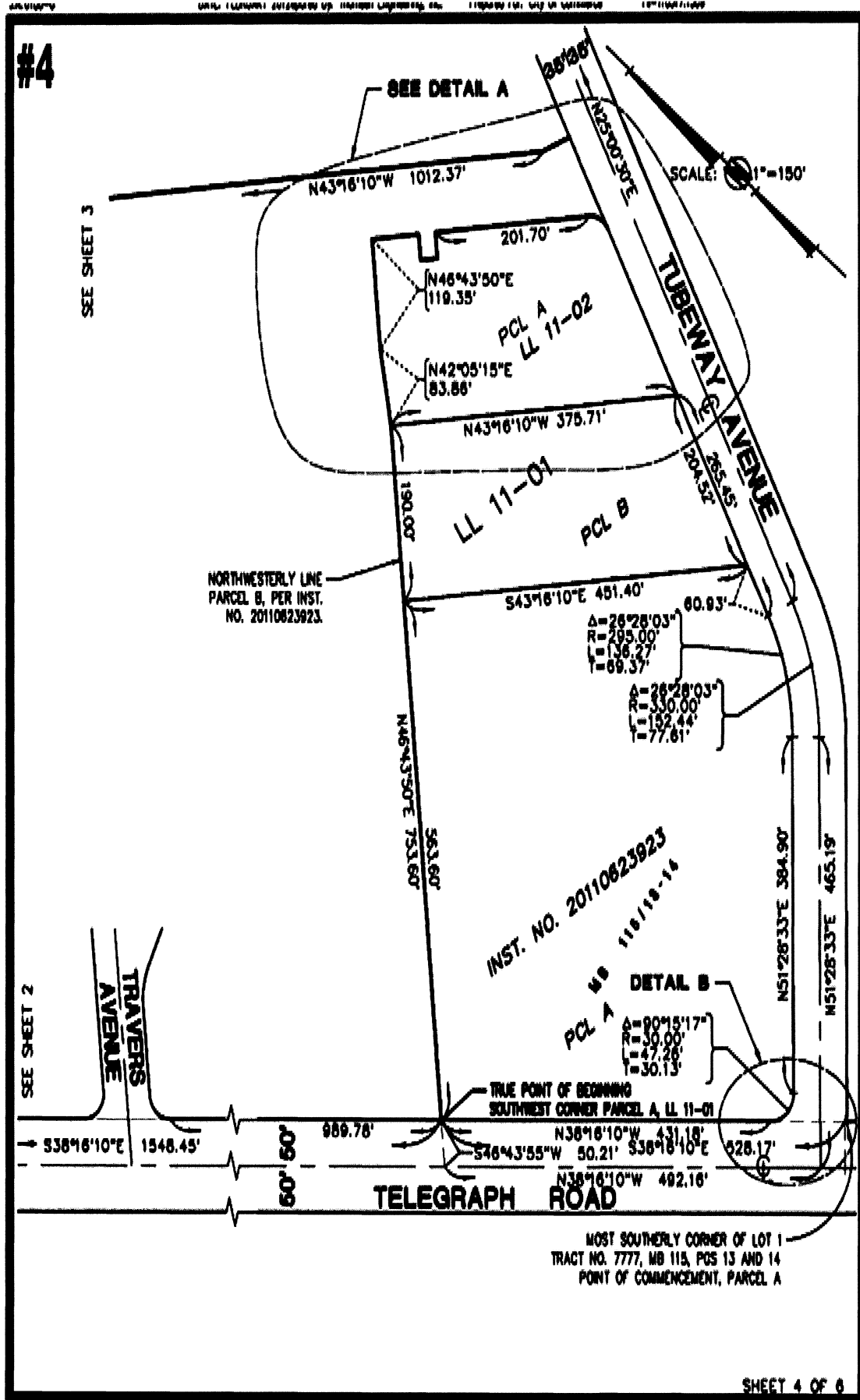


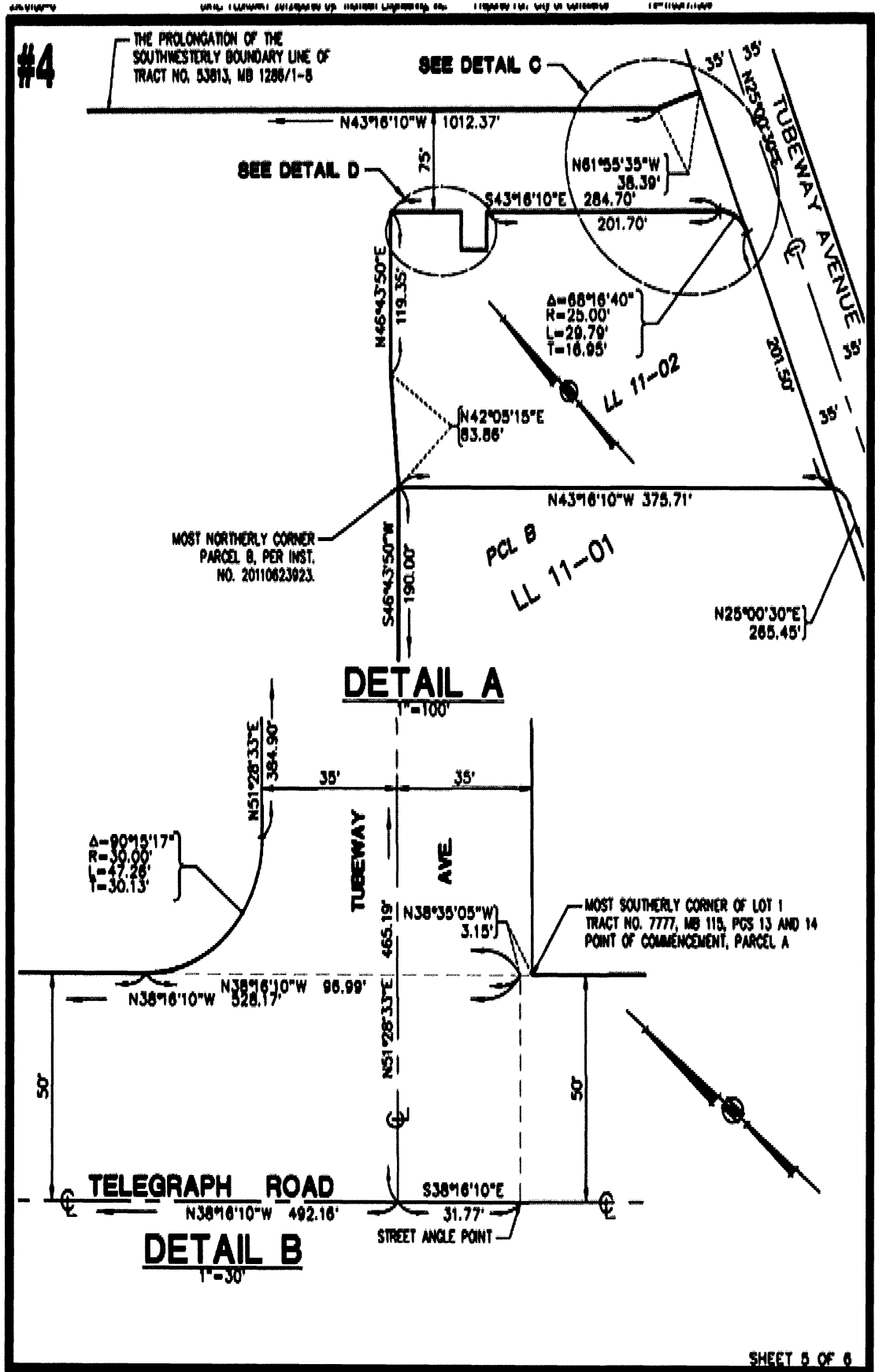
#4

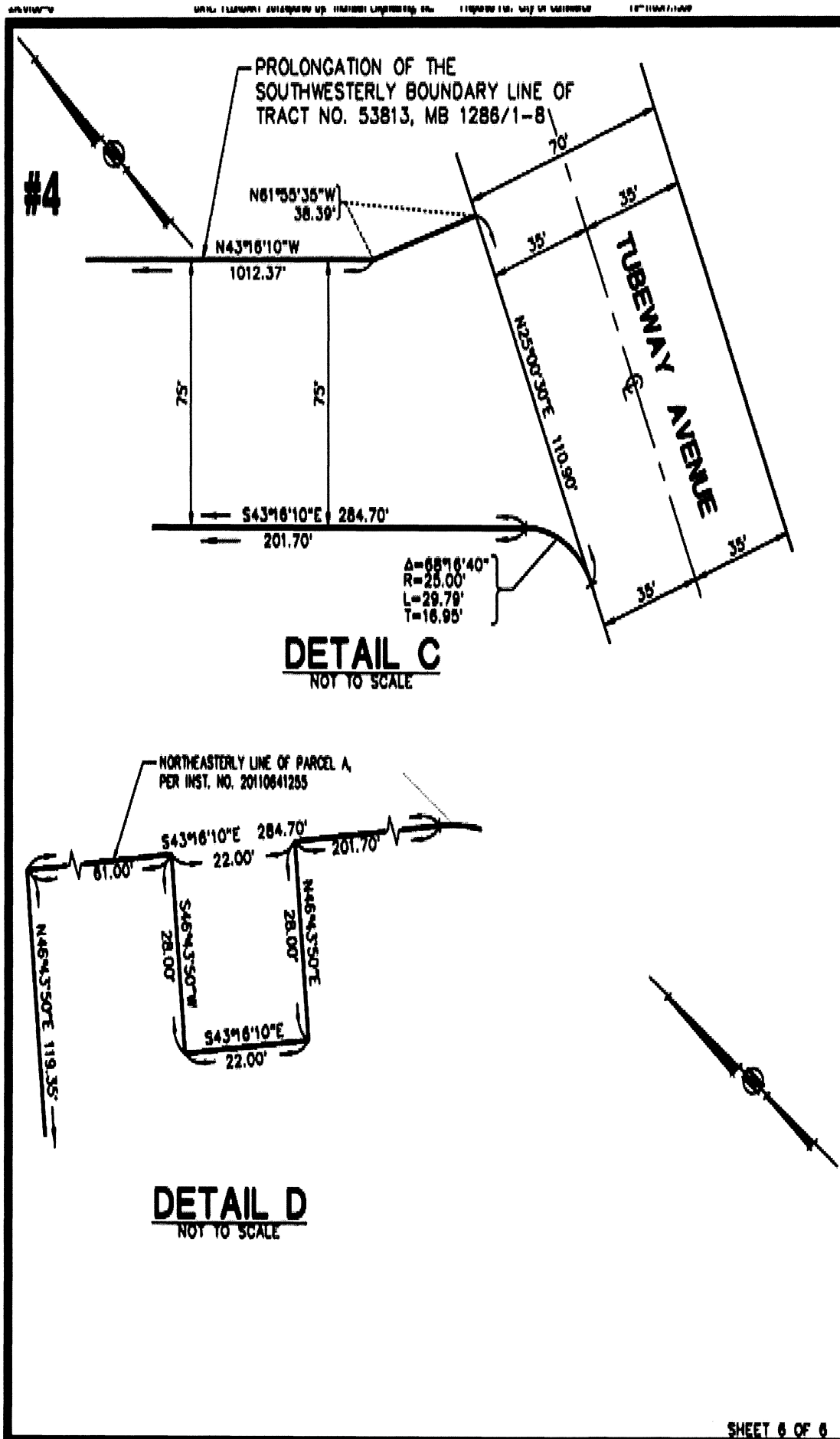


#4



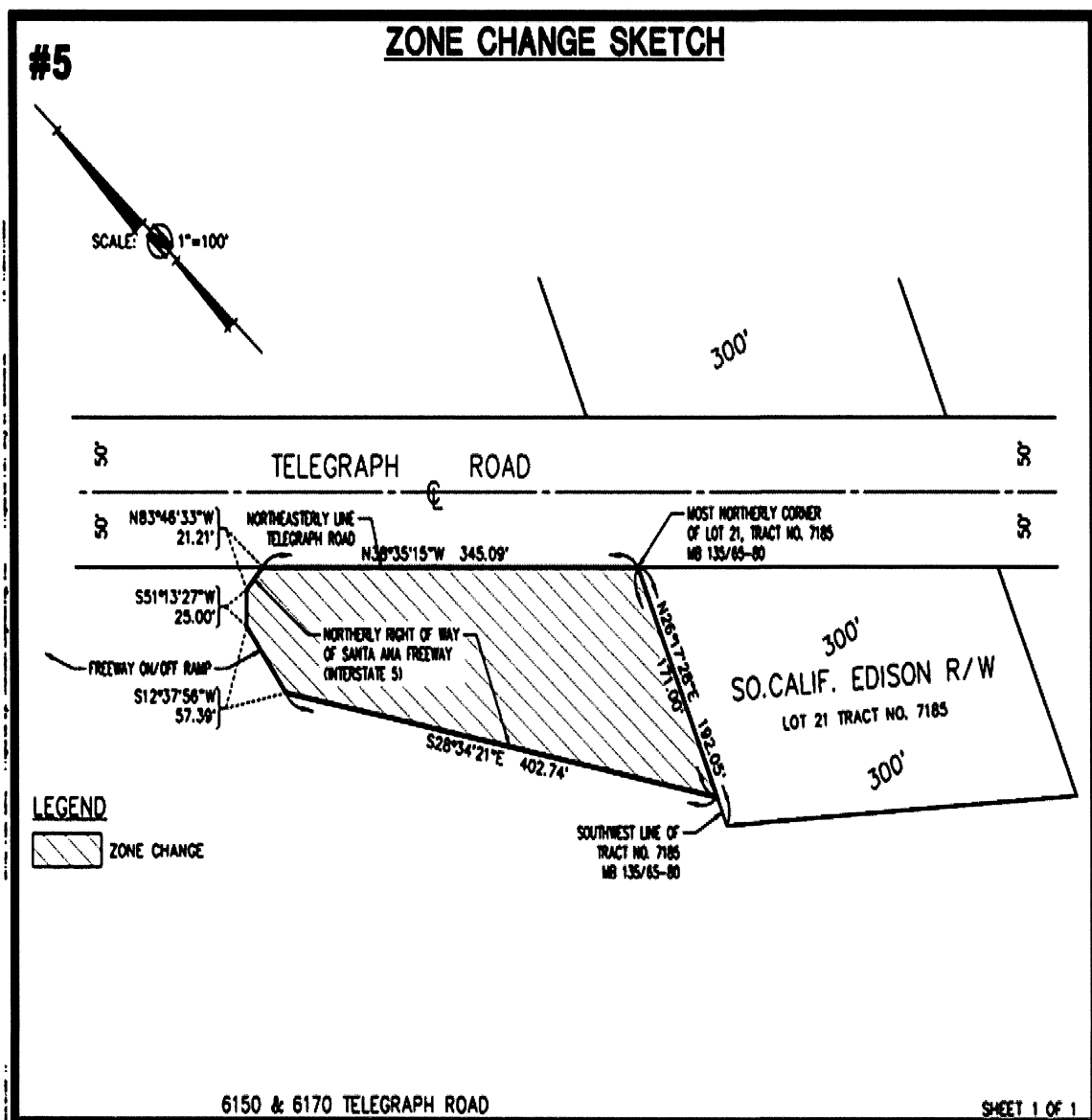






#5 THAT CERTAIN PARCEL OF LAND SITUATED IN THE CITY OF COMMERCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, BEING THAT PORTION OF LOT 66 OF RANCHO LAGUNA AS SHOWN ON MAP FILED AS EXHIBIT A IN CASE NO. B-25296 FO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA AS RECORDED IN BOOK 6387 PAGE 1 ET SEQ OF DEED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT MOST NORTHERLY CORNER OF LOT 21, TRACT NO 7185, AS PER MAP RECORDED IN BOOK 135 PAGES 56 THROUGH 80, INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, ALSO BEING ON THE NORTHEASTERLY LINE OF TELEGRAPH ROAD, FORMERLY ANAHEIM-TELEGRAPH ROAD, 100 FEET IN WIDTH, AS WIDENED BY DECREE OF CONDEMNATION, A CERTIFIED COPY OF WHICH IS RECORDED IN BOOK 9983 PAGE 296, OFFICIAL RECORDS; THENCE ALONG SAID NORTHEASTERLY LINE OF SAID TELEGRAPH ROAD, 100 FEET IN WIDTH, NORTH 38° 35' 15" WEST 345.09 FEET TO THE NORTHERLY RIGHT OF WAY OF INTERSTATE 5 FREEWAY; THENCE CONTINUING ON THE NEXT FOUR (4) COURSES ALONG THE NORTHERLY RIGHT OF WAY OF INTERSTATE 5 FREEWAY, (1) NORTH 83° 46' 33" WEST 21.21 FEET; THENCE (2) SOUTH 51° 13' 27" WEST 25.00 FEET; THENCE (3) SOUTH 12° 37' 56" WEST 57.39 FEET; THENCE (4) SOUTH 28° 34' 21" EAST 402.74 FEET TO THE SOUTHWEST LINE OF SAID TRACT NO. 7185; THENCE ALONG SOUTHWEST LINE OF SAID TRACT NO. 7185, NORTH 26° 17' 28" EAST 171.00 FEET TO THE POINT OF BEGINNING.



#6 THAT PORTION OF THE RANCHO SAN ANTONIO, IN THE CITY OF COMMERCE, AS SHOWN ON MAP THEREOF RECORDED IN BOOK 1, PAGE 389 OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

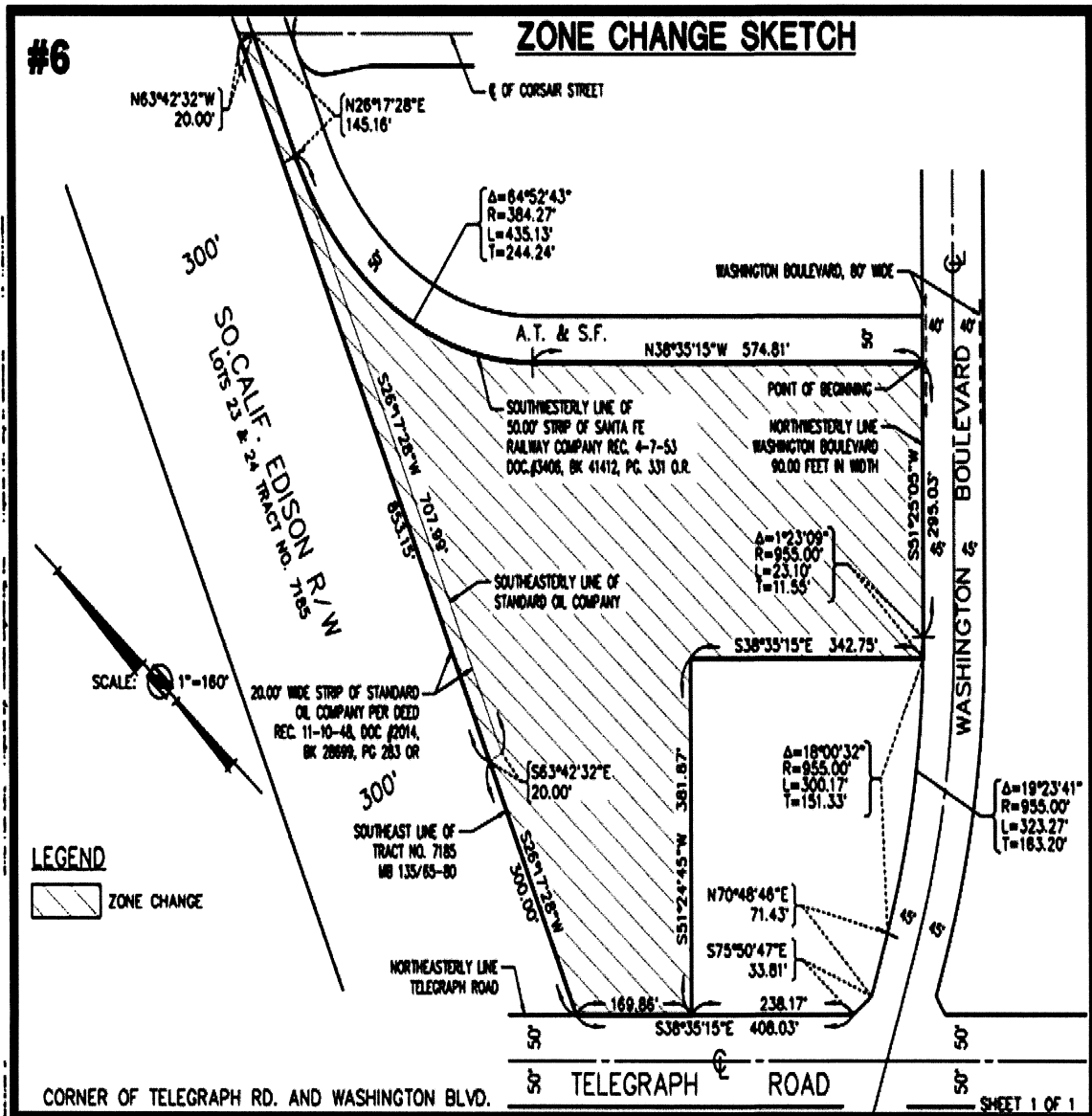
BEGINNING AT THE INTERSECTION OF THE NORTHWESTERLY LINE OF WASHINGTON BOULEVARD, 90 FEET IN WIDTH, DESCRIBED AS PARCEL NO. 1 IN DEED TO THE COUNTY OF LOS ANGELES, RECORDED AUGUST 29, 1939 AS DOCUMENT NO 1085, IN BOOK 16836 PAGE 241, OFFICIAL RECORDS AND AS WIDENED BY DEED DATED JULY 25, 1973 FOR ROAD PURPOSES, RECORDED JANUARY 23, 1974 AS INSTRUMENT NO 2907, OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, WITH THE SOUTHWESTERLY LINE OF THAT CERTAIN 50 FOOT WIDE RAILWAY RIGHT-OF-WAY CONVEYED TO THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, BY DEED RECORDED APRIL 7, 1953 AS DOCUMENT NO. 3406, IN BOOK 41412 AT PAGE 331, OFFICIAL RECORDS AND REFERRED TO THEREIN AS PARCEL NO. 1, THENCE ALONG SAID RIGHT-OF-WAY LINE NORTH 38° 35' 15" WEST 574.81 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 384.27 FEET; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE AND SAID CURVE AN ARC DISTANCE OF 435.13 FEET, THROUGH A CENTRAL ANGLE OF 64° 52' 43" TO A TANGENT POINT ON THE SOUTHEASTERLY LINE OF THAT CERTAIN 20.00 FEET WIDE RIGHT-OF-WAY CONVEYED TO STANDARD OIL COMPANY BY DEED RECORDED ON NOVEMBER 10, 1948 AS DOCUMENT NO 2014, IN BOOK 28699, PAGE 283, OFFICIAL RECORDS; THENCE TANGENT ALONG SAID SOUTHEASTERLY LINE SOUTH 26° 17' 28" WEST 707.99 FEET; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE SOUTH 63° 42' 32" WEST 20.00 FEET TO THE SOUTHEASTERLY LINE OF TRACT NO. 7185 AS SHOWN ON MAP RECORDED IN BOOK 135, PAGES 65 TO 80 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG SAID SOUTHEASTERLY TRACT LINE SOUTH 26° 17' 28" WEST 300.00 FEET TO THE NORTHEASTERLY LINE OF TELEGRAPH ROAD, FORMERLY ANAHEIM-TELEGRAPH ROAD, 100 FEET IN WIDTH, AS WIDENED BY DECREE OF CONDEMNATION, A CERTIFIED COPY OF WHICH IS RECORDED IN BOOK 9983 PAGE 296, OFFICIAL RECORDS; THENCE ALONG THE SAID NORTHEASTERLY LINE OF TELEGRAPH ROAD SOUTH 38° 35' 15" EAST 408.03 FEET; THENCE CONTINUING ALONG SAID WASHINGTON BOULEVARD NORTHERLY LINE, SOUTH 75° 50' 47" EAST 33.81 FEET TO THE NORTHWESTERLY LINE OF SAID WASHINGTON BOULEVARD, 90.00 FEET IN WIDTH; THENCE ALONG SAID NORTHWESTERLY LINE OF WASHINGTON BOULEVARD NORTH 70° 48' 46" EAST 71.43 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 955.00 FEET; THENCE CONTINUING ALONG SAID NORTHWESTERLY LINE AND SAID CURVE AN ARC DISTANCE OF 323.27 FEET, THROUGH A CENTRAL ANGLE OF 19° 23' 41"; THENCE TANGENT TO SAID CURVE, ALONG THE NORTHWESTERLY LINE OF SAID WASHINGTON BOULEVARD, 90 FEET IN WIDTH, NORTH 51° 25' 05" EAST 295.03 FEET TO THE POINT OF BEGINNING.

ALSO TOGETHER WITH THAT PORTION OF SAID RANCHO SAN ANTONIO DESCRIBED AS FOLLOWS:

THE SOUTHERLY 853.15 FEET OF THE 20.00 FEET WIDE STRIP OF STANDARD OIL COMPANY PER DEED RECORDED NOVEMBER 10, 1948 AS DOCUMENT NUMBER 2014 IN BOOK 28699, PAGE 283 OF OFFICIAL RECORDS

EXCEPT THEREFROM THAT PORTION OF SAID RANCHO SAN ANTONIO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTHWESTERLY LINE OF SAID WASHINGTON BOULEVARD, 90 FEET IN WIDTH, WITH THE SOUTHWESTERLY LINE OF THAT SAID CERTAIN 50 FOOT WIDE RAILWAY RIGHT-OF-WAY CONVEYED TO THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; THENCE ALONG THE NORTHWESTERLY LINE OF SAID WASHINGTON BOULEVARD, 90 FEET IN WIDTH, SOUTH 51° 25' 05" WEST 295.03 FEET TO A TANGENT CURVE CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 955.00 FEET; THENCE CONTINUING ALONG SAID NORTHWESTERLY LINE AND SAID CURVE AN ARC DISTANCE OF 23.10 FEET, THROUGH A CENTER ANGLE OF 01° 23' 09" TO THE **TRUE POINT OF BEGINNING**; THENCE LEAVING SAID NORTHWESTERLY LINE NORTH 38° 35' 15" EAST 342.75 FEET; THENCE SOUTH 51° 24' 45" WEST 381.87 FEET TO THE NORTHEASTERLY LINE OF SAID TELEGRAPH ROAD, 100 FEET IN WIDTH; THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE, SOUTH 38° 35' 15" EAST 238.17 FEET; THENCE CONTINUING ALONG SAID WASHINGTON BOULEVARD NORTHERLY LINE, SOUTH 75° 50' 47" EAST 33.81 FEET TO THE NORTHWESTERLY LINE OF SAID WASHINGTON BOULEVARD, 90.00 FEET IN WIDTH; THENCE ALONG SAID NORTHWESTERLY LINE OF WASHINGTON BOULEVARD NORTH 70° 48' 46" EAST 71.43 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 955.00 FEET; THENCE CONTINUING ALONG SAID NORTHWESTERLY LINE AND SAID CURVE AN ARC DISTANCE OF 300.17 FEET, THROUGH A CENTRAL ANGLE OF 18° 00' 32" TO THE TRUE POINT OF BEGINNING.





AGENDA REPORT

DATE: April 17, 2012

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA AMENDING TITLE 19 ("ZONING") OF THE COMMERCE MUNICIPAL CODE, TABLE 19.09.010 A (PERMITTED USES—COMMERCIAL ZONE) TO PERMIT HOTEL USES IN THE C-2 ZONE WITH APPROVAL OF A CONDITIONAL USE PERMIT AND ALLOW PARKING STRUCTURES AS A PERMITTED USE IN THE C-2 ZONE – SECOND READING

RECOMMENDATION:

Move to approve and adopt the subject Ordinance.

MOTION:

1. Move to read the Ordinance by title only; and
3. Move to approve and adopt the Ordinance and assign the number next in order.

BACKGROUND:

The purpose of the City's Commercial zone is to allow for the establishment and operation of retail and businesses in conveniently located areas of the City. These uses are intended to provide a variety of goods and services necessary to meet the needs of the resident and business populations. Uses allowed in the C-2 zone include, but are not limited to, retail businesses, restaurants, personal services, offices, repair shops and parking lots. Although a wide range of commercial uses and those uses accessory to them are permitted in this zone, hotels and parking structures are currently not.

The City's General Plan serves as the blueprint for future planning and development in the City. The City's vision for the future is indicated through the policies and plans, contained therein, which are designed to shape the physical development of the community. Zoning is the primary means of implementing a General Plan. In contrast to the long-term outlook of the General Plan, zoning classifies the specific, immediate uses of land. The typical zoning ordinance and map regulate land use by dividing the community into districts or zones and specifying the uses that are to be permitted, conditionally permitted, and prohibited within each zone. Cities are required to maintain consistency between their zoning ordinance and map, and their adopted General Plan and its map. The City's last General Plan Update in 2008 sets forth certain policies and objectives. Many of these look to encourage an increase in commercial and entertainment uses throughout the City.

While Commerce is home to approximately 13,000 persons, it remains an important contributor to the region's employment and economic base. The City's central location within the greater Los Angeles metropolitan area, its ideal location in relation to the region's network of freeways, and its continued commitment to commercial development are underscored in following General Plan policies:

- *Community Development Policy 2.1.* The city of Commerce will continue to promote the development of a quality retail and commercial entertainment district in the vicinity of Telegraph Road, north of the Santa Ana Freeway.

- *Community Development Policy 2.2.* The city of Commerce will encourage and promote the development of quality restaurants in the city to serve residents and visitors alike, and discourage the further proliferation of fast-food restaurants in the city.
- *Community Development Policy 2.3.* The city of Commerce will promote the development of larger, more efficient, commercial retail shopping centers as opposed to smaller “strip commercial” centers.
- *Community Development Policy 2.4.* The city of Commerce will continue to preserve and promote the improvement of the existing commercial areas, including the Commerce Center, the Telegraph Road/Washington Boulevard area, the Atlantic/Washington Redevelopment Project Area, the Commerce Business Park, and the commercial properties located along Slauson Avenue.
- *Community Development Policy 2.5.* The city of Commerce will explore the feasibility of constructing a supermarket to serve those portions of the city south of the Santa Ana Freeway.
- *Community Development Policy 2.6.* The city of Commerce will strive to improve security within existing and future shopping districts located in the city.
- *Community Development Policy 2.8.* The city of Commerce will continue to encourage the development of a high-intensity, highly visible commercial corridor consisting of offices, hotels, and retail and entertainment uses along Telegraph Road, extending from Hoefner Avenue to Vail Avenue.
- *Community Development Policy 2.9.* The city of Commerce will continue to promote the improvement of the Washington Boulevard corridor between the Santa Ana and Long Beach Freeways.
- *Community Development Policy 2.10.* The city of Commerce will continue to provide safe, convenient pedestrian linkages across and along streets containing strip commercial businesses.

The proposed amendment to the Commerce Municipal Code would allow for two new uses in the C-2 zone. First, parking structures would be permitted by right. Second, hotels would be permitted with approval of a CUP. Currently, the City’s Commercial standards only allow for lodging houses and parking lots.

This item was before the Planning Commission at their meeting of February 22, 2012. At that time, the Commission unanimously recommended approval of the subject amendment to the City Council. On April 3, 2012, the City Council conducted the required public hearing and approved the proposed Ordinance for first reading. The City Council will now consider the subject Ordinance for second reading and adoption

ANALYSIS:

The proposed amendment would change Table 19.09.010A of the Commerce Municipal Code. The amended table is shown below. The new uses are shown in bold print and are highlighted.

Table 19.09.010
Permitted Uses—Commercial Zone

Use	C-2
Accessory Use and Building	A
Adult Business	X
Alcoholic Beverages, Sale of	C*
Antique Store	P
Appliance Store, Small or Large Appliances	P
Auction House or Store	C
Auto Body and Fender Repair, enclosed within a building	C
Auto Dealer, New or Used	C*
Auto Repair Garage, enclosed within a building	C
Bakery, Retail	P
Bank	P**
Barber Shop, Beauty Shop	P
Billiard or Pool Hall	C
Blueprinting and Photocopying	P
Book Store (excluding adult bookstores)	P
Bowling Alley	C
Camera Store	P
Candy Store	P
Cellular Car Phones and Pagers - Sales, Service or Installation	P
Child Care Center	C*
China/Pottery Store; no outside storage or display	P
Churches and Similar Religious Institutions	P
Cinema	C
Cleaning and Pressing, using nonflammables	C
Clothing Store (other than secondhand)	P
Clubs, Private and Fraternities/Sororities	C
Cocktail Lounges and Bars	C*
Community Care Facilities	C
Computer Sales and Service	P
Dance Establishment	C
Dance Studio	C
Delicatessens	P
Department Store	P
Dressmaking, Custom	P
Drug Store, Pharmacy	P
Dwelling, Multifamily (a)	P
Dwelling, Single-Family (a)	P
Electric Distribution and Transmission Substation, with microwave facilities	C
Electronic Sales and Service	P
Entertainment Establishment	C*
Flower Shop	P
Fortunetelling	P
Funeral Parlor	C
Gaming Establishment	C
Greenhouse	P
Grocery, Fruit/Vegetable, Meat Market	P
Health Food Store	P
Hobby Shop	P
Interior Decorating Store	P
Jewelry Store (including repair)	P
Laundries	P
Laundry and Dry Cleaning	P
Laundry and Dry Cleaning Pick-up Station	P

Library	P
Lodging House	C
Medical and Dental Office, Clinic	P
Mini-Mart	C*
Mobile Office Trailer	C*
Music or Vocal Instruction	P
Music Store	P
Music Studio	P
Newsstand	P
Nursery, Flower or Plant, Retail or Wholesale	P
Office, Business	P
Office, Professional	P
Optometrist or Optical Goods Store	P
Outdoor Amusements, Recreational Uses	C
Parking Lot	P
Pet Shop, Bird Store	P
Photography Studio	P
Radio or Television Studio	P
Real Estate Office	P
Recreational Facilities, Commercial	C
Recycling Collection Center with Attendant - Permanent	X
Recycling Collection Center with Attendant - Temporary	P
Restaurant, Coffee Shop, Cafeteria (No Liquor Served)	P
Restaurant or Cafe Serving Liquor	C*
Restaurant with Dancing/Entertainment	C*
Restaurant, Fast Food or Drive-through	C*
School, Trade	C
Service Station, Gasoline	C*
Shoe Repair, Shop Shine Shop	P
Shoe Store	P
Shopping Center	P
Solid Waste Facilities, as defined in Public Resources	X
Stationary Store	P
Tailor Shop	P
Taxi Stands	C
Taxidermist	P
Theater or Auditorium, including movie theater (excluding adult theaters)	C
Tobacco Store	P
Toy Store	P
Travel Bureau	P
Upholstery Shop	P
Used Car Sales Lot	C*
Utility Business Office	P
Variety Stores	P
Videotape, Sales and Rental	P
Wholesale Business, Limited; no manufacturing/processing	P
Yardage and Fabric Shops	P

Hotels can vary in size and complexity. The City recognizes that certain uses, due to the nature of use, intensity, or size, require special review to determine if the proposed use or location, is compatible with surrounding uses, or through the imposition of development and use conditions, can be made compatible with surrounding uses. The conditional use permit process is provided for this purpose. Conditional uses require special consideration to ensure compatibility with zoning regulations and surrounding properties. The City's Planning Commission is empowered to grant and deny applications for CUPs and to impose reasonable conditions upon the granting of such a permit. Due to the potential complex nature of hotel development, staff has determined that it would be best to allow for hotels with approval of a CUP. Therefore, the Planning Commission would have the ability to

impose conditions on such a project to protect the best interests of the City and its residents.

Parking structures often play an integral part of commercial or retail shopping areas. The type of commercial activity contemplated in the General Plan may necessitate the need for a developer to construct a parking structure or structures. These uses are generally less intense than other uses like hotels. Therefore, staff is recommending they be permitted by right in the C-2 zone. This means a new parking structure would not require approval from the Planning Commission, unless the proposed construction would vary from the requirements set forth in the Commerce Municipal Code. Parking structure construction would have to meet standards related to things such as, but not limited to, circulation, aesthetics, height, and lot coverage.

The subject text amendment would serve to further the goals and objectives set forth in the City's General Plan, as it would allow for uses that help contribute to the creation of thriving entertainment and commercial areas.

FINDINGS:

Section 19.39.310 of the Commerce Municipal Code requires the following findings of fact to be made before approving a change of zone:

1. That the proposed zoning ordinance text amendment is consistent with the goals, policies, and objectives of the general plan. ***The proposed text amendment is consistent with the City of Commerce General Plan, as it would help to further the goals and objectives of the Plan. The Plan sets forth many policies that aim to encourage an increase in commercial and entertainment uses throughout the City. The proposed amendment would continue the City's commitment to commercial development as it would permit uses that are commonly found in commercial or retail areas, while still providing for proper oversight of these uses.***
2. That the proposed zoning ordinance text amendment will not adversely affect surrounding properties. ***The subject text amendment would not adversely affect surrounding properties. The amendment would serve to further the creation of commercial and retail uses as contemplated in the City's General Plan. During the process of recently updating the General Plan, it was determined that the goals, policies, and objectives included in the Plan would not adversely affect the City or its surroundings. The proposed text amendment is consistent with the General Plan and therefore would not create adverse impacts.***
3. That the proposed zoning ordinance text amendment promotes the public health, safety, and general welfare and serves the goals and purposes of this Title 19. ***The subject text amendment would serve to help protect the health, safety and general welfare of the residents of the City of Commerce. This amendment would help to promote the creation of commercial uses in the City. The proposed amendment is consistent with the General Plan, which serves as the blueprint for future development within the City. Previously, it was determined that the Plan and its implementation would not negatively affect the health of the Community or its surroundings. The text amendment modifies Title 19 to include two additional uses; however, any construction must still meet all of the standards and be consistent with that Title.***

ENVIRONMENTAL ASSESSMENT:

The project qualifies for a Class 8 Categorical Exemption under the provisions of the California Environmental Quality Act (CEQA) Guidelines Section 15308. Class 8 consists of actions taken by regulatory agencies, as authorized by local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment.

In January of 2008, the Commerce City Council approved and certified an Environmental Impact Report (the "EIR") regarding a comprehensive General Plan Update and approved the General Plan Update (the "Project"). The City Council, as the lead agency for the Project found that approval and implementation of the General Plan Update: will not have the potential to degrade the quality of the environment; does not have the potential to achieve short-term goals to the disadvantage of long-term environmental goals; is not expected to have impacts, which are individually limited but cumulatively considerable when considering planned or proposed development in the immediate vicinity; and is not expected to have environmental effects that will adversely affect humans, either directly or indirectly. The Final EIR was completed in compliance with the California Environmental Quality Act ("CEQA"), including a public review process. The City Council considered the information contained in the Final EIR prior to approving the Project.

CEQA Guidelines, Section 15183 provides for streamlined review of projects that are consistent with existing General Plans. That section provides that, when approving a project that is consistent with a general plan for which an environmental impact report has already been certified, a public agency need only examine those environmental effects that are peculiar to the project and were not analyzed or were insufficiently analyzed in the prior environmental impact report. In this case, the General Plan calls for the creation of additional entertainment and commercial uses in the City of Commerce. Policies contained in the Plan were designed and anticipated to facilitate a continued transition to commercial and entertainment uses. The EIR concluded that that the implementation of the policies and programs included in the General Plan would reduce the level of impact from future development to levels that are less than significant. Since the subject text amendment is consistent with the policies contained in the General Plan and these policies and their potential impacts were addressed in the EIR, pursuant to CEQA Guidelines, Section 15183, the City is only required to examine the effects that are peculiar to the proposed text amendment that were not analyzed or were insufficiently analyzed in the EIR. There are no environmental effects that are peculiar to the proposed text amendment that were not contemplated during the General Plan Update process. The proposed amendment to the Commerce Municipal Code is necessary to implement the policies contained in the General Plan, which were anticipated and studied in the EIR. Therefore, pursuant to Section 15183, no additional CEQA analysis is required.

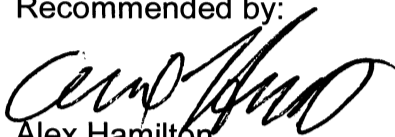
FISCAL IMPACT:

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

RELATIONSHIP TO 2009 STRATEGIC GOALS:

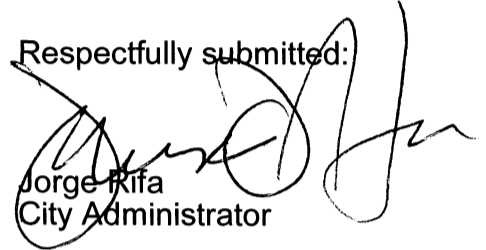
This agenda report relates to the 2009 strategic planning goal: *"Protect and Enhance the Quality of Life in the City of Commerce"*.

Recommended by:



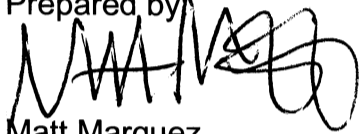
Alex Hamilton
Assistant Director of Community Development

Respectfully submitted:



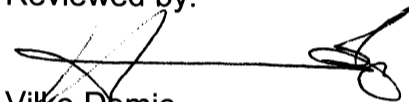
Jorge Rifa
City Administrator

Prepared by:



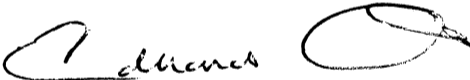
Matt Marquez
City Planner

Reviewed by:



Vilko Domic
Director of Finance

Approved as to Form:



Eduardo Olivo
City Attorney

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA AMENDING TITLE 19 ("ZONING") OF THE COMMERCE MUNICIPAL CODE, TABLE 19.09.010 A (PERMITTED USES—COMMERCIAL ZONE) TO PERMIT HOTEL USES IN THE C-2 ZONE WITH APPROVAL OF A CONDITIONAL USE PERMIT AND ALLOW PARKING STRUCTURES AS A PERMITTED USE IN THE C-2 ZONE

WHEREAS, the City Commerce's General Plan contains policies that promote and encourage entertainment, retail and commercial uses; and

WHEREAS, the City recognizes that its Zoning Ordinance does not allow for a full complement of commercial uses; and

WHEREAS, the City recognizes that hotels and parking structures are uses commonly found in entertainment and/or commercial areas.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, AND DETERMINE AS FOLLOWS;

SECTION 1: Table 19.09.010A of the Commerce Municipal Code is hereby amended to read as follows:

Table 19.09.010

Permitted Uses—Commercial Zone

Use	C-2
Accessory Use and Building	A
Adult Business	X
Alcoholic Beverages, Sale of	C*
Antique Store	P
Appliance Store, Small or Large Appliances	P
Auction House or Store	C
Auto Body and Fender Repair, enclosed within a building	C
Auto Dealer, New or Used	C*
Auto Repair Garage, enclosed within a building	C
Bakery, Retail	P
Bank	P**
Barber Shop, Beauty Shop	P
Billiard or Pool Hall	C
Blueprinting and Photocopying	P
Book Store (excluding adult bookstores)	P
Bowling Alley	C
Camera Store	P

Candy Store	P
Cellular Car Phones and Pagers - Sales, Service or Installation	P
Child Care Center	C*
China/Pottery Store; no outside storage or display	P
Churches and Similar Religious Institutions	P
Cinema	C
Cleaning and Pressing, using nonflammables	C
Clothing Store (other than secondhand)	P
Clubs, Private and Fraternities/Sororities	C
Cocktail Lounges and Bars	C*
Community Care Facilities	C
Computer Sales and Service	P
Dance Establishment	C
Dance Studio	C
Delicatessens	P
Department Store	P
Dressmaking, Custom	P
Drug Store, Pharmacy	P
Dwelling, Multifamily (a)	P
Dwelling, Single-Family (a)	P
Electric Distribution and Transmission Substation, with microwave facilities	C
Electronic Sales and Service	P
Entertainment Establishment	C*
Flower Shop	P
Fortunetelling	P
Funeral Parlor	C
Gaming Establishment	C
Greenhouse	P
Grocery, Fruit/Vegetable, Meat Market	P
Health Food Store	P
Hobby Shop	P
Hotel	C*
Interior Decorating Store	P
Jewelry Store (including repair)	P
Laundries	P

Laundry and Dry Cleaning	P
Laundry and Dry Cleaning Pick-up Station	P
Library	P
Lodging House	C
Medical and Dental Office, Clinic	P
Mini-Mart	C*
Mobile Office Trailer	C*
Music or Vocal Instruction	P
Music Store	P
Music Studio	P
Newsstand	P
Nursery, Flower or Plant, Retail or Wholesale	P
Office, Business	P
Office, Professional	P
Optometrist or Optical Goods Store	P
Outdoor Amusements, Recreational Uses	C
Parking Lot	P
Parking Structure	P
Pet Shop, Bird Store	P
Photography Studio	P
Radio or Television Studio	P
Real Estate Office	P
Recreational Facilities, Commercial	C
Recycling Collection Center with Attendant - Permanent	X
Recycling Collection Center with Attendant - Temporary	P
Restaurant, Coffee Shop, Cafeteria (No Liquor Served)	P
Restaurant or Cafe Serving Liquor	C*
Restaurant with Dancing/Entertainment	C*
Restaurant, Fast Food or Drive-through	C*
School, Trade	C
Service Station, Gasoline	C*
Shoe Repair, Shop Shine Shop	P
Shoe Store	P
Shopping Center	P
Solid Waste Facilities, as defined in Public Resources	X
Stationary Store	P

Tailor Shop	P
Taxi Stands	C
Taxidermist	P
Theater or Auditorium, including movie theater (excluding adult theaters)	C
Tobacco Store	P
Toy Store	P
Travel Bureau	P
Upholstery Shop	P
Used Car Sales Lot	C*
Utility Business Office	P
Variety Stores	P
Videotape, Sales and Rental	P
Wholesale Business, Limited; no manufacturing/processing	P
Yardage and Fabric Shops	P

SECTION 2: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remainder of the Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions may be declared invalid or unconstitutional.

SECTION 3: This Ordinance shall take effect on the thirty-first (31st) day after its adoption.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2012.

 Lilia R. Leon, Mayor

ATTEST:

 Linda Kay Olivieri, MMC
 City Clerk