



## **CITY OF WEST COVINA**

### **CITY COUNCIL/SUCCESSOR AGENCY**

**FEBRUARY 4, 2020, 7:00 PM  
REGULAR MEETING**

**CITY HALL COUNCIL CHAMBERS  
1444 W. GARVEY AVENUE SOUTH  
WEST COVINA, CALIFORNIA 91790**

**Mayor Tony Wu  
Mayor Pro Tem Letty Lopez-Viado  
Councilman Dario Castellanos  
Councilman Lloyd Johnson  
Councilmember Jessica C. Shewmaker**

*Please turn off all cell phones and other electronic devices prior to entering the Council Chambers*

#### ***AMERICANS WITH DISABILITIES ACT***

The City complies with the Americans with Disabilities Act (ADA). If you will need special assistance at Council meetings, please call (626) 939-8433 (voice) or (626) 960-4422 (TTY) from 8 to 5 Monday through Thursday. Do call at least one day prior to the meeting date to inform us of your particular needs and to determine if accommodation is possible. For sign language interpreter services at Council meetings, please request no less than four working days prior to the meeting.

#### ***AGENDA MATERIAL***

Agenda material is available for review at the City Clerk's Office, Room 317 in City Hall, 1444 W. Garvey Avenue South, West Covina and at [www.westcovina.org](http://www.westcovina.org). Any writings or documents regarding any item on this agenda, not exempt from public disclosure, provided to a majority of the City Council that is distributed less than 72 hours before the meeting, will be made available for public inspection in the City Clerk's Office, Room 317 of City Hall located at 1444 W. Garvey Avenue South, West Covina, during normal business hours.

#### ***NOTICE***

The City Council will regularly convene on the first and third Tuesday of the month. The West Covina Community Development Commission, West Covina Public Financing Authority and the West Covina Community Services Foundation are agencies on which the City Council serves as members. Agendas may contain items for these boards, as necessary.

#### **PUBLIC COMMENTS ADDRESSING THE CITY COUNCIL (Per WCMC 2-48, Ordinance No. 2150)**

**Any person wishing to address the City Council on any matter listed on the agenda or on any other matter within their jurisdiction should complete a speaker card that is provided at the entrance to the Council Chambers and submit the card to the City Clerk.**

***Please identify on the speaker card whether you are speaking on an agenda item or non-agenda. Requests to speak on agenda items will be heard prior to requests to speak on non-agenda items. All comments are limited to five (5) minutes per speaker.***

**Oral Communications may be limited to thirty (30) minutes, unless speakers addressing agenda items have not concluded.**

**Any testimony or comments regarding a matter set for a Public Hearing will be heard during the hearing.**

#### ***RULES OF DECORUM***

Excerpts from the West Covina Municipal Code and Penal Code pertaining to the Rules of Decorum will be found at the end of agenda.

# **AGENDA**

## **CITY OF WEST COVINA CITY COUNCIL/SUCCESSOR AGENCY**

**TUESDAY FEBRUARY 4, 2020, 7:00 PM  
REGULAR MEETING**

### **INVOCATION**

Led by Pastor Samuel Martinez  
Amazing Love Ministries

### **PLEDGE OF ALLEGIANCE**

Led by Councilmember Shewmaker

### **ROLL CALL**

### **REPORTING OUT FROM CLOSED SESSION**

### **PRESENTATIONS**

- San Gabriel Basin Water Quality Authority - Ken Manning
- Los Angeles County Registrar-Recorder/County Clerk - Jeff Klein
- Horatio Alger Association State Scholarship - Brandon Lam, Edgewood High School Student
- West Covina High School Dance and Drill Team

### **ORAL COMMUNICATIONS - Five (5) minutes per speaker**

*Please step forward to the podium and state your name and city of residence for the record when recognized by the Mayor.*

### **CITY MANAGER'S REPORT**

*City Manager's report on current City projects.*

### **CONSENT CALENDAR**

*All matters listed under CONSENT CALENDAR are considered to be routine and can be acted on by one roll call vote. There will be no separate discussion of these items unless members of the City Council/Community Development Commission request specific items to be removed from the Consent Calendar for separate discussion or action.*

### **APPROVAL OF MEETING MINUTES**

- 1) **JANUARY 21, 2020 CITY COUNCIL/SUCCESSOR AGENCY REGULAR MEETING MINUTES  
JANUARY 21, 2020 CITY COUNCIL/SUCCESSOR AGENCY CLOSED SESSION MEETING MINUTES**

It is recommended that the City Council approve the January 21, 2020 Regular Meeting Minutes and the January 21, 2020 Closed Session Meeting Minutes.

### **COMMUNITY DEVELOPMENT**

- 2) **CONSIDERATION OF BUDGET AND CONTRACT AMENDMENTS FOR ENGINEERING SERVICES (TRANSTECH) AND BUILDING & SAFETY SERVICES (WILLDAN)**

It is recommended that the City Council take the following actions:

1. Approve the First Amendment to the Agreement for Professional Services for City Engineer Services by Transtech to establish an annual budget of \$700,000 (not to exceed \$3,500,000 through contract life); establish a Capital Improvement Program annual budget of \$1,000,000 (\$5,000,000 through contract life) and separate the annual Engineering Services budget from the Capital Improvement Program projects budget; and
2. Amend the Fiscal Year 19/20 Budget to add \$616,000 in Restricted Funds (including Gas Tax, Measure R, Measure M - subject to METRO approval - and Sewer Maintenance Fund) and \$84,000 in general fund for Engineering Services; and
3. Approve the First Amendment to the Agreement for Professional Services for City Building Services with Willdan to establish an annual budget of \$940,000 (not to exceed \$4,700,000 through contract life); and
4. Amend the Fiscal Year 19/20 Budget to add \$700,000 from permit fees for Building Services. Fees will be increased for Building permits starting on February 18, 2020.

**3) CONSIDERATION OF AGREEMENT WITH NICHOLS CONSULTING ENGINEERS, CHTD. TO UPDATE THE CITYWIDE PAVEMENT MANAGEMENT PROGRAM (CITY PROJECT NO. 20003)**

It is recommended that the City Council:

1. Approve a Professional Services Agreement with Nichols Consulting Engineers, Chtd. (NCE) in the amount of \$67,500 to update the City's Pavement Management Program (PMP); and
2. Authorize the City Manager to execute the agreement.

**PUBLIC SERVICES**

**4) CONSIDERATION OF ACCEPTANCE OF DROUGHT TOLERANT LANDSCAPING IMPROVEMENTS IN LANDSCAPE MAINTENANCE DISTRICT NO. 4 - PROJECT NO. 18021**

1. Accept the Drought Tolerant Landscaping Improvements in Landscape Maintenance District 4 for Project No. 18021; and
2. Authorize recordation of Notice of Completion with the Los Angeles County Recorder.

**END OF CONSENT CALENDAR**

**HEARINGS**

**PUBLIC HEARINGS**

**5) PUBLIC HEARING TO CONSIDER CODE AMENDMENT NO. 19-02 REGARDING SINGLE FAMILY STANDARDS FOR ACCESSORY HABITABLE QUARTERS, AND VEHICLE BACKUP SPACE**

The Planning Commission recommends that the City Council consider a Zoning Code Amendment as follows:

**ORDINANCE NO. 2469 - AN ORDINANCE TO AMEND ZONING REGULATIONS APPLICABLE TO SINGLE FAMILY AND RESIDENTIAL AGRICULTURAL ZONES REGARDING ACCESSORY HABITABLE QUARTERS (FORMERLY KNOWN AS GUEST HOUSES) AND VEHICULAR BACKUP SPACE**

**DEPARTMENTAL REGULAR MATTERS**

**CITY MANAGER'S OFFICE**

6) **CONSIDERATION OF ISSUANCE AND DELIVERY OF PENSION OBLIGATION BONDS TO REFUND OUTSTANDING CALPERS PENSION FUND OBLIGATIONS.**

Approve City Council Resolution entitled:

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA AUTHORIZING THE ISSUANCE AND DELIVERY OF PENSION OBLIGATION BONDS TO REFUND CERTAIN OUTSTANDING PENSION FUND OBLIGATIONS OF THE CITY TO THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST AGREEMENT; AUTHORIZING A VALIDATION ACTION; APPROVING CERTAIN PROFESSIONALS FOR THE REFUNDING; AND OTHER MATTERS RELATING THERETO**

**COMMUNITY DEVELOPMENT**

7) **CONSIDERATION OF A HISTORIC CONTEXT STATEMENT (1945-1978) AND HISTORIC RESOURCE INVENTORY UPDATE**

Staff recommends that the City Council review and accept as complete the draft City of West Covina Historic Context Statement (1945-1978) and Historic Resource Inventory Update.

**CITY COUNCIL REQUESTS FOR REPORTS, STUDIES OR INVESTIGATION**

*(Per City of West Covina Standing Rules 4.f - Requests for reports, studies, or investigations that are not readily available must be placed on the City Council/Successor Agency agenda as items of business and must be approved by a majority of the City Council/Successor Agency Board.)*

8) **REQUEST FROM MAYOR WU FOR CITY COUNCIL'S CONSIDERATION TO CHANGE THE STREET NAME FROM GLENDORA AVENUE TO MAXSON AVENUE.**

It is recommended that the City Council discuss and provide staff appropriate direction.

**CITY COUNCIL COMMENTS**

**ADJOURNMENT**

**Next Tentative City Council Meeting**

Regular Meeting

February 18, 2020

7:00 PM

**RULES OF DECORUM**

*The following are excerpts from the West Covina Municipal Code:*

Sec. 2-48. Manner of addressing council; time limit; persons addressing may be sworn.

- a. Each person addressing the council shall step up to the rostrum, shall give his or her name and city of residence in an audible tone of voice for the record and unless further time is granted by the council, shall limit his or her address to five (5) minutes.
- b. The city council may establish a limit on the duration of oral communications.
- c. All remarks shall be addressed to the council as a body and not to any member thereof. No person, other than the council and the person having the floor, shall be permitted to enter into any discussion, either directly or through a member of the council, without the permission of the presiding officer. No question shall be asked of a councilmember except through the presiding officer.
- d. The presiding officer may require any person to be sworn as a witness before addressing the council on any subject. Any such person who, having taken an oath that he or she will testify truthfully, willfully and contrary to such oath states as true any material matter which he knows to be false may be held to answer criminally and subject to the penalty prescribed for perjury by the provisions of the Penal Code of the state.



Sec. 2-50. Decorum--Required.

- a. While the council is in session, the members shall preserve order and decorum, and a member shall neither, by conversation or otherwise, delay or disrupt the proceedings or the peace of the council nor interrupt any member while speaking or refuse to obey the orders of the council or its presiding officer, except as otherwise herein provided.
- b. Members of the public shall not willfully disrupt the meeting or act in a manner that actually impairs the orderly conduct of the meeting. For the purposes of this code, "willfully disrupt" includes, but is not limited to, continuing to do any of the following after being warned by the Mayor that continuing to do so will be a violation of the law:
  - a. Addressing the Mayor and City Council without first being recognized.
  - b. Persisting in addressing a subject or subjects, other than that before the Mayor and City Council.
  - c. Repetitiously addressing the same subject.
  - d. Failing to relinquish the podium when directed to do so.
  - e. From the audience, interrupting or attempting to interrupt, a speaker, the Mayor, a council member, or a staff member or shouting or attempting to shout over a speaker, the Mayor, a council member or a staff member.
  - f. As a speaker, interrupting or attempting to interrupt the Mayor, a council member, or a staff member, or shouting over or attempting to shout over the Mayor, a council member, or a staff member. Nothing in this section or any rules of the council shall be construed to prohibit public criticism of the policies, procedures, programs, or services of the City or of the acts or omissions of the City Council. It shall be unlawful to violate the provisions of this Section.

If any subsection, sentence, clause, or phrase or word of this Section 2-50 is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Section. The City Council hereby declares that it would have passed this section and each subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more subsections, sentences, clauses, phrases or words had been declared invalid or unconstitutional.

**Sec. 2-52. Persons authorized to be within council area.**

No person, except city officials, their representatives and members of the news media shall be permitted within the rail in front of the council chamber without the express consent of the council.

***The following are excerpts from the Penal Code***

148(a) (1) Every Person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety code, in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

403 Every person who, without authority of law, willfully disturbs or breaks up any assembly or meeting that is not unlawful in its character, other than an assembly or meeting referred to in Section 303 of the Penal Code or Section 18340 of the Elections Code, is guilty of a misdemeanor.



## AGENDA STAFF REPORT

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City of West Covina | Office of the City Manager

**DATE:** February 4, 2020

**TO:** Mayor and City Council

**FROM:** David Carmany  
City Manager

**SUBJECT: JANUARY 21, 2020 CITY COUNCIL/SUCCESSOR AGENCY REGULAR MEETING MINUTES**  
**JANUARY 21, 2020 CITY COUNCIL/SUCCESSOR AGENCY CLOSED SESSION MEETING MINUTES**

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### RECOMMENDATION:

It is recommended that the City Council approve the January 21, 2020 Regular Meeting Minutes and the January 21, 2020 Closed Session Meeting Minutes.

### DISCUSSION:

That the City Council adopt the attached minutes.

**Prepared by:** Kyle Clayton, Deputy City Clerk

**Additional Approval:** Mark Persico, Assistant City Manager

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### Attachments

Attachment No. 1 - 1-21-2020 Closed Session Meeting Minutes Draft

Attachment No. 2 - 1-21-2020 Regular Session Meeting Minutes Draft

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## **CITY OF WEST COVINA**

### **CITY COUNCIL/SUCCESSOR AGENCY**

JANUARY 21, 2020, 6:30 PM  
REGULAR MEETING - CLOSED SESSION

CITY MANAGER'S CONFERENCE ROOM  
1444 W. GARVEY AVENUE SOUTH  
WEST COVINA, CALIFORNIA 91790

### **MINUTES**

#### **CALL TO ORDER**

A Closed Session Meeting was called to order by Mayor Wu on Tuesday, January 21, 2020 at 6:03 p.m., in the City Manager's Conference Room, 1444 West Garvey Avenue South, West Covina, California.

#### **ROLL CALL**

Council Members

Present: Council Members Dario Castellanos, Lloyd Johnson, Jessica C. Shewmaker,  
Mayor Pro Tem Letty Lopez-Viado, Mayor Tony Wu

Council Members

Absent: None

City Staff: David Carmany City Manager, Mark Persico Assistant City Manager, Thomas P. Duarte City Attorney, Bruce Lindsey Deputy City Attorney, Jeff Anderson Community Development Director, Paulina Morales Economic Development/Housing Manager

#### **PUBLIC COMMENTS ON ITEMS ON THE AGENDA**

None

## **CLOSED SESSION**

### CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Pursuant to Government Code § 54956.9(d)(4)

Number of Cases: Two (2)

### CONFERENCE WITH LABOR NEGOTIATORS

Pursuant to Government Code § 54957.6

City Negotiators: Carmany, Persico, Tran, Duarte

Employee Organizations

- Confidential Employees
- Maintenance & Crafts Employees
- Non-Sworn
- W.C. Police Officers' Association
- W.C. Firefighters' Management Assoc.
- W.C. Firefighters' Association, I.A.F.F., Local 3226
- General Employees
- Mid-Management Employees
- W.C. Police Management Association

Unrepresented Employee Group

- Department Heads

## **REPORT OUTING OUT FROM CLOSED SESSION**

City Attorney Thomas P. Duarte reported that no reportable action was taken.

## **ADJOURNMENT**

The Closed Session Meeting adjourned at 6:35 p.m., by Mayor Wu. The next regularly scheduled Closed Session City Council Meeting will be held on Tuesday, February 4, 2020 at 6:00 p.m. in the City Manager's Conference Room, 1444 West Garvey Avenue South, West Covina, California.

Submitted by:

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Lisa Sherrick  
Assistant City Clerk

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Tony Wu  
Mayor



## **CITY OF WEST COVINA**

### **CITY COUNCIL/SUCCESSOR AGENCY**

JANUARY 21, 2020, 7:00 PM  
REGULAR MEETING

CITY HALL COUNCIL CHAMBERS  
1444 W. GARVEY AVENUE SOUTH  
WEST COVINA, CALIFORNIA 91790

### **MINUTES**

#### **CALL TO ORDER**

A Regular Meeting was called to order by Mayor Wu on Tuesday, January 7, 2020 at 7:00 p.m. in the Council Chamber, 1444 West Garvey Avenue South, West Covina, California.

#### **ROLL CALL**

##### **Councilmembers**

Present: Council Members Dario Castellanos, Lloyd Johnson, Jessica C. Shewmaker,  
Mayor Pro Tem Letty Lopez-Viado, Mayor Wu

##### **Councilmembers**

Absent: None

City Staff: David Carmany City Manager, Mark Persico Assistant City Manager, Thomas P. Duarte City Attorney, Lisa Sherrick Assistant City Clerk; other city staff presented reports and responded to questions as indicated in the minutes.

#### **PLEDGE OF ALLEGIANCE**

Mayor Pro Tem Letty Lopez-Viado led the Pledge of Allegiance.

#### **REPORTING OUT FROM CLOSED SESSION**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Pursuant to Government Code § 54957.6(d)(4)

Number of Cases: One (1)

**CONFERENCE WITH LABOR NEGOTIATORS**

Pursuant to Government Code § 54957.6

City Negotiators: Carmany, Duarte, Persico, Tran,

Employee Organizations

- Confidential Employees
- Maintenance & Crafts Employees
- Non-Sworn
- W.C. Police Officers' Association
- W.C. Firefighters' Management Assoc.
- W.C. Firefighters' Association, I.A.F.F., Local 3226
- General Employees
- Mid-Management Employees
- W.C. Police Management Association

Unrepresented Employee Group

- Department Heads

City Attorney Thomas P. Duarte indicated that no reportable action was taken.

**PRESENTATIONS**

- Shop Local After School Program - Chinese American Association of West Covina donations to School Districts
- The Kiwanis Club of West Covina - 2019 Pumpkin Run donation
- San Gabriel Valley Economic Partnership - Bill Manis CEO

**ORAL COMMUNICATIONS**

Speaker:

Vicki Scheliga  
Herb Redholtz  
George Giovannini Nguyen  
John Shewmaker  
Wen Wen Zhang  
Colleen Rozatti  
Lisa Mayo

---End of Public Comment---

**CM ORAL REPORT –**

- Presentation given by Mr. Carmany

## **CONSENT CALENDAR**

**ACTION: MOTION BY CASTELLANOS AND SECONDED BY JOHNSON,  
CARRIED 5-0 to: approve Consent Calendar Items 1 - 8.**

### **APPROVAL OF MEETING MINUTES**

- 1) **DECEMBER 17, 2019 CITY COUNCIL/SUCCESSOR AGENCY REGULAR MEETING MINUTES  
DECEMBER 17, 2019 CITY COUNCIL/SUCCESSOR AGENCY CLOSED SESSION MEETING MINUTES  
JANUARY 7, 2019 CITY COUNCIL/SUCCESSOR AGENCY REGULAR MEETING MINUTES  
JANUARY 7, 2019 CITY COUNCIL/SUCCESSOR AGENCY CLOSED SESSION MEETING MINUTES**

**CARRIED 5-0 to:** approve the December 17, 2019 Regular Meeting Minutes, the December 17, 2019 Closed Session Meeting Minutes, the January 7, 2019 Regular Meeting Minutes and the January 7, 2019 Closed Session Meeting Minutes.

### **INVESTMENT REPORT**

- 2) **INVESTMENT REPORT FOR THE MONTH ENDED NOVEMBER 30, 2019.**

**CARRIED 5-0 to:** receive and file the Investment Report for the month ended November 30, 2019.

### **COMMUNITY DEVELOPMENT**

- 3) **INITIATION OF CODE AMENDMENT NO. 20-01 FILM PERMIT STANDARDS**

**CARRIED 5-0 to:** consider initiating Code Amendment No. 20-01 to examine revisions to film permit standards, by adopting the following resolution:

**RESOLUTION NO. 2020-05 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, INITIATING CODE AMENDMENT NO. 20-01 TO STUDY FILM PERMIT STANDARDS**

- 4) **CONSIDERATION OF APPROVAL OF TRAFFIC COMMITTEE MINUTES AS WELL AS RECOMMENDATIONS FOR RED CURB INSTALLATION FROM THE DECEMBER 10, 2019 TRAFFIC COMMITTEE MEETING**

**CARRIED 5-0 to:** approve the Traffic Committee recommendations from the December 10, 2019 Traffic Committee Meeting for the following items:

1. Line of Sight Review at 2027 E. Garvey Avenue

Request: A resident requested red curb on either side of their driveway to deter vehicles from encroaching and blocking access to their driveway.

Review Standard:

- Curb marking recommendations are based on a combination of engineering judgment, the California Manual on Uniform Traffic Devices (CAMUTCD), and the California Vehicle Code (CVC). Based on engineering judgment, red curb is recommended.

Recommendation: The Traffic Committee unanimously recommends to paint 4-feet of red curb on both sides of the driveway approach.

2. Traffic Review of Vine Avenue between Valinda Avenue and Lark Ellen Avenue

Request: A resident requested for an all-way stop control at the intersection of Pima Avenue and Vine Avenue as well as a review of speeding concerns along Vine Avenue between Valinda Avenue and Lark Ellen Avenue.

Review Standard:

- The placement of stop signs is dictated by engineering judgment and based on the guidelines found in the CAMUTCD and CVC. CAMUTCD Section 2B.07 describes applications, warrants, and placement of STOP signs (R1-1). Based on these guidelines the placement of an all-way stop control at the requested location was not warranted and did not meet the criteria for all-way stop installation.
- Line of sight analysis was conducted at the requested intersection. Per AASHTO Table 3-1 (A Policy on Geometric Design of Highways and Streets) for a roadway with a posted speed of 35 MPH, the clear sight distance needed is 250 feet. Based on stopping sight distance triangle analysis completed on Pima Avenue and Vine Avenue, red curb is recommended to increase visibility.
- Installation of larger dimensioned signage are recommended as treatments to increase the motorist's awareness and other driver conditions by highlighting various areas of the roadway. All sign dimensions should comply with the dimensions specified in the CAMUTCD Table 2B-1 Regulatory Sign and Plaque Sizes. Posted speed signs and adjacent speed limit pavement legends are recommended to alert motorists of the speed limit.

Recommendation: The Traffic Committee unanimously recommends to (1) repaint all existing red curbs at the corners of the Pima Avenue and Vine Avenue intersection and paint an additional 5-feet of red curb for the northwest corner; and, (2) add W4-4p "Cross Traffic Does Not Stop" plaque for the northbound and southbound traffic under the existing stop signs; and, (3) install 30"x36" 35 MPH speed limit signs for eastbound and westbound travelers, midblock, approaching the intersection of Vine Avenue and Pima Avenue; and, (4) install 35" pavement legends for eastbound and westbound travelers adjacent to the new speed limit signs; and, (5) work with West Covina Police Department to do random spot speed enforcement.

3. Red Curb at the Foothill Transit Bus Stop (Azusa Avenue and Cameron Avenue)



Request: The Safety Compliance Coordinator for Foothill Transit requested for the City to review the curb markings at the bus stop located on the west side of Azusa Avenue south of Cameron Avenue due to vehicles parking too close to the bus stop making it difficult for buses to enter or exit the stop as well as for passengers to enter or exit the bus. All other bus stops located at the subject intersection have existing red curb.

Review Standard:

- Curb marking recommendations are based on a combination of engineering judgment, the California Manual on Uniform Traffic Devices (CAMUTCD), and the California Vehicle Code (CVC). Based on engineering judgment and conditions of the other bus stop locations, red curb is recommended.

Recommendation: The Traffic Committee unanimously recommends to Paint 120-feet of red curb on the west side of S. Azusa Avenue south of E. Cameron Avenue in front of the bus stop.

5) **CONSIDERATION OF ADOPTION OF RESOLUTIONS REQUESTING TO ACCEPT TRANSFER AND CONVEYANCE OF STORM DRAIN IMPROVEMENTS (MISCELLANEOUS TRANSFER DRAINS NO. 928, 954, AND 962)**

**CARRIED 5-0 to:** adopt the following resolutions on a 4/5ths vote per the County of Los Angeles direction:

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, REQUESTING THE BOARD OF SUPERVISORS OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT OF THE STATE OF CALIFORNIA TO ACCEPT, ON BEHALF OF SAID DISTRICT, THE TRANSFER AND CONVEYANCE OF THE STORM DRAIN IMPROVEMENTS KNOWN AS MISCELLANEOUS TRANSFER DRAIN NO. 928 IN THE CITY OF WEST COVINA FOR OPERATION, MAINTENANCE, REPAIR, AND IMPROVEMENT, AND AUTHORIZING THE TRANSFER AND CONVEYANCE THEREOF-RESOLUTION NO. 2020-02**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, REQUESTING THE BOARD OF SUPERVISORS OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT OF THE STATE OF CALIFORNIA TO ACCEPT, ON BEHALF OF SAID DISTRICT, THE TRANSFER AND CONVEYANCE OF THE STORM DRAIN IMPROVEMENTS KNOWN AS MISCELLANEOUS TRANSFER DRAIN NO. 954 IN THE CITY OF WEST COVINA FOR OPERATION, MAINTENANCE, REPAIR, AND IMPROVEMENT, AND AUTHORIZING THE TRANSFER AND CONVEYANCE THEREOF-RESOLUTION NO. 2020-03**

**RESOLUTION NO. 2020-04 - RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, REQUESTING THE BOARD OF**

**SUPERVISORS OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT OF THE STATE OF CALIFORNIA TO ACCEPT, ON BEHALF OF SAID DISTRICT, THE TRANSFER AND CONVEYANCE OF THE STORM DRAIN IMPROVEMENTS KNOWN AS MISCELLANEOUS TRANSFER DRAIN NO. 962 IN THE CITY OF WEST COVINA FOR OPERATION, MAINTENANCE, REPAIR, AND IMPROVEMENT, AND AUTHORIZING THE TRANSFER AND CONVEYANCE THEREOF**

- 6) **CONSIDERATION OF AN ADMINISTRATIVE BUDGET AND A RECOGNIZED OBLIGATION PAYMENT SCHEDULE “ROPS” PURSUANT TO HEALTH AND SAFETY CODE SECTION 34179.7(O)(1), FOR THE PERIOD OF JULY 1, 2020 THROUGH JUNE 30, 2021 FOR THE SUCCESSOR AGENCY TO THE FORMER WEST COVINA REDEVELOPMENT AGENCY**

**CARRIED 5-0 to:** acting as the Successor Agency to the former West Covina Redevelopment Agency, adopt the following resolution:

**RESOLUTION NO. 2020-06 – A RESOLUTION OF THE SUCCESSOR AGENCY TO THE FORMER WEST COVINA REDEVELOPMENT AGENCY APPROVING AND AUTHORIZING THE TRANSMITTAL OF AN ADMINISTRATIVE BUDGET AND A RECOGNIZED OBLIGATION PAYMENT SCHEDULE “ROPS” FOR THE PERIOD OF JULY 1, 2020 THROUGH JUNE 30, 2021**

**HUMAN RESOURCES/RISK MANAGEMENT**

- 7) **CONSIDERATION OF ENGAGEMENT OF LARSON O'BRIEN LLP IN CONNECTION WITH RICHARD MARTIN FRANCO, JR. AND YVONNE FRANCO V. CITY OF WEST COVINA MATTER**

**CARRIED 5-0 to:** authorize the City Manager to negotiate and execute any documents necessary to provide for the continued engagement of Larson O'Brien LLP to provide legal counsel to the City in connection with the *Richard Martin Franco, Jr. and Yvonne Franco v. City of West Covina* matter.

- 8) **CONSIDERATION OF GOVERNMENT TORT CLAIMS**

**CARRIED 5-0 to:** deny the following Government Tort Claims and the claimants to be notified:

1. Sharon Chapman vs. City of West Covina

**END OF CONSENT CALENDAR**

**PUBLIC HEARINGS**

- 9) **PUBLIC HEARING TO CONSIDER CODE AMENDMENT NO. 19-02 REGARDING SINGLE FAMILY STANDARDS FOR ACCESSORY HABITABLE QUARTERS, AND VEHICLE BACKUP SPACE**

**Public Comments in Favor**

None

**Public Comments in Opposition**

None

---End of Public Comment---

**ACTION:** City Manager Mr. Carmany requested to continue Item 9 until the next City Council Meeting to be held on February 4, 2020.

**ORDINANCE NO. 2469 - AN ORDINANCE TO AMEND ZONING REGULATIONS APPLICABLE TO SINGLE FAMILY AND RESIDENTIAL AGRICULTURAL ZONES REGARDING ACCESSORY HABITABLE QUARTERS (FORMERLY KNOWN AS GUEST HOUSES) AND VEHICULAR BACKUP SPACE**

**DEPARTMENTAL REGULAR MATTERS**

**CITY MANAGER'S OFFICE presentation**

- 10) **CONSIDERATION OF LEGISLATIVE MATTERS - SENATE BILL (SB) 50 (WEINER) PLANNING AND ZONING; HOUSING DEVELOPMENT; STREAMLINED APPROVAL; INCENTIVES AND SB 266 (LEYVA) - PUBLIC EMPLOYEES' RETIREMENT SYSTEM; DISALLOWED COMPENSATION; BENEFIT ADJUSTMENTS**

**CARRIED 5-0 to:** authorize the Mayor to sign letters of opposition to SB 50 and SB 266.

**POLICE DEPARTMENT -**

- 11) **FOURTH OF JULY ENFORCEMENT**

**CARRIED 5-0 to:** approve the 4th of July enforcement and deployment plan.

**MAYOR/COUNCILMEMBER REPORTS**

12) **CONSIDERATION OF REQUEST FROM MAYOR PRO TEM LETTY LOPEZ-VIADO REGARDING A CITY SPONSORED 4TH OF JULY PATRIOTIC EVENT.**

**CARRIED 5-0 to:** provide direction to staff for a 4th of July Patriotic Event by the selection of Option 5.

**CITY COUNCIL COMMENTS**

None.

**ADJOURNMENT**

A motion to adjourn the Regular Meeting was made by Councilman Johnson, and the meeting was adjourned at 9:08 p.m., by Mayor Wu. The next regularly scheduled Regular City Council Meeting will be held on Tuesday, February 4, 2020 at 7:00 p.m. in the Council Chamber, 1444 West Garvey Avenue South, West Covina, California.

Submitted by:

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Lisa Sherrick  
Assistant City Clerk

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Tony Wu  
Mayor



## AGENDA STAFF REPORT

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City of West Covina | Office of the City Manager

**DATE:** February 4, 2020

**TO:** Mayor and City Council

**FROM:** David Carmany  
City Manager

**SUBJECT: CONSIDERATION OF BUDGET AND CONTRACT AMENDMENTS FOR ENGINEERING SERVICES (TRANSTECH) AND BUILDING & SAFETY SERVICES (WILLDAN)**

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### RECOMMENDATION:

It is recommended that the City Council take the following actions:

1. Approve the First Amendment to the Agreement for Professional Services for City Engineer Services by Transtech to establish an annual budget of \$700,000 (not to exceed \$3,500,000 through contract life); establish a Capital Improvement Program annual budget of \$1,000,000 (\$5,000,000 through contract life) and separate the annual Engineering Services budget from the Capital Improvement Program projects budget; and
2. Amend the Fiscal Year 19/20 Budget to add \$616,000 in Restricted Funds (including Gas Tax, Measure R, Measure M - subject to METRO approval - and Sewer Maintenance Fund) and \$84,000 in general fund for Engineering Services; and
3. Approve the First Amendment to the Agreement for Professional Services for City Building Services with Willdan to establish an annual budget of \$940,000 (not to exceed \$4,700,000 through contract life); and
4. Amend the Fiscal Year 19/20 Budget to add \$700,000 from permit fees for Building Services. Fees will be increased for Building permits starting on February 18, 2020.

### BACKGROUND:

Many cities are moving to a contract model for the provision of building and engineering services. The contract model allows a city to staff according to the workflow and level of activity without having to hire or layoff city personnel. Contractors providing the service have flexibility of moving staff between their client cities seamlessly.

During the budget adoption process for Fiscal Year 19/20, the City Council made the decision to convert Engineering and Building functions to contracts. Subsequently, on August 12, 2019, the City Council approved a contract with Willdan for building services and on August 20, 2019, the City Council approved a contract with Transtech for City engineering services, traffic engineering services, and for general engineering services. The contracts for both Willdan and Transtech were executed for a two-year period ending on September 1, 2021 with three, one-year extensions available.

The budget adopted in June of 2019 specified \$400,000 for Engineering Services and \$300,000 for Building Service. The budget was prepared prior to the review of the proposals and the selection Transtech and Willdan.

## **DISCUSSION:**

Transtech and Willdan have both been able to accommodate the City's needs since they started providing services in September 2019. Service levels have increased and turnaround times have been reduced. Staff is requesting authorization to amend the contract and budget in order to continue providing Engineering and Building services.

### **Transtech**

The Transtech contract specified a compensation of \$800,000. This amount was determined based on the costs of providing general engineering services, including traffic, plan checking, inspections, and public counter coverage. As staff has worked with Transtech, it has become clear that compensation for general Engineering Services needs to be separated from compensation from Capital Improvement Program (CIP) projects. Because the general engineering services are billed hourly and capital projects are billed as a percentage of the total project cost, having the compensation in one lump sum is not the best way to pay for the services.

Previously, City staff costs were attributable to the work on CIP projects and Transtech costs will also be charged to CIP projects; with the goal of completing as many capital projects as possible. Subsequently, the more CIP projects that Transtech completes, the higher the total compensation. Therefore, if CIP compensation is part of the general Engineering Services compensation, the number of capital projects will be limited. Staff has reviewed several months of invoices to determine the appropriate split between the CIP project budget and general Engineering Services budget. Staff is recommending the First Amendment to Transtech's contract, as follows:

- Compensation for Engineering Services is \$700,000 annually, not to exceed \$3,500,000 over the life of the contract.
- Separate compensation for preparing and completing CIP projects from Engineering Services, based on the processing of each CIP project.
- Set CIP compensation at \$1,000,000 annually, not to exceed \$5,000,000 over the contract life.

An amendment is necessary to increase the Engineering Services budget by \$300,000, \$26,260 coming from the General Fund and \$273,750 coming from restricted transportation funds.

### **Willdan**

The Willdan contract specifies compensation of \$940,000. The costs of providing the services through Willdan are covered by the cost of building plan check and building permit fees. The amount was determined based on the costs of providing service for the Building counter, plan check, and inspections. Over the past few months staff has reviewed invoices to estimate the cost of Building services. Staff is recommending the First Amendment to Willdan's contract which would accomplish the following:

- Compensation is \$940,000 annually for Building Services, not to exceed \$4,700,000 over the life of the contract.

An amendment is necessary to increase the Building Services budget by \$640,000 to be funded by building fees that will be increased in mid-February.

## **OPTIONS:**

The City Council has the following options:

1. Approve staff's recommendation; or
2. Provide alternative direction.

**Prepared by:** Jeff Anderson, Community Development Director

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## **Fiscal Impact**

### **FISCAL IMPACT:**

The fiscal impact would include the following:

1. Increase the annual budget for Engineering Services from \$400,000 to \$700,000 utilizing \$84,000 in general fund monies and \$616,000 in transportation restricted funds;
2. Increase the annual budget for Capital Improvement Projects to a not to exceed amount of \$1,000,000 funded from capital project costs; and,
3. Increase the annual budget for Building Services from \$300,000 to \$940,000 with additional costs off-set by Building fees.

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#### **Attachments**

Attachment No. 1 - First Amendment with Transtech

Attachment No. 2 - Professional Services Agreement with Transtech

Attachment No. 3 - First Amendment with Willdan

Attachment No. 4 - Professional Services Agreement with Willdan

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**CITY COUNCIL GOALS & OBJECTIVES:** Achieve Fiscal Sustainability and Financial Stability  
Enhance the City Image and Effectiveness  
Engage in Proactive Economic Development

**FIRST AMENDMENT TO  
CITY OF WEST COVINA  
PROFESSIONAL SERVICES AGREEMENT  
WITH  
TRANSTECH CONSULTING GROUP  
FOR ENGINEERING SERVICES AND FOR PROCESSING CAPITAL  
IMPROVEMENT PROJECTS**

This is the First Amendment to the Agreement dated September 6, 2019 between the **CITY OF WEST COVINA**, a municipal corporation, hereinafter referred to as "City" and, **TRANSTECH**, hereinafter referred to as "Contractor" ("Original Agreement") is made and entered into as of February 4, 2020. In consideration of the mutual promises and covenants contained herein, the parties hereto mutually agree as follow:

**SECTION 1. RECITALS.** This Agreement is made and entered into with respect to the following facts:

1. **WHEREAS**, the Original Agreement included compensation amount of \$800,000 and included a term of two years with three, one-year extensions.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

2. The Compensation and Billing shall be modified to clarify that Compensation (2.1) is \$800,000 annually for Engineering Services (\$3,500,000 over the life of the contract) and that compensation for preparing and completing Capital Improvement Projects will be separate from Engineering Services and based on the processing of each Capital Improvement Projects.
3. Except as herein amended, the terms and conditions of the Original Agreement, executed on September 6, 2019 shall remain in full force and effect.

[Signatures on following page.]



**IN WITNESS WHEREOF**, City and Contractor have executed this Second Amendment as of the date set forth above.

CITY OF WEST COVINA

TRANSTECH

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By: David Carmany  
City Manager

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By: Ali Cayir  
President

APPROVED AS TO FORM:

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Thomas Duarte  
City Attorney

ATTEST:

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Lisa Sherrick  
Assistant City Clerk

**CITY OF WEST COVINA  
PROFESSIONAL SERVICES AGREEMENT  
WITH  
TRANSTECH  
FOR  
CITY ENGINEER SERVICES, TRAFFIC ENGINEER SERVICES AND ON-CALL GENERAL  
ENGINEERING SERVICES**

THIS AGREEMENT is made and entered into this 6<sup>th</sup> day of September, 2019 ("Effective Date"), by and between the CITY OF WEST COVINA, a municipal corporation ("City"), and Transtech, a California Corporation ("Consultant").

**W I T N E S S E T H :**

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to City, as more fully described herein; and

B. WHEREAS, Consultant represents that it has that degree of specialized training and experience contemplated within California Government Code Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated, except that if Consultant is required to but does not yet hold a City business license, it will promptly obtain a business license and will not provide services to the City until it has done so; and

C. WHEREAS, City and Consultant desire to contract for the specific services described in Exhibit "A" and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. WHEREAS, no official or employee of City has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

E. WHEREAS, Consultant responded to the City's Request for Proposals dated March 12, 2019, incorporated via this reference as if fully set forth herein, and Consultant's response to the Request for Proposals was a material inducement to the City ultimately entering into this agreement.

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

**1.0. SERVICES PROVIDED BY CONSULTANT**

1.1. Scope of Services. Consultant shall provide the professional services described in the Scope of Services attached hereto as Exhibit "A," incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also represents that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant's performance of this Agreement. Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way

affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. City Officers and employees shall not be liable at law or in equity for any claims or damages occurring as a result of failure of the Consultant to comply with this section.

1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to the reasonable satisfaction of the City. Evaluations of the work will be conducted by the City Manager or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;
- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Compliance with Applicable Laws. Consultant shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement.

1.5. Non-discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical or intellectual disability, medical condition, genetic information, pregnancy, marital status, sex, gender, gender identity, gender expression, or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code.

1.6. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement. Notwithstanding the foregoing, Consultant shall not be restricted from disclosing confidential that is reasonably necessary for Consultant to disclose to Consultant's employees, subconsultants and the general contractor and subcontractors, if appropriate, or information in whatever form that is in the public domain. Nor shall Consultant be restricted from giving notices required by law or comply with an order issued by a court, administrative agency or other legitimate authority, or if disclosure is reasonably necessary for Consultant to defend itself from any legal action or claim.

1.8 Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

## **2.0. COMPENSATION AND BILLING**

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "B," attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant's total compensation shall not exceed eight hundred thousand Dollars (\$ 800,000.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Consultant's Proposal unless the City, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable. Should the City request in writing additional services that increase the hereinabove described "SCOPE OF SERVICES", an additional fee based upon the Consultant's standard hourly rates shall be paid to the Consultant for such additional services. Such increase in additional fees shall be limited to 25% of the total contract sum or to the maximum total contract amount of \$25,000, whichever is greater. The Department Head or City Manager is authorized to approve a Change Order for such additional services.

2.3. Method of Billing. Consultant may submit invoices to the City for approval on a progress basis, but no more often than once a month. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City for inspection and/or audit at mutually convenient times for a period of three (3) years from the Effective Date.

## **3.0. TIME OF PERFORMANCE**

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Said services shall be performed in strict compliance with the Project Schedule approved by City as set forth in Exhibit "C," attached hereto and incorporated herein by this reference. The Project Schedule may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds

for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party. If a delay beyond the control of the Consultant is encountered, a time extension may be mutually agreed upon in writing by the City and the Consultant. The Consultant shall present documentation satisfactory to the City to substantiate any request for a time extension.

#### **4.0. TERM AND TERMINATION**

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of two years, ending on September 6, 2021, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. Thereafter, this Agreement may be renewed for a maximum of three successive one (1) year terms not to exceed three (3) years. Such renewal will be evidenced by a written Amendment upon written notice of City given to Consultant at any time prior to the expiration date of the Agreement.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing at least fifteen (15) days prior written notice to Consultant. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City. If the City suspends, terminates or abandons a portion of this Agreement such suspension, termination or abandonment shall not make void or invalidate the remainder of this Agreement.

If the Consultant defaults in the performance of any of the terms or conditions of this Agreement, it shall have ten (10) days after service upon it of written notice of such default in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled to at law, in equity, or under this Agreement.

The City also shall have the right, notwithstanding any other provisions of this Agreement, to terminate this Agreement, at its option and without prejudice to any other remedy to which it may be entitled to at law, in equity, or under this Agreement, immediately upon service of written notice of termination on the Consultant, if the latter should:

- a. Be adjudged a bankrupt;
- b. Become insolvent or have a receiver of its assets or property appointed because of insolvency;
- c. Make a general assignment for the benefit of creditors;
- d. Default in the performance of any obligation or payment of any indebtedness under this Agreement;
- e. Suffer any judgment against it to remain unsatisfied or unbonded of record for thirty (30) days or longer; or

- f. Institute or suffer to be instituted any procedures for reorganization or rearrangement of its affairs.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the effective date of the City's written notice of termination, within forty-five (45) days after the effective date of the notice of termination or the final invoice of the Consultant, whichever occurs last. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of the effective date of the notice of termination, at no cost to City.

## 5.0. INSURANCE

Consultant shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Consultant, his agents, representatives, employees or subcontractors:

5.1 Minimum Scope and Limits of Insurance. Coverage shall be at least as broad as:

- (a) **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- (b) **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
- (c) **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
- (d) **Professional Liability (Errors and Omissions)** Insurance appropriate to the Consultant's profession, with limit no less than **\$1,000,000** per claim, \$2,000,000 aggregate.

If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

5.2. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

- (a) Additional Insured Status: The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Lessee including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Lessee's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).
- (b) Primary Coverage: For any claims related to this Agreement, the Consultant's General Liability and Automobile Liability insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- (c) Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.
- (d) Waiver of Subrogation: Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
- (e) Self-Insured Retentions: Self-insured retentions must be declared to and approved by the City. The City may require the Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.
- (f) Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VI, unless otherwise acceptable to the City.
- (g) Verification of Coverage: Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of

all required insurance policies, including endorsements required by these specifications, at any time; Consultant is not required to provide proof of insurance unrelated to the City's contractual requirements.

- (h) Subcontractors: Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that City is an additional insured on insurance required from subcontractors.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City.

5.4. Certificates of Insurance. Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement.

5.5. Non-limiting. Nothing in this Section shall be construed as limiting in any way the indemnification provision contained in this Agreement.

## **6.0. GENERAL PROVISIONS**

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification.

6.2. Representatives. The City Manager or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Key Personnel. It is the intent of both parties to this Agreement that Consultant shall make available the professional services of Ahmad Ansari, Senior Engineer, who shall coordinate directly with City. Any substitution of key personnel must be approved in advance by City's Representative and the Agreement shall be amended to reflect the changes.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile, Email or by U.S. mail. If by U.S. mail, it shall be addressed as set forth below and placed in a sealed envelope, postage prepaid, and deposited in the United States Postal Service. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile or by Email; and c) 72 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

IF TO CITY:



Transtech  
13367 Benson Avenue  
Chino, CA 91710  
Tel: 855-595-2495  
Email:  
ahmad.ansari@transtech.org  
Attn: Ahmad Ansari

City of West Covina  
1444 West Garvey Ave. South  
West Covina, CA 91790  
Tel: (626)939-8422  
Email:  
janderson@westcovina.org  
Attn: Jeff Anderson

6.5 Attorneys' Fees. If litigation is brought by any party in connection with this Agreement, each party shall be responsible for its own costs and expenses, including attorney fees.

6.6 Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Los Angeles County, California.

6.7 Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.8 Indemnification and Hold Harmless. To the fullest extent of the law, CONSULTANT agrees as follows:

- (a) With respect to claims that are not directly related to Consultant's professional services, Consultant agrees to defend, indemnify, hold free and harmless the City, its elected and appointed officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, demands, actions, suits or other legal proceedings brought against the City, its elected and appointed officials, officers, agents and employees arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the Consultant, its employees, and/or authorized subcontractors, in performing this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence, recklessness or willful misconduct of the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, recklessness, or willful misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected and appointed officials, officers, agents and employees based upon such negligence, recklessness, or willful misconduct, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City.
- (b) With respect to claims directly related to Consultant's professional services, Consultant shall indemnify and hold the City, its elected and appointed officials, officers, agents and

employees harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent they are caused by Consultant's negligence, recklessness or willful misconduct. Consultant shall not have an upfront duty to defend the City, its elected and appointed officials, officers, agents and employees under this paragraph, but shall promptly reimburse reasonable defense fees and costs to the extent a claim is caused by the negligence, recklessness or willful misconduct of Consultant, or as the parties otherwise agree in settlement. In no event shall the cost to defend charged to Consultant under this paragraph exceed the Consultant's proportionate percentage of fault.

- (c) This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

6.9. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.10. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.11. Cooperation. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

6.12. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City. Consultant or Consultant's agents shall execute such documents as may be necessary from time to time to confirm City's ownership of the copyright in such documents.

6.13. Electronic Safeguards. Contractor shall identify reasonably foreseeable internal and external risks to the privacy and security of personal information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of the information. Contractor shall regularly assess the sufficiency of any safeguards and information security awareness training in place to control reasonably foreseeable internal and external risks, and evaluate and adjust those safeguards in light of the assessment.

6.14. Economic Interest Statement. Consultant hereby acknowledges that pursuant to Government Code Section 87300 and the Conflict of Interest Code adopted by City hereunder, Consultant is designated in said Conflict of Interest Code and is therefore required to file an Economic Interest Statement (Form 700) with the City Clerk, for each employee providing advice under this Agreement, prior to the commencement of work, unless waived by the City Manager.

6.15. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act of 1974 (Government Code Section 81000, *et seq.*) and Government Code Sections 1090-1092. Consultant covenants that none of Consultant's officers or principals have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of the services hereunder, including in any manner in violation of the Political Reform Act. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be used by Consultant as an officer, employee, agent, or subconsultant. Consultant further covenants that Consultant has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City and further covenants and agrees that Consultant and/or its subconsultants shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City prior to the completion of the work under this Agreement.

6.16. Prohibited Employment. Consultant will not employ any regular employee of City while this Agreement is in effect.

6.17. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent

this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

6.18. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.19. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.20. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.21. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.22. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.23. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.


6.24. Counterparts and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement. Counterpart written signatures may be transmitted by facsimile, email or other electronic means and have the same legal effect as if they were original signatures.

6.25. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

6.26. Taxpayer Identification Number. Consultant shall provide City with a complete Request for Taxpayer Identification Number and Certification, Form W9, as issued by the Internal Revenue Service.

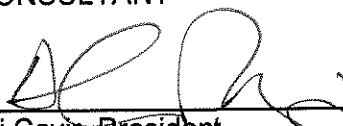
**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF WEST COVINA, a municipal corporation

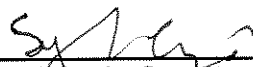
  
\_\_\_\_\_  
David N. Carmahy, City Manager

Date: 8-22-19

CONSULTANT

  
\_\_\_\_\_  
Ali Cayir, President

Date: 8/12/2019


  
\_\_\_\_\_  
Sybil Cayir, Secretary

Date: 8-12-19

ATTEST:


  
\_\_\_\_\_  
Carrie Gallagher, Assistant City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Thomas P. Duarte, City Attorney

Date: 08/21/19

APPROVED AS TO INSURANCE:

  
\_\_\_\_\_  
Risk Management

Date: 8/22/19.

**EXHIBIT A**  
**SCOPE OF SERVICES**

## **EXHIBIT A**

### **SCOPE OF SERVICES**

#### **City Engineer Services**

1. Manage plan review and inspection services for all public right-of-way encroachment permits to confirm compliance with all applicable codes, regulations, policies, standards, and best practices. Such permits may include construction work; construction or vehicle operations; oversize vehicles; street closures; temporary storage of vehicles, storage pods, trash bins, or other objects; news racks; and ongoing encroachment by awnings, sidewalk dining, etc. Services will include but may not be limited to the following:
  - Performing pre-work inspections as needed to evaluate existing conditions
  - Reviewing plans and specifications
  - Writing corrections and redlining of plans
  - Determining appropriate conditions to impose on permits
  - Determining whether a traffic control plan is required and reviewing such plans
  - Performing regular inspections of ongoing work and inspections of completed work to ensure compliance with approved plans and permit conditions
  - Maintaining regular communication with the applicant, job superintendent, or other project representatives as needed
2. Maintain a communication channel for applicants and job superintendents to communicate directly with the public works inspector via telephone, and/or with the city engineer on behalf of the inspector. Provide continuity of inspection services through project completion.
3. Provide a public works inspector presence at City Hall and within the City as necessary to adequately inspect ongoing work in the public right-of-way and address issues as they arise.
4. Provide plan review of grading, drainage, and improvement plans for private and public development projects. Services will include but may not be limited to the following:
  - Reviewing plans and specifications
  - Writing corrections and redlining of plans
  - Determining appropriate conditions to impose on permits
  - Providing pick-up and delivery of plans at City Hall and maintaining a log of plans in process and their status accessible at any time by City staff
  - Learning and effectively utilizing the City's cloud-based software for permit issuance and tracking
5. Provide plan review of plans submitted for planning or zoning review for public works issues. This may include conceptual or preliminary plans, architectural plans, site plans, and preliminary grading plans. Services will include but may not be limited to the following:
  - Reviewing project applications, plans, and related documents
  - Identifying major public works issues to be addressed through the planning process prior to plan check submittal including but not limited to grading, off-site improvements, and traffic
  - Writing conditions of approval related to public works issues to be imposed on the project through the planning process

- Providing pick-up and delivery of plans at City Hall and maintaining a log of plans in process and their status accessible at any time by City staff
  - Learning and effectively utilizing the City's permitting software for permit issuance and tracking
6. Provide review of projects submitted under the Subdivision Map Act and related provisions of the West Covina Municipal Code. This includes but may not be limited to tentative and final maps, lot mergers, lot line adjustments, certificates of compliance, dedications, vacations, and easements. Services will include but may not be limited to the following:
- Reviewing applications, maps, legal descriptions, deeds, and related documents
  - Providing redline documents and writing corrections
  - Writing conditions of approval to be imposed on tentative maps
  - Providing pick-up and delivery of documents at City Hall and maintaining a log of reviews in process and their status accessible at any time by City staff
  - Learning and effectively utilizing the City's permitting software for project tracking
7. Provide city engineering services, including but not limited to the following:
- Attend meetings with City staff, public officials, developers, contractors, and the public as needed
  - Attend Commission and City Council meetings as needed
  - Represent the City as its city engineer while interfacing with the public and other agencies including but not limited to L.A. County Department of Public Works, Southern California Edison, and the water purveyors that serve the City
  - Serve as the primary liaison to the County of Los Angeles Department of Public Works for technical and policy issues
  - Review documents and reports from other agencies pertaining to West Covina infrastructure or public works matters and provide recommendations to staff on appropriate responses or actions
  - Provide guidance and technical assistance to City staff on public works and engineering laws, policies, procedures, and best practices including but not limited to the California Public Contract Code, Streets and Highways Code, and Subdivision Map Act
  - Provide guidance and technical assistance to field staff regarding infrastructure and maintenance issues
8. Provide a city engineer presence at City Hall as needed. Hours may vary depending on project volume and workload. While in the office, the city engineer will be expected to provide internal and external customer service, including seeing customers at the counter, meeting with City staff, and taking phone calls.
9. Provide project and contract management services for public works projects and capital improvement projects to be determined. Services will include but may not be limited to the following:
- Prepare project plans, bid specifications, and Notice Inviting Bids
  - Conduct pre-bid meetings
  - Respond to inquiries and prepare addendums to bid specifications as needed
  - Conduct bid opening and bid analysis
  - Prepare staff reports and other documents as may be needed for contract approval



- Provide Construction management and Inspection.
  - Monitor labor compliance
  - Prepare contract change orders
  - Review project invoices for accuracy and contract compliance
  - Prepare staff reports and other documents as may be needed for project acceptance
  - Maintain project documents and files on behalf of City
  - Manage state and federally funded, CDBG Funded, and other outside funded projects. Services include design, bidding phase support, construction management and inspection, contract administration, funding management and coordination. **When applicable, work with City's grant administrator on grant-funded projects to prepare additional paperwork as necessary for grant compliance**
10. Provide project management and manage consultant contracts for public works services, such as updating plans or preparing studies beyond the scope of this contract. Services will include but may not be limited to the following:
    - Prepare and distribute RFPs or RFQs
    - Evaluate proposals submitted and interview consultants as needed
    - Negotiate price and contract terms with consultant on behalf of City
    - Prepare staff reports and other documents as may be needed for contract approval
    - Direct consultant work, serve as liaison with consultant, and review work product
    - Monitor work and progress and review invoices to ensure consistency with project budget and schedule
  11. Advise City staff as to grants or other funding available for public works projects and, when so directed, initiate and prepare applications for such funding or grants.
  12. Provide oversight of the City's public works program. This includes providing direction and mentoring to the staff permit technician pertaining to encroachment permits and providing recommendations to the Community Development Director regarding the program.
  13. Monitor trends, legislation, and standard practices and advise the Community Development Director on appropriate codes, policies, procedures, and practices to adopt.
  14. Coordinate, consult, and provide input to other departments and agencies as may be required, including but not limited to planning, building, code compliance, the Los Angeles Department of Public Works, Los Angeles County Sheriff's Department, Los Angeles County Fire Department, the City's consultant for building and safety services, the City's consultant for NPDES compliance, and utility providers.
  15. Prepare, implement, and enforce policies and procedures.
  16. In the event of a local, regional, or national emergency or disaster, provide engineering and public works plan review and inspection services as required to appropriately respond to the emergency, including after regular business hours.

17. Provide any other services as may be necessary for administration and enforcement of the California Public Contract Code, Streets and Highways Code, Subdivision Map Act, applicable provisions of the West Covina Municipal Code, and any other codes pertaining to public works and engineering matters.

### **Traffic Engineering Services**

Provide traffic engineering services, including but not limited to the following:

- Review and provide comments on traffic impact studies prepared by other consultants for development projects
- Review and provide comments on proposed development projects pertaining to traffic issues including but not limited to traffic impacts, site access and circulation, and parking
- Prepare conditions of approval for projects
- Review and provide engineering judgement on traffic safety issues raised by City staff, the Transportation and Public Safety Commission, and the public
- Conduct traffic reviews and prepare reports with recommendations for issues including but not limited to stop sign warrants, crosswalk installation and removal, traffic calming, speed surveys, accident histories, and other general traffic safety and related issues
- Prepare and make presentations to the Transportation & Public Safety Commission and City Council regarding traffic reviews and recommendations
- Serve as the primary liaison to the County of Los Angeles Department of Public Works for traffic signal timing and maintenance, striping, signs, and other traffic issues

### **On-Call Engineering Services**

Provide municipal engineering services on an “on-call or as needed” basis for various duties assigned by Community Development Director during the term of the agreement. Services may include, but are not limited to the following:

- General consulting and technical advice
- Private development application reviews
- Infrastructure design, construction and/or operation
- Assistance the Capital Improvement Program Manage state and federally funded, CDBG Funded, and other outside funded projects. Services include design, bidding phase support, construction management and inspection, contract administration, funding management and coordination. When applicable, work with City’s grant administrator on grant-funded projects to prepare additional paperwork as necessary for grant compliance
- Reviewing and certifying design plans, specifications and cost estimates for City capital projects
- Performing the lead role in the engineering review, coordination and technical administration of assessment districts and bond issue projects to provide coordinated and cost-effective project
- Reviewing private development construction plans, mapping and projects for compliance with City adopted design standards, subdivision standards and related work as required
- Assisting the City in processing Federal, State and regional permits
- Assisting the City with processing grant applications
- Miscellaneous engineering tasks, feasibility studies, investigations, and other duties as directed by the Community Development Director

**EXHIBIT B**  
**FEE SCHEDULE**

Below is Transtech's current Standard SCHEDULE OF HOURLY RATES for all staff classifications. Please note, Rates are average and negotiable, and final rates are negotiated based on final scope, staff positions.

## TRANSTECH ENGINEERS, INC. SCHEDULE OF HOURLY RATES

*Effective through June 30, 2020*

ENGINEERING	
Field Technician	\$67
Engineering Technician	\$82
Assistant CAD Drafter	\$97
Senior CAD Drafter	\$118
Associate Designer	\$123
Senior Designer	\$133
Design Project Manager	\$164
Assistant Engineer	\$103
Staff Engineer	\$128
Associate Civil Engineer	\$128
Senior Civil Engineer	\$164
Traffic Analyst Technician	\$82
Associate Traffic Analyst	\$97
Senior Traffic Analyst	\$133
Professional Transportation Planner	\$154
Traffic Engineer Technician	\$82
Associate Traffic Engineer	\$128
Traffic Engineer	\$144
Senior Traffic Engineer	\$164
Project Manager	\$154
Senior Project Manager	\$164
Deputy City Engineer	\$144
Senior City Engineer	\$164
Principal Engineer	\$185

CONSTRUCTION MANAGEMENT	
Labor Compliance Analyst	\$123
Funds Coordinator	\$123
Utility Coordinator	\$138
Office Engineer	\$113
Construction Inspector	\$118
Senior Construction Inspector	\$133
Construction Manager	\$164
Resident Engineer	\$164
PUBLIC WORKS INSPECTION	
Public Works Inspector	\$118
Senior Public Works Inspector	\$133
Supervising PW Inspector	\$138
SURVEY AND MAPPING	
Survey Analyst	\$118
Senior Survey Analyst	\$123
2 Man Survey Crew	\$287
Survey & Mapping Specialist	\$164
Licensed Land Surveyor	\$179
FUNDING & GRANT WRITING	
Funds Analyst	\$103
Senior Funds Analyst	\$123
Graphic & Rendering Designer	\$113
Grant Writer	\$123
Funds & Grant Project Manager	\$154

BUILDING & SAFETY	
Permit Technician	\$62
Building Inspector	\$87
Senior Building Inspector	\$97
Plans Examiner/Checker	\$123
Plan Check Engineer	\$133
CASp Plan Checker	\$144
Deputy Building Official	\$133
Building Official	\$144
PLANNING	
Community Development Technician	\$62
Planning Technician	\$62
Assistant Planner	\$97
Associate Planner	\$113
Senior Planner	\$123
Planning Manager	\$138
Deputy Director	\$174
Director	\$185
ADMINISTRATIVE STAFF	
Administrative/Clerical	\$62
Project Accountant	\$77

All fees are increased each year July 1st automatically by the percentage change Los Angeles-Long Beach-Anaheim California Consumer Price Index-All Urban Consumers ("CPI-U") for the preceding twelve-month period as calculated for February by the U.S. Department of Labor Bureau of Labor Statistics and published by the United States Bureau of Labor Statistic.

**SUMMARY**

CITY OF WEST COVINA, CITY ENGINEERING SERVICES ANNUAL HRS AND BUDGET ASSUMPTIONS			
BUDGET ALLOWANCE FOR BASE SERVICES			
BUDGET ALLOWANCE FOR BASE SERVICES 1A: CITY ENGINEER/TRAFFIC ENGINEER			
TOTAL ANNUAL BUDGET ALLOWANCE FOR FY 2019/20	\$162,400	SEE PAGE 2 FOR DETAILS	
BUDGET ALLOWANCE FOR BASE SERVICES			
BUDGET ALLOWANCE FOR BASE SERVICES 1B: SPECIAL CLASSIFICATIONS AND RATES			
TOTAL ANNUAL BUDGET ALLOWANCE FOR FY 2019/20	\$268,820	SEE PAGE 3 FOR DETAILS	
BUDGET ALLOWANCE FOR CC AND TC MEETINGS AND STAFF REPORTS			
TOTAL ANNUAL BUDGET ALLOWANCE FOR FY 2019/20	\$48,720	SEE PAGE 4 FOR DETAILS	
BUDGET ALLOWANCE FOR CIP RELATED ENGINEERING SOFT COSTS, SUCH AS PROJECT MANAGEMENT, DESIGN, CONSTRUCTION MANAGEMENT, INSPECTION, CONTRACT ADMINISTRATION, UTILITY COORDINATION, ETC.)			
TOTAL ANNUAL BUDGET ALLOWANCE FOR FY 2019/20	\$1,093,822	SEE PAGE 5 FOR DETAILS	
BUDGET ALLOWANCE TRAFFIC ENGINEERING FOR PREPARATION (SIGNAL WARRANTS, STOP WARRANTS, SCHOOL SAFETY, TRAFFIC CALMING, LEVEL OF SERVICE, SPEED HUMP, ETC.). PER HRLY RATES BASED ON ACTUAL TIME AND MATERIAL			
TOTAL ANNUAL BUDGET ALLOWANCE FOR FY 2019/20	\$75,000	SEE PAGE 9 FOR DETAILS	
BUDGET ALLOWANCE FOR DEVELOPMENT/ENCROACHMENT PLAN REVIEW, DEVELOPMENT INSPECTION. BASED ON % OF FEES COLLECTED BY THE CITY, AND/OR HRLY RATES			
TOTAL ANNUAL BUDGET ALLOWANCE FOR FY 2019/20	\$50,000	SEE PAGE 10 FOR DETAILS	
BUDGET ALLOWANCE FOR TRAFFIC STUDY REVIEWS FOR DEVELOPMENT PROJECTS. BASED ON % OF FEES COLLECTED BY THE CITY, AND/OR HRLY RATES			
TOTAL ANNUAL BUDGET ALLOWANCE FOR FY 2019/20	\$25,000	SEE PAGE 11 FOR DETAILS	
BUDGET ALLOWANCE FOR ALL OTHER SERVICES			
TOTAL ANNUAL BUDGET ALLOWANCE FOR FY 2019/20	PER HRLY BASIS	SEE PAGE 12 FOR DETAILS	

## CITY OF WEST COVINA, CITY ENGINEERING SERVICES ANNUAL HRS AND BUDGET ASSUMPTIONS

## BUDGET ALLOWANCE FOR BASE SERVICES

## BUDGET ALLOWANCE FOR BASE SERVICES 1A: CITY ENGINEER/TRAFFIC ENGINEER

CITY ENGINEER	Time Allowance for: On-site presence to attend meetings and Service Hours at City Hall	4	hrs/week average time allowance for on-site service	208	hrs Annual Hours estimated
	Time Allocation for: Off-site service	8	hrs/week average time allowance for off-site service	416	hrs Annual Hours estimated
	TOTAL ESTIMATED ANNUAL HOURS			624	
	Average estimated Billing Rate			\$140	
	TOTAL ESTIMATED ANNUAL BUDGET			\$87,360	
CITY TRAFFIC ENGINEER	Time Allowance for: On-site presence to attend meetings and Service Hours at City Hall	10	hrs/month average time allowance for on-site service	120	hrs Annual Hours estimated
	Time Allowance for: Off-site service. SEE BUDGET ALLOCATION for "TRAFFIC ENGINEERING FOR RESPONDING TO TRAFFIC RELATED QUESTIONS, PREPARATION OF SIGNAL WARRANTS, STOP WARRANTS, SCHOOL SAFETY, TRAFFIC CALMING, LEVEL OF SERVICE, SPEED HUMP, ETC.. PER HRLY RATES BASED ON ACTUAL TIME AND MATERIAL. SEE BUDGET"	8	hrs/week average time allowance for off-site service	416	hrs Annual Hours estimated
	Total estimated Annual Hours			536	
	Average estimated Billing Rate			\$140	
	Total estimated Annual Budget			\$75,040	
TOTAL ANNUAL HOURS ALLOWANCE FOR FY 2019/20				1,160	
TOTAL ANNUAL BUDGET ALLOWANCE FOR FY 2019/20				\$162,400	

## CITY OF WEST COVINA, CITY ENGINEERING SERVICES ANNUAL HRS AND BUDGET ASSUMPTIONS

## BUDGET ALLOWANCE FOR BASE SERVICES

## BUDGET ALLOWANCE FOR BASE SERVICES 1B: SPECIAL CLASSIFICATIONS AND RATES

SPECIAL CLASSIFICATION 1 FOR THIS CONTRACT: PERMIT TECHNICIAN/PUBLIC WORKS OBSERVER	Time Allocation for: On-site presence (assume full time) (For full-time, billable hours are estimated as follows: 2,080 payroll hrs/year minus 80 hours to account for holidays that fall on a City work days, vacation/sick leave days are assumed to be covered by another person at the same billing rate) (See Note 1.)	40 hrs/week average time allowance for on-site service	1,864	Annual billable hrs are equal to 2,080 - 12 days for holidays - 15 days will be charged at regular permit inspector rate as indicated in the line for Time Allowance for: On-site presence by experienced inspector.
	TOTAL ESTIMATED ANNUAL HOURS			1,864
SPECIAL CLASSIFICATION 2 FOR THIS CONTRACT: PUBLIC WORKS MANAGER	This position is a combination of permit tech and public works observer with limited experience, therefore, a lower rate as indicated is assumed as indicated (if this position is adjusted to regular/experienced inspector position, billing rate will be adjusted accordingly).			\$75
	TOTAL ESTIMATED ANNUAL BUDGET			\$153,960
	Special Rate for Permit Tech/PW Observer position (was established for Kun who is employed with the City, and whose position was scheduled to be terminated as of September 1. Kun was going to join Transtech, but later decided to go into a different direction). Rate will be adjusted if assigned staff changes and applicable rate per then current Fee Schedule will be charged for actual staff classification provided.			
BUDGET FOR PW INSPECTOR WHILE KUN IS ON VACATION/SICK	Time Allowance for: On-site presence by experienced inspector for 15 days a year when Eng. Tech is on vacation.			120
	TOTAL ESTIMATED ANNUAL HOURS			120
	Billing Rate			\$118
SPECIAL CLASSIFICATION 2 FOR THIS CONTRACT: PUBLIC WORKS MANAGER	TOTAL ESTIMATED ANNUAL BUDGET			\$14,160
	Time Allocation for: On-site presence (assume 20 hrs/week			1,060
	TOTAL ESTIMATED ANNUAL HOURS			1,060
SPECIAL CLASSIFICATION 2 FOR THIS CONTRACT: PUBLIC WORKS MANAGER	This is a special position and rate for this contract. If the position is filled by a professional engineer, the rate will be adjusted accordingly.			\$95
	TOTAL ESTIMATED ANNUAL BUDGET			\$100,700
	Special Rate (for current City Staff Miguel who is retiring and will work under Transtech contract on part-time employee without benefits). Rate will be adjusted if assigned staff changes and applicable rate per then current Fee Schedule will be charged for actual staff classification provided.			
TOTAL ANNUAL HOURS ALLOWANCE FOR FY 2019/20			3,044	
TOTAL ANNUAL BUDGET ALLOWANCE FOR FY 2019/20			\$268,820	

Note 1: Originally, this position was offered to City Employee Kun. Per August 8, 2019 email received from Kun, he has made the decision to go in a separate direction.

## CITY OF WEST COVINA, CITY ENGINEERING SERVICES ANNUAL HRS AND BUDGET ASSUMPTIONS

## BUDGET ALLOWANCE FOR CC AND TC MEETINGS AND STAFF REPORTS

BUDGET ALLOWANCE ASSUMPTION FOR CITY COUNCIL MEETINGS	Time Allocation for City Council Meetings (per 7-18-19 meeting with City Staff, assume attendance at all CC meetings)	CC meetings 24 attendance a year assumed	3 hrs/meeting average assumed	hrs Annual Hours estimated 72 (some of the TC items may be related to CIP projects or development projects for which City may collect fees from developers. Time spent at TC meetings related to CIP projects or development projects will be charged to those specific project budgets/fees)
	Time Allocation for CC Staff Report Preparation	3 per 7-18-19 meeting with City Staff, average number of reports related to City Engineering per CC meeting is assumed 3 hrs is allocated per Staff Report preparation 24 CC meetings attendance a year assumed 72 staff reports assumed per year		216
BUDGET ALLOWANCE ASSUMPTION FOR TRAFFIC COMMITTEE MEETINGS	Time Allocation for Traffic Committee Meetings attendance	TC meetings 12 attendance a year assumed	3 hrs/meeting average assumed	36 hrs Annual Hours estimated
	Time Allocation for CC Staff Report Preparation	2 Average number of reports related to City Engineering per TC meeting is assumed 1 hrs is allocated per Staff Report preparation per Meeting 12 TC meetings attendance a year assumed 12 Staff report is assumed per year		24 hrs Annual Hours estimated
		Total estimated Annual Hours		60
		Average estimated Billing Rate		\$140
Total estimated Annual Budget Allowance				\$8,400
TOTAL ANNUAL HOURS ALLOWANCE FOR FY 2019/20				348
TOTAL ANNUAL BUDGET ALLOWANCE FOR FY 2019/20				\$48,720



CITY OF WEST COVINA, CITY ENGINEERING SERVICES ANNUAL HRS AND BUDGET ASSUMPTIONS		
BUDGET ALLOWANCE FOR CIP RELATED ENGINEERING SOFT COSTS, SUCH AS PROJECT MANAGEMENT, DESIGN, CONSTRUCTION MANAGEMENT, INSPECTION, CONTRACT ADMINISTRATION, UTILITY COORDINATION, ETC.)		
CIP PROJECTS BASED ON PROJECT SPECIFIC SCOPE, BUDGET AND HOURLY RATES. ENGINEERING RELATED SOFT COSTS FOR CIP PROJECTS ARE GENERALLY IN THE RANGE OF 8 TO 12% FOR DESIGN PHASE, AND 10 TO 15% FOR CONSTRUCTION PHASE. (BASED 2019-20 BUDGET TOTAL CIP COST OF	\$1,093,822	SEE NEXT PAGES FOR CITY CIP AND SOFT COST BUDGET ALLOWANCE ESTIMATES FOR EACH PROJECT.
TOTAL ANNUAL BUDGET ALLOWANCE FOR FY 2019/20		\$1,093,822

2019-2020 CIP PROJECT LIST Page 331, CITY PRELIM BUDGET FY 2019-20					CIP SOFT COST BUDGET ALLOWANCE ESTIMATES (Note: The % ratios are estimates, and may change based on final project specific requirements and scope of work at the time the project is developed)									
NO	FUND NO.	FUND	PROJECT	BUDGET AMOUNT	SOFT COST ALLOWANCE			TOTAL SOFT COST			TOTAL CONSTRUCTION COST	PROJECT TOTAL	BUDGET TOTAL minus PROJECT TOTAL (This should be = \$0)	COMMENTS
					TRANSTECH		OTHER							
S-5	122		Prop C Bus Stop Enhancement Annual Program	\$25,000	10%	\$2,500	0%	\$0	\$2,500	11% OF CONSTRUCTION COST	\$22,500	\$25,000	\$0	
			TOTAL PROPOSITION C - 122	\$25,000		\$2,500			\$2,500		\$22,500	\$25,000	\$0	
S-1	124	GT	Pavement Management Plan Up-Date	\$75,000	10%	\$7,500	90%	\$67,500	\$75,000	#DIV/0! OF CONSTRUCTION COST	\$0	\$75,000	\$0	\$0 PMP REPORT. NO CONSTRUCTION INVOLVED
T-13	124	GT	Traffic Signal Battery Back-up Controller Replacement	\$80,000	5%	\$3,000	0%	\$0	\$3,000	5% OF CONSTRUCTION COST	\$77,000	\$80,000	\$0	
T-14	124	GT	Traffic Signal Battery Back-up Battery Replacement	\$30,000	5%	\$1,500	0%	\$0	\$1,500	5% OF CONSTRUCTION COST	\$28,500	\$30,000	\$0	
T-15	124	GT	Installation of Traffic Control Devices	\$30,000	5%	\$1,500	0%	\$0	\$1,500	5% OF CONSTRUCTION COST	\$28,500	\$30,000	\$0	
			TOTAL GAS TAX - 124	\$195,000		\$13,500		\$67,500	\$81,000		\$114,000	\$195,000	\$0	
S-3	128	TDA	Annual Concrete Sidewalk Installation/Replacement Program	\$70,000	10%	\$7,000	0%	\$0	\$7,000	11% OF CONSTRUCTION COST	\$63,000	\$70,000	\$0	
			TOTAL TRANSPORTATION DEVELOPMENT ACT - 128	\$70,000		\$7,000		\$0	\$7,000		\$63,000	\$70,000	\$0	
S-6	131	CDBG	Curb Access Ramp Programs	\$100,000	15%	\$15,000	0%	\$0	\$15,000	18% OF CONSTRUCTION COST	\$85,000	\$100,000	\$0	
			TOTAL COMMUNITY DEVELOPMENT GRANT PROGRAM - 131	\$100,000		\$15,000		\$0	\$15,000		\$85,000	\$100,000	\$0	
SD-1	160	CP	Update Housing Element	\$65,000	0%	\$0	100%	\$65,000	\$65,000	#DIV/0! OF CONSTRUCTION COST	\$0	\$65,000	\$0	
S-9	160	CP	Residential Street Rehabilitation Annual Program	\$567,148	15%	\$85,072	0%	\$0	\$85,072	18% OF CONSTRUCTION COST	\$482,076	\$567,148	\$0	
			TOTAL CAPITAL PROJECTS - 160	\$632,148		\$85,072		\$65,000	\$150,072		\$482,076	\$632,148	\$0	
G-8	161	CT	BKK Radio Tower Monitoring System	\$150,000	2%	\$3,000	13%	\$19,500	\$22,500	18% OF CONSTRUCTION COST	\$127,500	\$150,000	\$0	
			TOTAL CONSTRUCTION TAX - 161	\$150,000		\$3,000		\$19,500	\$22,500		\$127,500	\$150,000	\$0	
P-13	170	PDF A	Del Norte Park Restroom Improvements	\$30,000	5%	\$1,500	20%	\$6,000	\$7,500	33% OF CONSTRUCTION COST	\$22,500	\$30,000	\$0	
P-14	170	PDF A	Del Norte Park Repair Trash Enclosures	\$30,000	5%	\$1,500	20%	\$6,000	\$7,500	33% OF CONSTRUCTION COST	\$22,500	\$30,000	\$0	
			TOTAL PARK DEDICATION FEES "A" - 170	\$60,000		\$3,000		\$12,000	\$15,000		\$45,000	\$60,000	\$0	
P-29	171	PDF B	Palmview Park Repair Trash Enclosures	\$30,000	5%	\$1,500	20%	\$6,000	\$7,500	33% OF CONSTRUCTION COST	\$22,500	\$30,000	\$0	
			TOTAL PARK DEDICATION FEES "B" - 171	\$30,000		\$1,500		\$6,000	\$7,500		\$22,500	\$30,000	\$0	
P-25	172	PDF C	Orangewood Park Security Fencing	\$150,000	5%	\$7,500	10%	\$15,000	\$22,500	18% OF CONSTRUCTION COST	\$127,500	\$150,000	\$0	
P-26	172	PDF C	Orangewood Park Restroom Improvements	\$30,000	5%	\$1,500	10%	\$3,000	\$4,500	18% OF CONSTRUCTION COST	\$25,500	\$30,000	\$0	
			TOTAL PARK DEDICATION FEES "C" - 172	\$180,000		\$9,000		\$18,000	\$27,000		\$153,000	\$180,000	\$0	
P-8	174	PDF E	Corfiez Park - Repair Trash Enclosures	\$30,000	5%	\$1,500	10%	\$3,000	\$4,500	18% OF CONSTRUCTION COST	\$25,500	\$30,000	\$0	
P-9	174	PDF E	Corfiez Park - Repair Football Goal Posts	\$20,000	5%	\$1,000	10%	\$2,000	\$3,000	18% OF CONSTRUCTION COST	\$17,000	\$20,000	\$0	
			TOTAL PARK DEDICATION FEES "E" - 174	\$50,000		\$2,500		\$5,000	\$7,500		\$42,500	\$50,000	\$0	

2019-2020 CIP PROJECT LIST Page 331, CITY PRELIM BUDGET FY 2019-20					CIP SOFT COST BUDGET ALLOWANCE ESTIMATES (Note: The % ratios are estimates, and may change based on final project specific requirements and scope of work at the time the project is developed)									
NO	FUND NO.	FUND	PROJECT	BUDGET AMOUNT	SOFT COST ALLOWANCE			TOTAL SOFT COST			TOTAL CONSTRUCTION COST	PROJECT TOTAL	BUDGET TOTAL minus PROJECT TOTAL (This should be = \$0)	COMMENTS
					TRANSTECH		OTHER							
P-37	175	PDF F	Shadow Oak Park Restroom Improvements	\$30,000	5%	\$1,500	10%	\$3,000	18% OF CONSTRUCTION COST	\$4,500	\$25,500	\$30,000	\$0	
P-38	175	PDF F	Shadow Oak Park Repair Trash Enclosure	\$30,000	5%	\$1,500	10%	\$3,000	18% OF CONSTRUCTION COST	\$4,500	\$25,500	\$30,000	\$0	
			TOTAL PARK DEDICATION FEES "P" - 175	\$60,000		\$3,000		\$6,000		\$9,000	\$51,000	\$60,000	\$0	
P-16	177	PDF H	Friendship Park Replace Drinking Fountains	\$20,000	5%	\$1,000	10%	\$2,000	18% OF CONSTRUCTION COST	\$3,000	\$17,000	\$20,000	\$0	
P-17	177	PDF H	Friendship Park Repair Trash Enclosure	\$30,000	5%	\$1,500	10%	\$3,000	18% OF CONSTRUCTION COST	\$4,500	\$25,500	\$30,000	\$0	
			TOTAL PARK DEDICATION FEE "H" - 177	\$50,000		\$2,500		\$5,000		\$7,500	\$42,500	\$50,000	\$0	
P-42	183	CSS	Upgrade Landscaping based on Biologist Report	\$100,000	5%	\$5,000	10%	\$10,000	18% OF CONSTRUCTION COST	\$15,000	\$85,000	\$100,000	\$0	
			TOTAL Coast Scrub and Sage CIP - 183	\$100,000		\$5,000		\$10,000		\$15,000	\$85,000	\$100,000	\$0	
P-21	184	LMD-4	Tree thinning and shrub clearing	\$400,000	5%	\$20,000	10%	\$40,000	18% OF CONSTRUCTION COST	\$60,000	\$340,000	\$400,000	\$0	
P-22	184	LMD-4	Paseo Lighting Replacement/Repair	\$100,000	5%	\$5,000	10%	\$10,000	18% OF CONSTRUCTION COST	\$15,000	\$85,000	\$100,000	\$0	
			TOTAL MAINTENANCE DISTRICT 4 - 184	\$500,000		\$25,000		\$50,000		\$75,000	\$425,000	\$500,000	\$0	
U-1	189	Sewer	Replace/Upgrade pumps for City Hall Storm Water Lift Station	\$50,000	15%	\$7,500	0%	\$0	18% OF CONSTRUCTION COST	\$7,500	\$42,500	\$50,000	\$0	
U-2	189	Sewer	Upgrades to Sewer Lift Station at Police Department Building	\$600,000	15%	\$90,000	0%	\$0	18% OF CONSTRUCTION COST	\$90,000	\$510,000	\$600,000	\$0	
U-6	189	Sewer	Sewer Main Replacement - Portions of Glenview Rd, Michelle St, and Azusa Ave	\$1,450,000	15%	\$217,500	0%	\$0	18% OF CONSTRUCTION COST	\$217,500	\$1,232,500	\$1,450,000	\$0	
U-7	189	Sewer	Sewer Main Replacement - Portions of Azusa Ave	\$295,000	15%	\$44,250	0%	\$0	18% OF CONSTRUCTION COST	\$44,250	\$250,750	\$295,000	\$0	
U-8	189	Sewer	Sewer Main Replacement - Portion of Citrus St	\$230,000	15%	\$34,500	0%	\$0	18% OF CONSTRUCTION COST	\$34,500	\$195,500	\$230,000	\$0	
N-1	189	Sewer	Catch basin Trash Capture Device Installation Program	\$50,000	10%	\$5,000	0%	\$0	11% OF CONSTRUCTION COST	\$5,000	\$45,000	\$50,000	\$0	
			TOTAL SEWER FUND - 189	\$2,675,000		\$398,750		\$0		\$398,750	\$2,276,250	\$2,675,000	\$0	
S-11	224	Measure R	Implementation of green Streets Improvements	\$500,000	15%	\$75,000	0%	\$0	18% OF CONSTRUCTION COST	\$75,000	\$425,000	\$500,000	\$0	
T-1	224	Measure R	Merced / Sunset- Install Left-turn Phasing	\$190,000	15%	\$28,500	0%	\$0	18% OF CONSTRUCTION COST	\$28,500	\$161,500	\$190,000	\$0	
T-2	224	Measure R	Glendora / Merced - Install Left-turn Phasing	\$190,000	15%	\$28,500	0%	\$0	18% OF CONSTRUCTION COST	\$28,500	\$161,500	\$190,000	\$0	
T-3	224	Measure R	Merced / Valinda - Install Left-turn Phasing	\$25,000	15%	\$3,750	0%	\$0	18% OF CONSTRUCTION COST	\$3,750	\$21,250	\$25,000	\$0	
T-4	224	Measure R	La Puente Road / Forcades - New Traffic Signal Installation with City of Walnut	\$200,000	15%	\$30,000	0%	\$0	18% OF CONSTRUCTION COST	\$30,000	\$170,000	\$200,000	\$0	
			TOTAL MEASURE R - 224	\$1,105,000		\$165,750		\$0		\$165,750	\$939,250	\$1,105,000	\$0	
S-2	235	Measure M	Annual concrete sidewalk and curb and gutter repair program	\$180,000	15%	\$27,000	0%	\$0	18% OF CONSTRUCTION COST	\$27,000	\$153,000	\$180,000	\$0	
S-9	235	Measure M	Residential Street Rehabilitation Annual Program	\$500,000	15%	\$75,000	0%	\$0	18% OF CONSTRUCTION COST	\$75,000	\$425,000	\$500,000	\$0	
			TOTAL MEASURE M - 235	\$680,000		\$102,000		\$0		\$102,000	\$578,000	\$680,000	\$0	

2019-2020 CIP PROJECT LIST Page 331, CITY PRELIM BUDGET FY 2019-20										CIP SOFT COST BUDGET ALLOWANCE ESTIMATES (Note: The % ratios are estimates, and may change based on final project specific requirements and scope of work at the time the project is developed)									
NO	FUND NO.	FUND	PROJECT	BUDGET AMOUNT	SOFT COST ALLOWANCE			TOTAL SOFT COST			TOTAL CONSTRUCTION COST	PROJECT TOTAL	BUDGET TOTAL minus PROJECT TOTAL (This should be = \$0)	COMMENTS					
					TRANSTECH	OTHER													
T-3		Grant	Merced / Valinda - Install Left-Turn Phasing	\$165,000	15%	\$24,750	0%	\$0	\$24,750	18% OF CONSTRUCTION COST	\$140,250	\$165,000	\$0						
			TOTAL GRANT FUNDS	\$165,000		\$24,750		\$0	\$24,750		\$140,250	\$165,000	\$0						
S-S	227	SB-1	Residential Street Rehabilitation Annual Program	\$1,500,000	15%	\$225,000	0%	\$0	\$225,000	18% OF CONSTRUCTION COST	\$1,275,000	\$1,500,000	\$0						
			TOTAL SB-1 - 227	\$1,500,000		\$225,000		\$0	\$225,000		\$1,275,000	\$1,500,000	\$0						
			GRAND TOTAL	\$3,327,148		\$1,093,822		\$264,000	\$1,357,822		\$5,963,326	\$3,327,148	\$0						

CITY OF WEST COVINA, CITY ENGINEERING SERVICES ANNUAL HRS AND BUDGET ASSUMPTIONS		
BUDGET ALLOWANCE FOR PREPARATION (SIGNAL WARRANTS, STOP WARRANTS, SCHOOL SAFETY, TRAFFIC CALMING, LEVEL OF SERVICE, SPEED HUMP, ETC.). PER HRLY RATES BASED ON ACTUAL TIME AND MATERIAL		
TRAFFIC ENGINEERING FOR PREPARATION (SIGNAL WARRANTS, STOP WARRANTS, SCHOOL SAFETY, TRAFFIC CALMING, LEVEL OF SERVICE, SPEED HUMP, ETC.). PER HRLY RATES BASED ON ACTUAL TIME AND MATERIAL	\$75,000	
TOTAL ANNUAL BUDGET ALLOWANCE FOR FY 2019/20		\$75,000

CITY OF WEST COVINA, CITY ENGINEERING SERVICES ANNUAL HRS AND BUDGET ASSUMPTIONS		
BUDGET ALLOWANCE FOR DEVELOPMENT/ENCROACHMENT PLAN REVIEW, DEVELOPMENT INSPECTION. BASED ON % OF FEES COLLECTED BY THE CITY, AND/OR HRLY RATES		
DEVELOPMENT PLAN REVIEW.	\$25,000	
DEVELOPMENT INSPECTION.	\$25,000	
TOTAL ANNUAL BUDGET ALLOWANCE FOR FY 2019/20		\$50,000

CITY OF WEST COVINA, CITY ENGINEERING SERVICES ANNUAL HRS AND BUDGET ASSUMPTIONS		
BUDGET ALLOWANCE FOR TRAFFIC STUDY REVIEWS FOR DEVELOPMENT PROJECTS. BASED ON % OF FEES COLLECTED BY THE CITY, AND/OR HRLY RATES		
TRAFFIC STUDY REVIEWS FOR DEVELOPMENT PROJECTS.	\$25,000	
TOTAL ANNUAL BUDGET ALLOWANCE FOR FY 2019/20	\$25,000	

CITY OF WEST COVINA, CITY ENGINEERING SERVICES ANNUAL HRS AND BUDGET ASSUMPTIONS		
BUDGET ALLOWANCE FOR ALL OTHER SERVICES		
ALL OTHER SERVICES. BASED ON SPECIFIC SCOPE, BUDGET AND HOURLY RATES		PER HRLY BASIS
TOTAL ANNUAL BUDGET ALLOWANCE FOR FY 2019/20		PER HRLY BASIS



## TRANSTECH ENGINEERS, INC.

## SCHEDULE OF HOURLY RATES (submitted with the proposal to City)

Effective through June 30, 2020

ENGINEERING		CONSTRUCTION MANAGEMENT		BUILDING & SAFETY	
Field Technician	\$67	Labor Compliance Analyst	\$123	Permit Technician	\$62
Engineering Technician	\$82	Funds Coordinator	\$123	Building Inspector	\$87
Assistant CAD Drafter	\$97	Utility Coordinator	\$138	Senior Building Inspector	\$97
Senior CAD Drafter	\$118	Office Engineer	\$113	Plans Examiner/Checker	\$123
Associate Designer	\$123	Construction Inspector	\$118	Plan Check Engineer	\$133
Senior Designer	\$133	Senior Construction Inspector	\$133	CASp Plan Checker	\$144
Design Project Manager	\$164	Construction Manager	\$164	Deputy Building Official	\$133
Assistant Engineer	\$103	Resident Engineer	\$164	Building Official	\$144
Staff Engineer	\$128	PUBLIC WORKS INSPECTION		PLANNING	
Associate Civil Engineer	\$128	Public Works Inspector	\$118	Community Development Technician	\$62
Senior Civil Engineer	\$164	Senior Public Works Inspector	\$133	Planning Technician	\$62
Traffic Analyst Technician	\$82	Supervising PW Inspector	\$138	Assistant Planner	\$97
Associate Traffic Analyst	\$97	SURVEY AND MAPPING		Associate Planner	\$113
Senior Traffic Analyst	\$133	Survey Analyst	\$118	Senior Planner	\$123
Professional Transportation Planner	\$154	Senior Survey Analyst	\$123	Planning Manager	\$138
Traffic Engineer Technician	\$82	2 Man Survey Crew	\$287	Deputy Director	\$174
Associate Traffic Engineer	\$128	Survey & Mapping Specialist	\$164	Director	\$185
Traffic Engineer	\$144	Licensed Land Surveyor	\$179	ADMINISTRATIVE STAFF	
Senior Traffic Engineer	\$164	FUNDING & GRANT WRITING		Administrative/Clerical	\$62
Project Manager	\$154	Funds Analyst	\$103	Project Accountant	\$77
Senior Project Manager	\$164	Senior Funds Analyst	\$123		
Deputy City Engineer	\$144	Graphic & Rendering Designer	\$113		
Senior City Engineer	\$164	Grant Writer	\$123		
Principal Engineer	\$185	Funds & Grant Project Manager	\$154		

All fees are increased each year July 1st automatically by the percentage change Los Angeles-Long Beach-Anaheim California Consumer Price Index-All Urban Consumers ("CPI-U") for the preceding twelve-month period as calculated for February by the U.S. Department of Labor Bureau of Labor Statistics and published by the United States Bureau of Labor Statistic.

## Request for Taxpayer Identification Number and Certification

► Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

Give Form to the  
requester. Do not  
send to the IRS.

Print or type.  
See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. <b>TRANSTECH ENGINEERS, INC.</b>	
2 Business name/disregarded entity name, if different from above	
3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input checked="" type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____ Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. <input type="checkbox"/> Other (see instructions) ► _____	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ (Applies to accounts maintained outside the U.S.)
5 Address (number, street, and apt. or suite no.) See instructions. <b>13367 BENSON AVE.</b>	Requester's name and address (optional)
6 City, state, and ZIP code <b>CHINO, CA 91710</b>	
7 List account number(s) here (optional)	

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number								
			-			-		
or								
Employer identification number								
9	5	-	4	3	1	4	7	4 5

### Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ► <i>Joulynn Arila</i>	Date ► <i>6.7.2019</i>
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### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

### Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.



## Attachment A

**NON-COLLUSION DECLARATION TO BE EXECUTED BY  
BIDDER AND SUBMITTED WITH BID**

The undersigned declares:

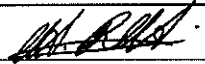
I am the Principal of TRANSTECH Engineers, Inc., the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on April 9, 2019 [date], at Chino [city], CA [state]."

Firm TRANSTECH Engineers, Inc.

  
(Signature)

Ahmad Ansari, PE, Principal

(Print Name & Title)

Street 13367 Benson Ave

City Chino State CA Zip 91710





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/15/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Dealey, Renton & Associates 790 E Colorado Blvd., #460 Pasadena, CA 91101 License #0020739	<b>CONTACT</b> NAME: Marie Swaney PHONE (A/C, No, Ext): 626-844-3070 E-MAIL: mswaney@dealeyrenton.com ADDRESS: mswaney@dealeyrenton.com	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> Transtech Engineers, Inc. 13367 Benson Ave. Chino, CA 91710 909 595-8599	INSURER A : Travelers Indemnity Co. of Connecticut	NAIC # 25682
	INSURER B : Travelers Property Casualty Co of Ameri	25674
	INSURER C : Hartford Casualty Insurance Co.	29424
	INSURER D : Berkley Insurance Company	32603
	INSURER E :	
	INSURER F :	

**COVERAGES**

CERTIFICATE NUMBER: 1719355198

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liab <input checked="" type="checkbox"/> XCU Included GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	6805H737478	12/31/2018	12/31/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NoOwnedAutos <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	BA4F174049	12/31/2018	12/31/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0	Y	Y	CUP4F17434A	12/31/2018	12/31/2019	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	72WEGAA508A	9/1/2019	9/1/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Professional Liability			AEC902574901	12/31/2018	12/31/2019	Per Claim 2,000,000 Annual Aggregate 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Insured owns no company vehicles; therefore, hired/non-owned auto is the maximum coverage that applies. Umbrella policy is follow-form to its underlying Policies: General Liability/Auto Liability/Employers Liability. Professional Liability is E&O Liability.  
RE: On-Call Traffic Eng Svcs & General Eng Svcs -- City of West Covina, The City, its officers, officials, employees, and volunteers are named as additional insured as respects general and auto liability as required per written contract or agreement. General Liability is Primary/Non-Contributory per policy form wording. Insurance coverage includes waiver of subrogation per the attached endorsement(s). Professional Liability policy is the only policy that has a deductible which is: \$50,000 per claim.

**CERTIFICATE HOLDER****CANCELLATION 30 Day Notice**

City of West Covina  
Attn: Risk Management  
1444 W. Garvey Ave, S.  
West Covina CA 91790

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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POLICY NUMBER: 6805H737478

COMMERCIAL GENERAL LIABILITY

ISSUED DATE: 8/15/2019

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

**Name of Person or Organization:**

Any person or organization that you agree in a written contract

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Condition (Section IV-COMMERCIAL GENERAL LIABILITY CONDITIONS) is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or

damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazards." This waiver applies only to the person or organization shown in the Schedule above.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**OTHER INSURANCE – ADDITIONAL INSURED –  
PRIMARY AND NON-CONTRIBUTORY WITH RESPECT TO  
CERTAIN OTHER INSURANCE**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

The following is added to Paragraph 4. a., **Primary Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

However, if you specifically agree in a written contract or agreement that the insurance afforded to an additional insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with that other insurance, provided that:

(1) The "bodily injury" or "property damage" for which coverage is sought is caused by an "occurrence" that takes place; and

(2) The "personal injury" or "advertising injury" for which coverage is sought arises out of an offense that is committed;

subsequent to the signing and execution of that contract or agreement by you.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BLANKET WAIVER OF SUBROGATION**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

The following replaces Paragraph A.5., **Transfer of Rights Of Recovery Against Others To Us**, of the **CONDITIONS** Section:

**5. Transfer Of Rights Of Recovery Against Others To Us**

We waive any right of recovery we may have against any person or organization to the extent

required of you by a written contract executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

**FIRST AMENDMENT TO  
CITY OF WEST COVINA  
PROFESSIONAL SERVICES AGREEMENT  
WITH  
WILLDAN ENGINEERING FOR BUILDING SERVICES**

This is the First Amendment to the Agreement dated September 6, 2019 between the **CITY OF WEST COVINA**, a municipal corporation, hereinafter referred to as "City" and, **WILLDAN ENGINEERING**, hereinafter referred to as "Contractor" ("Original Agreement") is made and entered into as of February 4, 2020. In consideration of the mutual promises and covenants contained herein, the parties hereto mutually agree as follow:

**SECTION 1. RECITALS.** This Agreement is made and entered into with respect to the following facts:

1. **WHEREAS**, the Original Agreement included compensation amount of \$940,000 and included a term of two years with three, one-year extensions.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

2. The Compensation and Billing shall be modified to clarify that Compensation (2.1) is \$940,000 annually for Building Services, \$4,700,000 over the life of the contract.
3. Except as herein amended, the terms and conditions of the Original Agreement, executed on September 6, 2019 shall remain in full force and effect.

[Signatures on following page.]



**IN WITNESS WHEREOF**, City and Contractor have executed this Second Amendment as of the date set forth above.

CITY OF WEST COVINA

WILLDAN:

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By: David Carmany  
City Manager

---

By: William C. Pagett  
Senior Vice President

---

By: Patrick Johnson  
Deputy Director of Building and Safety

APPROVED AS TO FORM:

---

Thomas Duarte  
City Attorney

ATTEST:

---

Lisa Sherrick  
Assistant City Clerk

**CITY OF WEST COVINA  
PROFESSIONAL SERVICES AGREEMENT  
WITH  
WILLDAN ENGINEERING  
FOR  
BUILDING AND SAFETY SERVICES**

THIS AGREEMENT is made and entered into this 6th day of September, 2019 ("Effective Date"), by and between the CITY OF WEST COVINA, a municipal corporation ("City"), and WILLDAN ENGINEERING, a California corporation ("Consultant").

**W I T N E S S E T H :**

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to City to provide building and safety services, as more fully described herein; and

B. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated within California Government Code Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated, except that if Consultant is required to but does not yet hold a City business license, it will promptly obtain a business license and will not provide services to the City until it has done so; and

C. WHEREAS, City and Consultant desire to contract for the specific services described in Exhibit "A" and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. WHEREAS, no official or employee of City has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

E. WHEREAS, Consultant responded to the City's Request for Proposals dated 4/18/19, incorporated via this reference as if fully set forth herein, and Consultant's response to the Request for Proposals was a material inducement to the City ultimately entering into this agreement.

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

**1.0. SERVICES PROVIDED BY CONSULTANT**

1.1. Scope of Services. Consultant shall provide the professional services described in the Scope of Services attached hereto as Exhibit "A," incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant's performance of this Agreement. Consultant shall keep itself informed of State and

Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. City Officers and employees shall not be liable at law or in equity for any claims or damages occurring as a result of failure of the Consultant to comply with this section.

1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to the reasonable satisfaction of the City. Evaluations of the work will be conducted by the City Manager or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;
- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement.

1.5. Non-discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical or mental disability, medical condition, genetic information, pregnancy, marital status, sex, gender, gender identity, gender expression, sexual orientation, or military or veteran status, except as permitted pursuant to Section 12940 of the Government Code.

1.6. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

1.8. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 *et seq.*).

Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

## **2.0. COMPENSATION AND BILLING**

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "B," attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant's total compensation shall not exceed nine hundred and forty thousand Dollars (\$ 940,000.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Scope of Services unless the City, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable. Should the City request in writing additional services that increase the "Scope of Services", an additional fee based upon the Consultant's standard hourly rates shall be paid to the Consultant for such additional services. Such increase in additional fees shall be limited to 25% of the total contract sum or to the maximum total contract amount of \$25,000, whichever is greater. The Department Head or City Manager is authorized to approve a Change Order for such additional services.

2.3. Method of Billing. Consultant may submit invoices to the City for approval on a progress basis, but no more often than once a month. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City for inspection and/or audit at mutually convenient times from the Effective Date until three (3) years after termination of this Agreement.

## **3.0. TIME OF PERFORMANCE**

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party. If a delay beyond the control of the Consultant is encountered, a time extension may be

mutually agreed upon in writing by the City and the Consultant. The Consultant shall present documentation satisfactory to the City to substantiate any request for a time extension.

#### 4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue through September 1, 2021, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. Thereafter, this Agreement may be extended for a maximum of three (3) successive one (1) year periods. Such extensions, if any, will be evidenced by a written amendment to this Agreement.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing at least fifteen (15) days prior written notice to Consultant. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City. If the City suspends, terminates or abandons a portion of this Agreement such suspension, termination or abandonment shall not make void or invalidate the remainder of this Agreement.

If the Consultant defaults in the performance of any of the terms or conditions of this Agreement, it shall have ten (10) days after service upon it of written notice of such default in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled to at law, in equity, or under this Agreement.

The City also shall have the right, notwithstanding any other provisions of this Agreement, to terminate this Agreement, at its option and without prejudice to any other remedy to which it may be entitled to at law, in equity, or under this Agreement, immediately upon service of written notice of termination on the Consultant, if the latter should:

- a. Be adjudged a bankrupt;
- b. Become insolvent or have a receiver of its assets or property appointed because of insolvency;
- c. Make a general assignment for the benefit of creditors;
- d. Default in the performance of any obligation or payment of any indebtedness under this Agreement;
- e. Suffer any judgment against it to remain unsatisfied or unbonded of record for thirty (30) days or longer; or
- f. Institute or suffer to be instituted any procedures for reorganization or rearrangement of its affairs.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the effective date of the City's written notice of termination, within forty-five (45) days after the effective date of the notice of termination or the final invoice of the Consultant, whichever occurs last. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of the effective date of the notice of termination, at no cost to City.

## **5.0. INSURANCE**

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company authorized to do business in California, with a current A.M. Best's rating of no less than A:VII, and approved by City:

- (a) Broad-form commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than Two Million Dollars (\$2,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per accident for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers for losses arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

By execution of this Agreement, the Consultant certifies as follows:

I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work.

The Consultant shall also comply with Section 3800 of the Labor Code by securing, paying for and maintaining in full force and effect for the duration of this Agreement, complete Workers' Compensation Insurance, and shall furnish a Certificate of Insurance to the City before execution of this Agreement by the City. The City, its officers and employees shall not be responsible for any claims in law or equity occasioned by failure of the consultant to comply with this section.

- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence or claim, and Two Million Dollars (\$2,000,000.00) aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retroactivity date shall be prior to the start of the contract work set forth herein. Consultant shall obtain and maintain said E&O liability insurance during the life of this Agreement and for five (5) years after completion of the work hereunder. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of this Agreement, Consultant shall purchase "extended reporting" coverage for a minimum of five (5) years after completion of the work.

If the Consultant maintains higher limits or has broader coverage than the minimums shown above, the City requires and shall be entitled to all coverage, and to the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

5.2. Endorsements. The insurance policies are to contain, or be endorsed to contain, the following provisions:

- (a) Additional Insureds: The City of West Covina and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant.
- (b) Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.
- (c) Primary Coverage: The Consultant's insurance coverage shall be primary insurance as respects the City of West Covina, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of West Covina shall be excess and not contributing with the insurance provided by this policy.
- (d) Waiver of Subrogation: Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
- (e) Coverage Not Affected: Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of West Covina, its officers, officials, agents, employees, and volunteers.



- (f) Coverage Applies Separately: The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. The City may require the Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

5.4. Certificates of Insurance. Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

5.5. Non-limiting. Nothing in this Section shall be construed as limiting in any way the indemnification provision contained in this Agreement.

## **6.0. GENERAL PROVISIONS**

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification.

6.2. Representatives. The City Manager or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Key Personnel. It is the intent of both parties to this Agreement that Consultant shall make available the professional services of Patrick Johnson, Building Official, who shall coordinate directly with City. Any substitution of key personnel must be approved in advance by City's Representative and the Agreement shall be amended to reflect the changes.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, Email or by U.S. mail. If by U.S. mail, it shall be addressed as set forth below and placed in a sealed envelope, postage prepaid, and deposited in the United States Postal Service. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by Email; and c) 72 hours after deposit in the U.S. Mail as reflected by the official U.S.

postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

Willdan Engineering  
13191 Crossroads Parkway North, Suite 405  
Industry, CA 91746-3443  
Tel: 562-908-6200  
Email: pjohnson@willdan.com  
Attn: Patrick Johnson

IF TO CITY:

City of West Covina  
1444 West Garvey Ave. South  
West Covina, CA 91790  
Tel: 626-939-8423  
Email: janderson@westcovina.org  
Attn: Jeff Anderson

6.5. Attorneys' Fees. If litigation is brought by any party in connection with this Agreement against another party, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.6. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Los Angeles County, California.

6.7. Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.8. Indemnification and Hold Harmless. Consultant agrees to defend, indemnify, hold free and harmless the City, its elected and appointed officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, demands, actions, suits or other legal proceedings brought against the City, its elected and appointed officials, officers, agents and employees arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the Consultant, its employees, and/or authorized subcontractors, in performing this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence, recklessness or willful misconduct of the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, recklessness, or willful misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected and appointed officials, officers, agents and employees based upon such negligence, recklessness, or willful misconduct, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained in the City's specifications, which shall be of no force and effect.

6.9. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.10. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.11. Cooperation. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

6.12. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents,

information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City. Consultant or Consultant's agents shall execute such documents as may be necessary from time to time to confirm City's ownership of the copyright in such documents.

6.13. Electronic Safeguards. Consultant shall identify reasonably foreseeable internal and external risks to the privacy and security of personal information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of the information. Consultant shall regularly assess the sufficiency of any safeguards and information security awareness training in place to control reasonably foreseeable internal and external risks, and evaluate and adjust those safeguards in light of the assessment.

6.14. Economic Interest Statement. Consultant hereby acknowledges that pursuant to Government Code Section 87300 and the Conflict of Interest Code adopted by City hereunder, Consultant is designated in said Conflict of Interest Code and is therefore required to file an Economic Interest Statement (Form 700) with the City Clerk, for each employee providing advice under this Agreement, prior to the commencement of work, unless waived by the City Manager.

6.15. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act of 1974 (Government Code Section 81000, *et seq.*) and Government Code Sections 1090-1092. Consultant covenants that none of Consultant's officers or principals have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of the services hereunder, including in any manner in violation of the Political Reform Act. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be used by Consultant as an officer, employee, agent, or subconsultant. Consultant further covenants that Consultant has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City and further covenants and agrees that Consultant and/or its subconsultants shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City prior to the completion of the work under this Agreement.

6.16. Prohibited Employment. Consultant will not employ any regular employee of City while this Agreement is in effect.

6.17. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

6.18. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.19. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental

beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.20. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.21. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.22. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.23. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.24. Counterparts and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement. Counterpart written signatures may be transmitted by facsimile, email or other electronic means and have the same legal effect as if they were original signatures.


6.25. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

6.26 Taxpayer Identification Number. Consultant shall provide City with a complete Request for Taxpayer Identification Number and Certification, Form W9, as issued by the Internal Revenue Service.

[SIGNATURE PAGE FOLLOWS]

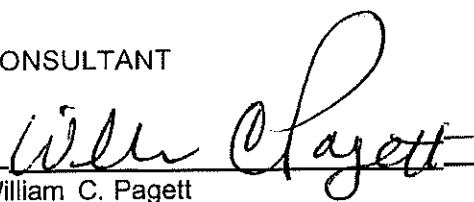
**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF WEST COVINA,  
A municipal corporation

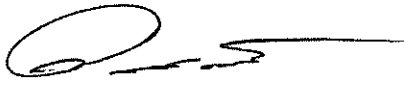
  
\_\_\_\_\_  
David N. Carmany  
City Manager

Date: 8-28-19

CONSULTANT

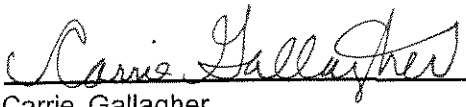
  
\_\_\_\_\_  
William C. Pagett  
Senior Vice President

Date: 8/20/19

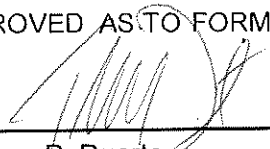
  
\_\_\_\_\_  
Patrick Johnson  
Director of Building and Safety

Date: 8/20/19

ATTEST:


  
\_\_\_\_\_  
Carrie Gallagher  
Assistant City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Thomas P. Duarte  
City Attorney

Date: 08/28/19

APPROVED AS TO INSURANCE:

  
\_\_\_\_\_  
Mike Bresciani  
Risk Management

Date: 8/28/19

Willdan Engineering

**EXHIBIT A**  
**SCOPE OF SERVICES**

## A. General Responsibilities

Under the direction of the Community Development Director, the selected firm would assume the responsibility for the operation of the Building and Safety Division and would provide the range of expertise necessary to carry out the normal and day-to-day activities and functions of the Division. This includes, but not limited to providing professional services in all the following areas: Building Official services, development review of new projects, counter assistance, plan checking, building code compliance, and "on-call" inspection services. It is the City's intent to select one (1) firm to provide the requested services.

The City of West Covina is committed to providing the most efficient and timely customer service possible to meet the needs of the community. The selected firm will be expected to provide excellent front-line customer services to the City's patrons, responding quickly and effectively to the walk-in, telephone, and electronic inquiries from the public related to Building and Safety services. The selected firm will be expected to work closely with all City departments and divisions and ensure that the appropriate requirements of those departments and divisions are incorporated in the Building and Safety Division's operating standards and processes.

## B. Building Official Services

The selected firm shall provide a highly qualified individual to serve as the City's Building Official. The Building Official shall oversee plan checking, building and grading inspections, building code compliance, and acts as an official City representative on building related matters. Service will include but are not limited to the following:

1. Quality control review of plan checks and inspections
2. Building Code updates and adoption
3. Resolution of resident inquiries and complaints
4. Building Official Administration, processing of complex Building Code issues and dispute resolution
5. Maintain and update the Building and Safety counter brochures and "hand-outs"
6. Monthly reporting of Building and Safety activities and annual reporting
7. Participate in pre-development review and provide comments
8. Attendance of pre-development review meetings
9. Processing of City Council staff reports (as needed)
10. Attendance at Planning Commission and City Council meetings (as needed)

The ideal proposal would include an International Code Council (ICC) Certified Building Official who is available to be at the City part-time (10 hours minimum) and as needed, has at least 5 years of Building Official experience, is customer-service oriented, and has experience with managing multiple tasks, assignments and responsibilities. The Building Official shall also be available on an as needed basis for questions and quality control of work during the time he/she is not at City Hall.



### C. Inspection Services

The selected firm shall provide a Building Inspector, acceptable to the Community Development Director, on an as needed/on-call basis to provide Building and Safety Services. Specific responsibilities include but are not limited to the following:

1. Inspection services (residential, commercial, and other nonresidential projects) for building code, accessibility, grading, building, electrical, mechanical, plumbing, etc.
2. Maintain permit forms and handout materials related to permit requirements and issuance
3. Handle project inquiries and resolve complaints
4. Maintain records and files concerning construction permits and building code administration (including documents for storage and/or imaging)

The ideal proposal would include an International Code Council (ICC) certified Building Inspector who is available to be at the City as needed/on-call, has at least 5 years of building inspection experience inspecting residential, commercial, and mixed-used buildings, has experience inspecting structural systems, has experience inspecting electrical systems, is customer-service oriented, and has experience with managing multiple tasks, assignments and responsibilities.

### D. Building Permit Technician Services

The selected firm shall provide a Building Permit Technician, acceptable to the Community Development Director, on an as needed/on-call basis to provide Building and Safety Services. Specific responsibilities include but are not limited to the following:

1. Reviews permit applications, calculate fees in accordance to established fee schedule, receive permit application/plans for plan check processing, and issue permits
2. Handle project inquiries and resolve complaints
3. Maintain records and files concerning construction permits and building code administration (including documents for storage and/or imaging)

The ideal proposal would include a Building Permit Technician who has at least 2 years of permit issuance experience in a municipal government department and responsible clerical experience requiring the application of policies and procedures.

### E. Plan Check Services

The selected firm shall provide qualified plan check professionals on as needed basis. The selected firm shall provide such personnel based on the volume of work and the City's expected plan check turn-around times as described in Section E below.

1. Plan checking includes code, accessibility, grading, erosion control, building, electrical, and plumbing work, etc. Fire code plan review will continue to be performed by the West Covina Fire Department.
2. Plan check monitoring, permit issuance for grading, building electrical, mechanical, and plumbing, etc.
3. Handle project inquiries and resolve complaints
4. Inspection services for code, accessibility, grading, building, electrical, mechanical and plumbing, etc. (as needed)

The ideal proposal would include an International Code Council (ICC) Certified California Building Plans Examiner with at least 5 years of plan check experience, committed to providing the most efficient, accurate and timely plan check services possible to meet the needs of the City, has previous City experiences, is customer-service oriented, and has experiences with successfully managing multiple tasks, assignments, and responsibilities. The plan checker may substitute for a portion of the required time the Building Official is available at City Hall.

#### F. Maximum Service Delivery Timeframes

The City has established the "Maximum Timeframes" for the delivery of Building and Safety Services. The selected firm shall provide adequate personnel, based on the level of development activity within any given time, to ensure that the following timeframes are met.

<b>Service</b>	<b>Timeframe for Delivery</b>
Major plan check such as new single-family house, multi-family residential, commercial and other non-residential project	10-15 business days
Subsequent & resubmitted plan checks; simple tenant improvements for non-residential buildings	5-10 business days
Minor plan checks such as room additions of single-family house, detached accessory structures, re-roofing, wall signs, swimming pools, etc.	3 business days or over the counter during a designated time period each day
Building inspection	As needed/On-call
Grading plan check for new construction	10-15 business days
Subsequent or resubmitted grading plan checks	5-10 business days
Grading inspection	As needed/On-call
Return of phone calls	Within 24 hours or next business day
Monthly accounting and reporting	Completed at the end of each month

The selected firm shall be responsible to ensure that all other Building and Safety duties and follow-up not specifically mentioned in the table above are performed in a timely

manner. The selected firm shall be responsible to ensure all personnel assigned to the City have sufficient on-going training to perform their assigned duties.

#### G. Emergency Response

In the event of a local or regional emergency or disaster, personnel provided by the selected firm shall be accessible, available, and prepared to provide Building and Safety services as directed by the City.

**EXHIBIT B**  
**FEE SCHEDULE**

## **Building and Safety Services**

Willdan will provide all services listed in scope of services for following percent of fees:

**70 %\* of net City monthly revenue.**

For completion of plan checks for which plan check fees were collected by the City prior the effective date of this contract, for open permits issued prior the effective date of this agreement, and for no fee plan checks and no fee permits such as City projects, Willdan provide Building and Safety Services for following hourly rates:

<b>Plan Check Examiner</b>	<b>\$115.00/hour</b>
<b>Plan Check Engineer</b>	<b>\$133.00/hour</b>
<b>Building Official</b>	<b>\$140.00/hour</b>
<b>Building Inspector</b>	<b>\$100.00/hour</b>
<b>Permit Technician</b>	<b>\$ 70.00/hour</b>

Upon adoption by the City Council and upon the effective of the new building and safety fees, Consultant's percent of fee compensation will be reduced to **50% of net City Monthly revenue.**

## Non-Collusion Affidavit (Attachment A)

Willdan has attached its signed, notarized Non-Collusion Affidavit (Attachment A) on the following pages.

## Attachment A

NON-COLLUSION DECLARATION TO BE EXECUTED BY  
BIDDER AND SUBMITTED WITH BID

The undersigned declares:

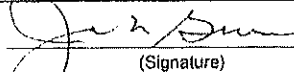
I am the <sup>Building and Safety,</sup> Director of Willdan Engineering, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on May 14, 2019 [date], at City of Industry [city], CA [state]."

Firm Willdan Engineering

  
(Signature)

James M. Guerra, Director of Building and Safety  
(Print Name & Title)

Street 13191 Crossroads Parkway North, Suite 405

City Industry State CA Zip 91746





# CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)  
08/21/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Aon Risk Insurance Services West, Inc. Los Angeles CA Office 707 Wilshire Boulevard Suite 2600 Los Angeles CA 90017-0460 USA	<b>CONTACT NAME:</b> <b>PHONE (A/C, No, Ext):</b> (866) 283-7122 <b>FAX (A/C, No.):</b> (800) 363-0105 <b>E-MAIL ADDRESS:</b>														
<b>INSURED</b> Willdan Engineering- Industry 2401 East Katella Avenue Suite 300 Anaheim CA 92806 USA	<table border="1"><thead><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr></thead><tbody><tr><td>INSURER A: Travelers Property Cas Co of America</td><td>25674</td></tr><tr><td>INSURER B: Lexington Insurance Company</td><td>19437</td></tr><tr><td>INSURER C:</td><td></td></tr><tr><td>INSURER D:</td><td></td></tr><tr><td>INSURER E:</td><td></td></tr><tr><td>INSURER F:</td><td></td></tr></tbody></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Travelers Property Cas Co of America	25674	INSURER B: Lexington Insurance Company	19437	INSURER C:		INSURER D:		INSURER E:		INSURER F:	
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INSURER D:															
INSURER E:															
INSURER F:															

**COVERAGES**

CERTIFICATE NUMBER: 570077919975

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Limits shown are as requested

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Employee Benefits Liability <input checked="" type="checkbox"/> Contractual Liability Included GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			P6307J366586TIL18	11/09/2018	11/09/2019	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$15,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY			P-810-73365332-TIL-18	11/09/2018	11/09/2019	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION			CUP9J5811041843	11/09/2018	11/09/2019	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	UB0L6636781843G	11/09/2018	11/09/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE-EA EMPLOYEE \$1,000,000 E.L. DISEASE-POLICY LIMIT \$1,000,000
B	Archit&Eng Prof			028174912 SIR applies per policy terms & conditions	11/09/2018	11/09/2019	Aggregate \$2,000,000 Per Claim \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The City of West Covina, and its elected and appointed boards, officers, officials, agents, employees, and volunteers are included as Additional Insured in accordance with the policy provisions of the General Liability and Automobile Liability policies. General Liability and Automobile Liability policies evidenced herein are Primary and Non-Contributory to other insurance available to Additional Insured, but only in accordance with the policy's provisions. A waiver of Subrogation is granted in favor of City in accordance with the policy provisions of the General Liability, Automobile Liability and Workers' Compensation policies.

**CERTIFICATE HOLDER****CANCELLATION**

City of West Covina Attn: Jeff Anderson 1444 West Garvey Ave, South West Covina CA 91790 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE  <i>Aon Risk Insurance Services West, Inc.</i>
---	--

Holder Identifier : ADFU

Certificate No : 570077919975



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BLANKET ADDITIONAL INSURED – WRITTEN CONTRACTS (ARCHITECTS, ENGINEERS AND SURVEYORS)**

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

**1. The following is added to SECTION II – WHO IS AN INSURED:**

Any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:

- a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
- b. If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies. The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

The insurance provided to such additional insured is limited as follows:

- c. In the event that the Limits of Insurance of this Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement shall not increase the limits of insurance described in Section III – Limits Of Insurance.
- d. This insurance does not apply to the rendering of or failure to render any "professional services" or construction management errors or omissions.
- e. This insurance does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured ap-

plies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.

**2. The following is added to Paragraph 4.a. of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

The insurance provided to the additional insured is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover. However, if you specifically agree in the "written contract requiring insurance" that this insurance provided to the additional insured under this Coverage Part must apply on a primary basis or a primary and non-contributory basis, this insurance is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured for such loss, and we will not share with that "other insurance". But this insurance provided to the additional insured still is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under any "other insurance".

**3. The following is added to SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

**Duties Of An Additional Insured**

As a condition of coverage provided to the additional insured:

- a. The additional insured must give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:



## COMMERCIAL GENERAL LIABILITY

- i. How, when and where the "occurrence" or offense took place;
  - ii. The names and addresses of any injured persons and witnesses; and
  - iii. The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against the additional insured, the additional insured must:
- i. Immediately record the specifics of the claim or "suit" and the date received; and
  - ii. Notify us as soon as practicable.
- The additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. The additional insured must immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
- d. The additional insured must tender the defense and indemnity of any claim or "suit" to

any provider of other insurance which would cover the additional insured for a loss we cover. However, this condition does not affect whether this insurance provided to the additional insured is primary to that other insurance available to the additional insured which covers that person or organization as a named insured.

4. The following is added to the **DEFINITIONS** Section:

"Written contract requiring insurance" means that part of any written contract or agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

- a. After the signing and execution of the contract or agreement by you;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

POLICY NUMBER: UB-01663678-18-43-G

## **WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

### **SCHEDULE**

**DESIGNATED PERSON:**

**DESIGNATED ORGANIZATION:**

ANY PERSON OR ORGANIZATION FOR WHICH THE INSURED HAS AGREED  
BY WRITTEN CONTRACT EXECUTED PRIOR TO LOSS TO FURNISH THIS  
WAIVER.

INCLUDING:

CONT.-JOB DESCRIPTION: PROFESSIONAL SERVICES FOR CITY  
ENGINEERING AND TRAFFIC ENGINEERING SERVICES.



WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 99 03 76 ( A ) - 002

POLICY NUMBER: UB-0L663678-18-43-G

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS  
ENDORSEMENT – CALIFORNIA  
(BLANKET WAIVER)**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

The additional premium for this endorsement shall be 2.00 % of the California workers' compensation premium.

**Schedule**

**Person or Organization**

**Job Description**

ANY PERSON OR ORGANIZATION FOR  
WHICH THE INSURED HAS AGREED  
BY WRITTEN CONTRACT EXECUTED  
PRIOR TO LOSS TO FURNISH THIS  
WAIVER.

INCLUDING:

CONT.-JOB DESCRIPTION:  
PROFESSIONAL SERVICES FOR CITY  
ENGINEERING AND TRAFFIC  
ENGINEERING SERVICES.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective  
Insured

Policy No.

Endorsement No.  
Premium

Insurance Company

Countersigned by \_\_\_\_\_

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BUSINESS AUTO EXTENSION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **BUSINESS AUTO COVERAGE FORM**

**GENERAL DESCRIPTION OF COVERAGE** – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- |   |   |
|---|---|
| <b>A. BROAD FORM NAMED INSURED</b>                                  | <b>H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT</b>  |
| <b>B. BLANKET ADDITIONAL INSURED</b>                                | <b>I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT</b> |
| <b>C. EMPLOYEE HIRED AUTO</b>                                       | <b>J. PERSONAL PROPERTY</b>   |
| <b>D. EMPLOYEES AS INSURED</b>                                      | <b>K. AIRBAGS</b>   |
| <b>E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS</b>                 | <b>L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS</b>                    |
| <b>F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS</b> | <b>M. BLANKET WAIVER OF SUBROGATION</b>                               |
| <b>G. WAIVER OF DEDUCTIBLE – GLASS</b>                              | <b>N. UNINTENTIONAL ERRORS OR OMISSIONS</b>                           |

### **PROVISIONS**

#### **A. BROAD FORM NAMED INSURED**

The following is added to Paragraph A.1., **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any organization you newly acquire or form during the policy period over which you maintain 50% or more ownership interest and that is not separately insured for Business Auto Coverage. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

#### **B. BLANKET ADDITIONAL INSURED**

The following is added to Paragraph c. in A.1., **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which

this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

#### **C. EMPLOYEE HIRED AUTO**

1. The following is added to Paragraph A.1., **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. The following replaces Paragraph b. in B.5., **Other Insurance**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your

## COMMERCIAL AUTO

permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

### D. EMPLOYEES AS INSURED

The following is added to Paragraph A.1., **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

### E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

1. The following replaces Paragraph A.2.a.(2), of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

(2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

2. The following replaces Paragraph A.2.a.(4), of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

### F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS

The following replaces Subparagraph (5) in Paragraph B.7., **Policy Period, Coverage Territory**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

(5) Anywhere in the world, except any country or jurisdiction while any trade sanction, embargo, or similar regulation imposed by the United States of America applies to and prohibits the transaction of business with or within such country or jurisdiction, for Covered Autos Liability Coverage for any covered "auto" that you lease, hire, rent or borrow without a driver for a period of 30 days or less and that is not an "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.

(a) With respect to any claim made or "suit" brought outside the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada:

(i) You must arrange to defend the "insured" against, and investigate or settle any such claim or "suit" and keep us advised of all proceedings and actions.

(ii) Neither you nor any other involved "insured" will make any settlement without our consent.

(iii) We may, at our discretion, participate in defending the "insured" against, or in the settlement of, any claim or "suit".

(iv) We will reimburse the "insured" for sums that the "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, that the "insured" pays with our consent, but only up to the limit described in Paragraph C., **Limits Of Insurance**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**.

(v) We will reimburse the "insured" for the reasonable expenses incurred with our consent for your investigation of such claims and your defense of the "insured" against any such "suit", but only up to and included within the limit described in Paragraph C., **Limits Of Insurance**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, and not in addition to such limit. Our duty to make such payments ends when we have used up the applicable limit of insurance in payments for damages, settlements or defense expenses.

(b) This insurance is excess over any valid and collectible other insurance available to the "insured" whether primary, excess, contingent or on any other basis.

(c) This insurance is not a substitute for required or compulsory insurance in any country outside the United States, its territories and possessions, Puerto Rico and Canada.

You agree to maintain all required or compulsory insurance in any such country up to the minimum limits required by local law. Your failure to comply with compulsory insurance requirements will not invalidate the coverage afforded by this policy, but we will only be liable to the same extent we would have been liable had you complied with the compulsory insurance requirements.

- (d) It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and possessions, Puerto Rico and Canada. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to insurance.

#### **G. WAIVER OF DEDUCTIBLE – GLASS**

The following is added to Paragraph D., **Deductible**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

#### **H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT**

The following replaces the last sentence of Paragraph A.4.b., **Loss Of Use Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

However, the most we will pay for any expenses for loss of use is \$65 per day, to a maximum of \$750 for any one "accident".

#### **I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT**

The following replaces the first sentence in Paragraph A.4.a., **Transportation Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

#### **J. PERSONAL PROPERTY**

The following is added to Paragraph A.4., **Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

##### **Personal Property**

We will pay up to \$400 for "loss" to wearing apparel and other personal property which is:

- (1) Owned by an "insured"; and

- (2) In or on your covered "auto".

This coverage applies only in the event of a total theft of your covered "auto".

No deductibles apply to this Personal Property coverage.

#### **K. AIRBAGS**

The following is added to Paragraph B.3., **Exclusions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Exclusion 3.a. does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs A.1.b. and A.1.c., but only:

- a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
- b. The airbags are not covered under any warranty; and
- c. The airbags were not intentionally inflated.

We will pay up to a maximum of \$1,000 for any one "loss".

#### **L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS**

The following is added to Paragraph A.2.a., of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

- (a) You (if you are an individual);
- (b) A partner (if you are a partnership);
- (c) A member (if you are a limited liability company);
- (d) An executive officer, director or insurance manager (if you are a corporation or other organization); or
- (e) Any "employee" authorized by you to give notice of the "accident" or "loss".

#### **M. BLANKET WAIVER OF SUBROGATION**

The following replaces Paragraph A.5., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

##### **5. Transfer Of Rights Of Recovery Against Others To Us**

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract signed and executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by

## COMMERCIAL AUTO

such contract. The waiver applies only to the person or organization designated in such contract.

### **N. UNINTENTIONAL ERRORS OR OMISSIONS**

The following is added to Paragraph B.2., **Concealment, Misrepresentation, Or Fraud**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**DESIGNATED INSURED FOR LIABILITY COVERAGE –  
PRIMARY AND NON-CONTRIBUTORY  
WITH OTHER INSURANCE**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM**

**SCHEDULE OF ADDITIONAL INSURED PERSONS OR ORGANIZATIONS**

**AS PER WRITTEN CONTRACT OR AGREEMENT**

**PROVISIONS**

1. The following is added to Paragraph c. in A.1., **Who Is An Insured**, of **SECTION II – LIABILITY COVERAGE**:

This includes any person or organization designated in the Schedule Of Additional Insured Persons Or Organizations who you are required under a written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to name as an additional insured for Liability Coverage, but only for damages to which this insurance applies and only to the extent of that designated person's or organization's liability for the conduct of another "insured".

2. The following is added to Paragraph 5., **Other Insurance**, in B., **General Conditions**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Regardless of the provisions of paragraph a. and paragraph d. of this part 5. **Other Insurance**, this insurance is primary to and non-contributory with applicable other insurance under which the person or organization designated in the Schedule Of Additional Insured Persons Or Organizations is the first named insured when the written contract or agreement between you and that designated person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, requires this insurance to be primary and non-contributory.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **DESIGNATED ENTITY – NOTICE OF CANCELLATION PROVIDED BY US**

This endorsement modifies insurance provided under the following:

ALL COVERAGE PARTS INCLUDED IN THIS POLICY

### **SCHEDULE**

**CANCELLATION:**

Number of Days Notice of Cancellation: 30 Days

**PERSON OR  
ORGANIZATION:**

As Per Written Contract or Agreement

**ADDRESS:**

### **PROVISIONS:**

If we cancel this policy for any statutorily permitted reason other than nonpayment of premium, and a number of days is shown for cancellation in the schedule above, we will mail notice of cancellation to the person or organization shown in the schedule

above. We will mail such notice to the address shown in the schedule above at least the number of days shown for cancellation in the schedule above before the effective date of cancellation.





## AGENDA STAFF REPORT

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City of West Covina | Office of the City Manager

**DATE:** February 4, 2020

**TO:** Mayor and City Council

**FROM:** David Carmany  
City Manager

**SUBJECT: CONSIDERATION OF AGREEMENT WITH NICHOLS CONSULTING ENGINEERS, CHTD. TO UPDATE THE CITYWIDE PAVEMENT MANAGEMENT PROGRAM (CITY PROJECT NO. 20003)**

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### RECOMMENDATION:

It is recommended that the City Council:

1. Approve a Professional Services Agreement with Nichols Consulting Engineers, Chtd. (NCE) in the amount of \$67,500 to update the City's Pavement Management Program (PMP); and
2. Authorize the City Manager to execute the agreement.

### BACKGROUND:

Adequate street maintenance is necessary to protect the original investment in the asset and to furnish maximum service to the users. To delay maintenance work will hasten the day when an entirely new paving job will be necessary. Maintenance work should therefore be given as much consideration as new construction, and the material used should be selected with the same caution as if it were intended for a new pavement. Maintenance is a continuous process requiring a rational system by which needs are addressed. A pavement management program provides a formal systematic approach to assessing, monitoring, and managing the condition of highway pavements in the most cost-effective manner.

### DISCUSSION:

In order to receive Federal funding for street rehabilitation projects, it is mandated that every mile of eligible Federal-Aid highway within the City (major arterials) be managed with a Pavement Management Program (PMP). Eligibility for State Proposition C funding also requires that a PMP be implemented and updated every three years. The results of the study help determine the most appropriate locations and the optimum approach to pavement rehabilitation.

A basic PMP involves dividing the City's street network into segments of approximately one-block lengths. The segments are evaluated by counting the number of cracks, measuring the size and type of cracking and collecting other pavement surface information. The measurements are analyzed mathematically and each segment is given a condition rating number (between 0 and 100) that is used to rank the streets in the order of their conditions. Combined with data on traffic volumes and pavement thicknesses, the program processes the condition data and produces recommendations for which streets to repair, in what order, the optimum method of repair, and the estimated costs. The information is used to prioritize and schedule street rehabilitation through the long range Capital Improvement Program (CIP) and budget process. Local streets are also monitored and managed by the PMP.

The last comprehensive update of the City's PMP was completed in August 2015 by Nichols Consulting Engineers, Chtd. (NCE). The PMP document presents findings and recommendations from a pavement condition survey of City's street network including pavement condition summaries, preservation and repair activities, and projected budgets for those activities. On November 7, 2019, staff issued Request for Proposals for the Citywide Pavement Management Program – 2019 Update.

On December 2, 2019, staff received proposals from two consulting firms:

Consultant	Location
IMS Infrastructure Management Services	Tempe, AZ
Nicholas Consulting Engineers, Chtd. (NCE)	Fountain Valley, CA

The proposals were reviewed by staff for completeness, relevant experience, scope of services provided, qualifications of proposed project team, proposed schedule and cost-effectiveness. After review, staff determined that the proposal from NCE was the most comprehensive and demonstrated the best understanding of the information and recommendations to be included in the PMP update. NCE has extensive experience in developing and implementing pavement management programs for over 200 municipalities in California, including the neighboring cities of Buena Park, Commerce, Corona, Diamond Bar, La Habra, San Dimas, San Gabriel and Whittier. NCE has also completed the latest PMP update for the City of West Covina in 2015 and thus is familiar with the City's street network and existing street saver database.

NCE's original proposal to complete the 2019 update was \$72,350; however, staff was able to negotiate their fee down to \$67,500 without any changes in their scope of services. Staff is recommending that the City Council approve a professional services agreement with NCE in the amount of \$67,500 to update the City's PMP.

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### **Fiscal Impact**

#### **FISCAL IMPACT:**

The total approved budget for this project is \$75,000 with funding coming from Gas Tax (Account No. 20003.124.7200). There are sufficient funds available in this account to cover NCE's contract amount and no General Fund monies will be used for the contract.

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### **Attachments**

Attachment No. 1 - Professional Services Agreement with NCE

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**CITY COUNCIL GOALS & OBJECTIVES:** Enhance City Facilities and Infrastructure  
Enhance the City Image and Effectiveness  
Enhance Public Safety

**CITY OF WEST COVINA  
PROFESSIONAL SERVICES AGREEMENT  
WITH  
NICHOLS CONSULTING ENGINEERS, CHTD.  
FOR  
THE CITYWIDE PAVEMENT MANAGEMENT PROGRAM – 2019 UPDATE**

THIS AGREEMENT is made and entered into this 4th day of February, 2020 ("Effective Date"), by and between the CITY OF WEST COVINA, a municipal corporation ("City"), and "NICHOLS CONSULTING ENGINEERS, CHTD.", a Nevada Corporation ("Consultant").

**W I T N E S S E T H :**

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to City to update the Citywide Pavement Management Program, as more fully described herein; and

B. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated within California Government Code Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated, except that if Consultant is required to but does not yet hold a City business license, it will promptly obtain a business license and will not provide services to the City until it has done so; and

C. WHEREAS, City and Consultant desire to contract for the specific services described in Exhibit "A" and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. WHEREAS, no official or employee of City has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

E. WHEREAS, Consultant responded to the City's Request for Proposals dated November 7, 2019, incorporated via this reference as if fully set forth herein, and Consultant's response to the Request for Proposals was a material inducement to the City ultimately entering into this agreement.

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

**1.0. SERVICES PROVIDED BY CONSULTANT**

1.1. Scope of Services. Consultant shall provide the professional services described in the Scope of Services attached hereto as Exhibit "A," incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect

Consultant's performance of this Agreement. Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. City officers and employees shall not be liable at law or in equity for any claims or damages occurring as a result of failure of the Consultant to comply with this section.

1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to the reasonable satisfaction of the City. Evaluations of the work will be conducted by the City Manager or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;
- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement.

1.5. Non-discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical or mental disability, medical condition, genetic information, pregnancy, marital status, sex, gender, gender identity, gender expression, sexual orientation, or military or veteran status, except as permitted pursuant to Section 12940 of the Government Code.

1.6. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

1.8 Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required

by the California Public Records Act (California Government Code Section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in California Government Code Section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the court.

## **2.0. COMPENSATION AND BILLING**

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "B," attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant's total compensation shall not exceed Sixty Seven Thousand Five Hundred Dollars (\$67,500.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services unless the City, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable. Should the City request in writing additional services that increase the Scope of Services, an additional fee based upon the Consultant's standard hourly rates shall be paid to the Consultant for such additional services. Such increase in additional fees shall be limited to 25% of the total contract sum or to the maximum total contract amount of \$25,000, whichever is greater. The Department Head or City Manager is authorized to approve a Change Order for such additional services.

2.3. Method of Billing. Consultant may submit invoices to the City for approval on a progress basis, but no more often than once a month. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City for inspection and/or audit at mutually convenient times from the Effective Date until three (3) years after the termination or expiration of this Agreement.

## **3.0. TIME OF PERFORMANCE**

3.1. Commencement and Completion of Work. Unless otherwise agreed to by the parties, the professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Said services shall be performed in strict compliance with the Project Schedule approved by City as set forth in Exhibit "C," attached hereto and incorporated herein by this reference. The Project Schedule may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of

performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party. If a delay beyond the control of the Consultant is encountered, a time extension may be mutually agreed upon in writing by the City and the Consultant. The Consultant shall present documentation satisfactory to the City to substantiate any request for a time extension.

#### **4.0. TERM AND TERMINATION**

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of twelve months, ending on February 4, 2021, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing at least fifteen (15) days prior written notice to Consultant. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City. If the City suspends, terminates or abandons a portion of this Agreement such suspension, termination or abandonment shall not make void or invalidate the remainder of this Agreement.

If the Consultant defaults in the performance of any of the terms or conditions of this Agreement, it shall have ten (10) days after service upon it of written notice of such default in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled to at law, in equity, or under this Agreement.

The City also shall have the right, notwithstanding any other provisions of this Agreement, to terminate this Agreement, at its option and without prejudice to any other remedy to which it may be entitled to at law, in equity, or under this Agreement, immediately upon service of written notice of termination on the Consultant, if the latter should:

- a. Be adjudged a bankrupt;
- b. Become insolvent or have a receiver of its assets or property appointed because of insolvency;
- c. Make a general assignment for the benefit of creditors;
- d. Default in the performance of any obligation or payment of any indebtedness under this Agreement;
- e. Suffer any judgment against it to remain unsatisfied or unbonded of record for thirty (30) days or longer; or
- f. Institute or suffer to be instituted any procedures for reorganization or rearrangement of its affairs.

4.3. Compensation. In the event of termination, City shall pay Consultant for



reasonable costs incurred and professional services satisfactorily performed up to and including the effective date of the City's written notice of termination, within forty-five (45) days after the effective date of the notice of termination or the final invoice of the Consultant, whichever occurs last. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of the effective date of the notice of termination, at no cost to City.

## **5.0. INSURANCE**

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, with a current A.M. Best's rating of no less than A:VII, and approved by City:

- (a) Broad-form commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than Two Million Dollars (\$2,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per accident for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers for losses arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

By execution of this Agreement, the Consultant certifies as follows:

I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work.

The Consultant shall also comply with Section 3800 of the Labor Code by securing, paying for and maintaining in full force and effect for the duration

of this Agreement, complete Workers' Compensation Insurance, and shall furnish a Certificate of Insurance to the City before execution of this Agreement by the City. The City, its officers and employees shall not be responsible for any claims in law or equity occasioned by failure of the consultant to comply with this section.

- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence or claim, and Two Million Dollars (\$2,000,000.00) aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retroactivity date shall be prior to the start of the work set forth herein. Consultant shall obtain and maintain said E&O liability insurance during the life of this Agreement and for five (5) years after completion of the work hereunder. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of this Agreement, Consultant shall purchase "extended reporting" coverage for a minimum of five (5) years after completion of the work.

If the Consultant maintains higher limits or has broader coverage than the minimums shown above, the City requires and shall be entitled to all coverage, and to the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

5.2. Endorsements. The insurance policies are to contain, or be endorsed to contain, the following provisions:

- (a) Additional Insureds: The City of West Covina and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant.
- (b) Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.
- (c) Primary Coverage: The Consultant's insurance coverage shall be primary insurance as respects the City of West Covina, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of West Covina shall be excess and not contributing with the insurance provided by this policy.
- (d) Waiver of Subrogation: Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of

whether or not the City has received a waiver of subrogation endorsement from the insurer.

- (e) Coverage Not Affected: Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of West Covina, its officers, officials, agents, employees, and volunteers.
- (f) Coverage Applies Separately: The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. The City may require the Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

5.4. Certificates of Insurance. Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

5.5. Non-limiting. Nothing in this Section shall be construed as limiting in any way the indemnification provision contained in this Agreement.

## **6.0. GENERAL PROVISIONS**

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification.

6.2. Representatives. The City Manager or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Key Personnel. It is the intent of both parties to this Agreement that Consultant shall make available the professional services of Charlene Palmer, Principal, who shall coordinate directly with City. Any substitution of key personnel must be approved in advance in writing by City's Representative.

6.4. Notices. Any notices, documents, correspondence or other communications

concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile, Email or by U.S. mail. If by U.S. mail, it shall be addressed as set forth below and placed in a sealed envelope, postage prepaid, and deposited in the United States Postal Service. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile or by Email; and c) 72 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

Nichols Consulting Engineers, Chtd.  
17050 Bushard Street, Suite #200  
Fountain Valley, CA 92708  
Tel: (714) 848-8897  
Email: [cpalmer@nce.net](mailto:cpalmer@nce.net)  
Attn: Charlene Palmer

IF TO CITY:

City of West Covina  
1444 West Garvey Ave. South  
West Covina, CA 91790  
Tel: (626) 939-8422  
Email: [janderson@westcovina.org](mailto:janderson@westcovina.org)  
Attn: Jeff Anderson

6.5. Attorneys' Fees. If litigation is brought by any party in connection with this Agreement against another party, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.6. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Los Angeles County, California.

6.7. Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.8. Indemnification and Hold Harmless. Consultant agrees to defend, indemnify, hold free and harmless the City, its elected and appointed officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, demands, actions, suits or other legal proceedings brought against the City, its elected and appointed officials, officers, agents and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected and appointed officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or

otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

6.9. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.10. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.11. Cooperation. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

6.12. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any

use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other related items as requested by City or its authorized representative, at no additional cost to the City. Consultant or Consultant's agents shall execute such documents as may be necessary from time to time to confirm City's ownership of the copyright in such documents.

6.13. Electronic Safeguards. Contractor shall identify reasonably foreseeable internal and external risks to the privacy and security of personal information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of the information. Contractor shall regularly assess the sufficiency of any safeguards and information security awareness training in place to control reasonably foreseeable internal and external risks, and evaluate and adjust those safeguards in light of the assessment.

6.14. Economic Interest Statement. Consultant hereby acknowledges that pursuant to Government Code Section 87300 and the Conflict of Interest Code adopted by City, Consultant is designated in said Conflict of Interest Code and is therefore required to file an Economic Interest Statement (Form 700) with the City Clerk, for each employee providing advice under this Agreement, prior to the commencement of work, unless waived by the City Manager.

6.15. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act of 1974 (Government Code Section 81000, *et seq.*) and Government Code Sections 1090-1092. Consultant covenants that none of Consultant's officers or principals have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of the services hereunder, including in any manner in violation of the Political Reform Act. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be used by Consultant as an officer, employee, agent, or subconsultant. Consultant further covenants that Consultant has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City and further covenants and agrees that Consultant and/or its subconsultants shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City prior to the completion of the work under this Agreement.

6.16. Prohibited Employment. Consultant will not employ any regular employee of City while this Agreement is in effect.

6.17. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

6.18. Costs. Each party shall bear its own costs and fees incurred in the preparation

and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.19. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.20. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.21. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.22. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.23. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.24. Counterparts and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement. Counterpart written signatures may be transmitted by facsimile, email or other electronic means and have the same legal effect as if they were original signatures.

6.25. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

6.26 Taxpayer Identification Number. Consultant shall provide City with a complete Request for Taxpayer Identification Number and Certification, Form W9, as issued by the Internal Revenue Service.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF WEST COVINA,  
A municipal corporation

\_\_\_\_\_  
David Carmany  
City Manager

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

**NICHOLS CONSULTING ENGINEERS, CHTD.**  
Nevada Corporation

\_\_\_\_\_  
*Charlene R Palmer*  
Signature

Date: 1/29/2020

\_\_\_\_\_  
Charlene R Palmer, Principal  
Name and Title

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Name and Title

ATTEST:

\_\_\_\_\_  
Lisa Sherrick  
Assistant City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Thomas P. Duarte  
City Attorney

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

APPROVED AS TO INSURANCE:

\_\_\_\_\_  
Helen Tran  
Risk Management

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



## **EXHIBIT A**

### **SCOPE OF SERVICES**

The following is a general outline of the scope of work to be provided by the Consultant. While it is believed that this scope includes all elements essential to complete the 2019 update, proposing firms are advised to include any items that they believe may be necessary to complete the project. Proposing firms may also note any required items that they believe may be excessive or unnecessary. The cost of such items should be separately noted in their proposals. Services required to complete this update shall include:

1. Meet with City staff to finalize scope of work, establish key personnel, review project schedule and address any issues.
2. Review all maintenance and rehabilitation activities conducted by the City since the last PMP update. Update database to include all street segments and alleys that have been rehabilitated since 2015. City staff will provide a hardcopy of list of streets and alleys reconstructed, overlaid or slurry sealed since 2015.
3. Conduct a comprehensive visual pavement condition (walking surveys) of all streets and alleys in the City (excluding private streets). These are performed with one-person crews (for high volume streets like expressways or major arterials, two-person crews may be needed for safety). The major advantage of this survey method is that it is more accurate than Wind Shield Surveys, since cracks and all other pavement distresses are measured and recorded. Pavement condition surveys shall be performed in accordance with the established standards as identified by ASTM D-6433.

The City has approximately 176 centerline miles of local streets and alleys, 42 centerline miles of arterial highways and 27 centerline miles of collector streets. The survey shall include the following information: alligator cracking, block cracking, distortions, longitudinal and transverse cracking, patching and utility cuts, rutting, depressions, weathering, and raveling.

Automated distress surveys and semi-automated distress surveys will be considered. This involves the utilization of video enhanced laser RST, which includes the use of lasers, video imaging and trained operator input. The survey will involve rating 100% of the roadway surface. Only one survey method shall be allowed to perform this task. The survey methods are not interchangeable. The selected consultant shall be responsible for providing all man power needed and all equipment necessary. Beside that, the consultant shall submit a Quality Control Plan and be prepared to discuss this at the pre-data collection meeting. This plan shall describe the measures used by the consultant to guarantee accuracy and repeatability.

4. Update and develop PMP to provide the following output:
  - a. Pavement Inventory. Inventory shall include segments of streets arranged continuously from west to east and from south to north.
  - b. Pavement Condition Index (PCI) per segment and overall.
  - c. Identification of all segments and Improvement Strategies for each segment.
  - d. Cost-Benefit Analyses to identify treatments and budget needs.
  - e. Priority Listing.
  - f. GIS layer or AutoCAD based map showing PCI's and proposed rehabilitation program over the next 7 years.

5. City's current PMP is Street Saver Online (<https://www.streetsaver.com/>). Consultant shall be qualified to use and update City's Street Saver online database.
6. Prepare a Pavement Condition Report that identifies the present condition of the pavement and future performance for the next seven years based on performance prediction modeling and local conditions. It shall identify the form, condition and causes of pavement failure (if possible). The report shall integrate and incorporate into its analysis the surface distress, roughness, rut, raveling condition, crack condition, drainage condition, utility cuts, street sections, functional classification, ride quality, traffic volume, overall condition rating, etc.
7. Prepare a Pavement Improvement Report indicating maintenance and rehabilitation (M&R) strategies necessary to achieve the desired level of serviceability. The consultant shall recommend strategies and unit costs based on local conditions and explain advantages and disadvantages of each strategy. The report shall make provisions for simultaneously analyzing the effectiveness of numerous M&R strategies including preventive and corrective maintenance, recycling alternatives, and surface and base reconstruction.
8. Prepare a Priority Listing indicating pavements in order of best to worst PCI. In addition, the consultant shall prepare a priority listing of projects to be completed within seven years based on cost-benefit analyses of individual strategies, present pavement conditions, current traffic volumes, current funding levels, accrued backlog levels and future major and routine maintenance needs.
9. Prepare the seven-year rehabilitation program to include the following:
  - Each fiscal year projects of arterial streets.
  - Each fiscal year projects of residential streets and alleys. It is desirable, where applicable, to identify residential streets included in one fiscal year project(s) to be located in the same neighborhood in accordance with the requirements set forth in Item 8 above.
10. Prepare an Executive Summary to include objectives for a sound PMP, field data collection techniques, data necessary to generate a reliable PMP, assessment and evaluation of results, present condition of streets and M&R strategies proposed, conclusions and recommendations. Executive summary shall include a diagram of three scenarios considering different funding levels, proposed rehabilitation program, overall PCI and backlog.
11. Provide City staff with on-site training in the operations and maintenance of PMP software. The training shall cover data collection, pavement condition surveys, computer operations, data entry/editing, PCI calculations, budget needs analyses, budget optimization analyses, report generation and database management.
12. Conduct a presentation of the results of the PMP to designated City personnel and/or elected officials.

#### **TASK I – MEETING WITH CITY STAFF:**

1. Attend preliminary meeting with City staff. The purpose of this meeting is to review the technical approach, finalize scope of work, review project schedule and budget, obtain list of recently completed rehabilitation projects (since 2015) and address any other project related issues.

2. Review all documents provided by the City necessary to complete the work. The City will provide the following:
  - Access to all available information, including street inventory, City maps, historical information, maintenance information, and historical cost information.
  - August 2015, PMP Update prepared by Nichols Consulting, Inc.
  - Hard copy of list of City streets and alley segments that have been rehabilitated since August 2015.
  - Hosting of progress meetings.

The consultant shall be responsible to review the available information and reproduce them at no cost to the City.

#### **TASK II – UPDATE MAINTENANCE AND REHABILITATION ACTIVITIES:**

1. Review recently completed maintenance and rehabilitation activities since last update in August 2015.
2. Update PMP database to reflect improvements in Item 1.

#### **TASK III – PAVEMENT SURVEY AND TREATMENT:**

1. Conduct comprehensive pavement condition survey of the City's pavement network. The City's pavement network includes approximately 245 centerline miles of arterial highways, streets and alleys.
2. Specify distress types for each City street segment included in the survey.
3. Select the appropriate treatment or rehabilitation strategy for each City street included in the survey.

#### **TASK IV – BUDGETARY ANALYSIS AND REPORTS:**

1. Update pavement inventory based on information obtained in TASK III.
2. Update PCI for all street segments and overall pavement network in the City.
3. Specify treatment of all segments of City streets.
4. Analyze budget scenarios and needs.
5. Prepare priority lists and a seven-year maintenance and rehabilitation project list.
6. Prepare Executive Summary.
7. Prepare GIS layer or AutoCAD based map showing PCI's and 7-year rehabition program.

#### **TASK V – PRESENTATION:**

1. Prepare presentation of PMP to City staff.
2. Prepare a 15-minute (non-technical) presentation to City Council.

**EXHIBIT B**  
**FEE SCHEDULE**

**Attachment B**  
**Revised Fee Proposal**

**COST PROPOSAL**  
**PROPOSAL**  
**PROFESSIONAL ENGINEERING SERVICES FOR THE**  
**CITYWIDE PAVEMENT MANAGEMENT PROGRAM - 2019 UPDATE**  
**CITY OF WEST COVINA, CALIFORNIA**

TASKS	Hourly Breakdown by Personnel							Total Cost
	Project Manager	QC/QA Manager	Project Engineer	Senior Technician	Technician	Clerical	Total Hours	
	\$175	\$155	\$140	\$95	\$90	\$70		
Task 1- Meeting with City Staff	2	2	6				10	\$ 1,500
Task 2 - Update Maintenance and Rehabilitation Activities	2		8	8			18	\$ 2,190
Task 3 - Pavement Survey and Treatment	4	8	24	249	220		505	\$ 48,405
Task 4 - Budgetary Analysis and Reports	2	4	40			2	48	\$ 6,710
Task 5 - Presentation*	4	3					7	\$ 815
Training	1	5					6	\$ 950
<b>Totals</b>	<b>15</b>	<b>22</b>	<b>78</b>	<b>257</b>	<b>220</b>	<b>2</b>		<b>\$ 60,570</b>

**Reimbursable Expenses:**

Task 1- Meeting with City Staff	Travel	
Task 2 - Update Maintenance and Rehabilitation Activities	None	
Task 3 - Pavement Survey and Treatment	Vehicle Cost per day, per diem	\$ 6,080
Task 4 - Budgetary Analysis and Reports	Final Reports for City	\$ -
Task 5 - Presentation*	Presentation Materials and Travel	\$ 190
Training	Training Manuals and Travel	\$ 660
		<b>\$ 6,930</b>

<b>Total Project Cost:</b>	<b>\$ 67,500</b>
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**Assumptions:**

Task 1 assumes video conference kick-off meeting.

Task 3 assumes 245 centerline miles of streets and alleys.

Task 4 assumes GIS shapefiles provided by City

\*Task 5 assumes 2 - one four hour on-line training class plus one presentation

# EXHIBIT C

## PROJECT SCHEDULE

### Schedule

#### CITY OF WEST COVINA CITYWIDE PAVEMENT MANAGEMENT PROGRAM - 2019 UPDATE Project Schedule

Task Description	Weeks from Notice to Proceed															
		Feb 3	Feb 10	Feb 17	Feb 24	Mar 2	Mar 9	Mar 16	Mar 23	Mar 30	Apr 6	Apr 13	Apr 20	Apr 27	May 4	May 11
Task I- Meeting with City Staff	NTP															
Task II - Update Maintenance and Rehabilitation Activities																
Task III - Pavement Survey and Treatment																
Task IV - Budgetary Analysis and Reports																
Task V - Presentation*																
Training																

#### Assumptions

NTP = Notice to Proceed

Task III assumes no weather delays

Task III assumes 7 weeks and 2 weeks QC

Task IV assumes 2 weeks for City review

Task V assumes 2 - 4 hour training classes on dates To Be Determined (TBD)\*



## AGENDA STAFF REPORT

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City of West Covina | Office of the City Manager

**DATE:** February 4, 2020

**TO:** Mayor and City Council

**FROM:** David Carmany  
City Manager

**SUBJECT: CONSIDERATION OF ACCEPTANCE OF DROUGHT TOLERANT LANDSCAPING IMPROVEMENTS IN LANDSCAPE MAINTENANCE DISTRICT NO. 4 - PROJECT NO. 18021**

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### RECOMMENDATION:

1. Accept the Drought Tolerant Landscaping Improvements in Landscape Maintenance District 4 for Project No. 18021; and
2. Authorize recordation of Notice of Completion with the Los Angeles County Recorder.

### BACKGROUND:

The City of West Covina's Public Services Department is responsible for the ongoing maintenance of all landscaping and irrigation improvements in City parks, facilities, medians, paseos, and landscape maintenance districts, including the open space areas and slopes in LMD 4.

### DISCUSSION:

On June 20, 2017, the City Council adopted the Guidelines and Standards for Drought Tolerant Landscaping and Water-Wise Irrigation in the Public Right-of-Way, City Parks and Facilities. A primary goal of the guidelines is to provide water efficient and aesthetically pleasing standards for the design, installation and maintenance of landscaping. The guidelines also included criteria to be used in prioritizing the implementation of improvements. A secondary goal is to improve efficiency by reducing water and maintenance costs, and integrating National Pollutant Discharge Elimination System (NPDES) requirements - also known as stormwater runoff requirements.

The majority of the open space areas in the landscape maintenance districts have been planted with native and drought tolerant plants, but have become overgrown and in need of revitalization. As part of the Fiscal Year (FY) 2017-18 Capital Improvement Program (CIP) budget, Project No. 18021 renovated the "Stephanie Paseo" located between Gemini Street and Stephanie Drive south of Shadow Oak Drive. This slope was renovated with water-wise plantings, more efficient irrigation components and a more open and visually appealing landscape design. Over one-half of the old existing landscape plants were removed or reshaped, and most trees were laced and had crown reductions performed. The new plants were planted in large groupings accentuating the plant's character. After the plantings were completed, the immediate areas around the new plants were mulched to retain moisture, reduce invasive weeds, and provide a clean manicured look for the residents and visitors.

All improvements were completed by Azteca Landscape, Inc. in accordance with the City Council approved Guidelines and the approved project plans and specifications. The project was substantially completed in October

2019.

**Prepared by:** Mike Cresap Public Services Superintendent

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**Fiscal Impact**

**FISCAL IMPACT:**

The following table shows the total budget approved and actual costs for this project:

Item	Approved Budget	Actual Cost
Project No. 18021 Drought Tolerant Landscaping	\$250,000	\$183,000
Total	\$250,000	\$183,000

Funds were approved as part of the FY 2017-18 CIP budget by the City Council in Account No. 184.80.7004.7700 on June 22, 2017.

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**CITY COUNCIL GOALS & OBJECTIVES:** Enhance the City Image and Effectiveness



## AGENDA STAFF REPORT

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City of West Covina | Office of the City Manager

**DATE:** February 4, 2020

**TO:** Mayor and City Council

**FROM:** David Carmany  
City Manager

**SUBJECT: PUBLIC HEARING TO CONSIDER CODE AMENDMENT NO. 19-02 REGARDING  
SINGLE FAMILY STANDARDS FOR ACCESSORY HABITABLE QUARTERS, AND  
VEHICLE BACKUP SPACE**

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### RECOMMENDATION:

The Planning Commission recommends that the City Council consider a Zoning Code Amendment as follows:

**ORDINANCE NO. 2469 - AN ORDINANCE TO AMEND ZONING REGULATIONS APPLICABLE  
TO SINGLE FAMILY AND RESIDENTIAL AGRICULTURAL ZONES REGARDING  
ACCESSORY HABITABLE QUARTERS (FORMERLY KNOWN AS GUEST HOUSES) AND  
VEHICULAR BACKUP SPACE**

### BACKGROUND:

On April 2, 2019, at the conclusion of the City Council public hearing on Accessory Dwelling Units ("ADU"), the City Council initiated a separate Code Amendment to examine making the standards for ADUs consistent with standards for additions to houses, and to examine eliminating Accessory Habitable Quarters ("AHQs") (formerly guest houses) as a use.

The City modified the standards for AHQs in 2014. AHQs are distinct from ADUs because they are not considered a separate unit, allow no kitchen facilities and not defined nor required under State housing law. Currently, AHQs require the approval of an administrative use permit (AUP), allowing for staff-level review with notification of the properties within 300 feet of the subject property. AHQs are currently allowed based on following development standards (WCMC Article VIII, 26-391.5):

- Maximum of 640 square feet.
- Require 1 covered parking space.
- 25-foot separation between second unit and primary unit.
- Comply with 25-foot rear setback.
- AHQ must be behind the primary dwelling unit.
- AHQ must be architecturally compatible with primary unit.
- No windows allowed when along a side property line if closer than 10 feet.

While the State has revised the methods that cities can regulate Accessory Dwelling Units, it is the cities choice about whether to allow Accessory Habitable Quarters. Over the past few years there has been little interest in building Accessory Habitable Quarters: 2014 = 1 request, 2015 = 2 requests, 2017 = 1 request, and no requests in



2018 or 2019. Staff believes that with the continued focus on Accessory Dwelling Units by the State, that there is no need for Accessory Habitable Quarters as a separate permitted use.

On July 23, 2019 the Planning Commission held a study to review AHQs. At the conclusion of the study session, the Planning Commission gave direction to staff to draft a code amendment to eliminate standards for AHQ's, and separately to establish backup space standards for garages. On November 26, 2019 the Planning Commission held a public hearing and recommended that the standards for AHQs be eliminated and that the garage backup space for vehicles for a minimum of 25 feet.

## **DISCUSSION:**

The draft code amendment has been prepared and is attached as Exhibit A to the Code Amendment Ordinance (Attachment No. 1). The draft code amendment includes the two items that Planning Commission directed staff, on November 26, 2019, to include.

### Accessory Living Quarters (AHQs)

Historically, AHQs were a simple process (allowed by right) and second units (ADUs) were more complicated (conditional use permit). Over the last 10 years the State has required cities to amend their Codes to relax standards and processes for ADUs. Subsequently, today ADUs are allowed by right. The Code was amended to make AHQs more complicated, requiring the approval of an AUP and requiring a garage (Attachment No. 3). Based on the number of submittals last year, 15 ADUs and no AHQs, it would seem that there is currently little interest in constructing AHQs. Additionally, State law allows legal structures to be converted to ADUs so even if someone builds an AHQ, they may want to convert it to an ADU. This code amendment was initiated to consider eliminating AHQs.

The draft code amendment incorporates the deletion of the process for approval and the standards to allow for AHQ's (Section 26-391.5). The definition and references have been left in the Code as there are many guest houses that were constructed over the years and there are a few AHQ's that have been constructed. All guest houses and AHQ's were required the recordation of covenants and therefore it will be helpful to future staff to have the terms defined.

### Backup Space

Currently, the Municipal Code requires a 22-foot backup space for garages that are in the side yard and face a side street, a 25-foot backup space for garages in the front yard, and an overall minimum of 22-feet of driveway length from property lines. However, the code does not contain any regulations about the distance from garage doors to another structure to allow for vehicle access to the garage. The Planning Department currently has a policy requiring a 25-foot backup space; however, the Municipal Code does not include any standards to ensure that vehicles can access a garage. The draft code amendment includes the requirement for a 25-foot back space from the opening of the garage (Section 26-402 (i)).

Notification of the public hearing was provided in the San Gabriel Valley Tribune on January 23, 2020.

## **LEGAL REVIEW:**

The City Attorney's Office has reviewed the proposed ordinance as to form and content and has concluded that it is in compliance with both State and federal law.

## **OPTIONS:**

The City Council has the following options:

1. Approve the Planning Commission's recommendation; or
2. Provide alternative direction

**ENVIRONMENTAL REVIEW:**

The proposal is exempt for California Environmental Quality Act (CEQA) per Section 15061(b)(3) of the CEQA Guidelines, which provides that CEQA only applies to activity that results in direct or reasonably foreseeable indirect physical change in the environment and for activity considered to be a project, respectively. The amendment to the West Covina Municipal Code would not result in a physical change in the environment because it would only revise development standards for properties zoned for single-family residential uses.

**Prepared by:** Jeff Anderson, Community Development Director

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**Attachments**

Attachment No. 1 - Ordinance  
Attachment No. 2 - Planning Commission Resolution  
Attachment No. 3 - Planning Commission Minutes 11/26/19  
Attachment No. 4 - Planning Commission Staff Report  
Attachment No. 5 - Planning Commission Minutes 7/23/19  
Attachment No. 6 - Planning Commission Study Session Staff Report

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**CITY COUNCIL GOALS & OBJECTIVES:** Achieve Fiscal Sustainability and Financial Stability  
Enhance the City Image and Effectiveness

**ORDINANCE NO. 2469**

**ORDINANCE TO AMEND ZONING REGULATIONS APPLICABLE TO SINGLE FAMILY AND RESIDENTIAL AGRICULTURAL ZONES REGARDING ACCESSORY HABITABLE QUARTERS (FORMERLY KNOWN AS GUEST HOUSES) AND VEHICULAR BACKUP SPACE**

**WHEREAS**, on the 2<sup>nd</sup> day of April 2019, the City Council initiated a code amendment to consider revisions to the Single-Family and Residential Agriculture zones of the West Covina Municipal Code; and

**WHEREAS**, the Planning Commission, did on the 23<sup>rd</sup> day of July 2019, conduct a study session to consider the initiated proposed code amendment change; and

**WHEREAS**, the Planning Commission, upon giving required notice, did on the 26<sup>th</sup> day of November 2018, conduct a duly advertised public hearing as prescribed by law, at which time the Planning Commission adopted Resolution No. 19-6011, recommending to the City Council approval of Code Amendment No. 19-02.

**WHEREAS**, the City Council, upon giving the required notice, did on the 4<sup>th</sup> day of February 2020, conduct a duly advertised public hearing as prescribed by law on the proposed ordinance; and

**WHEREAS**, based on review of the State CEQA Guidelines, the City Council finds and determines that the proposed ordinance is statutorily exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of the CEQA Guidelines, which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment; and

**WHEREAS**, the City Council has duly considered all information presented to it, including written staff reports and any testimony provided at the public hearing, with all testimony received being made a part of the public record.

**WHEREFORE, THE CITY COUNCIL OF THE CITY OF WEST COVINA HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1. Findings.** The City Council finds as follows:

- A. Consistent with state law, the City allows accessory dwelling units to be constructed within the city.
- B. Now that accessory dwelling units are allowed by right within the city, there is limited to no need to still allow accessory habitable quarters; and
- C. Antiquated provisions of the municipal code should be removed to increase administrative efficiencies and reduce public confusion.

**SECTION 2. Municipal Code Amendment.** The definition of “accessory habitable quarters” in section 26-63 of the municipal code is revised as follows:

Accessory habitable quarters/guest houses. A permanently constructed habitable quarters, separate from the primary residence, and having no kitchen facilities, which is clearly subordinate or incidental to the primary residence on the same lot. The accessory habitable quarters may include only a sleeping area, living area, and bathroom within an attached or detached accessory structure and for use by guests or occupants of the primary residence. The accessory habitable quarters shall not be separately rented, leased or let (by direct or indirect compensation) or otherwise occupied separately from the primary residence. Accessory habitable quarters were historically known as guest houses. New accessory habitable quarters/guest houses are no longer allowed.

**SECTION 3. Municipal Code Amendment.** Municipal Code section 26-296.1100 (Definitions) is revised as follows:

Sec. 26-296.1100. - Definitions.

- (a) Large expansions shall mean the expansion of the existing total gross floor area of a single-family dwelling unit by the following minimum square footage when either the floor area of the existing dwelling unit is expanded or when the existing dwelling unit is demolished and a new dwelling unit is constructed within five (5) years and results in a total gross floor area larger than existed at the time of demolition, but not resulting in a total gross floor area which exceeds the maximum permitted for a lot:

Lot Size (sq. ft.)	Large Expansion (sq. ft.)
Under 20,000	1,250
20,000—24,999	1,500
25,000—29,999	2,000
30,000—34,999	2,500
35,000—39,999	3,000
40,000+	3,500

Said large expansion includes the gross square footage of the main building and/or accessory uses when attached to the main building, (including, but not limited to ~~a~~ accessory habitable quarters/guest houses, and garage), and detached garages, as set forth in subsection (d) of this section.

- (b) Maximum unit size exception shall mean an increase of the total gross square footage permitted for a unit as defined in section 26-401.5 by up to twenty-five (25) percent of the gross square footage of the main building, and/or attached accessory uses (including, but not limited to an accessory habitable quarter/guest house, or garage), and/or detached garages, as set forth in subsection (d) of this section.

- (c) Timing of additions or expansions. All additions or expansions occurring within one (1) year of the building permit final inspection approval of the previous addition or expansion shall be considered as a single expansion for the purpose of determining the large expansion calculation.
- (d) Detached garages legally constructed prior to October 21, 2004, shall be exempt from inclusion in the gross square footage calculation. Expansion of such garages after October 21, 2004, however, shall cause this exemption to be lost.

**SECTION 4. Municipal Code Amendment.** The following portions of Municipal Code section 26-391 (i.e. through and including subsections 1 and 2) are revised as follows, with all other portions of the section unamended:

Municipal Code Sec. 26-391. - Permitted uses.

No building or improvement or portion thereof in the residential agricultural zone (R-A) or the single-family residential zone (R-1) shall be erected, constructed, converted, established, altered or enlarged nor shall any lot or premises be used except for one (1) or more of the following purposes:

- (1) One single-family dwelling per lot. Any additions or accessory buildings shall maintain architectural consistency with the house regarding roof profile and pitch, materials, colors, roofing, scale, exterior treatment and details.

- (2) Accessory buildings.

~~a. Accessory habitable quarters as allowed per section 26-391.5.~~

~~b. a. Accessory dwelling units as allowed per article XII, division 11 (26-685.30 *et seq.*).~~

b. e. Nonhabitable accessory buildings or structures, including, but not limited to the following:

- 1. Garages;
- 2. Carports;
- 3. Workshops;
- 4. Storage rooms or sheds;
- 5. Detached patio covers;
- 6. Pool bathroom or detached bathroom.

All nonhabitable accessory buildings of more than one hundred twenty (120) square feet shall file a covenant defining the use of the accessory building and stating that the building shall not be converted to any other use without city approval including an accessory dwelling unit.

**SECTION 5. Municipal Code Amendment.** Section 26-391.5, “Accessory buildings, habitable” is deleted.

**SECTION 6. Municipal Code Amendment.** A new subsection (i) is added to Section 26-402, “Off-street parking” to provide as follows:

- (i) A minimum unobstructed vehicular maneuvering distance of twenty-five (25) feet measured from the opening of the garage or carport shall be provided, except as otherwise permitted in this section. Minor design modifications may be approved, due to the uniqueness of the property as determined by the Planning Director.

**SECTION 7. Municipal Code Amendment.** Section 26-407, “Permissible coverage of required yards” is revised as follows.

Sixty (60) percent of the required rear yard in R-A and R-1 zones shall remain open; and the remaining forty (40) percent of the required rear yard may be covered by single story construction with a height of no greater than fifteen (15) feet. No construction shall be permitted within ~~five (5)~~ **fifteen (15)** feet of the rear property line.

**SECTION 8. Municipal Code Amendment.** Subsection (d) of section 26-418, (“Planning Commission Subcommittee for Design”) is revised as follows:

- (d) *Review required.* No building permit shall be issued for the following types of improvements to single-family residences prior to subcommittee review:
  - (1) New construction of single-family residences.
  - (2) Structural additions or modifications on the front elevation of a residence.
  - (3) New second-story additions to one-story residences.
  - (4) New second-story additions to two-story houses.
  - (5) New balconies.
  - ~~(6) Accessory habitable quarters.~~
  - ~~(7)~~ Any modifications that is readily visible from a public right-of-way.

**SECTION 9. Municipal Code Amendment.** Subsection (a) of Section 26-749.160 (“Administrative use permit required), is revised as follows:

- (a) Prior to the construction of any improvement in the lower pad area such as habitable structures (including ~~accessory habitable quarters and~~ accessory dwelling units), nonhabitable structures that require the issuance of a building permit, swimming pools, spas, sports courts, and similar uses (whether or not a building permit is required), an administrative use permit shall be required as specified in article VI, division 5 of this chapter 26.

**SECTION 10. ENVIRONMENTAL DETERMINATION.** The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City’s environmental procedures, and is found to be exempt pursuant to CEQA Guidelines Section 15061(b)(3), as this ordinance cannot create any significant effect on the environment.

**SECTION 11. INCONSISTENCIES.** Any provision of the West Covina Municipal Code or appendices thereto inconsistent with the provisions of this ordinance, to the extent of such

## ATTACHMENT NO. 1

inconsistencies and or further, is hereby repealed or modified to the extent necessary to affect the provisions of this ordinance.

**SECTION 12. SEVERABILITY.** If any provision or clause of this ordinance or the application thereof to any person or circumstances is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses or applications of this ordinance which can be implemented without the invalid provision, clause or application; and to this end, the provisions of this ordinance are declared to be severable.

**SECTION 13. PUBLICATION.** This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in a newspaper of general circulation, printed and published in the City of West Covina or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and

[continued on next page]

**ATTACHMENT NO. 1**

shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

**PASSED, APPROVED AND ADOPTED** this 4<sup>th</sup> day of February, 2020.

\_\_\_\_\_  
Tony Wu, Mayor

**ATTEST:**

\_\_\_\_\_  
Lisa Sherrick, Assistant City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Thomas Duarte, City Attorney

STATE OF CALIFORNIA            )  
COUNTY OF LOS ANGELES       )  
CITY OF WEST COVINA            )

I, Lisa Sherrick, Assistant City Clerk of the City of West Covina, do hereby certify that the foregoing Ordinance No. 2468 was regularly introduced and placed upon its first reading at a regular meeting of the City Council on the 4<sup>th</sup> day of February, 2020. That, thereafter, said Ordinance was duly adopted and passed at a regular meeting of the City Council on the \_\_\_\_ day of \_\_\_\_\_ 2020.

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

\_\_\_\_\_  
Lisa Sherrick, Assistant City Clerk



RESOLUTION NO. 19-6011

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF WEST COVINA CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE AN ORDINANCE TO AMEND ZONING REGULATIONS APPLICABLE TO SINGLE FAMILY AND RESIDENTIAL AGRICULTURAL ZONES REGARDING ACCESSORY HABITABLE QUARTERS (FORMERLY KNOWN AS GUEST HOUSES) AND REAR YARDS**

**Section 1. Findings.** The Planning Commission finds as follows:

- A. On April 2, 2019, the City Council initiated a code amendment to revise standards applicable to accessory habitable quarters.
- B. The Planning Commission, upon giving the required notice, did on November 25, 2019, conduct a duly advertised public hearing as prescribed by law; and

**Section 2. Resolution.** The Planning Commission recommends that the City Council conduct a public hearing, and thereafter adopt the ordinance attached hereto as Exhibit A.

**PASSED, APPROVED AND ADOPTED** on November 26, 2019 by the following roll call vote:

AYES: Holtz, Heng, Kennedy, Jaquez, Redholtz

NOES: None

ABSTAIN: None

ABSENT: None

DATE: November 26, 2019

  
\_\_\_\_\_  
Herb Redholtz, Chairman  
Planning Commission

  
\_\_\_\_\_  
Jeff Anderson, Secretary  
Community Development Director

## EXHIBIT A

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

### ORDINANCE TO AMEND ZONING REGULATIONS APPLICABLE TO SINGLE FAMILY AND RESIDENTIAL AGRICULTURAL ZONES REGARDING ACCESSORY HABITABLE QUARTERS (FORMERLY KNOWN AS GUEST HOUSES) AND REAR YARDS

**SECTION 1. Findings.** The City Council finds as follows:

- A. Consistent with state law, the City allows accessory dwelling units to be constructed within the city.
- B. Now that accessory dwelling units are allowed by right within the city, there is limited to no need to still allow accessory habitable quarters; and
- C. Antiquated provisions of the municipal code should be removed to increase administrative efficiencies and reduce public confusion.

**SECTION 2. Municipal Code Amendment.** The definition of “accessory habitable quarters” in section 26-63 of the municipal code is revised as follows:

Accessory habitable quarters/guest houses. A permanently constructed habitable quarters, separate from the primary residence, and having no kitchen facilities, which is clearly subordinate or incidental to the primary residence on the same lot. The accessory habitable quarters may include only a sleeping area, living area, and bathroom within an attached or detached accessory structure and for use by guests or occupants of the primary residence. The accessory habitable quarters shall not be separately rented, leased or let (by direct or indirect compensation) or otherwise occupied separately from the primary residence. Accessory habitable quarters were historically known as guest houses. New accessory habitable quarters/guest houses are no longer allowed.

**SECTION 3. Municipal Code Amendment.** Municipal Code section 26-296.1100 (Definitions) is revised as follows:

Sec. 26-296.1100. - Definitions.

- (a) Large expansions shall mean the expansion of the existing total gross floor area of a single-family dwelling unit by the following minimum square footage when either the floor area of the existing dwelling unit is expanded or when the existing dwelling unit is demolished and a new dwelling unit is constructed within five (5) years and results in a total gross floor area larger than existed at the time of demolition, but not resulting in a total gross floor area which exceeds the maximum permitted for a lot:

Lot Size (sq. ft.)	Large Expansion (sq. ft.)
Under 20,000	1,250

## EXHIBIT A

20,000—24,999	1,500
25,000—29,999	2,000
30,000—34,999	2,500
35,000—39,999	3,000
40,000+	3,500

Said large expansion includes the gross square footage of the main building and/or accessory uses when attached to the main building, (including, but not limited to a accessory habitable quarters/guest houses, and garage), and detached garages, as set forth in subsection (d) of this section.

- (b) Maximum unit size exception shall mean an increase of the total gross square footage permitted for a unit as defined in section 26-401.5 by up to twenty-five (25) percent of the gross square footage of the main building, and/or attached accessory uses (including, but not limited to an accessory habitable quarter/guest house, or garage), and/or detached garages, as set forth in subsection (d) of this section.
- (c) Timing of additions or expansions. All additions or expansions occurring within one (1) year of the building permit final inspection approval of the previous addition or expansion shall be considered as a single expansion for the purpose of determining the large expansion calculation.
- (d) Detached garages legally constructed prior to October 21, 2004, shall be exempt from inclusion in the gross square footage calculation. Expansion of such garages after October 21, 2004, however, shall cause this exemption to be lost.

**SECTION 4. Municipal Code Amendment.** The following portions of Municipal Code section 26-391 (i.e. through and including subsections 1 and 2) are revised as follows, with all other portions of the section unamended:

Municipal Code Sec. 26-391. - Permitted uses.

No building or improvement or portion thereof in the residential agricultural zone (R-A) or the single-family residential zone (R-1) shall be erected, constructed, converted, established, altered or enlarged nor shall any lot or premises be used except for one (1) or more of the following purposes:

- (1) One single-family dwelling per lot. Any additions or accessory buildings shall maintain architectural consistency with the house regarding roof profile and pitch, materials, colors, roofing, scale, exterior treatment and details.
- (2) Accessory buildings.
  - ~~a. Accessory habitable quarters as allowed per section 26-391.5.~~
  - b-a. Accessory dwelling units as allowed per article XII, division 11 (26-685.30 *et seq.*).

## EXHIBIT A

b e. Nonhabitable accessory buildings or structures, including, but not limited to the following:

1. Garages;
2. Carports;
3. Workshops;
4. Storage rooms or sheds;
5. Detached patio covers;
6. Pool bathroom or detached bathroom.

All nonhabitable accessory buildings of more than one hundred twenty (120) square feet shall file a covenant defining the use of the accessory building and stating that the building shall not be converted to any other use without city approval including an accessory dwelling unit.

**SECTION 5. Municipal Code Amendment.** Section 26-391.5, "Accessory buildings, habitable" is deleted.

**SECTION 6. Municipal Code Amendment.** A new subsection (i) is added to Section 26-402, "Off-street parking" to provide as follows:

- (i) A minimum unobstructed vehicular maneuvering distance of twenty-five (25) feet measured from the opening of the garage or carport shall be provided, except as otherwise permitted in this section. Minor design modifications may be approved, due to the uniqueness of the property as determined by the Planning Director.

**SECTION 7. Municipal Code Amendment.** Subsection (d) of section 26-418, ("Planning Commission Subcommittee for Design") is revised as follows:

- (d) *Review required.* No building permit shall be issued for the following types of improvements to single-family residences prior to subcommittee review:
  - (1) New construction of single-family residences.
  - (2) Structural additions or modifications on the front elevation of a residence.
  - (3) New second-story additions to one-story residences.
  - (4) New second-story additions to two-story houses.
  - (5) New balconies.
  - ~~(6) Accessory habitable quarters.~~
  - ~~(7)~~ Any modifications that is readily visible from a public right-of-way.

**SECTION 8. Municipal Code Amendment.** Subsection (a) of Section 26-749.160 ("Administrative use permit required), is revised as follows:

- (a) Prior to the construction of any improvement in the lower pad area such as habitable structures (including ~~accessory habitable quarters~~ and accessory dwelling units),

## EXHIBIT A

nonhabitable structures that require the issuance of a building permit, swimming pools, spas, sports courts, and similar uses (whether or not a building permit is required), an administrative use permit shall be required as specified in article VI, division 5 of this chapter 26.

**SECTION 9. ENVIRONMENTAL DETERMINATION.** The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and is found to be exempt pursuant to CEQA Guidelines Section 15061(b)(3), as this ordinance cannot create any significant effect on the environment.

**SECTION 10. INCONSISTENCIES.** Any provision of the West Covina Municipal Code or appendices thereto inconsistent with the provisions of this ordinance, to the extent of such inconsistencies and or further, is hereby repealed or modified to the extent necessary to affect the provisions of this ordinance.

**SECTION 11. SEVERABILITY.** If any provision or clause of this ordinance or the application thereof to any person or circumstances is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses or applications of this ordinance which can be implemented without the invalid provision, clause or application; and to this end, the provisions of this ordinance are declared to be severable.

**SECTION 12. PUBLICATION.** This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in a newspaper of general circulation, printed and published in the City of West Covina or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and

[continued on next page]

**EXHIBIT A**

shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

**PASSED, APPROVED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Tony Wu, Mayor

**ATTEST:**

\_\_\_\_\_  
Carrie Gallagher, Assistant City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Thomas Duarte, City Attorney

STATE OF CALIFORNIA            )  
COUNTY OF LOS ANGELES       )  
CITY OF WEST COVINA           )

I, Carrie Gallagher, Assistant City Clerk of the City of West Covina, do hereby certify that the foregoing Ordinance No. \_\_\_\_\_ was regularly introduced and placed upon its first reading at a regular meeting of the City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2019. That, thereafter, said Ordinance was duly adopted and passed at a regular meeting of the City Council on the \_\_\_\_ day of \_\_\_\_\_ 2019.

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Carrie Gallagher, Assistant City Clerk

**ATTACHMENT NO. 3**

3. CODE AMENDMENT NO. 19-02

APPLICANT: City of West Covina

LOCATION: Citywide

REQUEST: The proposed code amendment consists of amendments to Chapter 26 (Zoning) of the West Covina Municipal Code to revise standards in the West Covina Municipal Code for Residential Agriculture and Single-Family Residential zones and to consider eliminating standards for accessory habitable structures.

Community Development Director Jeff Anderson presented the staff report. During his presentation he told the Commission that this code amendment had been initiated by the City Council in April 2018. He also told the Commission that this code amendment included setback requirements for side and rear yard setbacks and eliminated accessory habitable quarters from the Code. He also told the Commission that applications for accessory habitable structures were no longer being requested due to the popularity of accessory dwelling units.

There was a short discussion by the Commission regarding a provision in the proposed code amendment requiring a 25-foot back up space for garages.

Chairman Redholtz opened the public hearing.

PROPOSERS:

No one spoke in favor of the code amendment.

OPPOSERS:

No one spoke in opposition to the code amendment.

Chairman Redholtz closed the public hearing.

There was a short discussion by the Commission regarding the proposed code amendment.

Motion by Holtz, seconded by Kennedy, to recommend removal of the revision to the rear yard setback standards and approval of Code Amendment No. 19-02 to the City Council Motion carried 5-0.

Chairman Redholtz said final action on this matter will take place at a public hearing before the City Council on a date to be determined.

# **AGENDA**

**ITEM NO. 3.**

**DATE: November 26, 2019**

## **PLANNING DEPARTMENT STAFF REPORT**

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### **SUBJECT**

**CODE AMENDMENT NO. 19-02**

**APPLICANT: CITY OF WEST COVINA**

**LOCATION: CITYWIDE**

**REQUEST: The proposed code amendment consist of amendments to Chapter 26 (Zoning) of the West Covina Municipal Code to revise standards in the Zoning section of the West Covina Municipal Code for Residential Agriculture and Single-Family Residential zones and to consider eliminating standards for accessory habitable structures.**

### **BACKGROUND**

The City Council initiated the Code Amendment on April 2, 2019, at the conclusion of Code Amendment No. 18-02 regarding City standards for accessory dwelling units (ADU). At the City Council hearing on that item there was discussion that the accessory dwelling unit standards should be consistent with standards for additions to houses. While adopting that Code Amendment the City Council did discuss that the required 25-foot setback should be evaluated as well as the current standards for accessory habitable quarters (AHQ) (formerly guest houses).

The City modified the standards for accessory habitable quarters (previously guest houses) in 2014. Accessory habitable quarters are distinct from ADUs in that they are not considered a separate unit, allow no kitchen facilities and there are no requirements per State law. Accessory habitable quarters (AHQ) require the approval of an administrative use permit (AUP), allowing for staff-level review with notification of the properties within 300 feet of the subject property. AHQs are currently allowed based on following development standards (WCMC Article VIII, 26-391.5);

- Maximum of 640 square feet.
- Require 1 covered parking space.
- 25-foot separation between second unit and primary unit.
- Comply with 25-foot rear setback.
- AHQ must be behind the primary dwelling unit.
- AHQ must be architecturally compatible with primary unit.
- No windows allowed when along a side property line if closer than 10 feet.
- While the State has revised the methods that cities can regulate ADU's, it is the cities choice about whether to allow AHQs. Since 2014, there have been four AHQs proposed, one in 2014, two in 2015, and one in 2017. Because the State has placed a focus on ADUs and required them to be approved by right, there has not been much interest in proposing AHQs.



The Planning Commission held a study session on July 23, 2019. At the conclusion of the study session, the Planning Commission gave direction to staff to draft a code amendment to establish a rear setback of 15 feet, to eliminate standards for AHQ's, and to establish backup space standards for garages.

## **DISCUSSION**

The draft code amendment has been prepared and is attached as Exhibit A to the Code Amendment Resolution (Attachment No. 1). The draft code amendment includes the three items that Planning Commission directed staff to include.

### Rear Setback

The City currently has a 25-foot rear setback for one-story and two-story structures. The Code does allow an exception to this setback for one-story structures that encroach no more than 40 percent into the rear yard (an area 25 feet by the width of the lot) that have a minimum 5-foot setback. In effect, the Code does allow structures to be built with a 5-foot rear setback that are one-story structures. It is possible that the initial concept for allowing the 5-foot setback was for non-habitable buildings, however, the Code allows all structures that are one story to be built with a 5-foot setback.

For most lots in the City, it is not likely that a room addition would be built with a 5-foot rear setback, and an addition that close to the rear property line can impact the neighboring rear yards. In addition, the recent changes to State law make it difficult to have different regulations for room additions and ADUs. In practice, many individuals proposing ADUs are proposing them as close to the rear yard as possible, which causes concerns for privacy in the neighboring rear yard. It should also be noted that State law requires cities to allow conversion of legal structures (habitable or non-habitable) into ADUs.

Based on legislative acts approved this calendar year by the state (AB 68, AB 881, SB 13, AB 587 and AB 670) there are new standards that cities in California are required to comply with. One of the standards required is allowing newly constructed ADU's with a minimum setback of as close as four (4) feet. Based on the changes required by the state, at this time, staff would recommend not modifying the rear yard setback. The original concept was to provide privacy in rear yard areas, however, the state has eliminated the City's ability to provide such protection of privacy.

As directed by the Planning Commission, staff has drafted the code amendment with a rear setback of 15 feet (Section 26-407). If the Planning Commission agrees with staff's recommendation to remove the rear setback revision, the revision should be made as part of the motion to recommend approval.

### Accessory Living Quarters

Historically, guest houses (AHQs) were a simple process (allowed by right) and second units (ADUs) were more complicated (conditional use permit). Over the last 10 years the State has required cities to amend their Codes to relax standards and processes for ADUs. Subsequently, today ADUs are allowed by right. The Code was amended to make AHQs more complicated, requiring the approval of an AUP and requiring a garage (Attachment No. 3). Based on the number of submittals last year, 15 ADUs and no AHQs, it would seem that there is currently little interest in constructing AHQs. Additionally, State law allows legal structures to be converted to ADUs so even if someone builds an AHQ, they may want to convert it to an ADU. This code amendment was initiated to consider eliminating AHQs.

The draft code amendment incorporates the deletion of the process for approval and the standards to allow for AHQ's (Section 26-391.5). The definition and references have been left in the Code as there are many guest

houses that were constructed over the years and there are a few AHQ's that have been constructed. All guest houses and AHQ's were required the recordation of covenants and therefore it will be helpful to future staff to have the terms defined.

#### Backup Space

Currently, the Municipal Code requires a 22-foot backup space for garages that are in the side yard and face a side street, a 25-foot backup space for garages in the front yard, and an overall minimum of 22 feet of driveway length from property lines. However, the code does not contain any regulations about the distance from garage doors to another structure to allow for vehicle access to the garage. The Planning Department currently has a policy requiring a 25-foot backup space; however, the Municipal Code does not include any standards to ensure that vehicles can access a garage. The draft code amendment includes the requirement for a 25-foot back space from the opening of the garage (Section 26-402 (i)).

#### **ENVIRONMENTAL DETERMINATION**

The proposal is not subject to the California Environmental Quality Act (CEQA) per Section 15061(b)(3) of the CEQA Guidelines, which provides that CEQA only applies to activity that results in direct or reasonably foreseeable indirect physical change in the environment and for activity considered to be a project, respectively. The amendment to the West Covina Municipal Code would not result in a physical change in the environment because it would only revise development standards for properties zoned for single-family residential uses.

#### **STAFF RECOMMENDATIONS**

Staff recommends that the Planning Commission adopt a resolution recommending approval of Code Amendment No. 19-02 to the City Council.

**Submitted by:** Jeff Anderson, Community Development Director

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#### **Attachments**

Attachment No. 1 - Resolution

Attachment No. 2 - Planning Commission Minutes, 7/23/19

Attachment No. 3 - Planning Commission Study Session Staff Report, 7/23/19

Attachment No. 4 - City Council Initiation Resolution

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## ATTACHMENT NO. 5

### ~~5. STUDY SESSION – SUBCOMMITTEE FOR DESIGN REVIEW ONE STORY GUIDELINES~~

~~This item was postponed to the next meeting.~~

### ~~6. STUDY SESSION – CODE AMENDMENT NO. 16-03 SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHT OF WAY~~

~~Planning Manager Jo Anne Burns presented the staff report. She discussed the previous study session on the code amendment and presented information on separation between small wireless facilities and separation between residential uses and small wireless facilities.~~

~~Chairmen Redholtz asked if anyone wanted to address the Commission regarding the matter.~~

~~Robert Jystad, Government Relations Manager for Crown Castle stated that a small wireless facility separation of 250 feet was standard and that an increase in the separation could be a problem for wireless providers. He recommended focusing on design standards not separation standards.~~

~~The Commission discussed that residents expect a certain level of service from wireless providers and the balance between needs of the provider and neighborhood aesthetic.~~

~~Chairman Redholtz stated he was satisfied with the recommended separation between facilities of 250 feet and the separation of residential and small wireless facilities of 15 feet in PCD-1 and 30 feet in other residential zones. He stated he thought the Guidelines should be designed to allow to simplify and allow for more efficient review of proposals. He felt that most of the small wireless facilities should be able to be approved by staff through the Guidelines.~~

~~Motion by Redholtz, seconded by Kennedy to direct staff to prepare a draft code amendment of 250 feet between facilities and a separation between residential uses and facilities of 15 feet (PCD-1) and 30 feet (other residential uses). Commission Jaquez stated that the issue of colocation reduced his concern on the number that might be proposed over time. Commissioner Heng stated she felt that there should be additional discussion as these decisions would affect all residents. The motion carried 3-2 (Heng, Holtz)~~

### ~~7. STUDY SESSION - CODE AMENDMENT NO. 19-02 R-1 Rear Setbacks/AHQ Standards~~

~~Community Development Director Jeff Anderson presented the staff report. He discussed City Council initiation and discussed potential changes to the rear yard setback, the elimination of AHQs and adding a backup standard from garages.~~

## ATTACHMENT NO. 5

The Commission discussed that it might make sense to have different rear yard setback requirements for larger lots. At the conclusion of the discussion the consensus was to direct staff to prepare a code amendment to eliminate AHQs, review the list of accessory buildings, and review the Area Districts and rear setback.

### ~~COMMISSION REPORTS/COMMENTS AND MISCELLANEOUS ITEMS~~

#### ~~8. COMMUNITY DEVELOPMENT DIRECTOR'S REPORT:~~

- a. ~~Forthcoming~~ discussed there were items scheduled for the next two meetings.

#### ~~9. CITY COUNCIL ACTION:~~

None

### ADJOURNMENT

Chairman Redholtz adjourned the meeting at 9:40 p.m. in memory of resident and Community Services Commissioner Phil Kaufman.

~~Respectfully submitted:~~

~~Jeff Anderson~~

~~Community Development Director~~

**ADOPTED AS SUBMITTED ON: August 13, 2019**

*City of West Covina*  
*Memorandum*  
**A G E N D A**

**ITEM NO. 7.**

**TO:** Planning Commission

**DATE:** **July 23, 2019**

**FROM:** Planning Division

**SUBJECT: STUDY SESSION - CODE AMENDMENT NO. 19-02  
R-1 Rear Setbacks/AHQ Standards**

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**BACKGROUND:**

The City Council initiated the Code Amendment at the conclusion of Code Amendment No. 18-02 regarding City standards for accessory dwelling units (ADU). At the City Council hearing on that item there was discussion that the accessory dwelling unit standards should be consistent with standards for additions to houses. While adopting that Code Amendment the City Council did discuss that the required 25-foot setback should be evaluated as well as the current standards for accessory habitable quarters (AHQ) (formerly guest houses).

The City modified the standards for accessory habitable quarters (previously guest houses) in 2014. Accessory habitable quarters are distinct from ADUs in that they are not considered a separate unit, allow no kitchen facilities and there are no requirements per State law. Accessory habitable quarters (AHQ) require the approval of an administrative use permit (AUP), allowing for staff-level review with notification of the properties within 300 feet of the subject property. AHQs are currently allowed based on following development standards (WCMC Article VIII, 26-391.5);

- Maximum of 640 square feet.
- Require 1 covered parking space.
- 25-foot separation between second unit and primary unit.
- Comply with 25-foot rear setback.
- AHQ must be behind the primary dwelling unit.
- AHQ must be architecturally compatible with primary unit.
- No windows allowed when along a side property line if closer than 10 feet.

While the State has revised the methods that cities can regulate ADU's, it is the cities choice about whether to allow AHQs. Since 2014, there have been four AHQs proposed, one in 2014, two in 2015, and one in 2017. Because the State has placed a focus on ADUs and required them to be approved by right, there has not been much interest in proposing AHQs.

**DISCUSSION:**

The proposed Code Amendment would examine rear setbacks and accessory living quarters. Staff is also suggesting including backup space standards to ensure that garages have adequate space to allow for vehicular access to the garage.

#### Rear Setback

The City currently has a 25-foot rear setback for one-story and two-story structures. The Code does allow an exception to this setback for one-story structures that encroach no more than 40 percent into the rear yard (an area 25 feet by the width of the lot) that have a minimum 5-foot setback. In effect, the Code does allow structures to be built with a 5-foot rear setback that are one-story structures. It is possible that the initial concept for allowing the 5-foot setback was for non-habitable buildings, however, the Code allows all structures that are one story to be built with a 5-foot setback.

For most lots in the City, it is not likely that a room addition would be built with a 5-foot rear setback, and an addition that close to the rear property line can impact the neighboring rear yards. In addition, the recent changes to State law make it difficult to have different regulations for room additions and ADUs. In practice, many individuals proposing ADUs are proposing them as close to the rear yard as possible, which causes concerns for privacy in the neighboring rear yard. It should also be noted that State law requires cities to convert legal structures (habitable or non-habitable) into ADUs.

Staff surveyed surrounding cities on their rear setbacks for habitable and for non-habitable structures (Attachment No. 3). Many cities have different standards to allow detached garages, sheds and other accessory structures in the rear yard area while providing more separation for habitable structures. Given the current requirements for ADUs, it may not be advisable to create different standards for habitable and non-habitable structures.

This code amendment was initiated to consider modifications to the 5-foot rear setback. The issues to consider are privacy in rear yards and the appropriate location for ADUs. All the options provided below would be to continue to require a 25-foot rear setback for all two-story structures. Options to consider include the following.

1. Continue to require a rear setback of 5 feet.
2. Require a rear setback of 10 feet (La Puente and El Monte use this setback).
3. Require a rear setback of 15 feet.
4. Require a rear setback of 20 feet (Baldwin Park, Diamond Bar, Azusa and El Monte use this setback).
5. Require a rear setback of 25 feet (Covina, Azusa and Glendora use this setback).

Staff is recommending a rear setback of 15 feet. This still allows some encroachment into the rear setback but provides separation from the neighboring properties to the rear and would likely reduce negative impacts on those adjacent properties.

#### Accessory Living Quarters

Historically, guest houses (AHQs) were a simple process (allowed by right) and second units (ADUs) were more complicated (conditional use permit). Over the last 10 years the State has required cities to amend their Codes to relax standards and processes for ADUs. Subsequently, today ADUs are allowed by right. The Code was amended to make AHQs more complicated, requiring the approval of an AUP and requiring a garage (Attachment No. 3). Based on the number of submittals last year, 15 ADUs and no AHQs, it would seem that there is currently little interest in constructing AHQs. Additionally, State law allows structures

legal structures to be converted to ADUs so even if someone builds an AHQ, they may want to convert it to an ADU. This code amendment was initiated to consider eliminating AHQs.

#### Backup Space

Currently, the Municipal Code requires a 22-foot backup space for garages that are in the side yard and face a side street, a 25-foot backup space for garages in the front yard, and an overall minimum of 22 feet of driveway length from property lines. However, the code does not contain any regulations about the distance from garage doors to another structure to allow for vehicle access to the garage. The Planning Department currently has a policy requiring a 25-foot backup space; however, the Municipal Code does not include any standards to ensure that vehicles can access a garage.

The backup space requirement is something that staff has intended to add to the Zoning Code for some time. Therefore, staff is recommending that the requirement for a 25-foot back space be added to the code amendment.

#### **RECOMMENDATION:**

Staff recommends that the Planning Commission review the information in the staff report and attachments and provide appropriate direction to staff regarding the code amendment.

**Submitted by:** Jeff Anderson, Community Development Director

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#### **Attachments**

Attachment No. 1 - City Council Staff Report 4/2/19

Attachment No. 2 - Municipal Code/Accessory Habitable Quarters

Attachment No. 3 - Survey of Surrounding Cities

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## AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

**DATE:** February 4, 2020

**TO:** Mayor and City Council

**FROM:** David Carmany  
City Manager

**SUBJECT: CONSIDERATION OF ISSUANCE AND DELIVERY OF PENSION OBLIGATION BONDS TO REFUND OUTSTANDING CALPERS PENSION FUND OBLIGATIONS.**

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### RECOMMENDATION:

Approve City Council Resolution entitled:

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA AUTHORIZING THE ISSUANCE AND DELIVERY OF PENSION OBLIGATION BONDS TO REFUND CERTAIN OUTSTANDING PENSION FUND OBLIGATIONS OF THE CITY TO THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST AGREEMENT; AUTHORIZING A VALIDATION ACTION; APPROVING CERTAIN PROFESSIONALS FOR THE REFUNDING; AND OTHER MATTERS RELATING THERETO**

### BACKGROUND:

The California Public Employees' Retirement System (CalPERS) was founded in 1932 as the State Employees' Retirement System and has grown to include 2,890 member agencies including the State, counties, cities, school districts and special districts. The City of West Covina joined CalPERS in May 1966. CalPERS is a defined benefit plan, in which employees receive fixed benefits that are based upon length of service and salary earned at the time of retirement. A defined benefit plan is contrasted with a defined contribution plan (e.g. 401k plan) where the retirement benefit is generally based upon the amount invested and the growth of those investments.

The City has two main employee groups - safety and miscellaneous - each with different retirement benefits. The formula represents the percentage of salary for each year employed with the City that a member will receive at or after the specified age.

Historically, more than 60% of all funds paid to CalPERS retirees comes from investment earnings. When CalPERS does not meet its investment return goals, the member agencies pay more. Over the past few decades the CalPERS system went from having an excess of cash (i.e. super-funded, or funded above 100%) to being under-funded. This is mainly due to investment losses by CalPERS during the Great Recession, which impacted all California agencies' retirement plans managed by CalPERS. Currently, the City's combined CalPERS plans are funded at approximately 64.8%. Additional factors have also contributed to increasing costs:

- Long-term investment returns not meeting expectations (e.g. 8.1% over the last five years, 5.6% over the last 10 years, and 6.1% over the last 20 years);

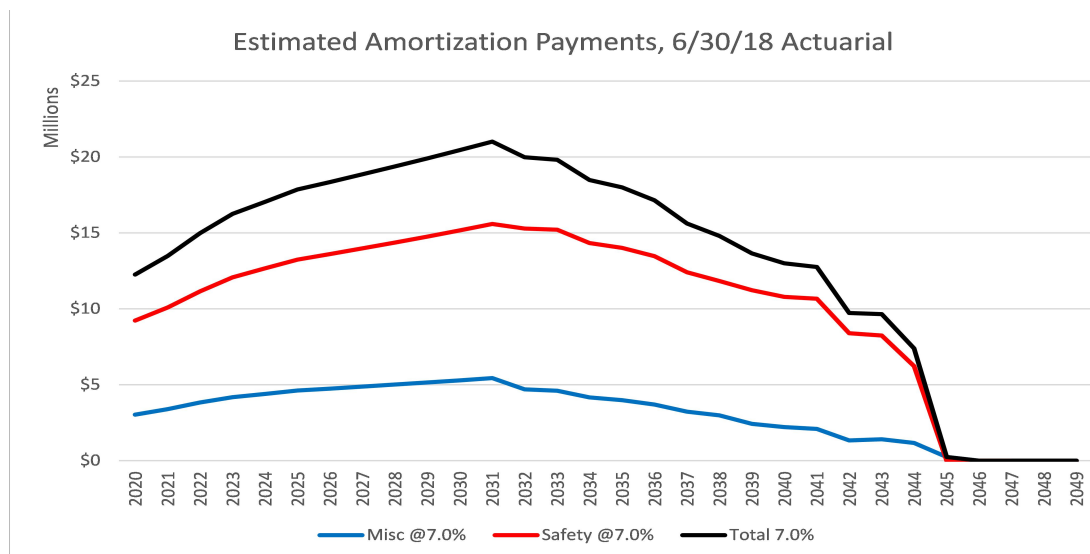


- The resulting changes in the CalPERS anticipated return-on-investment rate over the past 15 years, from 8.25% to 7.00%;
- CalPERS retirees living longer; and
- The ratio of workers to retirees has been decreasing.

As a result of the above factors, which contributed to the decline in overall retirement plan funding levels, California public entities such as the City of West Covina must increase their future payments into the CalPERS system. The payment levels are determined by CalPERS, and they are increasing annually.

Over the last five years, the City's unfunded actuarial accrued liability ("UAAL") for its CalPERS Miscellaneous and Safety Plans has grown from \$145 million (6/30/2016 estimate) to about \$200 million (6/30/2020 estimate). The UAAL represents the shortfall/gap between what is needed to pay retiree benefits versus how much in current assets the City actually has in its accounts with CalPERS. The \$200 million UAAL is not required to be repaid all at once but is amortized over a longer period (different components are amortized over different time periods, with most between 15 and 30 years) currently at an interest rate of 7.0%. Pension cost increases are the largest financial challenge facing most cities throughout the state and are primarily due to factors outside of the cities' control, including discount rate changes, assumption changes made by CalPERS and investment returns that were below expectations.

The chart directly below provides a current snapshot of the City's projected payments to amortize its \$200 million UAAL if no pension bonds are issued. Using current CalPERS estimates, annual costs are projected to increase rapidly from \$12.3 million in FYE 2020 to \$21 million in FYE 2031 (72% increase), dropping thereafter, and then fully amortizing by FY 2046.



The Government Finance Officers Association advisory "Evaluating the Use of Pension Obligation Bonds" is included in this report as Attachment 6.

## DISCUSSION:

Given unfunded pension obligations, the challenge is: How to effectively secure the solvent financial future of the City, its employees, and its retirees while ensuring the delivery of public services and stewardship of public resources. Pension Obligation Bonds (POBs) can be an effective tool to achieve several objectives:

- **Maintain Service Levels:** Reduce chance of service reductions, public safety layoffs, deferred maintenance.
- **Achieve Fiscal Stability:** Change the payment pattern (e.g., a smooth pattern for bond repayment, vs a sharply increasing pattern with no bonds). Smoother payment patterns make budgeting easier
- **Realize Savings:** Obtain higher expected investment returns on investments at retirement system (e.g., 7%) than borrowing cost (e.g., ~3.5-4.0%)
- **Increase the pension plan's level of funding:** from 64.8% to 92.5%

- **Establish a Long-Term Plan;** Incorporating best practices, operate the City on an actuarially sound basis to meet and reduce future pension obligations and liabilities.

Numerous cities throughout California have recently issued Pension Obligation Bonds, including Baldwin Park, Glendora, La Verne, Monrovia and Riverside, and there are several other cities that are currently in the process of structuring and/or evaluating POB financing. Most of these financing utilized POBs to “re-shape” their overall payments into a more level structure for enhanced budget predictability / affordability, near term savings and financial stability.

Tonight’s approval of the Trust Agreement and authorization to proceed with the judicial validation process is the initial step in this effort and will give the City Manager and the financing team direction to explore this concept further and in greater detail.

Validation Process: Authorizing the validation proceeding is the first step in the issuance process; it entails the courts validating the City’s legal ability to issue Pension Obligation Bonds, and to confirm that the sale meets the State of California’s constitutional requirements. A draft form of the Validation Complaint is provided as Attachment 3. The validation takes up to 5 months to complete. At the conclusion of the validation process, the court is expected to enter a judgment in favor of the City that the obligation of the City (i.e. that the UAAL the City owes to CalPERS) represents an “obligation imposed by law.” Numerous prior court cases have determined that pension liabilities are obligations imposed by law, and therefore are exempt from the debt limitation requirements set forth in Article XVI, Section 18, of the California Constitution.

Resolution 2020-08: The resolution (Attachment 1) being considered tonight authorizes the City Manager, the City Attorney and outside counsel to submit the necessary documents to the Los Angeles County Superior Court to start the judicial validation process as well as approves (1) the issuance of the bonds in an amount not-to-exceed \$205 million and (2) a draft form of the Indenture for the bonds (Attachment 2) and (3) authorizes staff to execute agreements with members of the Financing Team. The Trust Agreement identifies the duties and responsibilities of the Trustee, establishes the terms and conditions which the bonds are to be issued, and to secure the payment of the principal and interest. The not-to-exceed amount is meant to create enough flexibility for the City to pay off (1) 100% of its UAAL (\$200 million) if it desires (or anything lower), and (4) costs of issuance. The City is not committed to any specific amount as staff and the financing team will be evaluating a full range of options to ensure the most optimal size and structure is executed. The preliminary analysis provided below and required good faith cost estimates are based on a total bond size of \$157.9 million.

The resolution also authorizes the City Manager to negotiate and execute the necessary professional services agreements to secure the bond financing team, including Hilltop Securities as bond underwriter, Wolf and Company and NHA Advisors as municipal advisors, Norton Rose Fulbright as bond counsel and US Bank as bond trustee.

Financing Team and Schedule: All firms are very active in assisting cities across the State manage rising pension costs, specifically with similar UAL restructurings. The City Attorney’s office (Jones & Mayer) will review all documents.

Upon adoption of Resolution No. 2020-08, the validation process will be initiated. Key milestones of this process are listed below.

- City Council passes a resolution authorizing the sale of pension obligation bonds
- File Validation Action with Los Angeles County Superior Court
- Receive Order for Publication of Summons from the Court
- Publication of notice in local newspaper
- Waiting period for any responding party to file a petition
- Clerk enters hearing for a default judgment; if there is no responding party, schedules a hearing
- Hearing for default judgment, if no responding party
- 30-day Appeal Period ends
- Bonds are issued.

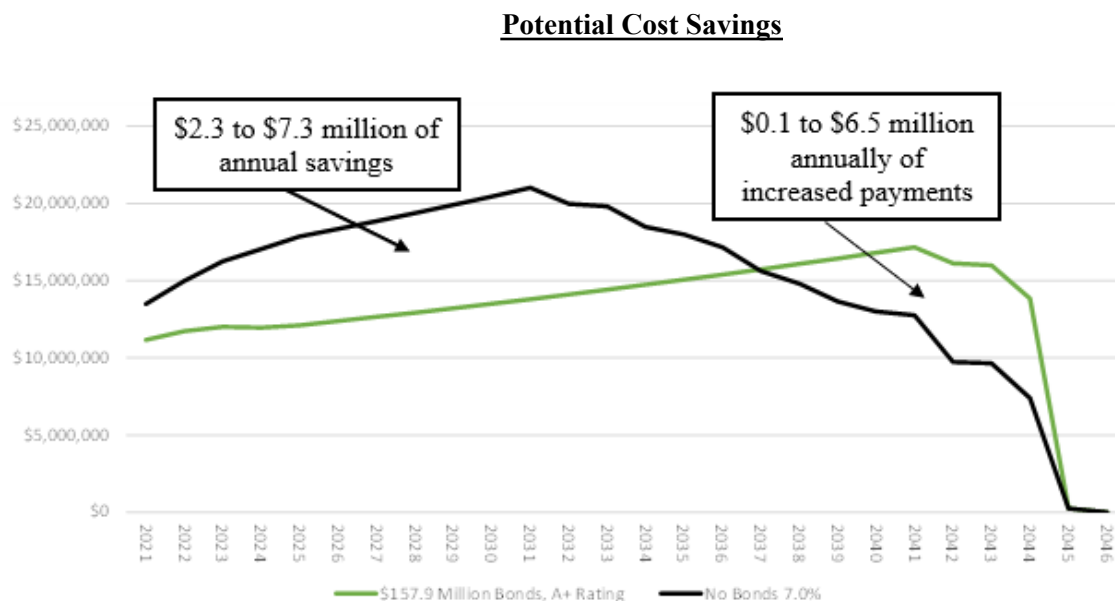
During this validation period (estimated at 3 to 5 months), the City Manager and the financing team will refine the various options for the City's proposed 2020 Pension Obligation Bonds. These options will include evaluating different sizes of POBs, amortization shapes, and targeted funded ratios. Also, during this time, a Preliminary Official Statement will be drafted (used to solicit investor interest) and a credit rating presentation will be prepared in order to obtain a credit rating (similar to a "credit score") for the proposed financing. It is anticipated that the team will be back in front of City Council for formal approval of the Preliminary Official Statement May of 2020, but this exact date will be dictated by the actual duration of the validation period and the municipal market interest rate environment.

### **FINANCING COST ESTIMATES AND SAVINGS:**

Fees for the financing team will be paid through (or reimbursed from) the financing process and only upon successful completion of the potential Pension Obligation Bond financing. However, given the unique nature of a POB issuance, there are certain legal costs that will not be contingent upon a successful closing of the transaction. These costs are estimated to not exceed \$38,000 if the pension financing is not successfully closed for legal validation costs (\$28,000 to bond counsel Norton Rose Fulbright and not-to-exceed \$10,000 to City Attorney Jones & Mayer).

Savings from the POB financing will be determined by the ultimate size, structure, credit rating, and interest rates at the time of bond sale and pricing. As noted earlier, several options will be presented and City staff, with guidance from its Municipal Advisor, will ultimately recommend for City Council consideration / approval which option is most prudent, if any, to execute. It should be noted that a POB that is executed in the Spring of 2020 will begin generating savings in FY 2020/21. Adoption of the Resolution and commencing the validation process provides the City with a basis to issue Pension Obligation Bonds in the future but does not obligate the City to issue the bonds.

The chart below has been developed to better illustrate the potential benefit of the pension obligation bonds. It should be noted that this analysis is considered preliminary. The analysis and chart below assume that the (1) POBs of \$157.9 million are issued and (2) the new debt service is structured to escalate at roughly 2% annually over 24 years and (5) a 3.813% interest rate is used for the POB (inclusive of all costs).



### **Hypothetical 2020 Pension Obligation Bond Financing: Prior UAAL Payments vs. New Pension Obligation Bond + Unrefunded UAAL**

The black line represents the City's current repayment schedule for its UAAL. A POB may be able to help

“smooth-out” overall new payments (as shown using the green line) at a much lower level. **Estimated present value (PV) savings is \$44.8 million, or 22.3% of refunded UAAL.** Annual savings from 2021 through 2035 range from \$2.3 to \$7.3 million. Under this 24-year maturity scenario, there would be an increase of payments ranging from \$0.1 to \$6.5 million annually from 2037 to 2044. In total, estimated cumulative net present value savings is \$44.8 million.

SB 450 Good Faith Estimates: Pursuant to Senate Bill 450 (Chapter 625 of the 2017–2018 Session of the California Legislative), certain good faith financing cost estimates (as obtained by the issuer from an underwriter, municipal advisor, or private lender) must be disclosed at a public meeting before the governing body’s authorization of the issuance of bonds with a term greater than 13 months.

<u>Information to be disclosed per Government Code Section 5852.1:</u>	<u>Estimates</u>
All In True interest cost of the bonds (the rate necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for the new issue of bonds)	3.812688%
Finance charge of the bonds (the sum of fees/charges paid to third parties)	\$924,258.40
Amount of proceeds received by the public body from the sale of the bonds, less the finance charge of the bonds and any reserves or capitalized interest paid or funded with proceeds of the bonds	\$156,955,741.60
The total payment amount (the sum total of all debt service payments on the bonds, plus the finance charge of the bonds not paid from bond proceeds)	\$250,311,511.52

## ANALYSIS

According to the actuarial valuation dated June 30, 2018 (recently released in September 2019), the City had a total projected UAAL at 6/30/2020 of approximately \$200 million, comprised of approximately \$48 million for Miscellaneous employees and approximately \$152 million for Safety employees. The recommended not-to-exceed Pension Obligation Bond Principal amount is \$205 million, including \$200 million of UAAL, issuance costs and a small contingency. The City Manager and the finance team have provided analysis of a preferred POB with a principal of \$157.9 million if issued on June 16, 2020. CalPERS calculates payoff amounts to the exact day it receives funds. Therefore, bond sizing will vary with the exact issuance date: earlier issuance would result in a smaller bond and later issuance would result in a larger bond.

## NEXT STEPS

Assuming this Resolution is approved by the City Council, the financing team and City Manager will work together concurrently with the validation process to prepare the final plan of finance and the Preliminary Official Statement for the Pension Obligation Bonds. The Preliminary Official Statement is the offering document with respect to the POBs and must contain all material information to enable investors to determine whether to purchase the POBs.

## **LEGAL REVIEW:**

The City Attorney's Office has reviewed and approved the report and the attached resolutions.

## **OPTIONS:**

The City Council has the following options:

1. Adopt the attached resolution to begin the process of issuing Pension Obligation Bonds, or
2. Adopt the resolution but only approve the validation action, or
3. Provide staff alternative direction.

**Prepared by:** David Carmany

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### **Fiscal Impact**

#### **FISCAL IMPACT:**

Issuance of Pension Obligation Bonds to fund the Unfunded Actuarial Accrued Liability exchanges one obligation for another at a lower interest rate. The financial benefit to the City is anticipated to be \$44.8 million in savings over the term of the bonds. If City does not proceed with Pension Obligation Bond issuance, there is a non-contingent cost paid for professional legal validation services that shall not exceed \$38,000.

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### **Attachments**

- Attachment 1 - Reso 2020-08
- Attachment 2 - Draft Trust Agreement
- Attachment 3 - Validation Complaint
- Attachment 4 - Estimated Cost of Issuance
- Attachment 5 - Pension Obligation Bond Timeline

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**CITY COUNCIL GOALS & OBJECTIVES:** Achieve Fiscal Sustainability and Financial Stability  
Enhance City Facilities and Infrastructure  
Enhance the City Image and Effectiveness  
Enhance City Programs and Activities

## **RESOLUTION NO. 2020-08**

### **RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA AUTHORIZING THE ISSUANCE AND DELIVERY OF PENSION OBLIGATION BONDS TO REFUND CERTAIN OUTSTANDING PENSION FUND OBLIGATIONS OF THE CITY TO THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST AGREEMENT; AUTHORIZING A VALIDATION ACTION; APPROVING CERTAIN PROFESSIONALS FOR THE REFUNDING; AND OTHER MATTERS RELATING THERETO**

**WHEREAS**, the City of West Covina, California (the "City") is obligated by the Public Employees' Retirement Law, commencing with Section 20000 of the Government Code of the State of California, as amended (the "Retirement Law"), to make payments to the System relating to pension benefits accruing to the California Public Employees' Retirement System's (the "System's") members, including the City; and

**WHEREAS**, the City is obligated specifically to make certain payments to the System in respect of current and retired public safety employees and miscellaneous employees under the pension programs of the System that amortize such obligations over a fixed period of time, including normal costs (collectively, the "Pension Obligation"); and

**WHEREAS**, the Pension Obligation is evidenced by a contract or contracts with the System with respect to public safety employees and miscellaneous employees of the City, as heretofore and hereafter amended from time to time (collectively, the "CalPERS Contract"); and

**WHEREAS**, the City is authorized pursuant to Articles 10 and 11 (commencing with Section 53570) of Chapter 3 of Division 2 of Title 5 of the Government Code of the State of California (the "Act") to issue bonds for the purpose of refunding any evidence of indebtedness of the City; and

**WHEREAS**, the City desires to issue one or more series of bonds (the "Pension Obligation Bonds") for the purpose of refunding obligations under the CalPERS Contract and thereby providing funds to the System in payment of the Pension Obligation; and

**WHEREAS**, there is on file with the City Council the proposed form of Trust Agreement (the "Trust Agreement") to be entered into between the City and a trustee to be named therein (the "Trustee"), relating to the Pension Obligation Bonds, including the forms of Bonds attached thereto as an exhibit.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST COVINA AS FOLLOWS:**

**Section 1.** The City Council hereby finds and determines that the foregoing recitals are true and correct.

**Section 2.** This City Council hereby finds and declares that the issuance of the Pension Obligation Bonds to refund Pension Obligations of the Safety Plan and the Miscellaneous Plan, and the other actions contemplated by this Resolution are in the best interests of the City.

**Section 3.** This City Council hereby authorizes and approves the assignment and pledge of all the City's rights, title and interest in and to all money and securities for deposit in, or deposited in, the Bond Fund established pursuant to the Trust Agreement and any investment earnings thereon, and any collateral security for, and all proceeds of, any of the foregoing, to the Trustee, in trust for the security of the owners, of one or more series of the Pension Obligation Bonds, and the issuance, sale and delivery of such Pension Obligation Bonds. The Pension Obligation Bonds shall be in substantially the form attached to the Trust Agreement, with such changes therein, deletions therefrom and additions thereto as the City Manager shall approve, such approval to be conclusively evidenced by the execution and delivery of the Pension Obligation Bonds. The Pension Obligation Bonds of any series shall be issued as current interest fixed rate bonds. The aggregate principal amount of the initial series of Pension Obligation Bonds (the "2020 Pension Obligation Bonds") shall not exceed (i) the lesser of \$205,000,000 or (ii) the amount of the Pension Obligation (as confirmed by the System) remaining unpaid on the Safety Plan and the Miscellaneous Plan (plus a normal cost contribution with respect to such plans), described above on the date of issuance, plus an additional amount desirable to fund a reserve and to pay costs of issuance of the Pension Obligation Bonds, original issue discount, and Underwriter's discount with respect to such Pension Obligation Bonds.

The Underwriter's discount, excluding original issue discount, shall not exceed 0.318% of the aggregate principal amount of the 2020 Pension Obligation Bonds. The maximum interest rate on the 2020 Pension Obligation Bonds shall not exceed 5.8% per annum. The 2020 Pension Obligation Bonds shall mature not later than 30 years following their date of issuance.

**Section 4.** The Pension Obligation Bonds, including the 2020 Pension Obligation Bonds, shall constitute an obligation imposed by law, pursuant to the Constitution and the laws of the State of California, including the Retirement Law. Payment of the principal of and interest on the Pension Obligation Bonds is not limited to any special source of funds and shall be payable from any legally available moneys or funds of the City.

**Section 5.** The proposed form of Trust Agreement, between the City and the Trustee, on file with the City Clerk, is hereby approved. The Mayor, the City Manager, and the City Clerk (the "Authorized Representatives") are each hereby authorized and directed, severally, or any such officer's designee, for and on behalf of the City, to execute and deliver the Trust Agreement, substantially in the form on file with the City Clerk, with such changes therein, deletions therefrom and additions thereto (including, but not limited to changes, deletions and additions as may be required by a municipal bond insurer, if any) as such Authorized Representative shall approve, such approval to be conclusively evidenced by the execution and delivery of the Trust Agreement.

**Section 6.** If an Authorized Representative determines that it will be advantageous to the City to purchase municipal bond insurance or secure other credit or liquidity enhancement with respect to some or all of the Pension Obligation Bonds, such Authorized Representative or

his designee is hereby authorized to do so upon determining that such purchase is in the best interest of the City.

**Section 7.** The Authorized Representatives of the City are, and each of them hereby is, authorized and directed to do any and all things, including bringing a validation action under Section 860 *et seq.* of the California Code of Civil Procedure and to take any and all actions (including any required publications of summons or other notice) and execute and deliver any and all documents which they or any of them deem necessary or advisable to consummate the transactions contemplated by this Resolution and the Trust Agreement and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution and the Trust Agreement. A draft of the Complaint for Validation is on file with the City Clerk.

**Section 8.** The City Council hereby approves the appointment of (a) Norton Rose Fulbright US LLP to perform Bond Counsel and Disclosure Counsel services, including the preparation of validation papers; (b) Wolf & Company Inc. and NHA Advisors LLC, to perform Municipal Advisor services; (c) Hilltop Securities Inc., to serve as Underwriters; and (d) US Bank to serve as Trustee. The City Manager is hereby authorized and directed to negotiate and execute professional services agreements with the financing team members.

**Section 9.** Each Authorized Representative and all other officers of the City are hereby authorized and directed, for and in the name and on behalf of the City to do any and all things and take any and all other actions, including the publication of any notices necessary or desirable in connection with the sale of the Pension Obligation Bonds and execution and delivery of any and all assignments, certificates, requisitions, agreements, notices, consents, instruments and other documents, which they, or any of them, deem necessary or advisable to consummate the issuance and sale of the Pension Obligation Bonds and the consummation of the transactions as described herein.

**Section 10.** All actions heretofore taken by any Authorized Representative or any officer, employee or agent of the City with respect to the issuance, delivery and sale of the Pension Obligation Bonds or in connection with or related to any of the agreements referred to herein, are hereby approved, confirmed and ratified.

**Section 11.** This Resolution shall take effect from and after its date of adoption.

[Signatures on following page]



**APPROVED AND ADOPTED** this 4<sup>th</sup> day of February 2020.

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Tony Wu  
Mayor

**ATTEST:**

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Lisa Sherrick  
Assistant City Clerk

**APPROVED AS TO FORM:**

---

Thomas P. Duarte  
City Attorney

**RESOLUTION CERTIFICATION**

STATE OF CALIFORNIA                    )  
  ) ss  
COUNTY OF LOS ANGELES            )

I, Lisa Sherrick, Assistant City Clerk of the City of West Covina, DO HEREBY CERTIFY that the foregoing Resolution was duly adopted at a regular meeting of the City Council held on the 4<sup>th</sup> day of February 2020, by the following vote to wit:

AYES:           Councilmembers:  
  
NOES:           Councilmembers:  
  
ABSENT:        Councilmembers:

\_\_\_\_\_  
ASSISTANT CITY CLERK

TRUST AGREEMENT

between the

CITY OF WEST COVINA

and

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

Dated as of [As of Date]

City of West Covina  
Taxable Pension Obligation Bonds  
Series 2020

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THIS TRUST AGREEMENT made and entered into as of [As of Date] (the “Trust Agreement”) by and between U.S. Bank National Association, a National Banking Association duly organized and existing under and by virtue of the laws of the United States, as Trustee (the “Trustee”) and the CITY OF WEST COVINA (the “City”), a duly organized, validly existing and operating municipal corporation, under the laws of the State of California.

**W I T N E S S E T H:**

**WHEREAS**, the City is obligated by the Public Employees’ Retirement Law, commencing with Section 20000 of the Government Code of the State of California, as amended (the “Retirement Law”), to make payments to the California Public Employees’ Retirement System (the “System”) relating to pension benefits accruing to the System’s members, including the City; and

**WHEREAS**, the City is obligated specifically to make certain payments to the System in respect of current and retired public safety employees and miscellaneous employees under the pension programs of the System that amortize such obligations over a fixed period of time, including normal costs (collectively, the “Pension Obligation”); and

**WHEREAS**, the Pension Obligation is evidenced by a contract or contracts with the System with respect to public safety employees and miscellaneous employees of the City, as heretofore and hereafter amended from time to time (collectively, the “CalPERS Contract”); and

**WHEREAS**, the City is authorized pursuant to Articles 10 and 11 (commencing with Section 53570) of Chapter 3 of Division 2 of Title 5 of the Government Code of the State of California (the “Act”) to issue bonds for the purpose of refunding any evidence of indebtedness of the City; and

**WHEREAS**, for the purpose of refunding the City’s obligations to the System evidenced by the CalPERS Contract and thereby providing funds to the System in payment of the Pension Obligation, the City has determined to issue an initial Series of Bonds hereunder, captioned the “City of West Covina Taxable Pension Obligation Bonds, Series 2020,” in the aggregate principal amount not to exceed \$205,000,000 (the “Series 2020 Bonds”), all pursuant to and secured by this Trust Agreement providing for the issuance of the Series 2020 Bonds and, collectively with Additional Bonds, the “Bonds,” all in the manner provided herein; and

**WHEREAS**, to provide for the authentication and delivery of the Bonds, to establish and declare the terms and conditions upon which the Bonds are to be issued and to secure the payment of the principal thereof and interest thereon, the City has authorized the execution and delivery of this Trust Agreement; and

**WHEREAS**, all acts and proceedings required by law necessary to make the Bonds, when executed by the City, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal obligations of the City payable in accordance with their terms, and to constitute this Trust Agreement a valid and binding agreement of the parties hereto for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution and delivery of this Trust Agreement have been in all respects duly authorized;

**NOW, THEREFORE, THIS TRUST AGREEMENT WITNESSETH**, that in order to secure the payment of the principal of, premium, if any, and the interest on all Bonds at any time issued and outstanding under this Trust Agreement, according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds are to be issued and received, and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the holders thereof, and for other valuable considerations, the receipt whereof is hereby acknowledged, the City does hereby covenant and agree with the Trustee, for the benefit of the respective holders from time to time of the Bonds, as follows:

## **ARTICLE I**

### **DEFINITIONS; EQUAL SECURITY**

**Section 1.01. Definitions.** Unless the context otherwise requires, the terms defined in this section shall for all purposes hereof and of any Supplemental Trust Agreement and of any certificate, opinion, request or other document herein or therein mentioned have the meanings herein specified:

“Act” means Articles 10 and 11 (commencing with Section 53570) of Chapter 3 of Division 2 of Title 5 of the Government Code of the State of California.

“Additional Bonds” means all Bonds of the City authorized by and at any time Outstanding pursuant hereto and executed, issued and delivered in accordance with Article III.

“Aggregate Principal Amount” means, as of any date of calculation, the principal amount of the Bonds referred to.

“Authorized Denominations” means \$5,000 principal amount or any integral multiple thereof.

“Authorized Representative” means the Mayor, the City Manager of the City of West Covina and his or her respective designees designated in writing to the Trustee.

“Beneficial Owner” means the beneficial owner of each such Bond, determined under the rules of DTC.

“Bond Fund” means the Bond Fund established in Section 4.01(a) of the Trust Agreement.

“Bond Insurance Policy” means the municipal bond insurance policy issued by the Bond Insurer, if any, insuring the payment when due of principal of and interest on a Series of Bonds as provided therein.

“Bond Insurer” shall mean the provider, if any, of a Bond Insurance Policy, or any successor thereto.

“Bonds” means the Series 2020 Bonds, and any subseries thereof, and all Additional Bonds.

“Business Day” means any day other than a Saturday or Sunday or day upon which the Trustee is authorized by law to remain closed.

“CalPERS Contract” means the contracts relating to the Safety Plan (ID 3963758199) and the Miscellaneous Plan (ID 3963758199), each between the City and the System, as heretofore and hereafter amended from time to time.

“Certificate of the City” means an instrument in writing signed by any one of the Authorized Representatives of the City or such officer’s designee, or by any other officer of the City duly authorized by the City Council of the City in writing to the Trustee for that purpose. If and to the extent required by the provisions of Section 10.07, each Certificate of the City shall include the statements provided for in Section 10.07.

“City” means the City of West Covina, California.

“Closing Date” means the date on which the Series 2020 Bonds are delivered to the original purchaser for the Series 2020 Bonds.

“Continuing Disclosure Certificate” means that certain Continuing Disclosure Certificate executed by the City dated the date of issuance and delivery of the Series 2020 Bonds, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

“Corporate Trust Office” means such corporate trust office of the Trustee as may be designated from time to time by written notice from the Trustee to the City, initially being in \_\_\_\_\_, California. The Trustee may designate in writing to the City and the Owner such other office or agency from time to time for purposes of registration, transfer, exchange, payment or redemption of Bonds.

“Costs of Issuance” means all items of expense directly or indirectly payable by or reimbursable to the City and related to the Bonds, including, but not limited to, costs of preparation and reproduction of documents, costs of rating agencies and costs to provide information required by rating agencies, filing and recording fees, initial fees and charges of the Trustee, legal fees and charges, fees and disbursements of consultants and professionals, fees and expenses of the Underwriter or placement agent, fees and charges for preparation, execution and safekeeping of the Bonds, premiums for bond insurance, if any, and any other cost, charge or fee in connection with the original execution and delivery of the Bonds.

“Costs of Issuance Fund” means the Costs of Issuance Fund established in Section 2.12(b) of this Trust Agreement.

“Defeasance Securities” means:

- (1) Cash; and



(2) Obligations of or obligations guaranteed as to principal and interest by, the United States or any agency or instrumentality thereof, when such obligations are backed by the full faith and credit of the United States, including:

- ☐ U.S. Treasury obligations
- ☐ All direct or fully guaranteed obligations
- ☐ Farmers Home Administration
- ☐ General Services Administration
- ☐ Guaranteed Title XI financing
- ☐ Government National Mortgage Association (GNMA)
- ☐ State and Local Government Series

Any security used for defeasance must provide for the timely payment of principal and interest and cannot be callable or prepayable prior to maturity or earlier redemption of the rated debt (excluding securities that do not have a fixed par value and/or whose terms do not promise a fixed dollar amount at maturity or call date).

“DTC” means The Depository Trust Company, New York, New York, a limited-purpose trust company organized under the laws of the State of New York, and its successors as securities depository for the Bonds including any such successor appointed pursuant to Section 2.07 hereof.

“Fiscal Year” means the twelve-month period terminating on June 30 of each year, or any other annual accounting period hereafter selected and designated by the City as its fiscal year in accordance with applicable law.

“Independent Certified Public Accountant” means any certified public accountant or firm of such accountants duly licensed and entitled to practice and practicing as such under the laws of the State or a comparable successor, appointed and paid by the City, and who, or each of whom --

(1) is in fact independent according to the Statement of Auditing Standards No. 1 and not under the domination of the City;

(2) does not have a substantial financial interest, direct or indirect, in the operations of the City; and

(3) is not connected with the City as a member, officer or employee of the City, but who may be regularly retained to audit the accounting records of and make reports thereon to the City.

“Interest Account” means the account by that name established in Section 4.02 of this Trust Agreement.

“Interest Payment Date” means each [\_\_\_\_\_] 1 and [\_\_\_\_\_] 1, commencing \_\_\_\_\_ 1, 20\_\_.

“MSRB” shall mean the Municipal Securities Rulemaking Board or any other entity designated or authorized by the Securities and Exchange Commission to receive reports pursuant to the Rule. Until otherwise designated by the MSRB or the Securities and Exchange Commission, filings with the MSRB are to be made through the Electronic Municipal Market Access (EMMA) website of the MSRB, currently located at <http://emma.msrb.org>.

“Opinion of Counsel” means a written opinion of counsel of recognized national standing in the field of law relating to municipal bonds, appointed and paid by the City.

“Outstanding,” when used as of any particular time with reference to Bonds, means (subject to the provisions of Section 7.02) all Bonds except

(1) Bonds theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation;

(2) Bonds paid or deemed to have been paid within the meaning of Section 9.01; and

(3) Bonds in lieu of or in substitution for which other Bonds shall have been executed, issued and delivered by the City pursuant hereto.

“Owner” means any person who shall be the registered owner of any Outstanding Bond.

“Permitted Investments” means any of the following to the extent permitted by the laws of the State:

(1) Defeasance Securities;

(2) Obligations of any of the following federal agencies which obligations represent the full faith and credit of the United States of America, including:

- ☐ Export-Import Bank
- ☐ Rural Economic Community Development Administration
- ☐ U.S. Maritime Administration
- ☐ Small Business Administration
- ☐ U.S. Department of Housing & Urban Development (PHA’s)
- ☐ Federal Housing Administration

- ☐ Federal Financing Bank;

(3) Direct obligations of any of the following federal agencies which obligations are not fully guaranteed by the full faith and credit of the United States of America:

- ☐ Senior debt obligations issued by the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC)
- ☐ Obligations of the Resolution Funding Corporation (REFCORP)
- ☐ Senior debt obligations of the Federal Home Loan Bank System
- ☐ Senior debt obligations of other Government Sponsored Agencies approved by the Bond Insurer;

(4) U.S. dollar denominated deposit accounts, federal funds and bankers' acceptances with domestic commercial banks (including the Trustee and its affiliates) which have a rating on their short-term certificates of deposit on the date of purchase of "A-1" or "A-1+" by Standard & Poor's Ratings Services and which mature not more than three hundred sixty (360) calendar days after the date of purchase. (Ratings on holding companies are not considered as the rating of the bank);

(5) Commercial paper which is rated at the time of purchase in the single highest classification, "A-1+" by Standard & Poor's Ratings Services and which matures not more than two hundred seventy (270) calendar days after the date of purchase;

(6) Investments in a money market fund rated at the time of purchase "AAAm" or "AAAm-G" or better by Standard & Poor's Ratings Services, including funds for which the Trustee or its affiliates receives and retains a fee for services provided to the fund, whether as a custodian, transfer agent, investment advisor or otherwise;

(7) Pre-refunded municipal obligations defined as follows: Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and

(A) which are rated at the time of purchase, based on an irrevocable escrow account or fund (the "escrow"), in the highest rating category of Standard & Poor's Ratings Services or any successors thereto; or

(B) which are fully secured as to interest and principal and redemption premiums, if any, by an escrow consisting only of cash or obligations described in paragraph (2) of the definition of Defeasance Securities, which escrow may be applied only to the payment of such interest and principal and redemption premiums, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (ii) which escrow is sufficient, as verified by a nationally recognized independent certified

public accountant, to pay principal of and interest and redemption premiums, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate;

(8) Municipal obligations rated at the time of purchase “Aaa/AAA” or general obligations of States with a rating of “A2/A” or higher by Standard & Poor’s Ratings Services; and

(9) The Local Agency Investment Fund (as that term is defined in Section 16429.1 of the Government Code of the State, as such Section may be amended or recodified from time to time).

The value of the above investments shall be determined as follows:

(a) For the purpose of determining the amount in any fund, all Permitted Investments credited to such fund shall be valued at fair market value. The Trustee shall have no duty in connection with the determination of fair market value other than to follow: (i) its normal practices in the purchase, sale and determining the value of Permitted Investments; and (ii) the investment directions of the City. The Trustee may utilize and rely on computerized securities pricing services that may be available to it, including those available through its regular accounting system;

(b) As to certificates of deposit and bankers’ acceptances, the face amount thereof, plus accrued interest thereon; and

(c) As to any investment not specified above, the value thereof established by prior agreement among the City, the Trustee and, if applicable, the Bond Insurer.

“Principal Account” means the account by that name established in Section 4.02 of this Trust Agreement.

“Person” means an individual, corporation, firm, association, partnership, trust, or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

“Principal Amount” means as to any Bond, the principal amount thereof.

“Principal Payment Date” means each \_\_\_\_\_ 1, commencing \_\_\_\_\_ 1, 20\_\_.

“Rating Agencies” means S&P Global Ratings or, if S&P Global Ratings no longer maintains a rating on the Bonds, any other nationally recognized bond rating agency then maintaining a rating on the Bonds, but, in each instance, only so long as S&P Global Ratings or other nationally recognized rating agency then maintains a rating on the Bonds.

“Record Date” means the close of business on the 15th day of the month preceding any Interest Payment Date, whether or not such day is a Business Day.

“Refunding Fund” means the fund by that name established in Section 2.12(a) of this Trust Agreement.

“Representation Letter” means the Letter of Representations from the City and the Trustee to DTC, or any successor securities depository for the Bonds.

“Retirement Law” means the Public Employees’ Retirement Law, commencing with Section 20000 of the Government Code of the State of California, as amended.

“Serial Bonds” means Bonds for which no sinking fund payments are provided.

“Series” means all of the Bonds designated as being within a certain series, regardless of variations in maturity date, interest rate, redemption and other provisions, and any Bonds thereafter issued in transfer or exchange for such Bonds pursuant to this Trust Agreement.

“Series 2020 Bonds” means the City of West Covina Taxable Pension Obligation Bonds, Series 2020.

“State” means the State of California.

“Surplus Account” means the account by that name established in Section 4.02 of this Trust Agreement.

“Supplemental Trust Agreement” means any trust agreement then in full force and effect which has been duly executed and delivered by the City and the Trustee amendatory hereof or supplemental hereto; but only if and to the extent that such Supplemental Trust Agreement is specifically authorized hereunder.

“System” means the California Public Employees’ Retirement System.

“Term Bonds” means Bonds which are payable on or before their specified maturity dates from sinking fund payments established for that purpose and calculated to retire such Bonds on or before their specified maturity dates.

“Trust Agreement” means this Trust Agreement, dated as of [As of Date], between the City and the Trustee, as originally executed and as it may from time to time be amended or supplemented by all Supplemental Trust Agreements executed pursuant to the provisions hereof.

“Trustee” means U.S. Bank National Association, or any other association or corporation which may at any time be substituted in its place as provided in Section 6.01.

“Underwriter” means, for the Series 2020 Bonds, Hilltop Securities Inc., and for any Additional Bonds, the underwriter for such Additional Bonds.

“Written Request of the City” means an instrument in writing signed by any one of the Authorized Representatives of the City or such officer’s designee, or by any other officer of the City duly authorized by the City Council of the City in writing to the Trustee for that purpose.

**Section 1.02. Trust Agreement Constitutes Contract.** In consideration of the acceptance of the Bonds by the Owners thereof, the Trust Agreement shall be deemed to be and shall constitute a contract among the City, the Trustee and the Owners from time to time of all Bonds authorized, executed, issued and delivered hereunder and then Outstanding to provide for the payment of the interest on, principal of, and redemption premium (if any) on, all Bonds which may from time to time be authorized, executed, issued and delivered hereunder, subject to the agreements, conditions, covenants and provisions contained herein; and all agreements and covenants set forth herein to be performed by or on behalf of the City shall be for the equal and proportionate benefit, protection and security of all Owners of the Bonds without distinction, preference or priority as to security or otherwise of any Bonds over any other Bonds by reason of the number or date thereof or the time of authorization, sale, execution, issuance or delivery thereof or for any cause whatsoever, except as expressly provided herein or therein.

## **ARTICLE II**

### **ISSUANCE OF SERIES 2020 BONDS; GENERAL BOND PROVISIONS**

**Section 2.01. Authorization and Purpose of Bonds.** The City has reviewed all proceedings heretofore taken relative to the authorization of the Bonds and has found, as a result of such review, and hereby finds and determines that all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and that the City is now duly authorized, pursuant to each and every requirement of the Act, to issue the Bonds in the form and manner and for the purpose provided herein and that the Bonds shall be entitled to the benefit, protection and security of the provisions hereof.

The obligations of the City under the Bonds, including the obligation to make all payments of interest and principal when due, are obligations of the City imposed by law and are absolute and unconditional, without any right of set-off or counterclaim. Neither the Bonds nor the obligation of the City to make payments on the Bonds constitute an indebtedness of the City, the State of California, or any of its political subdivisions within the meaning of any constitutional or statutory debt limitation or restriction.

**Section 2.02. Terms of the Series 2020 Bonds; General Bond Provisions.** The Series 2020 Bonds shall be designated “City of West Covina Taxable Pension Obligation Bonds, Series 2020” and shall be in the aggregate principal amount of \$\_\_\_\_\_. The Series 2020 Bonds shall be dated the date of original delivery, shall be issued only in fully registered form in denominations of five thousand dollars (\$5,000) or any integral multiple of five thousand dollars (\$5,000) (not exceeding the principal amount of Series 2020 Bonds maturing at any one time), and shall mature on the dates and in the principal amounts and bear interest at the rates as set forth in the following table:

Payment Date ( _____ 1)	Principal <u>Amount</u>	Rate of <u>Interest</u>
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The Bonds shall bear interest at the rates (based on a 360-day year of twelve 30-day months) set forth above, payable on the Interest Payment Dates for the Bonds. The Bonds shall bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless such date of authentication is an Interest Payment Date or during the period from the sixteenth day of the month preceding an Interest Payment Date to such Interest Payment Date, in which event they shall bear interest from such Interest Payment Date, or unless such date of authentication is prior to the first Record Date, in which event they shall bear interest from their dated date; provided, however, that if at the time of authentication of any Bond interest is then in default on the Outstanding Bonds, such Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment on the Outstanding Bonds. Payment of interest on the Bonds due on or before the maturity or prior redemption thereof shall be made to the person whose name appears in the Series 2020 Bonds registration books kept by the Trustee pursuant to Section 2.08 as the registered owner thereof as of the close of business on the Record Date for an Interest Payment Date, whether or not such day is a Business Day, such interest to be paid by check mailed on the Interest Payment Date by first-class mail to such registered owner at the address as it appears in such books; provided, that upon the written request of an Owner of \$1,000,000 or more in aggregate principal amount of Bonds received by the Trustee prior to the applicable Record Date, interest shall be paid by wire transfer in immediately available funds. Any such written request shall remain in effect until rescinded in writing by the Owner.

The principal of the Bonds shall be payable in lawful money of the United States of America at the Corporate Trust Office of the Trustee. Payment of the principal of the Bonds shall be made upon the surrender thereof at maturity or on redemption prior to maturity at the Corporate Trust Office of the Trustee.

**Section 2.03. Redemption of Series 2020 Bonds.**

(a) Optional Redemption. The Series 2020 Bonds maturing on or before \_\_\_\_\_ 1, 20\_\_ shall not be subject to optional redemption prior to maturity. The Series 2020 Bonds maturing on or after \_\_\_\_\_ 1, 20\_\_ shall be subject to redemption prior to their maturity date, at the option of the Authority, randomly within a maturity on any date on or after \_\_\_\_\_ 1, 20\_\_, from prepayment of Installment Payments made at the option of the City at the redemption price equal to the principal amount of the Series 2020 Bonds to be redeemed, plus accrued interest thereon to the date of redemption, without premium. In the event of a redemption of the Series 2020 Bonds pursuant to this Section 2.03(a), the City shall provide the Trustee with a revised sinking fund schedule giving effect to the redemption so completed.

(b) Mandatory Sinking Fund Redemption. The Series 2020 Term Bonds maturing on \_\_\_\_\_ 1, 20\_\_ are subject to mandatory sinking fund redemption on the dates and in the amounts specified below, at a redemption price equal to the principal amount thereof, plus accrued interest to the date fixed for redemption, without premium. The principal amount of such term bonds to be so redeemed and the dates therefor shall be as follows:

Redemption Date (_____ 1)	Principal <u>Amount</u>
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\*

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\* Maturity Date

The Series 2020 Term Bonds maturing on \_\_\_\_\_ 1, 20\_\_ are subject to mandatory sinking fund redemption on the dates and in the amounts specified below, at a redemption price equal to the principal amount thereof, plus accrued interest to the date fixed for redemption, without premium. The principal amount of such term bonds to be so redeemed and the dates therefor shall be as follows:

Redemption Date (_____ 1)	Principal <u>Amount</u>
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\* Maturity Date

(c) Selection of Bonds for Redemption. Whenever provision is made in the foregoing subsection (a) or (b) of this Section for the redemption of Bonds of more than one maturity, the Bonds to be redeemed shall be selected in inverse order of maturity or, at the election of the Authority evidenced by a Written Request of the City filed with the Trustee at least 30 days prior to the date of redemption, on a *pro rata* basis among maturities; and in each case, the Trustee shall select the Bonds to be redeemed within any maturity randomly in any manner which the Trustee in its sole discretion shall deem appropriate. For purposes of such selection, all Bonds shall be deemed to be comprised of separate \$5,000 portions and such portions shall be treated as separate Bonds which may be separately redeemed.

(d) Notice of Redemption. If the City elects to redeem Bonds as provided above, the City shall, at least 30 days (or such lesser number of days acceptable to the Trustee) prior to the redemption date, give written notice to the Trustee of its election to so redeem, the redemption date and the principal amount of the Bonds to be redeemed. Notice of redemption shall be mailed by first class mail by the Trustee, on behalf and at the expense of the City, not less than 20 nor more than 60 days prior to the redemption date to the respective Owners of Bonds designated for redemption at their addresses appearing on the bond registration books of the Trustee. The Trustee shall also provide such additional notice of redemption of Bonds at the time and as may be required by the MSRB. Each notice of redemption shall state the date of such notice, the Bonds to be redeemed, the Series and date of issue of such Bonds, the redemption



date, the redemption price, the place or places of redemption (including the name and appropriate address or addresses), the CUSIP number (if any) of the maturity or maturities, and, if less than all of any such maturity are to be redeemed, the distinctive certificate numbers of the Bonds of such maturity to be redeemed and, in the case of Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed. Each notice of optional redemption shall also state that such optional redemption may be rescinded by the City and that, unless such redemption is so rescinded, and provided that on said date funds are available for payment in full of the Bonds then called for redemption, on said date there will become due and payable on each of such Bonds the redemption price thereof or of said specified portion of the principal amount thereof in the case of a Bond to be redeemed in part only, together with interest accrued thereon to the redemption date, and that from and after such redemption date interest thereon shall cease to accrue, and shall require that such Bonds be then surrendered at the address or addresses of the Trustee specified in the redemption notice.

Failure by the Trustee to give notice pursuant to this Section 2.03 to any one or more of the Information Services or Securities Depositories, or the insufficiency of any such notice shall not affect the sufficiency of the proceedings for redemption. The failure of any Owner to receive any redemption notice mailed to such Owner and any defect in the notice so mailed shall not affect the sufficiency of the proceedings for redemption.

The City shall have the right to rescind any optional redemption by providing the Trustee with written notice of such rescission at least two Business Day prior to the date fixed for redemption. Any notice of redemption shall be cancelled and annulled if for any reason funds are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default hereunder. The Trustee shall mail notice of such rescission of redemption in the same manner as the original notice of redemption was sent.

**Section 2.04. Form of Bonds.** The Bonds and the authentication endorsement and assignment to appear thereon shall be substantially in the form set forth in Exhibit A.

**Section 2.05. Execution of Bonds.** The Mayor is hereby authorized and directed to execute each of the Bonds on behalf of the City, and the Assistant City Clerk of the City is hereby authorized and directed to countersign each of the Bonds on behalf of the City. The signature of the Mayor may be by printed or otherwise reproduced by facsimile reproduction. In case any officer whose signature appears on the Bonds shall cease to be such officer before the delivery of the Bonds to the purchaser thereof, such signature shall nevertheless be valid and sufficient for all purposes as if such officer had remained in office until such delivery of the Bonds.

Only those Bonds bearing thereon a certificate of authentication in the form provided for herein, executed manually and dated by the Trustee, shall be entitled to any benefit, protection or security hereunder or be valid or obligatory for any purpose, and such certificate of the Trustee shall be conclusive evidence that the Bonds so authenticated have been duly authorized, executed, issued and delivered hereunder and are entitled to the benefit, protection and security hereof.

**Section 2.06. Transfer and Payment of Bonds.** Any Bond may, in accordance with its terms, be transferred in the books required to be kept pursuant to the provisions of Section 2.08 by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bonds for cancellation at the Corporate Trustee Office of the Trustee, accompanied by delivery of a duly executed written instrument of transfer in a form acceptable to the Trustee. Whenever any Bond or Bonds shall be surrendered for transfer, the City shall execute and the Trustee shall authenticate and deliver to the transferee a new Bond or Bonds of the same series and maturity for a like aggregate principal amount. The cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any transfer shall be paid by the City. The Trustee shall require the payment by the Owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer as a condition precedent to the exercise of such privilege.

The City and the Trustee may deem and treat the registered owner of any Bond as the absolute owner of such Bond for the purpose of receiving payment thereof and for all other purposes, whether such Bonds shall be overdue or not, and neither the City nor the Trustee shall be affected by any notice or knowledge to the contrary; and payment of the interest on, principal of, and redemption premium (if any) on, such Bonds shall be made only to such registered owner, which payments shall be valid and effectual to satisfy and discharge liability on such Bonds to the extent of the sum or sums so paid.

The Trustee shall not be required to register the transfer of or exchange any Bond which has been selected for redemption in whole or in part, from and after the day of mailing of a notice of redemption of such Bond selected for redemption in whole or in part as provided in Section 2.03.

**Section 2.07. Book-Entry Bonds.** Notwithstanding any provision of this Trust Agreement to the contrary, the transfer provisions of Section 2.06 hereof do not apply if the ownership of the Bonds is in book-entry form.

(a) Except as provided in subparagraph (d) of this Section 2.07, the registered Owner of all of the Bonds shall be DTC, and the Bonds shall be registered in the name of Cede & Co., as nominee for DTC. Notwithstanding anything to the contrary contained in this Trust Agreement, payment of interest with respect to any Bond registered as of each Record Date in the name of Cede & Co. shall be made by wire transfer of same-day funds to the account of Cede & Co. on the Interest Payment Date for the Bonds at the address indicated on the Record Date or special record date for Cede & Co. in the Bond registration books required to be kept by the Trustee pursuant to the provisions of Section 2.09 hereof or as otherwise provided in the Representation Letter.

(b) The Bonds shall be initially executed and delivered in the form of separate single fully registered Bonds in the amount of each separate stated maturity of the Bonds. Upon initial execution and delivery, the ownership of such Bonds shall be registered in the Bond registration books required to be kept by the Trustee pursuant to the provisions of Section 2.09 hereof in the name of Cede & Co., as nominee of DTC. The Trustee and the City shall treat DTC (or its nominee) as the sole and exclusive Owner of the Bonds registered in its name for the purposes of payment of the principal, premium, if any, or interest with respect to the Bonds, selecting the

Bonds or portions thereof to be redeemed, giving any notice permitted or required to be given to Owners under this Trust Agreement, registering the transfer of Bonds, obtaining any consent or other action to be taken by Owners and for all other purposes whatsoever, and neither the Trustee nor the City shall be affected by any notice to the contrary. Neither the Trustee nor the City shall have any responsibility or obligation to any person claiming a beneficial ownership interest in the Bonds under or through DTC, or any other person which is not shown on the Bond registration books required to be kept by the Trustee pursuant to the provisions of Section 2.09 hereof as being an Owner, with respect to (i) the accuracy of any records maintained by DTC; (ii) the payment by DTC of any amount of the principal, premium, if any, or interest on the Bonds; (iii) any notice which is permitted or required to be given to Owners under this Trust Agreement or the selection by DTC of any person to receive payment in the event of a partial redemption of the Bonds; or (iv) any consent given or other action taken by DTC as Owner. The Trustee shall pay all principal, premium, if any, and interest on the Bonds only to DTC, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to the principal, premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. Except under the conditions of (d) below, no person other than DTC shall receive an executed Bond representing the right to receive principal, premium, if any and interest pursuant to this Trust Agreement. Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions herein with respect to Record Dates, the term "Cede & Co." in this Trust Agreement shall refer to such new nominee of DTC.

(c) To qualify the Bonds for DTC's book-entry system, the City and the Trustee (if required) will execute, countersign and deliver to DTC the Representation Letter. The execution and delivery of the Representation Letter shall not in any way limit the provisions of this Section 2.07 or in any other way impose upon the Trustee or the City any obligation whatsoever with respect to persons having interests in the Bonds other than the Owners, as shown on the Bond registration books required to be kept by the Trustee pursuant to the provisions of Section 2.08 hereof.

(d) If (i) DTC, including any successor as securities depository for the Bonds, determines not to continue to act as securities depository for the Bonds, or (ii) the City determines that the incumbent securities depository shall no longer so act and delivers a written certificate to the Trustee to that effect, then the City will discontinue the book-entry system with the incumbent securities depository for the Bonds. If the City determines to replace the incumbent securities depository for the Bonds with another qualified securities depository, the City shall prepare or direct the preparation of a new single, separate fully registered Bond for the aggregate outstanding principal amount of Bonds of each maturity, registered in the name of such successor or substitute qualified securities depository, or its nominee, or make such other arrangement acceptable to the City, the Trustee and the successor securities depository for the Bonds as are not inconsistent with the terms of this Trust Agreement. If the City fails to identify another qualified successor securities depository for the Bonds to replace the incumbent securities depository, then the Bonds shall no longer be restricted to being registered in the Bond registration books required to be kept by the Trustee pursuant to the provisions of Section 2.08 hereof in the name of the incumbent securities depository or its nominee, but shall be registered in whatever name or names the incumbent securities depository for the Bonds, or its nominee, shall designate. In such event the City shall execute and deliver a sufficient quantity of Bonds as

to carry out the transfers and exchanges provided in this Section and Sections 2.06 and 2.10 hereof. All such Bonds shall be in fully registered form in denominations authorized by this Trust Agreement.

(e) Notwithstanding any other provision of this Trust Agreement to the contrary, so long as any Bond is registered in the name of DTC, or its nominee, all payments with respect to the principal, premium, if any, and interest on such Bond and all notices with respect to such Bonds shall be made and given, respectively, as provided in the Representation Letter.

(f) In connection with any notice or other communication to be provided to Owners pursuant to this Trust Agreement by the City or the Trustee with respect to any consent or other action to be taken by Owner, the City or the Trustee, as the case may be, shall establish a record date for such consent or other action and give DTC notice of such record date not less than 15 calendar days in advance of such record date to the extent possible.

**Section 2.08. Exchange of Bonds.** Bonds may be exchanged at the Corporate Trust Office of the Trustee for a like aggregate principal amount of Bonds of the same series and maturity of other Authorized Denominations. The cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any exchange shall be paid by the City. The Trustee shall require the payment by the Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange as a condition precedent to the exercise of such privilege. The Trustee shall not be required to exchange any Bond which has been selected for redemption in whole or in part, from and after the day of mailing of a notice of redemption of such Bond selected for redemption in whole or in part as provided in Section 2.03.

**Section 2.09. Bond Registration Books.** The Trustee will keep at its Corporate Trust Office sufficient books for the registration and transfer of the Bonds which shall during normal business hours be open to inspection by the City, and upon presentation for such purpose the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer the Bonds in such books as hereinabove provided.

**Section 2.10. Mutilated, Destroyed, Stolen or Lost Bonds.** If any Bond shall become mutilated the Trustee at the expense of the Owner shall thereupon authenticate and deliver, a new Bond of like tenor and amount in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. Every mutilated Bond so surrendered to the Trustee shall be cancelled. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence be satisfactory to the Trustee and indemnity satisfactory to the Trustee shall be given, the Trustee, at the expense of the Owner, shall thereupon authenticate and deliver, a new Bond of like tenor in lieu of and in substitution for the Bond so lost, destroyed or stolen. The Trustee may require payment of a reasonable sum for each new Bond issued under this Section and of the expenses which may be incurred by the City and the Trustee in the premises. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall be equally and proportionately entitled to the benefits of this Trust Agreement with all other Bonds of the same series secured by this Trust Agreement. Neither the City nor the Trustee shall be required to treat both the original Bond and any replacement Bond as being Outstanding for the purpose of

determining the principal amount of Bonds which may be issued hereunder or for the purpose of determining any percentage of Bonds Outstanding hereunder, but both the original and replacement Bond shall be treated as one and the same.

**Section 2.11. Temporary Bonds.** The Bonds issued under this Trust Agreement may be initially issued in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds may be printed or typewritten, shall be of such denominations as may be determined by the City, shall be in fully registered form and may contain such reference to any of the provisions of this Trust Agreement as may be appropriate. Every temporary Bond shall be executed and authenticated as authorized by the City, in accordance with the terms of the Act. If the City issues temporary Bonds it will execute and furnish definitive Bonds without delay and thereupon the temporary Bonds may be surrendered, for cancellation, in exchange therefor at the Corporate Trust Office of the Trustee, and the Trustee shall deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of Authorized Denominations. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Trust Agreement as definitive Bonds delivered hereunder.

**Section 2.12. Procedure for the Issuance of Series 2020 Bonds; Application of Bond Proceeds.** At any time after the sale of the Series 2020 Bonds in accordance with the Act, the City shall execute the Series 2020 Bonds for issuance hereunder and shall deliver them to the Trustee, and thereupon the Series 2020 Bonds shall be authenticated and delivered by the Trustee to the Underwriter of the Series 2020 Bonds upon the Certificate of the City. The proceeds of the purchase of the Series 2020 Bonds shall be applied to pay Costs of Issuance and the obligation of the City to the System pursuant to the Retirement Law, as set forth in the Certificate of the City.

(a) The Trustee shall deposit \$\_\_\_\_\_ of proceeds of the Series 2020 Bonds in the Refunding Fund. On the **[Closing Date]** for such Bonds, the Trustee shall transfer all amounts in the Refunding Fund to the System pursuant to written instructions from an Authorized Representative.

(b) The Trustee shall deposit \$\_\_\_\_\_ in the Costs of Issuance Fund, which fund the City hereby agrees to maintain with the Trustee. All money in the Costs of Issuance Fund shall be used and withdrawn by the Trustee to pay or reimburse the Costs of Issuance of the Series 2020 Bonds upon receipt of a Written Request of the City filed with the Trustee, each of which shall be sequentially numbered and shall state the person to whom payment is to be made, the amount to be paid, instructions for making the payment, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. Each such Written Request of the City shall be sufficient evidence to the Trustee of the facts stated therein and the Trustee shall have no duty to confirm the accuracy of such facts.

On the date which is six months following the Closing Date for the Series 2020 Bonds or upon the earlier Written Request of the City, any remaining balance in the Costs of Issuance Fund shall be transferred to the Interest Account.

Upon receipt of the purchase price of Additional Bonds, if any, the Trustee shall set aside and deposit the proceeds received from such sale as set forth in the Supplemental Trust

Agreement authorizing such Additional Bonds, which proceeds may be deposited in the following respective accounts or funds:

(i) The Trustee shall deposit the amount, if any, set forth in the Supplemental Trust Agreement authorizing such Additional Bonds in the respective Refunding Fund. On the Closing Date for such Bonds, the Trustee shall promptly transfer all amounts in the respective Refunding Fund to the System or to refund Bonds, as set forth in the Supplemental Trust Agreement authorizing such Additional Bonds.

(ii) The Trustee shall deposit the amount, if any, set forth in the Supplemental Trust Agreement authorizing such Additional Bonds in the respective Costs of Issuance Fund, which fund the City hereby agrees to maintain with the Trustee. All money in the Costs of Issuance Fund shall be used and withdrawn by the Trustee to pay or reimburse the respective Costs of Issuance of the Additional Bonds upon receipt of a Written Request of the City filed with the Trustee, each of which shall be sequentially numbered and shall state the person to whom payment is to be made, the amount to be paid, instructions for making the payment, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. Each such Written Request of the City shall be sufficient evidence to the Trustee of the facts stated therein and the Trustee shall have no duty to confirm the accuracy of such facts. On the date which is six months following the Closing Date for the Additional Bonds or upon the earlier Written Request of the City, any remaining balance in the respective Costs of Issuance Fund shall be transferred to the Interest Account.

**Section 2.13. Validity of Bonds.** The recital contained in the Bonds that the same are issued pursuant to the Act and pursuant hereto shall be conclusive evidence of their validity and of the regularity of their issuance, and all Bonds shall be incontestable from and after their issuance. The Bonds shall be deemed to be issued, within the meaning hereof, whenever the definitive Bonds (or any temporary Bonds exchangeable therefor) shall have been delivered to the purchaser thereof and the proceeds of sale thereof received.

### **ARTICLE III**

#### **ISSUANCE OF ADDITIONAL BONDS**

**Section 3.01. Conditions for the Issuance of Additional Bonds.** The City may at any time issue Additional Bonds on a parity with the Series 2020 Bonds, but only subject to the following specific conditions, which are hereby made conditions precedent to the issuance of any such Additional Bonds:

(a) The City shall be in compliance with all agreements and covenants contained herein.

(b) The issuance of such Additional Bonds shall have been authorized pursuant to the Act and shall have been provided for by a Supplemental Trust Agreement which shall specify the following:

(1) The purpose for which such Additional Bonds are to be issued; provided, that such Additional Bonds shall be applied solely for (i) the purpose of satisfying any obligation

to make payments to the System pursuant to the Retirement Law relating to pension benefits accruing to the System's members, and/or for payment of all costs incidental to or connected with the issuance of Additional Bonds for such purpose, and/or (ii) the purpose of refunding any Bonds then Outstanding, including payment of all costs incidental to or connected with such refunding;

(2) The authorized principal amount and designation of such Additional Bonds;

(3) The date and the maturity dates of and the sinking fund payment dates, if any, for such Additional Bonds;

(4) The interest payment dates for such Additional Bonds;

(5) The denomination or denominations of and method of numbering such Additional Bonds;

(6) The redemption premiums, if any, and the redemption terms, if any, for such Additional Bonds;

(7) The amount, if any, to be deposited from the proceeds of sale of such Additional Bonds in the Interest Account hereinafter referred to; and

(8) Such other provisions (including the requirements of a book-entry Bond registration system, if any) as are necessary or appropriate and not inconsistent herewith.

**Section 3.02. Procedure for the Issuance of Additional Bonds.** At any time after the sale of any Additional Bonds in accordance with the Act, the City shall execute such Additional Bonds for issuance hereunder and shall deliver them to the Trustee, and thereupon such Additional Bonds shall be delivered by the Trustee to the purchaser thereof upon the Written Request of the City, but only upon receipt by the Trustee of the following documents or money or securities, all of such documents dated or certified, as the case may be, as of the date of delivery of such Additional Bonds by the Trustee:

(a) An executed copy of the Supplemental Trust Agreement authorizing the issuance of such Additional Bonds;

(b) A Written Request of the City as to the delivery of such Additional Bonds;

(c) An Opinion of Counsel to the effect that (1) the City has executed and delivered the Supplemental Trust Agreement, and the Supplemental Trust Agreement is valid and binding upon the City and (2) such Additional Bonds are valid and binding obligations of the City;

(d) A Certificate of the City stating that all requirements of Article III have been complied with and containing any other such statements as may be reasonably necessary to show compliance with the conditions for the issuance of such Additional Bonds contained herein;

(e) Such further documents, money or securities as are required by the provisions of the Supplemental Trust Agreement providing for the issuance of such Additional Bonds.

## ARTICLE IV

### SECURITY FOR THE BONDS; FUNDS AND ACCOUNTS

**Section 4.01.** Assignment and Pledge for the Bonds; Bond Fund; Deposits to Bond Fund.

(a) There is hereby created a special trust fund designated as the “Bond Fund” that shall be held and administered by the Trustee as provided in this Trust Agreement. The Bonds shall be payable by the City from any source of legally available funds. The City hereby irrevocably assigns and pledges to the Trustee, in trust for the security of the Owners on the terms hereof, all the City’s rights, title and interest in and to all money and securities for deposit in, or deposited in, the Bond Fund and any investment earnings thereon, and any collateral security for, and all proceeds of, any of the foregoing.

(b) The Trustee shall hold all the rights, title and interest received under this Section 4.01 and all money and securities (exclusive of money to which the Trustee is entitled in its own right as fees, indemnity, reimbursement or otherwise) received from the City or derived from the exercise of the City’s powers hereunder in trust for the security of the Owners in accordance with the provisions hereof. The City shall from time to time execute, deliver, file and record such instruments as the Trustee may reasonably require to confirm, perfect or maintain the security created hereby and the assignment and pledge hereby of the rights, title and interest assigned and pledged by the City to the Trustee hereunder.

(c) The City shall promptly deposit or cause to be deposited with the Trustee (i) on or before [ ] 1 of each Fiscal Year (or such other date as provided in a Supplemental Trust Agreement) the amount which, together with moneys transferred pursuant to Section 4.02(c) hereof, is sufficient to pay the principal and interest coming due on the Interest Payment Date succeeding such [ ] 1; and (ii) on or before [ ] 1 of each Fiscal Year (or such other date as provided in a Supplemental Trust Agreement) the amount which is sufficient to pay the interest coming due on the Interest Payment Date succeeding such [ ] 1.

**Section 4.02.** Allocation of Moneys in Bond Fund. On or before each Interest Payment Date or date fixed for redemption of Bonds, the Trustee shall transfer from the Bond Fund, in immediately available funds, for deposit into the following respective accounts (each of which is hereby created and which the Trustee shall maintain in trust separate and distinct from the other funds and accounts established hereunder), the following amounts in the following order of priority, the requirements of each such account (including the making up of any deficiencies in any such account resulting from lack of funds sufficient to make any earlier required deposit) at the time of deposit to be satisfied before any deposit is made to any account subsequent in priority:

(a) Interest Account,



- (b) Principal Account, and
- (c) Surplus Account.

All money in each of such accounts shall be held in trust by the Trustee and shall be applied, used and withdrawn only for the purposes hereinafter authorized in this Section 4.02.

(a) Interest Account. On each Interest Payment Date, the Trustee shall set aside from the Bond Fund and deposit in the Interest Account that amount of money which is equal to the amount of interest becoming due and payable on all Outstanding Bonds on such Interest Payment Date. No deposit need be made in the Interest Account if the amount contained therein is at least equal to the aggregate amount of interest becoming due and payable on all Outstanding Bonds on such Interest Payment Date. All money in the Interest Account shall be used and withdrawn by the Trustee solely for the purpose of paying the interest on the Bonds as it shall become due and payable (including accrued interest on any Bonds purchased or redeemed prior to maturity).

(b) Principal Account. On or before each Principal Payment Date, the Trustee shall set aside from the Bond Fund and deposit in the Principal Account an amount of money equal to the amount of all sinking fund payments required to be made on such Principal Payment Date into the respective sinking fund accounts for all Outstanding Term Bonds and the principal amount of all Outstanding Serial Bonds maturing on such Principal Payment Date.

No deposit need be made in the Principal Account if the amount contained therein is at least equal to the aggregate amount of the principal of all Outstanding Serial Bonds maturing by their terms on such Principal Payment Date plus the aggregate amount of all sinking fund payments required to be made on such Principal Payment Date for all Outstanding Term Bonds.

The Trustee shall establish and maintain within the Principal Account a separate subaccount for the Term Bonds of each series and maturity, designated as the "Sinking Account" (the "Sinking Account"), inserting therein the series and maturity (if more than one such account is established for such series) designation of such Bonds. With respect to each Sinking Account, on each mandatory sinking account payment date established for such Sinking Account, the Trustee shall apply the mandatory sinking account payment required on that date to the redemption (or payment at maturity, as the case may be) of Term Bonds of the series and maturity for which such Sinking Account was established, upon the notice and in the manner provided in Article II; provided that, at any time prior to giving such notice of such redemption, the Trustee may upon the Written Request of the City, apply moneys in such Sinking Account to the purchase for cancellation of Term Bonds of such series and maturity at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Account), as may be directed by the City, except that the purchase price (excluding accrued interest) shall not exceed the redemption price that would be payable for such Bonds upon redemption by application of such Mandatory Sinking Account Payment. If, during the twelve-month period immediately preceding said mandatory sinking account payment date, the Trustee has purchased Term Bonds of such series and maturity with moneys in such Sinking Account, such Bonds so purchased shall be applied, to the extent of the full principal amount thereof, as applicable, to reduce said mandatory sinking account payment.

All money in the Principal Account shall be used and withdrawn by the Trustee solely for the purpose of paying the principal of the Bonds, as applicable, as they shall become due and payable, whether at maturity or redemption, except that any money in any sinking fund account shall be used and withdrawn by the Trustee only to purchase or to redeem or to pay Term Bonds for which such Sinking Account was created.

(c) Surplus Account. On the Business Day following the last Interest Payment Date of each Fiscal Year, or on such other date as provided in a Supplemental Trust Agreement, any moneys remaining in the Bond Fund shall be deposited by the Trustee in the Surplus Account. So long as no event of default has occurred and is continuing, moneys deposited in the Surplus Account shall be transferred by the Trustee to or upon the order of the City, as specified in a Written Request of the City.

**Section 4.03. Deposit and Investments of Money in Accounts and Funds.** All money held by the Trustee in any of the accounts or funds established pursuant hereto shall be invested in Permitted Investments at the Written Request of the City. If no Written Request of the City is received, the Trustee shall hold such funds uninvested. Such investments shall, as nearly as practicable, mature on or before the dates on which such money is anticipated to be needed for disbursement hereunder. All interest, profits and other income received from any money so invested shall be deposited in the Bond Fund. The Trustee shall have no liability or responsibility for any loss resulting from any investment made or sold in accordance with the provisions of this Article IV, except for any loss due to the negligence or willful misconduct of the Trustee. The Trustee may act as principal or agent in the acquisition or disposition of any investment and may impose its customary charge therefor.

The City acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the City the right to receive brokerage confirmations of security transactions as they occur, the City agrees it will not receive such confirmations from the Trustee to the extent permitted by law. The Trustee will furnish the City periodic cash transaction statements which shall include detail for all investment transactions made by the Trustee hereunder.

## **ARTICLE V**

### **COVENANTS OF THE CITY**

**Section 5.01. Punctual Payment and Performance.** The City will punctually pay the interest on and the principal of and redemption premiums, if any, to become due on every Bond issued hereunder in strict conformity with the terms hereof and of the Bonds, and will faithfully observe and perform all the agreements and covenants to be observed or performed by the City contained herein and in the Bonds.

**Section 5.02. Extension of Payment of Bonds.** The City shall not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds or the time of payment of any claims for interest by the purchase of such Bonds or by any other arrangement, and in case the maturity of any of the Bonds or the time of payment of any such claims for interest shall be extended, such Bonds or claims for interest shall not be entitled, in case of any default hereunder,

to the benefits of this Trust Agreement, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest thereon which shall not have been so extended. Nothing in this Section 5.02 shall be deemed to limit the right of the City to issue Bonds for the purpose of refunding any Outstanding Bonds, and such issuance shall not be deemed to constitute an extension of maturity of the Bonds.

**Section 5.03. Additional Debt.** The City expressly reserves the right to enter into one or more other agreements or indentures for any of its purposes, and reserves the right to issue other obligations for such purposes.

**Section 5.04. Power to Issue Bonds.** The City is duly authorized pursuant to law to issue the Bonds and to enter into this Trust Agreement. The Bonds and the provisions of this Trust Agreement are the legal, valid and binding obligations of the City in accordance with their terms. The Bonds and any Additional Bonds shall constitute obligations imposed by law.

**Section 5.05. Accounting Records and Reports.** The City will keep or cause to be kept proper books of record and accounts in which complete and correct entries shall be made of all transactions relating to the receipts, disbursements, allocation and application of moneys on deposit in the funds and accounts established hereunder.

**Section 5.06. Prosecution and Defense of Suits.** The City will defend against every suit, action or proceeding at any time brought against the Trustee upon any claim to the extent involving the failure of the City to fulfill its obligations hereunder; provided that the Trustee or any affected Owner at its election may appear in and defend any such suit, action or proceeding. The City, to the extent permitted by law, will indemnify and hold harmless the Trustee against any and all liability claimed or asserted by any person to the extent arising out of such failure by the City, and will indemnify and hold harmless the Trustee against any attorney's fees or other expenses which it may incur in connection with any litigation to which it may become a party by reason of its actions hereunder, except for any loss, cost, damage or expense resulting from the negligence, willful misconduct or breach of duty by the Trustee. Notwithstanding any contrary provision hereof, this covenant shall remain in full force and effect even though all Bonds secured hereby may have been fully paid and satisfied.

**Section 5.07. Further Assurances.** Whenever and so often as reasonably requested to do so by the Trustee or any Owner, the City will promptly execute and deliver or cause to be executed and delivered all such other and further assurances, documents or instruments, and promptly do or cause to be done all such other and further things as may be necessary or reasonably required in order to further and more fully vest in the Owners all rights, interests, powers, benefits, privileges and advantages conferred or intended to be conferred upon them hereby.

**Section 5.08. Waiver of Laws.** The City shall not at any time insist upon or plead in any manner whatsoever, or claim or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force that may affect the covenants and agreements contained in this Trust Agreement or in the Bonds, and all benefit or advantage of any such law or laws is hereby expressly waived by the City to the extent permitted by law.

**Section 5.09. Compliance with Continuing Disclosure Certificate.** The City has undertaken responsibility for compliance with continuing disclosure requirements with respect to S.E.C. Rule 15c2-12. Notwithstanding any other provision of this Trust Agreement, failure of the City to comply with the Continuing Disclosure Certificate shall not be considered an Event of Default; however, the Trustee may (and, at the request of any Participating Underwriter (as defined in the Continuing Disclosure Certificate) or the Owners of at least 25% aggregate principal amount in Outstanding Bonds, and upon receipt of indemnification satisfactory to it, shall) or any Owner or Beneficial Owner may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this Section.

## **ARTICLE VI**

### **THE TRUSTEE**

**Section 6.01. The Trustee.** [TRUSTEE], shall serve as the Trustee for the Bonds for the purpose of receiving all money which the City is required to deposit with the Trustee hereunder and for the purpose of allocating, applying and using such money as provided herein and for the purpose of paying the interest on and principal of and redemption premiums, if any, on the Bonds presented for payment at the Corporate Trust Office of the Trustee with the rights and obligations provided herein. The City agrees that it will at all times maintain a Trustee having a corporate trust office in the State of California.

The City may at any time, unless there exists any event of default as defined in Section 8.01, with 30 days prior notice remove the Trustee initially appointed and any successor thereto and may appoint a successor or successors thereto by an instrument in writing; provided that any such successor shall be a bank or trust company doing business and having a corporate trust office in [Los Angeles or San Francisco, California], having a combined capital (exclusive of borrowed capital) and surplus of at least seventy-five million dollars (\$75,000,000) and subject to supervision or examination by federal or state authority. If such bank, national banking association or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this section the combined capital and surplus of such bank, national banking association or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. The Trustee may at any time resign by giving written notice of such resignation to the City and by mailing to the Owners notice of such resignation. Upon receiving such notice of resignation, the City shall promptly appoint a successor Trustee by an instrument in writing. Any removal or resignation of a Trustee and appointment of a successor Trustee shall become effective only upon the acceptance of appointment by the successor Trustee. If, within thirty (30) days after notice of the removal or resignation of the Trustee no successor Trustee shall have been appointed and shall have accepted such appointment, the removed or resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee, which court may thereupon, after such notice, if any, as it may deem proper and prescribe and as may be required by law, appoint a successor Trustee having the qualifications required hereby.

The Trustee is hereby authorized to pay or redeem the Bonds when duly presented for payment at maturity or on redemption prior to maturity. The Trustee shall cancel all Bonds upon payment thereof or upon the surrender thereof by the City and shall destroy such Bonds and a certificate of destruction shall be delivered to the City. The Trustee shall keep accurate records of all Bonds paid and discharged and cancelled by it.

The Trustee shall, prior to an event of default, and after the curing of all events of default that may have occurred, perform such duties and only such duties as are specifically set forth in this Trust Agreement and no implied duties or obligations shall be read into this Trust Agreement. The Trustee shall, during the existence of any event of default (that has not been cured), exercise such of the rights and powers vested in it by this Trust Agreement, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

**Section 6.02. Liability of Trustee.** The recitals of facts, agreements and covenants herein and in the Bonds shall be taken as recitals of facts, agreements and covenants of the City, and the Trustee assumes no responsibility for the correctness of the same or makes any representation as to the sufficiency or validity hereof or of the Bonds, or shall incur any responsibility in respect thereof other than in connection with the rights or obligations assigned to or imposed upon it herein, in the Bonds or in law or equity. The Trustee shall not be bound to recognize any person as the Owner of a Bond unless and until such Bond is submitted for inspection, if required, and such Owner's title thereto satisfactorily established, if disputed.

The Trustee shall not be liable in connection with the performance of its duties hereunder except for its own negligence, willful misconduct or breach of duty. The Trustee shall not be liable for any error of judgment made in good faith by a responsible officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts.

The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of not less than a majority in Aggregate Principal Amount of the Bonds at the time Outstanding, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Trust Agreement.

The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Trust Agreement at the request, order or direction of any of the Owners pursuant to the provisions of this Trust Agreement unless such Owners shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities that may be incurred therein or thereby. The Trustee has no obligation or liability to the Owners for the payment of interest on, principal of or redemption premium, if any, with respect to the Bonds from its own funds; but rather the Trustee's obligations shall be limited to the performance of its duties hereunder.

The Trustee shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements herein or of any of the documents executed in connection with the Bonds, or as to the existence of a default or event of

default thereunder. The Trustee shall not be responsible for the validity or effectiveness of any collateral given to or held by it.

The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through attorneys-in-fact, agents or receivers, shall not be answerable for the negligence or misconduct or any such attorney-in-fact, agent or receiver appointed by it in accordance with the standards specified above. The Trustee shall be entitled to advice of counsel and other professionals concerning all matters of trust and its duty hereunder, but the Trustee shall not be answerable for the professional malpractice of any attorney or certified public accountant in connection with the rendering of his professional advice in accordance with the terms of this Trust Agreement, if such attorney or certified public accountant was selected by the Trustee with due care.

Whether or not therein expressly so provided, every provision of this Trust Agreement, or related documents relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Article.

The Trustee shall be protected in acting upon any notice, resolution, requisition, request (including any Written Request of the City), consent, order, certificate, report, opinion, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee may consult with counsel, who may be counsel of or to the City, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

Whenever in the administration of its rights and obligations hereunder the Trustee shall deem it necessary or desirable that a matter be established or proved prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Trustee, be deemed to be conclusively proved and established by a Certificate of the City, which certificate shall be full warrant to the Trustee for any action taken or suffered under the provisions hereof upon the faith thereof, but in its discretion the Trustee may in lieu thereof accept other evidence of such matter or may require such additional evidence as it may deem reasonable.

No provision of this Trust Agreement shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance or exercise of any of its duties hereunder, or in the exercise of its rights or powers.

The Trustee shall have no responsibility, opinion, or liability with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of the Bonds.

All immunities, indemnifications and releases from liability granted herein to the Trustee shall extend to the directors, employees, officers and agents thereof.

Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all

of its corporate trust business, provided that such company shall meet the requirements set forth in Section 6.01, shall be the successor to the Trustee hereunder and vested with all of the title to the trust estate and all of the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor hereunder, without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

The Trustee shall not be deemed to have knowledge of any Event of Default unless and until it shall have actual knowledge thereof by receipt of written notice thereof at its Corporate Trust Office.

**Section 6.03. Compensation and Indemnification of Trustee.** The City covenants to pay to the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation for all services rendered by it in the exercise and performance of any of the powers and duties hereunder of the Trustee, and the City will pay or reimburse the Trustee upon its request for all expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Trust Agreement (including the reasonable compensation and the expenses and disbursements of its counsel and of all persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence, default or willful misconduct, including the negligence or willful misconduct of any of its officers, directors, agents or employees.

The City, to the extent permitted by law, shall indemnify, defend and hold harmless the Trustee against any loss, damages, liability or expense including legal fees and expenses incurred without negligence, willful misconduct or bad faith on the part of the Trustee, (i) arising out of or in connection with the acceptance or administration of the trusts created hereby or the exercise or performance of any of its powers or duties hereunder, and (ii) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading in any official statement or other offering circular utilized in connection with the sale of the Bonds, including costs and expenses (including attorneys' fees) of defending itself against any claim or liability in connection with the exercise or performance of any of its powers hereunder. The rights of the Trustee and the obligations of the City under this Section shall survive the discharge of the Bonds and this Trust Agreement and the resignation or removal of the Trustee.

## **ARTICLE VII**

### **AMENDMENT OF THE TRUST AGREEMENT; SUPPLEMENTAL TRUST AGREEMENT**

#### **Section 7.01. Amendment of the Trust Agreement.**

(a) This Trust Agreement and the rights and obligations of the City and of the Owners may be amended at any time by a Supplemental Trust Agreement which shall become binding when the written consents of the Owners of a majority in Aggregate Principal Amount of the Bonds then Outstanding, exclusive of Bonds disqualified as provided in Section 7.02, are filed with the Trustee. No such amendment shall (1) extend the maturity of or reduce the interest

rate on or amount of interest on or principal of or redemption premium, if any, or extend the time of payment on any Bond without the express written consent of the Owner of such Bond, or (2) reduce the percentage of Bonds required for the written consent to any such amendment.

(b) This Trust Agreement and the rights and obligations of the City and of the Owners may also be amended at any time by a Supplemental Trust Agreement which shall become binding upon adoption without the consent of, or notice to, any of the Owners for any one or more of the following purposes:

(i) to add to the agreements and covenants required herein to be performed by the City other agreements and covenants thereafter to be performed by the City, to pledge or assign additional security for the Bonds (or any portion thereof), or to surrender any right or power reserved herein to or conferred herein on the City;

(ii) to make such provisions for the purpose of curing any ambiguity or of correcting, curing or supplementing any defective provision contained herein and in any Supplemental Trust Agreement or in regard to questions arising hereunder which the City may deem desirable or necessary and not inconsistent herewith;

(iii) to provide for the issuance of any Additional Bonds and to provide the terms of such Additional Bonds, subject to the conditions and upon compliance with the procedure set forth in Article III (which shall be deemed not to adversely affect Owners);

(iv) to modify, amend or add to the provisions herein or in any Supplemental Trust Agreement to permit the qualification thereof under the Trust Indenture Act of 1939, as amended, or any similar federal statutes hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by such statute or similar statute; or

(v) to modify, amend or supplement this Trust Agreement and any Supplemental Trust Agreement in any manner that does not materially adversely affect the interest of Owners of Bonds.

**Section 7.02. Disqualified Bonds.** Bonds owned or held by or for the account of the City shall not be deemed Outstanding for the purpose of any consent or other action or any calculation of Outstanding Bonds provided in this article, and shall not be entitled to consent to or take any other action provided in this article. Upon request of the Trustee, the City shall specify in a certificate to the Trustee those Bonds disqualified pursuant to this Section and the Trustee may conclusively rely on such certificate.

**Section 7.03. Endorsement or Replacement of Bonds After Amendment.** After the effective date of any action taken as hereinabove provided, the City may determine that the Bonds may bear a notation by endorsement in form approved by the City as to such action, and in that case upon demand of the Owner of any Outstanding Bonds and presentation of his Bond for such purpose at the office of the Trustee a suitable notation as to such action shall be made on such Bond. If the City shall so determine, new Bonds so modified as, in the opinion of the City, shall be necessary to conform to such action shall be prepared and executed, and in that case upon demand of the Owner of any Outstanding Bond a new Bond or Bonds shall be exchanged



at the office of the Trustee without cost to each Owner for its Bond or Bonds then Outstanding upon surrender of such Outstanding Bonds.

**Section 7.04. Amendment by Mutual Consent.** The provisions of this article shall not prevent any Owner from accepting any amendment as to the particular Bonds held by him, provided that due notation thereof is made on such Bonds.

**Section 7.05. Attorney's Opinion Regarding Supplemental Agreements.** The Trustee may obtain an Opinion of Counsel that any amendments or supplements to the Trust Agreement comply with the provisions of this Article VII and the Trustee may conclusively rely upon such opinion.

## **ARTICLE VIII**

### **EVENTS OF DEFAULT AND REMEDIES OF HOLDERS**

**Section 8.01. Events of Default.** If one or more of the following events (herein called "events of default") shall happen, that is to say:

(a) if default shall be made by the City in the due and punctual payment of the interest on any Bond when and as the same shall become due and payable;

(b) if default shall be made by the City in the due and punctual payment of the principal of or redemption premium, if any, on any Bond when and as the same shall become due and payable, whether at maturity as therein expressed or by proceedings for redemption;

(c) if default shall be made by the City in the performance of any of the agreements or covenants required herein to be performed by the City, and such default shall have continued for a period of 60 days after the City shall have been given notice in writing of such default by the Trustee or the Owners of not less than 25% in Aggregate Principal Amount of the Bonds at the time Outstanding, specifying such default and requiring the same to be remedied, provided, however, if the default stated in the notice can be corrected, but not within the applicable period, the Trustee and such Owners shall not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the City within the applicable period and diligently pursued until the default is corrected; or

(d) if the City shall file a petition or answer seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if a court of competent jurisdiction shall approve a petition filed with or without the consent of the City seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if under the provisions of any other law for the relief or aid of debtors any court of competent jurisdiction shall assume custody or control of the City or of the whole or any substantial part of its property.

**Section 8.02. Remedies Upon an Event of Default.** Upon the occurrence and continuance of any event of default, the Trustee may, and upon the written request of Owners of not less than 51% of the Aggregate Principal Amount of Bonds then Outstanding, and upon being indemnified to its satisfaction, shall:

(a) by mandamus, suit, action or proceeding, compel the City and its members, officers, agents or employees to perform each and every term, provision and covenant contained in this Trust Agreement and the Bonds, and may require the carrying out of any or all such covenants and agreements of the City and the fulfillment of all duties imposed upon it by this Trust Agreement and by the Retirement Law.

(b) bring suit upon the defaulted Bonds.

(c) by suit, action or proceeding in equity, enjoin any acts or things which are unlawful, or the violation of any of the Owners' rights.

(d) by suit, action or proceeding in any court of competent jurisdiction, require the City and its members and employees to account as if it and they were the trustees of an express trust.

**Section 8.03. Application of Revenues and Other Funds After Default.** If an event of default shall occur and be continuing, all amounts then held or thereafter received by the Trustee under any of the provisions of this Trust Agreement shall be applied by the Trustee as follows and in the following order:

(a) To the payment of any fees and expenses necessary in the opinion of the Trustee to protect the interests of the Owners of the Bonds and to the payment of the reasonable charges and expenses of the Trustee (including reasonable fees and disbursements of its counsel, agents and advisors) incurred in and about the performance of its powers and duties under this Trust Agreement;

(b) To the payment of the principal and interest then due with respect to the Bonds (upon presentation of the Bonds to be paid, and stamping thereon of the payment if only partially paid, or surrender thereof if fully paid) subject to the provisions of this Trust Agreement, as follows:

*First:* To the payment to the Persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon, to the Persons entitled thereto, without any discrimination or preference; and

*Second:* To the payment to the Persons entitled thereto of the unpaid principal of any Bonds which shall have become due, whether at maturity or by call for redemption, with interest on the overdue principal at the rate borne by the respective Bonds on the date of maturity or redemption and, if the amount available shall not be sufficient to pay in full all the Bonds, together with such interest, then to the payment thereof ratably, according to the amounts of

principal due on such date to the Persons entitled thereto, without any discrimination or preference.

**Section 8.04. Non-Waiver.** Nothing in this Article or in any other provision hereof or in the Bonds shall affect or impair the obligation of the City, which is absolute and unconditional, to pay the interest on and principal of and redemption premiums, if any, on the Bonds to the respective Owners of the Bonds at the respective dates of maturity or upon prior redemption as provided herein, or shall affect or impair the right of such Owners, which is also absolute and unconditional, to institute suit to enforce such payment by virtue of the contract embodied herein and in the Bonds. A waiver of any default or breach of duty or contract by the Trustee or any Owner shall not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by the Trustee or any Owner to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair any such right or remedy or shall be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon the Owners by the Act or by this Article may be enforced and exercised from time to time and as often as shall be deemed expedient by the Trustee or the Owners.

If any action, proceeding or suit to enforce any right or exercise any remedy is abandoned, the City, the Trustee and any Owner shall be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

**Section 8.05. Actions by Trustee as Attorney-in-Fact.** Any action, proceeding or suit which any Owner shall have the right to bring to enforce any right or remedy hereunder may be brought by the Trustee for the equal benefit and protection of all Owners, whether or not the Trustee is an Owner, and the Trustee is hereby appointed (and the successive Owners, by taking and holding the Bonds issued hereunder, shall be conclusively deemed to have so appointed it) the true and lawful attorney-in-fact of the Owners for the purpose of bringing any such action, proceeding or suit and for the purpose of doing and performing any and all acts and things for and on behalf of the Owners as a class or classes as may be advisable or necessary in the opinion of the Trustee as such attorney-in-fact.

**Section 8.06. Remedies Not Exclusive.** No remedy herein conferred upon or reserved to the Owners is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by the Act or any other law.

**Section 8.07. Limitation on Owners' Right to Sue.** No Owner of any Bond issued hereunder shall have the right to institute any suit, action or proceeding at law or equity, for any remedy under or upon this Trust Agreement, unless (a) such Owner shall have previously given to the Trustee written notice of the occurrence of an event of default as defined in Section 8.01 hereunder; (b) the Owners of at least a majority in Aggregate Principal Amount of all the Bonds then Outstanding shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such suit, action or proceeding in its own name; (c) said Owners shall have tendered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; and (d) the Trustee shall

have refused or omitted to comply with such request for a period of sixty (60) days after such request shall have been received by, and said tender of indemnity shall have been made to, the Trustee. Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any owner of Bonds of any remedy hereunder; it being understood and intended that no one or more owners of Bonds shall have any right in any manner whatever by his or their action to enforce any right under this Trust Agreement, except in the manner herein provided, and that all proceedings at law or in equity to enforce any provision of the Trust Agreement shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Owners of the Outstanding Bonds.

**Section 8.08. Absolute Obligation of City.** Nothing in this Section or in any other provision of this Trust Agreement or in the Bonds contained shall affect or impair the obligation of the City, which is absolute and unconditional, to pay the principal of, premium, if any and interest on the Bonds to the respective Owners of the Bonds at their respective due dates as herein provided.

## **ARTICLE IX**

### **DEFEASANCE**

**Section 9.01. Discharge of Bonds.**

(a) If the City shall pay or cause to be paid or there shall otherwise be paid to the Owners of all Outstanding Bonds the interest thereon and the principal thereof and the redemption premiums, if any, thereon at the times and in the manner stipulated herein and therein, and shall pay or provide for the payment of all fees and expenses of the Trustee, then all agreements, covenants and other obligations of the City to the Owners of such Bonds hereunder shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, the Trustee shall execute and deliver to the City all such instruments as may be necessary or desirable to evidence such discharge and satisfaction, the Trustee shall pay over or deliver to the City all money or securities held by it pursuant hereto which are not required for the payment of the interest on, principal of, and redemption premium (if any) on, such Bonds.

(b) Any Outstanding Bonds shall prior to the maturity date or redemption date thereof be deemed to have been paid within the meaning of and with the effect expressed in subsection (a) of this section if (1) in case any of such Bonds are to be redeemed on any date prior to their maturity date, the City shall have given to the Trustee in form satisfactory to it irrevocable instructions to provide notice in accordance with Section 2.03, (2) there shall have been deposited with the Trustee either (A) money in an amount which shall be sufficient or (B) Defeasance Securities which are not subject to redemption prior to maturity (including any such Defeasance Securities issued or held in book-entry form on the books of the City or the Treasury of the United States of America), the interest on and principal of which when paid will provide money which, together with the money, if any, deposited with the Trustee at the same time, shall be sufficient, in the opinion of an Independent Certified Public Accountant, to pay when due the interest to become due on such Bonds on and prior to the maturity date or redemption date thereof, as the case may be, and the principal of and redemption premiums, if any, on such Bonds, and (3) in the event such Bonds are not by their terms subject to redemption within the

next succeeding 60 days, the City shall have given the Trustee in form satisfactory to it irrevocable instructions to mail as soon as practicable, a notice to the Owners of such Bonds that the deposit required by clause (2) above has been made with the Trustee and that such Bonds are deemed to have been paid in accordance with this section and stating the maturity date or redemption date upon which money is to be available for the payment of the principal of and redemption premiums, if any, on such Bonds.

**Section 9.02. Unclaimed Money.** Anything contained herein to the contrary notwithstanding, any money held by the Trustee in trust for the payment and discharge of any of the Bonds or interest thereon which remains unclaimed for two (2) years after the date when such Bonds or interest thereon have become due and payable, either at their stated maturity dates or by call for redemption prior to maturity, if such money was held by the Trustee at such date, or for two (2) years after the date of deposit of such money if deposited with the Trustee after the date when such Bonds have become due and payable, shall be repaid by the Trustee to the City as its absolute property free from trust, and the Trustee shall thereupon be released and discharged with respect thereto and the Owners shall not look to the Trustee for the payment of such Bonds.

## **ARTICLE X**

### **MISCELLANEOUS**

**Section 10.01. Benefits of the Trust Agreement Limited to Parties.** Nothing contained herein, expressed or implied, is intended to give to any person other than the City, the Trustee and the Owners any right, remedy or claim under or by reason hereof. Any agreement or covenant required herein to be performed by or on behalf of the City or any member, officer or employee thereof shall be for the sole and exclusive benefit of the Trustee and the Owners.

**Section 10.02. Successor Is Deemed Included in All References to Predecessor.** Whenever herein either the City or any member, officer or employee thereof or the Trustee is named or referred to, such reference shall be deemed to include the successor or assigns thereof, and all agreements and covenants required hereby to be performed by or on behalf of the City or the Trustee, or any member, officer or employee thereof, shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

**Section 10.03. Execution of Documents by Owners.** Any declaration, request or other instrument which is permitted or required herein to be executed by Owners may be in one or more instruments of similar tenor and may be executed by Owners in person or by their attorneys appointed in writing. The fact and date of the execution by any Owner or his attorney of any declaration, request or other instrument or of any writing appointing such attorney may be proved by the certificate of any notary public or other officer authorized to make acknowledgments of deeds to be recorded in the state or territory in which he purports to act that the person signing such declaration, request or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution duly sworn to before such notary public or other officer. The ownership of any Bonds and the amount, maturity, number and date of holding the same may be proved by the registration books relating to the Bonds at the office of the Trustee.

Any declaration, request, consent or other instrument or writing of the Owner of any Bond shall bind all future Owners of such Bond with respect to anything done or suffered to be done by the Trustee or the City in good faith and in accordance therewith.

**Section 10.04. Waiver of Personal Liability.** No member, officer or employee of the City shall be individually or personally liable for the payment of the interest on or principal of or redemption premiums, if any, on the Bonds by reason of their issuance, but nothing herein contained shall relieve any such member, officer or employee from the performance of any official duty provided by the Act or any other applicable provisions of law or hereby.

**Section 10.05. Acquisition of Bonds by City.** All Bonds acquired by the City, whether by purchase or gift or otherwise, shall be surrendered to the Trustee for cancellation.

**Section 10.06. Destruction of Cancelled Bonds.** Whenever provision is made for the return to the City of any Bonds which have been cancelled pursuant to the provisions hereof, the Trustee shall destroy such Bonds and furnish to the City a certificate of such destruction.

**Section 10.07. Content of Certificates.** Every Certificate of the City with respect to compliance with any agreement, condition, covenant or provision provided herein shall include (a) a statement that the person or persons making or giving such certificate have read such agreement, condition, covenant or provision and the definitions herein relating thereto; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements contained in such certificate are based; (c) a statement that, in the opinion of the signers, they have made or caused to be made such examination or investigation as is necessary to enable them to express an informed opinion as to whether or not such agreement, condition, covenant or provision has been complied with; and (d) a statement as to whether, in the opinion of the signers, such agreement, condition, covenant or provision has been complied with.

Any Certificate of the City may be based, insofar as it relates to legal matters, upon an Opinion of Counsel unless the person making or giving such certificate knows that the Opinion of Counsel with respect to the matters upon which his certificate may be based, as aforesaid, is erroneous, or in the exercise of reasonable care should have known that the same was erroneous. Any Opinion of Counsel may be based, insofar as it relates to factual matters information with respect to which is in the possession of the City, upon a representation by an officer or officers of the City unless the counsel executing such Opinion of Counsel knows that the representation with respect to the matters upon which his opinion may be based, as aforesaid, is erroneous, or in the exercise of reasonable care should have known that the same was erroneous.

**Section 10.08. Accounts and Funds; Business Days.** Any account or fund required herein to be established and maintained by the Trustee may be established and maintained in the accounting records of the Trustee either as an account or a fund, and may, for the purposes of such accounting records, any audits thereof and any reports or statements with respect thereto, be treated either as an account or a fund; but all such records with respect to all such accounts and funds shall at all times be maintained in accordance with sound accounting practice and with due regard for the protection of the security of the Bonds and the rights of the Owners. Any action required to occur hereunder on a day which is not a Business Day shall be required to occur on the next succeeding Business Day.

**Section 10.09. Notices.** All written notices to be given hereunder shall be given by mail to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other party in writing from time to time, namely:

If to the City:

City of West Covina  
1444 West Garvey Avenue South  
West Covina, CA 91790  
Attention: City Manager

If to the Trustee:

U.S. Bank National Association  
633 West 5<sup>th</sup> Street  
Los Angeles, CA 90071  
Attention: \_\_\_\_\_

**Section 10.10. Article and Section Headings and References.** The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof. All references herein to “Articles,” “Sections” and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and the words “hereby,” “herein,” “hereof,” “hereto,” “herewith,” “hereunder” and other words of similar import refer to the Trust Agreement as a whole and not to any particular article, section, subdivision or clause hereof.

**Section 10.11. Partial Invalidity.** If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of the City or the Trustee shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof or of the Bonds, and the Owners shall retain all the benefit, protection and security afforded to them under the Act or any other applicable provisions of law. The City and the Trustee hereby declare that they would have executed and delivered the Trust Agreement and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof and would have authorized the issuance of the Bonds pursuant hereto irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

**Section 10.12. Execution in Several Counterparts.** This Trust Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the City and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

**Section 10.13. Governing Law.** This Trust Agreement shall be governed by and construed in accordance with the laws of the State of California.

**Section 10.14. CUSIP Numbers.** Neither the Trustee nor the City shall be liable for any defect or inaccuracy in the CUSIP number that appears on any Bond or in any redemption notice. The Trustee may, in its discretion, include in any redemption notice a statement to the effect that the CUSIP numbers on the Bonds have been assigned by an independent service and are included in such notice solely for the convenience of the Owners and that neither City nor the Trustee shall be liable for any inaccuracies in such numbers.

IN WITNESS WHEREOF, the CITY OF WEST COVINA has caused this Trust Agreement to be signed in its name by the Authorized Representative and [TRUSTEE], in acceptance of the trusts created hereunder, has caused this Trust Agreement to be signed by the officer thereunder duly authorized, all as of the day and year first above written.

CITY OF WEST COVINA

By: \_\_\_\_\_  
City Manager

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

By: \_\_\_\_\_  
Authorized Officer





transfer in immediately available funds. The principal hereof is payable in lawful money of the United States of America at the Corporate Trust Office of the Trustee.

This Bond is one of a duly authorized issue of bonds of the City designated as its "Taxable Pension Obligation Bonds, Series 2020" (the "Bonds") in aggregate principal amount of \$\_\_\_\_\_, all of like tenor and date (except for variations relating to numbers, maturities and interest rates), and is issued under and pursuant to the provisions of Articles 10 and 11 (commencing with Section 53570) of Chapter 3 of Division 2 of Title 5 of the Government Code of the State of California and all laws amendatory thereof or supplemental thereto (the "Act") and under and pursuant to the provisions of a trust agreement, dated as of [As of Date] (the "Trust Agreement"), between the City and [TRUSTEE], as trustee (the "Trustee") (copies of which are on file at the Corporate Trust Office of the Trustee).

Under the Trust Agreement, Additional Bonds and other obligations may be issued on a parity with the Bonds, but subject to the conditions and upon compliance with the procedures set forth in the Trust Agreement. The Bonds and any bonds or other obligations issued on a parity with the Bonds are obligations imposed by law payable from funds to be appropriated by the City pursuant to the Public Employees' Retirement Law, commencing with Section 20000 of the Government Code of the State of California, as amended (the "Retirement Law"). Reference is hereby made to the Act and to the Trust Agreement and any and all amendments thereof and supplements thereto for a description of the terms on which the Bonds are issued, the rights of the registered owners of the Bonds, security for payment of the Bonds, remedies upon default and limitations thereon, and amendment of the Trust Agreement (with or without consent of the registered owners of the Bonds); and all the terms of the Trust Agreement are hereby incorporated herein and constitute a contract between the City and the registered owner of this Bond, to all the provisions of which the registered owner of this Bond, by acceptance hereof, agrees and consents.

The Bonds are subject to redemption as provided in the Trust Agreement.

THE OBLIGATIONS OF THE CITY OF WEST COVINA HEREUNDER, INCLUDING THE OBLIGATION TO MAKE ALL PAYMENTS OF INTEREST AND PRINCIPAL WHEN DUE, ARE OBLIGATIONS OF THE CITY OF WEST COVINA IMPOSED BY LAW AND ARE ABSOLUTE AND UNCONDITIONAL, WITHOUT ANY RIGHT OF SET-OFF OR COUNTER CLAIM. NEITHER THE BONDS NOR THE OBLIGATION OF THE CITY OF WEST COVINA TO MAKE PAYMENTS ON THE BONDS CONSTITUTE AN INDEBTEDNESS OF THE CITY OF WEST COVINA, THE STATE OF CALIFORNIA, OR ANY OF ITS POLITICAL SUBDIVISIONS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION.

This Bond is transferable only on a register to be kept for that purpose at the above-mentioned office of the Trustee by the registered owner hereof in person or by his duly authorized attorney upon payment of the charges provided in the Trust Agreement and upon surrender of this Bond together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered owner or his duly authorized attorney, and thereupon a new fully registered Bond or Bonds in the same aggregate principal amount of authorized denominations

will be issued to the transferee in exchange therefor. The City and the Trustee may deem and treat the registered owner hereof as the absolute owner hereof for the purpose of receiving payment of the interest hereon and principal hereof and for all other purposes, whether or not this Bond shall be overdue, and neither the City nor the Trustee shall be affected by any notice or knowledge to the contrary; and payment of the interest on and principal of this Bond shall be made only to such registered owner, which payments shall be valid and effectual to satisfy and discharge liability on this Bond to the extent of the sum or sums so paid.

This Bond shall not be entitled to any benefit, protection or security under the Trust Agreement or become valid or obligatory for any purpose until the certificate of authentication hereon endorsed shall have been manually executed and dated by the Trustee.

It is hereby certified that all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law and that the amount of this Bond, together with all other indebtedness of the City, does not exceed any limit prescribed by the Constitution or laws of the State of California and is not in excess of the amount of Bonds permitted to be issued under the Trust Agreement.

IN WITNESS WHEREOF, the City of West Covina has caused this Bond to be executed in its name and on its behalf by the signature of the Mayor and to be countersigned by the signature of the Assistant City Clerk of the City of West Covina, and has caused this Bond to be dated as of the original issue date specified above.

CITY OF WEST COVINA

By \_\_\_\_\_  
Mayor

Countersigned

\_\_\_\_\_  
Assistant City Clerk

[FORM OF CERTIFICATE OF AUTHENTICATION]

This is one of the Bonds described in the within-mentioned Trust Agreement which has been authenticated on \_\_\_\_\_, 20\_\_.

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

By \_\_\_\_\_  
Authorized Officer

[FORM OF ASSIGNMENT]

For value received the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ (Taxpayer Identification Number: \_\_\_\_\_) the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated:

Note: The signature to this Assignment must correspond with the name as written on the face of the Bond in every particular, without alteration or enlargement or any change whatever.

Signature Guaranteed: \_\_\_\_\_

Notice: Signature must be guaranteed by an eligible guarantor institution.

1 **NORTON ROSE FULBRIGHT US LLP**

Fee Exempt – Public Entity, Gov. Code § 6103

2 ROBIN D. BALL (STATE BAR NO. 159698)

3 MICHELLE L. CARTER (STATE BAR NO. 288081)

4 ANDY JINNAH (STATE BAR NO. 297907)

5 555 South Flower Street, Forty-First Floor

6 Los Angeles, California 90071

7 Telephone: (213) 892-9200

8 Facsimile: (213) 892-9494

9 robin.ball@nortonrosefulbright.com

10 michelle.carter@nortonrosefulbright.com

11 andy.jinnah@nortonrosefulbright.com

12 Attorneys for Plaintiff

13 CITY OF WEST COVINA

14  
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16  
17 COUNTY OF LOS ANGELES

18 CITY OF WEST COVINA,

Case No.

19 Plaintiff,

20 v.

**COMPLAINT FOR VALIDATION**

(§ 860, *et seq.*, of the Code of Civil  
Procedure; §§ 53511 and 53589.5 of the  
Government Code)

21 ALL PERSONS INTERESTED IN THE  
22 MATTER OF THE ISSUANCE AND SALE  
23 OF BONDS FOR THE PURPOSE OF  
24 REFUNDING CERTAIN OBLIGATIONS  
25 OWED BY THE CITY OF WEST COVINA  
26 TO THE PUBLIC EMPLOYEES'  
27 RETIREMENT SYSTEM UNDER THE  
28 PUBLIC EMPLOYEES' RETIREMENT  
LAW, AND ALL PROCEEDINGS LEADING  
THERETO, INCLUDING THE ADOPTION  
OF RESOLUTION NO. 2020-08 OF THE  
CITY COUNCIL OF THE CITY OF WEST  
COVINA AUTHORIZING THE ISSUANCE  
AND SALE OF SUCH BONDS AND  
AUTHORIZING THE EXECUTION AND  
DELIVERY OF A TRUST AGREEMENT  
AND RELATED DOCUMENTS,

**[TIME SENSITIVE – PRIORITY  
Cal. Civ. Proc. Code § 867]**

Defendants.

1 **COMPLAINT**

2 Plaintiff, the City of West Covina, California (the “City”) brings this validation action  
3 against all interested persons pursuant to section 860, *et seq.*, of the California Code of Civil  
4 Procedure (the “Code of Civil Procedure”) and sections 53511 and 53589.5 of the California  
5 Government Code (the “Government Code”). The City alleges as follows:

6 **The Parties**

7 1. The City is and was at all times mentioned herein a municipal corporation duly  
8 organized and existing under the laws and Constitution of the State of California (the “State”).  
9 The City is a “local agency” as defined by the sections 53510 and 53580 of the Government Code  
10 and is therefore authorized to bring this action pursuant to sections 53511 and 53589.5 of the  
11 Government Code and section 860, *et seq.*, of the Code of Civil Procedure.

12 2. The governing body of the City is the City Council of the City of West Covina (the  
13 “City Council”), which has its principal place of business in Los Angeles County, California.

14 3. Defendants herein are all persons having or claiming to have an interest in the  
15 proceedings, including the adoption of the Resolution (as defined herein) and the execution and  
16 delivery of the Trust Agreement. The names and capacities of those persons having or claiming  
17 an interest in the Resolution and the proceedings leading up to the adoption of the Resolution and  
18 the execution and delivery of the Trust Agreement are unknown to the City; therefore, the City  
19 names such interested persons as provided under section 860, *et seq.* See Paragraph 4 below.

20 **Publication of Summons**

21 4. Section 861 of the Code of Civil Procedure states that jurisdiction of all interested  
22 parties may be had by publication of summons pursuant to Section 6063 of the Government Code  
23 in a newspaper of general circulation designated by the court, published in the county where the  
24 action is pending and whenever possible within the boundaries of the public agency.

25 5. The *San Gabriel Valley Tribune* is a newspaper published and of general  
26 circulation in Los Angeles County. The newspaper’s coverage area explicitly includes the City.  
27 The City believes that the *San Gabriel Valley Tribune* is the most likely publication to give notice  
28 to persons interested in these proceedings.

1                                   **Statutory Authorization for this Validation Proceeding**

2           6.       Section 860 of the Code of Civil Procedure provides that a public agency, such as  
3 the City, may bring an *in rem* action to determine the validity of any matter which under any  
4 other law is authorized to be determined pursuant to section 860, *et seq.*, of the Code of Civil  
5 Procedure.

6           7.       Section 53511 of the Government Code states that a local agency may bring an  
7 action to determine the validity of its bonds, warrants, contracts, obligations or evidence of  
8 indebtedness pursuant to section 860, *et seq.*, of the Code of Civil Procedure. As defined in  
9 section 53510 of the Government Code, the City is a “local agency” authorized to bring an action  
10 under section 860, *et seq.*, of the Code of Civil Procedure.

11          8.       Section 53589.5 of the Government Code states that a local agency may bring an  
12 action to determine the validity of an issuance or proposed issuance of refunding bonds, and the  
13 legality and validity of all proceedings previously taken or proposed to be taken in a resolution  
14 adopted by a local agency for the authorization, issuance, sale and delivery of bonds, pursuant to  
15 section 860 *et seq.* of the Code of Civil Procedure. As defined under section 53580 of the  
16 Government Code, the City is a “local agency” authorized to bring an action under section 860, *et*  
17 *seq.*, of the Code of Civil Procedure.

18          9.       Section 860 of the Code of Civil Procedure provides that the action shall be  
19 brought in the Superior Court of the county in which the principal office of the agency is located.  
20 The principal office of the City is located in Los Angeles County, California. See Paragraph 2  
21 above.

22          10.      Thus, this action is properly brought by the City as an *in rem* proceeding pursuant  
23 to sections 53511 and 53589.5 of the Government Code and section 860, *et seq.*, of the Code of  
24 Civil Procedure for judicial examination, approval, and confirmation of the validity of the  
25 proceedings described above, the Resolution, the execution and delivery of the Trust Agreement  
26 (as defined herein), the issuance and sale of the Bonds of any Series (as defined in the Trust  
27 Agreement), and any other related contracts or agreements authorized or contemplated by the  
28 City.



**Debt Limitation Established in Article XVI, Section 18  
of the California Constitution Does Not Apply to the City**

11. Article XVI, Section 18 of the California Constitution provides in part:

No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters of the public entity voting at the election to be held for that purpose. . . .

12. The California Supreme Court has held that this debt limitation established in Section 18 of Article XVI (the “Constitutional Debt Limitation”) does not apply to obligations imposed by law.

13. Deferred compensation obligations, such as the Pension Obligation (as defined below in Item 15), are a protected category of employment obligations not subject to the Constitutional Debt Limitation.

14. Refunding an existing obligation, such as a Pension Obligation, does not create a new or different liability for purposes of the Constitutional Debt Limitation; instead, it merely evidences a change in form of existing liability.

**The City is Obligated to Fund Its Pension Obligation**

15. A contract between the City and the California Public Employees’ Retirement System (the “Retirement System”) was first approved on May 23, 1966, pursuant to City Council Ordinance No. 968.

16. City employees are members of the California Public Employees’ Retirement System (the “Retirement System”) established under sections 20000 through 21500 of the Government Code (the “Retirement Law”), and the City has entered into contracts, as amended from time to time for the Safety Plan (CALPERS ID 3693758199, Valuation Rate Plan 688) and the Miscellaneous Plan (ID 3693758199, Valuation Rate Plan 687), with the Retirement System Board of Administration (collectively, the “CalPERS Contract”). The CalPERS Contract evidences the City’s obligations under the Retirement Law to make payments to fund the

1 retirement benefits for eligible employees and former employees (the “Pension Obligation”),  
2 which includes the Unfunded Liability, as defined below in Paragraph 18.

3 17. The Retirement Law and the CalPERS Contract obligate the City, *inter alia*, to:

- 4 • make normal, annual contributions to the Retirement System to fund  
5 pension and other retirement benefits for City employees who are members  
6 of the Retirement System;
- 7 • amortize the unfunded liability with respect to such pension benefits in  
8 respect of retired safety and miscellaneous employees under the pension  
9 programs of the Retirement System (Safety Plan, CalPERS ID  
10 3693758199, Valuation Rate Plan 688; Miscellaneous Plan CalPERS ID  
11 3693758199, Valuation Rate Plan 687) (the “Unfunded Liability”); and  
12 • appropriate funds for the purpose of meeting these obligations; and

13 18. The Retirement System has prepared actuarial valuations projecting the Unfunded  
14 Liability of the City as of June 30, 2020 to be \$199,686,217.

15 19. The City is authorized under sections 53571 and 53584 of the Government Code to  
16 provide for the refunding of its obligations (which are “revenue bonds” within the meaning of  
17 53570 of the Government Code and “bonds” and “refunding bonds” within the meaning of 53580  
18 of the Government Code), including the Unfunded Liability, by issuing bonds or other evidences  
19 of indebtedness and applying the proceeds of such to the retirement of such obligations.

### 20 **The Resolution**

21 20. Pursuant to sections 860 and 864 the Code of Civil Procedure, the Bonds (as  
22 defined in Item 21), the Trust Agreement (as defined in Item 21), any supplemental trust  
23 agreements and all contracts executed and delivered in connection with the Bonds, are in  
24 existence and subject to validation upon their authorization by the City Council, as evidenced by  
25 their adoption of a resolution or ordinance authorizing their issuance.

26 21. On February 4, 2020, the City Council of the City (the “City Council”) adopted its  
27 Resolution No. 2020-08 entitled “RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
28 WEST COVINA AUTHORIZING THE ISSUANCE AND DELIVERY OF PENSION

1 OBLIGATION BONDS TO REFUND CERTAIN OUTSTANDING PENSION FUND  
2 OBLIGATIONS OF THE CITY TO THE CALIFORNIA PUBLIC EMPLOYEES'  
3 RETIREMENT SYSTEM; APPROVING THE FORM OF AND AUTHORIZING THE  
4 EXECUTION AND DELIVERY OF A TRUST AGREEMENT; AUTHORIZING A  
5 VALIDATION ACTION; APPROVING CERTAIN PROFESSIONALS FOR THE  
6 REFUNDING; AND OTHER MATTERS RELATING THERETO" (the "Resolution"). A true  
7 and correct copy of the Resolution is attached hereto as Exhibit A.

8 22. The Resolution as adopted authorizes the issuance and sales of pension obligation  
9 bonds (the "Bonds") and the execution and delivery of a trust agreement (the "Trust Agreement").  
10 The Bonds shall be payable from all legally available funds of the City pursuant to Articles 10  
11 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code, commencing with  
12 Section 53570 of said Code (the "Bond Law") for the purpose of refunding the Unfunded  
13 Liability and paying normal costs, evidenced by the CalPERS Contract, subject to the condition  
14 that the aggregate principal amount of the initial series of Bonds issued under the Trust  
15 Agreement shall not exceed \$205,000,000.

#### 16 **The Trust Agreement**

17 23. The Resolution approved the form of, and authorized the City to execute and  
18 deliver, the Trust Agreement, pursuant to which the proceeds from the sale of the Pension  
19 Obligation Bonds will be deposited with a trustee, which in turn will remit such proceeds to the  
20 Retirement System to refund all or a portion of the Pension Obligation.

21 24. The Trust Agreement establishes the terms and conditions upon which the Bonds  
22 shall be issued and the Pension Obligation refunded. The Trust Agreement will be substantially  
23 in the form presented to the City Council, a true and correct copy of which is attached hereto as  
24 Exhibit B, with such changes therein, deletions therefrom and additions thereto as authorized in  
25 the Resolution.

26 25. The Bonds and any and all contracts and agreements related thereto, including but  
27 not limited to the Trust Agreement, relate to and constitute both (i) a protected category of  
28

1 employment obligations excluded from the Constitutional Debt Limitation and (ii) the refunding  
2 of a pre-existing obligation imposed by law exempt from the Constitutional Debt Limitation.

3 **Cause of Action**  
4 **(Validation)**

5 26. This action is brought by the City to establish, among other things, that the  
6 obligations of the City, as evidenced by the CalPERS Contract, to make contributions to the  
7 Retirement System pursuant to the Retirement Law to fund pension and other retirement benefits  
8 represents an “obligation imposed by law” for which the City is obligated to satisfy from any  
9 money available in any fund in the City’s treasury. As an obligation imposed by law, the City’s  
10 obligation to make payments to fund the retirement benefits for City employees is exempt from  
11 the Constitutional Debt Limitation, and the issuance and sale of bonds for the purpose of  
12 refunding such obligation is therefore also an obligation imposed by law and exempt from the  
13 Constitutional Debt Limitation.

14 27. All such proceedings by and for the City and the provisions of the Resolution and  
15 the Trust Agreement were and are in the best interests of the City and all interested parties, and  
16 were, are and will be in conformity with the provisions of all laws and enactments at any time in  
17 force or controlling upon said proceedings, whether of law, statute or ordinance, and whether  
18 federal, state or municipal and were and are in conformity with all requirements of all regulatory  
19 bodies, agencies or officials having authority over or asserting authority over said proceedings or  
20 any part thereof.

21 28. The City realleges and incorporates by reference the allegations made throughout  
22 this Complaint as though fully set forth herein.

23 29. The Retirement Law imposes a statutory duty upon the City to provide funding for  
24 retirement benefits for City employees and former employees.

25 30. The City has evidenced its Pension Obligation in the CalPERS Contract, which is  
26 a legal and enforceable obligation of the City.  
27  
28

1           31. The Bonds will be issued and sold to refund all or a portion of the Pension  
2           Obligation, in fulfillment of the City's obligation to fund the retirement benefits for City  
3           employees and former employees.

4           32. The CalPERS Contract, the Pension Obligation, the Bonds and the Trust  
5           Agreement relate to and constitute a protected class of obligations excluded from consideration  
6           under the Constitutional Debt Limitation.

7           33. All proceedings by and for the City in connection with the Resolution, the Bonds,  
8           the Trust Agreement, any supplemental trust agreements and any other related contracts or  
9           agreements authorized or contemplated by the City, were and are valid and legal, and were and  
10          are in conformity with the applicable provisions of all laws and enactments at any time in force or  
11          controlling upon such proceedings, whether imposed by charter, law, constitution, statute or  
12          ordinance, whether federal, state, or local, including the Constitutional Debt Limitation.

13          34. All conditions, things, and acts required by law to exist, happen, or be performed  
14          precedent to the adoption of the Resolution, and the terms and conditions thereof, including the  
15          authorization for the issuance and sale of the Bonds, the execution and delivery of the Trust  
16          Agreement and any supplemental trust agreements and any other related contracts or agreements  
17          authorized or contemplated by the City, have existed, happened, and been performed in the time,  
18          form, and manner required by law.

19          35. The City has the authority under the California Constitution and California law to:

20               (a) provide for the refunding of all or a portion of the Pension Obligation, by  
21               executing and delivering the Trust Agreement and any other related contracts or  
22               agreements, and issuing the Pension Obligation Bonds; and

23               (b) apply the proceeds of the Bonds to the refunding of all or a portion of the Pension  
24               Obligation, including the Unfunded Liability, or any then-outstanding Bonds, and  
25               the payment of costs of issuing the Bonds.

26          36. Upon the execution and delivery thereof, the Bonds, the Trust Agreement and all  
27          other agreements executed and delivered in connection therewith will be valid, legal, and binding,  
28          including any and all contracts and obligations enforceable in accordance with their terms.

37. The City's incurrence of any and all indebtedness and/or liability in connection with the Pension Obligation or the Bonds, the Trust Agreement and all contracts and agreements related thereto, including any supplemental trust agreements, is exempt from and not subject to the Constitutional Debt Limitation.

38. This action is properly brought under sections 53511 and 53589.5 of the Government Code and section 860 *et seq.* of the Code of Civil Procedure.

## Prayer for Relief

The City prays for relief as follows:

39. That judgment be entered on the Cause of Action determining that:

- (a) This action is properly brought under section 860 *et seq.* of the Code of Civil Procedure and sections 53511 and 53589.5 of the Government Code;
- (b) All proceedings by and for the City in connection with the Resolution, the Trust Agreement, the Bonds, and the refunding of the City's obligation, evidenced by the CalPERS Contract, to pay the Unfunded Liability and normal costs, have been duly and lawfully taken in accordance with all requirements of law, including all requirements of section 860 *et seq.* of the Code of Civil Procedure and the Bond Law;
- (c) The Resolution, the Trust Agreement, the Bonds and the refunding of the City's Unfunded Liability and the payment of normal costs, and related contracts or agreements approved by the Resolution or contemplated by the City Council in connection with such contract and agreements, were and are valid, legal and binding obligations enforceable against the City and the other parties thereto in accordance with their terms and were and are in conformity with the applicable provisions of all laws and enactments at any time in force or controlling upon such proceedings, whether imposed by law, constitution, statute or ordinance and whether federal, state or municipal, including but not limited to the provisions of the Constitutional Debt Limitation and the Bond Law;

- 1 (d) All conditions, things and acts required by law to exist, happen or be performed  
2 precedent to the adoption of the Resolution, the Trust Agreement, and the terms  
3 and conditions thereof, and including execution and delivery of all related  
4 contracts or agreements approved by the Resolution or contemplated by the City  
5 Council of the City in connection with the issuance of the Bonds, have existed,  
6 happened and been performed in the time, form and manner required by law;
- 7 (e) The City has the authority under California law to execute and deliver the Trust  
8 Agreement and to undertake the issuance and sale of Bonds for the purpose of  
9 refunding the Unfunded Liability and paying the normal costs, including the  
10 making of any such changes therein, deletions therefrom and additions thereto as  
11 the officers authorized in the Trust Agreement shall approve;
- 12 (f) The City has the authority under California law to apply the proceeds of the Bonds  
13 to the retirement of its obligation, evidenced by the CalPERS Contract, for the  
14 reduction of the Unfunded Liability and the payment of normal costs;
- 15 (g) The CalPERS Contract and the Unfunded Liability constitute evidences of  
16 indebtedness which are bonds and revenue bonds within the meaning of the Bond  
17 Law;
- 18 (h) The City will be legally obligated to satisfy its obligations under the Bonds from  
19 all legally available funds of the City, and the City Council will be obligated to  
20 make all annual appropriations of such funds as may be required to satisfy its  
21 annual obligations under the Bonds, such obligations are legal, valid and in  
22 conformity with all requirements of the law, and are obligations which are fully  
23 enforceable against the City;
- 24 (i) The Trust Agreement and the Bonds and all agreements and contracts related  
25 thereto, are "obligations imposed by law" and are exempt from and not subject to  
26 the Constitutional Debt Limitation;
- 27  
28

1 (j) Jurisdiction of interested persons shall be established by publication of the  
2 Summons pursuant to section 861 of the Code of Civil Procedure and section 6063  
3 of the Government Code in the *San Gabriel Valley Tribune* as soon as practicable;

4 (k) The Bonds and any and all contracts and agreements executed and delivered in  
5 connection therewith are valid and binding obligations of the State of California;  
6 and

7 (l) The institution by any person of any action or proceeding raising any issue as to  
8 which the judgment is binding and conclusive (which includes all matters  
9 adjudicated or which at the time of the judgment could have been adjudicated),  
10 against the City and against all other persons are permanently enjoined.

11 40. For costs incurred herein.

12 41. For such other and further relief as the Court may deem just and proper.  
13

14 Dated: February \_\_\_\_, 2020

**NORTON ROSE FULBRIGHT US LLP**  
ROBIN D. BALL  
MICHELLE L. CARTER  
ANDY JINNAH

17 By /s/Robin D. Ball  
18 ROBIN D. BALL  
19 ATTORNEYS FOR PLAINTIFF  
20 CITY OF WEST COVINA  
21  
22  
23  
24  
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26  
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# Estimated Cost of Issuance

## City of West Covina

as of 1/28/2020

**Issue: Pension Obligation Bonds**

**Series 2020**

Estimated Notional Amount: \$157,880,000.00

DESCRIPTION:	Firm:	Fee Amount:
Issuer's Counsel (NTE)*	Jones & Mayer	\$ 10,000
Bond & Disclosure Counsel	Norton Rose	\$ 124,500
Validation Counsel Fees (NTE)*	Norton Rose	\$ 28,000
Municipal Advisor	Wolf & Company/ NHA	\$ 97,500
Trustee & Escrow Agent	US Bank	\$ 2,700
Actuarial Consultant**	[TBD, if needed]	\$ 20,000
Budget Forecast Consultant**	[TBD, if needed]	\$ 30,000
Printing	Imagemaster	\$ 2,500
Rating Agency**	S&P	\$ 97,000
Contingency	[TBD, if needed]	\$ 10,000
Subtotal	COI	\$ 422,200
Underwriter's Discount	Hilltop Securities (3.18/1000)	\$ 502,058
Total Costs		\$ 924,258

\*Non-contingent Professional fees relating to the validation process.

\*\*Non-contingent Professional fees relating to the issuance of pension obligation bonds.

## PENSION OBLIGATIONS BONDS

Activity	Date
City Staff Recommends Muni Advisor, Underwriter Bond Counsel	1/22/2020
City Council Approves MA, UW, BC, Validation Docs	2/4/2020
Financial & Risk Analysis of POB Alternatives	2/18/2020
Rating Presentation	4/22/2020
Rating Issued	5/11/2020
City Council to Approved Issuance, POS, Indenture	5/19/2020
Bond Sale	6/5/2020



## AGENDA STAFF REPORT

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City of West Covina | Office of the City Manager

**DATE:** February 4, 2020

**TO:** Mayor and City Council

**FROM:** David Carmany  
City Manager

**SUBJECT: CONSIDERATION OF A HISTORIC CONTEXT STATEMENT (1945-1978) AND  
HISTORIC RESOURCE INVENTORY UPDATE**

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### **RECOMMENDATION:**

Staff recommends that the City Council review and accept as complete the draft City of West Covina Historic Context Statement (1945-1978) and Historic Resource Inventory Update.

### **BACKGROUND:**

The City of West Covina originally prepared a historic context statement and resources survey in 2006. That project evaluated 284 residential properties constructed prior to 1945 under national, state, and local landmark and historic district programs. The threshold date of 1945 was selected because properties would have been more than 50 years old at the time (the age threshold is explained in further detail below). The preparation of a historic resources survey is generally the first step a city takes when interested in protecting and preserving its historic resources. The survey also provides a tool for evaluating new development projects per the California Environmental Quality Act (CEQA) because it provides an essential baseline of information to be used in evaluating properties as potential historic resources and determining an appropriate program to undertake in attempting to protect and preserve historic properties.

At the conclusion of the 2006 survey, the City Council provided direction to begin the preparation of an ordinance establishing a voluntary local historic preservation program. The City's Historic Resource Preservation Ordinance was adopted as Chapter 17, Article III of City of West Covina Municipal Code. The Ordinance specifies that a property may be designated a landmark, and an area may be designated an historic district, if it meets one of five criteria. To be eligible for consideration as a landmark, or individual historic resource, a property must be at least 50 years old, with the exception that a historic resource of at least 30 years of age may be eligible if the Planning Commission determines that the resource is exceptional, or that it is threatened by demolition, removal, relocation, or inappropriate alteration (City of West Covina Municipal Code, Ord. No. 2173, Sec. 17-122). To date, one property (the City-owned Heritage House at Heritage Park) has applied and received Landmark status.

## **DISCUSSION:**

In 2018, the City engaged GPA Consulting to update the 2006 historic context statement and resources survey. The objective of the update was to gain a better understanding of the City's postwar past, identify its postwar historic resources, and review prewar resources identified in the previous survey. The goals reflect the City's commitment to building on past efforts that ensure significant historic resources are identified and protected. With these goals in mind, GPA Consulting was hired to update the context statement and conduct a citywide historic resource survey in accordance with best practices in the field, and to facilitate compliance with the California Environmental Quality Act (CEQA).

The first component of the project was to review properties constructed before 1946 that were identified in the 2006 study as potential historic resources. GPA identified and documented physical changes to the properties since the last survey. There were three categories of properties identified in the previous study:

1. Properties potentially eligible for listing on the National Register or California Register (Appendix A);
2. Properties potentially eligible for listing on a local register (Appendix B); and,
3. Properties within the potentially eligible Sunkist Village Historic District (Appendix C).

In 2006, a total of 90 individual properties and one district were found to be eligible for National Register, California Register and/or as a local Historic Resource. The updated study makes recommendations to how the 90 properties and one district should be evaluated historically given changes to the property or the District over the past 15 years.

GPA then conducted a citywide, reconnaissance-level survey of properties within the City constructed during the postwar period. This survey fieldwork, supplemented by archival research, was used to develop a Historic Context Statement (HCS) for the period between 1945 and 1978. The HCS describes the broad patterns of development and architectural style in the City, organized by period and theme. For each theme, associated property types and registration requirements are defined to identify and evaluate the significance and physical integrity of potential historic resources. The HCS is important because the significance of historic resources are evaluated in terms of how they reflect the City's history, development, and popular architectural styles. The HCS provides the basis for identification and evaluation.

After completing the citywide reconnaissance survey and historic context statement, City staff and the consultant identified another list of 90 properties that warranted further evaluation as potential historic resources (Attachments 4 and 5). The evaluation of each property included an analysis of its significance and integrity based upon the eligibility standards outlined for each property type in the HCS. Following initial research, properties that merited a full evaluation were documented on California Department of Parks and Recreation (DPR 523) forms.

Following a thorough process to identify historic resources in the City of West Covina, GPA identified 20 properties as potential historic resources representing the period between 1945 and 1978. These properties are listed in Appendix D with more detailed information provided in Attachment 4.

<b>Number of Properties</b>	<b>Evaluation</b>	<b>California Historical Resource Status Code</b>
10	Properties individually eligible for listing on the National Register, California Register, and as local Historical Resources.	3S/3CS/5S3*
1	Locally significant both individually (listed, eligible, or appears eligible) and as a contributor to a district that is locally listed, designated, determined eligible or appears eligible through survey evaluation.	3S/3CS/5S3*
5	Appears to be a contributor to a district that appears eligible for local listing or designation through survey evaluation.	5D3*
4	Properties individually eligible only for local listing.	5S3*
65	Properties found ineligible for National Register, California Register or local designation through survey evaluation.	6Z
1	Needs to be reevaluated.	7N
4	Properties identified in reconnaissance level survey, but not evaluated because the property was not visible from the public right-of-way.	7R

\* presumed to be historical resources for the purposes of CEQA)

#### Use and Purpose of the Historic Context Statement (1945-1978) and Historic Resource Inventory Update

The purpose of the Historic Context Statement (1945-1978) and Historic Resource Inventory Update is to serve as a database and source of information to assist in protecting and preserving the historic resources in the City of West Covina.

The ability to identify potential historic resources from the postwar era is critical to the City. West Covina, like much of southern California, developed rapidly during the postwar era, therefore a majority of our building inventory is reaching the 50-year benchmark for historic resources simultaneously. Completing this HCS and HRI Update provides a basis for streamlining the review process as it provides a framework for determining eligibility of postwar properties as potential historic resources. In addition, the findings of the survey have identified properties potentially eligible as historic resources that should be reviewed carefully in planning decisions. Ultimately, the goal is to avoid impacts to historical resources under CEQA. As such, the finding of the survey should be incorporated into the City's property database so planners can easily access information about whether or not a property has been identified as a historic resource.

Though the report and findings are informational and do not strictly involve or encompass any mandatory requirement to preserve historic resources, those properties identified as eligible for listing in the California Register warrant further consideration as potential historic resources under CEQA for planning purposes. Projects involving these potential historic resources should be analyzed further to determine the possible impacts to the historic resource.

### Planning Commission Review

The Planning Commission reviewed the Historic Resources Study on December 10, 2019. The Commission discussed how the study will be used, how properties are identified as potentially eligible for historic status, how often the status of potential historic properties will be updated, if the results of the study will be posted on the city's website, how historical designation will affect the owner's ability to make improvements, the length of time between the first study and this one, and if the city would be able to force a property owner to list their home as historical. The Commission also discussed the house on Wrede Way designed by the architect Richard Neutra that did not show up on the list. At the conclusion of the review, the Planning Commission voted 5-0 to receive and file the study as presented.

### Next Steps

The completion of the Historic Context Statement (1945-1978) and Historic Resource Inventory Update represents an important continuation of the effort to identify historic resources in West Covina and is an important informational tool for making informed planning decisions. The document will serve as the foundation for determining whether a particular postwar property may be considered a historic resource for the purposes of CEQA or eligible for voluntary designation as a local landmark and eligible for the tax, building code, and zoning benefits of designation.

### Future Studies for Consideration

West Covina is a postwar community, but it has continued to evolve since its initial boom of development in the decades following World War II. The Woodside Development in the southern portions of the city includes buildings, planning, and landscaping elements that reflect a period outside the scope of GPA's study. Future studies should consider this area. The City might also consider examining the ethnic and cultural heritage of West Covina after 1978 in future studies.

### Additional Recommendations

Currently, if a property owner wants to voluntarily have property designated a historic resource, the Municipal Code Section 17-111 requires that the property meet one or more of the following criteria:

- A. It exemplifies or reflects special elements of the City's cultural, social, economic, political, aesthetic, engineering, or architectural history; or
- B. It is identified with persons or events significant in local, regional, state or national history; or
- C. It embodies distinctive characteristics of a style, type, period, or method of construction, or is a valuable example of the use of indigenous materials or craftsmanship; or
- D. It is representative of the notable work of a builder, designer, or architect; or
- E. It has a unique location or physical characteristic(s) or represents an established and familiar visual feature or landmark of a neighborhood, community, or the City.

Criteria A, B, C, and D are modeled after the four California Register of Historic resources criteria, which are modeled after the four National Register of Historic Places criteria. The approach of basing the City's registration program on the state and federal programs is appropriate and ideal as it simplifies the evaluation process for both City staff and the public. However, while the last criterion, E, is common among many cities in California, it can be problematic as it does not align with existing guidance for the evaluation of Historic resources and relies on more subjective judgments of importance to a community. GPA would recommend revising the criteria for evaluation to align completely with the national and state criteria. This would require the processing of a code amendment. If the City decides to proceed with this revision, GPA recommends engaging the services of a qualified consultant to draft the final code language and consultation with the City Attorney.

## **ATTACHMENTS**

The attachments are large documents and are posted on the City website

<https://www.westcovina.org/departments/community-development/planning-division/historic-preservation-copy>.

Under Historic Resource Inventory Draft (2019).

Attachment 1 - DPR Forms - HRI Update Individual Properties, December 2019

Attachment 2 - DPR Forms - HRI Update Individual Properties Local Only, December 2019

Attachment 3 - DPR Forms - HRI Update Sunkist Village, December 2019

Attachment 4 - DPR Forms - Survey Findings (Eligible), December 2019

Attachment 5 - DPR Forms - Survey Findings (Not Eligible), December 2019

**Prepared by:** Jeff Anderson, Community Development Director

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### **Fiscal Impact**

#### **FISCAL IMPACT:**

There is no fiscal impact on the results of this study. The study was approved by City Council on September 18, 2018 for \$74,905.

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**CITY COUNCIL GOALS & OBJECTIVES:** Enhance the City Image and Effectiveness



## AGENDA STAFF REPORT

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City of West Covina | Office of the City Manager

**DATE:** February 4, 2020

**TO:** Mayor and City Council

**FROM:** David Carmany  
City Manager

**SUBJECT: REQUEST FROM MAYOR WU FOR CITY COUNCIL'S CONSIDERATION TO CHANGE  
THE STREET NAME FROM GLENDORA AVENUE TO MAXSON AVENUE.**

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### RECOMMENDATION:

It is recommended that the City Council discuss and provide staff appropriate direction.

### DISCUSSION:

Per the City's Council's Standing Rules, Mayor Wu is asking that the City Council agendaize consideration of changing the name of Glendora Avenue to Maxson Avenue. Mr. Benjamin F. Maxson was the first Mayor of West Covina serving February 1923 to April 1928.

**Prepared by:** Lisa Sherrick, Assistant City Clerk

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**CITY COUNCIL GOALS & OBJECTIVES:** Enhance the City Image and Effectiveness