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**Agendas and other writings that will be distributed to the Councilmembers and Commissioners 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 COMMERCE COMMUNITY DEVELOPMENT COMMISSION  
COUNCIL CHAMBERS  
5655 JILLSON STREET, COMMERCE, CALIFORNIA**

**TUESDAY, AUGUST 16, 2011 – 6:30 P.M.**

**CALL TO ORDER**

Mayor/Chairperson Aguilar

**PLEDGE OF ALLEGIANCE**

Danilo Batson  
Assistant Director of Public Services

**INVOCATION**

Councilmember/Commission Leon

**ROLL CALL**

Deputy City Clerk Alexander

**APPEARANCES AND PRESENTATIONS**

**1. Citadel Clean Up Event**

At the request of Councilmember Fierro, the **City Council** will receive a presentation from Steve Craig, of Craig Realty Group, owner of The Citadel, who will acknowledge local businesses and youth groups who contributed generously to or participated in The Citadel Clean Up Event held on Saturday, August 6, 2011. Mr. Craig will also present checks to the youth groups in recognition of their participation in this event.

**PUBLIC COMMENT**

Citizens wishing to address the City Council/Commission 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/Commission 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/Commission 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/Commission. Request to address City Council/Commission cards are provided by the City Clerk/Assistant Secretary. If you wish to address the City Council/Commission at this time, please complete a speaker's card and give it to the City Clerk/Assistant Secretary prior to commencement of the City Council/Commission meeting. Please use the microphone provided, clearly stating your name and address for the official record and courteously limiting your remarks to five (5) minutes so others may have the opportunity to speak as well.

# CONCURRENT REGULAR COUNCIL/CDC AGENDA

8/16/11 – 6:30 p.m.

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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/COMMISSION 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/Commissioner 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.

#### 2. Approval of Minutes

The **City Council and Commission** will consider for approval, respectively, the minutes of the Concurrent Adjourned Regular Meetings of Monday, August 1, 2011, held at 6:30 p.m.; Concurrent Regular Meetings of Tuesday, August 2, 2011, held at 6:30 p.m. and Concurrent Adjourned Regular Meetings of Wednesday, August 3, 2011, held at 1:30 p.m.

#### 3. Approval of Warrant Registers No. 24 and No. 4

The **City Council and Commission** will consider for approval, respectively, the bills and claims set forth in Warrant Register No. 24A, dated August 15, 2011; No. 4A, dated August 16, 2011, and No. 4B, for the period August 3, 2011, to August 11, 2011.

#### 4. Commendation – Commending Landon Cadenas for An Act of Heroism in Saving Individuals From a Burning Vehicle on August 8, 2011

The **City Council** will consider for approval a Commendation acknowledging City employee Landon Cadenas for an act of heroism in saving the lives of individuals from a burning vehicle on August 8, 2011.

#### 5. A Resolution of the City Council of the City of Commerce, California, Finding the City to be in Conformance with the Congestion Management Program (CMP) and Adopting the CMP Local Development Report, in Accordance with California Government Code Section 65089

The Congestion Management Program (CMP) requires that local jurisdictions self certify that they are in conformance with all local CMP requirements by submitting a Local Development Report by September 1 of each year.

The **City Council** will consider for approval and adoption a proposed Resolution finding the City to be in conformance with the Congestion Management Program (CMP) and adopting the CMP Local Development Report in accordance with California Government Code Section 65089.

#### 6. A Resolution of the City Council of the City of Commerce, California, Approving an Assignment Agreement Between CWS Utility Services and the California Water Service Company Regarding the City's Water Lease Agreement

CWS Utility Services ("CWSUS") has notified the City that new regulations of the California Public Utilities Commission ("CPUC") require CWSUS to

# CONCURRENT REGULAR COUNCIL/CDC AGENDA

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assign its Sewer Billing Agreement to California Water Services Company (“CWS”).

The **City Council** will consider for approval and adoption a proposed Resolution approving an Assignment Agreement between CWS Utility Services (“CWSUS”), the California Water Service Company (“CWS”) and the City of Commerce (“Commerce”) regarding the City’s Water Lease Agreement, which was executed on October 1, 2002.

## SCHEDULED MATTERS

### 7. Assembly Bill 811, California Property Assessed Clean Energy (“PACE”)

The **City Council** will consider for approval, scheduling a presentation on the California PACE Program for business energy and water efficiency updates.

### 8. Award of Cash Contract No. 1102 – Street Sweeping Services and Other Matters Related Thereto

The **City Council** will consider for, and take the appropriate action as deemed necessary with respect to, the award of Cash Contract No. 1102 – Street Sweeping Services and other matters related thereto.

### 9. City Committee Appointments

The **City Council** will make the appropriate appointments to the following City Committees: Beautification Committee and Housing Committee.

## ORDINANCES AND RESOLUTIONS

### 10. An Ordinance of the City Council of the City of Commerce, California, Determining That it Will Comply With the “Voluntary Alternative Redevelopment Program” Pursuant to Part 1.9 of Division 24 of the California Health and Safety Code in Order to Permit the Continued Existence and Operation of the Commerce Community Development Commission – Second Reading

The **City Council** will consider for approval and adoption a proposed Ordinance determining that it will comply with the “Voluntary Alternative Redevelopment Program”, pursuant to Part 1.9 of Division 24 of the California Health and Safety Code, in order to permit the continued existence and operation of the Commerce Community Development Commission.

The proposed Ordinance was approved for first reading on August 1, 2011.

### 11. An Ordinance of the City Council of the City of Commerce, California, Amending Section 8.06.050 of Chapter 8.06 of the Commerce Municipal Code Regarding Dangerous Animals – First Reading

Chapter 8.06 of the Commerce Municipal Code relates to the City’s procedures for impounding dangerous animals. The current Section 8.06.050 states that decisions made by the Chief Animal Control Officer may be appealed to the City Council. The amendment presented will provide for an appeal to the City Administrator instead of the City Council. This process will be more efficient and effective.

The **City Council** will consider for first reading a proposed Ordinance amending Section 8.06.050 of Chapter 8.06 of the Commerce Municipal Code regarding dangerous animals.

## CONCURRENT REGULAR COUNCIL/CDC AGENDA

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12. A Resolution of the City Council of the City of Commerce, California, Awarding a Professional Services Agreement for Construction Management Services to Swinerton Management and Consulting

The **City Council** will consider for approval and adoption a proposed Resolution awarding a Professional Services Agreement to Swinerton Management and Consulting for construction management services in association with the City's Capital Improvement Projects (CIP) and other matters related thereto.

13. A Resolution of the City Council of the City of Commerce, California, Awarding a Contract to Ron's Maintenance, Inc. for Maintenance and Repair of Catch Basin Screen Inserts

The **City Council** will consider for approval and adoption a proposed Resolution awarding a contract to Ron's Maintenance, Inc. for the maintenance and repair of catch basin screen inserts.

### PUBLIC HEARINGS

14. Public Hearing – A Resolution of the City Council of the City of Commerce, California, Setting Forth its Findings of Fact For the Vacation of a Portion of Boxford Avenue That Bisepts Approximately 19 Acres of Private Property Located at 3415 Boxford With Frontage Along Slauson Avenue, in the City of Commerce With Reservations

The **City Council** will conduct a public hearing on, and thereafter consider for approval and adoption, a proposed Resolution setting forth its findings of fact for the vacation of a portion of Boxford Avenue that bisepts approximately 19 acres of private property located at 3415 Boxford with frontage along Slauson Avenue, in the City of Commerce with reservations. The subject private property is owned by Safeway/Vons, who has a food manufacturing and processing plant at the location.

The public hearing, as duly advertised and posted in accordance with State law, was continued from July 5, 2011.

15. Public Hearing – An Ordinance of the City Council of the City of Commerce, California, Amending Title 19 ("Zoning") of the Commerce Municipal Code, Table 19.11.030 (5. Transportation-related Uses, Notes and Exceptions) – First Reading

The Commerce Municipal Code currently fails to provide the City with the ability to require a Conditional Use Permit (CUP) for most warehouse projects. The requirement of a CUP for large warehouse structure projects will provide the City with more oversight and enable it to be better prepared to identify, consider and assure the mitigation of adverse impacts that may be caused to the surrounding community.

The **City Council** will conduct a public hearing on, and thereafter consider for first reading, a proposed Ordinance amending Title 19 ("Zoning") of the Commerce Municipal Code, Table 19.11.030 (5. Transportation-related Uses, Notes and Exceptions).

16. Public Hearing – An Ordinance of the City Council of the City of Commerce, California, Amending Title 19 ("Zoning") of the Commerce Municipal Code, Section 19.37.120A (Nonconforming Uses—Abandonment) – First Reading

The City recognizes the need to accommodate the rapidly-changing demands of the business community and desires to take action to provide

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the business community with more time to address tenant vacancies without unintentionally and prematurely losing their legal non-conforming use status.

The **City Council** will conduct a public hearing on, and thereafter consider for approval, a proposed Ordinance amending Title 19 (“Zoning”) of the Commerce Municipal Code, Section 19.37.120A (Nonconforming Uses - Abandonment).

## CIP PROGRESS REPORT

## LEGISLATIVE UPDATE

## I-710 LOCAL ADVISORY COMMITTEE UPDATE

## RECESS TO CLOSED SESSION

### 17. Pursuant to Government Code §54956.8,

- A. The **Commission** will confer with its real property negotiators, Jorge Rifá, Bob Zarrilli and John Yonai, with respect to real estate negotiations with Commerce Hyundai, including proposed price and other terms, concerning Commission-owned real property located at 5440 and 5540 Telegraph Road, Commerce, California.

### 18. Pursuant to Government Code §54956.9(a),

- A. The **City Council** will confer with its legal counsel and take the appropriate action, with respect to the pending litigation of Assembledge, Inc. v. City of Commerce, Superior Court of the State of California, County of Los Angeles, Central District, Case No. BC442410.
- B. The **City Council** will confer with its legal counsel and take the appropriate action, with respect to the pending litigation of Commerce City Employees Association v. City of Commerce, State of California, Public Employment Relations Board, Unfair Practice Charge No. LA-CE-636-M.

### 19. Pursuant to Government Code §54956.9(b),

- A. The **City Council** will confer with its legal counsel, and take the appropriate action, with respect to significant exposure to litigation in five potential cases.
- B. The **Commission** will confer with its legal counsel, and take the appropriate action, with respect to significant exposure to litigation in one potential case.

### 20. Pursuant to Government Code §54957,

- A. The **City Council** will consider personnel matters related to the evaluation and/or appointment of a Director of Transportation.

### 21. Pursuant to Government Code §54957.6,

- A. The **City Council** will confer with its labor negotiator, Jorge Rifá, with respect to labor negotiations pertaining to the Memoranda of Understanding between the City and the City of Commerce Employees Association on behalf of the mid-management and non-management full-time employees and part-time employees.

**ADJOURNMENT**

**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: August 16, 2011

**TO:** Honorable City Council  
**FROM:** City Administrator  
**SUBJECT:** CITADEL CLEAN UP EVENT

**RECOMMENDATION:**

Receive and file

**MOTION:**

Move to approve the recommendation.

**BACKGROUND:**

On Saturday, August 6, 2011, the Citadel Outlets sponsored a summer cleanup event that brought together volunteers and local businesses to make our community sparkle. At the request of Councilmember Fierro, tonight's presentation offers Council the opportunity to acknowledge all involved and for Mr. Steve Craig to present checks to groups that attended.

**ANALYSIS:**

On Saturday, August 6, 2011, the Citadel Outlets sponsored a summer cleanup event, from 6:00 a.m. to 1:00 p.m., in the beautification district between the Citadel Outlets and the Commerce Casino/Crowne Plaza Hotel. Volunteers from the Commerce Men's Water Polo Team; Teen Center; Saint Marcellinus Church; and several City Councilmembers and Commissioners worked tirelessly, picking up trash and removing debris in the area bordered by Camfield Avenue, Flotilla Street, Smithway Street, Tubeway Avenue, and Telegraph Road.

Several local businesses also contributed generously to the cleanup effort, as follows:

- The City of Commerce Graffiti Crew and Bruin Painting skillfully removed graffiti from the warehouses behind Flotilla Street;
- Ben's Asphalt filled potholes, between Tubeway Avenue on the east side of the project area to Smithway Street to the north; and
- CalMet Services donated thirteen 40-foot-long dumpsters for the event.

Other companies who donated time and resources included J. A. Stowell Construction, Apple Inc. Landscapers, and the Craig Realty Group. Participants enjoyed breakfast and lunch, prepared by Ruby's Diner and the event provided an opportunity to educate teens about the impact of littering and graffiti.

Steve Craig will be presenting checks to the following groups for their participation in the cleanup event:

Commerce Water Polo	15 people	\$1500
Commerce Teen Center	3 people	\$300
St. Marcellinus Catholic Church	17 people	\$1700

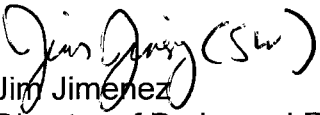
**FISCAL IMPACT:**

No fiscal impact is associated with this presentation.

**RELATIONSHIP TO 2011 STRATEGIC GOALS:**

The cleanup event is associated with Council's goal of protecting and enhancing the quality of life in the City of Commerce.

Recommended by:

  
Jim Jimenez  
Director of Parks and Recreation

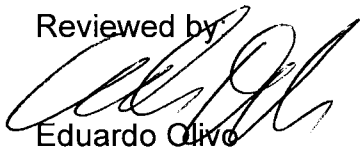
Respectfully submitted,

  
Jorge Rifa  
City Administrator

Fiscal Impact reviewed by:

  
Vilko Domic  
Director of Finance

Reviewed by

  
Eduardo Olive  
City Attorney





# AGENDA REPORT

Meeting Date: August 16, 2011

**TO:** Honorable City Council

**FROM:** City Administrator

**SUBJECT:** COMMENDATION – COMMENDING LANDON CADENAS FOR AN ACT OF HEROISM IN SAVING TWO INDIVIDUALS FROM A BURNING VEHICLE ON AUGUST 8, 2011

**RECOMMENDATION:**

Approve the commendation.

**MOTION:**

Move to approve the recommendation.

**BACKGROUND:**

On the night of August 8, 2011, at approximately 10:45 pm, Mr. Landon Cadenas came upon a Ford Excursion that had flipped several times and burst into flames on the Beach Boulevard off-ramp from the 5 Freeway in Buena Park.

Landon Cadenas pulled over to help and was able to pull a female passenger from the burning vehicle.

"I ran over there, opened the door, and I heard a lady screaming and saw a female trying to pull a girl out, so I just helped her by pulling the female that was in the car out of the window," Cadenas said.

Three other women who were thrown from the car were pronounced dead at the scene. The other two victims, the driver and a 17-year-old passenger, were taken to UC Irvine Medical Center in critical condition.

**ANALYSIS:**

The quick action and disregard for his own safety by Mr. Cadenas help save the life of an individual who needed a hero to act.

Mr. Landon Cadenas was raised in Commerce and works as a Recreation Leader for the City and has always been an exemplary resident, employee and mentor for the youth of Commerce. The City is fortunate to have an individual like this that we can call a resident and employee of the City. Commendation will be presented to Mr. Cadenas at a later date.

**FISCAL IMPACT:**

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

Recommended by:

Jim Jimenez  
Director of Parks and Recreation

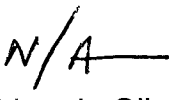
Respectfully submitted,

Jorge Rifá  
City Administrator

Reviewed by:

  
Vilko Domic  
Director of Finance

Approved as to form:

  
Eduardo Olivo  
City Attorney



# AGENDA REPORT

DATE: August 16, 2011

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE FINDING THE CITY TO BE IN CONFORMANCE WITH THE CONGESTION MANAGEMENT PROGRAM (CMP) AND ADOPTING THE CMP LOCAL IMPLEMENTATION REPORT IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 65089

RECOMMENDATION:

To approve the Resolution.

MOTIONS:

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

BACKGROUND/ANALYSIS:

The Congestion Management Program (CMP) requires that by September 1, 2011, local jurisdictions self certify that they are in conformance with all local CMP requirements by submitting a Local Implementation Report. Those local responsibilities are (1) the continued implementation of CMP Transportation Demand Management (TDM) Ordinance; (2) the continued implementation of a Land Use Analyze Program; (3) that by June 1, 2010 thru May 31, 2011, the City began tracking new development activity, consistent with the requirements identified in the CMP. This information will be annually tabulated, as the basis for establishing the City's mitigation responsibility under the Countywide Deficiency Plan.

The MTA will then determine our conformance with the CMP. The Local Implementation Report plays a key role in assessing a jurisdiction's adherence to the CMP responsibilities. The conformance with the CMP will assure the continued flow of Section 2105 gas tax funds, and reserves the eligibility for state and federal transportation programming funds.

FISCAL IMPACT:

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

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."* There are no specific objectives connected to this issue. The City is responsible for ensuring conformance with the Congestion Management Plan.

Recommended by:

Bob Zarilli  
Director of Community Development

Respectfully submitted,

Jorge Rifa  
City Administrator

Approved as to Form

Eduardo Olivo  
City Attorney



RESOLUTION NO. 11-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, FINDING THE CITY TO BE IN CONFORMANCE WITH THE CONGESTION MANAGEMENT PROGRAM (CMP) AND ADOPTING THE CMP LOCAL DEVELOPMENT REPORT, IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 65089

WHEREAS, CMP statute requires the Los Angeles County Metropolitan Transportation Authority ("LACMTA"), acting as the Congestion Management Agency for Los Angeles County, to annually determine that the County and cities within the County are conforming to all CMP requirements; and

WHEREAS, LACMTA requires submittal of the CMP Local Development Report by September 1 of each year; and

WHEREAS, the City Council held a public meeting on August 16, 2011, and

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

Section 1. That the City has taken all of the following actions, and that the City is in conformance with all applicable requirements of the 2004 CMP adopted by the LACMTA Board on July 22, 2004.

The City has locally adopted and continues to implement a transportation demand management ordinance, consistent with the minimum requirements identified in the CMP Transportation Demand Management Chapter.

The City has locally adopted and continues to implement a land use analysis program, consistent with the minimum requirements identified in the CMP Land Use Analysis Program Chapter.

The City has adopted a Local Development Report, attached hereto and made a part hereof, consistent with the requirements identified in the 2004 CMP. This report balances traffic congestion impacts due to growth within the City with transportation improvements, and demonstrates that the City is meeting its responsibilities under the Countywide Deficiency Plan consistent with the LACMTA Board adopted 2003 Short Range Transportation Plan.

Section 2. That the City Clerk shall certify to the adoption of this Resolution and shall forward a copy of this Resolution to the Los Angeles County Metropolitan Transportation Authority.

PASSED, APPROVED AND ADOPTED this 16TH day of August, 2011.

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Joe Aguilar, Mayor

ATTEST:

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Linda Kay Olivieri, MMC  
City Clerk

8-16-11cmp reso



Contact: Bob Zarrilli  
 Phone Number: 323-722-4805

**CONGESTION MANAGEMENT PROGRAM  
 FOR LOS ANGELES COUNTY**

**2011 DEFICIENCY PLAN SUMMARY**

**\* IMPORTANT: All "#value!" cells on this page are automatically calculated.  
 Please do not enter data in these cells.**

**DEVELOPMENT TOTALS**

**RESIDENTIAL DEVELOPMENT ACTIVITY**

**Dwelling Units**

Single Family Residential	11.00
Multi-Family Residential	0.00
Group Quarters	0.00

**COMMERCIAL DEVELOPMENT ACTIVITY**

**1,000 Net Sq.Ft.<sup>2</sup>**

Commercial (less than 300,000 sq.ft.)	(85.98)
Commercial (300,000 sq.ft. or more)	0.00
Freestanding Eating & Drinking	0.00

**NON-RETAIL DEVELOPMENT ACTIVITY**

**1,000 Net Sq.Ft.<sup>2</sup>**

Lodging	0.00
Industrial	0.00
Office (less than 50,000 sq.ft.)	0.00
Office (50,000-299,999 sq.ft.)	0.00
Office (300,000 sq.ft. or more)	0.00
Medical	0.00
Government	0.00
Institutional/Educational	0.00
University (# of students)	0.00

**OTHER DEVELOPMENT ACTIVITY**

**Daily Trips**

ENTER IF APPLICABLE	0.00
ENTER IF APPLICABLE	0.00

**EXEMPTED DEVELOPMENT TOTALS**

Exempted Dwelling Units	0
Exempted Non-residential sq. ft. (in 1,000s)	0

2. Net square feet is the difference between new development and adjustments entered on pages 2 and 3.

**City of Commerce**  
**2011 CMP Local Development Report**  
**Reporting Period: JUNE 1, 2010 - MAY 31, 2011**

Date Prepared: August 3, 2011

Enter data for all cells labeled "Enter." If there are no data for that category, enter "0."

**PART 1: NEW DEVELOPMENT ACTIVITY**

**RESIDENTIAL DEVELOPMENT ACTIVITY**

Category	Dwelling Units
Single Family Residential	11.00
Multi-Family Residential	0.00
Group Quarters	0.00

**COMMERCIAL DEVELOPMENT ACTIVITY**

Category	1,000 Gross Square Feet
Commercial (less than 300,000 sq.ft.)	5.52
Commercial (300,000 sq.ft. or more)	0.00
Freestanding Eating & Drinking	0.00

**NON-RETAIL DEVELOPMENT ACTIVITY**

Category	1,000 Gross Square Feet
Lodging	0.00
Industrial	0.00
Office (less than 50,000 sq.ft.)	0.00
Office (50,000-299,999 sq.ft.)	0.00
Office (300,000 sq.ft. or more)	0.00
Medical	0.00
Government	0.00
Institutional/Educational	0.00
University (# of students)	0.00

**OTHER DEVELOPMENT ACTIVITY**

Description (Attach additional sheets if necessary)	Daily Trips (Enter "0" if none)
ENTER IF APPLICABLE	0.00
ENTER IF APPLICABLE	0.00



**City of Commerce**  
**2011 CMP Local Development Report**  
**Reporting Period: JUNE 1, 2010 - MAY 31, 2011**

Date Prepared: August 3, 2011

Enter data for all cells labeled "Enter." If there are no data for that category, enter "0."

**PART 2: NEW DEVELOPMENT ADJUSTMENTS**

IMPORTANT: Adjustments may be claimed only for 1) development permits that were both issued and revoked, expired or withdrawn during the reporting period, and 2) demolition of any structure with the reporting period.

**RESIDENTIAL DEVELOPMENT ADJUSTMENTS**

Category	Dwelling Units
Single Family Residential	0.00
Multi-Family Residential	0.00
Group Quarters	0.00

**COMMERCIAL DEVELOPMENT ACTIVITY**

Category	1,000 Gross Square Feet
Commercial (less than 300,000 sq.ft.)	91.50
Commercial (300,000 sq.ft. or more)	0.00
Freestanding Eating & Drinking	0.00

**NON-RETAIL DEVELOPMENT ACTIVITY**

Category	1,000 Gross Square Feet
Lodging	0.00
Industrial	0.00
Office (less than 50,000 sq.ft.)	0.00
Office (50,000-299,999 sq.ft.)	0.00
Office (300,000 sq.ft. or more)	0.00
Medical	0.00
Government	0.00
Institutional/Educational	0.00
University (# of students)	0.00

**OTHER DEVELOPMENT ACTIVITY**

Description (Attach additional sheets if necessary)	Daily Trips (Enter "0" if none)
ENTER IF APPLICABLE	0.00
ENTER IF APPLICABLE	0.00

Enter data for all cells labeled "Enter." If there are no data for that category, enter "0."

**PART 3: EXEMPTED DEVELOPMENT ACTIVITY**  
 (NOT INCLUDED IN NEW DEVELOPMENT ACTIVITY TOTALS)

Low/Very Low Income Housing	<input type="text" value="0"/>	Dwelling Units
High Density Residential Near Rail Stations	<input type="text" value="0"/>	Dwelling Units
Mixed Use Developments Near Rail Stations	<input type="text" value="0"/>	1,000 Gross Square Feet
	<input type="text" value="0"/>	Dwelling Units
Development Agreements Entered into Prior to July 10, 1989	<input type="text" value="0"/>	1,000 Gross Square Feet
	<input type="text" value="0"/>	Dwelling Units
Reconstruction of Buildings Damaged due to "calamity"	<input type="text" value="0"/>	1,000 Gross Square Feet
	<input type="text" value="0"/>	Dwelling Units
Reconstruction of Buildings Damaged in Jan. 1994 Earthquake	<input type="text" value="0"/>	1,000 Gross Square Feet
	<input type="text" value="0"/>	Dwelling Units
Total Dwelling Units	<input type="text" value="0"/>	
Total Non-residential sq. ft. (in 1,000s)	<input type="text" value="0"/>	

**Exempted Development Definitions:**

- Low/Very Low Income Housing: As defined by the California Department of Housing and Community Development as follows:
  - Low-Income: equal to or less than 80% of the County median income, with adjustments for family size.
  - Very Low-Income: equal to or less than 50% of the County median income, with adjustments for family size.
- High Density Residential Near Rail Stations: Development located within 1/4 mile of a fixed rail passenger station and that is equal to or greater than 120 percent of the maximum residential density allowed under the local general plan and zoning ordinance. A project providing a minimum of 75 dwelling units per acre is automatically considered high density.
- Mixed Uses Near Rail Stations: Mixed-use development located within 1/4 mile of a fixed rail passenger station, if more than half of the land area, or floor area, of the mixed use development is used for high density residential housing.
- Development Agreements: Projects that entered into a development agreement (as specified under Section 65864 of the California Government Code) with a local jurisdiction prior to July 10, 1989.
- Reconstruction or replacement of any residential or non-residential structure which is damaged or destroyed, to the extent of > or = to 50% of its reasonable value, by fire, flood, earthquake or other similar calamity.
- Any project of a federal, state or county agency that is exempt from local jurisdiction zoning regulations and where the local jurisdiction is precluded from exercising any approval/disapproval authority. These locally precluded projects do not have to be reported in the LDR.



# AGENDA REPORT

MEETING DATE: August 16, 2011

**TO:** HONORABLE CITY COUNCIL

**FROM:** CITY ADMINISTRATOR

**SUBJECT:** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING AN ASSIGNMENT AGREEMENT BETWEEN CWS UTILITY SERVICES AND THE CALIFORNIA WATER SERVICE COMPANY REGARDING THE CITY'S WATER LEASE AGREEMENT

**RECOMMENDATION:**

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

**MOTION:**

Move to approve the recommendation.

**BACKGROUND/ANALYSIS:**

On October 1, 2002 CWS Utility Services ("CWSUS") and the City of Commerce (the "City") executed a Water System Lease Agreement for CWSUS to lease and operate the City's water system. CWSUS has advised the City that new regulations of the California Public Utilities Commission ("CPUC") require CWSUS to assign their Sewer Billing Agreement to California Water Service Company ("CWS"). Pursuant to the assignment agreement, CWSUS will assign all of its rights, obligations, and liabilities under the Water Lease Agreement to CWS, and CWS will accept such assignment ("Assignment"). The City Attorney has reviewed the request by CWSUS and recommends that the City approve the assignment agreement.

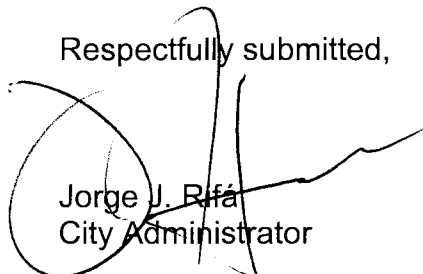
**FISCAL IMPACT:**

There will be no fiscal impact to the City as a result of the approval of the assignment agreement and this activity can be carried out without additional impact to the current operating budget.

**RELATIONSHIP TO 2009 STRATEGIC GOALS:**

This item does not relate to a specific goal.

Respectfully submitted,



Jorge J. Rifa  
City Administrator

Recommended by:



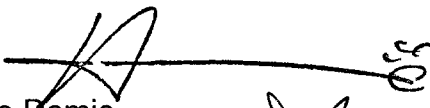
Bob Zarrilli  
Director of Community Development

Prepared by:



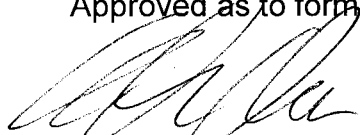
Danilo Batson  
Assistant Director of Public Services

Fiscal impact reviewed by:



Vilko Domic  
Director of Finance

Approved as to form:



Eduardo Olivo  
City Attorney

SUM (RESO – ASSIGNMENT AGMT – CWS UTILITY SRVCS & CAL WATER – CITY WATER LEASE AGMT) – 08-16-2011.DOC

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA,  
APPROVING AN ASSIGNMENT AGREEMENT BETWEEN CWS UTILITY SERVICES  
AND THE CALIFORNIA WATER SERVICE COMPANY REGARDING THE CITY'S  
WATER LEASE AGREEMENT

WHEREAS, the City of Commerce (the "City") and CWS Utility Services ("CWSUS") entered into a Water System Lease Agreement (the "Water Lease Agreement") on October 1, 2002, pursuant to which CWSUS operates the City's Water System; and

WHEREAS, new regulations of the California Public Utilities Commission ("CPUC") have prompted CWSUS to request the assignment of the Sewer Billing Agreement to California Water Service Company ("CWS"); and

WHEREAS, CWSUS has advised the City that, pursuant to the new CPUC regulations, it will to assign all of its rights, obligations, and liabilities under the Water Lease Agreement to CWS (the "Assignment"); and

WHEREAS, CWSUS has provided the City with a copy of the Assignment Agreement and has requested that, as required by the Water System Lease Agreement, the City authorize and approve the Assignment Agreement.

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

Section 1. The City Council hereby approves the Assignment Agreement with CWSUS and CWS. The Mayor is hereby authorized to execute the Assignment Agreement for and on behalf of the City of Commerce.

PASSED, APPROVED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Joe Aguilar  
Mayor

ATTEST:

\_\_\_\_\_  
Linda Kay Olivieri, MMC  
City Clerk



## ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT, made and entered into as of this \_\_\_\_ day of March 2011, by and between:

CWS Utility Services ("CWSUS"), a corporation duly organized and existing under the laws of California and having its head office located at 1720 North First Street, San Jose, California 95112;

California Water Service Company ("CWS"), a corporation duly organized and existing under the laws of California and having its head office located at 1720 North First Street, San Jose, California 95112; and

City of Commerce ("Commerce"), a municipal corporation in the State of California located at 2535 Commerce Way, Commerce, CA 90040;

(CWS, CWSUS and Commerce shall individually be referred to as a "Party" and collectively as the "Parties".)

### WITNESSETH:

WHEREAS, CWSUS and Commerce executed a *Water System Lease Agreement between the City of Commerce and CWS Utility Services* ("Water Lease Agreement") on October 1, 2002 for CWSUS to lease and operate the water system of Commerce;

WHEREAS, new regulations of the California Public Utilities Commission have prompted CWSUS to request the assignment of the Sewer Billing Agreement to CWS, an investor-owned public utility and affiliate of CWSUS;

NOW, THEREFORE, intending to be bound, the Parties hereto agree as follows:

---

### Article 1. Assignment

1.1 CWSUS hereby assigns all of its rights, obligations, and liabilities under the Water Lease Agreement to CWS, and CWS hereby accepts such assignment ("Assignment"). Insofar as rights and obligations under the Water Lease Agreement from the date of execution of this Assignment Agreement are concerned, references to CWSUS therein shall be deemed replaced with references to CWS.

1.2 As of the date of execution of this Assignment Agreement, CWSUS shall have no further rights, obligations, and liabilities of any kind whatsoever under the Water Lease Agreement, and the Water Lease Agreement, including the terms, conditions, covenants, agreements, and exhibits contained therein, shall be binding only on CWS and Commerce.

**Article 2. Consent to Assignment by the City of Commerce**

Pursuant to the foregoing terms and conditions, and pursuant to Section 20.10 of the Water Lease Agreement, Commerce hereby grants its consent to the Assignment.

**Article 3. Continued Effectiveness**

Except as otherwise provided herein, all terms and conditions of the Water Lease Agreement shall remain effective.

**Article 4. General**

4.1 This Assignment Agreement contains the entire understanding among the Parties hereto with respect to the matters covered herein and supersedes and cancels any prior understanding with respect to the matters covered herein.

4.2 No changes, alterations or modifications hereto shall be effective unless made in writing and signed by all the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Assignment Agreement to be executed in duplicate by their duly authorized representatives as of the date first written above; and each Party shall keep one copy, respectively.

**CALIFORNIA WATER SERVICE  
COMPANY**

**CITY OF COMMERCE**

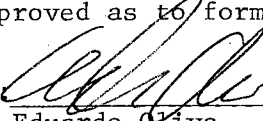
By: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: \_\_\_\_\_ Name: Joe Aguilar  
Title: \_\_\_\_\_ Title: Mayor

Agreed and Accepted by:

**CWS UTILITY SERVICES**

Approved as to form:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By:  \_\_\_\_\_  
Eduardo Olivo  
City Attorney





# AGENDA REPORT

MEETING DATE: August 16, 2011

**TO:** Honorable City Council

**FROM:** City Administrator

**SUBJECT:** AB 811, California Property Assessed Clean Energy ("PACE")

**RECOMMENDATION:**

It is recommended that the City Council consider scheduling a presentation on the California PACE Program for business energy and water efficiency updates.

**MOTION:**

Council Discretion

**BACKGROUND/ANALYSIS:**

In June of 2008, the Governor of California signed into law Assembly Bill 811. The legislation provided cities and counties the legal capacity to assist property owners within their respective jurisdictions to finance energy and water retrofits through the formation of assessment districts and enable voluntary contractual assessments. Enclosed for your review is a packet of information that staff received earlier this summer from the program administrators, "Public Finance Solutions & Engineering" (PFSE). The City was contacted by PFSE who requested that we review their program based on some interest from the Commerce business community. Staff has conducted a preliminary review of the legal and economic aspects of this initiative. The initial impression is that the City can be legally protected yet also stimulate some improvements to private property which would result in energy efficiency and conservation as well as employment related to the retrofit work. This can also be characterized as economic development with a "green" emphasis. Staff continues to gather information regarding the City's role, its risk exposure and any other related impacts.

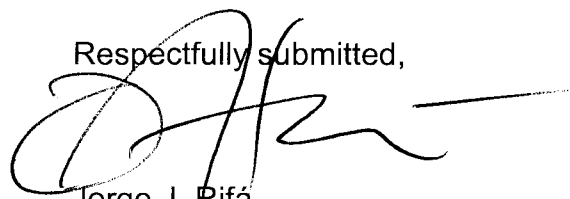
At this time, there is no risk to the Council and the City to receive a presentation on the PACE program to understand how it may be beneficial to Commerce business and commercial/business properties within the City.

**FISCAL IMPACT**

There is no fiscal impact to the City to receive the presentation. Further financial impact information would be provided as part of a more detailed presentation.

**RELATIONSHIP TO STRATEGIC GOALS:**

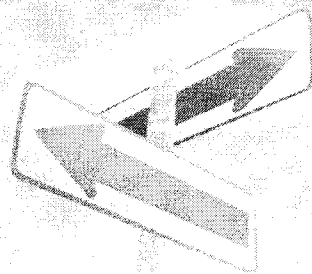
Goal #2 – Protect and Enhance the Quality of Life in the City of Commerce; and  
Goal #3 – Make Financial and Economically Sound Decisions Consistent with Economic Conditions

Respectfully submitted,  
  
Jorge J. Rifá  
City Administrator

Attachments PACE Program Literature



# MAKING CHANGES FOR A CLEANER TOMORROW



## CALIFORNIA PACE PROGRAM

### Executive Summary

To address current needs for energy and water efficiency in California, the contents of this document provide a quick overview of how to implement the California PACE clean energy financing solution for property owners in your community.

Public Finance Solutions &  
Engineering  
9915 Mira Mesa Boulevard,  
Suite 130  
San Diego, CA 92131  
877-577-7373  
[www.CityEnergySavings.com](http://www.CityEnergySavings.com)



## Contents

Financing Local Opportunity .....	1
Introducing Property Assessed Clean Energy .....	1
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Expert Management and Support .....	2
Financing Method .....	2
Assessment Financing Process.....	3
Joining California PACE Is Simple .....	4
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California PACE Financing Team .....	6

**Exhibit A**— California PACE Process Flowchart

**Exhibit B**— California PACE Term Sheet

# With California PACE, Clean Energy Retrofit Financing is available today.

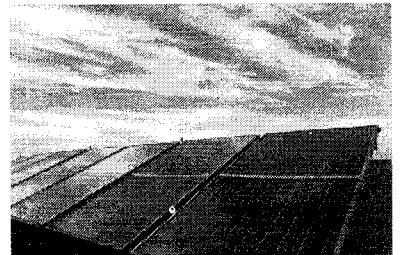
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## Financing Local Opportunity

Energy represents a major expense for California property owners—and many are wasting money every day on energy-inefficient buildings and equipment. Energy efficient upgrades can save property owners loads of cash—but require a capital investment. There have been many unsuccessful attempts to create energy efficiency financing programs, many of which charged cities major fees without delivering a program. Finally, there is an economically sustainable way to finance energy and water savings, creating vibrant communities and a cleaner California.

## Introducing Property Assessed Clean Energy

With the passing of Assembly Bill 811 in June 2008, California Cities and Counties gained the legal capacity to finance energy and water efficiency retrofits for property owners within their jurisdictions by way of voluntary contractual assessments. In response, the **California PACE** (*California Property Assessed Clean Energy*) Program by the Public Housing & Finance Agency (PHFA), a joint powers authority, was created to provide Cities and Counties a means to make retrofit financing a reality. On January 25, 2010, the PHFA authorized the issuance of up to **\$95 million** in taxable municipal bonds to fund the **California PACE** Program. With this authorization and more, up to **\$2 billion**, adequate funds are standing by for members of your community to take a step toward a renewable energy economy.



*California PACE financing was designed to make clean energy and water efficiency measures economically feasible for California property owners at no cost to Federal, State or local governments.*

---

### **California PACE Is a Win for Cities and Counties!**

- Local Jobs—financing retrofits puts contractors and “green” retailers back to work
- Sales Tax and Fee Permit Revenues—from equipment purchases, building licenses, and permits
- Cleaner Communities—energy and water efficiency reduces waste and pollution

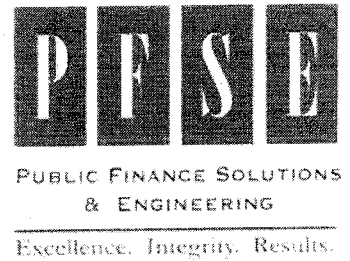
### **California PACE Is a Win for Property Owners, too!**

- Accessible Financing—a no-money-down means of financing energy and water efficiency
- Fixed Rates—property owners benefit from low, fixed-rate, long-term financing
- Money Savings—massive energy savings often lead to significantly lower expenses on utility bills

## About California PACE Financing

### Expert Management and Support

The **California PACE** Program is administered by **Public Finance Solutions & Engineering (PFSE)**, offering public agencies the benefits of years of experience in creating the financial solutions and strategies that have yielded measurable benefits to over 100 public agencies including Cities, Counties, Water Districts and School Districts in California. PFSE principals have managed public debt exceeding \$1 billion and, additionally, have over 25 years of construction management experience, with licenses in architecture and general contracting, ensuring unparalleled management in all areas of the world of Property Assessed Clean Energy financing.



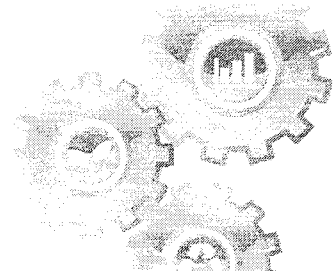
PFSE operates as Program Administrator under the Pacific Housing & Finance Agency. PHFA is a joint powers authority organized and existing pursuant to the Marks Roos Local Bond Pooling Act (Government Code Section 6584, et seq.). PHFA has the powers to issue bonds and notes, enter into agreements, and create programs for public purposes on behalf of PHFA and the Member Cities and Counties (Member Agencies).

### Financing Method

**California PACE** financing can be made available to property owners in “Member Agency” jurisdictions; such agencies are Cities and Counties that have joined the Pacific Housing & Finance Agency and formed a special Energy Assessment District.

*Membership in the PHFA and the passing of a resolution to form a special assessment district opens the door for economic growth and leadership in environmental stewardship.*

Once a special Energy Assessment District is formed, owners of property within the district are eligible to enter into **voluntary** contractual assessments to secure **California PACE** financing for energy and water efficient retrofits to their properties. Property owners taking **California PACE** financing repay their assessments as a line item on their property tax bill. Of note, all energy efficiency, water conservation, and renewable energy generation upgrades must be permanently attached to the property to qualify.



**California PACE** financing is made available through the sale of taxable Revenue Bonds issued by the PHFA. The proceeds are payable to:

- **Approved Contractors**—as reimbursement for installation of proven energy- and/or water-efficient equipment approved under the Program;
- **Approved Property Owners**—as reimbursement for approved out-of-pocket expenses such as application and energy audit fees.

The Bonds are special limited obligation revenue bonds of the PHFA and, as such, are **not** a debt of the Member Agencies, the State of California, or any of its political subdivisions (other than the PHFA). The Member Agencies, the State of California, nor any of its political subdivisions (other than the PHFA) is liable for the payment thereof.

The Bonds are special obligations of the PHFA payable exclusively from the Revenues (secured by Assessment District Liens on voluntarily participating properties), and amounts held in certain funds and accounts created pursuant to the Indenture. The Bonds will not be payable from any other revenues or other assets of the PHFA. PHFA does not have any taxing power. The Bonds do not represent or constitute debt or pledge the faith and credit of the Member Agencies, the State of California, or any of its political subdivisions. The Bonds do not constitute indebtedness within the meaning of any constitutional or statutory limitation or restriction.

### Assessment Financing Process

Property owners must apply to PFSE to initiate the financing process. PFSE evaluates the application and takes the necessary measures to ensure sound financing practices. Once a maximum financeable amount has been approved, property owners may begin to take competitive bids from **California PACE Approved Contractors**. When a bid has been selected by the property owner, PFSE works with the property owner to verify that all proposed retrofits are approved efficiency measures eligible for financing. As for billing, PFSE handles all contractor reimbursements and coordinates with the appropriate tax collection agency to collect assessment repayments. The property owner repays his or her assessment as a line item on the property tax bill. **California PACE** assessments are made only to property owners adhering to Program qualifications.

- *Maximum Financeable Amount*

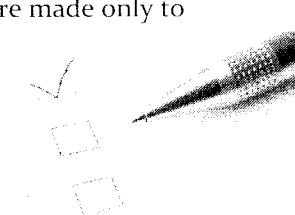
The **California PACE** assessment amount cannot exceed the greater of

- 1) the assessed **land** value of the property, or
- 2) Ten percent (10%) of the total value of the property.

(In certain circumstances, additional evidence may be considered to support an alternative basis for approval as directed by the PHFA Executive Director).

- *Good Standing*

Property owners must be current on their property taxes, and have no bankruptcy proceedings initiated in which the land is an asset.

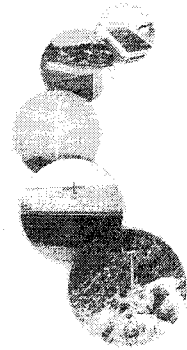


- *Professional Standards*  
Any retrofits financed under **California PACE** must be installed by **California PACE Approved Contractors** that meet or exceed State and Federal contractor standards, as well as the terms of the **California PACE Code of Conduct**.
- *Permanent Efficiency*  
All retrofits financed under **California PACE** must be permanently affixed to the property, ensuring lasting benefits to the lien property.

## Joining California PACE Is Simple

### A Total Solution

From proposal to continual Program management, **California PACE** is a total solution that makes it easy for Cities and Counties to participate. The Program has been structured to eliminate the burden of individual public agencies to pay the high, upfront development costs previously associated with starting and managing PACE programs. **California PACE** offers a unique total solution to its Member Agencies:



- *No Costs to Join the Program.* The PHFA has already developed the Program Materials and Guidelines at no additional cost to each participating Member Agency;
- *No City Funds are Required or Pledged.* **California PACE** is self-sufficient and does not require any Member Agency to pledge funds or credit to make PACE assessment financings;
- *Economies of Scale Savings.* With over 60 Member Agencies (and growing), **California PACE** can aggregate assessments from all participating Member Agencies to enhance financing-cost efficiencies and process more assessments on a periodic basis.
- *Ready to Go!* This is **not** a pilot program as with other joint powers authorities or Agency programs. PFSE, the Program Administrator, is committed to providing assessment financing to each participating Member Agency. Financing can be made available in as little as 30 days after the participating Member Agency forms the requisite Energy Assessment District.

## California PACE Highlights

### Program Benefits for Participating Member Agencies

- *Cost-Effective* The California PACE Program is the only statewide “no-cost” solution for Cities and Counties to get a Property Assessed Clean Energy Program underway.
- *Leadership* The California PACE team includes industry leaders in municipal finance, bond underwriting, and energy efficient construction to deliver a true financing solution to make retrofits a reality.

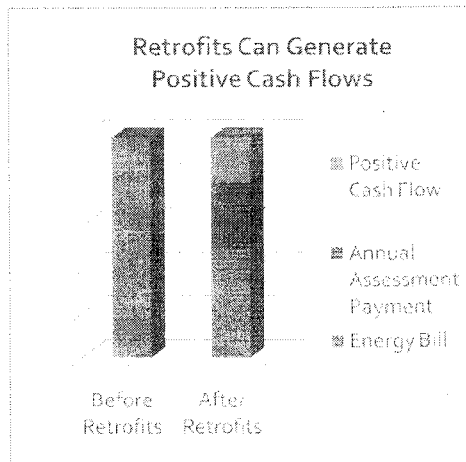


- *Scale* The Pacific Housing & Finance Agency joint powers authority structure provides cost sharing efficiencies in the financing process to deliver a facility to retrofit thousands of homes and commercial properties, improving communities and increasing values.
- *Environmental Stewardship* Energy and water efficient retrofits help to reduce waste and dependency on fossil fuels, creating a cleaner, healthier environment.

### Program Benefits for Property Owners

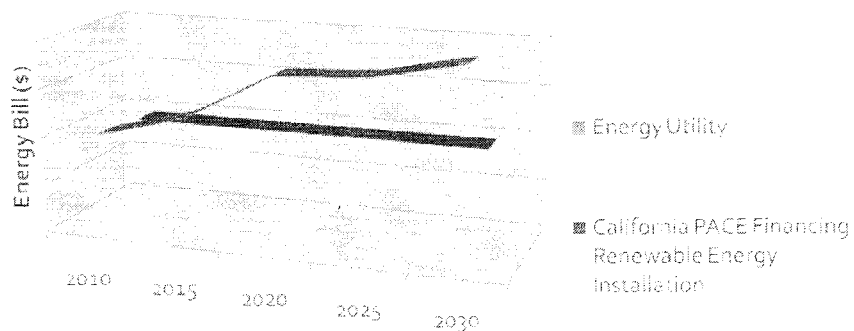
- *Accessible Financing* **California PACE** offers secure, property-based assessment financing with risk management procedures in place. Financing qualifications require no money down and no personal credit check.
- *Instant Savings* In many cases, the assessment financing payment can be less than the current energy costs on the property, creating instant cash savings.

Figure 1: Instant Savings



- *Hedge Against Rising Utility Costs* With an average 8% annual increase in energy rates, the fixed rate assessment financing payment can save even more over time.

Figure 2: Low Energy Prices Up to 20 Years



## California PACE Financing Team

### *Program Sponsor*

Pacific Housing & Finance Agency

Contact: Former Assemblyman David Elder, Executive Director



### *Program Underwriter*

J. K. Chilton & Associates, a division of  
O'Connor Securities

**O'CONNOR & COMPANY SECURITIES**  
PUBLIC FINANCE

Contact: Jim Chilton, President

Email: [jchilton@ocsec.com](mailto:jchilton@ocsec.com)

### *Bond Legal Counsel*

Lewis, Brisbois, Bisgaard and Smith, LLP

**LEWIS BRISBOIS BISGAARD & SMITH LLP**

Contact: Tim Sabo, Partner

Email: [sabo@lbbbslaw.com](mailto:sabo@lbbbslaw.com)

### *Program Administrator*

Public Finance Solutions & Engineering

Contact: Michael Chapin, President & CEO

Email: [mchapin@pfs-engineering.com](mailto:mchapin@pfs-engineering.com)



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& ENGINEERING

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### *Energy Assessment Team (Strategic Partner)*

Partner Energy

Contact: Tony Liou, Principal

Email: [liou@partnerenergy.com](mailto:liou@partnerenergy.com)

**PARTNERENERGY**

Exhibit A— California PACE Process Flowchart

# California PACE Assessment Process Chart

## APPLICATION & FINANCING PROCESS

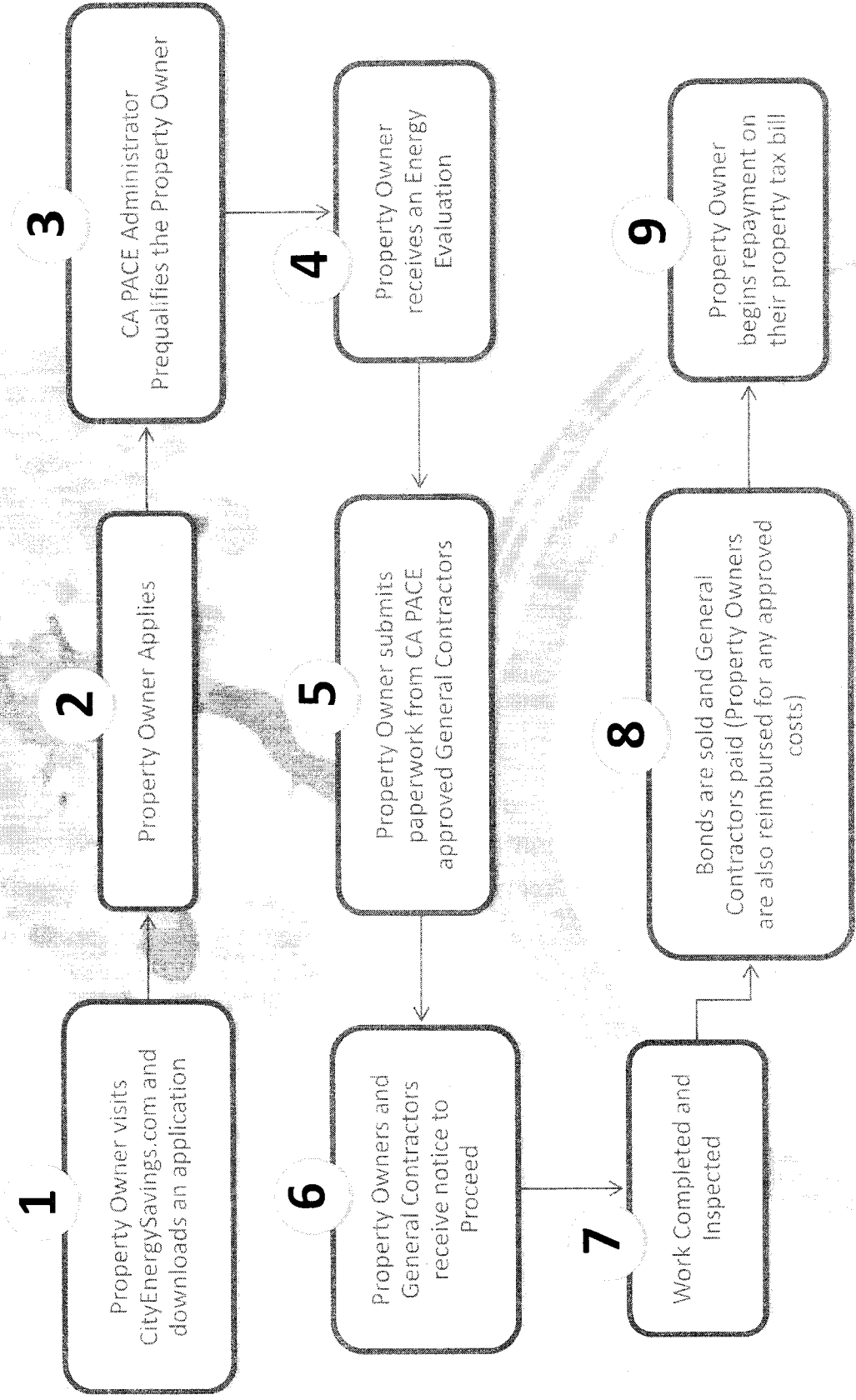


Exhibit B— California PACE Term Sheet



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& ENGINEERING  
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## Term Sheet: California Property Assessed Clean Energy (PACE) Program Property Owner Qualifications

- Applicant(s) is/are legal owner(s) of the property described in the Application;
- Property Owner is current on property taxes;
- Property Owner is current on mortgage(s);<sup>1</sup>
- For commercial property, lender has given consent to California PACE Assessment Financing;<sup>2</sup>
- Property Owner is not in bankruptcy and the property is not an asset in any bankruptcy proceedings.<sup>3</sup>

### Property Qualifications

- Property is developed and located within participating County/City boundaries;
- Property must be classified as commercial property. Commercial property includes the following uses: residential property with five (5) or more units, industrial, warehouse, and offices;
- There are no Federal or State income tax liens, judgment liens or similar involuntary liens on the Property;
- Requested Financing Amount does not exceed one hundred percent (100%) of the Assessed Land Value or ten percent (10%) of the Total Assessed Value;
- The Lien to Value Ratio (excluding the Requested Financing Amount) does not exceed one hundred percent (100%);<sup>4</sup>
- For further information on eligibility requirements, see the Program Report and Administrative Guidelines.

<sup>1</sup> If property is subject to loan modification because of default or delinquency, additional restrictions may apply. See program report for details.

<sup>2</sup> "Residential property" is defined as single-family properties with 1-to-4 residential units; "commercial property" is all other property.

<sup>3</sup> If property owner has been in bankruptcy in the past three years, additional requirements may apply. See program report for details.

<sup>4</sup> Calculation: Sum of all lien balances against the property divided by assessed value or market value, whichever is greater, is less than or equal to 100%.



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### California PACE Assessment Terms

- Fixed-rate fully amortized for duration of term;
- Terms up cannot exceed the useful life of the improvements up to twenty (20) years;
- Repaid semi-annually as a line-item on the property's property tax bill.





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# California PACE Program

## City of Commerce Adoption Timeline

City Council meets the first and third Tuesday of each month at 6:30.

### START DATES

### PROJECT TASKS

AS AP	<b>Deliver Draft Resolutions &amp; Documents to the City for review.</b> PFSE provides the initial documents needed to start the California PACE Program adoption process. These include: Staff Reports, Resolutions, and Co-OP Agreement.
TBD	<b>Intent Meeting:</b> The City Council adopts the Co-Op Agreement joining the PHFA and the Resolution of Intention setting the Public Hearing date.
TBD	<b>Utility Notices (Provided by PFSE):</b> The City mails out notice to all electric and water providers in the City of the Public Hearing date scheduled for the adoption of the California PACE program. Notice must be provided no less than 60 days prior to the Public Hearing.
TBD	<b>Program Report:</b> PFSE provides the City with the PACE program report which includes the authorized list of energy improvements, applications, verification procedures, and approval procedures.
TBD	<b>Public Hearing Publication:</b> City publishes notice of Public Hearing on (Date TBD), once a week for two weeks. <b>Note: The publication requirement is once a week for two weeks, therefore the publication must be PUBLISHED no later than (Date TBD) in order for the District to be confirmed on (TBD).</b>
TBD	<b>Public Hearing:</b> City Council holds a Public Hearing regarding the proposed Proceedings and the establishment of the Assessment District; 2.) A Resolution Approving the Program Report (As Submitted or Amended); 3.) A resolution confirming PHFA for assessment administration in connection with the District; 4.) A Resolution Confirming the Assessments to be levied within the Parameters of the Report.



## Jorge Rifa

---

**From:** Darrel Pyle [dpyle@pfs-engineering.com]  
**Sent:** Friday, June 24, 2011 10:36 AM  
**To:** Jorge Rifa  
**Subject:** FW: California PACE Executive Summary  
**Attachments:** California PACE Executive Summary.pdf

Last document of the morning.  
Good morning again Mr. Rifa.

Attached please find an executive summary of the California PACE Program. As Darrel probably already mentioned, we manage and finance the Commercial PACE Program for several cities in California. Some key advantages that the California PACE program offers is:

1. **Established financing supporting the program** of \$95 million dollars (up to \$2 billion) for financing energy efficiency retrofits.
2. **No costs to participate or establish the program.** The administration and support of the program is provided at no cost to the City of Commerce.
3. **Built in network of Cities and Contractors.** There is no "ramp-up" required with the program, as large cities like Fresno (5<sup>th</sup> largest in California) are already participating in the program, and a contractor network is already established ready to go to work.
4. **No reliance on City funds.** The program doesn't rely on City funds to support the financing, in fact, it's a revenue generation program that pays for itself and the City staff that support it.
5. **Positive job growth.** Based on a recent study by Johnson Controls, about 20 new jobs are created for each \$1M invested into energy retrofit work.

I hope that you find the summary helpful. If there is any other information we can provide, please don't hesitate to let me know.

Thanks.  
Darrel L. Pyle  
California PACE Program  
PUBLIC FINANCE SOLUTIONS & ENGINEERING  
9915 Mira Mesa Blvd., Suite 130  
San Diego, California 92131  
Office: (877) 577-PFSE (7373)  
Mobile: (559) 358-5226

PACIFIC HOUSING & FINANCE AGENCY

Participating Communities

*Updated October, 2005*

Adelanto	Lodi
Apple Valley	Madera
Auburn	Manteca
Avenal	Marina
Bakersfield	Merced
Banning	Modesto
California City	Oxnard
Calipatria	Palm Springs
Carson	Palmdale
Citrus Heights	Pittsburg
Clovis	Placer County (Unincorporated Area)
Coachella	Port Hueneme
Coalinga	Porterville
Corcoran	Reedley
Delano	Rialto
Desert Hot Springs	Roseville
Exeter	Sanger
Fairfield	Seaside
Farmersville	Selma
Fresno	Soledad
Galt	Stockton
Greenfield	Susanville
Hanford	Tulare
Hesperia	Turlock
Huron	Vacaville
Indio	Vallejo
Ione	Visalia
King City	Wasco
Lathrop	West Sacramento
Lemoore	Woodlake

**COOPERATION AGREEMENT**

**by and between the**

**PACIFIC HOUSING & FINANCE AGENCY**

**AND**

**CITY OF COMMERCE**

**Dated as of [DATE]**

## COOPERATION AGREEMENT

This COOPERATION AGREEMENT, made and entered into as of [DATE], by and between PACIFIC HOUSING & FINANCE AGENCY, a joint powers authority organized and existing under the laws of the State of California (the "Agency") and the City of Commerce, a municipal corporation organized and existing pursuant to the laws of the State of California (the "Associate Member");

### WITNESSETH:

In the joint and mutual exercise of their powers, in consideration of the mutual covenants herein contained, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto recite and agree as follows:

#### Section 1. Recitals.

(a) The Pacific Housing & Finance Agency (the "PHFA" or "Agency") is a joint powers financing agency organized and existing pursuant to the Marks Roos Local Bond Pooling Act (Government Code Section 6584, et seq.). The Agency has the powers to issue bonds and notes, enter into agreements and create programs for the public purposes of the Agency and the member jurisdictions of the Agency (the "Member Jurisdictions").

(b) The City of Commerce is a City of the State of California and is authorized to enter into this Agreement to become an Associate Member of the Agency.

(c) The parties have entered into this Agreement in order to facilitate the participation by Associate Member in the Agency's California PACE Program (the "Program").

(d) Each of the parties hereto has authority to enter into this Cooperation Agreement and perform its respective obligations hereunder and has taken all actions necessary to authorize its officers to enter into it as contemplated hereby and by related financing documents in connection with the Program, including the California PACE program report as required by Section 5898.22 of the California Streets and Highways Code "Program Guidelines".

(e) The capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Program Guidelines.

#### Section 2. Grant of Jurisdiction; Approval of Program.

The Associate Member by execution and approval of this Cooperation Agreement hereby covenants and warrants its interest to approve the Program and the Program Guidelines and has duly authorized its participation hereunder. The Associate Member acknowledges that it has formed, or shall cause an assessment district to be formed pursuant to Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code, commencing with Section 5898.12 et seq., to be formed for the implementation of the Program within its territorial jurisdiction.

Section 3. Compliance with Program Requirements.

(a) The Associate Member acknowledges its understanding of the Program and in accordance with the Program Guidelines. The Associate Member shall have the duties and responsibilities under the Continuing Disclosure Agreement as shall the Agency but solely with respect to matters that are particular to the Associate Member.

Section 4. Termination of Cooperation Agreement. The Associate Member may terminate its participation pursuant to this Cooperation Agreement, the Program and the Program Guidelines upon notice from the Associate Member to the Agency. No such termination shall be effective until all assessment liens financed by the Program in the Associate Member's jurisdiction have been paid in full unless otherwise agreed in writing by the Agency and the Trustee for the Bonds, upon obtaining the opinion of Bond Counsel that such termination will not adversely affect the then outstanding series of the Bonds.

Section 5. Acceptance. The Associate Member hereby accepts all duties and responsibilities incurred by reason of participation in the Program and accepts all terms and conditions set forth in the Program Guidelines. The Associate Member agrees to be bound by the provisions of all applicable documents in furtherance of the Program.

IN WITNESS WHEREOF, the parties hereto have executed this Cooperation Agreement by their officers duly authorized as of the day and year first written above.

Pacific Housing & Finance Agency

By: \_\_\_\_\_  
David Elder, Executive Director

City of Commerce

\_\_\_\_\_  
By: \_\_\_\_\_

**CITY OF COMMERCE**

**STAFF REPORT**

**REQUEST:** CONSIDERATION OF “RESOLUTION OF THE CITY OF COMMERCE DECLARING ITS INTENTION TO FORM AN ASSESSMENT DISTRICT TO FINANCE DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES AND ENERGY AND WATER EFFICIENCY IMPROVEMENTS FOR PROPERTY WITHIN THE CITY PURSUANT TO CHAPTER 29 OF PART 3 OF DIVISION 7 OF THE CALIFORNIA STREETS AND HIGHWAYS CODE AND SETTING A PUBLIC HEARING THEREON”

**SUBMITTED BY:**

**DATE:**

**CONTENTS:** RESOLUTION OF THE CITY OF COMMERCE DECLARING ITS INTENTION TO FORM AN ASSESSMENT DISTRICT TO FINANCE DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES AND ENERGY AND WATER EFFICIENCY IMPROVEMENTS FOR PROPERTY WITHIN THE CITY PURSUANT TO CHAPTER 29 OF PART 3 OF DIVISION 7 OF THE CALIFORNIA STREETS AND HIGHWAYS CODE AND SETTING A PUBLIC HEARING THEREON

EXHIBIT A: AB 811 FORMATION & ADMINISTRATIONS SERVICES AGREEMENT

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**Recommendation:** Adoption of the following:

Adopt Resolution No. \_\_\_\_\_ entitled “RESOLUTION OF THE CITY OF COMMERCE DECLARING ITS INTENTION TO FORM AN ASSESSMENT DISTRICT TO FINANCE DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES AND ENERGY AND WATER EFFICIENCY IMPROVEMENTS FOR PROPERTY WITHIN THE CITY PURSUANT TO CHAPTER 29 OF PART 3 OF DIVISION 7 OF THE CALIFORNIA STREETS AND HIGHWAYS CODE AND SETTING A PUBLIC HEARING THEREON”

**Background:**

In 2008 and 2009, the California Legislature adopted Assembly Bills 811 (“AB 811”) and 474 (“AB 474”) (codified at Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code) respectively, which authorize a legislative body of any City to determine, in the public interest, to designate the entire City or an area within the City as an assessment district for the financing of distributed generation renewable energy sources and energy and water efficient projects. In AB 811, the legislature declared there was urgency in the state to commence conversion to energy conservation and efficiency, and thus AB 811 creates a streamlined process by which assessment districts may be established by contractual agreement with property owners to finance such conversions. The bill permits the installation of distributed generation renewable energy sources, such as solar power, or energy and water efficiency improvements that are

permanently fixed to real property. The goal is to lower energy costs, enhance local businesses and create jobs.

Pacific Housing & Finance Agency (“PHFA”) has designed an energy and water efficiency program under AB 811 and AB 474 known as the California PACE (Property Assessed Clean Energy) Program (the “Program”) which permits the City of Commerce (the “City”), as an associate member of PHFA, to participate in the PHFA Program by the formation of an assessment district. The California PACE Program provides to property taxpayers within its member counties and cities an affordable financing program for energy-saving and water saving property improvements such as:

- (i) high-efficiency air conditioners,
- (ii) dual-pane windows,
- (iii) water saving equipment,
- (iv) solar panel systems, and
- (v) insulation.

PHFA will issue bonds to fund financing to property owners within its member counties and cities, and the financing will be secured by property assessments from the property which is included in the assessment district by the owner’s voluntarily participation in the assessment district. The bonds will be secured solely by the assessment revenues from the liens on the property of the owners participating in the Program, and the real property in the event of default and tax sale. The City’s revenues and funds will not be pledged to the payment of the bonds. Property owners will pay for the installation of water and energy savings improvements on their home or business as a line item on their property tax bill over time.

The proposed Resolution is the first step in a two-step process necessary for the adoption of the City’s California PACE Program. This Resolution declares the intent of the City Council to form an assessment district in order to cause the financing of energy and water efficiency improvements within the City. This Resolution also authorizes staff to complete the details of the proposed financing program as an associate member of the PHFA. This Resolution also sets [DATE OF PUBLIC HEARING] for the public hearing required for the formation of the assessment district. After the public hearing, if the City determines to approve formation of the assessment district, the City will adopt a resolution of formation at that time.

Submitted by:

Approval:

\_\_\_\_\_

\_\_\_\_\_

**CITY OF COMMERCE  
STAFF REPORT**

**REQUEST:** CONSIDERATION OF “RESOLUTION OF THE CITY OF COMMERCE APPROVING A COOPERATION AGREEMENT WITH THE PACIFIC HOUSING & FINANCE AGENCY TO PARTICIPATE AS AN ASSOCIATE MEMBER IN THE CALIFORNIA PACE PROGRAM AND OTHER BOND FINANCINGS ADMINISTERED BY PACIFIC HOUSING & FINANCE AGENCY ON BEHALF OF ITS MEMBER AGENCIES

**SUBMITTED BY:**

**DATE:**

**CONTENTS:** CONSIDERATION OF “RESOLUTION OF THE CITY OF COMMERCE APPROVING A COOPERATION AGREEMENT WITH THE PACIFIC HOUSING & FINANCE AGENCY TO PARTICIPATE AS AN ASSOCIATE MEMBER IN THE CALIFORNIA PACE PROGRAM AND OTHER BOND FINANCINGS ADMINISTERED BY PACIFIC HOUSING & FINANCE AGENCY ON BEHALF OF ITS MEMBER AGENCIES

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**Recommendation:** Adoption of the following:

Adopt Board of Supervisors Resolution No. \_\_\_\_ entitled “RESOLUTION OF THE CITY OF COMMERCE APPROVING A COOPERATION AGREEMENT WITH THE PACIFIC HOUSING & FINANCE AGENCY TO PARTICIPATE AS AN ASSOCIATE MEMBER IN THE CALIFORNIA PACE PROGRAM AND OTHER BOND FINANCINGS ADMINISTERED BY PACIFIC HOUSING & FINANCE AGENCY ON BEHALF OF ITS MEMBER AGENCIES”

**Background:**

In 2008 and 2009, the California Legislature adopted Assembly Bills 811 (“AB 811”) and 474 (“AB 474”) (codified at Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code) respectively, which authorize a legislative body of any City or County to determine, in the public interest, to designate the entire jurisdiction or an area within the jurisdiction as an assessment district for the financing of distributed generation renewable energy sources and energy and water efficient projects.

In response, the Pacific Housing & Finance Agency (“PFHA”) has established an Energy and Water Efficiency Program, the California PACE Program (the “Program”) under AB 811 and AB 474 which allows all participating PFHA Member Counties and/or Cities to offer the Program to its residential and commercial property owners. The PFHA currently has 60 member cities; however, the City of Commerce is currently not a member of the PFHA. In order for the



City of Commerce to participate in the Program, a Cooperation Agreement must be approved which would provide for Associate Member status. This would allow the City to participate in the PFHA Program, and other bond financings, but not be able to vote on non-PFHA Program matters.

There is no cost to become an Associate Member of the PFHA or to participate in the PFHA's Program.

Submitted by:

Approval:

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***AB 811 SERVICES AGREEMENT***

The Pacific Housing and Finance Agency has contracted with the firm of Public Finance Solutions & Engineering (PFSE) to provide AB 811 formation and administration services to participating member agencies.

***SCOPE OF SERVICES (No Cost Services)***

***California Property Assessed Clean Energy (California PACE) Program***

***EXPERT RESOURCE.*** First and foremost, PFSE will act as the “expert resource” for the City of Commerce (City) and is available to answer questions and advise the City on particular issues involving energy districts(s) established per the recently enacted law, AB 811.

***DATA COLLECTION.*** PFSE will gather and review data pertinent to the formation of the Property Assessed Clean Energy (**California PACE**) District. PFSE will maintain and periodically update a database of all parcels within the district and relevant parcel information.

***ANNUAL ASSESSMENT ROLL.*** PFSE will calculate the annual assessment for each parcel and submit the amount for each parcel to the City Auditor/Controller in the format and medium required.

***MEETING ATTENDANCE.*** PFSE will attend district related Council meetings as requested by the City. This may also include attendance and organization of community forums.

***FORMATION PACE REPORT.*** PFSE will provide the energy district formation Report as required by Section 5898.22 of the California Streets and Highway Code.

***RESOLUTIONS.*** PFSE will prepare the required resolutions to be considered by the City.

***UTILITY NOTICES.*** PFSE will prepare the required notices that must be transmitted to the local utility companies by the City.

***ANNUAL REPORT.*** PFSE will provide a comprehensive Annual Report that will show a detailed listing of the amounts submitted to the assessment roll, details of delinquent assessments, paid off parcels and release of liens.

***Out of Pocket Expenses***

Customary out-of-pocket expenses incurred in providing the “services included” will be billed to the City at actual cost to PFSE. These expenses may include, but not be limited to travel, postage, telephone, reproduction, meals and various charges for tapes, maps, and recording fees. These expenses may also include production and printing of marketing materials specific to the City of Commerce.



RESOLUTION NO. \_\_\_\_\_

**RESOLUTION OF THE CITY OF COMMERCE DECLARING ITS INTENTION TO FORM AN ASSESSMENT DISTRICT TO FINANCE DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES AND ENERGY AND WATER EFFICIENCY IMPROVEMENTS FOR PROPERTY WITHIN THE CITY PURSUANT TO CHAPTER 29 OF PART 3 OF DIVISION 7 OF THE CALIFORNIA STREETS AND HIGHWAYS CODE AND SETTING A PUBLIC HEARING THEREON**

**WHEREAS**, the City of Commerce (the “City”) is a municipal corporation organized and existing pursuant to the laws of the State of California; and

**WHEREAS**, the Pacific Housing & Finance Agency (the “PHFA”) is a joint powers financing agency and has established an Energy and Water Efficiency Program (the “Program”) pursuant to Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code ( the “Act”); and

**WHEREAS**, through the **California PACE** – California Property Assessed Clean Energy and Water Efficiency Program, the PHFA facilitates assessment financing to property owners within PHFA’s participating member jurisdictions for the financing of distributed generation renewable energy sources and energy and water saving property improvements; and

**WHEREAS**, pursuant to the Act and the Program, PHFA requires its participating member jurisdictions to form a contractual assessment district, and the PHFA will finance participating property owners energy efficiency, distributed renewable energy and water efficiency improvements within the assessment district through funds secured by an assessment lien on the subject property; and

**WHEREAS**, the Program provides for the funding and administration of the assessment district for its member jurisdictions; and

**WHEREAS**, the City is an associate member of the PHFA and desires to declare its intention to form a contractual assessment district and take the steps necessary for the creation of such assessment district.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF COMMERCE HEREBY FINDS, DETERMINES, RESOLVES AND ORDERS, AS FOLLOWS:**

**Section 1.** The City Council hereby finds and determines:

- (a) Energy and water conservation efforts, including the promotion of energy and water efficiency improvements to residential, commercial, industrial, or other real property, will generate costs savings and promote local employment.

- (b) The upfront cost of making residential, commercial, industrial or other real property more energy and water efficient prevents many property owners from making those improvements. To make those improvements more affordable and to promote the installation thereof, the Legislature has authorized an alternative procedure pursuant to Act to finance said improvements by the creation of contractual assessment districts.
- (c) It is in the public interest of the City to authorize creation of an assessment district for the installation of distributed generation renewable energy sources and energy and water efficiency improvements which are permanently fixed to residential, commercial, industrial, or other real property.

**Section 2.** The City Council hereby declares its intention to form a contractual assessment district pursuant to the Act for the purposes set forth in Section 1 hereof. The assessment district shall be for the purposes of providing the installation of distributed generation renewable energy sources and energy and water efficiency improvements that are permanently fixed to qualifying real property, including but not limited to: high efficiency air conditioning and ventilation systems, high performance windows, high efficiency pool equipment, high efficiency water heating equipment, photovoltaic and thermal solar energy systems, zoning control and energy management control systems, high efficiency irrigation pumps and controls and natural gas fuel cells, wind and geothermal energy systems, wall, ceiling and roof insulation upgrades, water savings equipment and dual pane windows.

**Section 3.** The City Council further determines that the boundaries of the assessment district established pursuant to the Act shall be the geographical boundaries of the City.

**Section 4.** The assessment district shall be financed by the issuance of bonds of the Pacific Housing & Finance Agency, a joint powers authority pursuant to the Pacific Housing & Finance Agency **California PACE** Program. The principal and interest on the Bonds shall be secured by the payments of the contractual assessments and the assessment liens on the real property upon which the improvements are placed. The assessments shall be collected at the same time and in the same manner as the general taxes of the City. The assessment shall be subject to the same penalties and lien priorities as the general taxes of the City in the event of delinquency and default. In the event of a delinquency in the payment of assessments by a property owner, and said delinquency continues for 150 days, the PHFA may commence proceedings to foreclose the assessment lien on the property. Interest on the Bonds shall not exceed the current legal maximum of 12% per year or such other amount authorized by law. The maturity date of the Bonds shall not exceed the life of the equipment financed.

**Section 5.** The City Council hereby designates the PHFA (or designee of the PHFA) as the Authorized Officer. All services related to the formation and administration of the assessment district will be provided by the PHFA at no cost to the City per the AB 811 Services Agreement provided in Exhibit A.

**Section 6.** The City Council hereby directs the Authorized Officer to prepare, or cause to be prepared, and file with the City Council a report pursuant to Sections 5898.22 of the

California Streets and Highways Code (the "Report") at or before the time of the public hearing described in Section 7 hereof. The Report shall contain all of the following:

- (a) A map showing the City boundaries as the boundaries of the assessment district.
- (b) A draft contract between the property owner and PHFA.
- (c) A statement of the City policies concerning contractual assessments including all of the following:
  - (i) Identification of types of facilities, distributed generation renewable energy sources, or energy efficiency improvements that may be financed through the use of contractual assessments;
  - (ii) Identification of a city official authorized to direct the Executive Director of the PHFA to enter into contractual assessments on behalf of the assessment district;
  - (iii) A maximum aggregate dollar amount of contractual assessments; and
  - (iv) A method for setting requests from property owners for financing through contractual assessments in priority order in the event that requests appear likely to exceed the authorization amount.
  - (v) Description of criteria for determining the underwriting requirements.
  - (vi) Safeguards that will be used to ensure that the total annual property taxes and assessments on the property will not exceed 5 percent of the property's market value.
- (d) The plan of bond financing by the PHFA pursuant to Streets and Highways Code Section 5898.28. The plan shall include a statement of, or method for, determining the interest rate and time period during which contracting property owners would pay any assessment. The plan shall provide for any reserve fund or funds. The plan shall provide for the apportionment of all or any portion of the costs incidental to financing, administration, and collection of the contractual assessments under the Program among the consenting property owners and the assessment district.

**Section 7.** The City Council hereby authorizes noticing a public hearing to be held on [DATE OF PUBLIC HEARING] at [TIME], or as soon thereafter as feasible, at [LOCATION], on the proposed Report and the assessment district. At the public hearing, all interested persons may appear and hear and be heard and object to or inquire about the proposed contractual assessment financing program or any of its particulars. The City Clerk is hereby directed to provide notice of the public hearing by publishing this Resolution once a week for two weeks, pursuant to Section 6066 of the California Government Code, in the [NAME OF

PUBLICATION] and the first publication shall not occur later than 20 days before the date of such hearing.

**Section 8.** The City Council hereby directs the Authorized Officer of the City to enter into consultations with the County of Los Angeles Auditor-Controller's Office in order to reach an agreement with the County regarding the collection of the contractual assessments by the County on the tax roll.

**Section 9.** The City Council hereby directs that written notice of the proposed contractual assessment program be sent to all water and electric providers within the boundaries of the City pursuant to Section of 5898.24(b) of the Act not less than 60 days prior to the adoption of the resolution confirming the Report and certain matters attendant thereto.

PASSED, APPROVED, AND ADOPTED by the City of Commerce City Council at its regular meeting held the [DATE], by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN





# AGENDA REPORT

MEETING DATE: August 16, 2011

**TO:** HONORABLE CITY COUNCIL

**FROM:** CITY ADMINISTRATOR

**SUBJECT:** AWARD OF CASH CONTRACT NO. 1102 – STREET SWEEPING SERVICES AND OTHER MATTERS RELATED THERETO

**RECOMMENDATION:**

City Council discretion.

**MOTION:**

Move to approve City Council decision.

**BACKGROUND:**

At its meeting of September 21, 2010, the City Council approved the Request for Proposal for Street Sweeping Services and authorized staff to advertise for proposals.

At its meeting of November 16, 2010, the City Council rejected all bids received and directed staff to provide additional information regarding street sweeping services in other communities, especially with regards to the following items:

1. Term (or length) of Contract
2. Pricing Strategy (automatic annual escalator or fixed pricing)
3. Approval authority (City Administrator or City Council)
4. Public Works Contract Clarification

At its meeting of February 15, 2011, the City Council received staff findings and recommendations with regards to the aforementioned items. The City Council then directed staff to revise the Street Sweeping Request for Proposal in the following manner:

1. Term of Contract – 3 year contract with a 2-year option
2. Pricing Strategy – Contractor will be allowed to request annual CPI adjustment
3. Authority – City Council to approve annual request for CPI adjustment
4. Public Works Contract Clarification – use LA County Public Works evaluation criteria as part of the RFP evaluation process.

The City Council also approved the following criteria for the evaluation of the proposals by a three member committee:

- Proposed Fee/Price..... 50 points
- References..... 15 points
- Experience.....10 points
- Financial Resources..... 5 points
- Work Plan..... 10 points
- Equipment ..... 5 points
- Record Keeping..... 5 points
- Total..... 100 points

The above scoring system is also used by L. A. County Public Works Department.

At its meeting of April 5, 2011, the City Council approved the Request for Proposals for Street Sweeping and authorized staff to advertise and issuance the Notice Inviting Bids/Proposals. The RFP was advertised appropriately and in accordance with existing regulations. The RFP included the evaluation criteria approved by the City Council, but advised that it was not exclusive and that the City reserved the right to apply additional evaluation criteria. A mandatory pre-bid meeting was held on Thursday May 5, 2011 in the City Hall North Conference Room at 10:00 a.m.

On June 2, 2011 at 10:00 a.m., the City Clerk received and opened all bids/proposals. The following six (6) proposals were received:

- |   |              |
|---|--------------|
| 1. R.F. Dickson Co., Inc. of Downey             | \$ 88,504.00 |
| 2. Webco Sweeping LB LLC of Long Beach          | \$ 93,015.20 |
| 3. Nationwide Environmental Services of Norwalk | \$121,206.24 |
| 4. Athens Services of City of Industry          | \$124,349.00 |
| 5. CleanStreet of Gardena                       | \$126,230.16 |
| 6. DeAngelo Brothers, Inc., of Ontario          | \$359,580.00 |

At its meeting of August 1, 2011, the City Council continued this item to its next regular meeting.

**ANALYSIS:**

**A. Bidder Evaluations and Scores**

As approved in the RFP, staff assembled a three-member evaluation committee to evaluate all proposals. The following participants were part of the committee: 1) Robert Ashworth, Integrated Waste Supervisor for the City of Glendale (supervises the in-house street sweeping operation for Glendale), 2) Gina Nila, Environmental Services Manager for the City of Commerce and 3) Danilo Batson, Assistant Director of Public Services.

On July 7, 2011, the committee visited all 6 contractors' offices and met with a contractor representative to view first-hand their operation and capacity to successfully perform all work called for in the RFP. The committee ranked and rated each contractor's proposal as follows:

	AVAILABLE POINTS	RF DICKSON	WEBCO	NATIONWIDE ENV. SERVS	ATHENS SERVICES	CLEAN STREET	DEANGELO BROTHERS
<b>Proposed Price</b>	50*	50	47	32	30	21	0
<b>References</b>	15	15	12	15	15	15	10
<b>Experience</b>	10	10	7	10	10	10	10
<b>Financial Resources</b>	5	5	3	4	3	5	5
<b>Work Plan</b>	10	8	4	10	10	10	3
<b>Equipment</b>	5	5	3	5	5	5	2
<b>Record Keeping</b>	5	5	3	4	5	5	3
<b>TOTAL SCORE</b>	50	98	79	80	78	71	33

\* Score is based on proposed/bid price.  $\$88,504/50 = \$1,770.08$  PER POINT

Based on the above scores, the proposals rank as follows:

- |   |    |
|---|----|
| 1. R.F. Dickson Co., Inc. of Downey             | 98 |
| 2. Nationwide Environmental Services of Norwalk | 80 |
| 3. Webco Sweeping LB LLC of Long Beach          | 79 |
| 4. Athens Services of City of Industry          | 77 |
| 5. CleanStreet of Gardena                       | 71 |
| 6. DeAngelo Brothers, Inc., of Ontario          | 33 |

The biggest factor (or weight) is the “proposed price” with 50 out of 100 points (or 50%). RF Dickson submitted the lowest price; consequently, they received all 50 points. The “proposed price” points assigned to all other proposers is based on the lowest submitted price.

RF Dickson has been the City’s street sweeping provider for the majority of years since the City was incorporated. Nationwide Environmental Services provided street sweeping services in Commerce between the years of 2000 and 2005.

Webco Sweeping provides sweeping services to various transportation district facilities, Union Pacific Railroad yards, private shopping centers and business complexes, and since 2009 they have provided sweeping services to LA County in San Pedro.

R.F. Dickson, Nationwide Environmental Services, Athens Services and CleanStreet have years of street sweeping experience, use essentially the same type of street sweepers (Tymco 600) and have parts department at their facilities. They provide contractual street sweeping services to most municipalities that contract for these services in Los Angeles and Orange counties.

DeAngelo Brothers is new to street sweeping services in Southern California, although they provide these services in other states. Their proposal included leasing the street sweepers.

Based on the scoring criteria in the RFP, RF Dickson (98) received the highest possible number of points; followed by Nationwide Environmental Services (80), Webco Sweeping (79) and Athens Services (77).

#### B. City Council Options

Competitive bidding for public works contracts for “public projects” over \$5000 is required for general law cities. [Public Contracts Code § 20162] Public Contracts Code § 20160 (c) defines a “public project” as including “[s]treet or sewer work except maintenance or repair.” The sweeping of streets is part of the “maintenance” of the streets. The City Attorney has therefore advised that such services are not “public projects” as that term is defined in the Public Contracts Code. The City may nevertheless, as it has done in this case, choose to proceed with some type of request for proposal process.

The evaluation criteria were established by the City Council as part of the RFP. However, the RFP expressly advised that such criteria were not exclusive and that the City reserved the right to apply additional evaluation criteria. Although the City can consider other factors, it would, under normal circumstances, make its decision regarding the award of the contract primarily based on the RFP evaluation criteria. Nevertheless, there has been an unusual development in this case.

On July 19, 2011, the City Council received a public complaint about the sweeping services by the City’s current street sweeping contractor, RF Dickson, who also received the highest amount of points for its bid in response to the RFP. The complaint was made by a major developer and the owner of the Citadel Outlets in the City. The City Council was provided with photographs that appeared to show significant neglect of the street sweeping duties in the subject area on Telegraph Road. The City Council was rightfully disturbed and concerned about the situation. Since then RF Dickson has taken action to correct the problems on Telegraph Road.

Before the most recent complaints, the City has received on average 2 to 3 complaints annually regarding RF Dickson’s street sweeping performance. Although RF Dickson received the highest amount of points, the City Council may consider the most recent complaint as a significant part of its selection criteria. The City Council may decide that it no longer desires to maintain a contract for street sweeping services with a contractor that has

failed to properly perform as demonstrated by the complaint. If the City Council chooses such a path, it may: (1) select the next highest point getter; (2) direct City staff to negotiate an acceptable reduction in the price by the next highest point getter; or (3) proceed to reject all bids and award the contract to one of the other bidders based on additional price negotiations. Alternatively, if the City Council is satisfied that the omissions that were the subject of the complaint were unusual and isolated, the City may proceed to award the contract to RF Dickson or require them to perform under a contract that includes a probationary term (such as 12 months) and/or the right by the City to terminate the contract at will.

**FISCAL IMPACT:**

During the budget process, \$130,000 was appropriated for street sweeping services in the Community Development Department Maintenance and Operations Budget for Fiscal Year 2011/12. This activity can be carried out at this time without additional impact on the current operating budget, if the City was to select one of the top five (5) proposers:

<u>Proposers (bidders)</u>	<u>Proposed Price</u>	<u>Rating</u>
R.F. Dickson Co., Inc. of Downey	\$ 88,504.00	98
Nationwide Environmental Services of Norwalk	\$121,206.24	80
Webco Sweeping LB LLC of Long Beach	\$ 93,015.20	79
Athens Services of City of Industry	\$124,349.00	77
CleanStreet of Gardena	\$126,230.16	71

**RELATIONSHIP TO 2009 STRATEGIC GOALS:**

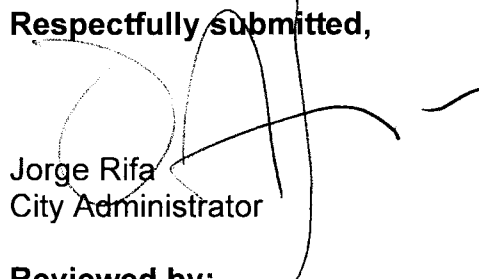
The issue before the Council is applicable to the following Council’s strategic goal: *“Protect and Enhance Quality of Life in the City of Commerce.”*

There are no specific objectives connected to this issue. The City’s ability to deliver quality street sweeping services with alternative-fuel powered vehicles to the community within the context of the FY 2010/2011 approved budget and available resources is in keeping with the identified 2009 Strategic Goals.

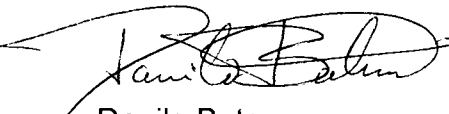
**Recommended by:**

  
Robert Zarrilli  
Director of Community Development

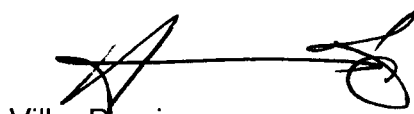
**Respectfully submitted,**

  
Jorge Rifa  
City Administrator

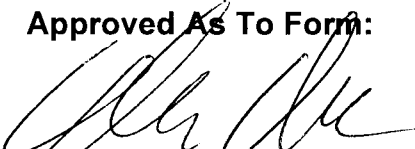
**Prepared by:**

  
Danilo Batson  
Assistant Director of Public Services

**Reviewed by:**

  
Vilko Domic  
Director of Finance

**Approved As To Form:**

  
Eduardo Olivo  
City Attorney



## AGENDA REPORT

DATE: August 16, 2011

**TO:** Honorable City Council  
**FROM:** City Administrator  
**SUBJECT:** 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 Committees at this time, with all terms to expire March 19, 2013, unless otherwise indicated:

Beautification Committee

Mayor Aguilar


Housing Committee

Mayor Aguilar  
Mayor Pro Tempore Baca Del Rio

**FISCAL IMPACT:**

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

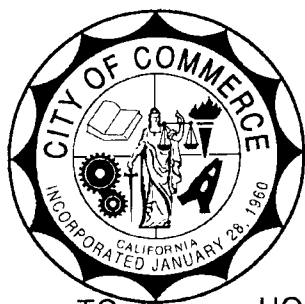
Recommended by:

  
Linda Kay Olivieri  
City Clerk

Respectfully submitted,

  
Jorge J. Rifa  
City Administrator





## AGENDA REPORT

DATE: August 15, 2011

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, DETERMINING THAT IT WILL COMPLY WITH THE "VOLUNTARY ALTERNATIVE REDEVELOPMENT PROGRAM" PURSUANT TO PART 1.9 OF DIVISION 24 OF THE CALIFORNIA HEALTH AND SAFETY CODE IN ORDER TO PERMIT THE CONTINUED EXISTENCE AND OPERATION OF THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION -SECOND READING

### RECOMMENDATION:

Approve and adopt the Ordinance.

MOTION: Move to read by title only.  
Move to approve and adopt and assign the number next in order  
ROLL CALL VOTE:

### BACKGROUND:

On March 14, 1974, the City of Commerce (the "City") City Council adopted Ordinance No. 206, which established the Commerce Redevelopment Agency (the "Agency"). Thereafter, the City Council approved and adopted the Redevelopment Plans for Project Area No. 1, Project Area No. 2 (the Town Center Project), Project Area No. 3 (the Atlantic Washington Project) and Project Area No. 4 (collectively, the "Redevelopment Plans"), covering certain properties within the City (the "Project Areas").

On November 3, 1992, the City Council adopted Ordinance No. 467, which created the Commerce Community Development Commission (the "Commission"). The Commission is the successor-in-interest to the Agency and has, since its creation, been authorized to and has been implementing the Redevelopment Plans. The Commission is has been engaged in various activities necessary to execute and implement the Redevelopment Plans pursuant to the provisions of the California Community Redevelopment Law (*Health and Safety Code* § 33000, *et seq.*) ("CRL").

As part of the 2011-12 State budget bill, the California Legislature recently enacted and the Governor has signed companion bills, Assembly Bill X1 26 ("AB 26") and Assembly Bill X1 27 ("AB 27"), requiring that each redevelopment agency in the State be dissolved unless the community that created it enacts an ordinance committing it to making certain payments. AB 26 prohibits redevelopment agencies from taking numerous actions, effective immediately and retroactively, and provides that agencies are deemed to be dissolved as of October 1, 2011. AB 27 provides that a community may participate in an "Alternative Voluntary Redevelopment Program," in order to enable a redevelopment agency within that community to remain in existence and carry out the provisions of the CRL, by enacting an ordinance agreeing to comply with Part 1.9 of Division 24 of the *Health and Safety Code*. The "Alternative Voluntary Redevelopment Program" requires that the community agree by ordinance to remit specified annual amounts to the Los Angeles County Auditor-Controller.

AB 26 and AB 27 will have severe economic impacts on the City and the Commission, as well as on all cities and redevelopment agencies throughout the State. City staff has analyzed the financial obligations that the City and the Commission will be required to incur in connection with the adoption of the ordinance required to participate in the Alternative Voluntary Redevelopment Program. The required Fiscal Year 2011-2012 community remittance is estimated to be Four Million Six Hundred Ninety Eight Thousand Nine Hundred Forty One Dollars (\$4,698,941). Subsequent annual community remittances, as

set forth in the CRL, will also be required. [See Fiscal Impact Section for additional financial impact analysis.]

In spite of the significant financial burdens imposed by AB 27, the alternative is much worse. If the City does not enact the ordinance and participate in the Alternative Voluntary Redevelopment Program established by AB 27, the City and the Commission will be subject to AB 26. The Commission will continue to be unable to engage in redevelopment operations, except for some very limited activities. Effective October 1, 2011, the Commission's redevelopment functions will be completely eliminated. A special agency will take over and dispose of all the Commission's assets and use the revenues generated to pay for various State programs. The Commission's property, including the properties that have been assembled for the Urban Entertainment Center Project, will be seized and sold off; the Commission will not be able to complete that project or any other projects. The over \$17 Million of loans that the City has made to the Commission over the course of the last 20 years in order to help fund redevelopment operations, including the purchase of land, would be taken by the State. In short, the impacts of AB 26 would be devastating to the City's community and is not a viable alternative. Thus, the payments required by AB 27 have been referred to throughout the State as a "ransom" – the City either pays it or the Commission is "put to death." In recognition of such grim realities, City staff must recommend the passage of the AB 27 ordinance so that the Commission may continue to exist, albeit in a substantially weakened state.

#### ANALYSIS:

In accordance with *Health and Safety Code* Section 34193, the Ordinance provides that the City shall comply with the provisions of Part 1.9 of Division 24 of the *Health and Safety Code*, as enacted by AB 27. The Ordinance determines that the City shall make the community remittances set forth in *Health and Safety Code* Section 34194 *et seq.* Thus, the City shall make the Fiscal Year 2011-2012 community remittance, currently estimated to be Four Million Six Hundred Ninety Eight Thousand Nine Hundred Forty One Dollars (\$4,698,941), as well as the subsequent annual community remittances as set forth in the CRL. The Ordinance reserves the City's right to appeal the California Director of Finance's determination of the Fiscal Year 2011-12 community remittance, as provided in *Health and Safety Code* Section 34194.

Once the Commission is again authorized to enter into agreements under the CRL, as set forth in the Ordinance, the City will enter into an agreement with the Commission as authorized pursuant to CRL Section 34194.2, whereby the Commission will transfer annual portions of its tax increment to the City in amounts not to exceed the annual community remittance payments to enable the City, directly or indirectly, to make the annual remittance payments. The Ordinance expressly provides that the City is not pledging any of the City's general fund revenues or assets to make the remittance payments.

The Ordinance recognizes that the California Redevelopment Association (CRA) and the League of California Cities have filed litigation in the California Supreme Court on behalf of all cities and redevelopment agencies in the state, which challenges the constitutionality of AB 26 and AB 27. The Ordinance notes that the City has been forced, under the threat of elimination provided for by AB 26, to enact the Ordinance and provides that payments authorized by the Ordinance as required by AB 27, are made under protest. If the Supreme Court, or any other court, determines that AB 26 and AB 27 are unconstitutional or otherwise illegal, and/or if the implementation of AB 26 and AB 27 are stayed or enjoined, the City reserves the right to stop the payments and seek reimbursement, consistent with any such court order. The City also reserves the right, regardless of any community remittance made pursuant to the Ordinance, to challenge the legality of AB 26 and AB 27.

The lawsuit filed by the CRA and the League of California Cities requests that the Supreme Court issue a stay of the implementation of AB 26 and AB 27, pending disposition of the case. The lawsuit requests that the Court make a determination about the stay by August 15, 2011. On July 19, 2011, the City Council also authorized the City to join in a consortium of several other cities and proceed with a separate lawsuit that will review and address any



other legal issues and challenges regarding AB 26 and AB 27. City staff and the City Attorney will keep the City Council updated on the developments of the lawsuits and their impact on the Ordinance and their overall impact on the City and the Commission.

FISCAL IMPACT:

**How Do We Address the Initial Obligation for FY 2011-12?**

Current Cash Available	\$25,562,199
Non-Housing Reserve	\$ 4,518,000
Housing Allocation Reserve	\$21,044,199

**Recommendation:**

Use Housing Reserves to Pay Our Obligation	<u>\$ 4,698,941</u>
Housing Reserves Available	\$16,345,258

**How Do We Address Our Obligation for FY 2012-13 & On-Going?**

Projected Year-End Revenues	\$24,645,556
Projected Year-End Expenditures	
Personnel Costs	\$ 2,210,588
Operation & Maintenance	\$ 3,031,228
Debt Service	<u>\$19,214,398</u>
Projected Year-End Surplus/Deficit	\$ 189,342

**Recommendation:**

Re-Allocation of Personnel Costs to Low-Mod Housing	\$ 520,632
Reductions in Operations	<u>\$ 742,378</u>
Amount Available to Service Obligation	\$ 1,452,352
Annual Obligation	<u>\$ 1,127,746</u>
Amount Remaining	\$ 324,606

The analysis aforementioned addresses whether or not the Commission is equipped monetarily to continue its operations and function if the continuation Ordinance is enacted by November 1, 2011. The proposed Ordinance calls for the City to make a commitment to making annual payments into an ERAF established for each county. The analysis focuses on the City's initial obligation for FY 2011-12 and the obligation going forward on an annual basis. The analysis shows that the Commission can absorb both the initial payment of approximately **\$4.7 Million** and ongoing payment of approximately **\$1.13 Million**, respectively.

**FY 2011-12 Obligation**

Staff is recommending that the initial payment be addressed by drawing from the Commission's Housing Reserve funds, which is allowed for this fiscal year by AB 27. The drawdown from the Housing Reserve would leave approximately **\$16.34 million** remaining, whereas, a drawdown from the Non-Housing Reserve would zero it out, leaving no monies for non-housing related capital needs.

**FY 2012-13 Obligation**

Staff is recommending the following actions be taken in order to comply with AB 27 and making the annual payment of approximately **\$1.13 million**:

- ✓ Re-allocate a portion (**\$520,632**) of the existing salary & benefit and indirect cost component expensed in General Administration to the Low/Mod Housing cost center
- ✓ Reduce operational costs by approximately **\$785,351**. These reductions relate primarily to the following in the four project area cost centers only:
  - Project Consultant costs
  - Environmental and Appraisal Service costs
  - Site Clearance costs
  - Other Legal Service costs
- ✓ Staff is projecting a minimal surplus of **\$189,342** for fiscal year-ending 2010-11. Keeping everything constant for FY 2011-12, staff believes that the same savings could be realized on an annual basis

Staff believes that the plan mentioned above allows for the continuance of the Commission and its operations, albeit, in a significantly diminished capacity.

Although staff is hopeful of a State Supreme Court decision overturning ABX1-26 and ABX1-27, the existing operating reality is ABX1-27. This means that our redevelopment budget has been significantly reduced and the Council's ability to reinvest in the community's infrastructure and other redevelopment priorities are limited. Should the State not meet its revenue projections, it is likely that the State will increase its ransom demands beyond \$1.156 million. If that is the case, consideration will have to be given to a restructuring of agency operations.

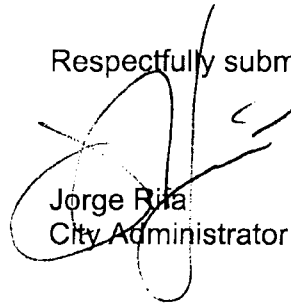
With that said, and regardless of the outcome of the current lawsuit, staff will continue to evaluate the Commission budget and return before this legislative body with additional recommendations, if necessary.

Reviewed by:



Bob Zarrilli  
Community Development Director

Respectfully submitted,



Jorge Rifa  
City Administrator

Fiscal Impact Reviewed by,



Vilko Domic  
Finance Director

Approved as to form:



Eduardo Olivo  
City Attorney

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, DETERMINING THAT IT WILL COMPLY WITH THE "VOLUNTARY ALTERNATIVE REDEVELOPMENT PROGRAM" PURSUANT TO PART 1.9 OF DIVISION 24 OF THE CALIFORNIA HEALTH AND SAFETY CODE IN ORDER TO PERMIT THE CONTINUED EXISTENCE AND OPERATION OF THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION

WHEREAS, on March 14, 1974, the City of Commerce (the "City") City Council adopted Ordinance No. 206, which established the Commerce Redevelopment Agency (the "Agency"); and

WHEREAS, the City Council approved and adopted the Redevelopment Plans for Project Area No. 1, Project Area No. 2 (the Town Center Project), Project Area No. 3 (the Atlantic Washington Project) and Project Area No. 4 (collectively referred to herein as the "Redevelopment Plans"), covering certain properties within the City (the "Project Areas"); and

WHEREAS, on November 3, 1992, the City Council adopted Ordinance No. 467, which created the Commerce Community Development Commission (the "Commission"); and

WHEREAS, pursuant to the California Health & Safety Code, the Commission is the successor-in-interest to the Agency and has, since its creation, been authorized to and has been implementing the Redevelopment Plans; and

WHEREAS, the Commission is engaged in activities necessary to execute and implement the Redevelopment Plans pursuant to the provisions of the California Community Redevelopment Law (*Health and Safety Code* § 33000, *et seq.*) ("CRL"); and

WHEREAS, since the adoption of the Redevelopment Plans, the Commission has undertaken redevelopment projects in the Project Areas to eliminate blight, improve public facilities and infrastructure, renovate and construct affordable housing, and to enter into partnerships with private industries in order to create jobs and expand the local economy; and

WHEREAS, over the next few years, the Commission hopes to implement a variety of redevelopment projects and programs that will, among other things, continue to eliminate and prevent blight, stimulate and expand economic growth in the Project Areas, create and develop local job opportunities and alleviate deficiencies in public infrastructure; and

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature has recently enacted and the Governor has signed companion bills, Assembly Bill X1 26 ("AB 26") and Assembly Bill X1 27 ("AB 27"), requiring that each redevelopment agency in the State be dissolved unless the community that created it enacts an ordinance committing it to making certain payments; and

WHEREAS, specifically, AB 26 prohibits redevelopment agencies from taking numerous actions, effective immediately and purportedly retroactively, and additionally provides that agencies are deemed to be dissolved as of October 1, 2011; and

WHEREAS, AB 27 provides that a community may participate in an "Alternative Voluntary Redevelopment Program," in order to enable a redevelopment agency within that community to remain in existence and carry out the provisions of the CRL, by enacting an ordinance agreeing to comply with Part 1.9 of Division 24 of the *Health and Safety Code*; and

WHEREAS, the "Alternative Voluntary Redevelopment Program" requires that the community agree by ordinance to remit specified annual amounts to the Los Angeles County Auditor-Controller; and

WHEREAS, under the threat of dissolution pursuant to AB 26, and subject to the contingencies and reservations set forth herein, the City shall make the Fiscal Year 2011-2012 community remittance, currently estimated to be Four Million Six Hundred Ninety Eight Thousand Nine Hundred Forty One Dollars (\$4,698,941), as well as the subsequent annual community remittances as set forth in the CRL; and

WHEREAS, the City reserves the right to appeal the California Director of Finance's determination of the Fiscal Year 2011-12 community remittance, as provided in *Health and Safety Code Section 34194*; and

WHEREAS, an action challenging the constitutionality of AB 26 and AB 27 has been filed in the California Supreme Court on behalf of cities, counties and redevelopment agencies throughout the State; and

WHEREAS, while the City intends to make these community remittances, they shall be made under protest and without prejudice to the City's right to recover such amounts and interest thereon, to the extent there is a final court determination that AB 26 and AB 27 are unconstitutional; and

WHEREAS, the City reserves the right, regardless of any community remittance made pursuant to this Ordinance, to challenge the legality of AB 26 and AB 27; and

WHEREAS, to the extent a court of competent jurisdiction enjoins, restrains, or grants a stay on the effectiveness of the Alternative Voluntary Redevelopment Program's payment obligation of AB 26 and AB 27, consistent with such court order, the City shall not be obligated to make any community remittance for the duration of such injunction, restraint, or stay; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred; and

WHEREAS, subject to the reservations and contingencies set forth above, the City desires to adopt this Ordinance so that the Commission may continue with its redevelopment activities pursuant to the terms and conditions of AB 27.

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

Section 1. Recitals. The Recitals set forth above are true and correct and incorporated herein by reference.

Section 2. Participation in the Alternative Voluntary Redevelopment Program. In accordance with *Health and Safety Code Section 34193*, and based on the Recitals set forth above, the City Council hereby determines that the City shall comply with the provisions of Part 1.9 of Division 24 of the *Health and Safety Code*, as enacted by AB 27.

Section 3. Payment Under Protest. Except as set forth in Section 4 below, the City Council hereby determines that the City shall make the community remittances set forth in *Health and Safety Code Section 34194 et seq.*

Section 4. Effect of Stay or Determination of Invalidity. The City shall not make any community remittance in the event a court of competent jurisdiction either grants a stay on the enforcement of AB 26 and AB 27 or determines that AB 26 and AB 27 are unconstitutional and therefore invalid, and all appeals therefrom are exhausted or unsuccessful, or time for filing an appeal therefrom has lapsed. Any community remittance shall be made under protest and without prejudice to the City's right to recover such amount and interest thereon in the event that there is a final determination that AB 26 and AB 27 are unconstitutional. If there is a final determination that AB 26 and AB 27 are invalid, this Ordinance shall be deemed to be null and void and of no further force or effect.

Section 5. Implementation. The City Council hereby authorizes and directs the City Administrator to take any action and execute any documents necessary to implement this Ordinance, including but not limited to notifying the Los Angeles County Auditor-Controller, the Controller of the State of California, and the California Department of Finance of the adoption of this Ordinance and the City's agreement to comply with the provisions of Part 1.9 of Division 24 of the *Health and Safety Code*, as set forth in AB 27.

Section 6. Additional Understandings and Intent. It is the understanding and intent of the City Council that, once the Commission is again authorized to enter into agreements under the CRL, the City will enter into an agreement with the Commission as authorized pursuant to CRL Section 34194.2, whereby the Commission will transfer annual portions of its tax increment to the City in amounts not to exceed the annual community remittance payments to enable the City, directly or indirectly, to make the annual remittance payments. The City Council does not intend, by enactment of this Ordinance, to pledge any of its general fund revenues or assets to make the remittance payments.

Section 7. CEQA. The City Council finds, under Title 14 of the California Code of Regulations, Section 15378(b)(4), that this Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") in that it is not a "project," but instead consists of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Los Angeles in accordance with CEQA Guidelines.

Section 8. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

Section 9. Certification; Publication. The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published once within 15 days of adoption in a newspaper of general circulation printed and published within the City of, and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with *Government Code* § 36933.

Section 10. Effective Date. This Ordinance shall become effective thirty (30) days from the date of its adoption.

PASSED, APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_ 2011.

\_\_\_\_\_  
Joe Aguilar  
Mayor

ATTEST:

\_\_\_\_\_  
Linda Kay Olivieri, MMC  
City Clerk





# AGENDA REPORT

Meeting Date: August 16, 2011

**TO: HONORABLE CITY COUNCIL**

**FROM: CITY ADMINISTRATOR**

**SUBJECT: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, AMENDING SECTION 8.06.050 OF CHAPTER 8.06 OF THE COMMERCE MUNICIPAL CODE REGARDING DANGEROUS ANIMALS – FIRST READING**

**RECOMMENDATION:**

Approve the Ordinance for first reading.

**MOTION:**

Move to read the Ordinance by title only.

Move to approve the Ordinance for first reading.

**ANALYSIS:**

In 1987, the City Council enacted Ordinance No. 407, which enacted Commerce Municipal Code (“CMC”) Chapter 8.06. Chapter 8.06 relates to the City’s procedures for impounding dangerous animals.

Pursuant to CMC Section 8.06.030, “[t]he chief animal control officer shall have the power to summarily and immediately impound a dog or other animal where there is evidence it has attacked, bitten or injured any human being or other animal.” Section 8.06.040 further provides that “the chief animal control officer shall conduct a hearing to determine whether or not a dog or other animal confined or impounded...is a dangerous animal.”

CMC Section 8.060.050 provides for an appeal process to the City Council from any decision by the Chief Animal Control Officer. CMC Section 8.06.050 reads as follows:

“Any appeal may be taken to the city council from any decision of the chief animal control officer pursuant to this chapter. Such appeal shall be delivered in writing to the city clerk within five days of the service upon the appellant of the decision from which the appeal is taken. The city clerk shall schedule such appeal on the agenda for the next regular city council meeting following the date of filing thereof, but if the date of such regular city council meeting is less than five days after the date of the filing of the appeal, the city clerk shall schedule the appeal on the agenda for the second next succeeding regular city council meeting. The decision of the city council shall be final and notice of such decision shall be served upon the chief animal control officer and upon the appellant. Service on the appellant shall be either personal or by prepaid first class mail.”

The City has recently had to address an appeal under Section 8.06.050. City staff believes that an appeal process that allows an appeal to be made to the City Administrator will be more efficient and effective.

The proposed Ordinance will amend CMC Section 8.06.050 to provide for an appeal to the City Administrator instead of the City Council. The City Clerk shall be required to schedule such an appeal within ten (10) business days.

**FISCAL IMPACT:**

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

**RELATIONSHIP TO 2009 STRATEGIC GOALS:**

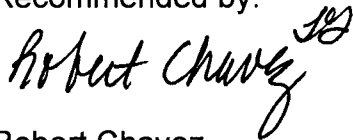
This report relates to the 2009 strategic planning goal: "Protect and Enhance the Quality of Life in the City of Commerce," as it addresses a community public safety issue of concern.

Respectfully submitted,



Jorge J. Rifá  
City Administrator

Recommended by:



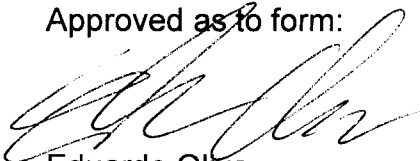
Robert Chavez  
Director of Safety and Community Services

Fiscal impact reviewed by:



Vilko Domic  
Director of Finance

Approved as to form:



Eduardo Olivo  
City Attorney



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE,  
CALIFORNIA, AMENDING SECTION 8.06.050 OF CHAPTER 8.06 OF THE  
COMMERCE MUNICIPAL CODE REGARDING DANGEROUS ANIMALS

WHEREAS, in 1987 the City Council of the City of Commerce (the "City") adopted Ordinance No. 407, which enacted Chapter 8.06 of the Commerce Municipal Code ("CMC") related to the City's impoundment of dangerous animals; and

WHEREAS, CMC Section 8.06.030 provides for the impoundment of an animal by the City's Chief Animal Control Officer where there is evidence that the animal has attacked or bitten any human being or other animal; and

WHEREAS, CMC Section 8.06.040 provides for a hearing by the City's Animal Control Officer to determine whether or not a dog or other animal confined or impounded is a "dangerous animal"; and

WHEREAS, CMC Section 8.06.050 provides for an appeal process from any decision by the Chief Animal Control Officer; and

WHEREAS, CMC Section 8.06.050 provides that the appeal is to be made to the City Council; and

WHEREAS, the City Council desires to amend CMC Section 8.06.050 to make the appeal process more efficient by directing that all appeals be made to the City Administrator.

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

SECTION 1. Section 8.06.050 of the Commerce Municipal Code is hereby amended in its entirety to read as follows:

"An appeal may be taken to the City Administrator from any decision of the chief animal control officer pursuant to this chapter. Such appeal shall be delivered in writing to the city clerk within five days of the service upon the appellant of the decision from which the appeal is taken. The city clerk shall schedule such appeal within 10 business days. The hearing shall afford the owner and the owner's witnesses a full opportunity to be heard. Notice of the time and place of the hearing shall be served upon the owner, either personally or by prepaid first class mail prior to the hearing. The decision of the City Administrator shall be final and notice of such decision shall be served upon the chief animal control officer and upon the appellant. Service on the appellant shall be either personal or by prepaid first class mail."

SECTION 2. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that anyone or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 3. Effective Date. This Ordinance shall become effective thirty (30) days from and after its adoption.

SECTION 4. 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 \_\_\_\_\_,  
2011.

\_\_\_\_\_  
Joe Aguilar  
Mayor

ATTEST:

\_\_\_\_\_  
Linda Kay Olivieri, MMC  
City Clerk



# AGENDA REPORT

MEETING DATE: August 16, 2010

**TO:** HONORABLE CITY COUNCIL

**FROM:** CITY ADMINISTRATOR

**SUBJECT:** RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE  
AWARDING A PROFESSIONAL SERVICES AGREEMENT FOR  
CONSTRUCTION MANAGEMENT SERVICES TO SWINERTON  
MANAGEMENT AND CONSULTING

**RECOMMENDATION:**

Approve and assign the number next in order.

**MOTION:**

Move to approve recommendation.

**BACKGROUND:**

At its meeting of July 19, 2011, as part of the Fiscal Year 2011/12 Capital Improvement Project (CIP) Budget, the City Council approved funds for construction management services for the capital improvement projects.

On August 1, 2011, Swinerton Management and Consulting (Swinerton) submitted a revised proposal for construction management services to the City that includes a 10% reduction in their contract fee.

**ANALYSIS:**

For the past couple of years, Swinerton has provided outstanding construction management and professional support services to the City of Commerce in connection with the City's Capital Improvement Project (CIP), including the Central Library Renovation.

Swinerton has offered to provide the same level of services for the City's FY 2011/12 Capital Improvement Projects for a reduced contract fee of \$257,591.

After careful review of Swinerton's proposal and their performance over the last couple of years, staff is recommending that the City enter into a professional services agreement with Swinerton for Fiscal Year 2011/12. Swinerton will be responsible for providing complete and professional construction management services including: construction management and oversight, coordination, scheduling and tracking, administration, inspection and quality assurance, cost estimating, value engineering, record keeping, etc., for the City's CIP projects.

**FISCAL IMPACT:**

Swinerton has offered to provide the requested services for a contract fee of \$257,591, which is 10% lowered than the previous fiscal year. Staff is recommending a contingency allocation of \$33,109 (approximately 13%) for unforeseen and additional services, for a total amount of \$290,700.

The proposed activity can be carried out at this time without additional impact on the current operating budget. Funding will be provided as follows:

CIP Funds	\$164,700
Central Library Project	\$ 90,000
PTMISEA (Transportation)	\$ 36,000
<b>TOTAL</b>	<b>\$290,700</b>

**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.”*

There are no specific objectives connected to this issue. The City’s ability to adequately maintain its infrastructure through the implement the Capital Improvement Project is of paramount importance to the community within the context of the FY 2010/2011 approved budget and available resources is in keeping with the identified 2009 Strategic Goals.

**Respectfully submitted,**



Jorge Rifa  
City Administrator

**Recommended by:**



Bob Zarrilli  
Director of Community Development

**Prepared by:**



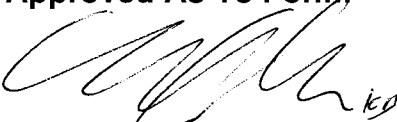
Danilo Batson  
Assistant Director of Public Services

**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, AWARDED A PROFESSIONAL SERVICES AGREEMENT FOR  
CONSTRUCTION MANAGEMENT SERVICES TO SWINERTON MANAGEMENT AND  
CONSULTING

WHEREAS, as part of the Fiscal Year 2011/12 Capital Improvement Project (CIP) Budget, the City Council approved funds for construction management services; and

WHEREAS, Swinerton Management and Consulting is qualified to perform the requested services and has provided outstanding services to the City in the last couple of years;

WHEREAS, Swinerton Management and Consulting has offered to provide the requested services at a 10% reduced price.

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 Swinerton Management and Consulting in connection with the FY 2011/12 Capital Improvement Project in the City of Commerce. The Mayor is hereby authorized to execute the agreement for and on behalf of the City of Commerce. .

PASSED, APPROVED AND ADOPTED this 16<sup>th</sup> day of August, 2011.

\_\_\_\_\_  
Joe Aguilar  
Mayor

ATTEST:

\_\_\_\_\_  
Linda Kay Olivieri, MMC  
City Clerk



**THIS AGREEMENT** (the "Agreement") dated as of August 16, 2011 (the "Effective Date") is made by and between Swinerton Management and Consulting ("Consultant") and the City of Commerce, a municipal corporation (the "City").

**RECITALS**

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

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

**AGREEMENT**

1. Scope of Services and Schedule of Performance.

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

2. Term.

Except as otherwise provided by Section 20 hereof, the term of this Agreement shall be for a period commencing on the Effective Date until August 1, 2012.

3. Compensation.

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

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

4. Financial Records.

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

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

5. Independent Contractor.

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

6. Consultant to Provide Required Personnel; Subcontracting.

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

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

7. Responsible Principal and Project Manager.

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

8. City Liaison.

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



9. Licenses.

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

1. Compliance with Laws.

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

11. Insurance.

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

12. Warranty and Liability.

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

13. Indemnification.

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

14. Confidentiality.

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

2. Ownership of Documents.

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

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

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

17. Covenant against Contingent Fees.

Consultant warrants that it has not employed or retained any company or person to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee, City or percentage from the award or making of this Agreement, except for subcontractors listed in this Agreement. For breach or violation of this warranty, the City shall have the right,

among other available legal remedies, to terminate this Agreement without liability, or in its discretion, to deduct from the consideration payable to Consultant, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

38. Conflict of Interest.

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

19. Other Agreements.

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

20. Termination.

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

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

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

4. Waiver of Breach.

No waiver of any term, condition or covenant of this Agreement by the City shall occur unless signed by the City Administrator and such writing identifies the provision which is waived and the circumstances or period of time for which it is waived. Such waiver shall be for the specified period of time only and shall not apply to any subsequent breach. In addition, such

waiver shall not constitute a waiver of any other term, condition or covenant of this Agreement nor shall it eliminate any remedies available to the City for any breaches of this Agreement which are not excused by such waiver. A delay in communicating a failure of Consultant to satisfy a term, condition or covenant in no way waives that term or any remedies available for its breach.

52. Assignment.

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

63. 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.

74. 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.

85. Notices.

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

For the City:

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

For Consultant:

Swinerton Management & Consulting  
865 S. Figueroa Street, Suite 3000  
Los Angeles, California 90017  
Attn: Emery Molnar, Vice President/Division Manager

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.

96. 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.

107. Severability.

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

28. No Construction of Agreement against any Party.

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

29. Entire Agreement and Amendments to Agreement.

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

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

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

31. Counterpart Signatures.

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

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

**CITY OF COMMERCE**

DATED: \_\_, 2011

By: \_\_\_\_\_  
Joe Aguilar, Mayor

ATTEST:

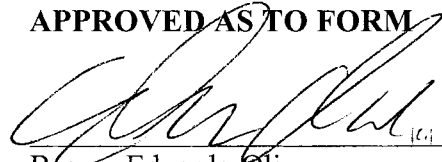
\_\_\_\_\_  
Linda K. Olivieri, City Clerk

**CONSULTANT**

DATED: 08/10, 2011

By: \_\_\_\_\_  
Name: Emery Molnar  
Title: Vice President/Division Manager

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
By: Eduardo Olivo  
Title: City Attorney

**EXHIBIT A**



August 1, 2011

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

RE: Proposal for Construction Management Services

Dear Mr. Batson:

We are pleased to submit our proposal for ongoing Construction Management (CM) and Project Support Services for the City of Commerce. As you know, we are currently providing construction management services to the City for the Aquatorium Locker Room Renovation, the Central Library Renovation and other miscellaneous projects, with Michael Halsey as the Swinerton Management & Consulting Project Manager for these projects.

Swinerton Management & Consulting's contract time expired at the end of March 2011; however, funding for services was approved and provided through July 2011 (PO #2011-10000931). The Library Renovation Project is anticipated to begin construction in late summer and the close-out of Aquatorium project will be overlapping. In an effort to provide continued management and support of these projects, Swinerton is proposing to extend our services through July 2012 and Michael Halsey will remain as the onsite Project Manager for the foreseeable future. He will also be available to assist the City with various other smaller projects without overburdening the fee proportion of any one project.

Currently, Swinerton Management & Consulting is billing the City of Commerce at a discounted rate of \$23,851 a month for construction management services. Swinerton would like to maintain a strong working relationship with the City of Commerce far into the future. With this in mind, Swinerton would like to offer a further reduction of our fee by an additional 10%.

As requested by City staff, we are also including a \$33,109 contingency that could be applied to various additional services like facilities assessments, estimating services, additional scheduling reviews or analysis, project/document controls, constructability reviews, and other services offered by Swinerton.

2011/2012 SERVICE AGREEMENT TOTAL

12 Months - Full Time Project Management Services .....	\$286,212
Additional 10% Discount.....	<u>(\$28,621)</u>
Subtotal for Construction Management Services.....	\$257,591
Construction Management Services Contingency.....	<u>\$ 33,109</u>

Total: \$290,700

This extension of services through July 2012 will allow Swinerton to continue providing uninterrupted services on the Library Renovation, Aquatorium Locker Room and various other projects for the City.



If additional services (document controls, detailed scheduling services, facilities assessments, feasibility studies, etc.) are required this may be achieved through the use of the services contingency or through a task order basis at an agreed upon fee.

We are excited about the opportunity to continue to provide services for trusted partner, The City of Commerce, and will be happy to provide any additional information that may be needed. In the meantime, your consideration and support are appreciated

Sincerely,

A handwritten signature in black ink, appearing to read 'Emery Molnar', with a long horizontal flourish extending to the right.

Emery Molnar  
Vice President/ Division Manager



## EXHIBIT B

### REQUIRED INSURANCE

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

1. Comprehensive General Liability and Automobile Liability Insurance Coverage.

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

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

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

2. Errors and Omissions Insurance Coverage.

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

3. Worker's Compensation.

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

4. Additional Insureds.

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

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

5. Cancellation Clause.

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

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

6. Severability Clause.

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

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

7. Qualifications of Insurer.

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

8. Approval of Insurer.

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

9. Payment of Premiums.

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

10. Evidence of Insurance and Claims.

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



## AGENDA REPORT

DATE: August 16, 2011

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA AWARDDING AND APPROVING A CONTRACT WITH RON'S MAINTENANCE, INC. FOR THE MAINTENANCE AND REPAIR OF CATCH BASIN SCREEN INSERTS

### RECOMMENDATION:

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

### MOTION:

Move to approve the recommendation.

### BACKGROUND:

The Trash Total Maximum Daily Load (TMDL) regulation, adopted in 2001 and amended in 2007 by the Regional Water Quality Control Board (Water Board), requires cities draining into the Los Angeles River watershed to reduce the amount of trash in their municipal storm drain system to a "zero level" by 2016. Failure to achieve the reductions can result in fines up to \$25,000 per day per City and third party litigation. The TMDL is enforced through the National Pollutant Discharge Elimination System (NPDES) Permit. These regulations require cities to implement litter reduction programs and capital improvement projects to reduce trash, monitor trash levels in the storm drain system, and maintain the catch basins in good order.

The City of Commerce has 676 catch basins that drain to the Los Angeles River of which the City owns approximately 126. Los Angeles County (County) owns the remaining catch basins. However, the Water Board is holding each City responsible for trash entering the storm drains despite who owns the catch basins. The City contracts with the County for maintenance service for City-owned catch basins.

In order to comply with the Trash TMDL, the City entered into a joint 16-City effort to install catch basin screens on all catch basins in Commerce including County-owned catch basins with a \$10 million grant from the Federal American Recovery and Reinvestment Act of 2009 (ARRA) funds. Commerce's share was approximately \$670,000. The project is complete however during permitting of the project, the County conditioned installation of the screens with City assumption of maintenance responsibilities for all catch basins with screens including County-owned catch basins. This condition unexpectedly and substantially increased the City's maintenance costs.

### ANALYSIS:

The County released a second Request for Proposal (RFP) for contracting catch basin maintenance services. The first RFP returned bids for a higher level of service that was cost prohibitive. In February 2011, the County presented their proposed costs for such service to cities. Since the costs were considerably higher than what the cities were paying before the Trash TMDL Catch Basin Screen Insert Project, in May 2011 the Los Angeles Gateway Region Integrated Regional Water Management Joint Powers Authority (Gateway Authority) of which Commerce is a member, released their own RFP

for the same level of service. The proposed services to be provided include the following:

- Catch basin cleanouts and inspections with repair services for the trash screens as needed. At a minimum, one cleanout/inspection will be required during the dry season (May 1<sup>st</sup> – September 30<sup>th</sup>) and four cleanouts/inspections during the wet season (October 1<sup>st</sup> – April 30<sup>th</sup>).
- Reporting to the City evidence of rodents and/or vectors breeding/living in the storm drain system within 24 hours.
- Stenciling “no dumping” template as needed.
- Photo documentation of before and after cleanings.
- Minor maintenance including adjustment to the ARS units to ensure full operation during storm events and repairs to the CPS screens.

The June 30, 2011 bid results are as follows:

	<b>Cost Per Catch Basin Per Cleaning</b>			
	<b>L.A. County (proposed)</b>	<b>Ron's Maintenance Inc.</b>	<b>Gateway Authority West Coast Storm Inc.</b>	<b>United Storm Water Inc.</b>
<b>ARS inserts only</b>	\$32.00	\$22.00	\$30.00	\$32.50
<b>CPS inserts only</b>	\$68.00	\$22.00	\$34.00	\$34.50
<b>ARS &amp; CPS inserts (combined)</b>	\$88.00	\$22.00	\$30.00	\$34.50
<b>No inserts</b>		\$17.00	\$34.00	\$30.00

The Gateway Authority bid pricing is limited to Gateway Authority region cities only and in effect for three years. *The Gateway Authority is not the contracting agency.* Their role was limited to conducting the competitive bidding process with the Board accepting the bidders that meet the requirements. The Board accepted all three bidders. Each eligible city may enter into a contract directly with one of the bidders. Staff contacted RMI's references and confirmed that their service was satisfactory. The County is one of RMI's clients.

Given the total number of catch basins in Commerce and the minimum level of service required annually, it is estimated that the County may charge Commerce approximately \$200,000 per year for catch basin maintenance beginning current fiscal year 2011/12. The County has offered to reimburse cities for cleaning County-owned catch basins with screens at a cost of \$11.06 per catch basin, which would amount to approximately a \$6,000 reimbursement payment for cleaning all their catch basins each year. However, cities were paying the County an average of \$22.00 per unmodified catch basin for cleanings. This item is still being discussed with the County. In comparison, the Gateway Authority's lowest bid from Ron's Maintenance Inc. (RMI) would result in an estimated annual cost of \$80,000 not including the County's proposed reimbursement.


**FISCAL IMPACT:**

The annual maintenance and repair cost is estimated at approximately \$80,000. Since most costs will be incurred mid-year, staff will return to the City Council mid-year with a clean-up resolution to designate funding for the required maintenance service.

**RELATIONSHIP TO 2009 STRATEGIC GOALS:**

This agenda report item complies with the City Council's Strategic Goal #2 – Protect and Enhance Quality of Life in the City of Commerce by reducing trash in the Los Angeles River.

Recommended by:

  
Bob Zarrilli  
Director of Community Development

Respectfully submitted,

  
Jorge Rifa  
City Administrator


Reviewed by:

  
Danilo Batson  
Assistant Director of Community Development

Prepared by:

  
Gina Nila  
Environmental Services Manager

Reviewed by:

  
Vilko Domic  
Director of Finance

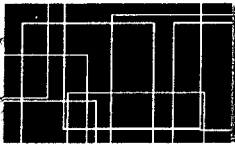
Approved as to Form:

  
Eduardo Olivo  
City Attorney

Attachment: Exhibit A – Ron's Maintenance Service Proposal

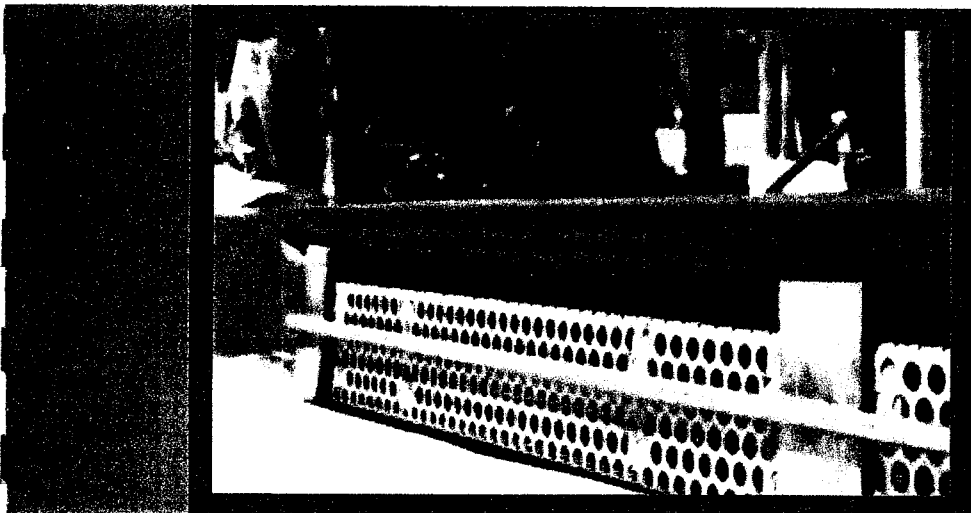




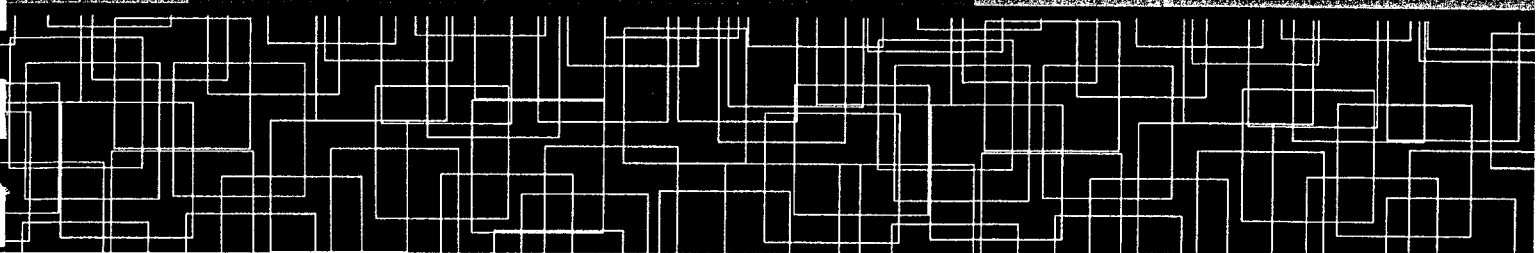


# MUNICIPAL STORM SEWER CATCH BASIN MAINTENANCE BID

A PROPOSAL SUBMITTED TO: GATEWAY AUTHORITY



**RMI**  
Ronald M. Williams & Associates  
2872 S. Broadway St.  
Los Angeles, CA 90007  
Tel: (323) 414-2460  
Fax: (323) 881-2418  
[www.rmimaintenance.com](http://www.rmimaintenance.com)



**RMI**

**CATCH BASIN AND STORM DRAIN  
MAINTENANCE SERVICES**

July 5, 2011

William Pagett  
Gateway Authority  
16401 Paramount Blvd  
Paramount, CA 90723  
(sent via email)


Re: Gateway Authority Catch Basin Cleaning Bid Irregularity

Dear Mr. Pagett;

This letter is submitted in response to the Gateway Authority's July 1, 2011 email regarding an irregularity in bid documents submitted by the three qualified bidders in response to your Request for Proposal. In response to your email request, Ron's Maintenance Inc. (RMI) affirms that the unit price shown on the bid form dated June 30, 2011, is based on a per cleaning price, instead of per year as stated in your email and bid package.

Please feel free to contact me directly at (213) 359-3827, should you need additional information or have any questions.

Sincerely,



Ron Norman  
President

June 30, 2011

Grace Kast  
Gateway Authority  
16401 Paramount Blvd  
Paramount, CA 90723

**RE: MUNICIPAL STORM SEWER CATCH BASIN MAINTENANCE BID**

Dear Mrs Kast:

Ron's Maintenance, Inc., (RMI) is a highly respected, service-oriented company specializing in performing catch basin cleanout and storm drains maintenance service. Our company is dedicated to providing the member agencies of the Gateway Authority with the tools necessary to maintain environmental standards in addition to providing superior catch basin cleaning and maintenance services.

For the more than 17 years, RMI has been committed to protecting and improving the quality of our urban water-ways and the environment. As part of our commitment to the Gateway Authority, RMI guarantees that our cost effective approach and level of service cannot be duplicated by our competitors.

RMI understands that like many municipalities the member agencies of the Gateway Authority are facing increased environmental oversight and ever decreasing staffing and financial resources. We believe these financial and regulatory stressors now serve as a catalyst for the sharing municipal resources. The member agencies of the Gateway Authority can benefit from utilizing RMI for their municipal storm sewer catch basin maintenance services, not only do we provide our clients with the tools necessary to maintain environmental standards, but our exceptional history, and professionalism serves as a testimony to our commitment to you the client. If selected, RMI promises to deliver unparalleled service in inspection, cleaning and maintenance of the 18,000 catch basins within the Gateway Authority boundaries.

We greatly appreciate this opportunity to submit the enclosed bid proposal. If you have any questions or need additional information, please feel free to contact me directly at (213) 359-3827.

Sincerely,



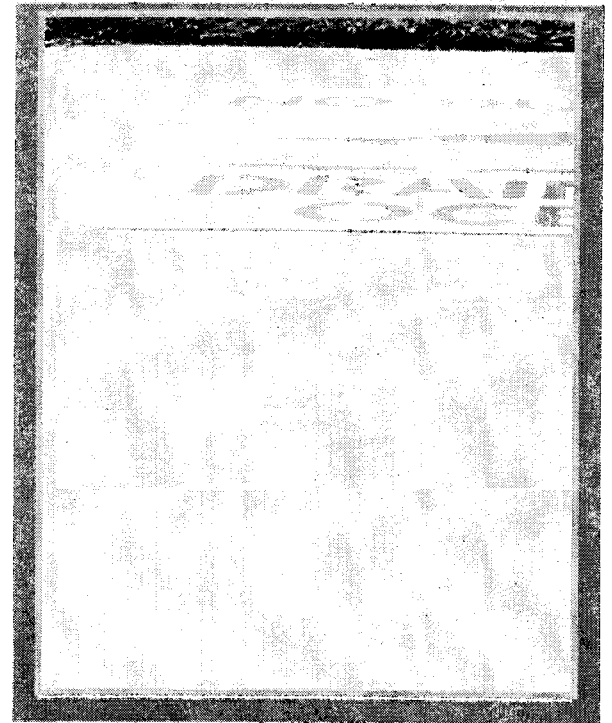
Ron Norman,

President

June 30, 2011

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**RMI**

**CATCH BASIN AND STORM DRAIN  
MAINTENANCE SERVICES**

## BIDDER INFORMATION

### COMPANY BACKGROUND

Ron's Maintenance, Inc. (RMI), was founded in 1994 by Ron Norman in the City of Los Angeles, with the goal of becoming the industry leader in catch basin cleaning.

RMI has been providing catch basin and storm drain cleanout services to municipal agencies throughout southern California for more than 17 years. RMI was founded with the primary goal of protecting the environment by maintaining catch basins to prevent blockages of the municipal storm sewer system and to minimize the amount of pollutants that eventually discharge into our local waterways and the ocean.

At RMI we are committed to providing municipal agencies with unsurpassed catch basin and storm drain cleanout and maintenance service. RMI utilizes the most efficient and cost effective catch basin and storm drain cleaning methods. In addition, we employ a staff of highly trained and professional staff. We are confident that the Gateway Authority member agencies will take a major step towards improving stormwater quality by selecting RMI's professional services.

### COMPANY PROFILE

- RMI is an S Corporation, owned and operated by Ron Norman.
- RMI's Tax Identification Number: 20-1345634
- D47 General Contractor License: License number 4343559

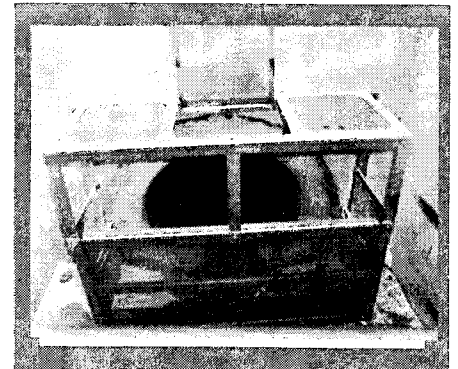
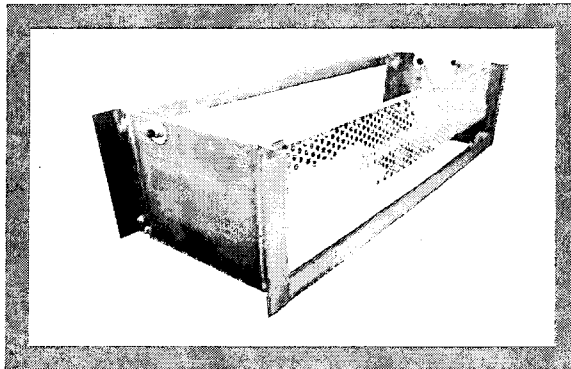
All project support and services associated with this project will be directed from RMI's Los Angeles, CA, office.

## GENERAL REQUIREMENTS AND APPROACH

### EXPERIENCE

RMI has been providing professional catch basin and storm drain cleaning and maintenance services for municipal agencies throughout southern California for more than 17 years. As technologies have evolved so has the level of our services we offered. RMI has more than five (5) years of experience cleaning and servicing Automatic Retractable Screen (ARS) units for the Los Angeles County Department of Public Works, the City of San Diego Department of Environmental Services and City Compton. In addition, RMI is familiar with and has serviced the Connection Pipe Screen (CPS) units utilized by Los Angeles County Department of Public Works for a number of years.

Our typical maintenance of a catch basin includes the removal of trash and sediments collected in the sump. Additional general maintenance activities are performed whenever necessary including minor repairs to the catch basin's, frames, covers; and the re-stenciling catch basins with no dumping messages.



RMI has incorporated a computerized work order management system to track cleaning and maintenance activities performed on our client's catch basins. Vital information is collected in RMI's work order management system including the date of cleaning, maintenance and/or repair; the amount of man-made trash removed; the amount of sediment and green waste removed; if any repairs were needed and the nature of repair; and if the catch basin was re-stenciled. RMI utilizes the information collected to optimize future catch basin cleaning and maintenance repair efforts. RMI's optimized maintenance program helps to reduce street flooding, minimizes nuisance odors, and significantly reduces the discharge of pollution to our waterways.

### **CONFINED SPACE TRAINING**

RMI fully complies with all applicable State of California Occupational Safety and Health Administration (Cal/OSHA) and Public Works' Safety Requirements, while performing all catch basin and storm drain system maintenance activities.

RMI is aware that entry into Permit-Required Confined Spaces, as defined in California Code of Regulations Title 8, Section 5157, may be required as a part of the work specified in the Scope of Work. RMI shall perform any required confined space entries in accordance with Cal/OSHA Confined Space Section 5156, 5157, 5158, Title 8 and CCR.

Copies of our project staff's Confined Space and Respiratory Training certificates are provided in Attachment B.

### **HAZARDOUS WASTE RECOGNITION**

RMI' staff is trained and is familiar with recognizing signs of illegal dumping of hazardous materials such as used oil and paint in catch basins and the storm drain system. Upon discovery of illegal dumping of hazardous wastes, RMI staff will comply with the reporting and response procedures established by the contracting agency, which includes immediate telephone notification of municipal contact.



## **APPROACH**

### **Project Scheduling and Coordination:**

- To ensure that all affected catch basins are cleaned prior to the start of the 2011-2012 Rainy Season (Oct 1), RMI will contact contracting agencies within seven (7) days of contract award to establish the lines of communication, obtain catch basin inventories, and obtain copies of catch basin location maps.
- After meeting with all contracting agencies, RMI will establish a master schedule to ensure that all contacting agencies receive the highest level of service, and that the established cleaning schedule (min. of one cleaning between May 1<sup>st</sup> and September 30<sup>th</sup>) is maintained.

### **Inspection and Cleaning Procedures:**

- RMI will visually inspect the condition of the catch basin grates, ARS, and CPS units; the legibility of "no dumping" signage/stencils; and note any build-up of debris outside the catch basin.
- RMI will note the type and quantity of materials removed from each catch basin and storm drain (i.e. trash, green waste, and dirt/sediment). In addition, staff will document any signs of vector/rodents habitats.
- RMI will look for evidence of illegal dumping of hazardous wastes such as used oil and paint in the catch basin/storm drain system. Should our crews encounter these materials, they will immediately notify the contracting agency.
- RMI will provide photographic documentation of inspection and cleaning activities. Photographs shall be taken prior to cleaning and after completion of cleaning activities from the same vantage points (before and after). A minimum of five (5) photographs will be taken of each basin, using a GPS enabled digital camera.
- RMI will document all information from inspections/cleaning, repair, and stenciling activities using a Field Data Sheet. This information along with site photographs will be provided to the contracting agencies upon the completion of the 1<sup>st</sup> round of cleaning and inspection activities.

### **Optional Task- Weighing/Measuring Trash and Debris:**

- RMI can further assist contract agencies in enhancing their compliance efforts by separating and measuring/weighing man-made trash vs green waste and dirt/sediment. Note: weighing/measuring activities will be done at the time of cleaning and will reflect "wet weight" of materials collected.



**On-Going Inspections:**

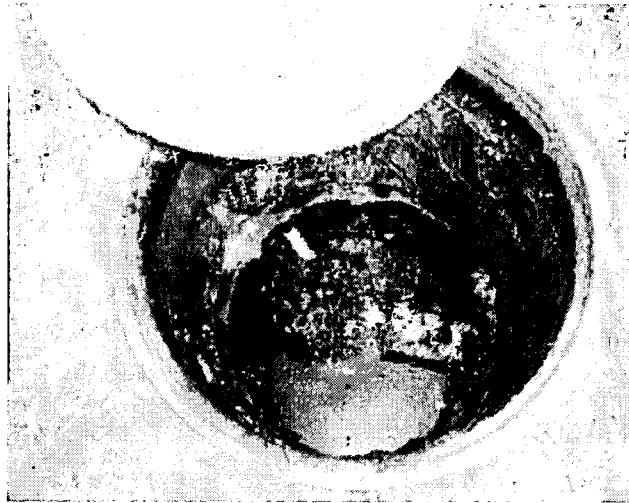
- RMI will perform inspections of all identified catch basins during the months of October, January, and April (on an annual basis).
- RMI will clean any catch basins observed having blocked screen inlets, blocked screened outlets, or are forty percent (40%) full of trash and debris.
- RMI will document inspection results on a Field Data Sheet along with providing any necessary photographic documentation.

**Minor Repairs:**

- RMI crews are able to, and will make the following minor repairs to screens and trash collection devices that have minor damage:
  - Adjust ARS units to allow proper operation; and
  - Repair CPS screens.
- Any damage observed beyond RMI's capabilities will be reported to the contracting agency within 24 hours of discovery.
- Contracting agency will arrange for any major repairs or replacements of damaged units.

**Vector/Rodents:**

- RMI will report to contracting agencies within 24 hours of discovering evidence of vector or rodent breeding/living activities in catch basins/storm drains.



## RESUMES AND EXPERIENCE

### PRESIDENT/OWNER

#### Ron Norman

Mr. Norman is the President and Owner of Ron's Maintenance, Inc. (RMI). He directs all aspects of the company's business affairs and oversees all client services. Mr. Norman is responsible for bottom-line results, client relations, and quality control. He is involved in all aspects of RMI's service to its municipal clients. He believes in providing the highest quality service for all RMI's municipal clients, doing what ever is necessary to ensure customer satisfaction.

#### Education:

Grambling State University, Grambling Louisiana; Major – Business

#### Key Qualifications and Experience:

- Administration and implementation of more than fifteen (15) municipal catch basin cleaning contracts throughout Southern California
  - More than 18 years of experience
  - D47 State Contractor's License
  - Project Management and Quality Control
  - Certification in Confined Space Entry
  - Class B Commercial License
  - Project Commitment
-

## **PROJECT MANAGERS**

### **Mario Gudino- Project Manager**

Mr. Gudino is a strong asset in our organization and has over 16 years of experience as a project manager with RMI. Mr. Gudino's duties include:

- On-Site Project Supervision
- Clean, stencil and repair catch basins
- Oversee large work crews to complete various contracts
- Manage supplies and keep track business expenses
- Responsible for knowing and abiding by city ordinances and laws
- Organized and completed over 100 awarded contracts
- Assist in Bid process
- Generate reports of work completed and report to respective authority

In addition, Mr. Gudino has five years of experience in cleaning CPS, APS, MRS and FBI inserts and is certified in Confined Space Entry; First Response for Unusual and Hazmat Occurrences; and Traffic Management.

---

### **Martin Nava- Project Manager**

Mr. Nava is a project manager with RMI. Mr. Nava has more than 13 years of experience in the field providing support on well over 100 contracts. Mr. Nava's current duties include:

- On-Site Project Supervision
- Clean, stencil and repair catch basins
- Oversee large work crews to complete various contracts
- Manage supplies and keep track business expenses
- Responsible for knowing and abiding by city ordinances and laws
- Organized and completed over 100 awarded contracts
- Assist in Bid process
- Generate reports of work completed and report to respective authority

In addition, Mr. Nava has five years of experience in cleaning CPS, APS, MRS and FBI inserts and has completed Certified in Confined Space Entry training.

## REFERENCES

Our company's longevity and growth is a result of continually striving to meet and exceed the needs of each and every one of our service contracts. We learned early on that both large and small cities are faced with every growing regulatory requirements to effectively reduce the amount of trash and debris discharged through the municipal storm drain system. RMI addresses this need by serving as specialists in the field, and by providing quality work with cost effective pricing. RMI has an extensive list of references which includes the following:



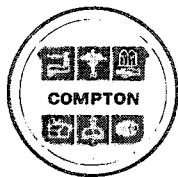
Los Angeles County Department of Public Works  
 Contact: Aki Gadim, Head Construction Inspector  
 900 S. Fremont Ave  
 Alhambra, CA 91803  
 Years Service: 18



City of Laguna Niguel  
 Contact: Kevin Smith, Project Manager  
 27751 La Paz Road Unit D  
 Laguna Niguel, CA 92677  
 Tel: (949) 795-5224  
 Years Service: 11



City of Rancho Santa Margarita  
 Contact: Joe Garza, Project Manager  
 23282 Arroyo Vista  
 Rancho Santa Margarita, CA 92688  
 (949) 795-5665  
 Years Service: 10



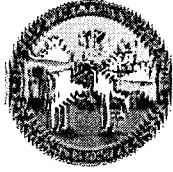
City of Compton  
 Contact: George Mendoza  
 458 S. Alameda  
 Compton, CA 90411  
 Tel: (310) 605-5691  
 Years Service: 10



City of Aliso Viejo  
 Contact: Joe Garza, Project Manager  
 12 Journey # 100  
 Aliso Viejo, CA 92656  
 949-795-5665  
 Years Service: 10



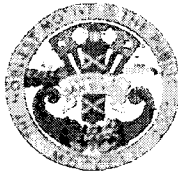
City of Buena Park ✓  
Contact: Doug Brodowski, Sr. Management Analyst  
6650 Beach Blvd.  
Buena Park, CA 90620  
Tel: (714) 562-3741  
Years Served: 8



City of Camarillo ✓  
Contact: Anita Kuhlman, Stormwater  
Division Manager  
283 S. Glenn Drive  
Camarillo, CA 93010  
Tel: (805) 388-5338  
Years Served: 6



Palos Verdes Estates  
Contact: Floriza Rivera, Associate Engineer Public Works  
340 Palos Verdes Drive West  
Palos Verdes Estates, CA 90274  
Tel: (310) 378-0383  
Years Served: 6



City of San Diego  
Contact: Daniel Lottermoser, Associate Engineer Street Division  
2781 Caminito Challas MS44  
San Diego, CA 92105  
Tel: (619) 527-5423  
Years Served: 4



City of Wildomar  
Contact: James Bingham, Project Manager  
23873 Clinton Keith Rd., Suite 201  
Wildomar, CA 92595  
Tel: (951) 634-9206  
Years Served: 2



City of Menifee  
Contact: James Bingham, Project Manager  
Menifee, CA 92586  
Tel: (951) 672-6777  
Years Served: 2



# ATTACHMENT A- BID FORM

RMI guarantees the bid prices below.

	<u>Unit Price</u>	<u># of CB</u>	<u>Extended Price</u>
ARS Catch Basins	\$ 22 each	1000	\$ 22,000
CPS Catch Basins	\$ 22 each	5000	\$ 110,000
ARS & CPS Catch Basins	\$ 22 each	4000	\$ 88,000
Non-retrofitted Catch Basins	\$ 17 each	3338	\$ 56,746
"No Dumping" stenciling	\$ 6 each	2000	\$ 12,000
"Staff Gauge" stenciling	\$ 6 each	7500	\$ 45,000
		TOTAL	\$ 333,746

  
Authorized Signature

6-30-2011  
Date



# ATTACHMENT B – CONFINED SPACE CERTIFICATIONS

Ron Norman



THIS ACKNOWLEDGES THAT Ron Norman  
HAS RECEIVED INSTRUCTION IN:

- "H2S Protection" Course with Smoke House
- "Respiratory Protection" Course (including fit test)
- "Confined Space Entry"

Date 6/24/11 Expiration Date 6/24/12  
Instructor Sean Tyone

Mario Gudino



THIS ACKNOWLEDGES THAT Mario Gudino  
HAS RECEIVED INSTRUCTION IN:

- "H2S Protection" Course with Smoke House
- "Respiratory Protection" Course (including fit test)
- "Confined Space Entry"

Date 6/24/11 Expiration Date 6/24/12  
Instructor Sean Tyone

Martin Nava

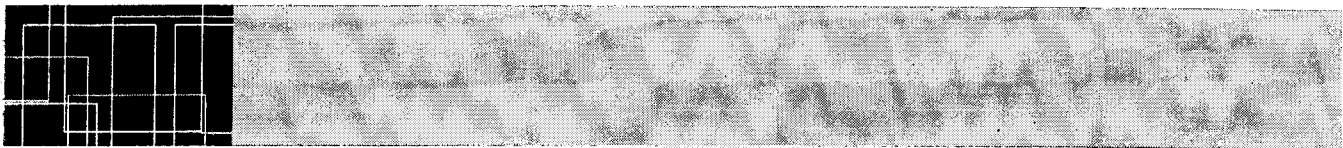


THIS ACKNOWLEDGES THAT Martin Nava  
HAS RECEIVED INSTRUCTION IN:

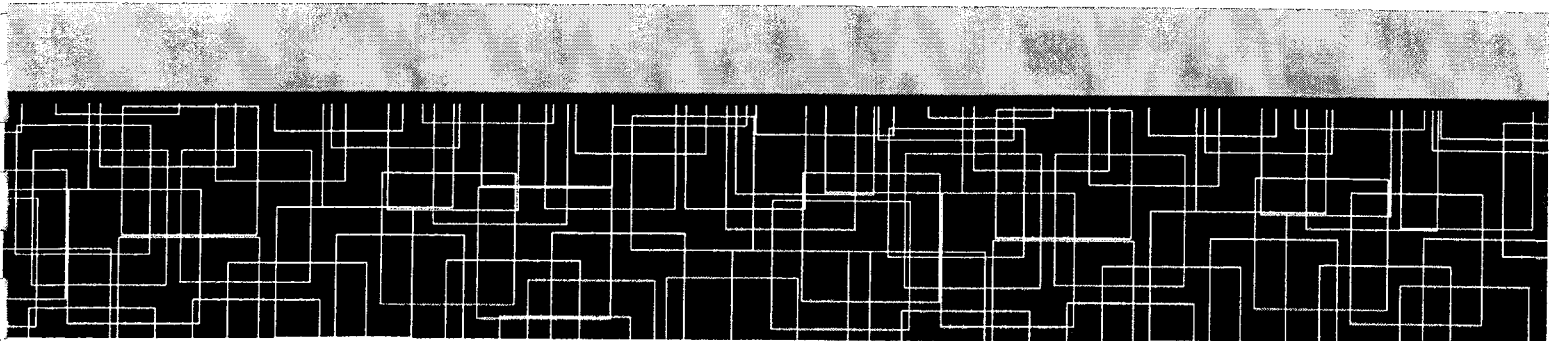
- "H2S Protection" Course with Smoke House
- "Respiratory Protection" Course (including fit test)
- "Confined Space Entry"

Date 6/24/11 Expiration Date 6/24/12  
Instructor Sean Tyone





5428 S Broadway, Los Angeles, CA 90037 | Phone: 562.861.2430 | Fax: 562.861.2418  
Ronsmaintenance@aol.com | www.Ronsmaintenance.com



**ADDENDUM NO. 3**  
**CONTRACT DOCUMENTS,**  
**SPECIFICATIONS, AND STANDARD DRAWINGS**  
**FOR**  
**MUNICIPAL STORM SEWER CATCH BASIN MAINTENANCE BID**  
  
**LOS ANGELES GATEWAY REGION**  
**INTEGRATED REGIONAL WATER MANAGEMENT**  
**JOINT POWERS AUTHORITY**

This Addendum forms a part of the Contract Documents for the above-identified project and modifies the original Specifications and Contract Documents, as noted below. Portions of the Contract, not specifically mentioned in the Addendum, remain in force. All trades affected shall be fully advised of these changes, deletions, and additions.

1. The INSTRUCTION TO BIDDERS is amended by deleting the following sentence to the second bullet under Bidder:

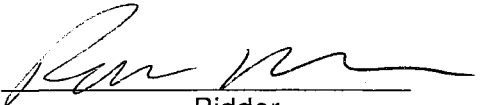
“The Bidder shall possess, at the time of the award of contract by the Contract Agency, a Class A license or a C-61 license with subcategory D-32.”

Please note that this Addendum revises provisions contained in Addendums No. 1 and Addendum No. 2.

  
\_\_\_\_\_  
William C. Pagett                      6/22/11  
Date

I acknowledge receipt of this Addendum No. 3 and accept the aforementioned.

6-25-2011  
Date

  
\_\_\_\_\_  
Bidder

ADDENDUM NO. 2

CONTRACT DOCUMENTS,  
SPECIFICATIONS, AND STANDARD DRAWINGS  
FOR  
MUNICIPAL STORM SEWER CATCH BASIN MAINTENANCE BID

LOS ANGELES GATEWAY REGION  
INTEGRATED REGIONAL WATER MANAGEMENT  
JOINT POWERS AUTHORITY

This Addendum forms a part of the Contract Documents for the above-identified project and modifies the original Specifications and Contract Documents, as noted below. Portions of the Contract, not specifically mentioned in the Addendum, remain in force. All trades affected shall be fully advised of these changes, deletions, and additions.

1. The INSTRUCTION TO BIDDERS is amended by amending the following sentence to the second bullet under Bidder Information to eliminate the HAZ certification from the license requirement:

"The Bidder shall possess, at the time of the award of contract by the Contract Agency, a Class A license or a C-61 license with subcategory D-32."

William C. Pagett 6/16/11  
William C. Pagett Date

I acknowledge receipt of this Addendum No. 2 and accept the aforementioned.

6-20-2011  
Date

[Signature]  
Bidder

ADDENDUM NO. 1

**CONTRACT DOCUMENTS,  
SPECIFICATIONS, AND STANDARD DRAWINGS  
FOR  
MUNICIPAL STORM SEWER CATCH BASIN MAINTENANCE BID**

**LOS ANGELES GATEWAY REGION  
INTEGRATED REGIONAL WATER MANAGEMENT  
JOINT POWERS AUTHORITY**

This Addendum forms a part of the Contract Documents for the above-identified project and modifies the original Specifications and Contract Documents, as noted below. Portions of the Contract, not specifically mentioned in the Addendum, remain in force. All trades affected shall be fully advised of these changes, deletions, and additions.

1. Bid Opening Date

The Gateway Authority has determined that the bid opening date shown in the NOTICE INVITING SEALED BIDS and in the INSTRUCTION TO BIDDERS shall be changed to Thursday June 30, 2011 at 12:00 noon.

2. Mandatory Pre-bid Conference

The following Paragraph shall be added to both the NOTICE INVITING SEALED BIDS and INSTRUCTION TO BIDDERS:

"The Gateway Authority will conduct a Mandatory Pre-bid Conference at 11:00 AM on Monday June 20, 2011, at the Gateway Authority office located at 16401 Paramount Blvd., Paramount, CA 90723. All potential bidders are required to have attended either the June 2, 2011 meeting or the June 20, 2011 meeting in order to submit a bid."

3. Prevailing Wages

The third Paragraph of the NOTICE INVITING SEALED BIDS is deleted and replaces with the following paragraph:

"The lowest responsible bidder will enter into contracts with individual municipalities (Contracting Agencies) within the Gateway Authority region wishing to accept Contractor's pricing and terms. Agreements between the Contractor and Contracting Agency is not subject to prevailing wage requirements and is subject to Minimum Wage requirements only."

4. No Dumping Stencil

The first paragraph on page two of the DESCRIPTION OF WORK TO BE DONE is amended by adding the following sentence after the fourth sentence to say:

"In lieu of the thermoplastic stencil required above the Contracting Agency may allow the replacement stencil to be of the same material that had existed or had been used by the

Contracting Agency in the past; paint, ceramic or metal, based on the contracting agencies preference."

The remainder of the paragraph shall remain in effect. This same provision occurs on the CATCH BASIN MAINTENANCE BID FORM in the second paragraph and shall be amended to agree with the revision above.

5. Picture Requirement

The first paragraph on page two of the DESCRIPTION OF WORK TO BE DONE is amended by deleting the last two sentences of said paragraph and substituting the following:

"Contractor shall take a photo documenting the before and after conditions of a catch basins where minor repairs are required, from the same vantage points. All photos shall be at least 4 megapixel (MP) in quality, in jpeg (.jpg) format, and submitted with the invoice to the designated Contracting Agency office."


This same provision occurs on the CATCH BASIN MAINTENANCE BID FORM in the third paragraph and shall be amended to agree with the revision above.

6. The DESCRIPTION OF WORK TO BE DONE is amended by adding the following Paragraph:

"All debris and trash required to be removed from the catch basins shall be removed in a manner to be determined by the contractor. The contractor shall not allow any trash or debris to enter the connector pipe or mainline storm drain as a result of the cleanout operations. All debris and trash removed under this contract shall become the property of the contractor and shall be legally disposed of by them away from the catch basin site. The contractor shall report to the disposal facility the trash and debris attributed to each Contract Agency. The Contractor shall provide to the Contract Agency dump receipts for the work under this contract".

7. The INSTRUCTION TO BIDDERS is amended by adding the following sentence to the second bullet under Bidder Information:

"The Bidder shall possess, at the time of the award of contract by the Contract Agency, a Class A license with a HAZ certification or a C-61 license with subcategory D-32 and a HAZ certification."

  
\_\_\_\_\_  
William C. Pagett      6/10/11  
Date

I acknowledge receipt of this Addendum No. 1 and accept the aforementioned.

6-13-2011  
Date

  
\_\_\_\_\_  
Bidder

During the June 2, 2011 Mandatory Pre-bid meeting for the above reference project several questions were asked that will benefit all potential bidders on the project. The following answers are:

1. Is a Hazardous Waste License Required? No. Refer to the INSTRUCTIONS TO BIDDERS, page 1, General Requirements, the last bullet point. The Contractor is required to "have the ability to test the accumulated trash in catch basins for Hazardous waste products and shall identify actions that he will take to address the hazardous waste found."
2. What is a Minor Repair? The bidders are referred to the DESCRIPTION OF WORK TO BE DONE, Page 2, last paragraph, which contains a definition for Minor maintenance.
3. Will there be Bonds required for this project? Since the Gateway Authority will not enter into any contracts as a result of this bid process no Bidders Bond is required. When the Contractor is asked to enter into a contract with one or more of the Contract Agencies within the Gateway Authority individual Cities may require the posting of a bond. This Bond requirement will be part of the negotiations between the Contract Agencies and the maintenance contractor.



**THIS AGREEMENT** (the "Agreement") dated as of August 16, 2011 (the "Effective Date") is made by and between Ron's Maintenance Inc. ("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.

Except as otherwise provided by Section 20 hereof, the term of this Agreement shall be for a period of three (3) years commencing on the Effective Date through August 16, 2014 and the completion by Contractor of all the Services, to the satisfaction of the City.

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 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. 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:

Ron's Maintenance Inc.  
5428 S. Broadway St.  
Los Angeles, CA 90037  
Attn: Ron Norman, President/Owner

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: \_\_, 2011

By: \_\_\_\_\_  
Joe Aguilar, Mayor

ATTEST:

\_\_\_\_\_  
Linda K. Olivieri, City Clerk

**CONTRACTOR**

DATED: \_\_, 2011

By: \_\_\_\_\_  
Name: Ron Norman  
Title: President

**APPROVED AS TO FORM**

\_\_\_\_\_  
By: Eduardo Olivo  
Title: City Attorney



**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.



RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, AWARDING A CONTRACT TO RON'S MAINTENANCE, INC. FOR MAINTENANCE AND REPAIR OF CATCH BASIN SCREEN INSERTS

WHEREAS, the Trash Total Maximum Daily Load (TMDL) regulation, adopted in 2001 and amended in 2007 by the Regional Water Quality Control Board (Water Board), requires cities draining into the Los Angeles River watershed to reduce the amount of trash in their municipal storm drain system to a "zero level" by 2016; and

WHEREAS, failure to achieve the reductions can result in fines up to \$25,000 per day per City and third party litigation. The TMDL is enforced through the National Pollutant Discharge Elimination System (NPDES) Permit; and

WHEREAS, in order to comply with the Trash TMDL, the City entered into a joint 16-City effort to install catch basin screens on all 676 catch basins in Commerce including County-owned catch basins with a \$10 million grant from the Federal American Recovery and Reinvestment Act of 2009 (ARRA) funds; and

WHEREAS, in February 2011, Los Angeles County (County) presented their proposed costs as a result of a Request for Proposal (RFP) for catch basin maintenance and repair services; and

WHEREAS, since the County's costs were considerably higher than what the cities were paying before the Trash TMDL Catch Basin Screen Insert Project, the Los Angeles Gateway Region Integrated Regional Water Management Joint Powers Authority (Gateway Authority) of which Commerce is a member, released their own RFP for the same level of service in May 2011; and

WHEREAS, in June 2011, the Gateway Authority received bids from Ron's Maintenance Inc., West Coast Storm Inc., and United Storm Water Inc.; and

WHEREAS, the Gateway Authority is not the contracting agency and as such, their role was limited to conducting the competitive bidding process with the Board accepting the bidders that meet the requirements. The Board accepted all three bidders; and

WHEREAS, each eligible city may enter into a contract directly with one of the bidders. After careful consideration and evaluation of proposals, City staff determined that Ron's Maintenance Inc. submitted the most competitive proposal that met the requirements in the RFP; and

**NOW, THEREFORE, THE COMMISSION DOES HEREBY RESOLVE THAT:**

**SECTION 1.** All of the proposals received are hereby rejected except the proposal received from Ron's Maintenance, Inc. for maintenance and repair of catch basin screen inserts (hereinafter, the "Successful Proposer").

**SECTION 2.** The agreement is hereby awarded to the Successful Proposer for the sum of the unit price as set forth and contained in the proposal dated June 30, 2011 submitted by the Successful Proposer as follows:

Description	Unit Price Each*
ARS only	\$22.00
CPS only	\$22.00
ARS and CPS combined	\$22.00
Non-retrofitted Catch Basins	\$17.00
"No Dumping" stenciling	\$ 6.00
"Staff Gauge" Stenciling	\$ 6.00

*\*bid price effective for three years*

**SECTION 3.** Staff will return to the City Council mid-year with a clean-up resolution to designate funding for the required maintenance service.

RESOLUTION NO. \_\_\_\_\_  
City Council Award of Contract  
To Ron's Maintenance Inc. for Catch Basin Maintenance & Repairs  
Page 2 of 2

**SECTION 4.** The Mayor's execution of the agreement for and on behalf of the Commerce City Council is hereby approved and ratified.

PASSED, APPROVED AND ADOPTED this 16<sup>th</sup> day of August, 2011.

\_\_\_\_\_  
Joe Aguilar  
Mayor

ATTEST:

\_\_\_\_\_  
Linda Kay Olivieri, MMC  
City Clerk



# AGENDA REPORT

DATE: August 16, 2011

TO: HONORABLE CITY COUNCIL  
FROM: DIRECTOR OF COMMUNITY DEVELOPMENT  
SUBJECT: PUBLIC HEARING - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, SETTING FORTH ITS FINDINGS OF FACT FOR THE VACATION OF 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 WITH RESERVATIONS

RECOMMENDATION:

That the City Council conduct a public hearing to adopt a resolution ordering the vacation (with reservations) of Boxford Avenue North of Slauson Avenue then approve and adopt the Resolution and assign the number next in order.

MOTION:

1. Declare the public hearing open.
2. Declare the public hearing closed.
3. Move to approve and adopt the Resolution and assign the number next in order.

BACKGROUND/ANALYSIS:

This item was continued from the City Council meeting of July 5<sup>th</sup>, 2011.

Safeway/Vons has a food manufacturing and processing plant in the City located at 3415 Boxford with frontage along Slauson Avenue. The Safeway/Vons site is approximately 19 acres and is bisected by Boxford Avenue (Safeway/Vons owns all the land on both sides of the street and their facility resides on both sides of Boxford). Safeway has prepared a master plan for their facility identifying various improvements to the property i.e. parking and circulation and on site storage which will improve the overall operation and functionality of their use. In addition, Safeway/Vons is contemplating a possible future expansion of production lines.

Safeway/Vons has requested the opportunity to purchase the portion of Boxford Avenue which lies within their site and has requested, in connection with such sale, that the City vacate the street. Such sale and vacation will add land area to the Safeway/Vons r site and accommodate their master plan improvements. All public utilities located in the area proposed for the vacation will remain in place including any and all easements reserving said rights for the utilities. The proposed vacation is being processed in accordance with the Streets and Highways Code Section 8300 et. seq. as well as applicable sections of Government Code Section 64000 et. seq.

Planning Commission Finding:

On May 25, 2011 the Planning Commission adopted a Resolution making a determination that the vacation of a portion of Boxford Avenue conforms to the City of Commerce General Plan as required by State Government Code Section 65402. More specifically, the Planning Commission found that the vacation is consistent with the General Plan including policies in the Plan that call for the use of circulation strategies that create a transportation system that is sensitive to the City's aim for continued economic development. Furthermore, the General Plan calls for the implementation of a plan for a coordinated street circulation system that will allow for the efficient movement of goods.

**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 and includes exhibits with Easement Agreements including legal descriptions for the easement areas to be reserved as well as plat maps.

**FISCAL IMPACT:**

If the vacation is approved by City Council, Safeway/Vons has offered to purchase the underlying fee of the vacated street from the City. Safeway/Vons will pay fair market value for the underlying fee which is estimated at \$1.7 million. A Purchase and Sale Agreement memorializing the terms of the land sale will be considered by City Council as a separate matter.

**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.

Respectfully submitted,



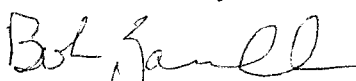
Jorge J. Rifa  
City Administrator

Prepared by:



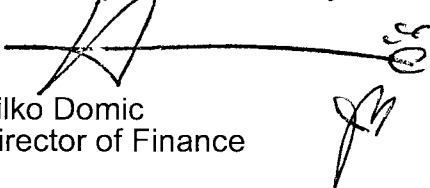
Alex Hamilton  
Assistant Director of Community Development

Recommended by:



Bob Zarrilli  
Director of Community Development

Fiscal impact reviewed by:



Vilko Domic  
Director of Finance

Approved as to form:



Eduardo Olivo  
City Attorney



RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA,  
SETTING FORTH ITS FINDINGS OF FACT FOR THE VACATION OF 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 WITH RESERVATIONS

WHEREAS, the City Council of the City of Commerce has considered a request for the vacation of 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, on June 7, 2011, the City Council adopted Resolution No. 11-42 calling for a public hearing to be held on Tuesday, July 5, 2011, at the hour of 6:30 p.m. regarding the proposed vacation; and

WHEREAS, at its meeting of Tuesday, July 5, 2011, at 6:30 p.m., the City Council continued said public hearing to Tuesday, August 16, 2011, at the hour of 6:30 p.m.; 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 B, is not an essential or integral part of said transportation and traffic circulation system for the City of Commerce; and

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

WHEREAS, the subject street is unnecessary for present or prospective use; and

WHEREAS, the City Council held a public hearing on August 16, 2011 for the purpose of considering the vacation of the subject street; 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.

WHEREAS, the City Council has reviewed all facts concerning the subject request and has considered all evidence submitted at the August 16, 2011 public hearing.

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

SECTION 1. The City Council finds that the proposed vacation of 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 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.

SECTION 4. The City Council hereby approves the vacation of 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 5. 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 6. The City Council of the City of Commerce does hereby approve the vacation of a portion of Boxford Avenue (as set forth in Section 2, above) subject to the following conditions:

1. The applicant shall provide 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 real property in the City of Commerce, as detailed in the legal description and the Plat Map attached collectively hereto as Exhibit C, together with all uses incident thereto, including without limitation, the right to enter upon, pass and re-pass over and along said land and to deposit tools, implements and other materials thereon by the City of Commerce, its officers, agents and employees, whenever and wherever necessary for the purposes above set forth.
2. The applicant shall provide a permanent non-exclusive easement to 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 real property in the City of Commerce, as detailed in the legal description and the Plat Map attached collectively hereto as Exhibit D, together with all uses incident thereto, including without limitation, the right to enter upon, pass and re-pass over and along said land and to deposit tools, implements and other materials thereon by Southern California Gas Company, its officers, agents and employees, whenever and wherever necessary for the purposes above set forth.
3. The applicant shall provide a permanent non-exclusive easement to 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 real property in the City of Commerce, as detailed in the legal description and the Plat Map attached collectively hereto as Exhibit E, together with all uses incident thereto, including without limitation, the right to enter upon, pass and re-pass over and along said land and to deposit tools, implements and other materials thereon by the County of Los Angeles, its officers, agents and employees, whenever and wherever necessary for the purposes above set forth.

SECTION 7. 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)

RESOLUTION NO. \_\_\_\_\_

Page 3 of 3

recording of the Resolution with Los Angeles County Registrar-Recorder/County Clerk's Office.

PASSED, APPROVED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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Joe Aguilar  
Mayor

ATTEST:

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Linda Kay Olivieri, MMC  
City Clerk

RESO (VACATION OF BOXFORD AVE) – 08-16-2011.DOC



EXHIBIT A

██████████  
LEGAL DESCRIPTION

THE LAND REFERED TO HEREON IS SITUATED IN THE CITY OF COMMERCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

BEING THOSE PORTIONS OF BOXFORD AVENUE OF TRACT 14528, AS PER MAP RECORDED IN BOOK 414, PAGES 47 AND 48 OF MAPS, AND AS SHOWN ON THE MAP OF TRACT 19071, AS PER MAP RECORDED IN BOOK 492, PAGE 6 OF MAPS, BOTH BEING RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS A WHOLE AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 1 OF SAID TRACT 14528; THENCE SOUTH 82°40'30" EAST 527.31 FEET TO AN ANGLE POINT IN SAID LOT, BEING ON THE WESTERLY LINE OF SAID BOXFORD AVENUE, SAID POINT BEING THE POINT OF BEGINNING; THENCE ALONG THE WESTERLY LINE OF SAID BOXFORD AVENUE, NORTH 52°19'30" EAST 35.36 FEET; THENCE NORTH 07°19'30" EAST 1166.64 FEET TO THE NORTHEAST CORNER OF LOT 1 OF SAID TRACT NO. 19071, BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 1058.02 FEET, A RADIAL FROM SAID BEGINNING BEARS NORTH 18°20'13" EAST; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°19'51" A DISTANCE OF 61.51 FEET, TO THE NORTHWEST CORNER OF LOT 2 OF SAID TRACT NO. 19071; THENCE SOUTH 07°19'30" WEST 1153.14 FEET ALONG THE EASTERLY LINE OF SAID BOXFORD AVENUE; THENCE SOUTH 37°40'30" EAST 35.36 FEET, TO THE SOUTHWESTERLY CORNER OF SAID LOT 2; THENCE NORTH 82°40'30" WEST 110.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 71,736.90 SQUARE FEET OR 1.647 ACRES, MORE OR LESS.

THIS DESCRIPTION SHALL NOT AND MAY NOT BE USED IN THE CONVEYANCE OF PROPERTY IN VIOLATION WITH THE SUBDIVISION MAP ACT LAWS FOR THE STATE OF CALIFORNIA. IT IS PROVIDED AS AN EXHIBIT ONLY AND IS NOT INTENDED TO REPLACE OR SUPERSEDE THE DESCRIPTIONS OF RECORD. LOCAL ORDINANCE FOR THE CONVEYANCE OF PROPERTY SHALL PREVAIL FOR TRANSFER OF PROPERTY OR RIGHTS.

THIS DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SURPERVISION.



SCOTT E. OHANA  
P.L.S. 7526, EXPIRES 12/31/2011



██████████

**EXHIBIT B**

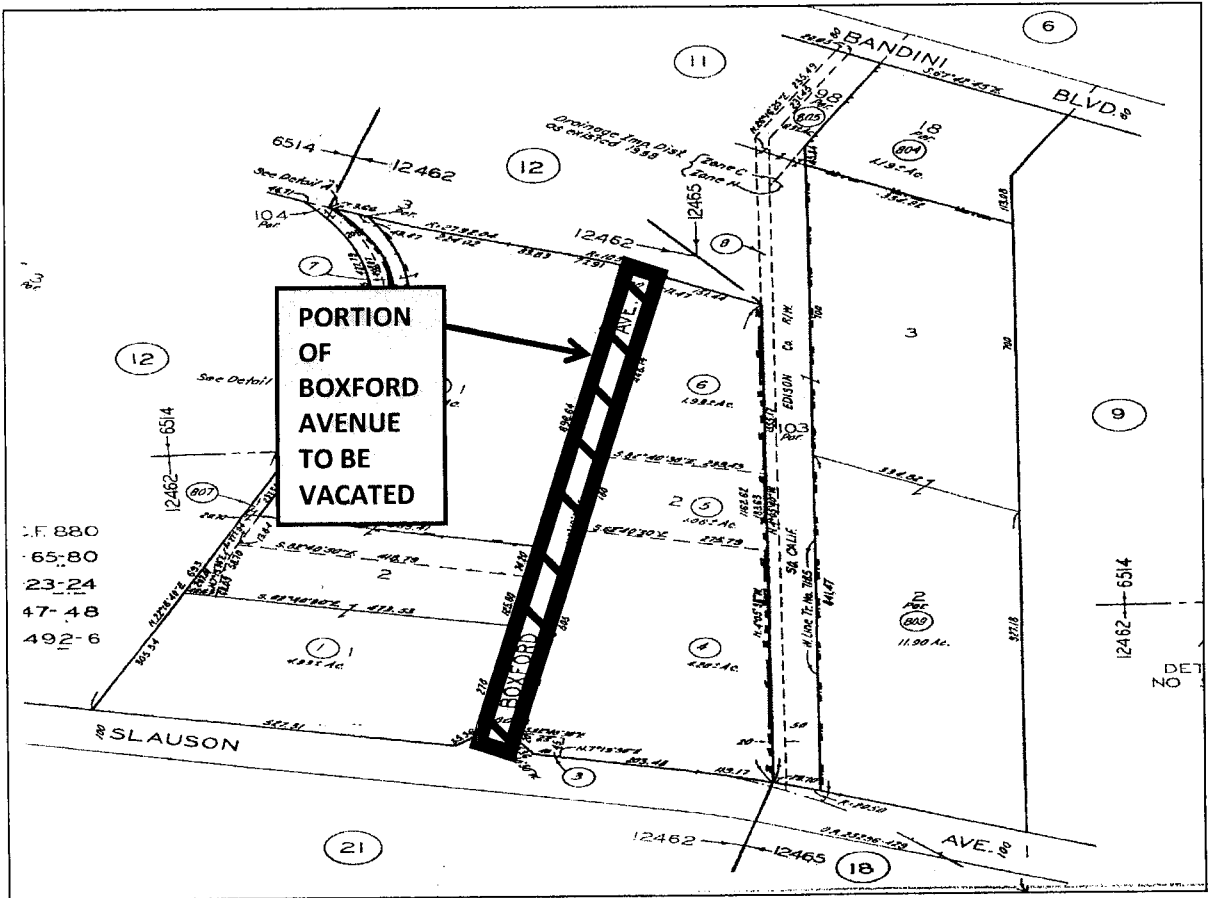


EXHIBIT C

LEGAL DESCRIPTION

THE LAND REFERED TO HEREON IS SITUATED IN THE CITY OF COMMERCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

BEING THOSE PORTIONS OF BOXFORD AVENUE OF TRACT 14528, AS PER MAP RECORDED IN BOOK 414, PAGES 47 AND 48 OF MAPS, AND AS SHOWN ON THE MAP OF TRACT 19071, AS PER MAP RECORDED IN BOOK 492, PAGE 6 OF MAPS, BOTH BEING RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS A WHOLE AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 1 OF SAID TRACT 14528; THENCE SOUTH 82°40'30" EAST 527.31 FEET TO AN ANGLE POINT IN SAID LOT, BEING ON THE WESTERLY LINE OF SAID BOXFORD AVENUE, SAID POINT BEING THE POINT OF BEGINNING; THENCE ALONG THE WESTERLY LINE OF SAID BOXFORD AVENUE, NORTH 52°19'30" EAST 35.36 FEET; THENCE NORTH 07°19'30" EAST 1166.64 FEET TO THE NORTHEAST CORNER OF LOT 1 OF SAID TRACT NO. 19071, BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 1058.02 FEET, A RADIAL FROM SAID BEGINNING BEARS NORTH 18°20'13" EAST; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°19'51" A DISTANCE OF 61.51 FEET, TO THE NORTHWEST CORNER OF LOT 2 OF SAID TRACT NO. 19071; THENCE SOUTH 07°19'30" WEST 1153.14 FEET ALONG THE EASTERLY LINE OF SAID BOXFORD AVENUE; THENCE SOUTH 37°40'30" EAST 35.36 FEET, TO THE SOUTHWESTERLY CORNER OF SAID LOT 2; THENCE NORTH 82°40'30" WEST 110.00 FEET TO THE POINT OF BEGINNING.

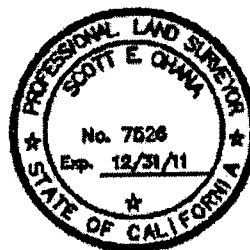
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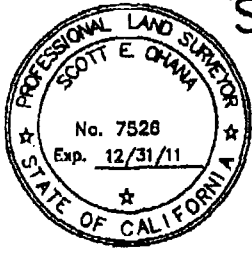
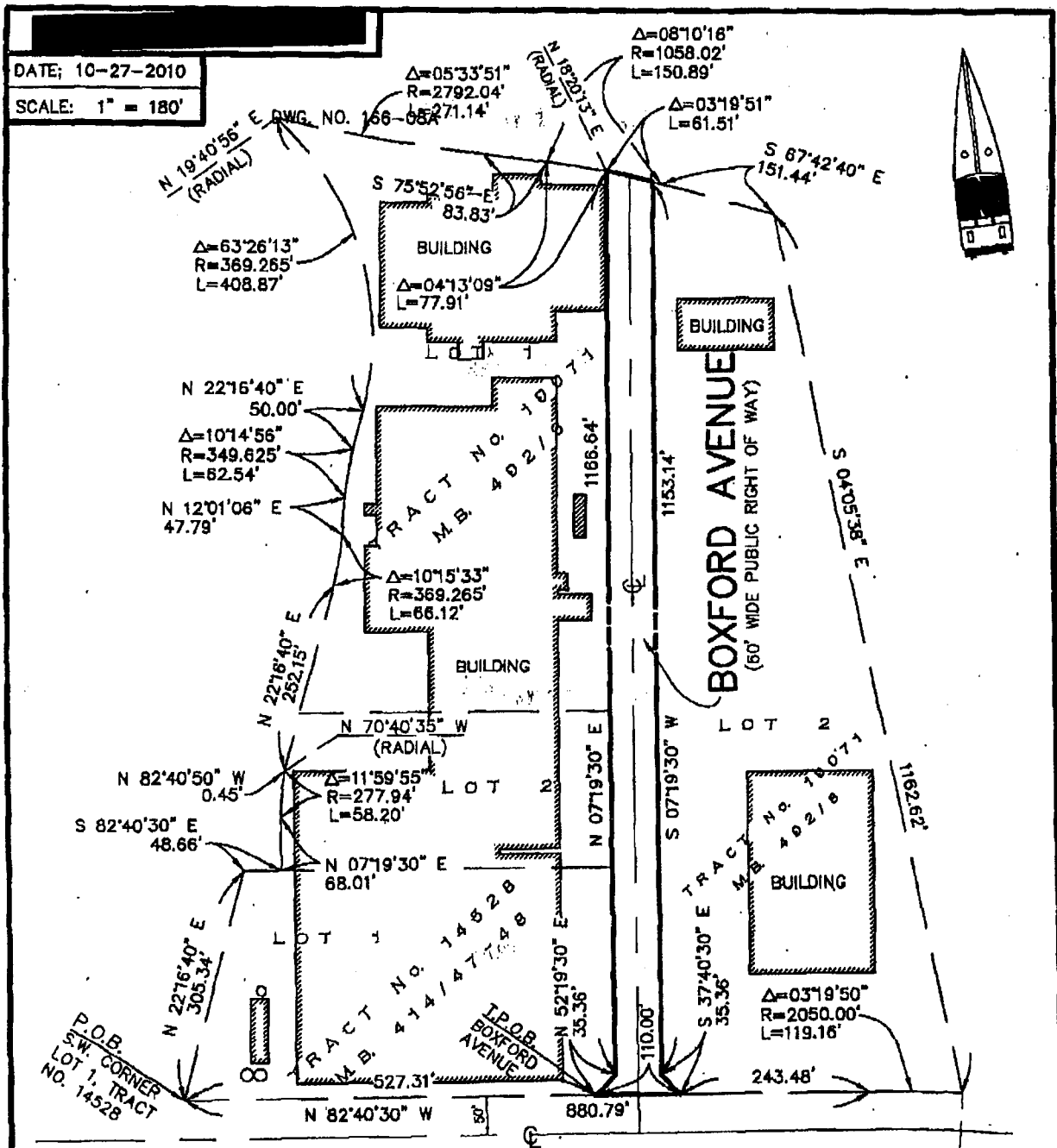


SCOTT E. OHANA  
P.L.S. 7526, EXPIRES 12/31/2011



DATE: 10-27-2010

SCALE: 1" = 180'



**SLAUSON AVENUE**

(100' WIDE PUBLIC RIGHT OF WAY)

THIS EXHIBIT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION

*Scott E. Ohana*  
 SCOTT E. OHANA, P.L.S. 7526  
 EXPIRES 12/31/2011

For Inquiries Concerning This Survey Contact MKA  
 National Coordinators of Land Survey Services  
**MKA**  
 A National Land Services Group  
 8583 Commerce Court - Warrenton, Virginia 20187  
 Phone: (540)428-3560 Fax: (540)428-3560  
 www.mkasurvey.com



EXHIBIT D

**LEGAL DESCRIPTION**

The land referred to herein is situated in the City of Commerce, County of Los Angeles, State of California and is described as follows:

Being those portions of Boxford Avenue of Tract 14528 as per Map recorded in Book 414, pages 47 and 48 of Maps, and as shown on Tract 19071, as per Map recorded in Book 492, page 6 of Maps, both being recorded in the office of the County Recorder of said County and more particularly described as follows:

**Beginning** at the southwesterly corner of Lot 2 of said Tract 19701, said point being on the northerly line of Slauson Avenue as shown on Map of said Tract 19701; thence North  $37^{\circ}40'30''$  West a distance of 35.36 feet; thence North  $07^{\circ}19'30''$  East a distance of 765.00 feet; thence North  $82^{\circ}40'30''$  West a distance of 10.00 feet; thence South  $07^{\circ}19'30''$  West a distance of 790.00 feet; thence South  $82^{\circ}40'30''$  East 35.00 feet to the **Point of Beginning**.

Said parcel contains 8,212.62 square feet, more or less.

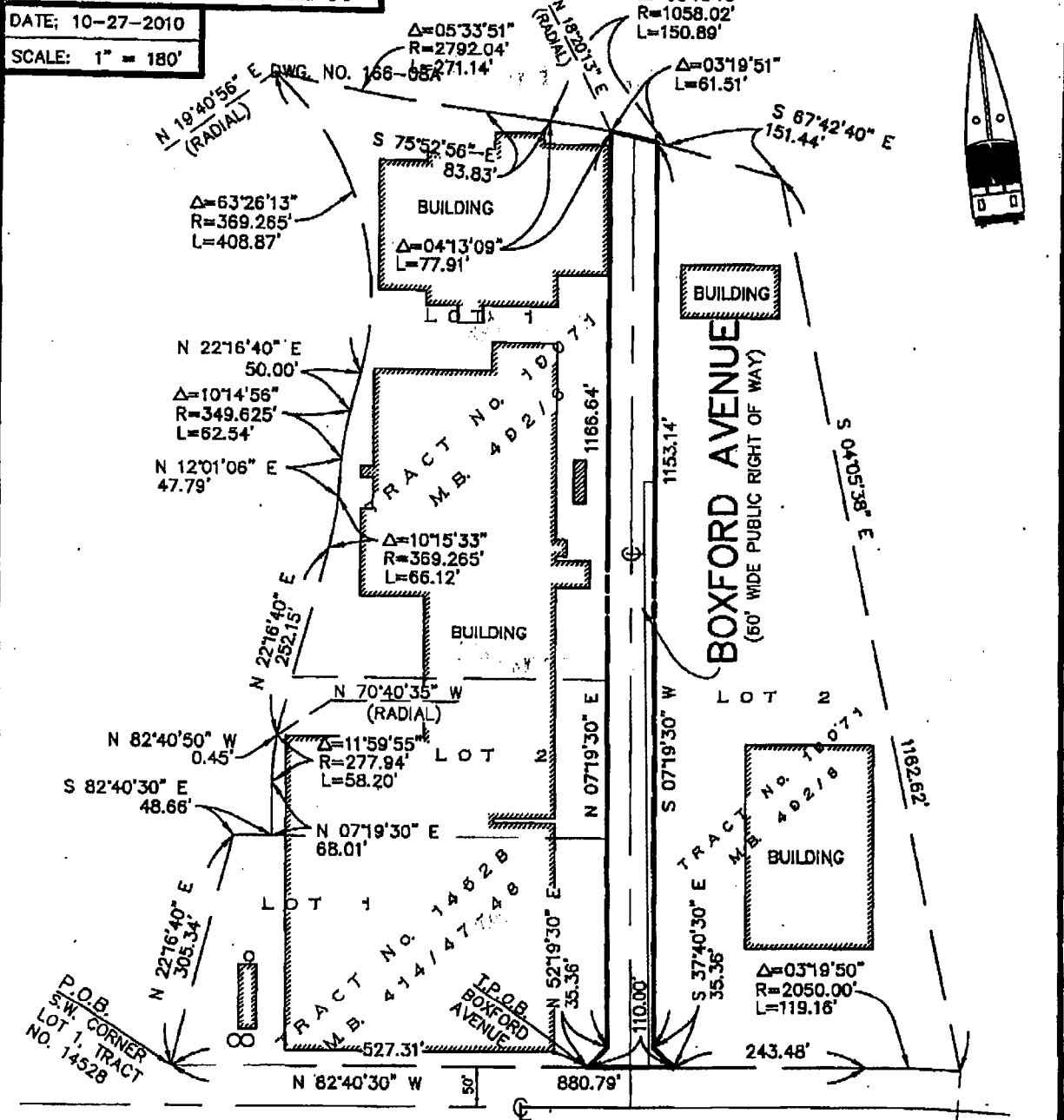
This description was prepared by me  
or under my direction in accordance with  
the Land Surveyors' Act.

---

David B. Ragland, L.S.5173

**PLAT**

DATE: 10-27-2010  
SCALE: 1" = 180'



**SLAUSON AVENUE**

(100' WIDE PUBLIC RIGHT OF WAY)

THIS EXHIBIT WAS PREPARED BY ME  
OR UNDER MY DIRECT SUPERVISION

SCOTT E. OHANA, P.L.S. 7526  
EXPIRES 12/31/2011

For Inquiries Concerning This Survey Contact **MKA**  
National Coordinators of Land Survey Services

**MKA**  
A National Land Services Group

6503 Commerce Court - Warren, Virginia 20187  
Phone: (540) 428-3550 Fax: (540) 428-3550  
www.mkasurveys.com

EXHIBIT E

**LEGAL DESCRIPTION**

The land referred to herein is situated in the City of Commerce, County of Los Angeles, State of California and is described as follows:

Being those portions of Boxford Avenue of Tract 14528 as per Map recorded in Book 414, pages 47 and 48 of Maps, and as shown on Tract 19071, as per Map recorded in Book 492, page 6 of Maps, both being recorded in the office of the County Recorder of said County and more particularly described as follows:

A strip of land 10 feet in width, lying 5.00 feet on both sides of the following described centerline:

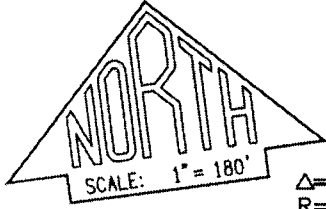
Commencing at the southwesterly corner of Lot 2 of said Tract 19701, said point being on the northerly line of Slauson Avenue as shown on Map of said Tract 19701; thence North  $82^{\circ}40'30''$  West a distance of 70.00 feet to the Point of Beginning of said 10 foot strip of land; thence North  $07^{\circ}19'30''$  East, along a line parallel with and 15.00 feet westerly of the centerline of Boxford Avenue, a distance of 1188.61 feet to the northerly line of Lot 3 of said Tract 14528. The sidelines of the above described strip of land shall be extended or shortened to terminate at the northerly line of Lot 3 of said Tract No. 14528.

This description was prepared by me  
or under my direction in accordance with  
the Land Surveyors' Act.

---

David B. Ragland, L.S.5173

PLAT TO ACCOMPANY  
LEGAL DESCRIPTION



$\Delta=05^{\circ}33'51''$   
 $R=2792.04'$   
 $L=271.14'$

S  $75^{\circ}52'56''$  E  
83.83'

$\Delta=08^{\circ}10'16''$   
 $R=1058.02'$   
 $L=150.89'$

$\Delta=03^{\circ}19'51''$   
 $R=1058.02'$   
 $L=61.51'$

S  $67^{\circ}42'40''$  E  
151.44'

N  $19^{\circ}40'56''$  E  
(RADIAL)

LOT 3

TRACT NO. 14528  
M.B. 414/47-48

$\Delta=63^{\circ}26'13''$   
 $R=369.265'$   
 $L=408.87'$

N  $22^{\circ}16'40''$  E  
50.00'

LOT 1

TRACT NO. 19071  
M.B. 492/6

$\Delta=10^{\circ}14'56''$   
 $R=349.625'$   
 $L=62.54'$

N  $12^{\circ}01'06''$  E  
47.79'

$\Delta=10^{\circ}15'33''$   
 $R=369.265'$   
 $L=66.12'$

AREA TO BE RESERVED  
SHOWN THUS:

N  $22^{\circ}16'40''$  E  
252.15'

N  $70^{\circ}40'35''$  W  
(RADIAL)

N  $82^{\circ}40'50''$  W  
0.45'

LOT 2

S  $82^{\circ}40'30''$  E  
48.66'

N  $07^{\circ}19'30''$  E  
68.01'

LOT 1

TRACT NO. 14528  
M.B. 414/47-48

N  $22^{\circ}16'40''$  E  
305.34'

N  $52^{\circ}19'30''$  E  
35.36'

LOT 2

TRACT NO. 19071  
M.B. 492/6

$\Delta=03^{\circ}19'50''$   
 $R=2050.00'$   
 $L=119.16'$



THIS EXHIBIT WAS PREPARED BY ME OR  
UNDER MY DIRECTION.

DAVID B. RAGLAND, L.S.5173

DATE

SLAUSON AVENUE

(100' WIDE PUBLIC RIGHT OF WAY) P.O.B.

SOUTHWESTERLY  
CORNER LOT 2  
TRACT NO. 19071

CITY OF COMMERCE

STREET VACATION OF BOXFORD AVENUE  
NORTH OF SLAUSON AVENUE, RESERVATION  
FOR SEWER EASEMENT



# AGENDA REPORT

DATE: August 16, 2011

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: PUBLIC HEARING - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, AMENDING TITLE 19 ("ZONING") OF THE COMMERCE MUNICIPAL CODE, TABLE 19.11.030 (5. TRANSPORTATION-RELATED USES, NOTES AND EXCEPTIONS) – FIRST READING

## RECOMMENDATION:

That the City Council conduct the required public hearing and thereafter consider the proposed Ordinance for first reading.

## MOTIONS:

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 the Ordinance for first reading.

## BACKGROUND:

Pursuant to the City of Commerce's General Plan, over 60% of the City's land area is dedicated to industrial uses. A significant challenge has been to identify strategies to enable industrial activities and businesses to coexist with homes. Through past planning efforts, the City has preserved and enhanced its neighborhoods, while at the same time, accommodated the rapidly changing demands of industry and commerce. The City is committed to continuing these efforts.

Warehouses typically represent a large volume of space with a significant number of loading or dock doors. The truck trips generally associated with warehouses can have significant impacts to the City's infrastructure and pose problems and dangers to surrounding uses. Typically, environmental analysis for new warehouse facilities focuses on the number of truck trips generated and how this affects air quality and infrastructure. A significant amount of emissions from these facilities is generally caused by truck trips to and from the facility and truck idling. A report by the Los Angeles County Metropolitan Transportation Authority (METRO) states, "15 minutes of idling caused emissions that were 50% more than one truck trip's emissions". According to this same report, recent studies estimated that warehouse/distribution centers generate between 330 and 530 daily truck trips per million square feet of warehouse. Therefore, for a 100,000 square foot warehouse, an estimate of average daily truck trips would be somewhere between 33 and 53.

Over the last few years, the largest warehouse building approved in the City measures approximately 400,000 square feet. A review of the project's environmental document indicated the estimated total number of daily truck trips to be 124.

The Commerce Municipal Code (CMC) currently defines a warehouse as follows:

*"Warehouse" means a building or portion thereof used for the shipping, receiving, storage, or wholesaling of goods and merchandise and any incidental or accessory activities. An area where goods are processed, manufactured, or serviced, or where equipment for rent or lease is stored is not considered a warehouse.*

The CMC also contains development standards related to warehouses and warehouse uses. However, it was determined that there is a need to review the existing requirements for establishing new warehouses as well as additions thereto. As the local ports and railroad industry continue to expand, cities like Commerce must prepare for a potential increased desire to build new warehouse facilities and the resulting negative impacts of such facilities on surrounding uses.

Currently, the entitlement process for a warehouse is via a Site Plan review. A Site Plan is required of any new building or structure in excess of 25,000 square feet and for the enlargement of any existing building or structure that adds more than 25,000 square feet of building area (CMC Section 19.39.650). This review process was established to provide a visual and factual document that may be used to determine and control the physical layout, design, and use of a lot or parcel of land, buildings, or structures. A determination must be made that a particular site is suitable for the use or development intended. In addition, review pursuant to the California Environmental Quality Act (CEQA) would be required.

Staff believes that the requirement of a conditional use permit (CUP) for large warehouse projects will provide the City with a better opportunity to address the potential negative impacts that such facilities may have on surrounding uses. Typically, following a list of permitted uses in each zoning district, a city's zoning ordinance will provide for other uses that are not permitted as a matter of right, but for which a CUP must be obtained. The City recognizes that certain uses, due to the nature of use, intensity, or size, require special review to determine if the use proposed, or the location of that use, is compatible with surrounding uses, or through the imposition of development and use conditions, can be made compatible with surrounding uses. A CUP is provided for this purpose. "The decision to allow a conditional use permit is an issue of vital public interest. It affects the quality of life of everyone in the area of the proposed use" (Curtin, 2009). Establishing a CUP requirement for warehouse buildings exceeding a certain threshold would give the City more oversight in the planning process of these structures. To ensure compatibility with zoning regulations and surrounding properties, conditional uses require special consideration. The City's Planning Commission is empowered to grant and deny applications for CUPs and to impose reasonable conditions upon the granting of such permit. The Planning Commission must determine if a proposed conditional use would not impair the integrity and character of the zone in which it is located. They also must determine if a proposed site is physically suitable for the proposed development and that it's compatible with surrounding uses. Provisions for adequate public access must be made and it must be consistent with the City's General Plan. The design of such a project must preserve and maximize the image, character and visual quality of the surrounding neighborhood. Plus, a conditional use may not be detrimental to the public health, safety and welfare. Additionally, CEQA review would also be required.

On June 22, 2011, the Planning Commission considered the matter. At the completion of their discussion, the Commission concluded that a CUP should be required for all new warehouses measuring 100,000 square feet or greater and additions to existing warehouses where the total square footage of all structures would measure 100,000 square feet or greater. The Planning Commission has therefore recommended that the City Council approve the subject ordinance.

#### ANALYSIS:

Pursuant to Table 19.11.030 of the CMC, new warehouses are allowed in the M-2 zone (Heavy Industrial). A majority of properties in the City have this zoning designation. Currently, a CUP is only required if a proposed warehouse would be located within 1,000 feet of the nearest residential district. However, the following exceptions currently apply:

1. Any user proposing to occupy an existing warehouse facility containing less than 35,000 square feet shall be exempt from the CUP requirement.
2. Where a major road separates the project site from the nearest residential district and such separation is equal to or greater than 300 feet, no CUP shall be required.
3. Where an active railroad right-of-way separates the project site from the nearest residential district and the director of community development determines that project truck traffic will not circulate through the residential district, no CUP shall be required.

As discussed in the Background section of this report, establishing a CUP requirement for warehouse buildings exceeding a certain threshold would give the City more oversight in the planning process of these structures. Any impacts associated with warehouses would have to be fully analyzed prior to approval and the findings for such an approval would be more stringent than those for Site Plan approval. The CUP requirement would also provide another basis for triggering a CEQA review in order to assure that environmental impacts are properly studied and considered and appropriate conditions can be imposed.

The proposed ordinance would amend Table 19.11.030 of the CMC. Specifically, the notes and exceptions column related to "Transportation-related uses) would be amended. Below is the subject table. The proposed text to be added is highlighted and in bold italics:

Use	C/M-1	M-1	M-2	*Notes and Exceptions
5. Transportation-related uses	X	X	C	a. For SIC code 495, only one such facility is permitted in the city per 12,000 residents, as reported in the most recent U.S. Census.
5.1 SIC code 40 (Railroad Transportation)	P	P	P	b. Helipads require a conditional use permit in the C/M-1, M-1, and M-2 zones.
5.2 SIC codes 41, 43, 491, 494	X	X	P/C*	Must be located a minimum of 500 feet from residential zones.
5.2 SIC code 42 (Trucking and Warehousing)	X	X	X	c. For trucking and warehousing uses, the distancing requirement set forth in Section 19.11.030(C) shall be 1,000 feet, meaning that any such use proposed to be located within 1,000 feet of the nearest residential district shall require conditional use permit review. The following exceptions shall apply:
5.3 SIC code 45 (Air transportation, except helipads)	X	X	P/C	
5.5 SIC codes 492, 493, 496	X	X	C	
5.6 SIC codes 495*, 496				i. Any user proposing to occupy an existing warehouse facility containing less than 35,000 square feet shall be exempt from the CUP requirement.
				ii. Where a major road separates the project site from the nearest residential district and such separation is equal to or greater than 300 feet, no CUP shall be required.

				<p>iii. Where an active railroad right-of-way separates the project site from the nearest residential district and the director of community development determines that project truck traffic will not circulate through the residential district, no CUP shall be required.</p> <p>d. SIC code 4225 (General Warehousing and Storage), also known as mini-warehousing, self-storage or public storage warehousing, is permitted in the M-2 (Heavy Manufacturing) zone with a conditional use permit.</p> <p><b><i>e. A CUP shall be required for any new warehouse building or development and additions to existing warehouse buildings and developments, where the total square footage of all structures measures 100,000 square feet or greater.</i></b></p>

PROPOSED FINDINGS:

Commerce Municipal Code Section 19.39.310 requires that all of the following findings be made before approving a zoning ordinance text amendment:

1. That the proposed zoning ordinance text amendment is consistent with the goals, policies, and objectives of the general plan. ***The proposed text amendment is consistent with the City of Commerce General Plan. The General Plan aims to ensure land use compatibility within each of the City's planning areas. The subject amendment would require a more detailed review process than what is currently applicable. This enhanced review would help to ensure an orderly pattern of development in the City, while at the same time accommodating future growth.***
2. That the proposed zoning ordinance text amendment will not adversely affect surrounding properties. ***The subject text amendment would serve to better protect surrounding properties from overdevelopment and the potential negative effects associated with it. The proposed amendment would require a more detailed review process for warehouses of a certain size. Therefore, the impacts associated with these warehouses would be fully analyzed prior to approval. Thus, surrounding properties would not be adversely affected.***
3. That the proposed zoning ordinance text amendment promotes the public health, safety, and general welfare and serves the goals and purposes of this Title 19. ***The subject text amendment would serve to help better protect the health, safety and general welfare of the residents of the City of Commerce. This amendment would help to ensure development that is in line with the vision of the City's future as set forth in the General Plan and zoning ordinance. This amendment would help to ensure new development that does not adversely affect surrounding properties. It will also help to create orderly development throughout the City and greater land use compatibility.***



- ATTACHMENTS:
- 1) Proposed Ordinance
  - 2) Chapter 19.39 Division 7 Conditional Use Permits
  - 3) Chapter 19.39 Division 10 Site Plan Review

PUBLIC HEARING NOTICE:

The Public Hearing Notice was published in the Commerce Comet on August 4, 2011.

ENVIRONMENTAL ASSESSMENT:

The project qualifies for a Class 8 Categorical Exemption under the provisions of the California Environmental Quality Act (CEQA) Guidelines Section 15308. Class 8 consists of actions taken by regulatory agencies, as authorized by local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment.

FISCAL IMPACT:

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

RELATIONSHIP TO 2009 STRATEGIC GOALS:

- Goal #2 – *Protect and Enhance Quality of Life in the City of Commerce.*

Recommended by:

  
Bob Zarilli  
Director of Community Development

Respectfully submitted,

  
Jorge Rifa  
City Administrator

Prepared by:

  
Matt Marquez  
City Planner

Fiscal impact reviewed by:

  
Vilko Domic  
Director of Finance

Approved as to Form

  
Eduardo Olivo  
City Attorney



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, AMENDING TITLE 19 (“ZONING”) OF THE COMMERCE MUNICIPAL CODE, TABLE 19.11.030 (5. TRANSPORTATION-RELATED USES, NOTES AND EXCEPTIONS)

WHEREAS, the City Commerce Municipal Code contains existing standards which regulate development in the City; and

WHEREAS, the Commerce Municipal Code currently fails to provide the City with the ability to require a Conditional Use Permit for most warehouse projects; and

WHEREAS, the construction of large warehouse structures, or large expansions to existing structures, can cause a significant increase in truck traffic in the surrounding areas, including residential areas and in the proximity of exiting schools; and

WHEREAS, the requirement of a Conditional Use Permit for large warehouse structure projects will provide the City with more oversight and enable the City to be better able to identify, consider and assure the mitigation of adverse impacts that may be caused to the surrounding community; and

WHEREAS, on July 27, 2011 the Planning Commission held a public hearing for the purpose of considering an Ordinance to amend Title 19 (“Zoning”) of the Commerce Municipal Code, Table 19.11.030 (5. Transportation-related uses, Notes and Exceptions); and

WHEREAS, the Planning Commission has recommended that the City Council adopt the Ordinance.

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

SECTION 1: Table 19.11.030 (5. Transportation-related uses, Notes and Exceptions) is hereby amended to read as follows:

Use	C/M-1	M-1	M-2	*Notes and Exceptions
5. Transportation-related uses	X	X	C	a. For SIC code 495, only one such facility is permitted in the city per 12,000 residents, as reported in the most recent U.S. Census.
5.1 SIC code 40 (Railroad Transportation)	P	P	P	b. Helipads require a conditional use permit in the C/M-1, M-1, and M-2 zones. Must be located a minimum of 500 feet from residential zones.
5.2 SIC codes 41, 43, 491, 494	X	X	P/C*	
5.2 SIC code 42 (Trucking and Warehousing)	X	X	X	c. For trucking and warehousing uses, the distancing requirement set forth in Section 19.11.030(C) shall be 1,000 feet, meaning that any such use proposed to be located within 1,000 feet of the nearest residential district shall require conditional use permit review. The following exceptions shall apply:
5.3 SIC code 45 (Air transportation, except helipads)	X	X	P/C	
5.5 SIC codes 492, 493, 496	X	X	C	
5.6 SIC codes 495*, 496				i. Any user proposing to occupy an existing warehouse facility containing less than

				35,000 square feet shall be exempt from the CUP requirement.
				ii. Where a major road separates the project site from the nearest residential district and such separation is equal to or greater than 300 feet, no CUP shall be required.
				iii. Where an active railroad right-of-way separates the project site from the nearest residential district and the director of community development determines that project truck traffic will not circulate through the residential district, no CUP shall be required. d. SIC code 4225 (General Warehousing and Storage), also known as mini-warehousing, self-storage or public storage warehousing, is permitted in the M-2 (Heavy Manufacturing) zone with a conditional use permit. e. A Conditional Use Permit shall be required for any new warehouse building or development and additions to existing warehouse buildings and developments, where the total square footage of all structures measures 100,000 square feet or greater.

**SECTION 9:** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remainder of the Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions may be declared invalid or unconstitutional.

**Section 10:** This Ordinance shall take effect on the thirty-first (31<sup>st</sup>) day after its adoption.

PASSED, APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Joe Aguilar  
Mayor

ATTEST:

\_\_\_\_\_  
Linda Kay Olivieri, MMC  
City Clerk

Commerce, California, Code of Ordinances >> Title 19 - ZONING >> CHAPTER 19.39 -  
ADMINISTRATION OF THE ZONING ORDINANCE >> DIVISION 7. - CONDITIONAL USE PERMITS >>

## DIVISION 7. - CONDITIONAL USE PERMITS

- 19.39.390 - Intent and purpose.
- 19.39.400 - Initiation.
- 19.39.410 - Proceedings.
- 19.39.420 - Required findings.
- 19.39.430 - Conditions of approval.
- 19.39.440 - Conditional use permit attached to the property.
- 19.39.450 - Suspension and revocation.
- 19.39.460 - Time limit for implementing conditional use permit.
- 19.39.470 - Reserved.

### 19.39.390 - Intent and purpose.

- A. The city recognizes that certain uses, due to the nature of use, intensity, or size, require special review to determine if the use proposed, or the location of that use, is compatible with surrounding uses, or through the imposition of development and use conditions, can be made compatible with surrounding uses. The conditional use permit is provided for this purpose.
- B. To ensure compatibility with zoning regulations and surrounding properties, conditional uses require special consideration. The planning commission is empowered to grant and deny applications for conditional use permits and to impose reasonable conditions upon the granting of such permit.
- C. Applications for conditional use permits may be submitted only for those uses specified as allowable conditional uses in the applicable zone district. A conditional use permit is not a substitute for a change of zone or zoning ordinance text amendment.

*(Ord. 544 § 1(part), 2000).*

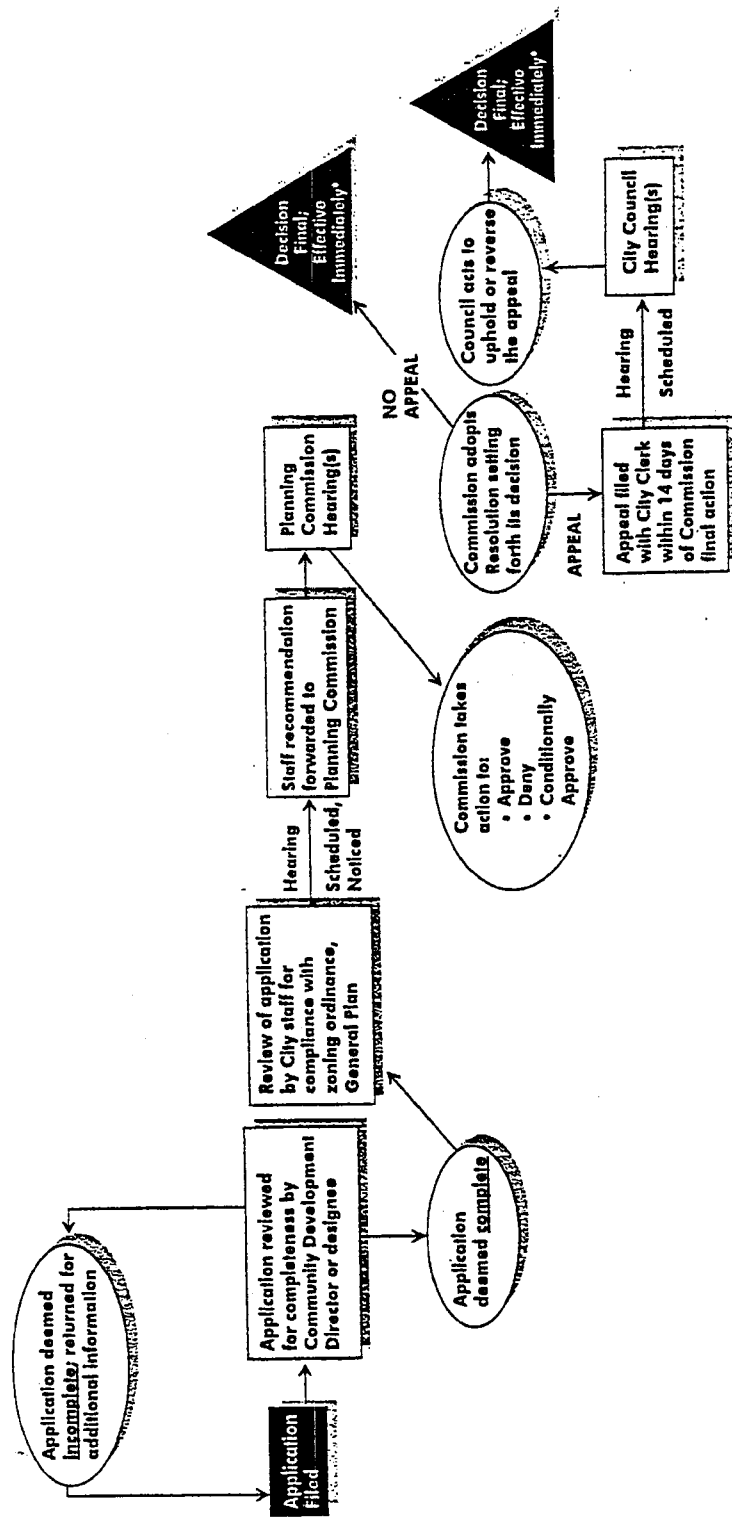
### 19.39.400 - Initiation.

- A. An application for a conditional use permit may be initiated by any person who is able to demonstrate a legal vested interest in the proposed application. The authorized agent of any person with a legal vested interest may also initiate an application. The community development director may request proof of ownership or authorization to apply prior to the acceptance of any application.
- B. An application shall be filed pursuant to the provisions of Division 2 (Applications, Processing, Filings, and Fees) of this Chapter 19.39

*(Ord. 544 § 1(part), 2000).*

### 19.39.410 - Proceedings.

- A. Community Development Director Investigation. The community development director or his designee shall investigate the application and proposal, including the analysis of precedent cases as appropriate, and shall prepare a report outlining facts and a recommendation relating to the application. The report shall be provided to the planning commission and the applicant prior to any scheduled public hearing on the application.
- B. Planning Commission Proceedings.
  1. A public hearing before the planning commission shall be noticed and conducted pursuant to the provisions of Division 3 (Public Hearings) of this Chapter 19.39
  2. At the public hearing, the planning commission shall review the application and proposal and receive evidence concerning the proposed use and the proposed conditions under which it would be operated or maintained, particularly with respect to the findings prescribed in Section 19.39.420 (Required findings).
  3. The planning commission shall act to approve, conditionally approve, or deny the application.
  4. The decision of the planning commission shall become effective immediately upon its rendering, unless an appeal is filed pursuant to the provisions of Division 4 (Appeals and Revocations) of this Chapter 19.39



• Grantee shall have one year from the effective date of approval to establish the right to use the permit.

(Ord. 544 § 1(part), 2000).

**19.39.420 - Required findings.**

- A. The planning commission may approve and/or modify a conditional use permit in whole or in part, with or without conditions; provided that all of the following findings of fact are made:

**Figure 19.39.410-3  
Process for Conditional Use Permit**

1. The proposed use is one conditionally permitted within the subject zone and complies with the intent of all applicable provisions of this Title 19, including, but not limited to, those set forth in Chapter 19.19 (Site Planning and General Development Standards);
  2. The proposed use would not impair the integrity and character of the zone in which it is to be located;
  3. The subject site is physically suitable for the type of land use being proposed;
  4. The proposed use is compatible with the land uses presently on the subject property;
  5. The proposed use would be compatible with existing and future land uses within the zone and the general area in which the proposed use is to be located;
  6. There would be adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety;
  7. There would be adequate provisions for public access to serve the subject proposal;
  8. The proposed use is consistent with the objectives, policies, general land uses, and programs of the general plan;
  9. The proposed use would not be detrimental to the public interest, health, safety, convenience, or welfare; and
  10. The proposed design and elevations preserve and maximize the image, character, and visual quality of the neighborhood.
- B.**
1. This subsection shall apply only to the uses identified in this subsection. This subsection shall not invalidate any conditional use permit for an operating facility, but shall be complied with prior to issuance of a building permit for all projects for which no building permit has been issued upon the effective date of this provision.
  2. In addition to findings required in Section 19.39.420(A), the planning commission shall find that the proposed use does not have a disproportionately high and adverse human health or environmental effect on minority and low-income populations. Such findings must be made for the following uses:
    - a. Solid waste facilities, as defined in Public Resources Code 40194, to the extent not prohibited by Section 19.31.470 of this Title 19
    - b. Auto wrecking or salvage yards.
    - c. Yards for the disposal and/or salvage of demolition or construction waste.
    - d. Recycling facilities.
    - e. Incinerators of any type.
- C.** Additional findings shall be made for specific uses as required by Chapter 19.31 (Standards for Specific Land Uses) of this Title 19  
*(Ord. 544 § 1(part), 2000).*  
*(Ord. No. 612, § 7, 10-7-2008)*

#### **19.39.430 - Conditions of approval.**

- A.** In granting a conditional use permit, the planning commission may impose such conditions as it deems necessary to ensure that the public health, safety, and general welfare are protected and that the proposed operation is not a detriment to the community.
- B.** All conditions shall be binding upon the applicant, heirs, successors, or assignees and shall restrict the construction, location, maintenance, and use of all land within the development.
- C.** A deed restriction may be recorded with the County Recorder of Los Angeles County, as approved by the city attorney, regarding the conditions of this section and other requirements of the conditional use permit.

*(Ord. 544 § 1(part), 2000).*

#### **19.39.440 - Conditional use permit attached to the property.**

A conditional use permit that is valid and in effect and granted pursuant to the provisions of this Title 19 shall be valid only on the property for which it was granted and shall continue to be valid upon change of ownership of the property or any lawfully existing building or structure on the property.

*(Ord. 544 § 1(part), 2000).*

#### **19.39.450 - Suspension and revocation.**

The community development director shall have the authority to initiate proceedings to suspend or revoke a conditional use permit pursuant to provisions set forth in Sections 19.39.240 through 19.39.250, inclusive, of this Chapter 19.39.

(Ord. 544 § 1(part), 2000).

**19.39.460 - Time limit for implementing conditional use permit.**

- A. The grantee of a conditional use permit shall have one year from the effective date of the permit to establish a right to use the permit; otherwise, the conditional use permit shall lapse and become void. For the purposes of this section, such a right shall be established if either:
1. A building permit has been issued and construction commenced and diligently pursued toward completion on the site for which the conditional use permit was approved; or
  2. In the event no building permit is required, a certificate of occupancy has been issued for the structure for which the conditional use permit was approved; or
  3. In the event no building permit or occupancy is required, the site for which the conditional use permit was approved is occupied and used for the permitted purpose; or
  4. Prior to the date on which the conditional use permit will elapse, the grantee files an application to renew the permit pursuant to subsection B of this section.
- B. A conditional use permit subject to lapse may be renewed up to an additional one-year period; provided, that the application for renewal is filed with the community development department prior to the expiration date. A public hearing before the planning commission shall be required.
- C. The planning commission may grant or deny an application for renewal of a conditional use permit. As part of its action, the commission may also modify existing conditions of approval or add new conditions to reflect any change in circumstances related to the conditional use permit and surrounding properties.
- D. If any conditional use permit fails to be actively exercised for a continuous one hundred eighty-day period, the permit shall lapse and become void.

(Ord. 544 § 1(part), 2000).

**19.39.470 - Reserved.**



Commerce, California, Code of Ordinances >> Title 19 - ZONING >> CHAPTER 19.39 -  
ADMINISTRATION OF THE ZONING ORDINANCE >> DIVISION 10. - SITE PLAN REVIEW >>

**DIVISION 10. - SITE PLAN REVIEW**

19.39.640 - Intent and purpose.

19.39.650 - Applicability.

19.39.660 - Initiation.

19.39.670 - Proceedings.

19.39.680 - Basis for approval.

19.39.690 - Approval attached to the property.

19.39.700 - Modification.

19.39.710 - Revocation.

19.39.720 - Time limit for implementing site plan review approval.

19.39.730 - Reserved.

**19.39.640 - Intent and purpose.**

- A. The site plan review process is established to provide a visual and factual document that may be used to determine and control the physical layout, design, and use of a lot or parcel of land, buildings, or structures. A site plan shall contain information that may include an application form, plans, drawings and diagrams, or pictures indicating uses, forms, dimensions, and other pertinent factors sufficient to provide a document that may be used to substantiate and corroborate facts and testimony vital to the administration of this Title 19
- B. A site plan is, or may be, required to determine whether or not a proposed development will properly comply with the provisions and development standards prescribed in this Title 19 or as prescribed by the site plan review approval.

*(Ord. 544 § 1(part), 2000).*

**19.39.650 - Applicability.**

- A. General. The submission of a site plan for site plan review shall be required for the following development proposals, where no other permit or application is required:
1. For any new building or structure in excess of twenty-five thousand square feet in area.
  2. For the enlargement of any existing building or structure which adds more than twenty-five thousand square feet of building or structure area.
  3. For the construction of any multiple-family housing development project containing five or more dwelling units.
  4. For any telecommunications antenna described in Chapter 19.27 this Title 19
- B. Projects Involving Planning Commission Review. The community development director may require submission of a site plan for any matter that otherwise involves the approval of the planning commission.

*(Ord. 544 § 1(part), 2000).*

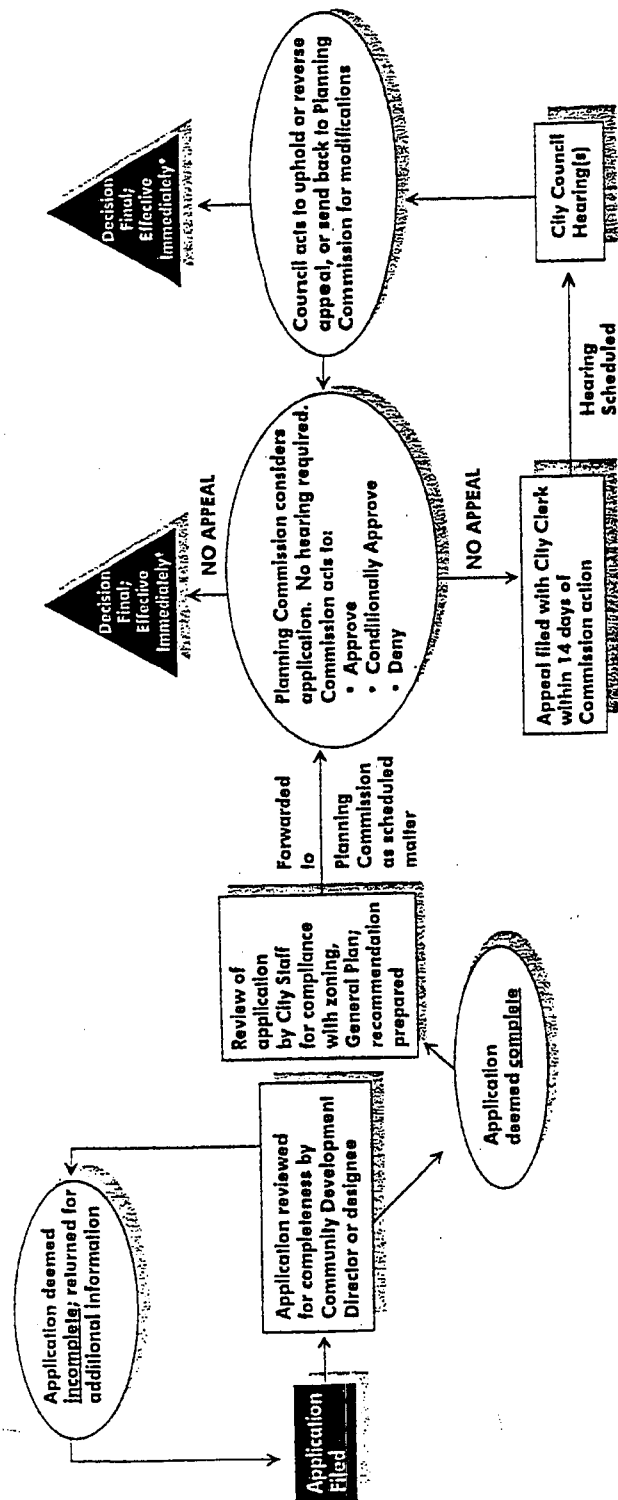
**19.39.660 - Initiation.**

- A. An application for site plan review may be initiated by any person who is able to demonstrate a legal vested interest in the proposed application. The authorized agent of any person with a legal vested interest may also initiate an application. The community development director may request proof of ownership or authorization to apply prior to the acceptance of any application.
- B. An application shall be filed pursuant to the provisions of Division 2 (Applications, Processing, Filings, and Fees) of this Chapter 19.39

*(Ord. 544 § 1(part), 2000).*

**19.39.670 - Proceedings.**

- A. Community Development Director Investigation. The community development director or his designee shall investigate the application and proposal, including the analysis of precedent cases as appropriate, and shall prepare a report outlining facts and a recommendation relating to the application.
- B. Planning Commission Consideration.
1. The community development director shall place the site plan review application on the planning commission agenda for consideration by the commission as a scheduled matter. No public hearing shall be required. However, notice to surrounding property owners shall be provided pursuant to the provisions of Section 19.39.140(C) of this Title 19
  2. The planning commission shall review the application and proposal and receive evidence concerning the proposed site plan.
  3. The planning commission shall act to approve, conditionally approve, or deny the application.
  4. The decision of the planning commission shall become effective immediately upon its rendering, unless an appeal is filed pursuant to the provisions of Division 4 (Appeals and Revocations) of this Chapter 19.39



• Grantee shall have one year from the effective date of approval to establish the right to use the permit.

(Ord. 544 § 1(part), 2000).

**19.39.680 - Basis for approval.**

Approval or disapproval of any site plan review application shall be based upon the following factors and principles:

- A. Compliance with all of the applicable provisions of this Title 19, including, but not limited to, those

**Figure 19.39.670-6  
Process for Site Plan Review**

set forth in Chapter 19.19 (Site Review and General Development Standards).

- B. Suitability of the site for the particular use or development intended.
- C. Physical layout of the total development, including the application of prescribed development standards. The project shall be so arranged to further the policies of the general plan and zoning regulations including, but not limited to, avoiding traffic congestion, ensuring the protection of public health, safety and general welfare, and preventing adverse effects on neighboring properties.
- D. Consistency with all elements of the general plan.
- E. Suitability and functional development design. However, such approval shall not be interpreted to require a particular style or type of architecture.

(Ord. 544 § 1(part), 2000).

(Ord. No. 612, § 8, 10-7-2008)

#### **19.39.690 - Approval attached to the property.**

A site plan review approval that is valid and in effect and granted pursuant to the provisions of this Title 19 shall be valid only on the property for which it was granted and only for the improvements for which it is granted and further, shall continue to be valid upon change of ownership of the property or any lawfully existing building or structure on the property.

(Ord. 544 § 1(part), 2000).

#### **19.39.700 - Modification.**

The applicant may apply for a modification to an approved site plan by following the same submission and application procedures for site plan review consideration. The applicant's submission shall specify the particular modifications requested and the grounds that support the modification request.

(Ord. 544 § 1(part), 2000).

#### **19.39.710 - Revocation.**

The community development director shall have the authority to initiate proceedings to suspend or revoke a site plan review approval pursuant to provisions set forth in Sections 19.39.240 through 19.39.250, inclusive, of this Chapter 19.39.

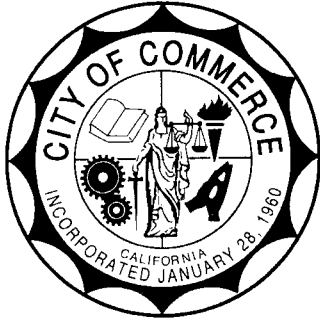
(Ord. 544 § 1(part), 2000).

#### **19.39.720 - Time limit for implementing site plan review approval.**

- A. The grantee of a site plan review approval shall have one year from the effective date of the approval to establish a right to use the approval; otherwise, the approval shall lapse and shall become void. For the purposes of this section, such a right shall be established if either:
  1. A building permit has been issued and construction commenced and diligently pursued toward completion on the site for which the site plan was approved; or
  2. In the event no building permit is required, a certificate of occupancy has been issued for the structure for which the site plan was approved; or
  3. In the event no building permit or occupancy is required, the site for which the site plan was approved is occupied; or
  4. Prior to the date on which the site plan review approval will elapse, the grantee files an application to renew the permit pursuant to subsection B of this section.
- B. A site plan review approval subject to lapse may be renewed up to an additional one-year period; provided, that the application for renewal is filed with the community development department prior to the expiration date.
- C. The community development director may approve or deny an application for renewal of a site plan review approval. As part of the action, the director may also modify existing conditions of approval or add new conditions to reflect any change in circumstances related to the site plan and surrounding properties.

(Ord. 544 § 1(part), 2000).

#### **19.39.730 - Reserved.**



# AGENDA REPORT

DATE: August 16, 2011

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: PUBLIC HEARING – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, AMENDING TITLE 19 (“ZONING”) OF THE COMMERCE MUNICIPAL CODE, SECTION 19.37.120A (NONCONFORMING USES--ABANDONMENT) – FIRST READING

## RECOMMENDATION:

That the City Council conduct the required public hearing and thereafter consider the proposed Ordinance for first reading.

## MOTIONS:

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 the Ordinance for first reading.

## BACKGROUND:

Over 66% of the City's land acres are dedicated to industrial and commercial uses. The City has long tried to identify and implement strategies to enable businesses to come to Commerce and to stay in Commerce. The country's current economic woes have affected local governments as well as the business community and property owners. Staff hears numerous stories of property owners who are finding it increasingly difficult to lease their buildings. Some properties sit vacant for several months, while others are vacant for years. Realizing that the City must continue to try to help the business community, the City Administrator requested that staff and the Planning Commission review the City's existing policies related to the abandonment and continuance of nonconforming uses. Specifically, the Planning Commission has considered the potential for increasing what is referred to as the City's "90 day rule".

The "90 day rule" (as shown in italics below) is found in Chapter 19.37, Division 2 of the Commerce Municipal Code (CMC). This part of the CMC contains standards related to nonconforming uses. A nonconforming use is defined as a "use or activity of land that was lawfully established and in compliance with all applicable ordinances and laws at the time it was undertaken, but which, due to a subsequently enacted ordinance or law, no longer complies with all the applicable regulations and standards of the zone in which the use is located". Chapter 19.37 includes standards related to the abandonment and continuance of nonconforming uses as shown below:

### *19.37.120 - Nonconforming uses—Abandonment.*

- A. *Whenever a nonconforming use has been abandoned, discontinued, or changed to a conforming use for a continuous period of ninety days or more, the nonconforming use shall not be re-established, and the structure or site thereafter shall be used in conformity with the regulations for the zone in which it is located. Discontinuance of*

*a use shall include cessation of the existing nonconforming use, regardless of intent to resume the nonconforming use.*

B. *This Section 19.37.120 shall not apply to nonconforming dwelling units.*

Pursuant to CMC Section 19.37.120, if a property owner whose tenant is conducting a legal nonconforming use vacates the property upon lease expiration, the tenant has only 90 days to reestablish the nonconforming use. Otherwise, the use is considered abandoned. Whether the owner intends to rent the property for that same use does not matter. Thus, it becomes a race against the 90-day deadline to lawfully re-establish the nonconforming use.

On June 22, 2011, the Planning Commission considered this matter. At that time, staff recommended an increase from 90 days to 18 months, with a 6-month extension if determined to be reasonable and necessary by the Director of Community Development. After some discussion, the Commission unanimously agreed that they would be in favor of a 9-month re-establishment period and a 3-month extension with approval by the Community Development Director. On July 27, 2011, the Planning Commission reviewed the subject Ordinance. At that time there was some additional discussion on the matter and staff read into the record, an email from the Executive Director of the Industrial Council. The email discussed the difficulties property owners are having trying to attract new tenants. Specifically, the email mentioned the considerable amount of time necessary for site rehabilitation. Also, negotiations between property owners and prospective tenants can take several months, and the marketing period can be very slow due to the current economic climate. The email has been included as an attachment to this report. In the end, the Commission agreed with staff's original recommendation of 18 months with the potential for a 6-month extension if deemed necessary by the Director of Community Development and has recommended that the City Council adopt the proposed ordinance in order to make this change to the City Code.

#### ANALYSIS:

Staff routinely hears of the difficulties owners are having leasing their properties. Many feel that the City's current "90 day rule" is not reasonable due to the current economic climate. Other cities typically have a similar rule related to the abandonment of nonconforming uses. However, time frames differ from city to city. For example, the City of Santa Fe Springs allows for a 12-month period and the City of Bell Gardens 6-months. Both of these time frames are substantially longer than that currently enforced by Commerce. The increased time frame agreed upon and recommended by the Planning Commission will help with the transition of nonconforming uses without creating an economic hardship.

Currently, Section 19.37.120A of the CMC is written as follows:

- A. Whenever a nonconforming use has been abandoned, discontinued, or changed to a conforming use for a continuous period of ninety days or more, the nonconforming use shall not be re-established, and the structure or site thereafter shall be used in conformity with the regulations for the zone in which it is located. Discontinuance of a use shall include cessation of the existing nonconforming use, regardless of intent to resume the nonconforming use.

The proposed Ordinance would change this section of the CMC to read as follows (amendment shown in highlighted bold italics):

- A. Whenever a nonconforming use has been abandoned, discontinued, or changed to a conforming use for a continuous period of ***eighteen months*** or more, the nonconforming use shall not be re-established, and the structure or site thereafter shall be used in conformity with the regulations

for the zone in which it is located. ***The Director of Community Development may grant one additional extension of six months if he or she determines that such extension is reasonable under the circumstances.*** Discontinuance of a use shall include cessation of the existing nonconforming use, regardless of intent to resume the nonconforming use.

The City continues to try to find ways to help the business community. Any increase to the existing “90 day rule” would serve to help owners lease their properties. “The spirit of a zoning ordinance with a provision permitting continued nonconforming uses is to allow, but not increase, the nonconforming use. Intensification or expansion of an existing nonconforming use, or moving the use to another location on the property is not permitted” (Curtin, 2009). The subject Ordinance would allow for certain nonconforming uses to continue, but does not allow for any increase in the degree of nonconformity.

#### PROPOSED FINDINGS:

Commerce Municipal Code Section 19.39.310 requires that all of the following findings be made before approving a zoning ordinance text amendment:

1. That the proposed zoning ordinance text amendment is consistent with the goals, policies, and objectives of the general plan. ***The proposed text amendment is consistent with the City of Commerce General Plan. The proposed amendment would serve to help the existing business community and accommodating the rapidly changing demands of industry. Furthermore, the subject amendment will help to promote the maintenance and preservation of businesses that contribute to the City's economic and employment base.***
2. That the proposed zoning ordinance text amendment will not adversely affect surrounding properties. ***The subject text amendment would not adversely affect surrounding properties. Proposed businesses would still be required to go through the City's business license process, which requires review and approval from the Planning, Fire, and Building and Safety Divisions. This review includes an analysis of the proposed use and inspections from the Fire and Building and Safety Divisions. This process is in place to help protect surrounding properties and it would not change due to the subject text amendment.***
3. That the proposed zoning ordinance text amendment promotes the public health, safety, and general welfare and serves the goals and purposes of this Title 19. ***The subject text amendment would serve to help protect the health, safety and general welfare of the residents of the City of Commerce. This amendment would help to promote the maintenance and preservation of businesses that contribute to the City's economic and employment base. The needs of the business community would be better served, as demands continue to change. The City's standard review process for new businesses helps to ensure the protection of the health, safety and welfare of the community and this process will not change with the implementation of the subject text amendment.***

ATTACHMENTS: 1) Proposed Ordinance  
2) Email from the Executive Director of the Industrial Council

#### PUBLIC HEARING NOTICE:

The Public Hearing Notice was published in the Commerce Comet on August 4, 2011.

ENVIRONMENTAL ASSESSMENT:

The project qualifies for a Class 8 Categorical Exemption under the provisions of the California Environmental Quality Act (CEQA) Guidelines Section 15308. Class 8 consists of actions taken by regulatory agencies, as authorized by local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment.

FISCAL IMPACT:

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

RELATIONSHIP TO 2009 STRATEGIC GOALS:

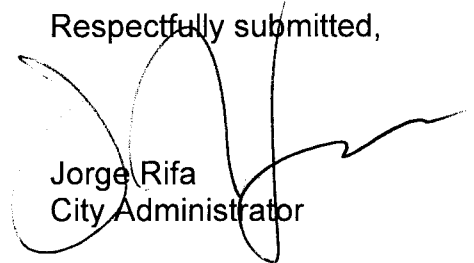
- Goal #2 – *Protect and Enhance Quality of Life in the City of Commerce; and*
- Goal #3 – *Make Financial and Economically Sound Decisions Consistent with Economic Conditions.*

Recommended by:



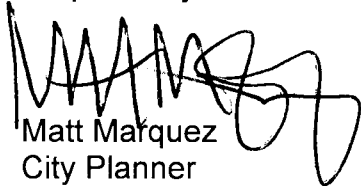
Bob Zarrilli  
Director of Community Development

Respectfully submitted,



Jorge Rifa  
City Administrator

Prepared by:



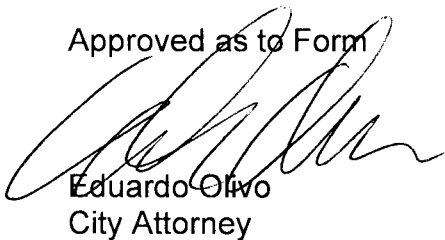
Matt Marquez  
City Planner

Fiscal impact reviewed by:



Vilko Domic  
Director of Finance

Approved as to Form



Eduardo Olivo  
City Attorney



AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE,  
CALIFORNIA, AMENDING TITLE 19 ("ZONING") OF THE COMMERCE MUNICIPAL  
CODE, SECTION 19.37.120A (NONCONFORMING USES--ABANDONMENT)

WHEREAS, the City Commerce Municipal Code contains existing standards related to the abandonment of legal nonconforming uses; and

WHEREAS, current economic forces have created increased difficulties for the business community, especially in the area of commercial property leasing; and

WHEREAS, the City recognizes the need to accommodate the rapidly-changing demands of the business community and desires to take action to provide the business community with more time to address tenant vacancies without unintentionally and prematurely losing their legal non-conforming use status; and

WHEREAS, the Planning Commission has recommended that the City Council adopt an ordinance that increases the time limit related to the abandonment of legal nonconforming uses.

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

SECTION 1: Section 19.37.120A of the Commerce Municipal Code is hereby amended to read as follows:

- A. Whenever a nonconforming use has been abandoned, discontinued, or changed to a conforming use for a continuous period of eighteen months or more, the nonconforming use shall not be re-established, and the structure or site thereafter shall be used in conformity with the regulations for the zone in which it is located. The Director of Community Development may grant one additional extension of six months if he or she determines that such extension is reasonable under the circumstances. Discontinuance of a use shall include cessation of the existing nonconforming use, regardless of intent to resume the nonconforming use.

SECTION 2: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remainder of the Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions may be declared invalid or unconstitutional.

SECTION 3: This Ordinance shall take effect on the thirty-first (31<sup>st</sup>) day after its adoption.

PASSED, APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Joe Aguilar  
Mayor

ATTEST:

\_\_\_\_\_  
Linda Kay Olivieri, MMC  
City Clerk



## **Matt Marquez**

---

**From:** Eddie D. Tafoya [eddie@industrialcouncil.org]  
**Sent:** July 27, 2011 5:18 PM  
**To:** Alex Hamilton; Matt Marquez  
**Subject:** Public Comment\_Commerce Zoning Amendment

Alex and Matt-

I won't be able to make tonight's planning commission meeting, but am submitting comments for the public hearing/comment section of the meeting. Please have read into the record.

These comments pertain to the item the Commission will consider regarding an Ordinance amending Title 19 ("Zoning") of the Commerce Municipal Code, Section 19.37.120A (Nonconforming uses -- Abandonment). As you know, the subject amendment would extend the abandonment period from 90 days to 9 months, as well as provide for a potential 3-month extension by the Director of Community Development.

The 12 months is a good start but still not feasible for the following reasons:

1. It can often take a considerable amount of time to rehabilitate a property before you bring it on line for marketing (perhaps 90-120 days)
2. Leasing and sale activity can be quite seasonal. As an example, if you bring a property onto the market after Halloween, it is very likely little or no activity will occur until the middle of January (another lost 90 days). Summer can also manifest slow periods of activity.
3. Lease and Sale negotiations can take several months themselves.
4. This does not even take into account the marketing period itself. This can be very slow these days as lease activity is very tepid.

As you may recall, at our meeting in June, we asked for a consideration of an 18-month period with a potential 6-month extension, to bring the total abandonment period to 2 years max.

A 9-month abandonment period with a potential 90-day extension still places an undue burden on Owner's of properties where the property falls under a non-conforming use. The average age of buildings in Commerce is 1955 so asking them to refurbish their facilities with only a year of vacancy is too cost prohibitive.

The City will create higher vacancy rates and prohibit job growth. Not to mention, the State of California, County of Los Angeles and the City of Vernon all have two (2) year time commitments' on subdivision, permitting process and vacancy/abandonment applications.

As you may be aware, there is approximately 75 million sq. ft. of industrial buildings in the city; however, only approximately 5 million sq. ft. are in compliance with current city requirements. The approximate 70 million sq. ft. were built prior to the formation of the City of Commerce to meet Los Angeles County Building Code.

Thank you for reading this into the record.

Regards,

-----

Eddie D. Tafoya  
Executive Director  
Commerce Industrial Council  
Chamber of Commerce  
6055 E. Washington Blvd., Suite 120  
Commerce, CA 90040  
323.728.7222, fax 323.728.7565  
Eddie@IndustrialCouncil.org