

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 16, 2012 – 5:00 P.M.

CALL TO ORDER

Mayor/Chairperson Leon

ROLL CALL

City Clerk/Secretary Olivieri

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 §54956.8, the **Successor Agency** will confer with its real property negotiators, Jorge Rifá, Alex Hamilton and John Yonai, with respect to real estate negotiations with and/or concerning:
 - A. Mayans Development, Inc., including proposed price and other terms, concerning real property located on Eastern Avenue, commonly known as AIN 5241-013-900, AIN 5241-013-901, AIN 5241-013-902, AIN 5241-013-903 and AIN 5241-014-900; Greenwood Avenue, commonly known as AIN 6357-011-909, AIN 6357-011-907 and AIN 6357-011-910; Nicola Avenue, commonly known as AIN 6351-038-900; Neenah Street, commonly known as AIN 6356-015-900; Watcher Street, commonly known as AIN 6357-014-900, AIN 6257-014-901, AIN 6357-014-902 and AIN 6357-014-903; Gage Avenue, commonly known as AIN 6357-016-900, AIN 6357-016-901, AIN 6357-016-905 and AIN 6357-016-002 and Gage Avenue (privately owned), commonly known as AIN 6357-016-003.
 - B. 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, AIN 5244-033-900 (formerly known as 4800 E. 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.
 - C. Proposed price and other terms relating to former Commerce Community Development Commission-owned real property located along the Telegraph Road Corridor, south of Gaspar Avenue and north of the Commerce Casino [Tubeway Avenue], which was the subject of a recent lot line adjustment and formerly known as 5809, 5819, 5823, 5901/5903, 5933, 5959, 6001 and 6003 Telegraph Road; 2240 Gaspar Avenue and 2311, 2322 and 2366 Travers Avenue, Commerce, California.
2. 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 one potential case.
 - B. The **Successor Agency** will confer with its legal counsel, and take the appropriate action, with respect to significant exposure to litigation in one potential case.
3. Pursuant to Government Code §54957,
 - A. The **City Council** will conduct an evaluation of the City Administrator.
4. Pursuant to Government Code §54957.6, the City Council will confer with its labor negotiator, Jorge Rifá, with respect to labor negotiations pertaining to:
 - A. Personnel matters involving unrepresented full-time executive management 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.**

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

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

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

TUESDAY, OCTOBER 16, 2012 – 6:30 P.M.

CALL TO ORDER

Mayor/Chairperson Leon

PLEDGE OF ALLEGIANCE

Scott Wasserman
Interim Director of Parks and Recreation

INVOCATION

Councilmember/Board Member Aguilar

ROLL CALL

City Clerk/Secretary Olivieri

APPEARANCES AND PRESENTATIONS

1. Presentation by Los Angeles County Economic Development Corporation (LAEDC) Recognizing City's Participation in 2012 Most Business Friendly City Program

The **City Council** will be presented with a scroll and plaque from the Los Angeles County Economic Development Corporation in recognition of the City's participation in the 2012 Most Business Friendly City Program.

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 com-

mencement 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.

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CITY COUNCIL/SUCCESSOR AGENCY REPORTS

CONSENT CALENDAR

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

2. Approval of Minutes

The **City Council and Successor Agency** will consider for approval, respectively, the minutes of the Concurrent Adjourned Regular Meetings of Tuesday, October 2, 2012, held at 5:00 p.m. and Concurrent Regular Meetings of Tuesday, October 2, 2012, held at 6:30 p.m.

3. Approval of Warrant Register No. 7

The **City Council and Successor Agency** will consider for approval, respectively, the bills and claims set forth in Warrant Registers No. 7A, dated October 16, 2012, and No. 7B, for the period October 3, 2012, to October 11, 2012.

4. Proposed Amendment to Personnel Classification and Compensation Plan to Amend Education and Experience Minimum Qualifications for Director of Library Services Classifications

The **City Council** will consider for approval an Amendment to the Personnel Classification and Compensation Plan amending the education and experience minimum qualifications for the Director of Library Services Classification.

5. A Resolution of the City Council of the City of Commerce, California, Approving an Agreement with N/S Corporation for the Replacement Bus Wash System Project

The **City Council** will consider for approval and adoption a proposed Resolution approving an Agreement with N/S Corporation for the Replacement Bus Wash System Project, which involves the upgrade of the existing bus wash system at the Transportation Services Center.

6. A Resolution of the City Council of the City of Commerce, California, Approving an Agreement with Aquatic Design Group for the Design of Supplemental Filtration for the Small Pool in the Brenda Villa Aquatic Center

The **City Council** will consider for approval and adoption a proposed Resolution approving an Agreement with Aquatic Design Group for the design of the supplemental filtration for the small pool in the Brenda Villa Aquatic Center.

7. A Resolution of the City Council of the City of Commerce, California, Approving the Purchase of One Medi Ride Van from A-Z Bus Sales, Inc.

The Medi-ride van being replaced (Unit 370) was purchased in 2004 and has exceeded its useful life according to Federal Transit Administration (FTA) standards. Staff is recommending replacing Unit 370, the last gasoline powered Medi-van, with a new CNG-powered vehicle. The new vehicle will offer improved reliability for senior and disabled residents and reduced maintenance costs and will be equipped with the latest CNG engine technology.

The **City Council** will consider for approval and adoption a proposed Resolution approving the purchase of one Medi-ride van from A-Z Bus Sales, Inc., pursuant to the contract between the CalAct/MBTA Vehicle Purchasing Cooperative and A-Z Bus Sales, Inc.

8. A Resolution of the City Council of the City of Commerce, California, Approving a 1-Year Agreement with Dekra-Lite For Holiday Decorations

The **City Council** will consider for approval and adoption a proposed Resolution approving a 1-Year Agreement with Dekra-Lite to provide and install Holiday Decorations.

PUBLIC HEARINGS – None

SCHEDULED MATTERS

9. City Advertising- Industrial Council's "Focus on Business" Publication

The **City Council** will consider, and take the appropriate action as deemed necessary with respect to, advertising in the Industrial Council's 2012 "Focus on Business" Fall/Winter publication, at a cost of \$3,400.00, which is published biannually.

10. Dissolution of Redevelopment: Low-Moderate Housing Fund Due Diligence Review

Pursuant to *California Health & Safety Code* §34179.5(a), the Successor Agency to the Commerce Community Development Commission (the "Commission") has completed a Due Diligence Review of the Low and Moderate Income Housing Fund ("LMIHF") maintained by the now dissolved Commission and has now, as required by *Health & Safety Code* §34179.6(a), provided the results of such review to the Oversight Board of the Successor Agency. The Due Diligence Review was performed by Mayer Hoffman McCann P.C. as part of the AB 1X 26 requirements for the end of redevelopment and pursuant to *Health & Safety Code* §34179.5(c) requiring each County Auditor-Controller to conduct or cause to be conducted, agreed-upon procedures of each former redevelopment agency.

The **City Council** and Successor Agency will receive a report on the Low and Moderate Income Housing Fund Due Diligence Review, including the impacts on the General Fund and the City's future ability to provide services to the community.

11. Authorization to Extend Challenge to California Consulting, LLC, to Find Eligible Grant Opportunity for City of Commerce

At the request of Mayor Leon, the **City Council** will consider authorizing the City Administrator to extend a challenge to California Consulting, LLC to find a grant opportunity for which the City of Commerce is eligible to apply, separate from any grant that the City is currently receiving, in order

to be considered at a future time for an agreement to provide grant writing services for the City.

12. Rescheduling of November 6, 2012, Concurrent Regular Meetings Due to General Election

The **City Council** will consider, and take the appropriate action as deemed necessary, with respect to rescheduling the concurrent regular meetings of Tuesday, November 6, 2012.

13. Special 2012-2013 Christmas and New Year Holiday Schedule for City Hall and Other City Facilities

The **City Council** will consider, and take the appropriate action as deemed necessary with respect to, approving a special 2012-2013 Christmas and New Year holiday schedule for City Hall and other City facilities.

ORDINANCES AND RESOLUTIONS

14. An Ordinance of the City Council of the City of Commerce, California Amending Sections 5.09.130 (“Massage Technician Permit Required”) and 5.09.150 (“Expiration of Permit”) of Chapter 5.09 (“Massage Establishments and Massage Technicians”) of the Commerce Municipal Code – First Reading

The **City Council** will consider for first reading a proposed Ordinance Amending Sections 5.09.130 (“Massage Technician Permit Required”) and 5.09.150 (“Expiration of Permit”) of Chapter 5.09 (“Massage Establishments and Massage Technicians”) of the Commerce Municipal Code.

15. An Ordinance of the City Council of the City of Commerce, California Amending Sections 5.04.121 (“Prosecution as Infraction”), 5.04.160 (“Two or More Businesses”), 5.05.020 (“Same-Application”), 5.05.110 (“Temporary Use Permits”), 5.05.120 (“Activities Included”), and 5.05.250 (“Unsocial Dancing”) of Title 5 (“Business License Code”) of the Commerce Municipal Code – First Reading

The **City Council** will consider for first reading a proposed Ordinance amending Sections 5.04.121 (“Prosecution as Infraction”), 5.04.160 (“Two or More Businesses”), 5.05.020 (“Same-Application”), 5.05.110 (“Temporary Use Permits”), 5.05.120 (“Activities Included”), and 5.05.250 (“Unsocial Dancing”) of Title 5 (“Business License Code”) of the Commerce Municipal Code.

16. A Resolution of the Successor Agency to the Commerce Community Development Commission Approving a Purchase and Sale Agreement with Gatwick Group, LLC for the Properties Located at 4957 Sheila Street (AIN 5244-034-900) and 4800 E. Washington Boulevard (AIN 5244-033-900), Commerce, California 90040

The **City Council** will consider for approval and adoption a proposed Resolution approving a Purchase and Sale Agreement with Gatwick Group, LLC for the properties located At 4957 Sheila Street (AIN 5244-034-900) and 4800 E. Washington Boulevard (AIN 5244-033-900) Commerce, California 90040.

17. A Resolution of the City Council of the City of Commerce, California, Approving an Agreement with JetPatcher USA, Inc. for Street Maintenance Services

The **City Council** will consider for approval and adoption a proposed Resolution approving an Agreement with JetPatcher USA, Inc. for street maintenance services for the City.

18. A Resolution of the City Council of the City of Commerce, California, Approving A Two-Year Extension of Cash Contract No. 1102 – Street Sweeping Services between the City of Commerce and Nationwide Environmental Services, Division of Joe’s Sweeping, Inc.

The **City Council** will consider for approval and adoption a proposed Resolution approving a two-year extension of Cash Contract No. 1102 – Street Sweeping Services between the City of Commerce and Nationwide Environmental Services, Division of Joe’s Sweeping, Inc.

CIP PROGRESS REPORT – None

I-710 LOCAL ADVISORY COMMITTEE UPDATE - None

RECESS TO CLOSED SESSION – No Items

ADJOURNMENT

Adjourn in memory of James Nunya, husband of AFSCME Executive Director Cheryl Parisi, to Monday, October 22, 2012, 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

DATE: October 16, 2012

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: LOS ANGELES COUNTY ECONOMIC DEVELOPMENT CORPORATION (LAEDC) PRESENTATION OF A SCROLL AND PLAQUE RECOGNIZING THE CITY OF COMMERCE PARTICIPATION IN THE 2012 MOST BUSINESS FRIENDLY CITY PROGRAM

RECOMMENDATION:

Accept recognition scroll from LAEDC honoring the City of Commerce for its business friendly commitment and for participating in the 2012 LAEDC's Most Business Friendly City Program.

MOTION:

Approve the recommendation.

BACKGROUND/ANALYSIS:

The City of Commerce is a member city of the Los Angeles County Economic Development Corporation. Membership in this organization has many benefits as it affords the city access to the many services and expertise of the LAEDC for business retention, attraction, and recruitment efforts. In addition, the LAEDC annually recognizes member cities and their ongoing efforts to promote economic development.

For the last four years the City has been a finalist for the "Eddy Awards-Most Business Friendly Award City" category. The LAEDC is presenting the City with a scroll to recognize our ongoing efforts. Ms. Barbara Levine, Senior Regional Manager of Economic Development will present the scroll and plaque.

The City hopes to further enhance our relationship with LAEDC and looks to further establish and define its commitment to economic development. Economic Development has lost one of its most powerful tools in redevelopment. Given this reality, it is more important than ever for the City to cultivate and develop an economic development model that works at the local level while strengthening the region as a whole.

FISCAL IMPACT:

There is no fiscal impact associated with this recognition effort.

RELATIONSHIP TO 2009 STRATEGIC GOALS:

The issue before the Council is applicable to the following Council strategic goal to "Protect and Enhance Quality of Life in the City of Commerce". The City's commitment to economic development is necessary to insure a healthy and thriving business community in Commerce.

Recommended by:


Alex Hamilton
Assistant Director of Community Development

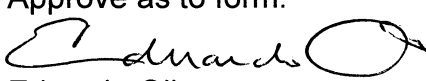
Respectfully submitted,


Jorge Rifa
City Administrator

Reviewed by:


Vilko Domic
Director of Finance

Approve as to form:


Eduardo Olivo
City Attorney

AGENDA ITEM No. 1



AGENDA REPORT

MEETING DATE: OCTOBER 16, 2012

TO: HONORABLE CITY COUNCIL
FROM: CITY ADMINISTRATOR
SUBJECT: PROPOSED AMENDMENT TO THE PERSONNEL CLASSIFICATION AND COMPENSATION PLAN TO AMEND THE EDUCATION AND EXPERIENCE MINIMUM QUALIFICATIONS FOR THE DIRECTOR OF LIBRARY SERVICES CLASSIFICATION

RECOMMENDATION:

City staff is recommending that City Council amend the Classification and Compensation Plan to amend the education and experience minimum qualifications for the Director of Library Services.

MOTION:

Move to approve the recommendation.

BACKGROUND:

The Director of Library Services position is responsible for overseeing and directing the Library's operations including administration, collection management, programming, information services, and on-line and literacy programs; assures the level of services; keeps pace with customer needs; plans and manages resource allocations; establishes priorities, coordinates operations, and assures program objectives and standards meet the City goals.

In an effort to develop the existing work force and promote from within, staff is recommending amending the education and experience minimum qualifications. Establishing this amendment would allow staff the ability to create opportunities for more viable internal candidates within the City of Commerce workforce to apply and compete in the future.

ANALYSIS:

Personnel Policy and Procedure's *Employee Positions* provides the procedure for implementing or revising the City of Commerce Classification Plan within the City's workforce. The recommended change in education and experience is as follows:

Masters Degree in Library Science is strongly preferred. A Bachelor's or higher degree and equivalent professional experience as a Librarian may be substituted for the Master of Library Science degree, AND five year's public library program management and supervisory experience.

FISCAL IMPACT

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

RELATIONSHIP TO 2009 STRATEGIC GOALS:

This recommended change in the education and experience minimum qualifications is related to the City Council's goal to ensure the City will have a trained, quality workforce to efficiently provide services to City of Commerce residents for the future.

Prepared by:



David Hill
Interim Director of Human Resources

Respectfully submitted,



Jorge Rifa
City Administrator

Approved as to Form:



Eduardo Olivo
City Attorney

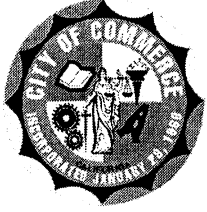
Fiscal Impact Reviewed by:



Vilko Domic
Director of Finance/City Treasurer

Attachments:

Director of Library Services



City of Commerce

DIRECTOR OF LIBRARY SERVICES

Department: **Library** Class Code: **1505**
Revised Date: **October 2012** FLSA Status: **Exempt**

GENERAL PURPOSE: Under limited supervision, plans, coordinates, manages, and directs the operations and activities of the City of Commerce public Library; develops and implements Library plans, policies, and programs to meet the informational, educational, and recreational needs of the residential and business communities; supervises assigned personnel.

PRIMARY DUTIES AND RESPONSIBILITIES:

The following duties **ARE NOT** intended to serve as a comprehensive list of all duties performed by all employees in this classification, only a representative summary of the primary duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.

- Oversees and directs the Library's operations including administration, collection management, programming, information services, and on-line and literacy programs; assures the level of services keeps pace with customer needs; plans and manages resource allocations; establishes priorities, coordinates operations, and assures program objectives and standards meet the City goals.
- Assures the delivery of high quality Library programs and services to meet the present and future informational, educational, and recreational needs of the residential and business communities.
- Develops and implements short and long-range Library plans and priorities for the improvement of the Library system, the Library's collection and community services provided.
- Monitors trends in Library practices, and recommends operational improvements; monitors operations and evaluates programs and services to assure they are meeting the needs of customers; identifies and resolves problems; interprets and explains library policies, procedures, rules and regulations.
- Prepares and administers budgets; reviews monthly financial data for discrepancies; monitors and authorizes expenditures; coordinates grant applications and grant programs.
- Directs the daily activities of the Library managers and staff; plans, prioritizes and assigns tasks and projects; monitors work, develops staff skills, and evaluates performance; meets regularly with staff to discuss and resolve workload and technical issues; develops goals and priorities.
- Oversees collection management activities; coordinates and authorizes the acquisition of Library materials; reviews and approves staff recommendations and selection lists; directs and coordinates the classification, cataloging, and maintenance of Library materials.
- Meets with community groups, schools and Library patrons to address and resolve Library related issues, develop community events and special programs, and promote Library services.
- Advises the City Council and the Library and Education Commissions, and prepares special reports.
- Completes various surveys as requested by local, State, and Federal libraries; compares and analyzes statistical performance data and identifies opportunities for improved service delivery.
- Maintains the absolute confidentiality of all records and information.

Director of Library Services

JOB DESCRIPTION
Director of Library Services

MINIMUM QUALIFICATIONS:

Education and Experience:

Masters Degree in Library Science is strongly preferred. A Bachelor's or higher degree and equivalent professional experience as a Librarian may be substituted for the Master of Library Science degree, AND five year's public library program management and supervisory experience.

Required Licenses or Certifications:

- Must possess a valid California Driver's License.

Required Knowledge of:

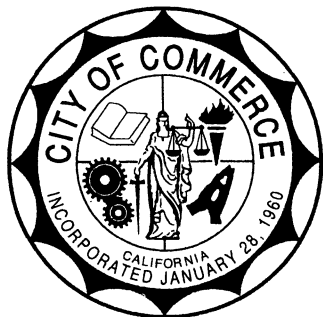
- City organization, operations, policies and procedures.
- State and Federal statutes, rules, codes, regulations and resources for Library programs.
- Principles and practices of public library administration, technology, practices and trends.
- Principles and practices of administrative management, including personnel rules, cost accounting, budgeting, procurement, and employee supervision.
- Policies, rules and regulations governing the conduct and safety of library programs and facilities.
- Methods and procedures for developing and maintaining library collections.
- Library classification, cataloging, and acquisition protocols.
- Techniques and protocols for researching online technical databases.
- Business computers, and specialized software applications for management of library systems.
- Record keeping and file maintenance principles and procedures.

Required Skill in:

- Interpreting and applying Library standards and City policies and procedures.
- Assessing community needs and developing solutions.
- Developing, coordinating and conducting library programs and activities.
- Planning, organizing, and coordinating the work of professional, technical and clerical personnel.
- Identifying library collection issues and developing suggestions for enhancements.
- Library database research & maintenance.
- Using initiative and independent judgment within established procedural guidelines.
- Assessing and prioritizing multiple tasks, projects and demands.
- Establishing and maintaining cooperative working relationships with City employees, officials, and representatives from other local, state and Federal agencies.
- Effective verbal and written communication.

Physical Demands / Work Environment:

- Work is performed in a Public Library and a standard office environment.



AGENDA REPORT

MEETING DATE: October 16, 2012

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING AN AGREEMENT WITH N/S CORPORATION FOR THE REPLACEMENT BUS WASH SYSTEM PROJECT

RECOMMENDATION:

Adopt the Resolution approving an Agreement with N/S Corporation for the replacement Bus Wash System Project, and assign the number next in order.

MOTION:

Move to approve the recommendation.

BACKGROUND:

On June 19, 2012, as part of the Fiscal Year 2012/13 Capital Improvement Program, the City Council appropriated \$317,467 for the replacement and upgrade of the existing bus wash system at the Transportation Services Center. The existing bus wash system has exceeded its useful life and has required numerous expensive repairs.

ANALYSIS:

On August 21, 2012, the City Council approved the Request for Proposal (RFP) for Replacement Bus Wash System Project and authorized staff to issue a Notice Inviting Bids/Proposals.

On September 21, 2012, the City received proposals from the following companies:

Contractor Name
1. Dahl, Taylor & Associates, Inc. Santa Ana, CA
2. Peterson Hydraulics, Inc. Gardena, CA
3. N/S Corporation, Inglewood, CA

The selected contractor will be responsible for delivery a turn-key system that meets all City needs: including removal of the existing system, installation of a new system, prepare all required drawings, obtain all permits, and install a system that meets all current Federal, State and local regulations.

A panel consisting of the Claude McFerguson (Director of Transportation), Michael Halsey (Construction Manager – Swinerton) and Greg Guzman (Mechanic) reviewed all proposals. Their combined scores are as follows:

	AVAILABLE POINTS	DAHL, TAYLOR & ASSOCIATES (2-BRUSH)	PETERSON HYDRAULICS (2-BRUSH)	PETERSON HYDRAULICS (4-BRUSH)	N/S CORPORATION (2-BRUSH)
Product Design	25	22	20	21	23
Total Cost	20	11	17	17	20
On-going Support	15	12	12	12	10
Warranty	15	14	12	12	11
Schedule/Testing/Training	10	10	5	3	10
Experience	10	8	4	5	10
DBE Goal	5	3	4	4	2
TOTAL SCORE	100	80	74	74	86

* Score is based on proposed/bid price.

\$310,467.20

Based on the above comparison, N/S Corporation, of Inglewood, CA, submitted the lowest, responsive proposal for the requested bus wash system and services.

Staff recommends that an agreement for replacement and upgrade of a bus wash system be awarded to N/S Corporation for the proposed amount of \$310,467.

FISCAL IMPACT

Funds for these services are available in the Fiscal Year 2012/13 Budget. City Council approved a budget of \$317,467 for this project, as follows:

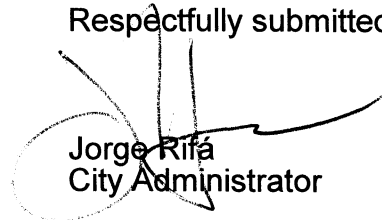
FTA Grant CA-90-Y847	\$227,200
TDA Capital Reserves	\$ 33,467
PTMISEA (Prop 1B)	\$ 56,800
TOTAL	\$317,467

No City funds have been appropriated for this project.

RELATIONSHIP TO 2009 STRATEGIC GOALS:

The proposed recommendation relates to the 2009 strategic planning goal: "Make Financial and Economical Sound Decisions Consistent with Economic Conditions" as this project shall reduce monthly electrical and water usage, resulting in lower utilities and maintenance related expenses.

Respectfully submitted:



Jorge Rifa
City Administrator

Recommended by:



Claude McFerguson
Director of Transportation

Recommended and prepared by:



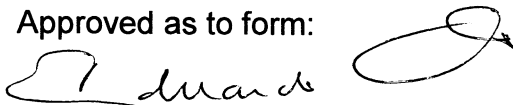
Danilo Batson
Assistant Director of Public Services

Fiscal impact reviewed by:



Vilko Domic
Director of Finance

Approved as to form:



Eduardo Olivo
City Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE,
CALIFORNIA, APPROVING AN AGREEMENT WITH N/S CORPORATION FOR THE
REPLACEMENT BUS WASH SYSTEM PROJECT

WHEREAS, on August 21, 2012, the City Council approved a Request for Proposals (RFP) for Replacement of Bus Wash System Project; and

WHEREAS, City staff determined that N/S Corporation submitted the lowest proposal.

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

Section 1. That the proposal by N/S Corporation is hereby accepted. An Agreement between the City and N/S Corporation is hereby approved. The Mayor is hereby authorized to execute the Agreement for and on behalf of the City of Commerce.

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

Lilia R. Leon, Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk

**REPLACEMENT BUS WASH SYSTEM PROJECT IN THE CITY OF COMMERCE
(FTA Project #CA-90-Y847)**

THIS AGREEMENT is made and entered into this ____ day of October 2012, by and between the CITY OF COMMERCE, a Municipal corporation (the "CITY") and N/S Corporation ("CONTRACTOR").

RECITALS

This Agreement is made and entered into with respect to the following facts:

WHEREAS, the City has determined that it requires the services of a professional that can provide professional engineering, design and construction for the REPLACEMENT BUS WASH SYSTEM ("PROJECT");

WHEREAS, the City desires to have a contract in place for these services prior to implementation and construction of said project;

WHEREAS, Contractor represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees;

WHEREAS, Contractor further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

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

ARTICLE I. CONTRACT DOCUMENTS.

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

ARTICLE II. THE WORK.

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

ARTICLE III. COMPENSATION.

CONTRACTOR hereby agrees to receive and accept the total amount of **\$310,467.49**, which is based on performing all of the work shown on Bidders Proposal as full compensation for furnishing all materials, performing all work, and fulfilling all obligations hereunder. Said compensation shall cover all expenses, losses, damages, and consequences arising out of the nature of the work during its progress or prior to its acceptance including those for well and faithfully completing the work and the whole thereof in the manner and time specified in the CONTRACT DOCUMENTS, and also including those arising from actions of the elements, unforeseen difficulties or obstructions encountered in the prosecution of the work, suspension or discontinuance of the work, and all other

unknowns or risks of any description connected with the work. CITY shall herein retain ten percent (5%) of said price until said time as the provisions of Article XII herein have been met.

ARTICLE IV. UNDOCUMENTED WORKERS.

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

ARTICLE V. NOTICE TO PROCEED.

CONTRACTOR shall commence work on the date specified in the Notice to Proceed to be issued to CONTRACTOR by the CITY and shall complete work on the PROJECT within one hundred, sixty three (163)calendar days from the commencement thereof.

ARTICLE VI. DISCOVERY OF HAZARDOUS OR LATENT CONDITIONS.

- A. CONTRACTOR shall, without disturbing the condition, notify CITY in writing as soon as CONTRACTOR, or any subcontractor, agent or employees have knowledge and reporting is possible, of the discovery of any of the following conditions:
1. The presence of any material that the CONTRACTOR believes is hazardous waste, as defined in Section 25117 of the Health and Safety Code;
 2. Subsurface or latent physical conditions at the site differing from those indicated in the specifications; or,
 3. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.
- B. Pending a determination by the CITY of appropriate action to be taken, CONTRACTOR shall provide security measures (e.g., fences) adequate to prevent the hazardous waste or physical conditions from causing bodily injury to any person.
- C. CITY shall promptly investigate the reported conditions. If CITY, through the City Engineer or his/her designee, and in the exercise of its sole discretion, determines that the conditions do materially differ, or do involve hazardous waste, and will cause a decrease or increase in the CONTRACTOR's cost of or time required for performance of any part of the work, then CITY shall issue a change order.
- D. In the event of a dispute between CITY and CONTRACTOR as to whether the conditions materially differ or involve hazardous waste or cause a decrease or increase in the CONTRACTOR's cost of, or time required for performance of any part of the work, CONTRACTOR shall not be excused from any schedule completion date, and shall proceed with all work to be performed under the Contract. CONTRACTOR shall retain any and all rights which pertain to the resolution of disputes and protests between the parties.

ARTICLE VII. INDEMNIFICATION.

CONTRACTOR shall assume the defense of and indemnify and save harmless the CITY, its elective and appointive boards, officers, agents and employees, from all claims, loss, damage, injury and liability of every kind, nature and description, directly or indirectly arising from the

performance of CONTRACTOR's work under this Contract; and from any and all claims, loss, damage, injury and liability, howsoever the same may be caused, resulting directly or indirectly from the nature of the work covered by the Contract; provided:

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

ARTICLE VIII. PERFORMANCE BOND.

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

ARTICLE IX. INSURANCE REQUIREMENTS.

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

ARTICLE X. LIQUIDATED DAMAGES.

The parties agree that it would be impractical and extremely difficult to fix the actual damages to the CITY in the event the PROJECT is not commenced and/or completed on or before the dates specified for commencement and completion of the PROJECT in the CONTRACT DOCUMENTS. The parties have considered the facts of breach of this Contract and have agreed that the liquidated damages sum hereinafter set forth is reasonable as liquidated damages in the event of a breach, and that said sum shall be presumed to be the amount of the damages sustained by the CITY in the event of such a breach. The parties therefore agree that in the event such work is not begun and/or completed and accepted by the times so specified in the CONTRACT DOCUMENTS, the sum of Two-hundred-fifty dollars (\$250) shall be presumed to be the amount of damages suffered by the CITY for each day's delay in the starting and/or completion and acceptance of said PROJECT after the dates specified in the CONTRACT DOCUMENTS for the start and/or completion thereof, and CONTRACTOR hereby agrees to pay said sum of ENTER AMOUNT HERE as liquidated damages for each day of delay in the starting and/or completion and acceptance of said PROJECT beyond the date specified in the CONTRACT DOCUMENTS. Any and all such liquidated damage assessed shall be done so in accordance with that certain edition of the Specification for Public Works Construction, currently in effect as of the date of this Contract. The payment of such liquidated damages is not intended as a forfeiture or penalty within the meaning of California Civil Code § 3275 or § 3369.

ARTICLE XI. COMPLIANCE WITH APPLICABLE LAWS.

CONTRACTOR hereby promises and agrees to comply with all of the provisions of all applicable state and federal laws in connection with the performance of its obligations under this Contract. Federal clauses, provisions and certifications attached hereto as Exhibit B.

ARTICLE XII. NOTICE OF COMPLETION.

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

ARTICLE XIII. NON-ASSIGNABILITY.

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

ARTICLE XIV. CUMULATIVE REMEDIES.

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

ARTICLE XV. ATTORNEY'S FEES.

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

ARTICLE XVI. TERMINATION OF CONTRACT

A. Termination for Convenience

The CITY may terminate this contract, in whole or in part, with 30 days written notice to the CONTRACTOR when it is in the CITY's best interest. The CONTRACTOR shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The CONTRACTOR shall promptly submit its termination claim to CITY to be paid the CONTRACTOR. If the CONTRACTOR has any property in its possession belonging to the CITY, the CONTRACTOR will account for the same, and dispose of it in the manner the CITY directs. The CONTRACTOR may terminate this contract, in whole, with 90 days written notice to the CITY.

B. Termination for Default

If at any time the CONTRACTOR is determined to be in material breach of the Contract, a Notice of Potential Breach of Contract shall be prepared by the CITY, or one of its designated representatives, and will be served upon the CONTRACTOR and its sureties. If the CONTRACTOR continues to neglect or refuses to comply with the Contract or with the Notice of Potential Breach of Contract to the satisfaction of the CITY within the time specified in such Notice, the CITY shall have the authority to terminate the Contract for this Project.

C. Waiver of Remedies for any Breach

In the event that CITY elects to waive its remedies for any breach by CONTRACTOR of any covenant, term or condition of this Contract, such waiver by CITY shall not limit CITY's remedies for any succeeding breach of that or of any other term, covenant, or condition of the Contract.

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

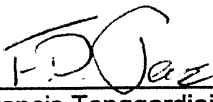
CITY OF COMMERCE

By: _____
Lilia R. Leon, Mayor

ATTEST:

By: _____
Linda Olivieri, MMC
City Clerk

CONTRACTOR

By:  _____
Francis Tenggardjaja,
Executive Vice President

APPROVED AS TO FORM:

By: _____
Eduardo Olivo, City Attorney

EXHIBIT A
INSURANCE REQUIREMENTS

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

1. Comprehensive General Liability and Automobile Liability Insurance Coverage.

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

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

Products/Completed Operations Hazard Insurance in an amount of not less than FIVE MILLION DOLLARS (\$5,000,000);

A combined single limit policy with aggregate limits in an amount of not less than Five MILLION DOLLARS (\$5,000,000) shall be considered equivalent to the said required minimum limits set forth herein above.

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

2. Errors and Omissions Insurance Coverage.

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

3. Worker's Compensation.

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

4. Additional Insureds.

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

be primary and noncontributory with any other insurance maintained by the CITY.

5. Cancellation Clause.

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

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

6. Severability Clause.

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

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

7. Qualifications of Insurer.

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

8. Approval of Insurer.

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

9. Payment of Premiums.

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

10. Evidence of Insurance and Claims.

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

CONTRACT EXHIBIT B
FEDERAL CLAUSES AND PROVISIONS

Buy America Certification (Steel and Manufactured Products)

Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000). Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating that Federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the US for 15 passenger vans and 15 passenger wagons produced by Chrysler Corp., software, microcomputer equipment and small purchases (currently less than \$100,000) made with capital, operating or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 60% domestic content. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Seismic Safety

Construction of new buildings or additions to existing buildings; these requirements do not apply to micro-purchases (\$3,000 or less, except for construction contracts over \$2,000). Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

Energy Conservation

All Contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000). Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

Clean Water

All Contracts and Subcontracts over \$100,000. Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

Lobbying

Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$100,000. Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Access to Records and Reports

Applicability – As shown below. These requirements do not apply to micro-purchases (\$3,000 or less, except for construction contracts over \$2,000). The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re:49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes

All Contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000). Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

Bonding Requirements

Applicability – For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:

(1) 50% of the contract price if the contract price is not more than \$1 million;

(2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(3) \$2.5 million if the contract price is more than \$5 million.

d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

Bid Bond Requirements (Construction)

(a) Bid Security - A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

(b) Rights Reserved - In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of (Recipient).

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole. The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested will render the bid unresponsive.

Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:
 - (i) Fifty percent of the contract price if the contract price is not more than \$1 million;
 - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (iii) Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

(a) The following situations may warrant a performance bond:

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:
 - (i) Fifty percent of the contract price if the contract price is not more than \$1 million;
-

- (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- (iii) Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The (recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient). Patent Infringement Bonding Requirements (Patent Indemnity) The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The (recipient) shall determine the amount of the patent indemnity to protect the (Recipient).

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

Clean Air

1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

2) Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

Recycled Products

All contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the current or previous fiscal year using Federal funds. The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

Davis-Bacon and Copeland Anti-Kickback Acts

Applicability -Construction contracts and subcontracts, including actual construction, alteration and/or repair, including decorating and painting, over \$2,000

(1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work

(or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification

under this contract from the first day on which work is performed in the classification.(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof. (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met.The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (v)

(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination.The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met: (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination.The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding - The recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract.In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the grantee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the recipient for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete; (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3; (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract. (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section. (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code. (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and

individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved. (ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved. (iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis- Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of Eligibility - (i) By entering into this contract, contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (iii) The penalty for making false statements is prescribed in 18 USC 1001.

Contract Work Hours & Safety Standards Act

Applicability – Contracts over \$100,000

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in para. (1) of this section, contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in para. (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - the recipient shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in para. (2) of this section.

(4) Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

No Government Obligation to Third Parties

Applicability – All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

(1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts

Applicability – All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000) (1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.

(3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Termination

Applicability – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$100,000

a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.

b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor

fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any

separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. the recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work.

Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses. If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of

contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

Government Wide Debarment and Suspension (Non Procurement)

Applicability – Contracts over \$25,000

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractors, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the recipient. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the recipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Contracts Involving Federal Privacy Act Requirements

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Civil Rights Requirements

All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 USC 2000d, Sec. 303 of the Age Discrimination Act (1975), as amended, 42 USC 6102, Sec. 202 of the Americans with Disabilities Act (1990), 42 USC 12132, and 49 USC 5332, contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or disability. Contractor shall also comply with applicable Federal implementing regulations and other requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 USC 2000e, and 49 USC 5332, contractor shall comply with all applicable equal employment opportunity requirements of USDOL, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, USDOL," 41 CFR 60 et seq., (implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC 2000e), and any applicable Federal statutes, executive orders, regulations, and policies that may in the future affect construction activities undertaken in the course of the project. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, contractor shall comply with any implementing requirements FTA may issue.

(b) Age - In accordance with Sec. 4 of the Age Discrimination in Employment Act (1967), as amended, 29 USC 623 and 49 USC 5332, contractor shall refrain from discrimination against present and prospective employees for reason of age. Contractor shall also comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with Sec. 102 of the Americans with Disabilities Act (ADA), as amended, 42 USC 12112, contractor shall comply with the requirements of US Equal Employment Opportunity Commission (EEOC), Regulations to Implement Equal Employment Provisions of the Americans with Disabilities Act, 29 CFR 1630, pertaining to employment of persons with disabilities. Contractor shall also comply with any implementing requirements FTA may issue.

(3) Contractor shall include these requirements in each subcontract financed in whole or in part with FTA assistance, modified only if necessary to identify the affected parties.

Breaches and Dispute Resolution

All contracts over \$100,000

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient's authorized representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient's CEO shall be binding upon contractor and contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved. Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the recipient and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties,

obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the recipient or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Disadvantaged Business Enterprise

Contracts over \$3,000 awarded on the basis of a bid or proposal offering to use DBEs

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.

b. The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.

f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

Incorporation of Federal Transit Administration (FTA) Terms

All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

Full and Open Competition

In accordance with 49 U.S.C. § 5325(a) all procurement transactions shall be conducted in a manner that provides full and open competition.

Prohibition Against Exclusionary or Discriminatory Specifications

Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

Conformance with ITS National Architecture

Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

Access Requirements for Persons with Disabilities

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

Notification of Federal Participation

To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

Interest of Members or Delegates to Congress

No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

Ineligible Contractors and Subcontractors

Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

Other Contract Requirements

To the extent not inconsistent with foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

Compliance with Federal Regulations

Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or

incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Real Property

Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 29 CFR 18.31, 49 CFR 24 Subpart B, FTA Circular 5010.1D, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Access to Services for Persons with Limited English Proficiency

To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

Environmental Justice

The Recipient agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.

Environmental Protections

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

Geographic Information and Related Spatial Data

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

Federal Single Audit Requirements for State Administered Federally Aid Funded Projects

Only Non Federal entities that expend \$500,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, Audits of States, Local Governments, and Non Profit Organizations. Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than \$500,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in '3052.215(a), but records must be available for review or audit by appropriate officials of the Federal and State agencies.

Catalog of Federal Domestic Assistance (CFDA) Identification Number

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

CFDA number for the Federal Transportation Administration

A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
 County of Los Angeles }
 On 10-14-12 before me, Kathy Wilkes, Notary Public,
Date Here Insert Name and Title of the Officer
 personally appeared Francis Tenggardjaya
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be 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: Kathy Wilkes
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____
 Document Date: _____ Number of Pages: _____
 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ <input type="checkbox"/> Corporate Officer — Title(s): _____ <input type="checkbox"/> Individual <input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General <input type="checkbox"/> Attorney in Fact <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator <input type="checkbox"/> Other: _____ Signer Is Representing: _____	RIGHT THUMBPRINT OF SIGNER Top of thumb here	Signer's Name: _____ <input type="checkbox"/> Corporate Officer — Title(s): _____ <input type="checkbox"/> Individual <input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General <input type="checkbox"/> Attorney in Fact <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator <input type="checkbox"/> Other: _____ Signer Is Representing: _____	RIGHT THUMBPRINT OF SIGNER Top of thumb here
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FEDERAL CERTIFICATIONS
CERTIFICATION AND RESTRICTIONS ON LOBBYING

I, Francis Tenggardjaja Executive Vice President, hereby certify
(Name and Title of Official)

On behalf of NS Corporation that:
(Name of Bidder/Company)

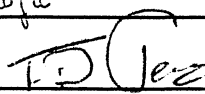
1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the Federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, "Disclosure Form to Report Lobbying" in accordance with its instruction.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

Name of Bidder/Company Name NS Corporation

Type or Print Name Francis Tenggardjaja

Signature of Authorized Representative  Date: 10/11/12

Signature of Notary and Seal _____

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

49 CFR Part 29, Executive Orders 12549, 12689, and 31 U.S.C. 6101 (Contracts over \$25,000)

Background and Applicability

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, Debarment and Suspension, Executive Order 12689, Debarment and Suspension, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contractor subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as "covered transactions."

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contractor subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entity they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

Suspension and Debarment

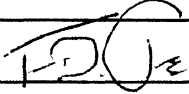
This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the recipient. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the recipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Contractor: NS Corporation

Signature of Authorized Official:  Date: 10/11/12

Print Name and Title of Contractor's Authorized Official: Francis Tenggardjaja
Executive Vice President

BUY AMERICA CERTIFICATION (STEEL OR MANUFACTURED PRODUCTS)

(61 FR 6302, February 16, 1996, as Amended 74 FR 30239, June 25, 2009)

General Requirements as stated in 49 CFR 661.51

Except as provided in 49 CFR 661.7 and 49 CFR 661.11 no funds may be obligated by FTA for a grantee project unless all iron, steel, and manufactured products used in the project are produced in the United States.

All steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in infrastructure projects such as, transit or maintenance facilities, rail lines, and bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock, or to bimetallic power rail incorporating steel or iron components.

For a manufactured product to be considered produced in the United States:

All of the manufacturing processed for the product must take place in the United States, regardless of the origin of its subcomponents.

All of the components of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents.

If steel, iron, or manufactured products (as Defined in 49 CFR 661.3 and 661.5) are being procured, the appropriate certification as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirements contained in 49 CFR 661.13(b)

Certificate of Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 53230 (1), and the applicable regulations in 49 CFR Part 661.

Company: NS Corporation

Name: Francis Tengardjaja

Signature: [Signature] Date: 10/11/12

Certificate of Non-Compliance with Buy America Steel or Manufactured Products Requirements

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 53230, but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 53230(2), as amended, and the applicable regulations in 49 CFR 661.7

Company: _____

Name: _____

Signature: _____ Date: _____



AGENDA REPORT

MEETING DATE: October 16, 2012

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING AN AGREEMENT WITH AQUATIC DESIGN GROUP FOR THE DESIGN OF SUPPLEMENTAL FILTRATION FOR THE SMALL POOL IN THE BRENDA VILLA AQUATIC CENTER

RECOMMENDATION:

Adopt the Resolution approving an Agreement with Aquatic Design Group for the design of supplemental filtration for the small pool in the Brenda Villa Aquatic Center, and assign the number next in order.

MOTION:

Move to approve the recommendation.

BACKGROUND:

On June 19, 2012, as part of the Fiscal Year 2012/13 Capital Improvement Program, the City Council appropriated \$150,000 for the design and installation of supplemental filtration for the small pool in the Brenda Villa Aquatic Center. The existing filtration is not sufficient to support the current level of programming in the pool.

ANALYSIS:

On July 17, 2012, the City Council approved the Request for Proposal (RFP) for the design phase of supplemental filtration and authorized staff to issue a Notice Inviting Bids/Proposals.

On August 2, 2012, the City received proposals from the following companies:

Contractor Name	Bid Amount
Jones and Madhavan Architecture Engineering, Thousand Oaks, CA	\$15,000
Aquatic Design Group, Carlsbad, CA	\$18,000
California Waters, Santa Ana, CA	\$19,520
Rowley International, Palos Verdes Estates, CA	\$82,500

The selected contractor will be responsible for designing the supplemental filtration for the small pool, including: 1) conducting an assessment of the existing filtration system; 2) Providing a preliminary design and layout for the supplemental filtration; 3) preparing all required drawings and bid ready documents; 4) obtaining all permits; 5) providing construction and post construction support; and 6) designing a system that meets all current Federal, State and local regulations.

On September 20, 2012 and September 25, 2012, a panel consisting of Scott Wasserman (Interim Director of Parks and Recreation), Michael Halsey (Construction Manager – Swinerton) and Rachel Baltierra (Aquatic Program Manager) reviewed all proposals and interviewed the top two candidates.

Staff recommends awarding the design contract to Aquatic Design Group, due to their extensive experience in aquatic design and their heavy involvement and leadership role in the industry. The principle project manager serves on several industry boards and panels and provides educational sessions, conferences, seminars, and contributes to industry publications around the world. In addition, Aquatic Design group has committed to providing unlimited training in the use of the filtration system and mandated Aquatic Facility Operator Certification (free of charge). In addition, the project manager assumed a prominent role in developing the Model Aquatic Health Code and is currently working with the Center for Disease Control, with regards to their swimming pool program.

Staff recommends that an agreement for the design of a supplemental filtration system be awarded to Aquatic Design Group, in the amount of \$18,000 and that a project contingency of \$2,700 (or 15%) be set aside.

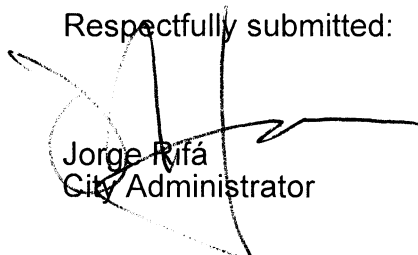
FISCAL IMPACT

On June 19, 2012, the City Council appropriated \$150,000, as part of its Capital Improvement Plan, to provide supplemental filtration for the small pool. The balance of funds \$129,300 will be used for construction costs. Once the design phase of the project is complete, staff will return to Council to request authorization to approve the construction plans and issue a notice inviting bids.

RELATIONSHIP TO 2009 STRATEGIC GOALS:


The issue before the Council is applicable to the following Council's strategic goal: *"Protect and Enhance Quality of Life in the City of Commerce."* Although, there are no specific objectives connected to this issue, the City is responsible for the maintenance and care of city-owned facilities.

Respectfully submitted:




Jorge Rifa
City Administrator

Recommended and prepared by:



Scott Wasserman
Interim Director of Parks and Recreation

Recommended:



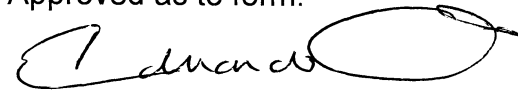
Danilo Batson
Assistant Director of Public Services

Fiscal impact reviewed by:



Vilko Domic
Director of Finance

Approved as to form:



Eduardo Olivo
City Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING AN AGREEMENT WITH AQUATIC DESIGN GROUP FOR THE DESIGN OF SUPPLEMENTAL FILTRATION FOR THE SMALL POOL IN THE BRENDA VILLA AQUATIC CENTER

WHEREAS, on June 19, 2012, as part of the Fiscal Year 2012/13 Capital Improvement Program, the City Council appropriated \$150,000 for the design and installation of supplemental filtration for the small pool in the Brenda Villa Aquatic Center.

WHEREAS, the existing filtration is not sufficient to support the current level of programming in the pool.

WHEREAS, on July 17, 2012, the City Council approved the Request for Proposal (RFP) for the design phase of supplemental filtration and authorized staff to issue a Notice Inviting Bids/Proposals.

WHEREAS, on August 2, 2012, the City received proposals from the following companies:

Contractor Name	Bid Amount
Jones and Madhavan Architecture Engineering, Thousand Oaks, CA	\$15,000
Aquatic Design Group , Carlsbad, CA	\$18,000
California Waters, Santa Ana, CA	\$19,520
Rowley International, Palos Verdes Estates, CA	\$82,500

WHEREAS, the selected contractor will be responsible for designing the supplemental filtration for the small pool, including: 1) conducting an assessment of the existing filtration system; 2) Providing a preliminary design and layout for the supplemental filtration; 3) preparing all required drawings and bid ready documents; 4) obtaining all permits; 5) providing construction and post construction support; and 6) designing a system that meets all current Federal, State and local regulations.

WHEREAS, on September 20, 2012 and September 25, 2012, a panel consisting of Scott Wasserman (Interim Director of Parks and Recreation), Michael Halsey (Construction Manager – Swinerton) and Rachel Baltierra (Aquatic Program Manager) reviewed all proposals and interviewed the top two candidates.

WHEREAS, staff recommends awarding the design contract to Aquatic Design Group, due to their extensive experience in aquatic design and their heavy involvement and leadership role in the industry. The principle project manager serves on several industry boards and panels and provides educational sessions, conferences, seminars, and contributes to industry publications around the world. In addition, Aquatic Design group has committed to providing unlimited training in the use of the filtration system and mandated Aquatic Facility Operator Certification (free of charge). In addition, the project manager assumed a prominent role in developing the Model Aquatic Health Code and is currently working with the Center for Disease Control, with regards to their swimming pool program.

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

Section 1. Approve staff's recommends that an agreement for the design of a supplemental filtration system be awarded to Aquatic Design Group, in the amount of \$18,000 and that a project contingency of \$2,700 (or 15%) be set aside.

Section 2. On June 19, 2012, the City Council appropriated \$150,000, as part of its Capital Improvement Plan, to provide supplemental filtration for the small pool. The balance of funds \$129,300 will be used for construction costs. Once the design phase of the project is complete, staff will return to Council to request authorization to approve the construction plans and issue a notice inviting bids.

Section 3. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

APPROVED AND ADOPTED this _____ day of _____, 2012

Lilia R. Leon, Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk

THIS AGREEMENT (the "Agreement") dated as of October ____, 2012 (the "Effective Date") is made by and between Aquatic Design Group ("Consultant") and the City of Commerce, a municipal corporation (the "City").

RECITALS

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

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

AGREEMENT

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

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

2. **Term.**

Except as otherwise provided by Section 20 hereof, the term of this Agreement shall be for a period commencing on the Effective Date until the completion by Consultant of all the Services, to the satisfaction of the City.

3. **Compensation.**

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

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

4. **Financial Records.**

Consultant shall maintain complete and accurate records with respect to fees and costs incurred under this Agreement. All such records shall be maintained on a generally accepted accounting basis and be clearly identified and readily accessible. Consultant shall keep, maintain and provide free access to such books and records to examine and audit the same, and to make

transcripts thereof as necessary, and to allow inspection of all work data, documents, proceedings and activities related to this Agreement for a period of three years from the date of final payments under this Agreement. All accounting records shall readily provide a breakdown of fees and costs charged to this Agreement.

5. Independent Contractor.

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

6. Consultant to Provide Required Personnel; Subcontracting.

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

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

7. Responsible Principal and Project Manager.

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

8. City Liaison.

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

9. Licenses.

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

10. Compliance with Laws.

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

11. Insurance.

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

12. Warranty and Liability.

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

13. Indemnification.

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

14. Confidentiality.

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

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

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

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

17. Covenant against Contingent Fees.

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

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

18. Conflict of Interest.

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

19. Other Agreements.

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

20. Termination.

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

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

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

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 Consultant 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 Consultant, nor shall this Agreement inure to the benefit of any trustee in bankruptcy, receiver, or creditor or Consultant, whether by operation of law or otherwise, without the prior written consent of the City which may be withheld in its sole discretion. Any attempt to so assign or transfer this Agreement or any rights or obligations hereunder without such consent shall be void and of no effect.

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

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: Danilo Batson – Assistant Director of Community Development

For Consultant:

Aquatic Design Group
2226 Faraday Ave.
Carlsbad, California 92008
Attn: Dennis Berkshire

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.

227. Severability.

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

28. No Construction of Agreement against any Party.

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

29. Entire Agreement and Amendments to Agreement.

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

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

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

31. Counterpart Signatures.

This Agreement may be executed in one or more counterparts. When this Agreement has

been properly signed by an authorized representative of each of the parties hereto, it shall constitute a valid Agreement, though each of the signatories may have executed separate counterparts hereof.

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

CITY OF COMMERCE

DATED: October ___, 2012

By: _____
Lilia R. Leon, Mayor

ATTEST:

Linda K. Olivieri, City Clerk

CONSULTANT

DATED: October ___, 2012

By: _____
Scott Ferrell, Vice President

APPROVED AS TO FORM

By: Eduardo Olivo
Title: City Attorney

EXHIBIT A

1.0 SCOPE OF SERVICES

Design, engineering and professional services as required for the supplemental filtration system replacement in the warm-up pool at the Aquatorium.

1.1 PHASE I Site Assessment / Recommendations:

Conduct a site assessment and prepare a report for evaluation by City. The report shall include, but not be limited to the following:

- Review and analysis of the existing pool circulation systems and equipment.
- Recommendations for improvements and alternatives for a supplemental filtration system.
- Recommendations for integration of supplemental filtration system with the existing filtration system and equipment.
- Potential operational impacts to surrounding facilities during construction.
- Preliminary construction cost estimate and implementation schedule.
- Present finding and recommendations to City staff.

1.2 PHASE II Preliminary Design / Layout Options:

Upon approval of phase I report, consultant will:

- Prepare preliminary design drawings, layouts and estimated schedule.
- Provide preliminary construction cost estimate including alternatives.
- Propose equipment and materials for City's consideration.
- Submit options with schematic plans for City review and make two presentations to the City, one to staff and one to the City Council at an evening meeting.

1.3 PHASE III Final Design / Bid Ready Documents / Permitting:

Upon selection of preliminary design and approval by council, consultant will:

- Prepare final bid-ready design and specifications for construction bid.
- Present 75% and 95% design drawings to staff for review and approval.
- Submit drawings to governing agencies for plan check approval and permitting process. Plan check / permit fees will be paid by City.
- Present proposed design to City and make two presentation, one to staff and one to the City Council at an evening meeting.
- Provide a detailed cost estimate of total construction cost.
- Provide 100% design and specification documents. Three (3) hard paper copies and one (1) electronic digital copy (CD-ROM). Drawings to be in CAD and PDF format. Details to be in PDF format. Electronic copies are to be accessible and manipulated by the City in the future.

Proposal

Supplemental Filtration System for
Aquatorium Warm-Up Pool

1.4 PHASE IV Construction and Post-Construction Consultation:

Upon completion of final design/bid ready documents, consultant will:

- Attend a project Pre-Bid Meeting and project site walk-thru.
- Assist City in responding to inquiries from prospective bidders.
- Attend a Pre-Construction meeting with selected contractor and answer questions as needed.
- Conduct at least four (4) onsite inspections during construction to review drawings and contract documents.
- Review submittals, information requests and change orders from contractor as needed.
- Conduct a final project inspection with the City in order to ensure quality of work and compliance with project specifications, drawings, and contract documents.
- Review as-built plans and make recommendations for revisions.

1.5 CONSULTANT's services are intended for the CLIENT's sole use and benefit and solely for the CLIENT's use on the Project. Except as agreed to in writing, CONSULTANT's services and work product shall not be used or relied on by any other person on entity, or for any purpose following substantial completion of the Project.

1.6 CONSULTANT's services shall be provided consistent with and limited to the standard of care applicable to such services, which is that CONSULTANT shall provide its services consistent with the professional skill and care ordinarily provided by consultants practicing in the same or similar locality under the same or similar circumstances.

1.7 CONSULTANT shall seek to comply with Building Codes applicable to the Project as is consistent with the professional standard of care and may seek and rely on the direction and input of public officials and others in doing so.

1.8 CONSULTANT's services shall be limited to those expressly set forth above, and CONSULTANT shall have no other obligations or responsibilities for the Project except as agreed to in writing or as provided in this Agreement.

1.9 This Agreement and all obligations described herein are intended for the sole benefit of the Parties and are not intended to create any third party rights or benefits.

2.0 EXCLUSIONS TO SCOPE OF SERVICES

2.1 CLIENT shall provide full information regarding requirements for the project, including a program which shall set forth CLIENT's design objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, special equipment, systems and site requirements. Additional information that may be required by CONSULTANT as prepared by other members of the project team shall include:

Proposal

Supplemental Filtration System for
Aquatorium Warm-Up Pool

- 2.1.1 Soils testing/engineering, including finalized geotechnical investigation report.
Note: Unusual soil conditions such as expansive soils, fill soils, soils with low bearing capacity (under 2,000 psf), and high water tables which require additional engineering will be considered an additional service and compensated for in conformance with Article 3.1.2, below.
- 2.1.2 Destructive testing of existing pool structures to confirm as-built condition.
Note: CONSULTANT cannot guarantee structural integrity of existing pool structures without confirming as-built condition of pool wall thickness, concrete reinforcement and compressive strength.
- 2.1.3 Utilities design to swimming pool mechanical equipment points of connection, including:
 - .1 Sanitary sewer.
 - .2 Storm sewer.
 - .3 Domestic water.
 - .4 Electrical distribution, including single line diagram, three phase conduit and conductors, motor starters, and single phase conduit and conductors.
- 2.1.4 Architectural, structural, mechanical, HVAC and electrical design of mechanical equipment room or other building structures as required.
- 2.1.5 Landscape design including pool decks, deck drainage, fencing, planting, irrigation, site drainage and site lighting.
- 2.1.6 Miscellaneous plan check and permit fees as may be required by regulatory agencies.
- 2.2 All construction projects require inspection and maintenance following completion. Operation, inspection, and maintenance are the sole responsibility of the Project Owner and CONSULTANT shall have no responsibility for any failures by the Project Owner or others to properly operate, inspect, or maintain the Project.

3.0 COMPENSATION

- 3.1 CLIENT shall compensate CONSULTANT for services rendered as follows:
 - 3.1.1 Basic Services: The Scope of Services described above shall be compensated for by a lump sum, fixed fee equivalent to: EIGHTEEN THOUSAND AND 00/100 DOLLARS (\$18,000.00).
 - 3.1.2 Additional Services: If requested, additional services will be billed for on an hourly basis, in conformance with the rates outlined in Article 3.3, below.

Proposal

Supplemental Filtration System for
Aquatorium Warm-Up Pool

3.1.3 Reimbursable Expenses: In addition to basic compensation, an allowance of \$500 shall be provided for reimbursable expenses. Reimbursable expenses will be billed at CONSULTANT's direct cost, and shall include the following:

- .1 Plotting and reproduction expense of Drawings, Specifications and other documents.
- .2 Special delivery and handling of documents and correspondence such as courier and overnight delivery services.
- .3 Travel and lodging expense associated with travel outside of Southern California in connection with the Project.

3.2 Terms of Payment:

3.2.1 Payments for Basic Services shall be made based upon percentage of completion in not less than monthly installments, in conformance with the following schedule of values:

.1	PHASE I	\$ 2,750.00
.2	PHASE II	\$ 3,250.00
.3	PHASE III	\$ 10,250.00
.4	PHASE IV	\$ 1,750.00

3.3 Hourly Rates:

3.3.1 Compensation for additional services (when requested and authorized in advance by CLIENT) shall be provided in conformance with the following hourly rates:

.1	Principal.....	\$ 195.00 per hour
.2	Project Architect / Engineer.....	\$ 165.00 " "
.3	Project Manager.....	\$ 135.00 " "
.4	Construction Manager.....	\$ 125.00 " "
.5	CAD Technician.....	\$ 100.00 " "
.6	Graphics Technician.....	\$ 85.00 " "
.7	Clerical.....	\$ 50.00 " "

4.0 EXPLANATION OF HOW FEES ARE DETERMINED

4.1 All fees are determined on an estimation of the number of hours required to complete scope as described in Article I above with the hourly rates in Article 3.3 above.

5.0 EXPLANATION OF CITY INDUCED DESIGN CHANGES

5.1 Any design changes that are outside the above agreed upon scope as outlined in Article I that are estimated to take over 1 hour to fulfill or if exhaustive smaller changes are requested, CONSULTANT shall be compensated for in conformance with Article 3.1.2 above.

Proposal

Supplemental Filtration System for
Aquatorium Warm-Up Pool

City of Commerce - Aquatic Design Service Contract - Exhibit A

Description	Rem Dur	Early Start	Early Finish	2012												2013			2014		
				OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	A
MILESTONES																					
ISSUE NOTICE OF AWARD - DESIGN	0	OCT.22.2012		◆ ISSUE NOTICE OF AWARD - DESIGN																	
TIME SUMMARY (CAL. DAYS)	298	OCT.22.2012	AUG.15.2013	TIME SUMMARY (CAL. DAYS)																	
ISSUE NOTICE TO PROCEED - DESIGN	0	OCT.30.2012		◆ ISSUE NOTICE TO PROCEED - DESIGN																	
SUBMITT FOR PLAN CHECK	0	DEC.20.2012		◆ SUBMITT FOR PLAN CHECK																	
BID DOCUMENTS COMPLETE	0		FEB.07.2013	◆ BID DOCUMENTS COMPLETE																	
CONSTRUCTION BIDS DUE	0		MAR.20.2013	◆ CONSTRUCTION BIDS DUE																	
START CONSTRUCTION	0	APR.24.2013		◆ START CONSTRUCTION																	
CONSTRUCTION COMPLETE	0		JUN.19.2013	◆ CONSTRUCTION COMPLETE																	
PROJECT CLOSED	0		AUG.15.2013	◆ PROJECT CLOSED																	
+DESIGNER SELECTION																					
	16	SEP.25.2012 A	OCT.29.2012																		
DESIGN																					
KICK OFF MEETING	1	OCT.30.2012	OCT.30.2012	I KICK OFF MEETING																	
SITE ASSESMENT / STAFF INPUT	3	OCT.31.2012	NOV.02.2012	I SITE ASSESMENT / STAFF INPUT																	
PREPARE / PRESENT DESIGN OPTIONS	5	NOV.05.2012	NOV.09.2012	I PREPARE / PRESENT DESIGN OPTIONS																	
PREPARE 80% DESIGN AND BUDGET	15	NOV.12.2012	NOV.30.2012	I PREPARE 80% DESIGN AND BUDGET																	
REVIEW 80% DESIGN	3	DEC.03.2012	DEC.05.2012	I REVIEW 80% DESIGN																	
CORRECTIONS / PREPARE 95% DESIGN	10	DEC.06.2012	DEC.19.2012	I CORRECTIONS / PREPARE 95% DESIGN																	
FINAL DESIGN AND BUDGET REVIEW BY	2	DEC.20.2012	DEC.21.2012	I FINAL DESIGN AND BUDGET REVIEW BY CITY																	
PLAN CHECK - CITY	15	DEC.24.2012	JAN.15.2013	I PLAN CHECK - CITY																	
PLAN CHECK - COUNTY	20	DEC.24.2012	JAN.22.2013	I PLAN CHECK - COUNTY																	
CORRECTIONS	5	JAN.23.2013	JAN.29.2013	I CORRECTIONS																	
PLAN CHECK FINAL	3	JAN.30.2013	FEB.01.2013	I PLAN CHECK FINAL																	
PERMIT READY	1	FEB.04.2013	FEB.04.2013	I PERMIT READY																	
PREPARE FINAL BID DOCS	4	FEB.04.2013	FEB.07.2013	I PREPARE FINAL BID DOCS																	
+BID AND AWARD																					
	55	FEB.04.2013	APR.19.2013																		
CONSTRUCTION																					
PRE-CONSTRUCTION MEETING	1	APR.22.2013	APR.22.2013	I PRE-CONSTRUCTION MEETING																	
ISSUE NOTICE TO PROCEED	1	APR.23.2013	APR.23.2013	I ISSUE NOTICE TO PROCEED																	
CONSTRUCTION	35	APR.24.2013	JUN.11.2013	I CONSTRUCTION																	
PUNCH LIST	5	JUN.12.2013	JUN.18.2013	I PUNCH LIST																	
PERMIT FINAL	1	JUN.19.2013	JUN.19.2013	I PERMIT FINAL																	
+CLOSEOUT																					
	40	JUN.20.2013	AUG.15.2013																		

Start date: DEC.07.2010
 Finish date: AUG.15.2013
 Data date: OCT.08.2012
 Run date: OCT.09.2012
 Para number: 1A
 Project name: SmallPool_008
 © Primavera Systems, Inc.

SMALL POOL FILTRATION UPGRADE
 Prepared by: Mike Halsey



EXHIBIT B

REQUIRED INSURANCE

On or before beginning any of the Services called for by any term of this Agreement, Consultant, at its own cost and expense, shall carry, maintain for the duration of this Agreement, and provide proof thereof that is acceptable to the City of its procurement of the insurance specified below from insurers and under forms of insurance satisfactory in all respects to the City. Consultant shall not allow any subcontractor to commence work on any subcontract under this Agreement until all insurance required of Consultant have also been obtained for the or by the subcontractor. Such insurance shall not be in derogation of Consultant's obligations to provide indemnity under Section 13 of this Agreement.

1. Comprehensive General Liability and Automobile Liability Insurance Coverage.

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

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

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

2. Errors and Omissions Insurance Coverage.

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

3. Worker's Compensation.

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

4. Additional Insureds.

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

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

5. Cancellation Clause.

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

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

6. Severability Clause.

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

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

7. Qualifications of Insurer.

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

8. Approval of Insurer.

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

9. Payment of Premiums.

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

10. Evidence of Insurance and Claims.

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



AGENDA REPORT

Meeting Date: October 16, 2012

TO: Honorable City Council

FROM: City Administrator

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING THE PURCHASE OF ONE MEDI RIDE VAN FROM A-Z BUS SALES, INC.

RECOMMENDATION:

Adopt the Resolution approving the purchase of one Medi-Van from A-Z Bus Sales, Inc., and assign the number next in order.

MOTION:

Move to approve recommendation.

BACKGROUND:

The City of Commerce operates five Medi Ride vans that provide transportation to senior and disabled citizens. Service is provided within a twelve mile radius of City Hall, and over 10,000 passengers use this service on an annual basis. Medi van Unit No. 370, which is the last gasoline powered Medi van owned by the City, was purchased in 2004 and, according to Federal Transit Administration (FTA) standards, has exceeded its useful life. Staff is recommending the replacement of Unit No. 370 with a new CNG-powered vehicle which is equipped with the latest CNG engine technology. The new vehicle will offer improved reliability for the City's senior and disabled residents, and reduced maintenance costs.

ANALYSIS:

The Morongo Basin Transit Authority (MBTA) formed the Cal ACT/MBTA Vehicle Purchasing Cooperative (the "Cooperative"). MBTA staff, consultants and counsel have independently developed requirements, product specifications and awarded contracts on behalf of the initial Cooperative for the purchase of various vehicles. A description of the Cooperative is attached to this staff report.

On March 23, 2012, the MBTA, on behalf of the Cooperative, awarded a contract to A-Z Bus Sales, located at 1900 S. Riverside Ave., Colton, CA 92324, for the purchase of various vehicles. California Public Contract Code § 20217 (a) provides that it is in the public interest for transit agencies to "consider the broadest possible range of competing products and materials available, fitness of purpose, manufacturer's warranty, vendor financing, performance reliability, standardization, lifecycle costs, delivery timetables, supporting logistics, and other similar factors in addition to price in the award of these contracts." Pursuant to California law, the City of Commerce is allowed to "piggyback" on the contract awarded to A-Z Bus Sales.

The City Transportation staff recommends that the City purchase a van from A-Z Bus Sales pursuant to the contract awarded by the Cooperative. Staff is proposing that the City use \$141,873 in FTA 5307 Capital Funds and local transit funds to purchase one replacement Medi Ride van. Delivery of this new vehicle is estimated to be in the 4th quarter of 2012.

Unit No. 370 is still in good condition and will be sent to Camp Commerce to replace Unit No. 218. Before doing so, Transportation staff will perform the following maintenance repairs: 1) major tune-up; 2) install new tires; 3) re-align suspension as needed; 4) install new belts, hoses, filters; 5) replace fluids; 6) install new brakes; and 7) complete a 54 point safety inspection.

FISCAL IMPACT:

The cost of the proposed vehicle is shown below and a copy of A-Z Bus Sales' quote of September 12, 2012 is attached.

Number of Vehicles	1
Purchase Price	\$ 131,346
Subtotal	\$ 131,346
Contingency	\$ 6,000
Grant Administration	\$ 4,527
TOTAL PRICE	\$ 141,873

The proposed activity can be paid for out of Federal Transit Administration (FTA) grant number CA-90-Y671 and local transit funds. Expenditures for the proposed activity will total \$141,873. Combined with all other reasonably known planned and approved expenditures for this line item and cost center, the proposed activity can be absorbed within current budget limitations for the remainder of the fiscal year.

FUNDING SOURCE	CONTRACT	AMOUNT
Federal Funds	Project I.D. CA-90-Z001-02	\$ 117,898
Local Funds	Prop. 1B Capital	\$ 23,975
TOTAL		\$ 141,873

STRATEGIC GOALS:

The proposed recommendation relates to City Council's 2009 Strategic Goals by utilizing vehicles powered by alternative fuel, resulting in lower emissions.

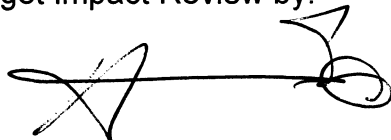
Recommended by:


 Claude McFerguson
 Director of Transportation

Respectfully submitted,


 Jorge Rifa
 City Administrator

Budget Impact Review by:



Vilko Domic
 Director of Finance

Approved as to Form:



Eduardo Olivo
 City Attorney

Attachments: A-Z Bus Sales, Inc. – Quote
 CalACT Cooperative – Notice of Award MBTA RFP #11-03

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE,
CALIFORNIA, APPROVING THE PURCHASE OF ONE MEDI RIDE VAN FROM A-Z
BUS SALES, INC.

WHEREAS, the City of Commerce was awarded a transit capital project grant from the Federal Transit Administration (CA-90-Z001-02) which includes funding for one replacement transit vehicle; and

WHEREAS, the Morongo Basin Transit Authority (MBTA) formed the Cal ACT/MBTA Vehicle Purchasing Cooperative (the "Cooperative"), MBTA staff, consultants and counsel have independently developed requirements, product specifications and awarded contracts on behalf of the initial Cooperative for the purchase of various vehicles; and

WHEREAS, on March 23, 2012, the MBTA, on behalf of the Cooperative, awarded a contract to A-Z Bus Sales, for the purchase of various vehicles; and

WHEREAS, California Public Contract Code § 20217 (a) provides that it is in the public interest for transit agencies to "consider the broadest possible range of competing products and materials available, fitness of purpose, manufacturer's warranty, vendor financing, performance reliability, standardization, lifecycle costs, delivery timetables, supporting logistics, and other similar factors in addition to price in the award of these contracts"; and

WHEREAS, pursuant to California and federal law, the City of Commerce is allowed to "piggyback" on the contract awarded to A-Z Bus Sales; and

WHEREAS, City Transportation staff recommends that the City purchase a van from A-Z Bus Sales pursuant to the contract awarded by the Cooperative.

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

Section 1: The purchase of one Medi Ride van from AZ Bus Sales, Inc. for a price not to exceed \$141,873, pursuant to the contract between the Cal ACT/MBTA Vehicle Purchasing Cooperative and A-Z Bus Sales, Inc., is hereby approved. The City Administrator of Commerce is hereby authorized to execute all documents necessary to complete the purchase.

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

Lilia R. Leon, Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk

All the Best
from



ORDER FORM

**Elkhart Coach - MBTA/CalACT Contract
STATEWIDE PROCUREMENT CONTRACT 11-03**

Customer: City of Commerce	Quote Date: 9/12/2012
Address: 5550 Jillson Street	Expires: 11/11/2012
City: Commerce	State: CA Zip Code: 90040
Contact: Greg Guzuman	Office: (323) 887-4419 Fax: (323) 724-2776
Email Address: gregg@ci.commerce.ca.us	Cell: TRANSPORTATION DSI Account:
Sales Representative: PHILLIPS	Transaction Type: ADD-ON
	Trade Ins: NONE

QUOTATION SUMMARY

BASE MODEL	BASE BID PRICE
2013 CalACT Type C, Glaval Universal, 16 Passenger, E-450	\$ 79,928.00

SPECIAL NOTES/INSTRUCTIONS:

SPECIFICATION SUMMARY

Model Year: 2013	Make: Ford	Wheelchair Lift Model: Ricon S2010
Type: Class C	Chassis: E-450	Wheelchair Lift Location: Rear
Passenger Capacity: 12 plus 2	Wheelbase: 158"	Number of Tie Downs: 2
Seat Fabric: Level 3	Engine: 6.8L V-10	Alternator: 225 Amp OEM
Air Conditioning System: TA 774	GVWR: 14,500	Tie Down Type: Q8100-AL
Exterior Color/Graphics: Custom	Body Length: 22.5'	Estimated Delivery: 180 Days ARO

Note: Optional Equipment below may supercede or replace standard bid specified equipment.

BASIC MODEL INCLUDING ALL STANDARD CONTRACT FEATURES	Qty	PRICE
Class B CNG, Ford E-450, 158" WB, 6.8L CNG, 16 Passengers/2 Wheelchairs, 68K BTU A/C, 225 Amp Alternator	BASE BG 1	\$ 79,928.00

STANDARD BID OPTIONS

Freedman Foldaway Seat	2	1,950.00
Freedman ICS Child Seat	1	795.00
Roof Vents	1	375.00
Credit for seat delete	4	(500.00)
Locking rear door w/alarm	1	625.00
Removable diamond floor access plate	1	110.00
Locking fuel door	1	75.00
USSC G2 E Drivers Seat	1	1,050.00
Telma Driveline Brake Retarder	1	6,200.00
Mor-RYD Suspension'	1	775.00
Upgraded A/ C System (75,000 BTU min)	1	1,600.00
Kidde Automatic Fire Supression w/Methane	1	4,525.00
Dialight Exterior LED	1	625.00
Dialight Interior LED	1	495.00
Level 3 fabric or vinyl seat credit	16	(160.00)
ADNIK Power Seat Base	1	425.00
Velvac Power Mirror	1	(90.00)
CNG PKG 37.5 GGE, Altoona Tested	1	3,875.00

SPECIAL OPTIONS

GE Mobileview V, 4 Camera, Color, System	1	9,918.00
Upgrade to Cloth Interior Package	1	1,500.00
Back-up Camera	1	525.00
Complete Wrap Graphics Package	1	6,000.00
Additional Security Cameras, (1) Streetside Exterior, (1) Curbside Exterior	2	950.00



ORDER FORM

**Elkhart Coach - MBTA/CalACT Contract
STATEWIDE PROCUREMENT CONTRACT 11-03**

Customer: City of Commerce	Quote Date: 9/12/2012
Address: 5550 Jillson Street	County: Los Angeles
City: Commerce	Expires: 11/11/2012
Contact: Greg Guzman	State: CA Zip Code: 90040
Email Address: gregg@ci.commerce.ca.us	Office: (323) 887-4419 Fax: (323) 724-2776
Sales Representative: PHILLIPS	Cell: TRANSPORTATION DSI Account:
	Transaction Type: ADD-ON
	Trade Ins: NONE

QUOTATION SUMMARY

BASE MODEL	BASE BID PRICE
2013 CalACT Type C, Glaval Universal, 16 Passenger, E-450	\$ 79,928.00

SPECIAL NOTES/INSTRUCTIONS:

SPECIFICATION SUMMARY

Model Year: 2013	Make: Ford	Wheelchair Lift Model: Ricon S2010
Type: Class C	Chassis: E-450	Wheelchair Lift Location: Rear
Passenger Capacity: 12 plus 2	Wheelbase: 158"	Number of Tie Downs: 2
Seat Fabric: Level 3	Engine: 6.8L V-10	Alternator: 225 Amp OEM
Air Conditioning System: TA 774	GVWR: 14,500	Tie Down Type: Q8100-AL
Exterior Color/Graphics: Custom	Body Length: 22.5'	Estimated Delivery: 180 Days ARO

QUOTE SUMMARY

	TOTAL of OPTIONS	\$ 41,643.00
	BASE VEHICLE AMOUNT	\$ 79,928.00
	Sub Total, per spec	\$ 121,571.00
	ADA Portion (Non-taxable)	\$ 10,680.00
	Document Fee	\$ 55.00
	Sales Tax	\$ 9,707.78
	Tire Recycle Fee	\$ 12.25
	Total Each	\$ 131,346.03
	Number of Units	1
	Total, Entire Order	\$ 131,346.03

County: Los Angeles Rate: 8.75%

**This quote is subject to change.
Does not include taxes, registration, or other fee.
Lead time confirmed at time of receipt of purchase order and purchase agreement.**

Offered by:

Agreed and Accepted by:

Representative _____ Date _____

Purchase _____ Date _____

Print Name _____



**California Association for Coordinated Transportation (CalACT)
Vehicle Purchasing Cooperative
(Morongo Basin Transit Authority-Lead Agency)**

"The Cooperative"

The Morongo Basin Transit Authority (MBTA) a member of the California Association for Coordinated Transportation (CalACT) takes the lead agency role in the formation of the CalACT/MBTA Vehicle Purchasing Cooperative.

MBTA staff, consultants and counsel will independently develop bid requirements, product specifications and award contracts on behalf of the Cooperative. After awards, CalACT will take on the task of assignment of vehicles, collection of fees, and general administration of the contract.

How does the Cooperative work? The form of procurement to be employed by the Cooperative is the development of a **Local Government Purchasing Schedule** as defined in the Federal Transit Administration's (FTA) Circular 4220.1F Chapter V, Part 4. Wherein the FTA extends to local governments the authority to make arrangements with multiple vendors to provide options for goods or service in the future at established prices to the local government or others that the local government chooses to share these arrangements with. This form of procurement is sometimes known as a "menu-style bid." The bid will enable transit agencies to select vehicles from a menu of choices from different vendors and manufacturers that best suit their requirements without having to go out to bid.

Can I buy a product from the menu that is not the lowest price? Yes! In accordance with 49 U.S.C. 5325 (c) FTA recipients may award contracts to parties other than a low bidder in order to further objectives such as long term efficiency and lower costs and in 49 U.S.C. 5325 (f) (1b) authorizes recipients to base awards for rolling stock on factors such as performance, standardization, life cycle costs or other factors or on a competitive process for selection of award such as this solicitation's (49 U.S.C. 5325 (f) (2)).

Further, the California legislature in Public Contract Code 20217 (a) finds and declares that it is in the public interest for *transit agencies* to "consider the broadest possible range of competing products and materials available, fitness of purpose, manufacturer's warranty, vendor financing, performance reliability, standardization, life cycle costs, delivery timetables, support logistics, and other similar factors in addition to price in the award of these contracts."

The above, as well as precedents set by practices in other states provide a preponderance of clear and compelling justifications for the Cooperative to create and maintain a bid schedule with multiple awards for products and for its assignees to purchase from the schedule considering factors other than lowest price.

Morongo Basin Transit Authority
March 23, 2012

**Notice of Award MBTA RFP #11-03 for Establishment of a Local Government Purchasing
Schedule**

The Morongo Basin Transit Authority (MBTA) is pleased to announce that its Board of Directors concurs with staff's recommendation to award contracts for RFP #11-03 to the following firms:

1. AZ-Bus Sales, – 1900 S. Riverside Ave, Colton, Ca 92324
2. Creative Bus Sales, 13501 Benson Ave, Chino, Ca 91710
3. Golden Gate Truck Centers, 8200 Baldwin Avenue, Oakland, Ca 94621

Orders will only be placed through an Assignment Process that will be managed jointly by MBTA and CalACT. In addition to pricing, Ordering Agencies may consider other criteria such as the past performance, warranty terms or other factors in making their decision of which vehicle to select.

Each firm will be sent electronic copies of the Contract documents once those are completed and available. At that time, the firm shall complete and return the following within ten (10) days:

1. Three (3) signed original Contract agreements. Upon execution by the MBTA, one original will be returned with a copy bound within the Conformed Contract Documents.
2. Certificates of Insurance, in accordance with Part C - Special Provision.

If you have any questions, please contact me at 760.366.2986 or joe@mbtabus.com

Thank you for your patience and diligence during the evaluation and award process.

Sincerely



Joe G. Meer
General Manager

Request for Proposal

September 30, 2011

RFP No. 11-03

CER 5. Pre-Award Evaluation Data Form

Instructions: This form is to be completed and included in the Qualification Package. Attach additional pages if required.

Morongo Basin Transit Authority
RFP No. 11-03 for Development of a Local Government Purchasing Schedule Accessible Transit/Paratransit Vehicles

<p>1. Name of firm: A-Z Bus Sales, Inc.</p> <p>2. Address: 1900 S. Riverside Ave. Colton, CA. 92324</p> <p>3. <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Joint Venture</p> <p>4. Date organized: 1976 State in which incorporated: California</p> <p>5. Names of officers or partners: a. Jim Reynolds b. Gordon Anderson c. d.</p> <p>6. How long has your firm been in business under its present name? 24 years</p>
<p>7. Have you been terminated or defaulted in the past five years, on any Contract you were awarded? Have you been barred by Federal process or any Western State? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, then attach as SCHEDULE ONE the full particulars regarding each occurrence.</p> <p>8. Attach as SCHEDULE TWO Proposer's last three (3) financial statements prepared in accordance with generally accepted accounting principles of the jurisdiction in which the Proposer is located, and audited by an independent certified public accountant; or a statement from the Proposer regarding how financial information may be reviewed by the Agency [This may require execution of an acceptable non-disclosure agreement between the Agency and the Proposer.]</p> <p>9. Attach as SCHEDULE THREE a list of all principal Subcontractors (if applicable) and the percentage and character of Work (Contract amount) that each shall perform on this Contract. Note: A subcontractor is one that physically works on manufacturing the bus.</p> <p>10. If the Contractor or Subcontractor is a joint venture, submit PRE-AWARD EVALUATION DATA forms for each member of the joint venture.</p>
<p>The above information is confidential and shall not be divulged to any unauthorized personnel.</p>
<p>The undersigned certifies to the accuracy of all information: Name and title: Ed King Director of Commercial and Transit Sales & Marketing Company: A-Z Bus Sales, Inc.</p> <p>_____ Authorized signature</p> <p>_____ Date 11/30/11</p>

Request for Proposal

September 30, 2011

RFP 11-03

CER 1.9 Proposal Form

NOTE: The following is an example of a Proposal form to be modified as appropriate by the Agency and included in the RFP.

Proposer shall complete the following form and include it in the price Proposal.

PROPOSAL

By execution below by a duly authorized representative(s) of the Proposer, the Proposer hereby offers to furnish equipment and services as specified in its Proposal submitted to MBTA in response to Request for Proposal No. Development of a Local Government Purchasing Schedule Accessible Transit/Paratransit Vehicles in its entirety.

Proposer:

A-Z Bus Sales, Inc.

Street address:

1900 S. Riverside Ave.

City, state, ZIP:

Colton, CA. 92324

Name and title of Authorized Signer(s):

Ed King Director of Commercial and Transit Sales and Marketing

Name and title of Authorized Signer(s):

Jim Reynolds CEO and President

Phone:

951-781-7188



Authorized signature

11/20/11

Date



Authorized signature

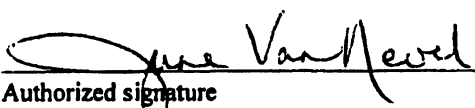
11/30/11


Date

CER 6. Federal Certifications and Other Certifications

CER 1.1 Buy America Certification

This form is to be submitted with an offer exceeding the small purchase threshold for federal assistance programs, currently set at \$100,000.

Certificate of Compliance	
The Proposer hereby certifies that it shall comply with the requirements of 49 USC Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 CFR 661.11:	
Name and title:	June Van Nessel, Dealer Sales Rep
Company:	Glaval Bus
Authorized signature	
Date	12-1-11

Certificate of Non-Compliance	
The Proposer hereby certifies that it cannot comply with the requirements of 49 USC Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 USC Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 CFR 661.7.	
Name and title:	
Company:	
Authorized signature	
Date	

CER 1.2 Debarment and Suspension Certification for Prospective Contractor

Primary covered transactions must be completed by proposer for contract value over \$25,000.

Choose one alternative:

- The Proposer, *Glenn Bw* certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. Have not within a three-year period preceding this Proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or Contract under a public transaction; violation of federal or state antitrust statutes or commission or embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in Paragraph 2 of this certification; and
4. Have not within a three-year period preceding this Proposal had one or more public transactions (federal, state or local) terminated for cause or default.

OR

- The Proposer is unable to certify to all of the statements in this certification, and attaches its explanation to this certification. (In explanation, certify to those statements that can be certified to and explain those that cannot.)

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of Title 31 USC § Sections 3801 are applicable thereto.

- Executed in *Elkhart, Indiana*

Name: *June Van Nevel*

June Van Nevel
Authorized signature

12-1-11
Date

Request for Proposal

September 30, 2011

RFP No. 11-03

CER 1.2 Debarment and Suspension Certification for Prospective Contractor

Primary covered transactions must be completed by proposer for contract value over \$25,000.

Choose one alternative:

- The Proposer, A-Z Bus Sales, Inc., certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. Have not within a three-year period preceding this Proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or Contract under a public transaction; violation of federal or state antitrust statutes or commission or embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in Paragraph 2 of this certification; and
4. Have not within a three-year period preceding this Proposal had one or more public transactions (federal, state or local) terminated for cause or default.

OR

- The Proposer is unable to certify to all of the statements in this certification, and attaches its explanation to this certification. (In explanation, certify to those statements that can be certified to and explain those that cannot.)
The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of Title 31 USC § Sections 3801 are applicable thereto.

- Executed in Colton CA.

Name: Ed King, Director of Commercial and Transit Department

Authorized signature

Date

11/29/11

CER 1.3 Debarment and Suspension Certification (Lower-Tier Covered Transaction)

This form is to be submitted by each Subcontractor receiving an amount exceeding \$25,000.

The prospective lower-tier participant (Proposer) certifies, by submission of this Proposal, that neither it nor its "principals" as defined at 49 CFR § 29.105(p) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency.

If the prospective Proposer is unable to certify to the statement above, it shall attach an explanation, and indicate that it has done so by placing an "X" in the following space: _____

THE PROPOSER, Glaval Bus,
CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH
STATEMENT OF ITS CERTIFICATION AND EXPLANATION, IF ANY. IN
ADDITION, THE PROPOSER UNDERSTANDS AND AGREES THAT THE
PROVISIONS OF 31 USC §§ 3801 *ET SEQ.* APPLY TO THIS CERTIFICATION AND
EXPLANATION, IF ANY.

Name and title of the proposer's authorized official:

June VanNivel - Dealer Sales Rep.

June VanNivel

Authorized signature

12-1-11

Date

Request for Proposal

September 30, 2011

RFP No. 11-03

CER 1.3 Debarment and Suspension Certification (Lower-Tier Covered Transaction)

This form is to be submitted by each Subcontractor receiving an amount exceeding \$25,000.

The prospective lower-tier participant (Proposer) certifies, by submission of this Proposal, that neither it nor its "principals" as defined at 49 CFR § 29.105(p) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency.

If the prospective Proposer is unable to certify to the statement above, it shall attach an explanation, and indicate that it has done so by placing an "X" in the following space: _____

**THE PROPOSER, A-Z Bus Sales, Inc.,
CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH
STATEMENT OF ITS CERTIFICATION AND EXPLANATION, IF ANY. IN
ADDITION, THE PROPOSER UNDERSTANDS AND AGREES THAT THE
PROVISIONS OF 31 USC §§ 3801 *ET SEQ.* APPLY TO THIS CERTIFICATION AND
EXPLANATION, IF ANY.**

Name and title of the proposer's authorized official: Ed King, Director of Commercial and Transit Department

Authorized signature

Date

CER 1.4 Non-Collusion Affidavit

This affidavit is to be filled out and executed by the Proposer; if a corporation makes the bid, then by its properly executed agent. The name of the individual swearing to the affidavit should appear on the line marked "Name of Affiant." The affiant's capacity, when a partner or officer of a corporation, should be inserted on the line marked "Capacity." The representative of the Proposer should sign his or her individual name at the end, not a partnership or corporation name, and swear to this affidavit before a notary public, who must attach his or her seal.

State of <u>Indiana</u> , County of <u>Elkhart</u>	
I, <u>Jane Van Newel</u> , being first duly sworn, do hereby state that <small>(Name of Affiant)</small>	
I am <u>Dealer, Sales Rep</u> of <u>Glaval Bus</u> <small>(Capacity) (Name of Firm, Partnership or Corporation)</small>	
whose business is <u>Bus Manufacturing</u>	
and who resides at <u>914 CR #1, Elkhart, IN 46514</u>	
and that <u>Glaval Bus</u> <small>(Give names of all persons, firms, or corporations interested in the bid)</small>	
is/are the only person(s) with me in the profits of the herein contained Contract; that the Contract is made without any connection or interest in the profits thereof with any persons making any bid or Proposal for said Work; that the said Contract is on my part, in all respects, fair and without collusion or fraud, and also that no members of the Board of Trustees, head of any department or bureau, or employee therein, or any employee of the Authority, is directly or indirectly interested therein.	
<u>Jane Van Newel</u> <small>Signature of Affiant</small>	<u>12-1-11</u> <small>Date</small>
Sworn to before me this <u>1st</u> day of <u>December</u> 20 <u>11</u>	
<u>Theresa A. Harris</u> <small>Notary public</small>	<u>8-1-2015</u> <small>My commission expires</small>
<small>Seal</small>	

Request for Proposal

September 30, 2011

RFP No. 11-03

CER 1.4 Non-Collusion Affidavit

This affidavit is to be filled out and executed by the Proposer; if a corporation makes the bid, then by its properly executed agent. The name of the individual swearing to the affidavit should appear on the line marked "Name of Affiant." The affiant's capacity, when a partner or officer of a corporation, should be inserted on the line marked "Capacity." The representative of the Proposer should sign his or her individual name at the end, not a partnership or corporation name, and swear to this affidavit before a notary public, who must attach his or her seal.

State of California County of Riverside

I, Ed King, being first duly sworn, do hereby state that
(Name of Affiant)

I am Director of Commercial and Transit of A-Z Bus Sales, Inc.
(Capacity) (Name of Firm, Partnership or Corporation)

whose business is Bus Sales

and who resides at 1900 S. Riverside Ave Colton, CA. 92324

and that A-Z Bus Sales, Inc.
(Give names of all persons, firms, or corporations interested in the bid)

is/are the only person(s) with me in the profits of the herein contained Contract; that the Contract is made without any connection or interest in the profits thereof with any persons making any bid or Proposal for said Work; that the said Contract is on my part, in all respects, fair and without collusion or fraud, and also that no members of the Board of Trustees, head of any department or bureau, or employee therein, or any employee of the Authority, is directly or indirectly interested therein.

[Signature] 11/29/11
Signature of Affiant Date

Sworn to before me this 29th day of November, 2011.

Kathryn E. LeVeque July 29, 2015
Notary public My commission expires

Seal



CER 1.5 Lobbying Certification

This form is to be submitted with an offer exceeding \$100,000.

The Proposer certifies, to the best its knowledge and belief, that:

1. No federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of a federal department or agency, a member of the U.S. Congress, an officer or employee of the U.S. Congress, or an employee of a member of the U.S. Congress in connection with the awarding of any federal Contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification thereof.
2. If any funds other than federal appropriated funds have been paid or shall be paid to any person for making lobbying contacts to an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal Contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction, as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 USC § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

THE PROPOSER, Glaval Bar, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE PROPOSER UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 USC §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.

Name of the bidder or Proposer's authorized official: June Van Neevel

Title: Dealer Sales Rep.

June Van Neevel 12-1-11
Signature Date

Per paragraph 2 of the included form Lobbying Certification, add Standard Form-LLL, "Disclosure Form to Report Lobbying," if applicable.

CER 1.5 Lobbying Certification

This form is to be submitted with an offer exceeding \$100,000.

The Proposer certifies, to the best its knowledge and belief, that:

1. No federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of a federal department or agency, a member of the U.S. Congress, an officer or employee of the U.S. Congress, or an employee of a member of the U.S. Congress in connection with the awarding of any federal Contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification thereof.
2. If any funds other than federal appropriated funds have been paid or shall be paid to any person for making lobbying contacts to an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal Contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction, as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, USC § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

THE PROPOSER, A-Z Bus Sales, Inc., CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE PROPOSER UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 USC §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.

Name of the bidder or Proposer's authorized official: Ed King

Title: Director of Commercial and Transit Department

[Signature]
Signature

11/29/11
Date

Per paragraph 2 of the included form Lobbying Certification, add Standard Form-LLL, "Disclosure Form to Report Lobbying," if applicable.

CER 1.6 Certificate of Compliance with Bus Testing Requirement

The undersigned certifies that the vehicle offered in this procurement complies and shall, when delivered, comply with 49 USC § 5323(c) and FTA's implementing regulation at 49 CFR Part 665 according to the indicated one of the following three alternatives.

Mark one and only one of the three blank spaces with an "X."

1. _____ The buses offered herewith have been tested in accordance with 49 CFR Part 665 on _____ (date). If multiple buses are being proposed, provide additional bus testing information below or on attached sheet. The vehicles being sold should have the identical configuration and major components as the vehicle in the test report, which must be submitted with this Proposal. If the configuration or components are not identical, then the manufacturer shall provide with its Proposal a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing. If multiple buses are being proposed, testing data on additional buses shall be listed on the bottom of this page.
2. _____ The manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), and submits with this Proposal the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.
3. X _____ The vehicle is a new model and shall be tested and the results shall be submitted to the Agency prior to acceptance of the first bus.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Company name: Glaval Bus
Name and title of the proposer's authorized official: Jurre Van Nevel - Dealer Sales Rep

Jurre Van Nevel _____
Authorized signature Date

CER 1.7 DBE Approval Certification

I hereby certify that the Proposer has complied with the requirements of 49 CFR 26, Participation by Disadvantaged Business Enterprises in DOT Programs, and that its goals have not been disapproved by the Federal Transit Administration.

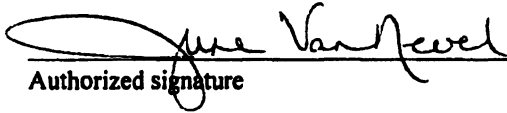
Name and title of the proposer's authorized official: *June Van Nevel - Dealer Sales Rep.*

June Van Nevel 12-1-11
Authorized signature Date

CER 1.8 Federal Motor Vehicle Safety Standards

The Proposer and (if selected) Contractor shall submit (1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or (2) manufacturer's certified statement that the contracted buses shall not be subject to FMVSS regulations.

Company name: Glaval Bus
Name of signer: June VanNewel
Title: Dealer Sales Rep.

 _____
Authorized signature

12-1-11

Date



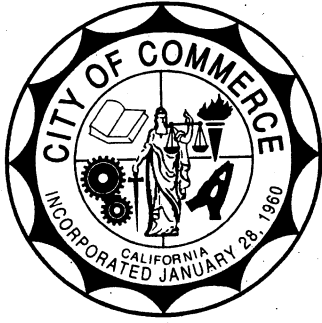
BUY AMERICA COST DOCUMENTATION

PRE-AWARD BUY AMERICA

Legacy

CAL ACT - DECEMBER 2011

COMPONENT	MANUFACTURER	STATE	% OF TOTAL COST
Chassis	Freightliner Custom Chassis / USA		0.514634329
ENGINE	Cummins / USA		
TRANSMISSION	Allison / USA		
FRONT AXLE	AAC / USA		
REAR AXLE	AAC / USA		
DRIVE SHAFT	Dana Spicer / USA		
FRONT SUSPENSION	Hendrickson / Canada		
REAR SUSPENSION	Freightliner / USA		
STEERING SYSTEM	TRW / USA		
AIR CONDITIONING	Seltec Compressor / Japan		
Glaval Base Build	Glaval Bus / USA	In	0.285388128
Air Conditioning System	Carrier / USA		0.029614866
Heat System	Pro Air / USA		0.004425855
Wheelchair Securement System	Q-Straint / USA		0.008358988
Wheelchair Lift Assembly	Braun / USA		0.040796467
Seating	Freedman Seating / USA		0.065349203
Help Bumper	Romeo Rim / USA		0.016855438
			0
			0
			0
			0
			0
			0
			0
			0
			0
			0
			0
			=====
Total unit cost minus discount	Total% of vehicle manufactured in the United States (minimum):		96.62%
Final assembly point will be Elkhart, Indiana. At this location the raw, cut away chassis is converted into a passenger and/or paratransit bus, complete and ready for use.			



AGENDA REPORT

MEETING DATE: October 16, 2012

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA APPROVING A 1-YEAR AGREEMENT WITH DEKRA-LITE FOR HOLIDAY DECORATIONS

RECOMMENDATION:

Approve and adopt the Resolution for a 1-year agreement with Dekra-Lite and assign the number next in order.

MOTION:

Move to approve the recommendation.

BACKGROUND/ANALYSIS:

Dekra-Lite has been providing holiday decoration services to the City of Commerce since 1999. In 1999 and 2004, they were awarded 5-year lease agreements.

The Keep Commerce Beautiful (KCB) Committee comprised of the Mayor Pro Tem Baca Del Rio and Councilmember Aguilar, has met and is recommending the continuation of the 2012 holiday decoration program with the existing vendor, 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, as provided last year.

Staff will be working with the KCB Committee in early 2013 to develop an RFP for the 2013/2014 holiday decoration program. The committee's final recommendation will be presented to City Council for review and approval, as part of the FY 2013/2014 budget.

FISCAL IMPACT:

Dekra-Lite 1-year lease proposal, dated September 26, 2012, is for \$87,372.01. Last year lease was for \$88,175.43. This activity can be carried out at this time without additional impact on the current operating budget, as funding for the program has been allocated in the Community Development Department FY 2012/2013 Budget.

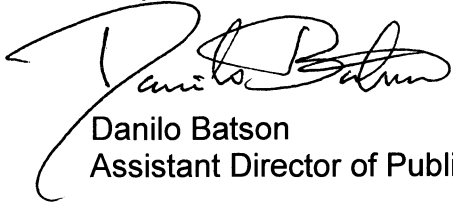
RELATIONSHIP TO 2009 STRATEGIC GOALS:

The issue before the Council is applicable to the following Council's strategic goal: "Protect and Enhance Quality of Life in the City of Commerce." Although, there are no specific objectives connected to this issue, the City has traditionally observed and provided holiday decorations.

Respectfully submitted,

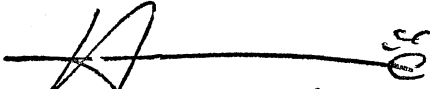

George Rifa
City Administrator

Prepared and recommended by:



Danilo Batson
Assistant Director of Public Services

Fiscal impact reviewed by:



Vilko Domic
Director of Finance

Approved as to form:



Eduardo Olivo
City Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE,
CALIFORNIA, APPROVING A 1-YEAR AGREEMENT WITH DEKRA-LITE FOR
HOLIDAY DECORATIONS

WHEREAS, Dekra-Lite has provided holiday decorations services for the City of Commerce since 1999 at a fair price; and

WHEREAS, the City would like to enter into a 1-year agreement with Dekra-Lite for such services.

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

Section 1. That the proposal by Dekra-Lite, dated April 2, 2012, is hereby accepted. The Agreement between the City and Dekra-Lite is hereby approved. The Mayor is hereby authorized to execute the agreement for and on behalf of the City of Commerce.

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

Lilia R. Leon, Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk

THIS AGREEMENT (the "Agreement") dated as of _____, 2012 (the "Effective Date") is made by and between Dekra-Lite ("Contractor ") and the City of Commerce, a municipal corporation (the "City").

RECITALS

WHEREAS, the City is in need of street maintenance and repair services throughout its roadway system; and

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

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, Vice President of Sales

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 ____, 2012

By: _____
Lilia R. Leon, Mayor

ATTEST:

Linda K. Olivieri, MMC
City Clerk

**DEKRA-LITE
CONTRACTOR**

DATED: October ____, 2012

By: _____
LeeRoy Chaffin, Vice President of Sales

APPROVED AS TO FORM

By: Eduardo Olivo
Title: City Attorney

EXHIBIT A



3102 W. Alton Ave. Ph. (714) 436-0705
 Santa Ana, CA 92704 Fax. (714) 436-0612
 www.dekra-lite.com

PROPOSAL PRP034646
 DATE 9/26/2012
 PAGE: 1

BILL TO:
 CITY OF COMMERCE
 2535 COMMERCE WAY
 LOS ANGELES CA 90040-1410

SHIP TO:
 CITY OF COMMERCE
 2535 COMMERCE WAY
 LOS ANGELES CA 90040-1410

HECTOR OROZCO
 PHONE (323) 722-4805 Ext. 0000
 FAX (323) 888-6841 Ext. 0000

INSTALL DATE Nov. 1-21, 2012
 REMOVAL DATE Jan. 5-19, 2013

PO Number R	Customer ID COM010	Salesperson ID GL	Shipping Method INSTALL	Payment Terms ANNUAL LEASE	Req Ship Date 0/0/0000	Master No. 38,002
Quantity	Item Number	Description	UOM	Unit Price	Extended Price	
43	LEASE RENEWAL	Lease Renewal: Holiday Pole Mounts on Eastern Ave. (21) Candles & (22) Stockings (36) on Eastern Ave. & (7) on Triggs	Each	\$146.42	\$6,296.06	T
43	PMVINYLRD	Vinyl Pole Wrap 6" x 50' Red	Each	\$0.00	\$0.00	T
15	LEASE RENEWAL	Lease renewal: 30"x 96" Banners w/Shooting Stars Banner Enhancers	Each	\$234.00	\$3,510.00	T
164	LEASE RENEWAL	Lease renewal:Pole Mounts (various locations) 7' Green Zig Zag Trees; 6' Single Candy Cane, & 7½' Stocking	Each	\$180.00	\$29,520.00	T
164	PMVINYLRD	Vinyl Pole Wrap 6" x 50' Red	Each	\$0.00	\$0.00	T
1	LEASE RENEWAL	Lease renewal: 20' Sequoia Tree for City Hall	Each	\$7,800.00	\$7,800.00	T
1	LEASE RENEWAL	Lease renewal: Décor package for 20' Sequoia Tree on City Hall	Each	\$1,800.00	\$1,800.00	T
2	LEASE RENEWAL	Lease renewal: 75" Fiberglass Toy Soldier for City Hall	Each	\$690.00	\$1,380.00	T
2	LEASE RENEWAL	Lease renewal: 8'3"x 6'8" Crossed Candy Cane Ground MOUNT for City Hall	Each	\$675.00	\$1,350.00	T
8	LEASE RENEWAL	Lease renewal: 5.7'x 40' Season's Greetings Overhead Streamer	Each	\$1,380.00	\$11,040.00	T
1	LEASE RENEWAL	Lease renewal: 24' Sequoia Tree for Heritage Park	Each	\$7,800.00	\$7,800.00	T



3102 W. Alton Ave. Ph. (714)436-0705
 Santa Ana, CA 92704 Fax (714) 436-0612
 www.dekra-lite.com

PROPOSAL PRP034646
 DATE 9/26/2012
 PAGE: 2

BILL TO:
 CITY OF COMMERCE
 2535 COMMERCE WAY
 LOS ANGELES CA 90040-1410

SHIP TO:
 CITY OF COMMERCE
 2535 COMMERCE WAY
 LOS ANGELES CA 90040-1410

HECTOR OROZCO
 PHONE 323) 722-4805 Ext. 0000
 FAX (323) 888-6841 Ext. 0000

INSTALL DATE Nov. 1-21, 2012
 REMOVAL DATE Jan. 5-19, 2013

PO Number	Customer ID	Salesperson ID	Shipping Method	Payment Terms	Req Ship Date	Master No.
R	COM010	GL	INSTALL	ANNUAL LEASE	0/0/0000	38,002
Quantity	Item Number	Description	UOM	Unit Price	Extended Price	
1	LEASE RENEWAL	Lease renewal: Décor package for 24' Tree on Heritage Park	Each	\$1,800.00	\$1,800.00	T
1	LEASE RENEWAL	Lease renewal: 10'x 35; Animated Train Set for Heritage Park	Each	\$3,600.00	\$3,600.00	T
2	LEASE RENEWAL	Lease renewal: 75" Fiberglass Toy Soldier for Heritage Park	Each	\$690.00	\$1,380.00	T
2	LEASE RENEWAL	Lease renewal: 8'3"x 6'8" Crossed Candy Cane Ground Mount for Heritage Park	Each	\$675.00	\$1,350.00	T
3	LEASE RENEWAL	Lease renewal: 36" Giant Presents for Heritage Park	Each	\$252.00	\$756.00	T
1	LEASE RENEWAL	Lease renewal: 8½"x 14' Angel Arch Pole Mount for Heritage Park	Each	\$960.00	\$960.00	T

Please Sign and Fax to 714-436-0612

Subtotal	\$80,342.06
Tax	\$7,029.95
Freight	\$0.00
Total	\$87,372.01
	<u>\$47,200.98</u>
	<u>\$40,171.03</u>

We propose hereby to furnish product and/or labor completely in accordance with above specifications, for the sum of

50% DEPOSIT DUE UPON ACCEPTANCE OF PROPOSAL
 BALANCE AMOUNT DUE UPON INSTALLATION OR DELIVERY

General Terms: The parties agree to the following additional terms of this Contract

A deposit of 50% is due upon execution of this Contract with the balance due on the installation date or delivery date unless specified above. All requested changes to the above-described work will be subject to additional charges. Cancellations and reductions are subject to a 30% restocking fee. Any amount not paid when due, is subject to a late charge of 1.5% per month (18% per annum). Owner is responsible for providing and maintaining adequate electrical outlets adjacent to the proposed locations for lit decorations and building lights. Dekra-Lite is not responsible for any products damaged or lost due to vandalism, extreme weather conditions, or acts of God and will make efforts to replace such product for an additional charge. All dates specified are subject to change due to inclement weather. Dekra-Lite will replace any malfunctioning product but does not guarantee that each individual lamp will light during the entire installed period. This Contract is governed by California law and is the entire contract between the parties, superseding all prior conversations and writings between the parties. In the event of a dispute arising out of this Contract, the parties shall arbitrate in Orange County before a single arbitrator selected through J.A.M.S./ENDISPUTE. Any judgement upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The prevailing party in arbitration shall be entitled to its reasonable attorneys' fees and costs.

If not accepted within _____ days, this proposal may be withdrawn

Dekra-Lite: _____

Acceptance of Proposal: The individual signing this Contract accepts the above Proposal and certifies to Dekra-Lite that he or she is authorized to enter into this Contract on behalf of Owner.

Property Owner: _____

Authorized Agent: _____

Date: _____

By: _____

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.



AGENDA REPORT

MEETING DATE: OCTOBER 16, 2012

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: ADVERTISING FUNDS FOR PLACING AN AD IN THE INDUSTRIAL COUNCIL'S PUBLICATION "FOCUS ON BUSINESS"

RECOMMENDATION:

Council discretion.

MOTION:

Council discretion.

BACKGROUND:

For more than a decade, the City of Commerce has been placing a full-page ad in each of the Industrial Council's publication, Focus on Business, which is published twice a year. The City's participation helps finance the publication which serves as a business and resource directory for local businesses.

Up until the dissolution of redevelopment (Jan. 31, 2012), the ads were paid for using RDA funds, which are no longer available. The ad in the Spring/Summer 2012 issue was paid for with funds from the Community Promotions account. This was requested and approved by Council on a one time basis. The Industrial Council has submitted the attached letter requesting an annual appropriation for the "Focus on Business" publication.

ANALYSIS:

The Council is being asked to consider appropriating \$3,400 to advertise in the Fall/Winter 2012 edition of Focus on Business or \$6,800 if Council chooses to fund ad purchases in both editions that the Industrial Council intends to publish in the 2012/2013 Fiscal Year.

This funding pays for the full page ad placed on the back cover of the Focus on Business magazine.

In addition to the paid ad, the Industrial Council allots the City space on interior pages that they utilize as content. This content includes a message from the Mayor, articles with news and information, and ads that publicize City services available to businesses and their employees, such as those offered by the Employment and Business Development Center and the City's fitness facilities.

The City's messaging in the publication focuses on business attraction and retention by highlighting the many advantages of doing business in Commerce. The Industrial Council distributes the publication to Commerce businesses and provides a substantial amount of copies to the City to distribute to the public.

FISCAL IMPACT:

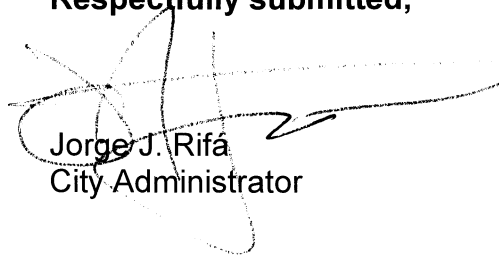
The cost to purchase an ad for the Fall/Winter 2012 edition is \$3,400. If the Council chooses to approve funding for both issues in the 2012/2013 Fiscal Year, the amount is \$6,800. Currently, there are sufficient funds in the Community Promotions account to fund the Fall/Winter 2012 edition at a cost of \$3,400. The Council may wish to bring this item back during mid-year budget review for funding consideration of the second issue.

RELATIONSHIP TO 2012 STRATEGIC GOALS:

This report relates to Strategic Goal #2:

Develop marketing plan to target companies for additional revenue and jobs that are consistent with the general plan.

Respectfully submitted,



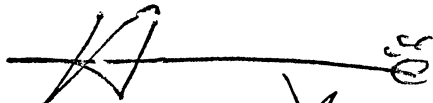
Jorge J. Rifa
City Administrator

Prepared by:



Fernando Mendoza
Deputy City Administrator

Fiscal Impact Reviewed by:



Vilko Domic
Director of Finance

Approved As To Form:



Eduardo Olive
City Attorney



COMMERCE INDUSTRIAL COUNCIL

Chamber of Commerce

EXECUTIVE COMMITTEE

President
Helene Simmons
Immediate Medical Center

Vice President
Community Relations
Evan Hitchcock
E-Central Credit Union

Vice President
Finance & Operations
John P. Pringle
Roquemore, Pringle & Moore, Inc.

Vice President
Government Affairs
Anthony Saldana
Exide Technologies

Vice President
City Affairs
Jon R. Reno
Heger Industrial

Vice President
Membership
Helene Simmons
Immediate Medical Center

Secretary
Susan Jennrich
Citadel Outlets

Community Liaison
Debbie Payne
Commerce Casino

Executive Director
Eddie D. Tafoya
Commerce Industrial Council

BOARD OF DIRECTORS

Steven Alpersen
Rolled Steel Products Corporation

Rob Antrobios
Prologis, Inc.

Mercy Avelar
Wilbur Curtis Company

Kevin Brady
AMVAC

Mike Harriel
Southern California Gas Company

James Filipan, Jr.
Steven's Steak & Seafood House

Sylvia Southerland
Southern California Edison

Trini Jimenez
BNSF Railway Company

Robert Levenstein
The S.D. Herman Company

Barbara Martine
Datapage Inc.

Dennis Nishida
Gehr Industries

Carmen R. Pimentel
99¢ Cents Only Stores

Bob Recendez
Zemarc Corporation

Jeffrey P. Sanita
Cushman & Wakefield of California, Inc.

Thomas Smalley
Doubletree Hotel Los Angeles/Commerce

Lupe C. Valdez
Union Pacific Railroad

Larry Young
Unified Grocers, Inc.

October 11, 2012

Hon. Lilia R. Leon
Mayor
City of Commerce
2535 Commerce Way
Commerce, CA 90040

Dear Mayor Leon:

I thank you in advance and am very pleased to submit this correspondence to you and the Commerce City Council concerning the *Focus on Business* magazine as you take appropriations for it under consideration at your October 16 city council meeting.

We are asking that the city council consider appropriating funding in the amount of \$6,800 on annual basis for the semi-annual *Focus on Business* magazine to further enhance awareness for our City to present the community to prospective residents and businesses hoping to relocate to the City of Commerce.

In 2003, the Commerce Industrial Council (CIC) Chamber of Commerce converted its annual directory into a semi-annual publication, continuing its in-house publication, to sell ads and manage all advertising costs, editorial, directory assembly, graphics and design, publication production, and printing.

The *Focus on Business* magazine is a glossy, full-color, semi-annual community and business resource guide that is published by the CIC Chamber. The magazine, which has a readership of over 30,000 annually, features various chamber and city editorial, advertisements, pictorials, articles provided by the city, advertisers and various contributors, maps, a restaurant guide, lodging lists, alphabetical member directory, classified listings, and information on activities and attractions in our city and resources for visiting, living, working and playing in the City of Commerce.

More than 12,000 copies, at no additional charge to anyone, will be circulated throughout the year to current residents, chamber members, businesses in our city, elected officials' offices that represent our City, tourists, business travelers, new residents, and convention attendees. Distribution points include the Chamber's offices, city hall, parks, the senior center, as well as local restaurants, hotels, real estate offices, corporations and agency offices. An online version of magazine is also available on our website, featuring links to all advertiser websites at no additional charge.

I look forward to a favorable response, and will also be on hand at the city council meeting should you or the city council have any additional questions. Should you have any questions prior to the meeting, please do not hesitate to call me at (323) 728-7222.

Sincerely,

EDDIE D. TAFOYA
Executive Director

cc: Commerce City Council
Jorge R. Rifá, City Administrator

6055 E. Washington Blvd., Suite 120, Commerce, CA 90040 • (323) 728-7222 • FAX (323) 728-7565
www.IndustrialCouncil.org



AGENDA REPORT

MEETING DATE: October 16, 2012

TO: HONORABLE CITY COUNCIL/SUCCESSOR AGENCY
FROM: CITY ADMINISTRATOR/EXECUTIVE DIRECTOR
SUBJECT: DISSOLUTION OF REDEVELOPMENT: LOW-MODERATE HOUSING FUND
DUE DILIGENCE REVIEW

RECOMMENDATION:

Receive and file the report, direction subject to Council discretion.

MOTION:

Move to approve the recommendation.

BACKGROUND/ANALYSIS:

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

On November 3, 1992, the City Council created the Commerce Community Development Commission (the "Commission"). The Commission is the successor-in-interest to the Agency and was engaged in various activities necessary to execute and implement the Redevelopment Plans pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code § 33000, et seq.) ("CRL").

As part of the 2011-12 State budget bill, the California Legislature enacted and the Governor signed companion bills, Assembly Bill X1 26 ("AB 26") and Assembly Bill X1 27 ("AB 27"), requiring that each redevelopment agency in the State be dissolved unless the community exercised the option to continue with a modified form of redevelopment under AB 27.

Subsequently, the League of California Cities, the California Redevelopment Association and the cities of San Jose and Union City filed a lawsuit with the California Supreme Court, entitled California Redevelopment Association et al., v. Ana Matosantos, challenging the constitution of AB 26 and AB 27.

On December 29, 2011, the California Supreme Court upheld the constitutionality of AB 26 which abolished redevelopment agencies. The Supreme Court also held that AB 27 was unconstitutional. Thus, effective, February 1, 2012, redevelopment agencies throughout the State were abolished and cannot continue on with any redevelopment activities.

California Health and Safety Code (HSC) Section 34179.5 requires each Successor Agency to employ a licensed accountant, approved by the county auditor-controller and with experience and expertise in local government accounting, to conduct a due diligence review to determine the unobligated balances to transfer to taxing entities.

The auditing firm of Mayer-Hofmann-McCann has completed the Due Diligence review engagement of the City's Low and Moderate Income Housing Fund/Program.

FISCAL IMPACT:

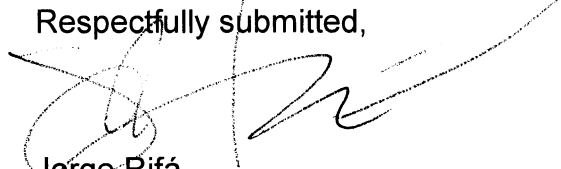
This activity can be carried out without additional impact on the current operating budget.

Recommended by:



Vilko Domic
Director of Finance

Respectfully submitted,



Jorge Rifá
City Administrator/Executive Director

Approved as to Form



Eduardo Olivo
City Attorney

**Dissolution of Redevelopment
Low-Mod Housing Fund Due Diligence Review,
What are the Impacts to the General Fund,
and the City's Future Ability to Provide
Services to the Community?**

**City Council / Successor Agency Meeting
October 16, 2012**

Purpose of Local Government

- The major purposes of local governments are to promote and preserve the social, economic, environmental, and cultural well-being of communities in the present and for the future.
- **One of the major tools that the City used to promote the above was Redevelopment.**

An Injustice has been Done to this Community

- The City has been ~~stripped~~ pillaged of its most important local economic development tool - its redevelopment program which generated \$19 million per year in revenue for the City.
- With the end of redevelopment, Sacramento will take in excess of \$50 million dollars in property and assets from Commerce, eliminating critical funding that would have been instrumental in mitigating infrastructure & public facilities, the city's housing stock, and environmental concerns (contaminated properties) in the City.

Impact of the Injustice: Millions Of Dollars!!

- **ROPSIII** - Staff is currently in dialogue with the State Department of Finance regarding certain items on the ROPSIII document, submitted in late August.
- **LMIHF Due Diligence Review** -- Auditors have completed the “Due Diligence Review” of the City’s Low-Moderate Housing Fund. The independent report concluded that the City/Successor Agency remit **\$19,963,547** to the State of California for allocation to affected taxing entities. It was the City’s hope that these funds be allocated for the remediation of contaminated properties once owned by the Commerce Community Development Commission.
- **All Others Due Diligence Review** -- By January 15, 2013, Successor Agencies must provide the DOF a second Oversight Board-approved Due Diligence Review. Staff is estimating that approximately **\$1 million** will remain in reserves at the time of this review.

Let's Not Forget....

- That the loss of redevelopment meant the transfer of approximately \$3.2 million of obligation to the General Fund - **ANNUALLY!!!**
- **Simply put, hard decisions that the Council implemented over the last 4 years and a healthy recovery in revenue growth was trumped by the decision makers in Sacramento in a matter of months.**

Redevelopment Funding - What Could Have Been....

- City staff has identified approximately \$34.1 million in needed infrastructure and capital items proposed in the next 4 years. Redevelopment funds (roughly \$21.53 million) were allocated for several of the following:
 - Washington Blvd widening - \$10,000,000 (50% redevelopment)
 - Street repairs - \$15,000,000 (75% redevelopment)
 - Excursion buses - \$1,200,000
 - Veteran's Park improvements - \$2,000,000 (redevelopment)
 - City facilities - \$3,000,000 (75% redevelopment)
 - Demolition of North Annex / parking lot construction - \$2,500,000 (50% redevelopment)
 - Water system - \$800,000
 - Capital items related to technology - \$1,600,000 (25% redevelopment)

City Services...Preserving the Quality of Life

- In addition to capital and infrastructure related needs that have been deferred over the years, the City still has the obligation to fund cost increases associated with providing vital City Services which include the following:
 - Community Services (Fire, Sheriff, Animal Control, Crossing Guards, Employment...)
 - Parks & Recreation (Rec Ops, Special Events, Sports, Senior and Teen services...)
 - Library Services (Children's Services, Literacy...)
 - Community Development (Planning, Building, Environmental...)

The Future....

- In order to maintain vital City services (including public safety) and preserve quality of life for the City's residents, the Council voted to place a ½ cent sales tax measure on the ballot.
- ½ cent Sales Tax projected revenue to address the city's infrastructure deficiencies and support vital services going forward -- ranges from \$4.5 to \$5.5 million annually.
- Citizens' Advisory Committee (residents and/or business representatives) appointed and advisory to Council.
- Citizens' Advisory Committee to recommend proposed spending decisions to Council to address deficiencies mentioned earlier.



Ballot Measure

- Applicable only within City boundaries.
- Tax rate is based on $\frac{1}{2}\%$ of the transaction's sales price.
- Valid until the Ordinance is rescinded by the vote of the People of Commerce.
- Commerce residents will have to pay $\frac{1}{2}$ cent on auto purchases regardless of where purchased (based on where vehicle is registered).

Fiscal Sustainability...

- Is a concept that refers to the ability of a government to sustain its current spending, tax and other policies in the long run without threatening government solvency or defaulting on some of its liabilities or promised expenditures.
- Even with the injection of this new revenue, can Commerce bear the brunt of providing the current level of services going forward?
- Answer: It is doable if the City Council adopts a framework for a “Spending Plan” to operate within the parameters set forth by that plan.

Questions?



AGENDA REPORT

Meeting Date: 10/16/2012

TO: Honorable City Council

FROM: Mayor Leon

SUBJECT: Authorization to Extend Challenge to California Consulting, LLC, to Find Eligible Grant Opportunity for City of Commerce

RECOMMENDATION:

Authorize the City Administrator to extend a challenge to California Consulting, LLC to find a grant opportunity for which the City of Commerce is eligible to apply, separate from any grant that the City is currently receiving, in order to be considered at a future time for an agreement to provide grant writing services for the City.

MOTION:

Move to approve the recommendation.

BACKGROUND:

California Consulting, LLC is a grant writing and lobbying firm specializing in federal, State and private grant foundation applications. Company owner, Steve Samuelian, served as Field Director and District Director for U.S. Congressman George Radanovich (R-Fresno). He also served in the California State Legislature, representing the 29th Assembly District.

ANALYSIS:

At the May 1, 2012, regular meeting, Mayor Leon requested that each department director meet with Mr. Samuelian to determine if there are any grants the City may acquire. After meeting with Mr. Samuelian, it was determined that the City is already receiving many of the eligible grants. However, additional grant opportunities may exist of which the City is unaware.

At the request of Mayor Leon, the City Council will consider posing a challenge to California Consulting, LLC, to locate a grant opportunity for which the City is eligible to apply, separate from any grant that the City currently receives. If the firm is successful in meeting the challenge, the Council will consider at a future time contracting with California Consulting, LLC for grant writing services.

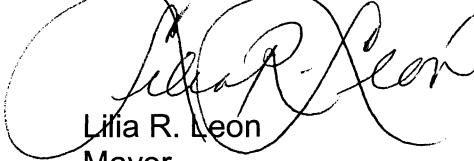
FISCAL IMPACT:

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

RELATIONSHIP TO 2009 STRATEGIC GOALS:

This item is related to the following 2009 Strategic Goal: *"Make financial and economically sound decisions consistent with economic conditions"*.

Respectfully submitted,



Lilia R. Leon
Mayor

Prepared by:



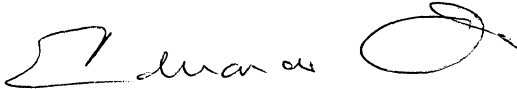
Linda Kay Olivieri
City Clerk

Fiscal impact reviewed by:



Vilko Domic
Director of Finance

Reviewed as to form:



Eduardo Olivo
City Attorney



AGENDA REPORT

Meeting Date: 10/16/2012

TO: Honorable City Council & Successor Agency

FROM: City Administrator/Executive Director

SUBJECT: Rescheduling of November 6, 2012, Concurrent Regular Meetings Due to General Election

RECOMMENDATION:

Council/Successor Agency discretion.

MOTION:

Council/Successor Agency discretion.

BACKGROUND/ANALYSIS:

The General Election will be held on November 6, 2012, which is the date of the next regularly scheduled Council and Successor Agency meetings. As a reminder, the City also has a Special Municipal Election scheduled for that same day, which has been consolidated with the General Election, at which Measure AA, relating to an Ordinance imposing a ½% transaction and use (sales) tax, is being placed before the qualified voters in Commerce.

At their discretion, the Council and Successor Agency may decide to re-schedule their regular November 6th meetings to another day, or cancel the meetings altogether. Monday, November 5th is a potential meeting date.

FISCAL IMPACT:

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

RELATIONSHIP TO 2009 STRATEGIC GOALS:

This item is not specifically related to any of the 2009 Strategic Goals.

Prepared by:

Linda Kay Olivieri
City Clerk

Respectfully submitted,

Jorge J. Rifa
City Administrator

Fiscal impact reviewed by:

Vilko Domic
Director of Finance

Reviewed as to form:

Eduardo Olivo
City Attorney

SUM (RESCHEDULING OF NOV 6, 2012 MTGS – GENERAL ELECTION) -10-16-2012.DOC



AGENDA REPORT

Meeting Date: 10/16/2012

TO: Honorable City Council

FROM: City Administrator

SUBJECT: SPECIAL 2012-2013 CHRISTMAS AND NEW YEAR HOLIDAY SCHEDULE FOR CITY HALL AND OTHER CITY FACILITIES

RECOMMENDATION:

Council discretion.

MOTION:

Council discretion.

BACKGROUND:

Historically, on the days prior to Christmas and New Year's, there has been very little interaction with the public and/or business activity conducted at City Hall and other City facilities by the residents and business community. This would hold true even more so this particular year, considering that the two holidays fall on Tuesday. In accordance with the Holidays Policy, Christmas Day and New Year's Day are holidays, when City Hall and other City facilities are closed.

Generally, the facilities that close include: City Hall, Central and Branch Libraries, Warehouse, Transportation Services office, Senior Center, Teen Center and Aquatorium.

The parks remain open on a normal holiday schedule and transportation services continue on a normal holiday schedule.

ANALYSIS:

Separate requests were made by Councilmembers Altamirano, Aguilar and Robles and Mayor Leon that an item be placed on the agenda for the Council to consider a holiday closure for the 2012-2013 Christmas and New Year season.

In order to facilitate the preparation of work schedules and public notices to inform employees and the public about a special holiday closing schedule, it is requested that the Council consider this matter at this time.

In the past, concerns have been raised by the part-time and full-time employees regarding potential inequities that may be created due to a special holiday closure.

Part-time employees have been concerned about the loss of hours. Department Directors have the authority to adjust part-time hours to prevent a loss of hours for those employees scheduled to work during the Christmas and New Year holiday weeks. Part-time employees may also utilize accumulated leave to make up lost hours.

Full-time employees have been concerned about inequities that may be created for those employees who work on a Tuesday through Friday schedule, who will need to work 30 hours to get paid for 40, while employees who work a Monday through

Thursday schedule will only need to work 20 hours to get paid for 40. One option to deal with this potential inequity is to grant those employees regularly scheduled to work a Tuesday through Friday schedule 10 hours of flexible leave for the additional holiday. This same process is currently in existence for other holidays, whereby, when a holiday falls on a Monday, 10 hours of flexible leave are granted to those full-time employees working a Tuesday through Friday Schedule. Likewise, when a holiday falls on a Friday, 10 hours of flexible leave are granted to those full-time employees working a Monday through Thursday schedule.

In 2007, the last time Christmas Eve and New Year's Eve fell on Monday, City Hall and other City facilities were closed all day on Monday, December 24th, and at 1:00 p.m. on Monday, December 31st.

FISCAL IMPACT:

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

RELATIONSHIP TO 2009 STRATEGIC GOALS:

This item is not specifically related to any of the 2009 Strategic Goals.

Respectfully submitted,



Jorge J. Rifa
City Administrator

Prepared by:




Linda Kay Olivieri
City Clerk

Fiscal impact reviewed by:



Vilko Domic
Director of Finance

Reviewed as to form:



Eduardo Olivo
by AW

Eduardo Olivo
City Attorney



AGENDA REPORT

DATE: October 16, 2012

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA AMENDING SECTIONS 5.09.130 ("MESSAGE TECHNICIAN PERMIT REQUIRED") AND 5.09.150 ("EXPIRATION OF PERMIT") OF CHAPTER 5.09 ("MESSAGE ESTABLISHMENTS AND MESSAGE TECHNICIANS") OF THE COMMERCE MUNICIPAL CODE

RECOMMENDATION:

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

MOTION:

Move to approve the recommendation.

ANALYSIS:

City staff has determined that sections of the Commerce Municipal Code (CMC) relating to massage establishments and massage technicians require revision.

1. Section 5.09.130 is entitled "Massage technician permit required" and currently reads as follows:

(a) A massage technician shall not engage in or participate in any massage activities in the city unless the massage technician has applied for and been issued a current massage technician permit.

(b) An applicant for a massage technician permit shall file a written, signed and verified application or renewal application on a form provided by the city administrator or his or her designee. Such application shall contain:

- (1) Applicant's legal name and any other names or aliases used by the applicant;
- (2) Applicant's age, date of birth, and place of birth;
- (3) Applicant's current residential address and telephone number;
- (4) Applicant's California driver license number or California identification card number;
- (5) Satisfactory written proof that the applicant is at least eighteen years of age;
- (6) Applicant's fingerprints on a form provided by and in a manner prescribed by the sheriff's department and two portrait photographs of the applicant (two inch by two inch minimum size), taken within the sixty days immediately prior to the date the application is filed, clearly showing the applicant's face. Any fees for the fingerprints and photographs shall be paid by the applicant. If the city approves the permit application, the city shall retain one photograph in the application file and affix the other photographs to the permit issued to applicant;
- (7) A statement detailing the applicant's employment and permit history for the five years immediately preceding the date of the filing of the application, including whether the applicant was previously licensed, permitted, or authorized conduct business or was seeking such license, permit, or authorization to conduct business in this or any other county, city, or state,

and whether the applicant has ever had such license, permit, or authorization to conduct business, denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the date, the name of the issuing or denying jurisdiction, and describe in full the reasons for the denial, revocation, or suspension;

- (8) Whether the applicant has ever been convicted of any penal code or municipal code violation, whether a felony or misdemeanor, or lesser offense from the violation originally charged, and, if so, the date, place, nature of each conviction or plea of nolo contendere and the identity of the convicting jurisdiction, or whether the applicant is required to register under the provisions of Section 290 of the Penal Code;
- (9) If the application is made for the purpose of renewing a permit, the applicant shall attach a copy of the permit to be renewed;
- (10) For a renewal of a permit under this section, the applicant shall also indicate any changes to the application since the filing of the initial application;
- (11) Applicant's authorization for the city, its employees, agents, and contractors, to seek information and conduct investigations to determine the truthfulness of the statements and information set forth in the application and applicant's qualifications for a permit;
- (12) A certificate from a medical doctor, licensed to practice in the state of California, stating that the applicant has, within thirty days immediately preceding the date of application, been examined and found to be free from any contagious disease;
- (13) An original or certified copy of a diploma or certificate of graduation from a recognized school of massage;
- (14) Proof that the applicant has, within twelve months immediately preceding the date of application, passed an examination administered by the county of Los Angeles health department; and
- (15) An applicant or massage technician seeking either to obtain or renew a permit issued pursuant to this section shall by no later than five years from the date of enactment of the ordinance codified in this chapter obtain and provide the city with a certified copy of a certification or diploma from the national certification board of therapeutic massage and bodywork to perform massage. The city shall deny any application or initiate proceedings to revoke any permit issued pursuant to this chapter per Section 5.09.170 should the massage technician not comply with the certification requirements.

(c) All applications for a permit or renewal shall be filed with the city business license division subject to investigation by the sheriff's department. Each application shall be accompanied by a nonrefundable fee for filing or renewal in an amount determined by resolution of the city council, which shall be used to defray the costs of investigation, inspection and processing of such application.

(d) The report of the sheriff's department regarding a permit application shall be issued within ninety days of filing a complete application. At the conclusion of the investigation, the results shall be indicated on the photocopy of the application, dated, signed and returned to the city business license division. A permit shall automatically be issued if a decision has not been made by the city business license division on the application for a permit within ninety days of receipt for a completed application. Any permit issued pursuant to this subsection shall be deemed conditional pending the city's receipt of the California department of justice report on the fingerprints submitted by the applicant. If the fingerprint report demonstrates that the applicant has made any false, misleading or fraudulent statement of material fact in the permit application, in any report or record required to be filed with the sheriff's department, or other department of the city the application shall be denied. If, however, a permit is issued and the fingerprint report demonstrates that the applicant has made any false, misleading, or fraudulent statement of material fact in the permit application or in any report or record required to be filed with the sheriff's department, or other department of the city, the permit shall be subject to revocation pursuant to Section 5.09.170.

(e) Following the sheriff's department's investigation, the city business license division shall issue a permit or renewal, unless one or more of the following are found to be true:

- (1) The applicant has knowingly made any false, misleading or fraudulent statement of material fact in the application for a permit or in any report or record relevant to the permit required to be filed with the sheriff's department, or other department of the city;
- (2) The applicant had any type of massage establishment permit or massage technician permit revoked by any public entity within two years of the date of the application;
- (3) The applicant is under eighteen years of age;
- (4) The applicant is delinquent in paying city fees or penalties owed in relation to the massage technician permit;
- (5) The application or permit fee required by this chapter has not been paid;
- (6) That the applicant has been convicted of any penal code or municipal code violation, whether a felony or misdemeanor, or lesser offense from the violation originally charged, and, if so, the date, place, nature of each conviction or plea of nolo contendere and the identity of the convicting jurisdiction, or whether the applicant is required to register under the provisions of Section 290 of the Penal Code;
- (7) Failure to file a complete application as required by this section; and
- (8) Prior revocation of a permit or business license from a municipal or governmental agency.

(f) The fact that an applicant possesses other types of state or city permits and/or licenses does not exempt the applicant from the requirement of obtaining a massage technician permit.

(g) Any application for a permit pursuant to this chapter is considered to be a ministerial act. Issuance or denial of the permit under the chapter is not subject to administrative appeal. The decision of the city business license division is subject to prompt judicial review by a court of competent jurisdiction in accordance with California law.

The permitting process is currently handled by the California Massage Therapy Council. Therefore, Section 5.09.130 should be amended to provide for that permitting process. Staff is aware that the California Massage Therapy Council may cease to exist sometime in the next few years. If that occurs, the City would need to proceed with the process that is currently contained in this section. The proposed Ordinance would amend subsection (a) of the existing section to require that the technician obtain a permit from the California Massage Therapy Council. The proposed Ordinance would also provide that, if the California Massage Therapy Council ceases to exist, the technician must then go through the permitting process that is currently contained in the CMC.¹

Section 5.09.150 is entitled "Expiration of permit" and currently reads as follows:

Each permit issued under this chapter shall expire one year from the date of issuance and may be renewed only by making an application as provided in this chapter. Application for renewal shall be made at least thirty days before the expiration date, and when made less than thirty days before the expiration date, the expiration of the permit will not be affected. A renewal application shall contain all materials required for an initial permit, and recent photographs of the renewal applicant. The applicant will be required to submit fingerprints for review by the department of justice every three years from the date of initial submission. An application for renewal of a technician license shall not require the passage of an examination administered by the county of Los Angeles health department.

¹ The proposed amendment would repeat almost all of the existing language and would only make the changes described in this paragraph. In order to avoid redundancy, the entirety of that language is not repeated here.

The last sentence in this section, "An application for renewal of a technician license shall not require the passage of an examination administered by the county of Los Angeles health department", is no longer relevant and should therefore be removed. The proposed Ordinance will amend Section 5.09.150 to read as follows:

Each permit issued under this chapter shall expire one year from the date of issuance and may be renewed only by making an application as provided in this chapter. Application for renewal shall be made at least thirty days before the expiration date, and when made less than thirty days before the expiration date, the expiration of the permit will not be affected. A renewal application shall contain all materials required for an initial permit, and recent photographs of the renewal applicant. The applicant will be required to submit fingerprints for review by the department of justice every three years from the date of initial submission.

FISCAL IMPACT:

No fiscal impact will arise from the adoption of this Ordinance.

Recommended by:


Vilko Domic
Director of Finance

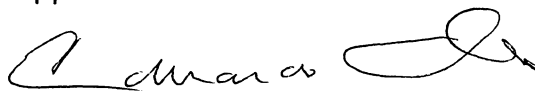
Respectfully submitted,


Jorge Rifa
City Administrator

Recommended by:


Maria Villaseñor
Business License Officer

Approved as to Form:


Eduardo Olivo
City Attorney

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE,
CALIFORNIA AMENDING SECTIONS 5.09.130 ("MESSAGE TECHNICIAN PERMIT
REQUIRED") AND 5.09.150 ("EXPIRATION OF PERMIT") OF CHAPTER 5.09
("MESSAGE ESTABLISHMENTS AND MESSAGE TECHNICIANS") OF THE
COMMERCE MUNICIPAL CODE

WHEREAS, Sections 5.09.130 and 5.09.150 of the Commerce Municipal Code need amending in order to update and clarify regulations relating to massage establishments and massage technicians.

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

SECTION 1. Section 5.09.130(a) of the Commerce Municipal Code is hereby amended in its entirety to read as follows:

(a) A massage technician shall not engage in or participate in any massage activities in the city unless the massage technician has applied for and been issued a current massage technician permit by the California Massage Therapy Council. If the Massage Therapy Council ceases to exist, the massage technician must apply for and be issued a current massage technician permit from the successor agency to the California Massage Therapy Council, or proceed with the application process set forth in subsections (b) through (g) of this Section.

(b) If the Massage Therapy Council ceases to exist and there is no successor agency established to carry out its functions, an applicant for a massage technician permit shall file a written, signed and verified application or renewal application on a form provided by the city administrator or his or her designee. Such application shall contain:

- (1) Applicant's legal name and any other names or aliases used by the applicant;
- (2) Applicant's age, date of birth, and place of birth;
- (3) Applicant's current residential address and telephone number;
- (4) Applicant's California driver license number or California identification card number;
- (5) Satisfactory written proof that the applicant is at least eighteen years of age;
- (6) Applicant's fingerprints on a form provided by and in a manner prescribed by the sheriff's department and two portrait photographs of the applicant (two inch by two inch minimum size), taken within the sixty days immediately prior to the date the application is filed, clearly showing the applicant's face. Any fees for the fingerprints and photographs shall be paid by the applicant. If the city approves the permit application, the city shall retain one photograph in the application file and affix the other photographs to the permit issued to applicant;
- (7) A statement detailing the applicant's employment and permit history for the five years immediately preceding the date of the filing of the application, including whether the applicant was previously licensed, permitted, or authorized conduct business or was seeking such license, permit, or authorization to conduct business in this or any other county,

city, or state, and whether the applicant has ever had such license, permit, or authorization to conduct business, denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the date, the name of the issuing or denying jurisdiction, and describe in full the reasons for the denial, revocation, or suspension;

- (8) Whether the applicant has ever been convicted of any penal code or municipal code violation, whether a felony or misdemeanor, or lesser offense from the violation originally charged, and, if so, the date, place, nature of each conviction or plea of nolo contendere and the identity of the convicting jurisdiction, or whether the applicant is required to register under the provisions of Section 290 of the Penal Code;
 - (9) If the application is made for the purpose of renewing a permit, the applicant shall attach a copy of the permit to be renewed;
 - (10) For a renewal of a permit under this section, the applicant shall also indicate any changes to the application since the filing of the initial application;
 - (11) Applicant's authorization for the city, its employees, agents, and contractors, to seek information and conduct investigations to determine the truthfulness of the statements and information set forth in the application and applicant's qualifications for a permit;
 - (12) A certificate from a medical doctor, licensed to practice in the state of California, stating that the applicant has, within thirty days immediately preceding the date of application, been examined and found to be free from any contagious disease;
 - (13) An original or certified copy of a diploma or certificate of graduation from a recognized school of massage;
 - (14) Proof that the applicant has, within twelve months immediately preceding the date of application, passed an examination administered by the county of Los Angeles health department; and
 - (15) An applicant or massage technician seeking either to obtain or renew a permit issued pursuant to this section shall by no later than five years from the date of enactment of the ordinance codified in this chapter obtain and provide the city with a certified copy of a certification or diploma from the national certification board of therapeutic massage and bodywork to perform massage. The city shall deny any application or initiate proceedings to revoke any permit issued pursuant to this chapter per Section 5.09.170 should the massage technician not comply with the certification requirements.
- (c) All applications for a permit or renewal shall be filed with the city business license division subject to investigation by the sheriff's department. Each application shall be accompanied by a nonrefundable fee for filing or renewal in an amount determined by resolution of the city council, which shall be used to defray the costs of investigation, inspection and processing of such application.
- (d) The report of the sheriff's department regarding a permit application shall be issued within ninety days of filing a complete application. At the conclusion of the investigation, the results shall be indicated on the photocopy of the application, dated, signed and returned to the city business license division. A permit shall

automatically be issued if a decision has not been made by the city business license division on the application for a permit within ninety days of receipt for a completed application. Any permit issued pursuant to this subsection shall be deemed conditional pending the city's receipt of the California department of justice report on the fingerprints submitted by the applicant. If the fingerprint report demonstrates that the applicant has made any false, misleading or fraudulent statement of material fact in the permit application, in any report or record required to be filed with the sheriff's department, or other department of the city the application shall be denied. If, however, a permit is issued and the fingerprint report demonstrates that the applicant has made any false, misleading, or fraudulent statement of material fact in the permit application or in any report or record required to be filed with the sheriff's department, or other department of the city, the permit shall be subject to revocation pursuant to Section 5.09.170

(e) Following the sheriff's department's investigation, the city business license division shall issue a permit or renewal, unless one or more of the following are found to be true:

- (1) The applicant has knowingly made any false, misleading or fraudulent statement of material fact in the application for a permit or in any report or record relevant to the permit required to be filed with the sheriff's department, or other department of the city;
- (2) The applicant had any type of massage establishment permit or massage technician permit revoked by any public entity within two years of the date of the application;
- (3) The applicant is under eighteen years of age;
- (4) The applicant is delinquent in paying city fees or penalties owed in relation to the massage technician permit;
- (5) The application or permit fee required by this chapter has not been paid;
- (6) That the applicant has been convicted of any penal code or municipal code violation, whether a felony or misdemeanor, or lesser offense from the violation originally charged, and, if so, the date, place, nature of each conviction or plea of nolo contendere and the identity of the convicting jurisdiction, or whether the applicant is required to register under the provisions of Section 290 of the Penal Code;
- (7) Failure to file a complete application as required by this section; and
- (8) Prior revocation of a permit or business license from a municipal or governmental agency.

(f) The fact that an applicant possesses other types of state or city permits and/or licenses does not exempt the applicant from the requirement of obtaining a massage technician permit.

(g) Any application for a permit pursuant to this chapter is considered to be a ministerial act. Issuance or denial of the permit under the chapter is not subject to administrative appeal. The decision of the city business license division is subject to prompt judicial review by a court of competent jurisdiction in accordance with California law.

SECTION 2. Section 5.09.150 of the Commerce Municipal Code is hereby amended in its entirety to read as follows:

Each permit issued under this chapter shall expire one year from the date of issuance and may be renewed only by making an application as provided in this chapter. Application for renewal shall be made at least thirty days before the expiration date, and when made less than thirty days before the expiration date, the expiration of the permit will not be affected. A renewal application shall contain all materials required for an initial permit, and recent photographs of the renewal applicant. The applicant will be required to submit fingerprints for review by the department of justice every three years from the date of initial submission.

SECTION 3. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this Chapter is declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council declares that it would have adopted this Chapter, and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases, or portions be declared invalid or unconstitutional.

SECTION 4. Effective Date. This ordinance shall become effective thirty (30) calendar days from and after its adoption.

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

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

CITY OF COMMERCE

By: _____
Lilia R. Leon, Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk

DS/



AGENDA REPORT

DATE: October 16, 2012

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA AMENDING SECTIONS 5.04.121 ("PROSECUTION AS INFRACTION"), 5.04.160 ("TWO OR MORE BUSINESSES"), 5.05.020 ("SAME-APPLICATION"), 5.05.110 ("TEMPORARY USE PERMITS"), 5.05.120 ("ACTIVITIES INCLUDED"), AND 5.05.250 ("UNSOCIAL DANCING") OF TITLE 5 ("BUSINESS LICENSE CODE") OF THE COMMERCE MUNICIPAL CODE

RECOMMENDATION:

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

MOTION:

Move to approve the recommendation.

ANALYSIS:

City staff has determined that various sections of the Commerce Municipal Code (CMC) relating to business licenses and regulations require revisions.

1. Section 5.04.121 is entitled "Prosecution as infraction" and currently reads as follows:

Violations of the provisions of this chapter shall be prosecuted as an infraction pursuant to the provisions of Section 1.12.0111

City staff has determined that it is necessary to amend this section to allow for the prosecution of the subject violations as misdemeanors. The current language only allows for prosecution as an infraction.

The proposed Ordinance would amend Section 5.04.121 to read as follows:

Violation of the provision of this chapter may be prosecuted as an infraction or a misdemeanor pursuant to provisions of Section 1.12.011.

2. Section 5.04.160 is entitled "Two or more businesses" and currently reads as follows:

In the event that any person is conducting, managing or carrying on, at one location, more than one business required to be licensed hereunder, or who is conducting one business which is classified in one or more categories hereunder, the fee to be paid by such person shall be determined as follows:

Such person shall pay the highest of the fees imposed for the business so conducted at the same location.

For the purposes of this section, games of skill and science shall be treated as a separate business for which a separate license shall be obtained, unless the same are operated by an otherwise licensed person who is the owner of the principal business being conducted.

This section provides that a person with two businesses will only pay the highest fees imposed for one of the business operating at the same location. Staff believes that it is necessary to require each of the businesses of the location to obtain and pay for a separate business license.

The proposed Ordinance would amend Section 5.04.160 to read as follows:

In the event that any person is conducting, managing or carrying on, at one location, more than one business required to be licensed hereunder, then each business is required to obtain a business license and pay the fees applicable to the license.

For the purposes of this section, games of skill and science shall be treated as a separate business for which a separate license shall be obtained, unless the same are operated by an otherwise licensed person who is the owner of the principal business being conducted.

3. Section 5.05.020 is entitled "Application" and currently reads as follows:

Before any permit is issued pursuant to this chapter, an application thereof shall be filed with the license collector, which application shall be verified by the applicant (if a corporation or association, an officer thereof; if a partnership, by general partner) and be accompanied by the fee required therefore, which shall include the following information:

- (1) Name and address of applicant (names of partners, if a partnership; officers and directors, if a corporation; principals, if an association);
- (2) Nature of the business enterprise;
- (3) The location and address of business or enterprises;
- (4) Brief description of the nature and amount of requirement to be used in business or enterprise;
- (5) A personal description of applicant (and each officer, partner or principal);
- (6) Evidence of identity of such applicant (and each officer, partner or principal), including, but not limited to, a suitable photograph of such person;
- (7) Fingerprints and thumb prints of applicant (and each officer, partner or principal).

The fingerprinting requirement imposed by subsection (7) is not necessary and is not enforced. Therefore, staff recommends that it be removed.

The proposed Ordinance would amend Section 5.05.020 to read as follows:

Before any permit is issued pursuant to this chapter, an application thereof shall be filed with the license collector, which application shall be verified by the applicant (if a corporation or association, an officer thereof; if a partnership, by general partner) and be accompanied by the fee required therefore, which shall include the following information:

- (1) Name and address of applicant (names of partners, if a partnership; officers and directors, if a corporation; principals, if an association);
- (2) Nature of the business enterprise;
- (3) The location and address of business or enterprises;
- (4) Brief description of the nature and amount of requirement to be used in business or enterprise;
- (5) A personal description of applicant (and each officer, partner or principal);
- (6) Evidence of identity of such applicant (and each officer, partner or principal), including, but not limited to, a suitable photograph of such person.

4. Section 5.05.110 is entitled "Temporary use permits" and currently reads as follows:

Temporary use permits shall be required for all of the activities enumerated in Section 5.05.120 hereof, and all activities which are similar or related thereto, except those activities sponsored by the city of other public agency, if conducted on the

premises of such agency. The activities, being temporary in nature, possess characteristics of such unique and special form as to make impractical their operation, without specific approval, upon such conditions as may be deemed appropriate, in the manner hereinafter set forth in this chapter.

This section is a duplication of Section 19.39.740 of the CMC and should not be set forth in Chapter 5.05. Therefore, staff recommends that it be deleted. The proposed initial Ordinance would delete this section in its entirety.

5. Section 5.05.120 is entitled "Activities included" and currently reads as follows:

No person shall sponsor, participate or engage in any of the following enumerated activities, without first obtaining a temporary use permit therefor, issued by the license collector of the city:

- (1) Circuses;
- (2) Parades;
- (3) Carnivals;
- (4) Fairs;
- (5) Temporary outdoor exhibits of equipment, goods or services, except for the outdoor sale of Christmas trees, conducted as an integral part of a business for which a valid license has been issued;
- (6) Aircraft and helicopter landings and demonstrations; parachutist demonstrations;
- (7) Public demonstrations or gatherings of more than twenty-five people.

The duration of permits for the activities enumerated in subparagraphs (1) through (7), inclusive, shall be limited to a period not to exceed seven consecutive calendar days.

The issuance of a temporary use permit, pursuant to this chapter, shall not be deemed a waiver of any requirement of any other provision of this code.

This section is a duplication of Section 19.39.740 of the CMC and should not be set forth in Chapter 5.05. Therefore, staff recommends that it be deleted. The proposed initial Ordinance would delete this section in its entirety.

6. Section 5.05.250 is entitled "Unsocial dancing" and currently reads as follows:

No person shall dance with any person of the same sex at any public dance hall, cabaret dance or public dance.

The restrictions contained in this section are illegal and not enforceable. Therefore, the proposed Ordinance will remove this section from the CMC.

FISCAL IMPACT:

No fiscal impact will arise from the adoption of this Ordinance.

Recommended by:


Vilko Domic
Director of Finance

Respectfully submitted,


Jorge Rifa
City Administrator

Recommended by:


Maria Villaseñor
Business License Officer

Approved as to Form:


Eduardo Olivo
City Attorney

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA AMENDING SECTIONS 5.04.121 ("PROSECUTION AS INFRACTION"), 5.04.160 ("TWO OR MORE BUSINESSES"), 5.05.020 ("SAME-APPLICATION"), 5.05.110 ("TEMPORARY USE PERMITS"), 5.05.120 ("ACTIVITIES INCLUDED"), AND 5.05.250 ("UNSOCIAL DANCING") OF TITLE 5 ("BUSINESS LICENSE CODE") OF THE COMMERCE MUNICIPAL CODE

WHEREAS, Sections 5.04.121, 5.04.160, 5.05.020, 5.05.110, 5.05.120, and 5.05.250 of the City's Municipal Code need to be amended in order to update and clarify the City's business license regulations.

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

SECTION 1. Section 5.04.121 of the Commerce Municipal Code is hereby amended to read as follows:

Violation of the provision of this chapter may be prosecuted as an infraction or a misdemeanor pursuant to provisions of Section 1.12.011.

SECTION 2. Section 5.04.160 of the Commerce Municipal Code is hereby amended in its entirety to read as follows:

In the event that any person is conducting, managing or carrying on, at one location, more than one business required to be licensed hereunder, then each business is required to obtain a business license and pay the fees applicable to the license.

For the purposes of this section, games of skill and science shall be treated as a separate business for which a separate license shall be obtained, unless the same are operated by an otherwise licensed person who is the owner of the principal business being conducted.

SECTION 3. Section 5.05.020 of the Commerce Municipal Code is hereby amended to remove sub-section (7) and will read as follows:

Before any permit is issued pursuant to this chapter, an application thereof shall be filed with the license collector, which application shall be verified by the applicant (if a corporation or association, an officer thereof; if a partnership, by general partner) and be accompanied by the fee required therefore, which shall include the following information:

- (1) Name and address of applicant (names of partners, if a partnership; officers and directors, if a corporation; principals, if an association);
- (2) Nature of the business enterprise;
- (3) The location and address of business or enterprises;
- (4) Brief description of the nature and amount of requirement to be used in business or enterprise;
- (5) A personal description of applicant (and each officer, partner or principal);
- (6) Evidence of identity of such applicant (and each officer, partner or principal), including, but not limited to, a suitable photograph of such person.

SECTION 4. Section 5.05.110 of the Commerce Municipal Code is hereby deleted in its entirety.

SECTION 5. Section 5.05.120 of the Commerce Municipal Code is hereby deleted in its entirety.

SECTION 6. Section 5.05.250 of the Commerce Municipal Code is hereby deleted in its entirety.

SECTION 7. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this Chapter is declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council declares that it would have adopted this Chapter, and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases, or portions be declared invalid or unconstitutional.

SECTION 8. Effective Date. This ordinance shall become effective thirty (30) calendar days from and after its adoption.

SECTION 9. The City Clerk shall attest to the adoption of this Ordinance and shall cause this Ordinance to be posted in the manner required by law.

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

CITY OF COMMERCE

By: _____
Lilia R. Leon, Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk



AGENDA REPORT

DATE: October 16, 2012

TO: HONORABLE SUCCESSOR AGENCY

FROM: EXECUTIVE DIRECTOR

SUBJECT: A RESOLUTION OF THE SUCCESSOR AGENCY TO THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION APPROVING A PURCHASE AND SALE AGREEMENT WITH GATWICK GROUP, LLC FOR THE PROPERTIES LOCATED AT 4957 SHEILA STREET (AIN 5244-034-900) AND 4800 E. WASHINGTON BOULEVARD (AIN 5244-033-900), COMMERCE, CALIFORNIA 90040

RECOMMENDATION:

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

MOTION:

Move to approve the recommendation.

BACKGROUND:

As part of the 2011-12 State budget bill, the California Legislature enacted and the Governor signed Assembly Bill 1X 26 ("AB 26"), requiring that each redevelopment agency in the State be dissolved. The Supreme Court upheld the constitutionality of AB 26 in the case of *California Redevelopment Association et al., v. Ana Matosantos, as Director, etc.*, Case No. S194861. One of the core requirements of AB 26 is that the successor agencies to the dissolved redevelopment agencies, with Oversight Board approval, dispose of agency-owned properties, realizing the highest achievable property value in a timely fashion.

On April 9, 2012, the Successor Agency to the Commerce Community Development Commission (the "Successor Agency") received an offer from Gatwick Group, LLC ("Gatwick") for the purchase of the properties located at 4957 Sheila Street (AIN 5244-034-900) and 4800 E. Washington Boulevard (AIN 5244-033-900), Commerce, California 90040 (the "Properties"). The Properties were purchased by the Commerce Community Development Commission for potential redevelopment purposes. Therefore, they are subject to disposition pursuant to the requirements of AB 26.

Gatwick desires to assemble the Properties under a single ownership for the purpose of pursuing a development project. Gatwick's purchase offer was for a total of Two Million Six Hundred Sixty Thousand Dollars (\$2,660,000). Gatwick provided an appraisal of the Properties from Frazier Capital Valuation in support of its offer.

On June 5, 2012, the Successor Agency approved the hiring of an appraiser to provide an individual appraisal of the Properties. On June 6, 2012, the Successor Agency hired DMD Appraisals to prepare the individual appraisal of the Properties. These actions were also approved by the Oversight Board to the Successor Agency.

The DMD appraisal concluded that the Properties are worth Three Million Nine Hundred Thirty-Two Thousand Dollars (\$3,932,000). Staff provided the appraisal to Gatwick. In response, Gatwick raised its offer to Three Million Two Hundred Sixty-Six Dollars (\$3,266,000), which was half of the difference between the two appraisals.

City staff advised the Successor Agency and the Oversight Board of Gatwick's counter offer. The Successor Agency and the Oversight Board approved the price and directed the City Attorney to negotiate a purchase and sale agreement with Gatwick for the Properties.

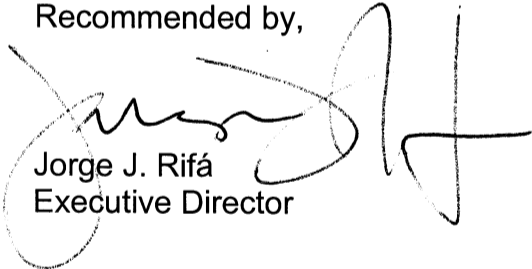
The proposed purchase and sale agreement provides that Gatwick will pay Two Million Seven Hundred Twelve Thousand and Five Hundred Dollars (\$2,712,500) for the property located at 4957 Sheila Street, Commerce, California, and Five Hundred Fifty Three Thousand Dollars (\$553,000) for the property located at 4800 Washington Boulevard, Commerce, California, for a total price for the Properties of Three Million Two Hundred Sixty-Five Thousand and Five Hundred Dollars (\$3,265,500) for the Properties. The escrow will close on March 14, 2012. This time period will allow Gatwick time to complete its environmental due diligence on the Properties to seek and obtain any entitlements that they believe necessary for the potential development of the sites.

Successor Agency staff believes that the approval of the proposed purchase and sale agreement will satisfy the requirements of AB 26. The enactment of AB 1484, which was intended to clean up and clarify the provisions of AB 26, have raised some uncertainty as to when previously owned Commission properties may be sold. Nevertheless, if the purchase and sale agreement was approved, Successor Agency staff intends to present the purchase and sale agreement to the Oversight Board for their approval. The Department of Finance will then make the final determination as to the appropriateness of the sale

FISCAL IMPACT:

The Successor Agency's approval will comply with its obligations under AB 26 to dispose of the assets previously owned by the Commerce Community Development Commission. The purchase and sale agreement must also be submitted and approved by the Oversight Board and then the Department of Finance. If these approvals occur and the purchase is completed, the purchase price amount of Three Million Two Hundred Sixty-Five Thousand and Five Hundred Dollars (\$3,265,500) will be forwarded to the appropriate taxing agencies as required by AB 26.

Recommended by,




Jorge J. Rifá
Executive Director

Fiscal impact reviewed by:



Vilko Domic
Finance Director

Approved as to form,



Eduardo Olivo
Agency Counsel

RESOLUTION NO. _____

A RESOLUTION OF THE SUCCESSOR AGENCY TO THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION APPROVING A PURCHASE AND SALE AGREEMENT WITH GATWICK GROUP, LLC FOR THE PROPERTIES LOCATED AT 4957 SHEILA STREET (AIN 5244-034-900) AND 4800 E. WASHINGTON BOULEVARD (AIN 5244-033-900), COMMERCE, CALIFORNIA 90040

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature enacted and the Governor signed Assembly Bill 1X 26 ("AB 26"), requiring that each redevelopment agency in the State be dissolved; and

WHEREAS, one of the core requirements of AB 26 is that the successor agencies to the dissolved redevelopment agencies, with Oversight Board approval, dispose of agency-owned properties, realizing the highest achievable property value in a timely fashion; and

WHEREAS, on April 9, 2012, the Successor Agency to the Commerce Community Development Commission (the "Successor Agency") received an offer from Gatwick Group, LLC ("Gatwick") for the purchase of the properties located at 4957 Sheila Street (AIN 5244-034-900) and 4800 E. Washington Boulevard (AIN 5244-033-900), Commerce, California 90040 (the "Properties"); and

WHEREAS, the Properties were purchased by the Commerce Community Development Commission (the "Commission") for potential redevelopment purposes and are therefore subject to disposition pursuant to the requirements of AB 26; and

WHEREAS, Successor Agency staff has completed negotiations with Gatwick for a purchase and sale agreement for the Properties; and

WHEREAS, the approval of the proposed purchase and sale agreement will satisfy the requirements of AB 26; and

WHEREAS, the purchase and sale agreement will needed to be presented to the Oversight Board of the Successor Agency for its approval and then to the Department of Finance.

NOW, THEREFORE, THE SUCCESSOR AGENCY DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

Section 1 The Purchase and Sale Agreement between the Successor Agency to the Commerce Community Development Commission and Gatwick Group, LLC for the properties located at 4957 Sheila Street (AIN 5244-034-900) and 4800 E. Washington Boulevard (AIN 5244-033-900), Commerce, California 90040 is hereby approved.

Section 2. Successor Agency staff is directed to present the actions set forth in this Resolution for review and approval by the Oversight Board.

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

Lilia R. Leon
Chairperson

ATTEST:

Linda Kay Olivieri, MMC
Secretary

THE PURCHASE AND SALE AGREEMENT WITH GATWICK GROUP, LLC
WILL BE DISTRIBUTED ON MONDAY, OCTOBER 15, 2012, OR TUESDAY,
OCTOBER 16, 2012, PRIOR TO THE REGULAR COUNCIL/SUCCESSOR
AGENCY MEETINGS.



AGENDA REPORT

MEETING DATE: October 16, 2012

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA APPROVING AN AGREEMENT WITH JETPATCHER USA, INC. FOR STREET MAINTENANCE SERVICES

RECOMMENDATION:

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

MOTION:

Move to approve the recommendation.

BACKGROUND/ANALYSIS:

As discussed with City Council previously, and after extensive demonstration and testing of their repair services, City staff has found that repairs performed by JetPatcher USA, Inc. have consistently exceeded those provided by the Los Angeles County Department of Public Works. Testing was conducted at the Provisor Building, on Washington Boulevard, on Eastern Avenue, on Telegraph Road, and on Jillson Street.

Also, JetPatcher has demonstrated that they have the expertise and equipment necessary to perform their repairs using hot asphalt, instead of cold-mix asphalt, even during cold temperatures, which will result in more effective, efficient repairs and significant cost savings to the City.

Over the past 3 years, the City has expended an average of \$177,950 in street repairs (pothole and skin-patching). City staff believes that it can reduce such costs by utilizing JetPatcher for these services. City staff therefore recommends that the City Council award a one-year contract for street maintenance services to JetPatcher USA, Inc.. During this time, staff will continue to evaluate JetPatcher USA, Inc.'s services and will return to City Council with a recommendation as to whether to enter into a multi-year contract with this company.

The contractor will be responsible for providing all labor, materials, equipment, tools and incidentals necessary to complete the work requested in accordance with the maintenance contract and as directed by the City, including providing bonds and insurance for the requested services.

FISCAL IMPACT:

This activity can be carried out at this time without additional impact on the current operating budget, as funding for street maintenance services has been approved and included in the FY 2012/13 General Fund Budget in the amount of \$200,000. Approximately, \$50,000 has been expended from this account, leaving a balance of \$150,000.

As allowed under the Public Contract Code, staff is recommending that the City Council awards JetPatcher an agreement for \$100,000 for street 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." Although, there are no specific

objectives connected to this issue, the City is responsible for street maintenance and repairs.

Respectfully submitted,



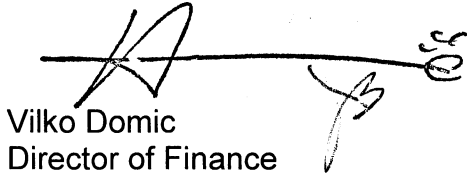
Jorge Rifa
City Administrator

Prepared and recommended by:



Danilo Batson
Assistant Director of Public Services

Fiscal impact reviewed by:



Vilko Domic
Director of Finance

Approved as to form:



Eduardo Olivo
City Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE,
CALIFORNIA, APPROVING AN AGREEMENT WITH JETPATCHER USA, INC. FOR
STREET MAINTENANCE SERVICES

WHEREAS, City staff has found that street repairs performed by JetPatcher USA, Inc. have exceeded that provided by the Los Angeles County Department of Public Works; and

WHEREAS, the City has expended on average of \$177,949.00 for the past 3 years on street repairs; and

WHEREAS, the City desires to reduce its annual maintenance cost for street repairs; and

WHEREAS, JetPatcher USA, Inc. has offered to perform these services at reasonable and lower unit cost; and

WHEREAS, the City would like to enter into an agreement with JetPatcher USA, Inc. for the maintenance and repair of City streets.

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

Section 1. That the proposal by JetPatcher USA, Inc., dated September 26, 2012, is hereby accepted. The Agreement between the City and JetPatcher USA, Inc. is hereby approved. The Mayor is hereby authorized to execute the agreement for and on behalf of the City of Commerce.

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

Lilia R. Leon, Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk

THIS AGREEMENT (the "Agreement") dated as of _____, 2012 (the "Effective Date") is made by and between JetPatcher USA, INC ("Contractor ") and the City of Commerce, a municipal corporation (the "City").

RECITALS

WHEREAS, the City is in need of street maintenance and repair services throughout its roadway system; and

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:

JetPatcher USA, INC
2520 South Birch Street
Santa Ana, CA 92707
Attn: Abraham Lopez Rodriguez, General Manager

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

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 ____, 2012

By: _____
Lilia R. Leon, Mayor

ATTEST:

Linda K. Olivieri, MMC
City Clerk

**JETPATCHER USA, INC.
CONTRACTOR**

DATED: October ____, 2012

By: _____
Abraham Lopez Rodriguez, General
Manager

APPROVED AS TO FORM

By: Eduardo Olivo
Title: City Attorney

EXHIBIT A



Sept 26, 2012

Mr. Hector Orozco
Street and Tree Maintenance Supervisor
2535 Commerce Way
Commerce, CA 90040
Ph 323-887-4469
Hectoro@ci.commerce.ca.us

Ref.- Jetpatcher USA
Asphalt Repairs PROPOSAL
for City of Commerce

Dear Mr. Orozco:

As agreed during our last interview hereby provide with the quotation for the services of Jetpatcher USA in connection with the preventive and corrective maintenance and repairs of the streets of the City of Commerce. Our services are rendered, reported and billed as follows:

1.- Types Services.

Our services are mainly divided in two types of asphalt repair services.

- **Pothole, Sealing Dig-out and Road Depression Repairs**
The pothole, sealing dig-out and road depression repairs will be performed and invoiced on a "pothole unit" basis. The "pothole unit" is considered by one (1) foot x two (feet) x 1.5 inches depth.
- **Surface (Alligator) Cracks, Scabbing and Wheel Path Rutting Repairs**
The surface (alligator) cracks, scabbing and wheel path rutting repairs will be performed and invoiced on a "skin patch unit". The "skin patch unit" is considered by one (1) foot x two (2) feet. Since the depth is less than 1.5 inches no additional cost for depth is considered.

2520 S. Birch St
Santa Ana, CA. 92707, USA



Our services will be provided to the City of Commerce in accordance to the following:

- A previous plan programmed with at least 1 week before of which streets will be repaired.
- Jetpatcher USA will use one full day per week (preferably Saturdays) to do the repairs.
- We will require that the specific areas to be repaired in the streets are clearly identified with white paint. If an area is not clearly identified, we will repair the damaged area in the street according to our experience and best judgment to prevent further damages (i.e. a pothole surrounded by alligator cracks).
- We will provide a weekly digital memory of all reparations trough a GPS-localized picture before and after the reparations, and a report with the advances and statistics of the project.
- We regularly provide the traffic control required during our pothole repairs. In a very few cases, (that must be reviewed in common), like a very heavy traffic primary streets we could ask for a temporary support of the City with a single Traffic Control Vehicle, while we are working over the streets, for a few hours. This manner is proposed to prevent to increase our costs.
- We require the support of the City with a single Traffic Control Vehicle, while we are working over the streets.
- The working time of Jetpatcher USA will be from 8:00 am to 4:00 pm, accordingly to the best time to reduce traffic impacts during peak hours.
- We are ready to begin the project at any time that the City requires.

2.- Patrol services.

Should you require for us to patrol your streets to identify any street damaged areas that require to be repaired in order to avoid further damages we will gladly provide such service at an additional service.

3.- Invoicing and Payment

We will furnish you with our invoice for services rendered to City of Commerce on a biweekly basis. We would normally expect payment of such invoice within the following 30 days through check or wire transfer payable to Jetpatcher USA.

2520 S. Birch St
Santa Ana, CA. 92707, USA



4.- Jetpatcher USA's Warranty for Services.

Although normally our repairs will last for much longer, the warranty for our repairs is of one year. In the event that any of the repairs performed by Jetpatcher USA fails to perform as expected Jetpatcher USA will fix any such failure free of cost.

The abovementioned summarized the scope of our services. We look forward to be of service to the City of Commerce.

Sincerely

ABRAHAM LOPEZ RODRIGUEZ
General Manager & RME

2520 S. Birch St
Santa Ana, CA. 92707, USA



Fee Schedule

Schedule of Pricing

Description	Size	Price	Unit
Pothole, Sealing Dig-out & Road Depression Repairs AKA "Pothole Unit" repair	One (1) foot x two (2) feet x 1.5 inches depth	\$ 10.00	Each
Surface(Alligator) Cracks, Scabbing & Wheel Path Rutting Repairs AKA "Skin Patch Unit"	One (1) foot x two (2) feet & < 1.5 inches depth	\$ 6.00	Each
Patrol & search for damaged areas for repairing "Pothole Unit" &/or "Skin Patch Unit"	An Additoinal Price per Unit	\$ 1.50	Each

Notes:

AKA = Also Know As
< = Less than

Sincerely

ABRAHAM LOPEZ RODRIGUEZ
General Manager & RME

2520 S. Birch St
Santa Ana, CA. 92707, USA



Sept 26, 2012

Mr. Hector Orozco
Street and Tree Maintenance Supervisor
2535 Commerce Way
Commerce, CA 90040
Ph 323-887-4469
Hectoro@ci.commerce.ca.us

Ref.- Projects in progress using Jetpatcher USA

We are glad to inform you that Jetpatcher USA is working in the U.S. with the LA County, since October 2010. With them we have had 2 Pilot projects, and the last one is actually in progress.

Also in these days we are closing other contract with the Calabasas City, with similar conditions like yours.

About the near future we will participate in the APWA EXPO for PWD in Anaheim.

Sincerely

ABRAHAM LOPEZ RODRIGUEZ
General Manager & RME

2520 S. Birch St
Santa Ana, CA. 92707, USA

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.



AGENDA REPORT

MEETING DATE: October 16, 2012

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING A TWO-YEAR EXTENSION OF CASH CONTRACT NO. 1102 – STREET SWEEPING SERVICES BETWEEN THE CITY OF COMMERCE AND NATIONWIDE ENVIRONMENTAL SERVICES, DIVISION OF JOE'S SWEEPING, INC.

RECOMMENDATION:

Approve and adopt the Resolution approving a two-year extension of the contract and assign the number next in order.

MOTION:

Move to approve the recommendation.

BACKGROUND:

On October 4, 2011, the City Council awarded Cash Contract No. 1102 – Street Sweeping Services to Nationwide Environmental Services for an initial probationary period of one year for the amount of \$121,206.24.

Effective November 1, 2011, Nationwide Environmental Services began providing street sweeping services in the City of Commerce, including all residential areas, industrial streets and major arterial streets.

As part of Fiscal Year 2012/13 General Fund Budget, the City Council approved \$125,000 for street sweeping services.

ANALYSIS:

The street sweeping agreement provided for initial probationary period one year. Thereafter, the City has the option of extending the agreement for another two-year period. Nationwide Environmental Services has provided excellent street sweeping services for the City over this initial probationary period. Nationwide has also voluntarily participated in community events, such as the recent Cleanup Commerce event. City staff has been pleased with the services provided by Nationwide and therefore recommends that the City Council approve a 2-year extension as provided for in the contract. Nationwide Environmental Services is aware and agrees with the 2-year extension. Nationwide Environmental Services will be eligible for a CPI adjustment at the end of year 1 of this 2-year term.

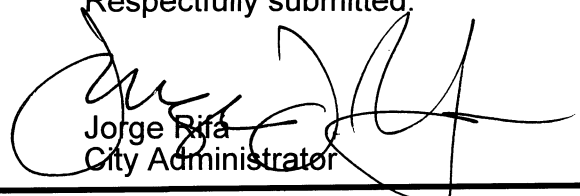
FISCAL IMPACT

Funds for these services are available in the Fiscal Year 2012/13 Budget. City Council approved a budget of \$125,000 for these services in the Community Development Department M&O Budget.

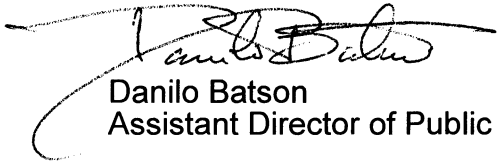
RELATIONSHIP TO 2009 STRATEGIC GOALS:

The issue before the Council is applicable to the following Council's strategic goal: *"Protect and Enhance Quality of Life in the City of Commerce."* Although, there are no specific objectives connected to this issue, the City is responsible for the maintenance and care of city streets.

Respectfully submitted:


Jorge Rifa
City Administrator

Recommended and prepared by:



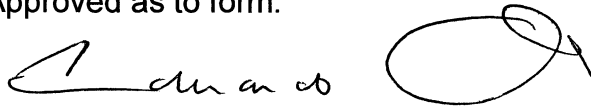
Danilo Batson
Assistant Director of Public Services

Fiscal impact reviewed by:



Vilko Domic
Director of Finance

Approved as to form:



Eduardo Olivo
City Attorney

File: 2012 City Council Agenda Reports
Two-Year Extension of Cash Contract No. 1102 – Street Sweeping Services (Nationwide Environmental Services) – Agenda Reports File

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE CALIFORNIA, APPROVING A TWO-YEAR EXTENSION OF CASH CONTRACT NO. 1102 – STREET SWEEPING SERVICES BETWEEN THE CITY OF COMMERCE AND NATIONWIDE ENVIRONMENTAL SERVICES, DIVISION OF JOE'S SWEEPING, INC.,

WHEREAS, on October 4, 2011, the City Council awarded Cash Contract No. 1102 – Street Sweeping Services to Nationwide Environmental Services; and

WHEREAS, Section 2 of the Contract provides that the city may, after initial one-year probationary term, decide to extend the contract term for another 2-year period; and

WHEREAS, Nationwide Environmental Services as provided excellent services to the City during the Contract probationary period; and

WHEREAS, the city desires exercise its right to extend the Contract on additional two-year period.

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

Section 1. Pursuant to Section 2 of Cash Contract No. 1102 – Street Sweeping Services between the City of Commerce and Nationwide Environmental Services, you Council hereby exercises its' right to extend the term of the Contract by another two years. The City Administrator is directed to advise National Environmental Services of the of the contract extension.

PASSED, APPROVED AND ADOPTED this 16th day of October , 2012.

Lilia R. Leon, Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk

