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AGENDA FOR THE
CONCURRENT REGULAR MEETINGS OF
THE CITY COUNCIL OF THE CITY OF COMMERCE AND
THE GOVERNING BODY OF THE SUCCESSOR AGENCY TO
THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION
(HEREINAFTER "SUCCESSOR AGENCY")

COUNCIL CHAMBERS
5655 JILLSON STREET, COMMERCE, CALIFORNIA

TUESDAY, OCTOBER 1, 2013 – 6:30 P.M.

CALL TO ORDER

Mayor/Chairperson Aguilar

PLEDGE OF ALLEGIANCE

Vilko Domic
Director of Finance

INVOCATION

Councilmember/Board Member Robles

ROLL CALL

Deputy City Clerk Alexander

APPEARANCES AND PRESENTATIONS

1. Presentation -- Recognizing Commerce Aquatic Teams

Participants will be presented by Swim Team Coach Kevin Larsen, Men's Water Polo Coach Bobby Contreras and Women's Water Polo Coach Gabriel Martinez

The **City Council** will participate in a photo session with the Commerce Aquatic Teams.

2. Presentation -- Certificates of Completion - Cable Television Production Graduates

The **City Council** will present Certificates of Completion to the 2013 Channel 3 and Channel 32 Cable Television Production graduates.

3. Commendation – Honoring Loretta Gutierrez Upon Her Retirement

The **City Council** will present a Commendation to City employee Loretta Gutierrez, Director of Safety & Community Services, upon her retirement from the City of Commerce.

PUBLIC COMMENT

Citizens wishing to address the City Council and Successor Agency on any item on the agenda or on any matter not on the agenda may do so at this time. However, State law (Government Code Section 54950 et seq.) prohibits the City Council/Successor Agency from acting upon any item not contained on the agenda posted 72 hours before a regular meeting and 24 hours before a special meeting. Upon request, the City Council/Successor Agency may, in their discretion, allow citizen participation on a specific item on the agenda at the time the item is considered by the City Council/Successor Agency. Request to address City Council/Successor Agency cards are provided by the City Clerk/Secretary. If you wish to address the City Council/Successor Agency at this time, please complete a speaker's card and give it to the City Clerk/Secretary prior to commencement of the City Council/Successor Agency meetings. Please use the microphone provided, clearly stating your name and address for the official record and courteously limiting your remarks to five (5) minutes so others may have the opportunity to speak as well.

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

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

CITY COUNCIL/SUCCESSOR AGENCY REPORTS

CONSENT CALENDAR

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

4. Approval of Minutes

The **City Council and Successor Agency** will consider for approval, respectively, the minutes of the Adjourned Regular Meeting of Tuesday, June 17, 2013, at 5:00 p.m.; Concurrent Adjourned Regular Meeting of Tuesday, June 18, 2013, at 5:00 p.m.; Concurrent Regular Meeting of Tuesday, June 18, 2013, at 6:30 p.m.; Concurrent Regular Meeting of Tuesday, July 2, 2013, at 6:30 p.m.; Special Meeting of Thursday, September 5, 2013, at 9:00 a.m. and Concurrent Special of Tuesday, September 17, 2013, at 5:00 p.m.

5. Approval of Warrant Register Nos. 5A and 5B

The **City Council and Successor Agency** will consider for approval, respectively, the bills and claims set forth in Warrant Registers No. 5A, dated October 1, 2013, and 5B for the period September 18, 2013 to September 26, 2013.

6. Proclamation - "Crime Prevention Month" during October 2013

The National Crime Prevention Council has proclaimed the month of October 2013, as "Crime Prevention Month". They believe that time, money, and other resources spent on prevention yields tremendous benefits in reducing crime and making communities stronger, safer, and better places to live, work, and play. During October, the City will conduct

CONCURRENT REGULAR COUNCIL/SUCCESSOR AGENCY AGENDA

10/1/2013 – 6:30 p.m.

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activities to educate and empower its residents in taking a stance against crime, including Red Ribbon Week and Neighborhood Watch meetings.

The **City Council** will proclaim the month of October 2013, as “Crime Prevention Month”, in the City of Commerce.

7. 2013 Edward Byrne Justice Assistance Grant (JAG)

The **City Council** will consider for approval authorizing City Staff to accept funding in the amount of \$11,368, from the Department of Justice via the 2013 Edward Byrne Justice Assistance Grant (JAG).

A Public Hearing was held on July 2, 2013, and it was decided that the funds will be utilized to train our 4 new Community Services Officers.

8. A Resolution of the City Council of the City of Commerce, California, Approving the Transit Mutual Assistance Compact Agreement for Public Transit Providers

The **City Council** will consider for approval and adoption a proposed Resolution approving the Transit Mutual Assistance Compact Agreement for Public Transit Providers.

9. A Resolution of the City Council of the City of Commerce, California, Approving a Retainer Agreement with the Law Firm of Remy, Thomas, Moose and Manley, LLP in Connection with the Environmental Impact Report Approved by the City of Bell for the Bell Business Center Project

The **City Council** will consider for approval and adoption a proposed Resolution approving a Retainer Agreement with the Law Firm of Remy, Thomas, Moose and Manley, LLP in connection with the Environmental Impact Report approved by the City of Bell for the Bell Business Center Project.

10. A Resolution of the City Council of the City of Commerce, California, Approving a Settlement Agreement and Release of All Claims Between the City of Bell, the Bell Public Finance Authority and the City of Commerce

The **City Council** will consider for approval and adoption a proposed Resolution approving a Settlement Agreement and Release of All Claims between the City of Bell, the Bell Public Finance Authority and the City of Commerce.

PUBLIC HEARINGS

11. Public Hearing -- Consider Whether AVI-CON, dba: CA Construction, is Not a Responsible Bidder for Purposes of the Central Library Renovation Project; AND

A Resolution of the City Council of the City of Commerce, California: (1) Determining that AVI-CON, dba CA Construction (“AVI-CON”) is Not a Responsible Bidder for Purposes of the Central Library Renovation Project; (2) Determining that the Bid by AVI-CON Was Not Completely Responsive and Is Therefore Disqualified; (3) Determining that the Bid By TOBO Construction Was Not Completely Responsive and is Therefore Disqualified; (4) Accepting the Withdrawal of the Bid by Cal-City Construction, Inc.; (5) Denying the Bid Protests by Sanders Construction; (6) and Accepting the Bid by MTM Construction, Inc. and Approving a

Construction Contract with MTM Construction for the Central Library Renovation Project (Project No. 1301)

The **City Council** will conduct a public hearing to consider whether AVI-CON, dba: CA Construction, is not a responsible bidder for purposes of the Central Library Renovation Project, and thereafter, consider, a proposed Resolution: (1) Determining that AVI-CON, dba: CA Construction (“AVI-CON”) is not a responsible bidder for purposes of the Central Library Renovation Project; (2) Determining that the Bid by AVI-CON was not completely responsive and is therefore disqualified; (3) Determining that the bid by TOBO Construction was not completely responsive and is therefore disqualified; (4) Accepting the withdrawal of the bid by Cal-City Construction, Inc.; (5) Denying the bid protest by Sanders Construction; (6) and accepting the bid by MTM Construction, Inc., and approving a Construction Contract with MTM Construction for the Central Library Renovation Project (Project No. 1301).

SCHEDULED MATTERS

12. Land for Sale -- Camp Commerce

The **City Council** will receive a report on and thereafter consider and take appropriate action as deemed necessary with respect to, the land adjacent to Camp Commerce that is for sale.

13. Camp Commerce Improvement Projects

The **City Council** will receive a report on, and thereafter consider and take appropriate action as deemed necessary with respect to, the proposed improvement projects at Camp Commerce.

ORDINANCES AND RESOLUTIONS

14. A Resolution of the City Council of the City of Commerce, California, Approving a Retainer Agreement with Susan M. Woolley

The **City Council** will consider for approval and adoption a proposed Resolution approving a Retainer Agreement with Susan M. Woolley.

15. An Urgency Ordinance of the City Council of the City of Commerce, California, Adding Chapter 2.11 (Requirements for Circulation of Recall Petition), To Title 2 (Administration and Personnel) of the Commerce Municipal Code

The **City Council** will consider for approval and adoption an Urgency Ordinance of the City Council of the City of Commerce, California Adding Chapter 2.11 (Requirements for Circulation of Recall Petition), to Title 2 (Administration and Personnel) of the Commerce Municipal Code.

16. An Ordinance of the City Council of the City of Commerce, California Amending Sections 9.06.020 (“Prohibited Conduct Generally”) of Title 9 (“Peace, Safety and Morals”) of the Commerce Municipal Code – First Reading

The **City Council** will consider for first reading a proposed Ordinance amending Sections 9.06.020 (“Prohibited Conduct Generally”) of Title 9 (“Peace, Safety and Morals”) of the Commerce Municipal Code.

CIP PROGRESS REPORT – None

I-710 LOCAL ADVISORY COMMITTEE UPDATE – None

RECESS TO CLOSED SESSION – No Items

ADJOURNMENT

Adjourn to Tuesday, October 8, 2013, at 11:00 a.m. in the City Council Chambers.

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



AGENDA REPORT

Meeting Date: 10/01/2013

TO: HONORABLE CITY COUNCIL
FROM: CITY ADMINISTRATOR
SUBJECT: PRESENTATION – COMMERCE AQUATICS TEAMS

RECOMMENDATION:

Receive the Presentation and participate in photo session with the teams.

MOTION:

Approve the recommendation.

BACKGROUND AND ANALYSIS:

Commerce Swim Team:

The Commerce Swim Team competed at Junior Olympics in Thousand Oaks, California July 24-28, 2013 at California Lutheran University. Commerce Aquatics was represented by 7 athletes: Jesse Barragan, Bianca Becerra, Carlos Heredia, Juan Mena, Catherine Mendoza, Cynthia Rosa, and Elyas Yepaz. Of these swimmers, four of the athletes qualified for finals in a total of 9 events: Swimmers Juan Mena, Jesse Barragan, Bianca Becerra, and Cynthia Rosa placed in the top 16 in their respective age groups for various swim events.

On August 1 & 2, 2013 Commerce Aquatics traveled to Hershey-Harrisburg, Pennsylvania to compete in the 8th Biennial State Games of America. The State Games of America is an Olympic-style event featuring competition between State Games winners (gold, silver, bronze) from across the nation. Commerce had 15 athletes attend SGA in Pennsylvania: Casey Barragan, Jesse Barragan, Maria Flores, Alex Gamboa, Wendy Gamboa, Jonathan Garcia, Ayelen Gimenez, Carlos Heredia, Jonathan Melendez, Catherine Mendoza, Leslie Meza, Bryan Miranda, Marisela Olivas, Mia Solorzano, Claudia Torres. Of these athletes 3 of our swimmers medaled in the top 3 at State Games of America: Jesse Barragan, Carlos Heredia, and Catherine Mendoza.

Commerce Water Polo Teams:

USA Water Polo's 44th Annual Junior Olympics was held in Orange County, CA and surrounding communities July 27, 2013 through August 4, 2013. Over five hundred teams and eight thousand athletes came together in hopes to compete in championship venues from Fullerton to Mission Viejo and Irvine.

The Junior Olympics was divided by gender with the men/boys playing July 27 – July 30, 2013 and the women/girls playing August 1 – 4, 2013. The 10&U coed National Championship was played August 1 – 4, 2013 in conjunction with the women/girls divisions. All teams entered had to qualify for the Junior Olympic Championship by competing in Zone Qualifying Tournaments, to be eligible to participate in this tournament.

The City of Commerce entered 10 teams, with approximately 120 athletes. Commerce men/boys results are as follows:

- 10 & Under (coed) – 12th Place - Platinum Division (38 teams entered)
- 12 & Under - 13th Place - Platinum Division (60 teams entered)
- 16 & Under Green – 8th Place - Invitational Division (108 teams entered)
- 16 & Under -Black- 7th Place-Platinum Division (108 teams entered)
- 18 & Under – 12th Place - Silver Division (84 teams entered)

AGENDA ITEM No. 1

Commerce women/girls results are as follows:

- 10 & Under – 1st Place-Platinum Division (10 teams entered)
- 12 & Under – 6th Place – Platinum Division (48 teams entered)
- 14 & Under – 10th Place – Platinum Division (72 teams entered)
- 16 & Under – 2nd Place – Platinum Division (108 teams entered)
- 18 & Under - 8th Place – Platinum Division (96 teams entered)

FISCAL IMPACT:

This item can be completed without any fiscal impact.

RELATIONSHIP TO STRATEGIC GOALS:

This agenda item relates to Strategic Goal #1-Staff Development: The City Council has always provided a high level of support and funding for the Aquatic Programs, which has allowed the Department to retain skilled coaches who keep the teams disciplined and competitive.

Recommended by:



Scott Wasserman
Director of Parks & Recreation

Respectfully Submitted,



Jorge Rifa
City Administrator

Fiscal Impact reviewed by:



Vilko Domic
Director of Finance

Approved as to Form:



Eduardo Olivo
City Attorney



AGENDA REPORT

Meeting Date: October 1, 2013

TO: Honorable City Council

FROM: City Administrator

SUBJECT: Certificates of Completion - Cable Television Production Class Graduates

RECOMMENDATION:

Present Certificates of Completion to the Cable TV Production Class Graduates.

MOTION:

Approve the recommendation.

BACKGROUND:

The City established the Cable TV division of the Public Information Office in 1988 to provide local programming and emergency public information to the community. In 1991, the division began conducting classes for volunteers in television production.

The intensive 52-week program covers studio and field production, post production and directing and technical directing. The courses include lighting for video, camera operations, audio recording, non-linear editing, video color correction and shading, camera robotic operation, studio floor managing, basic TV equipment maintenance, graphic motion design for TV and resumé creation.

Each volunteer must complete 11 written tests, 4 practical tests and contribute to a minimum of 32 city productions which include City Council meetings, the Miss Commerce Pageant, sports programming, the 4th of July Community Celebration, the Commerce Public Affairs Program, and the Commerce City News Program.

ANALYSIS:

The volunteers receive valuable, hands-on training while providing much needed labor that helps the staff create top-notch programming.


The Channel 3 and Channel 32 Television Production graduates for 2013 are: Marlyn Barajas, Jessica Chapula, Joaquin Duarte, Natalie Escamilla and Diego Guzman.

FISCAL IMPACT:

None.

Recommended by:

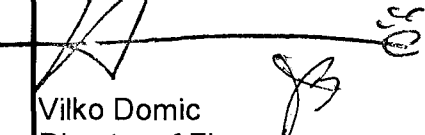
Respectfully submitted,


Fernando Mendoza
Deputy City Administrator


Jorge Rifa
City Administrator

Fiscal impact reviewed by:

Approved as to form:


Vilko Domic
Director of Finance


Eduardo Olivo
City Attorney



AGENDA REPORT

MEETING DATE: October 1, 2013

TO: HONORABLE CITY COUNCIL
FROM: CITY ADMINISTRATOR
SUBJECT: RETIREE COMMENDATION

RECOMMENDATION:

Approve Retirement Commendation for city employee Loretta Gutierrez, Director of Safety & Community Services.

MOTION:

Move to approve the recommendation.

BACKGROUND:

Loretta Gutierrez joined the City of Commerce on January 14, 1985 in the capacity of Field Coordinator. She worked various positions in the Community Services department and promoted to Assistant Director of Community Services on October 21, 1998. In March 2011 Ms. Gutierrez was assigned to the position of Director of Safety & Community Services on an interim basis. In November 2012 she was appointment to the Director of Safety & Community Services position. Ms. Gutierrez will be retiring from the City of Commerce on October 11, 2013, after providing over 28 years of service.

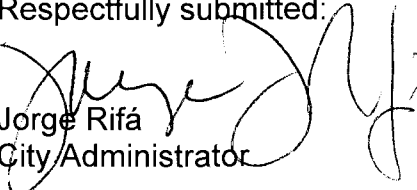
FISCAL IMPACT:

There is no fiscal impact associated with this agenda item report.

RELATIONSHIP TO 2012 STRATEGIC GOALS:

This agenda item is not applicable to a specific 2012 strategic goal.

Respectfully submitted:


Jorge Rifá
City Administrator

Fiscal impact reviewed by:


Vilko Domic
Finance Director

Approved as to form:

Eduardo Olivo
City Attorney

COMMENDATION OF THE CITY COUNCIL
OF THE CITY OF COMMERCE
HONORING

LORETTA GUTIERREZ

ON THE OCCASION OF HER RETIREMENT AND FOR 28 YEARS
OF DEDICATION AND EXCEPTIONAL SERVICE
TO THE CITY OF COMMERCE AND THE COMMUNITY

Whereas, Loretta Gutierrez began her career with the City of Commerce on January 14, 1985 as a field coordinator in the Department of Community Services; and

Whereas, Loretta Gutierrez provided counseling and other social services to the community, shepherding many youth and families to positive resolutions of social challenges to help them achieve success and a better quality of life, and

Whereas, Loretta Gutierrez continued to build on her education and skills as a social service professional by completing a Master's Degree in Social Work at California State University, Long Beach and becoming certified as a Licensed Clinical Social Worker by the California Board of Behavioral Sciences; and

Whereas, Loretta Gutierrez played a critical role in the development and implementation of innovative City programs including the Commerce Scholarship Program, Parenting Classes, the Community Task Force and the nationally recognized Commerce Youth Diversion Program; and

Whereas, Loretta Gutierrez was promoted to assistant director of Community Services in 1998, a role in which she excelled, which led to her service as acting director of Human Resources, and then as the interim director of Safety and Community Services in 2011, a position to which she was promoted permanently in 2012; and

Whereas, Loretta Gutierrez's hallmark has been the conviction and dedication with which she proudly served the City of Commerce, earning her the respect of her coworkers and the residents of the City of Commerce alike; and

Whereas, Loretta Gutierrez blessed the City of Commerce by investing so much of her life's work in the "Model City," a contribution that has made her not only a "Model Employee," but in fact an honorary Commerce resident:

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMMERCE COMMENDS LORETTA GUTIERREZ ON THE OCCASION OF HER RETIREMENT AND FOR HER EXCEPTIONAL SERVICE TO THE CITY OF COMMERCE. WE ARE GRATEFUL FOR THE LASTING CONTRIBUTIONS SHE HAS MADE TO THE COMMUNITY AND FOR HER DEDICATION TO IMPROVING THE QUALITY OF LIFE FOR ALL OF THE CITY'S STAKEHOLDERS. WE WISH YOU THE BEST IN YOUR RETIREMENT AND FUTURE ENDEAVORS.

Signed this 1st day of October 2013.

ATTEST:

Joe Aguilar
Mayor

Teresa Jackson, CMC
Interim City Clerk



AGENDA REPORT

DATE: October 1, 2013

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A PROCLAMATION DESIGNATING THE MONTH OF OCTOBER 2013
AS "CRIME PREVENTION MONTH"

RECOMMENDATION:

Approve a Proclamation to proclaim the month of October 2013 as "Crime Prevention Month."

MOTION:

Approve the recommendation.

BACKGROUND:

In 1984, The National Crime Prevention Council, the nation's focal point for preventing crime, designated October as Crime Prevention Month. The month-long celebration recognizes successful Crime Prevention efforts on the local, state and national levels to generate interest and enthusiasm for prevention efforts to continue to grow even stronger and become more widespread.

Crime Prevention Month 2013 reflects the strong belief that time, money, and other resources spent on prevention yields tremendous benefits in reducing crime and making communities stronger, safer, and better places to live, work, and play. During Crime Prevention Month, government agencies, civic groups, schools, businesses, and youth organizations throughout the County of Los Angeles will showcase their accomplishments, reach out to educate and empower the public through educational campaigns, and explore new partnerships that build stronger communities where crime cannot survive. City of Commerce Events will include Red Ribbon Week and Neighborhood Watch meetings, and Halloween Safety Patrol.

ANALYSIS:

The City of Commerce continues its commitment towards crime prevention efforts within the community and takes great pride in its programs which promote safer neighborhoods, awareness, and intervention strategies for youth. The City encourages residents to participate in working together to make the City a safer and stronger community.

FISCAL IMPACT:

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


RELATIONSHIP TO 2012 STRATEGIC GOALS:

This report relates to the 2012 strategic planning goal: "Protect and Enhance the Quality of Life in the City of Commerce". Public safety is the fundamental platform of quality of life.


Respectfully submitted


Jorge J. Rifa
City Administrator

Recommended by,


Loretta Gutierrez
Dir. of Safety & Comm. Serv.

Approved As To Form,


Eduardo Olivo
City Attorney

**A Proclamation of the City Council
of the
City of Commerce
Designating the Month of October 2013
as
CRIME PREVENTION MONTH**

WHEREAS, in 1984 The National Crime Prevention Council designated October as Crime Prevention Month;

WHEREAS, the vitality of our City depends on how safe we keep our homes, neighborhoods, schools, workplaces, and communities; and

WHEREAS, crime and fear of crime destroy our trust in others and in civic institutions, threatening the community's health, prosperity, and quality of life; and

WHEREAS, people of all ages must be made aware of what they can do to prevent themselves and their families, neighbors, and co-workers from being harmed by crime; and

WHEREAS, people of all ages must be made aware of the dangers of technology crime and how they can protect themselves from becoming victims; and

WHEREAS, the personal injury, financial loss, and community deterioration resulting from crime are intolerable and require investment from the whole community; and

WHEREAS, crime prevention initiatives must include self-protection and security, but they must go beyond to promote collaborative efforts to make neighborhoods safer for all ages and to develop positive opportunities for young people; and

WHEREAS, adults must invest time, resources, and policy support in effective prevention and intervention strategies for youth, and adults must make sure to engage teens in programs to drive crime from their communities; and

WHEREAS, effective crime prevention programs excel because of partnerships with law enforcement, other government agencies, civic groups, schools, faith communities, businesses and individuals as they help to nurture communal responsibility and instill pride; and

WHEREAS, the City of Commerce Crime Prevention events will include Neighborhood Watch Meetings, and **RED RIBBON WEEK** during the week of October 23-31, 2013;

NOW THEREFORE, I, Joe Aguilar, Mayor of the City of Commerce, do hereby join the National Crime Prevention Council in proclaiming the month of October 2013, as "Crime Prevention Month" and encourage all who live and work in the City of Commerce to take a stand against crime and work together to make the City a safer and stronger community.

PASSED AND ADOPTED this 1st day of October 2013.

Joe Aguilar, Mayor

ATTEST:

Teresa Jackson, CMC
Interim City Clerk



AGENDA REPORT

DATE: October 1, 2013

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

**SUBJECT: 2013 EDWARD BYRNE JUSTICE ASSISTANCE GRANT (JAG) –
AUTHORIZATION FOR CITY STAFF TO ACCEPT FUNDING IN
THE AMOUNT OF \$11,368**

RECOMMENDATION:

At the discretion of the City Council, authorize City Staff to accept funding in the amount of \$11,368 from the Department of Justice 2013 Edward Byrne Justice Assistance Grant (JAG).

MOTION:

Approve the recommendation.

BACKGROUND:

The Edward Byrne Justice Assistance Grant (JAG) is an annual federal grant. JAG grants are intended for municipalities to utilize towards crime prevention efforts, at the recipient's discretion. This is a competitive grant process and the grant amounts are predetermined, based on the City's population and crime statistics. The amount for the City of Commerce is **\$11,368**, to be utilized within a two year period.

On July 2, 2013, a Public Hearing was held in the City's EOC, to allow the public to opportunity to participate in determining how the funds will be spent, if they are awarded to the City of Commerce. At the hearing, it was determined that the funds will be spent as follows:

- To pay for required specialized training of our 4 new Community Services Officers (CSO's) and related costs. The training will increase efficiency and safety while on the job.

Following the Public Hearing, City staff submitted an application seeking grant funding from the Department of Justice. Shortly thereafter, the City received a congratulatory letter granting the grant funds in the amount of \$11,368. In order to receive the funds, the City Council is required to formally authorize City staff to "Accept" the funds.

ANALYSIS:

City staff is in agreement with requesting the grant funds and designating expenditure of the funds as noted above. All who were present at the Public Hearing held July 2, 2013 were in agreement with staff's recommendation on how the funds will be utilized.

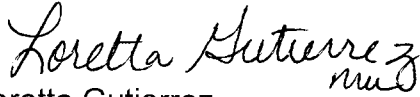
FISCAL IMPACT:

Since no matching funds from the City are required, this activity can be carried out without additional impact on the current operating budget.

RELATIONSHIP TO 2012 STRATEGIC GOALS:

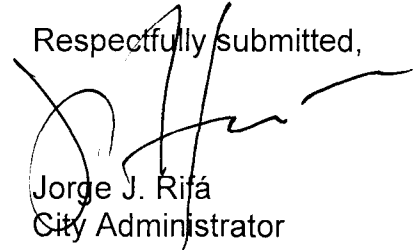
This report relates to the 2012 strategic planning goal: "Protect and Enhance the Quality of Life in the City of Commerce," as it addresses a community public safety issue of concern.

Recommended by,




Loretta Gutierrez
Director of Safety & Community Services

Respectfully submitted,



Jorge J. Rifa
City Administrator

Reviewed by:



Vilko Domic
Director of Finance

Approved As To Form by:



Eduardo Olivo
City Attorney



AGENDA REPORT

Meeting Date: October 1, 2013

TO: Honorable City Council

FROM: City Administrator

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING THE TRANSIT MUTUAL ASSISTANCE COMPACT (TRANSMAC) AGREEMENT FOR PUBLIC TRANSIT PROVIDERS

RECOMMENDATION:

Adopt the resolution approving the Transit Mutual Assistance Compact (TransMAC) Agreement for public transit providers.

MOTION:

Move to approve recommendation.

BACKGROUND:

This report is related to a program to better prepare the City of Commerce (City) to respond to, and recover from emergencies and disasters while fulfilling its obligation to provide essential services to the community, or assist its fellow public transit providers in doing the same. A formal mutual assistance agreement for public transit agencies has been developed with wide participation from transit providers, emergency management agencies and legal counsels in California. The resulting California Transit Mutual Assistance Compact (TransMAC) is similar to those that have existed and been tested in other disciplines for many decades (e.g., law enforcement, public works, utilities).

The original agencies responsible for coordinating and developing this transit mutual assistance agreement include: Los Angeles County Metropolitan Transportation Authority (LACMTA), Orange County Transportation Authority (OCTA), Foothill Transit, Sunline Transit, Omintrans, and the County Sheriff-Coroner Department – Emergency Management Division.

ANALYSIS:

TransMAC will help the City forge a resilient, formal and mutually beneficial relationship with its fellow public transit providers for emergency situations. TransMAC facilitates rapid, short-term deployment of emergency support (personnel, equipment, materials and other associated services) prior to, during, and/or after an incident or pre-planned event amongst its Membership. The TransMAC establishes the framework for activation, withdrawal, member responsibilities, reimbursement, documentation, legal and liability issues; yet provides great flexibility for Members to negotiate terms appropriate to the situation at the time of activation. TransMAC will also assist the City in joining a community of its fellow transit providers that are creating and codifying a united and strong voice for transit among our public safety and emergency services counterparts.

During the response to, and the period of recovery from, an emergency that may impact our operations or other events, it may be necessary for the City to sustain and rebuild its operation quickly in order to maintain essential services and support other agencies.

Pursuant to the proposed agreement, the City shall empower the City Administrator power to contract in an emergency as set forth in California Public Utilities Code sections 130234 and 130235 as well as the general power to enter into contracts required to obtain the necessary construction, goods, and services to allow the City to begin the rebuilding process as identified in California Public Utilities Code section 130051.9. The City's need to support other transit agencies and the potential need of the City to be assisted by other agencies would be enhanced by this formal agreement with those other Members in TransMAC. To facilitate and enable the City to join the TransMAC, it is advisable to empower the City Administrator to act on the City's behalf to take necessary actions without the normal protocols.

FISCAL IMPACT:

There is no fiscal impact associated with this agreement.

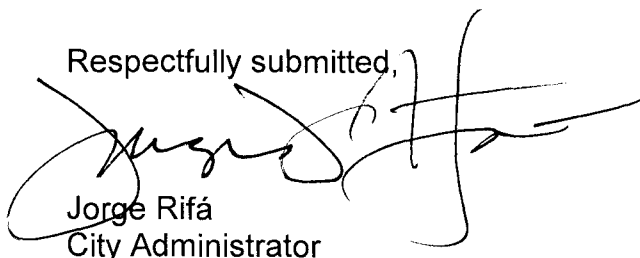
STRATEGIC GOALS:

The proposed recommendation ties into the City's 2012 strategic goal: "Establish protocol to ensure decision making and evaluation process for new ideas are clear and timely"; as this agreement will allow the City an opportunity to provide and/or receive support during the response to, and recovery from emergencies, pre-planned events, and other incidents that may impact transit operations.

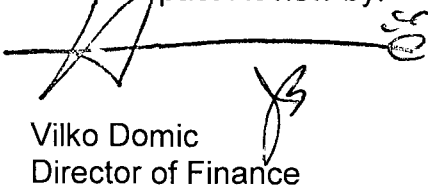
Recommended by:


Claude McFerguson
Director of Transportation

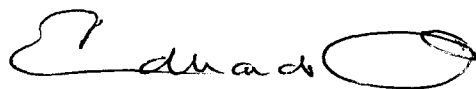
Respectfully submitted,


Jorge Rifá
City Administrator

Fiscal Impact Review by:


Vilko Domic
Director of Finance

Approved as to Form:


Eduardo Olivo
City Attorney

Attached: Transit Mutual Assistance Transmittal Letter
Transit Mutual Assistance Compact (TransMAC)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE,
CALIFORNIA, APPROVING THE TRANSIT MUTUAL ASSISTANCE COMPACT
AGREEMENT FOR PUBLIC TRANSIT PROVIDERS

WHEREAS, the City of Commerce (City) needs to better prepare to respond to, and recover from emergencies and disasters while fulfilling its obligation to provide essential services to the community, or assist its fellow public transit providers in doing the same; and

WHEREAS, a formal mutual assistance agreement for public transit agencies has been developed with wide participation from transit providers, emergency management agencies and legal counsels in California; and

WHEREAS, the original agencies responsible for coordinating and developing the California Transit Mutual Assistance Compact ("TransMAC") include: Los Angeles County Metropolitan Transportation Authority, Orange County Transportation Authority, Foothill Transit, Sunline Transit, Omintrans, and the County Sheriff-Coroner Department – Emergency Management Division; and

WHEREAS, TransMAC will help the City forge a resilient, formal and mutually beneficial relationship with its fellow public transit providers for emergency situations; and

WHEREAS, TransMAC facilitates rapid, short-term deployment of emergency support (personnel, equipment, materials and other associated services) prior to, during, and/or after an incident or pre-planned event amongst its Membership. TransMAC establishes the framework for activation, withdrawal, member responsibilities, reimbursement, documentation, legal and liability issues; yet provides great flexibility for members to negotiate terms appropriate to the situation at the time of activation. TransMAC will also assist the City in joining a community of its fellow transit providers that are creating and codifying a united and strong voice for transit among our public safety and emergency services counterparts; and

WHEREAS, during the response to, and the period of recovery from, an emergency that may impact our operations or other events, it may be necessary for the City to sustain and rebuild its operation quickly in order to maintain essential services and support other agencies; and

WHEREAS, the City's need to support other transit agencies and the potential need of the City to be assisted by other agencies would be enhanced by a formal agreement with other members in TransMAC; and

WHEREAS, to facilitate and enable the City to join the TransMAC, it is advisable to empower the City Administrator, pursuant to the proposed agreement, to act on the City's behalf to take necessary actions without the normal protocols.

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

The Transit Mutual Assistance Compact Agreement for public transit providers is hereby approved. The Mayor is hereby authorized to execute the Agreement for and on behalf of the City of Commerce.

PASSED, APPROVED and ADOPTED this 1st day of October, 2013.

Joe Aguilar, Mayor

ATTEST:

Teresa Jackson, CMC
Interim City Clerk

**TransMAC Steering
Committee**



Metro



Cal EMA
CALIFORNIA EMERGENCY
MANAGEMENT AGENCY



OCTA

SunLine
TRANSIT AGENCY



Foothill Transit
GOING GOOD PLACES



Omnitrans

**NORTH COUNTY
TRANSIT DISTRICT**

**LONG BEACH
TRANSIT**



June 3, 2013

Dear Transit Partners,

It is with pleasure and pride that we present for your consideration the California Transit Mutual Assistance Compact (TransMAC), an emergency mutual assistance agreement for public transit providers.

This Agreement is designed to forge a resilient, formal, and mutually beneficial relationship among public transit providers that allows us to provide support to each other during the response to, and recovery from, emergencies, pre-planned events, and other incidents that may impact transit operations. It is designed to be similar to mutual aid/assistance agreements in other disciplines (e.g., law enforcement, fire, public works, and utilities).

The Agreement is the collective work of more than thirty agencies throughout the region over the last three years. At the forefront of its creation were the Steering Committee members identified herein.

We believe the Agreement provides maximum flexibility to take advantage of our interconnected nature, our collective voice, and each Agency's individual capabilities. Meanwhile, it ensures each agency maintains control over its assets and is appropriately protected, ultimately enhancing our collective ability to provide service to the public and support public safety missions without interruption. It is only through the collaborative application of our resources that we can gain this level of resilience and serve our communities in times of crisis.

We urge your agency to enter into the Transit Mutual Assistance Compact. To assist you in getting proper authorization to enter the Agreement, we have included a sample Board Report to use as a template for your own accepted Board format if your procedures require Board approval. Once you have properly executed the Agreement, which you may do at any time, please send an executed copy of the Agreement to the Chair of the TransMAC Steering Committee at the following address:

Scott R. Norwood, J.D.,
Chair, TransMAC Steering Committee
Emergency & Homeland Security Preparedness Manager
Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza, Mail Stop 99-PL-8
Los Angeles, California 90012

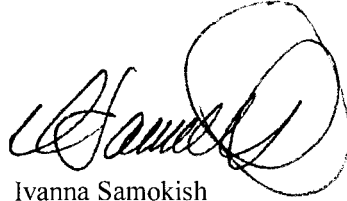
If you have any questions, please contact the Steering Committee Chair at (213) 922-3620 or NorwoodS@metro.net; or any other Steering Committee

member identified below. We look forward to your membership in this critical program and to working with you more closely as we continue to become better prepared for emergency situations.

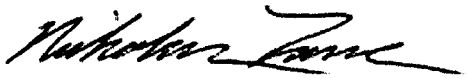
Thank you for your consideration,



Scott R. Norwood, J.D.,
Chair, TransMAC Steering Committee
Emergency & Homeland Security
Preparedness Manager
Los Angeles County Metropolitan
Transportation Authority
NorwoodS@metro.net



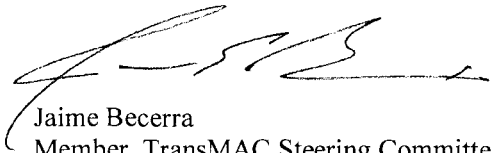
Ivanna Samokish
Vice-Chair, TransMAC Steering Committee
Safety & Security Coordinator
SunLine Transit Agency
ISamokish@sunline.org



Nicholas Lowe
Member, TransMAC Steering Committee
Sr. Operations Planner
California Emergency Management Agency
Nicholas.Lowe@calema.ca.gov



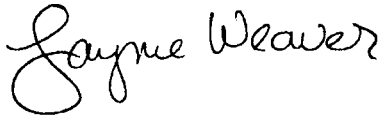
Bruce Gadbois
Member, TransMAC Steering Committee
Security & Emergency Preparedness Manager
Orange County Transportation Authority
BGadbois@octa.net



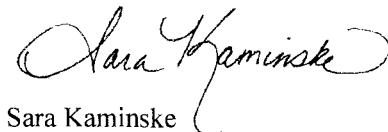
Jaime Becerra
Member, TransMAC Steering Committee
Director of Safety & Security
Foothill Transit
JBecerra@foothill.org



Mark Crosby
Member, TransMAC Steering Committee
Security & Loss Prevention Supervisor
Omnitrans
Mark.Crosby@omnitrans.org



Laynie Weaver
Member, TransMAC Steering Committee
Safety and Emergency Preparedness Manager
North County Transit District
LWeaver@nctd.org



Sara Kaminske
Member, TransMAC Steering Committee
Assistant Emergency Manager
Orange County Sheriff's Department/Emergency
Management Division
SKaminske@ocsd.org

CALIFORNIA STATEWIDE
TRANSIT MUTUAL
ASSISTANCE COMPACT
(TransMAC)

MAY 2013

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**CALIFORNIA STATEWIDE
TRANSIT MUTUAL ASSISTANCE COMPACT (TransMAC)**

PREAMBLE

This Transit Mutual Assistance Compact (TransMAC) and its Members have established a formal process whereby they may receive and provide Mutual Assistance to each other in the form of personnel, services, and equipment as deemed to be necessary or advisable in an emergency. The Mutual Assistance Agreement contained herein, sets forth the terms and conditions under which the undersigned Members agree to provide or receive Mutual Assistance. However, if a Requesting Member and one or more Providing Members are parties to another mutual assistance agreement at the time the Mutual Assistance is requested, such other mutual agreement shall govern the Mutual Assistance among those Members insofar as the previous agreements are not inconsistent with this Agreement.

In consideration of the foregoing, the TransMAC Member hereby agrees as follows:

- A. When providing Mutual Assistance to, or receiving Mutual Assistance from, another Member, the Member will adhere to these written principles to govern Mutual Assistance arrangements that are in effect as of the date of a specific request for Mutual Assistance, unless otherwise agreed to in writing by each Member.
- B. With respect to each Period of Assistance, Requesting Members agree that they will provide appropriate reimbursement to the Providing Member regarding all costs and expenses incurred by the Providing Member in furnishing Mutual Assistance as identified under the articles of this Agreement, unless otherwise agreed to in writing by each Member. Entities must maintain auditable records in a manner consistent with generally accepted practices and in a manner consistent with the Member's adopted practices and methods of record keeping and retention.
- C. During each Period of Assistance, the conduct of the Requesting Member and the Providing Member shall be subject to the liability and indemnification provisions set forth herein.
- D. A Member may withdraw from this Agreement at any time. In such an event, the Member should provide written notice to the Chairperson of the TransMAC Steering Committee.
- E. The TransMAC Steering Committee Chairperson shall maintain a current list of Members, which shall be distributed to all Members no less than twice annually; however, a Member may at any time request a copy of the signed Agreement of another Member prior to providing or receiving Mutual Assistance.

**ARTICLE I.
PURPOSE**

Recognizing that emergencies and other events may overwhelm the resources and capabilities of transit agencies, and that transit agencies may require assistance in the form of personnel, services, and equipment to continue to deliver critical services, the TransMAC Members hereby establish an intrastate program for Mutual Assistance. Through the TransMAC, Members

coordinate response activities and share resources when deemed to be necessary or advisable in an emergency. This Agreement sets forth the policies and standards for the administration of the TransMAC.

This Agreement shall be in accordance with the California Emergency Services Act, the California Disaster and Civil Defense Master Mutual Aid Agreement, the State Emergency Plan, and other existing state and local emergency operations plans, and shall be by and among Member transportation providers in the State of California.

ARTICLE II. DEFINITIONS

- A. **Associate Member** – Any non-transit providers, approved by the TransMAC Steering Committee, which play a supporting role for the TransMAC program. For example, the U.S. Department of Transportation (U.S. DOT), Federal Transit Administration (FTA), California Department of Transportation (CalTrans), California Emergency Management Agency (CalEMA), local emergency management organizations, and/or others who are not signatories to the TransMAC, but manifest the intent to offer support or coordination.
- B. **Authorized Official** – An employee or officer of a Member who is empowered and legally authorized to: (1) request assistance; (2) offer assistance; (3) refuse to offer assistance; (4) cancel a request or release assistance; or (5) withdraw assistance under this Agreement.
- C. **Emergency** – A natural or human caused event or circumstance causing, or imminently threatening to cause, impact to the operations of a Member, loss of life, injury to person or property, human suffering or financial loss, and includes, but is not limited to, fire, flood, severe weather, earthquake, civil disturbance, riot, explosion, drought, volcanic activity, spills or releases of oil or hazardous material, utility interruption, transportation emergencies, disease, blight, infestation, intentional acts, sabotage, declaration of war, or other conditions which are, or are likely to exceed, the resources of a Member and requires Mutual Assistance.
- D. **Founding Members** – The original agencies that coordinated and drafted this Agreement, which include: Los Angeles County Metropolitan Transportation Authority, Orange County Transportation Authority, Foothill Transit, SunLine Transit, Omnitrans, Long Beach Transit, California Emergency Management Agency, and the Orange County Sheriff-Coroner Department - Emergency Management Division.
- E. **Incident Command System (ICS)** – A management system designed to enable effective and efficient domestic incident management by integrating a combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure.
- F. **Independent Contractor** – Independent entity that agrees to furnish certain number or quantity of goods, materials, equipment, personnel, and/or services, at a mutually agreed upon price and within a specified timeframe to Members.
- G. **Member** – Any public or private transit provider who participates in the transit mutual assistance program by executing the TransMAC Agreement.

- H. **Mutual Assistance** – Any assistance provided under this Agreement. Mutual assistance is to be provided to a Requesting Member with the expectation of cost reimbursement as negotiated with the Providing Member.
- I. **Mutual Assistance Agreement** – A written agreement between and among Members that provides a mechanism to quickly obtain Mutual Assistance in the form of personnel, services, and equipment. The primary objective is to facilitate rapid, short-term deployment of emergency support prior to, during, and/or after an emergency.
- J. **National Incident Management System (NIMS)** – A national, standardized approach to incident management and response that sets uniform processes and procedures for emergency response operations.
- K. **Period of Assistance** – A specified period of time when a Providing Member assists a Requesting Member. The period shall commence when personnel and/or equipment expenses are initially incurred by the Providing Member in response to the official request of the Requesting Member and shall end upon agreement of the parties.
- L. **Providing Member** – A Member that responds to a Requesting Member by agreeing to provide personnel, services, equipment, etc. under the terms and conditions of this Agreement.
- M. **Requesting Member** – A Member who requests Mutual Assistance under this Agreement.
- N. **Sensitive Security Information** – Any document marked Sensitive Security Information (SSI), including but not limited to any map, report, notes, papers, plans, opinion, or e-mail, which relates to the system vulnerabilities of a Member or Associate Member, shall be handled consistent with proper protocols for Sensitive Security Information under 49 CFR Parts 15 and 1520.
- O. **Standardized Emergency Management System (SEMS)** – A standardized approach to command and jurisdictional management and response set forth by State of California Code of Regulations for multi-agency or multi-jurisdictional response to an emergency.

ARTICLE III. ADMINISTRATION

The administration of the TransMAC will be through the TransMAC Steering Committee and ad hoc project committees as designated by the Steering Committee.

The Steering Committee will be established by representatives from the Members to the TransMAC Agreement and will be originally comprised of the Founding Members that established this Agreement. Membership in the Steering Committee will be by nomination of the current Steering Committee membership from among the Members and Associate Members to this Agreement. The Steering Committee shall be comprised of no more than sixteen (16) Members and no more than eight (8) Associate Members. Steering Committee Members will have full voting rights. Associate Members will serve as advisors and will not have voting rights. A Chair and Vice-Chair will be elected by majority vote for a period of two (2) years and will act as administrators for the TransMAC during that time.

At a minimum, the Steering Committee will meet twice each year and issue a list of current Members and Associate Members. The Steering Committee will also address administrative issues such as database and document management, communications, funding, organization, and annual membership events.

In the event membership to this Agreement grows beyond the original region, comprised of the Counties of Los Angeles, Orange, San Bernardino, and Riverside, to include Members throughout the State of California, then the Steering Committee will explore options for establishing Regional Steering Committees and a State Steering Committee.

ARTICLE IV. PROCEDURES

An *Operational Guide*, detailing the processes for implementing this Agreement will be developed and adopted by majority vote of the Steering Committee. The *Operational Guide* will be reviewed and updated at least annually to reflect new material, processes, and to remove obsolete materials and processes. The document and revisions and updates will be reviewed and approved by the Steering Committee prior to publication and dissemination to the Members.

- A. In coordination with local and state emergency management organizations, the TransMAC Steering Committee shall develop operational and planning processes for the implementation of the TransMAC that shall be consistent with the California Emergency Services Act, SEMS, the State Emergency Plan, and the NIMS, reviewed annually and updated as needed by the Steering Committee.
- B. Requests for Mutual Assistance under this Agreement shall be directed to appropriate Authorized Official(s) from the list of Members.
- C. Any private sector Member to this Agreement shall be requested and tasked by a public sector Member before furnishing Mutual Assistance. Private sector Members may not be eligible to receive Mutual Assistance from public sector Members.
- D. Consistent with SEMS, when more than one County is impacted by a disaster, requests for mutual assistance under this Agreement may be channeled through the Regional Emergency Operations Centers and/or the State Operations Center to ensure maximum effectiveness in allocating resources to the highest priority needs.

ARTICLE V. MEMBER RESPONSIBILITIES

- A. Consistent with the NIMS, SEMS, and this Agreement, each Member shall develop a plan providing for the effective mobilization of its resources and personnel, both public and private, to cope with emergencies.
- B. Each Member agrees to furnish personnel, services, and/or equipment to each and every other Member to this Agreement to prevent and/or respond to any type of emergency in accordance with duly adopted plans, whether heretofore or hereafter adopted, detailing the method and manner by which such personnel, services, and equipment are to be made available and furnished; provided, however, that no Member shall be required to unreasonably deplete its own personnel, services, and/or equipment in furnishing such Mutual Assistance.

- C. It is expressly understood that any Mutual Assistance extended under this Agreement and the operational plans adopted pursuant thereto, is furnished in accordance with the California Emergency Services Act and other applicable provisions of law.
- D. Members shall identify an Authorized Official and alternates; provide contact information including 24-hour access; and maintain resource information made available by the Member for Mutual Assistance purposes, as allowed by the Member's policies. Such information shall be updated annually or as changes occur (whichever is sooner) and shall be provided to the TransMAC Steering Committee.
- E. Personnel of the Providing Member shall at all times during the Period of Assistance continue to be personnel of the Providing Member and shall not be deemed personnel of the Requesting Member for any purpose. Wages, hours, and other terms and conditions of employment of the Providing Member shall remain applicable to its personnel during the Period of Assistance.
- F. The Providing Member shall make available a sufficient number of Supervisors during its provision of Mutual Assistance consistent with the Providing Member's policies for personnel. All instructions for work to be done by Providing Member's personnel shall be given by Requesting Member to Providing Member supervisor(s); or when Providing Member personnel are to work in separate areas, to such of Providing Member's supervisors as may be designated for the purpose by Providing Member's policies/management.
- G. Unless otherwise agreed, the Requesting Member shall be responsible for supplying and/or coordinating support functions such as travel, lodging, meals, materials, etc. from the time Mutual Assistance arrives to the time of release when it is reasonably able to do so. The Providing Member shall normally be responsible for arranging travel, lodging and meals en route to the Requesting Member and for the return trip home.
- H. The Providing Member's safety and security rules, procedures, policies, guidelines, regulations, and laws shall apply to all work done by its personnel unless as mutually agreed otherwise. Any conflict, disagreement, questions and/or concerns arising about any safety and security rules and/or procedures should be brought to the Authorized Officials for prompt resolution between the Requesting Member and Providing Member.
- I. All time sheets and work records pertaining to the Providing Member's personnel furnishing Mutual Assistance shall be kept by the Providing Member.

ARTICLE VI. REQUESTS FOR ASSISTANCE

In general, Mutual Assistance will be in the form of resources, such as personnel, services equipment, and/or supplies. Mutual Assistance shall be given only when Providing Member, in its sole and absolute discretion, determines that its own needs can be met while rendering Mutual Assistance. The execution of this Agreement shall not create any duty to furnish Mutual Assistance on the part of any Member hereto.

- A. **Member Request** – In the event of an emergency, a Member's Authorized Official may request Mutual Assistance from another Member. Requests for Mutual Assistance may be made orally or in writing. When made orally, the request for Mutual Assistance shall

also be prepared in writing and submitted to the Member as soon as possible, but in no event longer than forty-eight (48) hours after the oral request was made. Requests for Mutual Assistance shall be directed to the Authorized Official of the other Member.

- B. **Response to a Request for Assistance** – After a Member receives a request for Mutual Assistance, the Authorized Official evaluates whether or not to respond, whether resources are available to respond, and/or if other circumstances will hinder response. Following the evaluation, the Authorized Official shall inform, as soon as possible, the Requesting Member of its decision.
- C. **Discretion of Providing Member's Authorized Official** – Execution of this Agreement does not create any duty to furnish Mutual Assistance. When a Member receives a request for Mutual Assistance, the Authorized Official shall have sole and absolute discretion as to whether or not to furnish Mutual Assistance, or the availability of resources to be furnished in such response. A potential Providing Member shall not be held liable for refusing to provide Mutual Assistance. An Authorized Official's decisions on the availability of resources and the furnishing of Mutual Assistance shall be final.
- D. **Specifying Type and Quantity of Mutual Assistance Resources** – The Requesting Member shall indicate to the Providing Member the number and specific types of resources desired, but the extent to which the Providing Member makes available such resources shall be at the Providing Member's sole discretion. Every effort will be made, to the extent reasonably possible, to accommodate the Providing Member's personnel with assigned work in their job classification.
- E. **Period of Assistance** – The Period of Assistance shall commence when personnel, services and/or equipment expenses are initially incurred by the Providing Member in response to the official request of the Requesting Member. This may include any request for the Providing Member to prepare its personnel, services, and/or equipment for transport and/or to prepare them for the Mutual Assistance assignment, and/or while awaiting further instructions before departing. The Period of Assistance shall terminate when such personnel and/or equipment have returned to the Providing Member, and may include any mandated U.S. Department of Transportation rest time resulting from the Mutual Assistance provided and reasonable time required to prepare the equipment for return to normal activities (e.g., cleaning, repair of vehicles, restocking parts).

The Requesting Member and Providing Member should reach a mutual understanding and agreement in advance as to the anticipated length, in general, of the Period of Assistance. For extended Periods of Assistance, there should be agreement on the process for replacing or providing extra rest for the Providing Member's personnel. It is understood and agreed that if, in the Providing Member's judgment, such action becomes necessary; the decision to terminate the assistance and recall personnel and equipment lies solely with the Providing Member. The Requesting Member will take the necessary action to return such personnel and equipment promptly (See Right to Withdraw Resources).

ARTICLE VII. COST REIMBURSEMENT

Except as herein otherwise provided, the Requesting Member shall reimburse the Providing Member for each of the following categories of costs and expenses incurred by the Providing

Member as a result of furnishing Mutual Assistance during the specified Period of Assistance, as set forth below, or by written mutual agreement reached at the time the request for assistance is agreed to by the Providing Member. Members will use their respective documented financial, accounting, and procurement policies in managing costs and coordinating reimbursement and payment.

- A. **Personnel** – Providing Member's fully burdened personnel costs (i.e., equal to the personnel's applicable salary or hourly wage plus fringe benefits and overhead, and consistent with Providing Member's collective bargaining agreements or other prescribed conditions). All personnel costs incurred for work performed during the specified Period of Assistance will be included. The Requesting Member shall be responsible for all direct and indirect labor costs.
- B. **Equipment** – Use of equipment, including construction equipment, revenue and/or non-revenue vehicles, or any other equipment, shall be at Providing Member's current equipment rates and subject to the following conditions:
1. The Requesting Member shall reimburse the Providing Member for the use of equipment during the specified Period of Assistance, including, but not limited to, any rental rates, fuel, lubrication, maintenance, transportation, and loading/unloading of equipment furnished for Mutual Assistance. Alternatively, Requesting Member may, at its own expense, provide fuel, lubrication and maintenance for furnished equipment until such time as the equipment is returned to the Providing Member.
 2. Providing Member's costs related to the transportation, handling and loading/unloading of equipment shall be chargeable to the Requesting Member.
 3. In the event equipment is damaged while being dispatched to the Requesting Member, or while in the custody and use of the Requesting Member, the Requesting Member shall reimburse the Providing Member for the reasonable cost of repairing said damaged equipment. If the equipment cannot be repaired, then the Requesting Member shall reimburse the Providing Member for the cost of replacing said equipment with equipment that is of at least equal capability as determined by the Providing Member. If the Providing Member must lease equipment while the equipment furnished to the Requesting Member is being repaired or replaced; then the Requesting Member shall reimburse the Providing Member for such lease costs.
- C. **Materials and Supplies** – Requesting Member shall reimburse the Providing Member in kind or at actual replacement cost, plus handling charges, for use of expendable or non-returnable supplies. Other supplies and reusable items that are returned to the Providing Member in a clean, damage-free condition shall not be charged to the Requesting Member and no rental fee will be charged; otherwise, they shall be treated as expendable supplies. Supplies that are returned to the Providing Member with damage must be treated as expendable supplies for purposes of cost reimbursement.
- D. **Payment Period** – Providing Member shall provide an itemized invoice to the Requesting Member for all expenses incurred by the Providing Member while furnishing Mutual Assistance. The Providing Member shall send the itemized invoice not later than ninety (90) days following the end of the Period of Assistance. The Providing Member may request additional periods of time within which to submit the itemized invoice, and Requesting Member shall not unreasonably withhold consent to such requests. The

Requesting Member agrees to reimburse the Providing Member within sixty (60) days from receipt of an invoice for Mutual Assistance furnished under this Agreement. The Requesting Member may request additional periods of time within which to pay the itemized invoice, and Providing Member shall not unreasonably withhold consent to such requests, provided, however, that all payments shall occur no later than one (1) year after the date a final itemized invoice was submitted to the Requesting Member.

- E. **Records** – Each Providing Member and Requesting Member and their duly authorized representatives shall have access to books, documents, notes, reports, papers and records, which are directly pertinent to this Agreement and the Period of Assistance for the purposes of reviewing the accuracy of an invoice or making a financial, maintenance or regulatory audit. Such records shall be maintained in a manner consistent with the Member's records retention policy for at least three (3) years after the close of the Period of Assistance or longer where required by law and as needed for federal reimbursement practices.
1. The Providing Member shall furnish documentation of expenses to the Requesting Member when it submits its invoice. Such documented costs and expenses shall include, but not be limited to the following:
 - a. Employees' wages and salaries for time during the Period of Assistance spent in Requesting Member's service, and time during travel to and from such service area, plus the Providing Member's standard payable additives to cover all personnel benefits and allowances for vacation, sick leave and holiday pay, social and retirement benefits, all payroll taxes, workers' compensation, employer's liability insurance, and other contingencies and benefits imposed by applicable law or regulation.
 - b. Personnel travel and support functions such as lodging, meals, materials, etc.
 - c. Replacement costs of expendable materials and supplies furnished.
 - d. Repair or replacement costs of equipment damaged or lost.
 - e. Charges for the use of vehicles and other equipment furnished.
 - f. Administrative and general costs, which are properly allocated to Mutual Assistance, to the extent such costs are not chargeable pursuant to the foregoing subsections.

ARTICLE VIII. RESPONSE COORDINATION

When providing assistance under this Agreement, the Requesting Member and Providing Member shall be organized by and shall function under the NIMS and SEMS protocols and procedures.

- A. **Resources** – Providing Member retains the right to identify the resources that are available for Mutual Assistance.

- B. **Control** – While personnel furnished through Mutual Assistance shall remain under the employment and supervision of the Providing Member, the Providing Member's personnel come under the direction and control of the Requesting Member when providing Mutual Assistance, consistent with the NIMS and the ICS to address the needs of the Requesting Member and/or as deemed appropriate by the Incident Commander. The Requesting Member's Authorized Official shall coordinate Mutual Assistance activities with the designated supervisor(s) of the Providing Member(s). The Providing Member's designated supervisor(s) must keep accurate records, consistent with Federal Emergency Management Agency (FEMA) standards, of work performed by personnel during the specified Period of Assistance.
- C. **Lodging and Meals** – As set forth in Article V Section I of this Agreement or unless otherwise agreed to in writing by the Requesting and Providing Members, the Requesting Member remains responsible for reimbursing the Providing Member for all reasonable and necessary costs associated with providing lodging and meals, if such resources are not provided.
- D. **Communications** – The Requesting Member shall provide the Providing Member's personnel with communications equipment such as radio equipment as available, or radio frequency information to program existing radios, in order to facilitate communications with local responders and/or the Requesting Member's command and control structure.
- E. **Status** – Unless otherwise provided by law, the Providing Member's officers and personnel retain the same privileges, immunities, rights, duties and benefits as provided in their respective home jurisdictions.
- F. **Licenses and Permits** – To the extent permitted by law, Providing Member personnel who hold licenses, certificates, or permits evidencing professional, mechanical, or other skills shall be allowed to carry out activities and tasks relevant and related to their respective credentials while providing Mutual Assistance during the specified Period of Assistance.
- G. **Right to Withdraw Resources** – The Providing Member's Authorized Official retains the right to withdraw some or all of its resources at any time for any reason in the Providing Member's sole and absolute discretion. Notice of intention to withdraw resources must be communicated by the Providing Member to the Requesting Member's Authorized Official as soon as possible under the circumstances. Actual release of the Providing Member's furnished resources shall be made as soon as it is safe and practicable as determined by the Requesting Member's Authorized Official. All resources shall be returned to the Providing Member as soon as is practicable and reasonable under the circumstances.
- H. **Right to Cancel a Request for Mutual Assistance or Release Resources** – The Requesting Member's Authorized Official retains the right to cancel a request for Mutual Assistance at any time for any reason prior to the deployment of Mutual Assistance resources by a Providing Member. The Requesting Member also retains the right to release the Providing Member's furnished resources at any time, including when they are en route, for any reason so long as it is safe and practicable to do so. In accordance with Article VII of this Agreement, all policies related to cost reimbursement still apply to the Period of Assistance even if that Period of Assistance is terminated early. Notice of

intention to release resources must be communicated by the Requesting Member to the Providing Member's Authorized Official as soon as possible under the circumstances.

ARTICLE IX.
ARBITRATION

If any controversy or claim arises out of, or relates to, this Agreement, including, but not limited to an alleged breach of the Agreement, the disputing Members shall first attempt to resolve the dispute by negotiation, followed by mediation or arbitration in accordance with the Rules of the American Arbitration Association. Each Member reserves the right at any time after mediation or arbitration to pursue its rights and remedies in a court of law.

ARTICLE X.
REQUESTING MEMBER'S DUTY TO INDEMNIFY

The Requesting Member shall indemnify, hold harmless, and defend the Providing Member from and against any and all liability for loss, damage, cost, or expense which the Providing Member may incur by reason of bodily injury, including death, to any person or persons, or by reason of damage to or destruction of any property, including the loss of use thereof, which result from furnishing Mutual Assistance and whether or not due in whole or in part to any act, omission, or negligence of the Providing Member, except to the extent that such death or injury to person, or damage to property, is caused by the willful or wanton misconduct and/or gross negligence of the Providing Member, its employees, officers, contractors, or agents. Where payments are made by the Providing Member under a workers' compensation or disability benefits law or any similar law for bodily injury or death resulting from furnishing or Mutual Assistance, the Requesting Member shall reimburse the Providing Member for such payments, except to the extent that such bodily injury or death is caused by the willful or wanton misconduct and/or gross negligence of the Providing Member, its employees, officers, contractors, or agents.

In the event any claim or demand is made, or suit or action is filed against the Providing Member alleging liability for which the Requesting Member shall indemnify and hold harmless the Providing Member under the above paragraph, the Providing Member shall promptly notify the Requesting Member thereof; and the Requesting Member, at its sole cost and expense, shall settle, compromise, or defend the same in such manner as it deems necessary or prudent. The Requesting Member shall consult the Providing Member on all such litigation and will not compromise any issue or claim without the concurrence of the Providing Member, which will not be unreasonably withheld. The Providing Member shall cooperate with the Requesting Member's reasonable efforts to investigate, defend, and settle the claim or lawsuit.

ARTICLE XI.
SIGNATORY INDEMNIFICATION

In the event of a liability, claim, demand, action or proceeding, of whatever kind or nature arising out of the rendering of Mutual Assistance through this Agreement, the parties involved in rendering or receiving Mutual Assistance agree to indemnify and hold harmless all Members whose only involvement is the execution and approval of this Agreement, in the transaction or occurrence which is the subject of such claim, action, demand or other proceeding. Such indemnification shall include indemnity for all claims, demands, liability, damages and costs, including reasonable attorneys' fees and other costs of defense, for injury, property damage and workers' compensation.

**ARTICLE XII.
WORKERS' COMPENSATION CLAIMS**

The Providing Member and Requesting Member are responsible for providing workers' compensation benefits and administering workers' compensation for their respective personnel.

**ARTICLE XIII.
NOTICE**

Each Member hereto shall give to the others prompt and timely written notice, within fifteen (15) business days of any claim made or any suit instituted coming to its knowledge, which in any way, directly or indirectly, contingently or otherwise, affects or might affect them, and each Member shall have the right to participate in the defense of the same, as it considers necessary to protect its own interests.

**ARTICLE XIV.
INSURANCE**

Members shall maintain an insurance policy or maintain a self-insurance program that covers activities that it may undertake by virtue of membership in the TransMAC. Proof of General Liability and Workers' Compensation coverage must be provided to any Requesting or Providing Member or the Steering Committee upon request.

**ARTICLE XV.
SENSITIVE SECURITY INFORMATION**

To the extent allowed by law, any Member or Associate Member shall maintain in the strictest confidence and shall take all reasonable steps necessary to prevent the disclosure of any confidential or Sensitive Security Information provided to it by another Member pursuant to this Agreement. If any Member, Associate Member, or third party requests or demands, by subpoena or otherwise, that a Member or Associate Member disclose any confidential or Sensitive Security Information provided to it under this Agreement, the Member or Associate Member shall immediately notify the owner of the confidential or Sensitive Security Information and shall take all reasonable steps necessary to prevent the disclosure of any confidential or Sensitive Security Information by asserting all applicable rights and privileges with respect to such information and shall cooperate fully in any judicial or administrative proceeding relating thereto.

**ARTICLE XVI.
EFFECTIVE DATE**

This Agreement shall take effect for a new Member immediately upon its execution by said Member.

**ARTICLE XVII.
WITHDRAWAL**

Any Member may terminate its participation in this Agreement by written notice to the Chair of the TransMAC Steering Committee. Withdrawal takes effect sixty (60) days after the appropriate officials receive notice. Withdrawal from this Agreement shall in no way affect a Requesting

Member's duty to reimburse a Providing Member for costs incurred during a Period of Assistance, which duty shall survive such withdrawal.

**ARTICLE XVIII.
MODIFICATION**

No provision of this Agreement may be modified, altered or rescinded by individual Members to the Agreement. Modifications to this Agreement require a simple majority vote of Members. The TransMAC Steering Committee will notify all parties of modifications to this Agreement in writing and those modifications shall be effective upon sixty (60) days written notice to the Members.

**ARTICLE XIX.
SEVERABILITY**

If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

**ARTICLE XX.
PRIOR AGREEMENTS**

To the extent that prior mutual assistance agreements among Members are inconsistent with this Agreement, such agreements are hereby superseded.

**ARTICLE XXI.
PROHIBITION ON THIRD PARTIES AND ASSIGNMENT OF RIGHTS/DUTIES**

This Agreement is for the sole benefit of the Members and no other person or entity has rights under this Agreement as a third party beneficiary. Assignment of benefits or delegation of duties created by this Agreement to third parties that are not Members is prohibited and without effect.

**ARTICLE XXII.
TORT CLAIMS**

This Agreement in no way abrogates or waives any immunity or defense available under Federal laws and/or the laws of the State of California.

**ARTICLE XXIII.
INTRASTATE AND INTERSTATE MUTUAL ASSISTANCE PROGRAMS**

To the extent practicable, Members retain the right to participate in mutual assistance activities conducted under the State of California Civil Defense and Master Mutual Aid Agreement, the TransMAC, and the interstate Emergency Management Assistance Compact (EMAC) and similar programs.

**CALIFORNIA STATEWIDE
TRANSIT MUTUAL ASSISTANCE COMPACT (TransMAC)
EXECUTION OF THE AGREEMENT**

City of Commerce
Name of Organization

Authorized Signature

Printed Name: Joe Aguilar

Title: Mayor

Date: October 1, 2013

Approved as to form: 
Eduardo Olivo, City Attorney

Note: Upon obtaining proper signatures, this form must be returned to the TransMAC Chairperson at the regular business address of the Chairperson's agency.



AGENDA REPORT

Meeting Date: October 1, 2013

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING A RETAINER AGREEMENT WITH THE LAW FIRM OF REMY, THOMAS, MOOSE AND MANLEY, LLP IN CONNECTION WITH THE ENVIRONMENTAL IMPACT REPORT APPROVED BY THE CITY OF BELL FOR THE BELL BUSINESS CENTER PROJECT

RECOMMENDATION:

Approve the Resolution approving a Retainer Agreement with the Law Firm of Remy, Thomas, Moose and Manley, LLP in connection with the Environmental Impact Report approved by the City of Bell for the Bell Business Center Project.

MOTION:

Move to approve recommendation.

BACKGROUND/ANALYSIS:

The City of Commerce (the "City") is concerned about the City of Bell's ("Bell") project known as the Bell Business Center Project (the "Project"). On August 7, 2013, Bell approved a final Environmental Impact Report ("EIR") for the Project. However, the EIR failed to properly analyze and address the City's concerns regarding the truck traffic the Project would cause to the City.

The City and Bell have had discussions regarding the City's concerns and have reached a potential resolution of this matter. Nevertheless, the City must be ready to challenge Bell's EIR under the California Environmental Quality Act ("CEQA") within the allotted time period.

The City Council directed the City Attorney to retain the Law Firm of Remy, Thomas, Moose and Manley, LLP (the "Firm") to assist the City with a potential writ of mandate against Bell regarding its compliance with CEQA for its approval of the EIR for the Project. The City has previously utilized the Firm for other EIR matters and was satisfied with their services. The Firm has agreed to provide services to the City at a rate of \$325.00 per hour for partners James G. Moose and Whitman F. Manley; \$310.00 per hour for partners Andrea L. Leisy, Tiffany K. Wright, Sabrina V. Teller, and Howard F. Wilkins; \$325.00 per hour for Brian J. Plant and Robert M. Sawyer, of counsel; \$300.00 per hour for senior counsel Jennifer S. Holman and Amanda R. Berlin; and \$290.00 per hour for associates Laura M. Harris, Jeanie Lee, John T. Wheat, Christopher L. Stiles, Elizabeth Sarine and Deb Kollars. The Firm's Retainer Agreement must now be approved and ratified by the City Council.


FISCAL IMPACT:

The services are being provided on an hourly basis. The exact amount that will be incurred is unknown at this time.


Reviewed by,


Vilko Domic
Finance Director

Approved As To Form,


Eduardo Olivo
City Attorney

Respectfully submitted,


Jorge Rifa
City Administrator

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING A RETAINER AGREEMENT WITH THE LAW FIRM OF REMY, THOMAS, MOOSE AND MANLEY, LLP IN CONNECTION WITH THE ENVIRONMENTAL IMPACT REPORT APPROVED BY THE CITY OF BELL FOR THE BELL BUSINESS CENTER PROJECT

WHEREAS, the City of Commerce is concerned about the City of Bell's ("Bell") project known as the Bell Business Center Project (the "Project"); and

WHEREAS, on August 7, 2013, the City of Bell approved a final Environmental Impact Report ("EIR") for the Project; and

WHEREAS, the EIR failed to properly analyze and address the City's concerns regarding the truck traffic the Project would cause to the City; and

WHEREAS, the City and Bell have had discussions regarding the City's concerns and have reached a potential resolution of this matter; and

WHEREAS, the City must be ready to challenge under Bell's EIR under California Environmental Quality Act ("CEQA") within the allotted time period; and

WHEREAS, the City Council directed the City Attorney to retain the law firm of Remy, Thomas, Moose and Manley, LLP (the "Firm") to assist the City with a potential writ of mandate against Bell regarding its compliance with CEQA for its approval of the EIR for the Project; and

WHEREAS, the City has previously utilized the Firm for other EIR matters and was satisfied with their services; and

WHEREAS, the Firm has agreed to provide services to the City in connection with the Project; and

WHEREAS, the Firm's Retainer Agreement must now be approved and ratified by the City Council.

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

Section 1. The Retainer Agreement between the City of Commerce and Remy, Thomas, Moose and Manley, LLP is hereby approved and ratified.

PASSED, APPROVED and ADOPTED this _____ day of _____, 2013.

Joe Aguilar
Mayor

ATTEST:

Teresa Jackson, CMC
Interim City Clerk

**REMY MOOSE MANLEY, LLP
LITIGATION FEE/RETAINER AGREEMENT**

CLIENT: City of Commerce

RMM MATTER NO.: 148

CASE NAME: Bell Business Center

THIS FEE/RETAINER AGREEMENT IS MADE THIS 29th DAY OF August 2013, by and between the undersigned Client CITY OF COMMERCE ("Client") and REMY MOOSE MANLEY, LLP, Attorneys at Law ("Attorneys").

1. THE CLIENT HEREBY RETAINS THE ATTORNEYS to assess CLIENT's likelihood of success on the merits of a petition for writ of mandate against the City of Bell regarding Bell's compliance with the California Environmental Quality Act (CEQA) for its approval on August 7, 2013 of an EIR for the Bell Business Center project, and, if authorized by CLIENT, to represent the CLIENT in such litigation.

2. THE CLIENT HEREBY AGREES to pay a fee of \$325.00 per hour for partners James G. Moose and Whitman F. Manley; \$310.00 per hour for partners Andrea K. Leisy, Tiffany K. Wright, Sabrina V. Teller, and Howard F. Wilkins; \$325.00 per hour for Brian J. Plant and Robert M. Sawyer, of counsel; \$300.00 per hour for senior counsel Jennifer S. Holman and Amanda R. Berlin; \$290.00 per hour for associates Laura M. Harris, Jeannie Lee, John T. Wheat, Christopher L. Stiles, Elizabeth Sarine, Deb Kollars, and any other attorney of comparable experience who may join the firm during the period of time covered

by this agreement; \$250.00 per hour for graduate legal assistant Gwynne Hunter, to be increased to \$290.00 per hour upon her admittance to the California Bar (expected in December 2013); \$150.00 per hour for any paralegal employed by the firm; and \$125.00 per hour for a law clerk. The Client will receive a monthly billing statement that sets forth work done and expenses incurred and amount due and payable at that time. The hourly rates set forth in this paragraph may change from time to time to reflect increases in the cost of doing business. Such changes will be noticed to the Client not less than 30 days before they take effect. The Attorneys do not bill for secretarial or word processor time. All time is billed in tenth hour intervals (6 minutes).

3. IN ADDITION TO THE ATTORNEYS' FEES SET FORTH ABOVE, THE CLIENT HEREBY AGREES to pay to the Attorneys all applicable COSTS, such as: filing fees; fees associated with performing legal research on electronic databases, as charged; copying costs; mileage costs (outside of Sacramento); document retrieval from storage, as charged; printing costs by a professional printer, as charged; phone charges, as charged; facsimile charges; postage charges, as charged; reimbursement for lodging and meal expenses in instances requiring out of county travel, including but not limited to any costs involving common carriers (i.e., airplane); extraordinary costs (i.e., labor charges for cite checking major briefs and administrative record preparation); and any other agreed upon costs or expenses related to this matter. Should an account

become delinquent by more than sixty (60) days, interest at the legal rate shall accrue. (See attached list of cost charges.)

4. IT IS ACKNOWLEDGED THAT no promises have been made concerning the ultimate result and/or outcome of the above-referenced litigation; and the payment of attorneys' fees is in no way contingent thereon.

5. SHOULD DEFAULT BE MADE in the payments provided herein when due, the entire unpaid balance shall become due and payable. Should it be necessary to institute legal proceedings for the enforcement of this agreement, the Client agrees to pay court costs and reasonable attorneys' fees incurred by Attorneys in obtaining enforcement of the agreement.

6. REMY MOOSE MANLEY, LLP, maintains insurance for errors and omissions subject to all terms, conditions, and exclusions set forth in the policy of insurance.

DATED: 8-20, 2013

CITY OF COMMERCE


EDUARDO OLIVO
CITY ATTORNEY

FEE/RETAINER AGREEMENT ACCEPTED BY
REMY MOOSE MANLEY, LLP:

DATED: August 20, 2013

By: 
SABRINA V. TELLER

COSTS

EXTRAORDINARY COSTS	\$50.00 PER HOUR
COPIES	\$.25 PER PAGE
MILEAGE	\$.35 PER MILE (FOR TRIPS OUTSIDE SACRAMENTO COUNTY ONLY)
FACSIMILE	\$1.00 PER DOCUMENT
DELIVERY/PICK UP CHARGES	\$7.50 PER DELIVERY IN THE SACRAMENTO AREA (\$.35 FOR EACH ADDITIONAL MILE OUTSIDE OF SACRAMENTO COUNTY)
LEGAL RESEARCH (ELECTRONIC DATABASE)	AS CHARGED
DOCUMENT RETRIEVAL FROM STORAGE	AS CHARGED



AGENDA REPORT

MEETING DATE: October 1, 2013

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING A SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS BETWEEN THE CITY OF BELL, BELL PUBLIC FINANCE AUTHORITY AND THE CITY OF COMMERCE

RECOMMENDATION:

Adopt the Resolution approving a settlement agreement and release of all claims between the City of Bell, Bell Public Finance Authority and the City of Commerce.

MOTION:

Move to approve recommendation.

BACKGROUND/ANALYSIS:

On June 10, 2013, the Los Angeles Superior Court in *Dexia Credit Local v. City of Bell, et al.*, Case No. BC471478, approved a stipulated settlement (the "Settlement") of that action for judicial foreclosure and deficiency judgment concerning approximately 40.2 acres of real property located at 5600 Rickenbacker Road, Bell, California 90201, including APN Nos. 6332-002-945, 6332-002-946, 6332-002-948, 6332-002-949, 6332-002-950, 6332-002-952, 6332-002-954, and 6332-002-965 (the "Property").

Pursuant to the Settlement, the City of Bell and the Bell Public Finance Authority (collectively "Bell") were authorized to complete an entitlement process under the California Environmental Quality Act ("CEQA") and applicable law for the sale of the Property for a development project (the "Project").

Concurrently with the Settlement and after soliciting development proposals from a number of developers, on June 5, 2013 Bell entered into an Exclusive Agreement to Negotiate ("ENA") with a developer to negotiate a purchase-sale agreement and development agreement to develop the Property, and pursuant to the ENA, Bell commenced preparing an environment impact report ("EIR") in connection with the Project.

The draft EIR identified impacts on certain intersections in the City of Commerce ("Commerce"), namely at Eastern Road and Bandini Boulevard and Eastern Road and Rickenbacker Road (the "Intersections"), and incorporated mitigation measures involving improvements to such Intersections, and the Project was approved at a properly noticed public hearing on August 7, 2013 and a Notice of Determination concerning the same was recorded with the County Recorder on August 8, 2013.

Commerce had taken the position that the mitigation in the draft EIR is insufficient and that the Project will have additional adverse traffic impacts in Commerce and that Bell must pay for improvements at various intersections including the Intersections (the "Traffic Impacts"). Commerce indicated its intent to challenge the sufficiency of the EIR by filing an action against Bell for the Traffic Impacts and potentially ask the Court to enjoin the entitlement and sale of the Property (the "Action").

The Parties entered into negotiations and agreed to take certain action in order to address the mitigation issues that were of concern to Commerce. The Parties have agreed upon a Settlement Agreement and Release of all Claims (the "Agreement"), which addresses Commerce's concerns regarding the traffic impacts at the Intersections.

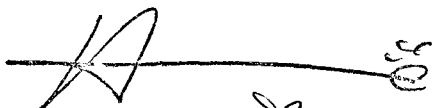
Pursuant to the Agreement, the Parties reached an agreement on the traffic impacts and agreed to the following for the Intersections: The estimated total costs for improvements at the intersection of Eastern Road and Bandini Boulevard is Six Hundred Seventy One Thousand Nine Hundred Fifty Six Dollars (\$671,956) and the estimated total costs for improvements at the intersection of Eastern Road and Rickenbacker Road is Three Hundred Twenty Six Thousand Three Hundred Eleven Dollars (\$326,311). Bell shall pay seventy (70%) percent of the improvement costs for the Intersections and Commerce shall pay thirty (30%) percent of the improvement costs for the Intersections. The amount to be paid by Bell for the improvements to the Intersections shall not exceed Seven Hundred Thousand Dollars (\$700,000) and the amount to be paid by Commerce for the improvements to the Intersections shall not exceed Three Hundred Thousand Dollars (\$300,000).

The Settlement Agreement & Release of All Claims must now be approved and ratified by the City Council

FISCAL IMPACT:

The City has agreed to pay thirty percent (30%) of improvement costs for the Intersections. The amount to be paid by the City for the improvements shall not exceed Three Hundred Thousand Dollars (\$300,000) and will be appropriated from available fund balance reserves.

Reviewed by,


Vilko Domic
Finance Director

Respectfully submitted,


Jorge Rifa
City Administrator

Approved As To Form,


Eduardo Olivo
City Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING A SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS BETWEEN THE CITY OF BELL, THE BELL PUBLIC FINANCE AUTHORITY AND THE CITY OF COMMERCE

WHEREAS, on June 10, 2013, the Los Angeles Superior Court in *Dexia Credit Local v. City of Bell, et al.*, Case No. BC471478, approved a stipulated settlement (the "Settlement") of that action for judicial foreclosure and deficiency judgment concerning approximately 40.2 acres of real property located at 5600 Rickenbacker Road, Bell, California 90201, including APN Nos. 6332-002-945, 6332-002-946, 6332-002-948, 6332-002-949, 6332-002-950, 6332-002-952, 6332-002-954, and 6332-002-965 (the "Property"); and

WHEREAS, pursuant to the Settlement, the City of Bell and the Bell Public Finance Authority (collectively "Bell") were authorized to complete an entitlement process under the California Environmental Quality Act ("CEQA") and applicable law for the sale of the Property for a development project (the "Project"); and

WHEREAS, concurrently with the Settlement and after soliciting development proposals from a number of developers, on June 5, 2013 Bell entered into an Exclusive Agreement to Negotiate ("ENA") with a developer to negotiate a purchase-sale agreement and development agreement to develop the Property, and pursuant to the ENA, Bell commenced preparing an environment impact report ("EIR") in connection with the Project; and

WHEREAS, the draft EIR identified impacts on certain intersections in the City of Commerce ("Commerce"), namely at Eastern Road and Bandini Boulevard and Eastern Road and Rickenbacker Road (the "Intersections"), and incorporated mitigation measures involving improvements to such Intersections; and

WHEREAS, the Project was approved by Bell on August 7, 2013 and a Notice of Determination concerning the same was recorded with the County Recorder on August 8, 2013; and

WHEREAS, Commerce had taken the position that the mitigation in the draft EIR is insufficient and that the Project will have additional adverse traffic impacts in Commerce and that Bell must pay for improvements at various intersections including the Intersections (the "Traffic Impacts"); and

WHEREAS, Commerce indicated its' intent to challenge the sufficiency of the EIR by filing an action against Bell for the Traffic Impacts and potentially ask the Court to enjoin the entitlement and sale of the Property (the "Action"); and

WHEREAS, the Parties entered into negotiations and agreed to take certain action in order to address the mitigation issues that at were of concern to Commerce. The Parties have agreed upon a Settlement Agreement and Release of all Claims (the "Agreement"), which addresses Commerce's concerns regarding the traffic impacts at the Intersections; and

WHEREAS, the Settlement Agreement and Release of All Claims must now be approved and ratified by the City Council

Resolution No. _____

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

Section 1. The Settlement Agreement and Release of All Claims between the City of Bell, the Bell Public Finance Authority and the City of Commerce is hereby approved and ratified. The Mayor's signature on the Agreement, for and on behalf of the City of Commerce, is hereby approved and ratified.

PASSED, APPROVED and ADOPTED this _____ day of _____, 2013.

Joe Aguilar, Mayor

ATTEST:

Teresa Jackson, CMC
Interim City Clerk

My Documents: Resolution – Approval of Bell Settlement Agreement

SETTLEMENT AGREEMENT & RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims (the "AGREEMENT") is entered into by and between the CITY OF BELL, a charter city and the BELL PUBLIC FINANCE AUTHORITY, a joint powers authority (collectively, "BELL") and the CITY OF COMMERCE, a Municipal Law City ("COMMERCE") (collectively, BELL and COMMERCE are referred to together as the "PARTIES" and separately as a "PARTY"). This AGREEMENT is entered into between the PARTIES to terminate fully and finally all disputes arising out of, or related to, the PROJECT (defined hereinafter) as between them.

RECITALS

WHEREAS, on June 10, 2013, the Los Angeles Superior Court in *Dexia Credit Local v. City of Bell, et al.*, Case No. BC471478, approved a stipulated settlement (the "SETTLEMENT") of that action for judicial foreclosure and deficiency judgment concerning approximately 40.2 acres of real property located at 5600 Rickenbacker Road, Bell, California 90201, including APN Nos. 6332-002-945, 6332-002-946, 6332-002-948, 6332-002-949, 6332-002-950, 6332-002-952, 6332-002-954, and 6332-002-965 (the "PROPERTY"); and

WHEREAS, pursuant to the SETTLEMENT, BELL was authorized to complete an entitlement process under the California Environmental Quality Act ("CEQA") and applicable law for the sale of the PROPERTY for a development project (the "PROJECT"); and

WHEREAS, concurrently with the SETTLEMENT and after soliciting development proposals from a number of developers, on June 5, 2013 BELL entered into an Exclusive Agreement to Negotiate ("ENA") with PACIFIC to negotiate a purchase-sale agreement and development agreement to develop the PROPERTY, and pursuant to the ENA, BELL commenced preparing an environmental impact report ("EIR") in connection with the PROJECT; and

WHEREAS, the draft EIR identified impacts on certain intersections in COMMERCE, namely at Eastern Road and Bandini Boulevard and Eastern Road and Rickenbacker Road (the "INTERSECTIONS"), and incorporated mitigation measures involving improvements to such INTERSECTIONS, and the PROJECT was approved at a properly noticed public hearing on August 7, 2013 and a Notice of Determination concerning the same was recorded with the County Recorder on August 8, 2013; and

WHEREAS, COMMERCE had taken the position that the mitigation in the draft EIR is insufficient and that the PROJECT will have additional adverse traffic impacts in COMMERCE and that BELL must pay for improvements at various intersections including the INTERSECTIONS (the "TRAFFIC IMPACTS"); and

WHEREAS, COMMERCE has indicated its' intent to challenge the sufficiency of the EIR by filing an action against BELL for the TRAFFIC IMPACTS and potentially ask the Court to enjoin the entitlement and sale of the PROPERTY (the "ACTION"); and

WHEREAS, BELL denies all liability for the claims alleged by COMMERCE as part of the ACTION; and

WHEREAS, a good faith dispute exists between the PARTIES as to any liability of BELL for the ACTION; and

WHEREAS, the PARTIES anticipate that attorney fees and expenses will be incurred by each of them if they are required to litigate the ACTION, and the PARTIES, acting in good faith, desire and intend to resolve, fully, finally and amicably, without admission or adjudication, and without prejudice or waiver of their respective positions in other matters, certain actual and potential controversies or disputes between them concerning the ACTION, and to avoid further costs and risks of litigation between them by entering into this AGREEMENT; and

WHEREAS, the PARTIES have met and conferred concerning their dispute. The PARTIES agree that other projects not caused by BELL contribute to the impacted INTERSECTIONS; that funds beyond those provided by BELL will be necessary to fully mitigate intersection impacts; and that funds paid by BELL should only be spent on actual construction, and based on the foregoing, the PARTIES wish to resolve, fully and finally, all disputes concerning the PROJECT and the alleged TRAFFIC IMPACTS.

AGREEMENT

The above Recitals are incorporated by reference as if set forth in full herein.

NOW, THEREFORE, for full and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and based upon the foregoing recitals and the terms, conditions, covenants, and agreements contained herein, all PARTIES hereto agree as follows:

1. **Settlement Payment.** The representatives of BELL and COMMERCE have met and reached an agreement on the TRAFFIC IMPACTS and hereby agree to the following for the INTERSECTIONS: The estimated total costs for improvements at the intersection of Eastern Road and Bandini Boulevard is Six Hundred Seventy One Thousand Nine Hundred Fifty Six Dollars (\$671,956) and the estimated total costs for improvements at the intersection of Eastern Road and Rickenbacker Road is Three Hundred Twenty Six Thousand Three Hundred Eleven Dollars (\$326,311). BELL shall pay seventy (70%) percent of the improvement costs for the INTERSECTIONS and COMMERCE shall pay thirty (30%) percent of the improvement costs for the INTERSECTIONS. The amount to be paid by BELL for the improvements to the INTERSECTIONS shall not exceed Seven Hundred Thousand Dollars (\$700,000) and the amount to be paid by COMMERCE for the improvements to the INTERSECTIONS shall not exceed Three Hundred Thousand Dollars (\$300,000) (the "CONTRIBUTIONS").

A. The PARTIES further agree as follows: (i) the INTERSECTIONS are the only intersections that need to be improved because of the PROJECT; (ii) they have agreed on an improvement plan for each Intersection (the "Intersection Improvement Program"); (iii) they have agreed on a budget for each Intersection (the "Intersection Budget") and (iv) they have agreed on Budget Allocation (the "Budget Allocation"). The Intersection Improvement Plans are attached hereto as Exhibit A and

incorporated herein by this reference. The Intersection Budgets and Allocations are attached hereto as Exhibit B and incorporated herein by this reference.

- B. Should the amount owed by either PARTY based on the percentages above be less than the not-to-exceed estimated amount above, the PARTIES shall pay the lower amount based on the percentage payment; under no circumstances shall either PARTY be required to pay more than the above not-to-exceed amounts; provided that funds may be switched from one INTERSECTION to the other to cover overruns, as provided in Section 2, provided the aggregate CONTRIBUTION limits are not extended. If either PARTY determines at any time that the costs of the design and construction of the improvements to the INTERSECTIONS will exceed the CONTRIBUTIONS, the PARTIES shall proceed as provided in Section 2 below, and meet and confer if they are not able to reduce the project accordingly.
- C. BELL is anticipated to award the contracts for the design and construction of the improvements to the INTERSECTIONS. COMMERCE's share of the CONTRIBUTIONS shall be deposited with BELL within thirty (30) days of the award of each of the contracts for the design and construction of the improvements to the INTERSECTIONS. All unused portions of the CONTRIBUTIONS based on the percentage distribution between the PARTIES as set forth above, shall be returned to the respective PARTY.
- D. COMMERCE has the right to reasonably conduct a true up accounting of all expenditures for each contract awarded for the improvements to the INTERSECTIONS in order to ensure compliance with the above provisions. Such an accounting shall take place **within ninety (90) days of completion** of the improvements to the INTERSECTIONS.

2. **Development of Plans and Specification.** After the close of escrow for the PROPERTY, the PARTIES shall develop detailed plans and specifications for the development of the Intersection Improvement Program, in sufficient detail to make an engineer's estimate of the cost, and also include a realistic funding program and schedule for undertaking the Intersection Improvements. The City Engineers shall consult with each other in the preparation of the foregoing. Draft documents will be exchanged and the respective PARTIES shall have two weeks to comment. The PARTIES will then finalize the plans and specifications so that they can be used in a request for proposals for the Intersection Improvement Program. Each PARTY shall bear their own costs for reviewing and commenting on the plans and specifications; such costs shall not be counted against the not-to-exceed amount referenced in Section 1 above. The Intersection Budget in Exhibit B includes a project contingency of 15% and an allowance for soft costs (administration, design, inspection) of 30%. In the event the Engineer's estimated cost or the actual bids will not allow such contingencies and allowances, unless such contingencies and allowances can be reduced with the agreement of both City Engineers, the project will be modified so that it can stay within the Intersection Budget, provided that funds may be shifted between INTERSECTIONS as long as the CONTRIBUTIONS limits in aggregate are not exceeded.

3. **Construction of the Project Intersection Improvements.** The CONTRIBUTIONS for each intersection to the extent listed above, shall be made when the following is completed for the respective Intersection: (i) the Intersection Contract with the general contractor is executed and approved, and (ii) the City of Bell City Attorney has certified that the Contract was awarded in accordance with the Municipal Code. The COMMENCEMENT OF CONSTRUCTION (defined as the issuance of building permits for the PROJECT) will commence within three (3) years after the close of escrow for the Property.

4. **Administration of Construction Contracts/Payment Due Date.** The PARTIES agree that BELL shall serve as the administrator for all contracts required to make the improvements at the INTERSECTIONS. COMMERCE shall have the right to inspect and monitor the improvements to the INTERSECTIONS, but no right to direct the work except for that work performed within COMMERCE. BELL shall provide COMMERCE with copies of all invoices for all engineering and construction work performed at the INTERSECTIONS in BELL within thirty (30) days of receipt of the same. COMMERCE shall have the right to review all bids before the award of any contract for work to be performed in BELL for engineering and construction of the improvements to the INTERSECTIONS, provided that, except for intersection improvement projects exclusively in COMMERCE, the final authority to award said contracts shall rest exclusively with BELL.

5. **Mutual Release.** For valuable consideration, the receipt and adequacy of which are hereby acknowledged, BELL and COMMERCE do hereby release and forever discharge each other and their respective "Releasees" hereunder, consisting of their respective elected and appointed officials, board members, departments, divisions and all related entities controlled by their respective city councils and boards, officers, agents, owners, members, employees, attorneys, and/or any other person(s) acting on their behalf of and from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, CEQA claims, lawsuits and causes of action, petitions for writ of mandamus, requests for injunctive relief, promises, liability, claims, demands, damages, losses, cost or expenses, of any nature whatsoever, known or unknown, fixed or contingent (hereinafter called "Claims"), which the PARTIES now have or may hereafter have against each other and/or the Releasees, or any of them, by reason of any matter, cause, or thing whatsoever from the beginning of time to the date hereof including, without limiting the generality of the foregoing, the ACTION, the PROPERTY, the PROJECT, the TRAFFIC IMPACTS, the impacts to the INTERSECTIONS and on any other intersections, as well as any matters, causes, or things whatsoever that were, or have been, could in any way have been, alleged concerning the same, except for those obligations arising out of or from this AGREEMENT. Each PARTY shall bear its own expenses, legal fees and costs incurred for the preparation and implementation of this AGREEMENT.

6. **Release of Unknown Claims.** The Release set forth above in Section 6 of this AGREEMENT is a release of ALL claims, demands, causes of action, obligations, damages, and liabilities of any nature whatsoever that are described in the Release and is intended to encompass all known and unknown, foreseen and unforeseen claims which the PARTIES and the Releasees may have as a result of the ACTION, the PROPERTY, the PROJECT, the TRAFFIC IMPACTS and the impacts to the INTERSECTIONS and on any other intersections, except for any claims which may arise from the terms of this AGREEMENT.

7. **Waiver of Civil Code Section 1542.** Further, the PARTIES expressly agree to waive and relinquish all rights and benefits they may respectively have against each other and the Releasees under Section 6 of this AGREEMENT based on Section 1542 of the Civil Code of the State of California, except for those obligations arising out of or from this AGREEMENT.

That section reads as follows:

“§1542. [General release; extent] A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

8. **Discovery of Different or Additional Facts.** The PARTIES acknowledge that they may hereafter discover facts different from or in addition to those that they now know or believe to be true with respect to the claims, demands, causes of action, obligations, damages, and liabilities of any nature whatsoever that are the subject of this AGREEMENT, and expressly agree to assume the risk of the possible discovery of additional or different facts, injuries, damages and/or claims and the PARTIES agree that this AGREEMENT shall be and remain effective in all respects regardless of such additional or different facts, injuries, damages and/or claims.

9. **No Assignment of Claims.** The PARTIES each warrant that they have made no assignment, and will make no assignment, of any claim, chose in action, right of action or any right of any kind whatsoever, embodied in any of the claims and allegations referred to herein, and that no other person or entity of any kind had or has any interest in any of the demands, obligations, actions, causes of action, debts, liabilities, rights, contracts, damages, attorneys' fees, costs, expenses, losses or claims referred to herein.

10. **Successors and Assigns.** This AGREEMENT, and all the terms and provisions hereof, shall be binding upon and shall inure to the benefit of the PARTIES and their respective heirs, legal representatives, successors, officers, owners, members and assigns.

11. **Knowing and Voluntary.** This AGREEMENT is an important legal document and in all respects has been voluntarily and knowingly executed by the PARTIES hereto. The PARTIES specifically represent that prior to signing this AGREEMENT they have been provided a reasonable period of time within which to consider whether to accept this AGREEMENT. The PARTIES further represent that they have each carefully read and fully understand all of the provisions of this AGREEMENT, and that they are voluntarily, knowingly, and without coercion entering into this AGREEMENT based upon their own judgment.

12. **Assistance of Counsel/Counterparts.** The PARTIES each specifically represent that they have consulted to their satisfaction with and received independent advice from their respective counsel prior to executing this AGREEMENT concerning the terms and conditions of this AGREEMENT. This AGREEMENT may be executed in multiple counterparts, each of which shall be considered an original but all of which shall constitute one agreement.

13. **Enforcement.** In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for

any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Should any legal action be required to enforce the terms of this AGREEMENT, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which that party may be entitled.

14. **Severability.** Should any portion, word, clause, phrase, sentence or paragraph of this AGREEMENT be declared void or unenforceable, such portion shall be considered independent and severable from the remainder, the validity of which shall remain unaffected.

15. **Integration.** The PARTIES acknowledge that this AGREEMENT was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against any of the PARTIES, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts. It is understood that there are no oral agreements between the PARTIES hereto affecting this AGREEMENT and this AGREEMENT supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the PARTIES, and none shall be used to interpret this AGREEMENT. This AGREEMENT may be amended at any time by the mutual consent of the PARTIES by an instrument in writing.

16. **Waiver.** Failure to insist on compliance with any term, covenant or condition contained in this AGREEMENT shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power contained in this AGREEMENT at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

17. **Governing Law.** This AGREEMENT is made and entered into in the State of California, and shall in all respects be interpreted, enforced and governed under the laws of said State without giving effect to conflicts of laws principles. This AGREEMENT shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this AGREEMENT shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county.

18. **Entire Agreement.** This AGREEMENT constitutes the entire agreement between the PARTIES who have executed it and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied between the PARTIES to this AGREEMENT for the subject matter herein. The PARTIES to this AGREEMENT each acknowledge that no representations, inducements, promises, agreements, or warranties, oral or otherwise, have been made by them, or anyone acting on their behalf, which are not embodied in this AGREEMENT, that they have not executed this AGREEMENT in reliance on any such representation, inducement, promise, agreement or warranty, and that no representation, inducement, promise, agreement or warranty not contained in this AGREEMENT, including, but not limited to, any purported supplements, modifications, waivers, or terminations of this AGREEMENT shall be valid or binding, unless executed in writing by all of the PARTIES to this AGREEMENT.

19. **Modifications.** Any alteration, change, or modification of or to this AGREEMENT shall be made by written instrument executed by each party hereto in order to become effective.

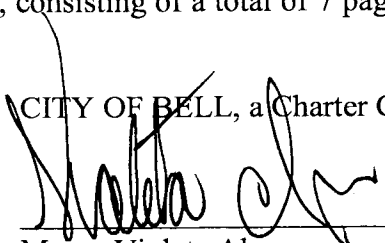
20. **No Third Party Beneficiaries.** No person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this AGREEMENT (either express or implied) is intended to confer upon any person or entity that is not a party to this AGREEMENT any rights, remedies, obligations or liabilities under or by reason of this AGREEMENT.

21. **Authority to Sign.** The person executing this AGREEMENT on behalf of the respective PARTIES hereto warrants that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party and to bind that party, including its members, agents and assigns, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which said party is bound.

[SIGNATURES ON FOLLOWING PAGE]


IN WITNESS WHEREOF, the undersigned have read, understand and agree to all of the above terms and conditions of this AGREEMENT, consisting of a total of 7 pages, by executing it on the dates set forth below.

Dated: _____, 2013

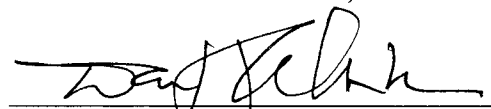
CITY OF BELL, a Charter City


Mayor Violeta Alvarez

BELL PUBLIC FINANCE AUTHORITY


By: DOUG WILMORE
Its: Executive Director

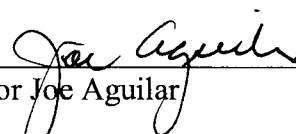
APPROVED AS TO FORM
ALESHIRE & WYNDER, LLP



David J. Aleshire, City Attorney

Dated: 9/11, 2013

CITY OF COMMERCE,
a Municipal law city



Mayor Joe Aguilar

APPROVED AS TO FORM:



Eddie Olivo, City Attorney

[END OF SIGNATURES & END OF AGREEMENT]



AGENDA REPORT

MEETING DATE: October 1, 2013

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A. PUBLIC HEARING TO CONSIDER WHETHER AVI-CON, DBA CA CONSTRUCTION, IS NOT A RESPONSIBLE BIDDER FOR PURPOSES OF THE CENTRAL LIBRARY RENOVATION PROJECT; AND

B. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA: (1) DETERMINING THAT AVI-CON, INC., DBA CA CONSTRUCTION ("AVI-CON") IS NOT A RESPONSIBLE BIDDER FOR PURPOSES OF THE CENTRAL LIBRARY RENOVATION PROJECT (THE "PROJECT"); (2) DETERMINING THAT THE BID BY AVI-CON IN RESPONSE TO THE NOTICE INVITING SEALED BIDS FOR THE PROJECT WAS NOT COMPLETELY RESPONSIVE AND IS THEREFORE REJECTED; (3) DETERMINING THAT THE BID BY TOBO CONSTRUCTION, INC. WAS NOT COMPLETELY RESPONSIVE AND IS THEREFORE REJECTED; (4) ACCEPTING THE WITHDRAWAL OF THE BID BY CAL-CITY, CONSTRUCTION, INC.; (5) DENYING THE BID PROTEST BY SANDERS CONSTRUCTION SERVICES; AND (6) ACCEPTING THE BID BY MTM CONSTRUCTION, INC. AND DIRECTING THE CITY ATTORNEY TO PREPARE A CONSTRUCTION CONTRACT WITH MTM CONSTRUCTION, INC. FOR THE PROJECT

RECOMMENDATION:

- (1) Open the Public Hearing regarding the consideration of whether AVI-CON, Inc., dba CA Construction is a responsible bidder for purposes of the Central Library Renovation Project (the "Project");
- (2) Close the Public Hearing;
- (3) Determine that AVI-CON, dba CA Construction, is not a responsible bidder for purposes of the Project; and
- (4) Approve the Resolution and assign the number next in order. In addition to the determination that AVI-CON, Inc. is not a responsible bidder, the approval of the Resolution will result in a determination that the bid by AVI-CON was not completely responsive and is rejected; that the bid by TOBO was not completely responsive and is therefore rejected; accepting the withdrawal of the bid by Cal-City, Construction, Inc.; denying the bid protest by Sanders Construction Services; and accepting the bid by MTM Construction, Inc. and directing the City Attorney to prepare a construction contract with MTM Construction, Inc. for the Project.

MOTION:

Move to approve the recommendations.

BACKGROUND:

On October 18, 2011, the City Council approved the Project Plans and Specifications, as prepared by Adrian-Gaus Architects, and Notice Inviting Sealed Bids, for the City of Commerce Library Renovation Project (the "Project"). On December 20, 2011, the City Clerk received and opened 14 bids for the Project. On December 21, 2011, Cal-City Construction, Inc., the lowest bidder, submitted a letter withdrawing its bid. On February 7, 2012, the City Council approved Resolution No. 12-15, which rejected all of the bids that had been submitted for the Project.

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

On June 19, 2012, the City Council approved a conceptual re-design of the Project. On May 23, 2013, the City Council received a presentation by Adrian-Gaus Architects on the final conceptual design of the Project. The Project, as currently designed, is consistent with the City of Commerce’s (the “City”) goal and desire to modernize, upgrade and provide the Commerce community with an outstanding library and library services. Therefore, on June 4, 2013, the City Council approved the Project Plans and Specifications and authorized staff to advertise for sealed bids.

On June 12, 2013, the City sent out a Notice Inviting Sealed Bids for the Project (hereafter, the “Notice Inviting Bids”). Pursuant to Addendum No. 3 to the Notice Inviting Bids, the sealed bids were required to be submitted on or before August 7, 2013. The Notice Inviting Bids advised that *“Late proposals will not be considered.”* (Emphasis in original.) On August 7, 2013, the City Clerk received and opened 23 bids for the Project, which ranged from \$3,260,000 to \$4,950,000.

On August 12, 2013, Cal-City, the apparent second lowest bidder, submitted a letter withdrawing their bid. A copy of the Cal-City letter is attached hereto as Attachment A.

On August 14, 2013, the City Clerk’s Office received a bid protest from Sanders Construction Services, which requested that the seven lowest bids be determined to be nonresponsive. Sanders Construction Services therefore argues that it should be determined to be the lowest, responsible bidder. A copy of the protest letter is attached hereto as Attachment B.

ANALYSIS:

A. Receipt of the Bids.

The Project schedule was established as follows:

TASK	ESTIMATED DATE
Issue Notice Inviting Bids	June 12, 2013
Bid Advertisement Period	30 Days
Mandatory Pre-Bid Meeting	June 26, 2013
Bids Due And Opened In Public By City Clerk	August 7, 2013
Award Of Contract	October 8, 2013
Contract, Bonds And Insurance To City	November 4, 2013
Pre-Construction Meeting	October 28, 2013
Issue Notice To Proceed With Construction	November 6, 2013
Construction Duration	236 working days from Notice to Proceed (or November 6, 2013)

On August 7, 2013, the City Clerk received the following proposals:

Name	City	Bid Amount
TOBO Construction, Inc.	Los Angeles, CA	\$3,260,000.00
CAL-CITY Construction, Inc.	Cerritos, CA	\$3,263,206.00
AVI-CON, Inc., dba: CA Construction	Riverside, CA	\$3,471,000.00
MTM Construction, Inc.	City of Industry, CA	\$3,680,000.00
The Sun Group Inc dba: The Sun Group	Costa Mesa, CA	\$3,688,300.00
Ruiz Brothers Construction Co.	City of Commerce	\$3,698,163.00
Mallcraft Inc.	Pasadena, CA	\$3,699,000.00
Sanders Construction Services	Lake Forest, CA	\$3,736,000.00
Inland Building Construction Services	San Bernardino	\$3,766,100.00
CWS Systems, Inc.	Pasadena, CA	\$3,774,000.00
Woodcliff Corporation	Los Angeles, CA	\$3,850,000.00
KEMCORP Construction Inc.	Chino, CA	\$3,925,000.00
AXIS Construction Inc.	Glendale, CA	\$3,993,000.00
Morillo Construction, Inc.	Pasadena, CA	\$4,029,000.00
Minako America Corporation	Gardena, CA	\$4,077,700.00
Adams/Mallory Construction Co., Inc.	Placentia, CA	\$4,101,498.00

Western Alta Construction, Inc	Tustin, CA	\$4,164,690.00
States Link Construction Inc.	Buena Park, CA	\$4,265,000.00
G2K Construction, Inc.	Agoura Hills, CA	\$4,272,000.00
RC Construction Services, Inc.	Rialto, CA	\$4,319,000.00
PLYCORP	Norco, CA	\$4,469,000.00
Toby B Hayward	Monrovia, CA	\$4,513,027.00
Shefir Construction, Inc.	Beverly Hills, CA	\$4,950,000.00

B. Facts Relevant to (1) the Public Hearing to determine that AVI-CON, Inc., dba: CA Construction is not a Responsible Bidder for the Project; and (2) the Determination that AVI-CON's Bid was not Completely Responsive and is Therefore Disqualified.

To be considered responsible, the bidder must demonstrate the attributes of trustworthiness, quality, fitness, capacity, and experience to satisfactorily perform the public works contract. A range of factors may be used to determine bidder responsibility including performance history, reliable financial information, bonding and insurance capacity, public works experience, personnel and litigation history. [*Public Contract Code § 1103; City of Inglewood-Los Angeles County Civic Center Authority v. Superior Court (1972) 7 Cal.3d 861; Boydston v. Napa Sanitation District (1990) 222 Cal.App.3d 1362*]

Instruction No. 3 of the (Section 00200) Instruction to Bidders, states that “It is the intent of this Contract that it be performed only by a contractor having the special expertise and organizational capabilities necessary to accomplish the scope of work...” The Project is a very significant and high profile project for the City. The City’s Library system is unique for a city of its size and is a source of tremendous civic pride. Thus, the qualifications and experience of the contractor that will perform the work on the Project is a major concern to the City.

The Bidder Qualification Form states that:

The bidder is required to state what work of a similar character to that included in the proposed contract he has successfully performed and give references which enable the City Council to judge of his responsibility, experience, skill, business and financial standing. **Minimum 5 references shall be provided.** (Emphasis in original.)

Based on the information provided, City staff has determined that AVI-CON, Inc., dba: CA Construction (“AVI-CON”) has not demonstrated that it has the experience and qualifications necessary for the Project. The largest previous job identified by AVI-CON was valued at \$1.7 Million, which is less than half of AVI-CON’s bid amount for this Project. That project was not close to the scope of this Project. AVI-CON also identified two previous library projects, in the amount of \$116,000 and \$873,378. The scope of those projects was relatively small and not comparable to the Project. Based on the past project experiences identified, City Staff believes that AVI-CON should not be considered a responsible bidder for this Project. If the City Council agrees and makes such a determination, AVI-CON’s bid will be disqualified.

On September 24, 2013, the City provided AVI-CON with notice of the fact that the City Council would be holding a public hearing on October 1, 2013, in order to determine whether AVI-CON was a responsible bidder for this Project. AVI-CON was informed of the basis for Staff’s conclusions. AVI-CON was advised that it had the right to submit evidence and counter arguments and that it could address the Council on October 1, 2013, in an effort to rebut Staff’s conclusion. [A copy of the September 24, 2013 letter to AVI-CON is attached hereto as Attachment C.]

AVI-CON also failed to provide accurate contact information on the Bidder Qualification Form... The telephone number for the last two references were not correct. Section 4 of the Notice Inviting Bids, entitled Proposal Forms, provides that “Bids shall be submitted in writing on forms provided by the City. *All information requested therein*

must be clearly and legibly set forth in the manner and form indicated. The City will not consider any proposal not meeting these requirements.” (Emphasis added.) AVI-CON’s failure to provide accurate information for its references was not responsive to the subject Notice Inviting Bid requirement. Staff also recommends that the bid be disqualified on this basis.

AVI-CON also failed to list the subcontractor on the Proposed Subcontractor Form for the Section 16785 Video on Demand component of the Notice Inviting Bids. Public Contracts Code Sections 4100 through 4114 require that each bidder shall set forth in its bid, the name and location of the-place of business of each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the Contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one half of one percent of the Contractor's total bid. This requirement was specifically set forth on the Proposed Subcontractor Form.

Page 2 of the AVI-CON Bid Proposal indicates that the price for the Section 16785 Video on Demand will be \$50,000. This amount is more than one half of one percent of the total amount of AVI-CON’s bid of \$3,471,000. Therefore, this subcontractor was also required to be identified on the Proposed Subcontractor Form. Staff is also recommending that AVI-CON’s bid be disqualified because of the failure to provide this required information.

C. Disqualification of the TOBO Construction, Inc. Bid.

The Instruction to Bidders (Section 00200), Instruction No. 18 (“Irregular Proposals”), provides that:

Unauthorized conditions, limitations, or provisions attached to a proposal will render it irregular and may cause its rejection. The completed proposal forms shall be without interlineations, alterations, or erasures. Alternative proposals will not be considered unless specifically requested. No oral, telegraphic, or telephonic proposal, modification, or withdrawal will be considered.

Section 4 of the Notice Inviting Bids, entitled Proposal Forms, also provides that “Bids shall be submitted in writing on forms provided by the City. *All information requested therein must be clearly and legibly set forth in the manner and form indicated.* The City will not consider any proposal not meeting these requirements.” (Emphasis added.)

The Proposed Subcontractor Form provided that:

In compliance with the provisions of Section 4100 through 4114, inclusive, of the Public Contract Code, and any amendments thereto, each bidder shall set forth in its bid, the name and location of the-place of business of each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the Contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one half of 1 percent of the Contractor's total bid; *and the portion of the work which will be done by each subcontractor under this act.* The Contractor shall list only one subcontractor for each portion as is defined by the Contractor. (Emphasis added.)

TOBO submitted their proposal on August 7, 2013. However, they failed to fill out all of the information required in the Proposed Subcontractors Form. Specifically, TOBO failed to fill out the Form columns that identified the “Dollar Value of Subcontract” and “% of Total Bid Amount.” Instead, they wrote a note in this area of the Form that indicated such information would be provided within 24 hours after the bid opening. [A copy of TOBO’s Proposed Subcontractor Form submitted on August 7, 2013, is

attached hereto as Attachment D.] On August 8, 2013, TOBO then submitted a revised Proposed Subcontractor Form that contained the missing information. [A copy of TOBO's Proposed Subcontractor Form submitted on August 8, 2013, is attached hereto as Attachment E.]

The information was material and was required to be provided as part of the bid response, in a timely fashion. The information regarding the Dollar Value of the Subcontract was required in order for staff to properly assess the bid responsiveness, the accuracy of the bid and the responsibility of the contractor. Public Contract Code Section 4104(2) (A) provides that “[a]ny information requested by the officer, department, board, or commission concerning any subcontractor who the prime contractor is required to list under this subdivision, other than the subcontractor’s name and location of business, may be submitted by the prime contractor up to 24 hours after the deadline established by the officer, department, board, or commission for receipt of bids by prime contractors.” Public Contract Code Section 4104(2) (B) provides, “A state or local agency may implement subparagraph (A) at its option.”

TOBO's revised Proposed Subcontractor Form was submitted one day after the bid response deadline. The Notice Inviting Bids (Addendum No. 3), as well as other Bid documents, clearly indicated that the bid due date was August 7, 2013, and advised that “Late proposals will not be considered.” (Emphasis in original.) City Staff believes that it would not be proper to allow TOBO, or any other contractor, to revise part of their proposal by submitting required information after the bid due date. Staff did not exercise the option of implementing Section 4104 (2) (A). If such an exception was made for one bidder, as a matter of fairness, it would have to be made for all bidders. This would create significant uncertainty and confusion in the bid process and would violate one of the most basic and fundamental provisions of the Notice Inviting Bids – the bid due date. Based on the failure to provide the subject information on a timely basis, as expressly required by the Proposed Subcontractor Form, City staff is recommending that TOBO's bid be determined to be non-responsive to the subject Notice Inviting Bid requirement and that it therefore be disqualified.

TOBO also failed to list the subcontractor for the Section 16785, Video on Demand component of the Notice Inviting Bids, on the Proposed Subcontractor Form. As set forth above, the Public Contracts Code requires that each bidder identify the name and location of the place of business of each subcontractor who will perform work or labor or render service to the Contractor or who specially fabricates and installs a portion of the work or improvement, in an amount in excess of one half of one percent of the Contractor's total bid. This requirement was specifically set forth on the Proposed Subcontractor Form. Page 2 of the TOBO Bid Proposal indicates that the price for Section 16785 Video on Demand will be \$50,000. This amount is more than one half of one percent of the total amount of TOBO Construction's bid of \$3,260,000. Therefore, this subcontractor was also required to be identified on the Form. Staff also recommends that TOBO Construction's bid be determined to be non-responsive for failing to provide this information and that it therefore be disqualified on this basis as well.

Finally, TOBO also failed to list the subcontractor on the Proposed Subcontractor Form for the Library Material Relocation work that was required by Section 12500 of the Notice Inviting Bids. Staff has determined from several other bids that the price for this part of the work should be around \$50,000, which is well over one half of one percent of the TOBO bid. Thus, this subcontractor should also have been listed. TOBO is apparently taking the position that its bid includes part of this relocation work to be performed by TOBO. The Library Material Relocation scope is specified in Section 12500 of the Notice Inviting Bids. The intent of this specification was to have the materials relocated by a company that specializes in library relocations. The shelving relocation scope to the interim library may have been properly covered by TOBO's shelving subcontractor. However, the library media materials being the most crucial part of the relocation, is not pursuant to the intent of the specification. This was specifically addressed during the Mandatory Pre-Bid Meeting conducted on June 26, 2013. TOBO is a general contractor and not one of the preapproved relocation

companies listed in the specifications. Their intent to self-perform this part of the work cannot be considered an equal. Rather, this is a substitution per section 12500 paragraph 2.1.

Even TOBO was allowed to perform the subject relocation work, TOBO was required to provide references that would allow staff to determine whether it had the experience and qualifications necessary to perform such work; TOBO failed to provide such references. Staff also recommends that TOBO Construction's bid be determined to be non-responsive for the failure to provide such information and it be disqualified on this basis as well.

On September 23, 2013, the City provided TOBO with notice of the recommendations being made by City Staff. A copy of the September 23, 2013 letter to TOBO is attached hereto as Attachment F.

D. Withdrawal of Bid by Cal-City Construction.

Cal-City Construction was the apparent second lowest bidder. By letter dated August 12, 2013, they advised that they had made a mistake on their bid and that they would like to withdraw it. [Attachment A] Public Contracts Code Section 5101 provides that a contractor may be relieved of the bid with the consent of the awarding authority. Cal-City's bid was timely withdrawn. Staff recommends approving the withdrawal of Cal-City's bid.

E. Denial of Sanders Construction Protest.

On August 14, 2013, the City received a bid protest from Sanders Construction Services (the "Protest"). [Attachment B.] The basis for the Protest is as follows:

After reviewing the Preliminary Bid Results for the Commerce Central Library project we have several issues with section 16785 and HD-LED TV's that we would like to see addressed. Due to the complexity of section 16785 'Video on Demand system' the listed prices for TOBO, Cal-City, AVI-CON, The Sun Group, and Ruiz Brothers are either missing crucial aspects or are not using the specified manufacturer, ETR-Media Master. As for the HD-LED TV section, it's clear that MTM should be deemed unresponsive for leaving this section blank on the bid form as well as Mallcraft for not using the specified Visio and Bose products. The Visio TV's alone for this section are well over \$5,000 without any of the required speakers or mounts, indicating that Mallcraft did not use the correct products.

Sanders Construction goes on to state that, because it used all the specified manufactures, it should be deemed the low bidder.

City staff is recommending that the contract for the Project be awarded to MTM Construction, Inc., which was the apparent fourth lowest bidder. As discussed above, City staff is recommending that the City Council determine that AVI-CON be determined to be a non-responsible bidder for purposes of this Project and that their bid be disqualified. Staff is also recommending that TOBO's bid be disqualified. Cal-City timely withdrew its bid. These bidders were the apparent three lowest bidders. If they are disqualified, then the next apparent lowest bidder would be MTM Construction. If their bid is deemed proper, then pursuant to the Notice Inviting Bids and the Public Contracts Code, the Project must be awarded to them. Therefore, staff's analysis of the protest is focused on issues specifically related to MTM Construction. For the reasons set forth below, the Protest should be rejected.

The Instruction to Bidders (Section 00200), Instruction No. 17 (Sole Source Provisions), states that:

In accordance with Section 3400 of the California Public Contract Code, no materials or equipment is intended to be identified as 'sole source'. All material and equipment is specifically identified as is **or equal**. Bidders are encouraged to propose alternates for evaluation by the City as being equal to that specified in the contract documents. (Emphasis added.)

Section 16785 states that, Video on Demand is based on equipment manufactured by ETR-Media Master, but since this is a public works project a single source manufacturer cannot be allowed and equals must be considered. This can result in varying dollar amounts listed.

The Sanders' Protest indicates that the listed prices for the Video on Demand system by TOBO, Cal-City, AVI-CON, the Sun Group, and Ruiz Brothers are either missing crucial aspects or are not using the specified manufacturer, ETR-Media Master. The Instructions and Section 16785 clearly indicate that "equals" would be considered. Nevertheless, MTM Construction used the specified manufacturer, ETR-Media Master. Therefore, this issue does not apply to MTM.

The Protest also points out that MTM Construction listed a zero dollar value for the LED LCD Televisions on their bid form. The Instruction to Bidders (Section 00200), Instruction No. 28, states that "The right is reserved to reject any and all bids and waive any irregularity in any bid received." MTM identified Checkpoint Communication Inc. as the vendor for the Video on Demand and listed an amount of \$300,000 on their Bid form. It is apparent that the dollar value for the LED LCD Televisions was combined with the Video on Demand dollar amount identified by MTM. The televisions were originally listed in both Section 16785 Video on Demand and Section 11005 Miscellaneous Equipment. Page 40 of Addendum No. 4 included single line drawings that identified the various signal sources to each television. Therefore, it is understandable why MTM listed the combined dollar value in Section 16785 on their bid form. Staff believes that the issue raised by the Protest constitutes a minor irregularity that would not provide MTM Construction with an unfair advantage and, therefore, recommends that it be waived. Thus, the Protest should be denied.

On September 24, 2013, the City provided Sanders Construction with notice of the fact that Staff was recommending that the Protest be denied. A copy of the September 24, 2013 letter to Sanders Construction is attached hereto as Attachment G.

F. Recommendation that MTM Construction's Bid be accepted and the Contract for the Project be awarded to MTM Construction.

After careful examination, consideration and reference checks, and after considering the above information and analysis, City Staff has found that MTM Construction, Inc., submitted the lowest, responsible and responsive bid for providing the requested services for the Project. Pursuant to the Contract and the Contract Documents, the contractor will be responsible for providing all labor, materials, equipment, tools and incidentals necessary to complete the work requested in accordance with the Project plans and specifications and as prepared by Adrian-Gaus Architects.

FISCAL IMPACT:

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

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

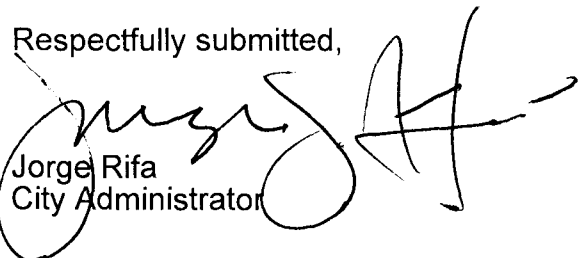
On February 16, 2012, the City Council approved Alternative 2 – Re-Design with the following funding allocation: [Note: Redesign removed the Council Chambers/Senior Center Walkway Project scope of work as part of the cost reduction design.]

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

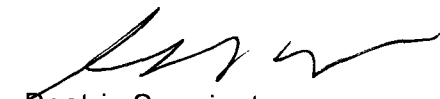
As of May 23, 2013, the City has expended \$1,458,533 and has \$4,300,000 remaining on the Library bond. Our most recent construction estimate places the final total budget for the Project at \$5,516,953.

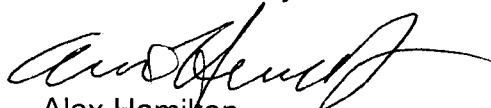
RELATIONSHIP TO 2009 STRATEGIC GOALS:

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

Respectfully submitted,

Jorge Rifa
City Administrator

Recommended by:

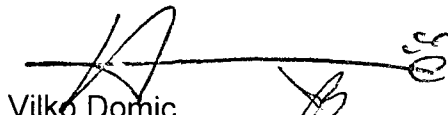

Beatriz Sarmiento
Director of Library Services


Alex Hamilton
Assistant Director of Community Development

Reviewed by,


Paul Banuelos
Project Manager

Fiscal impact reviewed by:


Vilko Domic
Finance Director

Approved as to form:


Eduardo Olivo
City Attorney

Attachments:

- A- Letter from Cal-City Withdrawing Bid
- B- Sanders Construction Bid Protest
- C- Notice Letter to Avi-Con, Inc.
- D- TOBO Construction Proposed Subcontractor Form August 7, 2013
- E- TOBO Construction Proposed Subcontractor Form August 8, 2013
- F- Notice Letter to TOBO Construction
- G- Notice Letter to Sanders Construction.
- H-TOBO Construction September 24, 2013 Response Letter

File: 2013 City Council Agenda Reports
City Project No. 1301 – Central Library Renovation Project – Agenda Reports

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA: (1) DETERMINING THAT AVI-CON, INC., DBA CA CONSTRUCTION (“AVI-CON”) IS NOT A RESPONSIBLE BIDDER FOR PURPOSES OF THE CENTRAL LIBRARY RENOVATION PROJECT (THE “PROJECT”); (2) DETERMINING THAT THE BID BY AVI-CON IN RESPONSE TO THE NOTICE INVITING SEALED BIDS FOR THE PROJECT WAS NOT COMPLETELY RESPONSIVE AND IS THEREFORE REJECTED; (3) DETERMINING THAT THE BID BY TOBO CONSTRUCTION, INC. WAS NOT COMPLETELY RESPONSIVE AND IS THEREFORE REJECTED; (4) ACCEPTING THE WITHDRAWAL OF THE BID BY CAL-CITY, CONSTRUCTION, INC.; (5) DENYING THE BID PROTEST BY SANDERS CONSTRUCTION SERVICES; AND (6) ACCEPTING THE BID BY MTM CONSTRUCTION, INC. AND DIRECTING THE CITY ATTORNEY TO PREPARE A CONSTRUCTION CONTRACT WITH MTM CONSTRUCTION FOR THE PROJECT

WHEREAS, on October 18, 2011, the City Council approved the Project Plans and Specifications, as prepared by Adrian-Gaus Architects, and Notice Inviting Sealed Bids for the City of Commerce Library Renovation Project (the “Project”); and

WHEREAS, on December 20, 2011, the City Clerk received and opened 14 bids for the Project. On December 21, 2011, Cal-City Construction, Inc., the lowest bidder, submitted a letter withdrawing its bid. On February 7, 2012, the City Council approved Resolution No. 12-15, which rejected all of the bids that had been submitted for the Project; and

WHEREAS, on February 16, 2012, the City Council received a presentation from Adrian-Gaus Architects that contained several alternatives on the next step for the Project. The City Council directed staff to proceed with an alternative design and a reduced budget; and

WHEREAS, on June 19, 2012, the City Council approved a conceptual re-design of the Project. On May 23, 2013, the City Council received a presentation by Adrian-Gaus Architects on the final conceptual design of the Project. On June 4, 2013, the City Council approved the Project Plans and Specifications and authorized staff to advertise for sealed bids; and

WHEREAS, on June 12, 2013, the City sent out a Notice Inviting Sealed Bids for the Project (hereafter, the “Notice Inviting Bids”). Pursuant to Addendum No. 3, sealed bids were required to be submitted on or before August 7, 2013; and

WHEREAS, on August 7, 2013, the City Clerk received the following 23 proposals:

Name	City	Bid Amount
TOBO Construction, Inc.	Los Angeles, CA	\$3,260,000.00
CAL-CITY Construction, Inc.	Cerritos, CA	\$3,263,206.00
AVI-CON, Inc., dba: CA Construction	Riverside, CA	\$3,471,000.00
MTM Construction, Inc.	City of Industry, CA	\$3,680,000.00
The Sun Group Inc dba: The Sun Group	Costa Mesa, CA	\$3,688,300.00
Ruiz Brothers Construction Co.	City of Commerce	\$3,698,163.00
Mallcraft Inc.	Pasadena, CA	\$3,699,000.00
Sanders Construction Services	Lake Forest, CA	\$3,736,000.00
Inland Building Construction Services	San Bernardino	\$3,766,100.00
CWS Systems, Inc.	Pasadena, CA	\$3,774,000.00
Woodcliff Corporation	Los Angeles, CA	\$3,850,000.00
KEMCORP Construction Inc.	Chino, CA	\$3,925,000.00
AXIS Construction Inc.	Glendale, CA	\$3,993,000.00
Morillo Construction, Inc.	Pasadena, CA	\$4,029,000.00
Minako America Corporation	Gardena, CA	\$4,077,700.00
Adams/Mallory Construction Co., Inc.	Placentia, CA	\$4,101,498.00
Western Alta Construction, Inc.	Tustin, CA	\$4,164,690.00
States Link Construction Inc.	Buena Park, CA	\$4,265,000.00
G2K Construction, Inc.	Agoura Hills, CA	\$4,272,000.00
RC Construction Services, Inc.	Rialto, CA	\$4,319,000.00

PLYCORP	Norco, CA	\$4,469,000.00
Toby B Hayward	Monrovia, CA	\$4,513,027.00
Shefir Construction, Inc.	Beverly Hills, CA	\$4,950,000.00;

and

WHEREAS, on August 12, 2013, Cal-City submitted a letter withdrawing their bid;
and

WHEREAS, on August 14, 2013, the City Clerk's Office received a bid protest from Sanders Construction Services, which requested that the seven lowest bids be determined to be nonresponsive; and

A. AVI-CON, Inc., dba: CA Construction.

WHEREAS, Instruction No. 3 of the (Section 00200) Instruction to Bidders, states that "It is the intent of this Contract that it be performed only by a contractor having the special expertise and organizational capabilities necessary to accomplish the scope of work..." The Project is a very significant and high profile project for the City. The City's Library system is unique for a city of its size and is a source of tremendous civic pride. Thus, the qualifications and experience of the contractor that will perform the work on the Project is a major concern to the City; and

WHEREAS, the Bidder Qualification Form states that:

The bidder is required to state what work of a similar character to that included in the proposed contract he has successfully performed and give references which enable the City Council to judge of his responsibility, experience, skill, business and financial standing. **Minimum 5 references shall be provided;** and

WHEREAS, based on the information provided, City staff has determined that AVI-CON, Inc., dba: CA Construction ("AVI-CON") has not demonstrated that it has the experience and qualifications necessary for the Project. The largest previous job identified by AVI-CON was valued at \$1.7 Million, which is less than half of AVI-CON's bid amount for this Project. That project was not close to the scope of this Project. AVI-CON also identified two previous library projects, in the amount of \$116,000 and \$873,378. The scope of those projects was relatively small and not comparable to the Project. Based on the past project experiences identified, City Staff believes that AVI-CON should not be considered a responsible bidder for this Project; and

WHEREAS, on September 24, 2013, the City provided AVI-CON with notice of the fact that the City Council would be holding a public hearing on October 1, 2013, in order to determine whether AVI-CON was a responsible bidder for this Project. AVI-CON was advised of the basis for Staff's conclusions and that it had the right to submit evidence and counter arguments and address the Council on October 1, 2013; and

WHEREAS, on October 1, 2013, the City Council conducted a public hearing to consider whether AVI-CON was a responsible bidder for purposes of the Project. The City Council has considered all of the evidence and arguments presented at the time of the public hearing and has concluded that AVI-CON is not a responsible bidder for the Project and that their bid should therefore be disqualified; and

WHEREAS, the contact information provided by AVI-CON on the Bidder Qualification Form was also inaccurate. Section 4 of the Notice Inviting Bids, entitled Proposal Forms, provides that "Bids shall be submitted in writing on forms provided by the City. *All information requested therein must be clearly and legibly set forth in the manner and form indicated.* The City will not consider any proposal not meeting these requirements." (Emphasis added.) AVI-CON's failure to provide accurate information for its references was in violation of the Notice Inviting Bid requirements and therefore renders its bid, nonresponsive; and

WHEREAS, AVI-CON also failed to list the subcontractor on the Proposed Subcontractor Form for the Section 16785 Video on Demand component of the Notice

Inviting Bids. Public Contracts Code Sections 4100 through 4114 require that each bidder shall set forth in its bid, the name and location of the place of business of each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the Contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one half of one percent of the Contractor's total bid. This requirement was specifically set forth on the Proposed Subcontractor Form; and

WHEREAS, Page 2 of the AVI-CON Bid Proposal indicates that the price for the Section 16785 Video on Demand will be \$50,000. This amount is more than one half of one percent of the total amount of AVI-CON's bid of \$3,471,000. Therefore, this subcontractor was also required to be identified on the Proposed Subcontractor Form. AVI-CON's failure to provide this information causes its bid to be nonresponsive; and

B. TOBO Construction, Inc.

WHEREAS, the Instruction to Bidders (Section 00200), Instruction No. 18 ("Irregular Proposals"), provides that:

Unauthorized conditions, limitations, or provisions attached to a proposal will render it irregular and may cause its rejection. The completed proposal forms shall be without interlineations, alterations, or erasures. Alternative proposals will not be considered unless specifically requested. No oral, telegraphic, or telephonic proposal, modification, or withdrawal will be considered; and

WHEREAS, Section 4 of the Notice Inviting Bids, entitled Proposal Forms, also provides that "Bids shall be submitted in writing on forms provided by the City. *All information requested therein must be clearly and legibly set forth in the manner and form indicated.* The City will not consider any proposal not meeting these requirements."; and

WHEREAS, the Proposed Subcontractor Form provided that:

In compliance with the provisions of Section 4100 through 4114, inclusive, of the Public Contract Code, and any amendments thereto, each bidder shall set forth in its bid, the name and location of the place of business of each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the Contractor, specially fabricates and Installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one half of 1 percent of the Contractor's total bid; *and the portion of the work which will be done by each subcontractor under this act.* The Contractor shall list only one subcontractor for each portion as is defined by the Contractor. (Emphasis added.)

WHEREAS, TOBO submitted their proposal on August 7, 2013. However, they failed to fill out all of the information required in the Proposed Subcontractors Form. Specifically, TOBO failed to fill out the Form columns that identified the "Dollar Value of Subcontract" and "% of Total Bid Amount." Instead, they wrote a note in this area of the Form that indicated such information would be provided within 24 hours after the bid opening. On August 8, 2013, TOBO then submitted a revised Proposed Subcontractor Form that contained the missing information; and

WHEREAS, the information was material and was required to be provided as part of the bid response, in a timely fashion. TOBO's revised Proposed Subcontractor Form was submitted one day after the bid response deadline. The Notice Inviting Bids (Addendum No. 3), as well as other Bid documents, clearly indicated that the bid due date was August 7, 2013, and advised that "Late proposals will not be considered"; and

WHEREAS, Public Contract Code Section 4104(2) (A) provides that "[a]ny information requested by the officer, department, board, or commission concerning any

subcontractor who the prime contractor is required to list under this subdivision, other than the subcontractor's name and location of business, may be submitted by the prime contractor up to 24 hours after the deadline established by the officer, department, board, or commission for receipt of bids by prime contractors." Public Contract Code Section 4104(2) (B) provides, "A state or local agency may implement subparagraph (A) at its option"; and

WHEREAS, the City does not desire to implement subparagraph (A) of Public Contract Code Section 4104 (2). The City believes that it would not be proper to allow TOBO, or any other contractor, to revise part of their proposal by submitting required information after the bid due date. If such an exception was made for one bidder, as a matter of fairness, it would have to be made for all bidders. This would create significant uncertainty and confusion in the bid process and would violate one of the most basic and fundamental provisions of the Notice Inviting Bids – the bid due date. Based on the failure to provide the subject information on timely basis, as expressly required by the Proposed Subcontractor Form, TOBO's bid is nonresponsive and untimely; and

WHEREAS, TOBO also failed to list the subcontractor for the Section 16785, Video on Demand component of the Notice Inviting Bids, on the Proposed Subcontractor Form. As set forth above, the Public Contracts Code requires that each bidder identify the name and location of the-place of business of each subcontractor who will perform work or labor or render service to the Contractor or who specially fabricates and installs a portion of the work or improvement, in an amount in excess of one half of one percent of the Contractor's total bid. This requirement was specifically set forth on the Proposed Subcontractor Form. Page 2 of the TOBO Bid Proposal indicates that the price for the Section 16785 Video on Demand will be \$50,000. This amount is more than one half of percent of the total amount of TOBO Construction's bid of \$3,260,000. Therefore, this subcontractor was also required to be identified on the Form. TOBO's failure to provide this information also caused its bid to be nonresponsive; and

WHEREAS, TOBO failed to list the subcontractor on the Proposed Subcontractor Form for the Library Material Relocation work that was required by Section 12500 of the Notice Inviting Bids. Staff has determined from several other bids that the price for this part of the work should be around \$50,000, which is well over one half of one percent of the TOBO bid. Thus, this subcontractor should also have been listed. TOBO is apparently taking the position that its bid includes part of this relocation work to be performed by TOBO. The Library Material Relocation scope is specified in Section 12500 of the Notice Inviting Bids. The intent of this specification was to have the materials relocated by a company that specializes in library relocations. The shelving relocation scope to the interim library may have been properly covered by TOBO's shelving subcontractor. However, the library media materials being the most crucial part of the relocation, is not pursuant to the intent of the specification. This was specifically addressed during the Mandatory Pre-Bid Meeting conducted on June 26, 2013. TOBO is a general contractor and not one of the preapproved relocation companies listed in the specifications. Their intent to self-perform this part of the work cannot be considered an equal. Rather, this is a substitution per section 12500 paragraph 2.1; and

WHEREAS, even if TOBO was allowed to provide the relocation services, TOBO was required to provide references that would allow staff to determine whether it had the experience and qualifications necessary to perform such work; TOBO failed to provide such references. TOBO's failure to provide this information has caused its bid to be nonresponsive; and

WHEREAS, on September 23, 2013, the City provided TOBO with notice of the recommendations being made by City Staff. On September 23, 2013, TOBO provided a response to staff. The City Attorney tasked with addressing the TOBO response; and

C. Withdrawal of Bid by Cal-City Construction.

WHEREAS, Cal-City Construction was the apparent second lowest bidder. By letter dated August 12, 2013, they advised that they had made a mistake on their bid and that

they would like to withdraw it. The withdrawal was timely submitted and will be accepted; and

D. Denial of Sanders Construction Services' Protest.

WHEREAS, on August 14, 2013, the City received a bid protest from Sanders Construction Services (the "Protest"). The basis for the Protest is as follows:

After reviewing the Preliminary Bid Results for the Commerce Central Library project we have several issues with section 16785 and HD-LED TV's that we would like to see addressed. Due to the complexity of section 16785 'Video on Demand system' the listed prices for TOBO, Cal-City, AVI-CON, The Sun Group, and Ruiz Brothers are either missing crucial aspects or are not using the specified manufacturer, ETR-Media Master. As for the HD-LED TV section, it's clear that MTM should be deemed unresponsive for leaving this section blank on the bid form as well as Mallcraft for not using the specified Visio and Bose products. The Visio TV's alone for this section are well over \$5,000 without any of the required speakers or mounts, indicating that Mallcraft did not use the correct products.

Sanders Construction Services goes on to state that, because it used all the specified manufactures, it should be deemed the low bidder; and

WHEREAS City staff is recommending that the contract for the Project be awarded to MTM Construction, Inc., which was the apparent fourth lowest bidder. As discussed above, the City has determined that AVI-CON is a non-responsible bidder for purposes of this Project and that their bid should therefore be disqualified the City has also determined that AVI-CON's bid was not completely responsive. The City has also determined that TOBO's bid was not completely responsive and should therefore be rejected. The City has also determined that it will accept Cal-City's withdrawal of its bid. These bidders were the apparent three lowest bidders. If they are disqualified and their bids are rejected, then the next apparent lowest bidder would be MTM Construction. If their bid is deemed proper, then pursuant to the Notice Inviting Bids and the Public Contracts Code, the Project must be awarded to them. For the reasons set forth below, the Protest should be rejected; and

WHEREAS, the Instruction to Bidders (Section 00200), Instruction No. 17 (Sole Source Provisions), states that:

In accordance with Section 3400 of the California Public Contract Code, no materials or equipment is intended to be identified as 'sole source'. All material and equipment is specifically identified as is or equal. Bidders are encouraged to propose alternates for evaluation by the City as being equal to that specified in the contract documents; and

WHEREAS, Section 16785 states that, Video on Demand is based on equipment manufactured by ETR-Media Master, but since this is a public works project a single source manufacturer cannot be allowed and equals must be considered. This can result in varying dollar amounts listed; and

WHEREAS, the Protest indicates that the listed prices for the Video on Demand system by TOBO, Cal-City, AVI-CON, the Sun Group, and Ruiz Brothers are either missing crucial aspects or are not using the specified manufacturer, ETR-Media Master. The Instructions and Section 16785 clearly indicate that "equals" would be considered. Nevertheless, MTM Construction used the specified manufacturer, ETR-Media Master. Therefore, this issue does not apply to MTM; and

WHEREAS, the Protest also points out that MTM Construction listed a zero dollar value for the LED LCD Televisions on their bid form. The Instruction to Bidders (Section 00200), Instruction No. 28, states that "The right is reserved to reject any and all bids and waive any irregularity in any bid received." MTM identified Checkpoint Communication Inc. as the vendor for the Video on Demand and listed an amount of \$300,000 on their bid form. It is apparent that the dollar value for the LED LCD Televisions was combined with the Video on Demand dollar amount identified by MTM. The televisions were originally

listed in both Section 16785 Video on Demand and Section 11005 Miscellaneous Equipment. Page 40 of Addendum No. 4 included single line drawings that identified the various signal sources to each television. Therefore, it is understandable why MTM listed the combined dollar value in Section 16785 on their bid form. Staff believes that the issue raised by the Protest constitutes a minor irregularity and therefore recommends that it be waived. Thus, the Protest should be denied; and

WHEREAS, on September 24, 2013, the City provided Sanders Construction with notice of the fact that Staff was recommending that the Protest be denied; and

E. MTM Construction.

WHEREAS, the City has found that MTM Construction, Inc., submitted the lowest, responsible and responsive bid for providing the requested services for the Project. Pursuant to the Contract and the Contract Documents, the contractor will be responsible for providing all labor, materials, equipment, tools and incidentals necessary to complete the work requested in accordance with the Project plans and specifications and as prepared by Adrian-Gaus Architects.

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

SECTION 1: The recitals set forth above are true and correct and are incorporated by reference herein.

SECTION 2: The City Council has considered all of the evidence and arguments presented at the time of the public hearing held to determine whether AVI-CON, Inc., dba CA Construction is a responsible bidder for purposes of the Central Library Renovation Project. Based on the evidence and arguments presented, the City Council hereby determines that AVI-CON, Inc. is not a responsible bidder and that their bid is therefore disqualified.

SECTION 3: AVI-CON, Inc. failed to provide accurate contact information on the Bidder Qualification Form. AVI-CON also failed to identify the subcontractor for the Section 16785 Video on Demand component of the Notice Inviting Bids. AVI-CON's bid is also hereby rejected for the failure to provide such responsive information.

SECTION 4: TOBO Construction failed to fill out all of the information required in the Proposed Subcontractors Form. The City will not exercise its discretion to implement subparagraph (A) of Public Contract Code Section 4104 (2). TOBO's bid is rejected based on its failure to provide this responsive information.

SECTION 5: TOBO Construction also failed to list the subcontractor for the Section 16785, Video on Demand component of the Notice Inviting Bids, on the Proposed Subcontractor Form. Page 2 of the TOBO Bid Proposal indicates that the price for the Section 16785 Video on Demand will be \$50,000. This amount is more than one half of percent of the total amount of TOBO Construction's bid of \$3,260,000. Therefore, this subcontractor was also required to be identified on the Proposed Subcontractor Form. TOBOS' bid is also hereby rejected because of the failure to provide such responsive information.

SECTION 6: TOBO also failed to list the subcontractor on the Proposed Subcontractor Form for the Library Material Relocation work that was required by Section 12500 of the Notice Inviting Bids. TOBO has indicated that its bid includes such work and that it will be provided, in part, by TOBO. The Library Material Relocation scope is specified in Section 12500 of the Notice Inviting Bids. The intent of this specification was to have the materials relocated by a company that specializes in library relocations. The shelving relocation scope to the interim library may have been properly covered by TOBO's shelving subcontractor. However, the library media materials being the most crucial part of the relocation, is not pursuant to the intent of the specification. This was specifically addressed during the Mandatory Pre-Bid Meeting conducted on June 26, 2013.

TOBO is a general contractor and not one of the preapproved relocation companies listed in the specifications. Because TOBO failed to identify a qualified subcontractor for the subject relocation services, its bid is nonresponsive and is therefore rejected.

SECTION 7: Even if TOBO, as the general contractor, could provide the Library Material Relocation scope ss specified in Section 12500 of the Notice Inviting Bids, TOBO was required to provide references that would allow staff to determine whether it had the experience and qualifications necessary to perform such work. Nevertheless, TOBO failed to provide such references. TOBO's bid is also hereby rejected because of the failure to provide such responsive information.

SECTION 8: The City Council hereby accepts the withdrawal of the bid by Cal-City.

SECTION 9: For the reasons set forth in the Recitals, the City Council hereby denies the bid protest by Sanders Construction Services.

SECTION 10: The City Council hereby determines that MTM Construction, Inc. has submitted the lowest, responsive and responsible bid. The City hereby accepts MTM Construction, Inc.'s bid and directs City staff and the City Attorney to prepare a contract between the City and MTM Construction for construction of the City of Commerce Library Renovation Project. The contract will be submitted to the City Council for approval as soon as it is ready.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2013.

CITY OF COMMERCE

By: _____
Joe Aguilar, Mayor

ATTEST:

Teresa Jackson, CMC
Interim City Clerk

Attachment "A"



August 13, 2013

City of Commerce
Community Development Department
2535 Commerce Way
Commerce, CA 90040

Re: Central Library Renovation Project

Dear Paul Banuelos(Project Manager)

Due to clerical mistake in filling out electric portion on the bid form, we'd like to request our bid for the above project to be withdrawn. Please disregard our bid proposal for this project submitted on August 7, 2013.

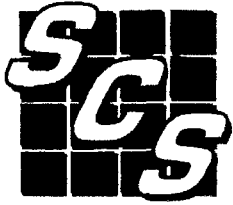
If you have any question or need more information on our withdrawal request, please contact us at 562-404-4820. Thank you.

Sincerely yours,

A handwritten signature in black ink, appearing to be "Woo S. Lim". The signature is stylized and somewhat messy, with several loops and a long horizontal stroke at the end.

Woo S. Lim/President

Attachment "B"



**Sanders
Construction
Services**

City of Commerce
City Clerk
2535 Commerce Way
Commerce, CA 90040
Re: Commerce Central Library Renovation Bid Protest

To whom it may concern,

After reviewing the Preliminary Bid Results for the Commerce Central Library project we have several issues with section 16785 and HD-LED TV's that we would like to see addressed. Due to the complexity of section 16785 'Video on Demand system' the listed prices for TOBO, Cal-City, AVI-Con, The Sun Group, and Ruiz Brothers are either missing crucial aspects or are not using the specified manufacturer, ETR-Media Master. As for the HD-LED TV section, it's clear that MTM should be deemed unresponsive for leaving this section blank on the bid form as well as Mallcraft for not using the specified Visio and Bose products. The Visio TV's alone for this section are well over \$5,000 without any of the required speakers or mounts, indicating that Mallcraft did not use the correct products.

Sanders Construction Services used all specified manufacturers and should be deemed the apparent low bidder for this project. I have attached our bid for section 16785 as well as the Preliminary Bid Results showing the vast difference in numbers for both of the line item sections which I have mentioned above.

Please feel free to contact me with any questions or concerns.

Sincerely,

Megan Guy, Estimator
Sanders Construction Services, Inc
MeganG@sandersconstruction.com
(949)951-6944

General Contractors • Design/Build • Construction Management

20331 Lake Forest Drive #C2 • Lake Forest, CA 92630 • Ph: 949/951-6944 • Fax: 949/951-6936 • CL #716521
www.SandersConstruction.com

Attachment "C"



City of Commerce

Public Works & Development Services Department

September 24, 2013

Via Email (aa@caconstruction.net), Fax and U.S. Mail

Charles Avila, President
AVI-CON, Inc., dba CA Construction
981 Iowa Avenue # A
Riverside, CA 92507

Re: City of Commerce Central Library Renovation Project

Dear Mr. Avila:

As you know, Avi-Con, Inc., dba CA Construction ("Avi-Con") submitted a bid in response to the Notice Inviting Sealed Bids (the "Notice Inviting Bids") for the City of Commerce Central Library Renovation Project (the "Project"). Please be advised that City Staff will be recommending that the City Council determine that Avi-Con is not a responsible bidder for purposes of this Project and that Avi-Con's bid be disqualified for failure to submit a completely responsive bid. The basis for these recommendations are set forth below.

Please also be advised that the City has received a protest that raises issues as to several bids, including the Avi-Con bid. City Staff does not believe that the protest has merit. Moreover, the merits of the protest against the Avi-Con bid will be rendered moot if the City Council accepts the recommendations by City Staff. A copy of the protest by Sanders Construction is attached for your review and consideration.

Facts Relevant to the Public Hearing to determine that Avi-Con is not a Responsible Bidder for the Project.

The City Council will conduct a public hearing on October 1, 2013, at or around 6:30p.m, in order to address City Staff's recommendation that Avi-Con be determined to be non-responsible bidder for purposes of the Project. You may attend the hearing and provide any evidence and argument in opposition to the recommendation. The basis for the recommendation is as follows.

Instruction No. 3 of the (Section 00200) Instruction to Bidders states that "It is the intent of this Contract that it be performed only by a contractor having the special expertise and organizational capabilities necessary to accomplish the scope of work..." The Project is a very significant and high profile project for the City. The City's Library system is unique for a city of its size and is a source of tremendous civic pride. Thus, the qualifications and experience of the contractor that will perform the work on the Project is a major concern to the City.

The Bidder Qualification Form states that:

The bidder is required to state what work of a similar character to that included in the proposed contract he has successfully performed and give references which enable the City Council to judge of his responsibility, experience, skill, business and financial standing. **Minimum 5 references shall be provided.** (Emphasis in original.)

Based on the information provided, City staff has determined that Avi-Con has not demonstrated that it has the experience and qualifications necessary for the Project. The largest previous job identified by Avi-Con was valued at \$1.7 Million, which is less than half of Avi-Con's bid amount for this Project. That project was not close to the scope of this Project. Avi-Con also identified two previous library projects, in the amount of \$116,000 and \$873,378. The scope of those projects was relatively small and not comparable to the Project. Based on the past project experiences identified, City Staff believes that Avi-Con should not be considered a responsible bidder for this Project. If the City Council determines, after considering all of the evidence presented, that Avi-Con is not a responsible bidder for this Project, Avi-Con's bid will be disqualified.

Facts Relevant to the Determination that Avi-Con's Bid was not Completely Responsive

The contact information provided by Avi-Con on the Bidder Qualification Form was also inaccurate. The telephone number for the last two references were not correct. Staff was required to do its own research in order to obtain such contact information. Section 4 of the Notice Inviting Bids, entitled Proposal Forms, provides that "Bids shall be submitted in writing on forms provided by the City. *All information requested therein must be clearly and legibly set forth in the manner and form indicated.* The City will not consider any proposal not meeting these requirements." (Emphasis added.) Avi-Con's failure to provide accurate information for its references was in violation of the Notice Inviting Bid requirements. Staff will recommend that the bid also be disqualified on this basis.

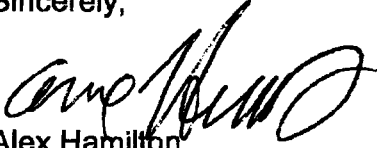
Avi-Con also failed to list the subcontractor on the Proposed Subcontractor Form for the Section 16785 Video on Demand component of the Notice Inviting Bids. Public Contracts Code Sections 4100 through 4114 require that each bidder shall set forth in its bid, the name and location of the place of business of each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the Contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one half of one percent of the Contractor's total bid. This requirement was specifically set forth on the Proposed Subcontractor Form.

Page 2 of the Avi-Con Bid Proposal indicates that the price for the Section 16785 Video on Demand will be \$50,000. This amount is more than one half of one percent of the total amount of Avi-Con's bid of \$3,471,000. Therefore, this subcontractor was also required to be identified on the Proposed Subcontractor Form. Staff is also recommending that Avi-Con's bid be disqualified because of the failure to provide this information.

As indicated above, you may attend the City Council meeting on October 1, 2013, at 6:30 p.m., in the City Council Chambers, located at 5655 Jillson Street, Commerce CA 90040. You may submit evidence and arguments regarding the recommendations being made by City staff. If you desire, you may submit such evidence or arguments in advance of the hearing to Alex Hamilton, Assistant Director of Public Works & Development Services, by fax at (323-888-6537) or email (alexh@ci.commerce.ca.us). You may also address the City Council regarding the proposed action at the time of the hearing on the matter.

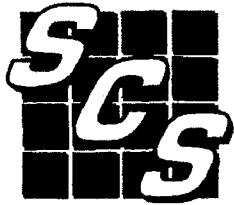
Please call me if you have any questions regarding this matter.

Sincerely,


Alex Hamilton
Assistant Director

Attachment (Sanders Construction Protest Letter)

cc: Eduardo Olivo
City of Commerce City Attorney



**Sanders
Construction
Services**

City of Commerce
City Clerk
2535 Commerce Way
Commerce, CA 90040
Re: Commerce Central Library Renovation Bid Protest

To whom it may concern,

After reviewing the Preliminary Bid Results for the Commerce Central Library project we have several issues with section 16785 and HD-LED TV's that we would like to see addressed. Due to the complexity of section 16785 'Video on Demand system' the listed prices for TOBO, Cal-City, AVI-Con, The Sun Group, and Ruiz Brothers are either missing crucial aspects or are not using the specified manufacturer, ETR-Media Master. As for the HD-LED TV section, it's clear that MTM should be deemed unresponsive for leaving this section blank on the bid form as well as Mallcraft for not using the specified Visio and Bose products. The Visio TV's alone for this section are well over \$5,000 without any of the required speakers or mounts, indicating that Mallcraft did not use the correct products.

Sanders Construction Services used all specified manufacturers and should be deemed the apparent low bidder for this project. I have attached our bid for section 16785 as well as the Preliminary Bid Results showing the vast difference in numbers for both of the line item sections which I have mentioned above.

Please feel free to contact me with any questions or concerns.

Sincerely,

Megan Guy, Estimator
Sanders Construction Services, Inc
MeganG@sandersconstruction.com
(949)951-6944

General Contractors • Design/Build • Construction Management

20331 Lake Forest Drive #C2 • Lake Forest, CA 92630 • Ph: 949/951-6944 • Fax: 949/951-6936 • CL #716521
www.SandersConstruction.com

Central Library Renovation Project, CC#1301



BID RESULTS - "PRELIMINARY"

Bid Due Date: August 7, 2013 at 1:00 PM

Company Name and Address	Section 16785	HD-LED TVs	Base Bid	Allowance A1	Allowance A2	Total	%	Rank
TOBO Construction, Inc Shatto Place, Suite 320 Los Angeles, CA 90020	\$ 50,000.00	\$ 15,000.00	\$ 2,677,000.00	\$ 18,000.00	\$ 500,000.00	\$ 3,260,000.00		
CAL-CITY CONSTRUCTION, INC 16605 Norwalk Blvd. Cerritos, CA 90703	\$ 111,500.00	\$ 22,750.00	\$ 2,610,956.00	\$ 18,000.00	\$ 500,000.00	\$ 3,263,206.00		
AVI-CON, INC, dba: CA Construction 981 Iowa Ave., Suite A Riverside, CA 92507	\$ 50,000.00	\$ 20,000.00	\$ 2,883,000.00	\$ 18,000.00	\$ 500,000.00	\$ 3,471,000.00		
MTM Construction, Inc. 16035 Phoenix Drive City of Industry, CA 91745	\$ 300,000.00	\$ -	\$ 2,862,000.00	\$ 18,000.00	\$ 500,000.00	\$ 3,680,000.00		
The Sun Group Inc, dba The Sun Group 3151 Airway Ave Costa Mesa, CA 92626	\$ 12,300.00	\$ 10,000.00	\$ 3,148,000.00	\$ 18,000.00	\$ 500,000.00	\$ 3,688,300.00		
Ruiz Brothers Construction Co. 2181 S Atlantic Blvd., Suite 101 City of Commerce, CA 90040	\$ 100,000.00	\$ 11,000.00	\$ 3,069,163.00	\$ 18,000.00	\$ 500,000.00	\$ 3,698,163.00		
Mallcraft Inc. PO Box 91983 Pasadena, CA 91109	\$ 265,000.00	\$ 5,000.00	\$ 2,911,000.00	\$ 18,000.00	\$ 500,000.00	\$ 3,699,000.00		
Sanders Construction Services 20331 Lake Forest Drive, Suite C2 Lake Forest, CA 92630	\$ 275,000.00	\$ 23,000.00	\$ 2,920,000.00	\$ 18,000.00	\$ 500,000.00	\$ 3,736,000.00		
Inland Building Construction Companies 323 S Sierra Way San Bernardino, CA 92408	\$ 279,600.00	\$ 2,500.00	\$ 2,966,000.00	\$ 18,000.00	\$ 500,000.00	\$ 3,766,100.00		
CWS Systems, Inc. 3814 E Colorado Blvd., Suite 102 Pasadena, CA 91107	\$ 122,000.00	\$ 22,000.00	\$ 3,112,000.00	\$ 18,000.00	\$ 500,000.00	\$ 3,774,000.00		
Woodcliff Corporation 1849 Sawtelle Blvd., Suite 610 Los Angeles, CA 90025	\$ 290,000.00	\$ 25,000.00	\$ 3,017,000.00	\$ 18,000.00	\$ 500,000.00	\$ 3,850,000.00		
KEMCORP Construction Inc. 14726 Romona Ave. #410W8 Chino, CA 91710	\$ 75,000.00	\$ 15,000.00	\$ 3,317,000.00	\$ 18,000.00	\$ 500,000.00	\$ 3,925,000.00		
AXIS Construction Inc. 901 S Glendale Ave., Suite 200 Glendale, CA 91205	\$ 290,000.00	\$ 15,000.00	\$ 3,170,000.00	\$ 18,000.00	\$ 500,000.00	\$ 3,993,000.00		
Morillo Construction, Inc. 227 N. Holliston Ave Pasadena, CA 91106	\$ 100,000.00	\$ 25,000.00	\$ 3,386,000.00	\$ 18,000.00	\$ 500,000.00	\$ 4,029,000.00		

Central Library Renovation Project, CC#1301



BID RESULTS - "PRELIMINARY"

Bid Due Date: August 7, 2013 at 1:00 PM

Company Name and Address	Section 16785	HD-LED TVs	Base Bid	Allowance A1	Allowance A2	Total	%	Rank
Minako America Corporation 522 E Airline Way Gardena, CA 90248	\$ 207,000.00	\$ 7,000.00	\$ 3,345,700.00	\$ 18,000.00	\$ 500,000.00	\$ 4,077,700.00		
Adams/Mallory Construction Co., Inc. 740 S Van Buren #A Placentia, CA 92870	\$ 300,000.00	\$ 5,000.00	\$ 3,278,498.00	\$ 18,000.00	\$ 500,000.00	\$ 4,101,498.00		
Western Alta Construction, Inc. 360 E First Street #698 Tustin, CA 92780	\$ 261,319.00	\$ 21,910.00	\$ 3,363,461.00	\$ 18,000.00	\$ 500,000.00	\$ 4,164,690.00		
States Link Construction Inc. 5825 Lincoln Ave., #212 Buena Park, CA 90620	\$ 150,000.00	\$ 5,000.00	\$ 3,592,000.00	\$ 18,000.00	\$ 500,000.00	\$ 4,265,000.00		
G2K Construction, Inc. 28348 Roadside Dr., #205 Agoura Hills, CA 91301	\$ 280,000.00	\$ 24,000.00	\$ 3,450,000.00	\$ 18,000.00	\$ 500,000.00	\$ 4,272,000.00		
RC Construction Services, Inc 2223 Locust Ave Rialto, CA 92377	\$ 286,000.00	\$ 10,000.00	\$ 3,505,000.00	\$ 18,000.00	\$ 500,000.00	\$ 4,319,000.00		
PLYCORP PO Box 142 Norco, CA 92860	\$ 200,000.00	\$ 27,000.00	\$ 3,724,000.00	\$ 18,000.00	\$ 500,000.00	\$ 4,469,000.00		
Toby B Hayward 1951 S Myrtle Ave Monrovia, CA 91016-4854	\$ 292,677.00	\$ 33,600.00	\$ 3,668,750.00	\$ 18,000.00	\$ 500,000.00	\$ 4,513,027.00		
Shefir Construction, Inc. 321 N. Oakhurst Drive, #504 Beverly Hills, CA 90210	\$ 98,000.00	\$ 12,000.00	\$ 4,322,000.00	\$ 18,000.00	\$ 500,000.00	\$ 4,950,000.00		



CHECKPOINT
communications incorporated

130 McCormick Ave Suite 105 Costa Mesa, CA 92626 Tel 714-549-1966 Fax 714-549-2951
www.checkpointcomm.com License #545063

August 7, 2013

Reference # 13-1139

Project Price Quotation

Central Library Renovation Project – City of Commerce

Attn: Estimating

Checkpoint Communications is providing a price quotation per plans and specs for following bid sections:

- 16785 Video on Demand System.(Checkpoint is an ETR – Media Master Dealer and a Bogen Engineered Systems Dealer)

Lump Sum Total for above listed sections: \$261,319.00

This Price includes Addendums 1, 2, 3, and 4.

Note: Data cabling and CATV cabling from room L112 to TV outlet locations to be installed by others (7 locations)

Note: Network Electronics to be provided by others (ie. Ethernet switches in room L112)

Note: All labor to be performed on 1st shift

Checkpoint Communications is a Bogen Engineered Systems Dealer, Mohawk Ortronics Certified Installer, Cisco Reseller/Enterasys Reseller, Extron Reseller, and Listen Technology Reseller.

Initial _____ Date: _____

Please see page 2 for conditions, exclusions and terms.



CHECKPOINT
communications incorporated

130 McCormick Ave Suite 105 Costa Mesa, CA 92626 Tel 714-549-1966 Fax 714-549-2951
www.checkpointcomm.com License #545063

Conditions:

This quote is valid for 60 days. Price subject to change after this date.

This proposal assumes all work can be done during normal working hours unless otherwise specified.

Price is predicated on Autocad drawings being provided to Checkpoint Communications for design and submittal requirements. If Autocad drawings are not available, a change order may be processed for additional drafting labor.

On projects that require plan check and/or submittals, no work shall be performed until all approvals have been received by Checkpoint Communications. The liability for any work requested prior to approvals shall be the sole responsibility of the owner/company requesting said work.

To insure against manufactures price increases and to avoid backorders, Checkpoint Communications reserves the right to purchase the equipment and/or material required within 30 days of contract and submittal approval and to invoice the owner/contractor when equipment/material is received.

Allow three working days for notification for inspectors to be on site.

Exclusions:

The use of Union Labor if required by the Local Government, GC or Building Owner.(No PLA, or PSA)

Permits and associated fee's if required.

Project Bonds and fees.

Warranty on existing equipment.

Lift and Scaffolding are provided by others and access will be provided to Checkpoint Communications. General Contractor to protect flooring prior to operating lifts.

Trash Bin is to be provided at no charge to Checkpoint Communications.

Parking is to be provided at no charge to Checkpoint Communications.

Busbars, Grounding and Bonding outside of MDF/IDF equipment.

Electrical work, conduits, conduit sleeving, pull ropes in empty conduits, fire rated backboards, weather heads, mast, poles and fire stopping.

Cable TV patch cords at station locations and IDF/MDF's.

Conduit, Raceway, Floor Boxes and Terminal cabinets, floor coring and sleeves.

Network Electronics.

UL listed Fire stop Assemblies.

Patching and Painting or repair of existing surface.

Trenching, backfill and/or compaction; repair and/or replacement of landscape.

Abatement of asbestos, lead containing or any other environmental hazardous material is not included.

Demolition and removal of any existing wiring and/or devices are not included. Temporary removal and relocation of existing devices and/or wiring is not included unless otherwise specified. All existing conduit removal is not included.

Terms:

Work will not commence on the project until a contract or a purchase order is received by Checkpoint Communications.

Invoicing shall be monthly, based on progress of labor and material. Checkpoint Communications reserves the right to stop work when any invoice exceeds 30 days past due.

Checkpoint does not accept responsibility for discounts in payments, back charges, or other adjustments, without receipt of written notification to Checkpoint Communications of specific problems and/or conditions. Should adjustments be found to be appropriate and correct Checkpoint Communications will provide written authorization to proceed.

Final Inspection is included, although if Checkpoint Communications has to return for additional inspections due to causes beyond our control add \$800 per visit.

One (1) year parts plus any extended warranty coverage from equipment manufacturers and One (1) year labor.

Warranty service, if required, will be performed during normal working hours (8:00am to 5:00pm) Monday through Friday, excluding holidays.

Warranty service requested other than the above reference hours shall be charged at Checkpoint Communications standard overtime rate.

If you have any questions please do not hesitate to call, thank you.

James Shoaff, RCDD, V.P. Engineering, (949) 724-9960, jshoaff@checkpointcomm.com

Customer Signature _____ Date: _____

Attachment "D"

PROPOSED SUBCONTRACTORS FORM

In compliance with the provisions of Section 4100 through 4114, inclusive, of the Public Contract Code, and any amendments thereto, each bidder shall set forth in its bid, the name and location of the place of business of each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the Contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one half of 1 percent of the Contractor's total bid; and the portion of the work which will be done by each subcontractor under this act. The Contractor shall list only one subcontractor for each portion as is defined by the Contractor.

Name, address, and phone number of subcontractors, suppliers, and vendors	Name portion of work, materials, and/or equipment	Dollar Value of Sub-Contract	% of Total Bid Amount
Mobile Modular 18450 Mission Blvd. Mira Loma, CA 91752 951-360-6600	Temporary Modular Buildings.	\$	%
Pake Cabinets 13158 Saturny St. N. Hollywood, CA 91605 818-759-7979	Casework.	\$	%
Pacific Single Ply PO Box 217 La Habra, CA 90633 562-691-3999	Roofing	\$	%
Precision Doors 14720 Central Ave Chino, CA 91710 909-548-2700	Doors + Hardware	\$	%
Random Glazing 17224 S. Figueroa St. Gardena, CA 90248 310-324-5881	Aluminum SF + Glazing	\$	%
Delgado Tiles 13422 Palamas Pl. Chino Hills, CA 91709 626-922-1428	Ceramic Tile	\$	%
Statewide Flooring 6736 Eton Ave. Crown Point, CA 91303 818-340-1222	Flooring	\$	%
Partition Specialties 12342 McLann Dr. Santa Fe Springs, CA 90670 562-407-1319	Operable Partitions.	\$	%

To be provided within 24 hours after bid opening

Attachment "E"

TOBO Construction, Inc.

Post Bid Documentation

2013 AUG -8 AM 9:16

DATE: August 8, 2013

TO: City of Commerce
2535 Commerce Way
City of Commerce, CA 90040

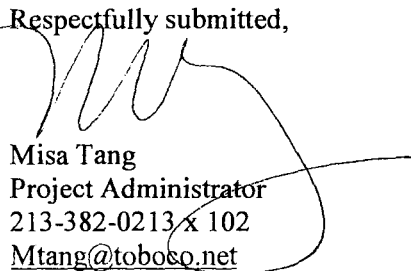
FROM: **Tobo Construction, Inc.**
Misa Tang
T: 213-382-0213
F: 877-411-8626
E: mtang@toboco.net

SUBJECT: **Central Library Renovation Project #1301**

Please find enclosed documentation for above-stated project regarding Designation of Subcontractors Listing

Please contact the undersigned for further information. We look forward to working with the City of Commerce.

Respectfully submitted,



Misa Tang
Project Administrator
213-382-0213 x 102
Mtang@toboso.net

PROPOSED SUBCONTRACTORS FORM

In compliance with the provisions of Section 4100 through 4114, inclusive, of the Public Contract Code, and any amendments thereto, each bidder shall set forth in its bid, the name and location of the place of business of each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the Contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one half of 1 percent of the Contractor's total bid; and the portion of the work which will be done by each subcontractor under this act. The Contractor shall list only one subcontractor for each portion as is defined by the Contractor.

Name, address, and phone number of subcontractors, suppliers, and vendors	Name portion of work, materials, and/or equipment	Dollar Value of Sub-Contract	% of Total Bid Amount
Mobile Modular 11450 Mission Blvd. Mira Loma, CA 91752 951-360-6000	Temporary Modular Buildings	\$ 80,000.00	2.45 %
Paks Cabinet 13158 Satriay St. N. Hollywood, CA 91605 818-759-7979	Casework	\$ 45,000.00	1.38 %
Pacific Single Ply P.O. Box 217 La Habra, CA 90633 562-691-3999	Roofing	\$ 290,000.00	8.90 %
Precision Doors 14720 Central Ave Chino, CA 91710 909-518-2700	Doors + Hardware	\$ 20,000.00	0.61 %
Rainbow Glazing 17224 S. Figueroa St. Gardena, CA 90248 310-324-5881	Aluminum SF + Glazing	\$ 100,000.00	3.07 %
Allegro Tiles 13422 Palomas Pl. Chino Hills, CA 91709 626-922-1428	Ceramic Tile	\$ 15,000.00	0.46 %
Statewide Flooring 6736 Eton Ave Van Nuys, CA 91303 818-340-1222	Flooring	\$ 70,000.00	2.15 %
Partition Specialties 12342 McLean Dr. Santa Fe Springs, CA 90670 562-407-3159	Operable Partitions	\$ 12,735.00	0.39 %

Asbestos Instant Response 3517 W. Washington Blvd. Los Angeles, CA 90018 323-733-0508	Abatement	\$ 35,000.00	1.07 %
Mage Air 1320 W. El Segundo Blvd. #B Gardena, CA 90247 310-576-6233	HVAC	\$ 180,000.00	5.52 %
Blutme 1300 W Olympic Blvd. Los Angeles, CA 90015 213-487-6411	Plumbing	\$ 65,000.00	1.99 %
Trace Fire 6834 Louise Ave Lake Balboa, CA 91406 818-881-3680	Fire Sprinkler	\$ 37,500.00	1.15 %
JNJ Electric 1328 N. Columbus Ave #2 Glen Dale, CA 91202 913-272-2330	Electrical	\$ 350,000.00	10.74 %
GS Fire 12896 Portland St. Victorville, CA 92392 760-241-3685	Fire Alarm low voltage	\$ 225,000.00	6.90 %
Prime Acoustics 2129 Via Colinas STE 702 West Lake Village, CA 91362 818-707-3508	Acoustical Tiles	\$ 45,000.00	1.38 %
Yamada Enterprises 76552 Berkeley Lane Huntington Beach, CA 92647 714-543-9802	Library stack shelving	\$ 90,000.00	2.76 %
		\$	%
		\$	%
		\$	%
2013 AUG -8 AM 9:46			
	Total	\$ 1,660,235	50.93 %

Note: The prime contractor is required to perform, with its own organization, contract work amounting to at least twenty percent (20%) of the Contract Price.

Attachment "F"



City of Commerce

Public Works & Development Services Department

September 23, 2013

Via Email (mtang@TOBOco.net) and U.S. Mail

Misa Tang
TOBO Construction, Inc.
500 Shatto Place, Suite 320
Los Angeles, CA 90020

Re: TOBO Construction – City of Commerce Central Library Renovation Project

Dear Ms. Tang:

The City of Commerce has received an email dated August 29, 2103, from attorney Emily A Kromke, advising that she represents TOBO Construction, Inc. ("TOBO") concerning its bid on the City of Commerce Library Renovation Project (the "Project"). I write this letter to you as TOBO's company representative; I have also sent a copy to Ms. Kromke for her review. As the email correctly points out, a protest has been filed concerning TOBO's bid. TOBO has requested the opportunity to review the basis for the protest and make any applicable counter arguments. A copy of the protest by Sanders Construction is attached for your review and consideration.

You should be advised that on October 1, 2013, City Staff will be recommending that the Commerce City Council deny the protest. Nevertheless, you should also be advised that City Staff has determined that TOBO's bid was not complete and should therefore be disqualified. The basis for these recommendations are set forth below.

The Protest

The basis for the protest is as follows:

After reviewing the Preliminary Bid Results for the Commerce Central Library project we have several issues with section 16785 and HD-LED TV's that we would like to see addressed. Due to the complexity

of section 16785 'Video on Demand system' the listed prices for TOBO, Cal-City, AVI-Con, The Sun Group, and Ruiz Brothers are either missing crucial aspects or are not using the specified manufacturer, ETR-Media Master. As for the HD-LED TV section, it's clear that MTM should be deemed unresponsive for leaving this section blank on the bid form as well as Mallcraft for not using the specified Visio and Bose products. The Visio TV's alone for this section are well over \$5,000 without any of the required speakers or mounts, indicating that Mallcraft did not use the correct products.

[See attached Sanders Construction Protest Letter]

City staff will be recommending that the City Council deny the protest as it relates to TOBO's bid for the following reasons:

The Instruction to Bidders (Section 00200), Instruction No. 17 (Sole Source Provisions), states that:

In accordance with Section 3400 of the California Public Contract Code, no materials or equipment is intended to be identified as 'sole source'. All material and equipment is specifically identified as is **or equal**. Bidders are encouraged to propose alternates for evaluation by the City as being equal to that specified in the contract documents. (Emphasis added.)

Section 16785 of the Notice Inviting Bids states that, Video on Demand is based on equipment manufactured by ETR-Media Master, but since this is a public works project a single source manufacturer cannot be allowed and equals must be considered. This can result in varying dollar amounts listed.

The Protest indicates that the listed prices for the Video on Demand system by TOBO, Cal-City, AVI-Con, the Sun Group, and Ruiz Brothers are either missing crucial aspects or are not using the specified manufacturer, ETR-Media Master. The Instructions and Section 16785 clearly indicate that "equals" would be considered. Therefore, the protest based on the failure to use the specified manufacturer, lacks merit. Sanders does not identify any other specific basis for its protest against the TOBO bid.

The Disqualification of TOBO's Bid

The Instruction to Bidders (Section 00200), Instruction No. 18 ("Irregular Proposals"), provides that:

Unauthorized conditions, limitations, or provisions attached to a proposal will render it irregular and may cause its rejection. The completed proposal forms shall be without interlineations, alterations, or erasures. Alternative proposals will not be considered unless specifically requested. No oral, telegraphic, or telephonic proposal, modification, or withdrawal will be considered.

Section 4 of the Notice Inviting Bids, entitled Proposal Forms, also provides that "Bids shall be submitted in writing on forms provided by the City. *All information requested therein must be clearly and legibly set forth in the manner and form indicated.* The City will not consider any proposal not meeting these requirements." (Emphasis added.)

The Proposed Subcontractor Form provided that:

In compliance with the provisions of Section 4100 through 4114, inclusive, of the Public Contract Code, and any amendments thereto, each bidder shall set forth in its bid, the name and location of the place of business of each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the Contractor, specially fabricates and Installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one half of 1 percent of the Contractor's total bid; *and the portion of the work which will be done by each subcontractor under this act.* The Contractor shall list only one subcontractor for each portion as is defined by the Contractor. (Emphasis added.)

TOBO submitted their proposal on August 7, 2013. However, they failed to fill out all of the information required in the Proposed Subcontractors Form. Specifically, TOBO failed to fill out the Form columns that identified the "Dollar Value of Subcontract" and "% of Total Bid Amount." Instead, they wrote a note in this area of the Form that indicated such information would be provided within 24 hours after the bid opening. On August 8, 2013, TOBO then submitted a revised Proposed Subcontractor Form that contained the missing information.

The information was material and was required to be provided as part of the bid response, in a timely fashion. TOBO's revised Proposed Subcontractor Form was submitted one day after the bid response deadline. The Notice Inviting Bids (Addendum No. 3), as well as other Bid documents, clearly

indicated that the bid due date was August 7, 2013, and advised that "Late proposals will not be considered." (Emphasis in original.) City staff has determined that it would not be proper to allow TOBO, or any other contractor, to revise part of their proposal by submitting required information after the bid due date. If such an exception was made for one bidder, as a matter of fairness, it would have to be made for all bidders. This would create significant uncertainty and confusion in the bid process and would violate one of the most basic and fundamental provisions of the Notice Inviting Bids – the bid due date. Based on the failure to provide the subject information on timely basis, as expressly required by the Proposed Subcontractor Form, City staff is recommending that TOBO's bid be disqualified as being incomplete and untimely.

TOBO also failed to list the subcontractor for the Section 16785, Video on Demand component of the Notice Inviting Bids, on the Proposed Subcontractor Form. As set forth above, the Public Contracts Code requires that each bidder identify the name and location of the place of business of each subcontractor who will perform work or labor or render service to the Contractor or who specially fabricates and installs a portion of the work or improvement, in an amount in excess of one half of one percent of the Contractor's total bid. This requirement was specifically set forth on the Proposed Subcontractor Form. Page 2 of the TOBO Bid Proposal indicates that the price for the Section 16785 Video on Demand will be \$50,000. This amount is more than one half of one percent of the total amount of TOBO Construction's bid of \$3,260,000. Therefore, this subcontractor was also required to be identified on the Form. Staff also recommends that TOBO Construction's bid be disqualified for the failure to provide this information.

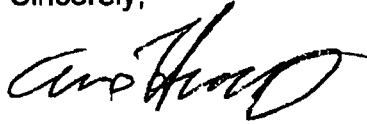
TOBO also failed to list the subcontractor on the Proposed Subcontractor Form for the Library Material Relocation work that was required by Section 12500 of the Notice Inviting Bids. Staff has determined from several other bids that the price for this part of the work should be around \$50,000, which is well over one half of one percent of the TOBO bid. Thus, this subcontractor should also have been listed. Staff also recommends that TOBO Construction's bid be disqualified based on the failure to provide this information.

You may attend the City Council meeting on October 1, 2013, at 6:30 p.m., in the City Council Chambers, located at 5655 Jillson Street, Commerce, CA 90040, and provide any additional counter arguments to the protest and staff's disqualification recommendation. You may submit such evidence and argument in writing, in advance of the meeting to Alex Hamilton, the Assistant Director of Public Works & Development Services and by fax at (323-888-6537) or email (alexh@ci.commerce.ca.us). You may also address the City Council regarding the proposed action at the time of the meeting.

Letter to TOBO Construction, Inc.
City of Commerce Central Library Renovation Project
September 23, 2013
Page 5 of 5

Please call me if you have any questions regarding this matter.

Sincerely,

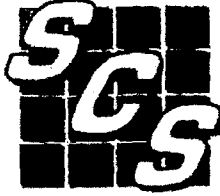


Alex Hamilton
Assistant Director

Attachment (Sanders Construction Protest Letter)

cc: Emily A. Kromke
Feldman & Associates
11030 Santa Monica Boulevard, Suite 109
Los Angeles, CA 90025

Eduardo Olivo
City of Commerce City Attorney



**Sanders
Construction
Services**

City of Commerce
City Clerk
2535 Commerce Way
Commerce, CA 90040
Re: Commerce Central Library Renovation Bid Protest

To whom it may concern,

After reviewing the Preliminary Bid Results for the Commerce Central Library project we have several issues with section 16785 and HD-LED TV's that we would like to see addressed. Due to the complexity of section 16785 'Video on Demand system' the listed prices for TOBO, Cal-City, AVI-Con, The Sun Group, and Ruiz Brothers are either missing crucial aspects or are not using the specified manufacturer, ETR-Media Master. As for the HD-LED TV section, it's clear that MTM should be deemed unresponsive for leaving this section blank on the bid form as well as Mallcraft for not using the specified Visio and Bose products. The Visio TV's alone for this section are well over \$5,000 without any of the required speakers or mounts, indicating that Mallcraft did not use the correct products.

Sanders Construction Services used all specified manufacturers and should be deemed the apparent low bidder for this project. I have attached our bid for section 16785 as well as the Preliminary Bid Results showing the vast difference in numbers for both of the line item sections which I have mentioned above.

Please feel free to contact me with any questions or concerns.

Sincerely,

Megan Guy, Estimator
Sanders Construction Services, Inc
MeganG@sandersconstruction.com
(949)951-6944

General Contractors • Design/Build • Construction Management

20331 Lake Forest Drive #C2 • Lake Forest, CA 92630 • Ph: 949/951-6944 • Fax: 949/951-6936 • CL #716521
www.SandersConstruction.com

Central Library Renovation Project, CC#1301

BID RESULTS - "PRELIMINARY"

Bid Due Date: August 7, 2013 at 1:00 PM



Company Name and Address	Section 16785	HD-LED TVs	Base Bid	Allowance A1	Allowance A2	Total	%	Rank
TOBO Construction, Inc Shatto Place, Suite 320 Los Angeles, CA 90020	\$ 50,000.00	\$ 15,000.00	\$ 2,677,000.00	\$ 18,000.00	\$ 500,000.00	\$ 3,260,000.00		
CAL-CITY CONSTRUCTION, INC 16605 Norwalk Blvd. Cerritos, CA 90703	\$ 111,500.00	\$ 22,750.00	\$ 2,810,956.00	\$ 18,000.00	\$ 500,000.00	\$ 3,263,206.00		
AVI-CON, INC, dba: CA Construction 981 Iowa Ave., Suite A Riverside, CA 92507	\$ 50,000.00	\$ 20,000.00	\$ 2,883,000.00	\$ 18,000.00	\$ 500,000.00	\$ 3,471,000.00		
MTM Construction, Inc. 16035 Phoenix Drive City of Industry, CA 91745	\$ 300,000.00	\$ -	\$ 2,862,000.00	\$ 18,000.00	\$ 500,000.00	\$ 3,680,000.00		
The Sun Group Inc, dba The Sun Group 3151 Airway Ave Costa Mesa, CA 92626	\$ 12,300.00	\$ 10,000.00	\$ 3,148,000.00	\$ 18,000.00	\$ 500,000.00	\$ 3,688,300.00		
Ruiz Brothers Construction Co. 2181 S Atlantic Blvd., Suite 101 City of Commerce, CA 90040	\$ 100,000.00	\$ 11,000.00	\$ 3,069,163.00	\$ 18,000.00	\$ 500,000.00	\$ 3,698,163.00		
Mailcraft Inc. PO Box 91983 Pasadena, CA 91109	\$ 265,000.00	\$ 5,000.00	\$ 2,911,000.00	\$ 18,000.00	\$ 500,000.00	\$ 3,699,000.00		
Sanders Construction Services 20331 Lake Forest Drive, Suite C2 Lake Forest, CA 92630	\$ 275,000.00	\$ 23,000.00	\$ 2,920,000.00	\$ 18,000.00	\$ 500,000.00	\$ 3,736,000.00		
Inland Building Construction Companies 323 S Sierra Way San Bernardino, CA 92408	\$ 279,600.00	\$ 2,500.00	\$ 2,986,000.00	\$ 18,000.00	\$ 500,000.00	\$ 3,766,100.00		
CWS Systems, Inc. 3814 E Colorado Blvd., Suite 102 Pasadena, CA 91107	\$ 122,000.00	\$ 22,000.00	\$ 3,112,000.00	\$ 18,000.00	\$ 500,000.00	\$ 3,774,000.00		
Woodcliff Corporation 1849 Sawtelle Blvd., Suite 610 Los Angeles, CA 90025	\$ 290,000.00	\$ 25,000.00	\$ 3,017,000.00	\$ 18,000.00	\$ 500,000.00	\$ 3,850,000.00		
KEMCORP Construction Inc. 14726 Romona Ave. #410W8 Chino, CA 91710	\$ 75,000.00	\$ 15,000.00	\$ 3,317,000.00	\$ 18,000.00	\$ 500,000.00	\$ 3,925,000.00		
AXIS Construction Inc. 901 S Glendale Ave., Suite 200 Glendale, CA 91205	\$ 290,000.00	\$ 15,000.00	\$ 3,170,000.00	\$ 18,000.00	\$ 500,000.00	\$ 3,993,000.00		
Morillo Construction, Inc. 227 N. Holliston Ave Pasadena, CA 91106	\$ 100,000.00	\$ 25,000.00	\$ 3,386,000.00	\$ 18,000.00	\$ 500,000.00	\$ 4,029,000.00		

Central Library Renovation Project, CC#1301

BID RESULTS - "PRELIMINARY"

Bid Due Date: August 7, 2013 at 1:00 PM



Company Name and Address	Section 16785	HD-LED TVs	Base Bid	Allowance A1	Allowance A2	Total	%	Rank
Minako America Corporation 522 E Airline Way Gardena, CA 90248	\$ 207,000.00	\$ 7,000.00	\$ 3,345,700.00	\$ 18,000.00	\$ 500,000.00	\$ 4,077,700.00		
Adams/Mallory Construction Co., Inc. 740 S Van Buren #A Placentia, CA 92870	\$ 300,000.00	\$ 5,000.00	\$ 3,278,498.00	\$ 18,000.00	\$ 500,000.00	\$ 4,101,498.00		
Western Alta Construction, Inc. 360 E First Street #598 Tustin, CA 92780	\$ 261,319.00	\$ 21,910.00	\$ 3,363,461.00	\$ 18,000.00	\$ 500,000.00	\$ 4,164,690.00		
States Link Construction Inc. 5825 Lincoln Ave., #212 Buena Park, CA 90620	\$ 150,000.00	\$ 5,000.00	\$ 3,592,000.00	\$ 18,000.00	\$ 500,000.00	\$ 4,265,000.00		
G2K Construction, Inc. 28348 Roadside Dr., #205 Agoura Hills, CA 91301	\$ 280,000.00	\$ 24,000.00	\$ 3,450,000.00	\$ 18,000.00	\$ 500,000.00	\$ 4,272,000.00		
RC Construction Services, Inc 2223 Locust Ave Rialto, CA 92377	\$ 286,000.00	\$ 10,000.00	\$ 3,505,000.00	\$ 18,000.00	\$ 500,000.00	\$ 4,319,000.00		
PLYCORP PO Box 142 Norco, CA 92880	\$ 200,000.00	\$ 27,000.00	\$ 3,724,000.00	\$ 18,000.00	\$ 500,000.00	\$ 4,469,000.00		
Toby B Hayward 1951 S Myrtle Ave Monrovia, CA 91016-4854	\$ 292,677.00	\$ 33,800.00	\$ 3,668,750.00	\$ 18,000.00	\$ 500,000.00	\$ 4,513,027.00		
Shefir Construction, Inc. 321 N. Oakhurst Drive, #504 Beverly Hills, CA 90210	\$ 98,000.00	\$ 12,000.00	\$ 4,322,000.00	\$ 18,000.00	\$ 500,000.00	\$ 4,950,000.00		

CHECKPOINT
communications incorporated

130 McCormick Ave Suite 105 Costa Mesa, CA 92626 Tel 714-549-1966 Fax 714-549-2951
www.checkpointcomm.com License #545063

August 7, 2013

Reference # 13-1139

Project Price Quotation
Central Library Renovation Project – City of Commerce

Attn: Estimating

Checkpoint Communications is providing a price quotation per plans and specs for following bid sections:

- 16785 Video on Demand System.(Checkpoint is an ETR – Media Master Dealer and a Bogen Engineered Systems Dealer)

Lump Sum Total for above listed sections: \$261,319.00

This Price includes Addendums 1, 2, 3, and 4.

Note: Data cabling and CATV cabling from room L112 to TV outlet locations to be installed by others (7 locations)

Note: Network Electronics to be provided by others (ie. Ethernet switches in room L112)

Note: All labor to be performed on 1st shift

Checkpoint Communications is a Bogen Engineered Systems Dealer, Mohawk Ortronics Certified Installer, Cisco Reseller/Enterasys Reseller, Extron Reseller, and Listen Technology Reseller.

Initial _____ Date: _____

Please see page 2 for conditions, exclusions and terms.

CHECKPOINT

communications incorporated

130 McCormick Ave Suite 105 Costa Mesa, CA 92626 Tel 714-549-1966 Fax 714-549-2951
www.checkpointcomm.com License #545063

Conditions:

This quote is valid for 60 days. Price subject to change after this date.

This proposal assumes all work can be done during normal working hours unless otherwise specified.

Price is predicated on Autocad drawings being provided to Checkpoint Communications for design and submittal requirements. If Autocad drawings are not available, a change order may be processed for additional drafting labor.

On projects that require plan check and/or submittals, no work shall be performed until all approvals have been received by Checkpoint Communications. The liability for any work requested prior to approvals shall be the sole responsibility of the owner/company requesting said work.

To insure against manufactures price increases and to avoid backorders, Checkpoint Communications reserves the right to purchase the equipment and/or material required within 30 days of contract and submittal approval and to invoice the owner/contractor when equipment/material is received.

Allow three working days for notification for Inspectors to be on site.

Exclusions:

The use of Union Labor if required by the Local Government, GC or Building Owner.(No PLA, or PSA)

Permits and associated fee's if required.

Project Bonds and fees.

Warranty on existing equipment.

Lift and Scaffolding are provided by others and access will be provided to Checkpoint Communications. General Contractor to protect flooring prior to operating lifts.

Trash Bin is to be provided at no charge to Checkpoint Communications.

Parking is to be provided at no charge to Checkpoint Communications.

Busbars, Grounding and Bonding outside of MDF/IDF equipment.

Electrical work, conduits, conduit sleeving, pull ropes in empty conduits, fire rated backboards, weather heads, mast, poles and fire stopping.

Cable TV patch cords at station locations and IDF/MDF's.

Conduit, Raceway, Floor Boxes and Terminal cabinets, floor coring and sleeves.

Network Electronics.

UL listed Fire stop Assemblies.

Patching and Painting or repair of existing surface.

Trenching, backfill and/or compaction; repair and/or replacement of landscape.

Abatement of asbestos, lead containing or any other environmental hazardous material is not included.

Demolition and removal of any existing wiring and/or devices are not included. Temporary removal and relocation of existing devices and/or wiring is not included unless otherwise specified. All existing conduit removal is not included.

Terms:

Work will not commence on the project until a contract or a purchase order is received by Checkpoint Communications.

Invoicing shall be monthly, based on progress of labor and material. Checkpoint Communications reserves the right to stop work when any Invoice exceeds 30 days past due.

Checkpoint does not accept responsibility for discounts in payments, back charges, or other adjustments, without receipt of written notification to Checkpoint Communications of specific problems and/or conditions. Should adjustments be found to be appropriate and correct Checkpoint Communications will provide written authorization to proceed.

Final Inspection is included, although if Checkpoint Communications has to return for additional inspections due to causes beyond our control add \$800 per visit.

One (1) year parts plus any extended warranty coverage from equipment manufacturers and One (1) year labor.

Warranty service, if required, will be performed during normal working hours (8:00am to 5:00pm) Monday through Friday, excluding holidays.

Warranty service requested other than the above reference hours shall be charged at Checkpoint Communications standard overtime rate.

If you have any questions please do not hesitate to call, thank you.

James Shoaff, RCDD, V.P. Engineering, (949) 724-9960, jshoaff@checkpointcomm.com

Customer Signature _____ Date: _____

Attachment "G"



City of Commerce

Public Works & Development Services Department

September 24, 2013

Via Email (Megan@sandersconstruction.com) and U.S. Mail

Megan Guy, Estimator
Sanders Construction Services, Inc.
20331 Lake Forest Drive, # C2
Lake Forest, CA 92630

Re: Protest Re Bids for the City of Commerce Central Library Renovation Project (the "Project")

Dear Ms. Guy:

The City of Commerce has received your Commerce Central Library Renovation Bid Protest (the "Protest"). The City has now had an opportunity to analyze the bids and the merits of the Protest. Please be advised that on October 1, 2013, City Staff will be recommending that the Commerce City Council deny the Protest. The basis for the recommendation is set forth below.

The basis for the protest is as follows:

After reviewing the Preliminary Bid Results for the Commerce Central Library project we have several issues with section 16785 and HD-LED TV's that we would like to see addressed. Due to the complexity of section 16785 'Video on Demand system' the listed prices for TOBO, Cal-City, AVI-Con, The Sun Group, and Ruiz Brothers are either missing crucial aspects or are not using the specified manufacturer, ETR-Media Master. As for the HD-LED TV section, it's clear that MTM should be deemed unresponsive for leaving this section blank on the bid form as well as Mallcraft for not using the specified Visio and Bose products. The Visio TV's alone for this section are well over \$5,000 without any of the required speakers or mounts, indicating that Mallcraft did not use the correct products.

Sanders Construction goes on to state that, because it used all the specified manufactures, it should be deemed the low bidder.

City Staff is recommending that TOBO Construction's bid (the apparent low bid) be disqualified because it was not compete or timely. Staff is also recommending that the City Council accept Cal-City's (the apparent second low bidder) withdrawal of its bid. City staff is also recommending that the City Council determine that the Avi-Con, Inc.(the apparent third lowest bidder) be determined to be a non-responsible bidder for purposes of this Project and that their bid also be disqualified for failure to provide all of the required information. If the above bids are disqualified, the next apparent low bidder would be MTM Construction. Pursuant to the Notice Inviting Bids and the Public Contracts Code, the Project would then have to be awarded to MTM Construction if their bid is deemed proper.

City staff will be recommending that the City Council deny the protest for the following reasons:

The Instruction to Bidders (Section 00200), Instruction No. 17 (Sole Source Provisions), states that:

In accordance with Section 3400 of the California Public Contract Code, no materials or equipment is intended to be identified as 'sole source'. All material and equipment is specifically identified as is **or equal**. Bidders are encouraged to propose alternates for evaluation by the City as being equal to that specified in the contract documents. (Emphasis added.)

Section 16785 states that, Video on Demand is based on equipment manufactured by ETR-Media Master, but since this is a public works project a single source manufacturer cannot be allowed and equals must be considered. This can result in varying dollar amounts listed.

The Protest indicates that the listed prices for the Video on Demand system by TOBO, Cal-City, AVI-Con, the Sun Group, and Ruiz Brothers are either missing crucial aspects or are not using the specified manufacturer, ETR-Media Master. The Instructions and Section 16785 clearly indicate that "equals" would be considered. MTM Construction used the specified manufacturer, ETR-Media Master. Therefore, this issue does not apply to MTM.

The Protest also points out that MTM Construction listed a zero dollar value for the LED LCD Televisions on their bid form. The Instruction to Bidders (Section 00200), Instruction No. 28, states that "The right is reserved to reject any and all bids and waive any irregularity in any bid received." MTM identified Checkpoint Communication Inc. as the vendor for the Video on Demand and listed an amount of \$300,000. It is apparent that the dollar value for the LED LCD Televisions was combined with the Video on Demand dollar amount identified by MTM. The televisions were originally listed in both Section 16785 Video on Demand and Section 11005 Miscellaneous Equipment. Page 40 of Addendum No. 4 included single line drawings that identified the various signal sources to each television. Therefore, it is understandable why MTM listed the combined dollar value in Section 16785 on their bid form. Staff believes that the issue raised by the Protest constitutes a minor irregularity and therefore recommends that it be waived. Thus, the Protest should be denied.

You may attend the City Council meeting on October 1, 2013, at 6:30 p.m. and provide any additional counter arguments to Staff's recommendation. You may submit such arguments in advance of the meeting to Alex Hamilton, Assistant Director Public Works & Development Services, by fax ((323-888-6537) and email (alexh@ci.commerce.ca.us). You may also attend the City Council meeting and address the City Council when it considers the Protest.

Should you have any questions regarding this matter, please do not hesitate to call me.

Sincerely,



Alex Hamilton
Assistant Director

cc: Eduardo Olivo
City Attorney

Attachment "H"



TOBO Construction, Inc.

September 24, 2013

Via Email (alexh@ci.commerce.ca.us) & U.S. Mail

Alex Hamilton
City of Commerce
Public Works & Development Services Department
2535 Commerce Way
Commerce, CA 90040

Re: TOBO Construction – City of Commerce Central Library Renovation Project

Dear Mr. Alex Hamilton:

We have received your letter dated September 23, 2013, which states that the City Staff will be recommending to the Commerce City Council that they deny the protest by Sander's Construction, and that Tobo Construction, Inc. ("TOBO") submitted a bid that was not complete and therefore should be disqualified. This letter is to address the latter.

Also, TOBO seeks clarification on whether the City's intent is to award the contract to the next lowest responsive and responsible bidder, or whether it intends to reject all bids.

Three reasons are indicated as the basis for the disqualification of TOBO's bid. Each of the three reasons is set forth below with an argument as to why TOBO disagrees with the findings.

1. TOBO failed to comply with subcontractor listing requirements.

Your letter states that TOBO failed to provide all information requested on the Proposed Subcontractor Form and therefore did not comply with the provision of Section 4100 through 4114 of the Public Contract Code.

The applicable Section of the Public Contract Code, section 4104, indicates that the bid must contain the name and location of the place of business of each subcontractor (4104(a)(1)) as well as the portion of the work that will be done by each subcontractor (4104(b)).

TOBO's subcontractor form, which was submitted with its bid, clearly indicated the name, location, and portion of work to be performed by each subcontractor in excess of one half of 1 percent in compliance with the statutory requirements. From your letter, it appears that the City is claiming TOBO failed to identify the portion of the work which would be done by each subcontractor in its bid. As you can see from the attached Proposed Subcontractor Form, TOBO did in fact include in its form submitted at the time of bid the scopes of work to be performed by each subcontractor.



Through past bid disputes, TOBO has learned that “portion of work” does not mean dollar value or percentage of work to be performed. It means scope of work. The California courts decided this specific issue in their Valley Crest Landscape, Inc. v. City Council ruling. TOBO has made certain to include the portions of work each subcontractor is to perform based in part on the court’s interpretation of the law.

TOBO later provided the information requested in the Form columns that identified the “Dollar Value of Subcontract” and “% of Total Bid Amount” and indicated, “To Be Provided within 24 hrs. After Bid Opening” pursuant to CAL Pub. Cont. Code § 4104.2(A) which states:

“..any information requested by the officer, department, board, or commission concerning any subcontractor who the prime contractor is required to list under this subdivision, other than the subcontractor's name and location of business, may be submitted by the prime contractor up to 24 hours after the deadline established by the officer, department, board, or commission for receipt of bids by prime contractors.” (Emphasis added.)

As TOBO provided the omitted information on August 8, 2013 within the allowable time frame (24 hours from the established bid deadline) TOBO’s bid should be considered complete and timely.

[See attached Proposed Subcontractor Form submitted with bid (Attachment “A”) and Omitted information submitted August 8, 2013 (Attachment “B”)]

2. TOBO failed to list a subcontractor for the Video on Demand Section 16785

Your letter states that the second reason City Staff will recommend disqualification of TOBO’s bid is because it failed to list a subcontractor for the Video on Demand component, Section 16785, of the Notice Inviting Bids.

The Video on Demand component is a low voltage system which is covered by TOBO’s low voltage subcontractor, GS Fire Technology, Inc. (“GSFT”). TOBO listed GSFT on the Proposed Subcontractor Form to perform the fire alarm and low voltage portions of the work (see Attachment “A”) and therefore is in compliance with the conditions listed in the Notice Inviting Bids, and Instructions To Bidders.

3. TOBO failed to list a subcontractor for the Library Material Relocation Section 12500

Your letter goes on to state that the final reason for City Staff to recommend disqualification of TOBO’s bid is because it failed to list a subcontractor for the Library Material Relocation, Section 12500, of the Notice Inviting Bids. Your letter also states that, “..based on several other bids that the price for this part of the work should be around \$50,000.00..” and therefore, TOBO should have been required to list a subcontractor for this portion of the work.

TOBO also received several bids for this portion of the work in excess of \$50,000.00 as stated in your letter. However, after careful consideration of all bids received TOBO felt



TOBO Construction, Inc.

that the bids were not competitive for the scope of work as specified by the contract documents. In an effort to provide the City with the most competitive pricing available TOBO spent a lot of time with its library shelving subcontractor, Yamada Enterprises, Inc., ("YE") to formulate a plan to jointly perform the Library Material Relocation.

As shown YE's bid (See Attachment "C") it has included the library shelving portion of the Library Material Relocation in its bid. The remaining items that are to be relocated were specifically excluded from YE's bid as it was decided that it would be more cost-effective for TOBO to self-perform this portion of the work.

As previously mentioned, the decision to self-perform a portion of this work while subcontracting the specialty portion (library shelving) was predicated upon providing the City with the most competitive pricing available while meeting all specified performance requirements.

TOBO's bid should be found to be responsive since TOBO listed YE on the Proposed Subcontractor Form to perform the Library Stack Shelving work. With regards to the Library Material Relocation portion of work that YE is performing; they were not specifically listed for this portion because that portion of YE's bid was only \$12,000, which falls below the listing requirement threshold of one half of 1 percent.

[See attached Yamada Enterprises bid, dated August 7, 2013 (Attachment "C")]

In closing, we respectfully request that the City reconsider its stance on disqualifying TOBO's bid with the clarifications provided above. TOBO will plan to attend the City Council meeting on October 1, 2013 to protest the City Staff's recommendation to disqualify TOBO's bid unless it is deemed unnecessary to do so prior to the meeting.

We look forward to your response and thank you in advance for your consideration. Please feel free to contact me if you have any questions regarding this matter.

Sincerely,

Mike Cha,
Project Manager
Tobo Construction, Inc
mcha@toboco.net
213-382-0213 x 111

Attachments: (Attachment "A" – Proposed Subcontractor Form submitted with TOBO bid)
(Attachment "B" – Omitted information submitted on August 8, 2013)
(Attachment "C" – Yamada Enterprises Bid Form, Dated August 7, 2013)

cc: Jimi Chae, Tobo
Misa Tang, Tobo
Emily A. Kromke, Feldman & Associates
Eduardo Olivo, City of Commerce

PROPOSED SUBCONTRACTORS FORM

In compliance with the provisions of Section 4100 through 4114, inclusive, of the Public Contract Code, and any amendments thereto, each bidder shall set forth in its bid, the name and location of the place of business of each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the Contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one half of 1 percent of the Contractor's total bid; and the portion of the work which will be done by each subcontractor under this act. The Contractor shall list only one subcontractor for each portion as is defined by the Contractor.

Name, address, and phone number of subcontractors, suppliers, and vendors	Name portion of work, materials, and/or equipment	Dollar Value of Sub-Contract	% of Total Bid Amount
Mobile Modular 11450 Mission Blvd. Mira Loma, CA 91752 951-2800-6600	Temporary Modular Buildings.	\$	%
Pake Cabinets 13150 Satory St. N. Hollywood, CA 91605 818-759-7979	Casework.	\$	%
Pacific Single Ply P.O. Box 217 La Habra, CA 90633 562-691-3999	Roofing	\$	%
Precision Doors 14720 Central Ave Chino, CA 91710 909-548-2700	Doors + Hardware	\$	%
Rainbow Glazing 17224 S. Figueroa St. Gardena, CA 90248 310-324-5881	Aluminum SF + Glazing	\$	%
Dalgocho Tiles 13422 Palamos Pl. Chino Hills, CA 91709 626-922-1428	Ceramic Tile	\$	%
Statewide Flooring 6736 Eton Ave. Covina Park, CA 91303 818-340-1222	Flooring	\$	%
Partition Specialties 12342 McClann Dr. Santa Fe Springs, CA 90670 562-407-1359	Operable Partitions.	\$	%

To be included within 24 hours after bid opening

ATTACHMENT "A"
PAGE 2 OF 2

Asbestos - Instant Response 3517 W. Washington Blvd. Los Angeles, CA 90015 222-733-0508	Abatement	\$	%
Mega Air 1320 W. El Segundo Blvd Irvine, CA 92614 310-516-6233	HVAC	\$	%
Blue Line 1300 W. Olympic Blvd. Los Angeles, CA 90015 213-487-6411	Plumbing	\$	%
Truck Fire 6824 Louise Ave Lake Balboa, CA 91406 818-881-2480	Fire Sprinkler	\$	%
JNT Electric 1328 N. Columbus Ave #2 Glendale, CA 91202 213-272-2330	Electrical	\$	%
GS Fire 12896 Portola St. Van Nuys, CA 91412 213-241-3683	Fire Alarm + Low Voltage	\$	%
Pine Acoustics 31129 Van Tolmas Ste 722 West Lake Village, CA 91362 818-707-3508	Acoustical Tiles	\$	%
Yamada Enterprises 1855 S. Burbelane Huntington Beach, CA 92647 714-843-1882	Library stack shelving	\$	%
		\$	%
		\$	%
		\$	%
		\$	%
Total		\$	%

To Be Provided
within 24 hours after bid opening

Note: The prime contractor is required to perform, with its own organization, contract work amounting to at least twenty percent (20%) of the Contract Price.

TOBO Construction, Inc.

Post Bid Documentation

2013 AUG -8 AM 9:46

DATE: August 8, 2013

TO: City of Commerce
2535 Commerce Way
City of Commerce, CA 90040


FROM: Tobo Construction, Inc.
Misa Tang
T: 213-382-0213
F: 877-411-8626
E: mtang@toboco.net

SUBJECT: Central Library Renovation Project #1301

Please find enclosed documentation for above-stated project regarding Designation of Subcontractors Listing

Please contact the undersigned for further information. We look forward to working with the City of Commerce.

Respectfully submitted,



Misa Tang
Project Administrator
213-382-0213 x 102
Mtang@toboco.net

Sub List

LISTED SUB	SCOPE	AMOUNT	% of BID
Mobile Modular	Temporary Modular Buildings	\$ 80,000.00	2.45%
Pak's Cabinets	Casework	\$ 45,000.00	1.38%
Pacific Single Ply	Roofing	\$ 290,000.00	8.90%
Precision Doors	Doors	\$ 20,000.00	0.61%
Rainbow Glazing	Aluminum SF & Glazing	\$ 100,000.00	3.07%
Delgado	Ceramic Tile	\$ 15,000.00	0.46%
Statewide	Flooring	\$ 70,000.00	2.15%
Partition Specialties	Operable Partition	\$ 12,735.00	0.39%
AIR	Abatement	\$ 35,000.00	1.07%
Mega Air	HVAC	\$ 180,000.00	5.52%
Blueline	Plumbing	\$ 65,000.00	1.99%
Trade Fire	Fire Sprinkler	\$ 37,500.00	1.15%
JNJ Electric	Electrical	\$ 350,000.00	10.74%
GS Fire	Fire Alarm & Low Voltage	\$ 225,000.00	6.90%
Prime Acoustics	Acoustical Ceilings	\$ 45,000.00	1.38%
Yamada Enterprises	Library Stack Shelving	\$ 90,000.00	2.76%
TOTALS:		\$ 1,660,235.00	50.93%

ATTACHMENT "B"
PAGE 2 OF 2

FAX BID FORM

Date: 08-07-13 Project: Commerce Central Library No. of Pages: 1

<p>Yamada Enterprises 16552 Burke Lane Huntington Beach, CA 92647 (800) 444-4594 (714) 843-9202 FAX Contact: Caesar Lara caesar@yamadaenterprises.com</p>	<p>License No.: (CA) 582159 Exp. Date: (CA) 3-31-14 Bondable: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Rate: 1½% DBE / WBE: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Addendum: 1, 2, 3, 4</p>	<p>Plans: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Specifications: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Substitution: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Installed: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Tax Included: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Union: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>
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Item	Description	Bid Amount
1.	Section 12500 – Library Material Relocation:	\$12,000.00
2.	Section 12568 – Library Stack Shelving:	\$76,000.00

Clarifications:

Section 12500 – Bidding relocation of existing shelving needed for the temporary building. Relocation of remaining existing shelving and all other materials / items are not included in this bid. Disposal of existing material is not included. Anchoring of shelving is not included.

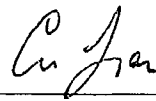
Section 12568 – Bidding Estey 2" Cantilever Shelving as specified. No other Library Shelving has been pre-approved. Quantity of shelving is conflicted per plan and specs. Bidding per the floor plan A2.1.1.

Yamada carries \$2 million general aggregate + \$4 million excess umbrella liability + \$1 million auto coverage.

Exclusions:

Cost of bonds and permits.

****Pricing is only valid if subcontract is received within 90 days from the bid date. This is required to secure long term factory pricing.****

By: _____

 Caesar Lara, Representative



AGENDA REPORT

Meeting date: 10/01/13

TO: Honorable City Council
FROM: City Administrator
SUBJECT: LAND FOR SALE-CAMP COMMERCE

RECOMMENDATION:

Receive a report on and thereafter consider and take appropriate action as deemed necessary with respect to the land adjacent to Camp Commerce that is for sale.

MOTION:

Council discretion.

BACKGROUND:

This item was agendized at the request of Councilmember Altamirano, who noted on a recent visit to Camp Commerce that land adjacent to Camp Commerce is for sale. Councilmember Altamirano directed staff to research the sale of the land to determine if there is an opportunity for the City to purchase a portion of the land that can be used to offer additional Camp activities and to address issues with the current property line.

ANALYSIS:

Approximately 31 acres of land adjacent to Camp Commerce is for sale. Camp Commerce is a 2.2 acre camp and the purchase of 1-2 additional acres could be used for various activities, including an archery range and snow activities. Council may also want to consider purchasing a portion of the land to address concerns regarding the property line with the adjacent landowner. The City currently has an easement with the adjacent property owner, providing access to the road behind the swimming pool and a portion of the pool deck, since this land technically does not belong to the City. The assessed value of all 31 acres is \$921,747.

Although the seller has told the Department that it is not interested in selling a portion of the land, Council may wish to further explore if the landowner would be willing to sell 1-2 acres to the City. If Council is interested in pursuing this option, staff recommends that Council allocate \$10,000 to pay an agent to research land titles, deeds, County records, and to make contact with the seller to negotiate on behalf of the City.

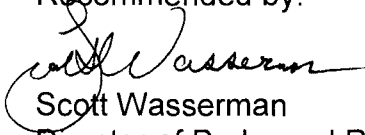
FISCAL IMPACT:

If the City Council is desirous of moving forward on the aforementioned item, an appropriation of \$10,000 will need to be made from the General Fund Unappropriated Fund Balance (10-29900) to General Services - Project Consultant (10-8804-54043) to facilitate the services of a consultant.

RELATIONSHIP TO STRATEGIC GOALS:

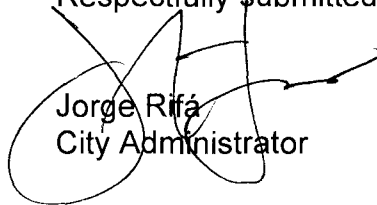
This agenda item relates to Council's Strategic Goal #3 – improving and maintaining infrastructure and beautifying the community. A portion of the land upon which Camp Commerce is operated technically belongs to the adjacent land owner. The City currently maintains easements with the adjacent landowner that allows it to operate Camp Commerce on this land. It would be wise for the City to explore the feasibility of purchasing a portion of the land that is for sale to eliminate the need to maintain these easements on an ongoing basis.

Recommended by:



Scott Wasserman
Director of Parks and Recreation

Respectfully submitted,



Jorge Rifa
City Administrator

Fiscal Impact reviewed by:



Vilko Domic
Director of Finance

Approved as to Form:



Eduardo Olivo
City Attorney



AGENDA REPORT

Meeting date: 10/01/13

TO: Honorable City Council
FROM: City Administrator
SUBJECT: CAMP COMMERCE IMPROVEMENT PROJECTS

RECOMMENDATION:

Receive a report on and thereafter consider and take appropriate action as deemed necessary with respect to the proposed improvement projects at Camp Commerce.

MOTION:

Council discretion.

BACKGROUND:

This item was agendized at the request of Councilmember Altamirano, who asked staff to provide a report on several suggested improvement projects at Camp Commerce.

On August 15, 2013, Mayor Aguilar and Councilmember Altamirano accompanied Parks and Recreation Director Wasserman to Camp Commerce, to identify various improvement projects. This agenda report provides options to Council for various projects, some of which will require supplemental budget appropriations.

ANALYSIS:

The list of suggested projects includes:

1. \$8,000 Wi Fi- The existing Wi Fi system at Camp Commerce is unreliable and does not provide adequate coverage to all parts of camp. Upgrading the City's Wi Fi system may help the City attract more private rentals for Camp Commerce, from the business community.
2. \$8,200 - Replace Carpet – Staff has identified several areas in cabins and the lodge where the carpet is worn and needs to be replaced. The carpet in these areas was not replaced in 2009.
3. \$10,500 – Replace 70 Mattresses - Approximately 60 mattresses were replaced in 2009. Staff is now requesting \$10,500 to replace an additional 70 mattresses that were not previously replaced or are in poor condition, due to vandalism.
4. \$6,000 - Canoes and Small Trailer: Staff is recommending the purchase of 6 canoes and a small trailer to enable camp staff to offer additional recreational activities at Lake Arrowhead, during the summer. The trailer can be towed to the lake using the existing camp vehicles. During the winter months, the trailer will be covered and stored in a garage to protect the equipment from the elements.
5. Repair Totem Pole –The totem pole is deteriorating, due to wood rot and insect infestation (carpenter ants) and needs to be removed from the ground, treated, and properly mounted, to prevent it from further deteriorating. Staff is currently addressing this with existing funds and no additional budget allocation is required.

6. \$9,000 for an additional Lifeguard- It will cost an additional \$9,000 to provide a second Lifeguard at Camp Commerce, for all summer sessions (June-September). This is not a recommended expenditure.

Having two Lifeguards assigned to each camp session will enable staff to offer simultaneous water activities in the Camp pool and at Lake Arrowhead. Due to the uncertainty that every group will request simultaneous activities in the pool and lake, staff does not recommend providing a second Lifeguard for all summer camp sessions. Not all groups are interested in swimming in the lake and the scheduling of two Lifeguards for each session will result in overstaffing for limited Lifeguard duties.

In addition, all camp activities are structured to appeal to the greatest number of campers and are offered within the confines of available staff and vehicles that are required to support each activity. If water activities are offered simultaneously at the pool and lake, another scheduled activity may need to be eliminated to ensure that adequate staffing, vehicles, and resources can be committed to activities at the lake. Currently, staff accommodates patrons' preferences for activities in the pool or lake, as determined by each unique group.

It was requested that staff explore the possibility of utilizing Lifeguards that have a dual classification of Camp Counselor, to ensure that the employee could supervise camp activities when he/she is not working as a Lifeguard. Currently, there are no staff members who have these dual classifications. Additionally, the Department has determined that it would not be feasible to allow one employee to work a camp session with two job classifications, simultaneously.

7. \$100,000 + Extend the roof of the dining hall to the edge of the walkway to enlarge the dining hall and maximize the use of space. This project is achievable but not recommended by the Parks and Recreation Department. Attendance at Camp Commerce is currently limited to 47, which is the number of patrons that can be safely evacuated in an emergency, using camp vehicles. The dining hall currently has a maximum capacity of 60. Due to the expense of completing this project and the fact that there is currently not an operational necessity to expand the capacity of the dining hall, staff believes that these funds can be re-directed to other Camp improvement projects that will have a more direct impact on camp operations.

In order to attain the desired extension of the dining hall, the roof line and pitch would need to be evaluated and designed by a registered architect to comply with existing building codes and standards for mountain/snow conditions. The City would need to hire an architect to provide a scope of work that would include a detailed cost estimate. It is likely that this total cost of the architectural services and construction will exceed \$100,000.

8. Use of EPI Pens- It has been suggested that Camp Commerce maintain a stock of EPI pens, so that staff can make them available to patrons, in the event a patron requires immediate relief from a severe food allergy or bee sting. At the recommendation of CJPIA, the Department discontinued the provision of EPI pens at Camp Commerce in 2009, due to the significant liability inherent in their use. Campers are required to bring their own medication to camp, which includes EPI pens.

EPI pens contain an epinephrine (or adrenaline), which is used to treat symptoms of anaphylaxis, or a severe allergic reaction brought on by exposure to food, drugs, or insect bites and stings. The drug acts by causing blood vessels to narrow, relaxing and opening airways, and redirecting blood flow to vital organs, such as the heart and brain. Medical professionals caution that EPI pens should only be used by individuals for whom they are prescribed. The medication in the EPI pen affects critical organs and staff could be providing this medication to patrons for whom it is not prescribed. Therefore, staff strongly urges abiding by the recommendation of CJPIA to refrain from making EPI pens available to patrons.

As an alternative, staff will take appropriate measures to advise patrons on the registration form of the need to bring their own EPI pens that have been prescribed by their doctors.

9. Snow Drop – Funding for this project has already been allocated by Council as part of the Camp Waterline Replacement project, that was approved as part of the 2012/2013 CIP plan. Parks and Recreation received an engineer's assessment of the snow drop, that provides two options to strengthen the existing concrete pad and footings that support the snow drop. Staff has asked the engineer to develop a third option that includes the total removal and reconstruction of the existing pad and footings. This information is still pending from the architect and staff will consider the appropriate options and proceed with the needed repairs, once all information is received.

FISCAL IMPACT:

Staff recommends moving forward with a one-time budget appropriation of \$32,700 to pay for the following projects and expenditures:

- \$8,000 Wi Fi Upgrade
- \$8,200 Carpet Replacement
- \$10,500 Mattress Replacement
- \$6,000 to purchase canoes

Staff does not recommend proceeding with the following projects at this time, until additional analysis can be completed, at Council's direction:

- \$9,000 for an Additional Lifeguard
- \$100,000 to extend the cafeteria roof
- Use of EPI pens

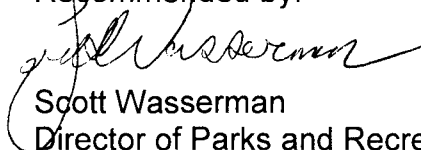
If the City Council is desirous of moving forward on any or all of the items mentioned above, an appropriation of \$141,700 (on items that have a projected cost at this time) will need to be made.

Finance will be returning at an upcoming Council meeting with a report discussing the FYE 2012-13 unappropriated final balance in more detail, at which time the Council can act appropriately on the aforementioned items, along with other departmental requests.

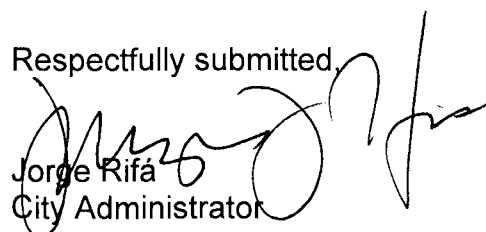
RELATIONSHIP TO STRATEGIC GOALS:

This agenda item relates to Council's Strategic Goal #3 – improving and maintaining infrastructure and beautifying the community. Camp Commerce is a City facility that is visited by hundreds of residents per year. The heavy use of the facility combined with extreme weather conditions necessitate frequent assessment and replacement of equipment and facility repairs.

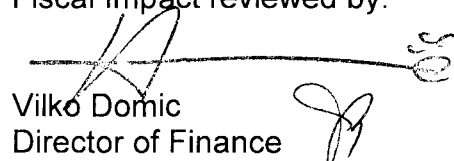
Recommended by:


Scott Wasserman
Director of Parks and Recreation

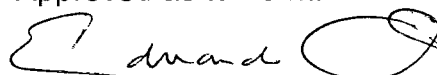
Respectfully submitted,


Jorge Rifa
City Administrator

Fiscal Impact reviewed by:


Vilko Domic
Director of Finance

Approved as to Form:


Eduardo Olivo
City Attorney



AGENDA REPORT

Meeting Date: October 1, 2013

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING A RETAINER AGREEMENT WITH SUSAN M. WOOLLEY

RECOMMENDATION:

Approve the Resolution approving a Retainer Agreement with Susan M. Woolley.

MOTION:

Move to approve recommendation.

BACKGROUND/ANALYSIS:

At the July 16, 2013, City Council meeting, Mayor Pro Tempore Lilia Leon requested that the City look into allegations contained in an anonymous letter dated June 16, 2013, that was read into the record during public comment. On September 3, 2013, the City Council directed staff to proceed with locating an investigator to investigate the contents of the complaint.

Human Resources, the City Attorney and the City Administrator have identified an attorney/investigator, Susan M. Woolley, who specializes in personnel investigations. Ms. Woolley is qualified to handle this investigation. She has investigated allegations of wrongdoing for public organizations and has reviewed hundreds of investigations as a joint consultant for the U.S. Department of Justice. [A copy of Susan M. Woolley's resume is attached hereto.] Ms. Woolley's rate is \$250 per hour. Staff recommends that the Retainer Agreement for Ms. Woolley's services be approved, so that she can proceed with the investigation.

FISCAL IMPACT:

The services are being provided at the rate of \$250 per hour. The exact amount that will be incurred is not known at this time.

Reviewed by,

Mike Casalou
Director of Human Resources

Respectfully submitted,

Jorge Rifa
City Administrator

Reviewed by,

Vilko Domic
Finance Director

Approved As To Form,

Eduardo Olivo
City Attorney

My Documents: Staff Report Resolution Approving Agreement with Susan M. Woolley, Inverstigator

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE,
CALIFORNIA, APPROVING A RETAINER AGREEMENT WITH SUSAN M. WOOLLEY

WHEREAS, at the July 16, 2013, City Council meeting, Mayor Pro Tempore Lilia Leon requested that the City look into allegations contained in an anonymous letter dated June 16, 2013, that was read into the record during public comment; and

WHEREAS, on September 3, 2013, the City Council directed staff to proceed with locating an investigator to investigate the contents of the complaint; and

WHEREAS, City Staff have identified, Susan M. Woolley, a well-qualified attorney/ investigator who specializes in personnel investigations; and

WHEREAS, City Staff recommends that the retainer agreement for Ms. Woolley's services be approved, so that she can proceed with the investigation.

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

Section 1. The Retainer Agreement between the City of Commerce and Susan M. Woolley is hereby approved. The Mayor is hereby authorized to execute the Agreement for and on behalf of the City of Commerce.

PASSED, APPROVED and ADOPTED this _____ day of _____, 2013.

Joe Aguilar,
Mayor

ATTEST:

Teresa Jackson, CMC
Interim City Clerk



AGENDA REPORT

Meeting Date: October 1, 2013

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, ADDING CHAPTER 2.11 (REQUIREMENTS FOR CIRCULATION OF RECALL PETITION), TO TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE COMMERCE MUNICIPAL CODE

RECOMMENDATION:

Approve the Urgency Ordinance and assign the number next in order

MOTION:

Move to read the Ordinance by title only.

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

BACKGROUND:

The City of Commerce has had several recall elections and recall attempts over the course of the last ten years. The City is also currently processing a recall petition that targets two Councilmembers.

The City has received various complaints during such recall proceedings about alleged fraud involving the circulation of the recall petitions and the gathering of signatures. One such complaint is that the recall proponents have started gathering signatures on a petition form before the petition form is finally approved by the City Clerk's Office pursuant to Elections Code Section 11042.

At the City Council meeting on August 20, 2013, Councilmember Tina Baca Del Rio requested that the City Administrator and the City Attorney look into how election fraud during the recall process can be prevented in the City of Commerce. Ms. Baca Del Rio has advised that she has witnessed such signature gathering in past recall elections and, on August 28, 2013, witnessed such conduct in connection with the current recall process; the August 28th incident was reported to the East Los Angeles County Sheriff. Mayor Pro Tem Leon and Councilmember Altamirano have also advised that they have witnessed such signature gathering efforts in the last few months and/or have been advised by various members of the community that efforts have been made to collect signatures on recall petition.

Elections Code Section 11042 (d) provides that:

(a) Within 10 days after filing of the answer to the notice of intention, or, if no answer is filed, within 10 days after the expiration of the seven-day period specified in Section 11023, the proponents shall file two blank copies of the petition with the elections official in his or her office during normal office hours as posted or, in the case of a recall of a state officer, with the Secretary of State, in his or her office during normal office hours as posted, who shall ascertain if the proposed form and wording of the petition meets the requirements of this chapter.

(b) At the time of the filing of the two blank copies of the petition, the proponents shall also file proof of publication of the notice of intention, if the notice of intention was published, or an affidavit of posting of the notice of intention, if the notice of intention was posted. The elections official or, in the case of a recall of a state officer, the Secretary of State, shall, within 10 days of receiving the blank copies of the petition, notify the proponents in writing of his or her finding.

(c) If the elections official finds that the requirements of this chapter are not met, the elections official shall include in his or her findings a statement as to what alterations in the petition are necessary. The proponents shall, within 10 days after receiving the notification, file two blank copies of the corrected petition with the elections official in his or her office during normal office hours as posted. The 10-day correction notification period and the 10-day filing period for corrected petitions shall be repeated until the elections official or the Secretary of State finds no alterations are required.

(d) No signature may be affixed to a recall petition until the elections official or, in the case of the recall of a state officer, the Secretary of State, has notified the proponents that the form and wording of the proposed petition meet the requirements of this chapter. (Emphasis added)

The recall petition format prepared by the Secretary of State is mandatory and must be used. [Elections Code Section 10043.5.] A copy of the required form is attached hereto as Attachment A. The allegation is that recall proponents have started the process of gathering original signatures on a petition form that has not been approved pursuant to Section 11042(d). The petition form that is allegedly being prematurely circulated only contains the bottom portion of the petition form, which includes the signature lines for the registered voters and the declaration by the circulator. The top of the form, where the statement of the reasons for the recall and the answer of the officer sought to be recalled are required to be included, is left blank. [See, e.g., Attachment B.] The incomplete form is then circulated and signatures gathered. This process can theoretically be started at any time (days, weeks, months) before the Elections Official has approved the proposed petition and notified the recall proponents, pursuant to Section 11042(d), that the wording on the proposed petition meets the requirements of the Elections Code. When the Elections Official finally approves the proposed petition, the allegation is that the proponents can then have the top portion of the approved petition form printed onto the unapproved petitions (that have the top part blank) that have already been signed. When this “photo-shopping” type of process is completed, the unapproved and signed petitions will have the exact same language that was eventually approved by the Elections Official and will contain original signatures. Thus, it appears that the approved petitions were circulate and signed.

If such activity is occurring, the recall proponents obtain an illegal advantage of having collected as many signatures as they can before the recall process has ever been properly started. Elections Code Section 11220 establishes the time, after the Elections Official provides the proponents with notice that the petition is approved, within which the required signatures must be obtained. If the proponents are able to obtain signatures before the time when such notice is provided, they will gain an illegal advantage in violation of Section 11220.

Elections Code Section 18600. Every person is guilty of a misdemeanor who:

(a) Circulating, as principal or agent, or having charge or control of the circulation of, or obtaining signatures to, any state or local initiative, referendum or recall petition, intentionally misrepresents or intentionally makes any false statement concerning the contents, purport or effect of the petition to any person who signs, or who desires to sign, or who is requested to sign, or who makes inquiries with reference to it, or to whom it is presented for his or her signature.

(b) Willfully and knowingly circulates, publishes, or exhibits any false statement or misrepresentation concerning the contents, purport or effect of any state or

local initiative, referendum, or recall petition for the purpose of obtaining any signature to, or persuading or influencing any person to sign, that petition.

(c) Circulating, as principal or agent, or having charge or control of the circulation of, or obtaining signatures to, any state or local initiative, intentionally makes any false statement in response to any inquiry by any voter as to whether he or she is a paid signature gatherer or a volunteer.

To the extent that signatures are obtained without the required statement of the reasons for the recall and the answer of the officer sought to be recalled, the voters are subject to being misled and deceived. Such conduct would violate Elections Code Section 18600 and various other provisions of the law. Such conduct would be harmful to the residents and voters of the City of Commerce.

ANALYSIS:

The City Attorney has considered a possible solution to the alleged election fraud that will be consistent with the requirements of the state Elections Code. The City Attorney has contacted printers who have advised that they can, provide special paper, insert a hologram or other security device on a form so that the City may assure that the alleged illegal activity is not occurring. The proposed ordinance will require that recall proponents only circulate copies of the approved petitions that have been provided by the City. The City would have a printer print an adequate number of approved petition copies that will each contain the hologram or other security device and provide as many as are necessary to the recall proponents in order for them to obtain the required number of signatures. In order to assure compliance with Elections Code Section 11042(d), the recall proponents shall be required to use the approved petition copies, which contain the required security marking that is provided by the City. The City will be required to reject any signatures that are provided on non-City provided petition copies. The recall proponents will still be required to comply with all of the requirements of the State Elections Code.

The insertion of the security devices on the petition copies will obviously cost more than regular copies. The power of the voters to remove elective officers is fundamental. [See Cal. Const., Art. II, Sections 13-19 and Elections Code Sections 11000 *et. seq.*] In order to avoid an undue burden on the recall proponents, the City would have to pay for the cost of such security marked petition copies and provide the recall proponents with an adequate number of copies.

The general rule is that if otherwise valid local legislation conflicts with state law, it is preempted by such law and is void. A conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication. Local legislation duplicates general law when it is coextensive therewith, contradicts general law when it is inimical thereto, and enters an area that is fully occupied by general law when the Legislature has expressly manifested its intent to occupy the area, or has impliedly done so in light of one of several indicia of intent. Those indicia are: (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality. People ex rel Deukmejian v. County of Mendocino (1984) 36 Cal. 3d 476; Sherwin-Williams v. City of Los Angeles (1993) 4 Cal. 4th 893.

The proposed ordinance regarding local enforcement of Elections Code § 11042 reveals no express preemption language contained in Elections Code Sections 11042 and 18600. Moreover, the language of these Elections Code Sections does not indicate implied preemption as to the subject of the proposed ordinance.

Pursuant to Government Code Section 36937, an ordinance takes effect immediately if it is an ordinance: (a) relating to an election; or (b) for the immediate preservation of the public peace, health or safety, containing a declaration of the facts constituting the urgency, and is passed by a four-fifths vote of the city council. Under Section 36937(a), any ordinance related to the recall effort would take effect immediately upon passage. However, under Government Code Section 36934, only an urgency ordinance may be passed immediately upon introduction at either a regular or special meeting.

On September 16, 2013, the Elections Official advised the recall proponents for Councilmembers Tina Baca Del Rio and Ivan Altamirano of corrections required on their proposed petition forms. The recall proponents had until September 26, 2013, to turn in their corrected petition forms. Pursuant to Elections Code Section 11042, the Elections Official will then have ten days, until October 6, 2013, to review the petition and notify the recall proponents of any additional corrections or that the petition form has been approved and is ready for circulation. In order to address the alleged fraud issues and have the proposed ordinance be effective in time to require the circulation of the security marked or stamped petition copies for the current recall process, the City Council will have to determine in the ordinance that the passage of the ordinance is required for the immediate preservation of the public peace, health or safety and is therefore an urgency ordinance.

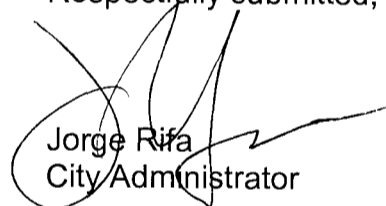
FISCAL IMPACT:

The cost of printing the petition forms is not known yet. A more precise estimate will be provided at the time of the City Council's consideration of this matter.

Approved As To Form,


Eduardo Olivo
City Attorney

Respectfully submitted,


Jorge Rifa
City Administrator

PETITION FOR RECALL

TO THE HONORABLE (See note¹)

Pursuant to the California Constitution and California election laws, we the undersigned registered and qualified electors of the (See note²) of (See note³)

(See note⁴), holding the office of (See note⁵), in (See note⁶), California.

We demand an election of a successor to that office. (See note⁶)

The following Notice of Intention to Circulate Recall Petition was served on (Date) to (See note⁴)

(Insert complete text of Notice of Intention here)

The answer of the officer sought to be recalled is as follows:

(Insert Officer's Statement here—200 words or less)
(If no statement, insert "No Answer was Filed")

Each of the undersigned states for himself/herself that he or she is a registered and qualified elector of the (See note²) of (See note³), California.

Column must be at least 1" wide

	PRINT YOUR NAME 1.	RESIDENCE ADDRESS ONLY CITY	ZIP	
	YOUR SIGNATURE AS REGISTERED TO VOTE			
	PRINT YOUR NAME 2.	RESIDENCE ADDRESS ONLY CITY	ZIP	
	YOUR SIGNATURE AS REGISTERED TO VOTE			
	PRINT YOUR NAME 3.	RESIDENCE ADDRESS ONLY CITY	ZIP	
	YOUR SIGNATURE AS REGISTERED TO VOTE			

DECLARATION OF PERSON CIRCULATING SECTION OF RECALL PETITION
(MUST BE IN CIRCULATOR'S OWN HANDWRITING)

I, (See Note⁷) declare:

1. My residence address is (Street Address) (City), in (County), California, and I am a registered voter in (See note²);
2. I personally circulated the attached petition for signing;
3. I witnessed each of the appended signatures being written on the petition and to my best information and belief, each signature is the genuine signature of the person whose name it purports to be; and
4. The appended signatures were obtained between the dates of (Starting Date) and (Ending Date), inclusive.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on (Date) at (City or Community Where Signed), California.⁸

SIGNED _____

¹ Insert here - Secretary of State of California if for a state officer, or name of the appropriate governing body if local. The authority which orders or "calls" elections for that office, or the governing authority for that jurisdiction should be named.
² Insert Electoral Jurisdiction here - County, City, District name, as appropriate.
³ Insert geographical location here - City, County, etc., as appropriate.
⁴ Insert here - name of person whose recall is being sought.
⁵ Insert here - name of office.
⁶ In case of Supreme Court or Appellate Court Justice, request shall be that the Governor appoint a successor.
⁷ Insert here - Full name of person who gathered signatures.
⁸ The petition must be set in at least 8point type. If signature spaces are printed on both sides of a sheet of paper, the above information, except for the declaration of circulator must appear on each side of the paper. The circulator's declaration must follow the last signature box. It is suggested that petitions be printed on 8 1/2" x 14" paper in order to maximize the number of signature spaces printed on a sheet of paper.

Each of the undersigned states for himself/herself that he or she is a registered and qualified elector of the City of Commerce of Los Angeles County, California.

OFFICIAL USE ONLY

	Print Your Name 1.	Residence Address Only		
	Your Signature as Registered to Vote	City	Zip	
	Print Your Name 2.	Residence Address Only		
	Your Signature as Registered to Vote	City	Zip	
	Print Your Name 3.	Residence Address Only		
	Your Signature as Registered to Vote	City	Zip	
	Print Your Name 4.	Residence Address Only		
	Your Signature as Registered to Vote	City	Zip	
	Print Your Name 5.	Residence Address Only		
	Your Signature as Registered to Vote	City	Zip	

DECLARATION OF PERSON CIRCULATING SECTION OF RECALL PETITION
(MUST BE IN CIRCULATOR'S OWN HANDWRITING)

I, _____ declare:
 My residence address is _____, in Los Angeles County, California,
 and I am a registered voter in the City of Commerce, California;
 I personally circulated the attached petition for signing;
 I witnessed each of the appended signatures being written on the petition and to my best information and belief, each signature is
 the genuine signature of the person whose name it purports to be; and
 The appended signatures were obtained between the dates of _____ and _____, inclusive.
 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____ at _____, California. SIGNED _____

ORDINANCE NO. _____

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, ADDING CHAPTER 2.11 (REQUIREMENTS FOR CIRCULATION OF RECALL PETITION), TO TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE COMMERCE MUNICIPAL CODE

WHEREAS, the City of Commerce has had several recall elections an attempted recalls over the course of the last ten years; and

WHEREAS, the City has received various complaints during such recall proceedings about alleged fraud involving the circulation of the recall petitions and the gathering of signatures. One such complaint is that the recall proponents have started gathering signatures on a petition form before the petition form is approved by the City Clerk's Office pursuant to Elections Code Section 11042; and

WHEREAS, Elections Code Section 11042 provides that:

(a) Within 10 days after filing of the answer to the notice of intention, or, if no answer is filed, within 10 days after the expiration of the seven-day period specified in Section 11023, the proponents shall file two blank copies of the petition with the elections official in his or her office during normal office hours as posted or, in the case of a recall of a state officer, with the Secretary of State, in his or her office during normal office hours as posted, who shall ascertain if the proposed form and wording of the petition meets the requirements of this chapter.

(b) At the time of the filing of the two blank copies of the petition, the proponents shall also file proof of publication of the notice of intention, if the notice of intention was published, or an affidavit of posting of the notice of intention, if the notice of intention was posted. The elections official or, in the case of a recall of a state officer, the Secretary of State, shall, within 10 days of receiving the blank copies of the petition, notify the proponents in writing of his or her finding.

(c) If the elections official finds that the requirements of this chapter are not met, the elections official shall include in his or her findings a statement as to what alterations in the petition are necessary. The proponents shall, within 10 days after receiving the notification, file two blank copies of the corrected petition with the elections official in his or her office during normal office hours as posted. The 10-day correction notification period and the 10-day filing period for corrected petitions shall be repeated until the elections official or the Secretary of State finds no alterations are required.

(d) No signature may be affixed to a recall petition until the elections official or, in the case of the recall of a state officer, the Secretary of State, has notified the proponents that the form and wording of the proposed petition meet the requirements of this chapter. (Emphasis added); and

WHEREAS, the recall petition format prepared by the Secretary of State is mandatory and must be used. [Elections Code Section 10043.5.]; and

WHEREAS, the City has received complaints that signature gathering has started in violation of Elections Official 11042(d). The allegation is that recall proponents have started the process of gathering original signatures on a petition form that only contains the bottom portion of the petition form, which includes the signature lines for the registered voters and the declaration by the circulator. The top of the form,

where the statement of the reasons for the recall and the answer of the officer sought to be recalled are required, is left blank. The incomplete form is then circulated and signatures gathered. This process can theoretically be started at any time (days, weeks, months) before the Elections Official has approved the proposed petition and notified them, pursuant to Section 11042(d), that the wording on the proposed petition meets the requirements of the Elections Code. When the Elections Official finally approves the proposed petition, the allegation is that the proponents can then have the top portion of the approved petition form printed onto the unapproved petitions (that have the top part blank) that have already been signed. When this "photo-shopping" type process is completed, the unapproved and signed petitions will have the exact same language that was eventually approved by the Elections Official and contain original signatures. Thus, it appears that the approved petitions were properly circulated and signed; and

WHEREAS, if such activity is occurring, the recall proponents obtain an illegal advantage of having collected as many signatures as they can before the recall process has ever been properly started. Elections Code Section 11220 establishes the time, after the Elections Official provides the proponents with notice that the petition is approved, within which the required signatures must be obtained. If the proponents are able to obtain signatures before the time when such notice is provided, they will gain an illegal advantage in violation of Election Code Section 11220.

WHEREAS, to the extent that signatures are obtained without the required statement of the reasons for the recall and the answer of the officer sought to be recalled, the voters are subject to being misled and deceived. Such conduct would violate Elections Code Sections 11042 (d), 10043.5, 18600 and various other provisions of the law. Such conduct would be harmful to the residents and voters of the City of Commerce; and

WHEREAS, the City desires to stop any potential fraud that may occur in connection with the gathering of signatures during the recall process. The City believes that it may do so, consistent with the requirements of Elections Code Section 11042(d), by requiring that recall proponents only circulate copies of the approved petitions that have been provided by the City. The City will have a printer print an adequate number of approved petition copies that will each contain a hologram or other security feature that will allow the City to determine that the petition sections were only circulated after the determinations have been made pursuant to Elections Code Section 11042 (d) and during the circulation time period allowed by Elections Code Section 11220. The recall proponents shall be required to use the approved petition copies, which contain the required security marking(s), provided by the City. The City will be required to reject any signatures that are provided on non-City provided, security marked petition copies; and

WHEREAS, pursuant to Government Code Section 36937, an ordinance takes effect immediately if it is an ordinance: (a) relating to an election; or (b) for the immediate preservation of the public peace, health or safety, containing a declaration of the facts constituting the urgency, and is passed by a four-fifths vote of the city council. Under Section 36937(a), any ordinance related to the recall effort would take effect immediately upon passage. However, under Government Code Section 36934 only an urgency ordinance may be passed immediately upon introduction at either a regular or special meeting; and

WHEREAS, the City is currently processing a recall petition. On September 16, 2013, the Elections Official advised the recall proponents of corrections required on their proposed petition forms. On September 26, 2013, the recall proponents returned the petition forms. Pursuant to Elections Code Section 11042, the Elections Official will then have ten days, until October 6, 2013, to review the proposed petition forms and

Ordinance No. _____

notify the recall proponents of any additional required corrections, or that the petition form has been approved and is ready for circulation; and

WHEREAS, in order to address the alleged fraud issues and have the proposed ordinance be effective in time to require the circulation of the security marked petition copies for the current recall process, the City Council will have to determine that the passage of the ordinance is required for the immediate preservation of the public peace, health or safety and is therefore an urgency ordinance.

THE CITY COUNCIL OF THE CITY OF COMMERCE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1.

That new Chapter 2.11 be, and the same is hereby, added to Title 2 of the Commerce Municipal Code, to read as follows:

CHAPTER 2.11

REQUIREMENTS FOR CIRCULATION OF RECALL PETITION ORDINANCE

Sections:

- 2.11.010 Intent and purpose.
- 2.11.020 Recall petition requirements.
- 2.11.030 Severability.

2.11.010. INTENT AND PURPOSE.

The requirements of this Chapter are intended to prevent election fraud to preserve the integrity of the recall process. The intent of this Chapter is to assure compliance with Elections Code Sections 11042 (d) and 11220. The City’s intent is that this Chapter be interpreted as consistent with the requirements of Elections Code Sections 11000, et. seq. and other applicable provisions of the Elections Code regarding the local recall process.

2.11.020. REQUIREMENT TO UTILIZE ELECTION OFFICIAL APPROVED RECALL PETITION FORM.

Any recall proponents desiring to circulate a recall petition pursuant to the provisions of Elections Code Sections 11000, et. seq., for the recall of an elected official for the City of Commerce, must obtain and use copies of the petitions that have been approved by the City’s Elections Official pursuant to Election Code Section 11042. Such City-provided copies shall contain a security marking, such as a hologram or other security marking and shall be used by the recall proponents to obtain the signatures required by Elections Code Sections 11000, et. seq. Such petition copies shall be provided by the City to the recall proponents, free of charge. An adequate number of copies shall be provided by the Elections Official so that the recall proponents may obtain the required number of signatures required by Elections Code Section 11221. The Elections Official shall not accept signatures that are not contained on the City-provided, security marked petition copies; such signatures shall be considered to be invalid and to have been obtained in violation of Elections Code Section 11042(d) and 11220.

2.11.030. SEVERABILITY.

If any section, subsection, paragraph, sentence, clause or phrase of this Chapter is declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council declares that it would have adopted this Chapter, and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any

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one or more sections, subsections, phrases, or portions be declared invalid or unconstitutional.

SECTION 2. Urgency Findings. The City Council finds and determines that that the fraud issues pertaining to the illegal circulation of recall petitions in the City of Commerce, pose an immediate threat to the public health, safety, or welfare. As described in the Recitals, the City Council is concerned that recall proponents will, or have already prematurely started the process of gathering original signatures on a petition form that has not been approved pursuant to Election Code Section 11042(d). Such activity would provide the recall proponents with an illegal advantage in violation of Election Code Sections 11042(d) and 11220, and would allow the City's voters to be unnecessarily misled about the basis of the recall petition and the fact that such petition is being circulated in compliance with the law. Having the Ordinance become effective immediately, so that it applies to the current recall process, will help preserve the public health, safety welfare. Thus, it is necessary that this Ordinance take effect immediately in order to prevent such harm.

SECTION 3. Savings Clause. Neither the adoption of this Ordinance nor the repeal of any other ordinance of this City shall in any manner affect the prosecution for violations of ordinances; which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license or penalty or the penal provisions applicable to any violation thereof. The provision of this Ordinance, insofar as they are substantially the same as ordinance provisions previously adopted by the City relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments.

SECTION 4. Effective Date. This Ordinance shall become effective immediately from and after its adoption.

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

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2013.

CITY OF COMMERCE

By: _____
Joe Aguilar, Mayor

ATTEST:

Teresa Jackson, CMC
Interim City Clerk



AGENDA REPORT

DATE: October 1, 2013

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA AMENDING SECTION 9.06.020 ("PROHIBITED CONDUCT GENERALLY") OF TITLE 9 ("PEACE, SAFETY AND MORALS") OF THE COMMERCE MUNICIPAL CODE -- FIRST READING

RECOMMENDATION:

Read the Ordinance by title only and approve for first reading.

MOTION:

Move to read the Ordinance by title only.
Move to approve the Ordinance for first reading.

ANALYSIS:

During the May 7, 2013 City Council Meeting, City staff requested that the City Council prohibit smoking in City parks. The Commerce Municipal Code has no specific language that prohibits smoking in City parks. The proposed Ordinance will amend the City code by adding the following:

CMC Section 9.06.020 – Prohibited Conduct Generally

Within the limits of any of the parks, it is unlawful for any person or persons to do any of the acts hereinafter specified:

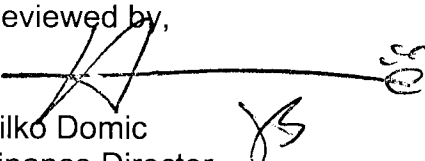
- (22) To smoke or possess any lit cigar, cigarette or pipe in the park, or in the parking lots for the park, unless the City has designated a specific smoking area.**

Any person failing to comply with this provision shall be guilty of an infraction pursuant to Commerce Municipal Code Section 9.06.062.

FISCAL IMPACT:

There will be no fiscal impact as a result of the adoption of this Ordinance.

Reviewed by,


Vilko Domic
Finance Director

Respectfully submitted,


Jorge Rifa
City Administrator

Approved as to form,


Eduardo Olivo
City Attorney

AGENDA ITEM No. 16

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA AMENDING SECTIONS 9.06.020 ("PROHIBITED CONDUCT GENERALLY") OF TITLE 9 ("PEACE, SAFETY AND MORALS") OF THE COMMERCE MUNICIPAL CODE

WHEREAS, smoking in the City of Commerce (the "City") parks affects public use of the facility; and

WHEREAS, the City is required to protect the public health and public safety in and around public areas; and

WHEREAS, the City finds that smoking is a potential risk to public health or public safety in and around the City parks and desires to prohibit smoking in these areas.

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

SECTION 1. Section 9.06.020 of the Commerce Municipal Code is hereby amended to read as follows:

Within the limits of any of the parks, it is unlawful for any person or person to do any of the acts hereinafter specified:

- (1) To hitch, fasten, lead, drive or let loose any animal or fowl of any kind, provided that this shall not apply to dogs when led by a cord or chain, not more than six feet long;
- (2) To ride or drive horses or other animals. The provisions of Chapter 9.50 regulate the operation of bicycles, skateboards, rollerblades, roller skates and coaster devices in or on city property and city facilities.
- (3) To carry or discharge any firearms, firecrackers, rockets, torpedoes or any other fireworks, or airgun or slingshot.
- (4) To cut, break, injure, deface or disturb any tree, shrub, plant, rock, building, cage, pen, monument, fence, bench or other structure, apparatus or property; or to pluck, pull up, cut, take or remove any shrub, plant, brush or flower; or to mark or write upon, paint or deface in any manner, any building, monument, fence, bench or other structure;
- (5) To cut or remove any wood, turf, grass, soil, rock, sand, gravel, or fertilizer;
- (6) To swim, fish in, to bathe, wade in, or pollute the water of any fountain, pond, lake or stream;
- (7) To make or kindle a fire except in picnic stoves, braziers or fire pits provided for that purpose;
- (8) To camp or lodge therein;
- (9) To cook, prepare serve or eat any lunch, barbecue or picnic except at the places provided therefore;
- (10) To wash dishes or to empty salt water or other waste liquids elsewhere than in the sinks provided for such purposes;
- (11) To leave garbage, cans, bottles, papers or other refuse elsewhere than in receptacles provided therefore;
- (12) To play, or engage in any game, excepting at such place as shall be especially set apart for that purpose; to play or engage in the games or activities known as tackle football or soccer, except as part of scheduled park activities;
- (13) To play or bet at or against any game which is played, conducted, dealt or carried on with cards, dice or other device, for money, chips, shells, credit or any other representative of value, or to maintain or exhibit any gambling table or other instrument of gambling or gaming;
- (14) To indulge in riotous, boisterous, threatening, or indecent conduct, or abusive, threatening profane or indecent language;

- (15) To disturb in any manner any picnic, meeting, service, concert, exercise or exhibition;
- (16) To post, place or erect on any public property any bills, notices, paper or advertising devices or matter of any kind;
- (17) To sell or offer for sale any merchandise, article or thing, whatsoever;
- (18) To practice, carry on, conduct or solicit for any trade, occupation, business or profession;
- (19) To remain, stay or loiter in any public park between the hours of ten p.m. and five a.m. of the following day;
- (20) To fail to obey the directions of the director or other park attendants to cease and desist from any activities prohibited by this chapter; to fail to obey the directions of the director or other park attendants to cease and desist from any activities which they deemed to involve an unreasonable risk of injury to self or to other park patrons; to fail to obey the directions of the director or other park attendants to cease and desist from any activities which they determine to be inappropriate for a public park;
- (21) To fail to leave the park premises when directed to so by the director or other park attendants because of violation of any of the provisions of this chapter, or to return to the park on the same calendar day after having complied with a direction to leave the park.
- (22) To smoke or possess any lit cigar, cigarette, or pipe in the park, unless the City has designated a specific smoking area.**

SECTION 2. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this Chapter is declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council declares that it would have adopted this Chapter, and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases, or portions be declared invalid or unconstitutional.

SECTION 3. Effective Date. This ordinance shall become effective thirty (30) calendar 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 _____, 2013.

CITY OF COMMERCE

By: _____
Joe Aguilar, Mayor

ATTEST:

Teresa Jackson, CMC
Interim City Clerk