

**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 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, DECEMBER 4, 2012 – 6:30 P.M.**

**CALL TO ORDER**

Mayor/Chairperson Leon

**PLEDGE OF ALLEGIANCE**

Alex Hamilton  
Assistant Director of Community  
Development

**INVOCATION**

Councilmember/Board Member Altamirano

**ROLL CALL**

City Clerk/Secretary Olivieri

**APPEARANCES AND PRESENTATIONS**

**PUBLIC COMMENT**

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

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

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

**CITY COUNCIL/SUCCESSOR AGENCY REPORTS**

**CONSENT CALENDAR**

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

**1. Approval of Minutes**

The **City Council and Successor Agency** will consider for approval, respectively, the minutes of the Concurrent Regular Meetings of Tuesday, November 20, 2012, held at 6:30 p.m. and Concurrent Adjourned Regular Meetings of Tuesday, November 27, 2012, held at 6:30 p.m.

**2. Approval of Warrant Register No. 10**

The **City Council and Successor Agency** will consider for approval, respectively, the bills and claims set forth in Warrant Registers No. 10A, dated December 4, 2012, and No. 10B, for the period November 21, 2012, to November 29, 2012.

**3. A Resolution of the City Council of the City of Commerce, California, Approving a Memorandum of Understanding Between the City of Commerce and the Los Angeles County Metropolitan Transportation Authority for Transfer of Two Buses to the City**

The **City Council** will consider for approval and adoption a proposed Resolution approving a Memorandum of Understanding between the City of Commerce and the Los Angeles County Metropolitan Transportation Authority for the Transfer of two (2) buses to the City.

The Transportation Department has one (1) bus that is out of service due to a pending warranty litigation claim with the bus manufacturer and has recently increased its service to Union Station. Adding the two (2) additional buses to the fleet at this time will ensure that the City can maintain an adequate spare ratio and improve its overall flexibility in providing reliable public transportation services.

**4. A Resolution of the City Council of the City of Commerce, California, Approving the First Amendment to the Professional Services Agreement for Design and Engineering Services with RBF Consulting for the Washington Boulevard Widening and Reconstruction Project**

The **City Council** will consider for approval and adoption a proposed Resolution approving the First Amendment to the Professional Services Agreement for Design and Engineering Services with RBF Consulting for the Washington Boulevard Widening and Reconstruction Project

The First Amendment includes additional services necessary to complete the Project.

**5. A Resolution of the City Council of the City of Commerce, California, Approving the First Amendment to Reimbursement Agreement Between the City of Commerce and Craig Realty Group Citadel, LLC for Paving and Restriping of Smithway Street**

The **City Council** will consider for approval and adoption a proposed Resolution approving the First Amendment to Reimbursement Agreement between the City of Commerce and Craig Realty Group Citadel, LLC for paving and restriping of Smithway Street, which was executed in the form of a Letter Contract by the City Administrator on August 2, 2012.

6. A Resolution of the City Council of the City of Commerce, California, Accepting the Work Performed by Unique Performance Construction Inc., of Costa Mesa, California, Under the City of Commerce Standard Contract for Cash Contract No. 1114 – 2011/2012 Bus Shelter Installation Project

The **City Council** will consider for approval and adoption a proposed Resolution accepting the work performed by Unique Performance Construction Inc., of Costa Mesa, California, under the City of Commerce Standard Contract for Cash Contract No. 1114 – 2011/2012 Bus Shelter Installation Project.

7. A Resolution of the City Council of the City of Commerce, California, [or the Successor Agency to the Commerce Community Development Commission], Making an Election to Receive Payments Pursuant to Health and Safety Code Section 33607.5 (b) for Commerce Redevelopment Project Area #3

The **City Council [or Successor Agency]** will consider for approval and adoption a proposed Resolution making an election to receive payments pursuant to Health and Safety Code Section 33607.5 (b) for Commerce Redevelopment Project Area #3.

**PUBLIC HEARINGS – None**

**SCHEDULED MATTERS**

8. A Resolution of the City Council of the City of Commerce, California, Approving the First Amendment to the Professional Services Agreement Between the City of Commerce and Clean Energy

The **City Council** will consider for approval and adoption a proposed Resolution approving the First Amendment to the Professional Services Agreement between the City of Commerce and Clean Energy, to provide regular fuel supply, operations and maintenance of the City's public access liquefied natural gas (LNG) and compressed (from liquefied) natural gas (LCNG) fueling station, located at 5940 Sheila Street, Commerce, California.

9. Approved Fee Increase of New Resident Activity Card

At its meeting of November 20, 2012, the City Council approved eliminating the \$.50 Aquatorium admission fee for residents and increasing the fee for each of the three types of Resident Activity Cards by \$2.00. The increase is intended to compensate for the loss of revenue associated with the discontinuation of the Aquatorium admission fee of \$5,455.00 annually.

At the request of Mayor Leon and Mayor Pro Tempore Baca Del Rio, the **City Council** will receive clarification of the City Council's action taken on November 20, 2012, and provide appropriate direction as may be deemed necessary with respect thereto.

10. Report On and Discussion of Potential Amendments to the Commerce Municipal Code Regarding the City's Industrial Zones and Permitted Uses

At the request of Mayor Leon and Councilmember Robles, the **City Council** will receive a report on, discuss and provide appropriate direction

as deemed necessary with respect to, options for amending the Commerce Municipal Code regarding the City's Industrial Zones and Permitted Uses.

**11. 2<sup>nd</sup> Annual Community Day of Service Event**

The **City Council** will consider for approval the 2<sup>nd</sup> Annual Community Day of Service Event, to be held on January 19, 2013, in the Bristow Park residential area. The event will include cleanup, painting of curbs, gardening, disposal of large items, graffiti abatement and more.

**ORDINANCES AND RESOLUTIONS**

**12. An Ordinance of the City Council of the City Of Commerce, California, Revising Section 2.20.010 of Chapter 2 ("Compensation") of the Municipal Code with Respect to Compensation of Councilmembers – First Reading**

The **City Council** will consider for first reading a proposed Ordinance revising Section 2.20.010 of Chapter 2 ("Compensation") of the Commerce Municipal Code with respect to compensation of Councilmembers.

**13. A Resolution of the City Council of the City of Commerce, California, Authorizing the Filing of an Administrative Petition for Review Challenging the Los Angeles MS4 Stormwater Permit Adopted on November 8, 2012 and Requesting for Abeyance on Behalf of the City of Commerce**

The **City Council** will consider for approval and adoption a proposed Resolution authorizing, on behalf of the City of Commerce, the filing of an Administrative Petition for Review with the State of California Water Resources Control Board challenging the Los Angeles MS4 Stormwater Permit adopted by the Los Angeles Regional Water Board on November 8, 2012, requesting that it be held in abeyance for two years to reserve the City's right to file a lawsuit in the future should circumstances necessitate filing a lawsuit.

The permit enforces all Total Maximum Daily Loads ("TMDLs") covering 140 different pollutants affecting water quality. The Permit goes into effect 50 days after its adoption and will remain in effect for five years.

**14. A Resolution of the City Council of the City of Commerce, California, Approving a Professional Services Agreement for Construction Management Services With Swinerton Builders dba Swinerton Management & Consulting**

As part of the fiscal year 2012-2013 Capital Improvement Program (CIP) Budget, the City Council approved funds for required construction management services. Swinerton Builders dba Swinerton Management and Consulting has provided such services to the City of Commerce over the past two years and is willing to provide the requested services through June 30, 2013, at the same price level.

The City Council will consider for approval and adoption a proposed Resolution approving a Professional Services Agreement for Construction Management Services with Swinerton Builders dba Swinerton Management & Consulting through June 30, 2013.

**CIP PROGRESS REPORT**

**15. Fiscal Year 2012/2013 Capital Improvement Program Update**

The **City Council** will receive an update on the fiscal year 2012/2013 Capital Improvement Program and thereafter consider said report for

receipt and filing and provide appropriate direction as may be deemed necessary.

**I-710 LOCAL ADVISORY COMMITTEE UPDATE - None**

**RECESS TO CLOSED SESSION – No Items**

**ADJOURNMENT**

Adjourn to Tuesday, December 18, 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

Meeting Date: December 4, 2012

**TO:** Honorable City Council  
**FROM:** City Administrator  
**SUBJECT:** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF COMMERCE AND THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY FOR THE TRANSFER OF TWO BUSES TO THE CITY

**RECOMMENDATION:**

Adopt the resolution and assign the number next in order.

**MOTION**

Approve the recommendation.

**BACKGROUND**

On September 7, 2011, the City and the Los Angeles County Metropolitan Transportation Authority ("LACMTA") entered into an agreement that provides for the loan of two LACMTA CNG-powered transit vehicles for up to 540 days, at no cost to the City. If/when the City returns the loaner buses, LACMTA will dispose of the buses through public auction. Therefore, on August 30, 2012, the City sent a letter to LACMTA requesting that LACMTA transfer ownership of the loaner buses to the City.

The City recently started express transit service that travels to and from Union Station in downtown Los Angeles (Citadel Express Route); and there is a transit bus currently out of service, due to a warranty litigation claim with the bus manufacturer, located in Anniston, Alabama. Adding the two additional buses to the transit fleet at this time will ensure that the City can maintain an adequate spare ratio and improve its overall flexibility in providing reliable public transportation services.


**FISCAL IMPACT:**

There will be no cost to the City for transferring ownership of the two LACMTA buses. This activity can be carried out without additional impact on the current operating budget.

**RELATIONSHIP TO 2012 STRATEGIC GOALS:**

This agenda item relates to the 2012 strategic planning goal: "Review and update services and activities to increase efficiency," as this transfer of buses will assist in mitigating transportation's operating and capital costs for the City.

Recommended by:

  
Claude McFerguson  
Director of Transportation

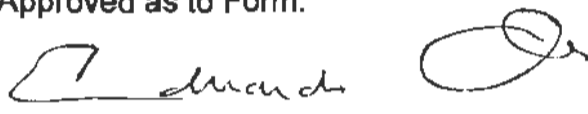
Respectfully submitted,

  
Jorge Rifá  
City Administrator

Budget Impact Review by:

  
Vilko Domic  
Director of Finance

Approved as to Form:

  
Eduardo Olivo  
City Attorney

Attachment:

MOU – For Transfer of Two Buses From LACMTA to the City  
Letter to Richard Bachman, LACMTA, From Claude McFerguson, City, Dated August 30,  
2012



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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF COMMERCE AND THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY FOR TRANSFER OF TWO BUSES TO THE CITY

WHEREAS, the City of Commerce Transportation Department requires additional buses for its transit operations; and

WHEREAS, the Los Angeles County Metropolitan Transportation Authority has agreed to transfer ownership of two CNG-powered transit buses at no cost to the City and has provided the City with a Memorandum of Understanding that will provide for the transfer

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

SECTION 1. The Memorandum of Understanding (MOU) between the City of Commerce and the Los Angeles County Metropolitan Transportation Authority (LACMTA) for the transfer of two buses to the City is hereby approved. The Mayor is authorized to sign the MOU for and on behalf of the City.

PASSED AND ADOPTED this 4<sup>th</sup> day of December, 2012.

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Lilia R. Leon, Mayor

ATTEST:

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Linda Kay Olivieri, MMC  
City Clerk



**MEMORANDUM OF UNDERSTANDING  
FOR TRANSFER OF TWO BUSES  
FROM LACMTA TO CITY OF COMMERCE**

This Memorandum of Understanding (hereinafter "Termination Memorandum") is dated as of \_\_\_\_\_ by and between the LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY ("LACMTA") and the CITY OF COMMERCE ("COMMERCE").

**RECITALS:**

A. Whereas, COMMERCE and LACMTA entered into that certain Memorandum of Understanding dated September 7, 2011, (the "Existing MOU"), which Existing MOU provides for the loan of two LACMTA buses to COMMERCE; and

B. Whereas, the loaner buses have surpassed FTA's useful life and the CNG tanks' certification expires in 2013; and

C. Whereas, if COMMERCE returns the loaner buses, LACMTA will dispose of the buses through public auction; and

D. Whereas, COMMERCE sent a letter to LACMTA dated August 30, 2012, requesting that LACMTA transfer the loaner buses to COMMERCE because COMMERCE is adding additional route(s) to and from Union Station. The additional buses will ensure that COMMERCE can maintain an adequate spare ratio and improve its overall flexibility in providing reliable public transportation within the legal boundaries of COMMERCE and its service area.

E. Whereas, COMMERCE and LACMTA desire to terminate the Existing MOU as provided herein.

**AGREEMENT:**

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby terminate the Existing MOU, and agree as follows:

1. LACMTA agrees to transfer the following loaner buses to COMMERCE: 2 (two) 1997 Neoplan buses, Model AN-440 MTA Bus Numbers 6434 and 6496, License numbers 1005723 (6434) and 1366191 (6496) (hereinafter called "Buses"). Promptly upon execution of this Agreement by both parties, LACMTA and COMMERCE will fully cooperate in preparing and signing any other documents needed to transfer title of the Buses from LACMTA to COMMERCE.

2. COMMERCE shall be responsible for replacing the existing CNG tanks on the Buses at its own expense, and will forward to LACMTA the new tank certification documents.

3. **INDEMNIFICATION:** COMMERCE hereby indemnifies, defends and holds harmless LACMTA and its directors, officers, employees and agents from and against any and all claims, demands, liabilities, costs, expenses, including, without limitation, reasonable attorneys' fees, resulting from the Buses after this Agreement is executed by both parties.

4. COMMERCE is aware that the fuel tanks on the Buses are under high pressure and near the end of their service life and will require replacement if the Buses are to continue in service.

5. COMMERCE agrees that by accepting the Buses in an "As Is" condition, COMMERCE is relinquishing and forever giving up any right of claim against LACMTA, its board members, officers, employees, successors in interest, contractors, consultants, representatives and agents with regard to any injury, claim or action of any kind, arising out of the fuel tanks or any other component on the Buses after this Agreement is executed by both parties..

6. **MISCELLANEOUS:**

a. **Successors and Assigns.** The covenants and agreements of this Agreement shall inure to the benefit of, and shall be binding upon, each of the parties and their respective successors and assigns.

b. **Governing Law.** This Agreement shall be governed by, interpreted under and construed and enforced in accordance with the laws of the State of California, and any action brought under this Agreement shall be filed in the Superior Court of the County of Los Angeles, Central Division.

c. **Notice.** Any notice, demand or documents which any party is required or may desire to give or deliver to the other shall be in writing and may be personally delivered or given by United States mail, certified, return receipt requested, postage prepaid and addressed as follows:

To: City of Commerce  
Attn: Claude McFerguson  
5555 Jillson Street  
Commerce, CA 90040

To: Los Angeles County Metropolitan Transportation Authority  
Attn: Matthew Dake  
1 Gateway Plaza  
Los Angeles, CA 90012

subject to the right of either party to designate a different address by notice similarly given.

d. **Time of Essence.** Time is of the essence with respect to all of the terms, conditions and obligations set forth herein.

e. **Amendments.** No variation, modification, change or amendment of this Agreement shall be binding upon either party unless such variation, modification, change or amendment is in writing and duly authorized and executed by both parties. This Agreement shall not be amended or modified by oral agreements or understandings between the parties or by any acts or conduct of the parties.

f. **Counterparts.** This Agreement may be executed simultaneously or in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

g. **Assignment.** Neither party shall assign this Agreement or any of such party's interest, rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

h. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous agreements and understandings.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered as of the above date.

LACMTA:

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Frank Alejandro  
Chief Operations Officer

APPROVED AS TO FORM:

Andrea Sheridan Ordin  
County Counsel

By: Ronald Stamm Date: 11/9/12  
Deputy

CITY OF COMMERCE:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Lilia R. Leon  
Mayor

Attest:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Linda Kay Olivieri, MMC  
City Clerk

APPROVED AS TO FORM:

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



# City of Commerce

## Transportation Department

Thursday, August 30, 2012

Richard Bachman, Interim Director, Material Management  
Los Angeles County Metropolitan Transportation Authority  
1 Gateway Plaza 8th Floor  
Los Angeles, CA 90012-2952

Subject: Loaner Neoplan Transit Buses - Transfer Request

Dear Richard,

The loaner Neoplan transit buses have been extremely beneficial for the City of Commerce (City). Per our current loaner bus MOU agreement, the loaner period ends March 2013. We realize that the buses have surpassed FTA's useful life and that the CNG tanks' certification expires in 2013. It is my understanding that both buses will be going to auction after the buses are returned to Metro.

We are in the process of adding additional route(s) servicing Union Station to the City of Commerce area, with an approximate start date of October 2012. Therefore, since the buses will be heading to salvage in the very near future, please consider transferring the vehicles to the City. The additional buses shall ensure that the City maintains an adequate spare ratio and improves our overall flexibility.

If this request is granted, the City shall absorb the cost of replacing the CNG tanks on both buses, and we will forward to you the tank certification documents for your files.

Thank you in advance for your consideration, and let me know if you have questions or require additional information.

Sincerely,

Claude McFerguson  
Director of Transportation

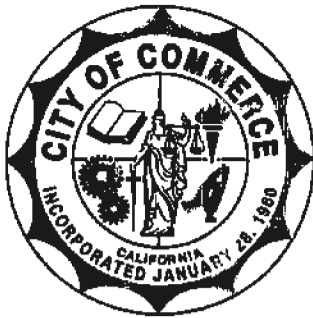
cc: Greg Guzman, Fleet Maintenance Supervisor

5565 Jillson Street  
Commerce, CA 90040  
Phone: 323\*887\*4419  
Fax: 323\*724\*2776

*"Where Quality Service Is Our Tradition"*







# AGENDA REPORT

MEETING DATE: December 04, 2012

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING THE FIRST AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT FOR DESIGN AND ENGINEERING SERVICES WITH RBF CONSULTING FOR THE WASHINGTON BOULEVARD WIDENING AND RECONSTRUCTION PROJECT

## RECOMMENDATION:

Approve the resolution approving the First Amendment to the Professional Services Agreement for Design and Engineering Services with RBF Consulting, and assign the number next in order.

## MOTION:

Move to approve recommendation.

## BACKGROUND:

On July 29, 2005, as part of a special appropriation from Congresswoman Lucille Roybal-Allard, the City of Commerce received \$2,400,000 for the Washington Boulevard Widening and Reconstruction Project under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

On January 25, 2007, the City of Commerce submitted an application with the Los Angeles County Metropolitan Transportation Authority (LACMTA) for their 2007 Call for Projects. The application requested \$17.8 million of the estimated \$32,000,000 required to perform all the improvements associated with widening and reconstructing Washington Boulevard.

On September 27, 2007, the LACMTA Board of Directors approved a one-time grant funds in the amount of \$13,362,000.00 for Washington Boulevard. The project boundaries are Washington Boulevard from westerly City limits (with Vernon) to the I-5 Freeway.

On February 19, 2008, the City Council approved the execution of the Memorandum of Understanding (MOU) between the City of Commerce and the LACMTA for the Project.

On July 1, 2008, the City Council approved the execution of the Trade Corridors Improvement Fund (TCFI) Project Baseline Agreement between the City of Commerce and the California Department of Transportation, which secured \$5.8 million from the State of California to complete this project.

On May 4, 2010, the City Council approved the Environmental Impact Report (EIR) for the Project.

On October 18, 2011, the City Council approved the execution Program Supplement Agreement No. N011 to the Administering Agency-State Agreement between the City of Commerce and the State of California Department of Transportation (or Caltrans) for this project.

On January 3, 2012, the City Council received a report and update on the Project. As stated in the report, on November 23, 2011, staff submitted a Pre-Award Letter to Caltrans

for review and approval, as required prior to award of any professional services agreement over \$1,000,000.

On May 3, 2012, the City received a letter dated April 30, 2012 from Caltrans waiving the pre-award audit at this time and authorizing the City to proceed with a professional services agreement for engineering and design services for the proposed project. The Caltrans letter provided that the total amount under the proposed agreement shall not exceed \$1,442,679 and that if the City and Consultant agree to increase or modify the terms of the agreement, a properly executed amendment will be required.

On June 19, 2012, the City Council awarded a Professional Services Agreement to RBF Consulting for design and engineering services for this project, in the amount of \$1,442,679.

**ANALYSIS:**

The proposed project seeks to widen and reconstruct Washington Boulevard from the I-5 Freeway (on the east) to 350 feet west of Indiana Street (Commerce City Limit). The project will add an additional lane in each direction, reconstruct the roadway in concrete, increase turning radius, install landscape medians, improve the railroad crossing (west of Commerce Way), upgrade traffic signals/street lighting, improve storm drain systems, install new curb & gutters, repair damaged sidewalks, install ADA-compliant ramps at intersections, and install new trees and directional signage.

For the past several months, RBF Consulting staff has been working on the preliminary design phase of the project. On September 20, 2012, they completed the Geometric Approval Drawing (GAD) and Construction Analysis Report and submitted to City staff.

In order to proceed with the preparation of final plans, specifications and estimates (PS&E) the following additional information and services are required:

- Visual Analysis and Curb Marking – prepare 5 simulations and paint new curb alignment at the 5 requested locations.....\$0.00 (No Change in Contract Amount)
  - Legal Descriptions and Exhibits – prepare 16 additional Title Reports and Legal Descriptions for various properties in the project area to fully determine and confirm City’s easement and whether additional right-of-way is required for the proposed project improvements.....\$42,240.00
  - ADA Ramp Special Design – due to existing constraints at many intersections special ADA ramp designs are required in order to complete the proposed project improvements.....\$16,280.00
  - Additional Pavement Investigation and Analysis – initial geotechnical analysis of the pavement substructure indicates that there is a cement concrete pavement under the existing asphalt pavement. In order to properly design the pavement section in the project plans and specifications, additional work is necessary to identify the width, depth and strength of the underlying concrete pavement.....\$23,600.00
  - Traffic Counts and Traffic Index Calculation – perform traffic counts that include truck counts by axle classification at 6 different intersections along the project route in order to determine the required pavement thickness for the proposed pavement and pavement life on Washington Boulevard.....\$8,920.00
  - Flashing Warning System Pedestrian Crossings – prepare flashing warning system improvement plans/specifications/cost estimate at 3 intersections along the project route to meet the 2012 CAMUTCD (California Manual of Uniform Traffic Control Devices), the 2010 Caltrans Standard Plans and Standard Specifications and latest addendums.....\$17,600.00
- TOTAL.....\$108,640.00

Staff recommends approval of the First Amendment adjusting the contract amount from \$1,442,679.00 to \$1,551,319.00. On June 19, 2012, the City Council appropriated a

contingency of \$216,400 (or 15%) for design and engineering services. The contingency will be used to cover the additional services/costs listed in the First Amendment.  
**FISCAL IMPACT:**

At this time, this activity can be carried out without additional impact on the current operating budget. The approved budget and funding sources for this project are as follows:

<b>WASHINGTON BLVD RECONSTRUCTION PROJECT</b>	
Preliminary Design & Scope of Work (MTA Prop C 25%)	\$77,000
Preliminary Design & Scope of Work (City Match 35% - 2007 Bonds Funds)	\$46,000
Design Specification 60% RDA	\$180,000
City Match 40% - 2004 Bond Funds	\$120,000
Construction Management 50% RDA	\$200,000
City Match 50% - 2004 Bond Funds	\$200,000
Construction (Phase I) Prop C 25% (MTA Funds)	\$13,285,000
Construction Fed. Highway Funds (SAFETEA-LU HPP 3085)	\$2,220,000
SAFETEA-LU Match	\$220,000
California Transportation Commission (CTC Grant)	\$5,800,000
California Transportation Commission (City ROW Match)	\$3,198,000
Construction (Phase I) City Remaining Match (35%) - \$3 million (General Fund Reserves; \$3,453,460 RDA)	\$6,454,000
	<b>\$32,000,000</b>

The proposed professional services agreement will be funded as follows:

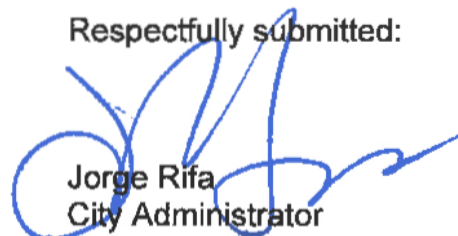
	Original Agreement	1 <sup>st</sup> Amendment	New Totals
Federal Funds (SAFETEA-LU)	\$1,154,143.00	\$86,912.00	\$1,241,055.00
Local (City Match)	\$288,536.00	\$21,728.00	\$310,264.00
<b>TOTAL</b>	<b>\$1,442,679.00</b>	<b>\$108,640.00</b>	<b>\$1,551,319.00</b>

The Commerce Community Development Commission had approved the payment of redevelopment funds as part of the local match for the Project. Pursuant to AB X1 26, the Department of Finance (DOF) determined that the Commission's local match for the Project was not an "enforceable obligation." Successor Agency staff requested a meet-and-confer with the DOF in connection with that determination and is currently awaiting the DOF's determination. Due to existing contractual obligations with LACMTA and Caltrans, in order not to jeopardize any other funding, staff recommends that the City continue with the engineering and design of the project. Currently, City staff, the MTA, the Gateway COG and The Dardanelle Group are exploring other potential sources of funds (such as, funding allocation by the I-710 Early Action Program), if the DOF determines that the redevelopment fund contributions to the Project is not an "enforceable obligation" under AB X1 26.

**RELATIONSHIP TO 2012 STRATEGIC GOALS:**

The issue before the Council is applicable to the following Council's strategic goal: "Improve and maintain infrastructure and beautify our community" as identified in the 2012 Strategic Plan.

Respectfully submitted:



Jorge Rifa  
 City Administrator

Recommended and prepared by:



Danilo Batson  
Assistant Director of Public Services  
Reviewed by:



Vilko Domic  
Director of Finance

Approve as to form:



Eduardo Olivo  
City Attorney

File: 2012 City Council Agenda Reports  
Washington Blvd. Widening and Reconstruction Project – Agenda Reports File

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE,  
CALIFORNIA, APPROVING THE FIRST AMENDMENT TO THE PROFESSIONAL  
SERVICES AGREEMENT FOR DESIGN AND ENGINEERING SERVICES WITH RBF  
CONSULTING FOR THE WASHINGTON BOULEVARD WIDENING AND  
RECONSTRUCTION PROJECT

WHEREAS, as part of the Capital Improvement Project Budget, the City Council appropriated \$32,000,000 for the Washington Boulevard Widening and Reconstruction Project; and

WHEREAS, on June 19, 2012, the City Council awarded a Professional Services Agreement (Agreement) to RBF Consulting for design and engineering services for the Washington Boulevard Widening and Reconstruction Project; and

WHEREAS, the City of Commerce and RBF Consulting desire to amend the existing Agreement to include additional services necessary to complete the project design.

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

Section 1. The First Amendment to the Professional Services Agreement is hereby approved. The Mayor is to execute the First Amendment for and on behalf of the City.

PASSED, APPROVED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2012.

ATTEST:

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

\_\_\_\_\_  
Lilia R. Leon, Mayor



FIRST AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN  
THE CITY OF COMMERCE AND RBF CONSULTING FOR DESIGN AND  
ENGINEERING SERVICES FOR THE WASHINGTON BOULEVARD WIDENING AND  
RECONSTRUCTION PROJECT

This First Amendment is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 2012, ("Effective Date") by and between the CITY OF COMMERCE, a Municipal Corporation (the "CITY") and RBF CONSULTING ("CONSULTANT").

WITNESSETH

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

- A. On June 19, 2012, the CITY and CONSULTANT entered into a Services Agreement for Design and Engineering Services associated with the widening and reconstruction of Washington Boulevard (the "Agreement").
- B. RBF Consulting has provided all necessary services required under the Agreement in order to prepare and complete the project Plans and Specifications.
- C. In order to complete all preliminary design and engineering services required for the project, additional services are necessary.
- D. On August 9, 2012, the CONSULTANT provided the CITY with a no-fee proposal to prepare five simulations and provide paint mark-up of new curb alignment at the selected locations.
- E. On October 25, 2012, the CONSULTANT provided the CITY with a second proposal to provide various preliminary design and engineering services required by the project.
- F. CITY and CONTRACTOR need to modify the Scope of Services and Compensation set forth in the Agreement in order to address the changed conditions.

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

1. Section 1: Scope of Services and Schedule of Performance

The Scope of Services that was set forth in Exhibit "A" and that was referenced in Section 1 of the Agreement is hereby expanded to include the Scope of Services set forth in the attached Exhibit "A-1" which is incorporated herein by reference.

2. Section 4: Compensation

The fees to be paid by the CITY for the additional services to be provided by CONSULTANT are also set forth in the attached Exhibit "A-1."

3. All other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have each executed or caused to be executed, this First Amendment on the dates set forth below.

CITY OF COMMERCE

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Lilia R. Leon, Mayor

ATTEST:

APPROVED AS TO FORM:

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

\_\_\_\_\_  
Eduardo Olivo  
City Attorney

RBF CONSULTING ("CONSULTANT")

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Gary Miller, PE  
Vice President Public Works



**EXHIBIT A-1**



## Scope Change Request

To: City of Commerce  
Danilo Batson, City Engineer

Project Name: Washington Boulevard  
Reconstruction  
Project No.: 10-107909.001  
Date: August 9, 2012

From: Gary Miller, Project Manager

Signature: 

**Description of Change:** Contract Amendment #1 - Prepare five simulations and provide paint mark-up of new curb alignment at the following locations and per the attached pdf Exhibit:



Proposed Curb Line  
Exhibit.pdf

1. Washington Blvd, b/w Fidelia Ave and Leo Ave
2. Washington Blvd, b/w Strong Ave and O'Neil Ave
3. Washington Blvd, b/w Coutts Ave and Bewley Ave
4. Washington Blvd, b/w Arrowmill Ave and Cobb Ave
5. Washington Blvd, b/w Pine Ave and Indiana Ave

Based on previous discussions with the City, Task 2.5.02 (Permit Applications –Railroad Spur Easement Relinquishment Negotiations) will not be necessary as the railroad will be eliminating this spur crossing of Washington Boulevard. The elimination of task effort allows for a portion of the fees to be re-allocated to perform the Visual Analysis and field marking work and will not require an increase in the total contract budget. Client understands that the visual analysis is to be prepared in advance of the completion of Task 2.2.02 (Landscape Concepts) and therefore the final approved concepts and plans may be different from that depicted in the Visual analysis.

**Reason for Change:** City requested additional work to provide Visual Analysis and markings along Washington Blvd. at the 5 locations noted above.

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

Date Requested: \_\_\_\_\_

**Scope Change Request(Cont'd)**

Washington Boulevard AM #1

Visual Analysis & Curb Markings

Date Prepared: August 9, 2012

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**Costs and/or Hour Estimate:**

Task 2.2.02AM1 -Visual Analysis and Curb Markings

**Estimated Hours:**

- Visual Analysis: 57 hours
- Curb Markings 8 hours

**Subtotal Fees:**

- Visual Analysis: \$6,500
- Curb Markings: \$1,200

**Total Fee Reallocation: \$7,700**

**Total Contract Amount to remain the same.**

<p><b>Approval to Proceed:</b> _____</p> <p style="text-align: center;"><b>Name / Title</b> <span style="float: right;"><b>Date</b></span></p>
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## Scope Change Request

To: City of Commerce

Danilo Batson, City Engineer

Project Name: Washington Boulevard  
Reconstruction

Project No.: 10-107909.001

Date: October 25, 2012

From: Gary Miller, Project Manager

Signature: 

### Description of Change: Contract Amendment #2 –

This request for additional work has been requested by the City based on investigations and constraints identified as a result of the preparation of the GAD and subsequent meetings and discussions with the City. The additional work includes providing:

**Task 1- Additional Legal Descriptions and Exhibits.**

**Task 2 - Provide Additional Pavement Investigations and Analysis and**

**Task 3 – Special ADA Ramp Design.**

**Task 4 – Traffic Counts and Traffic Index Calculations**



7909-EX03-105G.pdf



Figure 2 - Site  
plan.pdf



Table 1 - Washington  
blvd Existing Pavement

### Task 1 – Legal Descriptions & Exhibits

RBF has identified the need to prepare sixteen (16) Title Reports and Legal Descriptions at the following locations:

1. 3960 E. Washington Boulevard, Vernon, APN 6243-010-827; Consolidated Disposal SVC;
2. 4050- 4054 E. Washington Boulevard, Commerce, APN 5243-010-032; Hashimoto;
3. APN 5243-005-008; Union Pacific
4. 4334 E Washington Boulevard, Commerce; APN 5243-005-029; Millard;
5. 4338 E. Washington Boulevard, Commerce, APN 5243-005-028; Grupo Glemka;
6. 4350 E, Washington Boulevard, Commerce; APN 5243-005-027; Millard;
7. 4360 E. Washington Boulevard, Commerce; APN 5243-005-026; 4360 E. Washington, LLC;
8. 4400/4406 E. Washington Boulevard, Commerce; APN 5243-005-023, -024, -025; Western States Lacquer;
9. 4540 E. Washington Boulevard, Commerce; APN 5243-004-012; CA Water Service;
10. 4560 E. Washington Boulevard, Commerce; APN 5243-026-024; Sarakbe/ Tabbaa;
11. APN 5243-027-001; Ocegueda;
12. Parcel adjacent to I-710 On/Off Ramp (northwest); APN unknown
13. 4821 E. Washington Boulevard, Commerce; APN 5244-032-029; Shuken;
14. 5133 E. Washington Boulevard, Commerce; APN 5244-031-018; Silverberg;
15. 2425 S. Atlantic Avenue, Commerce; APN 5244-031-023; Sheinbein;
16. 5536 E. Washington Boulevard, Commerce; APN 6335-019-048; Eastside Development;

Based on recent discussions with the City, Task 1.4 "Record Land Parcels and Right of Way Mapping", of the Project Scope of Services, and for providing services to obtain Title Search of said properties, will be modified to include additional services for preparing and processing sixteen (16) total parcels as identified above.

### Task 2 – ADA Ramp Special Design

RBF has identified twenty-five (25) ADA curb ramp locations requiring detailed engineering design to

establish appropriate ADA ramp access along Washington Boulevard resulting from constraints within the ROW. The original project scope of work proposed on using standard ramp design to comply with ADA requirements.

**Task 3 – Additional Pavement Investigation and Analysis.**

RBF's subconsultant (DYA) has encountered cement concrete pavement under existing Asphalt Concrete during the performance of their borings between Atlantic Avenue to the I-5 Freeway. It is anticipated that the underlying PCC is remnants of old roadway pavement. The limits of which have not been clearly established. DYA has provided two alternative methods for further clarifying the extent of the concrete beneath the existing pavement..

The purpose of the proposed additional field exploration is to provide additional data between the previously completed borings in order to help delineate the areas of the project that contain surface AC overlaid on PCC. Two techniques, ground penetrating radar (GPR) and falling weight deflectometer (FWD), were considered. Each technique is briefly described below along with their respective advantages and disadvantages. Dependent on the City's preference, either GPR or FWD will be performed for the same price, as shown below.

**GPR** - This is a geophysical survey utilizing radar waves to image subsurface materials. The GPR is truck-mounted to image nearly continuous subsurface information along a specific alignment, typically the center of a single travelled lane. The vehicle moves approximately five miles per hour without stopping. It is possible to image through an intersection. The image is typically less than a foot wide. The GPR can locate changes in surface and shallow (typically less than five feet) subsurface conditions. These changes can include utility trench backfill, changes in pavement thickness or type, abrupt changes in subgrade layers, subgrade soil types, etc. The GPR cannot quantitatively describe the pavement or subsurface pavement supporting characteristics and is, therefore, most useful for delineating existing conditions, not for designing new pavements. As with all geophysical survey techniques, the GPR must be tested at the project location to check its effectiveness.

**FWD** - This method uses applied load-measured deflection approach to evaluate existing pavement (including subgrade) sections. The load-deflection device is mounted on a trailer and pulled with an automobile (van) that houses its control equipment. The device is typically followed by a safety vehicle with an arrow board. The van is stopped for approximately one minute at each location to perform the test. The individual tests are located approximately 200 feet apart along each lane. At each test location, the mechanism is engaged by lowering several sensors onto the pavement surface and then repeatedly dropping a weight onto the pavement surface, inducing pavement deflections that are measured by the sensors. The recorded deflection response (once analyzed) can establish whether or not that location included buried PCC pavement. The deflection responses can quantitatively describe the pavement section (pavement surface, base, subgrade, etc.) such that pavement overlay or design recommendations can be calculated. (Such quantitative analysis is outside of the scope of service in the proposed additional exploration; additional fees would be required.) Data are collected at 200-foot intervals in each travelled lane; testing is not performed in intersections for safety considerations.

An advantage of the FWD method is the ability to estimate pavement structural integrity and subgrade modulus even where Portland cement concrete (PCC) pavement sections are overlaid asphalt concrete (AC). The site has varying subgrade resistance values (R-values), even among similar soil types. In addition to delineating variations in pavement type, FWD testing can assist in delineating areas of weak subgrade soils, data which cannot be provided by GPR. Since FWD testing was developed specifically for pavement design, correlations exist to back-calculate the existing pavement section and subgrade strength. Based on a known Traffic Index (TI), the type of overlay or structural improvements required to bring the pavement to an acceptable thickness can be calculated for the proposed traffic loading. PCC pavements which have been overlaid cannot be visually inspected; FWD testing is a way to estimate their existing structural capacity which is important if they may remain in place. Since FWD will be performed in each lane, the proposed 200-foot spacing between test locations can be staggered between lanes in a pattern to maximize coverage effectiveness, providing data points a maximum of approximately 40 to 50 feet apart in the longitudinal direction, except at intersections.

**Task 4 – Traffic Counts and Traffic Index Calculations.**

RBF will contract with Counts Unlimited as a subconsultant to perform traffic counts for Washington Boulevard. The subcontractor shall perform a 7-day ADT vehicle counts for 7-day (both directions). The counts shall also include truck counts by axle classification at six (6) different locations along the Project route.

RBF will utilize the traffic count data to establish Equivalent Wheel Load (EWL) values such that a Traffic Index (TI) can be established following the County of Los Angeles Traffic Index Guidelines.

**Task 5 – Flashing Warning System Pedestrian Crossings.**

RBF will prepare flashing warning system improvement Plans/Specifications/Cost Estimate at the following intersections.

- Washington Boulevard at Fitzgerald Avenue
- Washington Boulevard at Daniel Avenue
- Washington Boulevard at Strong Avenue

RBF will coordinate with SCE for the electrical service point locations for each system. The flashing warning improvement plans will be prepared at 1"=20' scale and in accordance with latest standards set forth by the City of Commerce, 2012 CAMUTCD, and the May 2010 Caltrans Standard Plans and Standard Specifications, and latest addendums.

RBF will prepare the technical sections of the construction specifications for the flashing warning system and associated improvements. The specifications will conform to the applicable standards and specifications from the City of Commerce, "Caltrans Standard Plans and Specifications, May 2006 edition and the 2006 California MUCTD.

RBF will provide quantities of materials required for the installation of the traffic warning systems. An Engineering Cost Estimate will be prepared to identify the cost associated with the specific work required.



**Reason for Change(s):**

**Task 1-Legal Descriptions and Exhibits** - RBF has identified, and the City has requested, clarification of ownership of parcels along Washington Boulevard that either brings to question clear ownership, conflicting mapping of current Assessor Parcel Mapping and City Plate Mapping, or are impacted by the current design due to proposed project improvements. It is the intent of the City to secure this additional right-of-way to allow for the construction of the proposed improvements.

**Task 2 – ADA Ramp Special Design** –Constraints at many of the intersections limit the construction of accessible ramps for the disabled in accordance with ADA requirements and necessitate special design of these ramps within the constrained right-of-way. Twenty-five (25) curb ramp locations are located within narrow public right of way, adjacent to existing buildings, doorways, driveways, and other restrictive areas that require detailed investigation that the originally proposed standard ADA ramps cannot be constructed within these constrained limits.

**Task 3 – Additional Pavement Investigations and Analysis (FWD)** - Delineating PCC limits and to better determine appropriate R-Values to evaluate appropriate design sections is necessary to 1) quantify impacts to the project during construction, 2) facilitate project construction schedules and 3) determine a cost effective pavement section. The benefit of using the FWD method will allow for a better definition of the limits of PCC pavement and extent of removals or to remain in place, establishing economical pavement replacement sections, and controlling project costs and reducing potential schedule impacts to the public during construction early in the design.

**Task 4 – Traffic Index calculation** is required to provide appropriate wheel loading volumes to determine the pavement thickness for a particular pavement life. Washington Boulevard carries over 30,000 VPD with over a quarter trucks, to establish a cost effective pavement system the appropriate TI will need to be determined.

**Task 5 – Flashing Warning signs** are to be added at the specified intersections with marked crosswalks that are not currently controlled by traffic signals. These signs will be placed overhead with flashing yellow LED lighting such that they are not obscured by Truck Traffic. Their purpose is for safety and visibility.

Schedule	Estimated Hours	Subtotal Fees Requested
<b>Task 1 – Legals and Exhibits</b> - Completed 6 to 8 weeks from NTP.	<b>Task 1 - Title Reports/ Legal Descriptions:</b> 280 hours	<b>Task 1 -Title Reports/ Legal Descriptions:</b> \$42,240
<b>Task 2 – ADA Ramp Design</b> – Completed with Project Submittal Schedules	<b>Task 2 - Special Design ADA Ramps:</b> 110 hours	<b>Task 2 - Special Design ADA Ramps:</b> \$16,280

City of Commerce – Washington Blvd.  
Amendment #2 - Legal Descriptions, ADA Ramps & Pavement Investigation  
Date Prepared: September 13, 2012; Revised October 9, 2012

**Task 3 – Additional Pavement**

- Investigations - Complete within 5 weeks from the NTP
- Analysis & Report – Complete within 6 weeks from NTP

**Task 3 –Pavement**

Investigation: 116 hours

**Task 3 – FWD**

- Investigation: \$17,400
- Additional Analysis: \$6,200

**Task 4 –Traffic Counts and TI Calculation:**

- Perform Field Counts – Completed within 2 weeks

Analyze data and determine TI – Completed within 1 week

**Task 4 – Traffic Counts and TI Calculation:**

- Counts: 336 hours; (Subconsultant)
- TI Calc: 8 hours

**Task 4 – Traffic Counts/ TI Calculation:**

- Counts: \$7720; (Subconsultant)
- TI Calc: \$1200

**Task 5 –Flashing Warning System – Pedestrian Crossings:**

- Modify PS&E Documents – Completed within project delivery schedule

**Task 5 – Flashing Warning System Pedestrian Crossings:**

- Plans: 105 hours;
- Spec & Est.:12 hours

**Task 5 – Traffic Counts/ TI Calculation:**

- Plans: \$16,000;
- Spec & Est: \$1600

**Total Fee: \$108,640**

<b>Approval to Proceed:</b>	_____	_____
<b>City of Commerce By:</b>	<b>Danilo Batson / Assistant Director of Public Works</b>	<b>Date</b>





## AGENDA REPORT

MEETING DATE: December 4, 2012

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING THE FIRST AMENDMENT TO REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF COMMERCE AND CRAIG REALTY GROUP CITADEL, LLC FOR PAVING AND RESTRIPING OF SMITHWAY STREET

### RECOMMENDATION:

Approve the resolution approving the First Amendment to the Reimbursement Agreement between the City of Commerce and Craig Realty Group Citadel, LLC for paving and restriping of Smithway Street, and assign the number next in order.

### MOTION:

Move to approve the recommendation.

### BACKGROUND:

Craig Realty Group, LLC ("Craig Realty") is the owner and operator of the Citadel Outlets. Craig Realty proposed to coordinate with the City of Commerce (the "City") to repair certain portions of Smithway Street, near the Citadel. Craig Realty and its contractors proposed to repair the asphalt on Smithway Street, beginning from Tubeway Avenue west approximately 1,583 linear feet, from curb to curb, excluding any concrete gutters and center concrete swales. Craig Realty proposed to remove and or grind down, approximately 2 inches of existing asphalt on Tubeway Avenue, and replace with new asphalt based upon the City's specifications. Craig Realty, and its contractors would also provide any restriping and replacement striping that is required as part of paving repair project from the point of beginning to the end of the project.

On July 17, 2012, Craig Realty and the City entered into a Reimbursement Agreement for the restriping and asphalt repair work ("Reimbursement Agreement"). The work was to commence on or about August 10<sup>th</sup> or 17<sup>th</sup> and was to be completed within 48 hours from the time of commencement. The total cost of the work was originally estimated to be One Hundred Thousand Dollars (\$100,000), which would be split 50/50 between the City and Craig Realty.

On August 1, 2012, the parties mutually agreed that the following work was required to complete the repair work on Smithway Street:

- Grind and remove 3" (3 inches) of existing paving for an area characterized as 1,583 lineal feet of roadway surface by 57' (57 feet) in width. The original spec was for 2".
- Repave approximately 90,231 square feet (1,583 x 57 = 90,231) of roadway surface with 3" of depth Type III-C3 asphalt to be professionally installed and rolled with the proper equipment. Ben's Asphalt to provide barriers to prohibit vehicles from driving on such surface until material has cured.
- In order to provide additional strength, and extend the useful life of the asphalt, Contractor shall supply and properly install "Petromat" as part of the asphalt installation. Such material cost and labor is included in the price listed below.

The revised specifications caused the cost to increase to One Hundred Thirty Thousand and Two Hundred Ninety Three Dollars (\$130,293). Pursuant to the Reimbursement Agreement, the cost was required to be split 50/50 between the City and Craig Realty. The City will now pay Sixty Five Thousand One Hundred Forty Six Dollars and Fifty Cents (\$65,146.50) for the paving work on Smithway.

In order to have the work proceed on schedule, on August 2, 2012, the City Administrator, with the approval of the City Attorney, executed a Letter Contract that set forth the revised specifications and estimated costs. As a result, the August 2, 2012, Letter Agreement needs to be ratified.

On November 12, 2012, Craig Realty Group notified the City that American International Industries made a contribution of Eight Thousand Nine Hundred Dollars (\$8,900) for the street improvements performed on Smithway Street. This contribution should be applied equally to the additional expenditures incurred by both Craig Realty Group and the City.

**FISCAL IMPACT:**

The revised cost is estimated to be One Hundred Thirty Thousand and Two Hundred Ninety Three Dollars (\$130,293) with the following funding:

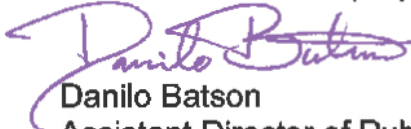
- Project Cost.....\$130,293.00
- American International Industries.....(\$ 8,900.00)
  - o Subtotal.....\$121,393.00
  - o Divided by 2 (Craig Realty Group & City).....\$ 60,696.50

Craig Realty Group has already reimbursed the contractor (Ben's Asphalt). The City portion or payment for the street improvements is Sixty Thousand Six Hundred Ninety-Six Dollars and Fifty Cents (\$60,696.50). Projected savings from this Fiscal Year Capital Improvement Program (CIP) will fund these improvements.

**RELATIONSHIP TO 2012 STRATEGIC GOALS:**

The issue before the Council is applicable to the following Council's strategic goal: *"Improve and maintain infrastructure and beautify our community"* as identified in the 2012 Strategic Plan.

Recommended and prepared by:



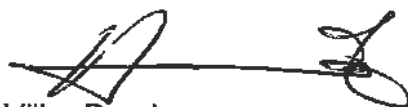
Danilo Batson  
Assistant Director of Public Services

Respectfully submitted,




Jorge Rifa  
City Administrator

Fiscal impact reviewed by:



Vilko Domic  
Director of Finance

Approved as to form:



Eduardo Olivo  
City Attorney



CRAIG REALTY GROUP

November 12, 2012

Via eMail  
Hard Copy via U.S. Mail

Mr. Zvi Ryzman  
Chief Executive Officer  
American International Industries  
2220 Gaspar Avenue  
Los Angeles, CA 90040

RE: Smithway Re-Paving Project

Dear Zvi,


I am in receipt of the \$8,900 check which Brian was kind enough to deliver to Susan Jennrich at our Citadel offices.

I hope that you are happy with the upgraded Smithway Street. It was truly a team effort between you, the City of Commerce, Craig Realty Group and our contractor, Ben's Asphalt. It also shows how much we can accomplish, if we all work together, pulling the rope in the same direction.

In closing, I want to thank you for being a man of your word. All too often, people lose sight of the value of their words. You have earned my trust and I look forward to working with you on our various endeavors in and around the City of Commerce.

Thank you again for your participation in this important project.

Sincerely,

  
Steven L. Craig  
/djc

cc: Mayor Lilia Leon  
Susan Jennrich

ghusers@steve.citadelryzman zvi 11-12-12





2012 AUG -6 PM 2: 31

**CRAIG REALTY GROUP**

August 2, 2012

Via eMail  
Hard Copy via U.S. Mail

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

RE: Paving Work on Smithway

Dear Jorge,

This letter shall serve to memorialize the understanding we reached during yesterday's impromptu conference call.

Per our agreement, the revised specifications for paving work on Smithway (north of Tubeway) are to be as follows:

- Grind and remove 3" (3 inches) of existing paving for an area characterized as 1,583 lineal feet of roadway surface by 57' (57 feet) in width. For your information, the original spec was for 2".
- Repave approximately 90,231 square feet ( $1,583 \times 57 = 90,231$ ) of roadway surface with 3" of depth Type III-C3 asphalt. All asphalt to be professionally installed and rolled with the proper equipment. Ben's Asphalt to provide barriers to prohibit vehicles from driving on such surface until material has cured.
- In order to provide additional strength, and extend the useful life of the asphalt, Contractor shall supply and properly install "Petromat" as part of the asphalt installation. Such material cost and labor is included in the price listed below.

The total cost of all such work associated with the revised specification is \$130,293. The \$130,293 cost shall be split 50/50 between The City of Commerce and Craig Realty Group-Citadel, LLC. Should the City of Commerce receive (obtain) donations for any portion of the paving costs, such donations shall be applied first to the total amount cost (\$130,293), thereby reducing the overall cost. The remaining balance (balance after applying the donation) shall then be split 50/50 between The City of Commerce and Craig Realty Group-Citadel, LLC.

4100 MacArthur Blvd., Suite 200 • Newport Beach, CA 92660  
v: 949/224-4100 f: 949/224-4101 [www.craigrealtygroup.com](http://www.craigrealtygroup.com)

Rifa, Jorge  
August 2, 2012  
Page 2

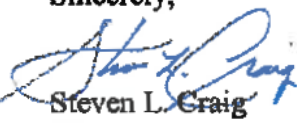
Additionally, Ben's Asphalt will be placing the excess materials "grindings" from the removal portion of the work, at the City's property, formerly known as the 26 acres, located on Telegraph Rd.

It should be further noted that Ben's Asphalt will follow the street closure plan prepared by City staff as well as provide all the necessary traffic safety delineators to protect vehicles traveling near to such repaving work.

So as to avoid any confusion, please confirm your agreement as to what I have outlined above by executing where provided for below. Please return a signed copy to me via email.

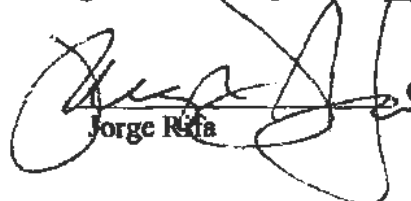
Thank you again for all your support, as well as that of your fine staff, in helping make our annual Clean-up Beautification Day a great success. I truly appreciate your support.

Sincerely,

  
Steven L. Craig  
/djc

cc: Danilo R. Baston, Assistant Director of Public Works  
John Yonai  
Bill Kelly  
Rino LaRosa  
Lori Smith  
Kevin Suess

Agreed and Accepted this 7<sup>th</sup> day of August, 2012

  
Jorge Rifa  
City Manager, City of Commerce

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING THE FIRST AMENDMENT TO REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF COMMERCE AND CRAIG REALTY GROUP CITADEL, LLC FOR PAVING AND RESTRIPIPING OF SMITHWAY STREET

WHEREAS, Craig Realty Group, LLC ("Craig Realty") is the owner and operator of the Citadel Outlets; and

WHEREAS, Craig Realty proposed to coordinate with the City of Commerce (the "City") to repair certain portions of Smithway Street, near the Citadel. Craig Realty, and its contractors proposed to repair the asphalt on Smithway Street, beginning from Tubeway Avenue west approximately 1,583 linear feet, from curb to curb, excluding any concrete gutters and center concrete swales; and

WHEREAS, Craig Realty proposed to remove and or grind down, approximately 2 inches of existing asphalt on Tubeway Avenue, and replace with new asphalt based upon the City's specifications. Craig Realty, and its contractors would also provide any restriping and replacement striping that is required as part of paving repair project from the point of beginning to the end of the project; and

WHEREAS, on July 17, 2012, Craig Realty and the City entered into a Reimbursement Agreement for the restriping and asphalt repair work ("Reimbursement Agreement"); and

WHEREAS, the work was to commence on or about August 10<sup>th</sup> or 17<sup>th</sup> and was to be completed within 48 hours from the time of commencement; and

WHEREAS, the total cost of the work was originally estimated to be One Hundred Thousand Dollars (\$100,000), which would be split 50/50 between the City and Craig Realty; and

WHEREAS, on August 1, 2012, the parties mutually agreed that the following work was required to complete the repair work on Smithway Street:

- Grind and remove 3" (3 inches) of existing paving for an area characterized as 1,583 lineal feet of roadway surface by 57' (57 feet) in width. For your information, the original spec was for 2".
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- In order to provide additional strength, and extend the useful life of the asphalt, Contractor shall supply and properly install "Petromat" as part of the asphalt installation. Such material cost and labor is included in the price listed below; and

WHEREAS, the revised specifications caused the cost to increase to One Hundred Thirty Thousand and Two Hundred Ninety Three Dollars (\$130,293); and

WHEREAS, in order to have the work proceed on schedule, on August 2, 2012, the City Administrator, with the approval of the City Attorney, executed a Letter Contract that set forth the revised specifications and estimated costs; and

WHEREAS, the August 2, 2012, Letter Agreement needs to be ratified.

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

Section 1. The August 2, 2012 Letter Contract executed by the City Administrator for the City of Commerce is hereby approved and ratified.

PASSED, APPROVED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Lilia R. Leon, Mayor

ATTEST:

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





## AGENDA REPORT

MEETING DATE: December 4, 2012

TO: HONORABLE CITY COUNCIL  
FROM: CITY ADMINISTRATOR  
SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, ACCEPTING THE WORK PERFORMED BY UNIQUE PERFORMANCE CONSTRUCTION INC., OF COSTA MESA, CALIFORNIA, UNDER THE CITY OF COMMERCE STANDARD CONTRACT FOR CASH CONTRACT NO. 1114 – 2011/2012 BUS SHELTER INSTALLATION PROJECT

### RECOMMENDATION:

Approve the resolution accepting the work performed by Unique Performance Construction Inc., under the Standard Contract for Cash Contract No. 1114 – 2011/2012 Bus Shelter Installation Project and assign the number next in order.

### MOTION:

Move to approve the recommendation.

### BACKGROUND:

As part of the FY 2006/07 Capital Improvement Project ("CIP") Budget, the City Council appropriated \$500,000 for the upgrade of various bus stop locations, in the City of Commerce (the "City"), including the installation of new shelters at certain locations.

In Fiscal Year 2008/09, the Community Development Department coordinated the installation of 17 bus shelters/benches in residential areas under the Community Development Block Grant Program.

As part of the Fiscal Year 2010/11, due to the fact that the engineering estimated for implementing the final Bus Shelter Project phase was twice the allocated funding, the City Council approved the implementation of the final phase over two fiscal year cycles in order to secure additional federal funds.

On December 20, 2011, the City Council approved the bid and contract documents, including the project Plans and Specifications and Notice Inviting Sealed Bids for this project, as prepared by Onward Engineering.

On April 3, 2012, the City Council awarded a standard contract to Unique Performance Construction Inc., of Costa Mesa, California, in the amount of \$333,255.00.

### ANALYSIS:

Unique Performance Construction has completed the work in conformance with the project plans and specifications, contract documents and grant requirements as of October 26, 2012.

The contractor provided all labor, materials, equipment, tools and incidentals necessary for the improvements, which include various repairs and upgrades to 73 City's bus stops in order to meet ADA requirements, improve safety and appearance, repair damaged sidewalk, etc. The contractors installed 16 new shelters (including solar powered transit lights), 37 new bus benches, 23 trash receptacles, 10 new bus stop signs, removal/replacement of 10,300 square feet of concrete, constructing 15 new ADA curb ramps, painting 940 linear feet of curb, etc.

At this point, the City Council can accept the project as satisfactory and complete. Upon acceptance of the project, staff will file the "Notice of Completion" with the County Recorder's Office for the project. Thirty-five (35) days after the recordation of the Notice of Completion by the County Recorder's Office, the City will release the Labor and Materials Bond, if requested by the bonding company, and make final payment of the 5% retention being withheld from the payment to Contractor, if no Stop Notices are filed within the 35-day period.

**FISCAL IMPACT:**

This activity can be carried out at this time without additional impact on the current operating budget, as funding for this activity has been approved and included in the FY 2006/07 and FY 2009/10 Capital Improvement Project Budgets, as follows:

\$400,000	Federal Transportation Administration
<u>\$100,000</u>	PTMSEA Prop 1-B
\$500,000	Total Project Budget

The contract awarded to Unique Performance Construction was for \$333,255.00. A project contingency of twenty percent (20%) or \$66,651.00 was also allocated for this project, for a total allocation of \$399,906.00.

All work has been completed in a satisfactory manner and in accordance with the Project Plans and Specifications as of October 26, 2012. The project was completed within the allocated budget with a final project cost of \$325,144.44 (2.4% below contract amount). The project contingency of \$66,651.00 was not utilized.

**RELATIONSHIP TO 2012 STRATEGIC GOALS:**

The issue before the Council is applicable to the following Council's strategic goal: "Improve and maintain infrastructure and beautify our community" as identified in the 2012 Strategic Plan.

Recommended by:

  
Claude McFerguson  
Director of Transportation

Respectfully submitted,

  
Jorge Rifa  
City Administrator

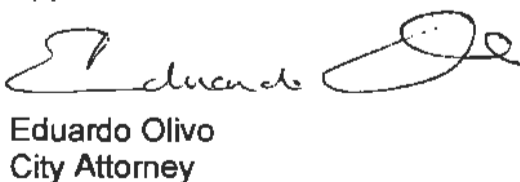
Recommended and Prepared by:

  
Danilo Batson  
Assistant Director of Public Services

Fiscal Impact Reviewed by:

  
Vilko Domic  
Director of Finance

Approved As To Form:

  
Eduardo Olivo  
City Attorney

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, ACCEPTING THE WORK PERFORMED BY UNIQUE PERFORMANCE CONSTRUCTION INC., OF COSTA MESA, CALIFORNIA, UNDER THE CITY OF COMMERCE STANDARD CONTRACT FOR CASH CONTRACT NO. 1114 – 2011/2012 BUS SHELTER INSTALLATION PROJECT

WHEREAS, on December 20, 2011, the City Council approved the Plans and Specifications and Notice Inviting Sealed Bids for the 2011/2012 Bus Shelter Installation Project; and

WHEREAS, on April 3, 2012, the City Council awarded a contract to Unique Performance Construction Inc., in the amount of \$333,255.00; and

WHEREAS, the work has been completed and performed in accordance with the Project Plans and Specifications as of October 26, 2012.

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

Section 1. The work performed by Unique Performance Construction Inc., of Costa Mesa, California, under the City of Commerce Standard Contract for Cash Contract No. 1114 - 2011/2012 Bus Shelter Installation Project is accepted as being satisfactory and complete.

Section 2. City staff is authorized to file the "Notice of Completion" with the Los Angeles County Registrar Recorder/County Clerk's Office and, thirty-five days thereafter, to release the Labor and Materials Bond if requested by the bonding company for the subject contract and make final payment of the 5% retention to contractor.

PASSED, APPROVED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Lilia R. Leon, Mayor

ATTEST:

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





## AGENDA REPORT

DATE: December 4, 2012

**TO:** HONORABLE CITY COUNCIL/SUCCESSOR AGENCY  
**FROM:** CITY ADMINISTRATOR/EXECUTIVE DIRECTOR  
**SUBJECT:** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA [OR THE SUCCESSOR AGENCY TO THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION], MAKING AN ELECTION TO RECEIVE PAYMENTS PURSUANT TO HEALTH AND SAFETY CODE SECTION 33607.5 (b) FOR COMMERCE REDEVELOPMENT PROJECT AREA #3

**RECOMMENDATION:**

Approve and adopt the Resolution, making an election to receive payments pursuant to Health and Safety Code Section 33607.5 (b) for Commerce Redevelopment Project Area #3, and assign the number next in order.

**MOTION:**

Move to approve the recommendation.

**PURPOSE:**

The purpose of this report, and pursuant to Health and Safety Code Sections 33333.6 (e)(2) and 33607.5, is for the City Council to elect to receive its share of the twenty-five percent (25%) tax increment pass-through payment authorized by Health and Safety Code Section 33607.5 (b) commencing with the first fiscal year the Agency is required to make such payments to the affected taxing entities and continuing each year thereafter.

**BACKGROUND/ANALYSIS:**

Section 33607.5 and 33607.7 of the Health & Safety Code sets forth the manner in which payments will be distributed to affected taxing entities from community redevelopment project areas adopted or amended on or after January 1, 1994. The community may elect to receive its share of the first 25 percent of tax increment as described in Health & Safety Code Section 33607.5 (b).

Currently, the County does not have a record of community election as described above for the following project. Therefore, if our General Fund is to receive said funds going forward, the City Council must elect to pass the attached resolution. The County must be notified by December 10, 2012 to acknowledge its decision to receive its share of the 25 percent tax increment to allow for the correct pass-through calculation.


**FISCAL IMPACT:**

Staff is projecting that the General Fund will recognize approximately \$11,500 annually.

**RELATIONSHIP TO 2009 STRATEGIC GOALS:**

The proposed Resolution is associated with Council's goal of making financially and economically sound decisions consistent with economic conditions.

Recommended by:



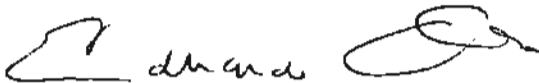
Vilko Domic  
Director of Finance/City Treasurer

Respectfully submitted,



Jorge Rifa  
City Administrator/  
Executive Director

Approved as to Form



Eduardo Olivo  
City Attorney/Agency Counsel

Attachment - Resolution

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE,  
CALIFORNIA [OR THE SUCCESSOR AGENCY TO THE COMMERCE  
COMMUNITY DEVELOPMENT COMMISSION], MAKING AN ELECTION TO  
RECEIVE PAYMENTS PURSUANT TO HEALTH AND SAFETY CODE SECTION  
33607.5 (b) FOR COMMERCE REDEVELOPMENT PROJECT AREA #3

WHEREAS, the Redevelopment Agency of the City of Commerce ("Agency") has prepared an amendment to the redevelopment plan (the "Redevelopment Plan") for the Project Area #3 to create a new project area (January 1994) and include new area (58 acres) under the auspices of redevelopment; and

WHEREAS, Section 33333.6 (e)(2) of the Health and Safety Code provides that if an Agency amends the redevelopment plan to create a new project area (Project Area #3 - January 1994) and include new area (58 acres) under the auspices of redevelopment then the Agency shall make the payment to affected taxing entities required by Section 33607.7; and

WHEREAS, Section 33607.7 of the Health and Safety Code provides that if the Agency amends the redevelopment plan to create a new project area (Project Area #3 -- January 1994) and include new area (58 acres) under the auspices of redevelopment and no pass through agreement exists, the amounts required pursuant to subdivisions (b), (c) (d) and (e) of Section 33607.5 must be paid to each affected taxing entity, including the City, if the City elects to receive such tax increments; and

WHEREAS, the City of Commerce is an affected taxing entity under Section 33607.5.

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

Section 1. Pursuant to Health and Safety Code Sections 33333.6 (e)(2) and 33607.5, the City Council hereby elects to receive its share of the twenty-five percent (25%) tax increment pass-through payment authorized by Health and Safety Code Section 33607.5(b) commencing with the first fiscal year the Agency is required to make such payments to the affected taxing entities and continuing each year thereafter.

Section 2. That the Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Resolution and thereupon the same shall take effect and be in force.

PASSED, APPROVED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Lilia R. Leon, Mayor

ATTEST:

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







# AGENDA REPORT

Meeting Date: December 4, 2012

TO: Honorable City Council

FROM: City Administrator

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING THE FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF COMMERCE AND CLEAN ENERGY

## RECOMMENDATION:

Approve the Resolution and assign the number next in order.

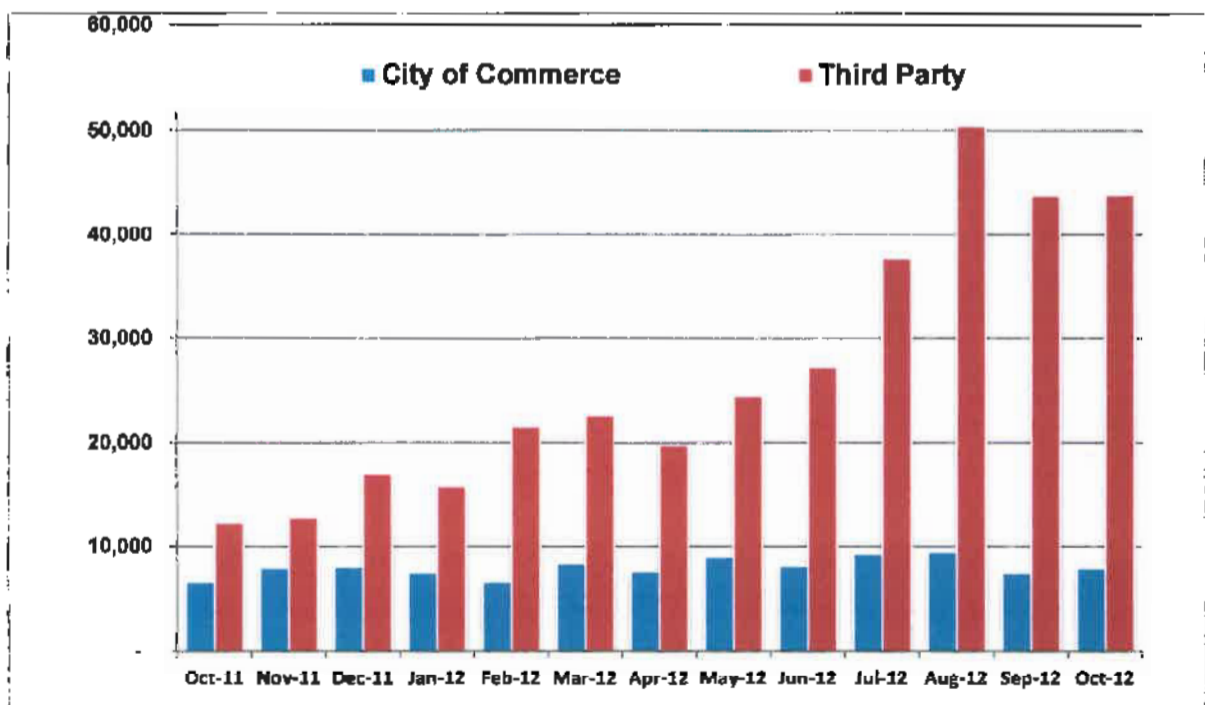
## MOTION:

Approve the recommendation.

## BACKGROUND:

On July 6, 2010, the City Council approved an agreement with Clean Energy for the fuel supply, operations and maintenance of the City's LNG/LCNG public fueling station. Over the past twelve month period (October 2011 – October 2012), outside usage of the LNG/LCNG fueling station has continued to increase (see volume consumed chart below).

Volume Consumed Chart - Gasoline Gallon Equivalent (GGE)



Total Annual Usage	City of Commerce	139,958
	Outside Fuel Sales	247,029

## **ANALYSIS:**

Based on the growth pattern (forecast) of outside sales, upgrades are strongly recommended to the existing capital equipment for the LNG/LCNG fueling station. The equipment upgrades are needed in order to keep up with rising service demands and avoid the station being “out-of-service” due to maintenance related issues and/or availability of parts.

There are two options available to the City at this time. Those options are as follows:

**1. The City can choose to not upgrade the station at this time.**

**Cost / Benefit**

- Initiate Request for Proposal (RFP) and go out to bid;
- No cost to City / no upgrade to equipment;
- Decreased revenue from the station due to long wait times;
- Businesses within the City will not have access to high flow capacity CNG to serve high fuel fleets. (i.e. trucking and distribution companies); and
- The City **will not** have a back-up system in place should primary LCNG pump fail.

**2. Clean Energy pays for cost of upgrading the station.**

**Cost / Benefit**

- The cost estimate to upgrade the station is approximately \$650,000;
- Creates new infrastructure at the station with improved fueling time;
- No cost to the City, exercise two, three year extensions to current agreement;
- Save capital dollars for the City;
- Increase revenue paid to the City; and
- The City **will** have a back-up system in place should primary LCNG pump fail.

## **SUMMARY**

Over the past two years, Clean Energy has provided outstanding professional services for fuel supply, operations and maintenance of the City's LNG/LCNG public access fueling station. In an effort to expand the capabilities of the station and build on their partnership with the City, in exchange for extending the current professional services agreement for six years, Clean Energy has proposed the following:

- Clean Energy will cover cost to upgrade capital equipment at the LNG/LCNG fueling station (approximately \$650,000), which shall include a new LCNG pump that will provide a built-in redundancy at the station, replace the 3000 psi nozzle with 3600 psi nozzles on existing dispensers for faster fueling; and upgrade the PLC panel to accommodate the new updates to the system equipment and operations; and
- Increase royalty payments to the City (see royalty chart below).

The City's current royalty payment rate is .10 for every GGE of outside fuel sales sold. The new royalty payment proposed by Clean Energy is as follows:

Year	Royalty	Estimated Payment
1	.15	\$43,200
2	.15	\$43,200
3	.15	\$43,200
4	.25	\$72,000
5	.25	\$72,000
6	.25	\$72,000
	<b>Total</b>	<b>\$345,600</b>

It should be noted that the estimated royalty payments to the City are based on current average monthly usage. Actual payments are determined based on volume at the station. Payments may be slightly higher or lower than forecast based on actual usage.

The proposed improvements to the station will:

- Have a positive impact to the City's transit fleet and local business community;
- Build a critical redundancy into the station in the event of an emergency;
- Decrease customer wait time due to faster fueling capabilities;
- Increase revenue paid to the City; and
- Meet the City's market share with reliable and faster service as new competitive fueling station's come on line.

Therefore, after careful review of Clean Energy's proposal and, based on their past performance, staff is recommending that the City undertake option two referenced above by entering into the First Amendment Professional Services Agreement with Clean Energy that will provide for the extension of the Agreement term and the facility upgrades.

#### **FISCAL IMPACT:**


If option No. 2 is approved, Clean Energy has agreed to provide the same outstanding level of service; increase royalty payments to the City; and absorb the capital equipment cost (approximately \$650,000) for the upgrades needed at the City's LNG/LCNG fueling station.

As a result, the proposed activity can be carried out with no cost to the City or impact on the current operating budget.

#### **RELATIONSHIP TO 2012 STRATEGIC GOALS**

This agenda item relates to the 2012 strategic planning goal: "review and update services and activities to increase efficiency", as the proposed recommendation outlined in this report assist in mitigating the City's transportation operating and capital equipment replacement cost.

Recommended by:

  
Claude McFerguson  
Director of Transportation

Respectfully submitted,

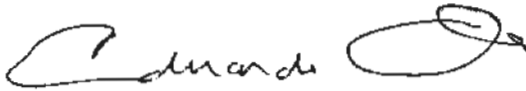
  
Jorge Rifá  
City Administrator

Budget Impact Review by:



Vilko Domic  
Director of Finance

Approved as to Form:



Eduardo Olivo  
City Attorney

Attachments:

First Amendment Professional Services Agreement with Clean Energy  
Clean Energy's Station Upgrade and Contract Extension Letter, Charles Love Jr.,  
Business Development Manager, Dated November 2, 2012

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA,  
APPROVING THE FIRST AMENDMENT TO THE PROFESSIONAL SERVICES  
AGREEMENT BETWEEN THE CITY OF COMMERCE AND CLEAN ENERGY

WHEREAS, on July 6, 2010, the City of Commerce and the Clean Energy entered into a professional services agreement to provide regular fuel supply, operations and maintenance of the City's public access liquefied natural gas (LNG) and compressed (from liquefied) natural gas (LCNG) fueling station, located at 5940 Sheila Street, Commerce, California; and

WHEREAS, over the past twelve month period, outside usage of the LNG/LCNG fueling station has continued to increase; and

WHEREAS, based on the growth pattern of outside sales, upgrades are needed for the existing capital equipment for the LNG/LCNG fueling station to keep up with the rising service demands and to avoid the station being out of service due to maintenance related issues; and

WHEREAS, Clean Energy has requested a 6-year extension of the Agreement; and

WHEREAS, in exchange for the extension, Clean Energy will pay for the cost of upgrading the station, create new infrastructure at no out of pocket cost to the City, improve fueling time for City/Public vehicles, and increase royalty payments to the City.

WHEREAS, the City believes that an extension of the Agreement, as proposed by Clean Energy, would be beneficial to the City.

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

Section 1. The First Amendment to the Professional Services Agreement between the City of Commerce and Clean Energy is hereby approved.

Section 2. The Mayor is hereby authorized to execute the First Amendment for and on behalf of the City of Commerce.

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

PASSED, APPROVED and ADOPTED this 4th day of December 2012.

\_\_\_\_\_  
Lilia R. Leon, Mayor

Attest:

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



**FIRST AMENDMENT TO THE  
PROFESSIONAL SERVICES AGREEMENT**

This First Amendment ("First Amendment") to Professional Services Agreement by and between the City of Commerce, a Municipal Corporation ("City"), and Clean Energy, a California corporation ("Contractor") dated July 6, 2010 (the "Agreement") is made and executed, by and between City and Contractor, to be effective as of the \_\_\_ day of \_\_\_\_\_ 2012 ("First Amendment Effective Date").

City and Contractor are, from time to time, referred to herein collectively as the "Parties". Capitalized terms used, but not defined herein shall have the meaning ascribed to such term in the Agreement.

**RECITALS**

**WHEREAS**, the Parties entered into the Agreement; and

**WHEREAS**, Clean Energy has requested an extension of the Agreement term; and

**WHEREAS**, in exchange for the extension, Clean Energy has agreed to increase royalty payments to the City and make, at its own cost, certain capital upgrades to the City's LNG/LCNG fueling station; and

**WHEREAS**, the Parties wish to amend the Agreement on the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations of the Parties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**AMENDMENT**

I. Amendment to Section 1 – Scope of Services and Schedule of Performance. Section 1 is hereby amended by adding the following language to the end of the Section:

"Contractor shall provide City with such professional services as are set forth in Exhibit C, Station Modifications and Improvements, which is attached hereto and incorporated herein by reference."

II. Amendment to Section 3 – Term of Agreement. Section 3 is hereby amended by deleting the Section in its entirety and replacing it with the following language:

"The initial term of this Agreement shall commence on the Effective Date and end on the three (3) year anniversary of the date the City first purchases LNG from Contractor at the Facility ("Commencement Date"). Contractor will notify City of the Commencement Date in writing. The City shall extend the term of the Agreement for two (2) three (3) year terms and shall have the option to extend the Agreement for one (1) three (3) year term, each an "extension term". Beginning on the effective date of the applicable extension term and on each one year anniversary thereof, the per LNG gallon delivery price of \$0.549 and the hourly labor rates of \$96.00 and \$144.00 listed in Exhibit A shall be increased by the change in the United States Bureau of Labor Statistics Consumer Price Index All Items, for All Urban Consumers, Los Angeles-Anaheim-Riverside, California (1982-84=100), from the Effective Date of this Agreement for the first such adjustment, or the date of the last adjustment for each subsequent adjustment. If the City desires to exercise the option, the City shall advise Contractor at least thirty (30) days prior to the expiration of the then-current term. The initial term and any extension term are referred to herein as the 'Term'."

III. Amendment to Section 11(a) – Liquidated Damages – Fuel Supply. Section 11(a) is hereby amended by adding the following language to the end of the Section:

"Notwithstanding anything to the contrary in this Agreement or the attached exhibits, Contractor shall not be required to pay LDs if a vehicle is unable to refuel because of the lack of LNG supply from the Supplier/Operator

if such inability to refuel occurs during the period of time in which Contractor is performing the station modifications and improvements described in Exhibit C.”

- IV. Amendment to Section 11(b) – Liquidated Damages – Repairs. Section 11(a) is hereby amended by adding the following language to the end of the Section:

“Notwithstanding anything to the contrary in this Agreement or the attached exhibits, Contractor shall not be required to pay liquidated damages under this Section if such inability to initiate emergency repairs occurs during the period of time in which Contractor is performing the station modifications and improvements described in Exhibit C.”

- V. Amendment to Exhibit A – Remittance to the City. The Section entitled Remittance to the City on page 27 of Exhibit A is hereby amended by deleting the second sentence in the section and replacing it with the following language:

“Furthermore, CE will provide the City with a fixed \$0.10 royalty on each gallon of natural gas sold to all non-city vehicles (a “Royalty”) during the initial term of the Agreement. Beginning on September 8, 2013, the Royalty shall increase to \$0.15 and beginning on September 8, 2016, the Royalty shall increase to \$0.25. The Royalty for the last extension term shall be determined by the Parties who shall negotiate the new rate in good faith prior to the commencement of the last extension term but such new Royalty rate shall, in no event, exceed \$0.40.”

- VI. Amendment to Exhibit A – Remittance to the City. The Section entitled Remittance to the City on page 27 of Exhibit A is hereby amended by deleting the second paragraph in the section in its entirety and replacing it with the following language:

“CE will submit a reimbursement check made payable to the City on a monthly basis.”

- VII. Amendment to Agreement. The Agreement is hereby amended by adding a new exhibit to the Agreement, Exhibit C, which contains the following language:

#### **“Exhibit C”**

Contractor (“CE”) will provide the following equipment and/or perform the following site modifications:

##### **Equipment:**

- Replace 3000 psi nozzle with a 3600 psi nozzle on existing dispenser.
- One (1) LCNG pump, with dedicated LCNG fan assisted ambient vaporizer.
- One (1) CNG storage vessel with associated valves, relief valves and drain tubes to function in conjunction with other CNG storage vessel.
- A NorthStar designed and fabricated fisher valve assembly to replace old priority panel.
- All natural gas piping, including shop-fabricated and field-fabricated vacuum insulated pipe, including valves, check valves, transmitters as needed to accomplish LCNG processes.
- Safety systems for the fueling area including methane detection, fire detection, and emergency stop buttons. Safety devices will interface with the PLC.
- Upgrade instrument air compressor.
- Update safety signage for LNG and LCNG equipment, as needed.

**Engineering and Permitting:** CE will generate the detailed engineering design and permit package, including:

- Submitting drawing package to obtain the necessary department permits.
- Mechanical and electrical drawing packages with California PE stamp, as required by local jurisdictions.
- Submit drawing package to obtain the necessary department permits.

**Civil and Electrical Construction:** CE will perform civil construction, including:

- Install all conduits from new control panel to new equipment.



- Perform all field wiring of NorthStar provided equipment, including installation of electrical conduit and seal-offs.
- Provide mechanical insulation for field installed piping.

**LCNG System:** The LCNG system upgrade will include:

- The existing LNG/LCNG pumps will be used and will be tied into the new equipment accordingly. The existing LCNG pump is gravity fed. The LCNG pump feed circuit will be re-designed to be pressure fed off of the new pump.
- Install one (1) 15 gallon per minute LCNG pump by CS&P or equal to run in parallel with the existing 8 gpm LCNG pump. Capacity is nominally 1,275 scfm. CNG tubing and hardware will be upgraded to handle the additional capacity.
- Provide and install one fan assisted high pressure LCNG ambient vaporizer by Cryoquip or equal to run in series with the 15 gpm LCNG pump.
- Install high pressure CNG storage container, 5500 psi MAWP that will be able to stack next to the existing storage containers. Associated high pressure tubing will be installed as needed.
- The 3,000 psi hose will be upgraded to a 3,600 psi hose on the exiting Kraus dispenser.
- Provide all necessary control valves, pressure and temperature transmitters, and piping.
- Process piping will be vacuum jacketed, with mechanical insulation installed where needed on non-vacuum jacketed pipe sections.

**Equipment Installation and Commissioning:**

- Installation is included and covers the cost of engineers, skilled technicians and station commissioning.

\*: This scope of work assumes that the existing electrical system is sufficient for the station upgrade. The site may need electrical upgrades which are not covered in this scope of work.”

- VIII. Terms and Conditions of the Agreement. Other than as expressly set forth in this First Amendment, all of the terms and conditions of the Agreement shall remain in full force and effect. To the extent there is a conflict between the terms of this First Amendment and the terms of the Agreement, the terms of this First Amendment shall control to the extent of such conflict.
- IX. Governing Law. This First Amendment shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of California.
- X. Counterparts. This First Amendment may be executed in two or more counterparts, each of which shall constitute an original, but all of which when taken together shall constitute but one and the same Agreement.

*[Signature Page to Follow]*

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be signed as of the First Amendment Effective Date.

**CLEAN ENERGY**

**CITY OF COMMERCE**

By: \_\_\_\_\_  
 Name: Peter Grace  
 Title: SVP Sales & Finance

By: \_\_\_\_\_  
 Lilia Leon  
 Mayor

**ATTEST:**

By: \_\_\_\_\_  
Linda K. Olivieri  
City Clerk

**AS TO FORM APPROVED**

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

[www.cleanenergyfuels.com](http://www.cleanenergyfuels.com)

November 2, 2012



Mr. Claude McFerguson  
Director of Transportation  
City of Commerce  
5555 Jillson Street  
Commerce, CA 90040

RE: Station Upgrade & Contract Extension

Mr. McFerguson:

On behalf of Clean Energy (CE), it has been a pleasure working with you throughout the initial term of our LNG/LCNG supply, maintenance and retailing agreement. In an effort to expand the capabilities of the station and our partnership, Clean Energy is pleased to propose the installation of a new high capacity, LCNG pump, which will approximately triple the speed of CNG flow from the station while providing a back-up LCNG pump. The new LCNG pump will provide the following benefits to the City:

- Decreased fuel time for transit fleet
- Improved infrastructure to enable Commerce to meet growing demand for CNG
- Enable Commerce to meet fueling demands of local businesses providing local jobs and revenue
- Increased revenue to Commerce from royalty agreement with Clean Energy
- Provide Back-up LCNG pump to safeguard Commerce transit operations

Our proposal contemplates the design, procurement, engineering, permitting, installation and follow-on maintenance of the following equipment and site modifications:

- Replace 3000 psi nozzle with a 3600 psi nozzle on existing dispenser
- One (1) LCNG pump, with dedicated LCNG fan assisted ambient vaporizer
- One (1) CE designed and fabricated LCNG panel.
- All natural gas piping, including shop-fabricated and field-fabricated vacuum insulated pipe, including valves, check valves, transmitters as needed to accomplish LCNG processes.
- Safety systems for the fueling area including methane detection, fire detection, and emergency stop buttons. Safety devices will interface with the PLC.
- All field wiring from the CE provided PLC to the LNG/LCNG equipment and fuel management system, including seal offs and above ground conduit which extends from Contractor installed below grade conduit.
- Update safety signage for LNG and LCNG equipment.

**Engineering and Permitting:** Clean Energy will generate the detailed engineering design and permit package, including:

- Submitting drawing package to obtain the necessary department permits.
- Civil, mechanical, and electrical drawing packages with California PE stamps.
- Submit drawing package to obtain the necessary department permits.



**Civil and Electrical Construction:** Clean Energy will perform civil construction, including:

- Install all conduits from new control panel to new equipment. Perform all field wiring of NorthStar provided equipment, including installation of electrical conduit and seal-offs.
- Provide mechanical insulation for field installed piping.

**LCNG System:** The LCNG system upgrade will include:

- The existing LNG/LCNG pumps will be used and will be tied into the new equipment accordingly. The existing LCNG pump is gravity fed. The LCNG pump feed circuit will be re-designed to be pressure fed off of the new pump.
- Install One (1) 2-door control panel.
- Install one (1) 15 gallon per minute LCNG pump by CS&P or equal to run in parallel with the existing 8 gpm LCNG pump. Capacity is nominally 1.275 scfm. CNG tubing and hardware will be upgraded to handle the additional capacity.
- Provide and install one fan assisted high pressure LCNG ambient vaporizer by Cryoquip or equal to run in series with the 15 gpm LCNG pump.
- Provide all necessary control valves, pressure and temperature transmitters, and piping.
- The LCNG pump must be located within the existing containment facility

**Miscellaneous Equipment:** Clean Energy will install the balance of equipment required for the complete system, including:

- The PLC control system upgrades necessary are manufactured by Cybertron, Inc. and programmed under CE direction. The PLC will be upgraded to accommodate the new updates to system equipment and operations.

There are several options available to the City at this time. Below we have tried to expound upon these options; however, please note that they are only those determined to be the most prominent. Other options may exist; and, if they do, Clean Energy would be glad to discuss them with the City.

1) The City of Commerce can choose to not upgrade the station.

Cost / Benefit:

- No cost to city / no upgrade to equipment
- Decreased revenue from the station
- Businesses within city will not have access to high flow capacity CNG to service high fuel use fleets, (i.e. trucking and distribution companies).
- City of Commerce transit fleet will not have back-up system should primary LCNG pump fail

2) City pays for upgrade to station

Cost / Benefit:

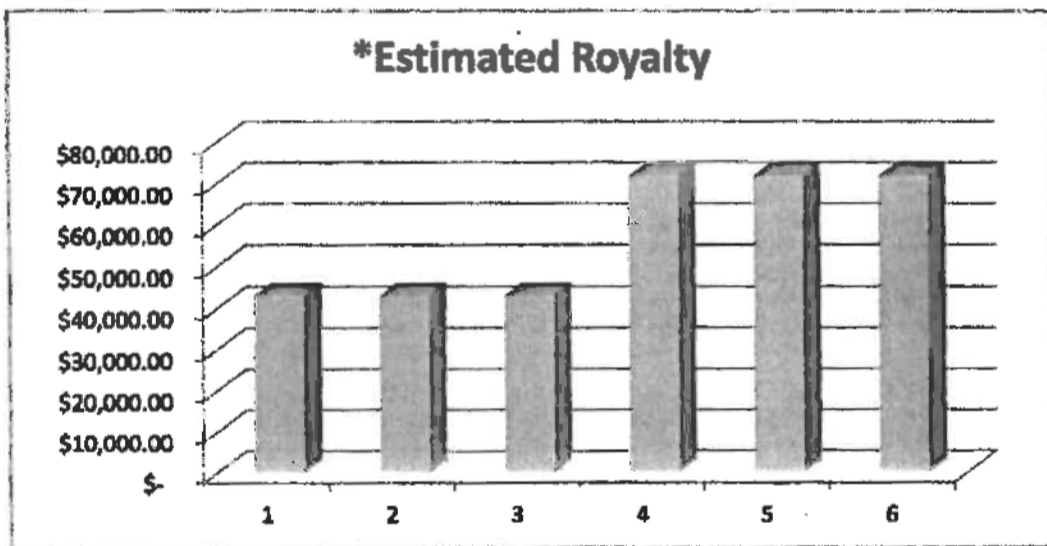
- Our preliminary cost estimate for proposed station upgrades are in excess of \$650,000.00



- Clean Energy continues to operate station in existing state. City extends current agreement and or goes out to bid.
- 3) Clean Energy pays the costs of upgrading the station
- Cost / Benefit:
- No cost to city, exercise two three year extensions to current agreement
  - Clean Energy increases royalty payments to City of Commerce (see chart)
  - City of Commerce is in position to provide fueling services for local businesses utilizing the new LCNG technologies
  - Creates new infrastructure for the City of Commerce at no out of pocket cost to City
  - Improved fueling time for City of Commerce transit fleet
  - Back-up infrastructure for fueling City transit fleet
  - New customers, usage and royalties to the City of Commerce

**New Proposed Royalty Agreement:**

Year	Royalty	*Estimated Payment
Year 1	.15	\$43,200.00
Year 2	.15	\$43,200.00
Year 3	.15	\$43,200.00
Year 4	.25	\$72,000.00
Year 5	.25	\$72,000.00
Year 6	.25	\$72,000.00
<b>*Estimated Royalty Payments</b>		<b>\$345,600.00</b>



\*Estimated Royalty Payments to the City of Commerce are based on current the average monthly station volume for the last 7 months from January 2012 to July 2012. Actual payments

3020 Old Ranch Parkway, Suite 400  
Seal Beach, California 90740  
562.936.7187

Charles E. Love Jr.  
Transit Business Development

[www.cleaneenergyfuels.com](http://www.cleaneenergyfuels.com)

are determined based on actual volume sold at station. Payments may be higher than forecasted or lower than forecasted based on volume.



**Conclusion:**

Clean Energy values our relationship with the City of Commerce and we are optimistic about continuing it for years to come. The proposed improvements to the facility will have a positive impact upon the local business community while increasing revenue paid to the City and building critical redundancy into the station for the transit fleet.

Please understand that Clean Energy is fully prepared to support the City in whichever choice is deemed in the best interest of the City of Commerce. Should the City decide to move forward with upgrading the station, Clean Energy is fully prepared to undertake Option 3, which we believe can be accomplished within four months of notice to proceed from the City.

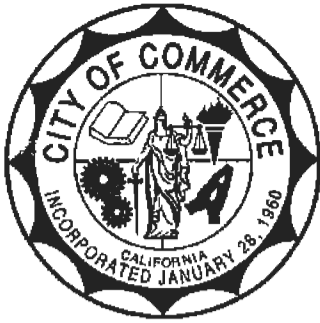
We believe this is the best value choice for the City, to approve the existing options of our current LNG/LCNG fuel supply maintenance and retailing agreement with its preferred partner Clean Energy. This will save capital dollars for the City at the same time increase the revenue paid to the City of Commerce.

Thank you for your consideration of this proposal and I look forward to working with you to improve the station for the fine City of Commerce.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles E. Love Jr.", written over a horizontal line.

Charles E Love Jr.  
Business Development Manager



# AGENDA REPORT

Meeting Date: 12/4/2012

**TO: HONORABLE CITY COUNCIL**  
**FROM: CITY ADMINISTRATOR**  
**SUBJECT: CLARIFICATION OF NEW RESIDENT ACTIVITY CARD FEE INCREASE APPROVED ON NOVEMBER 20, 2012**

**RECOMMENDATION:**

Council considered this item at its meeting of November 20, 2012 and approved the Parks and Recreation Department's recommendation to end the \$.50 Aquatorium admission fee for residents and to increase the cost of Resident Activity Cards by \$2. This item has been agendized at the request of Mayor Leon and Mayor Pro Tempore Baca Del Rio, for clarification purposes.

**MOTION:**

Council discretion.

**BACKGROUND:**

At its meeting of November 20, 2012, Council voted to eliminate the \$.50 Aquatorium admission fee for residents and increase the fee for each of the three types of Resident Activity Cards by \$2 each. The increase in two dollars for each Resident Activity Card is intended to compensate for the loss of revenue associated with the discontinuation of the Aquatorium admission fee (\$5,455 annually). The elimination of the Aquatorium admission fee and \$2 increase for each Resident Activity Card was recommended by the Parks and Recreation Commission.

Although the annual review of Resolution 10-49 (fee schedule) was also presented at the November 20, 2012 meeting, the \$2 increase in Resident Activity Cards was proposed to Council as a separate item from the fee schedule. Had Council not taken action on November 20, 2012 to increase the cost of each Resident Activity Card by \$2, the existing three-year fee schedule did not include this increase. The \$2 increase was specifically tied to the elimination of the Aquatorium admission fee, to compensate for the loss of revenue. Because the timing of the Parks and Recreation Commission's recommendation coincided with the annual review of the fee schedule resolution, staff combined both items.

The Parks and Recreation Department supports the recommendation of the Parks and Recreation Commission to discontinue the collection of the \$.50 entrance fee as well as the increase in cost for each of the three Resident Activity Cards, which will compensate for the revenue loss. If a card holder uses the pool eight times in one year, the card holder will have paid the increased cost of the Resident Activity Card (\$2) in the first four visits and the remaining visits will be at no cost. The holders of Resident Activity Cards are frequent users of the facility and the two dollar increase will allow for unlimited entry into the Aquatorium.

The City of Commerce fee schedule is updated and adopted annually. The attached fee schedule includes increases previously adopted by Council to be phased in over time.

Per Council action on November 20, 2012, the new cost of the Resident Activity Cards is as follows:

- Basic Card \$12 (up from \$10)
- Plus Card \$37 (up from \$35)
- Premier Card \$62 (up from \$60)

Staff has also performed a survey of fees charges in other Cities as part of the review of the fee schedule and the Strategic Planning Process. Based on this review staff is not proposing any additional changes to the fee schedule at this time.

**ANALYSIS:**

At its November 20, 2012 meeting, Council took action to eliminate the \$.50 Aquatorium admission fee for residents and to increase the cost of each Resident Activity Card by \$2.

**FISCAL IMPACT:**

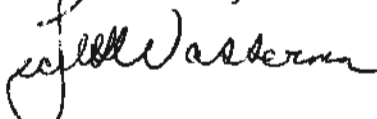
Council's reconsideration of the \$.50 Aquatorium resident entrance fee and \$2 increase to the cost of each Resident Activity Cards may have an impact on revenues. If Council rescinds the \$2 increase for Resident Activity Cards and upholds the discontinuation of the \$.50 Aquatorium entrance fee for residents, a loss of \$5,455 is expected.

If Council upholds the discontinuation of the \$.50 Aquatorium resident entrance fee and the \$2 increase for Resident Activity Cards, a nominal positive impact on revenues is expected.

**RELATIONSHIP TO 2009 STRATEGIC GOALS:**

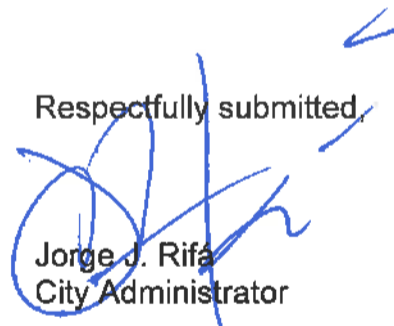
This item is associated with Council's Strategic Objective 2: Grow revenues to ensure all expenses are being met so that we can remain fiscally responsible and continue to provide services to the residents.

Recommended by:



Scott Wasserman  
Director of Parks & Recreation

Respectfully submitted,



Jorge J. Rifa  
City Administrator

Fiscal impact reviewed by:



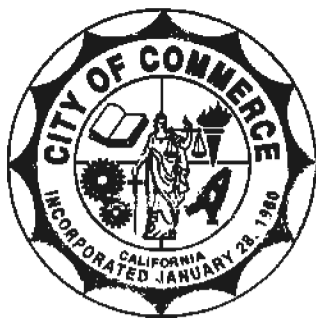
Vilko Domic  
Director of Finance

Approved as to form:



Eduardo Olivo  
City Attorney





# AGENDA REPORT

DATE: December 4, 2012

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: DISCUSSION OF POTENTIAL AMENDMENTS TO THE CITY'S ZONING ORDINANCE RELATED TO THE CITY'S INDUSTRIAL ZONES AND PERMITTED USES

**RECOMMENDATION:**

At the request of Mayor Leon and Councilmember Robles, the City Council will receive a report regarding options for amending the City's Zoning Ordinance and provide appropriate direction to staff with respect thereto.

**MOTION:**

Council Approve the recommendation.

**BACKGROUND/ANALYSIS:**

Councilmembers and staff have been meeting with members of the Industrial Council. These meetings have focused on topics such as but not limited to, permitted uses in the City's Commercial Manufacturing (C/M-1) zone, the business license process, unlicensed businesses, and ways staff and the Industrial Council can continue to work together to be more efficient and business friendly.

At the November 12, 2012 meeting, the group discussed some difficulties associated with the permitted uses in the City's C/M-1 zone. The permitted uses are set forth in Table 19.11.030A (Uses in Industrial Districts) of the Commerce Municipal Code (CMC). Generally, the uses are listed as different Standard Industrial Classification (SIC) codes under a basic use category such as 'Manufacturing'. Uses are assigned an SIC, which is shown as a number. For example, manufacturing uses are broken down into codes such as 22, 23, 283, 284 and alike, as shown below in a portion of table 19.11.030A.

Use	C/M-1	M-1	M-2	Notes and Exceptions
4. Manufacturing				a. Prohibited in C/M-1, M-1, and requires conditional use permit in M-2:
4.1 SIC codes 22, 27, 283, 284, 31*, 32*, 36, 38, 39	P/C	P	P	• 261 (Pulp Mills) • 262 (Paper Mills)
4.2 SIC code 23	C	C	C	• 263 (Paperboard Mills)
4.3 SIC codes 25, 26*, 30, 35	X	P/C	P	• 281 (Industrial Inorganic Chemicals) • 282 (Plastics Materials) • 285 (Paints, Varnishes)
4.4 SIC codes 21, 24, 289*, 34*, 37	X	P/C	P/C	• 286 (Industrial Organic Chemicals) • 287 (Agricultural Chemicals) • 2892 (Explosives)
4.5 SIC codes 29*, 33	X	X	C	• 291 (Petroleum Refining) • 311 (Leather Tanning and Finishing) • 324 (Hydraulic Cement) • 325 (Structural Clay Products) • 327 (Concrete, Gypsum, and Plaster Products) • 3292 (Asbestos Products) • 348 (Ordnance and Accessories) • 3471 (Electroplating, Plating, Polishing, Anodizing, and Coloring)

Each use category includes a number of different uses. For example, all of the different uses that fall under SIC use category 22 are shown below:

- 2211 Broadwoven Fabric Mills, Cotton
- 2221 Broadwoven Fabric Mills, Manmade Fiber and Silk
- 2231 Broadwoven Fabric Mills, Wool (Including Dyeing and Finishing)
- 2241 Narrow Fabric and Other Smallware Mills: Cotton, Wool, Silk, and Manmade Fiber
- 2251 Women's Full-Length and Knee-Length Hosiery, Except Socks
- 2252 Hosiery, Not Elsewhere Classified
- 2253 Knit Outerwear Mills
- 2254 Knit Underwear and Nightwear Mills
- 2257 Weft Knit Fabric Mills
- 2258 Lace and Warp Knit Fabric Mills
- 2259 Knitting Mills, Not Elsewhere Classified
- 2261 Finishers of Broadwoven Fabrics of Cotton
- 2262 Finishers of Broadwoven Fabrics of Manmade Fiber and Silk
- 2269 Finishers of Textiles, Not elsewhere Classified
- 2273 Carpets and Rugs
- 2281 Yarn Spinning Mills
- 2282 Yarn Texturizing, Throwing, Twisting, and Winding Mills
- 2284 Thread Mills
- 2295 Coated Fabrics, Not Rubberized
- 2296 Tire Cord and Fabrics
- 2297 Non-woven Fabrics
- 2298 Cordage and Twine
- 2299 Textile goods, Not Elsewhere Classified

One solution to the City's current SIC format would be to amend the CMC to include a more generic use table, as well as performance standards for uses and clear definitions for certain uses such as garment manufacturing. This is an option discussed at recent meetings with Mayor Leon, Councilmember Robles, Community Development staff and members of the Industrial Council. According to the APA Planner's Dictionary, performance zoning regulations permit uses based on a particular set of standards rather than on particular type of use. Performance zoning focuses on the performance of the parcel and how it impacts adjacent lands and public facilities, not on the use of the land. Environmental effects normally regulated through performance zoning are noise, pollution, glare, heat, smoke, odor, traffic and waste. Buildings and sites are regulated by things such as floor area ratio, site design and lot coverage. A couple examples of performance standards are as follows:

- *In all districts, except on farms, all waste material, with the exception of crop residue, debris, refuse, or garbage shall be kept in an enclosed building or property enclosed building or properly contained in a closed container designed for such purposes.*
- *All sewage and industrial waste systems shall comply with all requirements of the county sanitation districts and the city engineer. All industrial wastes not approved for deposit in sewer lines shall be disposed of as required by the city engineer.*

Many places made the switch to a performance based zoning ordinance. However, after a few years of using performance based zoning, additional changes to their ordinances were made. These changes typically created a hybrid approach that included some performance standards. This hybrid approach typically includes a somewhat basic use table with accompanying performance standards. As sample performance standards were provided above, an example of a use table is shown below:



Changing the City's industrial zoning standards to include a simpler use table, clear and enforceable performance standards, and specific definitions would require the City to hire a consultant. Staff would estimate this type of work to cost somewhere between \$30,000 and \$50,000. Amending the City's industrial zoning standards is a significant undertaking. Often times, City's will include such as task in a comprehensive update of an entire zoning ordinance. A zoning ordinance should be updated in a comprehensive manner from time to time to ensure it can address the current development market and its needs, to ensure consistency throughout all planning documents, and to ensure it includes mechanisms to achieve the City's goals and objectives. If the City Council were to hire a consultant to undertake a comprehensive code update, the estimated cost would be somewhere between \$125,000 to \$150,000. The last comprehensive update of the zoning ordinance was done in 2000.

Currently, staff manages the day to day operations of the Planning Division, processes entitlement applications (CUP, Plot Plan, etc.), and is also working on certain long range planning projects such as the digital billboard ordinance, the development of "green zones", and the 2014-2021 Housing Element. Any additional long range planning initiatives would require the outside expertise of consultants due to staff's current workload and current staffing levels.

As stated, this item was brought forward at the request of Mayor Leon and Councilmember Robles. Staff is now asking the City Council to provide feedback and direction on this matter. The City Council can choose from the following options, or any other deemed appropriate:

1. Hire a consultant to update only the City's Industrial standards (uses, performance standards, definitions, etc); or
2. Hire a consultant to conduct a comprehensive update of the zoning ordinance; or
3. Not hire a consultant, but direct staff to continue working with the Industrial Council to find other solutions that may assist with the business license and development processes.

If the City Council chooses either option 1 or 2, the standard RFP process will used to select the consultant. If the City Council chooses option 1, there may be additional funds in reserves to cover the cost of the project. However, staff cannot commit to using these funds until after there is a complete understanding of the impacts associated with the loss of redevelopment funds. This may take several months to determine. If the City Council chooses option 2, staff would recommend this be undertaken in the next fiscal year. In the interim, staff would continue meeting with the Industrial Council, working on minor Code amendments, and bettering the business license process.

#### FISCAL IMPACT:

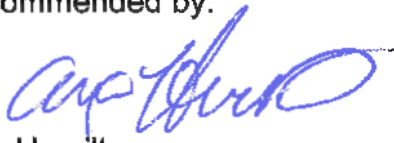
There is no fiscal impact at this time. However, depending on the City Council's direction, a fiscal impact may result. Changing the City's industrial zoning standards to include a simpler use table, clear and enforceable performance standards, and creating specific definitions would cost somewhere between \$30,000 and \$50,000. A comprehensive update of the entire zoning ordinance is estimated to cost between \$125,000 to \$150,000.

Depending on Council's direction, the following funding alternatives could be implemented:

- Modification of the zoning standards – return to the City Council subsequent to the redevelopment review (sometime in February 2013). At that time, the DOF will have rendered a decision as to the remaining redevelopment funds we have in reserves – translation, staff will know how much of the \$1.225 million held to address General Fund obligations will be freed up.

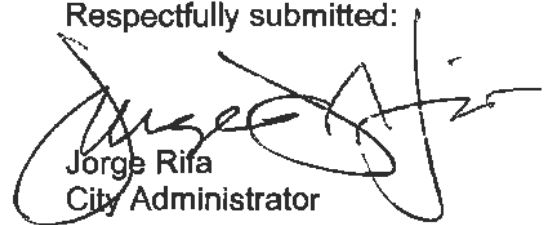
- Fund the aforementioned process with existing reserves, or a combination of reserves and City Council Discretionary Funds (\$30,000 – recently approved as part of the Mid-Year budget) if the City Council chooses not to wait until February or March 2013.
- Comprehensive Update – same as above if sufficient funds are available. If not, then defer a decision until either the FY 2013-14 budget process or part of the 2012-13 fiscal year-end clean-up (dependent on whether or not we finish the year up with a surplus).

Recommended by:



Alex Hamilton  
Assistant Director of Community Development

Respectfully submitted:



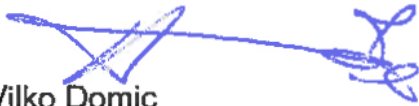
Jorge Rifa  
City Administrator

Prepared by:



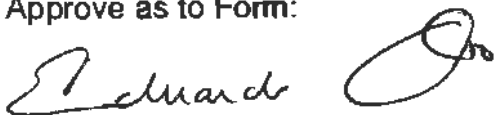
Matt Marquez  
City Planner

Fiscal impact reviewed by:



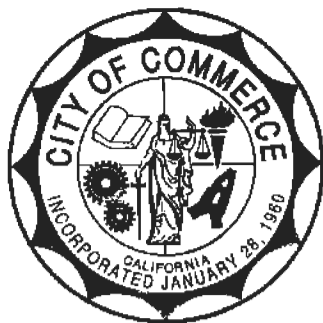
Vilko Domic  
Director of Finance

Approve as to Form:



Eduardo Olivo  
City Attorney





# AGENDA REPORT

Date: December 4, 2012

**TO: HONORABLE CITY COUNCIL**  
**FROM: CITY ADMINISTRATOR**  
**SUBJECT: 2<sup>ND</sup> ANNUAL COMMUNITY DAY OF SERVICE EVENT**

**RECOMMENDATION:**

City staff is recommending that City Council implement the 2<sup>nd</sup> Annual Community Day of Service event, to be held on January 19, 2013 in the Bristow Park residential area.

**MOTION:**

Move to approve the recommendation.

**BACKGROUND:**

At the City Council Meeting of September 20, 2011, Community Services Commissioner and City Resident Joanna Flores presented to the City Council a Community Day of Services Proposal. Following her presentation, at the request of Mayor Pro Tem Baca Del Rio, the City Administrator directed City staff to create a Committee to review the proposal and research its feasibility and/or find ways to incorporate the projects listed in the proposal with other events the City already has in place.

At the City Council Meeting of December 6, 2011, City staff presented various Day of Service options and recommended one of the options. The City Council approved staff's recommendation to establish the event which was held on January 14, 2012, at the Teen Center. The event involved cleanup of the facility, landscaping, and painting the interior walls of the facility.

City staff is recommending that the City Council implement the 2<sup>nd</sup> Annual Community Day of Service Event, to be held Saturday, January 19, 2013 in the Bristow Park residential area.

**ANALYSIS:**


The 2<sup>nd</sup> Annual Community Day of Service Event in the Bristow Park residential area will involve cleaning tree wells, placing mulch in tree wells (to reduce weeds), removal of trash from gutter lines and sidewalks, minor tree pruning to ensure pedestrian clearance (if needed), placing trash containers at designated location so that residents can dispose of large bulky items (similar to Spring Clean-up Event), painting of curbs, graffiti abatement (if needed), pruning overgrown vegetation (encroaching on City right-of-way or easement), etc.

**FISCAL IMPACT:**


The fiscal impact to the current operating budget may include personnel and material costs that will be absorbed by current budget allocations within the affected departments. Staff will also seek donations from existing vendors/contractors for services that they can provide. Staff will also work with the United Family of Bristow Park and pursue involvement or participation with other community groups in the area to assist with the event and offset costs associated with the event.

**RELATIONSHIP TO 2012 STRATEGIC GOALS:**


This report relates to the 2012 strategic planning goal: "Protect and Enhance the Quality of Life in the City of Commerce," as it addresses the overall appearance of the community and promotes civic engagement and pride in the community.

Respectfully submitted,  
  
Jorge J. Rifa  
City Administrator


Recommended by:

  
Loretta Gutierrez  
Director of Safety and Community Services

Reviewed by:

  
Vilko Domic  
Director of Finance

Approved as to Form:

  
Eduardo Olivo  
City Attorney





## AGENDA REPORT

Meeting Date: 12/04/2012

TO: Honorable City Council

FROM: City Administrator

SUBJECT: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, REVISING SECTION 2.20.010 OF CHAPTER 2 ("COMPENSATION") OF THE MUNICIPAL CODE WITH RESPECT TO COMPENSATION OF COUNCILMEMBERS – FIRST READING

RECOMMENDATION:

Council discretion.

MOTION:

Council discretion.

BACKGROUND:

Under California Government Code Section 36516, a City Council may only receive an increase in compensation by amending an Ordinance setting compensation. Under Government Code Section 36516.5, a salary increase may only take effect for all members of a City Council serving staggered terms when one or more members become eligible for a salary increase by beginning a new term of office.

Traditionally, this Ordinance is presented to the City Council for consideration prior to each General Municipal Election. The Ordinance must be effective prior to Councilmembers being sworn in to begin a new term of office.

ANALYSIS:

The last compensation increase approved by the City Council was on February 6, 2007. With the approval of Ordinance No. 601, the Council's compensation was increased from \$965.95 per month to \$1,062.55 per month. The City Council did not approve a compensation increase prior to the 2009 or 2011 General Municipal Elections.

In accordance with the provisions of Government Code Section 36516, the compensation of the members of the City Council may be increased up to and including \$1,381.32, payable bi-weekly. This represents an increase of a maximum of up to \$318.77 per month per Councilmember. In addition, Councilmembers may be reimbursed for actual and necessary expenses incurred in the performance of their official duty, upon the submission of an itemized account.

If the Council's discretion is to approve a compensation increase, pursuant to the provisions of Government Code Section 36516.5, the proposed Ordinance shall take effect for all members of the City Council when one or more members begin a new term of office following the March 5, 2013, General Municipal Election, which must take place no later than the fourth Friday following the election.

If this Ordinance does not become effective prior to one or more members of the City Council beginning a new term of office, no increase in compensation may be given until Councilmembers are sworn in following the 2015 General Municipal Election.

FISCAL IMPACT:

Approximately \$5,580.00 for increase in compensation for balance of fiscal year 2012-2013, if the full \$318.77 per month increase is approved. This activity can be carried out without additional impact on the current operating budget.

Prepared by:



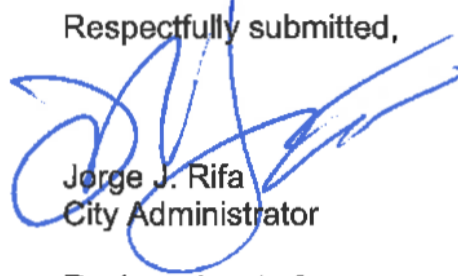
Linda Kay Olivieri  
City Clerk

Fiscal impact reviewed by:



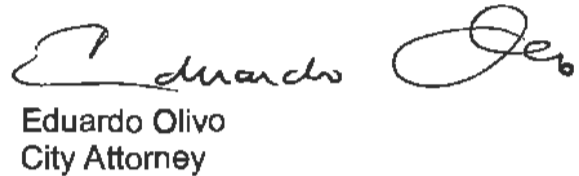
Vilko Domic  
Director of Finance

Respectfully submitted,



Jorge J. Rifa  
City Administrator

Reviewed as to form:



Eduardo Olivo  
City Attorney

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE,  
CALIFORNIA, REVISING SECTION 2.20.010 OF CHAPTER 2 ("COMPENSATION") OF  
THE MUNICIPAL CODE WITH RESPECT TO COMPENSATION OF  
COUNCILMEMBERS

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

Section 1. Section 2.20.010 of Chapter 2.20 ("Compensation") of the Municipal  
Code is revised in its entirety to read as follows:

"2.20.010 Councilmembers In accordance with the provisions of Section 36516 of  
the Government Code of the State of California, the compensation of the members of the  
City Council shall be \_\_\_\_\_  
per month, each, payable bi-weekly. In addition, councilmembers may be reimbursed for  
actual and necessary expenses incurred in the performance of official duty, upon the  
submission of an itemized account."

Section 2. Pursuant to the provisions of Section 36516.5 of the Government  
Code, this Ordinance shall take effect as to all members of the City Council when one or  
more members begin a new term of office following the 2011 General Municipal Election,  
but not earlier than the 31<sup>st</sup> day following the adoption hereof.

Section 3. If any section, subsection, subdivision, paragraph, sentence, clause,  
or phrase in this chapter or any part thereof is for any reason, held to be unconstitutional  
or invalid or ineffective by any court of competent jurisdiction, such decision shall not  
affect the validity or effectiveness of the remaining portions of this chapter or any part  
thereof. The City Council hereby declares that it would have passed each section,  
subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the  
fact that any one (1) or more subsections, subdivisions, paragraphs, sentences, clauses,  
or phrases be declared unconstitutional, or invalid, or ineffective.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_,  
2012.

\_\_\_\_\_  
Lilia R. Leon  
Mayor

ATTEST:

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





## AGENDA REPORT

DATE: December 4, 2012

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, AUTHORIZING THE FILING OF AN ADMINISTRATIVE PETITION FOR REVIEW CHALLENGING THE LOS ANGELES MS4 STORMWATER PERMIT ADOPTED ON NOVEMBER 8, 2012 AND REQUESTING FOR ABEYANCE ON BEHALF OF THE CITY OF COMMERCE

### RECOMMENDATION:

Adopt the Resolution and authorize the filing of an administrative petition for review challenging the Los Angeles MS4 Storm water permit adopted on November 8, 2012 and request for abeyance on behalf of the City of Commerce, and assign the number next in order.

### MOTION:

Approve the recommendation.

### BACKGROUND/ ANALYSIS:

On November 8, 2012, the Los Angeles Regional Water Board ("Water Board") adopted a new MS4 Stormwater Permit (the "Permit") regulating MS4 discharges from the County of Los Angeles and all cities within Los Angeles County, except Long Beach who have their own separate permit. The Permit enforces all Total Maximum Daily Loads ("TMDLs") and covers 140 different pollutants affecting water quality. The Permit goes into effect 50 days after its adoption and will remain in effect for five years.

The LA Permit Group was formed to represent the interests of 63 cities, including the City of Commerce (the "City"), to negotiate the new permit with the Water Board. The cities expressed the need for reasonable regulations based on science, feasible implementation and affordable and flexible standards of compliance. As a result, the new permit contains a provision that allows permittees to work together to develop flexible Watershed Management Plans ("WMP"), which are comprehensive planning documents that implement the requirements of the Permit on a watershed scale through customized strategies, control measures, and Best Management Practices ("BMPs"). The key is if a WMP is developed, approved, and implemented, it relieves the City of the obligation to comply with meeting strict numeric standards (amount of pollution allowed to discharge from cities) under the Permit's Receiving Water Limitations language. Further, once the Water Board approves the City's WMP, the City will be deemed in compliance with the entire Permit as long as the City implements the plan, regardless of water quality standards exceedances in the LA River, the City's receiving water body.

Despite some Water Board concessions negotiated, the Permit increases the City's future efforts to comply with water quality standards and the expense to do so. The Permit also grants the Water Board significant discretion in deciding the fate of submitted WMPs, their contents and basis for approval. More importantly, if the City deviates from the extremely tight compliance deadlines within the Permit or the WMP is rejected for any reason at any time or the Watershed Group determines the WMP will not actually meet the approved "enforceable benchmarks," the City still can be subject to liability for numeric water quality exceedances under the Receiving Water Limitations language.

The City has three options in response to the Permit:

1. **No Appeal.** LA County, LA City, the San Gabriel Valley Authority and several small cities have indicated that they will most likely not appeal. By not filing a petition of appeal, the City must begin implementing the new permit standards immediately,

3. **Appeal with Request for 2-year Abeyance.** This option does not result in an immediate appeal. The City would begin implementing the Permit, but retains the right to litigate against the Water Board in the future if implementation, related costs, and enforcement against the City prove problematic.

The law firm of Richards Watson & Gershon ("RWG") represents nine of the effected permittees and recommends filing an Administrative Petition for Review challenging the Permit with a request that it be held in abeyance for two years to reserve the City's right to file a lawsuit in the future should the Permit become too costly and/or infeasible to meet the water quality standards prescribed. Two years is the maximum time one can request a petition be held. However, if in the course of two years, if the City has not filed a lawsuit, a request to extend the abeyance can be filed since it may require more than two years to determine the permit's full impact on the City and fate of WMPs. This is considered the most sensible approach to allow the City to work with other permittees in drafting and submitting a WMP and implementing the Permit as feasible, while reserving the City's right to file a lawsuit in the future if circumstances necessitate such a filing.

As of the date of this report, RWG expects at least 15 cities to file a petition with a request for an abeyance. There are another 4 cities who are considering filing a petition for an immediate lawsuit. The names of which are not yet available for public record. RWG will provide a template petition for the City to review. Should the City decide to submit the petition to the State Water Resources Control Board, the total cost of \$30,000 will be shared among the parties at an estimated cost of \$3,000 each. State law allows only 30 days after permit adoption for filing a petition. Therefore, the deadline to submit a petition is December 8<sup>th</sup>.

**FISCAL IMPACT:**

The fiscal impact is approximately \$3,000 for the filing of the petition. There are sufficient funds budgeted in Account #10-1570-54027, Environmental Services to cover the costs of the filing. Future costs for litigation is unknown at this time as well as permit implementation costs, which will realistically be at least several million dollars to attempt to meet the permit's water quality standards.

**RELATIONSHIP TO 2009 STRATEGIC GOALS:**

This agenda report item complies with Goal #2 – *Protect and Enhance Quality of Life in the City of Commerce*. In conjunction with State and Federal water quality regulations, Commerce is promoting water quality for all residents.

Recommended by:



Alex Hamilton  
Assistant Director of Community Development

Respectfully submitted,



Jorge Rifá  
City Administrator

Prepared by:



Gina Nila  
Environmental Services Manager

Approved as to Form:



Eduardo Olivo  
City Attorney

Reviewed by:



Vilko Domic  
Director of Finance

Attachment: Resolution

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, AUTHORIZING THE FILING OF AN ADMINISTRATIVE PETITION FOR REVIEW CHALLENGING THE LOS ANGELES MS4 STORMWATER PERMIT ADOPTED ON NOVEMBER 8, 2012 AND REQUESTING FOR ABEYANCE ON BEHALF OF THE CITY OF COMMERCE

WHEREAS, on November 8, 2012, the Los Angeles Regional Water Board ("Water Board") adopted a new MS4 Stormwater Permit (the "Permit") regulating MS4 discharges from the County of Los Angeles and all cities within Los Angeles County, except Long Beach which have their own separate permit; and

WHEREAS, the Permit enforces all Total Maximum Daily Loads ("TMDLs") covering 140 different pollutants affecting water quality, becomes effective 50 days after adoption and will remain in effect for five years; and

WHEREAS, despite some Water Board concessions negotiated into the Permit, the Permit imposes additional requirements on the City of Commerce in order to comply with water quality standards and will result in increased expense to the City. The Permit also grants the Water Board significant discretion in deciding the fate of submitted Watershed Management Plans ("WMP") required under the new Permit; and

WHEREAS, if the City deviates from the Permit's extremely tight compliance deadlines, if the WMP is rejected for any reason, or if the Watershed Group determines the WMP will not meet the approved "enforceable benchmarks," the City can be subject to liability for numeric water quality exceedances under the Receiving Water Limitations language; and

WHEREAS, the City has three options in response to the Permit: (1) not filing a petition to appeal the Permit; (2) petitioning to appeal with the intent to legally challenge the Permit; or (3) petitioning to appeal with a request for a two-year abeyance to retain the City's right to challenge the Permit at a future date, if necessary; and

WHEREAS, the most cost-effective approach for filing an appeal is a cost-sharing arrangement with participating agencies; and

WHEREAS, the law firm of Richards Watson & Gershon ("RWG"), which represents nine of the effected permittees, recommends filing an Administrative Petition for Review with the State of California Water Resources Control Board challenging the Permit with a request that it be held in abeyance for two years (option 3) to reserve the City's right to file a lawsuit in the future should the Permit become too costly and/or infeasible to meet the water quality standards prescribed.

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

Section 1. City staff is authorized to take all action necessary, on behalf of the City of Commerce, to have an Administrative Petition for Review filed with the State of California Water Resources Control Board challenging the MS4 Permit adopted on November 8, 2012, with a request that it be held in abeyance for two years to reserve the City's right to file a lawsuit in the future should circumstances necessitate filing a lawsuit.

Section 2. The City shall participate in a cost-sharing arrangement for the filing of the Administrative Petition by the law firm of Richards Watson and Gershon, at a cost not to exceed \$5,000.

PASSED, APPROVED and ADOPTED this 4<sup>th</sup> day of December, 2012.

\_\_\_\_\_  
Lilia R. Leon, Mayor

ATTEST:

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







## AGENDA REPORT

MEETING DATE: December 4, 2012

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING A PROFESSIONAL SERVICES AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES WITH SWINERTON BUILDERS DBA SWINERTON MANAGEMENT & CONSULTING

### RECOMMENDATION:

The City Council will consider approval and adoption of a resolution approving a professional services agreement for construction management services with Swinerton Builders (dba Swinerton Management & Consulting) through June 30, 2013, and assign the number next in order.

### MOTION:

Move to approve recommendation.

### BACKGROUND:

On August 4, 2008, the City Council awarded a Services Agreement for Construction Management and Support Services to Swinerton Management & Consulting ("Swinerton") in connection with the Central Library Renovation Project and in the amount of Two Hundred and Three Thousand Dollars (\$203,000) (the "Agreement"). On June 16, 2009, the City Council approved the First Amendment to the Agreement, adding construction management services for various other capital improvement projects. The First Amendment increased the amount to be paid under the Agreement to Two Hundred Eighty-Six Thousand Four Hundred Twelve Dollars (\$286,412).

As part of the FY 2012/13 Budget, the City Council appropriated \$290,700 for Construction Management Services, including a contingency to be used at the City's discretion for additional services not covered in the Agreement.

### ANALYSIS:

For the past few years, Swinerton has provided outstanding construction management and professional support services in connection with the City's Capital Improvement Project (CIP), including the Central Library Renovation. Swinerton has offered to provide the same level of services for the City's FY 2012/13 Capital Improvement Program for the same contract fee as last year's or Two Hundred Fifty-Seven Thousand Five Hundred Ninety-One Dollars (\$257,591).

After careful review of Swinerton's proposal and, based on their past performance, staff is recommending that the City enter into a professional services agreement with Swinerton for FY 2012/13. Swinerton will be responsible for providing complete and professional construction management services including: construction management and oversight, coordination, scheduling and tracking, administration, inspection and quality assurance, cost estimating, value engineering, and record keeping for the City's CIP projects.

Swinerton staff is currently assisting with the following seven (7) projects and there are several other projects waiting to start:

1. Central Library, City Hall & Senior Plaza Project	\$ 4,837,794
2. Emergency Operation Center Construction Project	\$ 1,333,333
3. Safe Route to School Program	\$ 572,210
4. 26 <sup>th</sup> Street MetroLink Station Improvement Project	\$ 327,770
5. Replace Bus Washer	\$ 317,467
6. Supplemental Filtration and Replastering (Small Pool)	\$ 150,000
7. Exterior Painting of Transportation Services Center	<u>\$ 90,000</u>
ESTIMATED TOTAL VALUE:	\$ 7,628,574

The City desires to implement and properly complete the above projects and the many others identified in the Capital Improvement Program Budget. In order to do so, it is essential to continue an agreement with Swinerton at their current service level of 5 days a week. Additionally, Swinerton will provide a weekly timesheet and a monthly summary of their hours with their monthly invoice, as shown in the attached Sample Billing.

**FISCAL IMPACT:**

Swinerton offered to provide the requested services includes two options:

OPTION 1 (Fee Proposal Lump Sum Billing) – Under this billing method, each month of the term of the contract will be billed at a set amount for the scope of services listed in the proposal. This option provides for increase access to other services provided by Swinerton. Estimated cost for six-month period is.....  
 \$128,795.52

OPTION 2 (Fee Proposal Hourly Billing) – Under this billing method, each month of the term of the contract will fluctuate based on the number of working days (or hours) in the month for the scope of services listed in the proposal. This option provides limited access to other services provided by Swinerton, which will be charged after prior written approval by the City at the rate shown in the proposal. Estimated cost for six-month period is (\$138.00 x 992 hours).....\$136,896.00

Difference of .....\$ 8,100.48

Based on the above cost comparison, Option 1 is more cost effective and offers substantially more benefits to the City, in the terms of access to additional services and expertise provided by Swinerton without increasing the cost of services. If additional or specialized services are required that are not part of the based agreement, staff will return to the City Council for approval and funding allocation prior to acquiring these services.

Staff respectfully recommends that the City Council award a 6-month agreement to Swinerton under the Lump Sum Billing.

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

All General Funded CIP Projects	\$113,341.06
All Transportation Projects (PTMISEA)	<u>\$ 15,454.46</u>
TOTAL	\$128,795.52

**RELATIONSHIP TO 2012 STRATEGIC GOALS:**

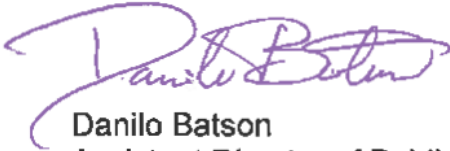
The issue before the Council is applicable to the following Council's strategic goal: *"Improve and maintain infrastructure and beautify our community"* as identified in the 2012 Strategic Plan.

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



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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE,  
CALIFORNIA, APPROVING A PROFESSIONAL SERVICES AGREEMENT FOR  
CONSTRUCTION MANAGEMENT SERVICES WITH SWINERTON BUILDERS DBA  
SWINERTON MANAGEMENT & CONSULTING**

WHEREAS, as part of the Fiscal Year 2012/13 Capital Improvement Program (CIP) Budget, the City Council approved funds for required construction management services; and

WHEREAS, Swinerton Builders, dba Swinerton Management and Consulting has provided such services to the City of Commerce (the "City") over the last two fiscal years and is willing to provide the requested services for FY 2012-2013 for at the same price level.

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

Section 1. The Services Agreement with Swinerton Builders, dba Swinerton Management and Consulting is hereby approved. The Mayor is 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



THIS AGREEMENT (the "Agreement") dated as of \_\_\_\_\_, 2012 (the "Effective Date") is made by and between Swinerton Builders, dba Swinerton Management & Consulting ("Consultant") and the City of Commerce, a municipal corporation (the "City").

### RECITALS

WHEREAS, the City is in need of construction management services for various capital improvement projects during FY 2012-2013; and

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

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

### AGREEMENT

1. Scope of Services and Schedule of Performance.

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

2. Term.

Except as otherwise provided by Section 20 hereof, the term of this Agreement shall be for a period commencing on the Effective Date until June 30, 2013.

3. Compensation.

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

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

4. Financial Records.

Consultant shall maintain complete and accurate records with respect to fees and costs incurred under this Agreement. All such records shall be maintained on a generally accepted

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

5. Independent Contractor.

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

6. Consultant to Provide Required Personnel; Subcontracting.

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

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

7. Responsible Principal and Project Manager.

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

8. City Liaison.

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



exclusively through the City Administrator or his designee.

9. Licenses.

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

1. Compliance with Laws.

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

11. Insurance.

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

12. Warranty and Liability.

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

13. Indemnification.

Consultant shall indemnify and hold the City and their respective officials, officers, agents and employees harmless from and against any and all liabilities, losses, damages, costs and expenses the City and their respective officials, officers, agents and employees hereafter may suffer in connection with any claim, action, or right 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.

2. Ownership of Documents.

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

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

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

17. Covenant against Contingent Fees.

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

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

38. Conflict of Interest.

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

19. Other Agreements.

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

20. Termination.

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

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

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

4. Waiver of Breach.

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

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

52. Assignment.

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

63. Arbitration.

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

74. Attorneys' Fees.

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

85. Notices.

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

For the City:

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

For Consultant:

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

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

96. Governing Law.

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

107. Severability.

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

28. No Construction of Agreement against any Party.

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

29. Entire Agreement and Amendments to Agreement.

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

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

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

31. Counterpart Signatures.

This Agreement may be executed in one or more counterparts. When this Agreement has been properly signed by an authorized representative of each of the parties hereto, it shall

constitute a valid Agreement, though each of the signatories may have executed separate counterparts hereof.

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

**CITY OF COMMERCE**

DATED: \_\_\_\_\_, 2012

By: \_\_\_\_\_  
Lilia R. Leon, Mayor

ATTEST:

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

**CONSULTANT**

DATED: \_\_\_\_\_, 2012

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

**APPROVED AS TO FORM**

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

**EXHIBIT A**

**NOVEMBER 2012**

**SWINERTON MANAGEMENT & CONSULTING**

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**PROJECT/CONSTRUCTION MANAGEMENT, STAFF AUGMENTATION, AND PROFESSIONAL SERVICES**

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Swinerton Management & Consulting (SMC) and its team offers a complete range of Professional Construction Management and Support Services and is adept at tailoring approaches and staffing that will best meet the specific needs of the City of Commerce. Swinerton has an experienced and efficient team, that has managed these exact types of projects, allowing us to move quickly and efficiently with lessons learned and best practices.

**STAFF AUGMENTATION APPROACH – FLEXIBLE, INNOVATIVE, AND SUPPORTIVE SUPPORTIVE & SERVICE-MINDED**

Our role is to be supportive to our client and the team, to provide solutions either in a single role or service, or to provide teams which can manage an entire project, if needed. Swinerton's core focus this program is to be flexible, supportive and provide innovative solutions to the City of Commerce's needs.

**FLEXIBILITY, SCALABILITY, AND DEPTH OF RESOURCES**

The staffing and service needs of municipal programs can often spike and dip over the course of the program. Swinerton and its teammates offer the flexibility and scalability needed to be responsive, efficient, and agile to address the program's needs. As one of the largest construction service providers in the Western United States, Swinerton brings over 1200 staff members in the Western U.S. and over 350 in the Southern California Region.

**SOLUTION ORIENTED**

Solution Oriented Consulting underlies our approach to Staff Augmentation services. By focusing on facilitating solutions for our clients and their stakeholders, our on-call services can be efficient and targeted. Core to this approach is close communication with all team members and the experience, best practices, and lessons learned developed over many years.

**CREATING STRONG TEAMS**

Swinerton believes that the "Team Attitude" of close coordination and communication with the City, Stakeholders, Designers, Contractors, Subcontractors, and Subconsultants is the best line of defense to create the shared responsibility of meeting milestones, resolving issues, and creating overall project success. Core to the creation of the "Team Attitude" is the trust gained by exceeding expectations of the stakeholders.

**PROPER PLANNING ENSURES PROPER EXECUTION**

The key to proper execution of construction programs is proper planning. The accurate estimation and allocation of resources, the management of design to mitigate risk, understanding the team and the environment, and the development of a project work plan are all critical to the incremental control of a project and its ultimate success.



#### STAKEHOLDER INVOLVEMENT

Working within any municipal environment, it is imperative to involve stakeholders early and often. Stakeholder buy-in and commitment is an on-going and important process that begins with design and continues through out the life of a project.

#### PROJECT WORK PLANS

The Swinerton Project Work Plan typically establishes the project(s) scope, budget, schedule and basic systems to be utilized, and the management plan to be implemented. Project goals are defined and reinforced. Design and estimating exercises may be validated to ensure that the project meets the City's requirements. The work plans, and our commitment to meet the City's goals create the basis for the delivery of successful projects. Our team will complete its "homework," and will work with the City and its consultants to develop the tasks and tools we will use to move the projects along the success spectrum. A key goal of this process is to develop proper project controls - the review, scheduling and estimating exercises that will be performed to ensure that the project(s) meet the City of Commerce's requirements.

#### FACILITIES ASSESSMENTS

The Swinerton team can provide detailed assessments of City-owned facilities to aid in understanding the condition of city facilities and act as a tool for capital outlay and for prioritization of building maintenance and repairs as an added service. The Swinerton team can evaluate building mechanical electrical and plumbing systems; seismic/structural elements and code compliance, ADA analysis, and lifecycle and outlay analysis of building elements and replaceable items (flooring, carpet, paint, etc.)

#### COST ESTIMATING / BUDGETING

At the beginning of each project assigned to us, and throughout each design phase, Swinerton can review, analyze, and prepare a cost report to validate the Architect of Record estimate to ensure that all costs have been accounted and are accurate to existing market conditions. Additionally, at the completion of the Construction Documents Phase, Swinerton can prepare an in-house estimate to reconcile the scope and qualifications as prepared by the Architect of Record if requested. This reconciled cost is utilized as the basis for fees and as the advertised bid amount and can be coordinated through our estimating team. Swinerton also employs a Cost-To-Complete practice in which all incurred costs and projected costs associated with a project are tracked to provide a true picture of the total project cost. Throughout preconstruction and construction, project costs will be monitored and reported.

#### REAL NUMBERS IN REAL TIME

Swinerton is able to provide up-to-the-minute cost-estimating data due to our work as a contractor. Each and everyday, Swinerton estimators are receiving the latest pricing information from hundreds of trade contractors. Due to our relationships with subcontractors and suppliers, Swinerton is able to see the latest price fluctuations and trending information, often months before traditional stand-alone cost-estimating or CM firms can. This gives Swinerton the ability to give the City of Commerce the most accurate and up-to-date information possible.

## DESIGN MANAGEMENT

The Swinerton effectively manages the architects and engineers for each project to achieve cost-effective, efficient, and architecturally appropriate designs that combine use needs for the City, while fulfilling the Federal, Agency, and Regulatory requirements and considering the community's needs.

## VALUE ENGINEERING

Swinerton's goal in value engineering (VE) is to insure that the projects meets the target budget while not sacrificing quality standards or design intent. Through this process we are able to identify areas, which hold potential for savings, added value, increased quality, operational life cycle considerations and schedule reduction.

Constructability reviews are equally as important during the design phase in order to minimize "risk" in the form of change orders during construction. Some of the benefits of utilizing a contractor based-CM during VE include:

- Construction Experience to Leverage Lessons Learned into Cost Savings
- Real-Time Construction Cost Information
- Ability to Identify Efficiencies and Alternatives

## SCHEDULING

A master schedule is developed, maintained, and updated on a monthly basis. It is used to recommend acceleration, recovery plans, forecasts, milestones, and any agency constraints, approvals, utility shut-downs, as well as analyze change orders. The Master Schedule takes into account all activities to create minimal disruption. Safety of employees and the general public is of the utmost concern and is considered throughout the process of developing the Master Schedule.

Scheduling will assess project information, assumptions and project team clarifications to establish milestones / decision dates for the project. The preliminary schedule is typically prepared at the beginning of the preconstruction planning process in collaboration with the owner, architect and construction management team to set up project controls with the goal of satisfying overall program requirements. SMC will also assist with the creation of a Master Schedule and early procurement of key items which could cause impacts to the progress of the project.

## "BRINGING A PROJECT BACK ON SCHEDULE" - SCHEDULE MANAGEMENT PROCEDURES

These procedures are critical on all projects. Starting and completing projects in alignment with the critical dates, and in conjunction with other projects can be critical. Our efforts to manage schedules includes:

- Project-specific Reporting
- Identification of Major Project Milestones and Critical Dates
- Identification of Long Lead Procurement Activities
- Identification of any Equipment and FF&E Activities
- Construction Contractor Submittal Review & Approval
- Commissioning Coordination

- **Substantial and Final Completion**

#### **HELPING ALL PARTIES BE SUCCESSFUL**

As a Staff Augmentation Construction/Project Manager, it is Swinerton's responsibility to help all team members achieve success. Our role is to be a manager, a problem solver, and to provide assistance where the program has the most need. Our role is not to be divisive but to create forward progress towards a shared goal and help all parties be successful.

#### **PROPER PLANNING - KEYS TO SUCCESS**

- **No Surprises – Cover All Possible Scenarios, Costs, and Contingencies**
- **Communication - Close Coordination with All Stakeholders**
- **Create a Clear Roadmap through Construction**
- **Help All Parties Be Successful**

#### **EXECUTING THE PLAN – PROJECT/CONSTRUCTION MANAGEMENT /PROFESSIONAL SERVICES**

##### **CONSTRUCTION EXPERIENCE**

Swinerton brings over 124 years of construction experience as an experienced manager and builder, Swinerton offers the experience and depth of resources to address issues, offer innovative solutions, and create value for all those involved in the process.

##### **COMPREHENSIVE CONSTRUCTION MANAGEMENT**

Construction Management is the core of Swinerton's services. Swinerton will act as an extension of the City of Commerce and Departmental Staff to provide overall coordination, planning and management required to control cost, schedule and quantity, including the standard services of:

- **Bid & Award Services**
- **Progress Meetings**
- **Field Presence & Inspections**
- **Daily Logs & Status Reporting**
- **Schedule Management & Recovery**
- **Document Management**
- **Submittals, RFIs', and Correspondence**
- **Change Order Management**
- **Pay Applications**
- **Cost Controls**
- **Safety Programs**
- **As-Built Information**
- **Lien Release**
- **PunchList/Close Out Completion**

#### RISK ANALYSIS , CLAIMS AND CHANGE AVOIDANCE

A good understanding of the construction process is a prime ingredient for success in claims avoidance, requiring the participation of all team members throughout the life of the project. As a firm with 124 years of experience as a general contractor, we are best able to provide the builder's perspective to this process. Risk analysis and claims avoidance starts in the preconstruction phase of the project by ensuring that complete and accurate documents are issued for bidding purposes. We review proposed design changes and seek alternates, to eliminate and/or mitigate any extra costs. In addition, we maintain and record in detail daily project operations, particularly with regard to the schedule, manpower productivity, deliveries and delays. All change order requests will be logged in and tracked as described above. Depending on the nature of the change, an impact assessment will be performed. Should a change order or claim arise, this review will be the basis for development of a course of action for deposition of the claim. We will prepare a fair cost estimate as a basis for negotiation and will propose a recommendation for the final negotiated amount. Rather than delaying settlement discussions to the end of the program/project, we pursue a fair resolution in a timely fashion during the course of construction when these claims are more manageable.

#### CONFLICT RESOLUTION

Swinerton believes that early project collaboration and formal partnering can be a helpful step in mitigating the need for conflict resolution later in the project. Swinerton addresses every issue in a timely manner, so they do not accumulate and become overwhelming. Waiting until the end of the job to resolve conflicts do not benefit either the client or the contractor, so we make an enormous effort to settle issues as they arise. If issues do arise, Swinerton prefers to resolve the issue early through the process of formal partnering at the team level then partnering at the management level. If issues are not resolved at these levels and positions from each side are entrenched, alternatives like mediation will be explored to mitigate the need for litigation.

#### PROJECT CONTROLS / DOCUMENT CONTROLS

Swinerton Document Controls is a key component of effective to our construction management. As part of Document Controls, we will manage the Document Control System, and streamline many of the processes encountered in construction projects. All Team members can interface through standard web browsers and the City's network resources. The system allows users to filter and sort through document management processes including:

- Contractor Billings
- Permit Tracking and Agency, and Approvals
- Bid Distribution and Management
- Punch Lists

#### CLOSE-OUT

This is where our philosophy of "No Punchlist" pays off. A list of items for completion at the end of a project is usually necessary, but often it is time consuming, and costly to all parties. By addressing the majority of these items as they are observed during the construction process, we will greatly minimize

the remedial work to be performed at the end of the project. Prior to the preparation of the design team's punch list, we perform a thorough walk-through in order to minimize items. During project close-out, we will administer the preparation of Certificates of Substantial and Final Completion, including any necessary certifications or occupancy procedures of regulatory authorities. We will assemble all guarantees and warranties as required by the contract documents, and review them for completeness and verify they cover all work. We will receive and check all releases of claims required prior to issuance of the final certification of completion and satisfaction of any condition present to final payment. We will determine the value of any incorrect work and make recommendations on the withholding of payments to contractors where deemed necessary. We will work closely with maintenance and building management, and any other individuals who need to be involved in the start-up following project completion.

#### **AREAS OF STRENGTH FOR SWINERTON**

- **Over 124 Years of Real-World Construction Experience – As a Construction Manager and Contractor**
- **Excellent Resources Managing Contractor Cost and Schedule**
- **Being an Strong Advocate to the City**
- **Bringing Projects in On-Time and Under Budget**

# SWINERTON MANAGEMENT & CONSULTING OPTION #1-FEE PROPOSAL LUMP SUM BILLING

Lump Sum billing is cost effective and eliminates fluctuations in billing cycles. Under this billing method, each month of the term of the contract will be billed at a set amount for the scope of services. This method is often preferred and cost effective due to the changing amount of hours in each month.

## LUMP SUM MONTHLY BILLING:

- MONTHLY BILLING FOR STAFF AUGMENTATION PROJECT/CONSTRUCTION MANAGEMENT - \$21,465.90
- SIX MONTH NOT TO EXCEED TOTAL: \$128,795.52
- YEARLY NOT TO EXCEED TOTAL: \$257,591.04

# OPTION #2- FEE PROPOSAL HOURLY BILLING

Under the hourly rate fee structure, Swinerton can provide project/construction management, staff augmentation, and professional services which can be billed at the following rates. These rates are assuming a full-time position, but will not charge for days not utilized like holidays, vacation days, and sick days. Under the lump sum method, some additional services like minor estimating and scheduling are included in the cost. Under the hourly billing method these services would be billed as utilized by the hour and noted below. Monthly billings will fluctuate due to changing hours of each month.

## PROJECT /CONSTRUCTION MANAGEMENT & STAFF AUGMENTATION SERVICES:

- PRINCIPAL IN CHARGE / PROJECT EXECUTIVE - \$205/HR
- SR. PROJECT OR CONSTRUCTION MANAGER - \$170/HR
- PROJECT OR CONSTRUCTION MANAGER - \$138/HR
- SR. PROJECT ENGINEER - \$112/HR
- PROJECT ENGINEER - \$108/HR

## PROFESSIONAL SERVICES – ESTIMATING & VALUE ENGINEERING

- SR. ESTIMATOR - \$130/HR
- ESTIMATOR - \$120/HR

**PROFESSIONAL SERVICES - SCHEDULING**

- SR. SCHEDULER - \$130/HR
- SCHEDULER - \$120/HR

**PROFESSIONAL SERVICES - CONSTRUCTABILITY REVIEW AND  
ADDITIONAL PROFESSIONAL SERVICES**

- SR. PROJECT OR CONSTRUCTION MANAGER - \$170/HR
- PROJECT OR CONSTRUCTION MANAGER - \$138/HR
- SUPERINTENDENT - \$135/HR
- SR. ESTIMATOR - \$130/HR
- ESTIMATOR - \$120/HR

**NOT TO EXCEED HOURS FOR CORE STAFF – MIKE HALSEY**

- NOT TO EXCEE HOURS FOR MIKE HALSEY – 2008 YEARLY HOURS

## EXHIBIT B

### REQUIRED INSURANCE

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

1. Comprehensive General Liability and Automobile Liability Insurance Coverage.

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

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

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

2. Errors and Omissions Insurance Coverage.

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

3. Worker's Compensation.

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

4. Additional Insureds.

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



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

5. Cancellation Clause.

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

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

6. Severability Clause.

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

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

7. Qualifications of Insurer.

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

8. Approval of Insurer.

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

9. Payment of Premiums.

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

10. Evidence of Insurance and Claims.

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





# AGENDA REPORT

MEETING DATE: December 4, 2012

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: FISCAL YEAR 2012/13 CAPITAL IMPROVEMENT PROGRAM UPDATE

**RECOMMENDATION:**

Consider for receipt and filing, and take appropriate action as deemed necessary with respect to the status report on the FY 2012/13 Capital Improvement Program.

**MOTION:**

Move to approve recommendation.

**BACKGROUND/ANALYSIS:**

On June 19, 2012, the City Council approved the Fiscal Year 2012/13 Capital Improvement Program Budget. The approved budget includes 4 transportation-related projects and 18 general fund related projects as shown on Table 1 & Table 2.

**TABLE 1 – TRANSPORTATION & SPECIAL PROJECT FUNDS APPROVED PROJECTS**

Project Consultant (Mobility Advancement)	\$ 45,000
Commerce MetroLink Station Improvement	\$ 250,000
Replace Bus Washer	\$ 317,467
Telegraph Road Street Improvement (MTA Measure R)	\$2,004,000
TOTAL	\$2,616,467

**TABLE 2 – GENERAL FUNDS & OTHER SOURCES APPROVED PROJECTS**

Street Reconstruction (Rosini Residential)	\$ 2,000,000
Street Reconstruction (Bristow Residential / East of I-710 FWY)	\$ 805,000
Safe Route to School (Cycle 7)	\$ 57,210
Railroad Crossing Improvements (HSIP Cycle 4 Grant)	\$ 56,000
Resident Card System and Services Tracking Program	\$ 113,000
Camp Commerce Water Line Improvements	\$ 130,000
Camp Commerce Driveway Improvements	\$ 40,000
Geotechnical Analysis Camp Commerce Snow Drop	\$ 30,000
Supplemental Filtration and Replastering (Small Pool)	\$ 150,000
Emergency System Upgrade	\$ 30,000
Emergency Dispenser/Fuel Line	\$ 65,000
City Hall Security/Electronic Card System	\$ 100,000
Teen Center Improvements	\$ 100,000
Municipal Code Update	\$ 45,000
Greenwood Library Improvements	\$ 28,300
Construction Management Services (Swinerton)	\$ 146,827
Engineering Services (Transtech)	\$ 63,000
Project Consultant (Tierra West)	\$ 87,000
TOTAL	\$4,046,969

Today's agenda includes City Council action on the following projects:

- 1) Washington Blvd. Widening and Reconstruction Project
- 2) Bus Shelter Installation Project
- 3) Construction Management Services (Swinerton)

Staff continues to work diligently on the implementation of this year's Capital Improvement Program. Attached is a spreadsheet with updates on all projects. Projects with significant changes/accomplishments are indicated with an asterisk.


**FISCAL IMPACT:**

The proposed activities can be carried out at this time without additional impact on the current operating budget, as funding for this activity has been approved and included in the FY 2012/13 Capital Improvement Program Budget.

**RELATIONSHIP TO 2012 STRATEGIC GOALS:**

The issue before the Council is applicable to the following Council's strategic goal: *"Improve and maintain infrastructure and beautify our community"* as identified in the 2012 Strategic Plan.

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

File: 2012 City Council Agenda Reports  
FY 2012/13 Capital Improvement Program – Agenda Reports

**FY 2012/13 TRANSPORTATION & SPECIAL PROJECT FUNDS PROJECTS**

PROJECT NAME	BUDGET	STATUS
PROJECT CONSULTANT (MOBILITY ADVANCEMENT)	\$ 45,000	Mobility Advancement is providing consultation services and assistance to Transportation on various grants and transit related projects.
COMMERCE METROLINK STATION IMPROVEMENT	\$ 327,792	Staff will meet the Project Engineer within the next 2 weeks to discuss additional work as a result of the Feb. 2012 train derailment.
REPLACE BUS WASHER	\$ 317,467	City Council approved contract with NS Corporation for these improvements on 10/16/12. Work is tentative schedule to begin on 01/7/13, pending approval of insurance, bonds documents, permits and procurement.
TELEGRAPH ROAD STREET IMPROVEMENT (MTA MEASURE R)	\$ 2,004,000	City Council approved RFP for various Professional Services (engineering, construction management, materials testing and public works inspection) on 11/5/12. Actual funds available from I-5 JPA is \$1,800,000 for this project of which 40% soft-cost & 60% construction cost.
PAINT TRANSPORTATION DEPARTMENT BUILDING	\$ 90,000	PHASE I - PAINTING OF INTERIOR OFFICES AND BUILDING EXTERIOR COMPLETED AND WORK ACCEPTED BY CITY COUNCIL ON 8/6/12. City Council to award PHASE II - Painting of Garage Interior on 9/4/12. Garage painting is tentatively schedule to begin mid-December 2012.
BUS STOPS -- CITYWIDE	\$ 500,000	IMPROVEMENTS COMPLETED. Council acceptance of work scheduled for 12/04/12. *
REPLACE HEAVY VEHICLE LIFT (TRANSPORTATION)	\$ 120,000	IMPROVEMENTS COMPLETED on Sept. 28, 2012. City Council acceptance of work scheduled for 12/20/12.
	\$ 3,404,259	

**TIER I - FY 2010/11 CIP APPROVED AND FUNDED PROJECTS (TRANSPORTATION & SPECIAL PROJECTS)**

PROJECT NAME	BUDGET	STATUS
STREET RECONSTRUCTION (ROSINI/ROSEWOOD RESIDENTIAL)	\$ 2,000,000	Contractor will begin providing Notice to residents/businesses on the week 11/19/12 in project area. Contract began mobilization on and surveying 11/26/12. Notices have been distributed. Work will begin on Monday 12/03/12 on Harbor Street (Eastern to Commerce Way). *
STREET RECONSTRUCTION (BRISTOW RESIDENTIAL)	\$ 805,000	Engineer is finalizing Plans and Specifications and incorporating staff comments. PS&E are scheduled for approval in December 2012.

SAFE ROUTE TO SCHOOL (CYCLE 7)	\$ 57,210	Project delayed due to reconstruction of Harbor Street, Commerce Way, etc. (part of Rosini/Rosewood Street Rehabilitation Project). Project will be completed after the Rosini/Rosewood project.
RAILROAD CROSSING IMPROVEMENTS (HSIP CYCLE 4 GRANT)	\$ 56,000	Awaiting MOU Agreement with Caltrans.
RESIDENT CARD SYSTEM AND SERVICES TRACKING PROGRAM	\$ 113,000	IT is on standby until Parks & Recreation replaces all the resident's old ID cards with the updated version that will work with our tracking software. Parks and Recreation indicated that they were on schedule to complete the change-over by November 2012.
CAMP COMMERCE WATER LINE IMPROVEMENTS	\$ 130,000	Engineer has submitted 90% plans for Water Line Improvements and Driveway Improvements. Staff to review next week and provide comments. Approval to performe the required survey needed for the driveway blocok wall construction has been given.
CAMP COMMERCE DRIVEWAY IMPROVEMENTS	\$ 40,000	
GEOTECHNICAL ANALYSIS CAMP COMMERCE SNOW DROP	\$ 30,000	
SUPPLEMENTAL FILTRATION AND REPLASTERING (SMALL POOL)	\$ 150,000	City Council awarded a design contract for the supplemental filtration system to Aquatic Design Group. Project kick-off meeting was held on 11/08/12. Preliminary design to be completed by mid-Dec 2012.
EMERGENCY SYSTEM UPGRADE	\$ 30,000	Staff will begin work on this project in January 2013.
EMERGENCY DISPENSER/FUEL LINE	\$ 65,000	Staff will begin work on this project in January 2013.
CITY HALL SECURITY/ELECTRONIC CARD SYSTEM	\$ 100,000	Staff has completed a draft RFP for this project and a preliminary plan showing all the locations of doors to be secured with card system. Staff will bring the RFP for City Council approval and issuance in December 2012.
TEEN CENTER IMPROVEMENTS	\$ 100,000	Staff met on 11/20/12 to dicuss project priorities and scheduling.
MUNICIPAL CODE UPDATE	\$ 45,000	The current Municipal Code is now avaiable online at the City Website. Staff is currently working on text revisions to the Municipal Code.
GREENWOOD LIBRARY IMPROVEMENTS	\$ 28,300	Staff has obtained 4 proposals for this work and submit them to Purchasing to issue P.O. to lowest bidder. Work will begin after the holidays. *
CONSTRUCTION MANAGEMENT SERVICES (SWINERTON)	\$ 146,827	Swinerton is providing construction management and support on various capital improvement projects. On 10/22/12, City Council approved a 60-day contract extension. On 12/04/12, City Council to consider extension of service agreement. *
ENGINEERING SERVICES (TRANSTECH)	\$ 63,000	Transtech is providing engineering services and support services to the City both on a daily basis and on capital improvement projects.

PROJECT CONSULTANT (TIERRA WEST)	\$ 87,000	Tierra West is providing consultation and support services to Community Development on various projects.
WASHINGTON BLVD MAJOR IMPROVEMENT	\$ 32,000,000	Engineer and staff are currently working on various design aspects of the project, including utility notification & coordination, storm drainage improvements, traffic signal improvements, roadway geometry and overall design. On 12/04/12, City Council to consider 1st Amendment to Services Agreement with RBF for additional preliminary engineering work.
RENOVATION OF THE CENTRAL LIBRARY	\$ 4,837,794	On October 8, 2012, the architect has submitted revised plans (to meet new building code requirements, effective 7/1/12) to the County for plan check approval. First Plan Check review has been completed and architect is working on revisions and will resubmit by first week in Dec. 2012. The PS&E are 90% completed. Final PS&E are scheduled for City Council consideration and approval in January 2013, for release and advertisement. Construction is scheduled to start in May 2013 with completion in January 2014.
EMERGENCY OPERATION CENTER CONSTRUCTION (EOC GRANT)	\$ 1,333,333	City Council awarded construction contract on 11/13/12 to E. Avico, Inc. On 11/20/12, City Council awarded inspector and materials testing services agreement to Converse. On 11/26/12, contractor began mobilization and excavation of EOC site.
ENERGY EFFICIENT UPGRADES/LIGHTING RETROFIT	\$ 111,988	IMPROVEMENTS COMPLETED, CITY COUNCIL ACCEPTED WORK ON 7/17/12.

**\$ 38,579,942**

\* indicates projects with significant change/accomplishment since previous update.

