

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

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

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

**TUESDAY, DECEMBER 6, 2011 – 6:30 P.M.**

**CALL TO ORDER**

Mayor/Chairperson Aguilar

**PLEDGE OF ALLEGIANCE**

Alex Hamilton  
Assistant Director of Community Development

**INVOCATION**

Councilmember/Commission Fierro

**ROLL CALL**

City Clerk/Assistant Secretary Olivieri

**APPEARANCES AND PRESENTATIONS**

**1. Presentation – Association for Los Angeles Deputy Sheriffs (ALADS)**

At the request of Mayor Aguilar, the **City Council** will receive a presentation from Floyd Hayhurst, President of ALADS, to publicly thank the City for its ongoing support of Los Angeles Deputy Sheriffs and district attorney investigators working in Los Angeles County.

**PUBLIC COMMENT**

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

# CONCURRENT REGULAR COUNCIL/CDC AGENDA

12/6/11 – 6:30 p.m.

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

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

## CITY COUNCIL/COMMISSION REPORTS

### CONSENT CALENDAR

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

#### 2. Approval of Minutes

The **City Council and Commission** will consider for approval, respectively, the minutes of the Concurrent Regular Meetings of Tuesday, November 15, 2011, held at 6:30 p.m.

#### 3. Approval of Warrant Register No. 11

The **City Council and Commission** will consider for approval, respectively, the bills and claims set forth in Warrant Registers No. 11A, dated December 6, 2011, and No. 11B, for the period November 16, 2011, to November 24, 2011.

#### 4. Request for Proposal (“RFP”) for Architectural, Engineering and Construction Management Services for FY10 Emergency Operations Center Under Grant #2010-0016, Cal EMA #037-14974, Amendment #1

The **City Council** will consider for approval a Request for Proposal (“RFP”) for Architectural, Engineering and Construction Management Services for FY10 Emergency Operations Center, Under Grant #2010-0016, Cal EMA #037-14974, Amendment #1, and authorizing the Community Development Department to advertise for proposals and designate Thursday, January 12, 2012, at 3:00 p.m., as the proposal opening date.

#### 5. Request for Proposal (“RFP”) for Purchase of Transit Data Management System

On February 26, 2009, the Metro Board of Directors approved the formula allocation and programming of federal highway and transit capital funds made through the American Recovery and Reinvestment Act of 2009 (ARRA). The City of Commerce will receive \$582,234 in FTA 5307 Transit Capital Funds. The two capital projects included in this grant were the purchase of one replacement bus (approved by the City Council on August 18, 2009) and the purchase of transit management software.

The **City Council** will consider for approval a Request for Proposal (“RFP”) for the purchase of a Transit Data Management System and authorizing the Transportation Department to advertise for proposals and designate Tuesday, January 17, 2012, at 3:00 p.m., as the proposal opening date.

# CONCURRENT REGULAR COUNCIL/CDC AGENDA

12/6/11 – 6:30 p.m.

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6. A Resolution of the City Council of the City of Commerce, California, Approving a Retainer Agreement with the Law Firm of Remy, Thomas, Moose and Manley, LLP in Connection with Environmental Review Services Under the California Environmental Quality Act

The Port of Los Angeles has prepared an Environmental Impact Report (“EIR”) for the Southern California International Gateway (“SCIG”) Project proposed by the Port of Los Angeles/Los Angeles Harbor Department. The SCIG Project may have significant impacts and/or help alleviate significant impacts caused by the regional goods movement. The City of Commerce is home to the Burlington Northern and Santa Fe Railway’s Hobart Yard and the Union Pacific’s intermodal facility. City staff believes that the City needs to review the SCIG Project EIR and provide comments that will properly document the issues facing the City and the potential impacts and/or mitigation that will be caused by the Project.

The **City Council** will consider for approval and adoption a proposed Resolution approving a retainer agreement with the law firm of Remy, Thomas, Moose and Manley, LLP in connection with Environmental Review Services of the SCIG Project EIR under the California Environmental Quality Act.

7. A Resolution of the City Council of the City of Commerce, California, Awarding and Approving Cash Contract No. 1112 for the Installation of Bristow Park Security Cameras to Integrated Security, Inc.

The **City Council** will consider for approval and adoption a proposed Resolution awarding and approving Cash Contract No. 1112 for the installation of Bristow Park Security Cameras to Integrated Security, Inc., of Monrovia, California.

8. A Resolution of the City Council of the City of Commerce, California, Adopting the Updated Guidelines and Agreements for the CDBG Funded Home Preservation Grant Program

The Home Preservation Grant Program was successfully implemented in 2009 and has assisted with home improvements that included replacement and repair of roofs, windows, garage doors, exterior paint, exterior doors and fencing. The Program was partly funded by a Community Development Block Grant (“CDBG”) from the Los Angeles County Community Development Commission and Redevelopment Housing Set-Aside Funds. In May 2010, CDBG staff completed a programmatic review of the Program Guidelines and recommended minor changes to the Guidelines and Agreements.

The **City Council** will consider for approval and adoption a proposed Resolution adopting the Updated Guidelines and Agreements for the CDBG Funded Home Preservation Grant Program.

## PUBLIC HEARINGS

## SCHEDULED MATTERS

9. Proposed Community Day of Service

At the City Council meeting of September 20, 2011, Community Services Commissioner Joanna Flores presented a Community Day of Services Proposal. Following her presentation, 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. City staff will provide an update on the Committee’s progress and present options for the City

# CONCURRENT REGULAR COUNCIL/CDC AGENDA

12/6/11 – 6:30 p.m.

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Council to implement the proposal. Staff is recommending Option #1 – “Establish the date of the Day of Service Event.”

The **City Council** will review the options presented and consider selecting Option #1, as recommended by staff, for implementation of the Community Day of Service Proposal.

## 10. “Get Out the Voice” (GOV) Youth Voter Registration Project

At its meeting of November 15, 2011, the City Council heard from residents Joanna Flores and Joseph Alvarado about a conceptual proposal they had put together for a Commerce community voter registration drive specifically targeted to youth.

The **City Council** will consider, and provide appropriate direction as deemed necessary with respect to, alternatives relating to the proposed “Get Out the Voice” (GOV) Youth Voter Registration Project.

## 11. Disposition Options for Commission-owned Real Property Located at 4906 Jardine Street

On January 2, 2008, the Commission approved the acquisition of the real property located at 4906 Jardine Street, which is improved with a 1,472 square-foot single family dwelling and detached two-car garage. The property was purchased by the Commission with the goal of adding to the City’s affordable housing stock. Rehabilitation of the property was completed in February 2009.

The **Commission** will consider, and provided appropriate direction as deemed necessary with respect to, the final disposition options for the Commission-owned real property located at 4906 Jardine Street. Option 1 is the disposition of the unit through a market rate sale and Option 2 involves the disposition of the unit to a low income household.

## 12. Delegate Appointment

The **City Council** will make the appropriate appointment to the following board with the term to expire Monday, January 6, 2014: Greater Los Angeles County Vector Control District.

## ORDINANCES AND RESOLUTIONS

### CIP PROGRESS REPORT

### LEGISLATIVE UPDATE

### I-710 LOCAL ADVISORY COMMITTEE UPDATE

### RECESS TO CLOSED SESSION

## 13. Pursuant to Government Code §54956.8,

A. The **Commission** will confer with its real property negotiators, Jorge Rifá and Bob Zarrilli, with respect to real estate negotiations with Mayans Development, Inc., including proposed price and other terms, concerning real property located on Eastern Avenue, commonly known as APN 5241-013-900, APN 5241-013-901, APN 5241-013-902, APN 5241-013-903 and APN 5241-014-900; Greenwood Avenue, commonly known as APN 6357-011-909, APN 6357-011-907 and APN 6357-011-910; Nicola Avenue, commonly known as APN 6351-038-900; Neenah Street, commonly known as APN 6356-015-900; Watcher Street, commonly known as APN 6357-014-

# CONCURRENT REGULAR COUNCIL/CDC AGENDA

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900, APN 6257-014-901, APN 6357-014-902 and APN 6357-014-903; Gage Avenue, commonly known as APN 6357-016-900, APN 6357-016-901, APN 6357-016-905 and APN 6357-016-002 and Gage Avenue (privately owned), commonly known as APN 6357-016-003.

14. Pursuant to Government Code §54956.9(b),
  - A. The **City Council** will confer with its legal counsel, and take the appropriate action, with respect to significant exposure to litigation in four potential cases.
  - B. The **Commission** will confer with its legal counsel, and take the appropriate action, with respect to significant exposure to litigation in one potential case.
15. Pursuant to Government Code §54957.6,
  - A. The **City Council** will confer with its labor negotiator, Jorge Rifá, with respect to labor negotiations pertaining to the Memorandum of Understanding between the City and the City of Commerce Employees Association on behalf of the mid-management and non-management full-time employees.

## ADJOURNMENT

Adjourn in memory of Evelyn Slagle, sister of retired City employee Beverly Wiggins; Ruth Cano, longtime Commerce resident, former City employee and aunt of City employee Mary Anne Griego-Talley; Maria Soto, mother of City employees Caleb Soto Ortiz and Jorge Salas Ortiz and former City employee Albert Ortiz and mother-in-law of City employee Terry Salas Ortiz, and Sylvia Lopez, long-time Commerce resident.

<p><b>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.</b></p>
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**SUPPLEMENTAL AGENDA FOR  
THE CONCURRENT REGULAR MEETINGS OF THE  
CITY COUNCIL OF THE CITY OF COMMERCE AND  
THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION  
COUNCIL CHAMBERS  
5655 JILLSON STREET, COMMERCE, CALIFORNIA**

**TUESDAY, DECEMBER 6, 2011 – 6:30 P.M.**

**CONSENT CALENDAR**

- 3A.** Commendation – Honoring Edwin Chau, Outgoing President of the Montebello Unified School District Board of Education

At the request of Mayor Aguilar, the **City Council** will consider for approval a Commendation for Edwin Chau, Outgoing President of the Montebello Unified School District Board of Education, in recognition of his service to the school district and the community. MUSD Board President Chau will officially step down from this position on December 8, 2011.

**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 6, 2011

**TO:** HONORABLE CITY COUNCIL

**FROM:** CITY ADMINISTRATOR

**SUBJECT:** PRESENTATION OF SCROLL FROM ASSOCIATION FOR LOS ANGELES DEPUTY SHERIFFS (ALADS) TO THANK THE CITY FOR ITS SUPPORT OF THE L.A. COUNTY SHERIFF'S DEPARTMENT

**RECOMMENDATION:**

Receive and file.

**MOTION:**

Move to approve the recommendation.

**BACKGROUND:**

The Association for Los Angeles Deputy Sheriff's (ALADS) recently expressed, via a letter to Mayor Joe Aguilar, their appreciation for the City's commitment to quality public safety services. They requested to publicly thank the City for its support of the L.A. County Sheriff's Department. ALADS represents Sheriff's Deputies who work in the Los Angeles County.

Floyd Hayhurst, President of ALADS, or his designee, will present the City with a Scroll and take a photograph with the City Council.

**ANALYSIS:**

At the request of Mayor Joe Aguilar, the City Council will receive a presentation from ALADS to thank the City for its ongoing support of the Sheriff's Department.

**FISCAL IMPACT:**

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

**RELATIONSHIP TO 2009 STRATEGIC GOALS:**

This report relates to the 2009 strategic planning goal: "Protect and Enhance the Quality of Life in the City of Commerce," as it addresses a community public safety issue of concern.

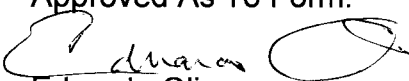
Recommended by:

  
Loretta Gutierrez  
Interim Dir. of Safety & Community Services

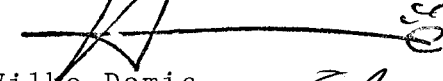
Respectfully submitted,

  
Jorge J. Rifa  
City Administrator

Approved As To Form:

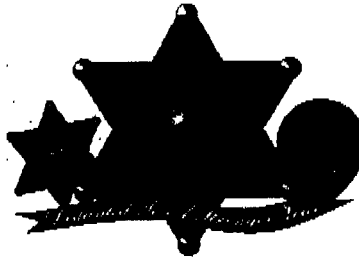
  
Eduardo Olivo  
City Attorney

Reviewed by:

  
Vilko Domic  
Finance Director

Attachment: Copy of Letter from ALADS





## Association for Los Angeles Deputy Sheriffs

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2 Cupania Circle Monterey Park, CA 91755-7406 • Office: (323) 213-4005 • Fax: (323) 724-0140 • [www.alads.org](http://www.alads.org)

October 20, 2011

Honorable Joe Aguilar, Mayor  
City of Commerce, City Hall  
2535 Commerce Way  
Commerce, CA 90040

Dear Mayor Joe Aguilar:

The members and directors of the Association for Los Angeles Deputy Sheriffs – ALADS – deeply appreciate your community's commitment to quality public safety services.

On behalf of more than 8,200 deputy sheriffs and district attorney investigators working in Los Angeles County, I would like to ask for just a few minutes of your time at an upcoming meeting of your City Council to make a presentation to highlight your City's ongoing support for our members.

It is our understanding that your Council meets on the first and third Tuesday of each month. Therefore, I ask your permission to be placed on the agenda for your Council gathering on December 6, 2011.

Please contact me at anytime to discuss our request to make a presentation at your Council. Additionally, our staff will be in contact with your office to confirm a date and time convenient for you and your Council.

Sincerely,

Floyd Hayhurst  
President

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### BOARD OF DIRECTORS

**Floyd Hayhurst**  
President

**Robert Connor**  
Director

**Mark Davis**  
Vice President

**Armando Macias**  
Director

**George Hofstetter**  
Secretary

**Wendy McDole**  
Director

**Dean Galarneau**  
Treasurer

An Affiliate of the Marine Engineers Beneficial Association AFL-CIO



# AGENDA REPORT

MEETING DATE: December 6, 2011

**TO:** Honorable City Council

**FROM:** City Administrator

**SUBJECT:** COMMENDATION- HONORING OUTGOING MONTEBELLO UNIFIED SCHOOL DISTRICT BOARD PRESIDENT EDWIN CHAU

**RECOMMENDATION:**

Approve the Commendation.

**MOTION:**

Move to approve the recommendation.

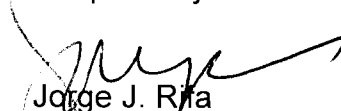
**ANALYSIS:**

At the request of Mayor Aguilar, the City Council will consider for approval a Commendation to outgoing Montebello Unified School District President, Edwin Chau. MUSD Board President Chau will officially step down from this position on December 8, 2011. The Commendation will be sent to MUSD to be presented at the scheduled event on Thursday, December 8, 2011.

**FISCAL IMPACT:**

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

Respectfully submitted,

  
Jorge J. Rifa  
City Administrator





# AGENDA REPORT

MEETING DATE: December 6, 2011

**TO:** HONORABLE CITY COUNCIL

**FROM:** CITY ADMINISTRATOR

**SUBJECT:** APPROVAL OF A REQUEST FOR PROPOSAL FOR ARCHITECTURAL, ENGINEERING AND CONSTRUCTION MANAGEMENT SERVICES FOR A FY10 EMERGENCY OPERATIONS CENTER, UNDER GRANT NO. 2010-0016, CAL EMA #037-14974, AMENDMENT #1

**RECOMMENDATION:**

That the City Council:

1. Approve the Request for Proposal as named above, prepared by staff, and
2. Authorize the Department of Community Development to advertise for proposals and designate Thursday, January 12, 2012, at 3:00 p.m., as the bid opening date.

**MOTION:**

Move to approve the recommendation.

**BACKGROUND:**

The Federal Government recognizes the need to provide agencies with the necessary equipment to manage and respond to emergencies and disasters in an effective manner. Grant funds were made available to agencies to use towards upgrading existing Emergency Operations Centers (EOC) or construct new ones. City staff has felt that the existing EOC is not adequate to serve its purpose for managing emergency incidents.

At its meeting of January 5, 2010, the City Council authorized staff to pursue Emergency Operation Center (EOC) funding offered by the U.S. Department of Homeland Security. The allocation would be used to renovate Old Fire Station No. 27 to an emergency operation center.

On January 10, 2010, an assessment of the City's existing EOC was conducted by Swinerton Management and Consulting, to help meet the needs associated with constructing a new EOC, being conjoined with the Community Services Department in City Hall. It was determined that the existing EOC is not adequate to meet the needs of the essential NIMS/SEMS functions. For example: The EOC is too small to handle a large scale incident; it's currently shared as a meeting room for other events, requiring set-up every time it's used as an EOC; its location presents a security issue because several entry points make it easily accessible to the public; and it does not have a HVAC system to protect those inside from a HazMat incident.

At its meeting of August 17, 2010, the City Council approved a Resolution to authorize the submittal of an application for the Fiscal Year 2010 EOC Grant funds in the amount of \$1,000,000.00 and designating agents authorized to prepare and execute any documents necessary under the California Emergency Management Agency Subgrant Program.

At its meeting of December 7, 2010, the City Council authorized staff to change the proposed EOC site location from Old Fire Station No. 27 to a proposed room addition to the existing City Hall and directed staff to formally notify California Emergency Management Agency (Cal EMA) and resubmit the grant application forms for the new proposed site.

On October 10, 2011, the City received a letter from Cal EMA, stating that the City's application for grant funds was approved in the amount of \$1,000,000.

**ANALYSIS:**

It is apparent that the existing EOC is not adequate for managing a large emergency incident affecting the community. City staff would like to proceed with utilizing the grant funds to construct a new EOC. Upon authorization by the City Council, City staff will request proposals from qualified firms for architectural, engineering and construction management services related to this project. City staff prepared the attached Request For Proposal, which states the project, timeline, and stipulations.

The Public Notice inviting sealed bids for this project is ready for advertisement. The project schedule is established as follows:

TASK	DATE
APPROVE RFP FOR ARCHITECTURAL/ENGINEERING/CONSTRUCTION MANAGEMENT SERVICES	12/06/11
ISSUE NOTICE INVITING PROPOSALS FOR BIDS FOR CONSTRUCTION	12/07/11
PRE-BID CONFERENCE/MEETING	12/19/11 @ 10AM
RFP QUESTIONS DUE	12/27/11 @ 3PM
AWARD ARCHITECTURAL / ENGINEERING / CONSTRUCTION MANAGEMENT SERVICES AGREEMENT BID DEADLINE	01/12/12 @ 3PM
ISSUE NOTICE TO PROCEED WITH ARCHITECTURAL/ENGINEERING/CONSTRUCTION MANAGEMENT SERVICES	2/21/12
PRESENT 65% DESIGN DRAWINGS & COST ESTIMATE	4/12/12
PRESENT 95% DESIGN DRAWINGS & COST ESTIMATE	7/16/12
PREPARE FINAL PS&E, CONSTRUCTION DOCUMENTS AND BID PACKAGE	8/9/12
ISSUE NOTICE INVITING BIDS FOR CONSTRUCTION	08/21/12
AWARD OF CONSTRUCTION CONTRACT TO LOWEST RESPONSIVE, RESPONSIBLE CBIDDER	10/16/12
ISSUE NOTICE TO PROCEED WITH CONSTRUCTION	10/17/12
COMPLETE ALL CONSTRUCTION ACTIVITIES	5/31/12
PRESENT PROJECT CLOSE-OUT PROJECT TO CITY	6/15/12
SUBMIT FINAL REPORT TO CAL FEMA	6/28/12

**FISCAL IMPACT**

The EOC Grant in the amount of \$1,000,000.00 requires a 25% match by the City. The grant allows value of public land to be factored in to the match equation. The City will utilize this option to match 25%.

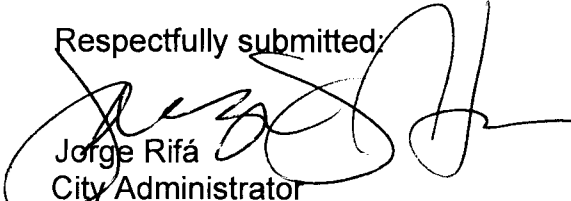
**RELATIONSHIP TO 2009 STRATEGIC GOALS:**

This agenda item report is applicable to the following Council's strategic goal: *"Protect and Enhance Quality of Life in the City of Commerce"*.

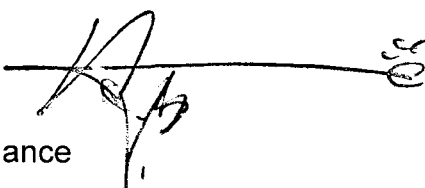
Recommended by:

  
Loretta Gutierrez  
Interim Director of Safety & Community Services

Respectfully submitted:

  
Jorge Rifá  
City Administrator

Reviewed by:

  
Vilko Domic  
Director of Finance

Approved As To Form:

  
Eduardo Olivo  
City Attorney

Attachment: Request For Proposal

**CITY OF COMMERCE**  
**REQUEST FOR PROPOSAL (RFP)**  
**ARCHITECTURAL, ENGINEERING AND CONSTRUCTION**  
**MANAGEMENT SERVICES**  
**FY10 EMERGENCY OPERATIONS CENTER**  
**Grant #2010-0016, Cal EMA #037-14974, Amendment #1**



**CITY OF COMMERCE**  
**2535 COMMERCE WAY**  
**COMMERCE, CA. 90040**

**Prepared Under the Supervision of:**  
Robert Zarrilli  
Director of Community Development  
2535 Commerce Way  
Commerce, CA. 90040

**Prepared by:**  
Danilo Batson  
Community Development Department  
2535 Commerce Way  
Commerce, CA. 90040

**December 6, 2011**



**CITY OF COMMERCE**  
**NOTICE INVITING PROPOSALS**  
**FY10 EMERGENCY OPERATIONS CENTER**  
**Grant #2010-0016, Cal EMA #037-14974, Amendment #1**

**PUBLIC NOTICE IS HEREBY GIVEN** that the City of Commerce ("City"), invites proposals for the above stated project and will receive such proposals in the office of the City Clerk, 2535 Commerce Way, City of Commerce, California 90040, **UP TO THE HOUR OF 3:00PM on January 12, 2012.**

Copies of the Request for Proposal and related documents are available for download at the City's website: <http://www.ci.commerce.ca.us/bids.aspx>.

In order to be considered in the selection process, interested parties shall submit five (5) copies of their proposal in conformance with instructions provided. Proposals shall be submitted in a sealed envelope plainly marked on the outside: "**FY10 EMERGENCY OPERATIONS CENTER**".

The work to be performed includes furnishing all labor, services, materials, tools, equipment, and incidentals necessary to conduct site assessments, prepare preliminary design drawings with a minimum of two initial options, prepare 65% and 95% design drawings and details for review and approval by City (including plan check of 95% drawings), prepare project's plans and specifications, construction documentation and technical sections, provide construction inspection and oversight services (including materials testing) for the construction of a new Emergency Operations Center (EOC).

The proposed EOC will be located adjacent to the Community Services Department (located at Commerce City Hall, 2535 Commerce Way, Commerce, CA 90040). The proposed building will be approximately 2,160 square feet and shall meet the latest California Building Code as amended and adopted by the City of Commerce and other applicable and current federal/state/local regulations/codes. The EOC building is required to meet the requirements of an essential services facility as described in the State of California Essential Services Act. The total project budget of the proposed EOC is \$1,333,333 (\$1,000,000 has been allocated from the FY 2010 EOC Grant Program Federal Funds and \$333,333 of Grantee matching Funds in which the City of Commerce will be providing).

A mandatory pre-proposal meeting will be held on: **DECEMBER 19, 2011 AT 10:00 AM** in the City of Commerce Council Chambers lobby located at 5655 Jillson Street, Commerce, CA 90040. Please RSVP in writing via e-mail to [miguelr@ci.commerce.ca.us](mailto:miguelr@ci.commerce.ca.us) with a copy to [danilob@ci.commerce.ca.us](mailto:danilob@ci.commerce.ca.us).

All questions regarding this proposal request shall be submitted in writing to [miguelr@ci.commerce.ca.us](mailto:miguelr@ci.commerce.ca.us) with a copy to [danilob@ci.commerce.ca.us](mailto:danilob@ci.commerce.ca.us) and be submitted on or before: **DECEMBER 27, 2011 AT 3:00 AM.** No verbal responses will be provided in person or over the telephone and it is the responsibility of the bidder to

confirm transmission of correspondence.

***The City reserves the right to reject any or all proposals, to waive any irregularity, and to take all proposals under advisement for a period of thirty (30) days.***

BY ORDER OF the City Council of the City of Commerce, California on December 6, 2011.

\_\_\_\_\_  
Robert Zarrilli, Director of Community Development

\_\_\_\_\_  
DATE



**CITY OF COMMERCE**  
Purchasing Division  
2535 Commerce Way  
Commerce, CA 90040  
(323) 722-4805



**REQUEST FOR PROPOSAL**  
Issue Date: **12/07/11**  
Closing Date: **01/12/12 AT 3:00PM**  
Danilo Batson, Asst. Dir. of Public Services  
E-mail: [danilob@ci.commerce.ca.us](mailto:danilob@ci.commerce.ca.us)

**REQUEST FOR PROPOSALS (RFP)**  
**ARCHITECTURAL DESIGN, ENGINEERING AND CONSTRUCTION MANAGEMENT SERVICES**  
**FOR CITY OF COMMERCE**

## **FY10 EMERGENCY OPERATIONS CENTER**

Grant #2010-0016, Cal EMA #037-14974, Amendment #1

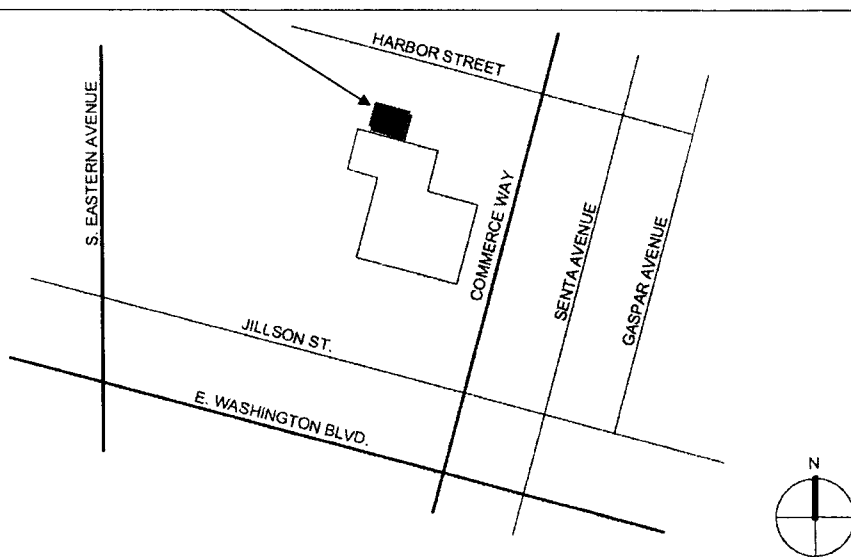
### **INTRODUCTION AND DESCRIPTION**

The City of Commerce is soliciting Proposals (hereinafter referred to as RFP) from qualified firms to provide professional architectural, engineering and construction management services for the **Emergency Operations Center Construction Project**. The proposed EOC will be the construction of a building addition to our Community Services Department in City Hall to permanently house the Commerce EOC and will be approximately 2,160 square feet. The total funds have been allocated from the FY 2010 EOC Grant Program Federal Funds for the completion of this project. The project will be administered in accordance with California Emergency Management Agency (Cal EMA) and all other applicable regulations and shall meet all relevant laws and requirements during the construction process. The total project budget of the proposed EOC is \$1,333,333. \$1,000,000 has been allocated from the FY 2010 EOC Grant Program Federal Funds and \$333,333 of Grantee matching Funds in which the City of Commerce will be providing.

**Project Location:**

Commerce City Hall – Community Service Department  
2535 Commerce Way, Commerce, CA 90040

### **PROJECT LOCATION**





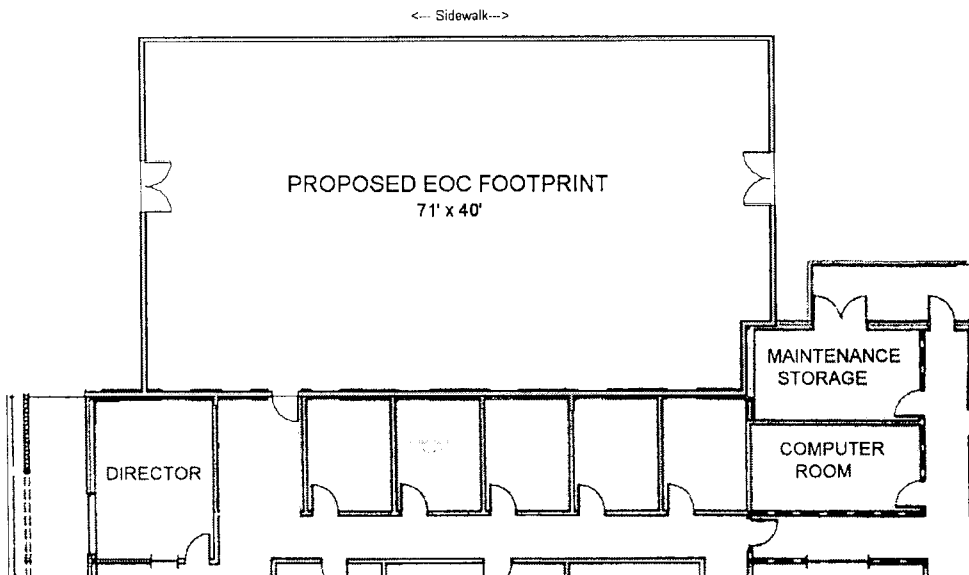
## SCOPE OF WORK

**Overview** - The City is requesting proposals to prepare design drawings, details, specifications, construction documentation and construction management services for the construction of a new Emergency Operations Center.

The project involves the construction of a new building addition to our Community Services Department in City Hall which will permanently house the City of Commerce Emergency Operations Center. The selected consultant shall provide professional architectural, engineering and construction management services for the project (including all services required for the preparation of PS&E (plans, specifications and estimates) bid package).

The construction will include new state of the art emergency equipment (communications, satellite, etc.) and furnishing necessary to respond to a localized or major event (i.e., earthquake, plane crash, accidental release of toxic chemical, terrorism event, etc.). The building will require a new HVAC system, plumbing and electrical upgrades, emergency generators, kitchen/dining and rest areas for emergency personnel, volunteers, etc. Finally, this project will enable emergency coordination and communication with County, Regional, and State Emergency Operations Centers, which will benefit residents and businesses located in the 34<sup>th</sup> Congressional District. In order to effectively deal with emergency/disaster events, it is vital that the Federal Government provide local entities with the equipment necessary to manage and respond to such an event.

### Proposed "Preliminary" Layout:



**CITY OF COMMERCE**

Purchasing Division  
2535 Commerce Way  
Commerce, CA 90040  
(323) 722-4805



**REQUEST FOR PROPOSAL**

Issue Date: **12/07/11**  
Closing Date: **01/12/12 AT 3:00PM**  
Danilo Batson, Asst. Dir. of Public Services  
E-mail: [danilob@ci.commerce.ca.us](mailto:danilob@ci.commerce.ca.us)

**Preparation of Specifications and Construction Management Tasks** - The scope of work for this project includes providing all necessary services and to manage all aspects of the project in compliance with the Cal EMA Grant Guidelines, County and local inspection requirements from start of construction through completion. The scope of work provided in this RFP shall be used as a guideline. It is the consultant's responsibility to provide all necessary services to ensure the project is completed efficiently and in full compliance with Grant, City's project requirements and all other relevant federal/state/local regulations/codes. The scope of work for this project will include, but not limited to the disciplines of architectural, civil, engineering, structural engineering, mechanical engineering, electrical engineering, plumbing, fire protection, life safety, value engineering, site development, landscaping, public works inspection and testing, construction management (including a Construction Manager and a Specialty Inspector for on-site inspections during construction). The tasks for these various disciplines are further outlined below.

The costs and schedules are to be developed separately for each phase, including estimated dedicated hours for each phase. The following parameters should be considered when calculating estimated fees for services and services shall be organized along five phases, as described below:

- PHASE 1: SITE ANALYSIS AND ASSESSMENT
- PHASE 2: PRELIMINARY DESIGN
- PHASE 3: FINAL DESIGN / BID READY DOCUMENTS
- PHASE 4: BIDDING / CONSTRUCTION
- PHASE 5: POST-CONSTRUCTION

**PHASE 1: SITE ANALYSIS AND ASSESSMENT**

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

- Review of proposed building site/location
- Review site circulation
- Parking requirements and pedestrian access
- Noise impacts
- Zoning ordinances
- Exterior design criteria
- Utility locations
- Survey and geotechnical reports
- Provide at least two (2) site arrangement options

**PHASE 2: PRELIMINARY DESIGN**

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

- Entrance maneuvering clearances and changes in level
- Door widths, opening force, and accessible lever-type handles
- Routes to public access areas within the facility
- Emergency alarms systems
- Emergency egress routes
- Visual emergency alarm systems
- Signage and other public communication materials
- Communication devices
- Provide recommendations for improvements

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- Provide preliminary construction cost estimate
- Propose various materials, furnishing and color schemes for the City's consideration
- Submit options with schematic plans for City review and make four presentations to the City, two to staff and two to the City Council at an evening meetings

**PHASE 3: FINAL DESIGN / BID READY DOCUMENTS**

Upon selection of chosen design option, consultant will:

- Prepare final bid-ready design and specification documents for construction bid
- Present 65% and 95% design drawings to staff for review and approval. Drawings to be in CAD format and provide City with electronic copies as well as three (3) hard paper copies. Electronic copies are to be accessible and manipulated by the City in the future.
- Submit 95% drawings to Plan Check for review and approval
- Make two presentations to City Council at an evening meetings
- Re-submit design drawings as necessary to obtain final Plan Check approval
- Develop custom details for elements such as lighting, signage, etc, which are consistent with current City's standards, energy efficiency and sustainable building standards
- Provide standards for fixtures, furnishings and finishes
- Provide a detail cost estimate of total construction cost
- Provide 100% design and specification documents. Three (3) hard paper copies and one (1) electronic digital copy (CD-ROM).

**PHASE 4: BIDDING / CONSTRUCTION**

- Assist City with responses to inquires from prospective bidders
- Assist City in selecting a construction contractor for the project
- Assist City in reviewing contractor schedule and progress estimates
- Conduct Pre-Construction meeting with selected contractor and answer questions as needed
- Provide on-site Construction Manager and Quality Control Inspectors to manage all aspects of the construction
- Function as City Engineer's Extension, and provide all necessary services, including inspection during construction for compliance with all applicable codes, and review and approval of all shop drawings during construction
- Provide "Specialty Inspection and Testing" for materials
- Develop a master construction schedule, monitor and update construction schedule
- Conduct weekly construction meetings with the contractor, City, and other involved parties
- Prepare and distribute meeting minutes
- Prepare and distribute all required notices, and respond to complaints and resolve problems as necessary
- Review contractor change order requests and prepare necessary documentation for submittal approval or denial by the City
- Review contractor pay requests and prepare necessary documentation for submittal and approval by the City
- Assist the City's Designated Labor Compliance Officer with the certified payroll review process and submittals of required documentation from contractor with respect to compliance with the Grant Program
- Manage all construction activities and project controls
- Manage contract cost accounting system
- Conduct project walk-through(s) and preparing punch list(s)
- Ensure the project is implemented per the approved set of plans and monitor as-built documentation



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**PHASE 5 - POST CONSTRUCTION PHASE:**

- Maintaining proper project files and documentation
- Coordinating close out of the project in coordination with the City's Designated Labor Compliance Officer
- Deliver a final completed project to the City which is in compliance with all applicable codes, standards and requirements per the Grant Program and City regulations
- Present to the City a complete project close out file
- Conduct a final project inspection with the City in order to ensure quality of work and compliance with project specifications, drawings and contract documents
- Review as-built plans and make recommendations for revisions

**TIMELINE (milestones)**

The following project schedule is for preparing the specifications and conducting construction:

TASK	DATE
APPROVE RFP FOR ARCHITECTURAL/ENGINEERING/CONSTRUCTION MANAGEMENT SERVICES	12/06/11
ISSUE NOTICE INVITING PROPOSALS FOR BIDS FOR CONSTRUCTION	12/07/11
PRE-BID CONFERENCE/MEETING	12/19/11 @ 10AM
RFP QUESTIONS DUE	12/27/11 @ 3PM
AWARD ARCHITECTURAL / ENGINEERING / CONSTRUCTION MANAGEMENT SERVICES AGREEMENT BID DEADLINE	01/12/12 @ 3PM
ISSUE NOTICE TO PROCEED WITH ARCHITECTURAL/ENGINEERING/CONSTRUCTION MANAGEMENT SERVICES	2/21/12
PRESENT 65% DESIGN DRAWINGS & COST ESTIMATE	4/12/12
PRESENT 95% DESIGN DRAWINGS & COST ESTIMATE	7/16/12
PREPARE FINAL PS&E, CONSTRUCTION DOCUMENTS AND BID PACKAGE	8/9/12
ISSUE NOTICE INVITING BIDS FOR CONSTRUCTION	08/21/12
AWARD OF CONSTRUCTION CONTRACT TO LOWEST RESPONSIVE, RESPONSIBLE CBIDDER	10/16/12
ISSUE NOTICE TO PROCEED WITH CONSTRUCTION	10/17/12
COMPLETE ALL CONSTRUCTION ACTIVITIES	5/31/12
PRESENT PROJECT CLOSE-OUT PROJECT TO CITY	6/15/12
SUBMIT FINAL REPORT TO CAL FEMA	6/28/12

**GENERAL ADMINISTRATIVE INFORMATION**

1. **SELECTED CONSULTANT:** The selected consultant will be required to sign a Service Agreement Contract with the City (sample is included as Attachment B) for this project. Each prospective consultant is expected to review the general terms and conditions and acknowledge their acceptance of the Attachment (or their objections to specific parts as a mechanism to expedite the contract execution process.
2. **MANDATORY PRE-PROPOSAL SUBMITTAL MEETING:** A mandatory pre-proposal meeting is scheduled for **DECEMBER 19, 2011 AT 10:00 AM** in the City of Commerce Council Chambers Lobby located at 5655 Jillson Street, Commerce, CA 90040. Please RSVP in writing to confirm your attendance via e-mail to [miguelr@ci.commerce.ca.us](mailto:miguelr@ci.commerce.ca.us) with a copy to [danilob@ci.commerce.ca.us](mailto:danilob@ci.commerce.ca.us).

**CITY OF COMMERCE**

Purchasing Division  
2535 Commerce Way  
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**REQUEST FOR PROPOSAL**

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Danilo Batson, Asst. Dir. of Public Services  
E-mail: [danilob@ci.commerce.ca.us](mailto:danilob@ci.commerce.ca.us)

- **QUESTIONS:** Submit questions regarding this project in writing via e-mail to [miquelr@ci.commerce.ca.us](mailto:miquelr@ci.commerce.ca.us) with a copy to [danilob@ci.commerce.ca.us](mailto:danilob@ci.commerce.ca.us). Questions must be submitted by no later than: **DECEMBER 27, 2011 AT 3:00 AM**. Responses will be distributed to all interested parties.
- 3. **REPLY FORMAT:** Proposal must follow the format as set in this request. Proposals must be returned by the due date to the indicated address. Individuals/firms must submit five (5) copies of the proposal. Please minimize the bulk of your proposal by only submitting one (1) copy of standard brochures and materials. You are free to organize your proposal as you wish, so long as it includes the requested information, including all of the forms contained in this request. Firms are required to clearly identify any limitations or exceptions to the requirements defined in this request. Alternative approaches will be given consideration if the approach clearly offers increased benefits to the City.
- 4. **PROPOSAL ACKNOWLEDGMENT AND RECEIPT:** A Proposal Acknowledgment form must be completed and submitted with proposal (see attachment A).
- 5. **FIRM QUALIFICATIONS:** The individual / firm shall have been in business doing this type of work, in California for at least five years.
- 6. **RESPONSIVENESS AND SELECTION PROCESS:** The decision for selection will be made on a combination of criteria and the City reserves the right to reject any and all proposals or to waive any minor errors, discrepancies or irregularities. The selection will be at the discretion of the City and may be made in any manner that best meets the needs of the City.
- 7. **SUBCONTRACTORS:** The City prefers a proposal with a single or primary individual / firm. If you propose a multi-firm (one firm must be identified as the lead entity) or subcontracted approach, clearly identify the responsibilities of each party and the assurances of performance that your proposal includes.
- 8. **PROPOSED CONTRACT:** Attachment B of this request is a sample Services Agreement that the City intends to use in awarding this contract. The individual / firm should review the terms and conditions contained in the Agreement and must note any exceptions, additions or modifications they would propose for consideration by the City. Blanket substitution of the individual / firm's standard contract or the Standard AIA Agreement in lieu of the City Agreement will not be permitted.
- 9. **INSURANCE REQUIREMENTS:** As indicated in Section 12 of the Professional Services Agreement attached as Attachment B, the selected individual/firm will be required to provide proof of insurance for each of the insurance categories so noted. The individual/firm will be required to name the City of Commerce as additional insured.
- 10. **PAYMENT TERMS:** The City payment terms are, at a minimum, Net 30 days after receipt of all goods and/or services and receipt of an accurate invoice and associated warranties. The City may, at its discretion, agree on a phased approach to invoicing and payment based upon defined benchmarks agreed to by the City and the individual / firm.
- 11. **DELIVERY:** All goods and services shall be delivered to the City, F.O.B. Destination. The individual/firm shall deliver completely by the dates agreed to in this agreement. Failure to deliver in a timely fashion is cause for the City to terminate this agreement.

**CITY OF COMMERCE**

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2535 Commerce Way  
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12. **FIRM PRICES:** All quotes shall be held firm for a minimum of sixty (60 days) after the proposal due date to allow adequate time for the City to consider each proposal and make an award. All blanks for unit price and total price shall be completed. Any discrepancy between the unit price and the extended or total price shall be determined by taking the lower price. Upon receipt of this proposal by the City, the individual/firm shall be presumed to be thoroughly familiar with all aspects of this work. The failure or omission to examine any location, equipment, form, instrument or document shall in no way relieve the individual/firm from any obligation with respect to this proposal.
13. **LITIGATION:** In the event of litigation between the parties concerning this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and associated costs. The laws of the State of California shall govern this Agreement. If any provision of this Agreement becomes invalid or unenforceable, the remainder of the Agreement shall not be affected.
14. **ASSIGNMENT:** This Agreement, nor any part of this Agreement, may be assigned without the written consent of the other party.
15. **CANCELLATION CLAUSE:** The City may terminate and cancel any purchase order or contract that result from this project without obligation at any time prior to receipt of the goods or services.
16. **HOLD HARMLESS:** The individual/firm shall defend, indemnify and hold the City, its officers, employees and agents harmless from any liability for damage or claims of same, including, but not limited to, personal injury, property damage and death, which may arise from Firm or Firm's contractor, subcontractors, agents or employees operating under this Agreement, excepting suits and actions brought by Firm for default of this Agreement or to the extent the claim arises out of the sole negligent or willful misconduct of City. City shall cooperate reasonably in the defense of any action, and Firm shall employ competent counsel, reasonably acceptable to City Attorney.
17. **KICK-OFF MEETING AND PRESENTATIONS:** Kick-off Meeting – Individual / firm and project team shall meet with City personnel within five (5) business days of contract award to discuss project requirements, schedule, deliverables and expectations.
18. **PRESENTATIONS:** Individual / firm and project team must be available for a minimum of four (4) presentations of their proposal and or during the course of the project and upon the City's request for such a presentation.

**CONSULTANT SELECTION**

The City will evaluate the proposals submitted, and select the most qualified consultant for the project. The proposals will be evaluated based upon several factors. These factors include the format, organization, and presentation of the proposal, the qualification and experience of the project staff, and the experience in the processes and procedures of the involved regulations.

In evaluating the proposals, the City will consider the following factors:

- Completeness of the Proposals and compliance with the required format.
- Project understanding, scope and approach to develop the project efficiently.
- Knowledge in Public Agency Procedures and Requirements.
- Experience in managing similar projects.
- Experience and qualifications of the firm and the project team members.
- Experience in Public Contract Procedures, Requirements, Laws and Construction Claims.

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- Experience in Federally Funded Project Requirements and Process.
- Experience in working as an extension of City staff and providing turn-key services in similar capacities with minimal direction from City staff.
- Experience of Construction Manager and Specialty Inspector.
- References and performance records on similar assignments.

Upon receipt of Proposals, City may select the most qualified consultant as 1 step process or may conduct additional interviews with the top 3 ranked consultants. The City will negotiate final scope and fee with the most qualified consultant.

**REQUIRED FORMAT FOR PROPOSAL SUBMITTAL**

The City of Commerce requests that interested individuals and firms send a detailed proposal to provide the requested services mentioned above. Five (5) copies of the proposal shall be submitted. Submittals shall be limited to a cover letter and 30 pages (one-sided) or 15 pages (double-sided), 8-1/2" x 11" in size, with pages distributed into each section as noted below. Facsimile copies will not be accepted. Proposals must contain the information listed below:

1. A cover letter including the name and address of the firm or individual, the telephone number to be used for contact, along with the name of the individual(s) who will be authorized to make presentations for the firm, and a statement regarding your firm's or individual capacity to perform the specific tasks outlined in this request. Also include statements regarding your firm's stability in the industry.
2. A statement on the individual / firm's project understanding and approach including a scope of work for each phase. The statement shall include a detailed scope and understanding of the process to undertake project and complete work in compliance with all applicable rules, regulations, standards and requirements.
3. A statement on the principal individual(s) who will be responsible for the assignments, along with their experience and qualifications. Statement shall include an organizational chart showing the names and responsibilities of key personnel. The proposed Professional Architect and Engineer shall be licensed in California and shall have experience working with Public Agencies in similar assignments, including experience in providing Municipal Architectural Services, Contract City Engineering Services and, dealing with Public Agency Staff, Council and Commissions. It is important that the key project team members have served public agencies in various capacities, and are accustomed to working with governmental agencies, and have good understanding of public agency issues, procedures, and policies. The City is looking for a qualified team that can provide turn-key services, and be the single Point of Responsible Party representing the City in all aspects of the project. Provide resumes of key personnel identified in the organizational chart.
4. Examples of firm's or individual's previous work, relevant experience with similar construction and explanation on how firm have kept current in general practice. Please include the scope of work, budget, date of completion and the principal for the listed projects. (Limit to 5 pages).
5. A list of at least five (5) references for which you or your firm have performed similar services. Include the project name, contact name, and address and telephone number for each reference.



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6. Fee structure for services shall include:
  - a. A listing of standard hourly rates for assigned staff positions;
  - b. A brief explanation on how fees are determined.
7. Proposal shall include a time schedule for the completion of services, including a current estimate for the duration of each phase including the construction period for the project.
8. Additional information may be provided to highlight or expand upon experience applicable to this request. (Limit to 8 pages).
9. Submit a fee for each phase. As required by the CDBG Program, the City will select the most qualified consultant, based on the most reasonable fee to prepare the design specifications, perform construction management, and coordinate with the City's Labor Standards Compliance Officer and to complete the entire construction for the Project within a 60 day construction project timeline.
10. The scope of work provided in this RFP will be used as a guideline only. It will be the selected consultant's responsibility to identify all necessary tasks and costs associated with the requested services and to ensure that each phase of the project is completed efficiently and in full compliance as required with the Grant guidelines and procedures.

**PRE-CONTRACTUAL EXPENSES**

All costs for the preparation of the proposal shall be borne by the proposing individual / firm. The City shall not be liable for any pre-contractual expenses incurred by any proposer or by any selected consultant. Each proposer shall protect, defend, indemnify, and hold harmless the City from any and all liability, claims, or expenses whatsoever incurred by, or on behalf of, the entity participating in the preparation of its response to this RFP.

The City reserves the right to amend, withdraw and cancel this RFP. The City reserves the right to reject all responses to this request at any time prior to contract execution. The City reserves the right to request or obtain additional information about any and all proposals.

**RFP ATTACHMENTS**

- A - Proposal Acknowledgment and Receipt**
- B - Service Agreement Contract**
- C - ENTER ADDITIONAL ATTACHMENTS HERE**

**RFP - ATTACHMENT A**

**Proposal Acknowledgment and Receipt**

REQUEST FOR PROPOSALS (RFP)  
ARCHITECTURAL DESIGN, ENGINEERING AND CONSTRUCTION MANAGEMENT SERVICES  
FOR CITY OF COMMERCE

**FY10 EMERGENCY OPERATIONS CENTER**  
**Grant #2010-0016, Cal EMA #037-14974, Amendment #1**

The undersigned proposes to furnish professional services to the City of Commerce California for the stated prices in accordance with the terms and conditions set in this Request for Proposal.

The undersigned understands and agrees that the conditions set forth in this Request for Proposal, together with the proposal and any other documents submitted in response to the foregoing, shall form a part of and be constructed as part of the purchase order/contract.

**FIRM:**

Company Name	Street Address of Company
Signature of Officer	City, State, Zip Code
Printed Name of Officer	Telephone No./Fax No.
Title of Officer	Federal I.D. Tax Number

MUST BE COMPLETED AND SUBMITTED WITH PROPOSAL

**RFP - ATTACHMENT B**

**SERVICES AGREEMENT**

**Between**

**CITY OF COMMERCE**

**And**

**ENTER FIRM NAME HERE**

**DATED: ENTER DATE HERE**



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**ATTACHMENTS**

SCOPE OF WORK:.....	EXHIBIT A
REQUIRED INSURANCE:.....	EXHIBIT B
LOBBYIST ORDINANCES:.....	EXHIBIT C

**ATTACHMENT 1  
SAMPLE CITY CONTRACT**

**PROFESSIONAL SERVICES AGREEMENT**

**THIS AGREEMENT** ("Agreement") entered into this \_\_\_ day of \_\_\_\_\_, 2011, ("Effective Date") is by and between \_\_\_\_\_ ("Contractor") located at \_\_\_\_\_ and the City of Commerce, a Municipal Corporation ("CITY") located at 2535 Commerce Way, Commerce CA 90040;

**WITNESSETH**

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

WHEREAS, the City has determined that it requires the services of a professional that can provide professional architectural, engineering, and construction management services for the City's Emergency Operations Center Project;

**Comment [A1]:** See Comment B1

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

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

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

1. Scope of Services and Schedule of Performance

Contractor shall provide City with such professional services as are set forth in Exhibit A, "Scope of Services," which is attached hereto and incorporated herein by this reference. NOTE: the Appendices that are prepared in response to the RFP and/or the Proposal by the successful bidder will be used as the Scope of Services attachment.

2. Warranty

Contractor warrants that the services provided under this Agreement will be performed with the degree of skill and judgment normally exercised by recognized professionals performing services of a similar nature at the time the services were rendered.

3. Term of Agreement

The term of this Agreement shall be for an initial one year period. The City shall have the option to extend the Agreement for two one-year terms. If the City desires to exercise such option(s), the City shall advise Contractor at least thirty (30) days prior to the expiration of the initial term or the initial option period.

4. Compensation and Payment

4.1. So long as Contractor is discharging Contractor's obligations in conformance with the terms of this Agreement, Contractor shall be paid such compensation rates as are set forth in Contractor's *[insert Contractor's fee schedule date]* fee schedule to City attached hereto as Exhibit B and incorporated herein by this reference. Contractor will not be eligible for any paid benefits for federal, social security, state workers' compensation, unemployment insurance, professional insurance, medical/dental, or fringe benefits offered by City.

4.2. Such fees shall be payable following receipt of an itemized invoice for services rendered submitted to City in a timely manner. Contractor shall send and address its bill for fees, expenses, and costs to City to the attention of the City Administrator upon completion of services invoiced to City on a monthly basis.

4.3. Payment by the City to Contractor shall be within 30-days of receipt of approved invoices. Payments will be based on approved invoices which include all required reports and detailed back-up information on all expenses. City shall pay the full amount of such invoice; provided, however, that if City or its City Administrator object to any portion of an invoice, City shall notify Contractor of City's objection and the grounds therefore within thirty (30) days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice.

5. Financial Records

Contractor shall maintain complete and accurate records with respect to fees and costs incurred under this Agreement. All such records shall be maintained on a generally accepted accounting basis and be clearly identified and readily accessible for audit or examination. Contractor shall keep, maintain and provide free access to such books and records to examine and audit the same, and to make transcripts thereof as necessary, and to allow inspection of all work data, documents, proceedings and activities related to this Agreement for a period of four (4) 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.

6. Right of Termination

6.1. City may in its sole discretion terminate this Agreement by providing Contractor with a thirty (30) day written notice.

6.2. Contractor may terminate this Agreement by giving the City a 60-day advance written notice if such termination is necessary.

6.3. With the 60-day written notice of termination, Contractor shall give City a written explanation of the reason that the Contractor believes termination is necessary, and cooperate with the City in an effort to resolve the issue.

6.4. Termination by either party hereunder, shall not relieve Contractor from providing services required to be performed up to the effective date of such termination, nor relieve City of its duty to pay the approved costs, prorated as necessary, to the effective date of such termination, or any other reimbursements, fees or expenses to be paid to Contractor by the terms of this Agreement.

7. Independent Contractor

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

8. Contractor to Provide Required Personnel; Subcontracting

Contractor shall provide and direct the necessary qualified personnel to perform the services required of and from it pursuant to the express and implied terms hereof, with the degree of skill and judgment normally exercised by recognized professional firms performing services of a similar nature at the time the services are rendered, and to the reasonable satisfaction of City. Contractor may not have a subcontractor perform any services required under this Agreement unless the subcontractor is first approved and authorized to perform such work by the City.

9. Responsible Principal and Project Manager

Contractor shall be required to identify a Project Manager for Contractor who shall be responsible for complying with Contractor's obligations under this Agreement and shall serve as principal liaison between City and Contractor. Designation of another responsible principal or project manager by Contractor shall not be made without the prior written consent of City.

10. City Liaison

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

11. Licenses

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

14. Compliance with Laws

Contractor shall, and shall ensure that its employees and sub-contractors comply with all applicable City, county, state, and federal laws and regulations (including occupational safety laws and regulations) in performing the services required under this Agreement, and shall comply with any directions of governmental agencies and City relating to safety, security, and

the like as they pertain to the performance of this Agreement.

15. Insurance

Contractor shall maintain insurance and provide evidence thereof as required by Exhibit C hereto (the "Required Insurance"). Contractor shall also require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.

16. Indemnification

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

16.2. City shall have the right to offset against the amount of any compensation due Contractor under this Agreement any amount due City from Contractor as a result of Contractor's Contractor failure to pay City promptly any indemnification arising under this Section and related to Contractor's Contractor failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

16.3. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 16 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. Contractor agrees to be fully responsible and indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Contractor's subcontractors or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.

16.4. City does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.



17. Confidentiality

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

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

19. Data and Services to be Furnished by City

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

20. Covenant Against Contingent Fees

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

21. Conflict of Interest

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

22. Other Agreements

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

23. Waiver of Breach

No waiver of any term, condition or covenant of this Agreement by City shall occur unless signed by the City Administrator of City 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 City for any breaches of this Agreement which are not excused by such waiver. A delay in communicating a failure of Contractor to satisfy a term, condition or covenant in no way waives that term or any remedies available for its breach.

24. No Discrimination

In the performance of this Agreement, Contractor shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition or sexual orientation. Contractor will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition or sexual orientation.

25. Captions

The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such

substitution(s).

26. Waiver

The waiver by City or Contractor of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Contractor unless in writing.

27. Cumulative Remedies

Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. In the event legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be San Bernardino County, California.

28. Assignment

Neither this Agreement nor any rights or obligations hereunder may be assigned or otherwise transferred by Contractor. 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.

29. Attorneys' Fees

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

30. 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 City:  
City of Commerce  
2535 Commerce Way  
Commerce, California 90040  
Attn: Robert Zarrilli, Director of Community Development

For Contractor:  
XXXXX  
XXXXX  
XXXXX  
Attn: XXXXX

Notice shall be deemed received three (3) 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 affected.

31. 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.

32. 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.

33. 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.

34. Entire Agreement and Amendments to Agreement

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

35. 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.

36. 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: \_\_\_\_\_

By: \_\_\_\_\_  
Joe Aguilar  
Mayor

("CONTRACTOR")

XXXXXXX

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
XXXX

ATTEST:

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

**APPROVED AS TO FORM**

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

## EXHIBIT C

### REQUIRED INSURANCE

On or before beginning any of the services called for by any term of this Agreement, Contractor, at its own cost and expense, shall carry, maintain for the duration of this Agreement, and provide proof thereof that is acceptable to City of its procurement of the insurance specified below from insurers and under forms of insurance satisfactory in all respects to City. Such insurance shall not be in derogation of Contractor's obligations to provide indemnity under Section 18 of this Agreement.

1. Comprehensive General Liability And Automobile Liability Insurance Coverage

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

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

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

2. Errors And Omissions Insurance Coverage

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

3. Worker's Compensation

Before execution of the Agreement, Contractor shall file with the City the following signed certification:

"I am aware of the provisions of Section 3700 Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Service Agreement".

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

4. Additional Insureds

The City of Commerce, their 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 City prior to the commencement of any work. Satisfaction of any deductible requirement shall be the responsibility of Contractor. Such insurance shall be primary, and noncontributory with any other insurance by the City of Commerce.

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 City and authorized to issue said policy in the State of California.

8. Approval of Insurer

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

9. Payment of Premiums

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

10. Evidence of Insurance and Claims

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

EXHIBIT C

FEDERAL LOBBYIST CERTIFICATION

Name of Firm: \_\_\_\_\_

Address: \_\_\_\_\_

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Telephone Number: | \_\_\_\_\_ | \_\_\_\_\_

Acting on behalf of the above named firm, as its Authorized Official, I make the following Certification to the U. S. Department of Housing and Urban Development and the Community Development Commission, County of Los Angeles.

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into the transaction imposed by Section 1362 Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Authorized Official

\_\_\_\_\_  
(Print or Type Name)

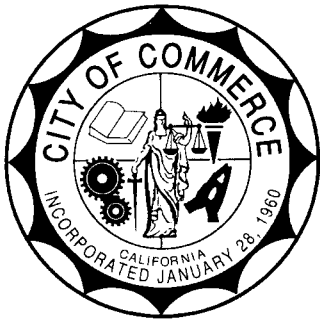
By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)



**EXHIBIT C - Continued**



# AGENDA REPORT

Meeting Date: December 6, 2011

TO: Honorable City Council

FROM: City Administrator

SUBJECT: Approval of Request for Proposal (RFP), for the Purchase of Transit Data Management Software

## RECOMMENDATION:

That the City Council:

1. Approve the Request for Proposal as named above, prepared by staff; and
2. Authorize the Transportation Department to advertise for proposals and designate Tuesday, January 17, 2012, at 3:00 p.m., as the bid due date.

## MOTION:

Approve the recommendation.

## BACKGROUND:

On February 26, 2009, the Metro Board of Directors approved the formula allocation and programming of federal highway and transit capital funds made through the American Recovery and Reinvestment Act of 2009 (ARRA). Commerce will receive \$582,234 in FTA 5307 transit capital funds. The two capital projects included in this grant were the purchase of one replacement bus (approved by Council on August 18, 2009) and the purchase of transit management software.

## ANALYSIS:

The Transportation Department is required to submit operating and financial data to the Department of Transportation's National Transit Database (NTD) program. The legislative requirement for the NTD is found in Title 49 U.S.C. 5335(a):

### SECTION 5335 - National Transit Database

- A. **National Transit Database**— To help meet the needs of individual public transportation systems, the United States Government, State and local governments, and the public for information on which to base public transportation service planning, the Secretary of Transportation shall maintain a reporting system, using uniform categories to accumulate public transportation financial and operating information and using a uniform system of accounts. The reporting and uniform systems shall contain appropriate information to help any level of government make a public sector investment decision. The Secretary may request and receive appropriate information from any source.
- B. **Reporting and Uniform Systems**— the Secretary may award a grant under Section 5307 or 5311 only if the applicant and any person that will receive benefits directly from the grant, are subject to the reporting and uniform systems.

As noted in the previous section, in order for the City of Commerce to continue receiving Federal Transit Capital Grants, the City must participate in the NTD program.

The Transportation Department submits NTD data on a monthly, quarterly, and annual basis. Data is collected from the following sources, analyzed, and combined prior to entry into the NTD program:

Department	Data Source
Finance	Operating costs, Capital expenditures, grant revenue (federal, state, and local)
Maintenance	Maintenance costs, maintenance operating statistics, fuel usage
Operations	Driver trip sheets, dispatch reports, customer comments, ridership reports
City Clerk	Accident reports and claims information
Transit Administration	Capital projects, vehicle fleet status

This process is time-consuming and requires multiple checks with different departments to ensure accuracy of data, and review and data validation questions from NTD staff.

Transit agencies in California use a variety of software programs to analyze operating and financial data for management purposes and NTD information submittal. Staff has reviewed web-based transit management software programs at several agencies, including Foothill Transit and the Los Angeles Department of Transportation, to assist in the development of the attached Request for Proposal.

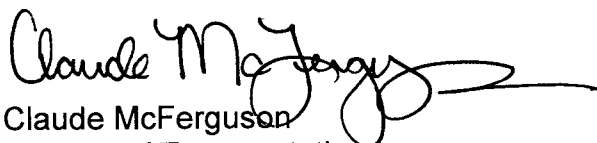
**FISCAL IMPACT:**

The proposed activity can be paid for out of Federal Transit Administration (FTA) Grant Number CA-96-X072. Appropriations were initially established at \$161,682. To date, there is an existing balance of \$161,682. Expenditures for the proposed activity will amount to \$161,682 for Fiscal Year 2010. Combined with all other reasonably known, planned and approved expenditures for this line item and cost center, the proposed activity can be absorbed within current budget limitations for the remainder of the fiscal year.

**RELATIONSHIP TO 2009 STRATEGIC GOALS:**

This agenda item relates to the 2009 strategic planning goal: "Make Financial and Economically Sound Decisions Consistent with Economic Conditions," as it will assist the Transportation Department in complying with Federal reporting requirements and will improve the accuracy of management information used to operate the Transportation Department effectively.

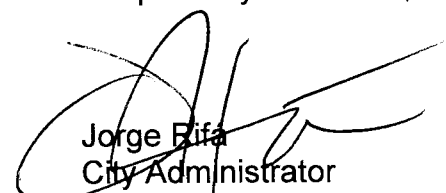
Recommended by:

  
Claude McFerguson  
Director of Transportation

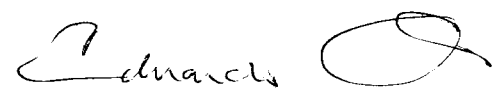
Budget Impact Review by:

  
Vilko Domic  
Director of Finance

Respectfully submitted,

  
Jorge Rifa  
City Administrator

Approved as to Form:

  
Eduardo Olivo  
City Attorney

Attachments: Invitation to Bid

**City of Commerce**  
**RFP No. XXXX**  
**Invitation to Bid**  
**Data Management System**  
**City of Commerce Transportation Department**



**SUBMIT BID TO:**

Purchasing Department  
City of Commerce  
2535 Commerce Way  
Commerce, CA 90040

**BID SCHEDULE**

**Release Request for Proposal:**  
December 7, 2011

**Bid Due Date:**  
January 17, 2012

**BID QUESTIONS**

All Questions should be submitted by e-mail to:  
[marting@ci.commerce.ca.us](mailto:marting@ci.commerce.ca.us)



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Appendix A: Standard Contract

Appendix B: Sample Cost Proposal Sheet

Appendix C: Data Source List

Appendix D: Data Management Required Reports

Appendix E: Sample Monthly Monitoring Report

Appendix F: ARRA Reporting Requirements

Attachment I: Federal Contract Clauses

## 1.0 Project Description

### Introduction to the City of Commerce

The City of Commerce has a mixture of residential, industrial and commercial areas. The City was incorporated in 1960 and is located six miles east of downtown Los Angeles and is bordered by Bell, Bell Gardens, Downey, East Los Angeles, Montebello and Vernon. The City is home to the Commerce Casino and Citadel Outlets.

The City of Commerce has operated a fixed route transportation system since 1960. The transportation system serves the City by providing local service which is not provided by regional carriers in the area. Since its inception, the system has operated on a fare-free basis which makes it unique in Los Angeles County.

The fixed route service consists of five routes that operate Monday through Friday, with three routes that run Saturdays, and two routes on Sunday. The Medi-Ride (paratransit) service is operated Monday through Friday. Fifteen vehicles are used to provide service (10 fixed routes, 5 paratransit) and approximately 25,348 annual service hours are operated.

### Project Description

The City of Commerce (referred to as "Commerce" or "City") is issuing this Request for Proposal (RFP) seeking proposals from qualified firms or individuals (referred to as "Vendor", "Proposer", "Contractor" or "Seller") to provide Data Management software to consolidate, display, report, and monitor pertinent characteristics of the agency, as more fully described in the Scope of Services set forth in **Section F** of the RFP. Proposals shall consist of the elements as described in **Section D** of the RFP. An Evaluation Committee will review and rate all proposals using the criteria noted in **Section G** of the RFP.

Currently, Commerce collects data from numerous data sources in the Department. The data is organized and analyzed using a variety of sources, some are proprietary, custom-developed solutions and others are standard database programs, such as MS Excel and MS Access. It is the goal of this solicitation to procure a solution that will act as a single solution that can be used by Commerce staff.

The successful Data Management solution proposer will clearly review this scope of work, understanding that a final solution will not come from this document or from their proposal alone, but will be a collaborative effort with Commerce staff who will use the Data Management software after contract commencement.

The desired Data Management solution will be one that integrates the different data sources currently used by Commerce, offers the simplest yet robust graphical user interface, provides an easy to read and simple user dashboard, and provides detailed data reports. The system should allow Commerce to create monthly Council reports, future NTD reports, and annual reports for its Short Range Transit Plan (S RTP).

**2.0 Timeline**

Event:	Date
Request for Proposals issued by City of Commerce	
Deadline for receipt of written questions and requests for addenda	
Commerce responses and/or addenda issued	
Proposals due – 3:00 p.m. PST	
Commerce reviews Proposals	
Commerce City Council received staff recommendation for award	

**3.0 General Information**

Notice of Informal Solicitation

Notwithstanding any other provision of this RFP, all proposers are hereby specifically advised that this RFP is an informal solicitation for proposals only, and is not intended and is not to be construed as an offer to enter into an agreement or engage into any formal competitive bidding or negotiation pursuant to any statute, ordinance, rule or regulation.

Method of Response

Responses to the RFP shall be made according to the specifications and instructions contained herein. Failure to adhere to instructions may be cause for rejection of any proposal.

Acceptance of Terms and Conditions

Proposers understand and agree that submission of a proposal will constitute acknowledgment and acceptance of, and a willingness to comply with, all the terms, conditions, and criteria contained in this RFP, except as otherwise specified in the proposal. Any and all parts of the submitted proposal may become part of any subsequent contract between the selected Contractor and the City of Commerce.

False, Incomplete, or Unresponsive Statements

False, incomplete, or unresponsive statements in connection with a proposal may be sufficient cause for rejection of the proposal. The evaluation and determination of the fulfillment of the above requirement will be the City of Commerce’s responsibility and its judgment shall be final.

Clear and Concise Proposal

Proposals shall provide a straightforward, concise delineation of the proposer’s capability to satisfy the requirements of this Request for Proposals (RFP). Each proposal shall be submitted in the requested format and provide all pertinent information, including but not limited to information relating to capability, experience, financial resources, management structure and key personnel, and other information as specified in Section D and otherwise required in this RFP. Each proposal shall be signed in ink by a duly authorized officer of the company.

Equal Employment Opportunity

Contractor will be required to comply with all applicable Equal Employment Opportunity laws and regulations.

Disadvantaged Business Enterprises (DBE) and Women Business Enterprises (WBE)

Commerce hereby notifies all bidders that it will affirmatively ensure that in regard to any contract entered into pursuant to its advertisement, Disadvantaged Business Enterprises (DBE) and Women Business Enterprises (WBE) will be afforded full opportunity to submit proposals in

response to this invitation and will not be discriminated against on the grounds of race, gender, color, or national origin in consideration for an award.

Ineligible Bidders

All bidders will be required to certify that they are not on the Comptroller's General List of Ineligible Contractors. The successful bidder shall be required to comply with Commerce's Affirmative Action Plan. Commerce reserves the right to reject any proposal if the contractor fails to comply.

ARRA Reporting Requirements

The selected vendor will be responsible for reporting under the American Recovery and Reinvestment Act (ARRA) of 2009, using the schedule and forms in Appendix F. Note that the report due dates are subject to change.

3.1. Submission of Proposals

One (1) bound original and three (3) bound copies of the proposals in the form specified in this RFP must be received by the City of Commerce at its offices at the address below, directed as set forth above by 3:00 PM PST, on January 17, 2012. Proposals in response to this RFP shall be considered received at the time actually received by the addressee listed below or designated agent. Proposals received after the specified date and time shall be considered late and shall not be considered for evaluation. Late proposals shall be returned to the sender unopened. Proposers should note that Commerce's normal business hours are from 8:00 AM to 5:00 PM, Monday through Friday.

All proposals and other communications must be addressed, as follows:

Martin Gombert, Project Manager  
Transportation Department  
City of Commerce  
5555 Jillson St.  
Commerce, CA 90040

P: (323) 887-4419  
F: (323) 724-2776

3.2. Inquiries, Pre-Proposal Conference and Due Date

A pre-proposal conference will not be held.

A proposer may submit to Commerce a written request for an interpretation or clarification of, or any addenda to, this RFP. Any such request must be received by Commerce no later than December 29, 2011. The request must be submitted in writing (including by facsimile) to the City of Commerce contact or by email at [marting@ci.commerce.ca.us](mailto:marting@ci.commerce.ca.us). Commerce's responses to questions and pre-proposal sign in will be mailed to interested proposers and posted to <http://www.ci.commerce.ca.us/index.aspx?NID=116> by January 9, 2011.



Commerce is not bound by any oral interpretations, clarifications, or changes made to this RFP by any Commerce representative. Any clarification or change to the RFP must be provided in writing pursuant to this Section.

### 3.3. Addendum

Commerce reserves the right to make modifications or addenda to this RFP. If Commerce determines it is appropriate to revise any portion of this RFP, either at the request of a proposer or upon Commerce's own initiative, Commerce will issue, and make available to all prospective proposers, a written addendum setting forth this revision. Proposers shall acknowledge receipt of addenda by written notice thereof returned to Commerce. Where addenda require changes in the work to be performed under the Contract, the date set for receipt of proposals may be postponed by such number of days as Commerce determines are appropriate, in order to enable prospective proposers to revise proposals.

### 3.4. Protest Procedures

After award notification, firms wishing to file a protest must do so in writing by the protest deadline stated in the RFP timeline. All protests must be sent to Commerce's Director of Transportation by certified mail and arrive by the protest deadline. The protest must include the name and contact information for the person representing the protesting firm, a full and complete written statement specifying in detail the grounds for the protest, and facts supporting the protest. The protest shall also clearly state the relief sought. If a protest is filed, Commerce shall issue a written decision on the protest to the protestor.

Upon receipt of any protests on the specific selection process, a review of the protest(s) shall be conducted by a secondary review committee.

### 3.5. Restrictions on Lobbying and Contacts

#### 1 - Restrictions on Lobbying and Contacts with Commerce City Council Members

During the period beginning on the date of the issuance of this RFP and ending on the date of the award of the contract, no person (or entity) submitting a proposal in response to this RFP, nor any officer, employee, representative, agent, or contractor representing such a person (or entity) shall contact through any means or engage in any discussion regarding this RFP, the evaluation or selection process, or the award of the contract with any member of the Commerce City Council or his or her personal staff. Any such contact shall be grounds for the disqualification of the proposer.

#### 2 - Restrictions on Lobbying and Contacts with Commerce Staff

During the period beginning on the date of the issuance of this RFP and ending on the date of the award of the contract, each person or entity described in subsection 3.5-1 shall limit his or her communication with Commerce staff to the written clarification and amendment process described. During such time period, any such person or entity is precluded from having any communications regarding this RFP, the evaluation or selection process, or the award of the contract with a member of the Commerce Evaluation Committee, other than communications initiated by such member during interviews or discussions. Any such unauthorized communication shall be grounds for the disqualification of the proposer.

3.6. Ownership of Proposals

The proposals received become the exclusive property of the City of Commerce. At such time, as a contract award is approved by the Commerce City Council, all proposals submitted in response to this RFP shall become a matter of public record and shall be regarded as public records, with the exception of those elements of each proposal which are trade secrets as that term is defined in California Government Code 6254.7 and which are marked as "TRADE SECRET," "CONFIDENTIAL" or "PROPRIETARY." Commerce shall not in any way be liable or responsible for the disclosure of any such records or portions thereof, including and without limitation, those so marked if disclosure is deemed required by law or by an order of a court. Proposals that indiscriminately identify all or most of the proposal as exempt from disclosure without justification may be found technically unacceptable.

**4.0 Proposal Format**

Proposers shall provide a written proposal which includes the required elements on separate tabs, both in content and sequence, set forth in this Section. Each section of the Proposal as described herein shall be segregated and identified by a tabbed insert as to identify the item being addressed in the Proposal. A Proposal may be rejected and not reviewed by Commerce if it modifies or fails to conform to each of the requirements set forth in this Section.

Cover Letter

Each proposer shall submit a maximum two-page letter including the name and address of the organization submitting the proposal; whether the organization is an individual, partnership, corporation or joint venture; and the name, address and telephone number of the contact person who will be authorized to make representations for the organization.

Section 1: Project Understanding

Proposers shall describe their understanding of Commerce and the services to be provided by the proposer in response to this RFP.

Section 2: Proposer Experience

*Similar Project Experience*

Each Proposer must provide detailed information concerning a minimum of three (3) projects that are similar in nature to that contemplated in this RFP for which the proposer has provided services to a public transit agency or other entity within the last 24 months. The detailed information for each project must include the following:

- A. A short narrative describing the project;
- B. Problems encountered, and the outcomes;
- C. The original project schedule and information concerning whether the schedule was met as contemplated, and, if not, why not; and
- D. The name of the entity for which the services were provided, including the project manager's name, address, phone number, and email address.

*Public Transit Experience*

Since the City of Commerce provides public transit service and because of the complex nature of the public transit business, proposers are required to have public transit experience along with experience dealing with Federal, state, and local governments. Since this project requires interfaces between Commerce's existing transit applications (Asset Works, AVL system-future) each proposer's experience dealing with similar agencies and applications, must be included in the proposal. Each Proposer must provide the following information:

- A. Name of each person in the Proposer's organization that will be assigned to the Commerce project, identifying that person's position and years of employment.

Section 3: Work Plan and Technical Approach

Each proposer must submit the following:

- A. Project Schedule: Detailed project schedule from contract execution to full implementation and utilization by the City of Commerce;
- B. Detailed information on the requirements gathering process and methodology;
- C. Usability: Information concerning the usability of the proposed product or products;
- D. Information on how much time will be spent importing historical data into the system;
- E. Sample Graphical User Interface: A sample of the graphical user interface proposed for the Dashboard and for other pertinent areas of the proposed solution; and
- F. Training Plan: A detailed training plan including proposed schedule, proposed attendees, and sample training manuals.

Section 4: System Capabilities

Each proposer must submit the following:

- A. Descriptions of modules included in your system (i.e. performance monitoring, vehicle data, complaint system, finance, etc.);
- B. Sample reports similar to those that will be utilized by Commerce including a monthly report similar to Appendix E, an NTD report and an annual report;
- C. What NTD reports can be created from the system;
- D. What graphs (include examples) can be created from the system;
- E. What type of queries can be made dynamically on the database; what interface is available; and
- F. Other features included with your system that are not required under this system but will add value to Commerce.

Commerce is interested in additional functionality that is not required under the RFP. Please provide information regarding whether your system can accommodate the following features. Include information regarding additional costs or customization needed.

- A. Ability to integrate with AVL system to store stop level data (future capability);
- B. Ability to store and track information related to bus stops (ADA accessibility, amenities, permits, etc);
- C. Ability to track DBE and WBE contractor information and other affirmative action and Equal Employment Opportunity (EEO) data as required by Commerce policy; and
- D. Ability to track fuel efficiency and other emissions related data.

Section 4: Technical Information

Each proposer must submit the following:

- A. Description of how performance data is stored (trip level is desired);
- B. An overview of server and user system requirements needed to implement the proposer's Data Management solution;
- C. Proposed network architecture overview;
- D. Proposed licenses required for all software proposed in solution;
- E. Description of the proposer's warranty plan;
- F. An overview of the proposed technical support to be provided to Commerce after system acceptance; and
- G. Capacity of data system; how long can data be stored, how much data can be stored; how many routes, how many service types, etc.

Section 5: Fee Proposal

Proposers are required to submit an individually sealed fee proposal for all services outlined in the Scope of Services. A sample cost proposal form is included in Appendix B. The fee proposal must be in a separate envelope with the marking FEE PROPOSAL. Please note that the fee proposal must specifically identify the name of the proposer. Proposers are also required to submit proposed fees for maintenance support costs based on a one year maintenance contract and on a two year maintenance contract. Provide startup and all other one-time costs for system. The Fee Proposal must include the proposed rate for custom programming for any report creation which is not covered in the Scope of Work; ongoing costs for the next five (5) years broken down by year and charges itemized to include maintenance and upgrade charges.

#### 4.1 Procurement Guidelines

##### Costs Incurred by Proposer

Any costs incurred by proposers in responding to this Request for Proposals shall be the proposer's sole expense and will not be reimbursed by Commerce.

##### Cancellation of Procurement

Commerce reserves the right in its discretion to cancel this Request for Proposals in whole or in part.

##### Proposal Rejection

The City of Commerce reserves the right in its discretion to accept or reject any and all proposals submitted in response to the RFP, or refuse to enter into any contract resulting from any proposal submitted, without expense to Commerce.

##### Proposal Withdrawal

The proposer's authorized representative may, prior to the date and time set as the deadline for receipt of proposals, modify or withdraw a proposal in person, in writing, or by facsimile (323)887-4419 to the Commerce contact listed in Section 3.1. If proposals are modified or withdrawn in person, the authorized representative shall make his or her identity known and shall sign a receipt for the proposal. Written or facsimile notices shall be received in Commerce's offices, 2535 Commerce Way, Commerce, CA 90040, no later than the date scheduled as the proposal receipt deadline. After the proposal receipt deadline, proposals may not be withdrawn for one hundred twenty (120) calendar days.

##### Acceptance of Proposals

Each proposal shall be submitted with the understanding that it is subject to the evaluation procedure set forth in Section 6, and to negotiation at the option of Commerce. Upon acceptance in writing by Commerce of the final offer to furnish any and all of the services described herein, the parties shall promptly execute the final contract documents. The written contract shall bind the proposer to furnish and deliver at the price proposed and in accordance with conditions of said accepted proposal and this Request for Proposals, as negotiated. Commerce reserves the right to make the award under this RFP based upon the initial proposals submitted.

#### **5.0 Scope of Work**

##### Purpose

The purpose of the Commerce Data Management system is to aggregate data from different sources within the organization in order to produce meaningful reports that will assist in making business decisions. The package should include "canned reports" or preexisting standard reports which are mentioned later in this document and give users the ability to create customized reports.

The goal of Commerce is to define and consistently implement best practices for contract administration and to use information to help improve service quality and the efficiency and effectiveness of operations. A change in staff member should not result in downtime or the reinvention of processes and reports. The system utilized should be capable of evolving as technologies utilized in the transit industry change. This same system should allow for performance to be compared to agency determined targets and budgets.

### Data Sources

The Data Source List in Appendix C is a list of data sources the City of Commerce Transportation Department currently uses to create reports. Sample data will be provided.

At the time of implementation, the vendor may have to utilize the data accrued by the contractors on the contractor's excel spreadsheet referenced in the Data Source List.

### Historical Data

At a minimum, historical data stored within Commerce's monthly data files will be imported into the data management system starting in July 2010. This data is stored in Excel spreadsheets and represents basic monthly, route level operating data for the system.

### Required Reports

The Data Management Report Table in Appendix D lists the REQUIRED reports, included in the table are the report name, description, and data sources. Commerce also expects the reports to be available in graphical form for easy data translation. The reports will give users the ability to specify certain parameters such as a time period, route number, coach number, travel direction, etc. For key performance indicator reports, the system must allow Commerce the ability to raise or lower a target or goal. In other words, the goals or targets should not be hard coded in the system.

### Custom Reports

Commerce requires the selected vendor to make available the data used to create the canned reports so that Commerce can create custom reports. The selected vendor will provide a data dictionary of the database. The proposers will include in the proposal and cost model, development of 5 custom reports to be determined either during and/or after the Data Management system has been implemented.

### Report Output

Aside from formatted paper reports, the reports will also be available in the following formats:

- Formatted Download, so data can be imported into programs including, but not limited to, MS Excel or MS Access.
- Graphical Representation to provide quick and easy report analysis.
  - Dashboards: The Key Performance Indicators should be available in a dashboard format that is easily transferred to our website so that the public and our board members can see whether or not we have achieved our targets.
  - Charts (Line Graphs, Bar Graphs, and Pie Charts).

### Database Access

Commerce expects to maintain control of the Data Management system contents. This includes the authority to assign full, limited, read-only, or no access as necessary.

### Database Technical Requirements

The database will be ODBC compliant which will allow connection to a report writing program such as but not limited to Crystal Reports or Cognos.

### System Architecture

Commerce is open to a system hosted either in-house or off-site. The architecture should be designed to protect the critical data and services running on the production servers so as to not interfere with any applications which may be utilizing the data.

### Hardware Requirements

The vendor will provide the City with hardware system specifications, including operating system and database server software. These specifications must be adequate to meet the customer's needs for at least 5 years; therefore consideration must be made for growth.

Vendors have the option to provide the hardware, including operating system and necessary database server software, for the system. The hardware price quote can be listed as a separate line item. If hardware is quoted, it will be treated separately during evaluation. If a proposer chooses not to provide the necessary hardware, an estimate of hardware expenses Commerce would incur must still be included in the price quote.

### Backup and Disaster Recovery Strategy

The vendor will also provide Commerce its preferred backup strategy for the system. If the proposed system is a "hosted" system, then the selected vendor must provide Commerce with the backup and disaster recovery strategies.

### Training and Documentation

The selected vendor will provide Commerce staff at least 3 days of training, which will include, but not be limited to:

- How to navigate the system.
- How to pull up canned reports.
- How to export data from reports.

The selected vendor will also provide at least 2 days of system administration training which will include, but not be limited to:

- System administration
- User management
- System management
- Database management
- Creation of reports

The vendor will also provide Commerce with documentation in electronic form with instructions on how to use the system and system administration.

## **6.0 Method of Evaluation and Criteria for Selection**

Commerce reserves the sole right to evaluate and select the successful proposer. An Evaluation Committee will evaluate all proposals in accordance with the criteria set below.

It will be recommended that a contract be negotiated with the Proposer judged to most successfully meet the overall objectives of the RFP while providing the best value to the City of Commerce.

Consulting firms/teams interested in being considered for selection to perform services under this RFP, must submit a proposal in compliance with this notice. Based on the evaluation of

submitted proposals, a list of the top qualified Vendors will be established. The top qualified Proposers may be requested to participate in an oral presentation. Upon completion of the proposal evaluations and interviews, the Proposers will be ranked and the top-ranked firm will be identified. If for any reason an acceptable contract cannot be negotiated with the top ranked Proposer, negotiations will commence with the next ranked Proposer, and so on.

The Evaluation Committee will score the proposals in order to develop a list of proposers determined to be within the competitive range. If necessary, the Proposers whose proposals are found by the City to be within the competitive range will be invited for a private interview and discussions with the Evaluation Committee to discuss answers to written or oral questions, clarifications, and any facet of its proposal.

Commerce may select a proposal for award *without* any oral interviews.

The following criteria will be considered in the selection of the Vendor firm/team (relative weights as shown):

<b>Vendor's Experience Working With Transit Agency Data Management</b>	<b>50</b>
Company Background	10
Transit Knowledge	10
Experience integrating similar data sources	10
Applications and ability to allow access to multiple contractors	20
<b>Implemented Projects</b>	<b>20</b>
Number of Similar Projects	10
Success of Similar Projects	10
<b>Price</b>	<b>30</b>
<b>Project Understanding</b>	<b>10</b>
<b>Project Plan</b>	<b>10</b>
Training Plan	5
Project Schedule	5
<b>Technical Information</b>	<b>40</b>
System's Reports	10
Graphical User Interface (GUI)	10
Warranty/Support	10
Disaster Recover /Backup Plan	10
<b>Total</b>	<b>160</b>



## 7.0 Standard and Special Contract Terms

The selected Vendor will agree to the following standard and special contract terms:

**CONTRACT:** This contract resulting from the acceptance of this order is to be construed according to the laws of the State of California and is non-assignable by the Vendor except upon prior written approval of the agency.

**WARRANTY:** Seller expressly warrants that all materials and work covered by this order will conform to the specifications, drawings, samples or other description furnished or specified by Buyer, and will be merchantable, of good materials and workmanship and free from defect and fit for the purposes intended. Seller expressly warrants that all the material covered by this order which is product of Seller, or is in accordance with Seller's specifications, will be for and sufficient for purposes intended.

**CANCELLATION FOR DEFAULT:** Buyer reserves the right to cancel all or any part of the work covered by this Purchase Order, if Seller does not make deliveries as specified in the schedules or so fails to make progress as to endanger performance of the work and does not correct such failure after receipt of written notice from Buyer specifying such failure, or if Seller breaches any of the terms hereof, including the warrants of Seller. Should cancellation be made for cause, the Buyer reserves the right to purchase elsewhere and if additional costs are incurred, such costs are to be at the Seller's expense.

The Seller shall be liable for any other damages suffered by the Buyer as result of any breach by the Seller in the performance of this Agreement.

**INSPECTION:** All material shall be received subject to Buyer's inspection and rejection. Defective material or materials not in accordance with Buyer's specifications will be held for Seller's instructions and at Seller's expense. Payment for material on this order prior to inspection shall not constitute an acceptance thereof, nor will acceptance remove Seller's responsibility for latent defects.

**CHANGE IN SPECIFICATIONS:** Buyer reserves the right at any time, to make changes in drawings and specifications as to any material and/or work covered by this order and/or schedules. Any difference in price or time for performance resulting from such changes shall be equitably adjusted and/or schedule shall be modified in writing accordingly.

**REMEDIES:** The remedies herein reserved shall be cumulative and additional to any other or further remedies provided in law or equity. No waiver or breach of any provisions of this order shall constitute a waiver of any other breach or such provision.

**INSURANCE:** The successful bidder will be required to comply with all City of Commerce insurance requirements contained in the final contract.

**ADVERTISING:** Seller shall not, without first obtaining the written consent of Buyer, in any manner, advertise or publish the fact the Seller has contracted to furnish Buyer the material herein ordered, and for failure to observe this provision, Buyer shall have the right to terminate the Contract resulting from the acceptance of this order without any

obligation to accept deliveries after the date of termination or make further payments except from completed articles delivered prior to termination.

GOVERNMENT REGULATIONS: In the performance of work under this order, Seller agrees to comply with all applicable Federal, State or local laws, rules, regulations or ordinances.

EXEMPTION FROM TAXES: The vendor certifies that all such taxes are not included in the price shown herein.

INTEREST OF MEMBERS OF STATE LEGISLATURE: No member of the State Legislature shall be admitted to any share or part of this contract or any benefit arising there from.

AUDIT & INSPECTION OF RECORDS BY CALIFORNIA DEPARTMENT OF TRANSPORTATION: The Contractor shall permit the authorized representatives of the State or Federal government to inspect and audit all data and records of the Contractor relating to his performance under this Contract, until expiration of three (3) years after final payment under this Contract.

FEDERAL CONTRACT CLAUSES: The successful bidder will be required to comply with all Federal Transit Administration contract clauses shown in Attachment I.

**APPENDIX A: CONTRACT**

**TO BE INSERTED BEFORE AWARD BY CITY COUNCIL**

**APPENDIX B: SAMPLE COST PROPOSAL FORM**

Please modify as needed.

<b>SAMPLE COST PROPOSAL FORM</b>		
<b>COMMERCE DATA MANAGEMENT SYSTEM</b>		
<b>ITEM</b>	<b>HOURS</b>	<b>COST</b>
Requirement Gathering		
Architecture Design		
Software Customization		
Installation		
Report Writing		
System Acceptance		
Computer Hardware		
Software License		
Warranty		
Direct Costs (Travel etc)		
Training		
Other Costs (Please Specify)		
<b>Subtotal – System Installation Costs for Year 1</b>		
Annual License Fee		
Ongoing Cost 1 (please specify)		
Ongoing Cost 2 (please specify)		
<b>Costs Year 2</b>		
<b>Costs Year 3</b>		
<b>Costs Year 4</b>		
<b>Costs Year 5</b>		
<b>Total (excluding hardware)</b>		
<b>Hardware Costs (please list)</b>		
<b>Custom Report Fees</b>		

**APPENDIX C: DATA SOURCE LIST**

<b>Data Source Name</b>	<b>Software Vendor</b>	<b>Description</b>	<b>Database Vendor</b>	<b>ODBC Compliant</b>	<b>Database</b>
Fixed Route Hours and Costs		Hours and costs by route	Microsoft	-	Excel
Historical Local Commerce Performance Data	In-House	Monthly Spreadsheet used to track performance measures	Microsoft	Yes	Excel
Paratransit Performance Data	In-House	Excel database created by Commerce	Microsoft		Excel
Paratransit Scheduling Data	TBD	Future capability to integrate paratransit scheduling software information	-	-	-
Customer Comments and Complaints	In-House	Monthly Spreadsheet used to track customer complaints	Microsoft	-	Excel
AVL Location and On-Time Performance Data	TBD	Software that will track vehicle location and on-time performance (future capability)	TBD	TBD	TBD

**APPENDIX D: DATA MANAGEMENT REQUIRED REPORTS**

<b>Reports Required</b>	<b>Report Type</b>	<b>Description</b>	<b>Sources</b>
Council Report-Monthly Monitoring	Key Performance Indicators	This monthly report summarizes performance statistics for all Commerce services by route. Data is tracked by fiscal year and compared with previous months and same month from the previous year.	Excel spreadsheets
Total Ridership by User Type	Key Performance Indicators	Track the number of passengers that board all of the Commerce vehicles. The report will allow users to select by date, route, day of week, and direction.	Excel spreadsheets
Ridership per Hour	Key Performance Indicators	Track the number of passengers boarding by route and by service hour.	Excel spreadsheets
Ridership per Trip	Key Performance Indicators	Track the number of passengers per trip by route for tripper services.	Excel spreadsheets
Total Miles	Key Performance Indicators	Track the total number of service-miles for each vehicle.	Excel spreadsheets
Expenses	Key Performance Indicators	Track the expenses incurred by Commerce.	LOGOS reports
Total Operating Hours	Key Performance Indicators	Track the number of hours the vehicles are in service.	Excel spreadsheets
On-Time Performance	Key Performance Indicators	Measure the on-time performance of Commerce service (future capability).	AVL
Wheelchair Use	Key Performance Indicators	Track the number of times wheelchairs board the vehicles.	Excel spreadsheets
Bicycle Rack Use	Key Performance Indicators	Track the number of times bicycles use the bicycle racks on the vehicles	Excel spreadsheets
Customer Comments	Informational	Track customer complaints, comments, and commendations by type and service.	Customer comments
Vehicle Inventory	Informational	Track vehicle information for Commerce owned vehicles.	Excel Spreadsheet

**APPENDIX E: Sample Monthly Report**

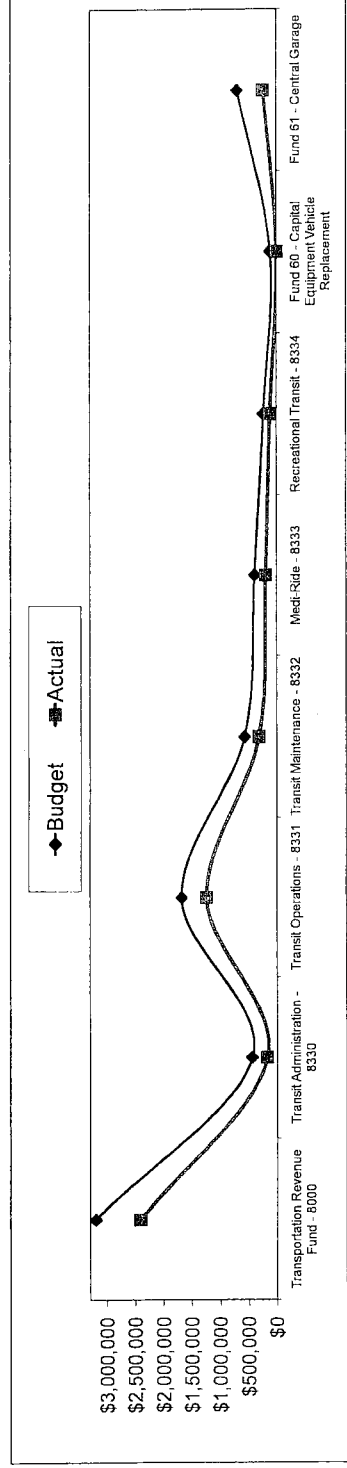
**FY 10/11 BUDGET -VS- ACTUAL EXPENSES**

Fund 57	Budget	Actual	Remaining	Balance
Transportation Revenue Fund - 8000	\$3,200,000	\$2,404,744	-\$795,256	75.15%
Transit Administration - 8330	\$443,341	\$174,223	\$269,118	60.70%
Transit Operations - 8331	\$1,682,082	\$1,242,964	\$439,118	26.11%
Transit Maintenance - 8332	\$574,826	\$318,849	\$255,977	44.53%
Medi-Ride - 8333	\$394,690	\$200,472	\$194,218	49.21%
Recreational Transit - 8334	\$239,822	\$119,199	\$120,623	50.30%
Fund 60 - Capital Equipment Vehicle Replacement	\$114,000	\$0	\$114,000	100.00%
Fund 61 - Central Garage	\$699,400	\$237,027	\$462,373	66.11%

Note: The Revenue Fund is used to offset transit operational cost and updated as payments are received (Metro) via the following funding sources noted below:

Revenue Funding Sources FY 10/11	Account #	\$ Received	Journal #	Date Received	YTD Total
Proposition "C": 40% Discretionary MOSIP	57-5100-36128	\$3,496	2011-00002536	26-Jan-11	\$24,473
Proposition "C": Foothill Transit Mitigation	57-5100-36125	\$421	2011-00002536	26-Jan-11	\$2,944
Proposition "C": 40% Discretionary Base Restructuring	57-5100-36124	\$18,123	2011-00002536	26-Jan-11	\$126,862
Proposition "C": 5% Transit Security	57-5100-36127	\$2,176	2011-00002536	26-Jan-11	\$15,229
Proposition "1B": Transit Security CAL-EMA	57-5100-36132	\$21,343	2011-00000674	3-Sep-10	\$21,343
Proposition "C": Local Return	57-5100-30121	\$11,437	2011-00002538	28-Jan-11	\$86,981
LTF/Transportation Development Act (TDA) Article 4 - Interest	57-5100-36002	\$11,757	2011-00002536	26-Jan-11	\$82,301
Measure "R" - Local	57-5100-36131	\$21,195	2011-00002539	31-Jan-11	\$64,371
Measure "R": Clean Fuel Bus Capital Facilities & Rolling Stock	57-5100-36133	\$19,092	2011-00002559	27-Jan-11	\$19,092
Measure "R" - Bus Operations	57-5100-36130	\$6,118	2011-00002536	26-Jan-11	\$42,828
CNG Station - FTA Grant	57-5100-37504	\$129,730	2011-00000714	3-Sep-10	\$1,301,930
Proposition "A": 40% Discretionary Funds - Zero Fare Comp	57-5100-36122	\$23,398	2011-00002536	26-Jan-11	\$183,786
State Assistance Fund (STA) - Gas Swap Tax Fund	57-5100-36004	\$3,513	2011-00002536	26-Jan-11	\$24,588
ARRA Funding Account	57-5100-37505	\$420,000	2011-00000843	17-Sep-10	\$420,000
CNG / LNG Facility Fuel Sales Revenue	57-5100-36134	\$7,972	2011-00002541	25-Jan-11	\$8,017
<b>Totals</b>		<b>\$699,771</b>			<b>\$2,404,744</b>

Note: All revenue amounts are retrieved directly from Logos.





**Y = Yes, N = No, Cap = Capital, Ops = Operating** Major Funding Sources Eligibility

Revenue Funding Sources Overview FY 10/11	Allocation Amount	Revenue Received	Entity Allocating	Entity Allocating	Process	Bus Eligible CAP	Bus Eligible OPS	Notes
5307 - American Recovery Reinvestment Act (ARRA)	\$562,234	\$420,000	FTA	FTA	Metro Board	Y	N	ARRA funds used to purchase new transit bus (#637) and new NTD software program.
5307 - Urbanized Area Formula Program 15% (Fund Balance)	\$395,373		FTA	FTA	Formula	Y	N	Funds shall be used to cover cost of vehicle replacements for (Medi-Ride Vans)
5307 - Urbanized Area Formula Program 85% (Fund Balance) FY09	\$373,694		FTA	FTA	Formula	Y	N	Used towards the new CNG Fuel Station - Opening Approximately August 2010
5307 - Urbanized Area Formula Program 85% (Fund Balance) FY10	\$377,626		FTA	FTA	Formula	Y	N	Used towards the new CNG Fuel Station - Opening Approximately August 2010
5307 - Urbanized Area Formula Program 85% (Fund Balance) FY11	\$1,301,930	\$1,301,930	FTA	FTA	Formula	Y	N	Used towards capital projects
CNG Station - Federal Transit Administration (FTA) 5307 Grant	\$42,150	\$24,568	State	State	Metro Board	Y	Y	Used towards the new CNG Fuel Station - Opening Approximately August 2010
STA Rev Base Plus Interest	\$56,489		State	State	Metro Board	Y	Y	Used to reduce incurred operating expenses
LTF/Transportation Development Act (TDA/STA) Capital Reserve FY 07	\$293,963		State	State	Metro Board	Y	Y	Used towards local match capital expenditures or towards operations
LTF/Transportation Development Act (TDA/STA) Capital Reserve FY 08	\$326,630		State	State	Metro Board	Y	Y	Used towards local match capital expenditures or towards operations
LTF/Transportation Development Act (TDA/STA) Capital Reserve FY 09	\$157,962	\$82,301	State	State	Metro Board	Y	Y	Used towards local match capital expenditures or towards operations
LTF/Transportation Development Act (TDA) Article 4 - Interest	\$5,477		State	State	Metro Board	Y	Y	Used to reduce incurred operating expenses
LTF/Transportation Development Act (TDA) Article 3 (Streets/Roads)	\$113,612	\$64,371	Local	Local	Ordinance	Y	Y	These funds are to be used with streets and roads, not transportation expenses.
Measure "R" Local Return	\$19,092	\$19,092	Local	Local	Ordinance	Y	N	Funds shall be used for approved Operating or Capital expenses
Measure "R" Clean Fuel Bus Capital Facilities & Rolling Stock	\$73,419	\$42,828	Local	Local	Ordinance	N	Y	Funds shall be used for approved Operating expenses
Measure "R" 20% Bus Operations	\$140,388		Local	Local	FAP	Y	Y	Funds shall be used for approved Operating expenses
Proposition "A" and Proposition "C" Interest	\$323,827	\$163,786	Local	Local	FAP	Y	Y	These funds are allocated on a "fair share" basis in addition to the Formula Allocation (FAP).
Proposition "A" Discretionary 85% of 40% Growth over CPI	\$182,625		Local	Local	Ordinance	Y*	Y	Consequently, an alternative method for calculating the City of Commerce's transit subsidy was created.
Proposition "A" Discretionary Funds - Zero Fare Comp	\$217,477	\$126,862	Local	Local	FAP	Y	Y	* = Muni Bus use only - First (3) years of new transit service only.
Proposition "C" 40% Discretionary Base Restructuring	\$41,954	\$24,473	Local	Local	FAP	Y	Y	Services that were in place before adding Proposition A 40% to the formula were allowed to be counted in the FAP.
Proposition "C" 40% Discretionary MOSIP	\$26,107	\$15,229	Local	Local	Metro Board	Y	Y	MOSIP is used to cover "transit service expansion" - Division 8331 (Orange Route)
Proposition "C" 5% Transit Security	\$5,047	\$2,944	Local	Local	Metro Board	Y	Y	Funds used towards transit security (Capital or Operating Expenses)
Proposition "C" Foothill Transit Mitigation	\$151,483	\$86,981	Local	Local	Ordinance	Y*	Y	These funds were made available to keep whole previous "included" Operators
Proposition "C" Local Return	\$120,734	\$21,343	Local	Local	Ordinance	Y	Y	* = Muni Bus use only - First (3) years of new transit service only
Proposition "1B" PTMISEA Fund	\$21,343	\$21,343	Local	Local	Ordinance	Y	Y	Eligible projects are transit capital projects and for preventative maintenance
Proposition "1B" Transit Security CAL-EMA	\$30,000	\$8,017	Local	Local	Ordinance	Y	Y	Funds used towards transit security (Capital or Operating Expenses)
CNG/LNG Facility Fuel Sales Revenue	\$5,379,736	\$2,375,384	Local	Local	Fuel Revenue	Y	Y	Funds used towards covering maintenance related repairs once warranty period has expired.
TOTAL								

**Note: Prop "A", "C", and Measure "R" Local return funds are allocated their share of estimated revenues (minus administration) without carryover.**

**Federal and State Processes**

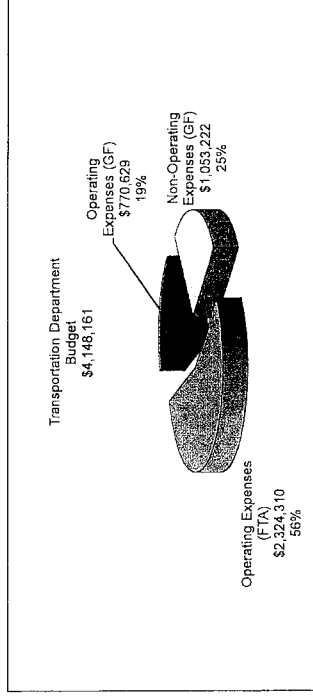
Federal Funds: Transportation Annual Appropriates ----> Obligation Authority ----> Allocation Process ----> Obligation Grant Award ----> Expenditure  
 State Funds: Budgeting ----> Programming ----> Allocation ----> Encumbrance ----> Expenditure

**Approved Programmed Funds for Capital Projects**

Operating Expenses for FY 10/11	\$2,164,292
Transit Administration - 57-8330	10/11 Budget
Transit Operations - 57-8331	\$443,341
Transit Maintenance - 57-8332	\$1,682,082
Medi-Ride - 57-8333	\$574,826
<b>Total Operating Expenses</b>	<b>\$3,094,939</b>
Recreational Transit - 57-8334	\$239,822
Vehicle Replacement - 60-6510-60500	\$114,000
Central Garage - 61-6510	\$596,400
<b>Total Budget</b>	<b>\$4,148,161</b>

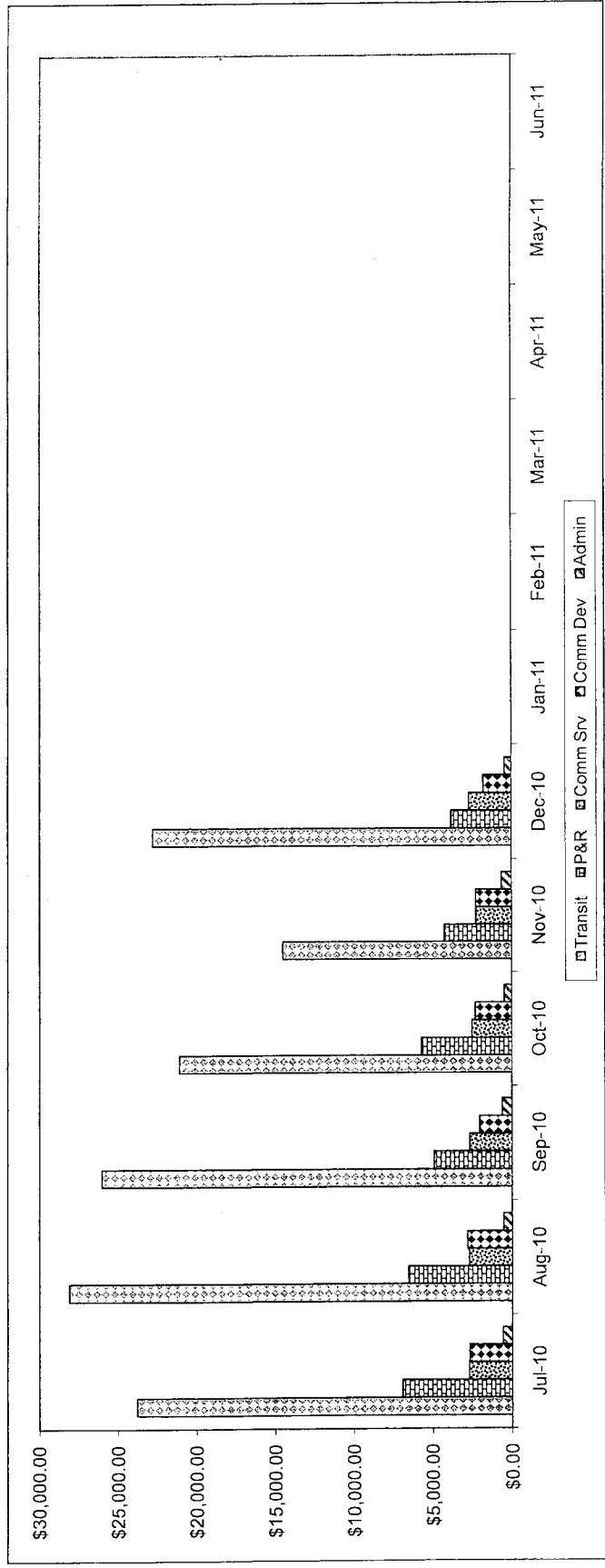
Revenue Approved to Subsidize Operating Expenses \$2,324,310 = 75% of Operating Expenses

**Fiscal Impact to the General Fund \$1,823,851**



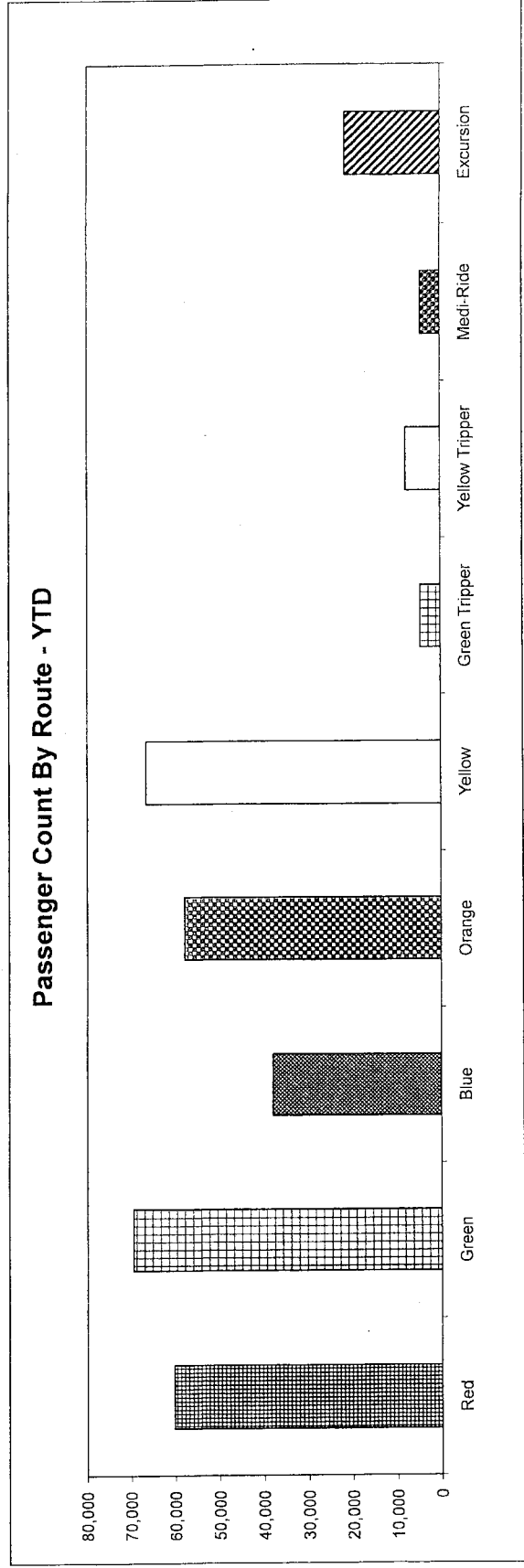
### CITY OF COMMERCE - MONTHLY FLEET FUEL SUMMARY

8331 Transit	70% Weekday	25% Saturday	5% Sunday	Combined Transit	8333 Medi-Ride	8334 Recreational	Total		TRANSIT	P & R	COMM SRV	COMM DEV	ADMIN	System Total
Jul-10	\$12,697.77	\$4,534.92	\$906.98	\$18,140	\$1,685.98	\$3,960.92	\$23,787	Jul-10	\$23,786.57	\$6,911.87	\$2,721.35	\$2,694.03	\$612.28	\$36,726
Aug-10	\$14,161.99	\$5,057.86	\$1,011.57	\$20,231	\$2,351.25	\$5,532.42	\$28,115	Aug-10	\$28,115.09	\$6,527.07	\$2,715.22	\$2,811.86	\$549.50	\$40,719
Sep-10	\$14,108.61	\$5,038.79	\$1,007.76	\$20,155	\$2,015.82	\$3,876.29	\$26,047	Sep-10	\$26,047.26	\$4,922.32	\$2,667.46	\$2,068.01	\$627.80	\$36,333
Oct-10	\$11,767.57	\$4,202.71	\$840.54	\$16,811	\$2,094.56	\$2,197.93	\$21,103	Oct-10	\$21,103.31	\$5,706.37	\$2,505.00	\$2,300.88	\$480.09	\$32,096
Nov-10	\$9,036.71	\$3,227.40	\$645.48	\$12,910	\$743.51	\$869.98	\$14,523	Nov-10	\$14,523.07	\$4,252.52	\$2,624.75	\$2,264.91	\$643.03	\$24,308
Dec-10	\$13,230.34	\$4,736.37	\$947.27	\$18,914	\$2,066.15	\$1,833.61	\$22,814	Dec-10	\$22,813.75	\$3,802.30	\$2,676.54	\$1,739.09	\$442.03	\$31,474
Jan-11				\$0			\$0	Jan-11	\$0.00					\$0
Feb-11				\$0			\$0	Feb-11	\$0.00					\$0
Mar-11				\$0			\$0	Mar-11	\$0.00					\$0
Apr-11				\$0			\$0	Apr-11	\$0.00					\$0
May-11				\$0			\$0	May-11	\$0.00					\$0
Jun-11				\$0			\$0	Jun-11	\$0.00					\$0
	<b>\$75,003</b>	<b>\$26,798</b>	<b>\$5,360</b>	<b>\$107,161</b>	<b>\$10,957</b>	<b>\$18,271</b>	<b>\$118,118</b>		<b>\$136,389</b>	<b>\$32,122</b>	<b>\$15,910</b>	<b>\$13,879</b>	<b>\$3,355</b>	<b>\$201,655</b>



# TOTAL PASSENGER COUNT

	Weekday Local	Saturday Local	Sunday	Transit Total	Medi-Ride	Excursion	System Total
Jul-09	49,795	5,145	398	55,338	719	5,856	56,057
Aug-09	48,537	3,965	765	53,267	775	5,606	54,042
Sep-09	54,693	3,995	656	59,344	831	1,633	60,175
Oct-09	51,838	4,939	801	57,578	745	3,353	58,323
Nov-09	50,294	3,659	700	54,653	563	2,047	55,216
Dec-09	49,303	2,695	542	52,540	772	3,060	53,312
Jan-10	0	0	0	0	0	0	0
Feb-10	0	0	0	0	0	0	0
Mar-10	0	0	0	0	0	0	0
Apr-10	0	0	0	0	0	0	0
May-10	0	0	0	0	0	0	0
Jun-10	0	0	0	0	0	0	0
	<b>304,460</b>	<b>24,398</b>	<b>3,862</b>	<b>332,720</b>	<b>4,405</b>	<b>21,555</b>	<b>358,680</b>



**REVENUE MILES**

	Weekday Local	Saturday Local	Sunday	Combined Transit	Medi-Ride	System
Jul-10	14,778	5,278	1,056	21,112	5,624	26,736
Aug-10	14,454	5,162	1,032	20,649	5,805	26,454
Sep-10	13,954	4,984	997	19,934	6,082	26,016
Oct-10	14,336	5,120	1,024	20,479	5,485	25,964
Nov-10	17,363	1,815	366	19,544	4,562	24,106
Dec-10	19,378	1,361	366	21,105	5,472	26,577
Jan-11				0		0
Feb-11				0		0
Mar-11				0		0
Apr-11				0		0
May-11				0		0
Jun-11				0		0
<b>TOTALS</b>	<b>94,263</b>	<b>23,720</b>	<b>4,841</b>	<b>122,824</b>	<b>33,030</b>	<b>155,854</b>

**TOTAL SYSTEM MILES**

	Weekday Local	Saturday Local	Sunday	Combined Transit	Medi-Ride	Excursion	System
Jul-10	14,930	5,332	1,066	21,328	5,906	9,832	37,067
Aug-10	14,561	5,200	1,040	20,801	6,264	9,000	36,065
Sep-10	14,104	5,037	1,007	20,149	6,521	3,866	30,536
Oct-10	14,491	5,175	1,035	20,701	6,048	4,270	31,019
Nov-10	17,542	1,833	374	19,749	4,994	2,748	27,491
Dec-10	19,563	1,375	374	21,312	6,021	3,060	30,393
Jan-11				0			0
Feb-11				0			0
Mar-11				0			0
Apr-11				0			0
May-11				0			0
Jun-11				0			0
<b>TOTALS</b>	<b>95,191</b>	<b>23,952</b>	<b>4,897</b>	<b>124,040</b>	<b>35,754</b>	<b>32,776</b>	<b>192,570</b>

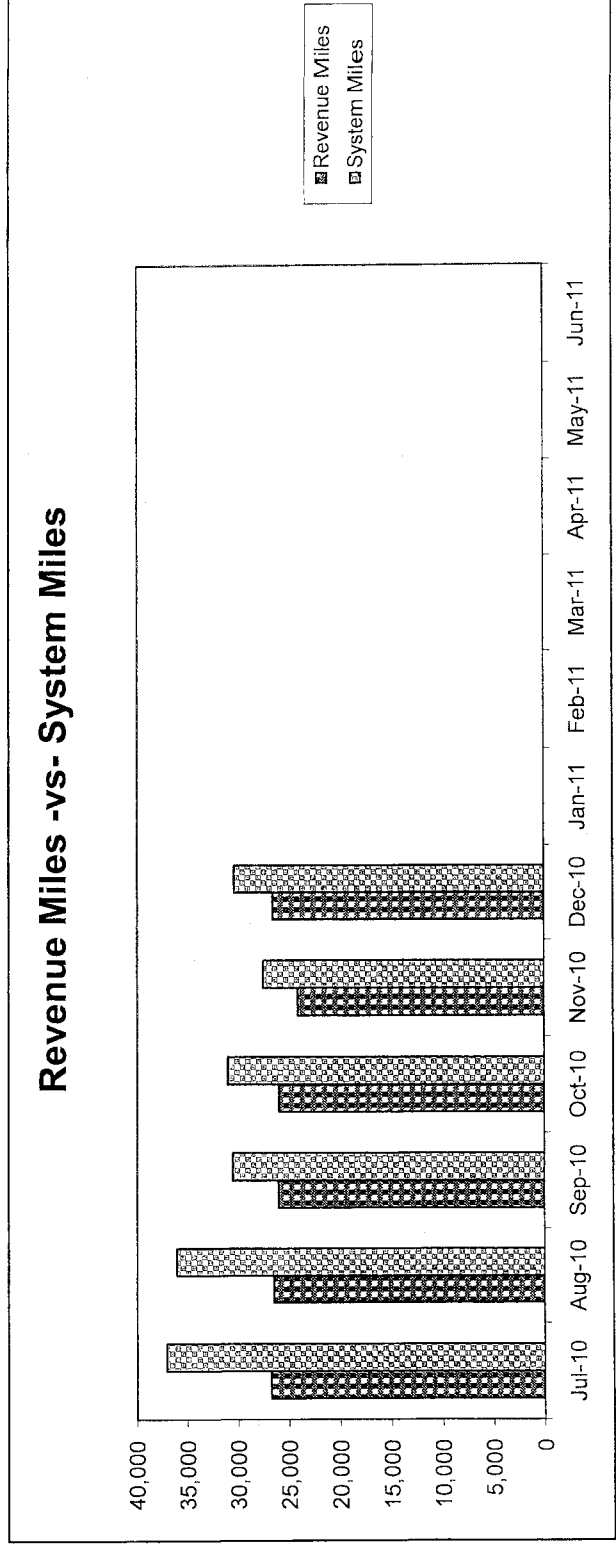
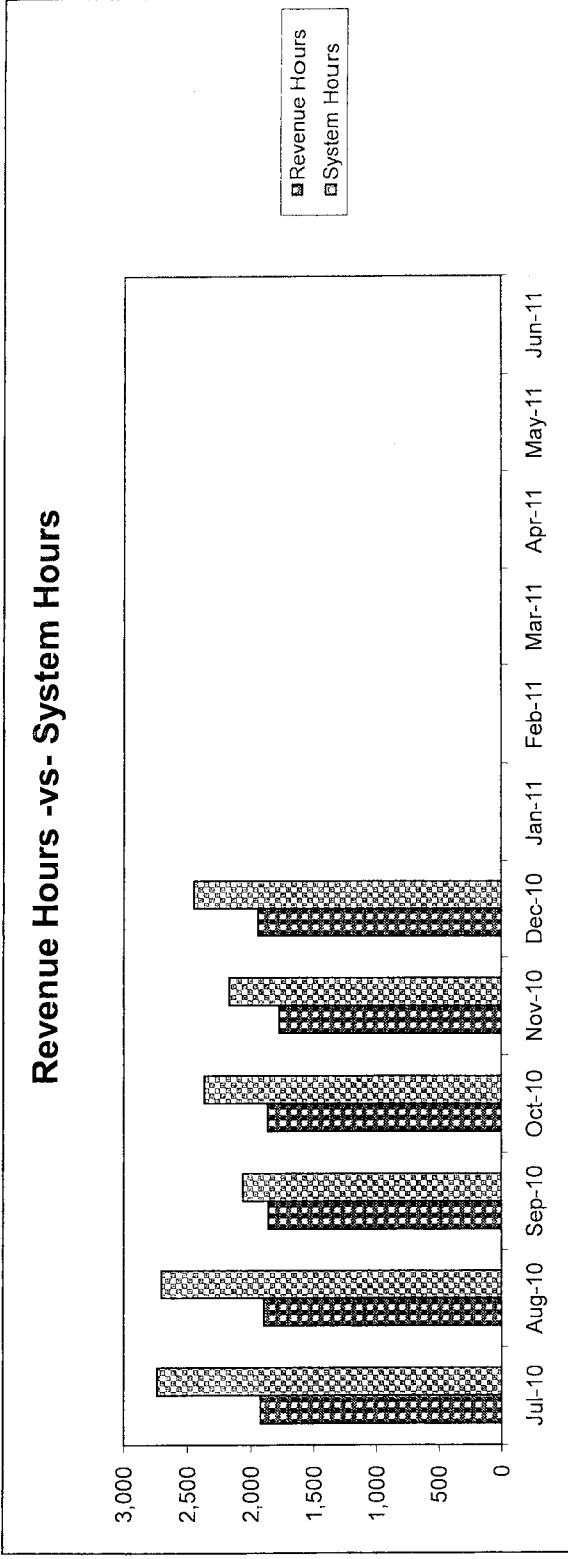
## REVENUE HOURS

	Weekday Local	Saturday Local	Sunday	Transit Total	Medi-Ride	System
Jul-10	1,098	392	78	<b>1,569</b>	358	<b>1,927</b>
Aug-10	1,064	380	76	<b>1,520</b>	377	<b>1,897</b>
Sep-10	1,037	370	74	<b>1,481</b>	380	<b>1,861</b>
Oct-10	1,065	380	76	<b>1,521</b>	345	<b>1,867</b>
Nov-10	1,293	139	21	<b>1,453</b>	322	<b>1,775</b>
Dec-10	1,438	104	21	<b>1,563</b>	378	<b>1,941</b>
Jan-11				<b>0</b>		<b>0</b>
Feb-11				<b>0</b>		<b>0</b>
Mar-11				<b>0</b>		<b>0</b>
Apr-11				<b>0</b>		<b>0</b>
May-11				<b>0</b>		<b>0</b>
Jun-11				<b>0</b>		<b>0</b>
	<b>6,994</b>	<b>1,766</b>	<b>346</b>	<b>9,106</b>	<b>2,161</b>	<b>11,267</b>

Note: Revenue hours are the actual time passengers are aboard a City transit bus or Medi-van for FTA reconciliation purposes.

## TOTAL SYSTEM HOURS

	Weekday Local	Saturday Local	Sunday	Transit Total	Medi-Ride	Excursion	System Total
Jul-10	1,181	422	84	<b>1,688</b>	433	620	<b>2,741</b>
Aug-10	1,142	408	82	<b>1,631</b>	471	602	<b>2,705</b>
Sep-10	994	355	71	<b>1,420</b>	456	183	<b>2,060</b>
Oct-10	1,142	408	82	<b>1,631</b>	446	289	<b>2,366</b>
Nov-10	1,390	151	21	<b>1,562</b>	402	204	<b>2,169</b>
Dec-10	1,545	113	21	<b>1,680</b>	476	292	<b>2,448</b>
Jan-11				<b>0</b>			<b>0</b>
Feb-11				<b>0</b>			<b>0</b>
Mar-11				<b>0</b>			<b>0</b>
Apr-11				<b>0</b>			<b>0</b>
May-11				<b>0</b>			<b>0</b>
Jun-11				<b>0</b>			<b>0</b>
	<b>7,394</b>	<b>1,857</b>	<b>361</b>	<b>9,612</b>	<b>2,685</b>	<b>2,191</b>	<b>14,488</b>



## VEHICLE ROAD CALL SUMMARY

	# Road	Months	Miles	Variance	# Road	Months	Miles	Variance
	Calls	Mileage	Between	over last FY	Calls	Mileage	Between	over last FY
<b>MEDI-RIDE</b>								
	<b>FY10</b>				<b>FY11</b>			
July	3	6190	2063	(225)		5906	5906	3843
August	2	6605	3303	(368)		6264	6264	2962
September	3	6513	2171	0		6521	6521	4350
October	2	6064	3032	(552)	1	6048	6048	3016
November	1	5200	5200	602	1	4994	4994	(206)
December	2	5128	2564	699		6021	6021	3457
January		5155	5155	(558)				
February	3	5377	1792	965				
March	2	6781	3391	(662)				
April		6075	6075	25				
May	4	5587	1397	465				
June	3	6095	2032	3				
<b>TRANSIT</b>								
	<b>FY10</b>				<b>FY11</b>			
July	3	21208	7069	(830)	1	21328	21328	14259
August	2	20540	10270	(312)		20801	20801	10531
September	5	20149	4030	55	4	20149	5037	1007
October	6	21445	3574	(762)	7	20700	2957	(617)
November	7	19155	2736	396	9	19748	2194	(542)
December	3	20883	6961	(91)	2	21312	10656	3695
January	2	19758	9879	(486)				
February	2	19270	9635	3				
March	1	21858	21858	(85)				
April	2	20955	10478	66				
May	1	20316	20316	(630)				
June	3	21003	7001	122				
<b>EXCURSION</b>								
	<b>FY10</b>				<b>FY11</b>			
July	1	8553	8553	105	1	9832	9832	1279
August	1	7904	7904	212		9000	9000	1096
September		4201	4201	6		3866	3866	(335)
October		4150	4150	226		4270	4270	120
November	1	3650	3650	305		2748	2748	(902)
December	1	2751	2751	450	1	3060	3060	309
January		2575	2575	589				
February		3732	3732	301				
March	2	4169	2085	(222)				
April	1	2579	2579	(36)				
May		3116	3116	105				
June		2713	2713	99				

## **APPENDIX F: ARRA Reporting Requirements**

The successful bidder will be required to comply with all reporting requirements contained in the American Recovery and Reinvestment Act (ARRA). Details on reporting requirements can be found at:

<http://www.fta.dot.gov/grants/12835.html>



**ATTACHMENT I  
FTA CONSTRUCTION AND  
CONTRACT CLAUSES**

**November 2011**

The following represent clauses derived from various Federal documents that regulate the manner in which the awarded contract will be administered. Contractors shall review and understand each of these clauses and, where applicable, adhere to them during the term of the contract. Contractors shall signify acceptance of these terms by signing as noted.

## 2. BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)  
49 CFR Part 661

### Applicability to Contracts

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

### Flow Down

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The \$100,000 threshold applies only to the grantee contract, subcontracts under that amount are subject to Buy America.

### Mandatory Clause/Language

The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts, but does not specify the language to be used. The following language has been developed by FTA.

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

### *Certificate of Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

Certification requirement for procurement of buses, other rolling stock and associated equipment.

*Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).*

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

## 6. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.  
49 CFR Part 18

### Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### Flow Down

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

### Model Clause/Language

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA.

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

## 7. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

### Applicability to Contracts

The Clean Water requirements apply to each contract and subcontract that exceeds \$100,000.

### Flow Down

The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

### Model Clause/Language

While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements.

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

## 10. LOBBYING

31 U.S.C. 1352  
49 CFR Part 19  
49 CFR Part 20

### Applicability to Contracts

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

### Mandatory Clause/Language

- Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.* ]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a

member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

## APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

### Certification for Contracts, Grants, Loans, and Cooperative Agreements

*(To be submitted with each bid or offer exceeding \$100,000)*

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be



subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date

## 11. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325  
**18 CFR 18.36 (i)**  
**49 CFR 633.17**

### Applicability to Contracts

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### Flow Down

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

### Model Clause/Language

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United

States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

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

#### Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<b>I State Grantees</b>	None	Those imposed on state pass thru to Contractor	None	None	None	None
a. Contracts below SAT (\$100,000)	None unless <sup>1</sup> non-competitive award		Yes, if non-competitive award or if funded thru <sup>2</sup> 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
b. Contracts above \$100,000/Capital Projects						
<b>II Non State Grantees</b>	Yes <sup>3</sup>	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
a. Contracts below SAT (\$100,000)	Yes <sup>3</sup>		Yes	Yes	Yes	Yes
b. Contracts above \$100,000/Capital Projects						

Sources of Authority:

<sup>1</sup> 49 USC 5325 (a)

<sup>2</sup> 49 CFR 633.17

<sup>3</sup> 18 CFR 18.36 (i)

## 12. FEDERAL CHANGES

### 49 CFR Part 18

#### Applicability to Contracts

The Federal Changes requirement applies to all contracts.

#### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

#### Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

#### Model Clause/Language

No specific language is mandated. The following language has been developed by FTA.

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

## 14. CLEAN AIR

42 U.S.C. 7401 et seq  
40 CFR 15.61  
49 CFR Part 18

### Applicability to Contracts

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

### Flow Down

The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

### Model Clauses/Language

No specific language is required. FTA has proposed the following language.

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

## 19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

### **Applicability to Contracts**

Applicable to all contracts.

### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### Flow Down

Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

### Model Clause/Language

While no specific language is required, FTA has developed the following language.

No Obligation by the Federal Government.

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

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

**20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS  
AND RELATED ACTS**

31 U.S.C. 3801 et seq.  
**49 CFR Part 31 18 U.S.C. 1001**  
**49 U.S.C. 5307**

**Applicability to Contracts**

These requirements are applicable to all contracts.

**Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

**Flow Down**

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

**Model Clause/Language**

These requirements have no specified language, so FTA proffers the following language.

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.



## 21. TERMINATION

49 U.S.C. Part 18  
**FTA Circular 4220.1E**

### Applicability to Contracts

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

### Flow Down

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

### Model Clause/Language

FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

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

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

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

f. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall

agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the (Recipient).

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

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

i. Termination for Convenience or Default (Architect and Engineering) The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

j. Termination for Convenience of Default (Cost-Type Contracts) The (Recipient) may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the (Recipient), the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

## 22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

49 CFR Part 29  
Executive Order 12549

### **Background and Applicability**

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

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

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

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

### **Clause Language**

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

### **Suspension and Debarment**

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

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

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

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

## 24. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000  
42 U.S.C. § 6102, 42 U.S.C. § 12112  
42 U.S.C. § 12132, 49 U.S.C. § 5332  
29 CFR Part 1630, 41 CFR Parts 60 et seq.

### Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

### Model Clause/Language

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shorten the lengthy text.

Civil Rights - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

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

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include,

but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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



## 25. BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18  
FTA Circular 4220.1E

### Applicability to Contracts

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

### Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

### Model Clauses/Language

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

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

Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

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

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## 28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

### 49 CFR Part 26

#### **Background and Applicability**

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (see section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

#### **Clause Language**

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

#### **Disadvantaged Business Enterprises**

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is \_\_ %. A separate contract goal **[of \_\_ % DBE participation has] [has not]** been established for this procurement.

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

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

49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

**[Bidders][Offerors]** must present the information required above **[as a matter of responsiveness] [with initial proposals] [prior to contract award]** (see 49 CFR 26.53(3)).

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

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the **{insert agency name}**. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.]**

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

### 30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

#### **FTA Circular 4220.1E**

##### Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

##### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

##### Flow Down

The incorporation of FTA terms has unlimited flow down.

##### Model Clause/Language

FTA has developed the following incorporation of terms language:

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests that would cause (name of grantee) to be in violation of the FTA terms and conditions.





# AGENDA REPORT

MEETING DATE: December 6, 2011

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING A RETAINER AGREEMENT WITH THE LAW FIRM OF REMY, THOMAS, MOOSE AND MANLEY, LLP IN CONNECTION WITH ENVIRONMENTAL REVIEW SERVICES UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

## RECOMMENDATION:

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

## MOTION:

Move to approve the recommendation.

## BACKGROUND:

The Port of Los Angeles has prepared an Environmental Impact Report ("EIR") for the Southern California International Gateway ("SCIG") Project proposed by the Port of Los Angeles/Los Angeles Harbor Department. The SCIG Project may have significant impacts and/or help alleviate significant impacts caused by the regional goods movement. The City of Commerce (the "City") is home to the Burlington Northern and Santa Fe Railway's Hobart Yard and the Union Pacific's intermodal facility. City staff believes that the City needs to review the SCIG EIR and provide comments that will properly document the issues facing the City and the potential impacts and/or mitigation that will be caused by the Project.

The EIR review will require significant time and environmental expertise. The City has previously utilized the law firm of Remy, Thomas, Moose and Manley (the "Firm") for other EIR matters and was satisfied with their services. The Firm has agreed to provide services to the City in connection with the review of the SCIG EIR.

The Firm has provided a proposed retainer agreement. The agreement provides that the City pay \$325.00 per hour for partners, \$295.00 per hour for senior associates, \$285.00 per hour for associate attorneys, \$225.00 per hour for graduate law students. Paralegals are billed at \$150.00 per hour. Time for research done by a law clerk will be billed at the rate of \$125.00 per hour. The rates in the proposed agreement are the same rates that were charged for the prior work done by the Firm for the City in 2009. City staff recommends that the agreement be approved.

## FISCAL IMPACT:

The services are being provided on an hourly basis. The exact amount that will be incurred is unknown at this time. Staff estimates that the total charge will be less than \$30,000, which will be allocated from Account No. 10-1050-53030 (Other Legal Services).

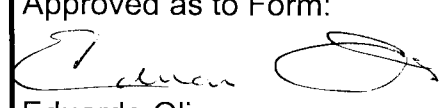
Recommended by

  
Vilko Domic  
Director of Finance

Respectfully submitted

  
Jorge Rifá  
City Administrator

Approved as to Form:

  
Eduardo Olivo  
City Attorney

AGENDA ITEM No. 6



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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE,  
CALIFORNIA, APPROVING A RETAINER AGREEMENT WITH THE LAW FIRM OF  
REMY, THOMAS, MOOSE AND MANLEY, LLP IN CONNECTION WITH  
ENVIRONMENTAL REVIEW SERVICES UNDER THE CALIFORNIA  
ENVIRONMENTAL QUALITY ACT

WHEREAS, the Port of Los Angeles has prepared an Environmental Impact Report ("EIR") for the Southern California International Gateway ("SCIG") Project proposed by the Port of Los Angeles/Los Angeles Harbor Department; and

WHEREAS, the SCIG Project may have significant impacts and/or help alleviate significant impacts caused by the regional goods movement; and

WHEREAS, the City of Commerce (the "City") is home to the Burlington Northern and Santa Fe Railway's Hobart Yard and the Union Pacific's intermodal facility; and

WHEREAS, City staff believes that the City needs to review the SCIG Project EIR and provide comments that will properly document the issues facing the City and the potential impacts and/or mitigation that will be caused by the Project; and

WHEREAS, the EIR review will require significant time and environmental expertise; and

WHEREAS, the law firm of Remy, Thomas, Moose and Manley (the "Firm") has agreed to provide the services required by the City in connection with the review of the SCIG EIR.

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

Section 1. The Retainer Agreement between the City of Commerce and the law firm of Remy, Thomas, Moose and Manley, LLP is hereby approved. The Mayor is hereby authorized to execute the Agreement for and on behalf of the City.

PASSED, APPROVED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_  
2011.

\_\_\_\_\_  
Joe Aguilar, Mayor

ATTEST:

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





**REMY, THOMAS, MOOSE and MANLEY, LLP**  
**FEE/RETAINER AGREEMENT**  
**ADMINISTRATIVE**

CLIENT: CITY OF COMMERCE  
CASE NO: 243  
CASE NAME: COMMERCE  
COUNTY: LOS ANGELES COUNTY

THIS FEE/RETAINER AGREEMENT IS MADE THIS \_\_\_\_ DAY OF NOVEMBER 2011, by and between the undersigned Client and REMY, THOMAS, MOOSE and MANLEY, LLP, Attorneys at Law.

1. THE CLIENT HEREBY RETAINS THE ATTORNEYS to review the EIR for the Southern California International Gateway (SCIG) Project proposed by the Port of Los Angeles/Los Angeles Harbor Department and to advise and assist the City regarding the Port/Harbor Department's CEQA compliance for the SCIG project.

2. THE CLIENT HEREBY EMPOWERS THE ATTORNEYS to perform the said services for and on behalf of the Client, and in his name and do all things that the Attorney may deem necessary, appropriate or advisable.

3. THE CLIENT HEREBY AUTHORIZES THE ATTORNEYS to have another attorney, either associated with him/her, or otherwise appear on behalf of the Client with the consent of the Client.

4. THE CLIENT HEREBY AGREES to pay a fee of \$325.00 per hour for partners James G. Moose, Whitman F. Manley, Andrea K. Leisy, Tiffany K. Wright, Sabrina V. Teller and Howard F. Wilkins III; \$295.00 per hour for senior associate attorney Jennifer S. Holman; \$285.00 per hour for associate attorneys Amanda R. Berlin, Laura M. Harris, Christopher J. Butcher, and

Jeannie Lee; \$225.00 per hour for graduate law students (to be increased to \$275.00 per hour upon passage of the Bar examination); \$325.00 per hour for Brian J. Plant, of counsel; and \$150.00 per hour for any paralegal employed by the firm. Time for research done by a law clerk will be billed at the rate of \$125.00 per hour. The Client will receive a monthly billing statement that sets forth work done and expenses incurred and amount due and payable at that time. The hourly rates set forth in this paragraph may change from time to time to reflect increases in the cost of doing business. Such changes will be noticed to the Client not less than 30 days before they take effect. The Attorneys do not bill for secretarial or word processor time.

5. All time is billed in quarter hour intervals (15 minutes).

6. IN ADDITION TO THE ATTORNEYS FEES SET FORTH ABOVE, THE CLIENT HEREBY AGREES to pay to the Attorneys all applicable COSTS, such as: filing fees; fees associated with performing legal research on electronic databases, as charged; copying costs; mileage costs (outside of Sacramento); document retrieval from storage, as charged; printing costs by a professional printer, as charged; phone charges, as charged; facsimile charges; postage charges, as charged; reimbursement for lodging and meal expenses in instances requiring out of county travel, including but not limited to any costs involving common carriers (i.e., airplane); extraordinary costs (i.e., labor charges for cite checking major briefs and administrative record preparation); and any other agreed upon costs or expenses related to this matter. Should an account become delinquent by more than sixty (60) days, interest at the legal rate shall accrue. (See attached list of cost charges.)

7. THE CLIENT HEREBY AGREES THAT the Client will advance all costs incident to the performance of said services; however, if the Attorneys should advance such costs, the Client agrees to reimburse the Attorneys for such costs UPON DEMAND.

8. THIS AGREEMENT SHALL BE LIMITED to tasks described in paragraph 1.

9. IT IS ACKNOWLEDGED THAT no promises have been made concerning the ultimate result and/or outcome of this action, and attorneys' fees are in no way contingent thereon.

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

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

DATED: \_\_\_\_\_

\_\_\_\_\_  
Title: \_\_\_\_\_  
FOR CLIENT CITY OF COMMERCE

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

DATED: \_\_\_\_\_

\_\_\_\_\_  
SABRINA V. TELLER, PARTNER

COSTS

EXTRAORDINARY COSTS \$50.00 PER HOUR

COPIES \$ .25 PER PAGE

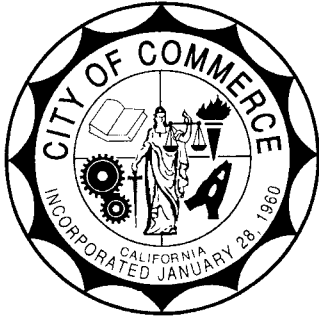
MILEAGE \$.44.5 PER MILE (FOR TRIPS OUTSIDE SACRAMENTO COUNTY ONLY)

FACSIMILE \$1.00 PER FACSIMILE

DELIVERY/PICK UP \$25.00 PER DELIVERY IN THE CITY OF SACRAMENTO, \$30.00 IN THE COUNTY OF SACRAMENTO AND \$40.00 OUTSIDE THE COUNTY OF SACRAMENTO

LEGAL RESEARCH AS CHARGED  
(ELECTRONIC DATABASE)

DOCUMENT RETRIEVAL AS CHARGED  
FROM STORAGE



# AGENDA REPORT

MEETING DATE: December 6, 2011

**TO:** CITY COUNCIL

**FROM:** CITY ADMINISTRATOR

**SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, APPROVING AND AWARDED CASH CONTRACT #1112 FOR THE INSTALLATION OF BRISTOW PARK SECURITY CAMERAS TO INTEGRATED SECURITY INCORPORATED**

**RECOMMENDATION:**

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

**MOTION:**

Move to approve the recommendation.

**BACKGROUND:**

At its meeting of July 19, 2011, the City Council approved a CIP plan for the 2011-2012 Fiscal Year which included an allocation of \$21,000.00 to install security cameras at Bristow Park.

On September 20, 2011, the City Council authorized the issuance of a Request for Proposal (RFP) to install additional security cameras at various outdoor locations at Bristow Park.

**ANALYSIS:**

Staff received the following bids for the Bristow Park Security Cameras project:

- Integrated Security \$19,400.00  
652 Anita St  
Monrovia CA 91016
- Digital View \$19,493.70  
2735 San Pasqual  
Pasadena, CA 91107
- Interface Systems \$58,720.00  
3750 Schaufele, Suite 200  
Long Beach, CA 90808
- Venture Electric \$126,062.00  
13250 Florence Ave.  
Santa Fe Springs, CA

Based upon its review and analysis of the bids, Staff is recommending that the City Council approve a contract with Integrated Security Incorporated of Monrovia, California as the lowest responsible bidder at the proposed cost of \$19,400.00.

**FISCAL IMPACT:**

The proposed amount for this project is \$19,400.00, plus an 8.24% contingency of \$1,598.00, for a total of \$20,998.00. The City Council has previously allocated \$21,000 for this project from the 2011/2012 Capital Improvement Project fund.

**RELATIONSHIP TO STRATEGIC GOALS:**

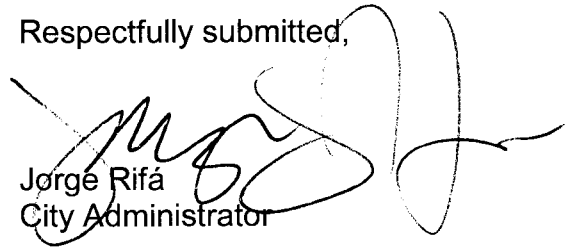
This agenda item relates to Strategic Goal #1: Develop Citywide Plan to enhance and maintain the City of Commerce environment and infrastructure to create livability and quality of life for those who life, work and play in the community. The security cameras will be installed near the basketball court, handball courts, and other various locations.

Recommended by,



Scott Wasserman  
Interim Director of Parks and Recreation

Respectfully submitted,



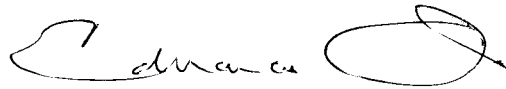
Jorge Rifa  
City Administrator

Reviewed by,



Vilko Domic  
Director of Finance

Approved as to form:



Eduardo Olivo  
City Attorney

Attachments: Resolution  
Agreement - Integrated Security

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE,  
CALIFORNIA, AWARDDING AND APPROVING CASH CONTRACT NO. 1112 FOR THE  
INSTALLATION OF BRISTOW PARK SECURITY CAMERAS TO INTEGRATED  
SECURITY INCORPORATED

WHEREAS, on July 19, 2011, the City Council approved a CIP plan for the 2011-2012 Fiscal Year, which included an allocation of \$21,000.00 to install security cameras at Bristow Park; and

WHEREAS, on September 20, 2011, the City Council authorized staff to seek proposals for the installation of additional security cameras at various outdoor locations at Bristow Park; and

WHEREAS, City staff solicited and received proposals to install the Bristow Park security cameras; and

WHEREAS, four proposals were received by the Parks and Recreation Department for this project:

- |                            |                   |
|----------------------------|-------------------|
| • Integrated Security Inc. | \$19,400.00       |
| • Digital View             | \$19,493.70       |
| • Interface Systems        | \$58,720.00       |
| • Venture Electric         | \$126,062.00; and |

WHEREAS, after evaluating the proposals and conducting reference checks, City staff found that Integrated Security Inc. submitted the lowest responsible proposal for the requested services.

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

Section 1. The proposal from Integrated Security Inc. to install the security cameras at Bristow Park is hereby accepted. Cash Contract 1112 between the City and Integrated Security, Inc. is hereby approved. The Mayor is hereby authorized to sign the Contract for and on behalf of the City.

APPROVED AND ADOPTED this 6<sup>th</sup> day of December, 2011

\_\_\_\_\_  
Joe Aguilar, Mayor

ATTEST:

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





CITY OF COMMERCE  
**Cash Contract No. 1112**  
**Bristow Park Security Cameras**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2011, by and between the CITY OF COMMERCE, a Municipal corporation (the "CITY") and Integrated Security ("CONTRACTOR").

RECITALS

WHEREAS, the CITY duly advertised a Notice Inviting Bids to be submitted on or before October 27, 2011 at 1:00 p.m., for Bristow Park Security Cameras (the "PROJECT"); and

WHEREAS, the City Council has accepted CONTRACTOR's bid and has directed that a written contract be entered into with CONTRACTOR for the PROJECT.

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

ARTICLE I. CONTRACT DOCUMENTS.

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

ARTICLE II. THE WORK.

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

ARTICLE III. COMPENSATION.

CONTRACTOR hereby agrees to receive and accept the total amount of NINETEEN THOUSAND FOUR HUNDRED DOLLARS (\$19,400.00), which is based on performing all of the work shown on CONTRACTOR's Proposal, as full compensation for furnishing all materials, performing all work, and fulfilling all obligations hereunder. Said compensation shall cover all expenses, losses, damages, and consequences arising out of the nature of the work during its progress or prior to its acceptance including those for well and faithfully completing the work and the whole thereof in the manner and time specified in the CONTRACT DOCUMENTS, and also including those arising from actions of the elements, unforeseen difficulties or obstructions encountered in the prosecution of the work, suspension or discontinuance of the work, and all other unknowns or risks of any description connected with the work. CITY shall herein retain ten percent (10%) of said price until said time as the provisions of Article XII herein have been met.

ARTICLE IV. UNDOCUMENTED WORKERS.

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

ARTICLE V. NOTICE TO PROCEED.

CONTRACTOR shall commence work on the date specified in the Notice to Proceed to be issued to CONTRACTOR by the CITY and shall complete work on the PROJECT within sixty (60) calendar days from the commencement thereof.

ARTICLE VI. DISCOVERY OF HAZARDOUS OR LATENT CONDITIONS.

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

ARTICLE VII. INDEMNIFICATION.

CONTRACTOR shall assume the defense of and indemnify and save harmless the CITY, its elective and appointive boards, officers, agents and employees, from all claims, loss, damage, injury and liability of every kind, nature and description, directly or indirectly arising from the performance of CONTRACTOR's work under this Contract; and from any and all claims, loss, damage, injury and liability, howsoever the same may be caused, resulting directly or indirectly from the nature of the work covered by the Contract; provided:

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

ARTICLE VIII. PERFORMANCE BOND.

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

ARTICLE IX. INSURANCE REQUIREMENTS.

Prior to commencing work hereunder, CONTRACTOR shall provide the CITY with proof of insurance providing and maintaining the coverages set forth in the Insurance Schedule attached hereto as Exhibit "A."

ARTICLE X. LIQUIDATED DAMAGES.

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

currently in effect as of the date of this Contract. The payment of such liquidated damages is not intended as a forfeiture or penalty within the meaning of California Civil Code § 3275 or § 3369.

ARTICLE XI. COMPLIANCE WITH APPLICABLE LAWS.

CONTRACTOR hereby promises and agrees to comply with all of the provisions of all applicable state and federal laws in connection with the performance of its obligations under this Contract.

ARTICLE XII. NOTICE OF COMPLETION.

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

ARTICLE XIII. NON-ASSIGNABILITY.

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

ARTICLE XIV. CUMULATIVE REMEDIES.

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

ARTICLE XV. ATTORNEY'S FEES.

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

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

CITY OF COMMERCE

Integrated Security

By: \_\_\_\_\_  
Joe Aguilar, Mayor

By: \_\_\_\_\_  
Name, Title

ATTEST:

APPROVED AS TO FORM:

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

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

EXHIBIT A  
INSURANCE REQUIREMENTS

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

1. Comprehensive General Liability and Automobile Liability Insurance Coverage.

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

Minimum coverage: Bodily injury limits of \$1,000,000 for each person and \$2,000,000 for each occurrence; property damage limits of \$1,000,000 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 Contract or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Contract, including the use of owned and non-owned real property and automobiles. Insurance coverage shall not be subject to any type of pollution exclusion or owned property exclusions.

2. Errors and Omissions Insurance Coverage.

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

3. Worker's Compensation.

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

4. Additional Insureds.

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

5. Cancellation Clause.

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

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

6. Severability Clause.

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

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

7. Qualifications of Insurer.

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

8. Approval of Insurer.

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

9. Payment of Premiums.

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

10. Evidence of Insurance and Claims.

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



# AGENDA REPORT

DATE: December 6, 2011

**TO:** HONORABLE CITY COUNCIL

**FROM:** CITY ADMINISTRATOR

**SUBJECT:** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, ADOPTING THE UPDATED GUIDELINES AND AGREEMENTS FOR THE CDBG FUNDED HOME PRESERVATION GRANT PROGRAM

**RECOMMENDATION:**

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

**MOTION:**

Move to approve the recommendation.

**BACKGROUND:**

The Home Preservation Program (HPP) was successfully implemented in 2009 and assisted homes with improvements that included replacement and repair of roofs, windows, garage doors, exterior paint, exterior doors, and fencing. The HPP was partly funded by a Community Development Block Grant (CDBG) from the Los Angeles County Community Development Commission's (LAEDC) and Redevelopment Housing Set-Aside Funds. Since its inception in 2009, the HPP has processed 23 cases (including nine that are in progress). HPP grants were on average \$13,000.

On April 6, 2010, the City Council adopted the City's 2009-2014 Updated Housing Element. The Housing Element included recommendations to fund the HPP. On May 14, 2010, the Los Angeles County Community Development Block Grant (CDBG) Program staff also completed a programmatic review of the City's CDBG funded HPP guidelines. The County recommended minor changes to the City's CDBG Program agreements and guidelines in order for the City to continue using CDBG funding for the Program. Annually, as funding is available, CDBG funds are used for this Program and may only be used to fund Low-Income households (defined as 80% of Area Median Income).

The Community Development Department's Housing Division staff has updated the Program guidelines funded by CDBG based on the County recommendations. Staff is requesting that the City Council approve the updated Program guidelines and agreements to implement the City's Home Preservation Program.

The proposed Program will further enhance the community and assist in preserving the City's housing stock by providing grants of up to \$20,000 for necessary repairs. Currently, the Program limits are \$15,000.

**ANALYSIS:**

**I. Overview of Proposed Program**

The suggested changes to the Program are to insure consistency with CDBG requirements and the Program limit increase to \$20,000 will better serve the needs of the community. Program guidelines, participation agreements and a flow chart of procedures have been prepared and attached for approval to ensure fair and prudent implementation of the Program. The Program is proposed to be funded with CDBG funds as needed.



## **II. Home Preservation Program Description**

The purpose of the Program is to provide financial assistance to low income residents (with priority given to elderly and physically disabled homeowners) who require basic upgrades to their homes in order to prevent deterioration that may lead to unhealthy or unsafe conditions. Eligible repairs include asbestos and lead removal, window and roof replacement, repairs or replacement of mechanical, electrical, plumbing and structural systems which show obvious signs of deterioration, as well as modifications to the residence for the physically handicapped. The maximum assistance amount is \$20,000 based on 100% of the cost of repairs. Applicants will be limited to one grant every 10 years as long as funds are available.

Housing Staff Division of the Community Development Department may recommend that other program funds be used in order to completely correct outstanding health and safety or code issues.

### ***Program Requirements***

1. Eligible applicants must be owner-occupants whose gross combined annual household income does not exceed the Low-Income Limits for Los Angeles County.
2. Dwelling units must be a single-family residential properties located within the City of Commerce.
3. The subject property must be the only real property owned by the applicant.
4. The maximum grant amount available is \$20,000.
5. Grants are for the cost of repairs or improvements.
6. The repairs and improvements will be prioritized by the Community Development Department and Housing Division Staff based on the health and safety needs of the property.
7. Approval of the grant is subject to program fund limitations in effect at the time of the application.
8. The applicant must execute a Grant Agreement with the City of Commerce.
9. All health and safety issues must be corrected first.
10. As a funding requirement, properties constructed prior to 1978, must be tested for lead-based paint contamination.
11. The grant does not require repayment to the City.
12. Home owners may reapply every ten years for a grant under this Program.

### ***Eligible Repairs***

Eligible rehabilitation may include, but are not limited to, the following hard costs:

1. Lead-based paint hazards.
2. Exterior accessibility modifications for elderly and disabled persons.
3. Repairs and replacement of exterior components (i.e. windows, doors, roof replacement, exterior and interior paint, etc.)
4. Site improvements and utility connections.
5. Plumbing (i.e. bathroom, kitchen, copper & sewer re-pipe).
6. Related soft costs (reasonable and necessary costs) may include:
  - a. Architectural, engineering, inspection consultant or related professional services.
  - b. Financing costs, such as credit and title costs, recordation fees, building permits and inspections, legal fees, and appraisals.

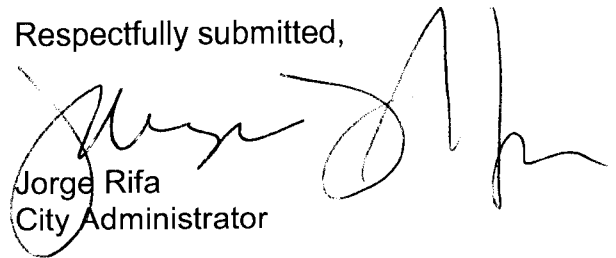
### **FISCAL IMPACT:**

The Los Angeles County Community Development Commission provides annual CDBG funds to the City as a sub-grantee to fund the Program.

**RELATIONSHIP TO THE 2011 STRATEGIC GOALS:**

The proposed housing program activities are consistent with goals and objectives to alleviate physical blight and enhance the Quality of Life in the City of Commerce.

Respectfully submitted,




Jorge Rifa  
City Administrator

Recommended by:




Bob Zarrilli  
Director of Community Development

Prepared by:



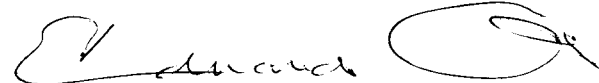
Christina D. Perez  
Redevelopment and Housing Manager

Fiscal impact reviewed by:



Vilko Domic  
Director of Finance

Approved as to form:



Eduardo Olivo  
City Attorney

Attachment: Home Preservation Grant Program Guidelines and Procedures (CDBG Funded)



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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA,  
ADOPTING THE UPDATED GUIDELINES AND AGREEMENTS FOR THE CDBG  
FUNDED HOME PRESERVATION GRANT PROGRAM

WHEREAS, on April 6, 2010, the City Council approved the submission of the City's 2009-2014 Housing Element Update to the General Plan; and

WHEREAS, the 2009-2014 Housing Element Update included recommendations to establish a Home Preservation Grant Program ("Program") to provide grant funding to income qualified homeowners for repairs of single family homes or condominiums within the City of Commerce; and

WHEREAS, the City is a CDBG sub-grantee of the Los Angeles County Community Development Commission and continues to receive funds for the preservation of the community's housing stock occupied by low income residents; and

WHEREAS, on May 14, 2010, the Los Angeles County Community Development Block Grant (CDBG) Program staff completed a programmatic review of the City's CDBG funded Program guidelines and recommended minor changes to the City's CDBG Program agreements and guidelines in order for the City to continue using CDBG funding for the Home Preservation Grant Program; and

WHEREAS, City staff has updated the Program guidelines and agreements, as recommended by the County of Los Angeles.

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

**Section 1.** The City Council finds and determines that the Home Preservation Grant Program will increase, improve and preserve the supply of low- and moderate-income housing and provide for the elimination of the conditions of blight.

**Section 2.** The Updated Program Guidelines and Program Agreements are hereby approved. City staff is authorized to implement the City's Home Preservation Grant Program procedures as set forth in the Program Guidelines.

**PASSED, APPROVED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

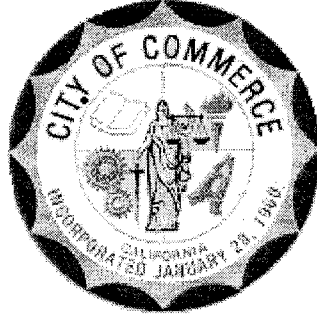
\_\_\_\_\_  
Joe Aguilar  
Mayor

ATTEST:

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



# **City of Commerce**



## **Home Preservation Grant Program Guidelines and Procedures (CDBG FUNDED)**

**DECEMBER 2011**

## **I. PROGRAM PURPOSE**

The purpose of the Home Preservation Grant Program (“Program”) is to assist income eligible City of Commerce residents with the repair and rehabilitation of single-family owner-occupied housing within the City of Commerce. The Program is funded using Community Development Block Grant (CDBG) Program funds.

The City of Commerce’s Housing and Community Development Department will administer the Program and provide funding to successful applicants who will be required to enter into an agreement with the City of Commerce to ensure compliance with all rules and regulations, goals and requirements of the Home Preservation Grant Program, including, but not limited to, income eligibility verifications, lead-based paint testing if necessary, and all state and local codes. The maximum grant amount awarded for each Home Preservation Grant Program projects is \$20,000.

Available CDBG funds will be utilized for the testing and abatement of lead and asbestos, roofing, replacement of windows, plumbing and electrical upgrades, painting and other eligible home improvements.

## **II. ELIGIBLE APPLICANTS**

Owner-occupant whose gross combined annual household income does not exceed Low Income (80% of Area Median Income) for Los Angeles County, as defined annually by HUD, adjusted for family size. Eligible income levels can be found in Exhibit A which shall be replaced annually.

## **III. ELIGIBLE PROPERTIES**

- Unit must be a single-family owner-occupied residential property located within the City of Commerce.
- Unit must be owner occupied and proof of ownership of the property will be required.
- Unit must be the owner’s principal residence. Proof of residence will be required.

## **IV. GRANT AMOUNT AND TERMS**

The maximum grant amount available is \$20,000 funded in Community Development Block Grant Program funding. It is up to the discretion of the Community Development Department, Housing Division staff to slightly increase the grant if it is discovered by gathering bids and estimates that the home is in critical need of slightly more funding in order to completely correct outstanding health and safety or code issues.

- Grants are for the cost of repairs or improvements, not to exceed \$20,000.
- The repairs and improvements will be prioritized by the program designated City’s Housing Division Staff based on the health and safety needs of the property.
- Subject property must be the only real property owned by applicant.
- Approval of the grant is subject to program funds limitations in effect at the time of application.
- Applicants are required to sign a CDBG Home Preservation Grant Program Agreement with the City of Commerce.

- All health and safety issues must be corrected first. Certain exterior improvements to property may also be required by the City's Housing and Building and Safety Divisions.
- As a funding requirement, properties constructed prior to 1978, must be tested for lead-based paint contamination.
- Asbestos testing and abatement will also be required for windows, roofing, flooring and other items as required.
- The grant does not require repayment to the City.
- Home owners may reapply every 10 years for a grant under this Program.

## **V. REHABILITATION REQUIREMENTS**

All rehabilitated units must meet building code requirements and the State's enhanced Housing Quality Standards (HQS). Applicants must also ensure that units meet all applicable codes and standards: Certifications from qualified building inspectors that the units meet these requirements will be required.

Federal lead-based paint regulations (24 CFR Part 35) make it necessary for applicants to obtain access to State-certified lead-based paint evaluation risk assessors and qualified lead-based paint hazard reduction contractors. The federal regulations also require contractors to ensure that extensive safe work practices, including occupant protection and temporary relocation, are done on each house while work is being performed. Housing rehabilitated must pass lead-dust level clearance standards and examinations according to the new regulations. Contractors will be required to demonstrate organizational capacity and readiness to deliver these requirements with letters of intention to bid from lead-trained contractors and with having written temporary occupant housing relocation plans and procedures submitted at time of application, if necessary.

## **VI. CONTRACTORS REQUIREMENTS**

Contractors will demonstrate availability of construction/rehabilitation specialist staff or consultant for construction management knowledgeable and experienced in construction and inspection methods, the preparation of detailed construction methods and materials job work specifications, housing & building codes, cost estimating, competitive bid procurement processes, managing job contracts and contractors.

Lead based paint and asbestos contractors will adhere to the hazard reduction methods, risk assessments, lead specifications, and safe work practices as required by the Los Angeles County Development Commission (LA CDC). The City will utilize the approved LA CDC lead and asbestos consultants (Attached as Exhibit B) to conduct procurement and hire consultants/contractors to perform testing and abatement.

## **VII. ELIGIBLE REHABILITATION ACTIVITIES\***

Eligible rehabilitation and beautification costs include, but are not limited to, the following development hard costs:

- Lead-based paint hazards.
- Exterior accessibility modifications for elderly and disabled persons.



- Minor repairs and/or replacement of exterior components including windows, doors, roof replacement, exterior and interior paint.
- Minor repairs and/or replacement of interior plumbing, electrical, ceiling, and/or flooring.
- Site improvements and utility connections.

Related soft costs, i.e. reasonable and necessary costs, may include:

- Architectural, engineering, inspection consultant or related professional services;
- Financing costs, such as credit and title costs, recordation fees, building permits and inspections, legal fees, and appraisals.

*\*Electrical and plumbing work will be considered on a case by case basis with the approval of the Executive Director or Deputy Director in coordination with the Housing Manager, Community Development Coordinator and Housing Specialist.*

## **VIII. INELIGIBLE ACTIVITIES**

Certain improvements are not basic requirements for a safe and healthy living environment. These items are not eligible for City loans or grants. Examples of such improvements include: pools, spas or hot tubs, outdoor cooking facilities, installation or purchase of storage sheds, patio covers, furniture, or draperies.

## **IX. PROGRAM PROCEDURES\***

- 1) An Interest form and Home Improvement Questionnaire are collected from all households interested in receiving and filing an application.
- 2) Homes on the Interest List are rated and ranked based on the Questionnaire and are selected to complete a Home Assessment conducted by the Community Development Department and Housing Division Staff.
- 3) Home Assessment photos with descriptions are prepared of all eligible home improvement items to complete the Home Assessment by Staff.
- 4) Eligibility letters and Application are mailed out to selected homeowners who participate in completing the Home Assessment process.
- 5) Home Assessments include checking the Permit file is reviewed to ensure that there are no unpermitted structures or existing building code violations in the property.
- 6) A second walk-through is performed of selected properties to take measurements and prepare a detailed plot plan to be included in the scope of repairs and to compare with the information found within the City's permit file.
- 7) Applications are then income qualified and an award.
- 8) Grant Award and/or Denial Letters or referral letters for a different program are then sent out to applicants based on Home Assessment results and application and income documentation review.

- 9) A scope of repair is prepared and the home is evaluated for lead/asbestos testing.
- 10) Lead/Asbestos Testing/Inspection to be completed.
- 11) Abatement bids are requests and reviewed (if necessary).
- 12) Property walk-through with construction contractors to review scope of repairs.
- 13) A request for bids is send out and bids from contractors are collected.
- 14) Bids for abatement and construction review and selection is made (lowest bidder).
- 15) Abatement and construction contractors are notified of selection.
- 16) Program documents including Program Agreement, Contract, City's General Guidelines, and Notice to Proceed are prepared.
- 17) Program documents are executed by homeowner, contractor, and the City. When executing documents, the homeowner and the contractor will receive copies and the original will remain in the case file with the City. Additionally, a review of the Scope of Repairs and agreed upon bid amount will be discussed at the time documents are executed.
- 18) Notice to Proceed after obtaining building permits will provided to contractor.
- 19) Contractor has 120 days to complete the work (30 days for abatement).
- 20) Contractor and homeowner set construction schedule for work to be completed. Housing Staff/Housing Consultant will follow up with both on a weekly basis to check status and to ensure proper permits have been pulled. City staff will document in writing any issues that arise throughout construction process.
- 21) Progress photos of repairs are taken during construction.
- 22) Contractor submits building and safety finalized permit. Copy is kept in project file.
- 23) Staff prepares a Certification of Work Completed prior to final payment.
- 24) "After" photos for client files are taken and a final walk-through with property owner is performed. If all of the work indicated in the scope of repairs has been completed, homeowner and staff member will sign the Certification of Work Completed form.
- 25) Program satisfaction survey is mailed to participant.
- 26) Invoices for work completed are processed. Invoices for materials only may be submitted prior to completion of the work; however invoices for labor must be submitted after finalized building permit is received.

27) An unconditional waiver and release upon final payment form for any liens against the home must be submitted by the contractor prior to final payment.

28) Invoices for payments are processed only after file is completed. At this time a copy of any checks issued are stored within the project file.

\*The City's Housing Division Staff and/or Housing Consultant may carry out all and any of the above tasks as required by the Community Development Department Director.

Attached to these guidelines are the following CDBG funded Home Preservation Grant Program documents for the execution of the grants and agreements:

- 1) Attachment 1 - Home Preservation Participation Agreement;
- 2) Attachment 2 - CDBG General Conditions to the Agreement;
- 3) Attachment 3 - Notice to Proceed; and
- 4) Attachment 4 - Flow Chart of Tasks for Administering the CDBG funded Home Preservation Grant Program.

# ATTACHMENT 1

## CITY OF COMMERCE

### HOME PRESERVATION GRANT PROGRAM AGREEMENT

THIS HOME PRESERVATION GRANT PROGRAM AGREEMENT ("Agreement") which is dated as of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") is entered into by and between the CITY OF COMMERCE, a public body, corporate and politic ("City") and \_\_\_\_\_ ("Owner"). Owner and the City agree as follows:

Section 1. Owner acknowledges that (i) Owner received a copy of and read the Home Preservation Grant Program and (ii) Owner has completed a Home Preservation Grant Program Application ("Application") and submitted the Application to the City.

Section 2. Owner acknowledges that it has met with the City staff members and Owner agrees that Owner's home, which is located at \_\_\_\_\_, **Commerce, CA 90040** ("Property"), needs certain repairs and improvements, which are listed in Exhibit 1 to this Agreement ("Work").

Owner agrees that the total estimated cost of completing all the Work is \_\_\_\_\_ **Dollars** (**\$ \_\_\_\_\_**) as described in Exhibit 1 and Owner understands that the City will provide the full amount of these funds in the form of a grant ("Grant") to Owner.

Section 3. By filling out the Application provided to Owner by the City when Owner first requested assistance in rehabilitating the Property, Owner provided the City with certain information about Owner's total income, the names of the person's who will be living on the Property (these people and only these people, are members of Owner's "household"), and the total income of all of the members of Owner's household. In addition, Owner represented to City that Owner, and all the members of Owner's household, live at the Property as their primary place of residence. This information is very important to the City and, in fact, the City decided to provide Owner the Grant to complete the Work described in Exhibit 1 based upon this information, which Owner has provided under penalty of law.

If any of the information provided in the Application has changed, it is Owner's responsibility to inform the City, in writing, of the change prior to signing this Agreement. By signing this Agreement Owner is stating that the information Owner provided the City in the Application was correct at the time Owner filled out the Application and remains correct, or Owner has corrected it, in writing, at the time Owner signs this Agreement.

Section 4. This Agreement is between Owner and the City. Owner specifically agrees to comply with all City ordinances, rules and regulations pertaining to the Property.

Section 5. This Agreement is governed by the laws of the State of California. Any legal action brought under this Agreement must be instituted in the appropriate California State court in Los Angeles County, California. Each party hereto irrevocably consents to the personal jurisdiction of that court.

Section 6. Notices under this Agreement shall be to the addresses and in the forms set forth in the Regulatory Agreement

Section 7. Indemnity. Owner shall defend, indemnify and hold City, its officers, directors, agents, servants, attorneys, employees and contractors harmless from and against any liability, loss, damage,

costs or expenses arising from or as a result of the Work carried out or completed on the Property or arising from or as a result of this Agreement.

Section 8. Right of Access. For the purposes of assuring compliance with this Agreement, representatives of the City shall have reasonable rights of access to the Property, without charge, during day light hours, until the City determines that the Work is complete.

Section 9. Schedule of Performance. Work shall be completed prior to \_\_\_\_\_, 20\_\_\_\_ (INSERT DATE).

**OWNER**

**CITY OF COMMERCE**

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

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

Mayor

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

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

## ATTACHMENT 2

### CITY OF COMMERCE

<h3>GENERAL CONDITIONS TO THE AGREEMENT FOR REHABILITATION</h3>
---

#### 1. Definitions.

Wherever used in the Agreement or these General Conditions, the following meanings shall be given to capitalized terms.

1.1 The term "Agreement" means and shall include the following:

1.1.1 The Agreement for Rehabilitation;

1.1.2 Exhibits (if any);

1.1.3 these General Conditions;

1.1.4 any Addendum to the General Conditions;

1.1.5 any Amendments to any of the above; and

1.1.6 Change Orders.

1.2 The term "Amendment" means the changes, revisions, or clarifications of the Agreement which have been signed by Owner and Contractor, and approved by the City of Commerce (CITY).

1.3 The term "Bid Proposal" means the bid proposal dated \_\_\_\_\_ submitted by the Contractor and accepted by the Owner.

1.4 The term "Change Order" means a revision of the Work signed by Owner and Contractor, and approved by CITY, after the start of the Work.

1.5 The term "Contractor" means the person, firm or corporation entering into the Agreement with Owner to perform the Work.

1.6 The term "Day" means calendar day.

1.7 The term "CITY" shall mean the City of Commerce, a public body, corporate and politic.

1.8 The term "Owner" means the legal owner or owners of the Site where the Work is to be performed.

1.9 The term "Site" means the location of the improvements where the Work is to be performed.

1.10 The term "Work" means the construction and services required by the Agreement, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by Contractor to fulfill Contractor's obligations.

1.11 The term "Working Day" means calendar days excluding weekends and federal and/or state holidays.

## **2. Contractor.**

2.1 Eligibility. Contractor represents that: (a) Contractor's California state contractor's license number listed on Contractor's Bid Proposal and the Agreement is current; (b) Contractor has a current City of Commerce business license; (c) Contractor carries insurance in accordance with the requirements of the Agreement and (d) Contractor possesses the skill, experience and expertise necessary to complete the Work in accordance with the Agreement. Contractor further represents that it is not listed on the Disbarred and Suspended Contractor's List of the United States Department of Housing and Urban Development, the City of Commerce, COMMISSION or any other public Agency, and Contractor agrees not to hire any subcontractor or supplier that is so listed.

2.2 Best Skill. Contractor shall supervise and direct the Work using its best efforts, skill and attention to ensure the workmanship and materials are of good quality and that the Work is completed in accordance with the Agreement. Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures; safety on the job; and coordinating all portions of the Work to be performed by Contractor's laborers, employees and subcontractors, if any.

2.3 Agents. Contractor shall be responsible to Owner for the acts and omissions of its employees, subcontractors and their agents and employees, and of all other persons performing any of the Work under a contract with or the control of Contractor.

2.4 Indemnification. To the fullest extent permitted by law, Contractor shall indemnify, hold harmless, protect, and defend Owner, the City of Commerce, and all other persons or organizations engaged or cooperating in the performance of the Work, and each of their officers, directors, shareholders, partners, representatives, employees and agents (all of which persons and organizations are referred to herein collectively or individually as "Indemnities") from and against any and all claims, demands, causes of action, losses, damages, liabilities, costs, expenses, liens, judgments or obligations whatsoever, including, without limitation, attorneys', consultants' and experts' costs and fees, resulting from or in any way connected, in whole or in part, with the performance of or failure to perform any obligations under the Agreement, or the acts, errors or omissions of Contractor, any subcontractor, or the officers, partners, employees, consultants or agents of any of them or by anyone for whose acts they may be liable. This indemnity obligation shall apply regardless of whether or not the event giving rise to the indemnity obligation is caused in part by the negligence of an Indemnitee, but shall not apply when the loss is caused solely by the negligence or willful misconduct of an Indemnitee. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity or contribution, which would otherwise exist as to any party or person pursuant to the Agreement.

## **3. Subcontractors and Employees.**

3.1 Coordination. Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to require compliance by each subcontractor with applicable provisions of the Agreement.

3.2 No Contractual Relationship. Nothing contained in the Agreement shall create any contractual relationship between any subcontractor and Owner.

## **4. Changes in the Work.**

4.1 Signed by Parties. No Change Orders are permitted and/or effective unless signed by Owner and approved by the CITY.

4.2 Change Order. Except for the purpose of affording protection against any emergency endangering life or property, Contractor shall make no change in the Work, nor provide any extra or additional labor, service, or material beyond that actually required for the execution of the Work, unless pursuant to a written order from Owner, which order has been approved by the CITY. No claim for an adjustment of the contract price shall be valid unless so ordered.

4.3 Contents. Each Change Order shall include a detailed description of the change in the Work, the agreed-to change in price and/or time for completion thereof, and a statement that all Work shall be performed in accordance with the Agreement as modified by the Change Order.

4.4 Work after Termination of Agreement. Owner and Contractor shall not enter into any other contract or otherwise undertake any work on the Site not included in the Work or a Change Order executed pursuant hereto until a Notice of Completion has been recorded. Additional Work not included in the Work or a Change Order may be negotiated separately between Owner and Contractor or any other contractor, only after recordation of a Notice of Completion.

## **5. Inspection of the Work.**

5.1 Inspection. Owner and Contractor shall permit the CITY to examine and inspect the Work during normal business hours and at any stage of construction.

5.2 THE CITY's Review. The exercise by the CITY of its right to review the progress of the Work is solely for the purpose of monitoring its conformity with the Agreement and the Program requirements pursuant to which THE CITY's financial assistance has been provided. Specifically, the CITY may (a) determine whether the work by Contractor is in compliance with the Agreement; (b) stop the work, if reasonably necessary, and (c) reject all work and materials, which do not conform to the requirements of this Agreement. the CITY does not have, and hereby expressly disclaims, the duty for any review of the Work for the purpose of determining compliance with building codes, safety features or standards or for the purpose of determining or approving engineering or structural design, sufficiency or integrity. the CITY's approval or authorization of a direction or request to change the plans, specifications or drawings submitted by Owner and/or Contractor is not and shall not be a review or approval of the quality, adequacy or suitability of such plans, specifications or drawings, nor of the labor, materials, services or equipment to be furnished or supplied in connection therewith. the CITY does not have and expressly disclaims any right of supervision or control over Owner, Contractor, any subcontractor, trades, or any other persons and professionals responsible for the formulation or execution of the Work. the CITY's approval of the Agreement or any subsequent amendment of the Agreement is not an endorsement or guarantee by the CITY of Contractor or the Work.

5.3 Right of Access. During normal construction hours, representatives of the CITY shall have the reasonable right of access to the Site without charges or fees for the purpose of inspecting the Work. The CITY hereby indemnifies and holds Owner and Contractor harmless from and against any loss, cost, damage or liability, including, without limitation, reasonable attorneys' fees, which result from the exercise by the CITY, or any party acting under the CITY's authority, of the rights granted by this Section.

## **6. Payment.**

6.1 Not Acceptance. No progress payment, nor any partial or entire use or occupancy of the Site by Owner, shall constitute an acceptance of the whole or any part of the Work.

6.2 Joint Payments. Owner and/or the CITY shall have the right, in their sole discretion, to make payments jointly to the order of Contractor and any subcontractor unless Contractor (a) is not in default and (b) requests Owner not to do so as a result of Contractor's good faith dispute with such subcontractor.



6.3 Withholding Payment. Owner or the CITY may withhold payment if in the opinion of Owner or the CITY the Work has not been performed in accordance with the Agreement. In such case, Owner shall notify Contractor of such deficiency. Owner or the CITY may also withhold payment to such extent as they deem necessary to protect Owner from loss because of:

6.3.1 defective Work not remedied;

6.3.2 third party claims filed or reasonable evidence indicating probable filing of such claims;

6.3.3 failure of Contractor to make payments properly to subcontractors or for labor, materials or equipment;

6.3.4 reasonable doubt that the Work can be completed for the unpaid balance of the contract price;

6.3.5 reasonable evidence that the Work will not be completed within the time agreed upon, and that the unpaid balance would not be adequate to cover actual and liquidated damages, if any, for the anticipated delay;

6.3.6 insufficient documentation, erroneous estimates of the value of the Work performed or other false or incomplete statements by Contractor; or

6.3.7 persistent failure of Contractor to perform any term or condition of the Agreement.

6.4 Withholding by Law. The provisions of this Section shall not lessen or diminish, but shall be in addition to, the right or duty of Owner to withhold any payments under applicable provisions of law respecting the withholding of sums due to contractors.

6.5 Release of Payment. When the above grounds are removed, payment shall be made for amounts withheld because of them.

6.6 Limitation to Withholding. Owner shall not withhold payment from Contractor for any amounts owing and not subject to dispute or offset.

6.7 Retentions. The CITY reserves the right to retain ten-percent (10%) of lump sum or partial payments. Retention payments due Contractor will be paid within 35 to 45 Days after the later of (a) the CITY and Owner complete necessary inspections, (b) a Notice of Completion has been recorded, (c) Owner has received satisfactory releases of liens or claims for liens by Contractor, subcontractors, laborers, and material suppliers for completed Work or installed materials, and (d) all disputes have been resolved.

7. Stop Order. If Contractor fails to correct Work which is not in accordance with the requirements of the Agreement, or persistently fails to carry out the Work in accordance with the Agreement, Owner or the CITY, by written order, may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of Owner and THE CITY to stop the Work shall not give rise to a duty on the part of Owner or the CITY to exercise this right for the benefit of Contractor or any other person or entity.

## 8. Termination of Agreement.

8.1 Diligent Prosecution. If Contractor refuses or fails to prosecute the Work with such diligence as will ensure its completion within the specified time or otherwise in accordance with the

provisions of the Agreement, or if the workmanship is of substandard quality, then Owner, by written notice to Contractor, may declare Contractor in default. If Contractor fails to remedy such default within fifteen (15) days of the date of such notice, Owner shall have the right to terminate the Agreement and select one or more substitute contractors acceptable to the CITY to finish the Work in accordance with Section 8.3.

8.2 Work Stoppage. If Contractor ceases to perform actual Work for a period of twenty (20) Days or more without an excusable delay pursuant to Section 9, then Owner, by written notice to Contractor, may terminate the Agreement and Contractor's right to proceed with the Work.

8.3 Damages. Upon termination, pursuant to 8.1 or 8.2, Owner may engage a substitute qualified licensed contractor to take over the Work and prosecute the same to ensure completion, and Contractor and its sureties (if any) shall be liable to Owner for any cost above the Contract Price, incurred by Owner to complete the Work. Contractor shall pay such amount (if any) to Owner within ten (10) days written demand therefore. Furthermore, payment for a completed portion of the Work performed by the terminated Contractor shall be withheld until the Work is one-hundred percent (100%) completed and shall not be paid until all other costs and claims pertaining to the Work have been paid. If any amount is left over from the Contract Price after all other costs and claims have been paid, that amount shall become payment in full to the terminated Contractor for all its portion of the Work performed, and shall be paid to it within thirty (30) days after satisfactory completion of the Work and payment of all claims. In no event shall said terminated Contractor receive any amount more than is equitable for Work performed as determined by the CITY or any arbitrator, mediator or court of law exercising jurisdiction over the matter, or any amount which will cause Owner additional cost, above the total Contract Price, as determined by the CITY or any arbitrator, mediator or court of law exercising jurisdiction over the matter.

8.4 Possession of Equipment. If Contractor's right to proceed is so terminated, Owner may take possession of and utilize in completing the Work such materials as may be on the Site and necessary for the completion of the Work.

## **9. Excusable Delays.**

Contractor shall not be charged with liquidated damages for any delays in the completion of the Work, and the date of completion shall be extended for delays, due to:

9.1 Any acts of Government, including controls or restrictions upon or requisitioning of materials, equipment, tools or labor by reason of war, National Defense, or any other national emergency;

9.2 Any acts of Owner;

9.3 Causes not reasonably foreseeable by parties to the Agreement at the time of execution of the Agreement which are beyond the control and without the fault or negligence of Contractor, including but not restricted to, acts of God or of the public enemy; acts of another contractor in the performance of some other agreement with Owner; fires; floods; epidemics; quarantine restrictions; strikes; freight embargoes; and weather of unusual severity such as hurricanes, tornadoes, cyclones and other extreme weather conditions; or

9.4 Any delay of an authorized subcontractor occasioned by any of the causes specified in Sections 9.1, 9.2, and 9.3 above, provided that Contractor promptly (in any event within ten (10) Days) notifies Owner and the CITY in writing of the cause of the delay.

9.5 If the facts show delay to be properly excusable under the terms of the Agreement, Owner and the CITY shall extend the time for substantial completion of the Work by a period commensurate with the period of excusable delay.

**10. Liquidated Damages for Delay.**

Because actual damages for any delay in completion of the Work which Contractor is required to perform under the Agreement are impracticable and extremely difficult to fix, Owner and Contractor agree that Contractor shall be liable for and shall pay to Owner the sum of one hundred dollars (\$100.00) as fixed, agreed and liquidated damages for each Working Day of delay from the date stipulated for completion in Section 4 of the Agreement for Rehabilitation, or as modified in accordance with Section 4, "Changes in the Work," of these General Conditions until such Work is satisfactorily completed and accepted. Owner is solely responsible for levying and collecting such payment for damages.

**Owner and Contractor further agree that One Hundred Dollars (\$100.00) per Working Week is a fair and reasonable estimate of such damages under the circumstances existing as of the date hereof and that such sum is not construed in any sense as a penalty. The parties further agree that said liquidated damages for delay shall be owners' sole and exclusive remedy for such delay.**

\_\_\_\_\_  
**Contractor's Initials**

\_\_\_\_\_  
**Owner's Initials**

**11. General Guarantee and Warranty.**

11.1 Warranty. Contractor warrants to Owner that materials and equipment furnished under the Agreement will be of good quality and new unless otherwise required or permitted by the Agreement, and that the Work will be free from defects. Work not properly approved and authorized may be considered defective. If required by Owner, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment used in the Work. Prior to the release of the final payment, Contractor shall secure, assign to and deliver to Owner written warranties and guaranties, if any, from its subcontractors and suppliers bearing the date of substantial completion or such other date as may be agreed to by Owner and stating the applicable period of warranty. Contractor is responsible for the warranty of the Work as set forth in this Section, whether performed by it or by its subcontractors.

11.2 Title. Contractor warrants the title to the Work will pass to Owner no later than the time of payment. Contractor further warrants that upon final payment all Work shall be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, its employees, subcontractors, material suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

11.3 Guarantee. The Work will be guaranteed for a period of one (1) year from date of final acceptance of all Work required by the Agreement. If during this twelve (12) month period Owner has any complaints concerning the Work, Owner shall contact Contractor directly to correct the items. **DO NOT CALL THE CITY COMMERCE.**

11.4 Prompt Remedy. Contractor shall promptly remedy any defects in the Work and shall pay for any damage to other Work resulting there from which may appear within a period of one (1) year from the date of final acceptance of the Work unless a longer period is specified. Owner will provide notice of observed defects with reasonable promptness.

11.5 No Acceptance. Neither the final payment nor any provision in the Agreement, nor partial or entire use or occupancy of the Site by Owner or resident shall constitute an acceptance of Work not

performed in accordance with the Agreement, or relieve Contractor of liability with respect to any express warranties or responsibility for failure to comply with the terms of the Agreement.

## **12. Conciliation / Arbitration.**

12.1 Conciliation. If any dispute, controversy or claim arises out of or relates to the Agreement, and if conciliation would be helpful to resolution of such dispute, the parties agree first to try to settle the dispute by conciliation before resorting to arbitration. The parties agree that if such a dispute arises, they will notify the CITY of such dispute, and meet with the CITY in a good faith effort to settle the dispute by conciliation. Thereafter, any dispute, controversy or claim not resolved by conciliation shall be submitted to arbitration as provided in Section 12.2.

12.2 Arbitration. All claims or disputes between Owner and Contractor arising out of or related to the Work that either were not referred to conciliation or cannot be settled by conciliation shall be decided by arbitration in accordance with the construction industry arbitration rules of the American Arbitration Association then obtaining, unless the parties mutually agree otherwise. Notice of the demand for arbitration shall be filed in writing with the other party to the Agreement, and shall be made within thirty (30) Days after either the recommendation by the CITY that the dispute not be conciliated or termination of the parties' attempt to conciliate the dispute. The matter shall be referred to mediation for arbitration. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. If the arbitrator's award is in a sum, which is less than that which was offered in settlement by Contractor, the arbitrator may award reasonable costs and attorney's fees in favor of Contractor. If the award of the arbitrator is in a sum greater than that which was offered in settlement by Owner, the arbitrator may award reasonable costs and attorney's fees in favor of Owner. In all other cases, the Owner and the Contractor shall share costs equally. In the event any party refuses to arbitrate or to cooperate with the arbitrator by failing to prepare for an arbitration hearing within a reasonable time not less than thirty (30) days as determined with the discretion of the arbitrator following filing of a notice of demand to arbitrate by the other party pursuant to this Section 12.2, then such party shall be deemed in default of the Agreement and the non-defaulting party may pursue all available remedies at law and/or equity.

## **13. Insurance.**

13.1 Comprehensive General Liability. Contractor shall at all times during the term of the Agreement maintain Comprehensive General Liability insurance written on an occurrence (not claims-made) basis covering all operations on behalf of Owner, including operations under subcontracts, and providing insurance for personal injury liability, bodily injury liability, sickness, disease or death of any persons and property damage liability, including loss of use, for a Combined Single Limit of \$1,000,000 for general liability, and including coverage for:

- (a) Premises and operations;
- (b) Products and completed operations;
- (c) Contractual Liability insuring the obligations assumed by Contractor in the Agreement;
- (d) Broad form property damage (including completed operations);
- (e) Explosion, collapse and underground hazards;
- (f) Personal injury liability; and
- (g) Independent contractors.

Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limit, where applicable, shall apply separately to Contractor's work under the Agreement.

13.2 Worker's Compensation. Contractor and its subcontractors shall carry or require that there be carried Workers' Compensation for all its employees and those of its subcontractors in form and amount as required by California's Worker's Compensation Laws.

13.3 Evidence of Insurance. The evidence of insurance shall be Certificates of Insurance, with endorsements naming Owner, the City of Commerce, and the CITY as additional insured on said insurance policies. Such certificates shall provide that said policy or policies shall not be canceled or non-renewed until after a minimum of ten (10) Days prior written notice to the CITY.

13.4 Verification of Insurance. If the CITY wishes to verify the existence and effectiveness of the foregoing policies, Contractor agrees to furnish the CITY with the mailing address, or addresses, of such insurance company or companies as is appropriate and, further, consents to allow THE CITY and/or Owner the right to verify such policies.

**14. Permits.**

Contractor shall obtain and pay for all permits and licenses necessary for the execution of the Work.

**15. Codes.**

Contractor shall give all notices required by, and perform all the Work in conformance with, applicable laws, ordinances and codes of the local government, whether or not covered by the specifications and drawings for the Work. Contractor shall not be held responsible for pre-existing violations of any law including, but not restricted to, zoning or building codes or regulations. Before beginning the Work, Contractor shall examine the description of the Work for compliance with applicable laws, ordinances and codes for the new or replaced Work and shall immediately report any discrepancy to the CITY and Owner. Where the requirements of the Work fail to comply with such applicable laws, ordinances or codes for the new or replaced Work, Owner and the CITY shall adjust the Agreement by Change Order to conform to such laws, ordinances, or codes and make appropriate adjustments to the contract price, unless waivers in writing covering the differences have been granted by the proper authorities.

**16. Safety of Persons and Property.**

16.1 Safety Precautions. Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- (a) employees on the Work and other persons who may be affected thereby;
- (b) the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody or control of the Contractor or the Contractor's subcontractors; and
- (c) other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. Contractor shall cooperate with the Owner in this respect, and shall take all reasonable and necessary steps to minimize any such dirt,

noise, dust, fumes, traffic or other problems or damage, to surrounding property or buildings attributable to any action by Contractor.

16.2 Notices. Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

16.3 Barriers and Signs. The Contractor shall erect and maintain as required by existing conditions and performance of the Agreement, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

16.4 Hazardous Materials or Devices. When use or storage of explosives or other dangerous materials or hazardous substances or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

16.5 Remedy of Damage or Loss. Contractor shall promptly remedy damage and loss to the Site or the improvements thereon caused in whole or in part by the Contractor, a subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under this Agreement except damage or loss attributable to acts or omissions of the Owner, and not attributable to the fault or negligence of the Contractor.

**17. Debris.**

Contractor shall keep the Site clean and orderly during the course of the Work and shall remove all debris at the completion of the Work. Materials and equipment that have been removed and replaced as part of the Work shall be removed from the Site promptly and before final payment unless Owner expressly instructs Contractor to the contrary.

**18. Assignment.**

Contractor shall not assign or transfer any of his rights, duties, benefits, obligations, liabilities or responsibilities under the Agreement without the prior written consent of Owner and the CITY. Any request for assignment shall be addressed to Owner and the CITY.

**19. Utility Services.**

19.1 Utilities Available. Any existing home utility service will be available to Contractor without charge, including: electric power; water; and telephone (if available and for local calls only). When Contractor must disconnect or otherwise interrupt such services, including plumbing fixtures, to effect repairs or replacement, the use or availability of such services shall not be deprived to Owner or occupant, unless Owner or occupant has been relocated, except during normal working hours (8:00 a.m. to 5:00 p.m. Monday through Friday, except holidays).

19.2 Disruptions. Where disruptions or disconnections will be other than during normal working hours, Contractor shall obtain approval of Owner and/or occupant, twenty-four (24) hours prior to such interruption.

**20. Occupancy.**

20.1 Site May Be Occupied. The Site may be occupied during the course of the Work unless an addendum stating otherwise is included with these General Conditions. Owner or its tenant will

cooperate with Contractor in a reasonable manner to minimize interference with the Work, including abandonment of limited areas as may be essential to the conduct of the Work.

21. **Addendum.** The following Addendum are attached hereto and made a part hereof:

**IN WITNESS WHEREOF**, the parties have executed these General Conditions to the Agreement for Rehabilitation as of the day and year written below.

\_\_\_\_\_ Date: \_\_\_\_\_  
Mayor

Owner, \_\_\_\_\_ Date: \_\_\_\_\_

Contractor, \_\_\_\_\_ Date: \_\_\_\_\_

**ATTACHMENT 3**  
**CITY OF COMMERCE**  
**HOME PRESERVATION GRANT PROGRAM**  
**NOTICE TO PROCEED**

Contractor Name _____	Date: _____
Contractor Address _____	Name _____
Address Line 2 _____	Address _____
Phone No: _____	Commerce, CA 90040
	Phone No: _____

**<Contractor Name>** is the successful bidder for the property located at **<Property Address>**, **Commerce, California 90040**.

You are hereby notified to commence WORK in accordance with the Agreement dated \_\_\_\_\_, 2011, on or before \_\_\_\_\_, 2011, and you are to complete the WORK within the timeframe stated within the Agreement.

The date of completion of all WORK is therefore \_\_\_\_\_, 20\_\_\_\_\_.

By \_\_\_\_\_

Title \_\_\_\_\_

**NOTICE TO CONTRACTORS: Each Payment Invoice Must Be Accompanied By a Labor and Material Lien Release as well as a Copy of all applicable Signed-Off Permit(s)**

- 1) Contractors are required to submit the list of all participating subcontractors and suppliers, to the City of Commerce prior to the start of the project in question.
- 2) Payments and lien release requirements are as follows:
  - **Progress Payments:** To receive a progress payment, please submit a progress payment invoice to The City of Commerce, as well as a conditional lien release for the progress payment amount.
  - **Change Order Payments:** the Property Owner, Contractor and The City of Commerce must first approve any Change Order to the contract before Change Order work items are begun. To request a Change Order the Contractor must first put in writing the reason and description of the work to be completed. After the Change Order work has been completed, the Contractor submits the payment invoice to The City of Commerce, as well as a conditional lien release for the change order payment amount.
  - **Final Payment / 10% Retention Payment:** Please submit to The City of Commerce a final payment invoice, less 10% as well as a 10% retention payment invoice and unconditional lien release for the final payment amount. Once all documents are received, the final payment less 10% will be processed. The City of Commerce and the Homeowner will sign-off approval for the final 10% retention payment if the job has been completed to their satisfaction.

Contractors must submit a final sign-off permit job card or a copy of a final sign-off permit card from the City of Commerce Building Department to The City of Commerce before final payment will be processed.



**PROJECT IN QUESTION / PROJECT SITE:**

<Participant's Name>  
<Property Address>  
Commerce, CA 90040

**NOTE:**

- No contractor will receive their first progress payment until they have submitted the list of all participating subcontractors and suppliers for the project in question.
- Upon the final payment phase, the City of Commerce requires all unconditional lien releases for all of the participating subcontractors and suppliers for the project in question. Furthermore, contractors must submit all certificates, guarantees and warranties relating to the project in question.

**ACCEPTANCE OF NOTICE**

**Receipt of the above NOTICE TO PROCEED is hereby acknowledged**

By \_\_\_\_\_  
Company Name

this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

By \_\_\_\_\_  
Company Representative Name                      Company Representative Signature

Title \_\_\_\_\_

**ATTACHMENT 4 – FLOW CHART OF CDBG FUNDED HOME PRESERVATION GRANT PROGRAM TASKS**

**Minor Rehabilitation Case Flow Chart- City of Commerce Housing Division**

**APPLICATION INTAKE (PROGRAM ADMINISTRATION)**

- **CITY STAFF** reviews Interest Forms in Home Preservation Grant Program Database and selects properties to perform Home Assessments with photos and Building Department pocket file research and pre-qualifies the Property and Owner to file an official Home Preservation CDBG Grant Application.
- **CITY STAFF** mails eligibility letters and application to those who participate in the Home Assessment to continue with the application process.
- **CITY STAFF** performs a second Walk-through of the property and confirms setback measurements and processes the scope of work in the County's Rehabilitation Project Database for Environmental Clearance and processes final award letters after County Environmental Clearance is received.

**PRE- CONSTRUCTION (PROGRAM ADMINISTRATION)**

- **CITY STAFF/CONSULTANT** updates a list of Contractors/Subcontractors, proof of insurance and State Licenses for City Review.
- **CITY STAFF/CONSULTANT** arranges for Lead/Asbestos Testing/Inspection to be completed and executes procurement, abatement agreements for property owner, contractor and City's execution.
- **CITY STAFF** reviews Construction Cost Template for all other items that are included in the CDBG Scope of work and conducts procurement, and contract execution with the homeowner to begin work with the Contractor/Subcontractor after all abatement work is completed.
- **CITY STAFF** ensures that a 'Notice to Proceed' is in the file for construction to begin.
- **CITY STAFF** ensures that the permits are pulled with copies in case file and job is complete per the proposal.

**MINOR REHABILITATION CONSTRUCTION PHASE**

- **CITY STAFF** oversees Contractors and/or their Subcontractors to complete the Construction.
- **CITY STAFF** arranges for City's Inspector from building department to inspect completed work.
- **CITY STAFF** arranges for City's Inspector approval of construction and owner approval signature.
- **CITY STAFF** interacts with homeowner, inspector and takes "in progress photos" during construction.
- **CITY STAFF** files a Notice of Completion.

**POST- CONSTRUCTION (PROGRAM ADMINISTRATION)**

- **CITY STAFF** take "after" photos for client files any final payments to be released.
- **CITY STAFF/CONSULTANT** complete and ongoing Monthly Status Reports and accounting by Fiscal Year for the City's file regarding case construction progress.
- **CITY STAFF** reviews monthly reports and updates City's Rehab. Program Database.
- **CITY STAFF** pays bill for all Lead/Asbestos Testing, Construction and withholds a 10% Retention to reimburse Contractor until a Notice of Completion is filed and Releases the 10% Retention for Construction Costs.

*\*Note: Each homeowner will be directed to other Community Development Department Redevelopment Funded Home Improvement Programs as funding is available for any additional/complicated repairs.*





This item was continued from November 15, 2011

## **AGENDA REPORT**

Date: December 6, 2011

**TO: HONORABLE CITY COUNCIL**

**FROM: CITY ADMINISTRATOR**

**SUBJECT: COMMUNITY DAY OF SERVICE – STAFF UPDATE ON IMPLEMENTATION OF PROPOSAL SUBMITTED BY COMMUNITY SERVICES COMMISSIONER JOANNA FLORES AND SELECT THE COMMITTEE’S RECOMMENDED OPTION, #1**

**RECOMMENDATION:**

That the City Council receives an update from City staff on the progress of the implementation of the Community Day of Service Proposal submitted by Community Services Commissioner Joanna Flores, as part of the City's Keep Commerce Beautiful Campaign, and select Option #1 – “Establish the date of the Day of Service Event”, as presented under the Analysis section of this report.

**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.

The Committee met and discussed various components of the proposal and possible issues that may arise. The Committee is of the opinion that most of the neighborhoods and areas within the City are clean and in decent condition. Some of the issues discussed were how to obtain volunteers; supervision and training of the volunteers; the supplies & equipment that the City would be required to purchase for the tasks; determining which areas would be included and what type of work would be required; logistical situations such as possibly having to close off streets in order to provide safety for the volunteers; limitations such as not going onto private property; and City liability for any injuries to volunteers and/or damage incurred to any property.

**ANALYSIS:**

The Committee established that some of the tasks listed in the proposal can be incorporated into existing events that the City sponsors, such as planting trees on Earth Day or Arbor Day, or expanding the Spring Cleanup event, as part of the Keep Commerce Beautiful Campaign. Other ideas were also discussed, as part of the beautification efforts (they are listed below). Nonetheless, it would be beneficial to the City to seek the participation of the Industrial Council, for input and assistance in the event the City would solicit contributions from businesses (i.e. supplies from Home Depot).

The Committee came up with options for implementation. Of the options presented, the Committee is recommending that the City Council select Option #1, to be implemented by City Staff. The options are:

1. **Establish the date of the Day of Service Event** – The event will be held on January 14, 2012, at the Teen Center located at 5107 Astor Avenue, Commerce, CA 90040. This event would involve landscaping, and painting the interior walls of the Teen Center.
2. **Organize the clean-up of neighborhoods/Incorporate Spring Clean-up** – This would involve determining which areas are of top priority and what specifically would be cleaned up.
3. **Provide home improvement assistance to Senior Citizens** – This would involve selecting the homes of interested Senior Citizen residents and assist them with clean-up and painting of their home.
4. **Plant trees throughout the City on Arbor Day and Earth Day** – This would involve identifying the areas suitable for new plantings and a plan for upkeep and maintenance of the trees. Another activity would be an Earth Day Environmental Educational Program at Atlantic Library working with East Yard Environmental Communities on April 19, 2012. The Parks and Recreation Department will plan park program activities to coincide with Earth Day.
5. **Adopt a “Tree” or “Area”** – This would involve identifying a tree or area within the City for purposes of preserving and/or maintaining it, utilizing volunteers, and seeking donations.
6. **Create Community Gardens for residents** – This would require identifying locations that are suitable and available for planting.
7. **Beautify City owned vacant lots throughout the City** – This would involve planting drought resistant plants and possibly utilizing volunteers to assist in the clean-up, preparation and planting of vegetation on these lots. The existing lots are smaller lots located in or adjacent to residential neighborhoods and do include the larger parcels located along Telegraph Road which staff believes must be professionally maintained. The candidate lots for beautification under this program are located at:
  - Astor/Jardine
  - 2207 and 2143 Atlantic

#### **FISCAL IMPACT:**

The fiscal impact to the current operating budget would depend on the option selected and may include personnel and material costs, as well as ongoing maintenance and operations costs.

#### **RELATIONSHIP TO 2009 STRATEGIC GOALS:**

This report relates to the 2009 strategic planning goal: “Protect and Enhance the Quality of Life in the City of Commerce,” as it addresses the overall appearance of the community and promotes civic engagement and pride in the community.

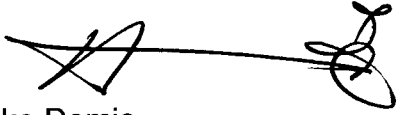
Respectfully submitted,

  
Jorge J. Rifa  
City Administrator

Recommended by:

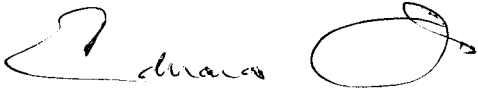
  
Loretta Gutierrez  
Interim Director of Safety & Community Services

Reviewed by:

A handwritten signature in black ink, consisting of a stylized 'V' followed by a horizontal line and a circular flourish.

Vilko Domic  
Director of Finance

Approved as to Form:

A handwritten signature in black ink, featuring a large, sweeping 'E' followed by the name 'Eduardo' and a circular flourish.

Eduardo Olivo  
City Attorney

Attachment: Power Point Presentation



*City of Commerce*



*Community Day of Service – Update on  
Implementation of Proposal  
Council Meeting on 12-6-11*

*Proposal Submitted by Community Services  
Commissioner Joanna Flores*





- Council Meeting of 9-19-11 (Public Comment):  
\*\*Commissioner Joanna Flores presents Community Day of Service Proposal
- Mayor Pro-Tem Del Rio requests that City Administrator direct staff to create Committee to research and find ways to implement the proposal



# City of Commerce

Committee meets and provides the following options:

1. Establish Date for Day of Service Event  
*\* January 14, 2012 @ Teen Center*
2. Organize clean-up of Neighborhoods and incorporate into Spring Clean-up  
*\* Identify top priority areas & tasks*
3. Provide Home Improvement Assistance to Senior Citizens  
*\* Select homes and assist seniors with tasks*



## Options - Continued:

4. Plant Trees Throughout the City on Arbor Day and Earth Day  
*\*Can combine with Earth Day Environmental Program Program at Atlantic Library with East Yard Environmental Communities on April 19, 2012*
5. Adopt a Tree or Area  
*\*Identify a tree or area*
6. Create Community Gardens  
*\*Identify suitable locations*



*Options - Continued:*

7. Beautify City-Owned Vacant Lots in the City

*\* Astor/Jardine*

*\*2207 and 2143 Atlantic*

Fiscal Impact is dependent on the option selected;  
further review is required.



## Issues to consider:

- Method for obtaining volunteers
- Supervision and training of volunteers
- Supplies and Equipment Needed (possible need for business donors)
- Determination of areas to select
- Logistics (i.e., possible street closures)
- Safety of Volunteers
- Limitations on private property
- City liability for injuries or damages incurred



# AGENDA REPORT

MEETING DATE: DECEMBER 6, 2011

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: "GET OUT THE VOICE" – YOUTH VOTER REGISTRATION DRIVE

**RECOMMENDATION:**

Council discretion.

**MOTION:**

Council discretion.

**BACKGROUND:**

At the meeting of November 15, 2011, during the public comments segment, the City Council heard from two residents of the City, Joanna Flores and Joseph Alvarado (both also are City Commissioners, Community Services and Youth Advisory Commission, respectively) about a conceptual proposal they had put together (see attached) for a Commerce community voter registration drive specifically targeted to youth. The Council requested that the item be brought back at the next meeting to review the possibilities of what can be done. Staff has met with Ms. Flores and Mr. Alvarado and has also met internally to discuss the possibilities of what the Council can accomplish in support of the proposal.

There are essentially two approaches on how the Council can involve itself in support of planning, organizing, and implementing such a voter registration drive. The first approach entails the Council's individual efforts as community residents and individual elected officials. The second approach entails formal Council policy direction to involve the City organization in a formal direct or indirect support of the voter registration initiative.

In the first approach, Council individual involvement is relatively straightforward. The Council as individuals can support and participate in the proposed voter organizing drive. Care has to be given when three or more members of the Council join in an activity related to the organizing effort (a committee setting or a public event) that an inadvertent violation of the Brown Act does not take place. Advance consultation with the City Attorney or the City Clerk would be recommended.

The second approach is more complicated and is related to the paradoxical nature of City government. The governance (setting policy) of a City is inherently a political process. The policy makers (City Council) are elected to office and the City is governed based on majority decisions (priorities and objectives) of the Council. By the same token, the operations of the City are apolitical. The City provides services to its residents in an apolitical manner. Political allegiances or affiliations have nothing to do with 911 emergency response, swimming lessons, garbage pickup, or library book check outs. Municipal services are delivered impartially. Commerce, similar to the overwhelming majority of America cities, has a history of contested local politics; yet the community and the Council can take pride in the Commerce tradition of service to residents despite political loyalties.

Political discourse on the issues, the power of the vote (aka "civic engagement"), are healthy and necessary to maintain democratic values and democratic government.

Educating young people as to their civic responsibilities and registering them to vote is a net positive to the community's democratic wellbeing.

Voter registration drives are inherently political processes; given the intent that once an individual is registered, he/she can express a choice (vote) on the public issues facing a community. In fact, the 2011 Secretary of State California Guide to Voter Registration Drives provides that partisan political activity may be conducted while registering voters. If any such activity takes place, or is alleged to have taken place with the involvement of the City, such activity would constitute a violation of law. Accordingly, it is not recommended that the Council formally authorize the direct involvement of the City (personnel and resources) in a voter registration drive because of its inherent political nature and its inherent partisan potential.

**FISCAL IMPACT:**

The budgetary impact of this proposed voter registration initiative is undetermined at this time pending Council direction. The City's overall FY2011/2012 General Fund operating budget was approved by the Council without a specific allocation set aside for this initiative. The General Fund does have a contingency account balance of \$20,000. This appropriation is set aside to primarily cover unanticipated and unforeseen costs of an urgent nature. Staff recommends for discretionary expenditures such as support of the proposed registration drive, that Council consideration, if desired, be given at the mid-year budget review, preliminarily scheduled for the January/February 2012 Council meetings.

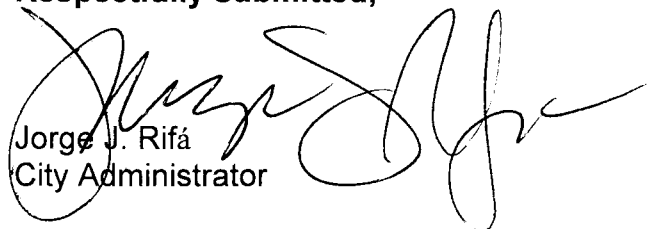
**Council Alternatives:**

1. Council can direct the preparation of a Council Resolution in support of the Commerce "Get Out the Voice" Youth Voter Registration Project. In so doing, it is recommended that City support for personnel and resources not be part of a direct City involvement in the project.
2. Council can direct the preparation of a Resolution of Support for the project and direct the use of City resources. This is not recommended because of the inherent potential for partisan activities in the voter registration process.
3. Council can choose to take no action.

**RELATIONSHIP TO STRATEGIC GOALS:**

This item could potentially be related to the Strategic Goal of protecting and enhancing the quality of life in the City of Commerce by assisting in educating the City's youth about the electoral process.

**Respectfully submitted,**

  
Jorge J. Rifá  
City Administrator

**Approved As To Form:**



Eduardo Olivo  
City Attorney

Attachment: "Get Out the Voice" Proposal

*City of Commerce*  
*"Get out the Voice" (GOV)- Youth Voter Registration Project Summary*

*By: Joseph Alvarado and Joanna Flores, Residents*

## **INTRODUCTION**

Research shows that it is possible to create long-term change by encouraging life-long civic participation from young people: 91 percent of registered voters under the age of 30 cast a ballot in 2008. However, Americans under the age of 30 remain severely underrepresented in the electorate, and the disparities in youth voting grow even wider when looking at African-Americans, Latinos, and those with no college experience (<http://www.lwv.org/AM/Template.cfm>).

From the economy to the future of health care and our energy security, our elected officials are making decisions now that will affect today's youth for decades to come. Young voters have a critical voice to lend. This project aims to empower young people to stand up and make the most of their right to vote. That's why we believe it is vital to reach the City of Commerce young voters along with the neighboring communities and educate them about the civic duty of voting.

## **OBJECTIVE**

The "Get out the Voice" Youth Voter Registration Project is a citywide effort to encourage young people—including those of the surrounding cities--to register to vote. This groundbreaking project aims to register 350 youth in March by the June 2012 Presidential Primaries. The League of Women Voters supports the project and would like to partner with the GOV Planning Committee to make this event a great success.

## **IMPLEMENTATION**

Date TBD (March 2012)

- 1) Form GOV Planning Committee (recruit residents, commissioners, youth and *City of Commerce- Staff Liaison*). Tentative first meeting- December 15, 2011
- 2) Meeting with the League of Women Voters
- 3) Collaboration with local cities surrounding Commerce
- 4) Recruit youth through local high schools, (Bell Gardens, Schurr and Montebello)

## **MATERIALS (not final)**

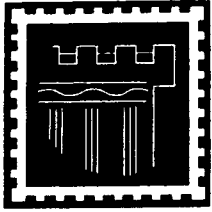
- City space to host GOV Planning Committee meetings
- City Space to host the event
- T-shirts
- Posters, flyers
- Tables and Chairs
- Prizes (raffle)
- Refreshments for volunteers

## **BUDGET**

TBD







COMMERCE  
COMMUNITY  
DEVELOPMENT  
COMMISSION

**AGENDA REPORT**

DATE: December 6, 2011

TO: HONORABLE COMMUNITY DEVELOPMENT COMMISSION

FROM: EXECUTIVE DIRECTOR

SUBJECT: COMMISSION DISCUSSION REGARDING DISPOSITION OPTIONS FOR  
4906 JARDINE STREET

RECOMMENDATION:

Commission direction is sought regarding the final disposition options for 4906 Jardine Street.

MOTION:

Move to approve the recommendation.

BACKGROUND:

This item is brought forward at the request of Mayor Pro Tem Del Rio. Commission direction is sought regarding the final disposition of the property. There are two disposition options presented in this report.

**Acquisition and Rehabilitation of 4906 Jardine Street:**

On January 2, 2008, the Commission considered and approved the acquisition of the subject property. The property is located at 4906 Jardine Street (the "Property") with Assessor's Parcel Number 5244-022-008 and is comprised of approximately 4,199 square feet. The Property is improved with a 1,472 square-foot single-family dwelling and detached 2-car garage. The dwelling consists of 4 bedrooms, 2 baths, kitchen and pantry, living/dining room, and a laundry room. The Property was purchased by the Commission for \$399,000 with the goal of adding to the City's affordable housing stock.

When the Commission acquired the Property, the dwelling had several deferred maintenance issues. The Commission approved the selection of a contractor to rehabilitate the unit. The dwelling was upgraded with new copper plumbing and fixtures, new drywall and flooring throughout, a forced air unit, new windows & doors, and a complete electrical rewire. A new concrete driveway, new landscaping and irrigation system helped beautify the exterior of the home. All improvements were completed in February 2009. The dwelling was rehabilitated for a total cost of \$108,000.

The dwelling has been vacant since the Commission's acquisition, except for the period earlier this year when, at City Council's direction, the house was made available to the Mexican National Water Polo Team.

ANALYSIS:

There are two options presented in this report regarding the disposition of the Property all of which have advantages and disadvantages. The first option is the market rate sale of the Property. The second involves sale of the Property to a qualified low income household. It is important to note that the Commission investment (profit/loss) is presented for information only. The profit/loss from this transaction is secondary to the goals of the Commission which is the preservation, maintenance and enhancement of affordable housing stock and creation of affordable housing opportunities in the community.

**Option 1. Disposition of 4906 Jardine Street- Market Rate Sale**

The Commission may choose to dispose of the Property through a market rate sale at the appraised value (estimated at approximately \$330,000). The following is a breakdown of the Commission's investment and proceeds that would be reinvested in the Low and Moderate Income Housing Funds:

OPTION 1 MARKET RATE SALE

Purchase Price and Rehabilitation	\$507,000
Estimated Sales Price	\$330,000
Cost of Sale (8% of Price)	\$ 26,400
Commission's Net Proceeds	\$303,600

In this instance, the unit would not be deed restricted as an affordable unit and the sale would simply be a market rate transaction with the proceeds from the sale reinvested in other current housing programs. For example, the proceeds from this sale could fund approximately 3 cases in the Commission's Substantial Rehabilitation Loan Program.

**Option 2. Disposition of 4906 Jardine Street to Low Income Household:**

On May 4, 2010, the Commission approved the City's First Time Homebuyer Program (FTHBP) guidelines. The FTHBP provides for Commission owned single-family housing units to be made available to income-qualified households. The first phase of the FTHBP kicked off in the Fall 2010. Income-qualified homebuyers participated in a lottery process to narrow down the field of potential buyers. The first phase concluded in June 2011, with the successful placement of four qualified households in homes.

A similar process may be used to select qualified buyers for the Property. Given the shortage of larger units within the City of Commerce, the sale of the home would be restricted to a large low-income family of no less than 5 persons in the household.

A sample calculation for a Low Income (up to 80% of County median income) family to purchase 4906 Jardine Street is as follows:

EXAMPLE - AFFORDABLE SALE

Maximum Affordable Housing Costs for a 4 Bedroom (4906 Jardine) Home	\$1,845
Maximum First Mortgage Approval for an Above Moderate-Income Household based on Maximum Affordable Housing Costs:	\$244,613
City Silent Second Mortgage Assistance:*	\$85,386
Total Maximum Costs for Purchasing 4906 Jardine Street:	\$330,000

\*Note: The City's Silent Second Mortgage is used to fill the gap between the final cost of purchasing the home minus the required 1% downpayment and homebuyer's First Mortgage Amount.

The actual assistance from the Commission for the sale of the unit to a low-income household will ultimately depend on the household's first mortgage, down payment and household composition. The following is a summary of the investment and proceeds to be reinvested in the Low and Moderate Housing Funds for the sale of the Property to a Low Income Household:

COMMISSION PROCEEDS AND INVESTMENT FROM AFFORDABLE SALE

Purchase Price and Rehabilitation	\$507,000
Estimated Sales Price/Net Proceeds	\$244,613
Commission's Total Investment	\$262,387

**FISCAL IMPACT:**

The Commission will receive the proceeds from the sale of 4906 Jardine Street to a qualified home buyer or market rate sale. The actual cost to the Commission will be the difference between the proceeds and the cost of acquisition and rehabilitation as indicated above.

**NEXT STEPS**

Considering the house has been vacant for some time, it is critical to move forward and dispose of the Property in accordance with Commission direction. Like all building stock, the Commission's cost to continue to maintain the Property will only increase over time, and more importantly the house is a relatively larger unit with a very efficient floor plan and layout which should be returned into the available housing stock in the community.

The Commission is subject to the stay in the Supreme Court case of *California Redevelopment Association, et. al. v. Matosantos, et. al.*, which challenges the State legislation that terminates redevelopment agencies and seeks to require significant payments in order for such agencies to continue their redevelopment activities. The Supreme Court is expected to rule on the case by January 15, 2012. After receiving Commission input and feedback on the preferred option and after the Supreme Court stay is lifted, staff will return early next year with a Resolution for Commission consideration and an outline of the steps in the process to initiate the disposition of the Property.

**RELATIONSHIP TO THE 2009 STRATEGIC GOALS:**

The proposed housing program activities are consistent with goals and objectives to alleviate physical blight and enhance the Quality of Life in the City of Commerce.

Respectfully submitted,



Jorge Rifa  
Executive Director

Recommended by:



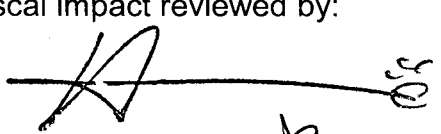
Bob Zarrilli  
Director of Community Development

Prepared by:




Alex Hamilton  
Assistant Director of Community Development

Fiscal impact reviewed by:



Vilko Domic  
Director of Finance

Approved as to form:



Eduardo Olivo  
Commission Counsel





## AGENDA REPORT

Meeting Date: 12/06/2011

TO: Honorable City Council

FROM: City Administrator

SUBJECT: DELEGATE APPOINTMENT

RECOMMENDATION:

Make appropriate appointment.

MOTION:

Council discretion.

BACKGROUND:

The City Council selects from among its members who will serve as delegates and as alternates on various boards.

ANALYSIS:

GREATER LOS ANGELES COUNTY VECTOR CONTROL DISTRICT

On December 1, 2009, Mayor Pro Tempore Baca Del Rio was appointed to a two-year term as the City's member to the Board of Trustees for the Greater Los Angeles County Vector Control District.

Pursuant to Health & Safety Code §2024, terms are for either two or four years, commencing at noon on the first Monday in January. Traditionally, the City's appointment is for a two-year term.

Mayor Pro Tempore Baca Del Rio's term will to expire at 11:59 a.m. on Monday, January 2, 2012.

It would be appropriate to appoint a new member to the Board at this time, for a two-year term commencing at noon on Monday, January 2, 2012, and expiring at 11:59 a.m. on Monday, January 6, 2014. There is no alternate Trustee.

A city member on the Board of Trustees of the District must be a registered voter of the city and a resident of that portion of the city which is in the District. Pursuant to California Health & Safety Code §2022(c), a city councilmember may serve as a member of the Board of Trustees as long as that individual meets all other applicable qualifications. Traditionally, the City of Commerce's member to the Board has been a Councilmember.

FISCAL IMPACT:

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

AGENDA REPORT – 12/06/2011  
Delegate Appointment – GLACVCD

RELATIONSHIP TO 2009 STRATEGIC GOALS:

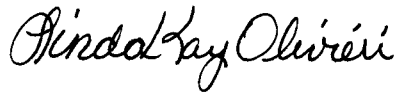
Not applicable.

Respectfully submitted,



Jorge J. Rifa  
City Administrator

Recommended by:



Linda Kay Olivieri  
City Clerk

Attachments: 09/30/2011 Letter from GLACVCD,  
including copy of California Health  
& Safety Code §2022

SUM (DELEGATE & ALTERNATE APPTS – VACANCIES – VECTOR CONTROL).DOC

GREATER LOS ANGELES COUNTY  
VECTOR CONTROL DISTRICT

12545 Florence Avenue, Santa Fe Springs, CA 90670

Office (562) 944-9656 Fax (562) 944-7976

Email: [info@glacvcd.org](mailto:info@glacvcd.org) Website: [www.glacvcd.org](http://www.glacvcd.org)

RECEIVED

GENERAL MANAGER  
Kenneth L. Bayless

2011 OCT -3 PM 3:44

CITY OF COMMERCE  
CITY CLERK

PRESIDENT

Owen Newcomer, Whittier

VICE PRESIDENT

Robert Campbell, Long Beach

SECRETARY-TREASURER

Dr. Jeff Wasseem, Burbank

September 30, 2011

ARTESIA

Sally Flowers

BELL

Danny Harber

BELLFLOWER

Ray T. Smith

BELL GARDENS

Pedro Aceituno

CARSON

Harold Williams

CERRITOS

Nikki Noushkam

COMMERCE

Tina Baca Del Rio

CUDAHY

Mison Levi

DIAMOND BAR

Steve Tye

DOWNEY

Meredith H. Perkins

GARDENA

Rachel C. Johnson

GLENDALE

Armine Perian

HAWAIIAN GARDENS

Barry Bruce

HUNTINGTON PARK

Elba Romo

LAKEWOOD

Joseph Esquivel

LA MIRADA

Gabe Garcia

LA HABRA HEIGHTS

Jim Remington

LOS ANGELES CITY

Steven Appleton

LOS ANGELES COUNTY

Dr. James Lawson

LYNWOOD

Jim Morton

MAYWOOD

Edward Varela

MONTEBELLO

Christina Cortez

NORWALK

Cheri Kelley

PARAMOUNT

Tom Hansen

PICO RIVERA

David Armenta

SAN FERNANDO

Sylvia Ballin

SAN MARINO

Jeff Groseth

SANTA CLARITA

Robert Newman

SANTA FE SPRINGS

Michael Madrigal

SIGNAL HILL

Dr. Hazel Wallace

SOUTH EL MONTE

Joseph Gonzales

SOUTH GATE

Maria Davila

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

Re: Appointment/ Re-appointment of representative to the Greater Los Angeles County Vector Control District Board of Trustees

Dear City Administrator Jorge Rifa:

This is to inform you that the term of the office of Trustee Tina Baca Del Rio as a member of the Board of Trustees of the Greater Los Angeles County Vector Control District will expire on January 2, 2012. Pursuant to Section 2024 of the State Health and Safety Code (SHSC) governing the dates for term of office of members appointed to the Board of Trustees, the City Council may consider reappointing Tina Baca Del Rio, or appointing a new trustee for a 2 or 4 year term of the office, commencing at noon on the first Monday of January (i.e. January 2, 2012). **Please note, per the State Health and Safety Code that representatives must be appointed to serve a full 2 or 4 year term commencing on January 2, 2012. City representatives should not be appointed on a yearly basis.**

Please review all subsections of the SHSC 2022 (i.e. a-e). Subsections a and b require that each person appointed by a board of supervisors or by a city council shall be a voter and resident within the respective county or city of the appointing body. Section 2022 (c) incorporates language that clarifies the issue over the doctrine of Incompatibility of Office, exempting and enabling an appointee who holds elected offices to also simultaneously serve on the District's Board of Trustees. **Once appointed, the representative will serve until the expiration of his/her term unless he/she resigns, vacates the office due to absences, or is no longer a voter and resident within the respective county or city of the appointing body.**

Please make your appointment or reappointment prior to January 2, 2012 as stipulated in the SHSC. Should you have any questions regarding this trustee appointment, please contact Truc Dever, Director of Community Affairs at 562-944-9656 x510.

Sincerely,



Kenneth L. Bayless  
General Manager

Enclosure: Section 2022 of the SHSC  
cc: Trustee Tina Baca Del Rio  
City Clerk ✓

A CALIFORNIA GOVERNMENTAL AGENCY

PROMOTING COMMUNITY HEALTH, COMFORT AND WELFARE THROUGH EFFECTIVE AND RESPONSIVE VECTOR CONTROL SINCE 1952



California Health and Safety Code

2022.

(a) Each person appointed by a board of supervisors to be a member of a board of trustees shall be a voter in that county and a resident of that portion of the county that is within the district.

(b) Each person appointed by a city council to be a member of a board of trustees shall be a voter in that city and a resident of that portion of the city that is within the district.

(c) Notwithstanding any other provision of law including the common law doctrine that precludes the simultaneous holding of incompatible offices, a member of a city council may be appointed and may serve as a member of a board of trustees if that person also meets the other applicable qualifications of this chapter.

(d) It is the intent of the Legislature that persons appointed to boards of trustees have experience, training, and education in fields that will assist in the governance of the districts.

(e) All trustees shall exercise their independent judgment on behalf of the interests of the residents, property owners, and the public as a whole in furthering the purposes and intent of this chapter. The trustees shall represent the interests of the public as a whole and not solely the interests of the board of supervisors or the city council that appointed them.