

ALL ITEMS FOR CONSIDERATION BY THE CITY COUNCIL AND CITY COUNCIL AS SUCCESSOR AGENCY TO THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION ARE AVAILABLE FOR PUBLIC VIEWING IN THE OFFICE OF THE CITY CLERK AND THE CENTRAL LIBRARY

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

**AGENDA FOR THE 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, MAY 1, 2012 – 6:30 P.M.

CALL TO ORDER

Mayor/Chairperson Leon

PLEDGE OF ALLEGIANCE

Beatriz Sarmiento
Interim Director of Library Services

INVOCATION

Councilmember/Board Member Altamirano

ROLL CALL

City Clerk/Secretary 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/Secretary. 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/Secretary 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/SUCCESSOR AGENCY 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 or Board Member desire to consider any item separately he/she should so indicate to the Mayor/Chairperson. 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.; Concurrent Adjourned Regular Meetings of Tuesday, April 10, 2012, held at 3:00 p.m.; Concurrent Adjourned Regular Meetings of Tuesday, April 17, 2012, held at 5:00 p.m.; Concurrent Regular Meetings of Tuesday, April 17, 2012, held at 6:30 p.m.; Adjourned Regular Meeting of Wednesday, April 18, 2012, held at 9:00 a.m. [Council only]; Adjourned Regular Meeting of Thursday, April 19, 2012, held at 3:00 p.m. [Council only]; Adjourned Regular Meeting of Saturday, April 21, 2012, held at 9:00 a.m. [Council only] and Concurrent Adjourned Regular Council and Special Successor Agency Meetings of Tuesday, April 24, 2012, held at 5:00 p.m.

2. Approval of Warrant Register No. 21

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. 21A, dated May 1, 2012, and No. 21B, for the period April 18, 2012, to April 26, 2012.

3. Commendation – Honoring Robert Zarrilli Upon His Retirement

The **City Council** will consider for approval a Commendation honoring Robert Zarrilli upon his retirement from the City of Commerce.

4. Proclamation – National Transportation Week

The **City Council** will consider proclaiming the week of May 13-19, 2012, as National Transportation Week in the City of Commerce.

5. Approval of 2012 Civic Organization Renewals

The **City Council** will consider for approval additional Civic Organizations of the City of Commerce for the year 2012, as recommended by the Parks and Recreation Commission at its meeting of April 5, 2012.

6. Request for Proposals for Tree Maintenance Services

The City of Commerce entered into a year-to-year contract with West Coast Arborists, Inc. (WCA), commencing on October 17, 2000, with the option to extend the term by one-year increments, for up to a maximum of five years. In June of 2005, the City and WCA entered into a new five

CONCURRENT REGULAR COUNCIL/SUCCESSOR AGENCY AGENDA

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year contract through June 30, 2010. The contract is currently continuing on month to month basis.

On April 10, 2012, the City Council rejected all bids received on its last RFP for Tree Maintenance Services and directed staff to return with a new RFP. The bids were rejected because of notice issues that could have caused some confusion.

The **City Council** will consider for approval, and authorizing staff to proceed with the issuance of, the Request for Proposals (RFP) to provide tree maintenance services for the City of Commerce.

7. A Resolution of the City Council of the City of Commerce, California, Approving the Execution of Cash Contract No. 1110R – Interior and Exterior Painting of the Commerce Transportation Services Center with C.T. Georgiou Painting Company of Wilmington, California

The Transportation Services Center was last painted in 1996, when it was constructed. The facility is over thirteen (13) years old and the paint is starting to crack and peel, which is noticeable throughout the facility.

The **City Council** will consider for approval and adoption a proposed Resolution approving the execution of Cash Contract No. 1110R – Interior and Exterior Painting of the Commerce Transportation Services Center with C.T. Georgiou Painting Company of Wilmington, California.

8. A Resolution of the City Council of the City of Commerce Authorizing the Filing of Applications with the Federal Transit Administration, an Operating Administration of the United States Department of Transportation, for Federal Transportation Assistance Authorized by 49 U.S.C. Chapter 53, Title 23 United States Code and Other Federal Statutes Administered by the Federal Transit Administration

The **City Council** will consider for approval and adoption a proposed Resolution authorizing the filing of applications with the Federal Transit Administration, an operating Administration of the United States Department of Transportation, for federal transportation assistance authorized by 49 U.S.C. Chapter 53, Title 23 United States Code and other federal statutes administered by the Federal Transit Administration.

9. A Resolution of the City Council of the City of Commerce, California, Amending Resolution No. 10-49, Adopting a City of Commerce Fee Schedule, as Amended, to Include a Summer Day Camp Program Fee Schedule

The **City Council** will consider for approval and adoption a proposed Resolution amending Resolution No. 10-49, adopting a City of Commerce Fee Schedule, as amended, to include a Summer Day Camp Program Fee Schedule, which was not included in the original Fee Schedule.

10. A Resolution of the City Council of the City of Commerce, California, Approving an Agreement between the City and Pyro Spectaculars, Inc. a California Corporation for the 4th of July Pyrotechnic Display at Rosewood Park

The **City Council** will consider for approval and adoption a proposed Resolution approving an Agreement between the City and Pyro Spectaculars, Inc., a California corporation, for an aerial fireworks display for the 2012 Fourth of July Celebration at Rosewood Park.

CONCURRENT REGULAR COUNCIL/SUCCESSOR AGENCY AGENDA

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11. A Resolution of the City Council of the City of Commerce, California, Approving an Agreement Between the City and Raymond Leefe D.B.A. Candyland Amusements for Carnival Services for the 4th of July Celebration at Rosewood Park

The **City Council** will consider for approval and adoption a proposed Resolution with Raymond Leefe, d.b.a. Candyland Amusements, for carnival services to be held in conjunction with the 2012 Fourth of July Celebration at Rosewood Park.

12. A Resolution of the City Council of the City of Commerce, California, Setting Forth its Findings of Fact for the Vacation of An Easement Interest Over a Portion of Boxford Avenue That Bisects Approximately 19 Acres of Private Property Located at 3415 Boxford with Frontage Along Slauson Avenue, in the City of Commerce, and Repealing Resolution No. 11-65

The **City Council** will consider for approval and adoption a proposed Resolution setting forth its findings of fact for the vacation of an easement interest over a portion of Boxford Avenue that bisects approximately 19 acres of private property located at 3415 Boxford, with frontage along Slauson Avenue, in the City of Commerce, and repealing Resolution No. 11-65.

PUBLIC HEARINGS

13. 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 – Second Reading

The **City Council** will conduct a public hearing on, and thereafter consider for approval and adoption, 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.

The proposed Ordinance was approved for first reading on April 17, 2012.

SCHEDULED MATTERS

14. Update on Status of Green Policy/Green Zones as Proposed by Environmental Justice Advisory Task Force

The **City Council** will consider for receipt and filing, and provide direction as deemed appropriate with respect to, an update on the status of the Green Policy/Green Zones, as proposed by the Environmental Justice Advisory Task Force.

15. Presentation – Central Library Renovation Project – Funding History, Bond Monies and Uses Thereof

The Central Library Renovation Project has been part of City Council’s vision since fiscal year 2003-04 and was made a funding priority since the issuance of the General Funds Lease Revenue Bonds in 2004. The report will highlight the funding history behind the vision and address any concerns as to the use of these bond funds.

The **City Council** will consider for receipt and filing, and provide direction as deemed appropriate with respect to, a presentation regarding the

funding history, bond monies and the uses thereof for the Central Library Renovation Project.

16. Commission and Committee Appointments

The **City Council** will make the appropriate appointments to the following Commission and Committee: Traffic Commission and Environmental Justice Advisory Task Force.

ORDINANCES AND RESOLUTIONS

CIP PROGRESS REPORT

RECESS TO CLOSED SESSION

ADJOURNMENT

Adjourn in memory of June McCoy, longtime Commerce resident and wife of former City of Commerce Water Facilities Corporation Board Member Charles McCoy, to Wednesday, May 2, 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: May 1, 2012

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: RETIREE COMMENDATION

RECOMMENDATION:

Approve Retirement Commendation for city employee Robert Zarrilli, Director of Community Development.

MOTION:

Move to approve the recommendation.

BACKGROUND:

The City annually approves Commendations for retiring City employees. This is the appropriate time to approve a Commendation for Robert Zarrilli, Community Development Director who retired from the City of Commerce after providing approximately 25 years of service to the City of Commerce Transportation Department and its patrons.

ANALYSIS:

Mr. Zarrilli was hired as a Senior Planner on April 21, 1986 and promoted to Director of Community Development on February 22, 2007. Mr. Zarrilli meets the eligibility requirements under the City's CalPERS retirement contract and has retired from the City of Commerce Community Development Department effective April 4, 2012. Mr. Zarrilli will be recognized for his valuable services to the City of Commerce during a Retirement Potluck Luncheon being held in his honor.

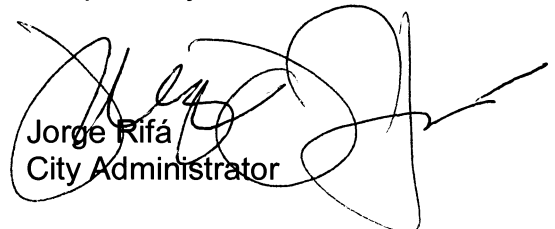
BUDGET IMPACT:

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

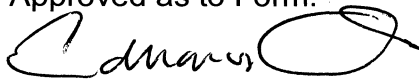
Recommended by,


Teresa McAllister
Director of Human Resources

Respectfully submitted,


Jorge Rifá
City Administrator

Approved as to Form:


Eduardo Olivo
City Attorney

COMMENDATION OF THE CITY COUNCIL
OF THE CITY OF COMMERCE
HONORING
BOB ZARRILLI

ON THE OCCASION OF HIS RETIREMENT AND FOR 25 YEARS
OF DEDICATION AND EXCEPTIONAL SERVICE
TO THE CITY OF COMMERCE AND THE COMMUNITY

Whereas, Bob Zarrilli began his long and storied career with the City of Commerce on April 21, 1986 when he was hired as a Senior Planner; and

Whereas, Bob Zarrilli came from humble beginnings in New Jersey before landing in New Mexico to obtain a Bachelor's Degree in Government, as well as a Master's Degree in Public Administration at New Mexico State University; and

Whereas, Bob Zarrilli served as the Associate Planner in the City of Cudahy before coming to Commerce where he served as the City Planner for over 20 years before being promoted to the Director of Community Development on February 22, 2007; and

Whereas, Bob Zarrilli is known as much for his gruff exterior as for his can-do attitude and encyclopedic knowledge of the Commerce Municipal Code, government policies and the General Plan; and

Whereas, Bob Zarrilli, during 25 years of dedicated service to the residents and stakeholders of Commerce, was a vital part of many of the City's successful projects including the Amtrak Station, Commerce Casino and Crowne Plaza expansion, the Citadel, Hyundai and the Costco Business Center; and

Whereas, Bob Zarrilli is an avid sports fan and loyal supporter of the USC Trojans, as well as a critic of general managers and coaches of professional sports organizations across the wide spectrum of athletics; and

Whereas, Bob Zarrilli is not only known for his strong work ethic but also for the many solid friendships he built inside City Hall and throughout the community over a quarter century while serving the residents and businesses of the City of Commerce; and

Whereas, Bob Zarrilli will be missed by many employees, residents and members of the business community but the legend of a hot-tempered Italian from New Jersey will live on:

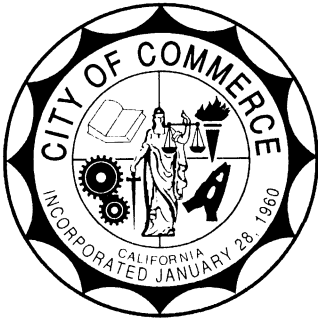
NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMMERCE COMMENDS BOB ZARRILLI ON THE OCCASION OF HIS RETIREMENT AND FOR HIS EXCEPTIONAL SERVICE TO THE CITY OF COMMERCE. THE CITY IS GRATEFUL FOR THE MANY CONTRIBUTIONS HE HAS MADE TO THE COMMUNITY AND FOR THE DEDICATION HE HAS DISPLAYED DURING HIS EMPLOYMENT WITH THE CITY. WE WISH YOU THE BEST IN YOUR RETIREMENT AND FUTURE ENDEAVORS.

Signed this 26th day of April 2012.

ATTEST:

Lilia R. Leon
Mayor

Linda Kay Olivieri, MMC
City Clerk



AGENDA REPORT

Meeting Date: May 1, 2012

TO: Honorable City Council

FROM: City Administrator

SUBJECT: PROCLAMATION – DESIGNATE THE WEEK OF MAY 13 – 19, 2012, AS NATIONAL TRANSPORTATION WEEK

RECOMMENDATION:

With the consent of the City Council, the Mayor will proclaim the week of May 13 – 19, 2012, as National Transportation Week.

MOTION:

Move to approve recommendation.

BACKGROUND:

The week of May 13 – 19, 2012, is recognized annually across the nation as National Transportation Week.

ANALYSIS:

None

FISCAL IMPACT:

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

RELATIONSHIP TO 2009/2010 STRATEGIC GOALS:

This item is related to the following 2009 Strategic Goal: Ensure the City will have a trained, quality workforce to efficiently provide services to City of Commerce residents for the future.

Recommended by:


Claude McFerguson
Director of Transportation

Respectfully submitted,


Jorge Rifa
City Administrator

Approved as to Form:



Eduardo Olivo
City Attorney

A PROCLAMATION OF THE
CITY OF COUNCIL OF THE CITY OF COMMERCE
DESIGNATING MAY 13 - 19, 2012, AS
NATIONAL TRANSPORTATION WEEK

WHEREAS, in 1962 President John F. Kennedy declared the third Friday of May as National Transportation Week; and

WHEREAS, the Transportation Industry has transformed America into a sophisticated network of metropolitan communities; and

WHEREAS, Public Transportation is a central component of the national Transportation network; and

WHEREAS, Public Transportation connects workers with jobs, families with each other, and the public with resources to live their lives; and

WHEREAS, the City's Transportation Department has been providing quality, fare-free transportation services to the City's residents for over 49 years; and

WHEREAS, the Commerce Transportation Department annually transports over 969,200 passengers for approximately 485,300 miles each year; and

WHEREAS, the City of Commerce maintains a professionally trained and dedicated staff of bus operators, mechanics, supervisors, and support staff who play a vital role in the overall success of the City's public transportation system; and

WHEREAS, the Commerce City Council and staff remain committed to providing safe, accessible, affordable, and essential public transportation services to the City's residents and business community.

NOW, THEREFORE, THE CITY OF COMMERCE CITY COUNCIL DOES HEREBY PROCLAIM THE WEEK OF MAY 13 – 19, 2012, AS NATIONAL TRANSPORTATION WEEK AND URGES ALL THOSE WHO LIVE OR WORK IN THE CITY OF COMMERCE TO SUPPORT AND PROMOTE THIS OBSERVANCE.

PASSED, APPROVED AND ADOPTED this 1st day of May 2012.

Lilia R. Leon
Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk



AGENDA REPORT

Meeting date: May 1, 2012

TO: Honorable City Council

FROM: City Administrator

SUBJECT: Approval of 2012 Civic/Service Organization Renewals

RECOMMENDATION:

Approve additional Civic and Service Organizations of the City of Commerce for the year 2012 as recommended by the Parks & Recreation Commission on April 5, 2012.

MOTION:

Move to approve recommendation.

BACKGROUND:

The City of Commerce through the Department of Parks and Recreation officially recognizes civic and service organizations of the City of Commerce that provide a benefit to the community and members it serves. Officially recognized civic and service organizations are entitled to privileges bestowed upon them by the City to assist the organizations in achieving their goals and missions.

ANALYSIS:

The Department of Parks and Recreation received the Civic and Service Organization renewal form after the City Council approved the 2012 Official Civic and Service list. The following civic organizations have submitted their applications for renewal and are in good standing:

- Commerce Aquatics Booster Club
- Volunteers of America (Commerce Head Start)

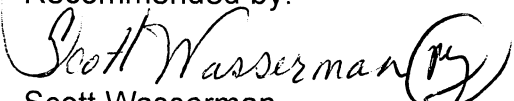
FISCAL IMPACT:

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

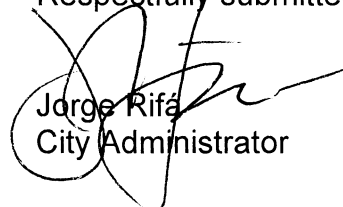
RELATIONSHIP TO STRATEGIC GOALS:

This agenda item relates to Strategic Goal #1: Develop Citywide Plan to enhance and maintain the City of Commerce environment and infrastructure to create livability and quality of life for those who life, work and play in the community.

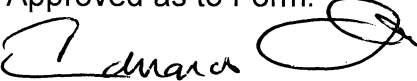
Recommended by:


Scott Wasserman
Interim Director of Parks and Recreation

Respectfully submitted,


Jorge Rifa
City Administrator

Approved as to Form:


Eduardo Olivo
City Attorney

CITY OF COMMERCE
DEPARTMENT OF PARKS AND RECREATION

REGISTRATION FORM
"COMMERCE CIVIC ORGANIZATIONS"

Official Name of Organization Commerce Aquatics Booster
Date of Application 2/24/12 Incorporated: Yes No (Check One)
Location of Meetings EOC
Meeting Dates Second Wednesday Times 7:00 - 8:00 pm
OF the month.

PLEASE SUBMIT:

1. Copy of the Organization By-Laws and/or a complete resume of the rules formulated by the Organization.
2. The Organization goals and objectives. Use space below or on reverse side.
3. Attach a complete membership roster (Include: Name, complete address and phone number)

As a booster we will collaborate with the
Water Polo and Swimming coaching staff. Our
Purpose is to help athletes accomplish the best
of them as individuals and as a team.

LIST CURRENT ELECTED OFFICERS:

	Name	Address	Phone
President	<u>Fernix Padilla</u>	<u>1542 S. Concourse Ave</u>	<u>(323) 496 4884</u>
Vice President	<u>Sergio Jimenez</u>	<u>7167 Kuhl Dr.</u>	<u>(323) 717 9080</u>
Treasurer	<u>Salvador Orozco</u>	<u>2507 Travers Ave.</u>	<u>(323) 246 7954</u>
Secretary	<u>Jose Cisneros</u>	<u>2407 Wilma Ave.</u>	<u>(323) 527 4451</u>
Other	<u>Bera Narawo</u>	<u>5768 Jillson St</u>	<u>(323) 807 7100</u>

PLEASE INFORM THE DEPARTMENT OF PARKS AND RECREATION OFFICE (Ext. 2223)
WHEN THERE IS A CHANGE OF OFFICERS.

2/24/12 Fernix Padilla President
Date Authorized Signature Title

ARTICLE 6-DUTIES

The President shall be the presiding officer at all general meetings, and Board meetings. In voting of any specific matter the President will only be required to vote in case of a tie.

The Vice-President, shall perform the duties of the President in case of the President's absence and shall act as Program Chairman, and take care of all the club's publicity.

The Public Relations Secretary shall meet, handle and recruit new parents for the Commerce Aquatic Booster Club, and shall perform any other duties assigned by the President.

The Recording Secretary shall keep a record of the minutes of all meetings and a running current file on all members, and shall perform any other duties assigned by the President, such as correspondence, etc.

The duty of the Treasurer will be to handle the financial business of the club in a business-like way. Paying all bills that are duly presented and make reports of the financial standing of the club at the regular meeting. All checks will be endorsed by two officers, the Treasurer and either the President or Vice-President.

All officers shall remain in office until the newly elected officers are installed.

If a member in office does not attend a least 25% of all meetings, he/she will be removed from office and a new member will be appointed to that position.

ARTICLE 7-EXECUTIVE BOARD

The Board shall consist of the President and the four (4) officers of the club, and shall meet once a month the week prior to the general meeting.

The meeting is open. Any member in good standing may attend. If any member wishes to present an item to the Board for discussion, they may do so at the Board meeting, with the results brought up to the whole club at the following regular meeting.

ARTICLE 8-NOMINATIONS AND ELECTIONS

The President shall appoint a Nominating Committee to consist of at least three (3) members. Candidates nominated must be members in good standing.

Elections of officers shall be held by ballot. Only members in good standing for at least three (3) months preceding election day, shall be allowed to vote.

Election of officers shall be held at the general meeting in October of each year.

Members must be present to vote. NO EXCEPTIONS

Vacancies shall be filled by recommendation from the Board as soon as possible after such vacancies occur. The term of vacated office filled shall be until the next regular election.

**COMMERCE AQUATICS BOOSTER CLUB
MEMBERSHIP LIST**

#	Parent's Name(s)	Child's Name
1	Abrego, Adriana	Abrego, Carlos
2	Acero, Jose & Patricia	Acero, Aaron-Katherine-Rosario-Ulysses
3	Alvarez, David & Sally	Alvarez, April
4	Amaya, Cristina	Amaya, Brittany-Samantha
5	Amezcuca, Miguel & Norma	Amezcuca, Michael-Amy-Vania
6	Arellano, Jorge & Graciela	Arellano, Daniel
7	Barragan, Jesus & Martina	Barragan, Jesse-Ryan-Casey
8	Becerra, Fernando & Nancy	Becerra, Bianca
9	Borunda, Eric & Patricia	Borunda, Eric-Bianca
10	Caraveo, Baldemar & Christina	Caraveo, Diane-Smyrna
11	Casas, Luis & Lupe	Casas, Kayla-Steven
12	Casillas, Julian & Andrea	Casillas, Julian
13	Cervantes, Jorge & Carmina	Cervantes, Jorge-Melissa
14	Cervantes, Yolanda	Cervantes, Amy-Denise
15	Cisneros (Munoz), Susana & Jose	Munoz, Jesus - Nayeli Cisneros
16	Contreras, Bobby & Liz	Contreras, Brooke-Justin-Karissa-Stephanie
17	Contreras, Gustavo & Arlene	Contreras, Jessica & Hernandez, Destiny
18	Cortes, Carlos & Maria	Cortes, Ryan
19	Cruz, Gunther & Romeia	Cruz, Angelica-Samantha
20	Cruz, Jessica	Rodriguez, Mary Lou
21	Curiel, Fausto & Martha	Curiel, Jason
22	De La Mora, Guillermo & Norma	De La Mora, Arlin
23	De La Mora, Jose & Patricia	De La Mora, Alfredo-Kate
24	De Leon, Tony & Gina	De Leon, Niki
25	De Santiago, Javier & Elizabeth	De Santiago, Javier
26	DeAnda, Santiago & Ana	Jimenez, Karyna-Kimberly
27	Diaz, Rosalba	Diaz, Alejandrina-Diego-Natalie
28	Ekman, Greg & Janie	Ekman, Brother-Sister-Sister

62	Padilla, Fermin & Marielena	Padilla, Jesus-Victoria
63	Pedregon, Eddie & Maria	Pedregon, Kimberly
64	Perez, Clayton & Marisa	Perez, Matthew
65	Perez, Ernest & Renee	Perez, Alexandria-Danielle-Jessica
66	Perez, Rafael & Martha	Perez, Gabriela
67	Perez, Ricardo & Irma	Perez, Leticia-Lizette
68	Perez, Silvia & Rick	Perez, Diego-Carrisa
69	Pitones, Gustavo & Natalia	Pitones, Natalie
70	Preciado, Chris & Elvia	Preciado, Jenny
71	Ramos, Samuel & Sandra	Ramos, Jacinda-Janelle-Justin-Samantha
72	Reyes, Jose & Alejandra	Reyes, Mariana
73	Reyes, Ricardo & Rosalba	Reyes, Ricardo-Rudy
74	Robles, Ernie & Yvette	Robles, Monica
75	Romero, Rafael & Lourdes	Romero, Rafael
76	Rosa, Rolando & Elvira	Carcamo, Kelci & Rosa, Cynthia
77	Sandoval, Eric & Esmeralda	Sandoval, Ashly
78	Santis, Douglas & Araceli	Santis, Bryan-Bryanna
79	Torres, Martin & Armanda	Torres, Jennifer
80	Torres, Rafael & Ofelia	Torres, Andrew-Jonathan-Raymond
81	Vargas, Javier & Susana	Vargas, Austin-Georgia-Savannah
82	Velazquez, Daniel & Isela	Velazquez, Daniel
83	Verdugo, Daniel & Marisela	Verdugo, Jacqueline-Kaitlyn
84	Villa, Edgar	Villa, Isabella
85	Villalpando, Arturo & Teresa	Villalpando, Arturo-Eric-Jasmine
86	Viramontes, Fernando & Inez	Viramontes, Jolene
87	Zamudio, David & Esperanza	Zamudio, Erendira

DEPARTMENT OF PARKS AND RECREATION

"CIVIC/SERVICE ORGANIZATIONS"
OFFICER LISTING FORM

(PLEASE PRINT OR TYPE AND INCLUDE ALL INFORMATION)

Official name of Organization: Volunteers of America (Commerce/Lead Start)
X
CIVIC SERVICE

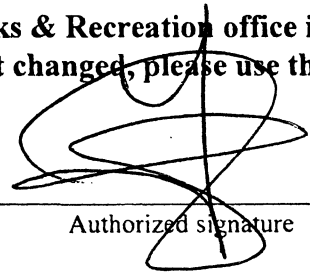
LIST OF CURRENT ELECTED OFFICERS:

	NAME	ADDRESS (STREET, CITY, ZIP)	AREA CODE/PHONE
PRESIDENT	<u>Diana Becerra</u>	<u>5147 Astor Ave</u> <u>Commerce, CA 90040</u>	<u>(323) 979-8341</u>
^{P.C. Rep} VICE PRESIDENT	<u>Patricia Ontiveros</u>	<u>2354 Wilma Ave</u> <u>Commerce, CA 90040</u>	<u>(323) 240-2430</u>
TREASURER	_____	_____	_____
SECRETARY	<u>Yareli Bicos</u>	<u>2309 Wilma Ave</u> <u>Commerce, CA 90040</u>	<u>(213) 915-1214</u>

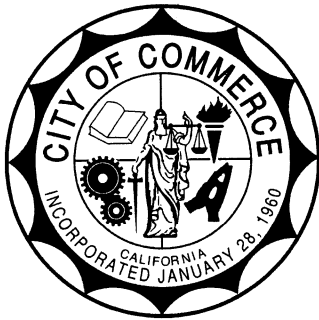
Please inform the Department of Parks & Recreation office immediately (extension 2223) when there is a change of officers.

The Organizations bylaws have not changed, please use the most current on file.

2/22/12
Date


Authorized signature

Director
Title



AGENDA REPORT

MEETING DATE: May 1, 2012

TO: HONORABLE CITY COUNCIL
FROM: CITY ADMINISTRATOR
SUBJECT: REQUEST FOR PROPOSALS FOR TREE MAINTENANCE SERVICES

RECOMMENDATION:

Approve the project Request for Proposals (RFP) prepared by staff for Tree Maintenance Services in the City of Commerce and authorize staff to advertise for bids/proposals.

MOTION:

Move to approve the recommendation.

BACKGROUND:

The City of Commerce entered into a year-to-year contract with West Coast Arborists, Inc. (WCA), commencing on October 17, 2000, with the option to extend to the term by one year increments, for up to a maximum of five years. In June of 2005, the City and WCA entered into a new five year contract through June 30, 2010. The contract is currently continuing on month-to-month basis.

On April 10, 2012, the City Council rejected all bids received on its last RFP for Tree Maintenance Services and directed staff to return with a new RFP. The bids were rejected because of notice issues that could have caused some confusion.

ANALYSIS:

The RFP seeks proposals from qualified and experienced contractors that have the necessary expertise, experience, personnel, equipment and are capable of securing all necessary bonds and insurance. The selected contractor will be responsible for providing tree maintenance services for all City-owned trees (parkway, park and median trees) in the City. The RFP follows the same guidelines used for the Street Sweeping RFP: three year initial term with two year option; contractor may request an annual CPI adjustment to be considered and approved at the discretion of the City Council; and similar bid evaluation process.

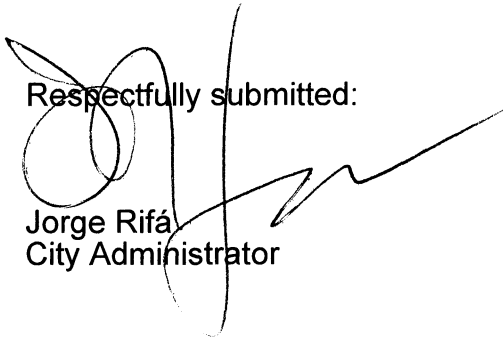
The RFP has been completed and is available for review in the office of the Community Development Department. The Notice Inviting Sealed Bids/Proposals is ready for advertisement. Staff recommends that the City Council approve the RFP, authorize staff to set the bid opening date for Tuesday, May 24, 2012, at 11:00 a.m. and advertise for bids. The RFP also includes a mandatory pre-bid meeting/conference on Tuesday, May 10, 2012 at 11:00 a.m. in the City Hall North Conference Room.

FISCAL IMPACT


Funds for these services will be available in the Fiscal Year 2012/13 Budget. At this time, the City is preparing its upcoming fiscal year budget and a proposed allocation of \$175,038 is under consideration for these services.

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 the maintenance and care of the City's Urban Forest.

Respectfully submitted:

Jorge Rifa
City Administrator

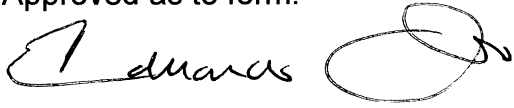
Recommended and prepared by:


Danilo Batson
Assistant Director of Public Services

Fiscal impact reviewed by:


Vilko Domic
Director of Finance

Approved as to form:


Eduardo Olivo
City Attorney

File: 2012 City Council Agenda Reports
Tree Maintenance Services – Agenda Reports File



REQUEST FOR PROPOSALS
FOR
TREE MAINTENANCE SERVICES
FOR THE CITY OF COMMERCE
(May 1, 2012)

I. GENERAL INFORMATION

The City of Commerce is soliciting proposals from qualified firms to provide annual services for maintenance, removal and replacement of trees, as needed, within the City's Community Forest. The City has approximately 5,000 combined trees (parkway, park and median trees) that comprise its Community Forest. (See Attachment I – City of Commerce Tree Inventory).

The purpose of this maintenance contract is to provide the City of Commerce with the best possible tree care to maintain the City's Community Forest at a level expected by the City's residents, City Council, City staff, and visitors of the community. The selected firm will work closely with City staff to insure the most appropriate care and maintenance of the City's Community Forest with sensitivity to the City of Commerce, its residents and visitors.

It is the intent of the City to award a contract, in a form approved by the City Attorney, to the selected firm. The City reserves the right to further negotiate the terms and conditions of the contract. The City shall preserve the right to reject any proposal for noncompliance with contract requirements and provisions, or to not award a contract because of unforeseen circumstances or if it is determined to be in the best interests of the City. This project will be awarded based on demonstrated ability and performance providing similar services at a fair and reasonable cost. This contract may not be awarded to the lowest bidder, although price is an important part of the bid evaluation process. The City Council will approve as part of the annual budget an annual contract amount. The City does not guarantee a specific amount of work and the quantity of work may increase or decrease depending on the annual needs of the Community Forest.

A. Agreement

Attachment II is a copy of the City's proposed Tree Maintenance Services Agreement. A statement must be made in the proposal that all terms and conditions are acceptable. If any revisions are requested, they must be described in full.

B. Indemnification

Contractor hereby agrees to and shall indemnify and hold harmless City, its elected and appointed boards, commissions, officers, employees, consultants and agents (collectively, "Indemnitees") from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of any and every kind and description (including, but not limited to, injury to and death of any person and damage to property, or for contribution or indemnity claimed by third parties) arising or resulting from and in any way connected with (1) the negligence or willful misconduct of Contractor, its officers, employees, agents, contractors and/or subcontractors in performing services

under this Agreement; (2) the failure of Contractor, its officers, employees, agents, contractors and/or subcontractors to comply in all respects with the provisions of this Agreement, applicable laws, ordinances and regulations, and/or applicable permits and licenses; (3) the acts of Contractor, its officers, employees, agents, contractors and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law. The foregoing indemnity shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by any of the Indemnitees' negligence, but shall not extend to matters resulting from the Indemnitees' sole negligence, or willful misconduct. Contractor further agrees to and shall, upon demand of City, at Contractor's sole cost and expense, defend (with attorneys acceptable to City) the Indemnitees against any claims, actions, suits in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the aforementioned events, and to reimburse City for any and all costs and expenses City incurs in providing any such defense, either before, during or after the time Contractor elects to provide such defense, including any and all costs incurred in overseeing any defense to be provided herein by Contractor.

Contractor, upon demand of City, made by and through the City Attorney, shall protect City and appear in and defend the Indemnitees in any claims or actions by third parties, whether judicial, administrative or otherwise, the scope of the rights granted herein, conflicts between the rights granted herein and rights asserted by other Persons, or the limits of City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, or asserting rights under the United States or California Constitutions or any federal or state law to provide tree maintenance services in the City.

The provisions of this section shall not terminate or expire, shall be given the broadest possible interpretation and shall survive the expiration or earlier termination of this Agreement.

C. Insurance

Contractor shall procure and maintain during the entire term of this Agreement the following types of insurance, and shall maintain the following minimum levels of coverage, which shall apply to any claims which may arise from or in connection with Contractor's performance hereunder or the actions or inactions of any of Contractor's officers, agents, representatives, employees, or subcontractors in connection with Contractor's performance. The insurance requirements hereunder in no way limit Contractor's various defense and indemnification obligations or any other obligations as set forth herein.

Contractor shall not commence work under this contract until Contractor shall have obtained all insurance required in this Request for Proposal and the City Standard Contract Documents and such insurance shall have been approved by City as to form, amount and carrier, nor shall Contractor allow any subcontractor to commence work on any subcontract until all similar insurance required of the subcontractor shall have been so obtained and approved.

1. Compensation Insurance

Contractor shall take out and maintain, during the life of this contract, Worker's Compensation Insurance for all of Contractor's employees employed at the site of improvement; and, if any work is sublet, Contractor shall require the subcontractor's similarly to provide Worker's Compensation Insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Contractor. If any class of employees engaged in work under this contract at the site of the project is not protected under any Worker's Compensation law, Contractor shall provide and shall cause each subcontractor's to provide adequate insurance for the protection of employees not otherwise protected. Contractor shall indemnify City for any damage resulting to it from failure of either Contractor or any subcontractor to take out or maintain such insurance.

2. Comprehensive General Liability, Products / Completed Operations Hazard, Comprehensive Automobile Liability and Contractual General Liability Insurance

Contractor shall take out and maintain during the life of this contract such comprehensive general liability, products/completed operations hazard, comprehensive automobile liability and contractual general liability insurance as shall protect the City, its elective and appointive boards, officers, agents and employees, Contractor, and any subcontractor performing work covered by this contract, from claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Contractor or any subcontractor, or by anyone directly or indirectly employed by either Contractor or any subcontractor's, and the amounts of such insurance shall be as follows:

- (1) Public Liability and Property Damage Insurance in an amount of not less than TWO MILLION DOLLARS (\$2,000,000);
- (2) Products/Completed Operations Hazard Insurance in an amount of not less than TWO MILLION DOLLARS (\$2,000,000);
- (3) Comprehensive Automobile Liability Insurance in an amount of not less than TWO MILLION DOLLARS (\$2,000,000);
- (4) Contractual General Liability Insurance in an amount of not less than TWO MILLION DOLLARS (\$2,000,000);
- (5) or GENERAL AGGREGATE LIABILITY in an amount of not less than TWO MILLION DOLLARS (\$2,000,000).

A combined single limit policy with aggregate limits in an amount of not less than TWO MILLION DOLLARS (\$2,000,000) shall be considered equivalent to the said required minimum limits set forth herein above.

3. Proof of Insurance

The City of Commerce shall be named as "additional insured" on all policies required hereunder, and Contractor shall furnish City, concurrently with the execution hereof, with satisfactory proof of carriage of the insurance required, and adequate legal assurance that each carrier will give City at least thirty (30) days' prior notice of the cancellation of any policy during the effective period of this

contract. Such insurance shall be primary and noncontributory with any other insurance maintained by the City of Commerce.

4. Notice to Commence Work

The City will not issue any notice authorizing Contractor or any subcontractor to commence work under this contract until Contractor has provided to the City the proof of insurance as required by subparagraph(c) of this article.

5. Acceptability of Insurers

The insurance policies required by this section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A- or better.

6. Verification of Coverage

Contractor shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to City and are to be received and approved by City before work commences. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

7. Companies and Subcontractors

Contractor shall include all Companies and subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each Contractor and subcontractor. All coverages for Companies and subcontractors shall be subject to all of the requirements stated herein.

8. Delivery of Proof of Coverage

Simultaneously with the execution of this Agreement, Contractor shall furnish City certificates of each policy of insurance required hereunder, in form and substance satisfactory to City. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall have all required endorsements. If City requests, copies of each policy, together with all endorsements, shall also be promptly delivered to City.

Renewal certificates will be furnished periodically to City to demonstrate maintenance of the required coverage throughout the Term.

9. Other Insurance Requirements

- a). In the event any services are delegated to another company or subcontractor, Contractor shall require such Contractor or subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the Contractor or subcontractor's employees engaged in the work in accordance with this Section. The liability insurance required

by this Section shall cover all Contractors or subcontractors or the Contractor or subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section.

- b). Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third Person against Contractor or any Contractor or subcontractor on account of any occurrence related to this Agreement, Contractor shall promptly report the facts in writing to the insurance carrier and to City.

If Contractor fails to procure and maintain any insurance required by this Agreement, City may take out and maintain, at Contractor's expense, such insurance as it may deem proper and deduct the cost thereof from any moneys due Contractor.

D. Consideration of Adjustment of Compensation Rates

After one (1) year of satisfactory service, the Contractor may submit to the Director of Community Development no later than the first day of March of each year, requests for adjustments in the compensation rates.

During the term of the Agreement rate adjustments may be authorized as follows:

On July 1 of each year, the contract price may be adjusted upward or downward according to the amount of the percentage change to the nearest 1/10th of a percent in the Consumer's Price Index of the Bureau of Labor Statistics, U.S. Department of Labor, Los Angeles – Long Beach metropolitan area for the most recently reported adjustment. Said adjustments shall become effective on the first day of July following receipt of the request and approval by the City Council. All requests for price adjustments shall be approved by the City Council.

E. Cooperation With Others

Work in the contract area by utility companies may be progressing concurrently with the work under this Agreement. It is the responsibility of the Contractor to inform itself of work planned by these parties and to coordinate its work with theirs.

F. Conduct of Maintenance Operation

No material and equipment shall be stored where it will interfere with the free and safe passage of public traffic. At the end of each day's work and at all other times, when maintenance operations are suspended for any reason, the Contractor shall remove all equipment and other obstructions from his portion of the roadway and open it for use by public traffic. No equipment will be stored on City streets overnight.

G. Character of Workers

If any subcontractor or person employed by the Contractor shall fail or refuse to carry out the directions of the Director of Community Development or his/her authorized representative or shall appear to the Director of Community Development or his/her authorized representative to be incompetent or to act in a disorderly or improper manner,

he shall be discharged immediately on the requisition of the Director of Community Development or his/her authorized representative, and such person shall not again be employed on the work.

The Contractor's employees performing services pursuant to the proposed Agreement shall at all times be dressed in clean uniforms with suitable identification. Employees shall not remove any portion of their uniform while working.

H. Faithful Performance Bond

Upon execution of the Agreement, the contractor shall file with the City Clerk, a corporate surety bond, approved by the Director of Community Development, and approved as to form by the City Attorney, executed by the Contractor as principal and by a corporate surety as surety, in the sum of \$50,000 conditioned upon the faithful performance by the Contractor.

The Faithful Performance Bond shall be written for the length of the Agreement and shall be kept in force until the expiration of the Agreement. The Contractor may elect to secure a one-year bond. In such case, that bond must be renewed at least thirty (30) days in advance of the expiring bond if the Agreement is extended. If the bond is not renewed, or is otherwise terminated, the City may declare the contractor in default and terminate the Agreement.

I. Compliance With Laws

All proposed contractors shall comply with all applicable laws, ordinances, and codes of the State of California and local governments, including the South Coast Air Quality Management District and California Air Resources Board, as well as all regulations and rules relating to affirmative action and prevailing wages (to the extent applicable), and shall commit no trespass on any public or private property in performing any of the work embraced by the Agreement.

J. Permits

The Contractor shall obtain all permits necessary to perform the work from the City, prior to commencing the work.

K. Licenses

The Contractor and all of its subcontractors shall obtain, at their own expense, a business license from the City prior to commencing operation.

L. Notice To Proceed

The City will issue a Notice to Proceed with the maintenance contract only after all contract documents have been properly executed and submitted to the City.

M. Term of Contract

The term of this Agreement shall be as follows:

- A. Initial Term: Three years from the Effective Date. The first year of the Initial Term shall a "probationary period during which the City will evaluate

Contractor's performance and the satisfaction of the City with Contractor's performance. The City shall have the right, in its sole and absolute discretion, to terminate this Agreement after completion of such probationary period by providing Contractor with notice of the City's desire to terminate; such notice shall be provided by City within 3 weeks after the expiration of the probationary period. If the City exercises its right to terminate after the completion of the probationary period, the Agreement shall cease to exist. If the City fails to exercise such right to terminate, the Initial Term shall continue and conclude three years from the Effective Date.

B. Optional Extension Period. Two years after completion of Initial Term. The City may, in its sole and absolute discretion, exercise the right to extend the Agreement term by another two years after completion of the Initial Term. The City may do so at any time before the expiration of the Initial Term by providing Contractor with notice of the City's decision to exercise such option.

N. Interpretation of Instructions and General Conditions

If any contractor contemplating submitting a proposal for such maintenance is in doubt as to the true meaning of any part of the Proposal or finds discrepancies in, or omissions from, said documents, contractor may submit to the City a written request for interpretation or correction thereof. Any interpretation or correction of these documents shall be made by the Director of Community Development or his/her duly authorized representative. The City will not be responsible for any other explanation or interpretation of these documents.

O. Examination of Proposal and Site of Work

Each contractor submitting a proposal is required to examine carefully the site of and the requirements for the work contemplated, and it will be assumed that the Contractor has investigated and is satisfied as to: the conditions to be encountered, the character, quality and quantities of work to be performed, the materials to be furnished and the maintenance and engineering requirements of this proposal.

P. Holidays

The following is a list of holidays on which contract service will not be performed:

New Year's Day
Washington's Birthday
Memorial Day
Independence Day (July 4th)
Labor Day (First Monday in September)
Thanksgiving Day
The day after Thanksgiving Day
Christmas Day

Special scheduling adjustments will be required when a holiday named herein falls on a weekday (Monday through Friday). During the week of a holiday, the Contractor shall adjust the weekly schedule to include services on Saturday, so as to return to the normal

weekly schedule by Monday of the following week. All such adjustments must be submitted to the City representative forty-five (45) days prior to the holiday.

II. SELECTION PROCESS

The process will adhere to the current City of Commerce Administrative Regulation for the award of contracts. Danilo – what are these???? Each bid will be evaluated based on firm qualifications and the required submittals. Firm selection will be made by utilizing the criteria described in this document. Each firm will be evaluated on their qualification submissions. All applicants will be notified as to the results of this evaluation. The evaluation criteria used in the selection process includes, but is not limited to, the following:

- A. Quality & Completeness of Proposal 10 Points
 - 1. Relevance & Conciseness of Bid Proposal and Statement of Qualifications
 - 2. Work Statement and Quality Control Plan
- B. Corporate Capability 10 Points
 - 1. Qualifications and experience of staff
 - 2. Quantity and types of equipment
 - 3. The ability of the firm to provide the proper insurance coverage
 - 4. Financial ability of the firm to provide services to the City of Commerce
 - 5. Experience in the management of electronic tree inventory databases
 - 6. Internal training program for employees.
 - 7. Equipment
 - 8. Greenwaste recycling capabilities
- C. Reference Evaluation 10 Points
 - 1. Customer Service Record
 - 2. Performance record of the firm relating to the Project Schedule of similar scale
 - 3. Quantity and Quality of work previously performed
 - 4. References
- D. Facility Evaluation 10 Points
 - 1. The firm's customer service program
 - 2. Equipment maintenance facility
 - 3. The firm's plan to recycle generated greenwaste from tree maintenance activities
- E. Information management 10 Points
 - 1. Inventory software provided to the City
 - 2. Technical support for software and data management
 - 3. Quantity and types of inventory equipment
 - 4. The ability to provide accurate inventory updates, for all trees serviced, compatible with the City's tree inventory database
 - 5. Geographic Information System (GIS) capabilities
- E. Pruning Program 10 Points
 - 1. Ability to recommend and meet Project Schedules
 - 2. Pruning ability
- F. Fee Schedule (or Schedule of Prices) 50 Points
 - 1. An evaluation of the firm's Fee Schedule

- G. Community Forest Study 5 Points
An evaluation of the firm's ability to conduct a comprehensive study of the current condition of Commerce's Community Forest.
- H. Oral Interviews
In addition to the written proposal, each respondent **may be** asked to make an oral presentation to the Selection Advisory Committee.

The Contractor should have available a principal in the company and the contractor's proposed project manager to discuss the following:

1. The major elements of the proposal and be prepared to answer questions clarifying the proposal details.
2. A description of similar experience the Contractor has in providing the requested services. Exhibits may also be used.
3. The proposed staffing, supervision coverage, level of training, and fleet and facility resources identified to provide the requested services.
4. The submitted Rate/Fee Schedule.
5. Any other areas the City finds necessary to address.

III. REQUIRED QUALIFICATIONS TO BE SUBMITTED WITH BID PROPOSAL

Award will be made to the firm who best meets the City's requirements and who offers the most advantageous combination of low price and highest qualifications for the all criteria described in this document. All firms submitting bid proposals must hold a valid State California C-27 and a C-61/ D49 Contractor's License. Both licenses must be in good standing for the previous 7 consecutive years without any official unresolved record of complaints registered or filed with the Board or California Department of Consumer Affairs.

Bid proposals shall include OSHA certification of all aerial equipment and the most recent California Highway Patrol Commercial Vehicle Inspection report for equipment to be used throughout the term of this project. Both of these provisions shall be provided with the submission of bid proposals.

Bid proposals shall include a list of all persons that will be performing the work outlined in the contract. Personnel must be qualified and trained in the tree maintenance industry. This will include the staffing of an on-site Supervisor who shall be an ISA Certified Arborist.

The firm shall be held liable for the faithful observance of any lawful instructions of the City, not in conflict, with the contract, which may be delivered to said party or his representatives on the work.

Bid proposals shall include a list of at least ten (10) similar and separate Southern California municipal multi-year tree maintenance contracts which have been successfully completed within the last seven (7) years. Each project shall be of comparable size and scope of this project (descriptions of these projects and contact persons must be provided with bid submission). These projects must also include work in tree inventory(ies). The proposal shall include a detailed description of their proposed inventory program along with sample reports.

Bid proposals shall include a Quality Control Plan with an effective and efficient means of identifying and correcting problems throughout the entire scope of operations. The successful contractor shall be required to comply with this quality control throughout the term of the contract. Contractors shall include with the bid proposal a copy of their current Safety Manual that meets SB 198 requirements for injury and illness prevention.

IV. SUBMITTALS

Firms wishing to have their bid proposals considered for this project shall submit the following, as a minimum:

1. The Proposer shall complete and submit all pages included in the Attachment III – Schedule of Prices, which include the following sections or items:
 - a. Schedule of Prices
 - b. Notice to Bidders
 - c. Designation of Subcontractor's
 - d. References
 - e. Bonds
 - f. Site Inspection
 - g. Addenda Acknowledgment
 - h. Equal Employment Opportunity Compliance
 - i. Affirmative Action Certification
 - j. Non-Collusion Affidavit
 - k. Bidder's Information
 - l. Bid Bond (sample included, Proposer can submit Surety's Form).
2. State of California Contractor's License number and expiration date, C-27 & C61/D-49.
3. Names, qualifications and proposed duties of staff to be assigned to this project. The firm shall identify at least two (2) ISA Certified Arborists who will be responsible for providing project management for the duration of the project as well as a Site Supervisor, who is an ISA Certified Arborists, capable of communicating with any City representative and be authorized to act on behalf of the firm.
4. List of staff qualifications including but not limited to:
 - a. All Certified Arborists employed by the firm.
 - b. All Certified Treeworkers employed by the firm.
 - c. All Certified Utility Arborists employed by the firm.
 - d. All Utility Line Clearance Specialists employed by the firm.
 - e. California State Licensed Pest Control Advisor employed by the firm.
 - f. California State Licensed Pest Control Applicator employed by the firm.
 - g. American Society of Consulting Arborists (ASCA) Registered Consulting Arborist employed by the firm to consult on tree health issues.
 - h. Technicians providing technical support for inventory software.
5. Technical ability and experience similar in scope to this project.
6. Statement of past project disqualification(s) and litigation.
7. Quality Control Plan.
8. Customer Service Program.
9. Safety Training Program.

10. Industrial Safety Record.
11. Letters of Reference.
11. Bid Guaranty (or Bid Bond)
 - a. A Bid guaranty is required of each Bidder and shall be made payable to the City in an amount of 10 percent of the Bidder's "Total Proposed Annual Price" from Schedule of Prices. The Bid guaranty can either be in the form of cash, certified check, cashier's check, or an original Bid bond, executed by the Bidder and issued by a California-admitted Surety (including power of attorney). No other form of Bid guaranty will be accepted. The Bid guaranty may be prepared on the Surety's standard form. Bidders shall pay all Bid guaranty premiums, costs, and incidentals. The bidder must submit a bid bond for each area a proposal is submitted.
 - b. The successful Bidder's Bid guaranty will be retained until the successful Bidder has executed the Agreement and provided all required proof of insurance and contract security, either 14 calendar days after Board approval or 14 days prior to contract start date, whichever occurs last. If the successful Bidder fails to execute and deliver the Agreement and to furnish the required proof of insurance and contract security within the time frame stated above, the County may annul the award approval, and the Bid guaranty of the Bidder shall be forfeited. All other Bidders' Bid guaranties will be returned upon the successful Bidders' execution of the Agreement, providing all required proof of insurance and contract security.

If a bid bond is submitted, it must be payable to City and executed by a corporate surety licensed to transact business ("admitted") as a surety in the State of California. The corporate surety must have an A.M. Best Rating of not less than A:VII, unless otherwise approved by the City. The City may verify the accuracy and authenticity of the bid guaranty submitted. Bids failing to provide the requested Bid guaranty at the time of Bid submission will be immediately rejected as nonresponsive.

- I. A description of previous experience, including projects of similar nature.
- C. A detailed description of the proposed services to be performed along with schedules, list of personnel, and vehicles that would be required to complete this project.
- D. Affirmative statement of compliance with indemnity and insurance.
- E. A written description of the proposed software program to be used to manage the City's Tree Inventory and firm's ability to provide accurate inventory updates for all trees serviced.
- F. Data shall be comparable with the City's current tree inventory database (See Attachment I – City of Commerce Tree Inventory).
- G. A written description of the firm's plan to report greenwaste generated and the method for its disposal.

- H. A written description of the firm’s internal tree maintenance and arboricultural training program.
- I. A complete list of machinery and equipment, including year, serial number and license number, to be used for this project and all available equipment in reserve to allow for breakdowns.
- J. A written description of methodology to be used for notifying residents prior to commencement of tree work. Door hangers are permitted in the City.
- K. The firm must submit a proposed *Quality and Cost Control Plan* to enhance the service and responsiveness to the City. It should include the following:
 - 1. The methodology in which the firm will handle complaints from the public and damage to public & private property
 - 2. Effective means to correct problems.
 - 3. The means the firm will use for completing the project
- L. Corporate and Financial Capability.
- M. A written statement describing the firm’s ability to acquire and purchase trees for the City’s planting program. Also describe the facility, which the trees are to be stored.
- N. These criteria are not exclusive. The City reserves the right to apply additional evaluation criteria.

V. PROJECT REQUIREMENTS

It shall be understood that the Contractor will be required to perform and complete the proposed landscape and/or tree maintenance work in a thorough and professional manner, and to provide all labor, tools, equipment , materials and supplies necessary to complete all the work in a timely manner that will meet the City’s requirements. Contractor shall be required to perform the following tree maintenance activities at various sites throughout the City;

- 1. Tree trimming
- 2. Tree removal
- 3. Tree planting
- 4. Clean up and disposal and/or recycling of generated greenwaste
- 5. Root pruning and root barrier installation
- 6. Milling of lumber from removed trees when directed
- 7. Tree inventory update and management
- 8. Software installation (if directed)
- 9. Small tree care

A. Project Initialization

Upon contract award, the successful bidder shall be required to provide a complete update of the City’s tree inventory. The tree inventory data shall conform the existing tree inventory database and include but not be limited to the following data fields:

- 1. Species

2. Size, including DBH, canopy height and canopy spread
3. Condition
4. No Parking dates and times (where applicable)
5. Presence of overhead power lines

II. Annual Pruning Program

Contractor shall submit a recommended annual pruning program. Bid proposal shall provide suggested time schedules, personnel and vehicles that would be required to complete the annual pruning schedules. Depending on the City's current and future pruning needs the recommended pruning schedule may require multiple crews to perform concurrently within the same time constraints.

III. Community Forest Study

The study will provide information on the overall health of the Community Forest and focus on the following areas of concern. Data from the study shall also be submitted in a format that will allow the data to be incorporated into the City's Tree Inventory database.

- 1 The impact of the City's root pruning and hardscape repair program has had on existing street trees.
2. The long range impact that poor or improper pruning practices, which has been conducted in previous years, and its effect on city trees in today's environment.
3. An evaluation of the City's mature and over-mature trees and the projected impact of removals and replacements that may be necessary in the next 10 years.
4. Projected requirements for the release of beneficial insects.
5. A hazard evaluation study of all park trees.

A mandatory pre-bid meeting will be held at the **CITY OF COMMERCE CITY HALL, 2535 COMMERCE WAY, COMMERCE CALIFORNIA, 90040, IN THE CITY HALL NORTH CONFERENCE ROOM AT 11 A.M., TUESDAY MAY 10, 2012.**

Written questions, if any, regarding the bid shall be sent in writing to the Director of Community Development at City of Commerce 2535 Commerce Way, Commerce, CA 90040 so that they can be reviewed and addressed. All written questions must be submitted on or before Tuesday, May 17, 2012. Responses to all questions will be returned within 4 working days from receipt of the correspondence.

Four (4) copies of the proposal, including all submissions, shall be presented in a sealed envelope bearing the name, address and telephone number of the individual or entity submitting the proposal and shall be addressed to the **CITY OF COMMERCE, 2535 COMMERCE WAY, COMMERCE CALIFORNIA, 90040, CITY CLERK.** The proposal shall include a 10% Bid Bond. The envelope shall be clearly marked with the notation "**DO NOT OPEN – PROPOSAL**". The proposal shall be delivered to the addressee on or before **11 a.m. on Tuesday May 24, 2012.**

VI. PROJECT SPECIAL PROVISIONS

This work consists of tree trimming for traffic clearance, palm trimming, and/or trimming and shaping of trees as specified in the Project Special Provisions Contract Documents and/or Requests for Bid Proposal. All pruning methods shall comply with the.

A. Definitions

Where "as directed", "as required", "as permitted", "approve", "acceptance", or words of similar import are used, it shall be understood that the direction, requirement, permission, approval or acceptance by the City of Commerce is intended unless otherwise stated. As used herein, "provide" shall be understood to mean "provide complete", in total. The word "site" as used hereinafter shall be understood to mean the location receiving the service. The use of the word "Contractor" shall be held to mean the Contractor and/or any person employed by them and working under this contract.

B. Work Quality

All tree trimming shall comply with good arboreal practice for the particular species of trees being trimmed shall be consistent with the Pruning Standards as adopted by the International Society of Arboriculture, and/or "Pruning Landscape Trees" by U.C. Agricultural Extension Service #AXT-288. The Contractor shall also meet the requirements of the American National Standards, Z133-1-1972, entitled "Safety Requirements for Tree Pruning, Trimming, Repair or Removal," published by the American National Standard Institute, Inc., 1430 Broadway, New York, New York 10018.

The Community Forester shall determine if the Contractor has met all trimming requirements and payment shall not be made for trimming that is not in accordance with the above standards. The Contractor shall be deemed in contract default, if they consistently fail to comply with the aforementioned standards.

C. Standards

Prior to beginning the work, the Contractor shall review with the Community Forester various methods, tools, and work scheduling to be used on the project. Unless otherwise indicated, tree trimming shall include but not be limited to accepted pruning activities.

Any structural weakness, decayed trunk or branches, or split crotches or limbs discovered by the Contractor during the course of trimming shall be reported to the Community Forester for determination.

The use of lopping shears shall be specifically approved by the Community Forester.

Daily tree trimming operations shall commence no earlier than 7:30 AM and shall be completed each day no later than 5:00 PM

Limbs one inch (1") in diameter or greater shall be pre-cut to prevent splitting. When there is a chance of bark tearing at the crotch, remove large limbs with three cuts. Make the first cut on the underside of the branch one foot (1') to two feet (2') from the crotch. The undercut should be at least one-third (1/3) of the diameter. Make the second cut one-

inch (1") to three inches (3") further from the crotch than the first. The final cut is made at the crotch in a manner to favor the earliest possible covering of the wound by callus growth. Cuts shall not be made so large that they will prevent sap flow. All cut branches three and one-half inches (3 ½") or larger in diameter shall be lowered by proper ropes to the ground. Any damage caused by dropping limbs shall be repaired within three (3) days at the Contractor's expense and to the satisfaction of the Community Forester. All debris resulting from tree trimming operations shall be removed from the work site on a daily basis.

Removal of all vines entwined in the tree or around its trunk, and the removal of sucker growth on tree trunks.

Tool Sanitation - On all trees, including palms, known or suspected to be diseased, pruning tools and cut surfaces shall be disinfected with a ten (10) percent chlorine bleach solution after each cut and between trees where there is danger of transmitting the disease on tools. Fresh solution shall be mixed daily.

1. General Trimming and Shaping of Conifers

Two basic classes of conifers can be found in Commerce, those with branches radiating out from the trunk in whorls such as Pine trees or Cedar trees and those that sprout branches in a random manner such as Juniper or Taxus. Conifers shall typically be pruned in late winter or early spring. Typically, no more than thirty percent (30%) of the live foliage may be removed.

- a. Contractor shall avoid damaging the central leader on all conifers. In specific cases the Community Forester may direct the contractor to remove the central leader in an effort to limit the height of specific trees.
- b. At the time of pruning, the Community Forester shall determine which trees shall have the new growth pinched back in an effort to control canopy size.
- c. To control the growth of large, mature conifers contractor shall be required to prune the new growth of lateral limbs.
- d. Typical pruning of conifers shall consist of removing crossed limbs, deadwood or unwanted branches from the interior of the canopy.

2. General Trimming and Shaping of Broadleaf Trees.

Follow the shape indicated by the natural growth habits of each tree species. Trimming and shaping of trees shall be as directed by the Community Forester and in accordance with the following:

- a. Cut to laterals to preserve the natural form of the tree, leaving the head open enough for the branching system to show and permitting the dead material to be easily cleaned out and light to show through the head. Tree foliage shall be reduced by at least twenty-five percent (25%) but no more than fifty percent (50%).
- b. Trim to remove dead wood or weak, diseased, insect-infested, broken, low, or crossing limbs. Branches with an extremely narrow angle of attachment should normally be removed.

- c. Small limbs, including suckers and waterspouts, shall be cut close to the trunk or branch from which they arise.
 - d. Heading cuts and/or topping will not be allowed under any circumstances. Heading, rounding over, or stubbing shall not be an accepted practice for reducing the size or the framework of any tree.
3. **General Trimming and Shaping of Ficus trees**
The objective is to control canopy size and basic structure while maintaining an aesthetically pleasing appearance.
- a. Ficus trees in the business districts shall be pruned on an annual cycle. The objective is to prune the trees in a manner that will provide clearance for business signs and storefronts while maintaining the natural shape and beauty of individual street trees. Contractor shall be required to meet the schedule requirements as outlined in the Contract requirements and make every attempt possible to reduce the impact on businesses and business patrons during the course of pruning activities.
 - b. Ficus trees in residential neighborhoods shall be pruned on a bi-annual cycle. The objective shall be to prune the trees in a manner that will provide sunlight for private landscapes, and buildings or homes while maintaining shade over the streets and sidewalks.
4. **Trimming for Traffic Clearances**
Tree trimming for traffic clearances shall provide clearances of at least fourteen feet (14') and no greater than sixteen feet (16') above finish grade for moving vehicles within the traveled roadway, for pedestrians on sidewalks. Clearances for adjacent structures and their connecting utility lines (service drops), shall be determined by the Community Forester and conform to the following:
- a. The maximum clearance under trees within the street right-of-way shall be sixteen feet (16') over the traveled road, and ten feet (10') over the curb line and the sidewalk side of the tree. When pruning the bottom branches, care shall be given to obtain a balanced appearance when viewed from across the street immediately opposite the tree.
 - b. Cut to laterals to preserve the natural form of the tree. Remove lateral branches at their point of origin, or shorten the length of a branch by cutting to a lateral, which is large enough to assume leadership.
 - c. When cutting back, avoid cutting back to small suckers. Remove smaller limbs and twigs in such a manner as to leave the foliage pattern evenly distributed.
5. **Trimming Palm Trees.**
Palm tree trimming shall consist of the removal of all dead fronds, dead frond sheaths, fruit clusters and other vegetation from the trunks of all palms listed in the Contract Documents Special Provisions in a manner selected by the Contractor and approved by the Community Forester, and in accordance the following:

- a. Dead fronds, and parts thereof, including stubs, shall be removed along the entire length of the trunk of each palm, leaving a clean unsheathed appearance slicked from the ground to approximately 24 - 36 inches from the base of the green fronds at the top of the tree. The frond stubs (cut close to trunk) shall be left in place within a span of at least eighteen inches (18") but no greater than thirty-six inches (36").
 - b. Only the full green undamaged fronds shall remain at the crown of the tree. The Contractor shall be required to remove and dispose of any fallen or hanging fronds for a period of 30 days after completion of the contract.
 - c. The use of climbing spurs or spike shoes for the purpose of climbing palm trees is prohibited, unless specifically approved by the Community Forester. The contractor shall be required to use an aerial tower with a height reach of one hundred feet (100') for the purpose of trimming City Palm trees.
 - d. *Trachycarpus fortunei*, *Chamaerops humilis*, and *Phoenix roebeleni* species as well as other palm trees having a trunk height not more than eight (8) feet above the ground shall be trimmed but not slicked.
6. **Small Tree Care**
The City requires an active approach to the care of its young and newly planted trees. The contractor shall be required to perform basic maintenance that will include but not be limited to tree well adjustments and watering, removal of weeds from tree wells, pruning, re-staking when necessary. The maintenance of small trees shall begin as soon as each individual tree has been planted.
7. **Utility Line Clearance**
During the course of this contract the contractor may be required to perform utility line clearance in conjunction with routine or non-routine trimming activities. The contractor shall be required to furnish all supervision, labor, equipment and materials necessary to accomplish the work in accordance with the contract. The contractor has the responsibility for compliance with safety and health standards of the California Occupational Safety and Health Act (OSHA) and all applicable rules, regulations and orders. The competency of contractor's personnel shall be maintained through regular training. All persons performing tree work on City trees in or around primary electrical lines shall be trained to do so in accordance the "Electrical Safety Orders" of the State of California.
8. **Tree Removals**
During the course of trimming activities for a specified street, contractor shall notify the Community Forester of any trees which may be dead, hazardous or in need of removal for any reason. The Community Forester shall make the final determination to remove or provide public noticing for removal at a later date. Removals shall be conducted in good workmanlike manner in accordance with the standards of the arboricultural profession.

All wood from removed trees is the property of the City and shall be disposed of at the direction of the Community Forester. No wood shall be left along public right-of-way unless approved by the Community Forester. All tree parts are to be loaded into transport vehicles or containers. The vehicles or containers must have the front, sides and rear solid and the top shall be tarped, or otherwise tightly enclosed. The transporting of tree parts must be made so that no debris escapes during the transport. Branches, suckers, bark and other tree parts that are chipped are to be covered while transported and hauled to the disposal site during the workday.

Contractor shall be required to call Underground Alert at least 2 days before stumps are to be ground out. All tree stumps must be removed to at least 18 inches below the lowest soil level adjacent to the stump, or until deep roots are no longer encountered. The Contractor shall grind the stump a minimum distance of 1½ feet either side of the outer circumference of the stump, or until surface roots are no longer encountered.

Stumps should be cut low enough to the ground where routing can be done safely. This may be accomplished by cutting the stump at the time of grinding, or at the time of tree removal. All stumps are to be ground within 48 hours of tree removal. Holes created by stump and root grinding must be filled the same day. The resultant chips from routing may be used to fill the hole to two (2) inches above normal ground level. All excess routing chips debris will be removed and loaded into transport vehicle for disposal. Any damaged paved surfaces shall be restored to their original condition.

9. Pest Control

The City may periodically require the Contractor to treat approximately 470 recently planted London Plane trees (*Platanus acerfolia* 'Blood good') on Pico Boulevard for Powdery Mildew (*Microsphaera alni*). Treatment will be done only when specifically requested by the Community Forester and shall be made in the form of soil injections. Contractor shall be required to provide the City with a written recommendation provided by a State Licensed Pest Control Advisor.

10. Crew Rental Services

Contractor shall provide when specifically requested a standards crew of 3 persons, one (1) chipper truck, one (1) chipper, one aerial tower truck and all necessary saws and hand tools. Crew make up should also be capable of modification in order to perform miscellaneous tree care tasks. The Community Forester shall provide a description of the work and recommended tools required to complete the assignment in an efficient and timely manner.

11. Emergency Response Service

The contractor shall be required to provide emergency on call response for damaged trees as a result of storms or other reasons. Emergency calls may occur at any given time. The contractor will be provided with locations and the work to

be done at each location via telephone from a City authorized representative. Emergency work shall begin within two (2) hours of the initial telephone call.

Contractor shall be required to provide 24-hour emergency phone numbers and the names of at least five (5) contact individuals upon award of contract. Should the contact persons or their phone numbers change during the course of the contract, those changes shall be submitted to the City within 2 working days.

Contractor shall be required to provide all necessary traffic control during the course of emergency work. Should the work involve any high voltage power lines or any utility lines the contractor shall be required to notify the responsible utility company.

Work performed under the emergency provision of this contract shall be paid for on a crew hour basis. This shall include all labor, tools equipment, disposal fees and necessary materials.

D. Traffic Control

Contractor shall be required to supply the necessary equipment to provide adequate traffic control measures during tree trimming operations. This shall include but not be limited to high visibility arrow boards where appropriate. The City prior to use must approve all traffic control measures.

Tree trimming operations may be conducted on one side of the street at a time and at no time may streets be closed. During all tree trimming operations adequate provisions shall be made by the contractor to accommodate normal traffic flow over public streets. Means of ingress and egress shall be provided for occupants of adjacent property with convenient access to driveways, buildings, businesses or private residences. Pedestrian traffic shall be accommodated on adjacent sidewalks.

Contractor shall be required to provide and maintain barriers, guards, and lights whenever and wherever necessary in order to effectively protect the public from the dangers associated with the tree trimming operations. Contractor shall be required to post proper notices and signals for the public regarding detours and the conditions of work currently in progress.

IV. Public Noticing of Tree Trimming Operations

1. Contractor shall be required to notify residents and/or businesses of scheduled tree trimming operations at least seven calendar days prior to the work being performed. Notifications shall be made in the form of door hangers, or letters mailed through the US Postal system.
2. City approved "No Parking" signs shall be posted on individual trees scheduled for trimming 24 hours prior to the work being performed.

V. Disposal of Debris

All brush generated from tree trimming operations shall be recycled where practical.

1. Greenwaste Report:

Greenwaste that is transported to an off site facility for grinding into mulch shall be documented and submitted to the Community Forester on a monthly basis. Weight slips shall be required as proof of disposal and shall be included in the monthly Greenwaste Report.

2. Wood Chips:

a. Chips generated from trimming operations within the City of Commerce may be dumped and spread at a City designated site.

b. At the direction of the Community Forester, wood waste generated from tree removals shall be chipped into pure wood chips with an even uniform size. These chips shall be dumped and spread in specified locations in the City.

3. Milling:

At the direction of the Community Forester, large tree trunks, which meet proper specifications will be required to be milled into lumber suitable for use in a variety of applications. Milled lumber shall be returned to the City at a cost to be included in the bid proposal.

VI. Invoice:

Contractor shall be required to submit invoices on a monthly basis. Invoice format shall include but not be limited to a list of each street that trimming operations took place, the address of each individual tree trimmed, the species and its current condition, height, trunk diameter and canopy spread of each individual tree that was trimmed. Each invoice shall include an exact copy in electronic format that is compatible with the City's Tree Inventory program. Failure to submit invoices in this format may result in non-payment until these requirements are met.

VII. Inspections

The Community Forester shall be furnished with every reasonable facility for ascertaining full knowledge of the daily tree maintenance operations involving the workmanship, character of materials and equipment used and employed in the work. Each week, the Contractor shall be required to submit a complete working schedule of all tree maintenance operations including but not limited to trimming, planting, removals, stump grinding and watering.

Inspection of the work shall not relieve the Contractor of any obligations to complete the work as outlined in this document. Defective work shall be made good even if the defective work was not pointed out during the initial inspection and the work was accepted for payment.

Any work found to be unacceptable will be noted in writing. Upon receipt of notice these deficiencies; the Contractor shall make a reasonable good faith effort to correct the deficiencies within 10 calendar days. If unacceptable conditions are not corrected within this time period the City shall have the right to deduct payment or terminate the contract.

VIII. Withholding Payment

The City may withhold payment to such extent as may be necessary to protect the City from loss due to one or more of the following reasons:

1. Defective or inadequate work not corrected.
2. Claims filed, or reasonable evidence indicating probable filing of claims.
3. Failure of the Contractor to make proper payments to subcontractors or for materials or labor,
4. A reasonable doubt that the contract can be completed for the balance unpaid.

IX. Minor Modifications and/or Additional Work

1. The City may modify these specifications with the joint approval of the Contractor and the City of Commerce Director of Community Development. All modifications shall be in writing.
2. In the event that the City of Commerce should require additional work beyond the requirements of these specifications, the Contractor shall perform all work at a competitive price.
3. Additional work may be added to the contract work as the need arises. The Contractor shall perform all specified and approved additional work at the unit prices submitted with this bid proposal.
4. The Contractor must be willing to provide a competitive price for additional work that may be added to the contract. Contractor will be required to demonstrate the ability to properly execute the expanded workload with the necessary increase in labor, materials and equipment needed to complete the additional work in a timely manner.
5. The Contractor must have the ability to receive and respond to emergency situations and must respond to emergency call outs within ninety (90) minutes of receipt of the call.

X. Clarification of Specifications

If any bidder, prior to submitting their bid should find any discrepancies and/or omissions from the specifications or other contract documents, or if they should be in doubt as to the true meaning of any part thereof, they shall at once make a written request to the City of Commerce Director of Community Development for corrections, clarification, or interpretation of the points in question. The person submitting such request shall be responsible for its prompt delivery.

In the event that the City of Commerce Director of Community Development receives a request and it should be found that certain essential information is not clearly and fully set forth, or if the City discovers errors, omissions, or points requiring clarification in these documents, a written addendum will be mailed to each person to whom a set of bid documents has been delivered. The City will not be responsible for any instructions, explanations, or interpretations of the documents presented to bidders in any manner other than written addendum.

ATTACHMENT II

THIS AGREEMENT (the "Agreement") dated as of _____, 2011 (the "Effective Date") is made by and between _____ ("Contractor") and the City of Commerce, a municipal corporation (the "City").

RECITALS

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

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

AGREEMENT

1. **Scope of Services and Schedule of Performance.**

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

2. **Term.**

The term of this Agreement shall be as follows:

- A. **Initial Term:** Three years from the Effective Date. The first year of the Initial Term shall a "probationary period during which the City will evaluate Contractor's performance and the satisfaction of the City with Contractor's performance. The City shall have the right, in its sole and absolute discretion, to terminate this Agreement after completion of such probationary period by providing Contractor with notice of the City's desire to terminate; such notice shall be provided by City within 3 weeks after the expiration of the probationary period. If the City exercises its right to terminate after the completion of the probationary period, the Agreement shall cease to exist. If the City fails to exercise such right to terminate, the Initial Term shall continue and conclude three years from the Effective Date.
- B. **Optional Extension Period.** Two years after completion of Initial Term. The City may, in its sole and absolute discretion, exercise the right to extend the Agreement term by another two years after completion of the Initial Term. The City may do so at any time before the expiration of the Initial Term by providing Contractor with notice of the City's decision to exercise such option.

3. **Compensation.**

So long as Contractor is discharging its obligations in conformance with the terms of this Agreement, Contractor shall be paid a fee by the City in accordance with the fee schedule set

forth in Exhibit A and with the other terms of this Agreement. The fees payable hereunder shall be subject to any withholding required by law.

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

4. Financial Records.

Contractor shall maintain complete and accurate records with respect to fees and costs incurred under this Agreement. All such records shall be maintained on a generally accepted accounting basis and be clearly identified and readily accessible. Contractor shall keep, maintain and provide free access to such books and records to examine and audit the same, and to make transcripts thereof as necessary, and to allow inspection of all work data, documents, proceedings and activities related to this Agreement for a period of three years from the date of final payments under this Agreement. All accounting records shall readily provide a breakdown of fees and costs charged to this Agreement.

5. Independent Contractor.

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

6. Contractor to Provide Required Personnel; Subcontracting.

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

Contractor may not have a subcontractor perform any Services except for the subcontractors identified in Exhibit A as such. Such identified subcontractors shall perform only those Services identified in Exhibit A as to be performed by such subcontractor. All labor, materials, fees and costs of such identified subcontractors shall be paid exclusively by

Contractor. No subcontractors may be substituted for any of the identified subcontractors except with the prior written approval of the City Administrator.

7. Responsible Principal and Project Manager.

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

8. City Liaison.

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

9. Licenses.

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

10. Compliance with Laws.

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

11. Insurance.

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

12. Performance Bond.

Before commencing work under this Agreement, Contractor shall furnish and file with the City a performance bond in a form satisfactory to the City in the sum of Fifty Thousand Dollars (\$50,000) thereof conditioned upon the faithful performance of this Agreement and upon the payment of all labor and materials furnished in connection with this Agreement.

13. Warranty and Liability.

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

14. Indemnification.

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

15. Confidentiality.

Contractor shall maintain as confidential and not disclose to others, either before or after the termination of this Agreement, any data, documents, reports, or other information provided to Contractor by the City, or employees or agents of the City, or any data, documents, reports, or other information produced by Contractor during its performance hereunder, except as expressly authorized in writing by the City, or to the extent required for: (1) compliance with professional standards of conduct for the preservation of the public safety, health, and welfare, but only after Contractor notifies the City of such need for disclosure; and (2) compliance with any court order or other government directive or requirement, but only after Contractor notifies the City of such an order, directive, or requirement. Contractor shall keep all "Confidential" materials received or generated under this Agreement in separate files marked "Confidential." Any non-compliance by Contractor with this part of the Agreement shall be deemed a material breach of this Agreement. The obligations of this paragraph shall survive the termination of this Agreement.

16. Ownership of Documents.

All original documents, designs, drawings, methodological explanations, computer programs, reports, notes, data, materials, services and other products prepared in the course of providing the Services (collectively, "Products") shall become the sole property of the City and the City shall have authority to publish, disclose, distribute, use, reuse or disposed of the Products in whole or in part, without the permission of Contractor. In the event that this Agreement is terminated by the City, Contractor shall provide the City with any finished or

unfinished Products. No documents, designs, drawings, methodological explanations, computer programs, reports, notes, data, materials, services and other products prepared in whole or in part under this Agreement shall be the subject of an application for copyright or submitted for publication by or on behalf of Contractor. Notwithstanding such ownership, Contractor shall be entitled to make and obtain copies or reproductions of such Products for its own files or internal reference.

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

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

18. Covenant against Contingent Fees.

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

19. Conflict of Interest.

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

20. Other Agreements.

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

21. Termination.

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

- a. by the written mutual agreement of the parties hereto; or
- b. by the City, with or without cause, upon 5 days written notice to Contractor pursuant to Section 25 of this Agreement.

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

22. Waiver of Breach.

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

23. Assignment.

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

24. Arbitration.

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

25. Attorneys' Fees.

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

26. Notices.

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

For the City:

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

For Contractor:

Attn: _____

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

27. Governing Law.

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

28. Severability.

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

29. No Construction of Agreement against any Party.

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

30. Entire Agreement and Amendments to Agreement.

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

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

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

32. Counterpart Signatures.

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

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

CITY OF COMMERCE

DATED: _____, 2012

By: _____
Lilia R. Leon, Mayor

ATTEST:

APPROVED AS TO FORM

Linda K. Olivieri, City Clerk

By: Eduardo Olivo
Title: City Attorney

CONTRACTOR

DATED: _____, 2012

By: _____
Name: _____
Title: President

EXHIBIT A
SERVICES

EXHIBIT B

REQUIRED INSURANCE

On or before beginning any of the Services called for by any term of this Agreement, Contractor, at its own cost and expense, shall carry, maintain for the duration of this Agreement, and provide proof thereof that is acceptable to the City of its procurement of the insurance specified below from insurers and under forms of insurance satisfactory in all respects to the City. Contractor shall not allow any subcontractor to commence work on any subcontract under this Agreement until all insurance required of Contractor have also been obtained for the or by the subcontractor. Such insurance shall not be in derogation of Contractor's obligations to provide indemnity under Section 14 of this Agreement.

1. Comprehensive General Liability and Automobile Liability Insurance Coverage.

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

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

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

2. Worker's Compensation.

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

3. Additional Insureds.

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

4. Cancellation Clause.

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

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

5. Severability Clause.

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

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

6. Qualifications of Insurer.

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

7. Approval of Insurer.

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

8. Payment of Premiums.

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

9. Evidence of Insurance and Claims.

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

CITY OF COMMERCE
SCHEDULE OF PRICES

NAME OF CONTRACTOR: _____

I. City Tree Inventory (Summary)

- 4,823 trees
- 2,698 vacant sites
- 103 not city planted/maintained
- 25 stumps
- 10 poor planting site

II. Current tree pruning cycle (or frequency)

- 429 Palm Trees (annually)
- 125 Eucalyptus Trees (annually)
- 774 Ficus Trees (annually)
- 120 Melaluca Trees (annually)
- 1,688 Trees, approx. of 50% of all other trees, (annually)
- 3,136 Trees trimmed annually

III. Fee Schedule based on trimming 3,136 trees every year.

1. Annual cost to trim 3,136 trees annually: _____
2. Tree Removal including stump and major roots and removal of grindings, per inch of tree diameter as measured measured 24-inches from ground level: _____ each
3. Stump Removal including major roots and removal of grindings, per stump: _____ each
4. Emergency Crew Response, 24-hour with 4-hour Notification: _____ per hour based on arrival within city.
5. Storm Clean-up Crew Response, next available business day: _____ per hour based on arrival within city.
6. Root Pruning, per individual tree: _____ per tree
7. Tree planting, including 12-months watering, pruning and fertilizing;
 - 15-gallon with root barrier, each: \$ _____
 - 15-gallon without root barrier, each: \$ _____
 - 24-inch box with root barrier, each: \$ _____
 - 24-inch box without root barrier, each: \$ _____
8. Tree planting only, no maintenance;
 - 15-gallon with root barrier, each: \$ _____
 - 15-gallon without root barrier, each: \$ _____
 - 24-inch box with root barrier, each: \$ _____
 - 24-inch box without root barrier, each: \$ _____

The BIDDER/PROPOSER shall provide bid prices for all of the items listed above. Failure to do so may be the grounds for rejection of the bid.

NOTICE TO BIDDERS

The final selection of the contractor will include but not limited to the Schedule of Prices per year, per units for optional items, bidder’s qualifications, experience, references, and other relevant items as indicated in the Request for Proposals.

The BIDDER agree that the City reserves the right to increase or decrease the amount of any quantity and to delete any item form the contract and pay the contractor at the bid unit prices so long as the total amount of change does not exceed 25% (plus or minus) of the total bid amount. If the change exceeds 25%, a change order may be negotiated to adjust unit prices. It is agreed that the bid prices include all appurtenant expenses, taxes, royalties, and fees. If the case of discrepancies in the amount bid, unit prices shall govern over extended amounts, and words shall govern over figures. All other work items not specifically listed above, but necessary to complete the work per applicable standards are assumed to be included in the above bid prices.

This proposal submitted by: _____

Company Name
Representative _____

Address

Phone & Fax Numbers _____

Email address _____

Business License Number _____

Federal Employer ID Number _____

Authorized Signature _____

DESIGNATION OF SUBCONTRACTOR'S

BIDDER proposes to subcontract certain portions of the work which are in excess of one-half of one percent of the bid and to procure materials and equipment from suppliers and vendors as follows:

Note: The prime Contractor is required to perform, with its own organization, contract amounting to at least fifty one percent (51%) of Contract Price.

NAME, ADDRESS, AND PHONE NUMBER OF SUBCONTRACTOR'S, of Total SUPPLIERS, AND VENDORS	NAME PORTION OF WORK, MATERIALS, AND/OR EQUIPMENT	Dollar Value of Contract	% Contract
_____	_____	\$ _____	_____ %
_____	_____	\$ _____	_____ %
_____	_____	\$ _____	_____ %
_____	_____	\$ _____	_____ %
_____	_____	\$ _____	_____ %
TOTAL:		\$ _____	_____ %

REFERENCES

The City of Commerce is interested in obtaining bids from the most qualified and capable Contractor with a proven track record able to perform work desired by the Community Development Department. Any and all references required to be provided by the bid specifications must be for projects constructed by the bidding company; references for other projects performed by principals or other individuals of the bidding company may not be included. The following are the names, addresses, and telephone numbers for three references for which BIDDER has performed similar work within the past ten years.

1.

Name and address of the owner

Name and telephone number of person familiar with the project

Contract amount Type of work Date Completed

2.

Name and address of the owner

Name and telephone number of person familiar with the project

Contract amount Type of work Date Completed

3.

Name and address of the owner

Name and telephone number of person familiar with the project

Contract amount Type of work Date Completed

BONDS

The following are the names, addresses, and telephone numbers for all brokers and sureties from whom BIDDER intends to procure insurance bonds:

SITE INSPECTION

The Bidder declares that he/she has carefully read and examined the project specifications, bid documents, and he/she has made a personal examination of the site (indicate name of the person, representing the bidder, who inspected the site and date below) and that he/she understands the exact scope of the Project WITHOUT QUESTION.

Name of Person who inspected the site: _____

Date of Inspection: _____

ADDENDA ACKNOWLEDGMENT

The Bidder acknowledges receipt of the following Addenda and has included their provisions in this Proposal:

Addendum No. _____ Dated _____

Addendum No. _____ Dated _____

Addendum No. _____ Dated _____

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

BIDDER certifies that all previous contracts or subcontracts, all reports which may have been due under the requirements of any Agency, Site, or Federal equal employment opportunity orders have been satisfactorily filed, and that no such reports are currently outstanding.

AFFIRMATIVE ACTION CERTIFICATION

BIDDER certifies that affirmative action has been taken to seek out and consider minority business enterprises for those portions of work to be subcontracted, and that such affirmative actions have been fully documented, that said documentation is open to inspection, and that said affirmative action will remain in effect for the life of any contract awarded hereunder. Furthermore, BIDDER certifies that affirmative action will be taken to meet all equal employment opportunity requirements of the contract documents.

NONCOLLUSION AFFIDAVIT

BIDDER declares that the only persons or parties interested in this proposal as principals are those named herein: that no officer, agent, or employee of the City of Commerce is personally interested, directly or indirectly, in this proposal; that this proposal is made without connection to any other individual, firm, or corporation making a bid for the same work and that this proposal is in all respects fair and without collusion or fraud.

BIDDER'S INFORMATION

BIDDER certifies that the following information is true and correct:

Bidder's Name _____

Form of Legal Entity (i.e., individual, partnership, corporation, etc.)

If a Corporation, State of Incorporation (i.e., Calif.) _____

Business Address _____

Telephone _____

State Contractor's License No. and Class _____

Original Date Issued _____ Expiration Date _____

The following are the names, titles, addresses, and phone numbers of all individuals, firm members, partners, joint ventures, and/or corporate officers having a principal interest in this proposal:

The date(s) of any voluntary or involuntary bankruptcy judgments against any principal having an interest in this proposal are as follows:

All current and prior DBA'S, alias, and/or fictitious business names for any principal having an interest in this proposal are as follows:

Previous contract performance history:

Was any contract terminated previously: _____

If the answer to the above is "yes", provide the following information:

Contract/project name and number: _____

Date of termination: _____

Reason for termination: _____

Owner's name: _____

Owner contact person and tel. no.: _____

IN WITNESS WHEREOF, BIDDER executes and submits this proposal with the names, titles, hands, and seals of all aforementioned principals this _____ day of _____, 201____.

BIDDER

Subscribed and sworn to this _____ day of _____, 201__.

NOTARY PUBLIC _____

BID BOND FOR

**TREE MAINTENANCE SERVICES CONTRACT
IN THE CITY OF COMMERCE, CALIFORNIA**

KNOW ALL MEN BY THESE PRESENTS that _____,
as BIDDER, AND _____, as SURETY,
are held and firmly bound unto the City of Commerce, in the penal sum of
_____ dollars (\$_____),
which is ten percent (10%) of the total amount bid by BIDDER to the City of Commerce for
the above stated project, for the payment of which sum, BIDDER and SURETY agree to be
bound, jointly and severally, firm by these presents. THE CONDITIONS OF THIS
OBLIGATION ARE SUCH that, whereas BIDDER is about to submit a bid to the City of
Commerce for the above stated project, if said bid is rejected, or if said bid is accepted and
a contract is awarded and entered into by BIDDER in the manner and time specified, then
this obligation shall be null and void, otherwise it shall remain in full force and effect in favor
of the City of Commerce. IN WITNESS WHEREOF the parties hereto have set their names,
titles, hands, and seals this _____ day of _____, 2012.

BIDDER* _____

SURETY* _____

*Provide BIDDER/SURETY name, address and telephone number and the name, title,
address and telephone number for authorized representative.

Subscribed and sworn to this _____ day of _____, 2012.

NOTARY PUBLIC _____



AGENDA REPORT

MEETING DATE: May 1, 2012

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE APPROVING THE EXECUTION OF CASH CONTRACT NO. 1110R – INTERIOR AND EXTERIOR PAINTING OF THE COMMERCE TRANSPORTATION SERVICES CENTER WITH C.T. GEORGIU PAINTING COMPANY OF WILMINGTON, CALIFORNIA

RECOMMENDATION:

Approve the Resolution and assign the number next in order.

MOTION:

Move to approve the recommendation.

BACKGROUND:

The City of Commerce Transportation Services Center was last painted in 1996, when constructed. The facility is over thirteen (13) years old and the paint is starting to crack and peel, which is noticeable throughout the facility.

As part of the FY 2011/12 Capital Improvement Project Budget, the City Council appropriated \$90,000 to paint both the exterior and interior of the building.

On September 20, 2011, the City Council approved the Request for Proposal for Cash Contract No. 1110 – Interior and Exterior Painting of the City of Commerce Transportation Services Center.

On October 11, 2011, at 1:00 p.m., a non-mandatory pre-bid meeting was held at the Transportation Services Center.

On December 08, 2011 the Request for Proposal was temporarily suspended.

On February 22, 2012 a revised Request for Proposal was issues.

On March 01, 2012, at 1:00 p.m., a non-mandatory pre-bid meeting was held at the Transportation Services Center.

On March 22, 2012, at 2:00 p.m., in accordance with the Notice Inviting Bids/Proposals, the City Clerk received nine (9) proposals, as follows:

<u>Name</u>	<u>City</u>	<u>Bid Amount</u>
C.T. Georgiou Painting Co.	Wilmington, CA.	\$39,500.00
Somerset General Builders	Los Angeles, CA.	\$43,979.00
Pacific Contractor Group	Northridge, CA.	\$47,000.00
Tony Painting	Garden Grove, CA	\$47,400.00
Olympos Paint Inc.	Van Nuys, CA.	\$51,000.00
Prime Painting Contractors	Northridge, CA.	\$54,900.00
Everlast Building Inc.	Canyon Country, CA.	\$55,000.00
GDL Best Contractors Inc.	Whittier CA.	\$57,000.00
Mear Construction, Inc.	Garden Grove, CA.	\$65,000.00

ANALYSIS:

After carefully consideration, evaluation of proposals and reference checks, staff has found that C.T. Georgiou Painting Co. submitted the lowest, responsible and responsive bid/proposal for providing the requested services.

The contractor will be responsible for providing all labor, materials, equipment, tools and incidentals necessary for the painting of the Transportation Services Center, in accordance with the project Request for Proposals.

FISCAL IMPACT

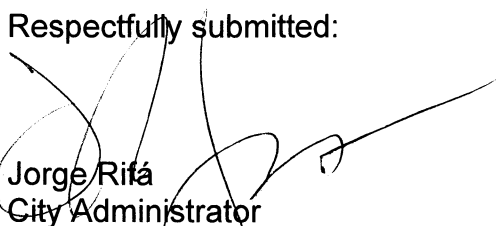
This activity can be carried out without additional impact on the current operating budget. The City Council appropriated \$90,000 for the completion of the project, as follows:

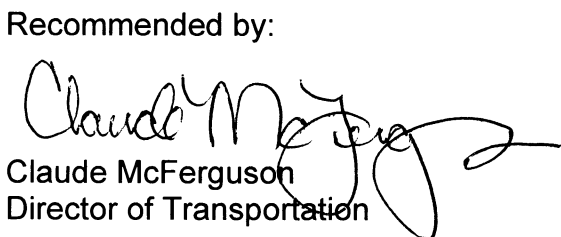
FTA 5307 Capital	\$45,000
PTMISEA	<u>\$45,000</u>
TOTAL FUNDING	\$90,000

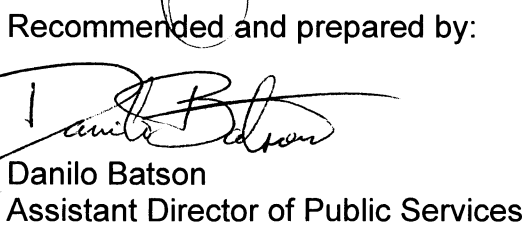
C.T. Georgiou Painting Co. bid/proposal is \$39,500. A project contingency of twenty percent (20%) or \$9,875 is also recommended to carry out this project, for a total allocation of \$49,375.

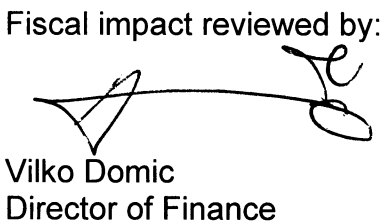
RELATIONSHIP TO 2009 STRATEGIC GOALS:

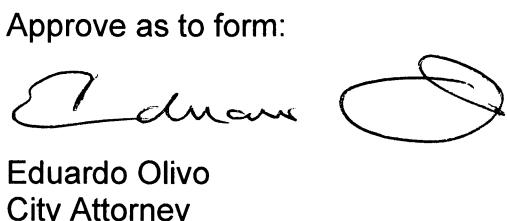
The issue before the Council is applicable to the following Council’s strategic goal: *“Protect and Enhance Quality of Life in the City of Commerce”*. Although, there are no specific objectives connected to this issue, the City is responsible for the general maintenance and upkeep of all city buildings.

Respectfully submitted:

Jorge Rifá
City Administrator

Recommended by:

Claude McFerguson
Director of Transportation

Recommended and prepared by:

Danilo Batson
Assistant Director of Public Services

Fiscal impact reviewed by:

Vilko Domic
Director of Finance

Approve as to form:

Eduardo Olivo
City Attorney

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA,
APPROVING THE EXECUTION OF CASH CONTRACT NO. 1110R – INTERIOR AND
EXTERIOR PAINTING OF THE COMMERCE TRANSPORTATION SERVICES CENTER
WITH C.T. GEORGIU PAINTING COMPANY OF WILMINGTON, CALIFORNIA**

WHEREAS, the Commerce Transportation Services Center is nearly 16 years old and the paint is starting to crack and peel throughout the facility, and

WHEREAS, as part of the Fiscal Year 2011/12 Capital Improvement Project Budget, the City appropriated \$90,000 to paint both the exterior and interior of the building, and

WHEREAS, March 22, 2012, the City received 9 proposals in response to the Request For Proposals for Cash Contract No. 1110R – Interior and Exterior Painting of the City of Commerce Transportation Services Center; and

WHEREAS, after careful examination, evaluation of all bids/proposals received, reference checks, City staff determined that C.T. GEORGIU PAINTING COMPANY OF WILMINGTON, California, is the lowest, responsive and most responsible bidder.

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

Section 1. That the proposal by C.T. GEORGIU PAINTING COMPANY is hereby accepted. A Standard Contract between the City and C.T. GEORGIU PAINTING COMPANY is hereby approved. The Mayor is hereby authorized to execute the Contract for and behalf of the City of Commerce.

Section 2. That a contingency of \$9,875.00 be set aside for said project.

Section 3. The remaining proposals received in response to the Request for Proposals are hereby rejected.

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

Lilia R. Leon, Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk

CITY OF COMMERCE
STANDARD CONTRACT
Cash Contract No. 1110R
Interior and Exterior Painting
City of Commerce Transportation Service Center
IN THE CITY OF COMMERCE, CALIFORNIA

THIS AGREEMENT is made and entered into this 01 day of May 2012, by and between the CITY OF COMMERCE, a Municipal corporation (the "CITY") and C.T. GEORGIU PAINTING COMPANY ("CONTRACTOR").

RECITALS

WHEREAS, the CITY duly advertised a Notice Inviting Bids to be submitted on or before March 22, 2012, for the Interior and Exterior Painting City of Commerce the Transportation Service Center Located at 5555 Jillson Street, Commerce, CA. 90040 (the "PROJECT");

WHEREAS, on May 01, 2012, the City Council accepted the bid of CONTRACTOR as the lowest responsible, responsive bid received and directed that a written contract be entered into with CONTRACTOR for the PROJECT.

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

ARTICLE I. CONTRACT DOCUMENTS.

The CONTRACT DOCUMENTS for the PROJECT shall consist of the Notice Inviting Sealed Bids, the Instructions to Bidders, Bidders Proposal, Addendums, General Specifications and all referenced specifications, details, standard drawings, and appendices, together with this Contract and all required bonds, and insurance certificates. All of the "Contract Documents" are intended to complement the other documents so that any work called for in one, and not mentioned in the others, or vice versa, is to be executed the same as if mentioned in all of said documents. The CONTRACT DOCUMENTS are incorporated herein by this reference and made part hereof as though they were fully set forth herein.

ARTICLE II. THE WORK.

For and in consideration of the payments and agreements to be made and performed by CITY, CONTRACTOR agrees to furnish all materials and perform all work required for the PROJECT and to fulfill all other obligations as set forth in the CONTRACT DOCUMENTS.

ARTICLE III. COMPENSATION.

CONTRACTOR hereby agrees to receive and accept the total amount of thirty nine thousand, five hundred dollars and zero cent (\$39,500.00), which is based on performing all of the work shown on Bidders Proposal as full compensation for furnishing all materials, performing all work, and fulfilling all obligations hereunder. Said compensation shall cover all expenses, losses,

damages, and consequences arising out of the nature of the work during its progress or prior to its acceptance including those for well and faithfully completing the work and the whole thereof in the manner and time specified in the CONTRACT DOCUMENTS, and also including those arising from actions of the elements, unforeseen difficulties or obstructions encountered in the prosecution of the work, suspension or discontinuance of the work, and all other unknowns or risks of any description connected with the work. CITY shall herein retain ten percent (10%) of said price until said time as the provisions of Article XII herein have been met.

ARTICLE IV. UNDOCUMENTED WORKERS.

CONTRACTOR hereby promises and agrees to comply with all of the provisions of Federal and/or State law as the same shall apply to this PROJECT pertaining to the employment of unauthorized aliens as defined therein. Should CONTRACTOR so employ unauthorized aliens for the performance of work and/or services covered by this Contract, and should the Federal Government impose sanctions against the CITY for use of unauthorized aliens, CONTRACTOR hereby agrees to, and shall, reimburse CITY for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the CITY in connection therewith.

ARTICLE V. NOTICE TO PROCEED.

CONTRACTOR shall commence work on the date specified in the Notice to Proceed to be issued to CONTRACTOR by the CITY and shall complete work on the PROJECT within sixty four (64) calendar days from the commencement thereof.

ARTICLE VI. DISCOVERY OF HAZARDOUS OR LATENT CONDITIONS.

- A. CONTRACTOR shall, without disturbing the condition, notify CITY in writing as soon as CONTRACTOR, or any subcontractor, agent or employees have knowledge and reporting is possible, of the discovery of any of the following conditions:
1. The presence of any material that the CONTRACTOR believes is hazardous waste, as defined in Section 25117 of the Health and Safety Code;
 2. Subsurface or latent physical conditions at the site differing from those indicated in the specifications; or,
 3. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.
- B. Pending a determination by the CITY of appropriate action to be taken, CONTRACTOR shall provide security measures (e.g., fences) adequate to prevent the hazardous waste or physical conditions from causing bodily injury to any person.
- C. CITY shall promptly investigate the reported conditions. If CITY, through the City Engineer or his/her designee, and in the exercise of its sole discretion, determines that the conditions do materially differ, or do involve hazardous waste, and will cause a decrease or increase in the CONTRACTOR's cost of or time required for performance of any part of the work, then CITY shall issue a change order.

D. In the event of a dispute between CITY and CONTRACTOR as to whether the conditions materially differ or involve hazardous waste or cause a decrease or increase in the CONTRACTOR's cost of, or time required for performance of any part of the work, CONTRACTOR shall not be excused from any schedule completion date, and shall proceed with all work to be performed under the Contract. CONTRACTOR shall retain any and all rights which pertain to the resolution of disputes and protests between the parties.

ARTICLE VII. INDEMNIFICATION.

CONTRACTOR shall assume the defense of and indemnify and save harmless the CITY, its elective and appointive boards, officers, agents and employees, from all claims, loss, damage, injury and liability of every kind, nature and description, directly or indirectly arising from the performance of CONTRACTOR's work under this Contract; and from any and all claims, loss, damage, injury and liability, howsoever the same may be caused, resulting directly or indirectly from the nature of the work covered by the Contract; provided:

- (a) That CITY does not, and shall not, waive any rights against CONTRACTOR which it may have by reason of the aforesaid hold-harmless agreement because of the deposit with CITY by CONTRACTOR, of any of the insurance policies hereinafter described herein.
- (b) That the aforesaid hold-harmless agreement by CONTRACTOR shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations of CONTRACTOR or any subcontractor, regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

ARTICLE VIII. PERFORMANCE BOND.

CONTRACTOR, before commencing said PROJECT, shall furnish and file with CITY, a performance bond, or bonds in the sum of one hundred percent (100%) of the Contract price thereof conditioned upon the faithful performance of this Contract and upon the payment of all labor and materials furnished in connection with this Contract. Such performance bond shall be in the form of the bond attached hereto as Exhibit A.

ARTICLE IX. INSURANCE REQUIREMENTS.

Prior to commencing work hereunder, CONTRACTOR shall provide the CITY with proof of insurance naming the CITY and each of its directors, officers, agents, and employees as additional-named insureds on a policy or policies of insurance providing and maintaining the coverages set forth in the Insurance Schedule attached hereto as Exhibit B.

ARTICLE X. LIQUIDATED DAMAGES.

The parties agree that it would be impractical and extremely difficult to fix the actual damages to the CITY in the event the PROJECT is not commenced and/or completed on or before the dates specified for commencement and completion of the PROJECT in the CONTRACT DOCUMENTS. The parties have considered the facts of breach of this Contract and have agreed that the liquidated damages sum hereinafter set forth is reasonable as liquidated damages in the event of a breach, and that said sum shall be presumed to be the amount of the damages sustained by the CITY in the event of such a breach. The parties therefore agree that in the event

such work is not begun and/or completed and accepted by the times so specified in the CONTRACT DOCUMENTS, the sum of Two-hundred-fifty dollars (\$250) shall be presumed to be the amount of damages suffered by the CITY for each day's delay in the starting and/or completion and acceptance of said PROJECT after the dates specified in the CONTRACT DOCUMENTS for the start and/or completion thereof, and CONTRACTOR hereby agrees to pay said sum of Two-hundred-fifty dollars (\$250) as liquidated damages for each day of delay in the starting and/or completion and acceptance of said PROJECT beyond the date specified in the CONTRACT DOCUMENTS. Any and all such liquidated damage assessed shall be done so in accordance with that certain edition of the Specification for Public Works Construction, currently in effect as of the date of this Contract. The payment of such liquidated damages is not intended as a forfeiture or penalty within the meaning of California Civil Code § 3275 or § 3369.

ARTICLE XI. COMPLIANCE WITH APPLICABLE LAWS.

CONTRACTOR hereby promises and agrees to comply with all of the provisions of all applicable state and federal laws in connection with the performance of its obligations under this Contract.

ARTICLE XII. NOTICE OF COMPLETION.

Upon completion of the PROJECT and acceptance of same by the City Council, the CITY Administrator shall have cause to be recorded a Notice of Completion with the office of the Los Angeles County Recorder; and, after thirty-five (35) days from the date said Notice of Completion is recorded, the Director of Finance of CITY shall release the funds retained pursuant to Article III hereof; provided there have been no mechanics' liens or stop notices filed against said work which have not been paid, withdrawn or eliminated as liens against said work.

ARTICLE XIII. NON-ASSIGNABILITY.

This Contract shall not be assignable, either in whole or in part, by the CONTRACTOR.

ARTICLE XIV. CUMULATIVE REMEDIES.

The provisions of this Contract are cumulative and in addition to and not in limitation of any rights or remedies available to CITY.

ARTICLE XV. ATTORNEY'S FEES.


If either party to this Contract is required to initiate or defend, or is made a party to, any action or proceeding in any way connected with this agreement, the party prevailing in the final judgment in such action or proceeding, in addition to any other relief which may be granted, shall be entitled to reasonable attorney's fees and costs. Attorney's fees shall include reasonable costs for investigating such action.

IN WITNESS WHEREOF the parties hereto have caused this Contract to be executed on the date first above written by their respective officers duly authorized in that behalf.

CITY OF COMMERCE

CONTRACTOR NAME

By: _____
Lilia R. Leon, Mayor

By:  _____
Costar Georgiou, Owner

ATTEST:

By: _____
Linda Olivieri, MMC
City Clerk

APPROVED AS TO FORM:

By: _____
Eduardo Olivo,
City Attorney

EXHIBIT A - FAITHFUL PERFORMANCE BOND

for

Cash Contract No. 1110R

Interior and Exterior Painting

City of Commerce Transportation Service Center

IN THE CITY OF COMMERCE, CALIFORNIA

KNOW ALL MEN BY THESE PRESENTS that _____

_____, as CONTRACTOR

and _____, as SURETY,

are held and firmly bound unto the City of Commerce, in the penal sum of

_____ dollars (\$ _____),

which is one-hundred percent (100%) of the total contract amount for the above stated project, for the payment of which sum, CONTRACTOR and SURETY agree to be bound, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH that, whereas CONTRACTOR has been awarded and is about to enter into a Contract with the City of Commerce for the above stated project, if CONTRACTOR faithfully performs and fulfills all obligations under the contract documents in the manner and time specified therein, then this obligation shall be null and void, otherwise it shall remain in full force and effect in favor of the City of Commerce; provided that any alternations in the obligations or time for completion made pursuant to the terms of the contract documents shall not in any way release either CONTRACTOR or SURETY, and notice of such alternations are hereby waived by SURETY.

IN WITNESS WHEREOF the parties hereto have set their names, titles, hands, and seal this

_____ day of _____, 20_____.

CONTRACTOR* _____

SURETY* _____

*Provide CONTRACTOR/SURETY name, address and telephone number and the name, title, address and telephone number for authorized representative.

Subscribed and sworn to this _____ day of _____, 20_____.

NOTARY PUBLIC _____

EXHIBIT A – MATERIAL AND LABOR BOND

for

Cash Contract No. 1110R

Interior and Exterior Painting

City of Commerce Transportation Service Center

IN THE CITY OF COMMERCE, CALIFORNIA

KNOW ALL MEN BY THESE PRESENTS that _____

_____, as CONTRACTOR

and _____, as SURETY,

are held and firmly bound unto the City of Commerce, in the penal sum of

_____ dollars (\$ _____),

which is one-hundred percent (100%) of the total contract amount for the above stated project, for the payment of which sum, CONTRACTOR and SURETY agree to be bound, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH that, whereas CONTRACTOR has been awarded and is about to enter into a Contract with the City of Commerce for the above stated project, if CONTRACTOR faithfully performs and fulfills all obligations under the contract documents in the manner and time specified therein, then this obligation shall be null and void, otherwise it shall remain in full force and effect in favor of the City of Commerce; provided that any alternations in the obligations or time for completion made pursuant to the terms of the contract documents shall not in any way release either CONTRACTOR or SURETY, and notice of such alternations are hereby waived by SURETY.

IN WITNESS WHEREOF the parties hereto have set their names, titles, hands, and seal this

_____ day of _____, 20____.

CONTRACTOR* _____

SURETY* _____

* Provide CONTRACTOR/SURETY name, address and telephone number and the name, title, address and telephone number for authorized representative.

Subscribed and sworn to this _____ day of _____, 20____.

NOTARY PUBLIC _____

EXHIBIT B- INSURANCE REQUIREMENTS

On or before beginning any of the work called for by any term of this Contract, CONTRACTOR, at its own cost and expense, shall carry, maintain for the duration of this Contract, and provide proof thereof that is acceptable to CITY of its procurement of the insurance specified below from insurers and under forms of insurance satisfactory in all respects to CITY. Such insurance shall not be in derogation of CONTRACTOR's obligations to provide indemnity under this Contract.

1. Comprehensive General Liability and Automobile Liability Insurance Coverage.

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

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

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

2. Errors and Omissions Insurance Coverage.

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

3. Worker's Compensation.

CONTRACTOR shall carry and maintain worker's compensation as required by the California Labor Code for all persons employed directly or indirectly in connection with this Contract by CONTRACTOR. To the extent that CONTRACTOR utilizes any subcontractor for the performance of any part of the work under this Contract, CONTRACTOR shall require and assure that such subcontractor also carry and maintain worker's compensation as required by the California Labor Code for all persons employed directly or indirectly in connection with this Contract.

4. Additional Insureds.

The CITY, its officers, agents and employees must be named as additional insureds or as additional loss payees in all insurance policies required by this Contract. An endorsement to this effect shall be delivered to CITY prior to the commencement of any work. Satisfaction of any deductible requirement shall be the responsibility of CONTRACTOR. Such insurance shall be primary and noncontributory with any other insurance maintained by the CITY.

5. Cancellation Clause.

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

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

6. Severability Clause.

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

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

7. Qualifications of Insurer.

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

8. Approval of Insurer.

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

9. Payment of Premiums.

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

10. Evidence of Insurance and Claims.

CITY shall have the right to hold the policies and policy renewals, and CONTRACTOR shall promptly furnish to CITY all renewal notices and all receipts of paid premiums. In CITY may make proof of loss if not made promptly by CONTRACTOR.



AGENDA REPORT

Meeting Date: May 1, 2012

TO: Honorable City Council

FROM: City Administrator

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, AUTHORIZING THE FILING OF APPLICATIONS WITH THE FEDERAL TRANSIT ADMINISTRATION, AN OPERATING ADMINISTRATION OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION, FOR FEDERAL TRANSPORTATION ASSISTANCE AUTHORIZED BY 49 U.S.C. CHAPTER 53, TITLE 23 UNITED STATES CODE AND OTHER FEDERAL STATUTES ADMINISTERED BY THE FEDERAL TRANSIT ADMINISTRATION

RECOMMENDATION:

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

MOTION:

Move to approve the recommendation.

BACKGROUND:

The Federal Transit Administration (FTA) of the Department of Transportation awards over 8 billion dollars in Federal Grants annually. This money funds more than 800 transit organizations across the United States, supporting our nation's Mass Transit Infrastructure.

At the center of the FTA's Grants Management mission is the TEAM (Transportation Electronic Award Management) Web Application. Designed and built by the FTA's Office of Information Technology and the Office of Program Management, the TEAM-Web System is a Project & Financial Management application that was designed and developed to fulfill government mandates for increased accessibility by the public to Federal Assistance Programs and the replacement of paper-laden processes with electronic processes.

ANALYSIS:

Ninety-eight percent of the 8 billion dollars in Federal Grants funding is applied for, reviewed, approved and managed electronically, using the TEAM application. It allows individuals from recipient organizations across the nation to log onto any computer with access to the internet and perform all the necessary functions to apply for Federal Transit grants, execute awards, manage projects, submit all required reports, etc. FTA employees are able to use the system for the application review and approval process, project oversight, interagency reporting requirements, and more.

Registration and use of the TEAM System is required to file grants and submit and update required FTA reports. This resolution clarifies the authority and responsibility at the City level.

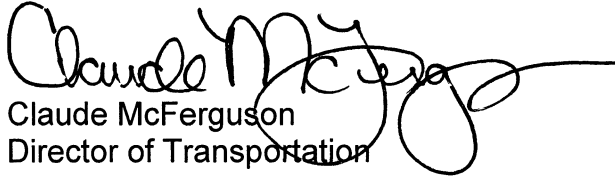
FISCAL IMPACT:

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

RELATIONSHIP TO 2009 STRATEGIC GOALS:

This item is related to the following 2009 Strategic Goal: Make Financial and Economically Sound Decisions Consistent with Economic Conditions.

Recommended by:


Claude McFerguson
Director of Transportation


Respectfully submitted,


Jorge J. Rifá
City Administrator

Budget Impact Review 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
AUTHORIZING THE FILING OF APPLICATIONS WITH THE FEDERAL
TRANSIT ADMINISTRATION, AN OPERATING ADMINISTRATION OF THE
UNITED STATES DEPARTMENT OF TRANSPORTATION, FOR FEDERAL
TRANSPORTATION ASSISTANCE AUTHORIZED BY 49 U.S.C. CHAPTER 53,
TITLE 23 UNITED STATES CODE AND OTHER FEDERAL STATUTES
ADMINISTERED BY THE FEDERAL TRANSIT ADMINISTRATION**

WHEREAS, the Federal Transportation Administrator has been delegated authority to award Federal financial assistance for transportation projects; and

WHEREAS, the grant or cooperative agreement for Federal Financial assistance will impose certain obligations upon the Applicant, and may require the Applicant to provide the local share of the project cost; and

WHEREAS, the Applicant has or will provide all annual certifications and assurances to the Federal Transit Administration required for the project.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMMERCE
RESOLVES AS FOLLOWS:**

1. The Director of Transportation or his/her designee is authorized to execute and file application for Federal assistance on behalf of the City of Commerce with the Federal Transit Administration for Federal Assistance authorized by 49 U.S.C. Chapter 53, Title 23, United States Code, or other Federal statutes authorizing a project administered by the Federal Transit Administration.
2. The Director of Transportation or his/her designee is authorized to execute and file with its application the annual certification and assurances and other document the Federal Transportation Administration requires before awarding a Federal assistance grant or cooperative agreement.
3. The Director of Transportation or his/her designee is authorized to execute grant and cooperative agreements with the Federal Transit Administration on behalf of the City of Commerce.

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

Lilia R. Leon, Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk



AGENDA REPORT

Meeting Date: May 1, 2012

TO: Honorable City Council

FROM: City Administrator

SUBJECT: **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, AMENDING RESOLUTION NO. 10-49, ADOPTING A CITY OF COMMERCE FEE SCHEDULE, TO INLCUDE A SUMMER DAY CAMP PROGRAM FEE SCHEDULE**

RECOMMENDATION:

Approve and adopt the Resolution and assign the number next in order.

MOTION:

Move to approve the recommendation.

BACKGROUND:

At its meeting of July 6, 2010, Council approved Resolution No. 10-49, establishing a fee schedule for many services provided by the City of Commerce. The Department of Parks & Recreation is preparing for the 10 week Summer Day Camp Program and is recommending including the Summer Day Camp Program in the fee schedule. The department is also recommending a change in the weekly fees associated with the program. The Day Camp Program serves youth, ages 5-13 and is one of the department's core programs, offering affordable daycare during the critical hours of the day. The Day Camp Program typically serves 105 children.

Last year's fee schedule for the 10 week Summer Day Camp was as follows:

- Regular Day Camp (10:00 a.m. – 3:00 p.m.) -\$5 per week, for up to three weeks.
- Extended Hours Day Camp (7:00 a.m. – 6:00 p.m.) -\$55 per week for residents and \$120 per week for industrial residents

ANALYSIS:

Unlike other programs offered by the department, the Day Camp program is only partially budgeted and relies on the collection of approximately \$32,000 in fees as revenue offset to cover actual expenditures. In 2011, the department collected only \$27,000 in fees, leaving a \$5,000 shortfall.

Due to the current fiscal constraints, the department was directed by City Council by consensus, during the April 18, 2012 Budget Session, to increase the \$5.00 per week Summer Day Camp option to \$25.00 for a 10:00 a.m. – 3:00 p.m. program, for up to three weeks, and continue the basic 7:00 a.m. – 6:00 p.m. Summer Day Camp Program at \$55.00 per week.

The resident fee of \$55 per week is lower than most fees charged by surrounding cities:

- \$135 per week Montebello/Commerce YMCA
- \$125 per week Downey
- \$84 per week Montebello
- \$80 per week Bell Gardens
- \$79 per week Pico Rivera
- \$70 per week Huntington Park
- \$35 per week Bell

The department will continue to offer the no-cost, drop in Park Program at all 4 parks, for children, ages 6-12 years old. During the summer, the program is offered Monday – Friday, from 10:00 a.m. – 3:00 p.m. Sumer Park Program includes arts and crafts, outdoor games, board games, and other supervised activities.

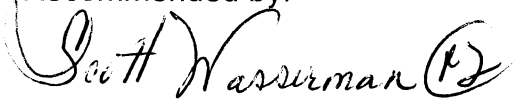
FISCAL IMPACT:

Although \$38,846 is budgeted for staff hours for year-round Day Camp, the department spends approximately \$70,000 for staff hours and is dependent on the collection of \$32,000 in revenue to offset program costs. Including Day Camp in the Fee Schedule and adjusting the Day Camp fees as recommended will enable the department to collect sufficient revenue to cover program costs.

RELATIONSHIP TO STRATEGIC GOALS:

This item relates to Council's goal of making financially and economically sound decisions that are consistent with current economic conditions.

Recommended by:



Scott Wasserman
Interim, Director of Parks and Recreation

Respectfully submitted,



Jorge Rifa
City Administrator

Fiscal Impact reviewed by:



Vilko Domic
Director of Finance

Approved as to form:



Eduardo Olivo
City Attorney

Attachment: Resolution
Fee Schedule

RESOLUTION _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA,
AMENDING RESOLUTION NO. 10-49, ADOPTING A CITY OF COMMERCE FEE
SCHEDULE, AS AMENDED, TO INCLUDE A SUMMER DAY CAMP PROGRAM FEE
SCHEDULE

WHEREAS, at its meeting of July 6, 2010, the City Council approved and adopted Resolution No. 10-49, adopting a City of Commerce Fee Schedule; and

WHEREAS, at its meetings of September 28, 2010; November 2, 2010, and May 17, 2011, the City Council approved and adopted, respectively, Resolution Nos. 10-64, 10-81 and 11-37 amending Resolution No. 10-49 by adding certain fees to the City of Commerce Fee Schedule; and

WHEREAS, at its meeting of September 6, 2011, the City Council approved and adopted Resolution No. 11-71 amending Resolution No. 10-49 by amending and replacing in its entirety Appendix A to said Resolution and adding thereto a three-tier Resident Card Program and separating the Camp Commerce Senior Citizens Weekend session from the Camp Commerce Family Weekend session fee schedule, capping the Senior Citizens Weekend session fee at \$6.00; and

WHEREAS, the Day Camp Program is only partially budgeted and relies on the collection of approximately \$32,000 in fees as revenue offset to cover actual expenditures; and

WHEREAS, the Department of Parks & Recreation collected only \$27,000 in fees in 2011, leaving a \$5,000 shortfall; and

WHEREAS, due to the current fiscal constraints, the Department of Parks & Recreation desires to increase the \$5.00 per week Summer Day Camp option to \$25.00 for a 10:00 a.m.-3:00 p.m. program, for up to three weeks, and continue the basic 7:00 a.m.-6:00 p.m. Summer Day Camp Program for \$55.00 per week, and

WHEREAS, the implementation of said basic program will provide residents and industrial residents unlimited registration for their children for the 10-week program at a set cost, and

WHEREAS, at its meeting of April 18, 2012, the City Council, by consensus, directed staff to implement the proposed fee increase for the up-to-three week option from \$5.00 to \$25.00.

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

Section 1. Appendix A, entitled "City of Commerce Fee Schedule", to Resolution No. 10-49, as amended in its entirety by Resolution No. 11-71, is hereby amended as follows:

Under "Parks & Recreation", the following fees are hereby added:

<u>Fee Description</u>	<u>FY 11-12 Fee</u>	<u>FY 12-13 Fee</u>	<u>Effective &/or Last Date Modified</u>
Summer Day Camp Program – Resident (per week)	\$5.00 for 10:00 a.m.- 3:00 p.m., up to 3 weeks <u>or</u> \$55.00 for 7:00 a.m.- 6:00 p.m.	\$25.00 for 10:00 a.m.- 3:00 p.m., up to 3 weeks <u>or</u> \$55.00 for 7:00 a.m.- 6:00 p.m.	2012 SUMMER SESSION

Summer Day Camp Program – Industrial (per week)	\$120.00	\$120.00	2012 SUMMER SESSION
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Section 2. Except as provided herein, Resolution No. 10-49, as amended, shall remain in full effect and force.

Section 3. The “City of Commerce Fee Schedule”, as approved and adopted in Resolution No. 10-49, and as amended herein, is not intended to depict all of the fees established by the City of Commerce and, except as may be increased and/or established thereby and herein, respectively, all other fees established by the City Council shall remain in full force and effect.

Section 4. This Resolution shall become effective immediately upon adoption.

Section 5. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

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

Lilia R. Leon, Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk



AGENDA REPORT

Meeting date: May 1, 2012

TO: Honorable City Council

FROM: City Administrator

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING AN AGREEMENT BETWEEN THE CITY AND PYRO SPECTACULARS, INC. FOR THE 4TH OF JULY PYROTECHNIC DISPLAY AT ROSEWOOD PARK

RECOMMENDATION:

Approve the resolution and assign the number next in order.

MOTION:

Move to approve recommendation.

BACKGROUND:

As part of the Independence Day Celebration, the City has provided a pyrotechnic display on the Fourth of July. The pyrotechnic display will take place on Wednesday, July 4, 2012, in conjunction with the carnival for the Independence Day Celebration at Rosewood Park. This event has grown in popularity in the past years and in 2011, the department estimated 5,000 people in attendance at Rosewood Park enjoying the display.

ANALYSIS:

The proposed activity will cost \$15,900. There was no increase in cost from the 2011 display. As approved by the City Council on March 2, 2010, the department was authorized to solicit donations for the 4th of July festivities from our local businesses, civic/service organizations and the general public. The department is soliciting donations as done last year to help offset the cost of the 4th of July festivities.

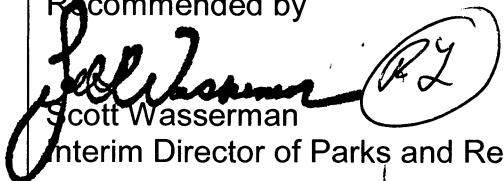
FISCAL IMPACT:

Expenditure for the proposed activity will amount to \$15,900.00 for the 011/12 Fiscal Year which will be paid out the donations received. There was no increase in cost from the 2011 display.

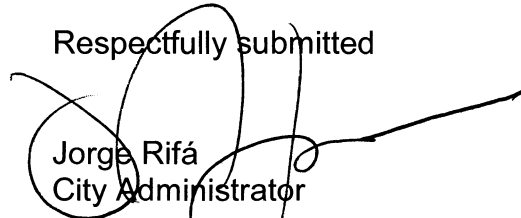
RELATIONSHIP TO STRATEGIC GOALS:

This agenda item relates to Strategic Goal #1: Develop Citywide Plan to enhance and maintain the City of Commerce environment and infrastructure to create livability and quality of life for those who life, work and play in the community.

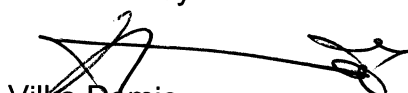
Recommended by


Scott Wasserman
Interim Director of Parks and Recreation

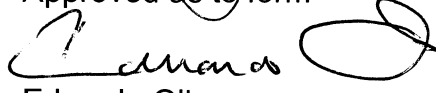
Respectfully submitted


Jorge Rifá
City Administrator

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 AN AGREEMENT BETWEEN THE CITY AND PYRO SPECTACULARS, INC., A CALIFORNIA CORPORATION FOR THE 4TH OF JULY PYROTECHNIC DISPLAY AT ROSEWOOD PARK

WHEREAS, as part of the Independence Day Celebration, the City has provided a pyrotechnic display on the 4th of July; and

WHEREAS, the pyrotechnic display will take place in conjunction with the carnival for the Independence Day celebration at Rosewood Park; and

WHEREAS, the City desires to approve an agreement that will set forth the terms and conditions under which the selected contractor will provide the pyrotechnics display.

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

Section 1. The City Council hereby approves the Agreement with Pyro Spectaculars, Inc., for the 4th of July Pyrotechnic Display at Rosewood Park. The Mayor is hereby authorized to execute the Agreement for and on behalf of the City.

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

Lilia R. Leon
Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk

THIS AGREEMENT (the "Agreement") dated as of _____, 2012 (the "Effective Date") is made by and between Pyro Spectaculars, Inc., a California Corporation ("Contractor") and the City of Commerce, a municipal corporation (the "City").

RECITALS

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

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

AGREEMENT

1. **Scope of Services and Schedule of Performance.**

Contractor shall furnish the City, in accordance with the terms and conditions hereinafter set forth, one (1) fireworks display of approximately 20 minutes in duration (the "Display") as per Program A set forth in Exhibit A, which is attached hereto and incorporated herein by reference, including the services of a licensed pyrotechnic operator to take charge of and, along with sufficient assistants, safely discharge the Display. The Display is scheduled to be performed on July 4, 2012, at the Rosewood Park Parking Lot at a mutually agreed upon time.

2. **Compensation.**

As sole and complete consideration for the services to be performed by Contractor under this Agreement, as specified in Section 1 above, the City agrees to pay Contractor Fifteen Thousand Nine Hundred Dollars (\$15,900). The City shall pay Contractor a deposit of Seven Thousand Two Hundred and Twenty-Five Thousand Dollars (\$7,225) by April 27, 2012. Full final payment is due on the first regular business day after the date set for the Display. A finance charge at a periodic rate of 1% per month, 12% annual percentage rate, or the maximum rate permitted by law, whichever is less, will be charged on any unpaid balance after ten (10) days from the date of the Display.

3. **Contractor's Obligations.**

Contractor agrees to devote the time and care necessary to perform the services, as described in Section 1 above, in a professional, competent, and safe manner, which include: the provision of a licensed pyrotechnic operator, insurance coverage, sales tax and delivery, set-up and breakdown, processing the necessary fire department permit application and music to accompany the aerial fireworks display.

4. City's Obligations.

A. The City, at its own expense, shall provide Contractor with the following:

- (1) suitable Display Site in which to stage the Display, including a firing and fallout zone reasonably acceptable to PYRO in which the fireworks and firework debris may be exhibited, rise and fall safely.
- (2) Adequate policing, guard protection, roping, fencing and/or other crowd control measures to prevent the access of the public or its property or any other people or property not authorized by Contractor into the Display Site.
- (3) Standby firemen and/or any applicable permit fees as required by state and local statutes, ordinances or regulations.
- (4) Access by Contractor, at all times, to the Display Site to set up the Display.

If the City fails to fully comply with requirements set forth above, Contractor shall have no obligation to perform and the City agrees to pay Contractor the entire agreement price plus any additional reasonable expenses incurred because of said failure. Contractor must provide the City with adequate proof of any additional expenses it alleges to have incurred before the City shall be obligated to pay for said expenses.

B. If, in its sole discretion, the City designates an area for members of the public to view the Display ("Spectator Area") and/or an area for vehicular parking ("Parking Area"), the City shall:

- (1) Ensure that the Spectator Area does not infringe on the Display Site;
- (2) Be solely responsible for ensuring that the terrain of the Spectator Area and any structures thereon, including, but not limited to, grandstands and bleachers are safe for use by spectators;
- (3) Be solely responsible for ensuring that the Parking Area is safe for use; and
- (4) Be solely responsible for policing, monitoring, and appropriately controlling spectator access to the Spectator Area and the Parking Area and for policing, monitoring and appropriately controlling the behavior of persons in these areas.

It is expressly agreed that Contractor shall not be responsible for policing, monitoring, or otherwise supervising any Spectator Area, Parking Area, or the Display Site. Notwithstanding the foregoing, Contractor shall ensure that any designated Spectator Area or Parking Area is a safe distance from the Display Site and that the Display Site is cleared of any live firework debris originating from the program.

5. Ownership Rights and Trade Names.

Contractor reserves the ownership rights and trade names that are used in or are a product of the Display. Any reproduction by sound, video or other duplication or recording process without the express written permission of Contractor is prohibited.

6. Independent Contractor.

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

7. Contractor to Provide Required Personnel; Subcontracting.

Contractor shall provide and direct the necessary qualified personnel to perform the Services required of, and from, it pursuant to the express and implied terms hereof, with the degree of skill and judgment normally exercised by recognized professional firms performing services of a similar nature at the time the Services are rendered, and to the reasonable satisfaction of the City. All labor, materials, fees and costs of such identified subcontractors shall be paid exclusively by Contractor. No subcontractors may be substituted for any of the identified subcontractors except with the prior written approval of the City Administrator.

8. Responsible Principal and Project Manager.

Christopher Souza, will serve as principal-in-charge of contract responsibilities for Contractor. Mr. Souza will be present at the time of the Display. Designation of another responsible principal by Contractor shall not be made without the prior written consent of the City.

9. City Liaison.

Contractor shall direct all communications to the Director of Parks and Recreation or his designee. All communications, instructions and directions on the part of the City shall be communicated exclusively through the Director of Parks and Recreation or his designee. The City's Liaison shall have the right to review, coordinate, and reasonably approve all work to be performed by Contractor pursuant to the terms of this Agreement and shall be the City's agent with respect to review, coordination and reasonable approval of the services to be performed by Contractor.

10. Licenses.

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

11. Compliance with Laws.

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

12. Insurance.

Contractor shall maintain insurance and provide evidence thereof as required by Exhibit B hereto (the "Required Insurance") which is attached hereto and incorporated herein by this reference, for the term provided herein. Such insurance afforded by Contractor shall not cover claims made against the City for bodily injury or property damage arising from (a) City's failure, including through or by its employees, agents and/or independent contractors, to perform its obligations under this Agreement, including, without limitation, those contained in Section 4 of this Agreement, or (b) City's failure to provide discretionary Spectator and Parking Areas referred to in Section 4 of this Agreement.

13. Warranty and Liability.

Contractor warrants that the services provided under this Agreement will be performed with the degree of skill and judgment normally exercised by recognized professionals performing services of a similar nature at the time the services were rendered. This warranty survives the completion and/or termination of this Agreement.

14. Indemnification.

A. The City shall indemnify and hold Contractor harmless from all claims and suits made against Contractor for bodily injury or property damage arising from (a) City's failure, including through or by its employees, agents and/or independent contractors, to perform its obligations under this Agreement, including, without limitation, those contained in Section 4 and (b) City's failure to provide discretionary Spectator and Parking Areas referred to in Section 4 herein.

B. Contractor shall indemnify and hold the City and their respective officials, officers, agents and employees harmless from and against any and all liabilities, losses, damages, costs and expenses the City and their respective officials, officers, agents and employees hereafter may suffer in connection with any claim, action, or right or action (at law or in equity) because of any injury (including death) or damage to person or property proximately caused by

any negligent acts, errors, or omissions by Contractor, its employees, its subcontractors or its agents in the performance of the Services hereunder. Upon demand, Contractor shall promptly provide a defense to such claims, actions or right of action (at law or equity) and shall promptly pay for all associated and resulting costs, damages, settlements, penalties, judgments, fees and expenses, including attorneys' fees and costs. However, Contractor's duty to defend, indemnify, and hold the City harmless shall not extend to any liability, loss, injury, damage, claim, lawsuit, cost, expense, attorneys fees, litigation costs, court costs, or any other cost arising out of the negligence or willful misconduct of the City, its employees, agents and officials.

15. Limitation of Liability for Contractor's Breach.

A. In the event Contractor breaches this Agreement, or is otherwise negligent in performing the Display provided for herein, the City shall, under no circumstances, be entitled to recover monetary damages from Contractor beyond the amount the City has agreed to pay Contractor under this Agreement. The City shall not, under any circumstances, be entitled to recover any consequential damages from Contractor including, without limitation, for loss of income, business or profits. Nothing in this paragraph shall be construed as a modification or limitation on the insurance coverage set forth in Section 12 herein.

B. The City recognizes that because of the nature of fireworks, an industry accepted level of 3% of the product used in any display may not function as designed and this level of nonperformance is acceptable as full performance.

16. Covenant against Contingent Fees.

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

17. Conflict of Interest.

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

18. Other Agreements.

Contractor warrants that it is not a party to any other existing agreement that would prevent Contractor from entering into this Agreement or that would adversely affect Contractor's

ability to perform the services under this Agreement. During the term of this Agreement, Contractor shall not, without City's prior written consent, perform services for any person, firm, or corporation other than City if such services could lead to a conflict with Contractor's obligations under this Agreement.

19. Termination.

A. Termination Upon Notice. City shall have the option to unilaterally cancel this Agreement prior to the date of the Display. If City exercises this option, City agrees to pay to Contractor, as liquidated damages, the following percentages of the agreed contract price: (1) 25% if cancellation occurs 3 or more days prior to the date set for the Display; (2) 50% if cancellation occurs within 2 days of the date set for the Display; (3) 75% if cancellation occurs on the date set for the Display, but prior to the time physical set-up of the Display actually begins; (4) 100% thereafter. If cancellation occurs prior to the date set for the Display, the City agrees to pay Contractor in addition to the above percentages, the value associated with any custom work performed by Contractor or its agents including, but not limited, to music/narration tape production and/or sponsors logos. Contractor shall provide the City with adequate proof of any costs incurred in connection with any custom work performed by Contractor, before the City shall be obligated to pay for said costs. The parties recognize and agree that, in the event that the City cancels the Display, it would be impractical or extremely difficult to establish the actual amount of Contractor's damages. The foregoing represents a reasonable estimate of the damages Contractor will suffer if the City cancels the Display.

B. Termination Upon Assignment. Notwithstanding any other provision of this Agreement, the Agreement shall terminate automatically without prior notice upon any assignment in violation of Section 21 herein.

C. Cancellation Beyond the Control of the Parties. The City assumes the risk of weather, or other causes beyond Contractor's reasonable control, which may prevent the Display from being safely discharged on the scheduled date, or which may cause cancellation of the event for which the City purchased the Display, or which may affect or damage such portion of the exhibits as must be placed and exposed a necessary time before the Display. It shall be within Contractor's sole discretion to determine whether or not the Display may be safely discharged on the scheduled date and the scheduled time. If, for any reason, beyond Contractor's reasonable control, including without limitation, inclement weather, Contractor cannot safely discharge the Display on the scheduled date or should any event for which the City has purchased the Display be canceled, the parties shall make a good faith effort to negotiate a new Display date, which shall be within sixty days of the original Display date. The City further agrees to pay Contractor for any additional expenses made necessary by the postponement, provided that Contractor provides the city with adequate documentation demonstrating what the additional expenses were incurred for. If after a good faith effort to agree to a new Display date, the parties are unable to do so, Contractor shall be entitled to liquidated damages pursuant to subsection A of this Section 19.

20. Waiver of Breach.

No waiver of the breach of any of the covenants, agreements, restrictions, or conditions of this Agreement by either party to this Agreement shall be construed to be a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement. No delay or omission of either party to this Agreement in exercising any right, power or remedy herein provided in the event of default shall be construed as a waiver thereof or acquiescence therein or be construed as a waiver of a variation of any of the terms of this Agreement. Any waiver by either of the parties must be in writing. A delay in communicating a failure by either party to satisfy a term, condition or covenant in no way waives that term or any remedies available for its breach.

21. Assignment.

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

22. Arbitration.

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

23. Attorneys' Fees.

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

24. Notices.

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

For the City:

City of Commerce
2535 Commerce Way
Commerce, California 90040
Attn: Scott Wasserman
Interim Director of Parks and Recreation

For Contractor:

PYRO–Pyro Spectaculars, Inc.
P.O. Box 2329, Rialto, California 92377
Attn.: Gary Brown

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

25. Governing Law.

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

26. Severability.

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

27. No Construction of Agreement against any Party.

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

28. Entire Agreement and Amendments to Agreement.

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

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

Except as expressly stated in this Agreement, no party, nor its employees, agents or attorneys have made any statement or representation to any other party or its employees, agents

or attorneys regarding any fact relied upon in entering into this Agreement, and each party does not rely upon any statement, representation and/or promise of any other party, its respective employees, agents or attorneys in executing this Agreement.

30. Counterpart Signatures.

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

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

CITY OF COMMERCE

DATED: __, 2012

By: _____
Lilia R. Leon, Mayor

ATTEST:

Linda K. Olivieri, City Clerk

PYRO SPECTACULARS, INC.

DATED: __, 2012

By: _____
Name: James R. Souza
Title: President

APPROVED AS TO FORM

By: Eduardo Olivo
Title: City Attorney

EXHIBIT A

EXHIBIT B

REQUIRED INSURANCE

On or before beginning any of the Services called for by any term of this Agreement, Contractor, at its own cost and expense, shall carry, maintain for the duration of this Agreement, and provide proof thereof that is acceptable to the City of its procurement of the insurance specified below from insurers and under forms of insurance satisfactory in all respects to the City. Contractor shall not allow any subcontractor to commence work on any subcontract under this Agreement until all insurance required of Contractor have also been obtained for the or by the subcontractor. Such insurance shall not be in derogation of Contractor's obligations to provide indemnity under Section 14 of this Agreement.

1. Comprehensive General Liability and Automobile Liability Insurance Coverage.

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

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

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

2. Errors and Omissions Insurance Coverage.

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

3. Worker's Compensation.

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

4. Additional Insureds.

The City, its officers, agents and employees must be named as additional insureds or as additional loss payees in all insurance policies required by this Agreement. An endorsement to

this effect shall be delivered to the City prior to the commencement of any work. Satisfaction of any deductible requirement shall be the responsibility of Contractor.

5. Severability Clause.

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

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

7. Qualifications of Insurer.

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

8. Approval of Insurer.

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

9. Payment of Premiums.

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

10. Evidence of Insurance and Claims.

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



AGENDA REPORT

Meeting date: May 1, 2012

TO: Honorable City Council

FROM: City Administrator

SUBJECT: A Resolution of the City Council of the City of Commerce, California, Approving an Agreement Between the City Of Commerce and Raymond Leefe, dba Candyland Amusements for Carnival Services for the 4th of July Celebration at Rosewood Park

RECOMMENDATION:

Approve the resolution and assign the number next in order.

MOTION:

Move to approve recommendation.

BACKGROUND:

This will be the 11th consecutive year the City has hosted a carnival during the City's Independence Day Celebration. The previous carnivals have been very successful and enjoyed by the community.

ANALYSIS:

The carnival services agreement is scheduled to be performed over a period of four days, starting on Wednesday, July 4, 2012 closed on Thursday, July 5, 2012 and reopen Friday – Sunday July 8, 2012. The agreement requires the contractor to pay the City 25% of all gross revenues from the carnival ticket sales; \$50 for each skill game booth; and \$50 for each food wagon or booth. The City projects revenues of \$10,000.

FISCAL IMPACT:

Projected revenue is approximately \$10,000.

RELATIONSHIP TO STRATEGIC GOALS:

This agenda item relates to Strategic Goal #1: Develop Citywide Plan to enhance and maintain the City of Commerce environment and infrastructure to create livability and quality of life for those who life, work and play in the community.

Recommended by:

Scott Wasserman
Interim Director of Parks and Recreation

Respectfully submitted,

Jorge Rifa
City Administrator

Reviewed by:

Vilko Domic
Director Finance

Approved as to form:

Eduardo Olivo
City Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE,
CALIFORNIA, APPROVING AN AGREEMENT BETWEEN THE CITY AND RAYMOND
LEEFE DBA CANDYLAND AMUSEMENTS FOR CARNIVAL SERVICES FOR THE 4TH
OF JULY CELEBRATION AT ROSEWOOD PARK

WHEREAS, this will be the eleventh consecutive year that the City of
Commerce has hosted a carnival during the City's Independence Day Celebration; and

WHEREAS, the previous carnivals hosted by the City have been very
successful and enjoyed by the community; and

WHEREAS, the City has identified a contractor that is able to continue to
provide the services required for the City's carnivals and desires to enter into an
agreement with the contractor.

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

Section 1. The City Council hereby approves the Services Agreement with
Raymond Leefe dba Carnival Amusements for services at the City 4th of July carnival.

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

Lilia R. Leon
Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk

THIS AGREEMENT (the "Agreement") dated as of _____, 2012 (the "Effective Date") is made by and between Raymond Leefe, dba Candyland Amusements ("Contractor") and the City of Commerce, a municipal corporation (the "City").

RECITALS

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

WHEREAS, Contractor is skilled in the professional calling necessary to perform the services and duties to be performed under this Agreement and the City is relying upon the skill and knowledge of Contractor to perform said services and duties; and

WHEREAS, Contractor is willing to render such services as hereinafter defined on the terms and conditions set forth below.

AGREEMENT

1. Scope of Services and Schedule of Performance.

Contractor shall perform the services (the "Services") set forth in Exhibit "A", which is attached hereto and incorporated herein by this reference. The Services shall be performed in accordance with the schedule set forth in Exhibit "A". Contractor shall perform all work to the highest professional standards and in a manner reasonably satisfactory to the City.

2. Term.

This Agreement shall take effect upon the execution by the parties and shall conclude on July 9, 2012.

3. Compensation.

The City shall receive the total gross receipts from the sale of tickets for amusement rides and other payments in compliance with the schedule set forth in Exhibit "B", which is attached hereto and incorporated herein by this reference. Payments shall be made in the form of check made payable to the City of Commerce at the time of settlement, which shall occur on July 10, 2012 by 5:00 p.m.

4. Financial Records.

Contractor shall maintain complete and accurate records with respect to fees and costs incurred and revenues generated under this Agreement. All such records shall be maintained on a generally accepted accounting basis and be clearly identified and readily accessible. Contractor shall keep, maintain and provide free access to such books and records to examine and audit the same, and to make transcripts thereof as necessary, and to allow inspection of all work data, documents, proceedings and activities related to this Agreement for a period of three years from the date of final payments under this Agreement.

5. Independent Contractor.

A. Contractor is and shall perform its services under this Agreement as a wholly independent contractor. Contractor shall not act nor be deemed an agent, employee, officer or

legal representative of the City. Contractor shall not at any time or in any manner represent that it or any of its agents, employees, officers or legal representatives are in any manner agents, employees, officers or legal representatives of the City. Contractor has no authority to assume or create any commitment or obligations on behalf of the City or bind the City in any respect. This Agreement is not intended to and does not create the relationship of partnership, joint venture or association between the City and Contractor. None of the foregoing shall affect any privilege or protection against disclosure which applies to the services Contractor undertakes under this Agreement.

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

6. Contractor to Provide Required Personnel; Subcontracting.

Contractor shall provide and direct the necessary qualified personnel to perform the Services required of, and from, it pursuant to the express and implied terms hereof, with the degree of skill and judgment normally exercised by recognized professional firms performing services of a similar nature at the time the Services are rendered, and to the reasonable satisfaction of the City. All of the services required under this Agreement shall be performed by Contractor or under its supervision, and all personnel engaged in such work shall be qualified to perform such Services, attired in neat, clean, and identifiable clothing. Overnight quarters (bunkhouse) for personnel shall be provided by Contractor. No employee shall sleep in tents or any ride. A list of all employees, along with social security and driver's license or California Identification card numbers shall be submitted to the City by June 18, 2012. Contractor reserves the right to determine the assignment of its own employees for the performance of the Services. However, the City reserves the right, for good cause, to require Contractor to exclude any employee from performing the Services on the City's premises.

7. Responsible Principal and Project Manager.

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

8. City Liaison.

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

9. Financial Condition.

Prior to entering into this Agreement, Contractor has submitted documentation acceptable to the City Administrator, establishing that it is financially solvent, such that it can reasonably be expected to perform the Services required by this Agreement. Financial information submitted to the City Administrator shall be returned to Contractor after review and shall not be retained by City.

10. Licenses.

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

11. Performance Evaluation.

The work product required by this Agreement shall be utilized as the basis for review. Any comments or complaints received by City during the review period, either orally or in writing shall be considered. If any noncompliance with the Agreement is found, City may direct Contractor to correct the inadequacies, or, in the alternative, may terminate this Agreement as provided herein.

12. Non-Compete Clause.

The City agrees that it will not sponsor or book directly or indirectly any other show, amusement or attraction of a similar nature to that of the Contractor's operation for ninety (90) days prior to the date of commencement of the event.

13. Compliance with Laws.

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

14. Insurance.

Contractor shall maintain insurance and provide evidence thereof as required by Exhibit "C" hereto (the "Required Insurance") which is attached hereto and incorporated herein by this reference, for the term provided herein. Such insurance shall be provided from June 27, 2012 through July 9, 2012. Contractor agrees that if it does not keep the aforesaid insurance in full force and effect, and such insurance is available at a reasonable cost, the City may take out the necessary insurance and pay the premium thereon, and the repayment thereof shall be deemed an obligation of Contractor and the cost of such insurance may be deducted, at the option of the City, from payments due Contractor. Contractor shall submit the required proof of insurance by June 15, 2012.

15. Warranty and Liability.

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

16. Indemnification.

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

17. Confidentiality.

Contractor shall maintain as confidential and not disclose to others, either before or after the termination of this Agreement, any data, documents, reports, or other information provided to Contractor by the City, or employees or agents of the City, or any data, documents, reports, or other information produced by Contractor during its performance hereunder, except as expressly authorized in writing by the City, or to the extent required for: (1) compliance with professional standards of conduct for the preservation of the public safety, health, and welfare, but only after Contractor notifies the City of such need for disclosure; and (2) compliance with any court order or other government directive or requirement, but only after Contractor notifies the City of such an order, directive, or requirement. Contractor shall keep all "Confidential" materials received or generated under this Agreement in separate files marked "Confidential." Any non-compliance by Contractor with this part of the Agreement shall be deemed a material breach of this Agreement. The obligations of this paragraph shall survive the termination of this Agreement.

18. Covenant against Contingent Fees.

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

amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

19. Conflict of Interest.

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

20. Other Agreements.

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

21. Termination.

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

- a. by the written mutual agreement of the parties hereto; or
- b. by the City, with or without cause, upon 30 days written notice to Contractor pursuant to Section 26 of this Agreement.

The effective date of termination shall be upon the date specified in the notice of termination, or, in the event no date is specified, upon the third (3rd) day following delivery of the notice. In the event of such termination, City agrees to pay Contractor for services satisfactory rendered prior to the effective date of termination. Immediately upon receiving written notice of termination, Contractor shall discontinue performing services, preserve the product of the services, and turn over to City the product of the services in accordance with written instruction of City.

22. Waiver of Breach.

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

satisfy a term, condition or covenant in no way waives that term or any remedies available for its breach.

23. Assignment.

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

24. Arbitration.

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

25. Attorneys' Fees.

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

26. Notices.

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

For the City:

City of Commerce
2535 Commerce Way
Commerce, California 90040
Attn: Scott Wasserman, Interim Director of Parks and Recreation

For Contractor:

Raymond Leefe
Candyland Amusements
14514 Valleyview Ave.
La Mirada, CA 90638

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

27. Governing Law.

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

28. Severability.

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

29. No Construction of Agreement against any Party.

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

30. Entire Agreement and Amendments to Agreement.

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

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

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

32. Counterpart Signatures.

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

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

CITY OF COMMERCE

DATED: May 1, 2012

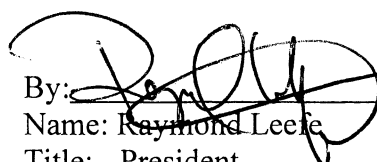
By: _____
Lilia R. Leon, Mayor

ATTEST:

Linda K. Olivieri, City Clerk

CONTRACTOR

DATED: April 1, 2012

By:  _____
Name: Raymond Leele
Title: President

APPROVED AS TO FORM

By: Eduardo Olivo
Title: City Attorney

EXHIBIT A

ADDITIONAL TERMS

The parties hereby mutually agree as follows:

1. Dates

Contractor to present a carnival for a period of four days commencing on Wednesday, July 4, 2012, Friday, July 6th through Sunday July 8, 2012.

2. Hours of Operation

Hours of operation for the Carnival:

Wednesday	July 4, 2012	12:00 p.m. - 11:00 p.m.*
Friday	July 6, 2012	5:00 p.m. - 11:00 p.m.*
Saturday	July 7, 2012	12:00 p.m. - 11:00 p.m.*
Sunday	July 8, 2012	12:00 p.m. - 11:00 p.m.*

* All tickets booths shall be closed thirty minutes (30) prior to the close operations.

3. Premises

City to provide a location at Rosewood Park located at 5600 Harbor Street, Commerce, California that will be available to Contractor on June 25, 2012.

4. Vacation of Premises

Contractor hereby agrees to remove all equipment and vacate premises by 5:00 p.m. on July 9, 2012. Premises shall be left clear of all debris and litter and in same condition as prior to installation of the carnival facilities.

5. Rides and Equipment

A. Contractor agrees to furnish high quality amusement rides that each have a valid current operating permit issued by the Department of Industrial Relations through the Division of Occupational Safety and Health. A minimum of thirteen (13) rides shall be furnished by the Contractor.

There shall be a minimum of twelve (12) major rides, and five (5) kiddies rides. A list of confirmed rides shall be provided to the City by June 15, 2012.

Contractor shall also provide all generators, cables, junction boxes, lights, ticket booths, power hook-up, and skilled operators for all amusement rides.

- B. Contractor shall set-up and operate skill game booths and pay the City \$50 for each booth. A list of the type of games to be offered by the Contractor shall give to the City by June 15, 2012.
- C. Contractor shall set-up and operate food booths, selling the following items: cotton candy, candy apples, soda, hot dogs, corndogs, popcorn, licorice, ice cream, lemonade, and nachos. Contractor shall pay the City a fee of \$50 for each food booth operated by the Contractor.
- D. Contractor shall have exclusive rights to sell cotton candy and candied apples with the exception of local community and approved non-profit groups, which shall have a concurrent right to sell these items on Wednesday, July 4, 2012. Contractor shall not have exclusive rights to sell the following items: hot dogs, popcorn, nachos, sodas, lemonade, ice cream, and candy. Throughout the duration of the carnival, local community groups shall also be allowed to operate food and game booths for the purpose of fundraising.
- E. Coupon prices for all rides shall be one dollar (\$1.00). This price shall be designated as the regular coupon price for all rides. Sheet of twenty-four (24) coupons shall be priced at seventeen dollars (\$20) and thirty (30) coupons shall be priced at twenty-two dollars (\$22). Coupons sold at pre-sale shall be in blocks of twenty (20) for ten dollars (\$10) each block.
- F. Wristbands for unlimited rides will be available for purchase \$15.00 presale (by City) and \$20.00 day starting July 4, 2012 @ 5:00 p.m. Presale wristbands will be honored on July 4, 2012. On-site wristbands will not be sold on July 4, 2012.

6. Licenses and Permits

Contractor shall obtain all permits and licenses, which may be required by the Municipal Code to operate within the City of Commerce, as well as all required County and State permits and licenses. The City of Commerce shall waive all costs and fees associated with the procurement of City permits and licenses. All fees and permits must be obtained by June 15, 2012.

7. Box Office, Tickets and Ticket Sellers

Contractor will provide and deliver to the premises, at its own expense, two tickets booths with electrical service and lights. The Contractor shall furnish at its own expense, serially numbered coupons redeemable for each ride. Contractor shall furnish sellers at its own expense, to operate and to sell coupons for the amusements rides in the ticket booths provide. The City shall inspect and receive a list of the coupon numbers to be sold by Contractor. A daily report showing the amount of tickets sold shall be provided to the City at closing. The Contractor shall retain custody of the receipts from the sales until such time as the final settlement is made.

8. Compliance with Safety Laws

At all times the scheduled activity, the Contractor shall fully comply with all laws, order, regulations and statutes of all governmental bodies and agencies with respect to safety, accident prevention, safety equipment and practices. Contractor shall conduct inspections to determine and insure that safe conditions exist and shall accept sole responsibility for providing a safe place for the benefit of employees, patrons, on all other persons.

9. Location of Equipment

Contractor shall secure advance written approval from the Director of Parks and Recreation, or his designated representatives as to all rides and booth locations.

10. Clean-up

A. Contractor shall restore the premises to the condition that it was found in on June 27, 2012. Contractor shall submit a one thousand dollar (\$1,000.00) refundable damage deposit to City by June 15, 2012. If damage to the premises is detected the deposit or portion of, shall be withheld to pay for repairs. Damage exceeding one thousand dollars (\$1,000.00) shall be invoiced to the Contractor. The deposit or portion to be returned shall be forwarded to the Contractor in a timely-manner following inspection of the premises.

B. Portable toilets and dumpsters will be provided and paid for by the City of Commerce before the agreed-to start date of the event.

11. Security and Logistic

The City agrees to provide trash bins and portable toilets. The City shall provide a large trash bin and eight (8) portable toilets. The City shall arrange and provide for security during carnival hours of operation only. Security for hours of non-operation shall be the sole responsibility of the Contractor. Contractor shall schedule, provide and pay for security during all non-hours operation

12. Advertising

Placement of any advertisement shall require prior approval by the Director of Parks Recreation. The Contractor agrees to pay the total cost of 50 posters, two thousand, five hundred (2,500) thousand flyers, and newspaper ads not to exceed \$1,000.00.

EXHIBIT B

SUMMARY OF PAYMENTS

Contractor agrees to pay the following to the City:

1. 25% of all gross revenue all from ticket sales, which includes but is, not limited to presale and onsite ticket sales.
2. \$50 for each skill game booth.
3. \$50 for each food wagon or booth.

Time of payment shall be time of settlement. See page 1 “Contractor Services”, No. 3 ‘Compensation’.

EXHIBIT C

REQUIRED INSURANCE

On or before beginning any of the Services called for by any term of this Agreement, Contractor, at its own cost and expense, shall carry, maintain for the duration of this Agreement, and provide proof thereof that is acceptable to the City of its procurement of the insurance specified below from insurers and under forms of insurance satisfactory in all respects to the City. Contractor shall not allow any subcontractor to commence work on any subcontract under this Agreement until all insurance required of Contractor have also been obtained for the or by the subcontractor. Such insurance shall not be in derogation of Contractor's obligations to provide indemnity under Section 17 of this Agreement.

1. Comprehensive General Liability and Automobile Liability Insurance Coverage.

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

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

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

2. Errors and Omissions Insurance Coverage.

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

3. Worker's Compensation.

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

4. Additional Insureds.

The City, its officers, agents and employees must be named as additional insureds or as additional loss payees in all insurance policies required by this Agreement. An endorsement to

this effect shall be delivered to the City prior to the commencement of any work. Satisfaction of any deductible requirement shall be the responsibility of Contractor.

5. Cancellation Clause.

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

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

6. Severability Clause.

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

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

7. Qualifications of Insurer.

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

8. Approval of Insurer.

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

9. Payment of Premiums.

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

10. Evidence of Insurance and Claims.

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



AGENDA REPORT

DATE: May 1, 2012

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, SETTING FORTH ITS FINDINGS OF FACT FOR THE VACATION OF AN EASEMENT INTEREST OVER A PORTION OF BOXFORD AVENUE THAT BISECTS APPROXIMATELY 19 ACRES OF PRIVATE PROPERTY LOCATED AT 3415 BOXFORD WITH FRONTAGE ALONG SLAUSON AVENUE, IN THE CITY OF COMMERCE, AND REPEALING RESOLUTION NO. 11-65

RECOMMENDATION:

Approve the resolution and assign the number next in order.

MOTION:

Move to approve the recommendation.

BACKGROUND/ANALYSIS:

The City Council of the City of Commerce has considered a request for the vacation of an easement interest over a portion of Boxford Avenue, that is approximately seventy-one thousand seven hundred eighteen (71,718) square feet of land that bisects approximately 19 acres of property owned by Safeway/Vons, located at 3415 Boxford with frontage along Slauson Avenue, in the City of Commerce. The portion of Boxford Avenue that bisects approximately 19 acres of private property located at 3415 Boxford with frontage along Slauson Avenue (the "Street"), is not an essential or integral part of said transportation and traffic circulation system for the City. The Street is not an essential or integral part of the transportation network for present or prospective public use and is unnecessary for present or prospective use.

The City requires a permanent easement to maintain, construct, reconstruct, repair and access underground pipelines related to the City's water system under the Street. Southern California Gas Company requires a permanent easement to maintain, construct, reconstruct, repair and access underground gas pipelines and related facilities that are operated by Southern Gas Company under the Street. The County of Los Angeles also requires a permanent easement to maintain, construct, reconstruct, repair and access a storm drain and related facilities that are operated by the County under the Street.

On May 25, 2011, the City of Commerce Planning Commission found that the proposed vacation of the portion of Boxford Street is in conformity with the General Plan of the City of Commerce as required by Section 65402 (a) of the Government Code of the State of California. On August 16, 2011, after conducting a public hearing regarding the subject request, the City Council adopted Resolution No. 11-16, which declared the Council's intent to vacate the Street.

Resolution No. 11-16 was not to take effect until it was recorded with the Los Angeles County Recorder's Office. Before recording the Resolution, the City discovered that its interest in the Street was not actually a fee, but was an easement. The City needs to

correct the resolution vacating the Street to reflect the proper City ownership interest being vacated.

California Environmental Quality Act (CEQA) Review

The proposed vacation and related conditions will not have a significant impact on the environment because the project is located in an area where there are adequate public services and facilities. Furthermore the proposed vacation request is categorically exempt pursuant to CEQA Guidelines Section 15301, Class 1 Minor Alterations of Existing Facilities. Should the vacation (after a duly noticed public hearing in accordance with all applicable state and local laws) be approved by the City Council, a Notice of Exemption will be filed with the Office of the County Recorder pursuant to the provisions of CEQA.

Public Notices

On June 7, 2011, the City Council adopted a Resolution of Intent setting a public hearing on the matter on July 5, 2011 as required by Section 8322 of the California Streets and Highways Code. A public notice of hearing for the subject vacation was published in the Commerce Comet on June 9, 2011 and June 16, 2011. Copies of the public notice were mailed to all property owners within a 500-foot radius, and posted along Slauson Avenue and Boxford Avenue as required by California Streets & Highways Code Section 8300 et seq.

Easements/Conditions To Vacation

Affected City departments, various agencies, and utility companies were notified of the proposed vacation. California Water Service Company and Sempra Energy (Formerly Southern California Gas Company) as well as Los Angeles County Public Works requested that easements be reserved for their facilities. The attached resolution ordering the vacation reserves grants or reserves easement rights.

RELATIONSHIP TO 2009 STRATEGIC GOALS

This agenda item report is in furtherance of Goal #1- *Maintain and Diversify Local Economy*. The proposed street vacation will help to retain an existing long-established Commerce business as it will add land area to their site and allow them to improve overall site layout and function thereby improving their operational efficiencies.

FISCAL IMPACT:

If the vacation is approved by City Council, Safeway/Vons has offered to purchase the City's easement interest for the fair market value of \$600,000. A Purchase and Sale Agreement memorializing the terms of the land sale was approved by City Council on March 6, 2012.

Recommended by,


Alex Hamilton
Assistant Director of Community Development

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, SETTING FORTH ITS FINDINGS OF FACT FOR THE VACATION OF AN EASEMENT INTEREST OVER A PORTION OF BOXFORD AVENUE THAT BISECTS APPROXIMATELY 19 ACRES OF PRIVATE PROPERTY LOCATED AT 3415 BOXFORD WITH FRONTAGE ALONG SLAUSON AVENUE, IN THE CITY OF COMMERCE, AND REPEALING RESOLUTION NO. 11-65

WHEREAS, the City Council of the City of Commerce has considered a request for the vacation of an easement interest over a portion of Boxford Avenue, that is approximately seventy-one thousand seven hundred eighteen (71,718) square feet of land that bisects approximately 19 acres of property owned by Safeway/Vons, located at 3415 Boxford with frontage along Slauson Avenue, in the City of Commerce; and

WHEREAS, the portion of Boxford Avenue that bisects approximately 19 acres of private property located at 3415 Boxford with frontage along Slauson Avenue, as indicated in the attached Exhibit "A" (the "Street"), is not an essential or integral part of said transportation and traffic circulation system for the City of Commerce; and

WHEREAS, the Street is not an essential or integral part of the transportation network for present or prospective public use and is unnecessary for present or prospective use; and

WHEREAS, City requires a permanent easement to maintain, construct, reconstruct, repair and access underground pipelines related to the City's water system under the subject street; and

WHEREAS, Southern California Gas Company requires a permanent easement to maintain, construct, reconstruct, repair and access underground gas pipelines and related facilities that are operated by Southern gas Company under the subject street; and

WHEREAS, the County of Los Angeles requires a permanent easement to maintain, construct, reconstruct, repair and access a storm drain and related facilities that are operated by the County under the subject street; and

WHEREAS, on May 25, 2011, the City of Commerce Planning Commission found that the proposed vacation of the portion of Boxford Street is in conformity with the General Plan of the City of Commerce as required by Section 65402 (a) of the Government Code of the State of California; and

WHEREAS, on August 16, 2011, after conducting a public hearing regarding the subject request, the City Council adopted Resolution No. 11-16, which declared the Council's intent to vacate the Street; and

WHEREAS, Resolution No. 11-16 was not to take effect until it was recorded with the with the Los Angeles County Recorder's Office; and

WHEREAS, before recording the Resolution, the City discovered that its interest in the Street was not actually a fee, but was an easement; and

WHEREAS, the City needs to correct the resolution vacating the Street to reflect the proper City ownership interest being vacated.

NOW, THEREFORE, THE CITY COUNCIL DOES HEREBY RESOLVE AND DETERMINES AS FOLLOWS:

SECTION 1. The City Council finds that the proposed vacation of the City's easement over the portion the street located on Boxford Avenue, that bisects approximately 19 acres of private property located at 3415 Boxford with frontage along Slauson Avenue, in the City of Commerce, is in conformity with the General Plan of the City of Commerce as required by Section 65402 of the Government Code of the State of California.

SECTION 2. The City Council is conducting this vacation proceeding under the State of California Streets and Highway Code Section 8320, *et seq.*

SECTION 3. The City Council hereby approves the vacation of its easement interest over the Street pursuant to the Street Vacation Act of 1941 for the property shown in and legally described in Exhibit A, attached hereto and made a part hereof.

SECTION 4. A map of the proposed vacation is on file with the City Clerk of the City of Commerce. Reference is hereby made to said map for particulars as to the street vacation.

SECTION 5. The City Council of the City of Commerce does hereby approve the vacation of its easement interest over a portion of Boxford Avenue (as set forth in Section 2, above) subject to the following conditions:

1. The City hereby reserves a permanent non-exclusive easement to the City of Commerce to operate, construct, reconstruct, maintain, repair, service, replace water lines and appurtenance facilities, in, over, under and across the Street.

2. A permanent non-exclusive easement is hereby reserved for Southern California Gas Company to operate, construct, reconstruct, maintain, repair, service, replace or enlarge gas piping facilities and appurtenance facilities, in, over, under and across the Street.

3. A permanent non-exclusive easement is hereby reserved for the County of Los Angeles to operate, construct, reconstruct, maintain, repair, service, replace or enlarge its storm drain and sewer system facilities and appurtenance facilities, in, over, under and across the Street.

SECTION 6. This Resolution shall be effective only upon the occurrence of both of the following events: (1) adoption of the Resolution by the City Council; and (2) recording of the Resolution with County of Los Angeles County Recorder's Office.

SECTION 7. Resolution No. 11-65 is hereby repealed.

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

Lilia R. Leon, Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk



AGENDA REPORT

DATE: May 1, 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 - SECOND READING

RECOMMENDATION:

Approve and adopt the Ordinance and assign the number next in order.

MOTION:

1. Declare the Public Hearing open.
2. Declare the Public Hearing closed.
3. Move to read the Ordinance by title only.
4. Move to approve and adopt the Ordinance and assign the number next in order.

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. 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.

The City Council approved the Ordinance for 1st reading on April 17, 2012.

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.*

Respectfully submitted,



Jorge Rifa
City Administrator

Recommended by:



Alex Hamilton
Assistant Director of Community Development

Prepared by:



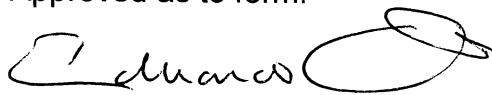
Gina Nila
Environmental Services Manager

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

DATE: May 1, 2012

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: AN UPDATE ON THE STATUS OF THE GREEN POLICY/GREEN ZONES AS PROPOSED BY THE ENVIRONMENTAL JUSTICE ADVISORY TASK FORCE.

RECOMMENDATION:

Receive and file.

MOTION:

Receive and file.

BACKGROUND AND ANALYSIS:

The City Council directed staff to work with the Environmental Justice Advisory Task Force (EJATF) to discuss and potentially develop a series of policy recommendations for consideration. These policies could eventually help serve to guide the City in its attainment of green economic development strategies, bringing into balance the human health problems associated with the environmental impacts of industrial and commercial land uses in a predominantly industrial community and the need to improve the environmental quality of life in Commerce.

The Environmental Protection Agency (EPA), Region 9, was asked by the EJATF to collaborate with them and the City on this matter. EPA has retained MIG Consulting (at their cost) to facilitate the discussions and input from stakeholders to develop a series of recommendations that will be presented to the City Council in the future.

Now that the contract to retain MIG Consulting has been approved a meeting with the core group of individuals from EJATF, the EPA, the City Administrator as well as other city staff, and MIG will be scheduled (tentatively) for the week of May 14th, to discuss the make-up of the stakeholders group and a schedule for this initiative to include milestones.

In the end, MIG will work with the group to achieve consensus on a common vision. Through the formal discussions and with the proper outreach, a final report will be prepared, including the need for a Green policy framework in the City of Commerce. It will include, amongst other things, all the necessary considerations and specific recommendations developed throughout the discussion process. At minimum, this process would take six to twelve months, with at least one meeting taking place per month.

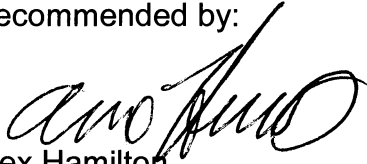
RELATIONSHIP TO 2009 STRATEGIC GOALS:

This agenda report relates to the 2009 strategic planning goal: *"Protect and Enhance the Quality of Life in the City of Commerce"*.

FISCAL IMPACT:

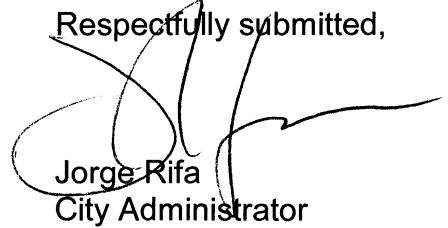
The purpose of this report is to provide information to the City Council. Therefore, the program discussed in it will not have an immediate additional impact on the current operating budget. The results of this program and further direction provided by the City Council will determine the future fiscal impact.

Recommended by:



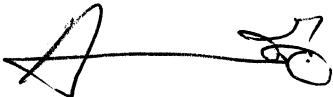
Alex Hamilton
Assistant Director of Community Development

Respectfully submitted,



Jorge Rifa
City Administrator

Fiscal Impact reviewed by:



Vilko Domic
Director of Finance

Approved as to Form



Eduardo Olivo
City Attorney



AGENDA REPORT

MEETING DATE: May 1, 2012

TO: HONORABLE CITY COUNCIL
FROM: CITY ADMINISTRATOR
SUBJECT: THE CENTRAL LIBRARY RENOVATION PROJECT – FUNDING HISTORY, BOND MONIES AND THE USES THEREOF

RECOMMENDATION:

Receive and File.

MOTION:

Move to approve the recommendation.

BACKGROUND:

The following is a timeline as it relates to the Central Library Project:

- Back in 2003, the City Council entertained the idea of making modifications to the Central Library. Dialogue ensued as to the scope of the project and what would be the funding mechanism to make this vision come to fruition.
- In FY 2003-04, the City Council approves **\$1.35 million** from General City reserves as seed money.
- In October 2004, the City Council approves a Lease Revenue Bond Issuance, generating just over **\$5.0 million** in acquisition proceeds.
- The proceeds were designated specifically for costs related to City Hall and/or Central Library expansion, and potentially any other capital improvement projects.
- In 2007, the City Council revisits the Central Library Renovation Project and designates **\$4.25 million** of the aforementioned bond monies to the project. This increases the total appropriation for this project to **\$5.6 million**.
- As part of the FY 2008-09 Capital Improvement Program budget process, the City Council appropriates an additional **\$1.0 million** from General City reserves to address additional structural concerns related to the roof spanning across both the library and city hall, increasing the total appropriation for the project to **\$6.6 million**.
- As of January 9, 2012, the City has expended approximately **\$1.24 million** on this project, leaving a balance of **\$5.36 million**.
- Reflective of the unfavorable bids that were received, the City Council requested that they re-visit the current scope and funding of the project. Staff returned on February 16, 2012 with 4 alternatives:
 - Alternative 1 – Value Engineer to meet the existing budget
 - Alternative 2 – Re-Design reflective of a budget decreased by \$1.5 to \$2.0 million
 - Alternative 3 – Postpone to a future year
 - Alternative 4 – Terminate / Cancel the project

The City Council decided to proceed with Alternative 2, thus lowering the project cost to **\$4.84 million**. With expenditures to-date of **\$1.24 million**, **\$3.6 million** of the remaining **\$4.66 million** in bond funds became the new appropriation, releasing (at the Council's discretion) approximately **\$1.0 million** to be re-allocated for other capital improvement projects.

ANALYSIS:

Over the last three budget cycles, the City Council and staff have been questioned as to the need of expending that level of funds while the City is making staff and program reductions. Why not use those funds to address the shortfall as opposed to impacting personnel and the programs that serve the community?

Definition of Bond Issue?

Very similar to house mortgage. Bonds sold by a corporation or government agency at a particular time and by date of maturity. This is done so in order to raise money for a specific project (acquisition cost); the issuer is required to pay a fixed sum annually (principle and interest) until maturity.

Definition of an Acquisition Cost?

With respect to any facilities to be acquired, constructed or installed under provisions stated in the bond documents, it is specific to all costs related to construction project. In this case, all costs related to the Central Library Renovation project.

Can these funds be used for other expenses unrelated to the Capital Improvement Project for which the funds were originally intended?

No they cannot. These are one-time funds designated for a specific purpose.

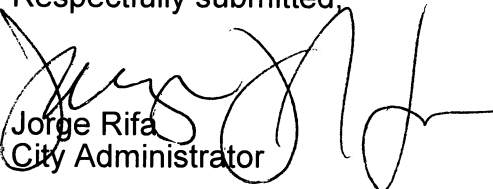
If the City decided to expend some of the bond funds on items outside the provisions as set forth in the bond documents, it could be determined such that the City is in non-compliance and face penalties from several governmental and non-governmental agencies.

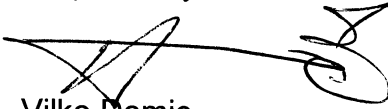
FISCAL IMPACT:

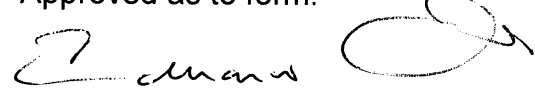
As a result of the action taken by the City Council on February 16, the Central Library Renovation Project will be scaled down from its original appropriation of **\$6.6 million** to **\$4.84 million**. With this decision, approximately **\$1.0 million** in bond funds can be re-allocated to address deficiencies in other areas of need.

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

Prepared by:

Vilko Domic
Director of Finance / City Treasurer

Approved as to form:

Eduardo Olivo
City Attorney



AGENDA REPORT

DATE: May 1, 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:

Traffic Commission

Councilmember Altamirano


Environmental Justice Advisory Task Force

Councilmember Altamirano

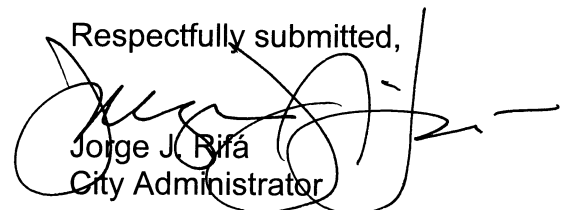
FISCAL IMPACT:

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


Recommended by:


Linda Kay Olivieri
City Clerk

Respectfully submitted,


Jorge J. Rifa
City Administrator

Prepared by:


Victoria M. Alexander
Deputy City Clerk

