# REVISED JANUARY 20, 2009 CITY COUNCIL AGENDA PACKET

ITEM #10 - ATTACHMENT #1 MAINTENANCE AGREEMENT REPLACED

ITEM #2 - REVISED, STAFF REPORT AND ATTACHMENTS



# REVISED AGENDA

### **EL SEGUNDO CITY COUNCIL**

**COUNCIL CHAMBERS - 350 Main Street** 

The City Council, with certain statutory exceptions, can only take action upon properly posted and listed agenda items. Any writings or documents given to a majority of the City Council regarding any matter on this agenda that the City received after issuing the agenda packet, are available for public inspection in the City Clerk's office during normal business hours. Such Documents may also be posted on the City's website at www.elsegundo.org and additional copies will be available at the City Council meeting.

Unless otherwise noted in the Agenda, the Public can only comment on City-related business that is within the jurisdiction of the City Council and/or items listed on the Agenda during the **Public Communications** portions of the Meeting. Additionally, the Public can comment on any Public Hearing item on the Agenda during the Public Hearing portion of such item. The time limit for comments is five (5) minutes per person.

Before speaking to the City Council, please come to the podium and state: Your name and residence and the organization you represent, if desired. Please respect the time limits.

Members of the Public may place items on the Agenda by submitting a **Written Request** to the City Clerk or City Manager's Office at least six days prior to the City Council Meeting (by 2:00 p.m. the prior Tuesday). The request must include a brief general description of the business to be transacted or discussed at the meeting. Playing of video tapes or use of visual aids may be permitted during meetings if they are submitted to the City Clerk two (2) working days prior to the meeting and they do not exceed five (5) minutes in length.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact City Clerk, 524-2305. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

REGULAR MEETING OF THE EL SEGUNDO CITY COUNCIL TUESDAY, JANUARY 20, 2009 - 7:00 P.M.

#### ITEM NO. 2 REVISED UNDER UNFINISHED BUSINESS

Next Resolution # 4586 Next Ordinance # 1425

7:00 P.M. SESSION

**CALL TO ORDER** 

**INVOCATION** – Pastor Justin Beck, Calvary Chapel LAX

PLEDGE OF ALLEGIANCE - Council Member Bill Fisher

#### **PRESENTATIONS**

a. Lighting Up The Community Awards

#### **ROLL CALL**

PUBLIC COMMUNICATIONS – (Related to City Business Only – 5 minute limit per person, 30 minute limit total) Individuals who have received value of \$50 or more to communicate to the City Council on behalf of another, and employees speaking on behalf of their employer, must so identify themselves prior to addressing the City Council. Failure to do so shall be a misdemeanor and punishable by a fine of \$250. While all comments are welcome, the Brown Act does not allow Council to take action on any item not on the agenda. The Council will respond to comments after Public Communications is closed.

#### A. PROCEDURAL MOTIONS

Consideration of a motion to read all ordinances and resolutions on the Agenda by title only.

Recommendation – Approval.

#### B. SPECIAL ORDERS OF BUSINESS (PUBLIC HEARING)

 Consideration and possible action to open a public hearing regarding the introduction and first reading of an Ordinance amending the El Segundo Municipal Code to allow limited sales of automobiles as an accessory use in the Small Business (SM) and Medium Manufacturing (MM) Zones. (Fiscal Impact: None)

Recommendation - (1) Open Public Hearing; (2) Discussion; (3) Introduction and waive first reading by title only of the proposed Ordinance; (4) Schedule second reading and adoption of Ordinance on February 3, 2009; (5) Alternatively, discuss and take other possible action related to this item

#### C. UNFINISHED BUSINESS

2. Consideration and possible action regarding amending Resolution 4574 and adopting a new Resolution amending the business license processing fees for businesses. (Fiscal Impact: Unknown)

Recommendation – (1) Adopt Resolution amending Resolution 4574 and approval to change business license processing fees to exclude nonprofit and exempt businesses; (2) Council discussion and potential direction to staff regarding all other business license processing fees; (3) Alternatively, discuss and take other action related to this item.

#### Mayor McDowell -

PUBLIC COMMUNICATIONS - (Related to City Business Only - 5 minute limit per person. 30 minute limit total) Individuals who have receive value of \$50 or more to communicate to the City Council on behalf of another, and employees speaking on behalf of their employer, must so identify themselves prior to addressing the City Council. Failure to do so shall be a misdemeanor and punishable by a fine of \$250. While all comments are welcome, the Brown Act does not allow Council to take action on any item not on the agenda. The Council will respond to comments after Public Communications is closed.

#### **MEMORIALS** -

#### **CLOSED SESSION**

The City Council may move into a closed session pursuant to applicable law, including the Brown Act (Government Code Section §54960, et seq.) for the purposes of conferring with the City's Real Property Negotiator; and/or conferring with the City Attorney on potential and/or existing litigation; and/or discussing matters covered under Government Code Section §54957 (Personnel); and/or conferring with the City's Labor Negotiators.

#### REPORT OF ACTION TAKEN IN CLOSED SESSION (if required)

#### ADJOURNMENT

POSTED:

MEETING DATE: January 20, 2009 AGENDA HEADING: Unfinished Business

#### **AGENDA DESCRIPTION:**

Consideration and possible action regarding amending Resolution 4574 and adopting a new Resolution amending the business license processing fees for businesses. (Fiscal Impact: Unknown)

#### RECOMMENDED COUNCIL ACTION:

- 1) Adopt Resolution amending Resolution 4574 and approval to change business license processing fees to exclude nonprofit and exempt businesses.
- 2) Council discussion and potential direction to staff regarding all other business license processing fees.
- 3) Alternatively, discuss and take other action related to this item.

#### ATTACHED SUPPORTING DOCUMENTS:

1) Draft Resolution and updated changes to business license processing fees from Fee Study Summary Schedule - Exhibit A

**FISCAL IMPACT:** Potential

**Amount Budgeted:** 

\$0

Additional Appropriation: N/A

Account Number(s):

**ORIGINATED BY:** 

Steve Jones, Business Services Manager

**REVIEWED BY:** 

Deborah Cullen, Director of Einance

**APPROVED BY:** 

Jack Wayt, City Manager

#### **BACKGROUND AND DISCUSSION:**

The result of the recent Cost Allocation and Fee Study conducted in the summer of 2008 proposed the implementation of a business license processing fee to identify the actual cost for services and identify the tax subsidy. The costs directly attributable to this function resulted in a proposed processing fee in the amount of \$40.00 to offset the identified tax subsidy. Staff reviewed the details submitted by the consultant performing the study and verified that the costs attributed to this service were valid and accurate.

This fee is collected for all categories of business license tax, and the administrative cost for providing this service results in the same amount of staff time and resources. Therefore, a flat processing fee was recommended for implementation. The processing fee became effective for the 2009 business license renewals and for all new business license applications beginning January 1, 2009.

During the implementation of the new business license processing fee for the 2009 business license tax renewals, as expected there were numerous inquiries and it was noted that nonprofits and exempt businesses were being charged the processing fee. These entities are not required to pay a business license tax; therefore, staff recommends that the processing fee should also be exempted. The purpose of the fee is to defray the costs of administration of issuing the business licenses.

Additionally, there have been some questions raised regarding the processing fee for all other categories. This fee is required to be paid by all home businesses, gardeners, apartment owners with 3 or more units, contractors and all other businesses plus branch locations which totals approximately 6800 annual business license certificates. There are approximately 520 home businesses, 100 gardeners, 450 apartments that qualify and 2500 contractors. To date the City has received 50% of the tax and processing fees for 2009. The projected amount of processing fee revenue for FY 2008-2009 totals \$272,000.

At this time to amend or change the processing fee for 2009 would negatively impact the administrative function and ultimately cost the City additional costs to refund the processing fees. This fee could be discussed and resolved during the FY 2009-2010 budget process.

A RESOLUTION AMENDING THE CITY-WIDE FEE SCHEDULE ADOPTED ON OCTOBER 21, 2008 BY RESOLUTION NO. 4574.

BE IT RESOLVED by the Council of the City of El Segundo as follows:

SECTION 1: The City Council finds as follows:

- A. Following a properly noticed public hearing on October 21, 2008, the City Council adopted Resolution No. 4574 to establish various fees for City Departments (collectively, the "Fees").
- B. Upon further reflection, the Fees relating to applications for business licenses should be amended to exempt nonprofit corporations and persons exempt from business licenses taxes in accordance with applicable law including, without limitation, El Segundo Municipal Code ("ESMC") Chapter 4-1.

<u>SECTION 2:</u> Exhibit A to Resolution No. 4574, as supplemented by Resolution No. 4578 (adopted December 2, 2008), is amended as set forth in attached Exhibit "A," which is incorporated by reference. Persons exempt from business license taxes (as determined by applicable law including, without limitation, ESMC Chapter 4-1) and nonprofit corporations (as determined by the Internal Revenue Code) need not pay an application fee for a business license.

<u>SECTION 3:</u> Exhibit A to this Resolution constitutes an elimination of an existing fee and, consequently, no further public hearing or notice is required.

<u>SECTION 4:</u> Except as amended by this Resolution, all provisions of Resolution Nos. 4574 and 4578 remain in full force and effect.

<u>SECTION 5:</u> This Resolution will become effective immediately upon adoption and will remain effective unless repealed or superseded.

<u>SECTION 6:</u> The City Clerk will certify to the passage and adoption of this Resolution; will enter the same in the book of original Resolutions of said City; and will make a minute of the passage and adoption thereof in the record of proceedings of the City Council of said City, in the minutes of the meeting at which the same is passed and adopted.

PASSED AND ADOPTED t	this	day of January 2009.
		Kelly McDowell, Mayor
STATE OF CALIFORNIA COUNTY OF LOS ANGELES CITY OF EL SEGUNDO	) ) )	SS
the whole number of members of Resolution No was approved and signed by the Mayo	the Ci duly or of sa id Cou	y of El Segundo, California, hereby certify that ty Council of the City is five; that the foregoing passed and adopted by said City Council id City, and attested to by the City Clerk of said incil held on the day of January 2009, and y the following roll call vote:
AYES:		
NOES:		
ABSENT:		
ABSTAIN:		
ATTEST:		
Cindy Mortesen, City Clerk	<del></del>	
APPROVED AS TO FORM: Mark D. Hensley, City Attorney		
By:  Karl H. Berger Assistant City Attorney	<del></del>	

#### Fee Study Summary Schedule- Exhibit A

CITY OF EL SEGUNDO FEE SUMMARY REPORT FY 07-08

REFEREN	CE # CITY SERVICE	CITY PROPOSED FEE
	FRATIVE SERVICES	
S-117	NEW BUSINESS LICENSE PROCESSING	\$40 per application; Nonprofit and exempt businesses will be exluded from this fee.
S-118	BUSINESS LICENSE RENEWAL PROCESSING	\$40 per renewal; Nonprofit and exempt businesses will be exluded from this fee.

## ITEM #10 - ATTACHMENT #1 MAINTENANCE AGREEMENT REPLACED

# MAINTENANCE AGREEMENT BETWEEN THE CITY OF EL SEGUNDO AND BELL BUILDING MAINTENANCE COMPANY

THIS MAINTENANCE AGREEMENT ("Agreement") is made and entered into this 21st day of January, 2009, by and between the CITY OF EL SEGUNDO, a general law city and municipal corporation ("CITY") and BELL BUILDING MAINTENANCE COMPANY, a sole proprietorship ("CONTRACTOR").

The Parties agree as follows:

#### 1. CONSIDERATION.

- A. As partial consideration, CONTRACTOR agrees to perform the work listed in the SCOPE OF SERVICES, below;
- B. As additional consideration, CONTRACTOR and CITY agree to abide by the terms and conditions contained in this Agreement;
- C. As additional consideration, CITY agrees to pay CONTRACTOR on a monthly basis an amount set forth in the attached Exhibit "A," which is incorporated by reference, for CONTRACTOR's services. CITY will pay such amount promptly, but not later than thirty (30) working days after receiving CONTRACTOR's invoice.
- D. The amount paid by CITY to CONSULTANT may be increased, at CITY's sole discretion, based on the Consumer Price Index (CPI), All Urban Consumers, for the Los Angeles-Anaheim-Riverside area (1982-84 = 100), as published by the United States Bureau of Labor Statistics, Department of Labor, for the month of September immediately preceding the month in which payment is due and payable, divided by the Consumer Price Index, All Urban Consumers, for the Los Angeles-Anaheim-Riverside area, for June 30, 2008, which equals 100. If the Index is discontinued or revised during the term of this Agreement, such other governmental price index or computation with which it is replaced chosen by CITY will be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. CITY will determine the adjustment in CPI and provide CONSULTANT with the correct schedule before July 1. Any CPI increase is limited to the actual CPI or five (5%) per annum, whichever is lower.
- 2. **TERM**. The term of this Agreement will be from January 21, 2009, to January 20, 2012. The Agreement may be renewed upon mutual consent of the parties.

#### 3. SCOPE OF SERVICES.

- A. CONTRACTOR will perform services listed in the attached Exhibit "B," which is incorporated by this reference.
- B. CONTRACTOR will, in a workmanlike manner, furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, printing, vehicles, transportation, office space and facilities, and all tests, testing and analyses, calculation, and all other means whatsoever, except as herein otherwise expressly specified to be furnished by CITY, necessary or proper to perform and complete the work and provide the professional services required of CONTRACTOR by this Agreement.
- 4. PREVAILING WAGES. This Agreement is for janitorial or custodial services of a routine, recurring, or usual nature. Accordingly, pursuant to 8 California Code of Regulations § 16000, CITY does not believe CONTRACTOR is required to pay prevailing wages. However, if required by applicable state law including, without limitation Labor Code §§ 1720 (as amended by AB 975 (2001)), 1771, 1774, 1775, and 1776, CONTRACTOR must pay its workers prevailing wages. It is CONTRACTOR's responsibility to interpret and implement any prevailing wage requirements and CONTRACTOR agrees to pay any penalty or civil damages resulting from a violation of the prevailing wage laws. In accordance with Labor Code § 1773.2, copies of the prevailing rate of per diem wages are available upon request from CITY's Engineering Division or the website for State of California Prevailing wage determination at <a href="http://www.dir.ca.gov/DLSR/PWD">http://www.dir.ca.gov/DLSR/PWD</a>. A copy of the prevailing rate of per diem wages must be posted at the job site.

#### 5. FAMILIARITY WITH WORK.

- A. By executing this Agreement, CONTRACTOR represents that CONTRACTOR has
  - i. Thoroughly investigated and considered the scope of services to be performed;
  - ii. Carefully considered how the services should be performed; and
  - iii. Understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement.
- B. If services involve work upon any site, CONTRACTOR warrants that CONTRACTOR has or will investigate the site and is or will be fully acquainted with the conditions there existing, before commencing the services hereunder. Should CONTRACTOR discover any latent or unknown conditions that may materially affect the performance of the services, CONTRACTOR will immediately inform CITY of such fact and will not proceed except at

CONTRACTOR's own risk until written instructions are received from CITY.

#### 6. INSURANCE.

A. Before commencing performance under this Agreement, and at all other times this Agreement is effective, CONTRACTOR will procure and maintain the following types of insurance with coverage limits complying, at a minimum, with the limits set forth below:

Type of Insurance	Limits (combined single)
Commercial general liability:	\$2,000,000
Business automobile liability	\$1,000,000
Workers compensation	Statutory requirement.

- B. Commercial general liability insurance will meet or exceed the requirements of the most recent ISO-CGL Form. The amount of insurance set forth above will be a combined single limit per occurrence for bodily injury, personal injury, and property damage for the policy coverage. Liability policies will be endorsed to name City, its officials, and employees as "additional insureds" under said insurance coverage and to state that such insurance will be deemed "primary" such that any other insurance that may be carried by City will be excess thereto. Such insurance will be on an "occurrence," not a "claims made," basis and will not be cancelable or subject to reduction except upon thirty (30) days prior written notice to City.
- C. Automobile coverage will be written on ISO Business Auto Coverage Form CA 00 01 06 92, including symbol 1 (Any Auto).
- D. CONTRACTOR will furnish to City duly authenticated Certificates of Insurance evidencing maintenance of the insurance required under this Agreement, endorsements as required herein, and such other evidence of insurance or copies of policies as may be reasonably required by City from time to time. Insurance must be placed with insurers with a current A.M. Best Company Rating equivalent to at least a Rating of "A:VII." Certificate(s) must reflect that the insurer will provide thirty (30) day notice of any cancellation of coverage. CONTRACTOR will require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- E. Should CONTRACTOR, for any reason, fail to obtain and maintain the insurance required by this Agreement, City may obtain such coverage at CONTRACTOR's expense and deduct the cost of such insurance from payments due to CONTRACTOR under this Agreement or terminate.

- 7. **TIME FOR PERFORMANCE**. CONTRACTOR will not perform any work under this Agreement until:
  - A. CONTRACTOR furnishes proof of insurance as required under Section 6 of this Agreement; and
  - B. CITY gives CONTRACTOR a written Notice to Proceed.
  - C. Should CONTRACTOR begin work in advance of receiving written authorization to proceed, any such professional services are at CONTRACTOR's own risk.

#### 8. TERMINATION.

- A. Except as otherwise provided, CITY may terminate this Agreement at any time with or without cause. Notice of termination will be in writing.
- B. CONTRACTOR may terminate this Agreement upon providing written notice to CITY at least thirty (30) days before the effective termination date.
- C. Should the Agreement be terminated pursuant to this Section, CITY may procure on its own terms services similar to those terminated.
- D. By executing this document, CONTRACTOR waives any and all claims for damages that might otherwise arise from CITY's termination under this Section.

#### 9. INDEMNIFICATION.

- A. CONTRACTOR indemnifies and holds CITY harmless from and against any claim, action, damages, costs (including, without limitation, attorney's fees), injuries, or liability, arising out of this Agreement, or its performance. Should CITY be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of this Agreement, or its performance, CONTRACTOR will defend CITY (at CITY's request and with counsel satisfactory to CITY) and will indemnify CITY for any judgment rendered against it or any sums paid out in settlement or otherwise.
- B. For purposes of this section "CITY" includes CITY's officers, officials, employees, agents, representatives, and certified volunteers.
- C. It is expressly understood and agreed that the foregoing provisions will survive termination of this Agreement.
- 10. **INDEPENDENT CONTRACTOR.** CITY and CONTRACTOR agree that CONTRACTOR will act as an independent contractor and will have control of all work and the manner in which is it performed. CONTRACTOR will be free to contract for similar service to

be performed for other employers while under contract with CITY. CONTRACTOR is not an agent or employee of CITY and is not entitled to participate in any pension plan, insurance, bonus or similar benefits CITY provides for its employees. Any provision in this Agreement that may appear to give CITY the right to direct CONTRACTOR as to the details of doing the work or to exercise a measure of control over the work means that CONTRACTOR will follow the direction of the CITY as to end results of the work only.

#### 11. NOTICES.

Α. All notices given or required to be given pursuant to this Agreement will be in writing and may be given by personal delivery or by mail. Notice sent by mail will be addressed as follows:

To CITY:

City of El Segundo 350 Main Street

El Segundo, CA 90245-3813

To CONTRACTOR: Bell Building Maintenance Company

5170 Sepulveda Blvd. Sherman Oaks, CA 91403

- B. When addressed in accordance with this paragraph, notices will be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices will be deemed given at the time of actual delivery.
- C. Changes may be made in the names or addresses of persons to whom notices are to be given by giving notice in the manner prescribed in this paragraph.
- 12. TAXPAYER IDENTIFICATION NUMBER. CONTRACTOR will provide CITY with a Taxpayer Identification Number.
- 13. WAIVER. A waiver by CITY of any breach of any term, covenant, or condition contained in this Agreement will not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement, whether of the same or different character.
- 14. CONSTRUCTION. The language of each part of this Agreement will be construed simply and according to its fair meaning, and this Agreement will never be construed either for or against either party.
- 15. SEVERABLE. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion will be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Agreement will continue in full force and effect.

- 16. **CAPTIONS.** The captions of the paragraphs of this Agreement are for convenience of reference only and will not affect the interpretation of this Agreement.
- 17. **WAIVER.** Waiver of any provision of this Agreement will not be deemed to constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver.
- 18. **INTERPRETATION**. This Agreement was drafted in, and will be construed in accordance with the laws of the State of California, and exclusive venue for any action involving this agreement will be in Los Angeles County.
- 19. **AUTHORITY/MODIFICATION.** This Agreement may be subject to and conditioned upon approval and ratification by the El Segundo City Council. This Agreement is not binding upon CITY until executed by the City Manager. The Parties represent and warrant that all necessary action has been taken by the Parties to authorize the undersigned to execute this Agreement and to engage in the actions described herein. This Agreement may be modified by written agreement. CITY's city manager may execute any such amendment on behalf of CITY.
- 20. ACCEPTANCE OF FACSIMILE SIGNATURES. The Parties agree that this Agreement, agreements ancillary to this Agreement, and related documents to be entered into in connection with this Agreement will be considered signed when the signature of a party is delivered by facsimile transmission. Such facsimile signature will be treated in all respects as having the same effect as an original signature.
- 21. **CONSISTENCY**. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement takes precedence over the attached Exhibits; this Agreement supersedes any conflicting provisions. Any inconsistency between the Exhibits will be resolved in the order in which the Exhibits appear below:
  - A. Exhibit A: Cost and Fee Schedule;
  - B. Exhibit B: Scope of Work; and
  - C. The Request for Proposals, dated November 18, 2008 ("RFP"), may be used to interpret any provision of Exhibit B to the extent there are any ambiguities and, for that limited purpose, the RFP is incorporated by this reference.
- 22. **CAPTIONS.** The captions of the paragraphs of this Agreement are for convenience of reference only and will not affect the interpretation of this Agreement.
- 23. **FORCE MAJEURE**. Should performance of this Agreement be prevented due to fire, flood, explosion, war, terrorist act, embargo, government action, civil or military authority, the natural elements, or other similar causes beyond the Parties' control, then the Agreement will immediately terminate without obligation of either party to the other.
- 24. **ENTIRE AGREEMENT.** This Agreement and its one attachment constitutes the sole agreement between CONTRACTOR and CITY respecting janitorial services. To the extent that

there are additional terms and conditions contained in Exhibit "A" that are not in conflict with this Agreement, those terms are incorporated as if fully set forth above. There are no other understandings, terms or other agreements expressed or implied, oral or written.

IN WITNESS WHEREOF the parties hereto have executed this contract the day and year first hereinabove written.

CITY OF EL SEGUNDO	BELL BUILDING MAINTENANCE COMPANY
Jack Wayt,	
City Manager	

ATTEST:		
Cindy Mortesen, City Clerk	Taxpayer ID No.	
APPROVED AS TO FORM: MARK D. HENSLEY, City Attorney		
By:  Karl H. Berger, Assistant City Attorney		