

**ALL ITEMS FOR CONSIDERATION BY THE CITY COUNCIL/COMMISSION
ARE AVAILABLE FOR PUBLIC VIEWING IN THE OFFICE OF THE CITY
CLERK AND THE CENTRAL LIBRARY**

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

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

TUESDAY, OCTOBER 4, 2011 – 6:30 P.M.

CALL TO ORDER

Mayor/Chairperson Aguilar

PLEDGE OF ALLEGIANCE

Vilko Domic
Director of Finance

INVOCATION

Councilmember/Commission Fierro

ROLL CALL

City Clerk Olivieri

APPEARANCES AND PRESENTATIONS

1. Commendation – Honoring Landon Cadenas

The **City Council** will present a Commendation to City employee and Commerce resident Landon Cadenas in recognition of his act of heroism in saving two individuals from a burning vehicle on August 8, 2011.

2. Commendation – Honoring Jennie Jacobsen-Huse

The **City Council** will present a Commendation to city employee Jennie Jacobsen-Huse in recognition of her induction into the USA Water Polo Hall of Fame Class of 2011.

PUBLIC COMMENT

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

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

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

CITY COUNCIL/COMMISSION REPORTS

CONSENT CALENDAR

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

3. Approval of Minutes

The **City Council and Commission** will consider for approval, respectively, the minutes of the Concurrent Special Meetings of Monday, September 19, 2011, held at 2:00 p.m.; Concurrent Adjourned Regular Meetings of Monday, September 19, 2011, held at 5:30 p.m.; Concurrent Regular Meetings of Tuesday, September 20, 2011, held at 6:30 p.m. and Concurrent Adjourned Special Meetings of Tuesday, September 20, 2011, held at 6:30 p.m.

4. Approval of Warrant Register No.7

The **City Council and Commission** will consider for approval, respectively, the bills and claims set forth in Warrant Register No. 7, dated October 4, 2011 and 7B, for the period September 21, 2011 to September 29, 2011.

5. Proclamation - "Crime Prevention Month"

The National Crime Prevention Council has proclaimed the month of October 2011, as "Crime Prevention Month." The organization believes that citizen involvement in crime prevention can play a vital role in helping communities stay safe. During October, the City will conduct activities to educate and empower its residents in taking a stance against crime.

The **City Council** will consider proclaiming the month of October 2011 as "Crime Prevention Month" in the City of Commerce.

6. Support of Continued Maintenance and Operation of California Youth Authority Norwalk Facility by State of California

To address budget issues, the California Department of Corrections has announced its intention to close the California Youth Authority facility in Norwalk, California, which according to the City of Norwalk, houses juveniles ages 12-25 and provides education, training and treatment services for serious youth offenders.

At the request of Councilmember Leon, the **City Council** will consider for approval a formal position letter supporting the continued maintenance and operation of the California Youth Authority (CYA) Norwalk facility by the State of California.

7. A Resolution of the City Council of the City of Commerce, California, Approving a Professional Services Agreement with Wells Fargo Insurance Services USA, Inc.

CONCURRENT REGULAR COUNCIL/CDC AGENDA

10/4/11 – 6:30 p.m.

Page 3 of 5

The **City Council** will consider for approval and adoption a proposed Resolution approving a Professional Services Agreement with Wells Fargo Insurance Services USA, Inc., for the purpose of providing the expertise necessary to assist the City in properly implementing the City's retiree health care programs and to develop a plan designed to address active employees and retiree needs so that they are consistent with the intent of the Memorandum of Understanding (MOU) between the City and the mid-management and non-management full-time employees.

Wells Fargo Insurance Services USA, Inc., will provide the required services for a total of \$4,000.00.

8. A Resolution of the City Council of the City of Commerce, California, Approving the First Amendment to the Agreement of Purchase and Sale Between the City of Commerce and Vons REIT, Inc.

On August 1, 2011, the City Council approved the Agreement of Purchase and Sale between the City of Commerce and Vons REIT, Inc., for the sale of a portion of Boxford Avenue that bisects approximately 19 acres of private property located at 3415 Boxford Avenue with frontage along Slauson Avenue, in the City of Commerce. Due to significant title issues, that may require a substantial change in the Agreement terms, the parties may require more time to address such issues prior to the close of escrow. In order to avoid a technical default, the parties agree that the Agreement must be amended to extend the Feasibility Period to October 31, 2011.

The **City Council** will consider for approval and adoption a proposed Resolution approving the First Amendment to the Agreement of Purchase and Sale between the City of Commerce and Vons REIT, Inc. extending the Feasibility Period as noted above.

9. A Resolution of the City Council of the City of Commerce, California, Approving a Grant of Easement Agreement Between Southern California Edison (SCE) and the City of Commerce, California and Other Matters Thereto

SCE has requested to purchase a right-of-way easement over property owned by the City on 26th Street to place electrical and fiber optic lines on existing wooden poles. After negotiations, SCE has agreed to pay the City \$2,500.00 for the easement, as opposed to its initial offer of \$639.00.

The **City Council** will consider for approval and adoption a proposed Resolution approving a Grant of Easement Agreement between Southern California Edison (SCE) and the City and other matters related thereto.

10. A Resolution of the City Council of the City of Commerce, California: (1) Approving an Agreement for Street Sweeping Services with Nationwide Environmental Services, a Division of Joe's Sweeping, Inc.; and (2) Rejecting All Other Bids

On April 5, 2011, the City Council approved, and authorized staff to advertise, a Request for Proposal (RFP) for Street Sweeping Services. The City Council decided to award a one-year probationary agreement to R.F. Dickson Co., Inc. on August 16, 2011. R.F. Dickson withdrew its proposal on August 31, 2011.

On August 18, 2011, Nationwide Environmental Services submitted an unsolicited proposal to include all of the City's streets as part of its original bid at the same price.

The **City Council** will consider for approval and adoption a proposed Resolution approving an Agreement for Street Sweeping Services with

CONCURRENT REGULAR COUNCIL/CDC AGENDA

10/4/11 – 6:30 p.m.

Page 4 of 5

Nationwide Environmental Services, a Division of Joe's Sweeping, Inc., and rejecting all other bids.

SCHEDULED MATTERS

11. Street Closure of Stevens Place, Portion of Fitzgerald Avenue and Portion of Alley Directly Behind Steven's Steakhouse for East Los Angeles Sheriff's Substation's Annual Benefit Ride for Fallen Officers

The **City Council** will consider for approval the street closure of Stevens Place, a portion of Fitzgerald Avenue and the portion of the alley directly behind Steven's Steakhouse for the East Los Angeles Sheriff's Substation's Annual Benefit Ride for Fallen Officers, to be held on October 8, 2011, between 10:00 a.m. and 5:00 p.m.

12. City Commission and Committee Appointments

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

ORDINANCES AND RESOLUTIONS

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

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

The **City Council** will consider for approval and adoption a proposed Ordinance amending Title 19 ("Zoning") of the Commerce Municipal Code, Table 19.11.030 (5. Transportation-related Uses, Notes and Exceptions). Further, the **City Council** will consider directing staff to continue outreach to the Commerce Industrial Council and, if it is determined that changes to the adopted Ordinance are feasible and practical, present amendments to the Planning Commission and City Council at a future time for consideration.

The proposed Ordinance was approved for first reading on August 16, 2011. The second reading of the proposed Ordinance was continued on September 6, 2011 and September 20, 2011.

14. A Resolution of the City Council of the City of Commerce Approving an Agreement with Municipal Revenue Advisors (MRA) for Revenue Enhancement Consulting Services and Designating Municipal Revenue Advisors as an Authorized City Representative to Examine Sales and Use Tax Records

On June 7, 2011, the City Council received information on the Business Cooperation Program and Business License Amnesty Program and directed staff to prepare the appropriate Resolution(s) and agreement(s) for the City Council's later consideration after receiving a presentation from each consultant and discussion with the Commerce Industrial Council.

The **City Council** will receive a presentation on the Business Cooperation Program and thereafter consider for approval and adoption a proposed Resolution approving an Agreement with Municipal Revenue Advisors

CONCURRENT REGULAR COUNCIL/CDC AGENDA

10/4/11 – 6:30 p.m.

Page 5 of 5

(MRA) for revenue enhancement consulting services and designating Municipal Revenue Advisors as an authorized City representative to examine Sales and Use Tax records.

PUBLIC HEARINGS

CIP PROGRESS REPORT

LEGISLATIVE UPDATE

I-710 LOCAL ADVISORY COMMITTEE UPDATE

RECESS TO CLOSED SESSION

15. Pursuant to Government Code §54956.8,

- A. The **Commission** will confer with its real property negotiators, Jorge Rifá and Bob Zarrilli, with respect to real estate negotiations with Gatwick Group, LLC, aka Commerce VRG, LLC, including proposed price and other terms, concerning real property commonly referred to as the Cable property and/or Cable Trust property; real property owned separately by the Union Pacific Railroad, Burlington Northern Santa Fe Railway Company and Anne R. Klein Estate and Commission-owned real property located at 4957 Sheila Street and on the southeast corner of Washington Boulevard and Hepworth Avenue, APN 5244-033-900 (formerly known as 4800 Washington Boulevard), Commerce, California, with said properties bounded by Washington Boulevard on the north, Sheila Street on the south, Atlantic Boulevard on the east and the I-710 Freeway on the West.

16. Pursuant to Government Code §54956.9(a),

- A. The **City Council** will confer with its legal counsel and take the appropriate action, with respect to the pending litigation of Commerce City Employees Association v. City of Commerce, State of California, Public Employment Relations Board, Unfair Practice Charge No. LA-CE-587-M.

17. Pursuant to Government Code §54956.9(b),

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

18. Pursuant to Government Code §54957.6,

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

ADJOURNMENT

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



AGENDA REPORT

Meeting Date: October 4, 2011

TO: Honorable City Council

FROM: City Administrator

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

RECOMMENDATION:

Read and present commendation from the City of Commerce to Landon Cadenas.

MOTION:

Move to approve the recommendation.

BACKGROUND:

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

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

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

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

ANALYSIS:

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

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

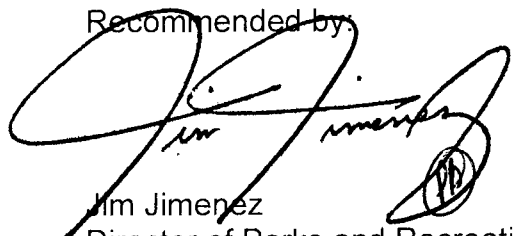
FISCAL IMPACT:

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

RELATIONSHIP TO STRATEGIC GOALS:

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

Recommended by:



Jim Jimenez
Director of Parks and Recreation

Respectfully submitted,



Jorge Rifa
City Administrator

Reviewed by:

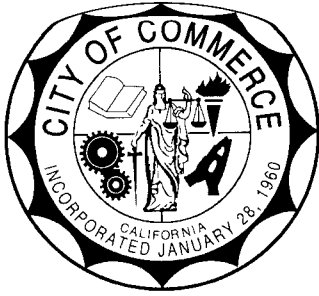


Vilko Domic
Director of Finance

Approved as to form:



Eduardo Olivo
Director of Finance



AGENDA REPORT

MEETING DATE: October 4, 2011

TO: Honorable City Council

FROM: City Administrator

SUBJECT: Commendation, honoring Jennie Jacobsen-Huse for her induction into the USA Water Polo Hall of Fame

RECOMMENDATION:

Present a commendation to Jennie Jacobsen-Huse for her induction into the USA Water Polo Hall of Fame.

MOTION:

Move to approve the recommendation.

BACKGROUND:

USA Water Polo inducted Jennie Jacobsen-Huse into the Water Polo Hall of Fame on September 17, 2011.

Jennie joined the Aquatics Division in 2003 as a Supervising Life Guard. In the past eight years, she has taught swim lessons as well as Lifeguarding and Water Safety Instructor courses to staff and the community. Miss Jacobsen-Huse has also assisted with our Commerce Aquatics Women's Program as a chaperone and assistant coach, when needed.

Jennie Jacobsen-Huse has been teaching and coaching water polo at Pasadena High School for the past 11 years, was the Director of Health & Safety for the San Gabriel Valley chapter of the American Red Cross for 9 years, and a Community Services Supervisor with the City of Irvine, for 9 years. Jennie is also a certified American Red Cross Instructor Trainer, which has enabled the Parks and Recreation Department to provide in-house training and certification courses to staff.

ANALYSIS:

USA Water Polo released the following statement about Miss Jacobsen-Huse:

Tournament results, medal counts, and official statistics will never do justice in explaining what Jennie Jacobsen-Huse has meant to women's water polo, USA Water Polo, and the water polo community as a whole, over the last 40 years plus. A pioneer in women's water polo as an athlete pushing to get water polo for females first at Pasadena High School and then at the University of California-Santa Barbara, she was a National Champion with the Merced Water Polo club and remains active in the masters water polo circuit.

In the interim, Jacobsen-Huse contributed wherever necessary, taking on a variety of roles to help better the game and improve the experience for those involved. She helped establish the very first USA Water Polo National Office in Colorado Springs and served as the first team leader for both the Women's Senior and Junior National Teams. Jacobsen-Huse served on the first ever USA Water Polo Board of Directors, was a respected desk official, wrote articles for the then Scoreboard Magazine, and did just

about everything else in between. Ms. Jacobsen-Huse remains a key part of the Commerce Aquatics program.

FISCAL IMPACT:

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

RELATIONSHIP TO STRATEGIC GOALS:

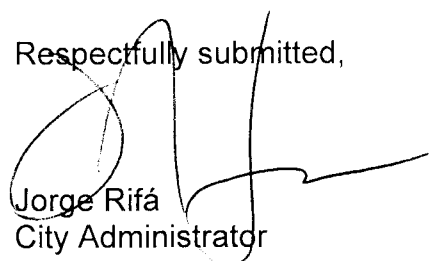
Recognizing Miss Jacobsen-Huse's achievements relates to Council's goals of protecting and enhancing the quality of life in the City of Commerce and ensuring that the City has a trained, quality workforce, to provide services to the City, in the future. Jennie has impacted numerous lives through her work with the City's Water Polo Program. She has also been a valuable asset to the Parks and Recreation Department, as a certified American Red Cross Trainer.

Recommended by:



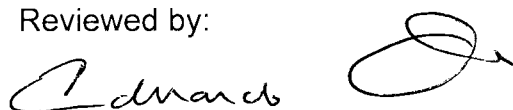
Jim Jimenez
Director of Parks and Recreation

Respectfully submitted,



Jorge Rifá
City Administrator

Reviewed by:



Eduardo Olivo
City Attorney



AGENDA REPORT

DATE: October 4, 2011

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A PROCLAMATION DESIGNATING THE MONTH OF OCTOBER 2011 AS "CRIME PREVENTION MONTH"

RECOMMENDATION:

Approve a Proclamation to proclaim the month of October 2011 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 2011 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.

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 2009 STRATEGIC GOALS:

This report relates to the 2009 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.

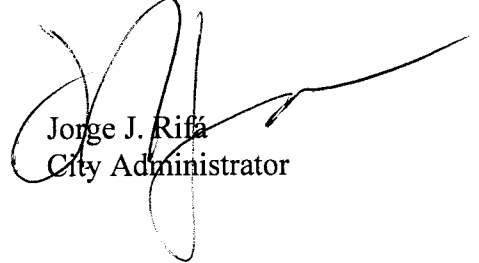
This proposed Resolution is not connected to any specific 2009 strategic goal objective.

Recommended by:



Robert Chavez
Director of Community Services

Respectfully submitted,



Jorge J. Rifa
City Administrator

Approved As To Form:



Eduardo Olivo
City Attorney

**A Proclamation of the City Council
of the
City of Commerce
Designating the Month of October 2011
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 these 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 24, 2011;

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 2011, 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 4th day of October 2011.

Joe Aguilar, Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk



AGENDA REPORT

MEETING DATE: October 4, 2011

TO: Honorable City Council

FROM: City Administrator

SUBJECT: SUPPORT OF CONTINUED MAINTENANCE AND OPERATION OF THE CALIFORNIA YOUTH AUTHORITY NORWALK FACILITY BY THE STATE OF CALIFORNIA

RECOMMENDATION:

At the request of Councilmember Lilia Leon, the City Council will consider for approval a formal position letter in support of the continued maintenance and operation of the California Youth Authority (CYA) Norwalk facility by the State of California.

MOTION:

City Council discretion.

BACKGROUND/ANALYSIS:

According to the City of Norwalk, the California Youth Authority (CYA) facility in Norwalk houses juveniles ages 12 to 25 and provides education, training, and treatment services for California's most serious youth offenders. To address the budget gap, the California Department of Corrections has announced that it intends to close this facility in December 2011. The Norwalk facility's closure would require transferring the youth to other locations and the older youth being transferred to adult facilities.

Norwalk states that this facility has the highest number of family visitors and the highest number of volunteers of all the youth facilities. Norwalk CYA also has the highest number of areas of compliance regarding court mandated changes to take place.

The closing of the CYA facility in Norwalk would result in the loss of jobs in the area and deprive valuable programs and services to the youth.

FISCAL IMPACT:

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

Fiscal impact reviewed by:


Vilko Domic
Director of Finance

Respectfully submitted,


Jorge J. Rifa
City Administrator

Reviewed as to form:


Eduardo Olivo
City Attorney

RESOLUTION NO. 11-52

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NORWALK IN SUPPORT OF THE CONTINUED MAINTENANCE AND OPERATION OF THE CALIFORNIA YOUTH AUTHORITY FACILITY BY THE STATE OF CALIFORNIA

WHEREAS, the State of California intends to close the California Youth Authority (CYA) Norwalk facility in December 2011; and

WHEREAS, the CYA facility provides juveniles ranging from 12 – 25 years old access to education, training, and treatment services; and

WHEREAS, the CYA facility's closure is the result of the State eliminating essential programs and services to balance its budget; and

WHEREAS, the facility's closure would mean depriving juveniles access to essential programs and services; and

WHEREAS, the facility's closure would result in the loss of jobs.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORWALK HEREBY DETERMINES, FINDS, AND RESOLVES AS FOLLOWS:

Section 1. Request that the State continue to maintain and operate the Norwalk CYA facility, believing that its continued maintenance and operation will significantly impact the youth in surrounding communities while protecting jobs.

Section 2. The Mayor, or presiding officer, is hereby authorized to affix his signature to this Resolution signifying its adoption by the City Council of the City of Norwalk and the City Clerk, or her duly appointed assistant, is directed to attest thereto.

APPROVED AND ADOPTED on this 6th day of September 2011.

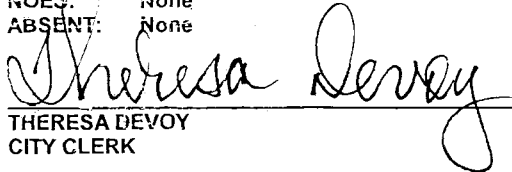


**MICHAEL MENDEZ
MAYOR**

ATTEST:

I, Theresa Devoy, City Clerk of the City of Norwalk, California **DO HEREBY CERTIFY** that the foregoing Resolution, being Resolution No. 11-52 has been duly signed by the Mayor and attested by the City Clerk, all at a regular meeting of the Norwalk City Council, held September 6, 2011, and that the same was approved and adopted by the following vote to wit:

AYES: Councilmembers Rodarte, Shryock, and Vernola, Vice Mayor Kelley, and Mayor Mendez
NOES: None
ABSENT: None


**THERESA DEVOY
CITY CLERK**

MICHAEL MENDEZ
Mayor
CHERI KELLEY
Vice Mayor
MARCEL RODARTE
Councilmember
LEONARD SHRYOCK
Councilmember
LUIGI VERNOLA
Councilmember
MICHAEL J. EGAN
City Manager



12700 NORWALK BLVD., P.O. BOX 1030, NORWALK, CA 90651-1030 * PHONE: 562/929-5700 * FACSIMILE: 562/929-5773 * WWW.CI.NORWALK.CA.US

September 14, 2011

The Honorable Jerry Brown
Governor, State of California
State Capitol Building, 1st Floor
Sacramento, CA 95814

Dear Governor Brown:

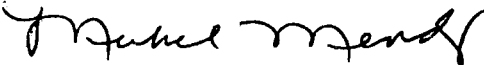
The City of Norwalk is home to the California Youth Authority Facility, also referred to as the Southern Youth Correctional Reception Center and Clinic (SYCRCC), which houses juveniles, ages 12 to 25 and provides education, training and treatment services for California's most serious youth offenders. We understand that as part of the State budget situation, the State has opted to close this facility in December 2011. This would require the transfer of some juvenile offenders to other locations and the release of others into our communities, not to mention the loss of approximately 400 jobs locally.

At our September 6th meeting, the Norwalk City Council adopted Resolution No. 11-52, expressing its request to the State to rescind its decision and continue operations at the California Youth Authority (CYA) Facility in Norwalk. Norwalk is deeply concerned with the transfer of juvenile offenders, who are on their way to rehabilitation, into adult prisons. The CYA Facility in Norwalk provides educational services to juveniles housed at that facility and has reached a 95% graduation rate. The transfer of this youth population into adult prisons will severely thwart their educational goals and achievements to date.

Attached is a copy of Resolution No. 11-52 and we respectfully ask that the State reconsider its decision to close the California Youth Authority Facility in Norwalk. In addition, we would like to request a meeting with State Officials in charge of the facility closure project and discuss timelines and impacts on the entire Norwalk community and surrounding areas.

Thank you for your consideration and prompt attention to this matter.

Sincerely,



Michael Mendez
Mayor

cc: Norwalk City Council
Senator Ron Calderon
Assemblymember Tony Mendoza
Joe A. Gonsalves & Son



CITY OF COMMERCE

Joe Aguilar
Mayor

Tina Baca Del Rio
Mayor Pro Tem

Robert C. Fierro
Councilmember

Lilia R. Leon
Councilmember

Denise M. Robles
Councilmember

October 4, 2011

The Honorable Jerry Brown
Governor, State of California
State Capitol Building, 1st Floor
Sacramento, CA 95814

Dear Governor Brown:

On behalf of the City of Commerce City Council, I write to respectfully request that the State reconsider its decision to close the California Youth Authority (CYA) facility in the City of Norwalk. We understand that as part of the State budget situation, the State has opted to close this facility in December 2011.

As you may be aware, the closure of the CYA facility would require the transfer of some juvenile offenders to other locations and the release of others into our communities. This facility houses juveniles ages 12 to 25 and provides education, training and treatment services for the State's most serious youth offenders. We are deeply concerned with the transfer of juvenile offenders into adult prisons. Many of the juveniles housed at this facility are on their way to rehabilitation or reaching their educational goals. With a 95% graduation rate, the transfer of this youth population into adult prisons will severely thwart their educational goals and achievements to date.

Lastly, the closure of the CYA facility would mean a loss of approximately 400 jobs in the local area, which would have a negative impact on the local economy.

For these reasons, we respectfully request that the State rescind its decision and continue the maintenance and operation of the CYA facility in Norwalk.

Thank you for your consideration and prompt attention to this matter.

Sincerely,

Joe Aguilar
Mayor
City of Commerce



AGENDA REPORT

MEETING DATE: October 4, 2011

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH WELLS FARGO INSURANCE SERVICES USA, INC.

RECOMMENDATION:

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

MOTION:

Move to approve recommendation.

ANALYSIS:

The City recently completed negotiations with the City of Commerce Mid Management and Non-Management Full-Time employees for a memorandum of understanding for fiscal Year 2011-2012 ("MOU"). The City requires the services of a consultant who can provide expertise necessary to assist the City in properly implementing the City's retiree health care programs and to develop a plan designed to address active employees and retiree needs so that they are consistent with the intent of the MOU agreement. Wells Fargo Insurance Services Insurances Services USA has the expertise necessary to assist the City. Pursuant to the proposed agreement, Wells Fargo will provide the required services for a total of \$4,000.

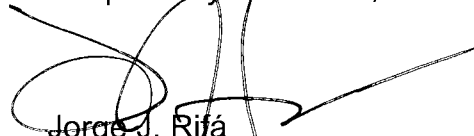
FISCAL IMPACT:

The services will be provided at a cost of \$4,000. There are sufficient funds in 10-8804-54043 to fund the said agreement with Wells Fargo for services delineated above.

RELATIONSHIP TO 2009 STRATEGIC GOALS:

This item is related to the 2009 Strategic Goal of making financial and economically sound decisions consistent with economic conditions.

Respectfully submitted,




Jorge J. Rifá
City Administrator

Fiscal impact reviewed by,



Vilko Domic
Director of Finance

Approved as to form by,



Eduardo Olivo
City Attorney

SUM (RESO - WELLS FARGO INS SERVICES USA) - 10-04-2011.DOC

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE,
CALIFORNIA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH
WELLS FARGO INSURANCE SERVICES USA, INC.

WHEREAS, the City recently completed negotiations with the City of Commerce Mid Management and Non-Management Full-Time employees for a memorandum of understanding for fiscal Year 2011-2012 ("MOU"); and

WHEREAS, the City requires the services of a consultant who can provide expertise necessary to assist the City in properly implementing the City's retiree health care programs and to develop a plan designed to address active employees and retiree needs so that they are consistent with the intent of the MOU agreement, and

WHEREAS, Wells Fargo Insurance Services Insurances Services USA has the expertise necessary to assist the City and has agreed to provide such services for a total sum of \$4,000.

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

Section 1. The City Council hereby approves the Professional Services Agreement with Wells Fargo Insurance Services USA, Inc. The City Administrator is hereby authorized to sign the Agreement for and on behalf of the City.

PASSED, APPROVED AND ADOPTED this _____ day of _____ 2011.

Joe Aguilar
Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk

CITY OF COMMERCE

PROFESSIONAL SERVICES AGREEMENT

This agreement is made upon the date of execution, as set forth below, by and between **Wells Fargo Insurance Services USA, Inc.** ("Consultant"), an employee benefits consulting firm, and the City of Commerce ("City"). The parties hereto, in consideration of the mutual covenants contained herein, hereby agree to the following terms and conditions:

1.0 GENERAL PROVISIONS

1.01 **Term:** This agreement will become effective on the date of execution set forth below, and will continue in effect until terminated as provided herein.

1.02 **Services:** Consultant shall perform the tasks described and set forth in **Exhibit A**, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

Consultant shall determine the method, details and means of performing the above-referenced services.

Consultant may, at their own expense, employ such assistants and subconsultants, as Consultant deems necessary to perform the services required of Consultant by this agreement. However, Consultant may not assign this agreement to any other person or entity in the performance of required project-related services, and the City may not control, direct or supervise Consultant's assistants or employees in the performance of those services.

1.03 **Standard of Performance:** Consultant's services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of Consultant's profession currently practicing under similar conditions. Whenever the scope of work requires or permits approval by the City, it is understood to be approval solely for the purposes of conforming to the requirements of the scope of work and not acceptance of any professional or other responsibility for the work. Such approval does not relieve the Consultant of responsibility for complying with the standard of performance or laws, regulations, industry standards, or from liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Consultant or its subcontractors. By delivery of completed work, Consultant certifies that the work conforms to the requirements of this contract and all applicable federal, state and local laws. If Consultant is retained to perform services requiring a license, certification, registration or other similar requirement under California law, Consultant shall maintain that license, certification, registration or other similar requirement throughout the term of this Contract.

1.04 **Compensation**: In consideration for the services to be performed by Consultant, City agrees to pay Consultant monetary consideration for professional employee benefit consulting services in accordance with the rates set forth in **Exhibit B**. The parties agree that total compensation for fees and costs for the services detailed in Exhibit A shall not exceed the sum of \$4,000 unless and until this Agreement is amended as provided herein.

1.05 **Billing/Payment Terms**. All charges for Consultant's services and related reimbursable expenses shall be billed in accordance to Exhibit B, and all undisputed charges will be paid by City within 30 (thirty) days of receipt. The bills will itemize by date all services and expenses provided for the invoice period under this Agreement including a brief description of the nature of work performed, the person performing or vendor providing them, the applicable billing rate, the time expended. All Consultant service invoices must be approved by the City Administrator, prior to payment.

2.0 OBLIGATIONS OF CONTRACTOR

2.01 **Contract Management and Service Performance**: Consultant Principal shall serve as the project manager and will personally prepare, or direct and supervise the preparation of, all work product called for by this agreement. Consultant represents that it has the qualifications, experience and facilities to properly perform all services hereunder in a thorough, competent, timely, and professional manner and shall, at all times during the term of this Agreement, have in full force and effect all licenses required of it by law. Consultant agrees to devote the hours and the human resources necessary to timely perform the services set forth in this agreement in an efficient, professional, and effective manner.

2.02 **Avoidance of Conflict of Interest**. Consultant may represent, perform services for, and be employed by additional individuals or entities, in Consultant's sole discretion, as long as the performance of these extra-contractual services does not interfere with or present a conflict with City's business or interfere with the timely performance and completion of Consultant's services under this Agreement.

Consultant shall comply with all conflict of interest laws and regulations including, without limitation, the City's Conflict of Interest Code (on file in the City Clerk's Office). All officers, employees and/or agents of Consultant who will be working on behalf of the City pursuant to this Agreement may be required to file Statements of Economic Interest. Therefore, it is incumbent upon the Consultant or Consulting Firm to notify the City of any staff changes relating to this Agreement.

- A. In accomplishing the scope of services of this Agreement, all officers, employees and/or agents of the Consultant(s) unless as indicated in Subsection B, will be performing a very limited and closely supervised function, and therefore, unlikely to have a conflict of interest arise. No disclosures are required for any officers, employees, and/or agents of Consultant, except as indicated in Subsection B. _____ (Initials).

2.03 **Tools and Instrumentalities:** Consultant shall provide all tools and instrumentalities to perform the services under this agreement.

2.04 **Workers' Compensation and Other Employee Benefits:** City and Consultant intend and agree that Consultant is an independent contractor of City and agree that Consultant and Consultant's employees and agents have no right to Workers' Compensation and other City-sponsored employee benefits. Consultant agrees to provide Workers' Compensation and other employee benefits, where required by law, for Consultant's employees and agents. Consultant agrees to hold harmless and indemnify City for any and all claims arising out of any claim for injury, disability, or death of Consultant and any of Consultant's employees or agents.

2.05 **Indemnification: General Professional Services:** Professional Consultant hereby agrees to, and shall, hold City, its elective and appointive boards, officers, agents and employees, harmless and shall defend the same from any liability for damage or claims for damage, or suits or actions at law or in equity which may allegedly arise from the negligent acts, errors or omissions of Consultant's or any of Consultant's employees' or agents' operations under this agreement, whether such operations be by Consultant or by any one or more persons directly or indirectly employed by, or acting as agent for, Consultant; provided as follows:

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

2.06 **Insurance:** Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit C attached to and part of this agreement

3.0 OBLIGATIONS OF CITY

3.01 **Cooperation:** City agrees to comply with all reasonable requests of Consultant necessary to the performance of Consultant's duties under this agreement. City employees, agents and officers of the City agree to disclose all information relevant to this project to Consultant.

4.0 TERMINATION OF AGREEMENT

4.01 **Termination Notice**: Notwithstanding any other provision of this agreement, any party hereto may terminate this agreement, at any time, without cause, by giving at least 30 (thirty) days' prior written notice to the other parties to this agreement.

4.02 **Termination on Occurrence of Stated Events**: This agreement shall terminate automatically on the occurrence of any of the following events:

- a. Sale of the business of any party;
- b. The end of the 30 (thirty) days as set forth in section 4.01;
- c. End of the contract to which Consultant's services were necessary; or
- d. Assignment of this agreement by Consultant without the consent of City.
- e. Bankruptcy or insolvency of any party.
- f. Death of any party.

4.03 **Termination by any Party for Default**: Should any party default in the performance of this agreement or materially breach any of its provisions, the non-breaching party, at its option, may terminate this agreement, immediately, by giving written notice of termination to the breaching party.

4.04 **Termination**: This agreement shall terminate on March 1, 2012, unless earlier extended as set forth in this Section. The City, with the agreement of Consultant, is authorized to extend the term of this agreement beyond the termination date, as needed, under the same terms and conditions as set forth in this agreement. Any such extension shall be in writing and be an amendment to this agreement.

5.0 SPECIAL PROVISIONS

5.01 **Additional Tasks as May Be Assigned by Finance Director or the City Manager**: Prior to initiating any Consultant work on matters relating to Implementing a Retiree Health Retirement Account, but outside this contract, it shall be the responsibility of Consultant to obtain written approval of the City Finance Director, or the City Administrator, prior to initiation of such tasks.

5.02 **Time Schedule**: Consultant is to begin work upon receipt and execution of City contract. It is contemplated that most of the services hereunder, including but not limited to preparation, public and agency review, and submission of the draft Implementation Plan for a Health Retirement Account. **TIME IS OF THE ESSENCE OF THIS CONTRACT.** Consultant agrees to engage its best efforts to adhere strictly to the

schedule set forth in the schedule, a copy of which is hereby marked Exhibit C and incorporated herein.

5.03 **Work Outside Contract Scope:** No payment for changed or additional work shall be made unless the changed or additional work has first been approved in writing by the Contract Manager and the parties have agreed upon the appropriate adjustment, if any, to the payment schedule and maximum payment amount for the changed or additional work. The Contract Manger may order changes or additions to the scope of work. Whether a change or addition to the scope of work is proposed by the Consultant or ordered by the Contract Manager, the parties shall in good faith negotiate an appropriate adjustment, if any, to the payment schedule and maximum payment for the changed or additional work. An approved change or addition, along with the payment adjustment, if any, will be effective upon an amendment to this contract executed by both parties. The amendment shall not render ineffective or invalidate unaffected portions of this contract.

5.04 **Confidentiality:**

- (a) Confidential Nature of Information. Consultant shall treat all information obtained from the City in the performance of this contract as confidential and proprietary to the City. Consultant shall treat all records and work product prepared or maintained by Consultant in the performance of this contract as confidential.
- (b) Limitation on use and disclosure. Consultant agrees that it will not use any information obtained as a consequence of the performance of work for any purpose other than fulfillment of Consultant's scope of work. Consultant will not disclose any information prepared for the City, or obtained from the City or obtained as a consequence of the performance of work to any person other than the City, or its own employees, agents or subcontractors who have a need for the information for the performance of work under this contract unless such disclosure is specifically authorized in writing by the City.
- (c) Security plan. If requested by the Contract Manager, Consultant shall prepare a security plan to assure that information obtained from the City or as a consequence of the performance of work is not used for any unauthorized purpose or disclosed to unauthorized persons. Consultant shall advise the City of any request for disclosure of information or of any actual or potential disclosure of information.
- (c) Survival. Consultant's obligations under this paragraph shall survive the termination of this contract.

6.0 **MISCELLANEOUS**

6.01 **Notices:** Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this agreement or by law to be served on or given to any party to this agreement shall be in writing and delivered or, in lieu of such

personal service, when deposited in the United States mail, first class postage prepaid, to the following address for each respective party:

PARTY	ADDRESS
TO: CITY OF COMMERCE	Jorge Rifa City Administrator 2535 Commerce Way Commerce, CA 90040
TO CONSULTANT:	Liliana Salazar Sr. Vice President of Compliance Wells Fargo Insurance Services 21250 Hawthorne Blvd., Ste 600 Torrance, CA 90503

6.02 **Governing Law**: This agreement and all matters relating to this agreement shall be governed by the laws of the State of California in force at the time, should any need for interpretation of this agreement or any decision or holding concerning this agreement arise.

6.03 **Binding Effect**: This agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto, but nothing in this Section shall be construed as a consent by City to any assignment of this agreement or any interest in the agreement.

6.04 **Remedies**: The remedies set forth in this agreement shall not be exclusive, but shall be cumulative with, and in addition to, all remedies now or hereafter allowed by law or equity.

6.05 **Due Authority**: The parties hereby represent that the individuals executing this agreement are expressly authorized to do so on and in behalf of the parties.

6.06 **Ownership of Work Product**: Upon delivery, the work product, including without limitation, all original reports, writings, recordings, drawings, files, and detailed calculations developed under this contract are the property of the City. Consultant agrees that all copyrights, which arise from creation of the work pursuant to this contract, shall be vested in the City and waives and relinquishes all claims to copyright or other intellectual property rights in favor of the City. City acknowledges that its use of the work product is limited to the purposes contemplated by the scope of work and that the Consultant makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

6.07. **Integration and Modification**: This contract represents the entire understanding and agreement of the City and Consultant as to those matters contained herein. This agreement correctly sets forth the obligations of the parties hereto to each other as of the

date of this agreement. All agreements or representations respecting the subject matter of this agreement not expressly set forth or referred to in this agreement are null and void. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This contract may not be modified, amended, or altered except in writing signed by the City and Consultant.

6.08. **Advice of Counsel:** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this contract, and that the decision of whether or not to seek the advice of counsel with respect to this contract is a decision which is the sole responsibility of each of the parties hereto. This contract shall not be construed in favor or against either party by reason of the extent to which each party participated in the drafting of the contract.

6.09. **Independent Review:** Each party hereto declares and represents that in entering this contract it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this contract is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent, or attorney of any other party.

6.10. **Attorney Fees:** In the event of any controversy, claim or dispute between the parties hereto, arising out of or relating to this agreement, or the breach hereof, the prevailing party shall be entitled, in addition to other such relief as may be granted, to a reasonable sum as and for attorney fees.

6.11 **No waiver:** The waiver of any breach by any party of any provision of this agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of this agreement.

6.12. **Assignment:** This agreement is specifically not assignable by Consultant to any person or entity. Any assignment or attempt to assign by Consultant whether it be voluntary or involuntary, by operation of law or otherwise, is void and is a material breach of this agreement, giving rise to a right to terminate as set forth in Section 4.03.

6.13. **Time for Performance:** Except as otherwise expressly provided for in this agreement, should the performance of any act required by this agreement to be performed by either party be prevented or delayed by reason by any act of God, strike, lockout, labor trouble, inability to secure materials, or any other cause, except financial inability, which is the fault of the party required to perform the act, the time for performance of the act will be extended for a period of time equivalent to the period of delay and performance of the act during the period of delay will be excused: provided, however, that nothing contained in this Section shall exclude the prompt payment by either party as required by this agreement of the performance of any act rendered difficult or impossible solely because of the financial condition of the party required to perform the act.

6.14 **Severability:** Should any provision of this agreement be held by a court of competent jurisdiction or by a legislative or rulemaking act to be either invalid, void or

unenforceable, the remaining provisions of this agreement shall remain in full force and effect, unimpaired by the holding, legislation or rule.

6.15. **Construction:** The parties agree that each has had an opportunity to have their counsel review this agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this agreement or any amendments or exhibits thereto. The captions of the sections are for convenience and reference only, and are not intended to be construed to define or limit the provision to which they relate.

6.16. **Amendments:** Amendments to this agreement shall be in writing and shall be made only with the mutual written consent of all the parties to this agreement.

6.17. **Signatures:** The individuals executing this contract represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the parties have executed this contract on the following date.

Consultant:

Date: _____

By: _____
Sr. Vice President of Compliance

City of Commerce:

Date: _____

By: _____
Jorge Rifa
City Administrator

APPROVED AS TO FORM:

Eduardo Olivo
City Attorney

EXHIBIT A

TASKS TO BE PERFORMED

Wells Fargo Insurance Services' consulting services will be delivered based on the following service proposal, which is more clearly defined in the project schedule:

Phase I

1. ANALYZE THE CITY'S RETIREE HEALTH CARE PROGRAMS AND DEVELOP A PLAN DESIGN TO ADDRESS ACTIVE EMPLOYEES AND RETIREE NEEDS
2. WORK WITH WFIS EMPLOYEE BENEFITS TEAM TO SELECT A VENDOR FOR RETIREE HEALTH REIMBURSEMENT ARRANGEMENT
3. DRAFT A CAFETERIA PLAN DOCUMENT FOR ACTIVE EMPLOYEES
4. PRESENT CITY WITH RETIREE HEALTH CARE REIMBURSEMENT ARRANGEMENT (HRA)VENDORS

Phase II

5. REVIEW AND/OR DRAFT THE PLAN DOCUMENT FOR THE HRA
6. CITY TO APPOINT HRA VENDOR
7. DEVELOP RETIREE COMMUNICATIONS OUTLINING CHANGES TO THE PAYMENT OF RETIREE PREMIUMS
8. CONDUCT MEETINGS WITH RETIREES
9. ADMINISTRATIVE MEETING WITH CITY TO DISCUSS ON-GOING ADMINISTRATION REQUIREMENTS OF A HRA AND A CAFETERIA PLAN

EXHIBIT B

PAYMENT SCHEDULE

Wells Fargo Insurance Services' consulting services will be delivered for a fee of \$4,000. The fee includes implementation of a retiree health reimbursement account (retiree HRA) for existing and future retirees and the implementation of a Cafeteria Plan for active employees. This fee assumes that Wells Fargo Insurance Services will conduct two (2) on-site meetings with the City and its retirees and active employees; additional meetings will be subject to additional charges.

The fee will be due and be payable in two installments. The first installment is due upon the commencement of Phase I of the consulting service agreement and the second installment is due upon commencement of Phase II as described in Exhibit A.

EXHIBIT C

INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of the Work, Consultant will maintain insurance in conformance with the requirements set forth below. Consultant will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Consultant agrees to amend, supplement or endorse the existing coverage to do so. Consultant acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to City in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to City.

Consultant shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Consultant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Consultant or Consultant's employees will use personal autos in any way on this project, Consultant shall provide evidence of personal auto

Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident or disease.

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Consultant, subconsultants or others involved in the Work. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this agreement. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this agreement.

Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the state of California and with an A.M. Bests rating of A- or better and a minimum financial size VII.

General conditions pertaining to provision of insurance coverage by Consultant. Consultant and City agree to the following with respect to insurance provided by Consultant:

1. Consultant agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds City, its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992. Consultant also agrees to require all contractors, and subcontractors to do likewise.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant's employees, or agents, from waiving the right of subrogation prior to a loss. Consultant agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.
3. All insurance coverage and limits provided by Contractor and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.
5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.
6. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Consultant shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.
7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by City shall be charged to and promptly paid by Consultant or deducted from sums due Consultant, at City option.
8. Certificate(s) are to reflect that the insurer will provide 30 days notice to City of any cancellation of coverage. Consultant agrees to require its insurer to modify such certificates to

delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will “endeavor” (as opposed to being required) to comply with the requirements of the certificate.

9. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Consultant or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to City.
10. Consultant agrees to ensure that subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to City for review.
11. Consultant agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to City. If Consultant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Consultant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
12. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City will negotiate additional compensation proportional to the increased benefit to City.
13. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
14. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.
15. Consultant will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until City executes a written statement to that effect.
16. Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to

expiration. A coverage binder or letter from Consultant's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.

17. The provisions of any workers' compensation or similar act will not limit the obligations of Consultant under this agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its employees, officials and agents.
18. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
19. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.
20. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.
21. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Consultant for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

Consultant agrees to provide immediate notice to City of any claim or loss against Consultant arising out of the work performed under this agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.



AGENDA REPORT

MEETING DATE: October 4, 2011

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING THE FIRST AMENDMENT TO THE AGREEMENT OF PURCHASE AND SALE BETWEEN THE CITY OF COMMERCE AND VONS REIT, INC.

RECOMMENDATION:

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

MOTION:

Move to approve recommendation.

BACKGROUND/ANALYSIS:

On August 1, 2011, the City Council approved the Agreement of Purchase and Sale between the City of Commerce and Vons REIT, Inc. (the "Agreement") for the sale of a portion of Boxford Avenue that bisects approximately 19 acres of private property located at 3415 Boxford with frontage along Slauson Avenue, in the City of Commerce (the "Property"). The Agreement provides for a Feasibility Period that requires Vons to notify the City of objections to title and/or other issues related to the Property within fifteen days after the City's delivery of certain documents to Vons. The parties have discovered certain title issues that must be resolved prior to the closing of the escrow for the sale of the Property. The title issues are significant and may require a substantial change in the Agreement terms. The parties are attempting to address such issues but require more time. In order to avoid a technical default, the parties agree that the Agreement must be amended to extend the Feasibility Period to October 31, 2011.

FISCAL IMPACT:

The approval of the First Amendment to the Agreement of Purchase and Sale can be carried out without additional impact on the current operating budget.


RELATIONSHIP TO 2009 STRATEGIC GOALS:

This item is related to 2009 Strategic Goal No. 1 – Maintain and Diversify Local Economy, assisting a long-established business with its land area and site layout and function.

Reviewed by:


Bob Zarilli
Director of Community Development

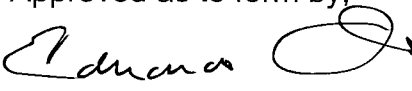
Respectfully submitted,


Jorge J. Rifa
City Administrator

Fiscal impact reviewed by,


Vilko Domic
Director of Finance

Approved as to form by,


Eduardo Olivo
City Attorney

SUM (RESO – 1ST AMENDMENT TO PSA – VONS – BOXFORD) – 10-04-2011.DOC

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA,
APPROVING THE FIRST AMENDMENT TO THE AGREEMENT OF PURCHASE AND
SALE BETWEEN THE CITY OF COMMERCE AND VONS REIT, INC.

WHEREAS, on August 1, 2011, the City Council approved the Agreement of Purchase and Sale between the City of Commerce and Vons REIT, Inc. (the "Agreement") for the sale of a portion of Boxford Avenue that bisects approximately 19 acres of private property located at 3415 Boxford with frontage along Slauson Avenue, in the City of Commerce (the "Property"); and

WHEREAS, the Agreement sets forth a Feasibility Period that requires Vons to notify the City of objections to title issues related to the Property; and

WHEREAS, the parties have discovered certain title issues that must be resolved prior to the closing, and

WHEREAS, the parties agree that if the title issues cannot be resolved in accordance with the Agreement terms, the Agreement will have to be reworked and amended. In the interim, the parties agree that the Agreement must be amended to extend the Feasibility Period to October 31, 2011.

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

SECTION 1. The First Amendment to the Agreement of Purchase and Sale between the City of Commerce and Vons REIT, Inc. is hereby approved. The Mayor's signature on the First Amendment for and on behalf of the City is hereby approved and ratified

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2011.

Joe Aguilar, Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk

**FIRST AMENDMENT TO
AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS**

THIS FIRST AMENDMENT TO AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS (the "First Amendment") is dated this 31st day of August, 2011, by and between **VONS REIT, INC.**, a Delaware corporation ("Buyer"); **CITY OF COMMERCE**, a municipal corporation ("Seller").

For valuable consideration, the receipt of which is hereby acknowledged, Seller and Buyer agree to amend the terms of the Agreement of Purchase and Sale dated August 1, 2011 (as amended, the "Agreement"), as follows:

1. **Terms.** All words used in this First Amendment beginning with capital letters shall have the same meaning as given them in the Agreement unless defined otherwise herein.
2. **Feasibility Period.** The parties acknowledge that there are title issues that need to be resolved prior to Closing. Thus, the Feasibility Period, notwithstanding anything to the contrary in the Agreement, shall expire on October 31, 2011. If it is determined that the City does not own the Property, the Agreement shall be void and of no further force and effect as between the parties.
3. **Signatures in Counterpart.** This First Amendment may be executed in two or more counterparts each of which shall be deemed an original, but all together shall constitute one and the same.
5. **Signature Via Facsimile.** This First Amendment may be executed by facsimile signature which facsimile signature shall be treated as if it were an original, so long as originals are delivered to each party within ten (10) days of the date of the facsimile.
6. **Entire Agreement; No Further Modifications.** This First Amendment contains all agreements and modifications to the Agreement since the execution of the Agreement. Except as expressly modified in this First Amendment, all other terms and conditions of the Agreement remain unchanged and in full force and effect.

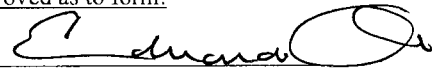
IN WITNESS WHEREOF, the parties have hereto executed this First Amendment as of the date set forth above.

SELLER:
CITY OF COMMERCE,
a municipal corporation

By: _____
Title: Joe Aguilar, Mayor

ATTEST:
By: _____
Title: Linda K. Olivieri, City Clerk

Approved as to form:

By: 
Title: Eduardo Olivo, City Attorney

BUYER:
VONS REIT, INC.,
a Michigan corporation

By: _____
Assistant Vice President

By: _____
Assistant Secretary

Form approved: _____



AGENDA REPORT

MEETING DATE: October 4, 2011

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING A GRANT OF EASEMENT AGREEMENT BETWEEN SOUTHERN CALIFORNIA EDISON (SCE) AND THE CITY OF COMMERCE, CALIFORNIA, AND OTHER MATTERS RELATED THERETO

RECOMMENDATION:

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

MOTION:

Move to approve the recommendation.

BACKGROUND/ANALYSIS:

On July 25, 2011, SCE requested to purchase a right-of-way easement over property owned by the City of Commerce located on 26th Street and identified as Assessor Parcel Number 6332-006-900, for the amount of \$639.00. The Office of the City Engineer and City staff reviewed the legal description of the easement and sent a counter offer to SCE. After some discussion, both SCE and City have agreed on the amount of \$2,500.00.

On September 22, 2011, SCE formally accepted the City's request and submitted a Grant of Easement Agreement. The City Attorney has reviewed staff negotiations and recommends approval.

FISCAL IMPACT:

This agreement will generate \$2,500.00 in revenues for the City's General Fund.

RELATIONSHIP TO 2009 STRATEGIC GOALS:

The issue before the Council is applicable to the following Council's strategic goal: *"Make Financial and Economically Sound Decisions Consistent with Economic Conditions."*

There are no specific objectives connected to this issue. The City's responsibility to make financial decisions that benefit its residents and businesses is of paramount importance within the context of the FY 2011/2012 approved budget and available resources is in keeping with the identified 2009 Strategic Goals.

Respectfully submitted,

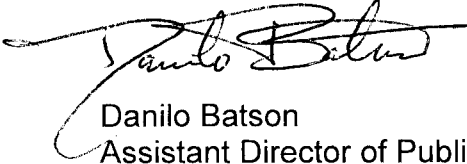

Jorge Rifa
City Administrator

Recommended by:



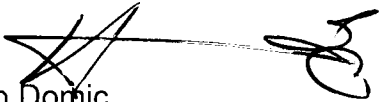
Bob Zarrilli
Director of Community Development

Prepared by:



Danilo Batson
Assistant Director of Public Services

Reviewed by:



Vilko Dornic
Director of Finance

Approved As To Form:



Eduardo Olivo
City Attorney

File: 2011 City Council Agenda Reports
SCE Grant of Easement Agreement on 26th Street

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA,
APPROVING A GRANT OF EASEMENT AGREEMENT BETWEEN SOUTHERN
CALIFORNIA EDISON (SCE) AND THE CITY OF COMMERCE, CALIFORNIA AND
OTHER MATTERS RELATED THERETO

WHEREAS, Southern California Edison (SCE) desires to acquire an easement over a City-owned property located on 26th Street and identified as Assessor Parcel Number 6332-006-900 to place electrical and fiber optic lines on existing wooden poles; and

WHEREAS, granting an easement for the stated purposes does not negatively impact the City-owned parcel;

WHEREAS, the grant of easement will generate \$2,500.00 for the City's General Fund;

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

Section 1. The City Council hereby approves the Grant of Easement Agreement with Southern California Edison. The Mayor is hereby authorized to execute the Grant of Easement Agreement for and on behalf of the City of Commerce.

PASSED, APPROVED AND ADOPTED this 4th day of October, 2011.

Joe Aguilar
Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk



Victor M. San Lucas
City Engineer
2535 Commerce Way
Commerce, CA 90040
323-722-4805 ext. 2206

September 22, 2011

City of Commerce
Attn. Victor M. San Lucas
2535 Commerce Way
Commerce, CA 90040
(323) 722-4805 ext:2206

Subject: Grant of Easement
Project Name: Fruitland-Vail FOC – City of Commerce
SCE Work Order: 800715344

Dear Property Owner:

This letter represents Southern California Edison’s (SCE) revised offer pursuant to negotiations held with Mr. Victor M. San Lucas, City Engineer. The new offer amount as compensation for the requested easement over property owned by the City of Commerce, Assessor’s Parcel Number 6332-006-900, is \$2,500.00.

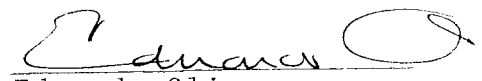
If you are in agreement with the terms of the easement, please sign in the spaces below and return this letter along with the signed and notarized enclosed Grant of Easement document and completed 1099. All originals need to be mailed to my office at your earliest convenience. Thank you for your cooperation in this matter.

AGREED and ACCEPTED:

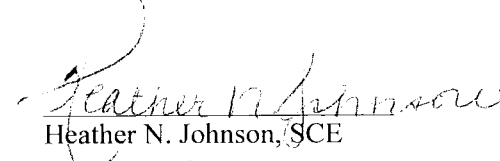
Property Owner:

BY: _____
NAME/TITLE: Joe Aguilar, Mayor
DATE: _____

Approved As To Form:


Eduardo Olivo
City Attorney

SCE:

BY: 
Heather N. Johnson, SCE
DATE: 9/22/11

Enclosures: Grant of Easement, 1099 Tax Form, Return Envelope



WHEN RECORDED MAIL TO

SOUTHERN CALIFORNIA EDISON COMPANY

Real Properties Dept.
 2131 Walnut Grove Ave.
 Rosemead, CA 91770

Attn: Edison Carrier Solutions Support
 Monica Contreras

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT OF EASEMENT

DOCUMENTARY TRANSFER TAX \$ NONE (VALUE AND CONSIDERATION LESS THAN \$100.00)	DISTRICT	WORK ORDER	IDENTITY	MAP SIZE
	Compton	800715344		051-087-4-1-4-3
SCE Company SIG. OF DECLARANT OR AGENT DETERMINING TAX FIRM NAME	FIM 108-4242-1 APN 6332-006-900	APPROVED: Real Properties Dept.	BY JOC	DATE 9/19/11

CITY OF COMMERCE (hereinafter referred to as "Grantor"), hereby grants to SOUTHERN CALIFORNIA EDISON COMPANY, a corporation, its successors and assigns (hereinafter referred to as "Grantee"), an easement and right of way to construct, use, maintain, operate, alter, add to, repair, replace, reconstruct, inspect and remove at any time and from time to time overhead electrical supply systems and communication systems (hereinafter referred to as "systems"), consisting of poles, guy wires and anchors, crossarms, wires, and other appurtenant fixtures and/or equipment necessary or useful for distributing electrical energy and for transmitting intelligence by electrical means, in, on, over, across and along that certain real property in the County of Los Angeles, State of California, described as follows:

For legal description, see Exhibit "A" and being more particularly depicted on Exhibit "B", both are attached hereto and by this reference made a part hereof.

This legal description was prepared pursuant to Sec. 8730(c) of the Business & Professions Code.

Grantor agrees for itself, its heirs, its assigns and its and their contractors, agents and employees, the right of free access to said systems and facilities and every part thereof, over the hereinabove described easement area, at all times, for the purpose of exercising the rights herein, and the right to clear and to keep clear said easement area free from explosives, buildings, structures, fences, vehicles, equipment, brush, combustible material and any and all other obstructions of any kind, and the right to trim or remove any tree or shrub which, in the opinion of Grantee, may endanger said systems, or any part thereof, or interfere with the exercise of the rights herein.

EXECUTED this ____ day of _____, 201__

CITY OF COMMERCE

By: _____
Name

Title

By: _____
Name

Title

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, 201__ before me, _____ a
Notary Public in and for said State, personally appeared _____

, who proved to me on the basis of satisfactory evidence to the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

STATE OF CALIFORNIA)
)
COUNTY OF _____)

, On _____, 201__ before me, _____ a
Notary Public in and for said State, personally appeared _____

, who proved to me on the basis of satisfactory evidence to the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT "A"
LEGAL DESCRIPTION

PROPOSED 4-FOOT WIDE EASEMENT FOR OVERHEAD ELECTRICAL AND FIBER OPTIC COMMUNICATION PURPOSES IN FAVOR OF SOUTHERN CALIFORNIA EDISON WITHIN APN 6332-006-900 (CITY OF COMMERCE PARCEL SOUTH OF 26TH STREET)

That portion of a division of Lot 99 of Rancho Laguna in the Rancho San Antonio as per map attached to Decree of Partition, recorded in Book 6387 Pages 1 et seq. of Deeds, Records of Los Angeles County lying northeasterly of the northeasterly line of Parcel 1 of Parcel Map filed in Book 5 Page 17, of Parcel Maps, in the office of the County Recorder of said county, within a strip of land 4 feet in width, the centerline of said strip being described as follows:

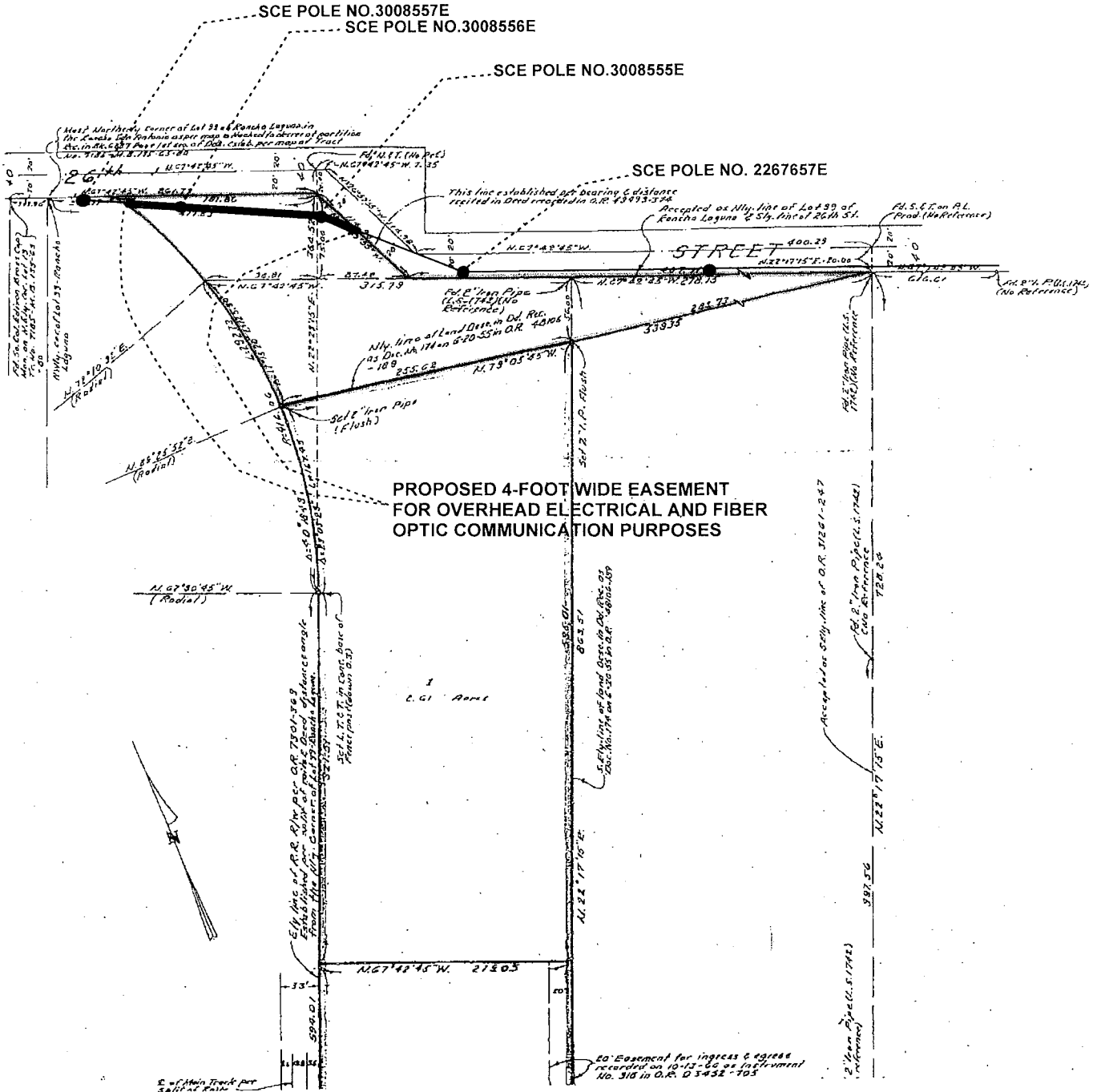
Beginning at a point adjoining an existing SCE Pole no. 2267657E located 1 foot northeasterly of the southwesterly right-of-way line for 26th Street, 40 feet in width, as shown on the above-mentioned Parcel Map, said point being distant approximately 100 feet northwesterly from the intersection of said southwesterly right-of-way line and the northerly prolongation of the southeasterly line of said Parcel 1 of said Parcel Map filed in Book 5 Page 17, of Parcel Maps; thence northwesterly, North 39° 43' 56" West, a distance of 100 feet more or less to the point of intersection with said southwesterly right-of-way line of said 26th Street shown as having a course of " North 26° 59'55" West 114.98 " on said Parcel map, said point being the **True Point of Beginning** for this legal description; thence continuing North 39° 43' 56" West, a distance of 30 feet to a point; thence northwesterly, North 64° 12' 25" West, a distance of 169.00 feet to the intersection with a curve concaved westerly having a radius of 416.00 feet, said curve being the northwesterly prolongation of the westerly boundary of Parcel 1 of said Parcel Map.

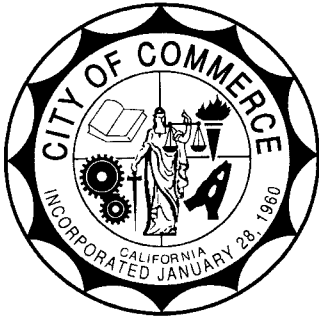
The above-described 4-foot wide easement to terminate southeasterly at a line shown as having a course of " North 26° 59'55" West 114.98 " as shown on said Parcel map, and terminates northwesterly at a curve concaved westerly having a radius of 416.00 feet, said curve being the northwesterly prolongation of the westerly boundary of Parcel 1 of said Parcel Map.

It is understood and agreed that the above description is approximate only, it being the intention of the Grantor to grant an easement for said systems as constructed. The centerline of the easement shall be coincidental with the centerline of said systems as constructed in, on, over, under, across and along the Grantor's property.

EXHIBIT " B "

PARCEL MAP CITY OF COMMERCE STATE OF CALIFORNIA BEING A DIVISION OF PORTION OF LOT 99 OF RANCHO LAGUNA IN THE RANCHO SAN ANTONIO AS PER MAP ATTACHED TO DECREE OF PARTITION RECORDED IN BOOK 6387, PAGES 1 & 59, OF DEEDS, RECORDS OF LOS ANGELES COUNTY





AGENDA REPORT

MEETING DATE: October 4, 2011

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA: (1) APPROVING AN AGREEMENT FOR STREET SWEEPING SERVICES WITH TO NATIONWIDE ENVIRONMENTAL SERVICES, A DIVISION OF JOE'S SWEEPING, INC.; AND (2) REJECTING ALL OTHER BIDS

RECOMMENDATION:

Approve the resolution and assign number next in order.

MOTION:

Move to approve recommendation.

BACKGROUND:

At its meeting of April 5, 2011, the City Council approved the Request for Proposals for Street Sweeping and authorized staff to advertise and issuance the Notice Inviting Bids/Proposals. The RFP was duly advertised, and included evaluation criteria approved by the City Council; such criteria were not exclusive.

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

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

On August 16, 2011, the City Council decided to award a 1-year probationary contract to R.F. Dickson for \$88,504 and directed staff to explore the opportunity of increasing the frequency of sweeping services in industrial areas or areas in need.

By letter dated August 31, 2011, R.F. Dickson advised the City that it was withdrawing its bid. By letter dated August 18, 2011, Nationwide Environmental Services provided the City with an unsolicited proposal to include all of the City's streets as part of its original bid at the same price. Based on the withdrawal by R.F. Dickson and the expanded services being provided by Nationwide, on September 20, 2011, the City Council decided to award a street sweeping services agreement to Nationwide Environmental Services, that would have an initial three year term, with the first year being a probationary year, and an option for the parties to proceed with an additional two year extension. The price for such services is \$121,206.24 per year.

ANALYSIS:

Staff has drafted an agreement consistent with City Council's direction. The agreement calls for:

- 1) Scope of Services – The contractor shall furnish all labor, equipment, tools, fuel, materials, insurance, supervision, waste recycling/disposal and incidentals required to perform street and parking lot sweeping services in the City of Commerce in accordance with the RFP and the amended proposal by Nationwide. These services shall include but not limited to:
 - a) Once a week sweeping of all City-owned residential streets;
 - b) Once a week sweeping of all major arterial streets, including median islands and striped medians;
 - c) Once a week sweeping of all City-owned parking lots; and
 - d) Once a week sweeping of all industrial streets, intersections and alleys.

- 2) Fees and Costs – Contractor fees for the services rendered shall be \$10,100.52 per month or \$121,206.24 per year. With emergency or additional sweeping services provided at the following rates:
 - a) During Regular Working Hours \$75.00 per hour
 - b) After Regular Working Hours \$95.00 per hour

- 3) Schedule of Performance – Prior to commencing any work, the Contractor shall provide a detail schedule to the City for review and approval.

- 4) Term of Contract – The term of the contract shall be as follows:
 - a) Initial Term: Three years from the Effective Date. The first year of the Initial Term shall be a "probationary period." The City may terminate the agreement after the one year probationary period or allow the Initial Term to be completed for the full three year period.
 - b) Optional Extension Period: The City may, in its sole and absolute discretion, exercise the right to extend the Agreement term by another two years after completion of the Initial Term.

- 5) Terms and Conditions – All other terms and conditions stated in the RFP shall apply to the agreement.

FISCAL IMPACT:

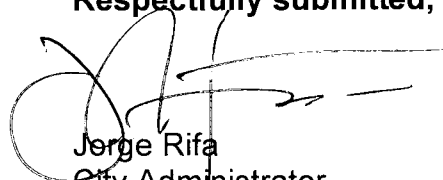
During the budget process, \$130,000 was appropriated for street sweeping services in the Community Development Department Maintenance and Operations Budget for Fiscal Year 2011/12.

RELATIONSHIP TO 2009 STRATEGIC GOALS:

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

There are no specific objectives connected to this issue. The City's ability to deliver quality street sweeping services with alternative-fuel powered vehicles to the community within the context of the FY 2011/2012 approved budget and available resources is in keeping with the identified 2009 Strategic Goals.

Respectfully submitted,



Jorge Rifa
City Administrator

Recommended by:



Robert Zarrilli
Director of Community Development

Prepared by:



Danilo Batson
Assistant Director of Public Services

Reviewed by:



Vilko Domic
Director of Finance

Approved As To Form:



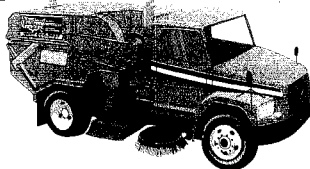
Eduardo Olivo
City Attorney

File: 2011 City Council Agenda Reports
Cash Contract No. 1102 – Street Sweeping Services (Nationwide Environmental Services) – Agenda Reports File

Attachment: Cover letter from Nationwide Environmental
Dated August 30, 2011

Nationwide Environmental Services®

Division of Joe's Sweeping, Inc.



August 30, 2011

Mr. Jorge Rifa
City Administrator
City of Commerce
2535 Commerce Way
Commerce, CA 90040

RE: Street Sweeping RFP

Dear Mr. Rifa:

Thank you for your letter dated August 24, 2011. Per your request, Nationwide Environmental Services (NES) confirms that we will hold our original proposal in the amount of \$121,206.24 as our base pricing and will honor the revised scope of services as indicated in our August 18, 2011 letter throughout the 3 + 2 contract term.

NES proudly provided high quality street sweeping services to the City of Commerce during 1999-2005 and we look forward to having another opportunity to serve the City.

If you have any questions, please feel free to contact me at (562) 860-0604 or ani@nes-sweeping.com. Thank you for your time and consideration.

Sincerely,

Ani Samuelian
Vice President

2011 AUG 30 AM 10:11

Admin

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA: (1) APPROVING AN AGREEMENT FOR STREET SWEEPING SERVICES WITH NATIONWIDE ENVIRONMENTAL SERVICES, A DIVISION OF JOE'S SWEEPING, INC.; AND (2) REJECTING ALL OTHER BIDS

WHEREAS, as part of the FY 2011/2012 Maintenance and Operations Budget, the City Council appropriated \$130,000 for street sweeping services; and

WHEREAS, at its meeting of April 5, 2011, the City Council approved and authorized City staff to advertise a Request for Proposals for Street Sweeping Services ("RFP"); and

WHEREAS, on June 2, 2011, the City received the following 6 proposals:

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

WHEREAS, on August 16, 2011, the City Council decided to award a 1-year probationary contract to R.F. Dickson and directed staff to explore the opportunity of increasing the frequency of sweeping services in industrial areas or areas in needs; and

WHEREAS, by letter dated August 31, 2011, R.F. Dickson advised the City that it was not interested in the probationary contract and was withdrawing its bid; and

WHEREAS, by letter dated August 18, 2011, Nationwide Environmental Services provided the City with an unsolicited proposal to include all of the City's streets as part of its original bid at the same price; and

WHEREAS, based on the withdrawal by R.F. Dickson and the expanded services being provided by Nationwide Environmental Services, on September 20, 2011, the City Council decided to award a street sweeping services agreement to Nationwide that would have an initial three year term, with the first year being a probationary period, and an option for the City to proceed with an additional two year extension.

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

Section 1. The Agreement for Street Sweeping Services with Nationwide Environmental Services, Division of Joe's Sweeping Inc., is hereby approved. The Mayor is hereby authorized to sign the Agreement for and on behalf of the City.

Section 2. All of the other bids received in response to the Request for Proposals for Street Sweeping Services are hereby rejected.

PASSED, APPROVED and ADOPTED this 4th day of October, 2011.

Joe Aguilar
Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk

THIS AGREEMENT (the "Agreement") dated as of **October 4, 2011** (the "Effective Date") is made by and between **Nationwide Environmental Services, a Division of Joe's Sweeping, Inc.**, ("Contractor") and the **City of Commerce**, a municipal corporation (the "City").

RECITALS

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

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

AGREEMENT

1. Scope of Services and Schedule of Performance.

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

2. Term.

The term of this Agreement shall be as follows:

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

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

3. Compensation.

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

be subject to any withholding required by law.

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

4. Financial Records.

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

5. Independent Contractor.

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

6. Contractor to Provide Required Personnel; Subcontracting.

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

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

with the prior written approval of the City Administrator.

7. Responsible Principal and Project Manager.

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

8. City Liaison.

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

9. Licenses.

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

10. Compliance with Laws.

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

11. Insurance.

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

12. Performance Bond.

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

13. Warranty and Liability.

Contractor warrants that the Services provided under this Agreement will be performed with the degree of skill and judgment normally exercised by recognized professionals performing

services of a similar nature at the time the services were rendered. Contractor shall be liable for injury or loss caused by the negligence of, or breach of this warranty by Contractor, its employees, its subcontractors, if any, and/or its agents hereunder. This warranty survives the completion and/or termination of this Agreement.

14. Indemnification.

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

15. Confidentiality.

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

16. Ownership of Documents.

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

entitled to make and obtain copies or reproductions of such Products for its own files or internal reference.

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

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

18. Covenant against Contingent Fees.

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

19. Conflict of Interest.

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

20. Other Agreements.

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

21. Termination.

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

following manner:

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

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

22. Waiver of Breach.

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

23. Assignment.

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

24. Arbitration.

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

25. Attorneys' Fees.

In the event arbitration or a judicial proceeding is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable

costs and attorneys' fees incurred in connection therewith.

26. Notices.

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

For the City:

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

For Contractor:

Nationwide Environmental Services (Division of Joe's Sweeping, Inc.)
11914 Front Street
Norwalk, CA 90650
Attn: Never Samuelian
President

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

27. Governing Law.

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

28. Severability.

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

29. No Construction of Agreement against any Party.

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

basis such party drafted this Agreement or any provision thereof.

30. Entire Agreement and Amendments to Agreement.

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

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

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

32. Counterpart Signatures.

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

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

CITY OF COMMERCE

DATED: _____, 2011

By: _____
Joe Aguilar, Mayor

ATTEST:

Linda K. Olivieri, City Clerk

CONTRACTOR

DATED: _____, 2011

By: _____
Name: Never Samuelian
Title: President

APPROVED AS TO FORM

By: Eduardo Olivo
Title: City Attorney

**EXHIBIT A
SCOPE OF SERVICES**

SERVICES

Contractor shall furnish all labor, equipment, tools, fuel, materials, insurance, supervision, waste recycling/disposal and incidentals required to perform street and parking lot sweeping services in the City of Commerce in accordance with the City of Commerce's Request for Proposals for Street Sweeping Services dated 5/23/11. These services shall include, but not be limited to:

1. Once a week sweeping of all City-owned residential streets;
2. Once a week sweeping of all major arterial streets, including median islands and striped medians;
3. Once a week sweeping of all City-owned parking lots; and
4. Once a week sweeping of all industrial streets, intersections and alleys within the City.

FEES AND COSTS

CONTRACTOR FEES for the services rendered shall be \$10,100.52 per month (\$121,206.24 per year).

Emergency or additional sweeping services shall be rendered at the following fees:

During Regular Working Hours	\$75.00/hr
After Regular Working Hours	\$95.00/hr

SCHEDULE OF PERFORMANCE

Prior to commencing any work the Contractor shall provide a detailed schedule to the City for review and approval.

EXHIBIT B

REQUIRED INSURANCE

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

1. Comprehensive General Liability and Automobile Liability Insurance Coverage.

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

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

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

2. Worker's Compensation.

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

3. Additional Insureds.

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

4. Cancellation Clause.

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

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

5. Severability Clause.

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

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

6. Qualifications of Insurer.

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

7. Approval of Insurer.

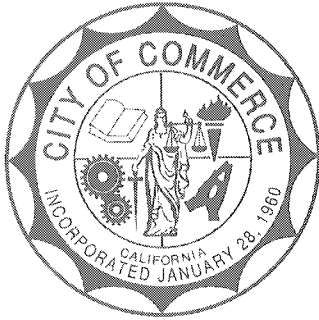
The insurance carrier providing the insurance shall be chosen by Contractor subject to approval by the City, provided that such approval shall not be unreasonably withheld.

8. Payment of Premiums.

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

9. Evidence of Insurance and Claims.

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



AGENDA REPORT

DATE: October 4, 2011

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: STREET CLOSURE OF STEVENS PLACE, A PORTION OF FITZGERALD AVENUE AND THE PORTION OF THE ALLEY DIRECTLY BEHIND STEVEN'S STEAKHOUSE FOR THE EAST LOS ANGELES BENEFIT RIDE FOR FALLEN OFFICERS.

RECOMMENDATION:

Move to approve the street closure.

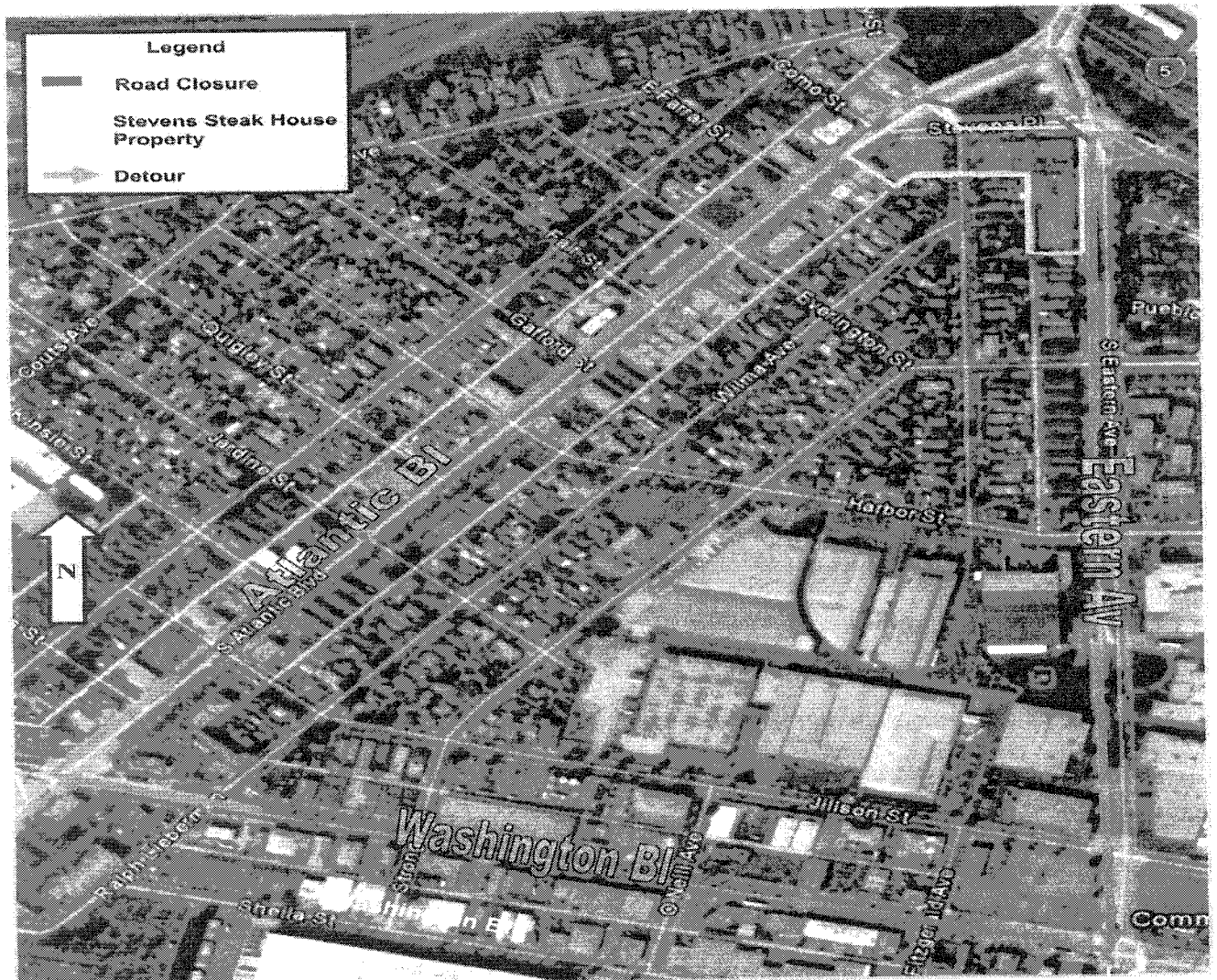
BACKGROUND:

A Temporary Use Permit (TUP) application was submitted by the East Los Angeles Sheriff's station to conduct their annual "Benefit Ride for Fallen Officers". The date of the event is October 8, 2011 between the hours of 10:00am and 5:00pm. Besides the motorcycle ride, a live band will provide music and food will also be available. The band and food would be situated in the parking lot immediately adjacent to the restaurant's west side. Motorcycles will park along Stevens Place and in the restaurant's parking lots along Atlantic Boulevard and South Eastern Avenue. Included in this application is the subject request to close Stevens Place, a very small portion of Fitzgerald Avenue and a portion of the alley directly behind Steven's Steakhouse and its parking lots.

Below are two maps pertaining to the subject event. The first shows the area of the proposed closure in red and the boundaries of the event in yellow. The second map also shows the proposed street closure, and event boundaries, but it also depicts a detour to Atlantic Boulevard (shown in green) from the I-5.



Detour to Atlantic Bl



On September 7, 2011, the TUP application along with its corresponding site plan, and maps were sent to various City Departments/Divisions (Fire, Sheriff's, Building and Safety, and Community Services) for feedback and comments. This is the standard practice for events of this type. Planning staff receives these applications and then reaches out to the other Departments/Divisions to obtain their comments, conditions and concerns. Staff receives the comments and the relays them to the applicant. It is then the applicant's responsibility to make sure all comments are addressed in a satisfactory manner. Staff will not approve an application unless the applicant can show that all issues have been resolved and each Department/Division has issued their approval.

For the subject event, the Community Services Department had no concerns, nor did Building and Safety. The City's Fire Inspector approved the event provided that the applicant have moveable barricades that allow for fire trucks to safely move through the area. Community Development also approved the event provided that the applicant notify nearby residents about the event and closure. Plus, Community Development asked that any issues with Caltrans be addressed, due to the event's proximity to a freeway off-ramp. In response, a letter from Caltrans was provided that states, "The request to close Steven's Place will not require you to submit any paperwork for a permit with Caltrans". Therefore, staff is now asking the City Council to approve the subject street closure.

FISCAL IMPACT:

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

RELATIONSHIP TO 2009 STRATEGIC GOALS:

This agenda item report relates to the 2009 strategic planning goal “*Protect and Enhance Quality of Life in the City of Commerce*” by supporting local law enforcement benefit ride.

Recommended by:



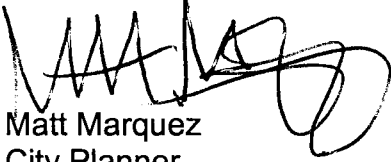
Bob Zarrilli
Director of Community Development

Respectfully submitted,



Jorge Rifa
City Administrator

Prepared by:



Matt Marquez
City Planner

Fiscal impact reviewed by:



Vilko Domic
Director of Finance

Approved as to Form



Eduardo Olivo
City Attorney



AGENDA REPORT

DATE: October 4, 2011

TO: Honorable City Council

FROM: City Administrator

SUBJECT: Commission and Committee Appointments

RECOMMENDATION:

Make the appropriate appointments.

MOTION:

Council discretion.

BACKGROUND:

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

ANALYSIS:

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

Education Commission

Mayor Pro Tempore Baca Del Rio

Housing Committee

Mayor Pro Tempore Baca Del Rio
Mayor Aguilar

Beautification Committee

Councilmember Leon
Mayor Aguilar

FISCAL IMPACT:

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

Recommended by:

Linda Kay Olivieri
City Clerk

Respectfully submitted,

Jorge J. Rifa
City Administrator



AGENDA REPORT

DATE: October 4, 2011

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

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

RECOMMENDATION:

Move to approve and adopt the Ordinance.

MOTION:

1. Move to read the Ordinance by title only.
2. Move to approve and adopt the Ordinance and assign the number next in order, and direct staff to continue outreach to the Industrial Council, and if it is determined that changes to the adopted ordinance are feasible and practical, present amendments to the Planning Commission and City Council at a future time for consideration and adoption.

ROLL CALL VOTE

BACKGROUND:

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

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

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

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

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

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

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

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

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

On August 16, 2011, the City Council conducted the required public hearing and approved the proposed Ordinance for first reading. At that meeting, members of the Industrial Council including Mr. Eddie Tafoya were present to indicate concerns with the proposed new requirements as it would impose another layer of "bureaucracy" on projects potentially exposing them to additional uncertainty and delays. In response to these concerns, staff attempted to meet with Mr. Tafoya and others on the Industrial Council to seek a potential solution to the issues but due to scheduling conflicts said meetings did not occur. Staff continued to try to arrange a meeting however due to further scheduling conflicts both parties have been unable to meet. At this point, staff recommends moving forward with the City Council action to consider the proposed ordinance as presented for second reading and adoption. If after adoption of this ordinance, and as a result of continued staff outreach to the Industrial Council, it is determined that changes to the adopted ordinance are feasible and practical, amendments can be brought back to the Planning Commission and City Council in the near future for consideration and adoption.

ANALYSIS:

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

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

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

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

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

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

PROPOSED FINDINGS:

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

1. That the proposed zoning ordinance text amendment is consistent with the goals, policies, and objectives of the general plan. ***The proposed text amendment is consistent with the City of Commerce General Plan. The General Plan aims to ensure land use compatibility within each of the City's planning areas. The subject amendment would require a more detailed review process than what is currently applicable. This enhanced review would help to ensure an orderly pattern of development in the City, while at the same time accommodating future growth.***
2. That the proposed zoning ordinance text amendment will not adversely affect surrounding properties. ***The subject text amendment would serve to better protect surrounding properties from overdevelopment and the potential negative effects associated with it. The proposed amendment would require a more detailed review process for warehouses of a certain size. Therefore, the impacts associated with these warehouses would be fully analyzed prior to approval. Thus, surrounding properties would not be adversely affected.***

That the proposed zoning ordinance text amendment promotes the public health, safety, and general welfare and serves the goals and purposes of this Title 19. ***The subject text amendment would serve to help better protect the health, safety and general welfare of the residents of the City of Commerce. This amendment would help to ensure development that is in line with the vision of the City's future as set forth in the General Plan and zoning ordinance. This amendment would help to ensure new development that does not adversely affect surrounding properties. It will also help to create orderly development throughout the City and greater land use compatibility.***

ENVIRONMENTAL ASSESSMENT:

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

FISCAL IMPACT:

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

RELATIONSHIP TO 2009 STRATEGIC GOALS:

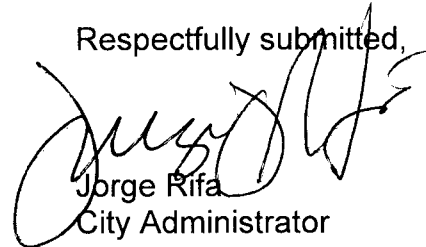
- Goal #2 – *Protect and Enhance Quality of Life in the City of Commerce.*

Recommended by:



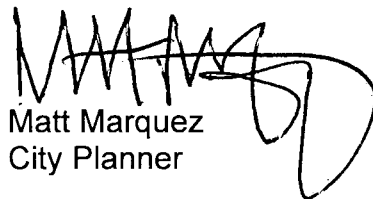
Bob Zarrilli
Director of Community Development

Respectfully submitted,



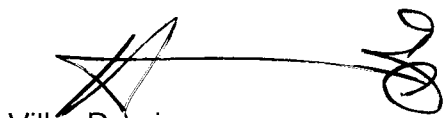
Jorge Rifa
City Administrator

Prepared by:



Matt Marquez
City Planner

Fiscal impact reviewed by:



Vilko Domic
Director of Finance

Approved as to Form



Eduardo Olivo
City Attorney

ORDINANCE NO. _____

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3: This Ordinance shall take effect on the thirty-first (31st) day after its adoption.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2011.

Joe Aguilar
Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk



AGENDA REPORT

MEETING DATE: October 4, 2011

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL APPROVING AN AGREEMENT WITH MUNICIPAL REVENUE ADVISORS (MRA) FOR REVENUE ENHANCEMENT CONSULTING SERVICES AND DESIGNATING MUNICIPAL REVENUE ADVISORS AS AN AUTHORIZED CITY REPRESENTATIVE TO EXAMINE SALES AND USE TAX RECORDS

RECOMMENDATION:

1. Receive presentation regarding Business Cooperation Program.
2. Approve and adopt the proposed resolution and assign the next number in order.

MOTION:

Move to approve the recommendations.

BACKGROUND:

At the June 7, 2011 City Council meeting, Council received information on two programs: 1) Business Cooperation Program and 2) Business License Amnesty Program.

Council then directed staff to prepare the appropriate resolution(s) and agreement(s) for Council's consideration at a future meeting, after receiving a formal presentation from each Consultant and discussion with the Industrial Council.

A formal presentation and discussions with the Industrial Council took place. From these discussions, staff determined that launching both programs at the same time would create confusion and could hinder the City's ability to achieve maximum results. For this reason staff will hold off on presenting the Business License Amnesty Program for consideration until sometime next year.

ANALYSIS:

Staff is now bringing the consultants before the City Council to provide a formal presentation prior to consideration of the resolution and agreement for the Business Cooperation Program.

The Business Cooperation Program structure is outlined below.

Municipal Revenue Advisors (MRA) and the City would work together to promote the program and to show businesses how they can make a difference in their City by changing the way they file their sales and use tax return with the State Board of Equalization including the use of a "Direct Pay Permit".

When businesses pay their use taxes under a "Direct Pay Permit", the 1% use tax is diverted from the Los Angeles County pool and allocated to the City of Commerce. The result is a higher percentage of revenue for the City which translates into continued quality services to the community.

MRA and the City would approach identified businesses to solicit voluntary participation in the program. MRA would then work with these businesses on how to pay their sales and use taxes, including the "Direct Pay Permit", with the State Board of Equalization. The City will also participate in the program.

Revenue projections are difficult to make because the results depend on how many businesses participate in the program and how many are eligible to apply for a "Direct Pay Permit". Nevertheless, the result translates into increased revenue for the City. MRA would work on a contingency basis (revenue off-set); therefore, the City Council will not need to appropriate any funding for the implementation of this program.

MRA has worked with the cities of Newport Beach, Santa Maria, and Milpitas, to name a few. All cities gave positive reviews with the quality of service provided by MRA and all have benefited from additional revenue generated by the program.

FISCAL IMPACT:

None at this time, however if the City Council decides to enter into an agreement on October 4, 2011 with Municipal Revenue Advisors, the implementation of the program could potentially result in the following:

Fiscal Impact of hiring MRA:

- Cost(s) to the City: 25% contingent fee of use tax revenue paid to the City for a maximum 11 quarters for each program participant
- 20% contingent fee, on the City's purchases, for 8 quarters for each vendor and contractor
- Risks to the City: None. Business Cooperation Program is a voluntary program and there is no cost if there is no new revenue

RELATIONSHIP TO 2009 STRATEGIC GOALS:

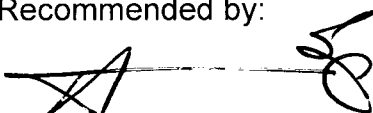
This item is associated with Council's goal of making financially and economically sound decisions consistent with economic conditions.

Respectfully submitted,



Jorge Rifá
City Administrator

Recommended by:



Vilko Domic
Director of Finance

Prepared by:



Maria E. Ibarra Villaseñor
Business License Officer

Approved as to Form:



Eduardo Olivo
City Attorney

RESOLUTION NO. _____

A RESOLUTION OF CITY COUNCIL OF THE CITY OF COMMERCE APPROVING AN AGREEMENT WITH MUNICIPAL REVENUE ADVISORS (MRA) FOR REVENUE ENHANCEMENT CONSULTING SERVICES AND DESIGNATING MUNICIPAL REVENUE ADVISORS AS AN AUTHORIZED CITY REPRESENTATIVE TO EXAMINE SALES AND USE TAX RECORDS

WHEREAS, pursuant to California Revenue and Taxation Code Section 7200, et seq., the City of Commerce has adopted a sales and use tax ordinance which imposes a tax and provides a measure that can be administered and collected by the State Board of Equalization along the same and existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes; and

WHEREAS, pursuant to California Revenue and Taxation Code Section 7056, the City of Commerce, by resolution, may designate any officer, employee or any other person to examine all of the sales and use tax records of the Board pertaining to sales and use taxes collected for the City; and

WHEREAS, the City of Commerce has entered into a non-exclusive agreement for revenue enhancement consulting services with the firm of Municipal Revenue Advisors to designate Municipal Revenue Advisors as an authorized Consultant to examine such sales tax allocation records maintained by the Board on behalf of the City of Commerce

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

Section 1. The City of Commerce hereby certifies to the State Board of Equalization that Municipal Revenue Advisors is a designated representative of the City of Commerce to examine all of the sales and use tax records collected by the Board on behalf of the City of Commerce.

Section 2. Pursuant to California and Revenue and Taxation Section 7056 (b), the City of Commerce hereby certifies that Municipal Revenue Advisors ("Consultant") meets all of the following conditions:

- a) Consultant has an existing contract with the City to examine sales tax records;
- b) Consultant is required by that contract to disclose information contained in, or derived from, those sales tax records only to an officer or employee of the City who is authorized by resolution to examine the information;
- c) Consultant is prohibited by the contract from performing consulting services for a retailer during the term of the contract; and
- d) Consultant is prohibited by the contract from retaining the information contained in, or derived from, those sales or transactions and use tax records, after the contracts have expired.

Section 3. The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED and ADOPTED this _____ day of _____ 2011.

Joe Aguilar
Mayor

Attest:

Linda K. Olivieri, MMC
City Clerk

CITY OF COMMERCE
Agreement for Revenue Enhancement Consulting Services

This Agreement is made and entered into by and between Municipal Revenue Advisors Inc. ("Consultant") and the City of Commerce ("City") a municipal corporation as of this _____ day of October, 2011. The City wishes to engage Consultant to assist the City with revenue enhancement consulting services. Consultant shall provide the service(s) listed below at the compensation rates listed:

1. Refunds on City Purchases and Unrealized Revenue
2. Business Cooperation Program

For each service selected, Consultant shall meet with City Staff to define the desired results for each service prior to commencing the service, review applicable City ordinances and establish appropriate reporting relationships.

For each service, the City shall provide Consultant the necessary information, maps, and data bases related to the service, such as business license files, sales tax registration files, etc.

SCOPE AND DELIVERABLES

1. REFUNDS ON CITY PURCHASES AND UNREALIZED REVENUE

Consultant shall conduct a review of the City's purchases annually, to determine which purchases may be over billed, over taxed or improperly reported. Consultant shall document, prepare and process refund claims, or assist the City to report and pay the tax to the City's advantage, including the legal basis for the refunds.

- A. Utilizing City's chart of accounts and/or vendor files, Consultant shall work with City staff to identify those purchases which may be incorrect.
- B. Consultant shall process overpayment refund claims for each vendor.
- C. Consultant shall work with the appropriate government agency's Refund Section to process the tax refund claims.

For the above services, Consultant shall prepare and provide Quarterly Reports to City on the status of each service document and verify the additional revenue received by City.

2. BUSINESS COOPERATION PROGRAM (BCP)

- A. Partnering with City staff, Consultant will work with businesses to gain/retain the use tax on their purchases and or the sales tax on their sales in and to the City.
- B. Consultant will meet with City staff to establish a list of high priority businesses which generate significant amounts of sales and use tax to the City, or have the potential of generating significant amounts of sales/use tax to the City.
- C. Consultant will develop individualized revenue enhancing strategies for each prioritized business designed to enhance sales and use tax revenue received by the City.
- D. Consultant in coordination with City staff will attend meetings with these businesses as part of the City's Economic Development Program. Consultant's role is to incorporate additional individualized sales and use tax revenue strategies as part of the relationship building process.

COMPENSATION

1. REFUNDS ON THE CITY'S PURCHASES AND UNREALIZED REVENUE

City Purchases and Contracts - 20% Contingent Fee for 8 quarters for each vendor and contractor.

2. BUSINESS COOPERATION PROGRAM

Business Cooperation Program (BCP) - 25% Contingent Fee for 11 quarters maximum for each program participant.

All normal and reasonable expenses are included in Consultant's compensation schedule as listed above.

All Invoices are due and payable when received by the City.

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

CITY OF COMMERCE

DATED: _____


By: _____
Joe Aguilar
Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk

Municipal Revenue Advisors

DATED: _____

By: 
Nick O'Hare, President

APPROVED AS TO FORM:



Eduardo Olivo
City Attorney

EXHIBIT A

CERTIFICATE OF CONFIDENTIALITY

The following conditions specified in Section 7056 (b), (l) of the State of California Revenue and Taxation Code are hereby made part of this Agreement entered into by and between City of Commerce (City) and Municipal Revenue Advisors (Consultant):

- a) Consultant has an existing contract with the City to examine sales tax records;
- b) Consultant is required by that contract to disclose information contained in, or derived from, those sales tax records only to an officer or employee of the City who is authorized by resolution to examine the information;
- c) Consultant is prohibited by the contract from performing consulting services for a retailer during the term of the contract; and
- d) Consultant is prohibited by the contract from retaining the information contained in, or derived from, those sales or transactions and use tax records, after the contracts have expired.

Information obtained by examination of SBE records shall be used only for purposes related to collection of local sales and use taxes or for other governmental functions of City as set forth by resolution adopted pursuant to Section 7056 (b) of the California Revenue and Taxation Code.

The resolution shall designate Consultant as a person authorized to examine sales and use tax records and shall certify that this Agreement meets the requirements set forth above in Section 7056 (b) (l) of the California Revenue and Taxation Code.

Consultant hereby certifies that any and all information utilized in the conduct of work performed is to be utilized only for these purposes authorized by City and by the Bradley-Bums Uniform Local Sales and Use Tax Law.