

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

Agendas and other writings that will be distributed to the Councilmembers/ Board Members 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/Secretary'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 ADJOURNED REGULAR MEETINGS OF THE CITY COUNCIL OF THE CITY OF COMMERCE AND THE GOVERNING BODY OF THE SUCCESSOR AGENCY TO THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION (HEREINAFTER "SUCCESSOR AGENCY")

**COUNCIL CHAMBERS
5655 JILLSON STREET, COMMERCE, CALIFORNIA**

TUESDAY, OCTOBER 8, 2013 – 11:00 A.M.

CALL TO ORDER

Mayor/Chairperson Aguilar

ROLL CALL

Deputy City Clerk/Secretary Alexander

PUBLIC COMMENT

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

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

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

RECESS TO CLOSED SESSION

1. Pursuant to Government Code §54957,
 - A. The **City Council** will interview applicants for the position of Public Works and Development Services Director and, thereafter, consider personnel matters related to the appointment of a Public Works and Development Services Director.

SCHEDULED MATTERS

2. A Resolution of the City Council of the City of Commerce, California, Approving an Agreement with United Pacific Services, Inc., for Interim Tree Maintenance Services

The **City Council** will consider for approval and adoption a proposed Resolution approving an Agreement with United Pacific Services, Inc., for Interim Tree Maintenance Services

3. A Resolution of the City Council of the City of Commerce, California, Amending an Agreement By and Between JetPatcher USA, Inc. and the City to Revert to a Month-to-Month Agreement upon Expiration on October 16, 2013.

The **City Council** will consider for approval and adoption a proposed Resolution amending an agreement by and between JetPatcher USA, Inc., and the City to revert to a month-to-month Agreement upon expiration on October 16, 2013.

4. A Resolution of the City Council of the City of Commerce, California, Approving a One-Year Agreement with Dekra-Lite for the Installation, Maintenance and Storage of Holiday Decorations

The **City Council** will consider for approval and adoption a proposed Resolution approving a one-year Agreement with Dekra-Lite for the Installation, Maintenance and Storage of Holiday Decorations.

5. Update and Review of Proposed Submission of Redevelopment Property Management Plan

The **City Council** will receive an update and review on, the proposed submission of the Redevelopment Property Management Plan and thereafter consider said report for receipt and filing and provide direction as may be deemed necessary.

ADJOURNMENT

Adjourn to Tuesday October 15, 2013 at 5:00 p.m. in the City Council Chambers.

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



AGENDA REPORT

MEETING DATE: October 8, 2013

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING AN AGREEMENT WITH UNITED PACIFIC SERVICES, INCORPORATED FOR INTERIM TREE MAINTENANCE SERVICES

RECOMMENDATION:

Approve and adopt the Resolution approving an Agreement with United Pacific Services, Inc. for interim tree maintenance services, and assign the number next in order.

MOTION:

Move to approve the recommendation.

BACKGROUND:

On September 17, 2013, the City Council terminated an Agreement with Trimming Land Company, Inc. for tree maintenance services effective at the end of the September 2013 billing period following a probationary period. Council also authorized staff to obtain tree trimming services on an interim basis with another vendor for a period of six months during which time staff will prepare a Request for Proposal (RFP) to secure tree maintenance services on a more extended basis.

To provide continued tree maintenance service, the Mayor approved an Agreement effective October 1, 2013, with United Pacific Services, Inc. (UPS). The term of the Agreement is for six months from the effective date of October 1, 2013 with two optional three-month extensions. This will allow the necessary time for staff to prepare an RFP and complete the selection process. UPS is a well established company who currently provides tree maintenance services to the following agencies:

- Vernon
- Simi Valley
- Rancho Cucamonga
- Hawthorne
- Long Beach
- Redondo Beach
- Fountain Valley
- Goleta
- County of LA
- County of Riverside

UPS submitted a bid to the City of Commerce in 2011 and 2012 for \$147,392. UPS offered the City an additional 5% reduction of their bid amount and detailed costs as outlined in their May 24, 2012 proposal. Their yard is located within a few miles of the City of Commerce at the intersection of the 710 Freeway and Imperial Highway. UPS provides their clients with an exclusive license for the ArborPro tree inventory software they use for requesting service and documenting work completed. The City will own and retain the data entered. Their references, the cities of Long Beach, Simi Valley, and Rancho Cucamonga are pleased with their service, response time, safety procedures and tree care.

On September 30, 2013, staff met with UPS to discuss the City's expectations for service and quality tree care and is satisfied that UPS can service the City in an interim capacity.

Staff recommends that the City Council approve an Agreement with UPS for interim tree maintenance services effective October 1, 2013.

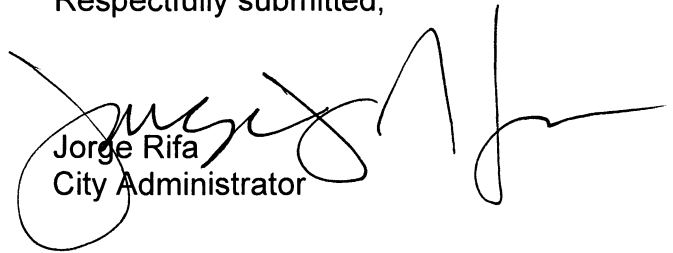
FISCAL IMPACT:

No fiscal impact is expected. Staff will prioritize tree maintenance services and remain within the current fiscal year budget.

RELATIONSHIP TO STRATEGIC GOALS:

This agenda report item complies with Goal #2 – *Protect and Enhance Quality of Life in the City of Commerce*. In conjunction with State and Federal environmental regulations, Commerce's continued focus on the environment will enhance water quality for all residents.

Respectfully submitted,



Jorge Rifa
City Administrator

Reviewed by:



Alex Hamilton
Assistant Director of Community Development

Prepared by:



Gina Nila
Environmental Services Manager

Reviewed by:



Vilko Domic
Director of Finance

Approved as to form:



Eduardo Olivo
City Attorney

Attachments: Agreement with UPS, Inc.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE,
CALIFORNIA, APPROVING AN AGREEMENT WITH UNITED PACIFIC
SERVICES, INCORPORATED FOR INTERIM TREE MAINTENANCE
SERVICES

WHEREAS, on September 17, 2013, the City Council terminated an Agreement with Trimming Land Company, Inc. for tree maintenance services effective at the end of the September 2013 billing period following a probationary period; and

WHEREAS, Council also authorized staff to obtain tree trimming services on an interim basis with another vendor for a period of six months during which time staff will prepare a Request for Proposal to secure tree maintenance services on a more extended basis; and

WHEREAS, to provide continued tree maintenance service, the Mayor approved an Agreement effective October 1, 2013, with United Pacific Services, Inc. (UPS); and

WHEREAS, UPS is a well established company who currently provides tree maintenance services to numerous public agencies; and

WHEREAS, UPS submitted a bid to the City of Commerce in 2011 and 2012 for \$147,392 and offered the City an additional 5% reduction of their bid amount and detailed costs as outlined in their May 24, 2012 proposal; and

WHEREAS, UPS' yard is located within a few miles of the City of Commerce at the intersection of the 710 Freeway and Imperial Highway; and

WHEREAS, UPS provides their clients with an exclusive license for the ArborPro tree inventory software they use for requesting service and documenting work completed in which the City will own and retain the data entered; and

WHEREAS, their references, the cities of Long Beach, Simi Valley, and Rancho Cucamonga, are pleased with their service, response time, safety procedures and tree care; and

WHEREAS, On September 30, 2013, staff met with UPS to discuss the City's expectations for service and quality tree care and is satisfied that UPS can service the City in an interim capacity; and

WHEREAS, Staff recommends that the City Council approve an Agreement with UPS for interim tree maintenance services effective October 1, 2013.

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

Section 1. The Agreement made by and between United Pacific Services, Inc. and the City of Commerce for interim tree maintenance services is hereby adopted.

Section 2. The Mayor is hereby authorized and directed to execute said agreement.

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

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

Joe Aguilar
Mayor

ATTEST:

Teresa Jackson, CMC
Interim City Clerk

THIS AGREEMENT (the "Agreement") dated as of October 1, 2013 (the "Effective Date") is made by and between United Pacific Services, 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 set forth below.

AGREEMENT

1. Scope of Services and Schedule of Performance.

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

2. Term.

A. Interim Term: Six months from the Effective Date.

B. Optional Extension Period. The City may, in its sole and absolute discretion, exercise the right to extend the Interim Term by up to two separate three month extension periods after completion of the Interim Term. The City may do so at any time before the expiration of the Interim 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.

7. Responsible Principal and Project Manager.

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

8. City Liaison.

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

9. Licenses.

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

10. Compliance with Laws.

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

11. Insurance.

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

12. 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.

13. 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.

14. 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.

15. 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.

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

All information, data, records, reports and maps as are in possession of the City, and necessary for the carrying out of this work, shall be made available to 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.

17. 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.

18. 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.

19. 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.

20. Termination.

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

21. 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.

22. 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.

23. 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.

24. 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.

25. 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:

United Pacific Services, Inc.
120 E. La Habra Blvd., Suite 107
La Habra, CA 90631-2310
Attn: Mr. Gus Franklin, 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.

26. 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.

27. Severability.

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

28. No Construction of Agreement against any Party.

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

29. Entire Agreement and Amendments to Agreement.

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

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

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

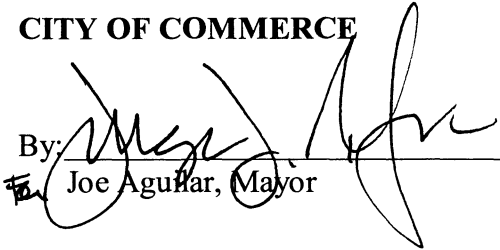
31. Counterpart Signatures.

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

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

CITY OF COMMERCE

DATED: October __, 2013

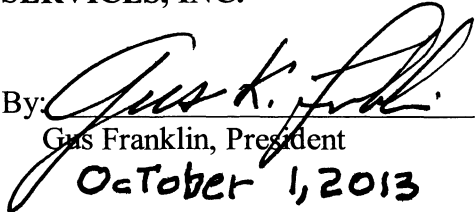
By: 
Joe Aguilar, Mayor

ATTEST:

Teresa Jackson, CMC
Interim City Clerk

CONTRACTOR – UNITED PACIFIC SERVICES, INC.

DATED: October __, 2013

By: 
Gus Franklin, President
October 1, 2013

APPROVED AS TO FORM

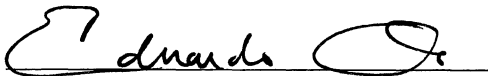

By: Eduardo Olivo
Title: City Attorney

EXHIBIT A

(Proposal dated May 24, 2012 and revised costs dated September 19, 2013, in an email correspondence from Mr. Gus Franklin of United Pacific Services, Inc.

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 13 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 \$5,000,000 for each person and \$5,000,000 for each occurrence; property damage limits of \$5,000,000 for each occurrence, \$5,000,000 aggregate.

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

2. Errors and Omissions Insurance Coverage.

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

3. Worker's Compensation.

Contractor shall carry and maintain worker's compensation as required by the California Labor Code, with a limit of no less than \$1,000,000 per accident for bodily injury or disease for all persons employed directly or indirectly in connection with this Agreement by Contractor or any subcontractor.

4. Additional Insureds.

The City, its officers, agents and employees must be named as additional insureds or as

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

5. Cancellation Clause.

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

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

6. Severability Clause.

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

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

7. Qualifications of Insurer.

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

8. Approval of Insurer.

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

9. Payment of Premiums.

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

10. Evidence of Insurance and Claims.

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



AGENDA REPORT

MEETING DATE: October 8, 2013

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 WITH JETPATCHER USA, INC. FOR STREET MAINTENANCE AND REPAIR SERVICES

RECOMMENDATION:

Approve and adopt the Resolution approving the First Amendment to the Agreement with JetPatcher USA, Inc. for Street Maintenance and Repair Services to revert to a month-to-month term, and assign the number next in order.

MOTION:

Move to approve the recommendation.

BACKGROUND:

On October 16, 2012, the City entered into an Agreement with JetPatcher USA, Inc. for street maintenance and repair services, namely pothole repairs for one year. During the past year, staff determined that JetPatcher's repairs consistently outlast those provided by the Los Angeles County Department of Public Works (LA County). Further, JetPatcher has demonstrated that they have the expertise, equipment and staff to respond to the City's needs for road repairs in a reasonable time frame.

Due to the conditions of the roads in Commerce, the City spent approximately \$213,000 in Fiscal Year 2012/13. Previously, the City spent on average \$177,950. However, many previous repairs by LA County needed to be redone using JetPatcher in addition to new work orders generated after rain events. The cost of repairs should decrease over time as the City implements its Capital Improvement Projects for roadways.

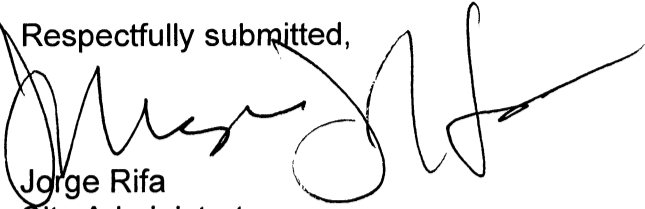
As a result of staff's satisfaction with JetPatcher's service and response time, staff recommends the City approve and adopt an amendment to the Agreement dated October 16, 2012 reverting to a month-to-month term. The Agreement allows for termination without cause upon five days written notice to the contractor. The City would continue to utilize LA County as a back-up service provider only as necessary.

FISCAL IMPACT:

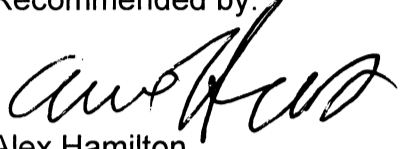
The Fiscal Impact is \$100,000 for JetPatcher's approximate annual costs depending on road conditions and rain events. \$150,000 was budgeted in account number 10-5140-56060, Street and Alley Maintenance and Repairs.

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."*

Respectfully submitted,

Jorge Rifa
City Administrator

Recommended by:


Alex Hamilton
Assistant Director of Community Development


Prepared by:


Gina Nila
Environmental Services Manager

Fiscal impact reviewed by:


Vilko Domic
Director of Finance

Approved as to form:


Eduardo Olivo
City Attorney

Attachments: Resolution
First Amendment to Agreement

File: 2013 City Council Agenda Reports
Street Maintenance and Repair Services – Agenda Reports File

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE,
CALIFORNIA, APPROVING THE FIRST AMENDMENT TO THE AGREEMENT WITH
JETPATCHER USA, INC. FOR STREET MAINTENANCE AND REPAIR SERVICES

WHEREAS, on October 16, 2012, the City entered into an Agreement with JetPatcher USA, Inc. for street maintenance and repair services, namely pothole repairs for one year; and

WHEREAS, during the past year, staff determined that JetPatcher's repairs consistently outlast those provided by the Los Angeles County Department of Public Works (LA County); and

WHEREAS, JetPatcher has demonstrated that they have the expertise, equipment and staff to respond to the City's needs for road repairs in a reasonable time frame; and

WHEREAS, the City would continue to utilize LA County as a back-up service provider only as necessary; and

WHEREAS, the City would like to approve a First Amendment to the Agreement with JetPatcher USA, Inc. that will change the term of the Agreement to a month-to-month term and retain the City's right to terminate the Agreement with or without cause upon five days written notice.

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

SECTION 1. The First Amendment to the Agreement by and between JetPatcher USA, Inc. and the City of Commerce is hereby approved. The Mayor is authorized to sign the First Amendment for and on behalf of the City.

SECTION 2. The City shall utilize account number 10-5140-56060, street and alley maintenance and repair for this service.

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

Joe Aguilar, Mayor

ATTEST:

Teresa Jackson, CMC
Interim City Clerk

FIRST AMENDMENT TO THE STREET MAINTENANCE AND REPAIR SERVICES AGREEMENT BETWEEN THE CITY OF COMMERCE AND JETPATCHER USA, INC.

The First Amendment to the Street Maintenance and Repair Services Agreement (hereinafter "First Amendment") is made and entered into as of the 8th day of October, 2013 ("Effective Date") by and between the City of Commerce, a public body of the State of California ("City") and JetPatcher USA, Inc., a California corporation in good standing ("Contractor")

WITNESSETH

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

- A. As of the 16th day of October 2012, the parties hereto entered into a certain "Street Maintenance and Repair Services Agreement" (hereinafter "Agreement") for one year.
- B. The parties hereto mutually desire to enter into a First Amendment to the Agreement in the manner hereinafter set forth.

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

1. Term of Agreement:

Pursuant to provisions in Section 2 ("Term") of the Agreement:

- A. The parties hereto agree to revert to a month-to-month term.

City of Commerce, a Municipal Corporation

JetPatcher USA, Inc., Contractor

Joe Aguilar, Mayor

Abraham Lopez Rodriguez,
General Manager

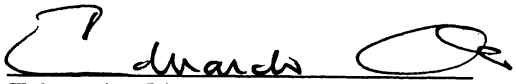
Dated: _____

Dated: _____

ATTEST:

APPROVED AS TO FORM:

Teresa Jackson, CMC
Interim City Clerk



Eduardo Olivo
City Attorney



AGENDA REPORT

MEETING DATE: October 8, 2013

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING A ONE-YEAR AGREEMENT WITH DEKRA-LITE FOR THE INSTALLATION, MAINTENANCE AND STORAGE OF HOLIDAY DECORATIONS

RECOMMENDATION:

Approve and adopt the Resolution approving a One-Year Agreement with Dekra-Lite for the Installation, Maintenance and Storage of Holiday Decorations, and assign the number next in order.

MOTION:

Move to approve the recommendation.

BACKGROUND:

On August 20, 2013, the Council authorized staff to release a Request for Proposals (RFP) for the installation, maintenance, and storage of holiday decorations for the City of Commerce. The RFP was released on September 5, 2013, and sent to eleven companies specializing in holiday decorations for commercial areas. Proposals were due on September 30, 2013.

The City's Holiday Decorations Program consists of 235 holiday displays including banners and overhead signs. Southern California Edison does not allow decorations on wooden poles for safety reasons. As a result, the 28 previously displayed decorations will not be placed on Ferguson Drive and Triggs Street. This applies to the Veteran's Park area as well due to wooden poles and overhead power lines. The RFP did reflect this change. The RFP included the following display areas:

1. Heritage Park
2. City Hall
3. Streets: Banners and Ornaments on:

Washington Blvd.	Atlantic Blvd.	Commerce Way
Telegraph Rd.	Eastern Ave.	
4. Street overhead: "Seasons Greetings" Streamers on:

Washington & Ayers	Atlantic & Washington	Triggs & McDonnell
Eastern & Yerington	Atlantic & Harbor	Washington & Commerce
Gage & Zindell	Washington & Telegraph	

ANALYSIS:

Due to the City's need for a single company to install, maintain, and store the holiday decorations, the City received proposals from the following companies:

Company	Proposal Amount
Dekra-Lite	\$87,572.85 – Option A, Existing Program with minor decoration refurbishing
Dekra-Lite	\$241,301.04 – Alternative Program – all new
Display Sales*	\$126,621 – Option I
Display Sales*	\$118,105 – Option II

**Company does not provide installation, maintenance or storage of the product.*

Display Sales' proposal does not meet the needs of the City as expressed in the RFP since they do not provide installation, maintenance and storage services, Dekra-Lite is the only proposer who meets the requirements of the RFP. Since 1999, Dekra-Lite has provided holiday decoration services to the City of Commerce initially under five-year lease agreements. However, on November 22, 2004, the City awarded a one-year lease agreement to Dekra-Lite. Since then, the City has operated on a year-to-year lease agreement with Dekra-Lite for holiday decoration services.

Staff recommends accepting Dekra-Lite's proposal for Option A, the City's existing holiday décor program and authorizing an award of a one-year agreement to Dekra-Lite. Dekra-Lite will be responsible for providing all labor, materials, equipment, tools and incidentals necessary for the installation and placement of the holiday decorations.

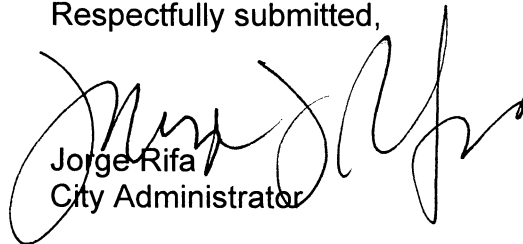
FISCAL IMPACT:

The Fiscal Impact is \$87,572.85 for Option A, the City's existing holiday décor program, relatively the same cost as the previous year. Sufficient funds were budgeted and available in account number 10-5160-54075, equipment rental.

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."*

Respectfully submitted,



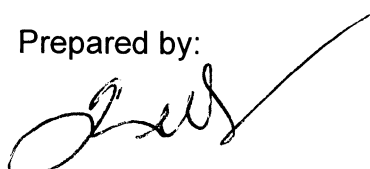
Jorge Rifa
City Administrator

Recommended by:



Alex Hamilton
Assistant Director of
Community Development

Prepared by:



Gina Nila
Environmental Services Manager

Fiscal impact reviewed by:



Vilko Domic
Director of Finance

Approved as to form:



Eduardo Olivo
City Attorney

Attachments: Resolution Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE,
CALIFORNIA, APPROVING A ONE-YEAR AGREEMENT WITH DEKRA-LITE FOR
THE INSTALLATION, MAINTENANCE AND STORAGE OF HOLIDAY
DECORATIONS

WHEREAS, on August 20, 2013, the Council authorized staff to release a Request for Proposals (RFP) for the installation, maintenance, and storage of holiday decorations for the City of Commerce; and

WHEREAS, the RFP was released on September 5, 2013, and sent to eleven companies specializing in holiday decorations for commercial areas with a proposal due date of September 30, 2013; and

WHEREAS, the City's Holiday Decorations Program consists of 235 holiday displays including banners and overhead signs to be displayed at Heritage Park, City Hall and along public streets; and

WHEREAS, the City received proposals from two companies, Dekra-Lite and Display Sales; and

WHEREAS, Display Sales does not provide installation, maintenance or storage of their product; and

WHEREAS, Dekra-Lite is the only proposer who can meet the needs of the City as expressed in the RFP; and

WHEREAS, since 1999, Dekra-Lite has provided holiday decoration services to the City of Commerce and is familiar with its holiday program needs; and

WHEREAS, since November 22, 2004, the City has operated on a year-to-year lease agreement with Dekra-Lite for holiday decoration services; and

WHEREAS, staff recommends accepting Dekra-Lite's proposal for Option A, the City's existing holiday décor program and authorizing an award of a one-year agreement to Dekra-Lite.

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

SECTION 1. The City of Commerce hereby accepts the bid from Dekra-Lite for Option A of the RFP.

SECTION 2. The agreement between the City of Commerce and Dekra-Lite is hereby approved. The Mayor is authorized to sign the Agreement for and on behalf of the City.

SECTION 3. The City shall utilize account number 10-5160-54075, equipment rental for this program.

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

Joe Aguilar, Mayor

ATTEST:

Teresa Jackson, MMC
Interim City Clerk

THIS AGREEMENT (the "Agreement") dated as of October 8, 2013 (the "Effective Date") is made by and between Dekra-Lite ("Contractor ") and the City of Commerce, a municipal corporation (the "City").

RECITALS

WHEREAS, Contractor has represented that it is trained, experienced and competent to perform the 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 set forth below.

AGREEMENT

1. Scope of Services and Schedule of Performance.

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

2. Term.

The term of this Agreement shall be for one year from the effective date.

3. Compensation.

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

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

4. Financial Records.

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

payments under this Agreement. All accounting records shall readily provide a breakdown of fees and costs charged to this Agreement.

5. Independent Contractor.

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

6. Contractor to Provide Required Personnel; Subcontracting.

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

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

7. Responsible Principal and Project Manager.

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

8. City Liaison.

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

9. Licenses.

Contractor warrants that it and its employees have obtained all valid licenses and/or certifications

generally required of professionals providing services such as the Services, by all applicable regulating governmental agencies, and are in good standing with such applicable regulating governmental agencies.

10. Compliance with Laws.

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

11. Insurance.

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

12. 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.

13. 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.

14. 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.

15. 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.

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

All information, data, records, reports and maps as are in possession of the City, and necessary for the carrying out of this work, shall be made available to 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.

17. 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.

18. 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.

19. 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.

20. Termination.

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

21. 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.

22. 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.

23. 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.

24. 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.

25. 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:

Dekra-Lite
3102 West Alton Avenue
Santa Ana, CA 92704
Attn: LeeRoy Chaffin, Senior Vice 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.

26. 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.

27. Severability.

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

28. No Construction of Agreement against any Party.

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

29. Entire Agreement and Amendments to Agreement.

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

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

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

31. Counterpart Signatures.

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

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

CITY OF COMMERCE

DATED: October ____, 2013

By: _____
Joe Aguilar, Mayor

ATTEST:

Teresa Jackson, MMC
Interim City Clerk

**DEKRA-LITE
CONTRACTOR**

DATED: October 3, 2013

By:  _____
LeeRoy Chaffin, Senior Vice President

APPROVED AS TO FORM

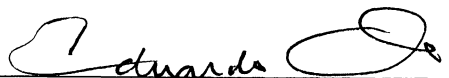

By: Eduardo Olivo
Title: City Attorney

EXHIBIT A



City of Commerce
2013 Holiday proposal
Index

1. Introduction page
2. Dekra-Lite Company Overview
3. Reference list
4. BID contract
5. All areas breakdown with unit pricing
6. Option "A" for current program
7. Description of decor items
8. On site pictures of current program
9. Insurance paperwork



September 27, 2013

Hector Orozco
City of Commerce
2535 Commerce Way
Commerce, CA 90040

Re: RFP Holiday Light Decorations – 9/30/2013

Dear Selection Committee,

We are pleased to submit this in response to your Request for Proposal. We are confident that you will be extremely satisfied with the products and services Dekra-Lite provides.

Our company specializes in Christmas decorations; this is not a sideline or add-on business for us. We are a certified electrical contractor in the State of California (C10) and use our own crews and equipment for our installations.

We look forward to brightening the holidays for the City of Commerce!

Sincerely,

George Livermore
Sr. Account Executive
Dekra-Lite Industries

Decoration Innovation

3102 W. Alton Ave. Santa Ana, CA 92704

800.436.3627 ● 714.436.0705 ● fax 714.436.0612

dekra-lite.com

dlimaging.net

snowfallusa.com



Dekra-Lite Company Overview

Founded in 1987 by Jeff Lopez, Dekra-Lite has become the largest exterior holiday décor company in the United States. Our clients include a diverse industry base including Life Style Centers, Shopping Malls, Entertainment Venues, Charity Organizations, Cities and several Major Theme Parks. Our creative team has been conceptualizing and implementing unique holiday décor programs for decades; from the smallest shopping center to several city blocks of décor. Dekra-Lite is the industry leader with experienced staff and a proven track record of customer satisfaction.

Dekra-Lite is located in the heart of Orange County, where we design and assemble our trees, wreaths, light strands, banners, and provide off-season cleaning and storage for our customers. Our holiday décor products include custom décor as well as stock items: Christmas trees, wreaths, garland, lights, specialty lighting, image projection systems, pole mounts, props, sets & décor.

Quality is paramount at Dekra-Lite; our operations and design teams review all projects before installation to ensure our high quality standards. We guarantee that your holiday décor program will be attended to within 24 hours of any repair call, even at the height of the holiday season. We have the resources and manpower in place to guarantee installation before Thanksgiving and removal by the end of the second week in January.

At Dekra-Lite, we take pride in our reputation for quality, creativity and outstanding customer service. As a leader in the Exterior Holiday Décor industry we have the resources and people in place to make the City of Commerce shine this coming Holiday Season.

Key Personnel – City of Commerce Holiday Décor Program:

Jeff Lopez – President and Founder of Dekra-Lite Industries, Inc.

Mike Sterling – General Manager

LeeRoy Chaffin II – Senior Vice President

Pete Rasmussen – Creative Director

George Livermore – Sr. Account Executive

Decoration Innovation

3102 W. Alton Ave. Santa Ana, CA 92704

800.436.3627 ● 714.436.0705 ● fax 714.436.0612

dekra-lite.com

dlimaging.net

snowfallusa.com



Project References:

City Of Newport Beach
Holiday Decorations, Banners
Leigh De Santis, (949) 644-3207

City of Dana Point
Holiday Decorations, Banners
Jennifer Anderson, (949) 248-3571

City of Montclair
Chamber of Commerce
City Banner Program
Kelly Johnson, (909) 624-4569

City of Rancho Cucamonga
City Banner Program
Donna Vega, (909) 477-2700

City of Hawaiian Gardens
Holiday Decorations, Banners
Joe Vasquez, (562) 420-2641

City of West Hollywood
Holiday Decorations, Banners
Laura Biery, (323) 848-6400

City of Seal Beach
Holiday Decorations, Banners
Karen Walton, (562) 431-2527

City of Huntington Beach
Holiday Decorations, Banners
Randy Menzel, (714) 536-5480

City of La Mirada
Holiday Decorations, Banners
Martin Munoz, (562) 902-2372

City of Garden Grove
Holiday Decorations, Banners
Kim Huy, (714) 741-5212

City of Fullerton
Holiday Decorations, Banners
Nicole Bernard, (714) 738-4102

City of Corona
Holiday Decorations, Banners
Carolina Torres, (951) 817-5824

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F. PAYMENT PROVISIONS

1. **PAYMENT TERMS.** Payment may be made only after inspection and acceptance by the using department. Payment of balances shall be made only after approval and final acceptance by the City.
2. **INVOICING.** Following acceptance of each payment term, payment shall be made within thirty (30) calendar days from receipt of itemized invoice. Before the City will pay any invoice, the invoice must include a detailed description of all charges, the proposal number, department name, dollar amount, quantity of hours worked, and any other pertinent information. All reimbursable expenses must be accompanied by a copy of the vendor's receipt. Submit invoice in duplicate to:

City of Commerce
2535 Commerce
Commerce, CA 90040

3. **WITHHOLDING PAYMENT.** Consideration for withholding payment shall include faulty materials, or workmanship, failure to meet delivery deadlines, and liens that have been filed, or evidence indicating a possible filing of claims. In all cases, regulations and limitation imposed by the Federal Government.
4. **TAXES.** The City of Commerce is exempt from all Federal, State of Illinois and other State Taxes on the purchase of commodities and services used by the City of Commerce within the State of Illinois. The Finance Department shall provide tax exemption certification to out-of-state taxes imposed on purchases of commodities and/or services which are which are used within another state are applicable and subject to payment. Contractors and subcontractors shall pay all legally required sales, consumer and use taxes on all commodities and/or services purchased or rented to complete their contract. If a contractor, subcontractor, or builder is to use building materials, supplies, and equipment in the performance of a construction contract with a designated exempt entity, the person shall purchase such items of tangible personal property without liability for the tax if such property will be used in the performance of the construction contract and a purchasing agent authorization letter and an exemption certificate, issued by the designated exempt entity, are presented to the retailer.

SECTION IV REFERENCES - See Attached additional References

The vendor must complete the required reference information listed below. The vendor must provide at least three (3) references from companies or agencies that have purchased the proposed holiday light decorations from your company. The company's name and address, a contact name, title, and phone number, must be included with the reference information.

1. Company Name: City of West Hollywood

Company Address: 8300 Santa Monica Blvd., West Hollywood, CA 90069

Company Contact: Jeff Huffer/Laura Biery

Title of Contact: Economic Development

Phone Number: 323-848-6400

2. Company Name: Westwood Village Improvement Association

Company Address: 10880 Wilshire Blvd., Suite 117, Los Angeles, CA 90024

Company Contact: Andrew Thomas

Title of Contact: Director

Phone Number: 310-470-1812

3. Company Name: City of Hawaiian Gardens

Company Address: 21815 Pioneer Blvd., Hawaiian Gardens, CA 90716

Company Contact: Joe Vasquez

Title of Contact: Public Works Director

Phone Number: 562-420-2641

Note: Additional reference may be included with the vendor's proposal.

SECTION V COMPANY INFORMATION & SIGNATURE SHEET

Vendors must include with their submitted proposal this completed and signed Company Information & Signature Sheet and a price list for the proposed Holiday Light Decorations required for this contract.

The undersigned bidder, having examined and determined the scope of this Request for Proposal, hereby proposes to supply and delivery the proposed commodities as described in the proposal documents at the prices set forth within.

The undersigned bidder states that this bid is made in conformity with the specifications and qualifications contained herein. In the event that there are any discrepancies or differences between any conditions of the vendor's proposal and the Request for Proposal prepared by the City of Commerce, and the City's Request for Proposal shall prevail. The undersigned bidder certifies that this proposal is made in good faith and without collusion or connection with any other persona or persons associated with the project.

Delivery: Upon receipt of a purchase order from the City of Commerce, the vendor guarantees delivery of the proposed Holiday Light Decoration by installation date.

Name of Firm: Dekra-Lite Industries

Authorized Representative: LeeRoy Chaffin II

Signature of Representative: 

Title of Authorized Representative: Senior Vice President

Address: 3102 W. Alton Avenue

City/State/Zip: Santa Ana, CA 92704

Phone Number: 800-436-3627

Fax Number: 714-436-0612

Website Address: www.dekra-lite.com

E-Mail Address: LeeRoyC@dekra-lite.com

Date Signed: Sept. 25, 2013

Addenda Form:

The undersigned hereby acknowledges receipt of the following applicable addenda:

Addenda Number Date

PROPOSAL PRICES - 2013 - See Attached Spreadsheets

AREA I HERITAGE PARK DISPLAY

- 1 – Lighted and Decorated 24” Holiday Sequoia Tree
- 1 – 10’ x 35’ Lighted and Animated Train Set
- 2 – 75” Toy Soldier
- 2 – 8’ 3” x 6’ 8” Crossed Candy Cane Ground Mount
- 3 – 36” Giant Presents
- 8 ½ x 14’ Angel Arch Pole Mounte

AREA II CITY HALL DISPLAY

- 1 – Lighted and Decorated 20’ Holiday Sequoia Tree
- 2 – 75” Fiberglass Toy Soldier
- 2 – 8’ 3” x 6’ 8’ Crossed Candy Cane Ground Mount

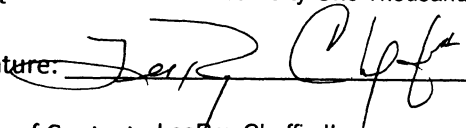
AREA III STREET DISPLAY

- 43 – Holiday Pole Mounts on Eastern Avenue (21) Candy Canes & (22) Stockings
- 43 – 6’ x 50’ Red Vinyl Pole Wraps
- 15 – 30” x 96” Banners with Shooting Stars & Banner Enhancements
- 164 – Pole Mounts (various locations) 7’ Green Zig Zag Trees, 6’ Single Candy Canes, & 7 1/2’ Stockings
- 164 – 6” x 50 Red Pole Wrap

AREA IV 8 – Season’s Greetings Overhead Streamers to be located at designated intersections.

Provide and install all required SCE tapa devices and outdoor approved electrical extension cords for all lighted street displays and holiday displays, as needed.

TOTAL COST* \$241,301.04 *Submit Unit Prices on Separate Sheet
Two Hundred Forty-One Thousand Three Hundred One Dollars and Four Cents

Signature: 
Name of Contact Lee Roy Chaffin II

Company Address: 3102 West Alton Avenue, Santa Ana, CA 92704

Company Contact: George Livermore

Title of Contact: Sr. Account Executive

Phone Number: 800-436-3627

DATE: Sept. 25, 2013

ATTACHMENT A

The contractor is required to supply all brackets and decorations, where specified by the City of Commerce. The contractor is responsible for installation, maintenance and removal of decorations. The decorations are to be installed and removed by the dates found in the aforementioned timeline. The contract will cover a one year period.

Unit Cost Pricing:

While the individual pole counts are assumed accurate, there may be slight deviations. To account for this, bidders are asked to submit unit costs for material. Unit costs pricing should include time and materials. Additional material requirements should be cleared through the City's representative.

AREA I TOTAL: \$52,063.31 - Fifty-Two Thousand Sixty Three Dollars and Thirty-One Cents

AREA II TOTAL: \$25,484.20 - Twenty-Five Thousand Four Hundred Eighty-Four Dollars and Twenty Cents

AREA III TOTAL: \$116,783.25 - One Hundred Sixteen Thousand Seven Hundred Eighty-Three Dollars and Twenty-Five Cents

AREA IV TOTAL: \$46,970.28 - Forty-Six Thousand Nine Hundred Seventy Dollars and Twenty-Eight Cents

AREA I - HERITAGE PARK DISPLAY

<u>Qty</u>	<u>Description</u>	<u>Unit Price</u>	<u>Total</u>
1	Lighted and Decorated 24' Holiday Sequoia Tree	\$13,506.50	\$13,506.50
1	Ornament Package for 24' Holiday Sequoia Tree	\$4,608.80	\$4,608.80
1	10' x 35' Lighted and Animated Train Set	\$10,447.50	\$10,447.50
2	75" Toy Soldier	\$696.50	\$1,393.00
2	8' 3" x 6' 8" Crossed Candy Cane Ground Mount	\$1,676.50	\$3,353.00
3	36" Giant Presents	\$556.50	\$1,669.50
1	8 ½ x 14' Angel Arch Pole Mounte	\$976.50	\$976.50
	Install, Remove & Store Holiday Décor		\$11,809.70
	Subtotal		\$47,764.50
	Tax		<u>\$4,298.81</u>
	Total		<u>\$52,063.31</u>

AREA II - CITY OF COMMERCE CITY HALL

<u>Qty</u>	<u>Description</u>	<u>Unit Price</u>	<u>Total</u>
1	Lighted and Decorated 20' Holiday Sequoia Tree	\$8,739.50	\$8,739.50
1	Custom Décor Package for 20' Holiday Sequoia Tree	\$3,052.00	\$3,052.00
1	24" Crystal Tree Topper	\$276.50	\$276.50
2	75" Fiberglass Toy Soldier	\$696.50	\$1,393.00
2	8'3" x 6'8' Crossed Candy Cane Ground Mount	\$1,676.50	\$3,353.00
	Install, Remove & Store Holiday Décor		\$6,566.00
	Subtotal		\$23,380.00
	Tax		<u>\$2,104.20</u>
	Total		<u>\$25,484.20</u>

AREA III - CITY OF COMMERCE STREET DISPLAY

<u>Qty</u>	<u>Description</u>	<u>Unit Price</u>	<u>Total</u>
43	Holiday Pole Mounts on Eastern Avenue (21) Candy Canes & (22) Stockings	(21) \$342.30 (22) \$419.30	\$16,412.90
43	6' x 50' Red Vinyl Pole Wraps	\$13.30	\$279.30
15	30" x 96" Banners with Shooting Stars	\$118.30	\$1,774.50
15	Star Display Banner Enhancements	\$255.50	\$3,832.50
164	Pole Mounts (various locations) 7' Green Zig Zag Trees, 6' Single Candy Canes, & 7 1/2' Stockings	(55) \$419.30 (54) \$342.30 (55) \$321.30	\$59,217.20
164	6" x 50 Red Pole Wrap	\$13.30	\$2,181.20
	Install, Remove & Store Holiday Décor		\$23,443.00
	Subtotal		\$107,140.60
	Tax		<u>\$9,642.65</u>
	Total		<u>\$116,783.25</u>

AREA IV - CITY OF COMMERCE OVERHEAD DISPLAY

<u>Qty</u>	<u>Description</u>	<u>Unit Price</u>	<u>Total</u>
8	Season's Greetings Overhead Streamers	\$4,550.00	\$36,400.00
	Install, Remove & Store Holiday Décor		\$6,692.00
	Subtotal		\$43,092.00
	Tax		<u>\$3,878.28</u>
	Total		<u>\$46,970.28</u>

ALL AREAS

<u>Location</u>	<u>Description</u>	
AREA I	Heritage Park Display	\$52,063.31
AREA II	City of Commerce City Hall	\$25,484.20
AREA III	City of Commerce Street Display	\$116,783.25
AREA IV	City of Commerce Overhead Display	<u>\$46,970.28</u>
	Grand Total	<u>\$241,301.04</u>

ALL AREAS Option "A" Existing Program

<u>Location</u>	<u>Description</u>	
AREA I	Heritage Park Display	\$17,646.00
AREA II	City of Commerce City Hall	\$12,330.00
AREA III	City of Commerce Street Display	\$39,326.06
AREA IV	City of Commerce Overhead Display	<u>\$11,040.00</u>
	Tax	7230.79
	Grand Total	<u>\$87,572.85</u>

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 13 of this Agreement.

1. Comprehensive General Liability and Automobile Liability Insurance Coverage.

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

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

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

2. Errors and Omissions Insurance Coverage.

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

3. Worker's Compensation.

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

4. Additional Insureds.

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

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

5. Cancellation Clause.

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

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

6. Severability Clause.

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

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

7. Qualifications of Insurer.

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

8. Approval of Insurer.

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

9. Payment of Premiums.

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

10. Evidence of Insurance and Claims.

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

