



CITY OF WEST COVINA

CITY COUNCIL/SUCCESSOR AGENCY

**JULY 21, 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**

On March 4, 2020, Governor Newsom proclaimed a State of Emergency in California as a result of the threat of COVID-19. On March 17, 2020, Governor Newsom issued Executive Order N-29-20, suspending certain requirements of the Brown Act relating to the conduct of public meetings.

On June 11, 2020, the Los Angeles County Public Health Officer issued a revised Health Officer Order directing, among other things, that all persons living within the Los Angeles County Public Health Jurisdiction remain in their residences whenever practicable. Pursuant to the Order, people leaving their residences must strictly comply with specified social (physical) distancing protocols.

Due to the ongoing COVID-19 emergency and pursuant to State and County public health directives, the City Council Chambers will have limited seating available on a first-come, first-served basis for members of the public to attend the City Council meeting in person. All persons attending the meeting shall wear cloth face coverings and shall observe social distancing protocols. Members of the public may also watch City Council meetings live through the West Covina Website at <https://www.westcovina.org/departments/city-clerk/agendas-and-meetings/current-meetings-and-agendas> or the West Covina City YouTube channel at www.westcovina.org/LIVE.

If you are experiencing symptoms such as fever or chills, cough, shortness of breath or difficulty breathing, fatigue, or sore throat, the City requests that you participate in the meeting from home by watching the meeting via the West Covina Website at

<https://www.westcovina.org/departments/city-clerk/agendas-and-meetings/current-meetings-and-agendas> or the City's YouTube channel ([//www.westcovina.org/LIVE](http://www.westcovina.org/LIVE)) and/or providing public comments by email or telephone. If you are in the group of individuals who are at high-risk for severe illness from COVID-19, including those over the age of 65 and those with underlying health conditions, please consider participating in the meeting from home.

In lieu of attending the meeting in person, members of the public can submit public comments to the City Clerk at

City_Clerk@westcovina.org. The subject line should specify either “Oral Communications – 7/21/2020” or “Public Hearing Item # [X] – 7/21/2020”. Please include your full name and address in your e-mail. The City Clerk will read emails received by 6:30 P.M. the day of the meeting out loud into the public record. All comments received will be made part of the official public record of the meeting.

If you wish to address the Council by telephone during Oral Communications or a public hearing, you may contact the City Clerk by email City_Clerk@westcovina.org or by telephone (626) 939-8433 by 6:30 P.M. on the day of the meeting to advise the City Clerk that you would like to address the Council during Oral Communications or a public hearing.

Please be advised that members of the public will only receive one opportunity to address the Council during Oral Communications or a public hearing – either in person, via email, or by telephone.

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. 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 JULY 21, 2020, 7:00 PM
REGULAR MEETING**

INVOCATION

Led by Reverend Mason Okubo from Immanuel First Lutheran Church.

PLEDGE OF ALLEGIANCE

Led by Mayor Pro Tem Lopez-Viado

ROLL CALL

REPORTING OUT FROM CLOSED SESSION

PRESENTATIONS

- Proclamation - Parks Make Life Better Month
- Donations - Adopt a Senior Program - Suburban Water Systems
- 4th of July Enforcement - Chief Bell and Chief Capelle

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) **JUNE 23, 2020 CITY COUNCIL/SUCCESSOR AGENCY SPECIAL CLOSED SESSION MEETING MINUTES**
JUNE 23, 2020 CITY COUNCIL/SUCCESSOR AGENCY SPECIAL REGULAR SESSION MEETING MINUTES
JULY 7, 2020 CITY COUNCIL/SUCCESSOR AGENCY CLOSED SESSION MEETING MINUTES
JULY 7, 2020 CITY COUNCIL/SUCCESSOR AGENCY REGULAR SESSION MEETING MINUTES

It is recommended that the City Council approve the June 23, 2020, Special Closed and Regular Session Meeting Minutes, and the July 7, 2020, Closed and Regular Session Meeting Minutes.

CITY MANAGER'S OFFICE

- 2) **CONSIDERATION OF RESOLUTION NO. 2020-85 EXTENDING THE LOCAL EMERGENCY DECLARATION**

It is recommended that the City Council adopt Resolution No. 2020-85 as follows:

RESOLUTION NO. 2020-85 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, DETERMINING THE NEED TO FURTHER CONTINUE THE LOCAL EMERGENCY PROCLAIMED ON MARCH 16, 2020 AND PREVIOUSLY CONTINUED ON APRIL 7, 2020, MAY 5, 2020, JUNE 2, 2020 AND JUNE 23, 2020

COMMUNITY DEVELOPMENT

3) **CONSIDERATION OF FIRST AMENDMENTS TO THE AGREEMENT OF PURCHASE AND SALE, AND RIGHT OF ACCESS AND ENTRY AGREEMENT WITH SINGPOLI BD CAPITAL GROUP, LLC FOR DEVELOPMENT OF THE FORMER BKK LANDFILL**

It is recommended that the City Council authorize the City Manager to negotiate and execute the First Amendment to the Agreement of Purchase and Sale and Joint Escrow Instructions (dated August 1, 2019) and the First Amendment to the Right of Access and Entry Agreement (dated July 16, 2019) with Singpoli BD Capital Group, LLC (Singpoli) through October 31, 2020 for the development of the former BKK Landfill (APN Nos: 8735-001-919, 8735-001-920, 8735-001-921, 8735-001-931, 8735-002-906, 8735-002-909, and 8735-002-910; and Lease of APN 8735-022-018).

4) **CONSIDERATION OF APPROVAL OF THE TRAFFIC COMMITTEE MEETING MINUTES AND TRAFFIC COMMITTEE RECOMMENDATIONS FROM THE JUNE 9, 2020 TRAFFIC COMMITTEE MEETING**

It is recommended that the City Council approve the Traffic Committee Meeting Minutes and Traffic Committee recommendations from the June 9, 2020 Traffic Committee Meeting for the following item:

Traffic Review for the Signalized intersection of Lark Ellen Avenue and Badillo Street

Request: As part of the 2011 Metro Call for Projects, the County of Los Angeles Department of Public Works ("County") was awarded a grant for the Traffic Signal Synchronization Project (TSSP) and Bus Signal Priority (BSP) Project within the corridor of Ramona Boulevard, Badillo Street, and Covina Boulevard in the Cities of West Covina, Baldwin Park, Covina, El Monte, Irwindale, and San Dimas. The purpose of the project is to synchronize traffic signals along the corridor between Santa Anita Avenue and the 57 Freeway and implement BSP between Tyler Avenue and Citrus Avenue. The County is initiating improvement recommendations and communications design for the project. The project includes the intersections of Badillo Street/Vincent Avenue, Badillo Street/Lark Ellen Avenue, and Badillo Street/Azusa Avenue. All these intersections are shared by the City of Covina. The City of West Covina reviewed the potential for installing a protected left turn phasing at the Lark Ellen Avenue and Badillo Street intersection as part of the improvements for the project. Traffic Engineering Staff presented a traffic memo summarizing the conditions justifying the installation of protected left turn phasing. Installation of protected left turn phasing will improve safety for pedestrians, reduce the potential for turning collisions, and improve line of sight for turning vehicles.

Review Standard: The installation of all traffic control devices on public streets is guided by the California Manual on Uniform Traffic Control Devices (CAMUTCD), the California Vehicle Code (CVC), and engineering judgement. The CAMUTCD Section 4D.19 provides guidance and warrants on where protected left turn phasing could be installed. Conformity to standards approved by Caltrans or by the Design Manual or other legislative bodies of work provides the engineer as well as the City with the reasonableness of traffic control measures which conform to standards of design and safety. Installation can be based on volume, or improved safety for pedestrians or vehicles. This intersection did meet the recommended guidance for left turn phasing.

Recommendation: It was unanimously recommended to coordinate with the County to request if this project could be added as part of the County's Traffic Signal Synchronization Project (TSSP) and Bus Signal Priority (BSP) Project awarded to the County of Los Angeles Department of Public Works from the 2011 Metro Call for Projects grant. If it cannot be added to that the project, then the City may consider this project as part of a future West Covina CIP project or part of a future grant project when funds become available. The County will be providing their recommendations to the City of West Covina for all intersections along the Badillo Corridor that can be included as part of the Traffic Signal Synchronization Project (TSSP) and Bus Signal Priority (BSP) Project awarded to it from the 2011 Metro Call for Projects grant.

5) **CONSIDERATION OF MEMORANDUM OF UNDERSTANDING BETWEEN THE CITIES OF WEST COVINA AND WALNUT FOR THE INSTALLATION OF A TRAFFIC SIGNAL AT LA PUENTE ROAD AND FORECASTLE AVENUE**

It is recommended that the City Council authorize the City Manager to negotiate and execute a Memorandum of Understanding (MOU) with the City of Walnut for the installation of a Traffic Signal at La Puente Road and Forecastle Avenue (Attachment No. 1) and authorize the City Manager to execute amendments to the MOU with a 15% contingency, if necessary.

HUMAN RESOURCES/RISK MANAGEMENT

6) **CONSIDERATION OF RESOLUTION ADOPTING TERMS AND CONDITIONS OF EMPLOYMENT FOR EMPLOYEES IN THE WEST COVINA POLICE OFFICERS' ASSOCIATION (WCPOA)**

That the City Council adopt the following Resolution:

RESOLUTION NO. 2020-74 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA POLICE OFFICERS' ASSOCIATION (WCPOA)

7) **CONSIDERATION OF A SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE NON-SWORN SAFETY SUPPORT EMPLOYEES' ASSOCIATION**

It is recommended that the City Council adopt the following Resolution:

RESOLUTION NO. 2020-76 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE NON-SWORN SAFETY SUPPORT EMPLOYEES' ASSOCIATION REPRESENTED BY TEAMSTERS LOCAL 1932 UNION

8) **CONSIDERATION OF A SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA FIREFIGHTERS' ASSOCIATION, I.A.F.F., LOCAL 3226**

It is recommended that the City Council adopt the following Resolution:

RESOLUTION NO. 2020-75 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA FIREFIGHTERS' ASSOCIATION, I.A.F.F., LOCAL 3226

9) **CONSIDERATION OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY AND THE WEST COVINA POLICE MANAGEMENT ASSOCIATION**

It is recommended that the City Council adopt the following Resolution:

RESOLUTION NO. 2020-77 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, ADOPTING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY AND THE WEST COVINA POLICE MANAGEMENT ASSOCIATION (WCPMA)

10) CONSIDERATION OF A SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA MAINTENANCE AND CRAFTS EMPLOYEES' ASSOCIATION

It is recommended that the City Council adopt the following Resolution:

RESOLUTION NO. 2020-79 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA MAINTENANCE AND CRAFTS EMPLOYEES' ASSOCIATION REPRESENTED BY CITY EMPLOYEES ASSOCIATES (CEA)

11) CONSIDERATION OF A SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA GENERAL EMPLOYEES' ASSOCIATION

It is recommended that the City Council adopt the following Resolution:

RESOLUTION NO. 2020-80 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA GENERAL EMPLOYEES' ASSOCIATION (WCGEA)

12) CONSIDERATION OF A SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA CONFIDENTIAL EMPLOYEES' ASSOCIATION (WCCEA)

It is recommended that the City Council adopt the following Resolution:

RESOLUTION NO. 2020-81 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA CONFIDENTIAL EMPLOYEES' ASSOCIATION (WCCEA)

13) CONSIDERATION OF A SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA MIDDLE MANAGEMENT EMPLOYEES' ASSOCIATION

It is recommended that the City Council adopt the following Resolution:

RESOLUTION NO. 2020-82 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA MIDDLE MANAGEMENT EMPLOYEES' ASSOCIATION (WCMMEA)

14) CONSIDERATION OF A SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA FIRE MANAGEMENT EMPLOYEES' ASSOCIATION (WCFMA)

It is recommended that the City Council adopt the following Resolution:

RESOLUTION NO. 2020-78 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA FIRE MANAGEMENT ASSOCIATION (WCFMA)

15) CONSIDERATION OF AMENDMENT NUMBER ONE TO CITY OF WEST COVINA CITY MANAGER EMPLOYMENT AGREEMENT WITH DAVID CARMANY

It is recommended that the City Council adopt the following Amendment:

**AMENDMENT NUMBER ONE TO CITY OF WEST COVINA CITY MANAGER
EMPLOYMENT AGREEMENT WITH DAVID CARMANY.**

16) CONSIDERATION OF GOVERNMENT TORT CLAIMS

It is recommended that the City Council deny the following Government Tort Claims and the claimants to be notified:

1. Geovanny Medina vs. City of West Covina

POLICE DEPARTMENT

**17) CONSIDERATION OF 2018 STATE HOMELAND SECURITY GRANT FOR PURCHASE OF
POLICE RADIOS**

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

1. Accept and appropriate the reimbursable 2018 State Homeland Security Program grant totaling \$70,199 in expenditures and revenues, and authorize the City Manager to execute all related agreements, in a form approved by the City Attorney; and
2. Authorize the purchase of a total of (nine) 9 APX radios with accessories, directly from Motorola Solutions, for a total of \$69,936.19, from account 218.31.3111.7160.
3. Adopt the following resolution authorizing the necessary budget amendment:

**RESOLUTION NO. 2020-70 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF WEST COVINA, CALIFORNIA, ADOPTING A BUDGET AMENDMENT FOR THE
FISCAL YEAR COMMENCING JULY 1, 2020, AND ENDING JUNE 30, 2021 (2018
STATE HOMELAND SECURITY GRANT)**

18) CONSIDERATION OF ASSET FORFEITURE FOR POLICE EQUIPMENT AND SERVICES

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

1. Approve, by a majority vote of the entire City Council, dispensing with formal bidding procedures and requirements in connection with the procurement of specialized services relating to the West Covina Service Group's Computer Aided Dispatch and Records Management System (CAD-RMS), in accordance with the requirements of Section 2-330(b) of the West Covina Municipal Code; and
2. Authorize the City Manager to negotiate and execute an agreement, in an amount up to \$495,000, for a term of two years, with Scientia Consulting Group, subject to City Attorney approval, for continued services related to the West Covina Service Group CAD-RMS operations, from Account No. 117.31.3119.6120; and
3. Adopt the following resolution authorizing the necessary budget amendments:

**RESOLUTION NO. 2020-71 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF WEST COVINA, CALIFORNIA, ADOPTING A BUDGET AMENDMENT FOR THE
FISCAL YEAR COMMENCING JULY 1, 2020, AND ENDING JUNE 30, 2021 (ASSET**

FORFEITURE FUNDS FOR POLICE EQUIPMENT AND SERVICES)

PUBLIC SERVICES

19) CONSIDERATION OF AGREEMENT FOR BUS SHELTER MAINTENANCE

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

1. Approve, by a majority vote of the entire City Council, dispensing with formal bidding procedures and requirements in connection with the procurement of bus shelter maintenance services, in accordance with the requirements of Section 2-330(b) of the West Covina Municipal Code and Section 19404 of the California Welfare and Institutions Code.
2. Authorize the City Manager to negotiate and execute an agreement with Valley Light Industries, for an initial term of three (3) years, with two (2) optional one (1) year extensions, in an amount not-to-exceed \$72,956 annually, for the weekly cleaning of City-owned bus shelters, in a form approved by the City Attorney; and
3. Authorize the City Manager to exercise the extension options.

20) CONSIDERATION OF AN AGREEMENT WITH UNION STATION HOMELESS SERVICES, FOR IMPLEMENTATION OF CITY HOMELESS PLAN GRANT

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

1. Approve the agreement with Union Station to provide homeless services and authorize the City Manager to negotiate and execute the agreement; and
2. Approve the following Resolution:

RESOLUTION NO. 2020-84 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, ADOPTING A BUDGET AMENDMENT FOR THE FISCAL YEAR COMMENCING JULY 1, 2020 AND ENDING JUNE 30, 2021 (UNION STATION HOMELESS SERVICES - VOUCHERS)

END OF CONSENT CALENDAR

HEARINGS

PUBLIC HEARINGS

21) PUBLIC HEARING TO CONSIDER CODE AMENDMENT NO. 20-01 FOR FILM PERMIT STANDARDS

It is recommended that the City Council approve Code Amendment No. 20-01 by:

1. Conducting a public hearing regarding Code Amendment No. 20-01; and
2. Introducing for first reading, by title only, further reading waived, the following ordinance:

ORDINANCE NO. 2471 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA APPROVING CODE AMENDMENT NO. 20-01, RELATED TO FILM PERMIT STANDARDS

DEPARTMENTAL REGULAR MATTERS

POLICE DEPARTMENT

22) POLICE DEPARTMENT UPDATE

It is recommended that the City Council receive and file this informational report.

MAYOR/COUNCILMEMBERS REPORTS

AB 1234 Conference and Meeting Report (verbal, if any)

(In accordance with AB 1234, Councilmembers shall make a brief report or file a written report on any meeting/event/conference attended at City expense.)

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.)

CITY COUNCIL COMMENTS

ADJOURNMENT

Next Tentative City Council Meeting

Regular Meeting

August 14, 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

City of West Covina | Office of the City Manager

DATE: July 21, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

**SUBJECT: JUNE 23, 2020 CITY COUNCIL/SUCCESSOR AGENCY SPECIAL CLOSED SESSION
MEETING MINUTES
JUNE 23, 2020 CITY COUNCIL/SUCCESSOR AGENCY SPECIAL REGULAR SESSION
MEETING MINUTES
JULY 7, 2020 CITY COUNCIL/SUCCESSOR AGENCY CLOSED SESSION MEETING
MINUTES
JULY 7, 2020 CITY COUNCIL/SUCCESSOR AGENCY REGULAR SESSION MEETING
MINUTES**

RECOMMENDATION:

It is recommended that the City Council approve the June 23, 2020, Special Closed and Regular Session Meeting Minutes, and the July 7, 2020, Closed and Regular Session Meeting Minutes.

DISCUSSION:

That the City Council adopt the attached minutes.

Prepared by: Lisa Sherrick, Assistant City Clerk

Attachments

Attachment No. 1 - 06-23-20 Special Closed Session Meeting Minutes Draft

Attachment No. 2 - 06-23-20 Special Regular Session Meeting Minutes Draft

Attachment No. 3 - 07-07-20 Regular Session Meeting Minutes Draft

Attachment No. 4 - 07-07-20 Regular Session Meeting Minutes Draft



CITY OF WEST COVINA

CITY COUNCIL/SUCCESSOR AGENCY

JUNE 23, 2020, 6:00 PM
SPECIAL MEETING - CLOSED SESSION

MANAGEMENT RESOURCE CENTER CONFERENCE ROOM
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

Minutes

CALL TO ORDER

A Special Closed Session Meeting was called to order by Mayor Wu on Tuesday, June 23, 2020 at 6:00 p.m., in the Management Resource Center 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, Robbeyn Bird Director of Finance. Helen Tran Director of Human Resources, Oliver Ye Outside Council.

PUBLIC COMMENTS ON ITEMS ON THE AGENDA

None

CLOSED SESSION

CONFERENCE WITH LABOR NEGOTIATORS

Pursuant to Government Code § 54957.6

City Negotiators: Carmany, 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

REPORTING OUT

City Attorney Thomas P. Duarte reported that no reportable action was taken during the closed session meeting.

(THIS SPACE IS INTENTIONALLY LEFT BLANK)

ADJOURNMENT

The Closed Session Meeting adjourned at 6:45 p.m., by Mayor Wu. The next regularly scheduled Closed Session City Council Meeting will be held on Tuesday, July 21, 2020 at 6:00 p.m. in the Management Resource Center Conference Room, 3rd Floor, 1444 West Garvey Avenue South, West Covina, California.

Submitted by:

Lisa Sherrick
Assistant City Clerk

Tony Wu
Mayor



CITY OF WEST COVINA

CITY COUNCIL/SUCCESSOR AGENCY

**JUNE 23, 2020, 7:00 PM
SPECIAL 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**

MINUTES

CALL TO ORDER

A Special Meeting was called to order by Mayor Wu on Tuesday, June 23, 2020 at 7:00 p.m. in the Council Chambers, 1444 West Garvey Avenue South, West Covina, California.

ROLL CALL

Councilmembers

Present: Council Members Dario Castellanos, Lloyd Johnson, Jessica 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, Lisa Sherrick Assistant City Clerk

INVOCATION

Pastor Jillian Lutes from the West Covina Hills Seventh Day Adventist Church.

PLEDGE OF ALLEGIANCE

Led by Mayor Wu

CLOSED SESSION

CONFERENCE WITH LABOR NEGOTIATORS

Pursuant to Government Code § 54957.6

City Negotiators: Carmany, 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

REPORTING OUT FROM CLOSED SESSION

City Attorney Thomas P. Duarte reported that no reportable action was taken during the closed session meeting.

PRESENTATIONS

- **Nogales High School - Graduating Class of 2020**

PUBLIC COMMENTS ON ITEMS ON THE AGENDA

- Mr. Chin

- Cindy Ortega
- Edward Duong
- San Gabriel Valley Progressive Action
- Apolonia Lepe
- Rozlind Silva
- Amy J. Wong
- Melissa Lourido
- Andrew Yip
- Xanthe Sangco
- Cirilo Castaneda
- Sean Wise
- Jim Rudroff
- West Covina Professional Fire Management Association, Local 4594
- Jerri Potras
- Jim Grivich
- Peter Dreu
- Brian Tabatabai
- Steve Bennett
- Colleen Rozatti
- Yusuf Arifin
- Teresa Cozad
- Erin Lopez

--End of Public Comment--

CITY MANAGER'S REPORT

None

CONSENT CALENDAR

ACTION: MOTION BY COUNCILMAN JOHNSON AND SECONDED BY MAYOR PRO TEM LOPEZ, CARRIED 5-0 TO: approve Consent Calendar Items 1-3.

1) CONSIDERATION OF A RESOLUTION OF INTENTION TO LEVY ASSESSMENTS FOR THE AUTO PLAZA BUSINESS IMPROVEMENT DISTRICT

Carried 5-0 to: approve the following resolution and take the following actions:

1. Approve the Annual Report for the West Covina Auto Plaza Business Improvement District.
2. Adopt the following resolution:

RESOLUTION NO. 2020-67- A RESOLUTION OF INTENTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, DECLARING ITS INTENTION TO LEVY AN ASSESSMENT WITHIN THE BUSINESS IMPROVEMENT AREA KNOWN AS THE WEST COVINA AUTO PLAZA BUSINESS IMPROVEMENT DISTRICT FOR FISCAL YEAR 2020-21 AND SETTING THE TIME AND PLACE FOR A PUBLIC HEARING THEREON.

2) CONSIDERATION OF RESOLUTION NO. 2020-68 EXTENDING THE LOCAL EMERGENCY DECLARATION

Carried 5-0 to: Adopt Resolution 2020-68 as follows:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, DETERMINING THE NEED TO FURTHER CONTINUE THE LOCAL EMERGENCY PROCLAIMED ON MARCH 16, 2020 AND PREVIOUSLY CONTINUED ON APRIL 7, 2020, MAY 5, 2020 AND JUNE 2, 2020

3) ANNUAL APPROPRIATIONS LIMIT FOR FISCAL YEAR 2020-21

Carried 5-0 to: adopt the following resolution:

RESOLUTION NO. 2020-65 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, DETERMINING AND ADOPTING THE ANNUAL APPROPRIATIONS LIMIT FOR FISCAL YEAR 2020-2021

---End of Consent Calendar---

PUBLIC HEARING

4) PUBLIC HEARING REGARDING WEST COVINA CITYWIDE SEWER SERVICE CHARGES TO BE COLLECTED ON TAX ROLL FOR FY 2020-21

ITEM CONTINUED TO JULY 7, 2020 MEETING

5) PUBLIC HEARING REGARDING ASSESSMENTS FOR FISCAL YEAR 2020-21 FOR WEST COVINA CITYWIDE LIGHTING AND MAINTENANCE DISTRICT

ACTION: MOTION BY COUNCILMAN CASTELLANOS AND SECONDED BY COUNCILMAN JOHNSON, CARRIED 5-0 TO: adopt

the following resolution:

RESOLUTION NO. 2020-62 — A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, CONFIRMING THE DIAGRAM AND ASSESSMENT FOR THE CITYWIDE LIGHTING AND LANDSCAPE MAINTENANCE DISTRICT FOR FISCAL YEAR 2020-21

DEPARTMENTAL REGULAR MATTERS

- 6) **ADOPTION OF THE CITY OF WEST COVINA FISCAL YEAR 2020-21 ANNUAL OPERATING AND CAPITAL IMPROVEMENT PROGRAM BUDGET**

ACTION: MOTION BY COUNCILMAN CASTELLANOS AND SECONDED BY MAYOR PRO TEM LOPEZ, CARRIED 4-1 (No: Shewmaker) to: approve the Fiscal Year 2020-21 Proposed Operating and Capital Improvement Program Budget by adopting the following resolution:

RESOLUTION NO. 2020-64 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, ADOPTING THE OPERATING AND CAPITAL IMPROVEMENT PROGRAM BUDGET FOR THE CITY OF WEST COVINA, WEST COVINA PUBLIC FINANCING AUTHORITY, WEST COVINA HOUSING AUTHORITY, AND THE SUCCESSOR AGENCY TO THE FORMER WEST COVINA REDEVELOPMENT AGENCY FOR FISCAL YEAR 2020-21

MAYOR/COUNCILMEMBERS REPORTS

None

CITY COUNCIL REQUESTS FOR REPORTS, STUDIES OR INVESTIGATION

Councilman Castellanos has requested that the City Council review the City's policies in order to better assess community concerns about the West Covina Police Department.

CITY COUNCIL COMMENTS

None

(THIS SPACE IS INTENTIONALLY LEFT BLANK)

ADJOURNMENT

A motion to adjourn the Regular Meeting was made by Mayor Wu, and the meeting was adjourned at 9:05 p.m. The next regularly scheduled Regular City Council Meeting will be held on Tuesday, July 7, 2020 at 7:00 p.m. in the Council Chambers, 1444 West Garvey Avenue South, West Covina, California.

Submitted by:

Lisa Sherrick
Assistant City Clerk

Tony Wu
Mayor



CITY OF WEST COVINA

CITY COUNCIL/SUCCESSOR AGENCY

JULY 7, 2020, 6:00 PM
REGULAR MEETING – CLOSED SESSION

MANAGEMENT RESOURCE CENTER CONFERENCE ROOM
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

MINUTES

CALL TO ORDER

A Closed Session Meeting was called to order by Mayor Wu on Tuesday, June 2, 2020 at 6:00 p.m., in the Management Resource Center 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, Helen Tran Director of Human Resources, Robbeyn Bird Finance Director, Jamar Boyd-Weatherby Assistant City Attorney, Oliver Yee, LCW

PUBLIC COMMENTS ON ITEMS ON THE AGENDA

None

CLOSED SESSION

1. CONFERENCE WITH REAL PROPERTY

NEGOTIATORS Pursuant to Government Code § 54956.8

Property: 2100 S Azusa Ave, APN: 8735-001-913, 8735-001-914

Agency Negotiator: Carmany, Persico, Duarte

Negotiating Parties: Big League Dreams, West Covina

LLC Under Negotiation: Lease Terms

2. CONFERENCE WITH LABOR

NEGOTIATORS Pursuant to Government Code § 54957.6

City Negotiators: Carmany, 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

3. PUBLIC EMPLOYMENT

(Authorized under Government Code §54957(b)(1)) Title: Fire Captain

(THIS SPACE IS INTENTIONALLY LEFT BLANK)

ADJOURNMENT

The Closed Session Meeting adjourned at 6:55 p.m., by Mayor Wu. The next regularly scheduled Closed Session City Council Meeting will be held on Tuesday, July 21, 2020 at 6:00 p.m. in the Management Resource Center Conference Room, 3rd Floor, 1444 West Garvey Avenue South, West Covina, California.

Submitted by:

Lisa Sherrick
Assistant City Clerk

Tony Wu
Mayor



CITY OF WEST COVINA

**CITY COUNCIL/SUCCESSOR AGENCY/
PUBLIC FINANCING AUTHORITY**

**JULY 7, 2020, 7:00PM
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**

Minutes

CALL TO ORDER

A Regular Meeting was called to order by Mayor Wu on Tuesday, July 7, 2020 at 7:03 p.m. in the Council Chambers, 1444 West Garvey Avenue South, West Covina, California.

ROLL CALL

Council Members

Present: Council Members Dario Castellanos, Lloyd Johnson, Jessica 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, Lisa Sherrick Assistant City Clerk; other City staff presented reports and responded to questions as indicated in the minutes.

INVOCATION

Led by Reverend Nobuko Miyoshi from West Covina Buddhist Temple

PLEDGE OF ALLEGIANCE

Led by Councilman Johnson

CLOSED SESSION

1. CONFERENCE WITH REAL PROPERTY

NEGOTIATORS Pursuant to Government Code § 54956.8

Property: 2100 S Azusa Ave, APN: 8735-001-913, 8735-001-914

Agency Negotiator: Carmany, Persico, Duarte

Negotiating Parties: Big League Dreams, West Covina

LLC Under Negotiation: Lease Terms

2. CONFERENCE WITH LABOR

NEGOTIATORS Pursuant to Government Code § 54957.6

City Negotiators: Carmany, 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

3. PUBLIC EMPLOYMENT

(Authorized under Government Code §54957(b)(1)) Title: Fire Captain

REPORTING OUT FROM CLOSED SESSION

City Attorney Thomas P. Duarte reported that the employee leave extension has been approved through 8/14/2020.

PRESENTATIONS

- Proclamation - Parks Make Life Better Month
- Donations - Adopt a Senior Program
- Yuriko Chavez - Senior at Edgewood High School - Poet of the Year, National

ORAL COMMUNICATIONS - Five (5) minutes per speaker

- Kim Faanunu
- Angie Gillingham
- Else Messman
- Teresa Cozad
- Brian Jobst
- Brian Tabatabai
- B. Robinson
- Jim Grivich
- Jerri Potras
- Chris Miller
- Yusuf Arifin
- Peter Dien
- Steve Bennett
- Collen Rozatti
- Sarah McHurgue Core

--End of Oral Communication--

CITY MANAGER'S REPORT

Presentation given by Mr. Carmany

CONSENT CALENDAR

ACTION: MOTION BY COUNCILMAN CASTELLANOS AND SECONDED BY MAYOR PRO TEM LOPEZ, CARRIED 5-0 TO: approve Consent Calendar Items 1-6 and 16-18. (Items 7-15 pulled from the Consent Calendar by City Manager Carmany).

APPROVAL OF MEETING MINUTES

- 1) **JUNE 10, 2020 CITY COUNCIL/SUCCESSOR AGENCY SPECIAL CLOSED SESSION MEETING MINUTES**
JUNE 16, 2020 CITY COUNCIL/SUCCESSOR AGENCY CLOSED SESSION MEETING MINUTES
JUNE 16, 2020 CITY COUNCIL/SUCCESSOR AGENCY REGULAR SESSION MEETING MINUTES

Carried 5-0 to: approve the June 10, 2020, Special Closed Session Meeting Minutes, the June 16, 2020, Closed Session Meeting Minutes and the June 16, 2020, Regular Session Meeting Minutes.

INVESTMENT REPORT

- 2) **CONSIDERATION OF INVESTMENT REPORT FOR THE MONTH ENDED APRIL 30, 2020**

Carried 5-0 to: receive and file the Investment Report for the month ended April 30, 2020.

COMMUNITY DEVELOPMENT

3) CONSIDERATION OF A PROFESSIONAL SERVICES AGREEMENT FOR THE PREPARATION OF THE GENERAL PLAN HOUSING ELEMENT UPDATE

Carried 5-0 to: approve the following actions:

1. Authorize the City Manager to execute a Professional Service Agreement with JHD Planning, LLC, in an amount not to exceed \$68,540, to provide consulting services associated with updating the Housing Element of the General Plan.
2. Approve contingency in the amount of \$6,824.
3. Authorize the City Manager to execute any amendments to the Agreement.

4) CONSIDERATION OF RELEASE OF FAITHFUL PERFORMANCE AND LABOR AND MATERIAL BONDS FOR PARCEL MAP NO. 74787 LOCATED AT 845 S. SUNKIST AVENUE - SILVERADO PROPERTY GROUP, LLC

Carried 5-0 to: accept all on-site and off-site improvements for Parcel Map No. 74787 located at 845 S. Sunkist Avenue and authorize the release of Faithful Performance and Labor and Material Bonds in the amount of \$29,250 and \$29,250, respectively.

5) CONSIDERATION OF PROGRAM EXTENDING PLANNING ENTITLEMENTS, BUILDING PLAN CHECKS, BUILDING PERMITS, ENGINEERING PLAN CHECKS, AND ENGINEERING PERMITS FOR A PERIOD OF SIX MONTHS

Carried 5-0 to: adopt the following resolution:

RESOLUTION NO. 2020-73 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, PROVIDING AN AUTOMATIC EXTENSION OF THE EXPIRATION DATE OF ALL PLANNING ENTITLEMENTS, ALL BUILDING DIVISION PLAN CHECKS AND PERMITS, AND CERTAIN ENGINEERING DIVISION PLAN CHECKS AND PERMITS, WHICH WERE VALID AS OF MARCH 1, 2020 AND ARE DUE TO EXPIRE BY DECEMBER 31, 2020, FOR A PERIOD OF SIX MONTHS

HUMAN RESOURCES/RISK MANAGEMENT

6) CONSIDERATION OF GOVERNMENT TORT CLAIMS

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

4. E. Renee Washington vs. City of West Covina

7) **CONSIDERATION OF RESOLUTION ADOPTING TERMS AND CONDITIONS OF EMPLOYMENT FOR EMPLOYEES IN THE WEST COVINA POLICE OFFICERS' ASSOCIATION (WCPOA)**

(Item 7 was removed from the Agenda by City Manager Carmany.)

RESOLUTION NO. 2020-74 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA ADOPTING TERMS AND CONDITIONS OF EMPLOYMENT FOR THE EMPLOYEES IN THE WEST COVINA POLICE OFFICERS' ASSOCIATION

8) **CONSIDERATION OF A RESOLUTION ADOPTING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY AND THE NON-SWORN SAFETY SUPPORT EMPLOYEES' ASSOCIATION**

(Item 8 was removed from the Agenda by City Manager Carmany.)

RESOLUTION NO. 2020-76 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA ADOPTING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY AND THE NON-SWORN SAFETY SUPPORT EMPLOYEES' ASSOCIATION REPRESENTED BY TEAMSTERS LOCAL 1932 UNION

9) **CONSIDERATION OF A SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA FIREFIGHTERS' ASSOCIATION, I.A.F.F., LOCAL 3226**

(Item 9 was removed from the Agenda by City Manager Carmany.)

RESOLUTION NO. 2020-75 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA FIREFIGHTERS' ASSOCIATION, I.A.F.F., LOCAL 3226

10) **CONSIDERATION OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY AND THE WEST COVINA POLICE MANAGEMENT ASSOCIATION**

(Item 10 was removed from the Agenda by City Manager Carmany.)

RESOLUTION NO. 2020-77 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA ADOPTING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY AND THE WEST COVINA POLICE MANAGEMENT ASSOCIATION (WCPMA)

11) **CONSIDERATION OF A SIDE LETTER OF AGREEMENT BETWEEN THE CITY**

AND THE WEST COVINA MAINTENANCE AND CRAFTS EMPLOYEES' ASSOCIATION

(Item 11 was removed from the Agenda by City Manager Carmany.)

RESOLUTION NO. 79 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA MAINTENANCE AND CRAFTS EMPLOYEES' ASSOCIATION REPRESENTED BY CITY EMPLOYEES ASSOCIATES (CEA)

- 12) **CONSIDERATION OF A SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA GENERAL EMPLOYEES' ASSOCIATION**

(Item 12 was removed from the Agenda by City Manager Carmany.)

RESOLUTION NO. 2020-80 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA GENERAL EMPLOYEES' ASSOCIATION (WCGEA)

- 13) **CONSIDERATION OF A SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA CONFIDENTIAL EMPLOYEES' ASSOCIATION (WCCEA)**

(Item 13 was removed from the Agenda by City Manager Carmany.)

RESOLUTION NO. 2020-81 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA CONFIDENTIAL EMPLOYEES' ASSOCIATION (WCCEA)

- 14) **CONSIDERATION OF A SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA MIDDLE MANAGEMENT EMPLOYEES' ASSOCIATION**

(Item 14 was removed from the Agenda by City Manager Carmany.)

RESOLUTION NO. 2020-82 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA MIDDLE MANAGEMENT EMPLOYEES' ASSOCIATION (WCMMEA)

- 15) **CONSIDERATION OF A SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA FIRE MANAGEMENT EMPLOYEES' ASSOCIATION (WCFMA)**

(Item 15 was removed from the Agenda by City Manager Carmany.)

RESOLUTION NO. 2020-78 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA FIRE MANAGEMENT ASSOCIATION (WCFMA)

16) CONSIDERATION OF A SIDE LETTER OF AGREEMENT BETWEEN THE CITY OF WEST COVINA AND THE WEST COVINA DEPARTMENT HEADS

Carried 5-0 to: adopt the following Resolution:

RESOLUTION NO. 2020-83 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA DEPARTMENT HEADS

PUBLIC SERVICES

17) CONSIDERATION OF TREE TRIMMING AND MAINTENANCE SERVICES CONTRACT

Carried 5-0 to: take the following actions:

5. Authorize the City Manager to negotiate and execute a contract with West Coast Arborists, Inc. for a three (3) year term, with two (2) optional one (1) year extensions, in an amount not-to-exceed \$485,000 annually, or \$2,425,000 if both extension options are exercised, to provide tree trimming and maintenance services for City trees.
6. Authorize the City Manager to exercise the extension options.

18) CONSIDERATION OF ANNUAL PURCHASE ORDER TO WAXIE SANITARY SUPPLY FOR FISCAL YEAR 2020-21

Carried 5-0 to: approve an annual purchase order for Fiscal Year (FY) 2020-21 to WAXIE Sanitary Supply in the total amount of \$65,000.

END OF CONSENT CALENDAR

HEARINGS

PUBLIC HEARINGS

19) PUBLIC HEARING TO CONSIDER WEST COVINA AUTO PLAZA BUSINESS IMPROVEMENT DISTRICT FISCAL YEAR 2020-2021 ANNUAL REPORT AND ASSESSMENT

ACTION: MOTION BY COUNCILMAN CASTELLANOS AND SECONDED BY

COUNCILMAN JOHNSON CARRIED 5-0 to: adopt the following resolution:

RESOLUTION NO. 2020-69 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, CONFIRMING THE ANNUAL REPORT FILED BY THE WEST COVINA AUTO PLAZA BUSINESS IMPROVEMENT DISTRICT ADVISORY BOARD AND LEVYING AN ANNUAL ASSESSMENT FOR THE WEST COVINA AUTO PLAZA BUSINESS IMPROVEMENT DISTRICT FOR FISCAL YEAR 2020-2021

- 20) **PUBLIC HEARING TO CONSIDER WEST COVINA CITYWIDE SEWER SERVICE CHARGES TO BE COLLECTED ON TAX ROLL FOR FY 2020-21 (CONTINUED FROM JUNE 23, 2020)**

ACTION: MOTION BY COUNCILMAN JOHNSON AND SECONDED BY MAYOR PRO-TEM LOPEZ-VIADO CARRIED 5-0 to: adopt the following resolution:

RESOLUTION NO. 2020-61 — A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, APPROVING THE SEWER SERVICE CHARGES TO BE COLLECTED ON THE FISCAL YEAR 2020-21 TAX ROLL

DEPARTMENTAL REGULAR MATTERS

CITY MANAGER'S OFFICE

- 21) **CONSIDERATION OF A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA AND A RESOLUTION OF THE WEST COVINA PUBLIC FINANCE AUTHORITY APPROVING THE ISSUANCE OF LEASE REVENUE BONDS, 2020 SERIES A (FEDERALLY TAXABLE) BY THE WEST COVINA PUBLIC FINANCING AUTHORITY; AUTHORIZING AND APPROVING A SITE AND FACILITY LEASE, A LEASE AGREEMENT, A PRELIMINARY OFFICIAL STATEMENT, A BOND PURCHASE AGREEMENT AND A CONTINUING DISCLOSURE AGREEMENT; APPROVING CERTAIN PROFESSIONALS; RESCISSION OF RESOLUTION RELATING TO PENSION OBLIGATION BONDS; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH**

ACTION: MOTION BY COUNCILMAN CASTELLANOS AND SECONDED BY MAYOR PRO-TEM LOPEZ-VIADO CARRIED 4-1 (No: Shewmaker) to: adopt the following resolution:

A RESOLUTION NO. 2020-72 - RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, APPROVING THE ISSUANCE OF LEASE REVENUE BONDS, 2020 SERIES A (FEDERALLY TAXABLE) BY THE WEST COVINA PUBLIC FINANCING AUTHORITY; AUTHORIZING AND APPROVING A SITE AND FACILITY LEASE, A LEASE AGREEMENT, A PRELIMINARY OFFICIAL

STATEMENT, A BOND PURCHASE AGREEMENT AND A CONTINUING DISCLOSURE AGREEMENT; APPROVING CERTAIN PROFESSIONALS; RESCISSION OF RESOLUTION RELATING TO PENSION OBLIGATION BONDS; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

ACTION: MOTION BY COUNCILMAN CASTELLANOS AND SECONDED BY MAYOR PRO-TEM LOPEZ-VIADO CARRIED 4-1 (No: Shewmaker) that: The West Covina Public Financing Authority (the "Authority") adopt the following resolution:

RESOLUTION NO. 30 - RESOLUTION OF THE WEST COVINA PUBLIC FINANCING AUTHORITY APPROVING THE ISSUANCE OF LEASE REVENUE BONDS, 2020 SERIES A (FEDERALLY TAXABLE); APPROVING A SITE AND FACILITY LEASE, A LEASE AGREEMENT, AN ASSIGNMENT AGREEMENT, AN INDENTURE, A PRELIMINARY OFFICIAL STATEMENT AND BOND PURCHASE AGREEMENT; APPROVING CERTAIN PROFESSIONALS; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

POLICE DEPARTMENT

22) Police Department Update

ITEM CONTINUED TO JULY 21, 2020 MEETING to: receive and file this informational report.

MAYOR/COUNCILMEMBERS REPORTS

None

CITY COUNCIL REQUESTS FOR REPORTS, STUDIES OR INVESTIGATION

None

CITY COUNCIL COMMENTS

None

(THIS SPACE IS INTENTIONALLY LEFT BLANK)

ADJOURNMENT

A motion to adjourn the Regular Meeting was made by Mayor Wu, and the meeting was adjourned at 10:36 p.m. The next regularly scheduled Regular City Council Meeting will be held on Tuesday, July 21, 2020 at 7:00 p.m. in the Council Chambers, 1444 West Garvey Avenue South, West Covina, California.

Submitted by:

Lisa Sherrick
Assistant City Clerk

Tony Wu
Mayor



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: July 21, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

**SUBJECT: CONSIDERATION OF RESOLUTION NO. 2020-85 EXTENDING THE LOCAL
EMERGENCY DECLARATION**

RECOMMENDATION:

It is recommended that the City Council adopt Resolution No. 2020-85 as follows:

RESOLUTION NO. 2020-85 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, DETERMINING THE NEED TO FURTHER CONTINUE THE LOCAL EMERGENCY PROCLAIMED ON MARCH 16, 2020 AND PREVIOUSLY CONTINUED ON APRIL 7, 2020, MAY 5, 2020, JUNE 2, 2020 AND JUNE 23, 2020

BACKGROUND:

On March 17, 2020, the City Council adopted Resolution 2020-19, ratifying Proclamation 2020-01 declaring existence of a local emergency, which was issued by the City Manager acting in the capacity of Director of Emergency Services. The local emergency is due to the novel coronavirus (COVID-19) pandemic. Following adoption of the resolution, the City Council needs to review and reevaluate the need for continuing the local emergency at least once every thirty (30) days in conformance with Section 8-7(a)(2) of the West Covina Municipal Code (WCMC). The City Council previously continued the local emergency on April 7, 2020, May 5, 2020, June 2, 2020 and June 23, 2020.

DISCUSSION:

The City Manager acting in the capacity of Director of Emergency Services has mobilized appropriate staff and other resources on a daily basis to address the COVID-19 pandemic. Staff at all levels of the organization have been engaged in the response.

As of July 14, 2020, there were 12,964,809 confirmed cases of COVID-19 globally. On July 14, 2020, California reported that, as of July 13, 2020, there were 336,508 confirmed cases in California. As of July 13, 2020, there were 140,307 confirmed cases in Los Angeles County, including 1,537 confirmed cases in the City of West Covina according to the Los Angeles County Department of Public Health. Health officials expect the number of cases in California, the United States and worldwide to increase. It is essential that the City continue to provide basic services and provide for continuity of services over the long-term. Staff is requesting that the City Council continue the local emergency.

LEGAL REVIEW:

The City Attorney's Office has reviewed and approved the proposed resolution as to form.

OPTIONS:

The options available to the City Council are as follows:

1. Adopt the resolution as submitted.
2. Determine the local emergency has ceased.
3. Provide alternative direction.

Prepared by: Mark Persico, Assistant City Manager

Attachments

Attachment No. 1 - Resolution No. 2020-85

CITY COUNCIL GOALS & OBJECTIVES: Enhance City Facilities and Infrastructure
Enhance Public Safety

RESOLUTION NO. 2020-85

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, DETERMINING THE NEED TO FURTHER CONTINUE THE LOCAL EMERGENCY PROCLAIMED ON MARCH 16, 2020 AND PREVIOUSLY CONTINUED ON APRIL 7, 2020, MAY 5, 2020, JUNE 2, 2020 AND JUNE 23, 2020

WHEREAS, the California Emergency Services Act (Government Code Section 8550 et seq.) authorizes the City Council, or an official designated by ordinance adopted by the City Council, to proclaim a local emergency when the City is threatened by conditions of disaster or extreme peril to the safety of persons and property within the City that are likely to be beyond the control of the services, personnel, equipment, and facilities of the City; and

WHEREAS, West Covina Municipal Code section 8-7(a)(1) empowers the City Manager, as the Director of Emergency Services, to declare the existence or threatened existence of a local emergency when the City is affected or likely to be affected by a public calamity; and

WHEREAS, on March 16, 2020, the City Manager declared a local emergency as authorized by Government Code section 8630(a) and West Covina Municipal Code section 8-7(a)(1) through Proclamation No. 2020-01 due to the COVID-19 pandemic; and

WHEREAS, on March 17, 2020, the City Council adopted Resolution No. 2020-19, ratifying the City Manager's proclamation as required by Government Code section 8630(b) and West Covina Municipal Code section 8-7(a)(1); and

WHEREAS, Section 8-7(a)(2) of the West Covina Municipal Code empowers the City Manager to request that the City Council review the need for continuing the local emergency at least once every 30 days until the City Council terminates the local emergency; and

WHEREAS, at the time the City Council ratified the proclamation, the World Health Organization (WHO) reported, as of March 15, 2020, 153,517 confirmed cases of COVID-19 globally, 5,735 of which resulted in death. On July 14, 2020, the WHO reported 12,964,809 confirmed cases globally, 570,288 of which resulted in death; and

WHEREAS, at the time the City Council ratified the proclamation, the California Department of Public Health (CDPH) reported that, as of March 15, 2020, there were 335 confirmed cases of COVID-19 in California, six (6) of which resulted in death. On July 14, 2020, CDPH reported that, as of July 13, 2020, there were 336,508 confirmed cases in California, 7,087 of which resulted in death; and

WHEREAS, at the time the City Council ratified the proclamation, the Los Angeles County Department of Public Health ("LA County Health Department") reported that, as of March 15, 2020, Los Angeles County had 69 confirmed cases, including one (1) death and one (1) confirmed case at West Covina High School. On July 14, 2020, the LA County Health Department

reported that, as of July 13, 2020, Los Angeles County had 140,307 confirmed cases, 3,894 of which resulted in death; and

WHEREAS, as of July 13, 2020, the LA County Health Department reported 1,537 confirmed cases in the City of West Covina, 20 of which resulted in death; and

WHEREAS, health officials expect the number of cases in California, the United States, and worldwide to increase; and

WHEREAS, on April 7, 2020, the City Council adopted Resolution No. 2020-22, determining there was a need to continue the local emergency and confirming the written orders and regulations promulgated by the City Manager; and

WHEREAS, on May 5, 2020, the City Council adopted Resolution No. 2020-41, determining there was a need to continue the local emergency and confirming the written orders and regulations promulgated by the City Manager; and

WHEREAS, on June 2, 2020, the City Council adopted Resolution No. 2020-45, determining there was a need to continue the local emergency; and

WHEREAS, on June 23, 2020, the City Council adopted Resolution No. 2020-68, determining there was a need to continue the local emergency; and

WHEREAS, the City Manager has requested that the City Council review the need for continuing the local emergency in accordance with Section 8-7(a)(2) of the West Covina Municipal Code; and

WHEREAS, the City Council has reviewed the need for continuing the local emergency as required by West Covina Municipal Code section 8-7(a)(2); and

WHEREAS, the City Council finds that the conditions resulting from the COVID-19 emergency are still beyond the control of the services, personnel, equipment, and facilities of the City and require the combined forces of other political subdivisions to combat.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The City Council has reviewed the need for continuing the local emergency as required by West Covina Municipal Code section 8-7(a)(2), and determines, based on the foregoing recitals, that there is a need to continue the local emergency.

SECTION 2. This local emergency shall continue to exist until the City Council proclaims the termination of the local emergency. The City Council shall review the need for continuing the local emergency in the manner required by law.

APPROVED AND ADOPTED this 21st day of July, 2020.

Tony Wu
Mayor

APPROVED AS TO FORM

ATTEST

Thomas P. Duarte
City Attorney

Lisa Sherrick
Assistant City Clerk

I, LISA SHERRICK, ASSISTANT CITY CLERK of the City of West Covina, California, do hereby certify that the foregoing Resolution No. 2020-85 was duly adopted by the City Council of the City of West Covina, California, at a special meeting thereof held on the 21st day of July 2020, by the following vote of the City Council:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lisa Sherrick
Assistant City Clerk



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: July 21, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT: CONSIDERATION OF FIRST AMENDMENTS TO THE AGREEMENT OF PURCHASE AND SALE, AND RIGHT OF ACCESS AND ENTRY AGREEMENT WITH SINGPOLI BD CAPITAL GROUP, LLC FOR DEVELOPMENT OF THE FORMER BKK LANDFILL

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to negotiate and execute the First Amendment to the Agreement of Purchase and Sale and Joint Escrow Instructions (dated August 1, 2019) and the First Amendment to the Right of Access and Entry Agreement (dated July 16, 2019) with Singpoli BD Capital Group, LLC (Singpoli) through October 31, 2020 for the development of the former BKK Landfill (APN Nos: 8735-001-919, 8735-001-920, 8735-001-921, 8735-001-931, 8735-002-906, 8735-002-909, and 8735-002-910; and Lease of APN 8735-022-018).

BACKGROUND:

The City of West Covina and Singpoli BD Capital Group executed the Agreement of Purchase and Sale and Joint Escrow Instructions (Purchase Agreement) on August 1, 2019 for the sale and lease of approximately 190-acres of property. The City and Singpoli also executed a Right of Access and Entry Agreement (Access Agreement) on July 16, 2019.

Pursuant to the Purchase Agreement, Singpoli has a 365-day expiration of the General Contingency Period. At expiration of the General Contingency Period, Singpoli is required to provide the City with notification of satisfaction with the purchase of the property.

In order to close escrow, both Singpoli and the City need to comply with conditions of closing pursuant to Section 7 of the Purchase Agreement. Buyer conditions include: Inspection of the Property, Review of Documents and Materials, and Satisfaction of the property. Seller conditions include: entering into a Development Agreement, completion of California Environmental Quality Act (CEQA), and entering into a Sublicense Agreement.

DISCUSSION:

Since the execution of the Purchase Agreement, Singpoli has conducted various surveys and studies to determine project feasibility as part of the General Contingency Period. Singpoli is committed to proceeding with the purchase of the property, however, Singpoli is requesting an extension of the General Contingency Period. They have indicated that the request is due to COVID-19 and economic uncertainty that has been created.

Singpoli is requesting an extension of their General Contingency Period to October 31, 2020, and has agreed to

proceed to close escrow no later than October 31, 2020. In exchange for the extension, Singpoli has offered to have the deposit of \$405,000 become nonrefundable, waive the Seller's obligations to close escrow (buying the property "where is/as-is").

Currently, the General Contingency Period expires on August 8, 2020, which is 365 days from when escrow was opened. If the extension is not granted, Singpoli will need to provide the City with notice of approval of condition of title by August 8, 2020 or the deposit shall be returned to Singpoli.

In addition to Singpoli's request for extension, the City is seeking amendments the Purchase Agreement to delete its conditions to closing pursuant to Section 7(b) and to insert language pertaining to Department of Toxic Substances Control (DTSC) process for transfer of title. Specifically, DTSC has requested that the Purchase Agreement incorporate certain environmental use restrictions and certain immunities granted to the City.

The City is also seeking amendments to the Right of Entry and Access Agreement. Many of these amendments are made at the request of DTSC, which clarify that DTSC is party to the indemnification and insurance. The amendment also updates the term of the Entry and Access Agreement to coincide with the term of the Purchase Agreement.

Staff is recommending that the City Council authorize the City Manager to negotiate and execute the First Amendment to the Purchase and Sale Agreement and Joint Escrow Instructions, and the First Amendment to the Right of Entry and Access Agreement as outlined above.

LEGAL REVIEW:

The City Attorneys' Office has reviewed and approved the Amendments as to form.

OPTIONS:

The City Council has the following options:

1. Approve staff's recommendation;
2. Approve different terms for extension; or
3. Provide alternative direction.

Attachments

Attachment No. 1 - First Amendment to Agreement of Purchase and Exhibits

Attachment No. 2 - First Amendment to Right of Entry and Access Agreement

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

**FIRST AMENDMENT TO AGREEMENT OF PURCHASE AND SALE
AND JOINT ESCROW INSTRUCTIONS
(City of West Covina / Singpoli BD Capital Group, LLC)**

This First Amendment to the Agreement of Purchase and Sale and Joint Escrow Instructions ("First Amendment"), dated for reference purposes as July 21, 2020 is entered into by and between **Singpoli BD Capital Group, LLC ("Buyer")**, and **The City of West Covina ("Seller")**.

Recitals

A. On August 1, 2019 Buyer and Seller entered into an Agreement of Purchase and Sale And Joint Escrow Instructions (the "Purchase Agreement") concerning the purchase and sale of certain real property in the City of West Covina, County of Los Angeles, State of California, commonly known as Assessor's Parcel Numbers 8472-001-919, 8735-001-920, 8735-001-931, 8735-002-906, 8735-002-909, and 8735-002-910, and as further identified in the Purchase Agreement as (the "Property").

B. Buyer and Seller desire to amend the Purchase Agreement pursuant to the provisions of this First Amendment.

NOW, THEREFORE, in consideration of the foregoing recitals, and the mutual covenants contained herein, the parties agree as follows:

Agreement

1. **Definitions.** Except as otherwise provided herein, all capitalized terms set forth in this First Amendment shall be defined as set forth in the Purchase Agreement.

2. Section 4(b) of the Agreement is hereby amended to read as follows:

Close of Escrow. For purposes of this Agreement, the "Closing" shall be defined as the consummation of the transaction contemplated by this Agreement and "Close of Escrow" shall be defined as the date that a grant deed ("Grant Deed"), the form of which is attached hereto as Exhibit A to this First Amendment and supersedes Exhibit B of the Purchase Agreement, conveying the Property to Buyer, is recorded in the Official Records. This Escrow shall close on or before the date which is ten (10) days after the satisfaction, or Seller's waiver of, the conditions set forth in Section 7(b) below, and the satisfaction, or Buyer's waiver of, the last of the conditions to closing set forth in Sections 7(a)(i) - 7(a)(vi) below, or no later than October 31, 2020.

3. **Extension of Buyer's Contingency Period.** Buyer's Contingency period as described in Paragraph 7(a)(i) of the Purchase Agreement shall be extended to October 1, 2020 to allow Buyer to finalize their due diligence.

4. Section 7(a)(ii)(A) of the Agreement is hereby amended to read as follows:

(A) Buyer shall have until the expiration of the General Contingency Period (the "Title Review Period") in which to give Seller and Escrow Holder written notice of its approval of the condition of title to the Property ("Buyer's Title Notice") based on (I) a standard preliminary report from the Title Company with respect to the Land, together with complete and legible copies of the underlying documents relating to the Schedule B exceptions set forth in such report, and (II) any survey to be conducted on behalf of Buyer at Buyer's sole cost and expense (collectively, the "Report"). The failure of Buyer to give Buyer's Title Notice on or before the end of the General Contingency Period shall be deemed to constitute Buyer's approval of the condition of the title to the Property. If Buyer delivers written notice to Seller of non-satisfaction prior to the expiration of the General Contingency period, then (1) this Agreement and the Escrow created pursuant hereto shall terminate and be of no further force or effect, (2) Escrow Holder shall return to Buyer the Deposit and all interest accrued thereon, and (3) Buyer shall return to Seller all Documents and Materials and Supplemental Information previously delivered to Buyer by Seller.

5. Section 7(b) of the Agreement is hereby amended to delete conditions to closing for the benefit of seller in subparts 7(b)(iii), 7(b)(iv) and 7(b)(v).

6. A new section 14(d) is added to read as follows:

Buyer acknowledges and confirms Notice of Environmental Restrictions as set forth below and in the form Grant Deed, attached and incorporated by this reference to this First Amendment as Exhibit A:

"The property (or premises) described herein is adjacent to property that contains hazardous waste and is subject to an environmental restriction and covenant to restrict use which, among other things, prohibits the following uses:

- (1) A residence, including any mobile home or factory built housing constructed or installed for use as permanently occupied human habitation;
- (2) A hospital for humans;
- (3) A school for persons under age 21;
- (4) A day care center for children;
- (5) Any permanently occupied human habitation; or
- (6) A park or playground, provided that a golf course shall not be considered a park or playground.

The environmental restriction and covenant to restrict use is in favor of the City of West Covina, the Department of Toxic Substances Control, and the U.S. Environmental Protection Agency, as a third party beneficiary. This statement is not a declaration that a hazard exists."

7. A new Section 14(e) is added to read as follows:

Buyer acknowledges and confirms "Agreement and Covenant Not To Sue the City of West Covina" entered into by the State of California, California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) and the City of West Covina executed May 27, 2003, attached and incorporated by this reference to this First Amendment as Exhibit B, which includes the following provisions:

"9.25. Transfer. (a) Notwithstanding any other, provisions of this Agreement, all of the rights, benefits and obligations conferred upon Settling Respondent under this Agreement may be assigned or transferred to any person with prior written consent of DTSC in its sole discretion.

(b) Transferees, assignees, tenants and sub-tenants shall pay costs incurred by DTSC to review any requests for consent to assign or transfer benefits conferred by this Agreement.

(c) In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transfer shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement except as DTSC and the assignor or transferor otherwise agree and modify this Agreement, in writing, accordingly. Moreover, prior to any assignment or transfer of the Property, the assignee or transferee must consent in writing to be bound by the terms of this Agreement including but not limited to the certification requirement in Section VIII of this Agreement in order for the Covenant Not to Sue in Section 5.1 to be available to the party. The Covenant Not to Sue in Section 5.1 shall not be effective with respect to any assignees or transferees who fail to provide such written consent to DTSC. However, notwithstanding anything to the contrary contained herein, it is understood and agreed by the parties that Settling Respondent City of West Covina shall remain responsible for performance of the work to be performed in accordance with Section 4.1 (Agreement), Section 4.2 (Payment), Section 4.3 (Work to Be Performed) and Exhibit 10 (Site Funds Escrow Agreement) of this Agreement and that no subsequent assignee, transferee, lessee or sub-lessee shall be obligated or bound by the terms of the Agreement with respect to implement such work or shall be required to demonstrate that it is financially capable of performing such work in order to obtain DTSC's prior written consent to the assignment, transfer, lease or sublease in accordance with paragraphs (d) or (e) below.

(d) Any person desiring to obtain the prior written consent of DTSC with respect to the assignment or transfer of all or any portion of the rights, benefits and obligations conferred upon Settling Respondent under this Agreement shall submit a Certification of Compliance with Agreement and Covenant Not to Sue (Assignees/Transferee) in the form of the model certification attached hereto as Exhibit 11. No transferee or assignee of all or any portion of the Property shall have any right hereunder (including any right under the Covenant Not to Sue set forth in Section 5.1) unless: (1) at least 30 days before such assignment or transfer, the transferee submits a Certification of Compliance with Agreement and Covenant Not to Sue (Assignee/Transferee) in the form of the model certification attached hereto

as Exhibit 11; (2) the assignee/transferee shall be financially capable of performing all the obligations referenced in such Certification; (3) the assignee/transferee is not liable under CERCLA, the Health and Safety Code or any other law for the Existing Contamination; (4) the assignee/transferee's use of the Property will not result in a release or threat of release of any hazardous substance; (5) the assignee/transferee's use of the Property will not cause or contribute to the migration or release of any Existing Contamination or to any threat to human health or the environment caused by any such release or threat of release; (6) the assignee/transferee agrees to pay costs incurred by DTSC to review the request for consent to assign or transfer benefits conferred by this Agreement; (7) at least 30 days before such assignment or transfer, the assignee/transferee submits an affidavit and supporting documentation demonstrating to DTSC's reasonable satisfaction the truth of the preceding clauses (2) through (6) in this paragraph (d) of Section 9.25; (8) Settling Respondent City of West Covina shall have fully performed its obligations under paragraph (a) of Section 4.2 (Payment/ Escrow Instructions) of this Agreement; and (9) DTSC shall not have objected to the assignee/transferee's certification, affidavit and supporting documentation. In the event that DTSC has not so objected within thirty (30) days of its receipt of written notice from the assignee/transferee, such assignment or transfer shall be deemed approved. If at any time DTSC determines that an assignee/transferee's certification, affidavit or supporting documentation is materially inaccurate or incomplete, the Agreement and Covenant Not to Sue shall be null and void with respect to such assignee/transferee, and the State of California reserves all rights it may have against such transferee.

(e) Settling Respondent may lease the Property or any portion thereof to tenants who in turn may lease to sub-tenants. Any prospective tenants or sub-tenants desiring to obtain the prior written consent of DTSC with respect to acquiring rights, benefits and obligations conferred upon Settling Respondent under this Agreement shall submit a Certification of Compliance with Agreement and Covenant Not to Sue (Tenant) in the form of the model certification attached hereto as Exhibit 12. No tenant or sub-tenant shall have any right hereunder (including any right under the Covenant Not to Sue set forth in Section 5.1) unless: (1) at least 30 days before the inception of such tenancy or sub-tenancy, the tenant or sub-tenant submits a Certification of Compliance with Agreement and Covenant Not to Sue (Tenant) in the form of the model certification attached hereto as Exhibit 12; (2) the tenant or sub-tenant shall be financially capable of performing all the obligations referenced in such Certification; (3) the tenant or sub-tenant's use of the Property shall not result in a release or threat of release of any hazardous substance; (4) the tenant or sub-tenant is not liable under CERCLA, the Health and Safety Code or any other law for the Existing Contamination; (5) the tenant or sub-tenant's use of the Property will not cause or contribute to the migration or release of any Existing Contamination or to any threat to human health or the environment caused by any such release or threat of release; (6) the tenant or sub-tenant agrees to pay costs incurred by DTSC to review the request for consent to assign or transfer benefits conferred by this Agreement; (7) at least 30 days before the inception of such tenancy, the tenant or sub-tenant

submits an affidavit and supporting documentation demonstrating to DTSC's reasonable satisfaction the truth of the preceding clauses (2) through (6) in this paragraph (e) of section 9.25; (8) Settling Respondent City of West Covina shall have fully performed its obligations under paragraph (a) of Section 4.2 of this Agreement (Payment/Escrow Instructions); and (9) DTSC shall not have objected to the tenant or sub-tenant's certification, affidavit and supporting documentation. In the event that DTSC has not so objected within thirty (30) days of its receipt of written notice from the tenant or sub-tenant such tenant or sub-tenant shall have the benefit of the Covenant Not to Sue and Contribution Protection with respect to the leased property from the inception of such tenancy. If at any time DTSC determines that a tenant or a sub-tenant's certification, affidavit or supporting documentation is materially inaccurate or incomplete, the Agreement and Covenant Not to Sue shall be null and void with respect to such tenant or sub-tenant, and the State of California reserves all rights it may have against such tenant or sub-tenant."

8. Section 16 of the Agreement is hereby amended to read as follows:

Non-refundable Consideration. The Deposit includes a sum equal to the amount of Four Hundred Five Thousand Dollars (\$405,000.00) which shall become, upon the date of execution by both parties of this First Amendment, "Non-refundable Consideration". Notwithstanding anything to the contrary in this Agreement, the Non-refundable Consideration shall be non-refundable to Buyer as consideration for the rights and options extended to Buyer under this Agreement, including, without limitation, the right and options to terminate the Agreement as provide herein. After the expiration of the General Contingency Period, the Non-refundable Consideration portion of the Deposit is non-refundable under all circumstances, but is applicable to, and shall be credited by Escrow Holder against the Purchase Price.

9. Counterparts. This First Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.
10. Facsimile Signatures. In order to expedite the transaction contemplated herein, telecopied signatures may be used in place of original signatures on this First Amendment, Seller and Purchaser intend to be bound by the signatures on the telecopied document, are aware that the other party will rely on the telecopied signatures, and hereby waive any defenses to the enforcement of the terms of this First Amendment based on the use of a facsimile signature.
11. Ratification. Buyer and Seller hereby agree that, except as provided in this First Amendment, the Purchase Agreement is ratified, affirmed and remains in full force and effect, and is incorporated herein by this reference.
12. Authority. Each of the undersigned represents and warrants that he or she is duly authorized to execute and deliver this First Amendment and that such execution is binding upon the entity for which he or she is executing this document.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the dates set forth below.

SELLER:

The City of West Covina

By: _____
David N. Carmany, City Manager

Date: _____

Attest:

By: _____
Lisa Sherrick, Assistant City Clerk

Approved as to form:

JONES & MAYER

By: _____
Print Name: Thomas P. Duarte
Title: City Attorney

BUYER:

Singpoli BD Capital Group, LLC

By: _____
Kin Hui, Manager

Date: _____

**EXHIBIT A
FORM OF GRANT DEED**

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

MAIL TAX STATEMENTS TO:

APN's: 8472-001-919, 8735-001-920, 8735-001-931, 8735-002-906, 8735-002-909, and 8735-002-910

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

THE UNDERSIGNED GRANTOR DECLARES

THAT DOCUMENTARY TRANSFER TAX IS:

\$_____ computed on the full value
of the interest or property conveyed.

GRANT DEED

For valuable consideration, receipt of which is hereby acknowledged, City of West Covina, a California Municipal Corporation("Grantor") hereby grants to Singpoli BD Capital Group, LLC, a California Limited Liability Company , the real property located in the State of California, County of Orange, City of West Covina, described in Exhibit A attached hereto (the "Property"), together with all Grantor's right, title and interest, of, in and to all structures and improvements now located on the Property, subject to the following:

1. Taxes and assessments, not delinquent.
2. All other covenants, conditions, restrictions, reservations, rights, rights of way, easements, encumbrances, liens and title matters of record or visible from an inspection or survey of the Property.

3. Statement of Notice of Environmental Restriction and Covenant:

"The property (or premises) described herein is adjacent to property that contains hazardous waste and is subject to an environmental restriction and covenant to restrict use which, among other things, prohibits the following uses:

- (1) A residence, including any mobile home or factory built housing constructed or installed for use as permanently occupied human habitation;
- (2) A hospital for humans;
- (3) A school for persons under age 21;
- (4) A day care center for children;

- (5) Any permanently occupied human habitation; or
- (6) A park or playground, provided that a golf course shall not be considered a park or playground.

The environmental restriction and covenant to restrict use is in favor of the City of West Covina, the Department of Toxic Substances Control, and the U.S. Environmental Protection Agency, as a third party beneficiary. This statement is not a declaration that a hazard exists."

Grantor: CITY OF WEST COVINA,
a California Municipal Corporation

By: _____
Print Name: David N. Carmany
Title: City Manager

Attest:

By: _____
Print Name: Lisa Sherrick
Title: Assistant City Clerk

Approved as to form:

JONES & MAYER

By: _____
Print Name: Thomas P. Duarte
Title: City Attorney

EXHIBIT B
AGREEMENT AND COVENANT NOT TO SUE



Department of Toxic Substances Control

Edwin F. Lowry, Director
1001 "I" Street, 25th Floor
P.O. Box 806
Sacramento, California 95812-0806

Winston H. Hickox
Agency Secretary
California Environmental
Protection Agency



Gray Davis
Governor

June 18, 2003

BY OVERNIGHT MAIL

Mr. Andrew Pasmont
City Manager
City of West Covina
1444 W. Garvey Avenue
West Covina, California 91793

ORIGINAL EXECUTED PROSPECTIVE PURCHASER AGREEMENT

Dear Mr. Pasmont:

Enclosed please find an original of the Prospective Purchaser Agreement that was executed by the Department of Toxic Substances Control. I have provided Colin Lennard with a copy of the signature page.

Thank you for your cooperation. Please feel free to call me with questions or comments at (916) 327-0979.

Sincerely,

Antonette B. Cordero
Chief Counsel and Deputy Director

Marilee Hanson
Senior Staff Counsel

cc: Mr. Colin Lennard (signature page only)
Fulbright & Jaworski L.L.P.
865 South Figueroa Street, 29th Floor
Los Angeles, California 90017

REDEVELOPMENT AGENCY

JUN 20 2003

WEST COVINA

RECEIVED
03 JUN 19 09:46
WEST COVINA CITY MANAGER

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:)	Docket No. HSA-A 02/03-174
)	
)	
THE BKK LANDFILL)	AGREEMENT AND COVENANT
)	NOT TO SUE THE CITY
2210 South Azusa Avenue)	OF WEST COVINA
West Covina, California)	
)	
and)	
)	
)	
CITY OF WEST COVINA)	
)	
[Settling Respondent])	
)	
)	
)	

I. INTRODUCTION

1.1. Parties. This Agreement and Covenant Not to Sue (Agreement) is made and entered into by and between the State of California, California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) and the City of West Covina, a municipal corporation (collectively the "Parties").

1.2. Site. This Agreement applies to the site located at 2210 South Azusa Avenue in West Covina, Los Angeles County, California and depicted generally on the map attached as Exhibit 1 and more particularly described in Section II of this Agreement, Definitions. A legal description of the Site is the consolidation of the legal descriptions of Parcels 1,2 and 3 (defined in Section II below) and attached as Exhibits 4,5 and 6.

1.3 Property. This Agreement applies to the Property, which is the portion of the 583 acre Site comprised of Parcels 1 and 2 and more particularly described in Section II of this Agreement.

A legal description of the Property is the consolidation of the legal descriptions of Parcels 1 and 2 (defined in Section II

below) attached as Exhibits 4 and 5. Parcels 1 and 2 are depicted in the map of the Site attached as Exhibit 1.

1.4. Jurisdiction. DTSC enters into this Agreement pursuant to Health and Safety Code, division 20, chapter 6.8, section 25300 et seq. (the Hazardous Substance Account Act (HSAA), chapter 6.5, section 25100 et seq. (the Hazardous Waste Control Law (HWCL)) and Health and Safety Code sections 58009 and 58010. DTSC has authority to enter into agreements whereby DTSC covenants not to sue or assert claims for environmental remediation against prospective purchasers of environmentally impacted properties, if such agreements are sufficiently in the public interest.

1.5. Purpose. The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections V (Covenants Not to Sue) and VIII (Certification), the potential liability of the Settling Respondent for the Existing Contamination (hereinafter defined) at the Property that would otherwise result from Settling Respondent becoming the owner of the Property.

The City of West Covina, California, a municipal corporation and the Redevelopment Agency of the City of West Covina, California, a municipal corporation, ("Settling Respondent") are duly authorized municipal corporations. The BKK Corporation ("BKK") is the owner and operator of the BKK hazardous waste landfill, which is located at 2210 South Azusa Avenue, West Covina, California, 91792, wholly within the boundaries of the City of West Covina, California (the "Site").

Settling Respondent has certain land use authority over the Site, as well as certain Local Enforcement Authority over a portion of the Site, as defined herein. The Site is part of a redevelopment project area duly established by the Redevelopment Agency of the City of West Covina (the "Agency"). The Agency desires to purchase Parcels 1 and 2 of the Site (the "Property") from BKK and plans to develop a portion of Parcel 1 of the Property for sports park activities, plans to sell another portion of Parcel 1 of the Property for commercial development and plans to develop Parcel 2 of the Property (along with Lot 5 and a portion of Parcel 3) as a municipal golf course. A certain portion of Parcel 1 may also be set aside as habitat for the threatened California gnatcatcher. The Agency also desires to purchase Lot 5, which is not part of the Site, from BKK and desires to enter into a licensing agreement with BKK in order to use a portion of Parcel 3, which is part of the Site, for the golf course.

The Parties agree that the Settling Respondent's entry into this Agreement, and the actions undertaken by the Settling Respondent in accordance with this Agreement, do not constitute an admission of any liability by the Settling Respondent.

The resolution of this potential liability, in exchange for provision by the Settling Respondent to DTSC of a substantial benefit, is in the public interest.

This Agreement shall be subject to the Settling Respondent's acquisition of title to the Property. If Settling Respondent fails to acquire title to the Property, the Agreement shall be null and void and DTSC reserves all rights it may otherwise have against Settling Respondent.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement that are defined in CERCLA, RCRA, the Health and Safety Code or in implementing regulations promulgated thereunder shall have the meaning assigned to them in those statutes and regulations, including any amendments thereto.

1. "Agency" shall mean the Redevelopment Agency of the City of West Covina, California.

2. "BKK" shall mean the BKK Corporation.

3. "City of West Covina" shall mean the City of West Covina, California, a municipal corporation and any successor agency thereto.

4. "Documents" shall mean papers, information, memoranda, letters, studies, reports, handwritten or typed notes, facsimile compilations, electronic mail, recordings, tapes and all other types of records.

5. "DTSC" shall mean the State of California, Environmental Protection Agency, Department of Toxic Substances Control and any successor departments or agencies of the State of California that may have responsibility for and jurisdiction over the subject matter of this Agreement.

6. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

7. "Existing Contamination" shall mean:

(a) any hazardous wastes within the meaning of Health and Safety Code section 25117, hazardous substances, pollutants or contaminants, present or existing on or under (including within the groundwater beneath) the Property as of the Effective Date of this Agreement;

(b) any hazardous wastes within the meaning of Health and Safety Code section 25117, hazardous substances, pollutants or contaminants that migrated from the Property prior to the effective date of this Agreement; and

(c) any hazardous wastes within the meaning of Health and Safety Code section 25117, hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Property after the effective date of this Agreement.

8. "Final Settlement Costs" shall mean those closing costs and prorations to be paid by or charged against BKK under the Purchase Agreement, including, without limitation, escrow fees, title insurance premiums, recording fees, documentary transfer taxes, prorations of taxes and expenses and any and all other costs and expenses to be paid by BKK at closing, all pursuant to Section 6 of the Purchase Agreement.

9. "Final Workplan" means the Final Workplan described in Section III of the First Consent Order Modification (Submittal of Monitoring Plan for Development), which will implement the Environmental Monitoring Protocol attached to and defined in the First Consent Order Modification.

10. "First Consent Order Modification" shall mean the First Modification to Administrative Order on Consent (U.S. EPA Docket No. RCRA-9-2000-003) entered into between BKK and EPA, effective January 22, 2002.

11. "Institutional Controls" shall mean the Environmental Restrictions recorded with the Recorder's Office of Los Angeles County, California on May 29, 2001 applicable to the Property, and any modifications thereto, copies of which are attached hereto as Exhibit 2 of this Agreement.

12. "Lot 5" shall mean the real property located adjacent to the Site, encompassing approximately 73.1 acres, which is described in Exhibit 3 of this Agreement.

13. "Monitoring Protocol Funds" shall mean the four hundred and twenty-thousand dollars (\$420,000.00) of the net proceeds of the sale of the Property and Lot 5 pursuant to the Purchase Agreement, plus any interest earned on said four hundred and twenty-thousand dollars (\$420,000.00), to be used for the purpose of implementing, and/or purchasing financial assurance for the implementation of, the Final Workplan in accordance with the First Consent Order Modification, all in accordance with the Site Funds Escrow Agreement.

14. "Parcel 1" shall mean that portion of the Site, encompassing approximately 101.198 acres, which is described in Exhibit 4 of this Agreement.

15. "Parcel 2" shall mean that portion of the Site, encompassing approximately 56.84 acres, which is described in Exhibit 5 of this Agreement.

16. "Parcel 3" shall mean that portion of the Site, encompassing approximately 425.172 acres, which is described in Exhibit 6 of this Agreement.

17. "Parties" shall mean the State of California, California Environmental Protection Agency, Department of Toxic Substances Control, and the Settling Respondent.

18. "Property" shall mean that portion of the 583- acre Site encompassing both Parcels 1 and 2.

19. "Purchase Agreement" shall mean that certain Agreement of Purchase and Sale and Joint Escrow Instructions, dated as of June 27, 2002, by and between the Agency as Purchaser and BKK as seller, and any and all amendments thereto, which agreement and its amendments are all attached hereto as Exhibit 7.

20. "Release" shall have the meaning given it under both CERCLA section 101(22), 42 U.S.C. § 9601(22), and RCRA section 3008(h), 42 U.S.C. § 6928(h).

21. "Remaining Funds" shall mean the funds deposited into the Site Funds Escrow, excluding the Monitoring Protocol Funds, plus any interest earned on such funds.

22. "Sale Escrow Holder" shall mean First American Title Company, which is the Escrow Holder as defined in the Purchase Agreement.

23. "Second Consent Order Modification" shall mean the Second Modification to Administrative Order on Consent (U.S. EPA

Docket No. RCRA-9-2000-003) to be entered into between BKK and EPA.

24. "Security Agreements" shall mean the security agreements to be entered into by and between EPA and BKK and DTSC and BKK respectively, in substantially the same form as the documents attached hereto as Exhibit 8 and Exhibit 9, respectively.

25. "Settling Respondent" shall mean the City of West Covina, California, a municipal corporation, including without limitation the Agency.

26. "Site" shall mean the BKK Landfill RCRA facility encompassing approximately 583 acres, located at 2210 South Azusa Avenue, in West Covina, Los Angeles County, California, and depicted generally on the map attached as Exhibit 1 of this Agreement. The Site shall include the contiguous 583 acres of real property which, at the time it was split into three separate legal parcels (Parcels 1, 2 and 3) by the recording of a final parcel map on May 29, 2001 with the Recorder's Office of Los Angeles County, California, was owned by BKK. The Site includes: the closed hazardous waste landfill ("Class I landfill"), consisting of approximately 190 acres, where hazardous wastes were disposed of from 1972 to 1984 and municipal waste and asbestos were disposed until 1987; the adjacent inactive municipal solid waste landfill ("Class III landfill"), consisting of approximately 170 acres, which was operated from 1987 to 1996; a leachate treatment plant; and gas combustion and energy recovery facilities. The Site also includes the Property, and all areas to which hazardous wastes within the meaning of Health and Safety Code section 25117, hazardous substances and/or pollutants or contaminants, have come to be located.

27. "Site Funds Escrow" shall mean the escrow accounts subject to the Site Funds Escrow Agreement.

28. "Site Funds Escrow Agreement" shall mean the agreement to be entered into by and between BKK, Settling Respondent and Wells Fargo Bank in substantially the same form as the document attached hereto as Exhibit 10.

29. "Supplemental Escrow Instructions" shall mean the Fifth Amendment to Agreement of Purchase and Sale and Joint Escrow Instructions to be delivered to the Sale Escrow Holder in accordance with the provisions of this Agreement, a true and correct copy of which is attached hereto as part of Exhibit 7.

30. "United States" shall mean the United States of America, its departments, agencies and instrumentalities.

III. STATEMENT OF FACTS

DTSC hereby finds:

3.1. Ownership. The Site is currently owned by BKK.

3.2. Parcels. On May 29, 2001, the RCRA facility was divided by BKK into three separate parcels (commonly known as Parcels 1, 2 and 3) by the recording of a final parcel map with the Recorder's Office of Los Angeles County, California.

3.3. Institutional Controls. Also on May 29, 2001, the Institutional Controls, which were signed by DTSC, Settling Respondent and BKK, were recorded with the Recorder's Office of Los Angeles County, California on the Property.

3.4. Contemplated Development. The Settling Respondent contemplates a development of a sports park on a portion of Parcel 1 of the Property, contemplates selling another portion of Parcel 1 for commercial development, and contemplates development of a municipal golf course on Parcel 2 of the Property, Lot 5 and the portion of Parcel 3 subject to the licensing agreement between BKK and the Settling Respondent.

3.5. Site History. [Note: see the definition of "Site" in Section II above for additional history of the Site.] The Site, which means the RCRA facility (the Facility) encompassing approximately 583 acres, sits on previously rural land and includes the following Solid Waste Management Units (SWMUs): an operational Leachate Treatment Plant (LTP), a closed Class I landfill (on Parcel 3), an inactive Class III landfill (currently undergoing closure, on Parcel 3) and the inactive Area D landfill on Parcel 3 and formerly in the southern portion of Parcel 1. The Class I and Class III landfills are shown on Exhibit 1. The LTP treats wastewaters that derive from post-closure care of the closed Class I landfill and management of the inactive Class III landfill.

Approximately 3.4 million tons of liquid and solid hazardous wastes were disposed, together with nonhazardous wastes, in the unlined Class I landfill while it operated. Numerous types of hazardous wastes from a variety of sources were disposed at the Class I landfill. An extensive list of wastes BKK reports it accepted is in the draft Hazardous Waste Facility Post-Closure Permit issued by DTSC in November, 1999.

Closure construction was completed in March 1989 and certification was provided to DTSC on May 15, 1989. DTSC acknowledged closure certification on June 12, 1991. Closure

included installation of a clay and vegetative cover, a gas collection system, and construction of the LTP.

The closed Class I landfill is currently under a post-closure care and maintenance program. The waste remains buried within the landfill. The activities being currently conducted at the Class I landfill include: post-closure monitoring, landfill gas, leachate and contaminated groundwater extraction; inspection; maintenance and RCRA corrective action. A final Stipulated Permanent Injunction approved by the Los Angeles Superior Court on or about October 28, 1988 (Case No. C507317) also requires monitoring and corrective action. A network of extraction wells is used to remove leachate, landfill gas, and contaminated ground water. A network of groundwater monitoring wells is used to monitor ground water around the landfill.

The draft Hazardous Waste Facility Post-Closure Permit DTSC issued for the Facility (Site) in 1999 included a draft post closure permit for the Class I landfill and draft operating permit for the LTP. DTSC is currently preparing the final consolidated permit for the Facility.

3.6. Documents Related to Substances Found at the Site.
Numerous Documents discuss hazardous substances at the Site and contamination of media such as soil, groundwater, surface water, pore gas and air, including, but not limited to, the following:

Agra Earth & Environmental Inc., *Soil and Water Sampling and Testing Program, Lower Retention Basin, BKK Landfill* (November 25, 1992);

The Janes Network, *Resource Conservation and Recovery Act Facility Investigation- Groundwater, BKK Landfill* (October 31, 1997);

BKK, *Part B Hazardous Waste Facility Permit Application* (1997).

The Janes Network, Groundworks Environmental Inc., and CB Consulting, Inc., *Resource Conservation and Recovery Act, Groundwater Interim Remedial Measures Study, BKK Landfill* (February 27, 1998);

CB Consulting, Inc., *Corrective Measures Study (CMS) for Groundwater, BKK Landfill* (August 5, 1998);

DTSC, *Draft Hazardous Waste Facility Class I Landfill Post-Closure Care Permit, BKK Landfill* (November, 1999);

Administrative Order on Consent Entered into Between US EPA and BKK (Docket No. RCRA-9-2000-003) (September 14, 2000) (attachment with Exhibit 2 of this Agreement) ;

BKK, Excavation Soils Monitoring Plan for Business Park Development (December 20, 2000) ;

DTSC, Business Park Development, Soil Monitoring Plan, BKK Landfill (March 14, 2001) ;

BKK, Excavation of 1960s Trash Near West Near West Entrance of BKK Landfill Site/ Borehole Investigation Report, BKK Landfill Site (July 10, 2001) ;

BKK, Excavation of 1960s Trash from Old Area D at BKK Landfill Site (July 11, 2001) ;

BKK, Parcel 1 at BKK Landfill Site (October 12, 2001) ;

BKK, Non-Routine Groundwater Monitoring in Parcel 1 at BKK Landfill Site (January 18, 2002) ;

Janes, Steve, Wells and Geology of the Western Entrance Area (February 26, 2002) ;

DTSC, Request for Additional Data, Southern 31 Acres of Parcel 1, BKK Landfill (March 1, 2002) ;

Romanowski, Walter, Memorandum to BKK re: Field Projects Conducted in Area D (May 20, 2002) ;

BKK, Petrogenic Gas at the Northwest Corner of BKK Landfill Site (June 27, 2002) ;

BKK, BKK Landfill Quarterly Groundwater Monitoring Report-3rd Quarter, 2002 (November 13, 2002) ;

BKK, SCAQMD Rule 1150.1 Quarterly Air Monitoring Report, BKK Landfill (January 17, 2003) ;

BKK, Groundwater Monitoring Report Annual Summary, BKK Landfill (March 28, 2003) ;

DTSC, Surface Water Monitoring and Need to Cease Sub-Drain Discharges at the Detention Basins, BKK Landfill (March 3, 2003) ; and

BKK, Scope of Work for Soil, Groundwater and Soil Gas Sampling for Southern 31 Acres of Parcel 1 at BKK Landfill Site (April 16, 2003) .

3.7. Settling Respondent's Representations. The Settling Respondent represents, and for the purposes of this Agreement DTSC relies on those representations, that Settling Respondent's involvement with the *Property* has been limited to the following: landfill related actions at the Site pursuant to its land use authority under the California Government Code; landfill related inspection and enforcement actions at the Site pursuant to its Local Enforcement Agency designation under the California Public Resources Code; and other landfill related actions at the Site pursuant to and in its capacity as a municipal corporation.

IV. AGREEMENT

4.1. IT IS HEREBY AGREED THAT the Settling Respondent shall execute and deliver valid escrow instructions pursuant to Section 4.2 (Payment) and may, if required, conduct activities under the terms of, and in accordance with, the Work to Be Performed contained in Section 4.3. Settling Respondent shall conduct activities in Section 4.3 in the manner specified herein and in accordance with the Final Workplan. All work shall be performed consistent with the HSAA, the HWCL (as defined in Section 1.4), as amended and the National Contingency Plan (40 Code of Federal Regulations (C.F.R) Part 300), as amended.

4.2. Payment

(a) Escrow Instructions. In consideration of and in exchange for DTSC's Covenant Not to Sue in Section 5.1. herein, Settling Respondent agrees to execute and deliver, and shall use its best efforts to cause BKK to execute and deliver, valid supplemental escrow instructions to the Sale Escrow Holder instructing the Sale Escrow Holder at close of Escrow (as defined in the Purchase Agreement) to:

(1) Pay in Full: (i) all amounts due and payable under that certain Promissory Note, dated October 22, 2001, in the original principal amount of three million dollars (\$3,000,000.00) executed by BKK to the order of South Bay Bank, NA as secured by that certain Deed of Trust dated October 22, 2001, executed by BKK for the benefit of South Bay Bank, NA, filed of record in the Official Records of Los Angeles County, California on October 30, 2001, as Instrument No. 2001-2067839, and (ii) all amounts then due and payable under that certain Non-Negotiable Promissory Note, dated April 15, 1996, in the original principal amount of three million, five-hundred thousand dollars (\$3,500,000.00), executed by BKK to the order of the City;

(2) Pay all Final Settlement Costs; and

(3) Deposit the remainder of the Purchase Price (as that term is defined in the Purchase Agreement) into the Site Funds Escrow on the Closing Date (as that term is defined in the Purchase Agreement). The funds distributed from the Site Funds Escrow are to be used as follows: (i) the Monitoring Protocol Funds are to be used by BKK or the Settling Respondent to perform the monitoring described in, and required of BKK pursuant to, the First Consent Order Modification or to purchase financial assurances to implement said monitoring or are to be deposited into a Superfund Special Account managed by EPA ; and (ii) the Remaining Funds are to be used by BKK strictly in accordance with the requirements of Section 10 (d) (ii) of the Purchase Agreement and the provisions of the Site Funds Escrow Agreement or are to be deposited into the Removal and Remediation Activity Account managed by DTSC, all in accordance with the Site Funds Escrow Agreement.

(b) DTSC Concurrence. In accordance with the Site Funds Escrow Agreement, DTSC agrees that it shall provide the written concurrence on or written explanation as to no concurrence on any written proposal regarding any addition or modification to the Site Funds Escrow Agreement no later than five (5) business days following the receipt of a such written proposal. Such written concurrence on or written explanation as to no concurrence on any such written proposal shall be signed by the Chief of the Permitting Branch or the Deputy Director of the Hazardous Waste Management Program, which shall not be unreasonably withheld.

(c) Failure to Execute and Deliver Valid Escrow Instructions or Failure to Meet Requirements of Purchase Agreement. In accordance with Section 5.2 (DTSC's Reservation of Rights) of this Agreement, it is understood and agreed by the Parties that, should the fully executed Supplemental Escrow Instructions fail to be delivered to the Sale Escrow Holder in accordance with paragraph (a) of Section 4.2 (Payment/Escrow Instructions) of this Agreement, or should the monies fail to be deposited into the Site Funds Escrow in accordance with the Supplemental Escrow Instructions or should the monies deposited into the Site Funds Escrow fail to be used in accordance with the requirements of Section 10 (d) (ii) of the Purchase Agreement, the Site Funds Escrow Agreement and paragraph (a) of Section 4.2 (Payment/Escrow Instructions) of this Agreement , the covenant not sue set forth in Section 5.1 (DTSC's Covenant Not to Sue) of the this Agreement, shall be null and void and DTSC reserves all rights it may have.

4.3. Work to Be Performed.

(a) Implement Final Workplan. Settling Respondent agrees that, should BKK fail to submit and/or fully implement the Final Workplan in accordance with and as required by the First Consent Order Modification, Settling Respondent shall submit and/or fully implement the Final Workplan in accordance with the First Consent Order Modification for so long as and to the extent funds are available from the sources set forth below to Settling Respondent for this purpose under: (i) the Site Funds Escrow (with respect to the Monitoring Protocol Funds); (ii) any financial assurance mechanism purchased with the Monitoring Protocol Funds; or (iii) any financial assurance mechanism established for the purpose of ensuring the implementation of the Final Workplan in accordance with the Second Consent Order Modification. Settling Respondent agrees to obtain all necessary approvals from DTSC and abide by all approved schedules relating to submittal and implementation of the Final Workplan that BKK would have otherwise been obligated to abide by or obtain. Settling Respondent intends to perform the work required under this paragraph (a) of Section 4.3 (Work to be Performed/Implement Final Workplan) through duly retained environmental consultants. It is understood and agreed by the parties that, in the event no funds described in this paragraph are available to Settling Respondent to submit or fully implement the Final Workplan, Settling Respondent shall have no further obligations under this paragraph (a) of Section 4.3 (Work to be Performed/Implement Final Workplan) with respect to fully implementing the Final Workplan.

(b) Settling Respondent also agrees to cooperate fully in being named as an additional insured, or additional payee, or otherwise being identified as an entity to whom the funds for the preparation and/or implementation of the Final Workplan will be made available in accordance with this Agreement and the Second Consent Order Modification.

(c) Direct Remaining Funds. The Site Funds Escrow Agreement requires that, if an "Event of Default" occurs under either of the Security Agreements prior to disbursement of all funds from the Site Funds Escrow, the Agency, DTSC and/or EPA shall direct the escrow holder for the Site Funds Escrow in writing to: (1) disburse any portion of the Monitoring Protocol Funds remaining in the Site Funds Escrow to a Superfund Special Account to be established by EPA pursuant to the provisions of CERCLA; and (2) disburse the remainder of the funds in the Site Funds Escrow to the Removal and Remediation Activity Account managed by DTSC to fund remediation activities at the Site. In such an event, and notwithstanding Section 4.2, paragraph

(a) (3) of this Agreement (Payment /Escrow Instructions) , EPA shall use any funds deposited into a Superfund Special Account consistent with the list of "Permitted Disbursements" attached as Exhibit "A" to the Site Funds Escrow Agreement. It is understood and agreed by the Parties that, upon the deposit of any such funds into an Superfund Special Account, Settling Respondent shall have no further obligations under this Section 4.3 (Work to be Performed) with respect to the Monitoring Protocol Funds.

V. COVENANTS NOT TO SUE

5.1. DTSC's Covenant Not to Sue. (a) Subject to Section 5.2. (Reservation of Rights), upon payment of the amount specified in Section 4.2 (Payment) of this Agreement and contingent upon satisfactory compliance with the terms of this Agreement, on and subsequent to the Effective Date of this Agreement, DTSC covenants not to sue or take any civil or administrative action against Settling Respondent for any and all civil liability, for injunctive relief or reimbursement of response costs pursuant to Section 107 (a) of CERCLA, 42 U.S.C. section 9607 (a); 7002 of RCRA, 42 U.S.C. section 6973; or chapters 6.5 (commencing with Section 25100) and 6.8 (commencing with section 25301), division 20 of the Health and Safety Code with respect to Existing Contamination and as limited in paragraph (b) below.

(b) This covenant not to sue shall extend only to any liability Settling Respondent may have for Existing Contamination under either RCRA, CERCLA or the Health and Safety Code as an "owner" of Parcel 1 and as an "owner" of Parcel 2, as that term is used under CERCLA section 107(a), 42 U.S.C. section 9607(a), RCRA section 3008(a), 42 U.S.C. section 6928(a), the Health and Safety Code and implementing regulations, and/or as defined in 40 C.F.R section 260.10. It shall not extend to any other possible liability Settling Respondent may have with respect to the Site.

5.2. DTSC's Reservation of Rights. The covenant not to sue set forth in Section 5.1. above does not pertain to any matters other than those expressly specified in Section 5.1 (DTSC Covenant Not to Sue). DTSC reserves and this Agreement is without prejudice to all rights against Settling Respondent with respect to all other matters, including but not limited to, the following;

(a) claims based on a failure by Settling Respondent, its successors, assignees, transferees or lessees to meet a requirement of this Agreement. (However, it is understood and agreed by the parties that only Settling Respondent City of West Covina remains responsible for performance of the work in accordance with Section 4.1 (Agreement) Section 4.2 (Payment),

Section 4.3 (Work to be Performed) and Exhibit 10 (Site Funds Escrow Agreement));

(b) any liability resulting from past or future Releases (within the meaning of RCRA section 3008, subsection(h)) of hazardous wastes (within the meaning of Health and Safety Code section 25117), substances, pollutants or contaminants, at or from the Site caused or contributed to by Settling Respondent, successors, assignees, transferee, lessees or sub-lessees ;

(c) any liability resulting from exacerbation by Settling Respondent, successors, assignees, transferees, lessees or sub-lessees of Existing Contamination;

(d) any liability resulting from the release (within the meaning of RCRA section 3008, subdivision (h)) or threat of release of hazardous wastes (within the meaning of Health and Safety Code section 25117), substances, pollutants or contaminants, at the Site after the Effective Date of this Agreement, not within the definition of Existing Contamination;

(e) criminal liability;

(f) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by agencies other than DTSC;

(g) liability under CERCLA section 107 (a) (3) and (4);

(h) liability for violations of local, State or federal law or regulations;

(i) liability relating to the Institutional Controls attached hereto as Exhibit 2; and

(j) any claims against Settling Respondent City of West Covina in the event of either the fully executed Supplemental Escrow Instructions failing to be delivered to the Sale Escrow Holder in accordance with Section 4.2 (Payment) or the monies deposited into the Sale Escrow failing to be used in accordance with the requirements of Section 10 (d)(ii) of the Purchase Agreement and the Site Funds Escrow Agreement.

5.2.1. With respect to any claim or cause of action asserted by DTSC, the Settling Respondent, successors, assigns, transferees, lessees and sub-lessees shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

5.2.2. If Settling Respondent and/or any successor, assignee, transferee, lessee or sub-lessee is determined, through adjudication or the administrative or the regulatory processes, to have committed an act or omission after the Effective Date for which DTSC has specifically reserved its rights in (a) through (j) above, Settling Respondent (if it was so determined to have committed the act or omission), or the particular successor, assignee, transferee, lessee or sub-lessee that was determined to have committed the act or omission, shall be liable for all

enforcement costs including, but not limited to, litigation costs, incurred by DTSC in conjunction with that act or omission.

5.2.3. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which DTSC may have against any person, firm, corporation or other entity not a party to this Agreement.

5.2.4. Nothing in this Agreement is intended to limit the right of DTSC to undertake future response actions, remedial activities, or any other action or activity taken pursuant to, or authorized by, CERCLA, RCRA or the Health and Safety Code at the Site or to seek to compel parties other than the Settling Respondent and/or any successor, assignee, transferee, lessee or sub-lessee to perform or pay for such actions and activities at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions, remedial activities, or any other action or activity taken pursuant to, or authorized by, CERCLA, RCRA or the Health and Safety Code which may be taken or be required by DTSC in exercising its authority under federal and State law. Settling Respondent acknowledges that it is purchasing Property where response actions, remedial activities, or other activities taken pursuant to, or authorized by, CERCLA, RCRA and/or the Health and Safety Code may be required. DTSC agrees when it undertakes such actions or activities, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with use of the Property by Settling Respondent.

5.3. Settling Respondent's Covenant Not to Sue. In consideration of DTSC's Covenant Not To Sue in Section 5.1. of this Agreement, the Settling Respondent hereby covenants not to sue and not to assert any claims or causes of action against DTSC, its authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to: (i) any direct or indirect claim for reimbursement from the Hazardous Waste Control Account, Hazardous Substance Account, or Hazardous Substance Cleanup Fund through Health and Safety Code section 25375 or any other provision of law; (ii) any claim against the State of California, including any department, agency or instrumentality of the State under sections 107 or 113 of CERCLA or section 7002 of RCRA related to the Site ; (iii) any other claims arising out of response actions or any other activity taken pursuant to, or authorized by, CERCLA, RCRA or the Health and Safety Code at the Site, including claims based on DTSC's oversight activities or approval of plans for such activities, or claims for just compensation against the State of California, including any department, agency or instrumentality of the State for "taking" property based on the Fifth Amendment

to the United States Constitution or based on Article I, Section 19 of the California Constitution, nuisance, trespass, equitable indemnity and indemnity under California law, or strict liability under California law. This Covenant is made and given by Settling Respondent, and is effective upon execution by Settling Respondent of this Agreement and does not extend to or bind other persons.

5.4. Settling Respondent's Reservation of Rights. The Settling Respondent reserves, and this Agreement is without prejudice to, actions against DTSC based on negligence, not including oversight or approval of the Settling Respondent's plans or activities, that are brought pursuant to any statute other than the Hazardous Waste Control Account, Hazardous Waste Control Law, Hazardous Substance Account, Hazardous Substance Cleanup Fund through Health and Safety Code section 25375, CERCLA, or RCRA.

VI. CONTRIBUTION PROTECTION

6.1. With regard to claims for contribution against Settling Respondent, the Parties hereto agree that the Settling Respondent is entitled to protection from contribution actions or claims as provided by CERCLA section 113, subdivision(f)(2), 42 U.S.C. section 9613, subdivision(f)(2) for CERCLA matters addressed in this Agreement. The CERCLA matters addressed in this Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by DTSC or any other person for the Site with respect to the Existing Contamination.

6.2. The Settling Respondent agrees that with respect to any suit or claim for contribution brought by Settling Respondent for matters related to this Agreement it will notify DTSC in writing no later than sixty (60) days prior to the initiation of any such suit or claim.

6.3. The Settling Respondent also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify in writing DTSC within ten (10) days of service of the complaint on them.

VII. DUE CARE/COOPERATION

7. The Settling Respondent shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. The Settling Respondent shall also comply with all obligations needed to maintain the "Institutional Controls". The

Settling Respondent recognizes that the implementation of response actions, remedial activities, or any other activity taken pursuant to, or authorized by, CERCLA, RCRA or the Health and Safety Code at the Site may interfere with the Settling Respondent's use of the Property and/or Lot 5, and may require closure of its operations or a part thereof. The Settling Respondent agrees to cooperate fully with DTSC in the implementation of response actions, remedial activities, or any other activity taken pursuant to, or authorized by, CERCLA, RCRA or the Health and Safety Code at the Site and further agrees not to interfere with such response activities. DTSC agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the use of the Property by Settling Respondent when DTSC undertakes such entry and response. In the event the Settling Respondent becomes aware of any action or occurrence which causes or threatens a Release (within the meaning of RCRA section 3008 (h)) of hazardous wastes (within the meaning of Health and Safety Code section 25117), hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondent shall immediately take all appropriate action to prevent, abate, or minimize such Release or threat of Release, and shall, in addition to complying with any applicable notification requirements under the Health and Safety Code, or any other law, immediately notify DTSC of such Release or threatened Release.

VIII. CERTIFICATION

8. By entering into this Agreement, the Settling Respondent certifies that to the best of its knowledge and belief it has never owned Parcel 1 or Parcel 2 prior to the Effective Date of this Agreement. If DTSC determines, within its sole discretion, that information provided by the Settling Respondent is not materially accurate and complete, the Covenant Not to Sue in Section 5.1 of the Agreement shall be null and void and DTSC reserves all rights it may otherwise have against Settling Respondent.

IX. GENERAL PROVISIONS

9.1. Site Access. Commencing upon the date that it acquires title to the Property, and thereafter, Settling Respondent, agrees to provide to EPA and DTSC, their authorized officers, employees, contractors, consultants, representatives, and all other persons, including but not limited to BKK, performing response actions, remedial activities, or any other

activity taken pursuant to or authorized by CERCLA, RCRA or the Health and Safety Code under EPA or State oversight, an irrevocable right of access at all reasonable times to the Property, Lot 5 and to any other property to which access is required for the implementation of such activities at the Site, to the extent access to such other property is controlled by the Settling Respondent, for the purposes of performing and overseeing such activities at the Site under federal or State law. To the extent controlled by Settling Respondent, Settling Respondent shall also ensure that assignees, successors in interest, lessees, and sub-lessees of the Property shall provide the same access and cooperation and shall comply with the Institutional Controls. Settling Respondent shall grant access to parties conducting response activities pursuant to this Agreement or for activities deemed necessary by DTSC to complete required response activities.

Nothing in this section is intended or shall be construed to limit in any way the right of entry or inspection that DTSC or any other agency may otherwise have by operation of any law. DTSC and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including, but not limited to: inspecting records, operating logs, sampling and analytic data, and contracts relating to this Site; reviewing the progress of Settling Respondent in carrying out the terms of this Agreement; conducting such tests as DTSC may deem necessary; and verifying the data submitted to DTSC by Settling Respondent. DTSC agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with use of the Property by Settling Respondent when DTSC undertakes such activities. Notwithstanding any provision of this Agreement, DTSC retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, the Health and Safety Code and any other applicable statute or regulation, including any amendments thereto.

9.2. Site Access/ Notice to Successors in Interest. The Settling Respondent shall ensure that a copy of this Agreement is provided to any current lessee or sub-lessee on the Property as of the Effective Date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property made by Settling Respondent are consistent with the Institutional Controls, and this Agreement, including but not limited to this Section 9.2, Section 9.1 (Site Access), Section VII (Due Care/Cooperation) and Section 9.25 (Transfer). However, it is understood and agreed by the parties that only Settling Respondent City of West Covina remains responsible for performance of the work in accordance with Section 4.1 (Agreement), Section 4.2 (Payment), Section 4.3

(Work to be Performed) and Exhibit 10 (Site Funds Escrow Agreement).

9.3. Cost Recovery. Subject to Section 5.1 (DTSC's Covenant Not to Sue), the Settling Respondent is liable for all of DTSC's costs incurred in responding to the contamination at the Site attributable to acts or omissions of the Settling Respondent, including costs of overseeing response work performed by the Settling Respondent for matters addressed by this Agreement, except for work Settling Respondent City of West Covina may perform pursuant to Section 4.3 (Work to Be Performed) of this Agreement, and costs incurred by DTSC in association with preparation of this Agreement. Cost recovery may be pursued by DTSC under CERCLA, Health and Safety Code Section 25360, or any other applicable State or federal statute or common law. The State of California reserves the right to bring an action against Settling Respondent under CERCLA, Health and Safety Code section 25360, or any other applicable State or federal statute or common law, for recovery of all response and oversight costs incurred by the State of California discussed in this Section 9.3 (Cost Recovery).

9.4. Payment. All payments made by the Settling Respondent pursuant to this Agreement shall be by a cashier's or certified check made payable to the "Department of Toxic Substances Control", and bearing on its face the project code for the site (site # 300002) and the docket number of this Agreement. Payments shall be sent to:

Department of Toxic Substances Control
Accounting/Cashier
400 P Street, 4th Floor
P.O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent concurrently to DTSC's Project Manager/Regional Branch Chief.

9.4.1. If any bill is not paid by the Settling Respondent within sixty (60) days after it is sent by DTSC, the Settling Respondent may be deemed to be in material default of this Agreement.

9.5. Project Coordinator. If the Settling Respondent City of West Covina implements the Final Workplan pursuant to Section 4.3 (Work to Be Performed), the work shall be under the direction and supervision of a qualified project coordinator, with expertise in hazardous substance site cleanup. The Settling Respondent shall submit to DTSC the name, address and resume of the coordinator. The Settling Respondent shall promptly notify

DTSC of any change in the identity of the Project Coordinator. All engineering and geological work shall be conducted in conformance with applicable state law, including but not limited to, Business and Professions Code sections 6735 and 7835.

9.6. Notices and Submissions. All notices, documents and communications required to be given under this Agreement, unless otherwise specified herein, shall be sent to the respective parties at the following addresses in a manner that produces a record of the sending of the notice, document or communication such as certified mail, overnight delivery service, facsimile transmission or courier hand delivery service:

All notices to Settling Respondent shall be sent to:

Steve Samaniego
Environmental Management Director
City of West Covina
1444 W. Garvey Avenue
West Covina, California 91793

with a copy to:

Colin Lennard, Esq.
Fulbright & Jaworski L.L.P.
865 South Figueroa Street
29th Floor
Los Angeles, California 90017

All notices to DTSC shall be sent to:

Jose Kou
Branch Chief
Department of Toxic Substances Control
Southern California Permitting Branch
1011 North Grandview Avenue
Glendale, California 91201

Phil Chandler
Supervising Engineering Geologist
Department of Toxic Substances Control
Southern California Permitting Branch
1011 North Grandview Avenue
Glendale, California 91201

with a copy to:

Marilee Hanson
Senior Staff Counsel
Department of Toxic Substances Control
1001 "I" Street, 23rd Floor
Sacramento, California 95814

9.7. Communications. All approvals and decisions of DTSC made regarding submittals and notifications will be communicated to Settling Respondent in writing by the Site Mitigation Branch Chief, Department of Toxic Substances Control, the Permitting Branch Chief or his/her respective designee. No informal advice, guidance, suggestions or comments by DTSC regarding reports, plans, specifications, schedules or any other writings by Settling Respondent shall be construed to relieve Settling Respondent of the obligation to obtain such formal approvals as may be required.

9.8. DTSC Review and Approval. (a) If DTSC determines that any report, plan, schedule or other document submitted for approval pursuant to of this Agreement fails to comply with this Agreement or fails to protect public health or safety or the environment, DTSC may:

(1) Modify the document as deemed necessary and approve the document as modified; or

(2) Return comments to Settling Respondent with recommended changes and a date by which Settling Respondent(s) must submit to DTSC a revised document incorporating the recommended changes.

(b) Any modifications, comments or other directive issued pursuant to (a) above, are incorporated into this Agreement.

Any noncompliance with these modifications or directives shall be deemed a failure or refusal to comply with this Agreement.

9.9. Compliance with Applicable Laws. Settling Respondent shall carry out this Agreement in compliance with all applicable State, local, and federal laws, regulations and requirements including, but not limited to, requirements to obtain permits and to assure worker safety.

9.10. Sampling, Data and Document Availability. Settling Respondent shall permit DTSC and its authorized representatives to inspect and copy all sampling, testing, monitoring or other data generated by Settling Respondent or on Settling Respondent's

behalf in any way pertaining to work undertaken pursuant to Sections 4.3 (Work to Be Performed) and VII. (Due Care/Cooperation) of this Agreement. Settling Respondent shall submit all such data upon the request of DTSC. Copies shall be provided within ten (10) days of receipt of DTSC's written request. Settling Respondent shall inform DTSC at least ten (10) days in advance of all field sampling under Sections 4.3 (Work to Be Performed) and VII. (Due Care/Cooperation) of this Agreement, and shall allow DTSC and its authorized representatives to take duplicates of any samples collected by Settling Respondent pursuant to Section 4.3 (Work to Be Performed) and VII. (Due Care/Cooperation) of this Agreement. Settling Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to Section 4.3 (Work to Be Performed) and VII. (Due Care/Cooperation) of this Agreement. It is understood and agreed by the parties that only Settling Respondent City of West Covina shall remain responsible for performance of the work to be performed in accordance with Section 4.3 (Work to Be Performed).

9.11. Document Retention. All data, reports and other Documents shall be preserved by Settling Respondent for a minimum of ten (10) years after the conclusion of all activities under this Agreement to the satisfaction of DTSC. If DTSC requests that some or all of these documents be preserved for a longer period of time, Settling Respondent shall either comply with that request or deliver the documents to DTSC, or permit DTSC to copy the documents prior to destruction. Settling Respondent shall notify DTSC in writing, at least six (6) months prior to destroying any documents prepared pursuant to this Agreement and shall provide DTSC with an opportunity to copy any documents at the expense of DTSC.

9.12. Government Liabilities. The State of California shall not be liable for any injuries or damages to persons or property resulting from acts or omissions by Settling Respondent, or related parties specified in Section 9.24, (Parties Bound), in carrying out activities pursuant to this Agreement, nor shall the State of California be held as a party to any contract entered into by Settling Respondent or its agents in carrying out activities pursuant to this Agreement.

9.13. Additional Actions. By entering into this Agreement, DTSC does not waive the right to take any further actions authorized by law.

9.14. Extension Requests. If Settling Respondent is unable to perform any activity or submit any document within the time required under this Agreement, Settling Respondent may, prior to expiration of the time, request an extension of the time

in writing. The extension request shall include a justification for the delay. All such requests shall be in advance of the date on which the activity or document is due.

9.15. Extension Approvals. If DTSC determines that good cause exists for an extension, it will grant the request and specify a new schedule in writing. Settling Respondent shall comply with the new schedule incorporated in this Agreement.

9.16. Severability. The requirements of this Agreement are severable, and Settling Respondent shall comply with each and every provision hereof, notwithstanding the effectiveness of any other provision.

9.17. Incorporation of Plans, Schedules and Reports. All plans, schedules, reports, specifications and other documents that are submitted by Settling Respondent pursuant to this Agreement are incorporated in this Agreement upon DTSC's approval or as modified pursuant to Section 9.8, (DTSC Review and Approval), and shall be implemented by Settling Respondent. Any noncompliance with the documents incorporated in this Agreement, shall be deemed a failure or refusal to comply with this Agreement.

9.18. Modifications. This Agreement may be amended in writing by mutual agreement of DTSC and Settling Respondent. Any amendment to this Agreement shall be effective upon the date the modification is signed by DTSC and shall be deemed incorporated in this Agreement.

9.19. Time Periods. Unless otherwise specified, time periods begin from the Effective Date of this Agreement and "days" means calendar days.

9.20. Effective Date. The Effective Date of this Agreement shall be the date upon which DTSC issues written notice to Settling Respondent that DTSC has fully executed the Agreement after review and response to public comments received.

9.21. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

9.22. Third Party Actions. In the event that the Settling Respondent is a party to any suit or claim for damages or contribution relating to the Site to which DTSC is not a party, the Settling Respondent shall notify DTSC in writing within ten (10) days after service of the complaint in the third-party

action. Settling Respondent shall pay all costs incurred by DTSC relating to such third-party actions, relating to this Agreement in whole or in part, including but not limited to responding to subpoenas.

9.23. Governing Law. This Agreement shall be construed and governed by the laws of the State of California.

9.24. Parties Bound.

(a) This Agreement shall apply to and be binding upon:

(1) DTSC, and upon any successor agency of the State of California that may have responsibility for and jurisdiction over the subject matter of this Agreement; and

(2) the Settling Respondent, its successors, officers, directors, appointed and elected officials, agents, and employees.

(b) DTSC's Covenant Not to Sue in Section 5.1 and Contribution Protection in Section VI shall apply to Settling Respondent and its successors, officers, directors, appointed and elected officials, agents, and employees to the extent that the alleged liability of the successor, officer, director, appointed and elected official, agent and employee is based on its status and in its capacity as an officer, director, appointed and elected official, agents, or employee of Settling Respondent; and not to the extent that the alleged liability arose independently of the alleged liability of the Settling Respondent.

(c) Each signatory of a party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such party.

9.25. Transfer. (a) Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon Settling Respondent under this Agreement may be assigned or transferred to any person with prior written consent of DTSC in its sole discretion.

(b) Transferees, assignees, tenants and sub-tenants shall pay costs incurred by DTSC to review any requests for consent to assign or transfer benefits conferred by this Agreement.

(c) In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits,

assignment or transfer, the assignee/transferee submits an affidavit and supporting documentation demonstrating to DTSC's reasonable satisfaction the truth of the preceding clauses (2) through (6) in this paragraph(d) of Section 9.25; (8) Settling Respondent City of West Covina shall have fully performed its obligations under paragraph (a) of Section 4.2 (Payment/ Escrow Instructions) of this Agreement; and (9) DTSC shall not have objected to the assignee/transferee's certification, affidavit and supporting documentation. In the event that DTSC has not so objected within thirty (30) days of its receipt of written notice from the assignee/transferee, such assignment or transfer shall be deemed approved. If at any time DTSC determines that an assignee/transferee's certification, affidavit or supporting documentation is materially inaccurate or incomplete, the Agreement and Covenant Not to Sue shall be null and void with respect to such assignee/transferee, and the State of California reserves all rights it may have against such transferee.

(e) Settling Respondent may lease the Property or any portion thereof to tenants who in turn may lease to sub-tenants. Any prospective tenants or sub-tenants desiring to obtain the prior written consent of DTSC with respect to acquiring rights, benefits and obligations conferred upon Settling Respondent under this Agreement shall submit a Certification of Compliance with Agreement and Covenant Not to Sue (Tenant) in the form of the model certification attached hereto as Exhibit 12. No tenant or sub-tenant shall have any right hereunder (including any right under the Covenant Not to Sue set forth in Section 5.1) unless:

- (1) at least 30 days before the inception of such tenancy or sub-tenancy, the tenant or sub-tenant submits a Certification of Compliance with Agreement and Covenant Not to Sue (Tenant) in the form of the model certification attached hereto as Exhibit 12;
- (2) the tenant or sub-tenant shall be financially capable of performing all the obligations referenced in such Certification;
- (3) the tenant or sub-tenant's use of the Property shall not result in a release or threat of release of any hazardous substance;
- (4) the tenant or sub-tenant is not liable under CERCLA, the Health and Safety Code or any other law for the Existing Contamination;
- (5) the tenant or sub-tenant's use of the Property will not cause or contribute to the migration or release of any Existing Contamination or to any threat to human health or the environment caused by any such release or threat of release;
- (6) the tenant or sub-tenant agrees to pay costs incurred by DTSC to review the request for consent to assign or transfer benefits conferred by this Agreement;
- (7) at least 30 days before the inception of such tenancy, the tenant or sub-tenant submits an affidavit and supporting documentation demonstrating to DTSC's reasonable satisfaction the truth of the preceding clauses (2) through (6) in this paragraph (e) of Section 9.25;
- (8) Settling Respondent City of West Covina shall have fully performed its

of this Agreement except as DTSC and the assignor or transferor otherwise agree and modify this Agreement, in writing, accordingly. Moreover, prior to any assignment or transfer of the Property, the assignee or transferee must consent in writing to be bound by the terms of this Agreement including but not limited to the certification requirement in Section VIII of this Agreement in order for the Covenant Not to Sue in Section 5.1 to be available to the party. The Covenant Not to Sue in Section 5.1 shall not be effective with respect to any assignees or transferees who fail to provide such written consent to DTSC. However, notwithstanding anything to the contrary contained herein, it is understood and agreed by the parties that Settling Respondent City of West Covina shall remain responsible for performance of the work to be performed in accordance with Section 4.1 (Agreement), Section 4.2 (Payment), Section 4.3 (Work to Be Performed) and Exhibit 10 (Site Funds Escrow Agreement) of this Agreement and that no subsequent assignee, transferee, lessee or sub-lessee shall be obligated or bound by the terms of the Agreement with respect to implement such work or shall be required to demonstrate that it is financially capable of performing such work in order to obtain DTSC's prior written consent to the assignment, transfer, lease or sublease in accordance with paragraphs (d) or (e) below.

(d) Any person desiring to obtain the prior written consent of DTSC with respect to the assignment or transfer of all or any portion of the rights, benefits and obligations conferred upon Settling Respondent under this Agreement shall submit a Certification of Compliance with Agreement and Covenant Not to Sue (Assignees/Transferee) in the form of the model certification attached hereto as Exhibit 11. No transferee or assignee of all or any portion of the Property shall have any right hereunder (including any right under the Covenant Not to Sue set forth in Section 5.1) unless: (1) at least 30 days before such assignment or transfer, the transferee submits a Certification of Compliance with Agreement and Covenant Not to Sue (Assignee/Transferee) in the form of the model certification attached hereto as Exhibit 11; (2) the assignee/transferee shall be financially capable of performing all the obligations referenced in such Certification; (3) the assignee/transferee is not liable under CERCLA, the Health and Safety Code or any other law for the Existing Contamination; (4) the assignee/transferee's use of the Property will not result in a release or threat of release of any hazardous substance; (5) the assignee/transferee's use of the Property will not cause or contribute to the migration or release of any Existing Contamination or to any threat to human health or the environment caused by any such release or threat of release; (6) the assignee/transferee agrees to pay costs incurred by DTSC to review the request for consent to assign or transfer benefits conferred by this Agreement; (7) at least 30 days before such

obligations under paragraph (a) of Section 4.2 of this Agreement (Payment/Escrow Instructions); and (9) DTSC shall not have objected to the tenant or sub-tenant's certification, affidavit and supporting documentation. In the event that DTSC has not so objected within thirty (30) days of its receipt of written notice from the tenant or sub-tenant, such tenant or sub-tenant shall have the benefit of the Covenant Not to Sue and Contribution Protection with respect to the leased property from the inception of such tenancy. If at any time DTSC determines that a tenant or a sub-tenant's certification, affidavit or supporting documentation is materially inaccurate or incomplete, the Agreement and Covenant Not to Sue shall be null and void with respect to such tenant or sub-tenant, and the State of California reserves all rights it may have against such tenant or sub-tenant.

9.26. Representative Authority. Each undersigned representative of the Parties to this Agreement certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the Parties to this Agreement.

9.27. Disclaimer. This Agreement in no way constitutes a finding by DTSC as to the risks to human health and the environment that may be posed by contamination at the Property or the Site nor constitutes any representation by DTSC that the Property or the Site is fit for any particular purpose.

9.28. Exhibits All exhibits attached to this Agreement are incorporated herein by this reference.

X. NOTICE OF SETTLEMENT

10. This Agreement shall be subject to a 30-day comment period, after which DTSC may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations that indicate that this Agreement is inappropriate, improper or inadequate. Settling Respondent shall prepare the notice for the 30-day comment period, with DTSC approval of all aspects of the notice. The notice shall require that all comments be forwarded simultaneously to Settling Respondent and DTSC.

XI. EXHIBITS

- 11.1 Exhibit 1 shall mean the map depicting the Site.
- 11.2 Exhibit 2 shall mean the Institutional Controls recorded with the Recorder's Office of Los Angeles County, California on May 29, 2001 applicable to the Property (i.e., Parcels 1 and 2).
- 11.3 Exhibit 3 shall mean the description of Lot 5.
- 11.4 Exhibit 4 shall mean the description of Parcel 1 of the Property.
- 11.5 Exhibit 5 shall mean the description of Parcel 2 of the Property.
- 11.6 Exhibit 6 shall mean the description of Parcel 3 of the Property.
- 11.7 Exhibit 7 shall mean the Purchase Agreement and all its amendments, including the Supplemental Escrow Instructions.
- 11.8 Exhibit 8 shall mean the form of the Security Agreement to be entered into between EPA and BKK.
- 11.9 Exhibit 9 shall mean the form of the Security Agreement to be entered into between DTSC and BKK.
- 11.10 Exhibit 10 shall mean the Site Funds Escrow Agreement to be entered into by and between BKK, Settling Respondent and Wells Fargo Bank.
- 11.11 Exhibit 11 shall mean the Certification of Compliance with Agreement and Covenant Not to Sue (Assignee/Transferee).
- 11.12 Exhibit 12 shall mean the Certification of Compliance with Agreement and Covenant Not to Sue (Tenant).

IT IS SO AGREED:

THE CITY OF WEST COVINA, A MUNICIPAL CORPORATION

BY: _____

Steve Herfert
Mayor

7/9/03
Date

APPROVED AS TO FORM:

FULBRIGHT & JAWORSKI L.L.P., Special Counsel

BY: _____

Colin Lennard, Esq.

Date

ATTEST:

Janet Berry
Janet Berry, City Clerk

IT IS SO AGREED:

STATE OF CALIFORNIA, ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

BY: _____

Rick Moss
Division Chief
Department of Toxic Substances Control

5/27/03
Date

IT IS SO AGREED:

THE CITY OF WEST COVINA, A MUNICIPAL CORPORATION

BY:

Steve Herrert
Mayor

7/9/03
Date

APPROVED AS TO FORM:

FULBRIGHT & JAWORSKI L.L.P., Special Counsel

BY:

Colin Lennard, Esq.

5/27/03
Date

ATTEST:

Janet Berry
Janet Berry, City Clerk

IT IS SO AGREED:

STATE OF CALIFORNIA, ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

BY:

Rick Moss
Division Chief
Department of Toxic Substances Control

Date

FIRST AMENDMENT TO RIGHT OF ENTRY AND ACCESS AGREEMENT

This First Amendment to the Right of Entry and Access Agreement ("First Amendment"), dated July 21, 2020 dated for reference purposes as July 21, 2020 is entered into by and between the City of West Covina, California, ("**City**") and Singpoli BD Capital Group LLC, ("**Developer**") (the "Access Agreement").

Recitals

A. On July 16, 2019 Developer and City entered into a Right of Entry and Access Agreement concerning approximately 134 acres, consisting of seven (7) individual parcels (Assessor's Parcel Numbers 8472-001-919, 8735-001-920, 8735-001-931, 8735-002-906, 8735-002-909, and 8735-002-910) and an adjacent 85 acres the City has under a License Agreement (Assessor's Parcel Number 8735-022-018).

B. City and Developer have agreed that Developer desires to enter upon and gain temporary access to the City Property and License Property (the "Development Area") to inspect them and perform certain due diligence activities in connection with the negotiation of the proposed Agreement of Purchase and Sale and Joint Escrow Instructions.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained therein and in the Agreement, the Parties agree that the Agreement shall be amended as follows:

1. Section 2, "Conditions of the Inspections" shall be amended to read as follows:

b. Developer shall give the City and DTSC at least forty-eight (48) hours' notice via telephone or electronic mail prior to starting an Inspections on the Development Area. Developer shall give BKK Agents at least forty-eight (48) hours' notice via electronic mail prior to accessing the site. Developer shall not excavate any soils on Parcel 3.

e. The following sentence is added to the subsection: Developer shall not conduct any Intrusive Inspections on the City Property without the prior consent of DTSC.

2. Section 3, "Term," shall be amended to read as follows:

Term. The term of this Agreement shall commence on the Effective Date and shall continue thereafter until the Inspections have been completed to the reasonable satisfaction of Developer, but in no event longer than the term of the Agreement of Purchase and Sale and Joint Escrow Instructions and amendments thereto.

3. Section 4, "Restoration Obligations," is amended to add the following sentence: "Developer shall promptly notify DTSC of any discovery by it or its Agents of any damaged area or hazardous or toxic materials discovered on the Development Area during the Inspections(s) provided for herein.

4. Section 5, "Assumption of Risk and Releases," is amended to provide that DTSC, its officials, officers, agents, employees and representatives also are released and shall not be

liable in any manner for injury to or death of Developer or its Releasees arising from the Inspection,

5. Section 6., "Indemnification" is revised to provide include DTSC and its officials, officers, agents, employees and representatives.

6. Section 7, "Insurance" is amended to provide that DTSC and its officials, officers, agents, employees and representatives shall be additional insureds.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the dates set forth below.

CITY:

City of West Covina

By: _____
David N. Carmany, City Manager

Date: _____

Attest:

By: _____
Lisa Sherrick, Assistant City Clerk

Approved as to form:

JONES & MAYER

By: _____
Thomas P. Duarte, City Attorney

DEVELOPER:

Singpoli BD Capital Group, LLC

By: _____
Kin Hui, Manager

Date: _____



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: July 21, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT: CONSIDERATION OF APPROVAL OF THE TRAFFIC COMMITTEE MEETING MINUTES AND TRAFFIC COMMITTEE RECOMMENDATIONS FROM THE JUNE 9, 2020 TRAFFIC COMMITTEE MEETING

RECOMMENDATION:

It is recommended that the City Council approve the Traffic Committee Meeting Minutes and Traffic Committee recommendations from the June 9, 2020 Traffic Committee Meeting for the following item:

Traffic Review for the Signalized intersection of Lark Ellen Avenue and Badillo Street

Request: As part of the 2011 Metro Call for Projects, the County of Los Angeles Department of Public Works ("County") was awarded a grant for the Traffic Signal Synchronization Project (TSSP) and Bus Signal Priority (BSP) Project within the corridor of Ramona Boulevard, Badillo Street, and Covina Boulevard in the Cities of West Covina, Baldwin Park, Covina, El Monte, Irwindale, and San Dimas. The purpose of the project is to synchronize traffic signals along the corridor between Santa Anita Avenue and the 57 Freeway and implement BSP between Tyler Avenue and Citrus Avenue. The County is initiating improvement recommendations and communications design for the project. The project includes the intersections of Badillo Street/Vincent Avenue, Badillo Street/Lark Ellen Avenue, and Badillo Street/Azusa Avenue. All these intersections are shared by the City of Covina. The City of West Covina reviewed the potential for installing a protected left turn phasing at the Lark Ellen Avenue and Badillo Street intersection as part of the improvements for the project. Traffic Engineering Staff presented a traffic memo summarizing the conditions justifying the installation of protected left turn phasing. Installation of protected left turn phasing will improve safety for pedestrians, reduce the potential for turning collisions, and improve line of sight for turning vehicles.

Review Standard: The installation of all traffic control devices on public streets is guided by the California Manual on Uniform Traffic Control Devices (CAMUTCD), the California Vehicle Code (CVC), and engineering judgement. The CAMUTCD Section 4D.19 provides guidance and warrants on where protected left turn phasing could be installed. Conformity to standards approved by Caltrans or by the Design Manual or other legislative bodies of work provides the engineer as well as the City with the reasonableness of traffic control measures which conform to standards of design and safety. Installation can be based on volume, or improved safety for pedestrians or vehicles. This intersection did meet the recommended guidance for left turn phasing.

Recommendation: It was unanimously recommended to coordinate with the County to request if this project could be added as part of the County's Traffic Signal Synchronization Project (TSSP) and Bus Signal Priority (BSP)

Project awarded to the County of Los Angeles Department of Public Works from the 2011 Metro Call for Projects grant. If it cannot be added to that the project, then the City may consider this project as part of a future West Covina CIP project or part of a future grant project when funds become available. The County will be providing their recommendations to the City of West Covina for all intersections along the Badillo Corridor that can be included as part of the Traffic Signal Synchronization Project (TSSP) and Bus Signal Priority (BSP) Project awarded to it from the 2011 Metro Call for Projects grant.

DISCUSSION:

Please refer to the attached detailed meeting minutes for more information (Attachment No. 1).

OPTIONS:

The City Council has the following options:

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

Prepared by: Jana Robbins, Project Manager

Fiscal Impact

FISCAL IMPACT:

At this time, the fiscal impact will be based on when funds become available per the Los Angeles County Department of Public Works recommendations. At that time, City staff will present the County's recommendations with the estimated fiscal impacts for the City Council consideration.

Attachments

Attachment No. 1 - Traffic Committee Meeting Minutes from June 8, 2020 Meeting

CITY COUNCIL GOALS & OBJECTIVES: Enhance Public Safety
Enhance City Programs and Activities



CITY OF WEST COVINA

Traffic Committee Meeting Minutes

MEETING MINUTES FROM JUNE 9, 2020 MEETING

Meeting Name: Traffic Committee Regular Meeting

Date: Tuesday, June 9, 2020

Time: 3:00 p.m.

Location: West Covina City Hall, Management Resources Room (MRC)

Attendees: **City Representatives:** Sergeant Brian Daniels (West Covina Police Department Traffic Committee Representative), Corporal Abel Hernandez, (West Covina Police Department Traffic Committee Representative), Michael Ackerman (Contract City Engineer), Jana Robbins (Contract Traffic Engineering/Planning), Melissa Demirci (Contract Traffic Engineering/Planning)

Residents: None

1. **Call to Order:** Meeting was called to order at 3:00 PM

2. **Previous Items Recap**

a. **Traffic Committee Items from the March 10, 2020 Traffic Committee Meeting was approved by City Council at the April 7, 2020 Regular City Council Meeting. These items are currently being scheduled for installation. The items were as follows:**

- i. **Traffic Review for Red Curb in front of the Foothill Transit Bus Stop Near Valinda Avenue South of Glendora Avenue:** The West Covina Police Department requested a traffic review of existing conditions along Valdina Avenue at Glendora Avenue/West Covina Parkway due to the narrow width of the street. It was unanimously recommended to repaint and extend the red curb on Valinda Avenue to improve the safety and access at the bus stop.
- ii. **Traffic Review Along Curve at Baymar Avenue and Idahome Street:** A resident submitted a request to conduct a traffic review to evaluate existing conditions at the curve where Baymar Avenue and Idahome Street intersect due speeding concerns along the curve. It was unanimously recommended to install a center line consisting of a solid double yellow line along the center of the curve at the intersection of Baymar Avenue and Idahome Street and chevron alignment signs along the curve to provide additional emphasis and guidance for a change in horizontal alignment.
- iii. **Line of Sight Review at Phillips Avenue East of Workman Avenue:** A resident submitted a request to review the existing line of sight at the intersection of Phillips Avenue and Workman Avenue due to restricted view of approaching vehicles from parked vehicles when trying to exit from Phillips Avenue onto Workman Avenue as well as restricted view of pedestrians crossing northbound in the uncontrolled crosswalk at the east leg of the intersection. It was unanimously recommended to repaint approximately the existing red curb and paint an additional 25-feet of red curb, for a total of 35-feet of red curb, to prohibit parking too close to the marked crosswalk as well as to install other pedestrian safety and school warning signage at and approaching the crosswalk.



CITY OF WEST COVINA

Traffic Committee Meeting Minutes

MEETING MINUTES FROM JUNE 9, 2020 MEETING

- b. All other approved items from previous Traffic Committee Meetings that were also approved by City Council are currently scheduled for installation.
- c. The April 2020 and May 2020 Traffic Committee meetings were cancelled.
- d. Due to COVID-19, County, and CDC guidelines for social distancing, the City hosted two Community Workshops and Meetings in a virtual format as follows:
 - i. **Virtual Community Workshop:** The City hosted a two phase (4 part) community workshop virtually for the intersection of Citrus Street and Cameron Avenue and the corridor of Cameron Avenue between Hollenbeck Street and Citrus Street. The purpose of the workshop is to engage with the community, present existing traffic conditions at the locations, review some of the community concerns and potential measures that can be applied to the intersection and corridor, and to collect feedback from residents via an online survey. Phase 1 was accessible and live between Friday May 1, 2020 through Friday, May 15, 2020 and included a video presentation along with an accompanying survey, this phase has concluded. Phase 2 is currently still live and will be open for access between Monday, June 1, 2020 through Friday, June 12, 2020. This phase also includes a video presentation summarizing the results from the 1st survey part of Phase 1 and a final survey for residents to fill out. The workshop will be summarized and presented to City Council at a later date.
 - ii. **Virtual Community Meeting:** The City hosted a separate Virtual Community Meeting for the intersection of La Puente Road and Forecastle Avenue. The purpose of the Community Meeting was to present and discuss the proposed Traffic Signal installation project at the intersection of La Puente Road and Forecastle Avenue and to collect feedback from residents via an online survey. This meeting was accessible and live between May 15, 2020 through May 29, 2020 and included a video presentation along with an accompanying survey. The meeting has concluded. The meeting will be summarized and presented to City Council at a later date.

3. New Traffic Committee Items Presented at the June 9, 2020 Traffic Committee Meeting:

- a. **Traffic Review for the Signalized intersection of Lark Ellen Avenue and Badillo Street**
 - 1. **Request:** As part of the 2011 Metro Call for Projects the County of Los Angeles Department of Public Works was awarded a grant for the Traffic Signal Synchronization Project (TSSP) and Bus Signal Priority (BSP) Project within the corridor of Ramona Boulevard, Badillo Street, and Covina Boulevard in the Cities of West Covina, Baldwin Park, Covina, El Monte, Irwindale, and San Dimas. The purpose of the project is to synchronize traffic signals along the corridor between Santa Anita Avenue and the 57 Freeway and implement BSP between Tyler Avenue and Citrus Avenue. LA County is initiating improvement recommendations and communications design for the project. The project includes the intersections of Badillo Street/Vincent Avenue, Badillo Street/Lark Ellen Avenue, and Badillo Street/Azusa Avenue. All these intersections are shared by the City of Covina. The City of West Covina reviewed the potential for installing a protected left turn phasing at the Lark Ellen Avenue and Badillo Street intersection as part of the improvements for the project. Traffic Engineering Staff presented a traffic memo summarizing the conditions justifying the installation of protected left turn phasing.



CITY OF WEST COVINA

Traffic Committee Meeting Minutes

MEETING MINUTES FROM JUNE 9, 2020 MEETING

Installation of protected left turn phasing will improve safety for pedestrians, reduce the potential for turning collisions, and improve line of sight for turning vehicles.

2. **Review Standard:** The installation of all traffic control devices on public streets is guided by the California Manual on Uniform Traffic Control Devices (CAMUTCD), the California Vehicle Code (CVC), and engineering judgement. The CAMUTCD Section 4D.19 provides guidance and warrants on where protected left turn phasing could be installed. Conformity to standards approved by Caltrans or by the Design Manual or other legislative bodies of work provides the engineer as well as the City with the reasonableness of traffic control measures which conform to standards of design and safety. Installation can be based on volume, or improved safety for pedestrians or vehicles. This intersection did meet the recommended guidance for left turn phasing.
3. **Recommendation:** It was unanimously recommended to coordinate with LA County to request if this project could be added as part of LA County's Traffic Signal Synchronization Project (TSSP) and Bus Signal Priority (BSP) Project awarded to the County of Los Angeles Department of Public Works from the 2011 Metro Call for Projects grant. If it cannot be added to that the project, then the City may consider this project as part of a future West Covina CIP project or part of a future grant project when funds become available. LA County will be providing their recommendations to the City of West Covina for all intersections along the Badillo Corridor that can be included as part of the Traffic Signal Synchronization Project (TSSP) and Bus Signal Priority (BSP) Project awarded County of Los Angeles Department of Public Works from the 2011 Metro Call for Projects grant.

4. **Audience Comments on Items Not on Agenda:** None.
5. **Committee Member Comments on Items Not on Agenda:** None.
6. **Adjourn:** Meeting adjourned at 3:11 PM.



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: July 21, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT: CONSIDERATION OF MEMORANDUM OF UNDERSTANDING BETWEEN THE CITIES OF WEST COVINA AND WALNUT FOR THE INSTALLATION OF A TRAFFIC SIGNAL AT LA PUENTE ROAD AND FORECASTLE AVENUE

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to negotiate and execute a Memorandum of Understanding (MOU) with the City of Walnut for the installation of a Traffic Signal at La Puente Road and Forecastle Avenue (Attachment No. 1) and authorize the City Manager to execute amendments to the MOU with a 15% contingency, if necessary.

BACKGROUND:

At the February 12, 2019 West Covina Traffic Committee Meeting, the Traffic Committee reviewed a request from the City of Walnut for the installation of a traffic signal at the intersection of La Puente Road and Forecastle Avenue. This intersection is shared between the Cities of Walnut and West Covina. At that meeting, the Traffic Committee approved the installation of a new traffic signal at La Puente Road and Forecastle Avenue.

The West Covina City Council requested that staff conduct community outreach regarding the proposed project. Due to COVID-19, and State, County, and CDC guidelines for social distancing, the City conducted the community outreach in a virtual format. The City hosted a Virtual Community Meeting about this project from Friday, May 15, 2020 through Friday, May 29, 2020. This included set up of an interactive dedicated webpage, video presentation, and an online survey. The goal and purpose of the Virtual Community Meeting was to present the proposed traffic signal installation project at the intersection of La Puente Road and Forecastle Avenue and collect feedback from residents via an online survey.

DISCUSSION:

The Virtual Community Meeting was open for access and was live from Friday, May 15, 2020 through Friday, May 29, 2020 on both the City's website and a dedicated domain link. Flyer notices were mailed out to 449 addresses in the City of West Covina near the intersection. The Virtual Community Meeting was divided into two parts. Part 1 was a video presentation with an introduction about the proposed traffic signal installation project and background and history. The presentation that was provided to participants of the Virtual Community Meeting is included as Attachment No. 2 - PowerPoint Presentation.

Part 2 was an accompanying online survey for participants to fill out after watching the video presentation. Both parts were available for participants to access 24 hours a day for two weeks from Friday, May 15, 2020 through

Friday, May 29, 2020. At the end of the Virtual Community Meeting, in total there were 25 participants who watched the presentation and filled out the online survey. Based on the survey results, 88% of participants stated they supported the installation of a traffic signal at La Puente Road and Forecastle Avenue while 12% did not support it. A full breakdown of the Virtual Community Meeting and the survey results, including screen shots of the virtual meeting, is included as Attachment No. 3 - Virtual Community Meeting Presentation Overview and Survey Results.

This project is being led and managed by the City of Walnut. The City of West Covina will be responsible to pay for 50% of the cost for the installation of the traffic signal at La Puente Road and Forecastle Avenue.

The City of Walnut reviewed this item at their August 28, 2019 City Council Meeting (Attachment No. 4). Per the staff report, the City of Walnut's Traffic Safety Committee (TSC) considered a request from Walnut residents for the installation of a traffic signal at the intersection of La Puente Road and Forecastle Avenue. Walnut City staff performed a Traffic Signal Warrant Analysis for the intersection and determined that it met three of the nine warrant categories. Per the City of Walnut's staff report, the warrant categories met at this intersection are as follows: Warrant 1 - Eight Hour Vehicular Volume; Warrant 2 - Four Hour Vehicular Volume; and Warrant 6 – Coordinated Signal System. Based on the Traffic Signal Warrant Analysis, the TSC recommended that staff reach out to the City of West Covina to request their participation in this project.

Since the Walnut City Council approved the project, Walnut and West Covina have worked to negotiate and finalize the terms of the MOU. As outlined in the MOU, the City of Walnut will be responsible for the preparation of the plans, specifications, and construction management of the proposed traffic signal improvements. West Covina and Walnut will each contribute equally to the design and construction costs. Once completed, the new traffic signal will be added to the City of Walnut's contract with Los Angeles County for the ongoing maintenance of the traffic signal and the costs will be borne completely by Walnut.

The City's estimated contribution for the project is \$200,000. Staff is requesting that the City Council authorize the City Manager to execute the MOU with a 15% contingency, if necessary.

LEGAL REVIEW:

The City Attorney's Office has reviewed and approved the MOU as to form.

OPTIONS:

The City Council has the following options:

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

Prepared by: Jana Robbins, Project Manager

Fiscal Impact

FISCAL IMPACT:

Per the MOU, the total cost of the design and construction of the Traffic Signal Improvements is estimated at \$400,000. The total project cost will be shared by each city at 50% for the Cities of West Covina and Walnut. The total cost for the City of West Covina is estimated to be \$200,000. The final amount of the project will be based on the lowest responsible bid received for the construction of the traffic signal. Therefore, it is recommended that the City Manager be authorized to execute amendments to the MOU with a 15% contingency, if necessary.

Attachments

Attachment No. 1 - MOU between the Cities of West Covina and Walnut

Attachment No. 2 - PowerPoint Presentation of the Virtual Community Meeting

Attachment No. 3 - Virtual Community Meeting Presentation Overview and Survey Results

CITY COUNCIL GOALS & OBJECTIVES: Enhance Public Safety
Enhance City Programs and Activities

MEMORANDUM OF UNDERSTANDING

BETWEEN THE CITY OF WEST COVINA AND THE CITY OF WALNUT FOR THE CONSTRUCTION OF TRAFFIC SIGNAL IMPROVEMENT FACILITIES AT LA PUENTE ROAD AND FORECASTLE AVENUE

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into this _____ of _____, 2020, between the CITY OF WEST COVINA, a Municipal Corporation in the State of California, hereinafter called “West Covina” and the CITY OF WALNUT, a Municipal Corporation in the State of California, hereinafter called “Walnut.” West Covina and Walnut are sometimes referred to herein as “Party” and collectively as the “Parties” or “Cities.”

RECITALS

1. Both West Covina and Walnut desire to have constructed certain traffic signal improvement facilities at the intersection of La Puente Road and Forecastle Avenue at or near the border shared by both Cities.
2. The design of the traffic signal improvements, as shown on Exhibit “A” attached hereto, and incorporated herein by this reference, are acceptable to both Cities (“Traffic Signal Improvements”).
3. The Parties desire that Walnut, and not West Covina, shall have the responsibility and express authority/permission to construct or cause to be constructed all of the Traffic Signal Improvements.
4. The Parties desire to each equally contribute financially to the construction of the Traffic Signal Improvements, including the actual costs of the traffic signal design, traffic signal construction and the cost to administer the construction contract, as set forth in this MOU.
5. The Parties desire that the ongoing maintenance responsibilities and costs related to the Traffic Signal Improvements shall be the responsibility of Walnut, as set forth in this MOU.

AGREEMENT

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

1. **CONSTRUCTION OF TRAFFIC SIGNAL IMPROVEMENTS.** Walnut shall prepare and circulate the specifications and Notice Inviting Bids for the Traffic Signal Improvements, select a contractor in consultation with West Covina and construct and install and/or cause to be constructed and installed all Traffic Signal Improvements. West Covina hereby agrees to cooperate with Walnut, as may be necessary, and respond to reasonable inquiries and requests from Walnut

throughout the construction phase of this MOU, including consultation regarding the specifications, contract award and granting of encroachment permits, if any, required for the construction of the Traffic Signal Improvements. Walnut agrees to install the Traffic Signal Improvements as they are shown in Exhibit A. In the event modifications to the design become necessary due to changed conditions or later discovered conditions, Walnut shall so advise West Covina and obtain written approval of any increased costs prior to Walnut's approval and implementation of the design modifications.

2. **COST ALLOCATION OF CONSTRUCTION SERVICES.** All costs associated with the design and the construction of the Traffic Signal Improvements, including actual costs of construction and all costs incurred by Walnut to let and administer any construction contract, shall be allocated between West Covina and Walnut as follows:

Agency	Cost of Construction (%)
West Covina	50%
Walnut	50%

3. **PAYMENT OF CONSTRUCTION COSTS.**

- A. The total cost of the design and construction of the Traffic Signal Improvements is estimated at \$400,000. Walnut shall advise West Covina and obtain West Covina's written approval for any increase in construction costs over the Contract Amount, which approval shall not be unreasonably withheld. Change orders to the construction contract for unanticipated construction costs over the Contract Amount shall not be rejected by West Covina and shall be shared equally by the Parties. Notwithstanding the foregoing, cost increases that are directly caused by one Party shall be the responsibility of that Party. Change orders that increase the Contract Amount and the financial contribution by the Parties shall be memorialized by a written amendment to this MOU. As used in this paragraph, "Contract Amount" refers to the amount of the lowest responsible bid for the construction contract for the Traffic Signal Improvements.
- B. Walnut agrees to provide to West Covina for West Covina's review all requests for progress payments for the Traffic Signal Improvements. West Covina shall approve or disapprove said requests within five (5) business days of receipt of same. If West Covina does not approve or disapprove a payment request within such 5-day period, the progress payment shall be deemed approved. If West Covina disapproves a progress payment request, West Covina shall provide information and/or documents detailing such disapproval.
- C. Walnut will submit to West Covina invoices for construction and construction administration costs for which West Covina has approved a progress payment request, in triplicate (and with supporting documentation satisfactory to West Covina), that are itemized and specify (i) the particular construction service rendered; (ii) the total cost thereof; and (iii) that dollar amount which represents fifty percent (50%) of the total

cost to reflect the total amount to be contributed by West Covina for the construction of the Traffic Signal Improvements.

- D. Provided that Walnut has obtained West Covina's approval for a progress payment request as set forth herein, West Covina agrees to submit payment to Walnut for the full amount showing due on any and all invoices submitted by Walnut pursuant to this MOU thirty (30) days following West Covina's receipt of an invoice.
- E. In the event that West Covina disputes the amounts stated on any itemized invoice, West Covina shall submit a written notice of such dispute within seven (7) days of West Covina's receipt of an invoice and the basis for the dispute. The Parties shall endeavor to resolve any such disputes within a reasonable time after Walnut's receipt of a notice of dispute and payment. Upon resolution of the dispute, West Covina agrees to promptly remit any amount agreed to be due to Walnut.

4. **MAINTENANCE.** Walnut shall perform and pay the cost of all operation and maintenance services, as necessary, for the proper operation, maintenance and repair of the Traffic Signal Improvements.

5. **INDEMNITY.** West Covina and Walnut both mutually agree to indemnify, defend and hold harmless each other and their respective officers, agents, volunteers, servants and employees from any and all claims, demands, liabilities, debts, damages, suits, losses, actions and causes of action, of whatever kind, nature or sort, including, but not by way of limitation, wrongful death, personal injury or damage to property, the expenses of the defense of said parties and the payment of attorneys' fees in any such claim or action, occurring or resulting, in any way, from the actual or alleged negligent acts or omissions or willful misconduct of either Party arising out of the performance of services by either Party, or their officers, agents, volunteers, servants and employees, in connection with the performance of this MOU.

Walnut shall require consultants and contractors hired in connection with the Traffic Signal Improvements to indemnify, defend, and hold harmless West Covina to the same extent as they are required to indemnify, defend, and hold harmless Walnut. Walnut shall further require that consultants and contractors maintain sufficient insurance coverage for the services provided and that they name Walnut and West Covina as additionally insured parties for the Traffic Signal Improvements.

6. **TERM.** This MOU shall be deemed to have become effective upon execution by the Parties and shall continue for a period of two (2) years. This MOU may be extended upon mutual written agreement of the Parties.

7. **ENFORCEMENT AND COSTS.** In the event that either Party institutes any action to enforce the terms of this MOU, the prevailing party shall be entitled to costs and reasonable attorneys' fees from the other party.

8. **NOTICE.** Any notice required or permitted to be sent to each Party shall be sent by regular mail, addressed as follows:

City of West Covina
1444 West Garvey Avenue South
West Covina, CA 91790
ATTN: City Manager

City of Walnut
21201 La Puente Road
Walnut, CA 91789
ATTN: City Manager

9. **GOVERNING LAW/VENUE.** This MOU shall be governed by the laws of the State of California. Any action or proceeding between the parties concerning the interpretation MOU shall be instituted and prosecuted in the Los Angeles County Superior Court, Pomona Courthouse.

10. **AUTHORITY TO ENTER INTO AGREEMENT/AMENDMENTS.** Each Party warrants that the individuals who have signed this MOU have the legal power, right, and authority enter into this MOU and to bind each respective Party. The City Managers of the Cities are authorized to enter into an amendment(s) or otherwise take action on behalf of the respective Party to implement this MOU. Only a writing executed by the City Manager of each of the Parties hereto or their respective successors and assigns may amend this MOU.

11. **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 MOU 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.

12. **SEVERABILITY.** If any provision of this MOU 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 MOU, 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.

13. **COUNTERPARTS.** This MOU 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.

[SIGNATURES ON FOLLOWING PAGE]

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

CITY OF WEST COVINA, a Municipal Corporation

Date_____

By_____
David Carmany, City Manager

APPROVED AS TO FORM:

ATTEST:

Thomas P. Duarte, City Attorney

Lisa Sherrick, Assistant City Clerk

CITY OF WALNUT, a Municipal Corporation

Date_____

By_____
Robert Wishner, City Manager

APPROVED AS TO FORM:

ATTEST:

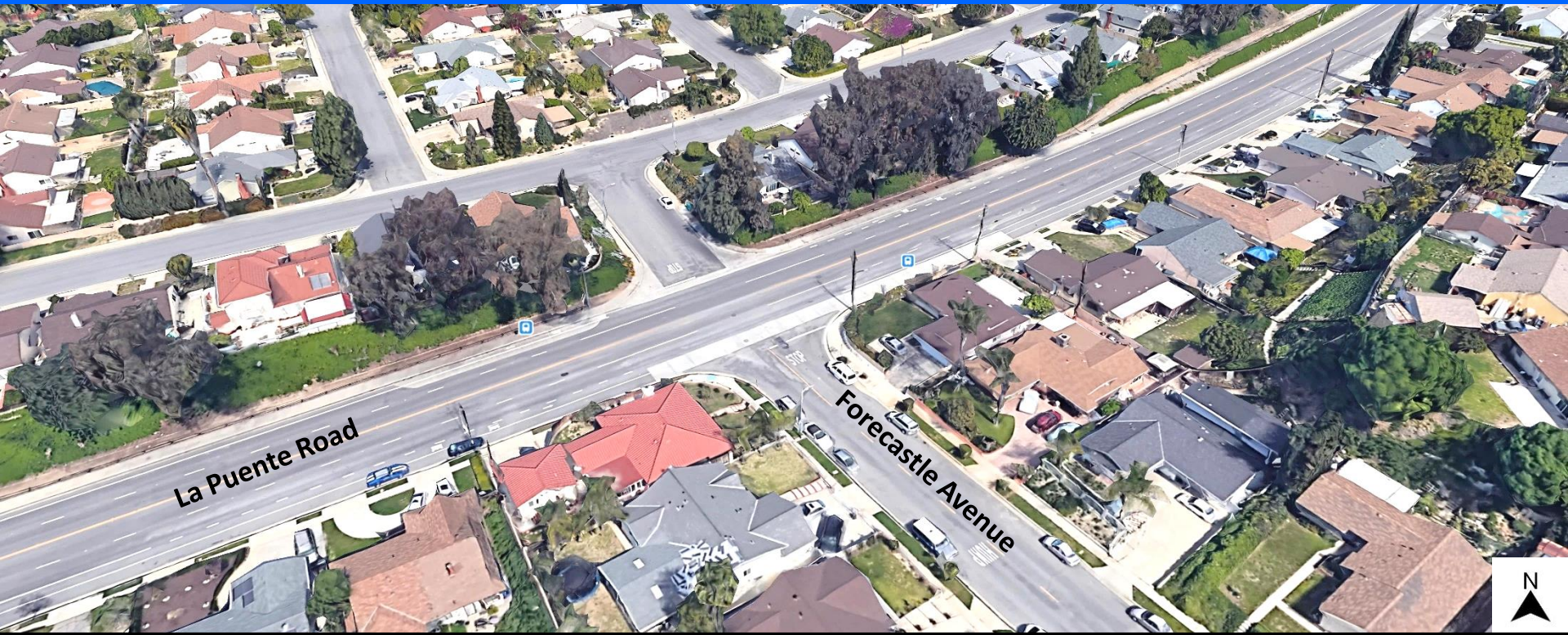
Barbara Leibold, City Attorney

Teresa De Dios, City Clerk



Welcome to the City of West Covina's Virtual Community Meeting Presentation

For the Proposed Traffic Signal at the Intersection of La Puente Road & Forecastle Avenue

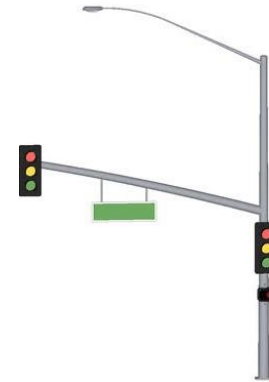


Welcome!

We thank you for participating in the City of West Covina's efforts to conduct this Virtual Community Presentation.

Due to COVID-19, County, and CDC guidelines for social distancing, the City is conducting this Community Meeting in a virtual format.

The purpose of this meeting is to provide the community with information for the proposed Traffic Signal Installation at the Intersection of La Puente Rd & Forecastle Ave.



If you have additional questions, or comments please email us directly at: traffic@transtech.org. Please include your name, contact information (email and phone) and home address.

Please note that all contact information will be kept confidential and not made public.



Meeting Agenda

The Virtual Community Meeting will be available to access between
Friday, May 15, 2020 through Friday, May 29, 2020

The purpose of today's presentation is to:

1. Discuss the proposed Traffic Signal installation project at the intersection of La Puente Road and Forecastle Avenue.
2. Collect feedback from residents via an online survey.

Virtual Community Meeting Instructions:

1. The Virtual Community Meeting will be divided into 2 parts.
2. **Part 1** is this presentation which will be available online between **Friday, May 15th through Friday, May 29th**. To view the Virtual Community Meeting please visit the Virtual Community Meeting Website at the following link: onlinecityservices.com/la-puente-forecastle
3. **Part 2** is the accompanying survey that you are requested to fill out at the end of this presentation. Any questions and all survey submissions must be submitted by **Friday, May 29, 2020**. To access the survey please visit the Virtual Community Meeting Website and scroll down to **Step 3**.
4. All resident comments, questions and results from the survey will be compiled and presented to City Council at a future date.

If you have additional questions, or comments please email us directly at: traffic@transtech.org.

Please include your name, contact information (email and phone) and home address.

Please note that all contact information will be kept confidential and not made public.



Important Links, Dates, & Contact Info



Virtual Community Meeting Website: onlinecityservices.com/la-puente-forecastle



Virtual Community Meeting Video Presentation and Survey will be available to access between Friday, May 15, 2020 through Friday, May 29, 2020.



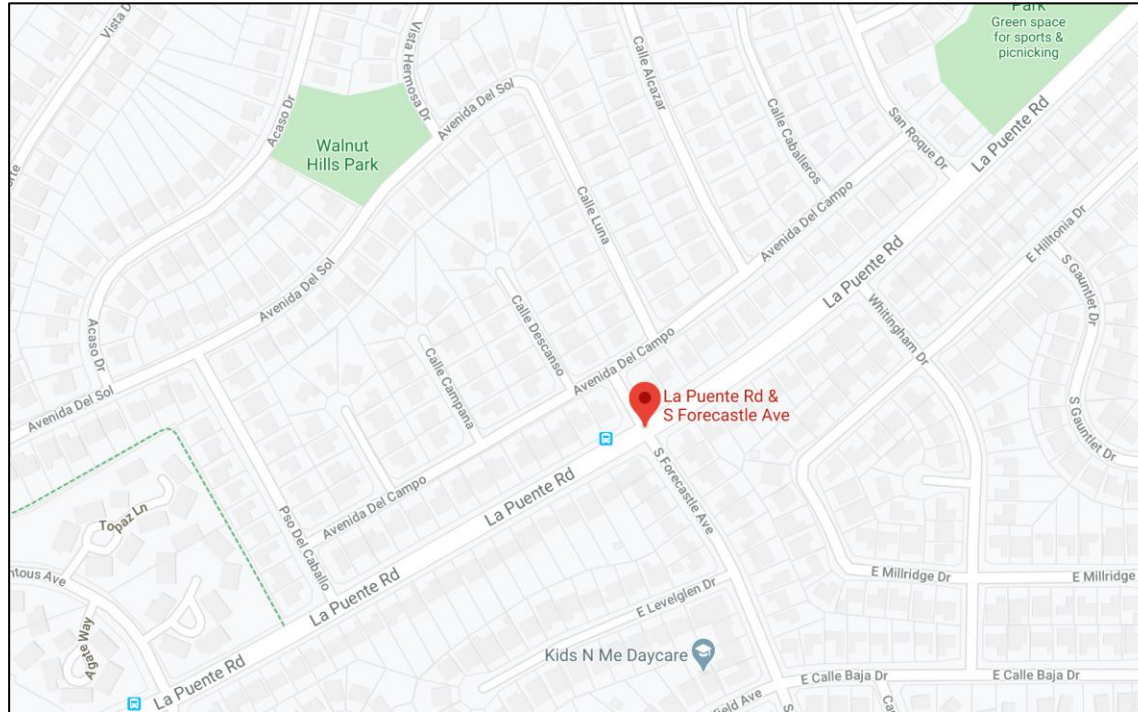
The link to the Online Survey to fill out after watching this presentation (please scroll down to Step 3 on the website): onlinecityservices.com/la-puente-forecastle. All survey submissions or additional questions must be received by Friday, May 29, 2020. All submittals after this date will not be included in the summary to City Council.



If you have additional questions, or comments please email us directly at: traffic@transtech.org. Please include your name, contact information (email and phone) and home address.

Please note that all contact information will be kept confidential and not made public.

Introduction & Project Background



- ✓ This project was initiated by the City of Walnut for the installation of a Traffic Signal at the intersection of La Puente Road and Forecastle Avenue.
- ✓ The intersection is shared between the Cities of Walnut and West Covina.
- ✓ On February 12, 2019, the West Covina Traffic Committee reviewed the request from the City of Walnut for the installation of the Traffic Signal and made a motion to recommend approval of an MOU between the Cities of Walnut and West Covina for a new Traffic Signal at La Puente Road and Forecastle Avenue.

About the Intersection



- ✓ La Puente Road has a posted speed limit of 45mph while Forecastle Avenue is considered a local residential street with a prima facie speed limit of 25 MPH
- ✓ Currently the intersection is stop controlled on Forecastle Avenue for vehicles entering La Puente Road
- ✓ There is a bus stop on each corner – the speed of traffic and horizontal line of sight make it difficult for vehicles to cross La Puente Road.

Intersection Photos



Traffic Engineering Study Results

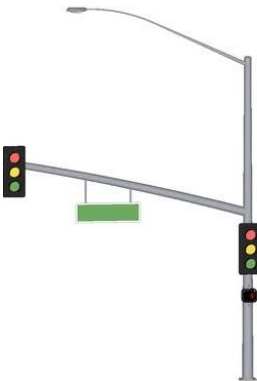
As part of the overall analysis conducted at this intersection by the City of Walnut it was determined that the intersection met traffic engineering standards for Traffic Signal installation.



- ✓ The installation of all traffic control devices on public streets is guided by the California Manual on Uniform Traffic Control Devices (CAMUTCD), the California Vehicle Code (CVC), and engineering judgement. Installation of traffic signals would fall under these guidelines per CAMUTCD Chapter 4C – Traffic Control Signal Needs Studies in Part 4 – Highway Traffic Signals.
- ✓ Based on the analysis conducted, it was found that the intersection meets the following CAMUTCD Warrants:
 - **Warrant 1:** Eight Hour Vehicular Count - Section B
 - **Warrant 2:** Four Hour Vehicular Volume
 - **Warrant 6:** Coordinated Signal System
- ✓ Installation of a Traffic Signal would provide a safer option by addressing broadside collisions and stopping the heavier flow of traffic on La Puente Road for side street traffic to enter.



Traffic Signals



Currently, the intersection of La Puente Road and Forecastle Avenue does not have a traffic signal. La Puente Road has a posted speed limit of 45 mph. Currently, drivers must judge fast moving traffic and cross over 4 lanes of traffic to cross or merge onto La Puente Road.

- ✓ A traffic signal would aid in moving traffic in an orderly fashion.
- ✓ It would minimize the overall delay to side street vehicles. Currently at the intersection, during peak hours vehicles must wait for an acceptable gap in traffic from both directions in order to merge onto La Puente Road.
- ✓ Traffic signals have shown to reduce crash-producing conflicts. A signal would make the cross street of Forecastle Avenue more visible to approaching vehicles.
- ✓ Traffic signals have also been shown to reduce the frequency of certain types of crashes (e.g. right-angle crashes). Between 2015 to 2019 there were a total of 12 accidents reported within the intersection.

Now it's time to take the Survey!

Below is a link to the Online Survey to fill out after watching this presentation: onlinecityservices.com/la-puente-forecastle. Once there please scroll down to Step 3 and follow the directions.

All survey submissions or additional questions must be received by **Friday, May 29, 2020.**

Step 3: Community Meeting Survey



Online Survey

Once you have completed Step 2, please click the below button to complete the Community Meeting Survey. All surveys must be submitted no later than **Friday, May 29, 2020**. If you are unable to take the survey online and prefer to fill it out over the phone with someone, please contact traffic@transtech.org

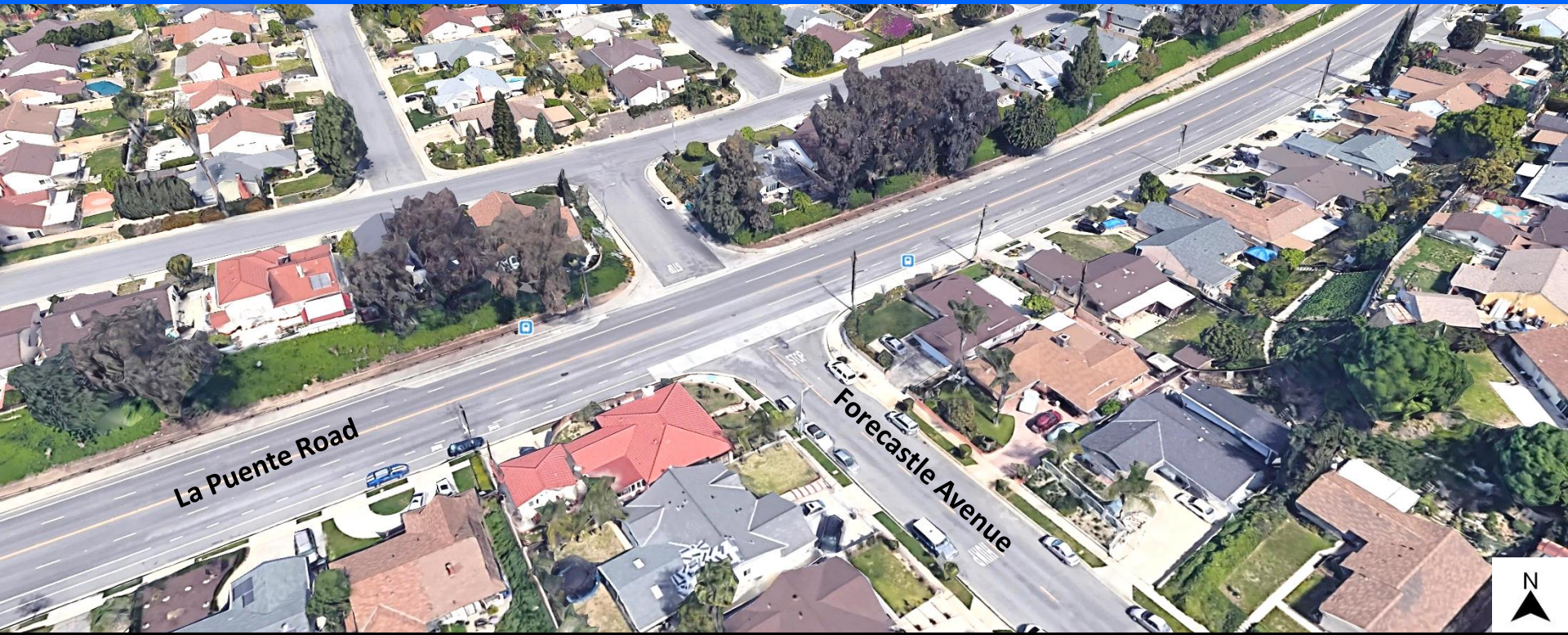
[Click Here to Take the Online Survey](#)



If you are unable to take the survey online and prefer to fill it out over the phone with someone, please contact traffic@transtech.org. Please note that all contact information will be kept confidential and not made public.



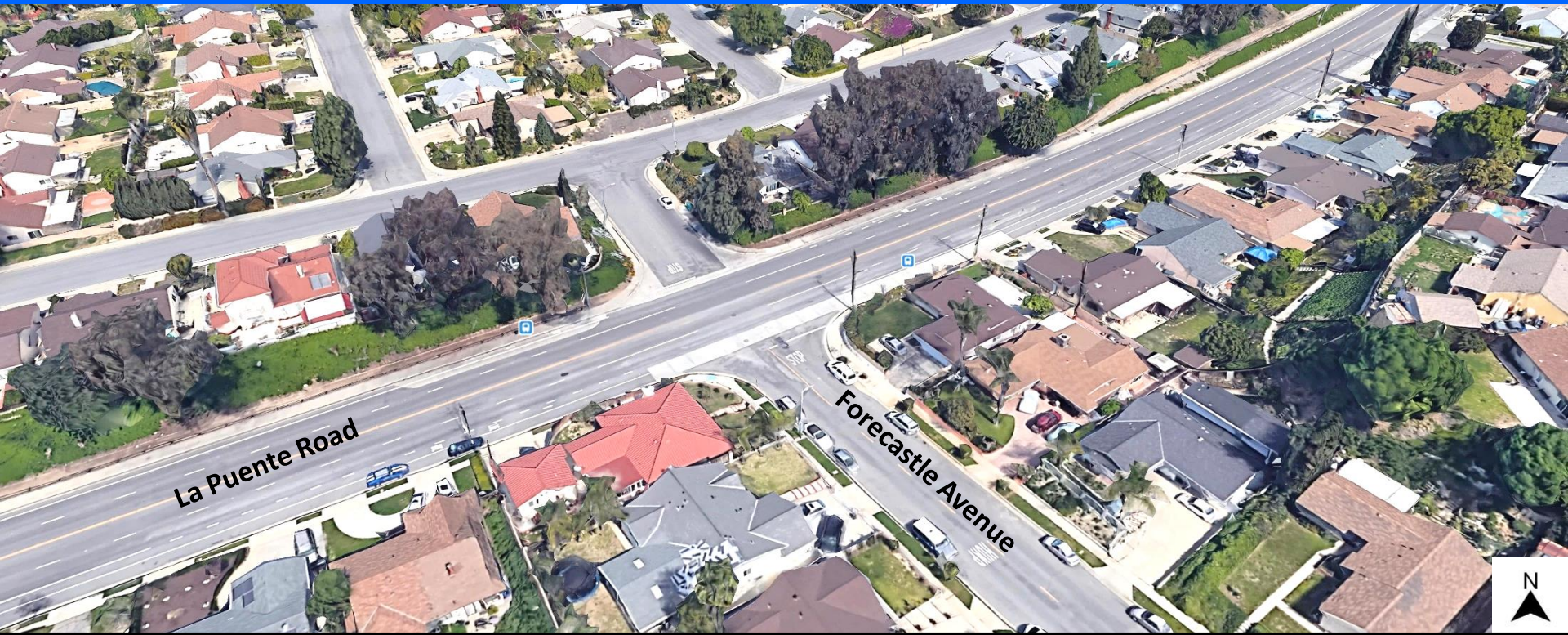
THANK YOU!





Virtual Community Meeting Presentation Overview and Survey Results

For the Proposed Traffic Signal at the Intersection of La Puente Road & Forecastle Avenue



Flyer and GIS Addresses Mailed

FLYER MAILED

449 addresses were mailed this flyer.



The City of West Covina wants to hear from you!

The City is hosting a **Virtual Community Meeting** for the proposed Traffic Signal at the intersection of La Puente Rd & Forecastle Ave

Due to COVID-19, County, and CDC guidelines for social distancing, the City is conducting this Community Meeting in a virtual format.

Please Visit the Website link below and follow the instructions on the site to **ENTER the Community Meeting Website! The Community Meeting will be available to access between **Friday, May 15th through Friday, May 29th.****

onlinecityservices.com/la-puente-forecastle



The purpose of the Virtual Community Meeting is to:

1. Discuss the proposed Traffic Signal installation project at the intersection of La Puente Rd & Forecastle Ave
2. Collect feedback from residents via an online survey.

Virtual Community Meeting Instructions:

1. The Virtual Community Meeting will be divided into 2 parts.
2. Part 1 is this presentation which will be available online between Friday, May 15th through Friday, May 29th. To view at the Virtual Community Meeting please visit the Virtual Community Meeting Website at the following link: onlinecityservices.com/la-puente-forecastle
3. Part 2 is the accompanying survey that you are requested to fill out at the end of this presentation. Any questions and all survey submissions must be submitted by Friday, May 29, 2020. To access the survey please visit the Virtual Community Meeting Website and scroll down to Step 3.
4. All resident comments, questions and results from each survey along with will be compiled and presented to City Council at a future date.

If you have additional questions, or comments please email us directly at: traffic@transtech.org. Please include your name, contact information (email and phone) and home address.

All information will be kept confidential and not shared with the public.

GIS MAP OF ADDRESSES WHO WERE MAILED A FLYER AND NOTIFIED OF THE COMMUNITY MEETING





Welcome to West Covina's Virtual Community Meeting

Thank you for participating in the City of West Covina's efforts to conduct a Virtual Community Meeting for:

The Intersection of La Puente Road and Forecastle Avenue.

Your input is important to the City!

[Click Here to Begin the Virtual Community Meeting](#)

Community Meeting

Step 1: Introduction

To read about the purpose and goal of this Community Meeting please click the button below.

[Click Here for Introduction & Background](#)

Step 3: Community Meeting Survey

Once you have completed Step 2, please scroll down to complete the Community Meeting Survey. All surveys must be submitted no later than **Friday, May 29, 2020.**

Step 2: Community Meeting Video Presentation

Once you have read the introduction in Step 1, please scroll down to watch the Community Meeting Video Presentation.

Questions? Please Contact Us.

If you need help, have any questions, or comments please email us directly at: traffic@transtech.org.



Step 1: Introduction

Community Meeting Information

We thank you for participating in the City of West Covina's efforts to conduct this Virtual Community Meeting. Your input is important to the City. Due to COVID-19, County, and CDC guidelines for social distancing, the City is conducting this Community Meeting in a virtual format.

This Virtual Community Meeting will be open for participation between
Friday, May 15, 2020 through Friday, May 29 2020.

The purpose of the Virtual Community Meeting is to:

1. Discuss the proposed Traffic Signal installation project at the intersection of La Puente Road and Forecastle Avenue
2. Collect feedback from residents via an online survey.

Virtual Community Meeting Instructions:

1. The Virtual Community Meeting will be divided into 2 parts.
2. **Part 1** is this presentation which will be available online between Friday, May 15, 2020 through Friday, May 29, 2020.
3. **Part 2** is the accompanying survey that you are requested to fill out at the end of this presentation. Any questions and all survey submissions must be submitted by Friday, May 29, 2020. To access the survey please scroll down to Step 3.
4. All resident comments, questions, and results from each survey will be compiled and presented to City Council at a future date.

If you have additional questions, or comments please email us directly at traffic@transtech.org. Please include your name, contact information (email and phone) and home address. Please note that all contact information will be kept confidential and not made public.

Please scroll down for Step 2.



Step 2: Community Meeting Presentation



Community Meeting Video Presentation

Once you have read the introduction in Step 1, please press play on the video to view and watch the Community Meeting Video Presentation.

Please make sure your volume and speakers are on!

After you have watched the video please scroll down to Step 3 to take the Online Survey.

Download a PDF Copy of the Presentation

In addition to the video presentation, you may also click on the button below to download a PDF copy of the presentation as a stand alone document you can save or print with no voice or sound.

[Click Here to Download a PDF Copy of the Presentation](#)

Step 3: Community Meeting Survey



Online Survey

Once you have completed Step 2, please click the below button to complete the Community Meeting Survey. All surveys must be submitted no later than **Friday, May 29, 2020**. If you are unable to take the survey online and prefer to fill it out over the phone with someone, please contact traffic@transtech.org

[Click Here to Take the Online Survey](#)

Contact Us

This Community Meeting is Presented by Transtech Engineers, Inc.

Email us at traffic@transtech.org

CITY OF WEST COVINA



Community Meeting Online Survey

For the Intersection of La Puente Road and Forecastle Avenue

Thank you for participating in the City of West Covina's efforts to conduct a Virtual Community Meeting. The purpose of the meeting is to provide information on the proposed Traffic Signal installation at the intersection and to collect feedback from the community regarding the intersection of La Puente Road & Forecastle Avenue.

The below questions are based on the Video PowerPoint Presentation (link provided below).

If you have not watched and listened to the video presentation, please watch the presentation before continuing to the survey below.

Please Click the following Link to Watch the Presentation: onlinecityservices.com/la-puente-forecastle

If you have any questions or need to contact someone for help, please email traffic@transtech.org

Online Survey Images

* Required Information

1. Before we begin, please fill out your information so the City may contact you to answer any questions and comments you may have. Only one survey is allowed to be submitted per individual. Please note that all contact information entered will be kept confidential and not made public, this is only to confirm you are a West Covina resident and for contact purposes to ensure that a real person is taking this survey.

* First Name	<input type="text"/>
* Last Name	<input type="text"/>
* Address (525 Main St)	<input type="text"/>
* City	<input type="text"/>
* State	<input type="text" value="--Select--"/>
* ZIP Code	<input type="text"/>
* Best Telephone Number	<input type="text"/>
* Email Address	<input type="text"/>

* 2. Did you listen and watch the presentation prior to taking this survey? If you have not, please scroll up and click the link to watch and listen to the presentation before you continue with the survey. Only one survey is allowed per person.

- ☐ Yes, I watched and listened to the presentation.
- ☐ No, I did not watch and listen to the presentation.



Online Survey Images

* 3. What is your main mode of travel through the intersection of La Puente Road and Forecastle Avenue? Please pick one.

- ☐ I drive a motor vehicle (personal car)
- ☐ I am a pedestrian (walking)
- ☐ I am a bicyclist (biking)
- ☐ I am a transit bus rider
- ☐ Other (Please specify)

* 4. How often do you pass through the intersection of La Puente Road and Forecastle Avenue? Please pick one.

- ☐ I do not regularly pass through this intersection.
- ☐ 1-2 Times a Week
- ☐ 3-4 Times a Week
- ☐ 5-6 Times a Week
- ☐ Everyday

* 5. What is your reason for driving through the intersection of La Puente Road and Forecastle Avenue? Please check all that apply.

- ☐ I do not drive through this intersection
- ☐ Visiting family or friends who live off of the Forecastle Avenue neighborhoods
- ☐ I live in the neighborhood off of Forecastle Avenue and commute to/from work using La Puente Road to access Forecastle Avenue
- ☐ I only drive on La Puente Road through the intersection to/from other destinations
- ☐ Dropping off/Picking up students from nearby schools
- ☐ Shopping or running errands



Online Survey Images

- * 6. Please rank the order of your concerns from most important to least important for the intersection of La Puente Road & Forecastle Avenue. For example, if you rank "Too much traffic congestion" as 1 that would mean your number 1 concern is "Too much traffic congestion". Two items cannot have the same ranking.

I have difficulty finding gaps in traffic on La Puente Road to be able to exit the neighborhood from Forecastle Avenue

- Rank-

I have difficulty crossing La Puente Road as a pedestrian or bicyclist since La Puente Road is wide and traffic volumes and/or speeds are too high to safely cross

- Rank-

Vehicles are driving too fast on La Puente Road and I am unable to enter La Puente Road safely from the side street

- Rank-

I have difficulty turning left from La Puente Road to Forecastle Ave

- Rank-

Overall concerns for Pedestrian or Bicyclist Safety (ped or bike collisions at the intersection)

- Rank-

Overall concerns for Vehicular Safety (vehicle collisions at the intersection)

- Rank-

Too much traffic congestion, long delays to enter or cross La Puente Road from the side street

- Rank-

Not being able to see vehicles, pedestrians or bicyclists crossing in the intersection

- Rank-

- * 7. Do you support the installation of a Traffic Signal at La Puente Road and Forecastle Avenue?

- ☐ Yes, I support a Traffic Signal at La Puente Road and Forecastle Avenue.
- ☐ No, I do not support a Traffic Signal at La Puente Road and Forecastle Avenue.



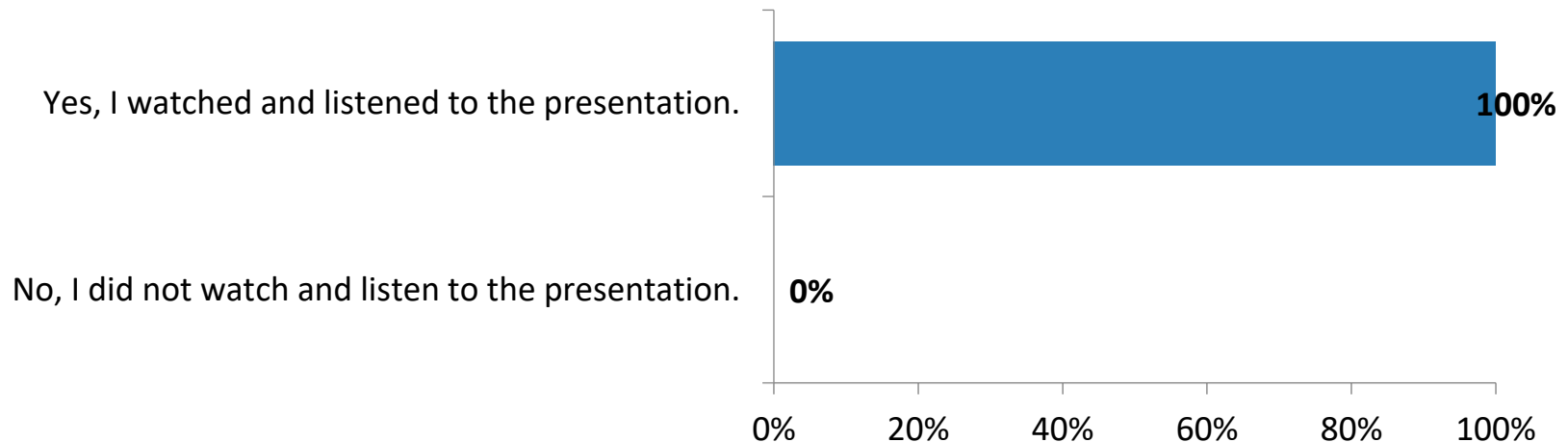
Online Survey Results

The 1st Survey was open between Friday, May 1, 2020 through Friday May 15, 2020, with the following participation:

- ✓ 449 addresses were notified of the meeting.
- ✓ 25 survey responses were submitted

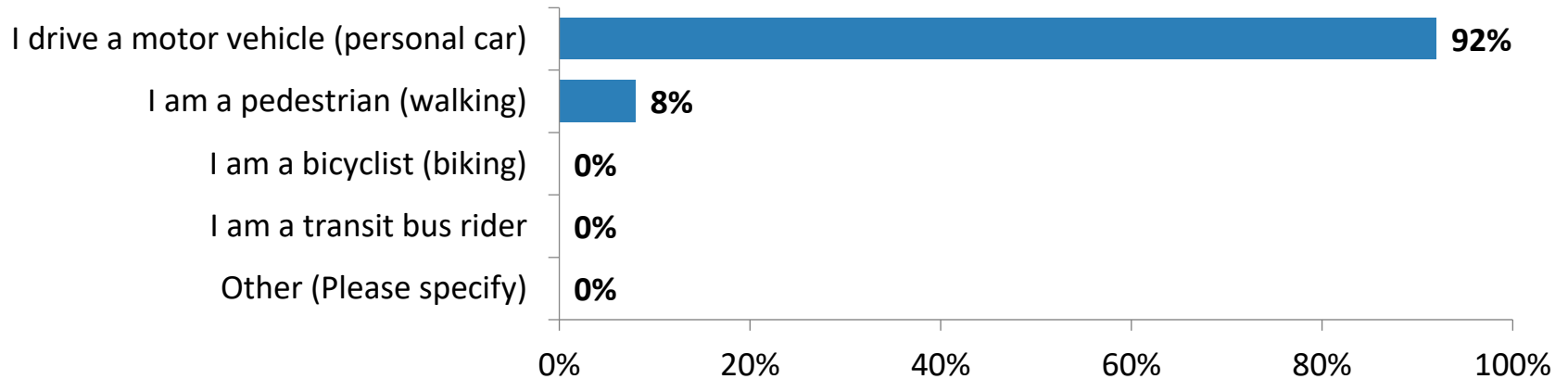
Question 1: Contact Information for each survey was filled out by the Participants.

Question 2: Did you listen and watch the presentation prior to taking this survey? If you have not, please scroll up and click the link to watch and listen to the presentation before you continue with the survey. Only one survey is allowed per person.

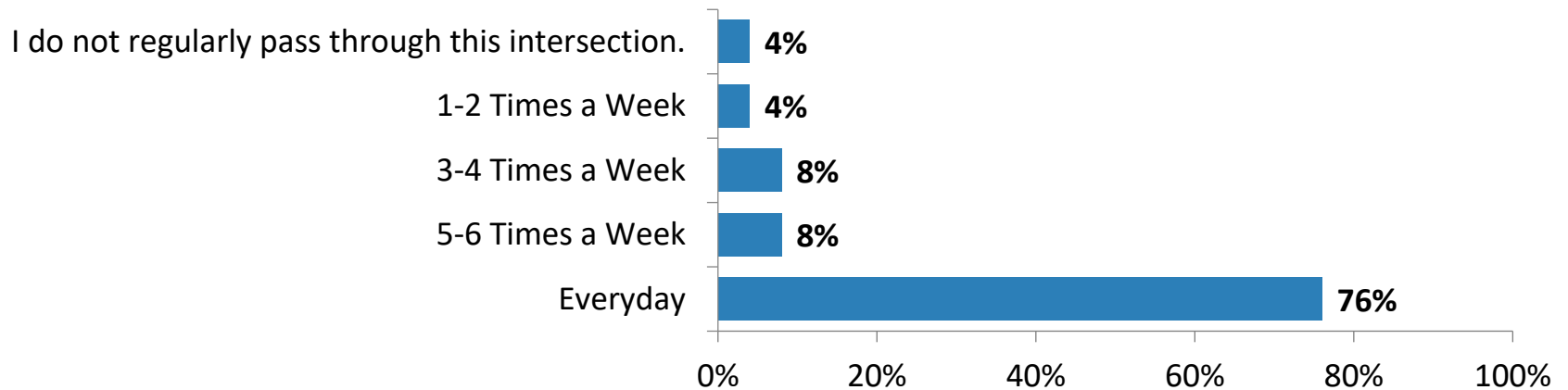


Online Survey Results

Question 3: What is your main mode of travel through the intersection of La Puente Road and Forecastle Avenue? Please pick one.

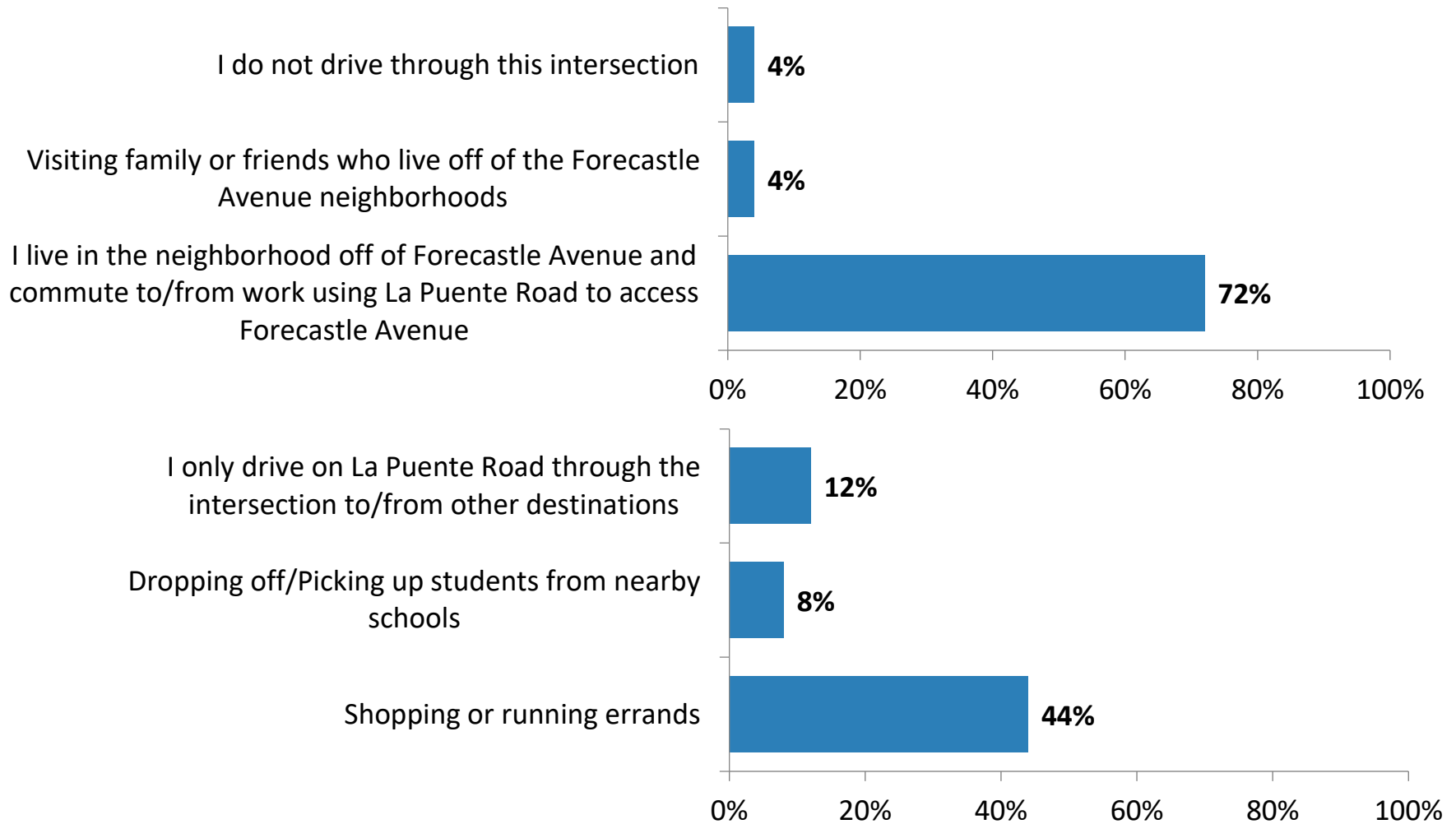


Question 4: How often do you pass through the intersection of La Puente Road and Forecastle Avenue? Please pick one.



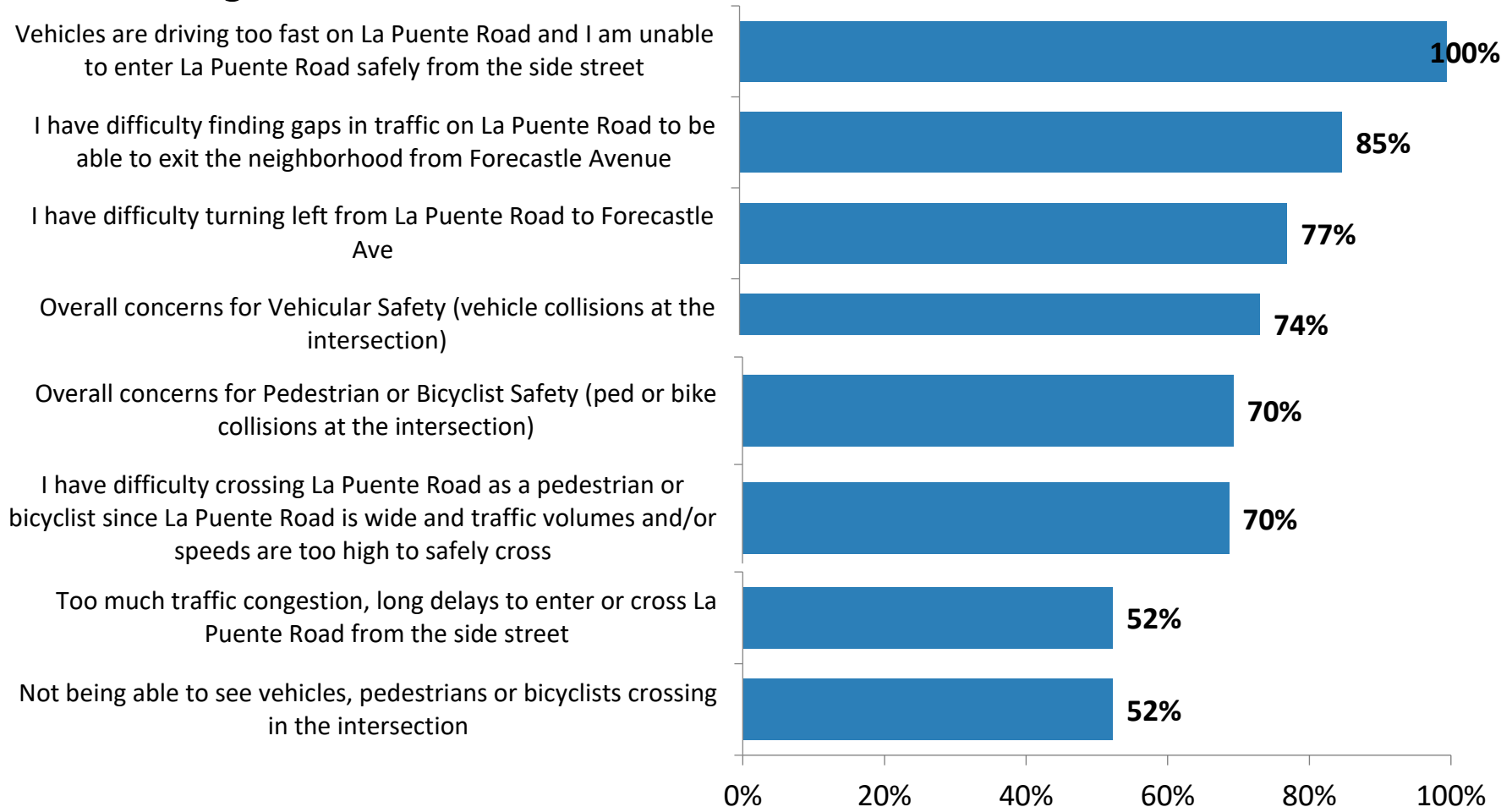
Online Survey Results

Question 5: What is your reason for driving through the intersection of La Puente Road and Forecastle Avenue? Please check all that apply.



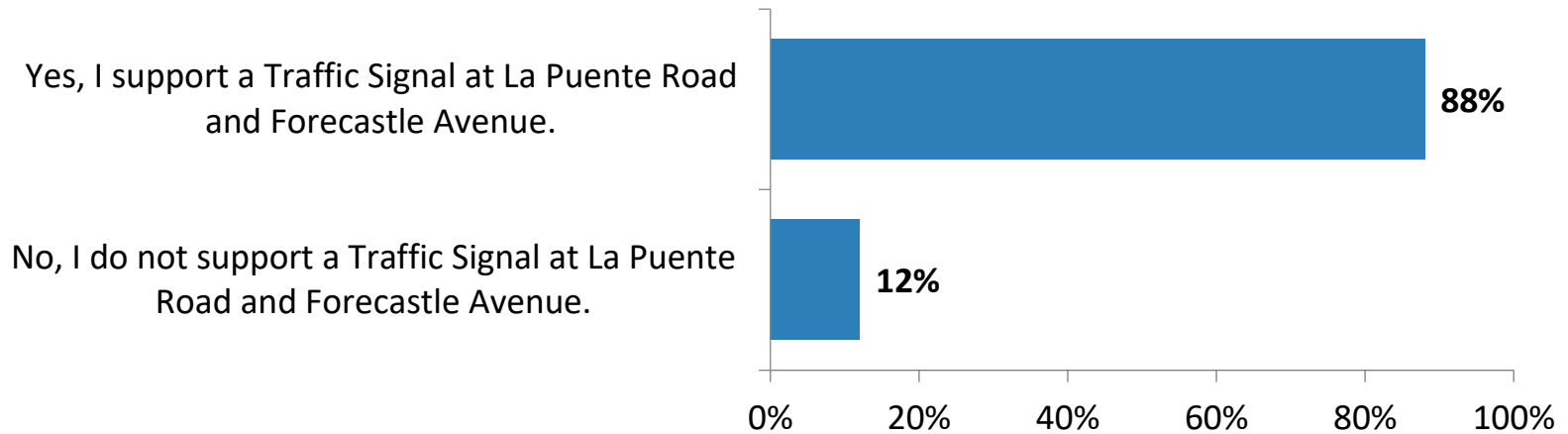
Online Survey Results

Question 6: Please rank the order of your concerns from most important to least important for the intersection of La Puente Road & Forecastle Avenue. For example, if you rank “Too much traffic congestion” as 1 that would mean your number 1 concern is “Too much traffic congestion”. Two items cannot have the same ranking.



Online Survey Results

Question 7: Do you support the installation of a Traffic Signal at La Puente Road and Forecastle Avenue?




AGENDA ITEM 5

- ☐ Public Hearing
☐ Ordinance
☒ Consent Calendar
☐ Discussion

WALNUT CITY COUNCIL
AGENDA DATE: AUGUST 28, 2019
TO: Mayor Rodriguez and Council Members

VIA: Rob Wishner, City Manager *Rob*
 Mary Rooney, ACM: Community Services/Public Works *MR* *MR*
FROM: David Gilbertson, City Engineer *DG* *AG*
SUBJECT: Approval of Memorandum of Understanding between the City of West Covina and the City of Walnut for the Construction of Traffic Signal Improvement Facilities at the Intersection of La Puente Road and Forecastle Avenue and Appropriate \$200,000 of Restricted Funds to the Project
RECOMMENDATION:

It is recommended that City Council:

1. Authorize the City Manager to execute the Memorandum of Understanding (MOU) between the City of West Covina and the City of Walnut for the Construction of Traffic Signal Improvement Facilities at the intersection of La Puente Road and Forecastle Avenue in substantially the form attached and in such final form as approved by the City Attorney;
2. Appropriate \$100,000 from Metro Measure M Funds (Fund 21) to the project; and
3. Appropriate \$100,000 from Traffic Congestion Relief Funds (Fund 31) to the project.

BACKGROUND:

The City of Walnut is mandated by the California Vehicle Code, Section 21400 to install traffic control devices, such as traffic control signals, in accordance to the adopted California Manual on Uniform Traffic Control Devices (CaMUTCD). CaMUTCD Section 4C, Traffic Control Signal Needs Study (*Traffic Signal Warrant Analysis*), stipulates guidelines which must be used in determining whether a traffic control signal is justified at a particular location. The CaMUTCD states that a traffic control signal should not be installed unless one or more of the categories of the warrant analysis are satisfied.

The Traffic Safety Committee (TSC) considered a request from Walnut residents for the installation of a traffic signal at the intersection of La Puente Road and Forecastle Avenue. Staff performed a Traffic Signal Warrant Analysis for the intersection and it met three of the nine warrant categories.

The intersection of La Puente Road and Forecastle Avenue is a shared jurisdiction intersection between the Cities of Walnut (50%) and West Covina (50%). Based on the Traffic Signal Warrant Analysis, the TSC recommended that staff reach out to the City of West Covina to request their participation in this project.

STAFF ANALYSIS:

La Puente Road between Nogales Street and Lemon Avenue is an east-west collector road with two lanes in each direction. The posted speed limit is 45 MPH. Forecastle Avenue is a north-south local residential street and has a *prima facie* speed limit of 25 MPH. Forecastle Avenue currently has stop controls at each entrance to La Puente Road.

The warrant categories met at this intersection are as follows: Warrant 1 – Eight Hour Vehicular Volume; Warrant 2 – Four Hour Vehicular Volume; and Warrant 6 – Coordinated Signal System.

The City of West Covina concurs with the findings of the Traffic Signal Warrant Analysis. Staff prepared a MOU outlining the responsibilities of each agency for the design and construction of the proposed traffic signal improvements, the contribution of costs for the improvements, and the on-going maintenance of the signal.

FISCAL IMPACT:

The total cost for the installation of the proposed traffic signal improvements is estimated to be \$400,000:

1) Plan Preparation, Construction Management, and Inspections	\$38,000
2) SCE Costs	\$10,000
3) Construction (including 10% contingency)	<u>\$352,000</u>
TOTAL:	\$400,000

The City of West Covina has agreed to fund 50% of the total cost of the project. Walnut will be responsible for the preparation of the plans, specifications, and construction management of the proposed traffic signal improvements. Once completed, the new traffic signal will be added to the City of Walnut's contract with Los Angeles County for the on-going maintenance of the traffic signal and the costs will be borne completely by Walnut (The other three shared signals on Nogales are maintained 100% by West Covina).

At award of bid, the City of Walnut will remit an invoice to the City of West Covina for their portion of the project. If required, an additional appropriation may be requested at that time should West Covina prefer to pay on a reimbursement basis.

RELATION TO MISSION STATEMENT:

We will enhance civic pride by promoting public safety.

Attachments: 1) Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING

BETWEEN THE CITY OF WEST COVINA AND THE CITY OF WALNUT FOR THE CONSTRUCTION OF TRAFFIC SIGNAL IMPROVEMENT FACILITIES AT LA PUENTE ROAD AND FORECASTLE AVENUE

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into this _____ of _____, 2019, between the CITY OF WEST COVINA, a Municipal Corporation in the State of California, hereinafter called "West Covina" and the CITY OF WALNUT, a Municipal Corporation in the State of California, hereinafter called "Walnut." West Covina and Walnut are sometimes referred to herein as "Party" and collectively as the "Parties" or "Cities."

RECITALS

1. Both West Covina and Walnut desire to have constructed certain traffic signal improvement facilities at the intersection of La Puente Road and Forecastle Avenue at or near the border shared by both Cities.
2. The design of the traffic signal improvements, as shown on Exhibit "A" attached hereto, and incorporated herein by this reference, are acceptable to both Cities ("Traffic Signal Improvements").
3. The Parties desire that Walnut, and not West Covina, shall have the responsibility and express authority/permission to construct or cause to be constructed all of the Traffic Signal Improvements.
4. The Parties desire to each equally contribute financially to the construction of the Traffic Signal Improvements, including the actual costs of the traffic signal design, traffic signal construction and the cost to administer the construction contract, as set forth in this MOU.
5. The Parties desire that the ongoing maintenance responsibilities and costs related to the Traffic Signal Improvements shall be the responsibility of the City of Walnut, as set forth in this MOU.

AGREEMENT

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

1. **CONSTRUCTION OF TRAFFIC SIGNAL IMPROVEMENTS.** Walnut shall prepare and circulate the specifications and Notice Inviting Bids for the Traffic Signal Improvements, select a contractor in consultation with West Covina and construct and install

and/or cause to be constructed and installed all Traffic Signal Improvements. West Covina, hereby, agrees to cooperate with Walnut, as may be necessary, and respond to reasonable inquiries and requests from Walnut throughout the construction phase of this MOU, including consultation regarding the specifications, contract award and granting of encroachment permits, if any, required for the construction of the Traffic Signal Improvements. Walnut agrees to install the Traffic Signal Improvements as they are shown in Exhibit A. In the event a modification to the design become necessary due to changed conditions or later discovered conditions, Walnut shall so advise West Covina prior to Walnut's approval of the design modification.

2. COST ALLOCATION OF CONSTRUCTION SERVICES. All costs associated with the design and the construction of the Traffic Signal Improvements, including actual costs of construction and all costs incurred by Walnut to let and administer any construction contract, shall be allocated between West Covina and Walnut as follows:

Agency	Cost of Construction (%)
West Covina	50%
Walnut	50%

3. PAYMENT OF CONSTRUCTION COSTS

- A. Within thirty (30) days of the date of this MOU, West Covina shall deposit with Walnut Two Hundred Thousand Dollars (\$200,000) which amount is equal to fifty percent (50%) of the estimated Traffic Signal Improvement construction costs, including plan preparation, construction management, and inspections, SCE utility costs, and construction (including 10% contingency).
- B. Walnut agrees to submit to West Covina invoices for construction and construction administration costs, in triplicate (and with supporting documentation), that are itemized and specify (i) the particular construction service rendered; (ii) the total cost thereof; and (iii) that dollar amount which represents fifty percent (50%) of the total cost to reflect the total amount to be contributed by West Covina to the construction of the Traffic Signal Improvements.
- C. In the event that West Covina's fifty percent (50%) share of the actual Traffic Signal Improvements construction costs are less than the Two Hundred Thousand Dollar (\$200,000) deposit, Walnut will refund the difference to West Covina within thirty (30) days of the completion of the Traffic Signal Improvements.
- D. In the event West Covina's fifty percent (50%) share of the actual Traffic Signal Improvements construction costs are greater than the Two Hundred Thousand Dollar (\$200,000) deposit, West Covina shall submit payment to Walnut for the full amount showing due on any and all invoices submitted by Walnut pursuant to this MOU, within thirty (30) days of submission.

E. In the event that West Covina disputes the amounts stated on any itemized invoice, West Covina shall submit a written notice of such dispute and the basis for the dispute. The Parties shall endeavor to resolve any such disputes within a reasonable time after Walnut's receipt of a notice of dispute and payment. Any adjustments in the invoice amount upon resolution of the dispute will be credited to future invoices, or returned if no invoices are forthcoming. If West Covina does not pay the full amount of the disputed invoice when submitting a written notice of dispute, then West Covina shall have waived its right to dispute the invoice.

4. **MAINTENANCE.** Walnut shall perform and pay the cost of all operation and maintenance services, as necessary, for the proper operation, maintenance and repair of the Traffic Signal Improvements.

5. **INDEMNITY.** West Covina and Walnut both mutually agree to indemnify, defend and hold harmless each other and their respective officers, agents, volunteers, servants and employees from any and all claims, demands, liabilities, debts, damages, suits, losses, actions and causes of action, of whatever kind, nature or sort, including, but not by way of limitation, wrongful death, personal injury or damage to property, the expenses of the defense of said parties and the payment of attorneys' fees in any such claim or action, occurring or resulting, in any way, from the actual or alleged negligent acts or omissions or willful misconduct of either party arising out of the performance of services by either party, or their officers, agents, volunteers, servants and employees, in connection with the performance of this MOU.

6. **TERM.** This MOU shall be deemed to have become effective on _____, 2019 and shall expire until cancelled.

7. **ENFORCEMENT AND COSTS.** In the event that either party institutes any action to enforce the terms of this MOU, the prevailing party shall be entitled to costs and reasonable attorney's fees from the other party.

8. **NOTICE.** Any notice required or permitted to be sent to each party shall be sent by regular mail, addressed as follows:

City of West Covina
1444 West Garvey Avenue South
West Covina, CA 91790
ATTN: City Manager

City of Walnut
21201 La Puente Road
Walnut, CA 91789
ATTN: City Manager

9. **GOVERNING LAW/VENUE.** This MOU shall be governed by the laws of the State of California. Any action or proceeding between the parties concerning the interpretation MOU

shall be instituted and prosecuted in the Los Angeles County Superior Court, Pomona Courthouse.

10. AMENDMENTS. Only a writing executed by the parties hereto or their respective successors and assigns may amend this MOU.

11. 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 MOU 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.

12. SEVERABILITY. If any provision of this MOU 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 MOU, 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.

13. COUNTERPARTS. This MOU 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.

[SIGNATURES ON FOLLOWING PAGE]

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

City of West Covina, a Municipal Corporation

Date _____

By _____
City Manager

Approved as to Form:

ATTEST:

Scott Porter, City Attorney

City Clerk

City of Walnut, a Municipal Corporation

Date _____

By _____
City Manager

Approved as to Form:

ATTEST:

Barbara Leibold, City Attorney

City Clerk



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: July 21, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT: CONSIDERATION OF RESOLUTION ADOPTING TERMS AND CONDITIONS OF EMPLOYMENT FOR EMPLOYEES IN THE WEST COVINA POLICE OFFICERS' ASSOCIATION (WCPOA)

RECOMMENDATION:

That the City Council adopt the following Resolution:

RESOLUTION NO. 2020-74 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA POLICE OFFICERS' ASSOCIATION (WCPOA)

BACKGROUND:

The West Covina Police Officers' Association (WCPOA) MOU is scheduled to expire on June 30, 2021. However, on January 30, 2020, the World Health Organization declared the novel coronavirus, COVID-19, outbreak a "public health emergency of international concern." On March 11, 2020, the World Health Organization elevated the public health emergency to the status of a pandemic. In California, Governor Gavin Newsom declared a State of Emergency on March 4, 2020. On the same date, Los Angeles County declared a local emergency and a local health emergency. The City of West Covina declared a local emergency on March 16, 2020.

On March 19, 2020, Governor Newsom issued Executive Order N-33-20, mandating all individuals living in the State of California to stay at home or at their place of residence except as needed to maintain the continuity of operations of the federal critical infrastructure sectors. On the same date, the Los Angeles County Public Health Officer issued a Safer at Home Order for the Control of COVID-19, ordering, among other things, the immediate closure of: (1) non-essential retail businesses, (2) indoor malls and shopping centers, including all stores therein regardless whether they are essential or non-essential businesses, and (3) indoor and outdoor playgrounds for children, except for those located in childcare centers.

As a result of the State and County stay-at-home orders, the City has experienced a decline in economic activity, which has impacted the City's revenues. City staff estimates a potential loss of \$2.8 million in General Fund revenues for Fiscal Year (FY) 2019-20 and a continuing loss of \$2.1 million in General Fund revenues in FY 2020-21.

In addition to the economic impacts from the COVID-19 pandemic, over the past five years, the City's General Fund reserves have continued to decline – in FY 2014-15, the unassigned fund balance was \$20,531,695, in FY

2015-16, the unassigned fund balance was \$15,032,389, in FY 2016-17, the unassigned fund balance was \$14,119,078, in FY 2017-18, the unassigned fund balance was \$11,979,653, in FY 2018-19, the unassigned fund balance was \$9,884,913, and for FY 2019-20, the unassigned fund balance is projected to be \$8,147,406. These reserves are insufficient to fully absorb the loss in revenue that will occur due to the COVID-19 pandemic.

The City has also faced challenges in delivering a balanced budget in recent years. For example, to deliver a balanced budget for FY 2019-20, the City had to make significant cuts in expenditures, including layoffs of City employees, contracting out Building & Safety and Engineering functions, and not funding vacancies in City positions.

Due to the financial condition of the City, which has been exacerbated by the COVID-19 pandemic, the City Council unanimously declared a fiscal emergency on May 19, 2020. In declaring the fiscal emergency, the City Council authorized the City Manager to take any and all actions necessary to address the fiscal emergency, including reviewing and making changes to service agreements.

Unfortunately, as outlined above, the City has faced significant fiscal challenges in recent years, which challenges were not foreseeable at the time the City entered into the MOU with the WCPOA. The COVID-19 pandemic, which effectively shut down the economy, was also not foreseeable at the time the City entered into the MOU. Due to this "irresistible, superhuman cause", which is expected to result in a loss to the City of approximately \$2.8 million in General Fund revenues in the current fiscal year alone and which exacerbated the City's financial condition such that the City declared a fiscal emergency, the City is unable to perform its contractual obligations pursuant to the MOU. The City must stabilize its cash flow. The City is unable to determine when it will recover from the financial impacts of the pandemic and be in financial position to enable it to resume performance.

The City Manager sent an all staff memorandum to City employees on April 29, 2020 and May 19, 2020 summarizing the City's need to address its unforeseen emergency costs and strained financial position.

On May 15, 2020, the Los Angeles County Department of Auditor-Controller ("County Auditor-Controller") notified the City that due to delayed payments of property taxes due to the COVID-19 pandemic, the City's May 20, 2020 property tax remittance will be less than expected. On the same date, the County Auditor-Controller notified the Successor Agency that due to delayed payments of property taxes due to the COVID-19 pandemic, the Successor Agency's June 1, 2020 property tax remittance will be less than expected; and the City's General Fund reserves are insufficient to fully absorb the anticipated loss in revenue that will occur from the COVID-19 pandemic.

DISCUSSION:

Between May 20, 2020 and July 21, 2020, representatives of the City met with representatives of the West Covina Police Officers' Association to discuss the City's unforeseen fiscal emergency and the need to immediately stabilize the City's cash flow through immediate cost savings measures through the reduction of personnel and benefits costs. The West Covina Police Officers' Association put forth proposals on reduction of personnel and benefits costs and reached agreement with the City to change the terms and conditions of their current MOU in order to assist the City during this unprecedented time. Such reductions assist the City in immediately stabilizing the City's cash flow through immediate cost savings measures.

LEGAL REVIEW:

The City's Labor Attorney, LCW, has reviewed and approved the Resolution as to form.

Prepared by: Helen Tran, HR/Risk Management Director

Fiscal Impact

FISCAL IMPACT:

Anticipated cost savings is approximately \$375,000 in benefits reduction suspension.

Attachments

Attachment No. 1 - Resolution 2020-74

Attachment No. 1 - Exhibit "A" - Side Letter of Agreement (WCPOA)

CITY COUNCIL GOALS & OBJECTIVES: Achieve Fiscal Sustainability and Financial Stability

RESOLUTION NO. 2020-74

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA POLICE OFFICERS' ASSOCIATION (WCPOA)

WHEREAS, on May 19, 2020, the City Council declared a fiscal emergency through the adoption of Resolution No. 2020-46; and

WHEREAS, in declaring the fiscal emergency, the City Council directed the City Manager to take any and all actions necessary to address the fiscal emergency, including, but not limited to, measures relating to personnel and benefit costs, operations, and reductions in service levels, and reviewing and negotiating changes to labor agreements, service agreements, and franchise agreements, to the extent permitted by law; and

WHEREAS, the City of West Covina, hereinafter referred to as the "City," and the West Covina Police Officers' Association, hereinafter referred to as the "Association," have met and conferred in accordance with the Meyers-Milias-Brown Act and Government Code § 3500 to address the City's fiscal emergency, and the appropriate personnel-related cost savings measures needed to address the fiscal emergency; and

WHEREAS, the City and the Association have memorialized the agreement in a written side letter of agreement, which is attached hereto as Exhibit "A".

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA HEREBY RESOLVES AS FOLLOWS:

SECTION 1. The Side Letter of Agreement between the City and the Association, attached hereto as Exhibit "A," is hereby approved.

SECTION 2. The City Manager is authorized to sign the Side Letter of Agreement.

SECTION 3. The City Clerk shall certify to the adoption of this resolution and shall enter the same in the book of original resolutions and it shall become effective immediately.

APPROVED AND ADOPTED this 21st day of July, 2020.

Tony Wu
Mayor

APPROVED AS TO FORM

ATTEST

Thomas P. Duarte
City Attorney

Lisa Sherrick
Assistant City Clerk

I, LISA SHERRICK, ASSISTANT CITY CLERK of the City of West Covina, California, do hereby certify that the foregoing Resolution No. 2020-74 was duly adopted by the City Council of the City of West Covina, California, at a regular meeting thereof held on the 21st day of July, 2020, by the following vote of the City Council:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lisa Sherrick
Assistant City Clerk

EXHIBIT A

SIDE LETTER OF AGREEMENT

Attachment No. 1 - Exhibit "A"

SIDE LETTER OF AGREEMENT TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF WEST COVINA AND WEST COVINA POLICE OFFICERS' ASSOCIATION

THIS SIDE LETTER OF AGREEMENT ("Agreement") memorializes an agreement entered into between the City of West Covina ("City") and the West Covina Police Officers' Association ("WCPOA") (collectively "Parties") with respect to the following:

WHEREAS, the Parties entered into a Side Letter Agreement to the Memorandum of Understanding (MOU) with a term of January 1, 2017 to June 30, 2021; and

WHEREAS, the Parties agree that the amendments set forth in this side letter agreement shall be incorporated into the MOU; and

WHEREAS, all other terms and conditions of the MOU shall remain in full force and effect.

NOW THEREFORE, the Parties have agreed to amend the MOU as follows:

1. "Suspend" as used throughout this Agreement shall mean that the stated benefits will not be provided during the term stated, i.e. through January 14, 2021. After January 14, 2021, the suspended benefits will resume.
2. Section 12, PERS Employee's Contribution – Paid by Employee shall be modified and replaced with the following:

The Employee shall pay the entire nine percent (9%) member contribution to the Public Employees' Retirement System (PERS). The Employee who does not qualify as a "New Member" shall pay, via payroll deduction, an additional three percent (3%) of compensation earnable towards the employer contribution pursuant to cost sharing in accordance with Government Code Section 20516(f). Thus, the total employee contribution shall be twelve percent (12%). As soon as practical, the City shall amend the CalPERS contract so that cost sharing will be by contract amendment under Government Code section 20516(a) so that the additional 3% cost sharing identified above will be switched from cost sharing under Government Code section 20516(f) to Government Code section 20516(a). When cost sharing by contract amendment becomes effective under Government Code section 20516(a), cost sharing under Government Code section 20516(f) shall immediately cease. In accordance with IRS Code section 414(h)(2), the cost sharing will then be treated as a pre-tax deduction.

The Employee who qualifies as a "New Member" shall pay 50% of the applicable normal cost as their member contribution (California Government Code Section 7522.30(c)). In the event that 50% of the applicable normal cost member contribution falls below twelve percent (12%) of compensation earnable, the "New

Attachment No. 1 - Exhibit "A"

Member" Employee shall pay the difference between 12% of compensation earnable and 50% of the applicable normal cost member contribution pursuant to cost sharing in accordance with Government Code Section 20516(f). As soon as practical, the City shall amend the CalPERS contract so that cost sharing will be by contract amendment under Government Code section 20516(a) so that the additional cost sharing identified above will be switched from cost sharing under Government Code section 20516(f) to Government Code section 20516(a). When cost sharing by contract amendment becomes effective under Government Code section 20516(a), cost sharing under Government Code section 20516(f) shall immediately cease. In accordance with IRS Code section 414(h)(2), the cost sharing will then be treated as a pre-tax deduction.

The Parties agree that should the MOU expire without a successor agreement in place, the cost sharing contribution as described above shall continue.

3. Section 14, Deferred Compensation – Suspend through January 14, 2021 the City/employer contribution of up to \$50 per month to Deferred Compensation. Employees shall still be able to participate in the voluntary benefit contribution by the employee only during the suspension period.
4. Section 23 (F), Sick Leave, Sick Leave Annual Payoff Program – There will be a one-time suspension of the cashing out of up to sixty (60) hours of sick leave in November of 2020. This benefit will be reinstated and employees shall be able to cash out up to sixty (60) hours of sick leave in the next cash out period in November of 2021.
5. Section 23 (E), Sick Leave, Sick Leave Pay-Off Upon Termination shall be modified and replaced with the following:

The City shall contract with CalPERS for the Credit for the Unused Sick Leave option under Government Code section 20965. Employees, upon retirement, shall be required to first use all accumulated and unused sick leave for PERS service credit. Any accumulated and unused sick leave remaining after the purchase of service credit of one year (e.g. 2080 hours) shall be paid at one-third (1/3) of their accumulated or unused sick leave up to a maximum of four hundred (400) hours. Employees who die or voluntarily terminate prior to retirement shall not be required to first convert accumulated and unused sick leave for PERS service credit. Thus employees who die or voluntarily terminate prior to retirement shall be paid at one-third (1/3) of their accumulated or unused sick leave up to a maximum of four hundred (400) hours. However, there is no eligibility of pay out for unused sick leave for employees dying or terminating prior to three (3) years of full-time employment with the City.

Attachment No. 1 - Exhibit "A"

FOR THE WCPOA AND CITY OF WEST COVINA:

I agree on behalf of the WCPOA:

I agree on behalf of the City:

Matt Bowman
WCPOA President

David Carmany
City Manager

Date

Date



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: July 21, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

**SUBJECT: CONSIDERATION OF A SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND
THE NON-SWORN SAFETY SUPPORT EMPLOYEES' ASSOCIATION**

RECOMMENDATION:

It is recommended that the City Council adopt the following Resolution:

RESOLUTION NO. 2020-76 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE NON-SWORN SAFETY SUPPORT EMPLOYEES' ASSOCIATION REPRESENTED BY TEAMSTERS LOCAL 1932 UNION

BACKGROUND:

The West Covina Non-Safety Support Employees' Memorandum of Understanding expired on June 30, 2017. Terms and conditions of employment were imposed and adopted to cover fiscal year 2017-2018, and have been in operation since that time. The City and the West Covina Non-Safety Support Employees, represented by Teamsters Local 1932 Union, met and conferred on nine (9) occasions and have reached a side letter of agreement.

DISCUSSION:

The City and the Non-Sworn Safety Support Employees' Association have memorialized a side letter of agreement. The terms and conditions agreed upon addressed the necessary cost-saving measures as a result of the City's dire financial condition, as declared by the City Council on May 19, 2020.

LEGAL REVIEW:

The City Attorney's Office has reviewed the resolution and approved it as to form.

Prepared by: Helen Tran, HR/Risk Management Director

Fiscal Impact

FISCAL IMPACT:

Anticipated savings is approximately \$78,000 of benefits reductions suspension.

Attachments

CITY COUNCIL GOALS & OBJECTIVES: Achieve Fiscal Sustainability and Financial Stability

RESOLUTION NO. 2020-76

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE NON-SWORN SAFETY SUPPORT EMPLOYEES' ASSOCIATION REPRESENTED BY TEAMSTERS LOCAL 1932 UNION

WHEREAS, on May 19, 2020, the City Council declared a fiscal emergency through the adoption of Resolution No. 2020-46; and

WHEREAS, in declaring the fiscal emergency, the City Council directed the City Manager to take any and all actions necessary to address the fiscal emergency, including, but not limited to, measures relating to personnel and benefit costs, operations, and reductions in service levels, and reviewing and negotiating changes to labor agreements, service agreements, and franchise agreements, to the extent permitted by law; and

WHEREAS, the City of West Covina, hereinafter referred to as the "City," and the Non-Sworn Safety Support Employees' Association represented by Teamsters Local 1932 have met and conferred in accordance with the Meyers-Milias-Brown Act and Government Code § 3500; and

WHEREAS, the City and the Non-Sworn Safety Support Employees' Association represented by Teamsters Local 1932 have memorialized the agreement in a written side letter of agreement, which is attached hereto as Exhibit "A".

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA HEREBY RESOLVES AS FOLLOWS:

SECTION 1. The Side Letter of Agreement, attached hereto as Exhibit "A," is hereby approved.

SECTION 2. The City Manager is authorized to sign the Side Letter of Agreement.

SECTION 3. The City Clerk shall certify to the adoption of this resolution and shall enter the same in the book of original resolutions and it shall become effective immediately.

APPROVED AND ADOPTED this 21st day of July, 2020.

Tony Wu
Mayor

APPROVED AS TO FORM

ATTEST

Thomas P. Duarte
City Attorney

Lisa Sherrick
Assistant City Clerk

I, LISA SHERRICK, ASSISTANT CITY CLERK of the City of West Covina, California, do hereby certify that the foregoing Resolution No. 2020-76 was duly adopted by the City Council of the City of West Covina, California, at a regular meeting thereof held on the 21st day of July, 2020, by the following vote of the City Council:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lisa Sherrick
Assistant City Clerk

EXHIBIT A

SIDE LETTER OF AGREEMENT



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: July 21, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

**SUBJECT: CONSIDERATION OF A SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND
THE WEST COVINA FIREFIGHTERS' ASSOCIATION, I.A.F.F., LOCAL 3226**

RECOMMENDATION:

It is recommended that the City Council adopt the following Resolution:

RESOLUTION NO. 2020-75 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA FIREFIGHTERS' ASSOCIATION, I.A.F.F., LOCAL 3226

BACKGROUND:

West Covina Firefighters' Association (WCFFA) MOU is scheduled to expire on June 30, 2022. However, on January 30, 2020, the World Health Organization declared the novel coronavirus, COVID-19, outbreak a "public health emergency of international concern." On March 11, 2020, the World Health Organization elevated the public health emergency to the status of a pandemic. In California, Governor Gavin Newsom declared a State of Emergency on March 4, 2020. On the same date, Los Angeles County declared a local emergency and a local health emergency. The City of West Covina declared a local emergency on March 16, 2020.

On March 19, 2020, Governor Newsom issued Executive Order N-33-20, mandating all individuals living in the State of California to stay at home or at their place of residence except as needed to maintain the continuity of operations of the federal critical infrastructure sectors. On the same date, the Los Angeles County Public Health Officer issued a Safer at Home Order for the Control of COVID-19, ordering, among other things, the immediate closure of: (1) non-essential retail businesses, (2) indoor malls and shopping centers, including all stores therein regardless whether they are essential or non-essential businesses, and (3) indoor and outdoor playgrounds for children, except for those located in childcare centers.

As a result of the State and County stay-at-home orders, the City has experienced a decline in economic activity, which has impacted the City's revenues. City staff estimates a potential loss of \$2.8 million in General Fund revenues for Fiscal Year (FY) 2019-20 and a continuing loss of \$2.1 million in General Fund revenues in FY 2020-21.

In addition to the economic impacts from the COVID-19 pandemic, over the past five years, the City's General Fund reserves have continued to decline – in FY 2014-15, the unassigned fund balance was \$20,531,695, in FY 2015-16, the unassigned fund balance was \$15,032,389, in FY 2016-17, the unassigned fund balance was

\$14,119,078, in FY 2017-18, the unassigned fund balance was \$11,979,653, in FY 2018-19, the unassigned fund balance was \$9,884,913, and for FY 2019-20, the unassigned fund balance is projected to be \$8,147,406. These reserves are insufficient to fully absorb the loss in revenue that will occur due to the COVID-19 pandemic.

The City has also faced challenges in delivering a balanced budget in recent years. For example, to deliver a balanced budget for FY 2019-20, the City had to make significant cuts in expenditures, including layoffs of City employees, contracting out Building & Safety and Engineering functions, and not funding vacancies in City positions.

Due to the financial condition of the City, which has been exacerbated by the COVID-19 pandemic, the City Council unanimously declared a fiscal emergency on May 19, 2020. In declaring the fiscal emergency, the City Council authorized the City Manager to take any and all actions necessary to address the fiscal emergency, including reviewing and making changes to service agreements.

Unfortunately, as outlined above, the City has faced significant fiscal challenges in recent years, which challenges were not foreseeable at the time the City entered into the MOU with the WCFFA. The COVID-19 pandemic, which effectively shut down the economy, was also not foreseeable at the time the City entered into the MOU. Due to this “irresistible, superhuman cause”, which is expected to result in a loss to the City of approximately \$2.8 million in General Fund revenues in the current fiscal year alone and which exacerbated the City’s financial condition such that the City declared a fiscal emergency, the City is unable to perform its contractual obligations pursuant to the MOU. The City must stabilize its cash flow. The City is unable to determine when it will recover from the financial impacts of the pandemic and be in financial position to enable it to resume performance.

The City Manager sent an all staff memorandum to City employees on April 29, 2020 and May 19, 2020 summarizing the City’s need to address its unforeseen emergency costs and strained financial position.

On May 15, 2020, the Los Angeles County Department of Auditor-Controller (“County Auditor-Controller”) notified the City that due to delayed payments of property taxes due to the COVID-19 pandemic, the City’s May 20, 2020 property tax remittance will be less than expected. On the same date, the County Auditor-Controller notified the Successor Agency that due to delayed payments of property taxes due to the COVID-19 pandemic, the Successor Agency’s June 1, 2020 property tax remittance will be less than expected; and the City’s General Fund reserves are insufficient to fully absorb the anticipated loss in revenue that will occur from the COVID-19 pandemic.

DISCUSSION:

Between May 20, 2020 and July 21, 2020, representatives of the City met with representatives of the West Covina Firefighters’ Association I.A.F.F. Local 3226 to discuss the City’s unforeseen fiscal emergency and the need to immediately stabilize the City’s cash flow through immediate cost savings measures through the reduction of personnel and benefits costs. The West Covina Firefighters’ Association I.A.F.F. Local 3226 put forth proposals on reduction of personnel and benefits costs and reached agreement with the City to change the terms and conditions of their current MOU in order to assist the City during this unprecedented time to assist the City in immediately stabilizing the City’s cash flow through immediate cost savings measures.

Fiscal Impact

FISCAL IMPACT:

Anticipated savings is approximately \$350,000 of benefits reductions suspension.

Attachments

Attachment No. 1 - Resolution 2020-75

CITY COUNCIL GOALS & OBJECTIVES: Achieve Fiscal Sustainability and Financial Stability

RESOLUTION NO. 2020-75

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA FIREFIGHTERS' ASSOCIATION, I.A.F.F., LOCAL 3226 (WCFFA)

WHEREAS, on May 19, 2020, the City Council declared a fiscal emergency through the adoption of Resolution No. 2020-46; and

WHEREAS, in declaring the fiscal emergency, the City Council directed the City Manager to take any and all actions necessary to address the fiscal emergency, including, but not limited to, measures relating to personnel and benefit costs, operations, and reductions in service levels, and reviewing and negotiating changes to labor agreements, service agreements, and franchise agreements, to the extent permitted by law; and

WHEREAS, the City of West Covina, hereinafter referred to as the "City," and the West Covina Firefighters' Association, I.A.F.F. Local 3226 have met and conferred in accordance with the Meyers-Milias-Brown Act and Government Code § 3500 to address the City's fiscal emergency, and the appropriate personnel-related cost savings measures needed to address the fiscal emergency; and

WHEREAS, the City and the West Covina Firefighters' Association, I.A.F.F. Local 3226 have memorialized the agreement in a written side letter of agreement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA HEREBY RESOLVES AS FOLLOWS:

SECTION 1. The Side Letter of Agreement between the City and the West Covina Firefighters' Association, I.A.F.F. Local 3226, as provided to the City Council on July 21, 2020, is hereby approved.

SECTION 2. The City Manager is authorized to sign the Side Letter of Agreement.

SECTION 3. The City Clerk shall certify to the adoption of this resolution and shall enter the same in the book of original resolutions and it shall become effective immediately.

APPROVED AND ADOPTED this 21st day of July, 2020.

Tony Wu
Mayor

APPROVED AS TO FORM

ATTEST

Thomas P. Duarte
City Attorney

Lisa Sherrick
Assistant City Clerk

I, LISA SHERRICK, ASSISTANT CITY CLERK of the City of West Covina, California, do hereby certify that the foregoing Resolution No. 2020-75 was duly adopted by the City Council of the City of West Covina, California, at a regular meeting thereof held on the 21st day of July, 2020, by the following vote of the City Council:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lisa Sherrick
Assistant City Clerk



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: July 21, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

**SUBJECT: CONSIDERATION OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY
AND THE WEST COVINA POLICE MANAGEMENT ASSOCIATION**

RECOMMENDATION:

It is recommended that the City Council adopt the following Resolution:

RESOLUTION NO. 2020-77 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, ADOPTING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY AND THE WEST COVINA POLICE MANAGEMENT ASSOCIATION (WCPMA)

BACKGROUND:

The West Covina Police Management Association's Memorandum of Understanding expired on June 30, 2019. The City and the West Covina Police Management Employees met and conferred on nine (9) occasions and have reached an agreement on a two-year Memorandum of Understanding, covering the period of July 1, 2020 until June 30, 2022 ("MOU").

DISCUSSION:

The City and the Police Management Association have reached a successor Memorandum of Understanding (MOU) July 1, 2019 through June 30, 2022. The terms and conditions agreed upon address the necessary cost-saving measures as a result of the City's dire financial condition, as declared by the City Council on May 19, 2020.

LEGAL REVIEW:

The City Attorney's Office has reviewed the resolution and approved it as to form.

Prepared by: Helen Tran, HR/Risk Management Director

Fiscal Impact

FISCAL IMPACT:

Anticipated savings is approximately \$48,000 in benefits reduction suspension.

Attachments

Attachment No. 1 - Exhibit "A" - PMA Successor MOU

Attachment No. 1 - Resolution No. 2020-77

CITY COUNCIL GOALS & OBJECTIVES: Achieve Fiscal Sustainability and Financial Stability

MEMORANDUM OF UNDERSTANDING

THE CITY OF WEST COVINA
AND
THE WEST COVINA POLICE MANAGEMENT ASSOCIATION

EFFECTIVE

JULY 1, 20~~20~~15 THROUGH JUNE 30, ~~2019~~2022

TABLE OF CONTENTS

<u>SECTION</u>	<u>TITLE</u>	<u>PAGE NUMBER</u>
1	SALARY SCHEDULE	3
2	PERS RETIREMENT BENEFITS	3
3	PARS SUPPLMENTAL RETIREMENT PLAN	5
4	CAFETERIA PLAN	5
5	RETIREE HEALTH BENEFIT	7
6	LIFE INSURANCE	8
7	TUITION REIMBURSEMENT	9
8	HOURS OF WORK	9
9	COMPENSATORY TIME	10
10	VACATION	10
11	POLICE MANAGEMENT ADMINISTRATIVE LEAVE	11
12	SICK LEAVE	12
13	HOLIDAYS	14
14	BEREAVEMENT LEAVE	14
15	VEHICLE ASSIGNMENT	15
16	DISABILITY DISCRIMINATION	15
17	GRIEVANCE PROCEDURE	15
18	EMPLOYEE AND EMPLOYER RIGHTS	15
19	OTHER PROVISIONS NOT COVERED HERE	16
20	MASTER MOU	16
21	SEVERABILITY	16

**MEMORANDUM OF UNDERSTANDING
THE CITY OF WEST COVINA
AND
THE WEST COVINA POLICE MANAGEMENT ASSOCIATION**

PREAMBLE

The Meyers-Milias-Brown Act (MMBA) governs labor-management relationships within California local governments. Under MMBA the wages, hours and other conditions of employment are contained in a written memorandum of understanding. It also requires the City of West Covina ("City") and its employee associations to meet and confer regarding these wages, hours and other conditions of employment. The City and the West Covina Police Management Association ("Association") have been negotiating a successor memorandum of understanding and an agreement has been reached for the period of July 1, 2020~~15~~ through June 30, 2022~~19~~.

THEREFORE, the City and the Association agree as follows:

SECTION 1. SALARY SCHEDULE

~~A. Effective Date of New Salary Schedule~~

~~Effective the first full pay period of Fiscal Year 2015-2016, eligible members shall receive a 2% base pay increase, based on the pay rate in effect at that time.~~

~~B. Effective the Pay Period Beginning May 6, 2017~~

Police Management Association Members shall be paid according to the attached salary schedule (Attachment A). The salary schedule replaces all prior forms of compensation including uniform allowance, education incentive, senior officer pay and overtime compensation.

SECTION 2. PERS RETIREMENT BENEFITS

The contract between the City and Public Employees' Retirement System (PERS) shall provide the following benefits for unit employees:

A. 3% at age 50 (Employees Hired Prior to December 19, 2012)

Unit members hired by the City of West Covina prior to December 19, 2012, shall participate in the PERS 3% at age 50 PERS retirement benefit plan. ~~The City shall pay 100% of the PERS employer cost.~~ Each employee shall pay the full employee cost of nine percent (9%). Such contribution shall be made on a pre-tax basis.

Retirement benefits under the 3.0% at age 50 formula shall be computed using the One-Year Final Compensation Option (per the city's contract with CalPERS).

B. 3% at age 55 (Classic PERS Members)

Unit members hired between December 19, 2012 and January 1, 2013, or having reciprocity with another PERS agency ("classic member") shall participate in the 3% at age 55 PERS

Formatted: Indent: Left: 0.5", No bullets or numbering

Formatted: Indent: Left: 0.5"

Formatted: Indent: Left: 0.5", No bullets or numbering

Formatted: Left, Indent: Left: 0.5", Space Before: 14.5 pt, Line spacing: Exactly 13.75 pt, Tab stops: 0.25", Left + 0.75", Left

retirement benefit plan. ~~The City shall pay 100% of the PERS employer cost.~~ Each employee

shall pay the full employee cost of nine percent (9%). Such contribution shall be made on a pre-tax basis.

Retirement benefits under the 3.0% at age 55 formula shall be computed using the One-Year Final Compensation Option (per the city's contract with CalPERS).

C. 2.7% at age 57 (New PERS Members)

Unit members classified as "new safety members," as defined by the Public Employees' Pension Reform Act of 2013, hired on or after January 1, 2013 shall participate in the 2.7% at age 57 PERS retirement benefit plan, with their final compensation based upon the average of their highest annual compensation earned over a three (3) year period. New members will be required to pay the appropriate share of their pension costs and other provisions, as required by the Public Employees' Pension Reform Act of 2013.

D. Classic member employees shall pay the entire nine percent (9%) member contribution to the Public Employees' Retirement System (PERS) and an additional three percent (3%) to CalPERS of the employer contribution as a cost-sharing pursuant to Government Code section 20516(f) for a total contribution of twelve percent (12%). This cost-sharing is based on the member contribution percentage being 9%. Should the member contribution percentage increase beyond 9%, then the total contribution shall remain at 12%. As soon as practical, the City shall amend the CalPERS contract so that cost sharing will be by contract amendment under Government Code section 20516(a) so that the additional 3% cost sharing identified above will be switched from cost sharing under Government Code section 20516(f) to Government Code section 20516(a). When cost sharing by contract amendment becomes effective under Government Code section 20516(a), cost sharing under Government Code section 20516(f) shall immediately cease. In accordance with IRS Code section 414(h)(2), the cost sharing will then be treated as a pre-tax deduction. The Parties agree that should the MOU expire without a successor agreement in place, the cost sharing as described above shall continue.

E. New Member (PEPRA) employees shall pay 50% of the applicable normal cost as their member contribution (California Government Code Section 7522.30(c)). In the event that 50% of the applicable normal cost member contribution falls below twelve percent (12%) of compensation earnable, the New Member Employee shall pay the difference between 12% of compensation earnable and 50% of the applicable normal cost member contribution pursuant to cost sharing in accordance with Government Code Section 20516(f). As soon as practical, the City shall amend the CalPERS contract so that cost sharing will be by contract amendment under Government Code section 20516(a) so that the additional cost sharing identified above will be switched from cost sharing under Government Code section 20516(f) to Government Code section 20516(a). When cost sharing by contract amendment becomes effective under Government Code section 20516(a), cost sharing under Government Code section 20516(f) shall immediately cease. In accordance with IRS Code section 414(h)(2), the cost sharing will then be treated as a pre-tax deduction. The Parties agree that should the MOU expire without a successor agreement in place, the cost sharing as described above shall continue.

D.F. Additional Retirement Benefits:

In addition, the following benefits will remain in place for unit members, unless deemed ineligible by PERS under the Public Employees' Pension Reform Act of 2013.

- **4th Level Survivor Benefits**

Level IV of 1959 Survivor Benefits pursuant to Government Code Section 21574.

- **Military Buy Back**

Military service credit as public service credit pursuant to Government Code Section 21024.

- **Post-Retirement Survivor Allowance**

Post-Retirement Survivor Continuance benefit pursuant to Government Code Section 21624, ~~and 21624~~

- **Pre-Retirement Optional Settlement 2 Death Benefit**

Pre-Retirement Optional Settlement 2 Death Benefit pursuant to Government Code Section 21548.

- **Pre-Retirement Death Benefit After Remarriage of Survivor**

Pre-Retirement Death Benefit after Remarriage of Survivor pursuant to Government Code Section 21551.

- **Credit For Unused Sick Leave**

Credit for Unused Sick Leave pursuant to Government Code Section 20965.

- **Other PERS Benefits**

Any other PERS Benefit Programs that are provided to the West Covina Police Officers Association shall be provided to the Police Management Association.

SECTION 3. PARS SUPPLEMENTAL RETIREMENT PLAN

The City will replace the Employer Paid Member Contribution (EPMC) gross up amount that has been historically reported to CalPERS with a PARS Supplemental retirement plan. This supplemental plan will make the employees whole in consideration for the loss of the incremental stipend amount due to the "West Covina Plan" method of calculation no longer being allowable under CalPERS regulations.

The PARS plan will pay a retirement amount for all years of service to those unit employees retiring from the City based on .89% of PERSable compensation. At the time of retirement, the employee can make a one-time election to receive either an ongoing monthly stipend or a lump sum amount at the time of retirement based on an actuarially determined net present value of the annual stipends. The monthly stipends will contain the same benefit options as the City's PERS plan including 2% annual COLA's and survivor benefits. This plan will be available to all future retirees, and any past retirees who retired after July 1, 2004 who can provide documentation to the City that the .89% of compensation was disallowed by CalPERS in determining their retirement stipend.

Effective July 1, 2012, employees must be employed as a Police Management employee with the City of West Covina for a minimum of three (3) years to be eligible to receive this benefit.

The City retains the responsibility to fund this plan with actuarially determined

contributions. **SECTION 4. CAFETERIA PLAN**

City contributions for Medical, Dental, and Vision Insurance will be provided as set forth below for all bargaining unit members.

To comply with the Public Employees' Hospital and Medical Care Act (PEMCHA), the City will contribute the statutory minimum amount for the provision of medical insurance. In addition, the City will contribute an additional amount for current bargaining unit members into a cafeteria plan in accordance with IRS Code Section 125. These additional amounts will be as follows:

A. Health Insurance

1. An amount that when added to the PEHMCA statutory minimum amount is up to the Kaiser Full Family premium rate. If an employee chooses a plan that is less than Kaiser Full Family premium rate (e.g., Blue Shield two party), the amount provided for health insurance through the cafeteria plan will be the PERS statutory minimum plus the additional amount to pay for Blue shield two-party premium rate. If an employee chooses a plan that is more than Kaiser Full Family premium rate (e.g., PERS Care Family), the amount provided for health insurance through the cafeteria plan will be the PERS statutory minimum plus the additional amount to pay Kaiser Full Family premium rate. The employee would pay the additional amount for the PERS Care Family plan premium through a payroll deduction.

Effective January 1, 2018, the City's medical contributions will be based on the coverage tier (single, two-party or family) as follows:

An employee who selects an Employee Only medical plan will receive a City contribution in an amount that when added to the PEMCHA statutory minimum amount equals the monthly Los Angeles region Kaiser Employee Only medical premium.

An employee who selects an Employee plus One medical plan will receive a City contribution in an amount that when added to the PEMCHA statutory minimum amount equals the monthly Los Angeles region Kaiser 2-party medical premium.

An employee who selects an Employee plus Two or More (Family) medical plan will receive a City contribution in an amount that when added to the PEMCHA statutory minimum amount equals the monthly Los Angeles region Kaiser Family medical premium.

In the event the Police Officers Association agrees to cap the City medical contribution; such a cap shall also apply to the Police Management Association-

2. An employee who selects a single party plan with a monthly premium of less than \$600, will receive the difference between the amount of that premium and \$600 in cash. An employee who does not take the City's health insurance and can demonstrate that he/she has health insurance from another source will receive \$600.00 per month. Under either of these two scenarios, that amount can be received as cash, placed in the employee's deferred compensation account or used to purchase dental or vision insurance above the amounts provided through the cafeteria plan as described below.

B. Dental Insurance

In addition to the above amount for medical, the cafeteria amount shall also include up to \$53.28 monthly for dental insurance for member and eligible dependents. If the dental insurance plan chosen by the member is less than \$53.28, the amount shall be the cost of the dental insurance chosen. If the dental insurance plan chosen by the member is equal to or more than \$53.28 per month, the amount shall be \$53.28.

C. Vision Insurance:

In addition to the above amounts for medical and dental, the cafeteria amount shall also include up to \$40.04 monthly for vision insurance for member and eligible dependents. If the vision insurance plan chosen by the member is less than \$40.04, the amount shall be the cost of the vision insurance chosen. If the vision insurance plan chosen by the member is equal to or more than \$40.04 per month, the amount shall be \$40.04.

SECTION 5. RETIREE HEALTH BENEFIT

A. Health Insurance

The City contracts with CalPERS for the provision of health insurance. To comply with the Public Employees' Hospital and Medical Care Act, the City will contribute the statutory minimum amount for the provision of retiree medical insurance for all retirees in the bargaining unit.

In addition to the provision of the statutory minimum amount for all retirees, to comply with PEHMCA, the City will provide a retiree longevity stipend to offset the cost of retiree medical benefits as follows:

1. Tier 1 Employees:

For employees hired prior to July 1, 2012 with a minimum of five years sworn service with the West Covina Police Department, when they retire from the City, each month the City will contribute up to nine hundred thirty-one dollars and twenty six cents (\$931.26) minus the PERS statutory minimum for that year into a qualified Health Reimbursement Account (HRA). The City will cover all administrative costs associated with the HRA and benefits will not be reduced to retirees as a result of administrative fees/costs. The money placed into the HRA by the City on behalf of the retiree will be available to be used to purchase health insurance. For retirees that do not use PERS Medical, the amount placed into the HRA will not be reduced by the PERS statutory minimum.

If the retiree chooses a plan that is less \$931.26, the amount the City will contribute into the HRA per month will be the amount of the plan chosen minus the PERS statutory minimum for that year. For retirees that do not use PERS Medical, the amount placed into the HRA will not be reduced by the PERS statutory minimum. If the retiree chooses a plan that is \$931.26 or more, the amount the City will contribute into the HRA per month will be \$931.26 minus the PERS statutory minimum for that year. For retirees that do not use PERS Medical, the amount placed into the HRA will not be reduced by the PERS statutory minimum.

Effective January 1, 2013, for employees hired prior to July 1, 2012 with a minimum of five years sworn service with the West Covina Police Department, when they retire from the City, each month the City will contribute up to one thousand four dollars and eighty cents (\$1,004.80) minus the PERS statutory minimum for that year into a qualified Health Reimbursement Account (HRA). The City will cover all administrative costs associated with the HRA and benefits will not be reduced to retirees as a result of administrative fees/costs. The money placed into the HRA by the City on behalf of the retiree will be available to be used to purchase health insurance. For retirees that do not use PERS Medical, the amount placed into the HRA will not be reduced by the PERS statutory minimum.

Effective January 1, 2013, if the retiree chooses a plan that is less \$1,004.80, the amount the City will contribute into the HRA per month will be the amount of the plan chosen minus the PERS statutory minimum for that year. If the retiree chooses a plan that is \$1,004.80 or more, the amount the City will contribute into the HRA per month will be \$1,004.80 minus the PERS statutory minimum for that year.

Employees hired prior to July 1, 2012 with less than five years sworn service with the West Covina Police Department are not eligible for the retiree longevity stipend.

The term "employee", as it relates to Tier 1 health benefits, includes all prior retirees, current employees and future retirees, with the exception of Tier 2 employees.

2. Tier 2 Employees:

Employees hired between July 1, 2012 and December 31, 2016 are only eligible for the retiree longevity stipend described above for Tier 1 employees if they retire from the City of West Covina with a minimum of 20 years of sworn service, five of which were with the City of West Covina Police Department. A Tier 2 employee who does not meet this eligibility criteria will not receive the retiree longevity stipend, but like all retirees of the City, as set forth above, the City will contribute the PERS statutory minimum amount on the retiree's behalf.

The City affirms that the provision of retiree health benefits for Tier 1 and Tier 2 Police Management Members as described above, will not be revoked by the City during that member's lifetime (defined as until member's death). Further, the City will reimburse, to the extent applicable, all yearly Medicare premiums once a retired employee or a retired employee's spouse enroll in Medicare.

Upon death of a Tier 1 or Tier 2 retiree, the City shall continue to reimburse the cost of the healthcare premiums for a surviving spouse. This benefit will cease if the spouse remarries. This benefit is only available to a spouse married to a retiree at the time of retirement.

3. Tier 3 Employees:

Employees hired on or after January 1, 2017 are not eligible for the retiree longevity stipend. Those employees will receive a \$200 per month City contribution to a RHS plan. For example, a member of the Police Officers Association who was first hired by the City on or after January 1, 2017 would not be eligible for the retiree longevity stipend but would receive a \$200 per-month City RHS contribution.

SECTION 6. LIFE INSURANCE

A. Policies

The City shall provide all unit employees a term life insurance policy in the amount of \$100,000 and an additional insurance benefit of \$100,000 life insurance if killed in the line of duty.

B. Retired Employee Term Life Insurance

The City shall provide all unit employees who retire from the City a term life insurance in the amount of ten thousand (\$10,000) dollars. It is understood there shall be no reduction in benefits based on age.

SECTION 7. TUITION REIMBURSEMENT

Effective July 1, 2020, the Tuition Reimbursement Program described below is suspended for the term of this Agreement, through June 30, 2022.

A. Maximum Reimbursement

Unit employees' tuition reimbursement (including books) shall be paid up to the equivalent of yearly costs for seven (7) units of the California State University Los Angeles (CSULA) cost.

B. Administrative Policy

The specific details of the Tuition Reimbursement Program is set forth in the City's Administrative Policy approved on August 13, 1992, and amended thereafter.

SECTION 8. HOURS OF WORK

Daily hours of work or shifts of employees within departments shall be assigned by the Chief of Police as required to meet the operational requirements of the department.

Effective May 6, 2017, the Police Lieutenants shall transition from FLSA Non-exempt to exempt status. The intent of this change is to move Police Lieutenants to a fixed salary and eliminate the overtime benefit (Section 14. Overtime) agreed to in the prior memoranda of understanding. Therefore, the Association has agreed to adopt the "Patrol Lieutenant Deployment Strategy" (Attachment B) which was presented to the Police Chief for approval.

A. Patrol Division

Lieutenants assigned to the Patrol Division shall work a 3/12.50 work schedule. Salary is based upon a 40-hour workweek with the condition that at the end of the month the employee will owe the City 10 hours to be reconciled in the form of a scheduled payback.

B. Non-Patrol

All other non-patrol police management employees are assigned to a 4/10 work schedule that begins on Saturday at 12:00 A.M. and ends on Friday at 11:59 P.M.

SECTION 9. COMPENSATORY TIME

Prior to the salary adjustment all compensatory time shall be cashed out at the member's hourly pay rate as of May 2, 2017. Also, in the event a City employee is promoted from another bargaining group (e.g. Police Officers' Association), all compensatory time must be cashed out at the employee's rate of pay prior to the effective date of the promotion.

SECTION 10. VACATION

It is the policy of the City that whenever possible, vacation be taken annually in the year earned. The time during the year at which an employee may take vacation shall be determined by the appointing authority of such employee with due regard for the wishes of the employee and particular regard for the needs of the service.

Eligible employees shall earn and accumulate to a maximum vacation leave as follows:

Months of Service	Hours Earned Per Pay Period	Hours Earned Per Month	Maximum Accruals
1— 60*	3.08	6.67	320
61 — 108	4.62	10.00	360
109 —120	4.92	10.67	368
121 — 132	5.23	11.33	376
133 —144	5.54	12.00	384
145 —156	5.85	12.67	392
157 +	6.15	13.33	400

*After completion of 60 months of service, forty (40) additional hours vacation shall be granted.

A. Limitation - Vacation Leave Accrual

1. Employees shall not be allowed to accrue vacation leave beyond the stated maximums.
2. No employee shall lose earned vacation leave because of work urgency as approved by management. Work urgency is defined as the department's need to have the employee at work to perform duty assignments for a specified period of time.
3. If an employee has reached the maximum allowed unused vacation leave balance, and is unable to take vacation leave due to work urgency, industrial injury, extended medical leave, special or pre-scheduled leave as authorized by management, the Human Resources Director will approve a waiver of the maximum allowed unused balance for a period not to exceed six (6) months per fiscal year.

B. Vacation Accrual of Holidays

If a holiday falls within a scheduled vacation period, vacation shall be granted based on the employees' regular work schedule (e.g. 12.5 hours for patrol and 10 hours for non-patrol).

C. Payment for Unused Vacation

1. Upon separation of employment the 100% of the employee accrued vacation benefits shall be contributed to the Police Management Association's 401 (A) deferred retirement account.
2. Upon request of the employee and the department head and with approval of the City Manager, in order to address unusual or emergency conditions, an employee may be paid the straight time daily equivalent of his/her salary in lieu of vacation time off. Such payment shall be for no more than 40 hours in any one calendar year, except as otherwise provided herein.

D. Advance Payment of Vacation

Any employee who is authorized to take 40 or more hours of vacation with pay at one time may apply for the payment of salary in advance for any pay period occurring during the period of the employee's authorized vacation. The application must be approved by the employee's Department Head and filed with the Finance Director at least seven (7) days before the vacation period for which the salary advance is requested. In cases of extreme emergency where the employee is unable to give the required notice, approval for an advance vacation check may be given where such request can be justified to, and approved by, the Department Head, and Finance Director.

E. Payment-in-lieu of Vacation

Employees with less than five years of City service may receive payment in lieu of up to 80 hours of accumulated vacation time in any calendar year upon filing a written request with the Finance Department at least five days prior to requested date of issuance of the check, upon approval of Department Head. Employees with five or more years of service may receive payment in lieu of up to 120 hours.

SECTION 11. POLICE MANAGEMENT ADMINISTRATIVE LEAVE

Administrative Leave is provided to Police Management employees for the attendance at City Council meetings, community events, special events and the management of police services.

A. Management Leave Time for Lieutenants

Effective January 1 of each year, Lieutenants will receive 70 hours of police management leave (pro-rata based upon date of appointment). Employees will not be allowed to cash out or carry over any unused police management leave. Any unused leave will expire at the end of each calendar year.

B. Administrative Leave for Captains

Effective January 1 of each year, Captains will receive 115 hours of Administrative Leave (pro-rata based upon date of appointment). Employees will not be allowed to cash out or carry over any unused Administrative leave. Any unused leave will expire at the end of each calendar year.

Employees may submit a request to the City Manager to carry over a maximum of forty (40) hours of unused Administrative Leave to the next calendar year; which must be used within six (6) months.

Approval of request are the sole discretion of the City Manager.

SECTION 12. SICK LEAVE

To aid in reducing illness, the parties shall work in unison to educate and emphasize to employee members the importance of proper diet, sleep, exercise and other pertinent practices in maintaining a healthy condition.

A. Allowance/Accumulation

City employees shall accrue 96 hours of sick leave per year. Following completion of thirty (30) calendar days of continuous full-time service, each City employee shall accrue 3.69 hours per pay period of sick leave pay. Thereafter for each calendar month of service in which the employee has worked or has been paid for more than two-thirds (2/3) of the actual number of working days of such month, he/she shall be allowed eight hours of credit for sick leave with pay. Sick leave may be used by new employees following thirty calendar days of employment. Unused sick leave may be accumulated without limit.

B. Use of Sick Leave

No more than 48 hours of sick leave within any calendar year may be granted to an employee for the care or attendance upon members of his/her immediate family, and not more than 48 hours of sick leave within any calendar year may be granted to an employee each absence due to death of his/her immediate family. The phrase "immediate family" is defined as spouse, domestic partner, mother, mother-in-law, father, father-in-law, brother, brother-in-law, sister, sister-in-law, child, and a grandparent or grandchild, if residing within the home or within the same place of residence of the employee.

C. Reinstatement of Sick Leave

Upon reemployment, an employee who was terminated due to layoff will have sick leave time reinstated in that amount accumulated at the time of layoff up to a maximum of 320 hours. In the event that through the course of continued employment accumulated sick leave exceeds 320 hours, payoff for such excess accumulations shall be in accordance with the payoff provisions of the program, but in no case shall the aggregate of such amount(s) exceed that provided by the policy.

D. Sick Leave Annual Payoff Program

There will be a one-time suspension of the cashing out of up to sixty (60) hours of sick leave in November of 2020. This benefit will be reinstated and employees shall be able to cash out up to sixty (60) hours of sick leave in the next cash out period in November of 2021. The employee sick leave annual payoff program.

shall be administered as follows:

1. By November of each calendar year, the City will determine the amount of unused sick leave for the calendar year that shall begin on the 25th biweekly pay period of each year through the 24th biweekly pay period of the following year for purposes of this provision. The specific dates between these pay periods vary from year to year and shall be provided to the employees in November of each year for the following year.
2. The maximum amount of sick leave hours cashed each calendar year at the employee's hourly rate is sixty (60) hours.
3. Each employee must carry over to a sick leave "bank" a minimum of 36 current year unused hours per year in December, and may request cash payment for any hours above 36 current year unused hours or may add it to the sick leave bank.
4. The sick leave payoff shall be based upon the pay rate of the employee as of the cutoff date of the above defined sick leave calendar year.
5. If 36 hours per calendar year of unused sick leave are not available, the number of unused hours must be carried over to the sick leave bank.
6. Employees shall not be allowed to change sick leave to other forms of paid leave upon return to work.

The current payoff programs at termination or retirement, as detailed in the Personnel Rules, remain unchanged.

E. Sick Leave to Service Credit Upon Retirement

~~Employees upon separation of continuous service, other than by discharge, shall be paid for one third of all sick leave accrued to the time of such separation, to a maximum of 400 hours, which shall be deposited into the 401 (A) deferred compensation plan.~~ The City shall contract with CalPERS for the Credit for the Unused Sick Leave option under Government Code section 20965. Employees, upon retirement, may elect to convert all accumulated and unused sick leave to CalPERS service credit.

F. Physician's Certificate on Use of Sick Leave

The Department Head may require evidence in the form of a physician's certificate, or written statement, as to adequacy of reason for any employee's absence of ~~three~~^{two} (2) or more consecutive working days for which sick leave was requested ~~or~~^{and} management suspects an abuse of sick leave. A failure to supply or provide said certificate or written statement ~~may~~^{shall} be grounds for denial of sick leave pay and the imposition of such disciplinary action as may be deemed appropriate.

G. Physical Examination

Any employee absent from work for a period of three (3) or more consecutive working days, due to illness or accident, may be required to submit to and successfully complete a physical examination before returning to active duty. The physical examination will be conducted by a physician of the City's choice, with all costs to be paid by the City.

SECTION 13. HOLIDAYS

A. Fixed Holidays

The City will recognize the following days as official City fixed holidays: New Year's Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve, and Christmas Day.

Each fixed holiday granted to employees shall be a full shift of up to ten (10) hours of time off with pay. Any additional time taken off above ten hours per each fixed holiday must be deducted from the employee's other leaves, such as vacation.

B. Observation of Saturday and Sunday Holidays

For those employees whose normal work week is Monday through Friday, when a holiday falls on a Sunday, the following Monday shall be deemed to be the holiday in lieu of the day observed. When a holiday falls on a Saturday, the preceding Friday shall be deemed the holiday in lieu of the day observed.

C. Holiday Accrual on Flex Day Off or Work day

For all other employees, when a holiday falls on a regularly scheduled day off, the employee shall be entitled to straight time compensation for the holiday. This compensation can be taken either as compensatory time or pay, at the discretion of the employee. When a holiday falls on a regularly scheduled work day, employees assigned to Patrol shall accrue eight hours of holiday time in addition to being paid for time worked.

SECTION 14. BEREAVEMENT LEAVE

Bereavement - 40 hours of said leave per calendar year will be available to an employee in the event of the death of said employee's grandparent, parent, spouse, domestic partner, child, stepchild, brother, or sister. The program is supplemental to the current sick leave program.

SECTION 15. VEHICLE ASSIGNMENT

Police Management Members shall be assigned vehicles. Vehicles must be used in accordance with Lexipol standards and guidelines.

SECTION 16. DISABILITY DISCRIMINATION

The City's policy shall be to make such efforts as are consistent with federal and state laws to place physically or mentally disabled employees in such positions that can be made available in the City service where their disabilities will not affect the performance of their duties. This policy will extend to all terms, conditions and privileges of employment.

The Americans with Disabilities Act (ADA) requires accommodation for individuals on a case by case basis. Prior to the City providing an accommodation, which would be contrary to negotiated agreements, the City shall provide written notice of intent to disregard provisions and shall meet and confer over options prior to implementation.

The City has a legal obligation to meet with individual employees as necessary to discuss possible accommodation before any adjustments are made to working conditions. The Association shall be notified prior to the implementation of proposed accommodations by the City, which affects an employee or group of employees within their respective bargaining unit. Accommodations provided to an individual protected by the ADA shall not establish a past practice, nor shall it be cited or used as evidence of past practice in any grievance process.

No employee shall hold any position in a class where such individual poses a risk to the health or safety of the individual or others.

SECTION 17. GRIEVANCE PROCEDURE

Refer to Personnel Rule XV, Grievance and Complaint Procedure, Sections 15.1-15.6.

SECTION 18. EMPLOYEE AND EMPLOYER RIGHTS

The parties hereto agree that this MOU does not in any manner abridge, modify or restrict the rights and prerogatives of employees and the City as set forth in Chapter 2 of the West Covina Municipal Code. It is understood that said rights and prerogatives of the City include, but are not limited to, determinations as to the levels of service, manning requirements, work schedules, transfers, number and location of work stations, nature of work to be performed, contracting for any work or operations, employee performance standards, discipline and discharge, and reasonable work and safety rules and regulations in order to maintain the efficiency and economy desirable, in the performance of City services. It is further agreed that the City agrees to meet and confer with the recognized bargaining representatives regarding the impact of such management decisions on matters within the scope of representation.

SECTION 19. OTHER PROVISIONS NOT COVERED HERE

It is understood that all other items relating to employee salaries and benefits not covered in this MOU, are covered by existing ordinances, resolutions, and policies of the City Council, as well as the Personnel Rules and Regulations presently in effect.

SECTION 20. MASTER MOU

The Association and the City have met in in good faith to achieve this Memorandum of Understanding which replaces and superseded all previous Memorandum of Understandings.

SECTION 21. SEVERABILITY

It is understood and agreed that this MOU is subject to all present and future federal and state laws and regulations and the provisions hereof shall be effective and implemented only to the extent permitted by such laws and regulations. If any part of this MOU is in conflict or inconsistent with such applicable provisions of federal or state laws or regulations, or otherwise held to be invalid or unenforceable by a tribunal of competent jurisdiction, such part of provision shall be suspended and superseded by such applicable laws and regulations and the remainder of this MOU shall not be affected thereby and shall remain in full force and effect.

SECTION 22. RATIFICATION AND IMPLEMENTATION

A. ACKNOWLEDGEMENT

The City and Association acknowledge that this Memorandum of Understanding shall not be in full force and effect until ratified by those Association members voting who are in classifications represented by the Association set forth in this Agreement and adopted in the form of a resolution by the City Council.

B. Mutual Recommendation

This Agreement constitutes a mutual recommendation by the parties hereto, to the City council, that one or more ordinances and/or resolutions be adopted accepting its provisions and effecting the changes enumerated herein relating to wages, hours, fringe benefits, and other terms and conditions of employment for unit employees represented by the Association.

C. Ratification

Subject to the foregoing, this Memorandum of Understanding is hereby ratified by the authorized representatives of the City and the Association and entered into on this 2nd day of ~~May~~ 2017.

D. Term of Memorandum of Understanding

The term of this Memorandum of Understanding shall be for the period commencing on July 1, 2020~~15~~, and terminating after June 30, 2022~~19~~.

E. Reopener

From July 1, 2020 to June 30, 2022 (“Reopener Period”), the Association may reopen negotiations on the issue of compensation. In order to exercise its right to reopen, the Association must provide written notice to reopen to the City during the Reopener Period. Should the Association not provide such timely notice, the Association shall waive its right to reopen. Should the Association provide such timely notice, the City and the Association shall meet for its first negotiations session on the limited reopener within 30 days of the Association providing notice to reopen unless another date has been mutually agreed to.

PARTIES TO THE AGREEMENT

West Covina Police Management Association

City of West Covina

~~Attachment A~~

ATTACHMENT A

West Covina Police Management Association

Authorized Salary Ranges

Effective ~~May 6, 2017~~ January 7, 2020 (Salary Resolution No. 2020-02)

~~**Position Title Salary Grade Minimum Maximum**~~

~~Police Captain PM300 \$12,432 \$16,783~~

~~Police Lieutenant PM475 \$11,605 \$15,667~~

~~**Annual**~~

~~**Position Title Salary Grade Minimum Maximum**~~

~~Police Captain PM300 \$149,185 \$201,400~~

~~Police Lieutenant PM475 \$139,259 \$188,000~~

<u>Position Title</u>	<u>Pav Grade</u>	<u>Period</u>	<u>Minimum (Step 1)</u>	<u>Mid-Point (Step 2)</u>	<u>Maximum (Step 3)</u>
Police Captain	PM300	Monthly	\$14,594	N/A	\$16,783
		Annually	\$175,130	N/A	\$201,400
Police Lieutenant	PM475	Monthly	\$13,750	\$14,667	\$15,667
		Annually	\$165,000	\$176,000	\$188,000

CITY OF WEST COVINA — Memorandum
Police Department

TO DAVE FAULKNER, CHIEF OF POLICE
FROM PAT BENSCHOP, LIEUTENANT
DATE APRIL 06, 2017
SUBJECT: **PATROL LIEUTENANT DEPLOYMENT STRATEGY**

As a component of the currently proposed WCPMA MOU, Police Lieutenants have agreed to transition from: FLSA non-exempt status to exempt status. This simply moved the Lieutenants onto a fixed salary with no overtime earnings. To meet the challenge of covering Patrol shifts in the absence of the assigned Lieutenant, traditionally covered with overtime, the WCPMA explored numerous deployment options. However, it was unanimously decided by the entire body of the WCPMA that the Department would be best served by the Patrol Lieutenants remaining on their current deployment schedule (3/12.5 shifts).

It is the intention of the WCPMA to avoid staffing Patrol Lieutenant (Watch Commander) vacancies with overtime. However, it is understood that where overtime can be significantly impacted and controlled, it will not be completely eliminated where staffing is required 24 hours per day; 76 days per week.

The following is a guideline which will be utilized to efficiently staff vacancies at the Watch Commander position:

Regularly scheduled vacations/time-off:

- Each month at the Lieutenant's Meeting, Watch Commanders will have an opportunity to inform the group of time off requests for the upcoming month
- The group will coordinate to backfill those vacancies with Patrol and/or special assignment Lieutenants
- Where there are extended vacancies or scheduling conflicts, the Relief Sergeant may be used to staff the position (as is the current practice)

Training Courses:

- As with Vacation time, Watch Commanders will notify the Lieutenant's group as soon as practical of any upcoming training course they will attend.
- The vacancies may be staffed with Patrol and/or special assignment Lieutenants
- Where there are extended vacancies created by the school or scheduling conflicts, the Relief Sergeant may be used to staff the position (as is the current practice)

Backfill for 5th Sunday/Friday coverage:

- The Crew 5 and Crew 6 Sergeants will be scheduled to cover these shifts.

Long-Term IOD (Watch Commander)

- To handle the unforeseen incidents of long-term IOD's the special assignment Lieutenants may be tasked with managing the Patrol coverage
- In addition, the-Relief Sergeant may be tasked to work a portion of the coverage

Equity-in Staffing:

- Each month at the Lieutenant's Meeting, the group will examine the extra hours (beyond the 40-hour work week) worked as well as time off taken by each Lieutenant during that cycle to insure equity
- The Patrol :Division Captain will be provided with the monthly data

As this deployment strategy is a new concept for the West Covina Police Department, it should be expected that adjustments may become necessary in the interest of operational efficiency. The Patrol Captain and Lieutenants will remain flexible and diligent in their overall deployment and evaluation of this strategy.

In an effort to educate future Lieutenants on the expectations outlined above, HR will be adding this information to all future promotional fliers for the rank of Lieutenant. Current Lieutenants acknowledge and agree with this deployment strategy,

LIEUTENANT PI, NKETT

LIEUTENANT P. BENSCHOP

LIEUTENANT D PATTON

LIEUTENANT D. LEE

LIEUTENANT TIB:OFTM

- •Fra:z A-141L1.- 6rvr: 1CiriAvviL
LIEUTENANT R....ALLEP

Pat Benschop

From: Ron Allen
Sent: Friday, April 07, 2017 11:18 AM
To: Pat Benschop
Subject: Acknowledgment and Agreement
Attachments: memo LT Deployment Strategy 2017.doc

To Whom it May Concern:

I acknowledge & agree with the "PATROL LIEUTENANT DEPLOYMENT STRATEGY"
Memo and authorize Lieutenant Benschop to sign on my behalf.

R. Allen
Lieutenant, West Covina Police Department

SIDE LETTER AGREEMENT TO THE
MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF WEST COVINA
AND
THE WEST COVINA POLICE MANAGEMENT ASSOCIATION
JULY 1, 2015 THROUGH JUNE 30, 2019

The City and the Association reached an agreement on a successor memorandum of understanding for the period of July 1, 2015 through June 30, 2019. During the negotiations, the parties discussed the various wages, hours and other conditions of employment.

The City and the Association agrees re-open negotiations regarding the PARS Supplemental Retirement Plan (Attachment No. 1), within 30 days following ratification of the memorandum of understanding.

It is understood that in the event an agreement is reached it will be presented to the City Council for consideration.

PARTIES TO THE AGREEMENT

West Covina Police Management Association

City of West Covina



Pat Benschop
Police Management Association


Chris Freeland
City Manager



Dennis Patton
Police Management Association



Tom Bokoy
Human Resources Director

PARS SUPPLEMENTAL RETIREMENT PLAN

The City will replace the Employer Paid Member Contribution (EPMC) gross up amount that has been historically reported to CalPERS with a PARS Supplemental retirement plan. This supplemental plan will make the employees whole in consideration for the loss of the incremental stipend amount due to the "West Covina Plan" method of calculation no longer being allowable under CalPERS regulations.

The PARS plan will pay a retirement amount for all years of service to those unit employees retiring from the City based on .89% of PERSable compensation. At the time of retirement, the employee can make a one-time election to receive either an ongoing monthly stipend or a lump sum amount at the time of retirement based on an actuarially determined net present value of the annual stipends. The monthly stipends will contain the same benefit options as the City's PERS plan including 2% annual COLA's and survivor benefits. This plan will be available to all future retirees, and any past retirees who retired after July 1, 2004 who can provide documentation to the City that the .89% of compensation was disallowed by CalPERS in determining their retirement stipend.

Effective July 1, 2012, employees must be employed as a Police Management employee with the City of West Covina for a minimum of three (3) years to be eligible to receive this benefit.

The City retains the responsibility to fund this plan with actuarially determined contributions.

RESOLUTION NO. 2020-77

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, ADOPTING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY AND THE WEST COVINA POLICE MANAGEMENT ASSOCIATION

WHEREAS, on May 19, 2020, the City Council declared a fiscal emergency through the adoption of Resolution No. 2020-46; and

WHEREAS, in declaring the fiscal emergency, the City Council directed the City Manager to take any and all actions necessary to address the fiscal emergency, including, but not limited to, measures relating to personnel and benefit costs, operations, and reductions in service levels, and reviewing and negotiating changes to labor agreements, service agreements, and franchise agreements, to the extent permitted by law; and

WHEREAS, the City of West Covina, hereinafter referred to as the "City," and the West Covina Police Management Association, hereinafter referred to as the "Association," have met and conferred in accordance with the Meyers-Milias-Brown Act and Government Code § 3500 to address the City's fiscal emergency, and the appropriate personnel-related cost savings measures needed to address the fiscal emergency; and

WHEREAS, the City and the Association have memorialized the agreement in a memorandum of understanding, which is attached hereto as Exhibit "A".

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA HEREBY RESOLVES AS FOLLOWS:

SECTION 1. The Memorandum of Understanding between the City and the Association, attached hereto as Exhibit "A," is hereby approved.

SECTION 2. The City Manager is authorized to sign the Memorandum of Understanding.

SECTION 3. The City Clerk shall certify to the adoption of this resolution and shall enter the same in the book of original resolutions and it shall become effective immediately.

APPROVED AND ADOPTED this 21st day of July, 2020.

Tony Wu
Mayor

APPROVED AS TO FORM

ATTEST

Thomas P. Duarte
City Attorney

Lisa Sherrick
Assistant City Clerk

I, LISA SHERRICK, ASSISTANT CITY CLERK of the City of West Covina, California, do hereby certify that the foregoing Resolution No. 2020-77 was duly adopted by the City Council of the City of West Covina, California, at a regular meeting thereof held on the 21st day of July, 2020, by the following vote of the City Council:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lisa Sherrick
Assistant City Clerk

EXHIBIT A

MEMORANDUM OF UNDERSTANDING



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: July 21, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

**SUBJECT: CONSIDERATION OF A SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND
THE WEST COVINA MAINTENANCE AND CRAFTS EMPLOYEES' ASSOCIATION**

RECOMMENDATION:

It is recommended that the City Council adopt the following Resolution:

RESOLUTION NO. 2020-79 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA MAINTENANCE AND CRAFTS EMPLOYEES' ASSOCIATION REPRESENTED BY CITY EMPLOYEES ASSOCIATES (CEA)

BACKGROUND:

The West Covina Maintenance and Crafts represented by City Employees' Association (CEA) Memorandum of Understanding expired on June 30, 2019. The City and the West Covina Maintenance and Crafts employee association met and conferred on ten (10) occasions and have reached a side letter of agreement.

DISCUSSION:

The City and the Maintenance and Crafts Employee Association have memorialized a side letter of agreement. The terms and conditions agreed upon address personnel-related cost-saving measures immediately needed as a result of the City's dire financial condition, as declared on May 19, 2020.

Prepared by: Helen Tran, HR/Risk Management Director

Fiscal Impact

FISCAL IMPACT:

Anticipated savings is approximately \$30,000 of benefits reduction suspension.

Attachments

Attachment No. 1 - Resolution 2020-79

CITY COUNCIL GOALS & OBJECTIVES: Achieve Fiscal Sustainability and Financial Stability

RESOLUTION NO. 2020-79

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA MAINTENANCE AND CRAFTS EMPLOYEES' ASSOCIATION REPRESENTED BY CITY EMPLOYEES ASSOCIATES (CEA)

WHEREAS, on May 19, 2020, the City Council declared a fiscal emergency through the adoption of Resolution No. 2020-46; and

WHEREAS, in declaring the fiscal emergency, the City Council directed the City Manager to take any and all actions necessary to address the fiscal emergency, including, but not limited to, measures relating to personnel and benefit costs, operations, and reductions in service levels, and reviewing and negotiating changes to labor agreements, service agreements, and franchise agreements, to the extent permitted by law; and

WHEREAS, the City of West Covina, hereinafter referred to as the "City," and the West Covina Maintenance and Crafts Employees' Association represented by City Employees Associates, have met and conferred in accordance with the Meyers-Milias-Brown Act and Government Code § 3500; and

WHEREAS, the City and the West Covina Maintenance and Crafts Employees' Association represented by City Employees Associates have memorialized the agreement in a written side letter of agreement, which is attached hereto as Exhibit "A".

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST COVINA HEREBY RESOLVES AS FOLLOWS:

SECTION 1. The Side Letter of Agreement between the City and the West Covina Maintenance and Crafts Employees' Association represented by City Employees Associates, attached hereto as Exhibit "A," is hereby approved.

SECTION 2. The City Manager is authorized to sign the Side Letter of Agreement.

SECTION 3. The City Clerk shall certify to the adoption of this resolution and shall enter the same in the book of original resolutions and it shall become effective immediately.

APPROVED AND ADOPTED this 21st day of July, 2020.

Tony Wu
Mayor

APPROVED AS TO FORM

ATTEST

Thomas P. Duarte
City Attorney

Lisa Sherrick
Assistant City Clerk

I, LISA SHERRICK, ASSISTANT CITY CLERK of the City of West Covina, California, do hereby certify that the foregoing Resolution No. 2020-79 was duly adopted by the City Council of the City of West Covina, California, at a regular meeting thereof held on the 21st day of July, 2020, by the following vote of the City Council:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lisa Sherrick
Assistant City Clerk

EXHIBIT A

SIDE LETTER OF AGREEMENT



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: July 21, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

**SUBJECT: CONSIDERATION OF A SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND
THE WEST COVINA GENERAL EMPLOYEES' ASSOCIATION**

RECOMMENDATION:

It is recommended that the City Council adopt the following Resolution:

**RESOLUTION NO. 2020-80 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST
COVINA, CALIFORNIA ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY
AND THE WEST COVINA GENERAL EMPLOYEES' ASSOCIATION (WCGEA)**

BACKGROUND:

The West Covina General Employees (WCGEA) represented by City Employees' Association (CEA) Memorandum of Understanding expired on June 30, 2019. The City and the West Covina Maintenance and Crafts employee association met and conferred on ten (10) occasions and have reached a side letter of agreement.

DISCUSSION:

The City and the West Covina General Employees Association (WCGEA) represented by CEA have memorialized a side letter of agreement. The terms and conditions agreed upon address personnel-related cost-saving measures immediately needed as a result of the City's dire financial condition, as declared on May 19, 2020.

Prepared by: Helen Tran, HR/Risk Management Director

Fiscal Impact

FISCAL IMPACT:

Anticipated savings is approximately \$53,000 of benefits reduction suspension.

Attachments

Attachment No. 1 - Resolution 2020-80

CITY COUNCIL GOALS & OBJECTIVES: Achieve Fiscal Sustainability and Financial Stability

RESOLUTION NO. 2020-80

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA GENERAL EMPLOYEES' ASSOCIATION (WCGEA) REPRESENTED BY CITY EMPLOYEES ASSOCIATES (CEA)

WHEREAS, on May 19, 2020, the City Council declared a fiscal emergency through the adoption of Resolution No. 2020-46; and

WHEREAS, in declaring the fiscal emergency, the City Council directed the City Manager to take any and all actions necessary to address the fiscal emergency, including, but not limited to, measures relating to personnel and benefit costs, operations, and reductions in service levels, and reviewing and negotiating changes to labor agreements, service agreements, and franchise agreements, to the extent permitted by law; and

WHEREAS, the City of West Covina, hereinafter referred to as the "City," and the West Covina General Employees' Association represented by City Employees Associates, have met and conferred in accordance with the Meyers-Milias-Brown Act and Government Code § 3500; and

WHEREAS, the City and the West Covina General Employees' Association represented by City Employees Associates have memorialized the agreement in a written side letter of agreement, which is attached hereto as Exhibit "A".

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA HEREBY RESOLVES AS FOLLOWS:

SECTION 1. The Side Letter of Agreement, attached hereto as Exhibit "A," is hereby approved.

SECTION 2. The City Manager is authorized to sign the Side Letter of Agreement.

SECTION 3. The City Clerk shall certify to the adoption of this resolution and shall enter the same in the book of original resolutions and it shall become effective immediately.

APPROVED AND ADOPTED this 21st day of July, 2020.

Tony Wu
Mayor

APPROVED AS TO FORM

ATTEST

Thomas P. Duarte
City Attorney

Lisa Sherrick
Assistant City Clerk

I, LISA SHERRICK, ASSISTANT CITY CLERK of the City of West Covina, California, do hereby certify that the foregoing Resolution No. 2020-80 was duly adopted by the City Council of the City of West Covina, California, at a regular meeting thereof held on the 21st day of July, 2020, by the following vote of the City Council:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lisa Sherrick
Assistant City Clerk

EXHIBIT A

SIDE LETTER OF AGREEMENT



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: July 21, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

**SUBJECT: CONSIDERATION OF A SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND
THE WEST COVINA CONFIDENTIAL EMPLOYEES' ASSOCIATION (WCCEA)**

RECOMMENDATION:

It is recommended that the City Council adopt the following Resolution:

**RESOLUTION NO. 2020-81 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST
COVINA, CALIFORNIA ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY
AND THE WEST COVINA CONFIDENTIAL EMPLOYEES' ASSOCIATION (WCCEA)**

BACKGROUND:

The West Covina Confidential Employees Association (WCCEA) represented by City Employees' Association (CEA) Memorandum of Understanding expired on June 30, 2019. The City and the West Covina Confidential employee association met and conferred on eleven (11) occasions and have reached a side letter of agreement.

DISCUSSION:

The City and the Confidential Employees Association have memorialized a side letter of agreement. The terms and conditions agreed upon address personnel-related cost-saving measures immediately needed as a result of the City's dire financial condition, as declared on May 19, 2020.

Prepared by: Helen Tran, HR/Risk Management Director

Fiscal Impact

FISCAL IMPACT:

Anticipated savings is approximately \$47,000 of benefits reduction suspension.

Attachments

Attachment No. 1 - Resolution 2020-81

CITY COUNCIL GOALS & OBJECTIVES: Achieve Fiscal Sustainability and Financial Stability

RESOLUTION NO. 2020-81

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA CONFIDENTIAL EMPLOYEES' ASSOCIATION (WCCEA) REPRESENTED BY CITY EMPLOYEES ASSOCIATES (CEA)

WHEREAS, on May 19, 2020, the City Council declared a fiscal emergency through the adoption of Resolution No. 2020-46; and

WHEREAS, in declaring the fiscal emergency, the City Council directed the City Manager to take any and all actions necessary to address the fiscal emergency, including, but not limited to, measures relating to personnel and benefit costs, operations, and reductions in service levels, and reviewing and negotiating changes to labor agreements, service agreements, and franchise agreements, to the extent permitted by law; and

WHEREAS, the City of West Covina, hereinafter referred to as the "City," and the West Covina Confidential Employees' Association represented by City Employees Associates, have met and conferred in accordance with the Meyers-Milias-Brown Act and Government Code § 3500; and

WHEREAS, the City and the West Covina Confidential Employees' Association represented by City Employees Associates have memorialized the agreement in a written side letter of agreement, which is attached hereto as Exhibit "A".

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Side Letter of Agreement, attached hereto as Exhibit "A," is hereby approved.

SECTION 2. The City Manager is authorized to sign the Side Letter of Agreement.

SECTION 3. The City Clerk shall certify to the adoption of this resolution and shall enter the same in the book of original resolutions and it shall become effective immediately.

APPROVED AND ADOPTED this 21st day of July, 2020.

Tony Wu
Mayor

APPROVED AS TO FORM

ATTEST

Thomas P. Duarte
City Attorney

Lisa Sherrick
Assistant City Clerk

I, LISA SHERRICK, ASSISTANT CITY CLERK of the City of West Covina, California, do hereby certify that the foregoing Resolution No. 2020-81 was duly adopted by the City Council of the City of West Covina, California, at a regular meeting thereof held on the 21st day of July, 2020, by the following vote of the City Council:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lisa Sherrick
Assistant City Clerk

EXHIBIT A

SIDE LETTER OF AGREEMENT



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: July 21, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

**SUBJECT: CONSIDERATION OF A SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND
THE WEST COVINA MIDDLE MANAGEMENT EMPLOYEES' ASSOCIATION**

RECOMMENDATION:

It is recommended that the City Council adopt the following Resolution:

**RESOLUTION NO. 2020-82 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST
COVINA, CALIFORNIA ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY
AND THE WEST COVINA MIDDLE MANAGEMENT EMPLOYEES' ASSOCIATION (WCMMEA)**

BACKGROUND:

The West Covina Middle Management Employees Association (WCMMEA) represented by City Employees' Association (CEA) Memorandum of Understanding expired on June 30, 2019. The City and the West Covina Maintenance and Crafts employee association met and conferred on ten (10) occasions and have reached a side letter of agreement.

DISCUSSION:

The City and the Middle Management Employees Association have memorialized a side letter of agreement. The terms and conditions agreed upon address personnel-related cost-saving measures immediately needed as a result of the City's dire financial condition, as declared on May 19, 2020.

Prepared by: Helen Tran, HR/Risk Management Director

Fiscal Impact

FISCAL IMPACT:

Anticipated savings is approximately \$101,000 of benefits reduction suspension.

Attachments

Attachment No. 1 - Resolution 2020-82

CITY COUNCIL GOALS & OBJECTIVES: Achieve Fiscal Sustainability and Financial Stability

RESOLUTION NO. 2020-82

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA MIDDLE MANAGEMENT EMPLOYEES' ASSOCIATION (WCMMEA) REPRESENTED BY CITY EMPLOYEES ASSOCIATES (CEA)

WHEREAS, on May 19, 2020, the City Council declared a fiscal emergency through the adoption of Resolution No. 2020-46; and

WHEREAS, in declaring the fiscal emergency, the City Council directed the City Manager to take any and all actions necessary to address the fiscal emergency, including, but not limited to, measures relating to personnel and benefit costs, operations, and reductions in service levels, and reviewing and negotiating changes to labor agreements, service agreements, and franchise agreements, to the extent permitted by law; and

WHEREAS, the City of West Covina, hereinafter referred to as the "City," and the West Covina Middle Management Employees' Association represented by City Employees Associates, have met and conferred in accordance with the Meyers-Milias-Brown Act and Government Code § 3500; and

WHEREAS, the City and the West Covina Middle Management Employees' Association represented by City Employees Associates have memorialized the agreement in a written side letter of agreement, which is attached hereto as Exhibit "A".

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA HEREBY RESOLVES AS FOLLOWS:

SECTION 1. The Side Letter of Agreement, attached hereto as Exhibit "A," is hereby approved.

SECTION 2. The City Manager is authorized to sign the Side Letter of Agreement.

SECTION 3. The City Clerk shall certify to the adoption of this resolution and shall enter the same in the book of original resolutions and it shall become effective immediately.

APPROVED AND ADOPTED this 21st day of July, 2020.

Tony Wu
Mayor

APPROVED AS TO FORM

ATTEST

Thomas P. Duarte
City Attorney

Lisa Sherrick
Assistant City Clerk

I, LISA SHERRICK, ASSISTANT CITY CLERK of the City of West Covina, California, do hereby certify that the foregoing Resolution No. 2020-82 was duly adopted by the City Council of the City of West Covina, California, at a regular meeting thereof held on the 21st day of July, 2020, by the following vote of the City Council:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lisa Sherrick
Assistant City Clerk

EXHIBIT A

SIDE LETTER OF AGREEMENT



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: July 21, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT: CONSIDERATION OF A SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA FIRE MANAGEMENT EMPLOYEES' ASSOCIATION (WCFMA)

RECOMMENDATION:

It is recommended that the City Council adopt the following Resolution:

RESOLUTION NO. 2020-78 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA FIRE MANAGEMENT ASSOCIATION (WCFMA)

BACKGROUND:

The West Covina Fire Management Association's Memorandum of Understanding expired on June 30, 2016. The City and the West Covina Fire Management Association met and conferred on seven (7) occasions and have reached a side letter of agreement.

DISCUSSION:

The City and the Fire Management Association have memorialized a side letter of agreement. The terms and conditions agreed upon address personnel-related cost-saving measures immediately needed as a result of the City's dire financial condition, as declared on May 19, 2020.

Prepared by: Helen Tran, HR/Risk Management Director

Fiscal Impact

FISCAL IMPACT:

Anticipated savings is approximately \$20,900 of benefits reduction suspended for a period of 6 months.

Attachments

Attachment No. 1 - Resolution 2020-78

CITY COUNCIL GOALS & OBJECTIVES: Achieve Fiscal Sustainability and Financial Stability

RESOLUTION NO. 2020-78

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, ADOPTING THE SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE WEST COVINA FIRE MANAGEMENT ASSOCIATION (WCFMA)

WHEREAS, on May 19, 2020, the City Council declared a fiscal emergency through the adoption of Resolution No. 2020-46; and

WHEREAS, in declaring the fiscal emergency, the City Council directed the City Manager to take any and all actions necessary to address the fiscal emergency, including, but not limited to, measures relating to personnel and benefit costs, operations, and reductions in service levels, and reviewing and negotiating changes to labor agreements, service agreements, and franchise agreements, to the extent permitted by law; and

WHEREAS, the City of West Covina, hereinafter referred to as the "City," and the West Covina Fire Management Association represented by City Employees Associates, have met and conferred in accordance with the Meyers-Milias-Brown Act and Government Code § 3500; and

WHEREAS, the City and the West Covina Fire Management Association represented by City Employees Associates have memorialized the agreement in a written side letter of agreement, which is attached hereto as Exhibit "A".

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA HEREBY RESOLVES AS FOLLOWS:

SECTION 1. The Side Letter of Agreement, attached hereto as Exhibit "A," is hereby approved.

SECTION 2. The City Manager is authorized to sign the Side Letter of Agreement.

SECTION 3. The City Clerk shall certify to the adoption of this resolution and shall enter the same in the book of original resolutions and it shall become effective immediately.

APPROVED AND ADOPTED this 21st day of July, 2020.

Tony Wu
Mayor

APPROVED AS TO FORM

ATTEST

Thomas P. Duarte
City Attorney

Lisa Sherrick
Assistant City Clerk

I, LISA SHERRICK, ASSISTANT CITY CLERK of the City of West Covina, California, do hereby certify that the foregoing Resolution No. 2020-78 was duly adopted by the City Council of the City of West Covina, California, at a regular meeting thereof held on the 21st day of July, 2020, by the following vote of the City Council:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lisa Sherrick
Assistant City Clerk

EXHIBIT A

SIDE LETTER OF AGREEMENT



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: July 21, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

**SUBJECT: CONSIDERATION OF AMENDMENT NUMBER ONE TO CITY OF WEST COVINA CITY
MANAGER EMPLOYMENT AGREEMENT WITH DAVID CARMANY**

RECOMMENDATION:

It is recommended that the City Council adopt the following Amendment:

**AMENDMENT NUMBER ONE TO CITY OF WEST COVINA CITY MANAGER EMPLOYMENT
AGREEMENT WITH DAVID CARMANY.**

BACKGROUND:

On May 19, 2020, the City Council declared a fiscal emergency through the adoption of Resolution No. 2020-46. In declaring the fiscal emergency, the City Council directed the City Manager to take any and all actions necessary to address the fiscal emergency, including, but not limited to, measures relating to personnel and benefit costs, operations, and reductions in service levels, and reviewing and negotiating changes to labor agreements, service agreements, and franchise agreements, to the extent permitted by law. Due to the fiscal emergency, the City Manager has volunteered to temporarily reduce the value of his benefits.

DISCUSSION:

Effective June 18, 2020, through December 31, 2020, the City Manager agrees to reduce the value of his employer-provided benefits, including, but not limited to, contributions to a Retirement Health Savings Plan, health insurance contributions, and Employee's automobile allowance, by eleven and a half percent (11.5%). The changes to the City Manager's benefits set forth in the Amendment will be retroactive to June 18, 2020.

Prepared by: Helen Tran, Director Human Resources/Risk Management

Fiscal Impact

FISCAL IMPACT:

The value of the City Manager's employer-provided benefits, including, but not limited to, contributions to a Retirement Health Savings Plan, health insurance contributions, and Employee's automobile allowance, by eleven and a half percent (11.5%).

Attachments

Attachment No. 1 - Amendment to CM Contract

CITY COUNCIL GOALS & OBJECTIVES: Achieve Fiscal Sustainability and Financial Stability

**AMENDMENT NUMBER ONE
TO
CITY OF WEST COVINA
CITY MANAGER EMPLOYMENT AGREEMENT
WITH DAVID CARMANY**

This Amendment Number One to City of West Covina City Manager Employment Agreement with David Carmany ("Amendment") is made and entered into this 21st day of July, 2020, by and between the CITY OF WEST COVINA, a municipal corporation ("City"), and DAVID CARMANY, an individual ("Employee"). City and Employee are collectively referred to herein as the "Parties" and individually as a "Party."

WHEREAS, City and Employee entered into a City Manager Employment Agreement on August 20, 2019 (the "Agreement"); and

WHEREAS, on May 19, 2020, the City Council declared a fiscal emergency through the adoption of Resolution No. 2020-46; and

WHEREAS, in declaring the fiscal emergency, the City Council directed the City Manager to take any and all actions necessary to address the fiscal emergency, including, but not limited to, measures relating to personnel and benefit costs, operations, and reductions in service levels, and reviewing and negotiating changes to labor agreements, service agreements, and franchise agreements, to the extent permitted by law; and

WHEREAS, due to the fiscal emergency, Employee has volunteered to temporarily reduce the value of Employee's benefits; and

WHEREAS, City and Employee desire to amend the Agreement accordingly.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Employee agree as follows:

1. Effective June 18, 2020 through December 31, 2020, Employee agrees to reduce the value of Employee's employer-provided benefits, including, but not limited to, contributions to a Retirement Health Savings Plan, health insurance contributions, and Employee's automobile allowance, by eleven and a half percent (11.5%). The manner of such reduction shall be as agreed upon by Employee and the Human Resources Director.
2. The changes to Employee's benefits set forth in this Amendment shall be retroactive to June 18, 2020 as set forth herein.
3. All other terms, conditions, and provisions of the Agreement not in conflict with this Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed as of the date and year first above written.

CITY OF WEST COVINA

EMPLOYEE

Tony Wu, Mayor

By: David Carmany

ATTEST:

Lisa Sherrick, Assistant City Clerk

APPROVED AS TO FORM:

Thomas P. Duarte, City Attorney



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: July 21, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT: **CONSIDERATION OF GOVERNMENT TORT CLAIMS**

RECOMMENDATION:

It is recommended that the City Council deny the following Government Tort Claims and the claimants to be notified:

1. Geovanny Medina vs. City of West Covina

BACKGROUND:

The Tort Claims Act governs the filing of claims against a government entity. The Tort Claims Act is found in Division 3.6 of the California Government Code, Govt. Code §§ 810 et seq. Typically, one must first give written notice within six (6) months of the injury or discovery of the injury before filing an actual lawsuit in a California superior court, giving the governmental agency time to settle the claim.

DISCUSSION:

As all claims should be considered potential lawsuits, it is requested that all Councilmembers refrain from making specific public comments so as not to prejudice any claim. Specific questions should be referred to the City Attorney.

CITY COUNCIL GOALS & OBJECTIVES: Achieve Fiscal Sustainability and Financial Stability



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: July 21, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

**SUBJECT: CONSIDERATION OF 2018 STATE HOMELAND SECURITY GRANT FOR PURCHASE
OF POLICE RADIOS**

RECOMMENDATION:

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

1. Accept and appropriate the reimbursable 2018 State Homeland Security Program grant totaling \$70,199 in expenditures and revenues, and authorize the City Manager to execute all related agreements, in a form approved by the City Attorney; and
2. Authorize the purchase of a total of (nine) 9 APX radios with accessories, directly from Motorola Solutions, for a total of \$69,936.19, from account 218.31.3111.7160.
3. Adopt the following resolution authorizing the necessary budget amendment:

RESOLUTION NO. 2020-70 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, ADOPTING A BUDGET AMENDMENT FOR THE FISCAL YEAR COMMENCING JULY 1, 2020, AND ENDING JUNE 30, 2021 (2018 STATE HOMELAND SECURITY GRANT)

DISCUSSION:

The State Homeland Security Program (SHSP) grant is a federal grant that passes through the California Governor's Office of Emergency Services and then through the Los Angeles County Operational Area. In late 2018, Police Department staff applied for funds under the 2018 SHSP grant to obtain portable and vehicle-mounted radios that allow for communications between multiple agencies, compatible with the regional Com-Net digital public safety communications system. Ultimately, grant funds totaling \$70,199 were awarded—see Attachment No. 1.

There are strict financial requirements associated with these grant funds. The funds can only be used for specific items approved by the grantors, and all purchases/projects must be completed by May 2021. Additionally, this is reimbursable grant, which means that the City Council must first appropriate funds before City staff can complete the purchases and submit requests for reimbursement. With all reimbursable grants, the City (General Fund) fronts the money for the purchases until the grant reimbursement funds are received—at that time, all transactions are

recorded to the grant. There is ultimately no burden on the City General Fund.

West Covina's radio system, and the regional Com-Net communications JPA, are built on Motorola radio infrastructure items and system components. During the grant award process, the Los Angeles County Operational Area negotiated with Motorola and obtained a new, significantly discounted contract price for radio items—see Attachment No. 2. Staff did obtain two other price quotes for these Motorola APX model portable radios, but the Motorola/LA County contract price represents a discount of about 37% in relation to those other prices—obtaining multiple price quotes is not economical or practical, because the contract discount is so significant. The Purchasing Division has verified that the LA County contract meets all City requirements set forth in Section 2-333(i)(2) of the West Covina Municipal Code and therefore formal contract procedures may be waived in connection with this purchase.

Staff recommends authorizing the purchase of nine (9) APX radios (four (4) portable radios and five (5) vehicle-mounted radios), with accessories, directly from Motorola Solutions, using the LA County contract (Contract # MA-IS-1740313-3) pricing, as shown in Attachment No. 2.

LEGAL REVIEW:

The City Attorney's Office has reviewed the resolution and approved it as to form.

Prepared by: Alex B. Houston, Police Administrative Services Manager

Additional Approval: Richard Bell, Chief of Police

Additional Approval: Robbeyn Bird, Finance Director

Fiscal Impact

FISCAL IMPACT:

The City will receive \$70,199 in 2018 State Homeland Security Grant Program funds for police radio items, which are the specific items approved by the federal government and County Operational Area. As detailed in the attached budget amendment, Staff is recommending expenditure and revenue appropriations of that amount in Fund 218. There is no match requirement, and when all grant purchases and reimbursements are complete, there will ultimately be no impact on the City General Fund.

Attachments

Attachment No. 1 2018 SHSP WCPD Funding

Attachment No. 2 - Motorola Radios Price Quote

Attachment No. 3 - Resolution 2020-70

Exhibit A - Budget Amendment

CITY COUNCIL GOALS & OBJECTIVES: Enhance Public Safety

City of West Covina
2018 SHSP Projects

Project #	Project Title	Funding Source	Discipline	Solution Area	Total Budgeted
003	LE Interoperable Communications Equipment	HSGP-SHSP	LE	Equipment	\$ 35,099
005	LE Mobile Radios	HSGP-SHSP	LE	Equipment	\$ 35,100

Totals \$ 70,199

Project #	Equipment Description & Quantity	AEL #	AEL Title	SAFECOM Consult	Funding Source	Discipline	Solution Area Sub-Category	Deployable / Shareable	Part of a Procurement over \$150K	Sole Source Involved	Hold Trigger	Budgeted Cost
003.28	Purchase P25 compliant portable all spectrum/band radios.	06CP-01-PORT	Radio, Portable	Yes	HSGP-SHSP	LE	Interoperable Communications Equipment	Shareable	No	No	No Hold Indicated	35,099
005.00	P25 compliant mobile radios for Police vehicles - Purchase / deployment of all spectrum/band portable radios that can be utilized for interoperable communications on the LARICS, ICL, LA City, and Independent radio systems throughout the Los Angeles County region as well as the neighboring counties of Orange and San Bernardino and San Bernardino trunked 700/800 systems. Will provide connectivity between local and interagency organizations to coordinate public safety responses in	06CP-01-MOBL	Radio, Mobile		HSGP-SHSP	LE	Interoperable Communications Equipment	Shareable	No	No	No Hold Indicated	35,100

Motorola Solutions

Customer Quote

Prepared By: Joe Warner

Phone: (312) 204-9300

Date: Jul. 01, 2020

Quote #: APX 8500/8000

CUSTOMER #:

PREPARED FOR : Mike Weathermon	Bill To	Ship to PLEASE PROVIDE
COMPANY : West Covina	Address:	Address:
PHONE :		
FAX :		

Equipment Details and Pricing

Qty.	Model	Description	Unit Price	Discount Price	Total Price
5	M37TSS9PW1 N	APX8500 ALL BAND MP MOBILE	\$4,770.00	\$3,005.10	\$ 15,025.50
5	G892	ADD: HAND MIC, GCAI WATER RESISTANT	\$72.00	\$45.36	\$ 226.80
5	G851	ADD: AES/DES-XL/DES-OFB ENCRYPTION	\$799.00	\$503.37	\$ 2,516.85
5	G298	ENH: ASTRO 25 OTAR W/ MULTIKEY	\$740.00	\$466.20	\$ 2,331.00
5	G806	ADD: ASTRO DIGITAL CAI OPERATION	\$515.00	\$324.45	\$ 1,622.25
5	G67	ADD: REMOTE MOUNT MID POWER	\$297.00	\$187.11	\$ 935.55
5	G51	ENH: SMARTZONE OPERATION APX	\$1,500.00	\$945.00	\$ 4,725.00
5	G831	ADD: AUXILARY SPKR 15 WATT	\$60.00	\$37.80	\$ 189.00
5	GA01513	ADD: ALL BAND MOBILE ANTENNA (7/8/V/U)	\$95.00	\$59.85	\$ 299.25
5	GA00226	ADD: GPS/WI-FI ANTENNA	\$75.00	\$47.25	\$ 236.25
5	G361	ADD: P25 TRUNKING SOFTWARE	\$300.00	\$189.00	\$ 945.00
5	GA00580	ADD: TDMA OPERATION	\$450.00	\$283.50	\$ 1,417.50
5	GA09001	ADD: WI-FI CAPABILITY	\$300.00	\$189.00	\$ 945.00
5	GA09007	ADD: OUT OF THE BOX WI-FI PROVISIONING	\$0.00	\$0.00	\$ -
5	G442	ADD: O5 CONTROL HEAD	\$432.00	\$272.16	\$ 1,360.80
5	G996	ADD: OVER THE AIR PROVISIONING	\$100.00	\$63.00	\$ 315.00
5	G444	ADD: APX CONTROL HEAD SOFTWARE	\$0.00	\$0.00	\$ -
5	GA00250	ADD: WIFI/GNSS FLEXIBLE CABLE LMR	\$100.00	\$63.00	\$ 315.00
4	H91TGD9PW7 N	APX 8000 ALL BAND PORTABLE MODEL 3.5	\$6,292.00	\$3,963.96	\$ 15,855.84
4	Q806	ADD: ASTRO DIGITAL CAI OPERATION	\$515.00	\$324.45	\$ 1,297.80
4	H38	ADD: SMARTZONE OPERATION	\$1,500.00	\$945.00	\$ 3,780.00
4	Q361	ADD: P25 9600 BAUD TRUNKING	\$300.00	\$189.00	\$ 756.00
4	QA00580	ADD: TDMA OPERATION	\$450.00	\$283.50	\$ 1,134.00
4	Q498	ENH: ASTRO 25 OTAR W/ MULTIKEY	\$740.00	\$466.20	\$ 1,864.80
4	Q15	ENH: AES/DES,DES-XL,DES-OFB	\$799.00	\$503.37	\$ 2,013.48
4	QA09001	ADD: WIFI CAPABILITY	\$300.00	\$189.00	\$ 756.00
4	QA09007	ADD: OUT OF THE BOX WIFI PROVISIONING	\$0.00	\$0.00	\$ -
4	G996	ADD: PROGRAMMING OVER P25 (OTAP)	\$100.00	\$63.00	\$ 252.00

Accessories

4	NMN6274A	IMPRES XP RSM FOR APX W/ DUAL MIC NOISE SUPPRESSION, 3.5MM	\$369.00	\$295.20	\$ 1,180.80
4	PMNN4486	BATT IMPRES 2 LIION R IP68 3400T - SPARE BATTERY	\$142.00	\$113.60	\$ 454.40
4	NNTN8863A	IMPRES 2 SINGLE UNIT CHARGER	\$168.30	\$134.64	\$ 538.56
	SMART X DISCOUNT				\$ (1,016.24)

ICI System Users Discount Promotion - Expires December 11, 2020

APX Radio = 37% Discount

4	Q58	ADD: 3Y ESSENTIAL SERVICE	\$ 110.00		\$440.00
5	G78	ADD: 3Y ESSENTIAL SERVICE	\$168.00		\$ 840.00

QUOTE PAGE TOTAL **\$69,936.19**

QUOTE TERMS AND CONDITIONS :

Quotes are exclusive of all installation and programming charges(unless expressly stated) and all applicable taxes.

Purchaser will be responsible for shipping costs, which will be added to the invoice.

Prices quoted are valid for thirty(30) days from the date of this quote.

Unless otherwise stated, payment will be due within thirty days after invoice.

LA County Contract: MA-IS-1740313-3

This quotation is provided to you for information purposes only and is not intended to be an offer or a binding proposal. If you wish to purchase the quoted products, Motorola will be pleased to provide you with our standard terms and conditions of sale, or alternatively, receive your purchase order which will be acknowledged. Thank you for your consideration of Motorola products.

RESOLUTION NO. 2020-70

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, ADOPTING A BUDGET AMENDMENT FOR THE FISCAL YEAR COMMENCING JULY 1, 2020, AND ENDING JUNE 30, 2021 (2018 STATE HOMELAND SECURITY GRANT)

WHEREAS, the City Manager, on or about June 23, 2020, submitted to the City Council a proposed budget for the appropriation and expenditure of funds for the City for West Covina for Fiscal Year 2020-2021; and

WHEREAS, following duly given notice and prior to budget adoption, the City Council held public meetings, receiving, considering and evaluating all comments, and adopted a budget for the fiscal year commencing July 1, 2020 and ending June 30, 2021; and

WHEREAS, amendments must periodically be made to the budget to conform to changed circumstances following adoption of the budget.

WHEREAS, the City has been awarded State Homeland Security Program grant funds in the amount of \$70,199.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA DOES RESOLVE AS FOLLOWS:

SECTION 1. The City Council hereby approves Budget Amendment No. 2, attached hereto as Exhibit A, related to the grant award from the State Homeland Security Program.

SECTION 2. The City Clerk shall certify to the adoption of this resolution and shall enter the same in the book of original resolutions and it shall become effective immediately.

APPROVED AND ADOPTED this 21st day of July, 2020.

Tony Wu
Mayor

APPROVED AS TO FORM

ATTEST

Thomas P. Duarte
City Attorney

Lisa Sherrick
Assistant City Clerk

I, LISA SHERRICK, Assistant City Clerk of the City of West Covina, California, do hereby certify that the foregoing Resolution No. 2020-70 was duly adopted by the City Council of the City of West Covina, California, at a regular meeting thereof held on the 21st day of July, 2020, by the following vote of the City Council:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lisa Sherrick
Assistant City Clerk

**CITY OF WEST COVINA
BUDGET AMENDMENT**

BA # 2

Posted By:

Date Posted:

Date: 7/21/2020
 Requested by: Alex Houston
 Dept/Div: Police

Fiscal Year: 2020-2021
 Amount: \$70,199.00
 Description: 2018 State Homeland Security Grant

EXPENDITURES

Account Number	Dept/Account Description	Current Budget	Proposed Amendment	Amended Budget
218.31.3111.7160	Other Equipment	-	70,199.00	70,199.00
				-
				-
				-
				-
				-
				-
				-
				-
				-
				-
				-
				-
				-
				-
				-
				-

REVENUES

Account Number	Account Description	Current Budget	Proposed Amendment	Amended Budget
218.31.4556	Grant revenue, federal pass thru State	-	70,199.00	
				-
				-
				-
				-

REASON/JUSTIFICATION (Please be specific)

To appropriate revenues and expenditures for the reimbursable 2018 State Homeland Security Grant (federal funds, passed through the State), not previously identified or budgeted, as approved by the City Council on 7/21/2020.

APPROVALS

City Council Approval Date (if required, attach minutes): 7/21/2020 ☐ Approval Not Required

Dept Head Approval: see attached Date: _____

Finance Director: _____ Date: _____

Funds Available? ☐ Yes ☐ No

City Manager: see attached Date: _____

(if over \$100,000)

☐ Approved ☐ Denied



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: July 21, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT: CONSIDERATION OF ASSET FORFEITURE FOR POLICE EQUIPMENT AND SERVICES

RECOMMENDATION:

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

1. Approve, by a majority vote of the entire City Council, dispensing with formal bidding procedures and requirements in connection with the procurement of specialized services relating to the West Covina Service Group's Computer Aided Dispatch and Records Management System (CAD-RMS), in accordance with the requirements of Section 2-330(b) of the West Covina Municipal Code; and
2. Authorize the City Manager to negotiate and execute an agreement, in an amount up to \$495,000, for a term of two years, with Scientia Consulting Group, subject to City Attorney approval, for continued services related to the West Covina Service Group CAD-RMS operations, from Account No. 117.31.3119.6120; and
3. Adopt the following resolution authorizing the necessary budget amendments:

RESOLUTION NO. 2020-71 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, ADOPTING A BUDGET AMENDMENT FOR THE FISCAL YEAR COMMENCING JULY 1, 2020, AND ENDING JUNE 30, 2021 (ASSET FORFEITURE FUNDS FOR POLICE EQUIPMENT AND SERVICES)

BACKGROUND:

The West Covina Police Department has received federal asset forfeiture funds totaling \$2,985,000, stemming from successful law enforcement and prosecution efforts of narcotics cases, spearheaded by the Department's Special Enforcement Team (SET). These cases are joint local-federal operations, and are adjudicated at the federal level, which is often a lengthy process that results in irregular receipts of these funds. The U.S. Department of Justice produces a lengthy publication concerning the spending rules and prohibitions associated with federal asset forfeiture funds. This publication is called the *Guide to Equitable Sharing of Federally Forfeited Property for State and Local Governments*. Generally, asset forfeiture funds are approved for new unbudgeted law enforcement uses, must be accounted for separately from other funds to adhere to financial reporting and auditing requirements, and cannot be spent until the funds are actually received as revenue. Moreover, these funds cannot be used to replace (supplant) funding levels for Police Department items (like police officers, materials, services, supplies and equipment, etc.) previously funded from the City's General Fund.

The federal asset forfeiture program encompasses the seizure and forfeiture of assets that represent the proceeds of,

or were used to facilitate, federal crimes. The primary mission of the program is to employ asset forfeiture powers in a manner that enhances public safety and security. This is accomplished by removing the proceeds of crime and other assets relied upon by criminals and their associates to perpetuate their criminal activity against our society. Asset forfeiture has the power to disrupt or dismantle criminal organizations that would continue to function if we only convicted and incarcerated specific individuals, denying these criminal organizations of their ill-gotten gains and instead channeling those resources to enhance public safety.

DISCUSSION:

As outlined above, the West Covina Police Department has received federal asset forfeiture funds totaling \$2,985,000. There are sufficient funds available in the fund balance of Fund 117 for a range of needed public safety items, which have been prioritized. These items include the following:

- Specialized computer services related to the West Covina Service Group (WCSG)

The Police Department needs to continue specialized computer services related to the West Covina Service Group (WCSG). The City Council previously authorized the Police Department to contract with Scientia Consulting Group for services related to the WCSG's Computer Aided Dispatch and Records Management System (CAD-RMS), using federal asset forfeiture funds. The WCSG is midway in the process of a transformative partnership that will change the technical operations of the WCSG's CAD-RMS, and also its organizational structure. However, the existing purchase order with Scientia is concluding. It is vital to the ongoing and future operations of the WCSG to continue these specialized computer services with Scientia Consulting Group. Scientia staff possess detailed knowledge and understanding of the WCSG infrastructure and needs, and come from law enforcement professions, each having successfully passed a government background investigation. Scientia staff have worked diligently, helping the WCSG develop partnerships and adapt to market changes in the overall CAD-RMS industry.

Section 2-330(b) of the West Covina Municipal Code states that the City Council, by a majority vote of the entire City Council, may dispense with the formal bidding procedures and requirements of Division 2 (Purchasing System) of Article VII (Purchases and Sales) of Chapter 2 (Administration) of the West Covina Municipal Code upon a finding that "it would be impracticable, useless or uneconomical...to follow such procedures and...the public welfare would be promoted by dispensing with the same." A primary reason for this exemption is that, in some circumstances, a low bid for specialized services like these does not constitute the best service provider. In this instance, specialized expertise is required, including understanding of Criminal Justice Information Services (CJIS) computer protocols mandated by the federal government that are specific to law enforcement databases, and detailed familiarity with West Covina Service Group computer infrastructure. Selecting a different vendor would not meet the computer security needs of the Police Department, but would instead jeopardize the security and functionality of public safety computer operations. Staff believes it would be impracticable and would not promote the public welfare to follow formal bidding requirements in connection with the procurement of these services.

Therefore, staff recommends that the City Council dispense with formal bidding requirements and procedures based upon a finding that following such requirements would be impracticable and dispensing with such requirements would promote the public welfare. Staff also recommends that the City Council and authorize the City Manager to execute and negotiate an agreement, in an amount up to \$495,000, for a term of two years, with Scientia Consulting Group, in a form approved by the City Attorney, for continued specialized WCSG technical and administrative services--see Attachment No. 1.

In addition to the proposed agreement with Scientia Consulting Group, which requires immediate action, the following items have been prioritized for funding. Some of the items below meet the cost threshold requiring a competitive bid process. For those items, staff will organize and conduct the bids, and submit additional Agenda Items to the City Council to consider awarding the bids at a future date.

- Continued Funding for Federal Task Force Officer Position

On March 6, 2018, the City Council approved an agreement assigning a West Covina Police Officer to the U.S. Marshal Service (USMS) Pacific Southwest Regional Fugitive Task Force (RFTF) to investigate and apprehend high grade, dangerous fugitives in the southwest region of the country. Joining this task force greatly expanded WCPD's ability to apprehend dangerous fugitives who commit crimes in and around West Covina, and has brought the regional and national resources of the RFTF to our area, improving safety in the local community and region. The RFTF also reimburses West Covina for certain overtime costs.

Assigning a WCPD Officer to the USMS Pacific Southwest RFTF allowed the creation of a new WCPD Officer position, "backfilling" the officer assigned to the federal task force. This is one of very few scenarios that allows asset forfeiture funds to be used for a sworn officer position. Funding for this ongoing position must be renewed, totaling \$225,000.

- Continued Law Enforcement Helicopter Services

On October 4, 2016, the City Council approved an agreement with the County of Los Angeles for the Sheriff's Department to provide police helicopter services as needed, and appropriated estimated asset forfeiture funding for this new service. This service has proven to be a very valuable officer safety tool, allowing rapid access to regional law enforcement assistance. Funding for this ongoing service must be replenished, totaling an estimated \$50,000.

- Continued Funding for Interagency Supplemental Law Enforcement Investigative Services with the California Highway Patrol

On December 20, 2016, the City Council appropriated asset forfeiture funds and approved an agreement with the California Highway Patrol (CHP) to assign a dedicated CHP Officer to work with the Police Department's Investigative & Support Services Division (ISSD), focusing on the investigation of complex criminal cases on a regional level. CHP pays the salary and benefits of their Officer, but West Covina reimburses CHP up to \$100,000 for any overtime worked. The addition of this new CHP Officer has proven very valuable, giving significant support to the mission of the Police Department, as well as reliable access to resources on a statewide basis. During the next fiscal year, the estimated funding for this service will be depleted, and must be renewed, totaling \$100,000.

- Com-Net Regional Police Communications JPA

On September 17, 2013, the City Council authorized West Covina's participation in the multi-city East San Gabriel Valley Regional Communications Network Joint Powers Authority ("Com-Net" JPA) that joins together multiple public safety radio communications in a regional, digital system. Com-Net is tied to the Interagency Communications Interoperability System JPA that is headquartered in Glendale. To date, the costs associated with Com-Net have been paid using asset forfeiture funds. Replenished funding totaling \$120,000, is needed, as follows:

- Com-Net JPA membership and operational costs, totaling \$70,000;
- Dedicated Ethernet utility lines, totaling \$50,000, are needed to carry dispatch voice and data information to and from the Glendale headquarters.

- Law Enforcement Computer System Renewals

Previously, the Police Department used asset forfeiture funds to purchase a series of new computer technology items, including firewalls, Dispatch consoles, virtualized infrastructure items, and new software licenses. In order to ensure the continued security and functioning of Police Department computer networks, the maintenance, licenses, and support for these items must be renewed, along with some new computer infrastructure hardware, totaling an estimated \$115,000 for software, an estimated \$35,000 for hardware, an estimated \$695,000 for computer services (including Information Technology support services, and West Covina Service Group technical and administrative services), and an estimated \$35,000 for Dispatch console

computer maintenance.

- Special Enforcement Team Travel Costs

The SET Team's work on large scale international narcotics cases involving asset forfeiture often incurs travel costs. Funding totaling an estimated \$15,000 for these travel costs will be needed during this fiscal year.

- Police Vehicles

- Patrol Vehicles: The patrol vehicle is a basic tool needed by a patrol officer to perform the job of providing police service to residents. For patrol officers, their office space is their vehicle, and they count on those vehicles performing every time they enter them. These vehicles are used in intense pursuits, and often run nonstop supporting multiple patrol shifts round the clock—this greatly reduces these vehicles' useful lifespan in comparison to regular civilian passenger vehicles. An estimated eight vehicles will be needed near the end of this fiscal year, totaling an estimated \$535,000, including warranties and vehicle mounted equipment.
- Investigations Vehicles: In addition to patrol vehicles, four of the older vehicles used by Detectives have suffered mechanical problems, reducing the effectiveness of ongoing operations. Replacement vehicles are needed, totaling an estimated \$250,000, including vehicle mounted equipment.
- Surveillance Vehicles: In addition to patrol vehicles, several vehicles used by the SET Team for surveillance operations have suffered mechanical problems, reducing the effectiveness of ongoing operations. Over the next year, it is projected that three replacement vehicles will be needed, totaling an estimated \$185,000, including vehicle mounted equipment.

- Other Police Equipment:

A range of equipment items, totaling \$345,00, are also needed, as follows: Shields and defensive equipment totaling an estimated \$45,000; current generation radio equipment, compatible with the digital interoperable Com-Net communication system, totaling an estimated \$75,000, including digital trunking encryption software; cell-phone based citations/ticketing system equipment, totaling an estimated \$150,000; new simulator training technology equipment, totaling an estimated \$75,000.

- Police Facilities Remodel Funds:

Areas throughout the Police Station require remodeling work, including flooring, lighting and ceiling, storage, and paint, totaling an estimated \$85,000.

- Police Supplies:

A range of police supply items, totaling an estimated \$195,000, are also needed for frontline law enforcement operations, as follows:

- GPS based surveillance items and supplies used by the SET Team to track narcotics suspects;
- Tactical supplies for the SWAT Team;
- Emergency response gear and police supplies supporting front line law enforcement.
- Traffic enforcement supplies
- Protective supplies
- Less lethal weapons and accessories

As outlined above, at this time staff is only requesting approval of an agreement with Scientia Consulting Group and adoption of the resolution approving the budget amendments. For the items above requiring a competitive bid, staff will return to the City Council for consideration of awarding those bids at a future date.

LEGAL REVIEW:

The City Attorney's Office has reviewed the resolution and approved it as to form.

Prepared by: Alex B. Houston, Police Administrative Services Manager

Additional Approval: Richard Bell, Chief of Police

Additional Approval: Robbeyn Bird, Finance Director

Fiscal Impact**FISCAL IMPACT:**

The West Covina Police Department received federal asset forfeiture funds stemming from successful law enforcement and prosecution efforts of narcotics cases, spearheaded by the SET team, such that there are sufficient monies available in the fund balance of Fund 117 for all of the items detailed above, totaling \$2,985,000. As detailed in the proposed budget amendment, staff is recommending an expenditure appropriation of that amount in Fund 117.

Without these federal asset forfeiture funds, these unmet needs would become Police Department budget requests, drawing on the City's General Fund. Thus, while these funds do not supplant existing budgeted funds, they provide significant savings of General Fund money and alleviate current and future strain on the City's fiscal resources while meeting unbudgeted Police Department needs. It is appropriate and allowable to use available federal asset forfeiture funds for these items. There is no General Fund impact with this agenda item.

Attachments

Attachment No. 1 - Draft Agreement with Scientia Consulting Group

Attachment No. 2 - Resolution 2020-71

Exhibit A - Budget Amendment

CITY COUNCIL GOALS & OBJECTIVES: Enhance Public Safety

**CITY OF WEST COVINA
PROFESSIONAL SERVICES AGREEMENT
WITH
SCIENTIA CONSULTING GROUP
FOR
WEST COVINA SERVICE GROUP (WCSG) ADMINISTRATIVE
AND TECHNICAL SERVICES**

THIS AGREEMENT is made and entered into this 21st day of July, 2020 ("Effective Date"), by and between the CITY OF WEST COVINA, a municipal corporation ("City"), and "**Scientia Consulting Group**", 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 WCSG administrative and technical 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.

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 "A," attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant's total compensation shall not exceed Four Hundred and Ninety Five Thousand Dollars (\$495,000).

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, referenced in Exhibit A, 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 for a period of two (2) years, 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 Tony White and/or Phil Danie, who shall coordinate directly with City. Any substitution of key personnel must be approved in advance in writing by City's Representative. Other Scientia Staff, as assigned by Tony White or Phil Danie, may also provide specific technical services.

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:

Scientia Consulting Group
4368 E. La Palma
Anaheim, CA 92807
Tel: 714-646-9283

Attn: Phil Danie

IF TO CITY:

City of West Covina
1444 West Garvey Ave. South
West Covina, CA 91790
Tel: 626-939-8401

Attn: City Manager

6.5. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, 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.

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: _____

CONSULTANT

Signature

Date: _____

Name and Title

Signature

Date: _____

Name and Title

ATTEST:

Lisa Sherrick
Assistant City Clerk

APPROVED AS TO FORM:

City Attorney

Date: _____

APPROVED AS TO INSURANCE:

Risk Management

Date: _____

EXHIBIT A

SCOPE OF SERVICES

1. RIGHTS AND LICENSES

1.1 Designated Software and Materials. West Covina Police hereby grants to Scientia, a limited right to install, execute, copy, modify, display, and otherwise use all Designated Software and all West Covina Police Materials, solely in order to perform services under this Agreement if and only to the extent allowed by the license agreements relating to the Supported Software.

1.2 West Covina Police Hardware. West Covina Police hereby grants to Scientia, a limited right to use the West Covina Police Hardware solely in order to perform services under this Agreement.

1.3 Required Consents. Prior to Scientia obtaining access to any Supported Software or Supported Hardware, Scientia will obtain all consents, approvals, and agreements that may be required from third parties for the grant of rights under Sections 1.1 and 1.2 and for Scientia to perform the Services; provided however, that West Covina Police will obtain any Required Consents applicable to West Covina Police Hardware and West Covina Police Materials. If Scientia does not obtain any Required Consent or West Covina Police does not obtain any West Covina Police Required Consent, the Parties will meet to mutually agree upon alternative approaches to permit Scientia to perform the Services.

1.4 Costs of Assignment and Consents. West Covina Police shall pay any and all third party fees or costs associated with Sections 1.3 hereof other than with respect to West Covina Police Materials, for which West Covina Police shall pay collectively, the Assignment and Consent Costs.

2. SERVICES

2.1 Base Services. Subject to the terms and conditions of this Agreement, during the Term, Scientia will provide to West Covina Police, and West Covina Police will obtain from Scientia, Services for West Covina Police. Services include the following:

(1) Administrative services for the West Covina Service Group (WCSG) for the purposes of partnership development, and business management, customer acquisition, and existing customer retention. Assigned Scientia staff will implement marketing and sales strategies with the goal of acquiring new customers, working with existing business partners as appropriate. The business management role will enhance the existing management team in place currently servicing the customer base and will be responsible for the future success of programs and offerings from the WCSG, in cooperation with existing business partners. Assigned Scientia staff will attend onsite and offsite customer and partner meetings, manage customer and partner needs, and participate in planning and execution of new CAD-RMS products.

(2) Technical services for the WCSG Enterprise, including interface programming, new CAD-RMS products, and other technical CAD-RMS products

needed as part of the WCSG Enterprise, and/or by customers, in cooperation with existing business partners when appropriate.

During the Term, and for so long as Scientia is not in breach of any material term or provision contained herein (including, without limitation, the Service Levels), or, if such breach exists, so long as Scientia cures such breach within a reasonable time after notice thereof from West Covina Police, Scientia will be the exclusive provider for the types of services.

2.2 Subcontracting. West Covina Police understands that before and after the date of this Agreement, Scientia may have contracted, and may in the future contract, with third parties to provide services in connection with all or any portion of the WCSG marketing, management, and technical services to be provided under this Agreement. Scientia reserves the right to continue to contract with third parties to provide the foregoing or to enter into new contractual relationships for any of the foregoing; provided that no such subcontracting shall relieve Scientia from its obligations hereunder.

3. WEST COVINA POLICE OBLIGATIONS

3.1 Scientia Policies. West Covina Police will comply with Scientia's reasonable policies, procedures, requirements, and restrictions with respect to West Covina Police's use of its Services.

3.2 Cooperation. In order to enable Scientia to perform the Services, West Covina Police and Scientia will provide such mutual cooperation and assistance as reasonably requested by the other Party. Such cooperation and assistance shall include providing to Scientia in a timely manner answers to questions, information, technical consultation, and, where applicable, acceptances. West Covina Police's Main Technical Contact will be the West Covina Police principal point of contact for obtaining the foregoing. Scientia shall be excused from performing its obligations and meeting any Service Levels to the extent Scientia's performance is actually prevented or hindered by: West Covina Police's nonperformance; the failure by West Covina Police personnel or any West Covina Police third-party contractor to adequately perform its tasks related to the Services; unreasonable, untimely, inaccurate, or incomplete information from West Covina Police; the failure of any Hardware or Software that is not the fault of Scientia; or the occurrence of an event described in Section 12.3; West Covina Police agrees that, in connection with the foregoing, Scientia shall be entitled to an extension of time to complete the affected Services and, if applicable, an adjustment of the applicable fees.

3.4 New Software and Hardware. Any new or additional Software or Hardware that Scientia may require from time to time to perform the Services will be purchased, leased, or licensed by West Covina Police in its own name. Upon request, Scientia will process such purchases in a manner consistent with the way in which such purchases were processed within Scientia immediately prior to the Effective Date.

4. COORDINATION AND COMMUNICATION

4.1 Main Technical Contact. West Covina Police and Scientia will each appoint a single "Main technical Contact" who will serve as the primary point of contact for the other Party for matters related to this Agreement. Either Party may replace its Services

Manager with an individual of comparable qualifications and experience by notifying the other Party of such new appointment.

4.2 Service Performance Reviews. The Main Technical Contact's will meet formally as needed and informally as needed in order to review Service Levels, address new requirements, review outstanding issues and new issues and other items as needed. Meetings will be scheduled based on the availability of both Services Managers.

4.3 Agreement Review. The Parties will meet, formally review and, to the extent mutually agreed upon by the Parties, update the terms, pricing, conditions and other details of this Agreement so that the on-going business requirements of Scientia and West Covina Police are met.

5. PRICING & PAYMENTS

5.1 Fees for Base Services. West Covina Police shall pay a rate of \$85.75 per hour for software developer services. West Covina Police shall pay a rate of \$90.75 per hour for all WCSG Marketing and Management Consultant Services. West Covina Police shall pay a rate of \$115.25 per hour for Senior Software Developer. The billing is as follows: Onsite support shall be charged per use at a minimum of one hour, with subsequent usage rounded up at fifteen (15) minutes increments thereafter, at the discretion of Scientia. Telephone support shall be charged per use at a minimum of fifteen (15) minutes per session, and rounded up at fifteen (15) minutes increments thereafter, at the discretion of Scientia; Email support shall be charged per use at a minimum of fifteen (15) minutes, and rounded up at fifteen (15) minutes increments thereafter, at the discretion of Scientia.

5.2 Reimbursement of Expenses. In addition to the Hourly Services Fee, West Covina Police will reimburse Scientia for any expenses of the types and any other expenses that the Parties reasonably and mutually agree should have been incurred by West Covina Police in connection with, and only to the extent necessary for, performance of the West Covina Service Group Marketing and Management Consultant Services. West Covina Police shall reimburse Scientia for expenses incurred under the following terms and conditions; (1) Scientia shall notify West Covina Police of the expenditure in advance and with reasonable notice and (2) West Covina Police shall approve the expenditure in advance. Reimbursement costs are subject to the same terms and conditions as outlined in section 7.1.

5.3 Taxes. The fees and charges of Scientia under this Agreement exclude all applicable income, franchise, excise, sales, use, gross receipts, value added, goods and services, property, or similar tax imposed by any federal, state, or local taxing authority and West Covina Police will be responsible for payment of all such Taxes and any related penalties and interest, arising from the payment of fees and charges to Scientia. West Covina Police will indemnify and hold Scientia harmless from any and all damages, losses, liabilities, demands, awards, assessments, costs, penalties, and expenses, arising directly or indirectly from West Covina Police's failure to collect or pay any of the Taxes required to be collected or paid by West Covina Police.

5.4 Payments Invoices will be submitted on a biweekly basis. West Covina Police will remit payment within 30 days of receipt of each invoice.

6. CONFIDENTIALITY AND SECURITY OBLIGATIONS.

6.1 Privacy – West Covina Police. West Covina Police shall maintain in confidence, and shall not disclose to any third party, unless directed to do so in writing by Scientia, or designee, all data and materials furnished by Scientia for services hereunder, and West Covina Police agrees that such information shall not be used by West Covina Police for any purposes other than the provision of processing services pursuant to this Agreement. West Covina Police's obligation under this Paragraph is limited to diligent compliance with the same methods and procedures that West Covina Police uses to protect its own confidential information from disclosure. West Covina Police shall furnish Client Agency with a description of such restrictions upon Client Agency's request.

6.2 Privacy – Scientia. Scientia shall maintain in confidence, and shall not disclose to any third party, unless directed to do so in writing by West Covina Police, or designee, all data, operational information, and materials furnished by West Covina Police for services hereunder, and Scientia agrees that such information shall not be used by Scientia for any purposes other than the provision of processing services pursuant to this Agreement. Scientia's obligation under this Paragraph is limited to diligent compliance with the same methods and procedures that Scientia uses to protect its own confidential information from disclosure. Scientia shall furnish West Covina Police with a description of such restrictions upon West Covina Police's request.

6.3 Security. The parties mutually agree that to the extent allowed by law, none of its officers or employees shall use or reveal any research or statistical information furnished by any person and identifiable to any specific private person for any purpose other than the purpose for which it was obtained. Copies of such information shall not, without the prior written consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit or other judicial or administrative proceedings, unless ordered by a court of competent jurisdiction. Client Agency shall be notified immediately upon receipt of any such order of court, pertaining to production of such information.

7. ACCESS TO COMPUTER SYSTEMS.

7.1 Access and Conformity. If either Party is given access to any equipment, computer, software, network, electronic files, or electronic data storage system owned or controlled by the other Party, the Party provided access shall limit such access and use solely to provide or receive, as applicable, WCSG Marketing and Management Consultant Services under this Agreement and shall not access or attempt to access any equipment, computer, software, network, electronic files, or electronic data storage system, other than those specifically required to provide or receive, as applicable, the Services. Each Party shall limit such access to those individuals with a requirement to have such access in connection with this Agreement, shall advise the other Party in writing of the name of each such person who will be granted such access, and shall strictly follow all security rules and procedures of the other Party for use of that Party's electronic resources. All user identification numbers and passwords disclosed to a Party by the other Party and any nonpublic information of a Party obtained by the other Party as a result of their access to and use of any equipment, computers, software, networks, electronic files, and electronic data storage systems owned or controlled by the disclosing Party, shall be deemed to be, and shall be treated as confidential. Each Party agrees to cooperate with the other Party in the investigation of any apparent unauthorized access by the first Party to any equipment,

computer, software, network, clean-room, electronic file, or electronic data storage systems owned or controlled by the other Party, or any apparent unauthorized release of nonpublic information by the first party's employees. Further, Scientia agrees that any persons employed by Scientia who will have physical access with any CLETS equipment or information, including its affiliates and subcontractors, have satisfied the requirements of the California Department of Justice – CLETS Policies, Practices and Procedures, section 1.9.2, regarding adequate background checks. As used in this section, physical access includes access accomplished by means of a remote connection.

8. LIMITATIONS OF LIABILITY

8.1 Waiver. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOSS OF PROFIT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING.

9. REPRESENTATIONS AND WARRANTIES AND LIMITATIONS.

DISCLAIMER. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS SECTION, THE I.T. SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED "AS IS." EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS SECTION, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES UNDER THIS AGREEMENT, AND EACH PARTY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

10. TECHNICAL SUPPORT

Technical support will be provided to the main technical contact person designated by West Covina Police. Additional users may be added as required.

- i. Scientia offers no guarantee that it will be able to fix any particular issue. Scientia will employ all reasonable efforts to do so in the time allowed. Engineers will be assigned based on required skills.
- ii. West Covina Police can use the time for hardware and/or software technical assistance.
- iii. Technical support will be available by phone during Scientia's normal 9 AM to 5 PM (PST) business hours. After hours calls will be returned within a 2 hour period.
- iv. Scientia guarantees that it will commence service on West Covina Police's request the same business day where feasible. However, depending upon the nature of the support requests, Scientia cannot guarantee a time of resolution.
- v. Scientia assumes no liability whatsoever for proposed resolutions or fixes.
- vi. If requested, Scientia will provide a log outlining use of service hours upon completion of each billing cycle.

RESOLUTION NO. 2020-71

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, ADOPTING A BUDGET AMENDMENT FOR THE FISCAL YEAR COMMENCING JULY 1, 2020, AND ENDING JUNE 30, 2021 (ASSET FORFEITURE FOR POLICE EQUIPMENT AND SERVICES)

WHEREAS, the City Manager, on or about June 23, 2020, submitted to the City Council a proposed budget for the appropriation and expenditure of funds for the City for West Covina for Fiscal Year 2020-2021; and

WHEREAS, following duly given notice and prior to budget adoption, the City Council held public meetings, receiving, considering and evaluating all comments, and adopted a budget for the fiscal year commencing July 1, 2020 and ending June 30, 2021; and

WHEREAS, amendments must periodically be made to the budget to conform to changed circumstances following adoption of the budget.

WHEREAS, the City has received federal asset forfeiture funds in the amount of \$2,985,000.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA DOES RESOLVE AS FOLLOWS:

SECTION 1. The City Council hereby approves Budget Amendment No. 3, attached hereto as Exhibit A, related to federal asset forfeiture funds.

SECTION 2. The City Clerk shall certify to the adoption of this resolution and shall enter the same in the book of original resolutions and it shall become effective immediately.

APPROVED AND ADOPTED this 21st day of July, 2020.

Tony Wu
Mayor

APPROVED AS TO FORM

ATTEST

Thomas P. Duarte
City Attorney

Lisa Sherrick
Assistant City Clerk

I, LISA SHERRICK, Assistant City Clerk of the City of West Covina, California, do hereby certify that the foregoing Resolution No. 2020-70 was duly adopted by the City Council of the City of West Covina, California, at a regular meeting thereof held on the 21st day of July, 2020, by the following vote of the City Council:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lisa Sherrick
Assistant City Clerk

CITY OF WEST COVINA
BUDGET AMENDMENT

BA # 3

Posted By:

Date Posted:

Date: 7/21/2020
 Requested by: Alex Houston
 Dept/Div: Police

Fiscal Year: 2020-2021
 Amount: \$2,985,000
 Description: Asset Forfeiture for Police programs and equipment

EXPENDITURES

Account Number	Dept/Account Description	Current Budget	Proposed Amendment	Amended Budget
117.31.3120.5110	Sworn Salary	-	225,000.00	225,000.00
117.31.3120.6120	Other Cont. Services	-	50,000.00	50,000.00
117.31.3131.6120	Other Cont. Services	-	100,000.00	100,000.00
117.31.3110.6120	Other Cont. Services	-	70,000.00	70,000.00
117.31.3110.6145	Telephone/Data special lines	-	50,000.00	50,000.00
117.31.3119.6272	Software Licensing	-	115,000.00	115,000.00
117.31.3119.7160	Other Equipment	-	35,000.00	35,000.00
117.31.3119.6120	Other Cont. Services	-	695,000.00	695,000.00
117.31.3116.7130	Data Computer Equipment	-	35,000.00	35,000.00
117.31.3110.6050	Conferences, Meetings, Travel	-	15,000.00	15,000.00
117.31.3120.7170	Vehicles	-	535,000.00	535,000.00
117.31.3130.7170	Vehicles	-	250,000.00	250,000.00
117.31.3131.7170	Vehicles	-	185,000.00	185,000.00
117.31.3110.7160	Other Equipment	-	345,000.00	345,000.00
117.31.3110.7530	Building Improvements	-	85,000.00	85,000.00
117.31.3110.6220	Police Department Supplies	-	195,000.00	195,000.00

REVENUES

Account Number	Account Description	Current Budget	Proposed Amendment	Amended Budget
				-
				-
				-
				-

REASON/JUSTIFICATION (Please be specific)

To appropriate expenditures for the Police programs and equipment from federal asset forfeiture funds, as approved by the City Council on 7/21/2020.

APPROVALS

City Council Approval Date (if required, attach minutes): 7/21/2020 ☐ Approval Not Required

Dept Head Approval: see attached Date: _____

Finance Director: _____ Date: _____

Funds Available? ☐ Yes ☐ No

City Manager: see attached Date: _____

(if over \$100,000)

☐ Approved ☐ Denied



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: July 21, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT: CONSIDERATION OF AGREEMENT FOR BUS SHELTER MAINTENANCE

RECOMMENDATION:

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

1. Approve, by a majority vote of the entire City Council, dispensing with formal bidding procedures and requirements in connection with the procurement of bus shelter maintenance services, in accordance with the requirements of Section 2-330(b) of the West Covina Municipal Code and Section 19404 of the California Welfare and Institutions Code.
2. Authorize the City Manager to negotiate and execute an agreement with Valley Light Industries, for an initial term of three (3) years, with two (2) optional one (1) year extensions, in an amount not-to-exceed \$72,956 annually, for the weekly cleaning of City-owned bus shelters, in a form approved by the City Attorney; and
3. Authorize the City Manager to exercise the extension options.

BACKGROUND:

On March 24, 2016, staff issued a Request for Proposals (RFP) for power washing and/or steam cleaning, including general cleaning at and around 100 City-owned bus shelters. The scope of work included weekly general power washing and/or steam cleaning services at the City-owned bus shelters.

At the June 21, 2016 City Council Meeting, the City Council awarded a one (1) year contract with three (3) one-year extensions to Valley Light Industries, Inc. (VLI) for power washing and cleaning at and around City-owned bus shelters.

VLI has been a longtime service provider for cleaning and power washing of the City-owned bus shelters. VLI is a non-profit agency that has been providing vocational rehabilitation services in the area to adults with developmental disabilities since 1970. The program initially trains clients in a workshop environment where basic vocational skills, work habits and characteristics of a good employee are taught. When a client is ready for community employment, they are referred to VLI's "Supported Employment Program," which finds employers interested in incorporating this sector of the community into their workforce. The Supported Employment Program places either an individual worker or a group of workers in a job with ongoing support provided by a professional Job Coach. For group placements, Job Coaches supervise the workers 100% of the time for the duration of the contract. Currently, 3 of the 4 clients (75%) clients employed by VLI working on the West Covina Bus Shelter crew are West Covina residents.

DISCUSSION:

The current agreement with VLI expired on July 18, 2020. VLI has contacted the City to express interest in entering into a new agreement with the City. VLI has requested three-year agreement with an option of two additional one-year extensions for bus shelter cleaning. The new agreement will have a term of today's date through June 30, 2023 to coincide with the fiscal year.

VLI is requesting an increase in the per shelter charge from \$11.69 to \$14.03. This rate will not change over the three-year term of the agreement or two optional annual extensions, if exercised. This request is due to increases in the minimum wage that are scheduled to occur annually at \$1 per year through 2022, as well as adjustments based on changes in the Consumer Price Index. Over the term of the previous agreement, which began in July 2016, the minimum wage increased by \$3.50 per hour. There was, however, no increase in VLI's per shelter charge of \$11.69 over same term.

Staff is also requesting that the City Council approve, by a majority vote of the entire City Council, dispensing with the formal bidding procedures and requirements set forth in Division 2 (Purchasing System) of Article VII (Purchases and Sales) of Chapter 2 (Administration) of the West Covina Municipal Code, based upon a finding that it would be uneconomical to follow such procedures and the public welfare would be promoted by dispensing with the same and based upon the waiver provided in Welfare and Institutions Code section 19404. Staff believes that it would be uneconomical to require compliance with formal bidding requirements and procedures because the City is not likely to obtain these services at a lower price than that which VLI is proposing. Staff also believes that the public welfare would be promoted by dispensing with formal bidding requirements and procedures given that VLI is a non-profit agency that provides vocational rehabilitation services to adults with developmental disabilities, and has been providing these services to the City for several years.

Welfare and Institutions Code section 19404 also permits cities and other governmental entities to purchase services provided by nonprofit California corporations "operating community rehabilitation programs serving persons with disabilities who have indicated an interest in supplying those goods and services and may, on an equitable basis apportion the business among the interested community rehabilitation programs, provided the goods or services meet the specifications and needs of the purchasing agency and are purchased at a fair market price, as determined by the appropriate state or local agency" and provided that the public or private nonprofit California corporations comply with specified requirements. Staff has determined that VLI meets the City's needs, that VLI's services are provided at fair market price, and that VLI meets the requirements set forth in Welfare and Institutions section 19404.

Therefore, staff is requesting that the City Council dispense with formal bidding requirements and procedures and authorize the City Manager to negotiate and execute an agreement with Valley Light Industries, in a form approved by the City Attorney.

OPTIONS:

The City Council has the following options:

1. Approve staff's recommendation;
2. Solicit new bids for bus shelter cleaning. However, this option is not recommended by staff due to reasonable market value of the service provided by VLI and the notable opportunities provided to our developmentally challenged residents; or
3. Provide alternative direction.

Fiscal Impact

FISCAL IMPACT:

The bus shelter cleaning is funded from Public Services Transportation Operating Budget (Fund 122 - Proposition C). The annual cost \$72,956 the weekly power wash cleaning of the City's 100 bus shelters at (\$14.03 per shelter). This rate will not change over the three-year term of the contract or two optional annual extensions, if exercised. There are sufficient funds available in Account No. 122.61.5144.6120 to cover this cost.

Attachments

Attachment No. 1 - Professional Services Agreement (Valley Light Industries)

CITY COUNCIL GOALS & OBJECTIVES: Enhance City Facilities and Infrastructure
Enhance City Programs and Activities

**CITY OF WEST COVINA
PROFESSIONAL SERVICES AGREEMENT
WITH
VALLEY LIGHT INDUSTRIES
FOR
BUS SHELTER CLEANING**

THIS AGREEMENT is made and entered into this 21st day of July, 2020 ("Effective Date"), by and between the CITY OF WEST COVINA, a municipal corporation ("City"), and VALLEY LIGHT INDUSTRIES, 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 clean City-owned bus shelters, 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.

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 Seventy-Two Thousand Nine Hundred Fifty-Six Dollars (\$72,956).

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 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 36 months, ending on June 30, 2023, 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 two (2) 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 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 Ivan Campos, 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:

Valley Light Industries
5360 N Irwindale Ave.
Irwindale, CA 91790
Tel: 626-337-6200 x130
Email:
icampos@valleylightind.org

Attn: Ivan Campos

IF TO CITY:

City of West Covina
1444 W Garvey Ave. South
West Covina, CA 91790
Tel: 626-939-8494
Email:
kmcdonald@westcovina.org

Attn: Kelly McDonald

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 attorneys' 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. 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. 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. 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: _____

CONSULTANT

Sage Newman
Chief Executive Officer

Date: _____

Ivan Campos
Director of Operations

Date: _____

ATTEST:

Lisa Sherrick
Assistant City Clerk

APPROVED AS TO FORM:

Thomas P. Duarte
City Attorney

Date: _____

APPROVED AS TO INSURANCE:

Helen Tran
Human Resources and Risk Management
Director

Date: _____

EXHIBIT A

SCOPE OF SERVICES

BUS SHELTER CLEANING SERVICES

Contractor shall clean the bus shelters and surrounding area as specified herein with special attention to maintain them free of litter, debris and graffiti.

A. WORKMANSHIP: Work shall be performed by competent workers, trained in bus shelter cleaning procedures and product use. Contractor shall notify the City's Contract Officer of any shelter damage.

B. INSPECTION BY THE CITY: The Contract Officer will inspect the quality and completeness of the Contractor's work and report any deficiencies to the contractor. The contractor will have weekly meetings with the city representation and monthly meetings with the Contract Officer.

C. SCOPE OF WORK: The work shall consist of furnishing of all labor, materials, equipment, traffic control, and incidentals necessary to thoroughly clean all parts of bus shelter and surrounding areas as described herein, including but not limited to.

SUPPLIES AND EQUIPMENT

The contractor shall provide all supplies: to carry out the cleaning and disinfecting operations within this contract and shall meet the standards of the Federal Occupational Safety and Health Act and Cai OSHA. The contractor shall submit a written list of all supplies (i.e. cleaners, disinfectants, etc.) with attached Material Safety Data Sheets (MSDS) intended for use for approval by the City of West Covina. Adequate quantities of properly labeled supplies (minimum of two weeks inventory) must be on-hand to perform cleaning at all times. Contractor to provide an estimated monthly usage along with an estimated monthly cost of supplies.

The contractor shall provide all equipment: to carry out cleaning operations. All equipment must be in good working order and ready for inspection. In case of equipment breakdown, forty-eight (48) hours repair or replacement time shall be allowed.

CLEANING STANDARDS. GENERAL

The following cleaning standards shall provide well-maintained, safe and clean bus shelter facilities at all times.

Trash Receptacles (Standard and Big Belly) - Outside of the container shall be cleaned and disinfected, Containers shall appear visibly and uniformly clean. This shall include the elimination of streaks, foodstuff, markings and stains.

Shelters and Benches - Shall be free of dust, dried soil, soil, gum, spots, stains and other debris. This shall include the elimination of dust streaks, lint, standing water, cleaner residue and film.

Concrete Slab- Contractor shall pick up all trash and litter within a ten-foot radius of the bus stop, excluding the street. Shall be free of dust, dried soil, soil, gum, spots, stains and other debris. This shall include the elimination of dust streaks, lint, standing water, cleaner residue and film.

EXHIBIT B
FEE SCHEDULE

The City of West Covina currently has 100 bus shelters.

Pricing for this proposal shall include all applicable taxes, labor, equipment, materials, traffic controls, and travel necessary to provide a safe, clean, and attractive passenger environment.

DESCRIPTION	UNIT COST	QUANTITY	FREQUENCY	ANNUAL COST
PRESSURE WASHING INCLUDING GENERAL CLEANING (Weekly Service as described in Project Schedule - Exhibit C)	\$ 14.03	100	52	\$ 72,956
TOTAL				

EXHIBIT C
PROJECT SCHEDULE

Weekly

1. Power Wash and disinfect bus shelters, benches and exterior trash receptacles (standard and big belly).
2. Sweep and remove all debris within a 10-foot radius of shelter, excluding the street.
3. Clean and remove any debris including gum, grease and stains.
4. Power wash and /or steam clean entire area around bus shelters within a 10-foot radius, including shelter and bench. Wipe dry the bus shelter.

Monday

1. Northbound Puente at Sunset
2. Westbound Puente at Sunset
3. Westbound Puente at Nora
4. Southbound Sunset at Rowland
5. Southbound Sunset at Workman
6. Northbound Sunset at Workman
7. Eastbound West Covina Parkway at Toluca
8. Southbound Sunset at Durness
9. Northbound Sunset at Durness
10. Northbound Sunset at Farlington
11. Northbound Sunset at Merced
12. Northbound Sunset at Cameron
13. Northbound Sunset at West Covina Parkway
14. Northbound Sunset at Plaza Drive
15. Westbound West Covina Parkway at California (2-shelters)
16. Eastbound West Covina Parkway at California (2-shelters)
17. Southbound Glendora at Cameron
18. Northbound Glendora at Cameron
19. Southbound Glendora at Michelle
20. Northbound Glendora at Michelle
21. Westbound Rowland at Azusa
22. Eastbound Workman at Eastland Mall
23. Eastbound 1-10 fwy at Azusa
24. Westbound 1-10 fwy at Azusa

Tuesday

1. Westbound West Covina parkway at Fashion Plaza (2-shelters)
2. Eastbound West Covina Parkway at Sunset
3. Eastbound West Covina Parkway at Fashion Plaza Way
4. Southbound Barranca at North Garvey (2-shelters_
5. Southbound Amar at Azusa
6. Northbound Amar at Azusa
7. Westbound West Covina Parkway at Toluca (2-shelters)
8. Southbound Sunset at Civic Center (2-shelters)

Wednesday

1. Northbound Azusa at Cortez
2. Northbound Citrus and Cortez

3. Westbound Cameron at Montezuma
4. Westbound Hollenbeck at Cameron
5. Westbound Cameron at Azusa
6. Westbound Cameron at Lark Ellen
7. Northbound Valinda at Summer Place
8. Northbound Valinda at Maplegrove
9. Northbound Valinda at Cameron
10. Westbound Cameron at Fernwood
11. Westbound Francisquito at Tonopah
12. Westbound Francisquito at Orange
13. Westbound Francisquito at Willow
14. Eastbound Francisquito at Tonopah
15. Southbound Sunset at Francisquito
16. Eastbound Francisquito at Broadmoor

Thursday

1. Westbound Amar at Azusa
2. Southbound Azusa at Amar
3. Eastbound Amar at Azusa
4. Eastbound Amar at Temple
5. Eastbound Amar at Westport
6. Westbound Shadow Oak at Nogales
7. Eastbound Shadow Oak at Nogales
8. Southbound Nogales at Shakespeare
9. Westbound La Puente at Nogales
10. Westbound La Puente at Sentous
11. Northbound Nogales at La Puente
12. Westbound Amar at Nogales
13. Westbound Amar at Westport
14. Westbound Amar at Temple
15. Northbound Azusa at Workman
16. Northbound Azusa at Garvey
17. Northbound Azusa at Cortez
18. Eastbound Cameron at Azusa
19. Northbound Azusa at Vine
20. Southbound Azusa at Vine
21. Northbound Azusa at Merced
22. Southbound Azusa at Merced
23. Southbound Azusa at Francisquito
24. Northbound Sunset at The Heights

Friday

1. Westbound Shadow Oak at Shakespeare
2. Eastbound Shadow Oak at Gemini
3. Eastbound Shadow at Adrienne
4. Westbound Shadow Oak at Stephanie
5. Westbound Shadow Oak at Rita
6. Westbound Shadow Oak at Gemini
7. Westbound Shadow Oak at Woodgate
8. Southbound Holt at Temple
9. Westbound Barranca at Garvey (2-shelters)

10. Eastbound Workman at Eastland
11. Northbound Azusa at Fairgrove
12. Westbound Amar at Brentwood
13. Westbound Amar at Lark Ellen
14. Westbound California at West Covina Parkway
15. Southbound Azusa at Aroma
16. Westbound Rowland at Azusa

Schedule

Work schedule to be Monday through Friday. Time frame to be approved by City's Contact Officer.



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: July 21, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT: CONSIDERATION OF AN AGREEMENT WITH UNION STATION HOMELESS SERVICES, FOR IMPLEMENTATION OF CITY HOMELESS PLAN GRANT

RECOMMENDATION:

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

1. Approve the agreement with Union Station to provide homeless services and authorize the City Manager to negotiate and execute the agreement; and
2. Approve the following Resolution:

RESOLUTION NO. 2020-84 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, ADOPTING A BUDGET AMENDMENT FOR THE FISCAL YEAR COMMENCING JULY 1, 2020 AND ENDING JUNE 30, 2021 (UNION STATION HOMELESS SERVICES - VOUCHERS)

BACKGROUND:

On August 17, 2015, in response to the growing crisis of homelessness, the Los Angeles County Board of Supervisors launched the Homeless Initiative (HI) to prevent and combat homelessness which continues to pervade our communities. In February 2016, following an unprecedented collaborative planning process, the Board of Supervisors approved a comprehensive plan consisting of 47 strategies. Recognizing the need to sustain the HI strategies, the Board of Supervisors adopted an ordinance placing Measure H, a one-quarter cent special sales tax for a period of 10 years, on the March 7, 2017 ballot. The ordinance that identifies 21 of the 51 HI strategies as eligible for funding through Measure H. On March 7, 2017, Los Angeles County voters approved Measure H.

Since the inception of the HI in 2015, collaboration and engagement with the 88 cities in the County has been a major priority for the County. Cities play a critical role in ensuring that the impact of these strategies is maximized. Cities have jurisdiction over housing and land use for about one third of the County's land and 90% of the countywide population, and thus play a vital role, along with the County of Los Angeles, in developing affordable housing and interim housing.

In 2017, the Board of Supervisors approved funding to cities to develop their own homelessness plans. In 2018, participating cities submitted their homelessness plans. In September 2018, the Board of Supervisors approved \$9 million in Measure H funding for the HI and United Way Home for Good Funders Collaborative to issue a Request for Proposals (RFP) for the cities to implement their homelessness plans, either as individual cities or multi-jurisdictional partners.

The City was funded by the County of Los Angeles to develop a homelessness plan in 2018. On September 14, 2018, the County released an RFP to fund the implementation of components of homelessness plans. West Covina, as part of a five-city collaborative (ESGV Cohort), submitted a grant proposal to strengthen services and Coordinated Entry System (CES) coordination by sharing a new five-member case management team to offer a visible entry point into services in each of the cities and to mobilize for projects such as outreach fairs and riverbed engagement with a goal to decrease homelessness in the five cities by engaging those experiencing homelessness in essential supportive services to remove barriers and move them into permanent housing. The proposal was successful and awarded by the County. The ESGV Cohort selected Union Station Homeless Services (Union Station), a County-approved and vetted homeless service provider, to perform case management services in accordance with the grant.

DISCUSSION:

In response to the same County September 2018 RFP, staff submitted an individual grant proposal for a housing navigator. Viewing it as redundant to the ESGV Cohort proposal, the County requested an alternative submittal. The City's revised submittal requested funding to pay for motel vouchers and security deposits to temporarily house homeless persons and families in local motels. Prior to the motel stay, client assessments will be made by a service provider. During the stay, linkages will be made to supportive services. The proposal was funded at \$100,000.

The City has selected Union Station to manage the distribution of the vouchers through City's contracted Housing Navigator, also provided by Union Station. Union Station will utilize the vouchers on a case-by-case basis to meet the needs of our clients and the community. Their main strategy in using motel vouchers is primarily as "bridge housing" opportunities (housing that will bridge individuals into more permanent housing models or other funded bridge housing beds at a shelter site) rather than using them for emergency shelter stays of 1-7 days. While there are times when a client will need to utilize a motel room for a 1-7 day stay while finding another solution (i.e., bus ride back home, bed at an emergency shelter, fleeing domestic violence incident), Union Station finds this is the exception, not the rule, in part because the practice of housing and then un-housing that person can be re-traumatizing and backwards moving. Vouchers will be an important and necessary resource for the City's Housing Navigator as she assists at-risk and homeless clients with housing plans. Distribution of the vouchers will be jointly managed by Union Station and the City, which assures control over how and when vouchers are used.

LEGAL REVIEW:

The City Attorney's Office has reviewed the agreement and resolution and approved them as to form.

OPTIONS:

The City Council has the following options:

1. Approve the staff recommendation; or
2. Provide alternative direction.

Prepared by: Kelly McDonald, Public Services Manager

Fiscal Impact

FISCAL IMPACT:

The total grant award from the County is \$100,000. The City will be paid out based on the invoicing for reimbursable charges over the term of the agreement.

Attachments

Attachment No. 1 - Professional Services Agreement

Attachment No. 2 - Resolution No. 2020-84 (Budget Amendment)

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

**CITY OF WEST COVINA
PROFESSIONAL SERVICES AGREEMENT
WITH
UNION STATION HOMELESS SERVICES
FOR
IMPLEMENTATION OF MOTEL VOUCHER PROGRAM**

THIS AGREEMENT is made and entered into this 15th day of June, 2020 ("Effective Date"), by and between the CITY OF WEST COVINA, a municipal corporation ("City"), and UNION STATION HOMELESS SERVICES, a California non-profit corporation ("Contractor").

W I T N E S S E T H :

A. WHEREAS, City proposes to utilize the services of Contractor as an independent contractor to City to provide services to increase availability of temporary beds for emergency housing in the area local to West Covina, as more fully described herein; and

B. WHEREAS, Contractor 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 Contractor 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 Contractor 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.

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 CONTRACTOR

1.1. Scope of Services. Contractor 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 Contractor 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 Contractors in similar fields and circumstances in accordance with sound professional practices. Contractor 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 Contractor's performance of this Agreement. Contractor 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 Contractor 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 Contractor

to comply with this section.

1.3. Performance to Satisfaction of City. Contractor 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 Contractor to review the quality of the work and resolve the matters of concern;
- (b) Require Contractor 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. Contractor 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, Contractor 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. Contractor acknowledges that City may enter into agreements with other Contractors 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 Contractor in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Contractor covenants that all data, documents, discussion, or other information developed or received by Contractor or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Contractor 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. Contractor's covenant under this Section shall survive the termination of this Agreement.

1.8. Public Records Act Disclosure. Contractor 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 Contractor, 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 Contractor 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. City shall pay Contractor on a reimbursement basis for allowable costs incurred pursuant to the terms of this Agreement and in accordance with the fee schedule set forth in Exhibit "B," attached hereto and made a part of this Agreement (the "Fee Schedule"). Total reimbursement shall not exceed One Hundred Thousand Dollars (\$100,000.00).

2.2. Additional Services. Contractor shall not be reimbursed for any services provided outside the scope of services unless the City, prior to Contractor 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 Contractor's standard hourly rates shall be paid to the Contractor 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. Contractor may submit invoices to the City for approval on a monthly basis. Said invoice shall be based on the total of all Contractor's services which have been completed to City's sole satisfaction. City shall pay Contractor's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe the services performed, the date of performance, and the actual expenses incurred. 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 Contractor'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. 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 Contractor is encountered, a time extension may be mutually agreed upon in writing by the City and the Contractor. The Contractor 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 February 28, 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 Contractor. In the event of such termination, Contractor 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 Contractor 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 Contractor 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 Contractor, 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 Contractor 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 Contractor, whichever occurs last.

4.4. Documents. In the event of termination of this Agreement, all documents prepared

by Contractor 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. Contractor 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. Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor to comply with this section.

If the Contractor 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 Contractor. 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 Contractor pursuant to its contract with the City; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; automobiles owned, leased, hired, or borrowed by the Contractor.
- (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 Contractor'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: Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor 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 Contractor'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 Contractor 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. Contractor 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.

Contractor shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Contractor 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 Contractor shall make available the professional services of the Director of Adult Services and the Associate Director of Access & Engagement, 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 CONTRACTOR:

Union Station Homeless Services
825 E. Orange Grove Blvd.
Pasadena, CA 91104
Tel: (626) 240-4550
Email: amiskey@unionstationhs.org
Attn: Anne Miskey, CEO

IF TO CITY:

City of West Covina
1444 West Garvey Ave. South
West Covina, CA 91790
Tel: (626) 939-8494
Email: KMcDonald@westcovina.org
Attn: Kelly McDonald

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 attorneys' 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. Contractor shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Contractor'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 Contractor of Contractor's obligation to perform all other obligations to be performed by Contractor hereunder for the term of this Agreement.

6.8. Indemnification and Hold Harmless. Contractor agrees to defend, indemnify, hold free and harmless the City, its elected and appointed officials, officers, agents and employees, at Contractor'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 Contractor, 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 Contractor, 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 Contractor, 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 Contractor, its employees, and/or authorized subcontractors under this Agreement, whether or not the Contractor, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Contractor 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 Contractor's Proposal, which shall be of no force and effect.

6.9. Independent Contractor. Contractor is and shall be acting at all times as an independent contractor and not as an employee of City. Contractor 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 Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor 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. Contractor 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 Contractor and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Contractor 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. Contractor further agrees to

indemnify and hold City harmless from any failure of Contractor to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.10. PERS Eligibility Indemnification. In the event that Contractor or any employee, agent, or subcontractor of Contractor 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, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor 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, Contractor 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 Contractor's performance or services rendered under this Agreement, Contractor 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 Contractor or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Contractor 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 Contractor. City shall indemnify and hold harmless Contractor 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 Contractor. Contractor 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. Contractor or Contractor'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. Contractor hereby acknowledges that pursuant to Government Code Section 87300 and the Conflict of Interest Code adopted by City, Contractor 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. Contractor and its officers, employees, associates and subcontractors, if any, will comply with all conflict of interest statutes of the State of California applicable to Contractor'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. Contractor covenants that none of Contractor'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. Contractor further covenants that in the performance of this Agreement, no person having such interest shall be used by Contractor as an officer, employee, agent, or subcontractor. Contractor further covenants that Contractor 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 Contractor and/or its subcontractors 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. Contractor will not employ any regular employee of City while this Agreement is in effect. The City will not pursue to hire any employee of the Contractor while this Agreement is in effect and for two (2) years after the Agreement's termination date.

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 Contractor 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. Contractor 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: _____

CONTRACTOR



Anne Miskey
Chief Executive Officer

Date: June 25, 2020

ATTEST:

Lisa Sherrick
Assistant City Clerk

APPROVED AS TO FORM:

Thomas P. Duarte
City Attorney

Date: _____

APPROVED AS TO INSURANCE:

Helen Tran
Human Resources and Risk Management
Director

Date: _____

EXHIBIT A

SCOPE OF SERVICES

The City is seeking to fill the vital need of increasing availability of temporary beds for emergency housing in the area local to West Covina. The City will reimburse Contractor for costs used to pay for vouchers and security deposits to temporarily house homeless persons and families in local motels. Vulnerability Index Service Prioritization Decision Assistance Tool (VI-SPDAT) assessments will be made prior an individual's motel stay. During the stay, linkages will be made to supportive services.

Contractor will manage and coordinate the Motel Voucher Program by providing the following services, primarily through its Housing Navigator:

1. Engaging with motel owners to increase interim housing opportunities.
2. Negotiations of rate of payments for vouchers with participating motels.
3. Evaluations and referrals of clients to the participating motels.
4. Receive invoices and pay motels upon use of the established voucher.
5. Provide short term motel stay with access to transitional housing if appropriate.
6. Facilitate the entry to transitional housing as appropriate.
7. Provide ongoing list of individuals participating in the Motel Voucher Program to the City.
8. Verify individuals' eligibility for program participation in accordance with criteria established by the City.
9. Implement the security deposit program in accordance with criteria established by the City.

Contractor will provide the services in accordance with the target outcomes of the program as described below and in accordance with the Motel Voucher Guidelines attached hereto as Attachment 1.

Engage with Motel Owners

Activities	Metrics	Target Outcome
Engagement with motel owners to increase interim housing opportunities.	Number of interim housing operators engaged	1

Implement the Motel Voucher Program

Activities	Metrics	Target Outcome
Interim Housing Vouchers	Number of new locations providing interim housing	1
	Number of new rooms secured for interim housing	5
	Number of individuals and family members newly enrolled during report period (unduplicated)	15
	Number of individuals and family members active in the program during report period (unduplicated)	15
	Number individuals and family members who exited to any destination during report period (unduplicated)	15

	Number of individuals and family members who exited to permanent housing destination during report period (unduplicated)	5
--	--	---

Implement the Security Deposit Program

Activities	Metrics	Target Outcome
Security Deposits	Number of Security Deposits Provided	2
	Number of individuals and family members placed in housing due to security deposit payments	2

ATTACHMENT 1

MOTEL VOUCHER GUIDELINES

Criteria:

1. Participants should be literally homeless in West Covina or should have some ties whether such ties are from relatives, school, health/mental services and/or work.
2. Participants must be willing to participate in Housing Navigation.
3. Harm reduction model will be utilized in order to work with participant's behavior.

Types of Beds:

1. **Outreach/Navigation:** 45-90 day stay with weekly re-evaluation but possibility of extension if participants are actively engaged in housing navigation process. Participants have a housing plan and are awaiting Rapid Re-Housing /Permanent Supportive Housing. Participants will be asked to contribute a 30% of their income if their stay is more than 60 days and have income (SSI/SSDI/SSA).
Contractor will notify City of any extensions.
2. **Crisis/Temporary:** 2-week stay with a re-evaluation each week. The beds will be utilized for participants who have some type of immediate plan such as interim housing, substance abuse programs, linkage to board and care and re-unification with family.
Contractor will notify City of any extensions.
3. **Civil/Emergency:** Short-term and for emergency purposes. City officials/PD/FD are getting repeated calls about a participant who has no clear housing plan and/or encounter a family after hours.

EXHIBIT B
FEE SCHEDULE

Contractor will be paid a maximum of \$100,000 as direct reimbursement for actual expenditures of motel vouchers and security deposits provided through the Motel Voucher Program. The term of a stay shall be in accordance with the Motel Voucher Guidelines set forth in Attachment 1 to Exhibit A.

Payment will be by submittal and approval by City of monthly invoices showing actual expenses by month. Contractor shall provide the City with monthly financial statements of voucher and security deposit expenses within fifteen (15) days of the end of each month. Contractor shall submit with each invoice a summary of Contractor's activities for the preceding month and Contractor's progress toward the target outcome identified for each activity.

RESOLUTION NO. 2020-84

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, ADOPTING A BUDGET AMENDMENT FOR THE FISCAL YEAR COMMENCING JULY 1, 2020, AND ENDING JUNE 30, 2021 (UNION STATION HOMELESS SERVICES - VOUCHERS)

WHEREAS, the City Manager, on or about June 23, 2020, submitted to the City Council a proposed budget for the appropriation and expenditure of funds for the City for West Covina for Fiscal Year 2020-21; and

WHEREAS, following duly given notice and prior to budget adoption, the City Council held public meetings, considered and evaluated all comments, and adopted a budget for the fiscal year commencing July 1, 2020 and ending June 30, 2021; and

WHEREAS, amendments must periodically be made to the budget to conform to changed circumstances following adoption of the budget; and

WHEREAS, in response to a grant proposal, the County of Los Angeles awarded the City of West Covina \$100,000 in Measure H funding for motel vouchers to assist homeless persons.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The City Council hereby approves Budget Amendment No. 001, attached hereto as Exhibit A, related to the grant award from Los Angeles County for motel vouchers for Fiscal Year 2020-21.

SECTION 2. The City Clerk shall certify to the adoption of this resolution and shall enter the same in the book of original resolutions and it shall become effective immediately.

APPROVED AND ADOPTED this 21st day of July, 2020.

Tony Wu
Mayor

APPROVED AS TO FORM

ATTEST

Thomas P. Duarte
City Attorney

Lisa Sherrick
Assistant City Clerk

I, LISA SHERRICK, Assistant City Clerk of the City of West Covina, California, do hereby certify that the foregoing Resolution No. 2020-84 was duly adopted by the City Council of the City of West Covina, California, at a regular meeting thereof held on the 21st day of July, 2020, by the following vote of the City Council:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lisa Sherrick
Assistant City Clerk

EXHIBIT A
BUDGET AMENDMENT

CITY OF WEST COVINA
BUDGET AMENDMENT

BA # 001

Posted By:
Date Posted:

Date: 7/21/2020
Requested by: Kelly McDonald
Dept/Div: Public Services

Fiscal Year: 2020-2021
Amount: \$100,000.00
Description: Homeless Services - Union Station

EXPENDITURES

Account Number	Dept/Account Description	Current Budget	Proposed Amendment	Amended Budget
240.61.2255.6120	Other Contractual Services	-	100,000.00	100,000.00
		-	-	-
		-	-	-
				-
				-
				-
				-
				-
				-
				-
				-
				-
				-
				-
				-
				-
				-
				-
				-
				-

REVENUES

Account Number	Account Description	Current Budget	Proposed Amendment	Amended Budget
240.61.4540	Grant	-	100,000.00	100,000.00
		-		-
				-
				-
				-

REASON/JUSTIFICATION (Please be specific)

Grant award received through County Measure H. Amount to be fully reimbursed.

APPROVALS

City Council Approval Date (if required, attach minutes): _____ ☐ Approval Not Required

Dept Head Approval: _____ Date: _____

Finance Director: _____ Date: _____

Funds Available? ☐ Yes ☐ No

City Manager: _____ Date: _____

(if over \$100,000)

☐ Approved ☐ Denied



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: July 21, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT: PUBLIC HEARING TO CONSIDER CODE AMENDMENT NO. 20-01 FOR FILM PERMIT STANDARDS

RECOMMENDATION:

It is recommended that the City Council approve Code Amendment No. 20-01 by:

1. Conducting a public hearing regarding Code Amendment No. 20-01; and
2. Introducing for first reading, by title only, further reading waived, the following ordinance:

ORDINANCE NO. 2471 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA APPROVING CODE AMENDMENT NO. 20-01, RELATED TO FILM PERMIT STANDARDS

BACKGROUND:

On January 21, 2020, the City Council adopted Resolution No. 2020-05 to initiate a Code Amendment to Section 26-281 of the West Covina Municipal Code (WCMC) pertaining to film permit standards.

On February 11, 2020, the Planning Commission held a study session to discuss the film permit code standards and directed staff to modify the number of days filming is allowed in residential and non-residential zones, and to modify the filming activity timeframe for non-residential zones. The ordinance was prepared based on the comments received from the Planning Commission during the study session.

On March 10, 2020, the Planning Commission held a public hearing to consider Code Amendment No. 20-01. During the hearing, Mr. Lucas Purcell pointed out that the draft Code Amendment does not limit the amount of filming days allowed in non-residential zones. The Planning Commission voted 5-0 to approve Resolution No. 20-6030 recommending the City Council adopt Code Amendment No. 20-01 as presented.

On April 21, 2020, the City Council held a public hearing to consider Code Amendment No. 20-01 and voted 5-0 to forward the item back to the Planning Commission for further revisions. The City Council provided the following direction:

- The City Council believed that the language needed further refinement in order to make it easier to understand; the language pertaining to filming in residential and non-residential zones should be made consistent.
- Limiting filming in residential zones to 5 days including set up seems too restrictive.
- Filming in non-residential zones should be regulated in the number of filming days, similar to the language

regulating filming in residential zones.

- Allowing filming 20 times per year or 20 days at a time, with only 7 days in between activities in nonresidential zones is excessive.

On May 26, 2020, the Planning Commission reconsidered Code Amendment No. 20-01 and made revisions based on the City Council's direction. The Planning Commission voted 4-0 (Commissioner Holtz was absent) to approve Resolution No. 20-6037 recommending the City Council adopt Code Amendment No. 20-01.

DISCUSSION:

The proposed Ordinance provides the following changes to subsection (a) of Chapter 26, Article VI, Division 6 of the West Covina Municipal Code:

- Residential Zones - The current version of the Code and previous version of the draft Ordinance allowed for 5 days of filming activity including setup and dismantling. The revised version does not include setup and dismantling in the allotted 5 days. In addition, the language has been revised so that it is clear that 90 days is the required "cool-off" period; the current version of the Code requires 3 months. This allows for the administrative approval of approximately 20 days (combined total) of filming in residential zones in a calendar year through the film permit process. If filming in excess of 5 days is proposed, a separate section of the WCMC allows applicants to apply for a Major Production Permit which requires neighbor notification and may require a hearing before the Planning Commission.
- Non-Residential Zones - The previous version of the draft Ordinance did not limit the amount of days allowed per activity; it limited the amount of times (20) per calendar year with only a 7-day "cool-off" period. The language in the revised version is similar to the text for filming in residential zones. The revised version limits filming in non-residential zones to 15 days with a minimum of 30 days in between each time period. This allows for the administrative approval of approximately 125 days (combined maximum total) of filming in non-residential zones in a calendar year through the film permit process. If filming in excess of 15 days is proposed, a separate section of the WCMC allows applicants to apply for a Major Production Permit which requires neighbor notification and may require a hearing before the Planning Commission.

LEGAL REVIEW:

The City Attorney's Office has reviewed the proposed ordinance and approved it as to form.

OPTIONS:

The City Council has the following options:

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

ENVIRONMENTAL REVIEW:

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 revises film permit standards which is a temporary activity that is subject to a separate approval process.

Fiscal Impact

FISCAL IMPACT:

The proposed code amendment will generate additional economic development activity within the City. The exact benefits are difficult to quantify but will increase over time, as the City becomes known as a "film friendly" city. Applicants are required to pay fees associated with permit processing.

Attachments

Attachment No. 1 - Ordinance No. 2471

Attachment No. 2 - PC Resolution No. 20-6037

Attachment No. 3 - May 26, 2020 PC Staff Report

Attachment No. 4 - April 21, 2020 City Council Staff Report

Attachment No. 5 - March 10, 2020 PC Staff Report

ORDINANCE NO. 2471

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA APPROVING CODE AMENDMENT NO. 20-01, RELATED TO FILM PERMIT STANDARDS

WHEREAS, the City's provisions for film permits were last updated on March 7, 2000; and

WHEREAS, on January 21, 2020, the City Council initiated a code amendment related to film permit standards; and

WHEREAS, on February 11, 2020, the Planning Commission conducted a study session to discuss potential revisions to the film permit standards; and

WHEREAS, on March 10, 2020, the Planning Commission conducted a duly noticed public hearing as prescribed by law regarding proposed Code Amendment No. 20-01. At the conclusion of the public hearing, the Planning Commission approved Planning Commission Resolution No. 20-6030, recommending that the City Council approve Code Amendment No. 20-01; and

WHEREAS, on April 21, 2020, the City Council conducted a duly noticed public hearing as prescribed by law regarding this ordinance and forwarded Code Amendment No. 20-01 back to the Planning Commission for further revisions; and

WHEREAS, on May 26, 2020, the Planning Commission conducted a duly noticed public hearing as prescribed by law regarding proposed Code Amendment No. 20-01. At the conclusion of the public hearing, the Planning Commission approved Planning Commission Resolution No. 20-6037, recommending that the City Council approve Code Amendment No. 20-01; and

WHEREAS, on July 21, 2020, the City Council conducted a duly noticed public hearing as prescribed by law regarding this ordinance approving Code Amendment No. 20-01; and

WHEREAS, based on review of the State CEQA Guidelines, the City Council finds and determines that the 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.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Subsection (a) of Section 26-281 of Chapter 26, Article VI, Division 6 of the West Covina Municipal Code is hereby amended to read as follows:

(a) *Applicability.* A film permit may be approved by the planning director without notice or hearing for the following filming:

- (1) In single- and multi-family residential zones, filming for up to ~~three (3)~~ five (5) days, not including any setup and dismantling, ~~in any three (3) months~~ with a minimum of 90 days in between each time period, on any one (1) property.
- (2) In all other zoning districts, filming of up to ~~five (5) days~~ 15 days, not including any setup and dismantling, ~~in any three (3) months~~ with a minimum of 30 days in between each time period, on any one (1) property or shopping center.
- (3) All filming, including any setup and dismantling, shall be done between the hours of 7:00 a.m. and 9:00 p.m. in residential zones, and between the hours of 6:00 a.m. and 11:00 p.m. in all other zoning districts. Film permit activities may extend outside these hours if the planning director finds that there will be no adverse impacts to nearby residents or business owners.
- (4) Filming which involves no exceptions to the general filming conditions in Section 26-280(e) above

SECTION 2: The City Clerk shall certify to the passage of this ordinance and shall cause the same to be published as required by law.

SECTION 3: This ordinance shall take effect and be in force thirty (30) days from and after the date of its passage.

PASSED, APPROVED AND ADOPTED this ____ day of ____, 2020.

Tony Wu
Mayor

APPROVED AS TO FORM

ATTEST

Thomas P. Duarte
City Attorney

Lisa Sherrick
Assistant City Clerk

ATTACHMENT NO. 1

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 the foregoing Ordinance, being Ordinance No. 2471, was introduced at the July 21, 2020 regular Council meeting and adopted at a regular meeting of the City Council on _____, by the following roll call vote:

AYES:
NOES:
ABSENT:
ABSTAINED:

Lisa Sherrick
Assistant City Clerk

P L A N N I N G C O M M I S S I O N
R E S O L U T I O N N O . 2 0 - 6 0 3 7

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF
WEST COVINA, CALIFORNIA, RECOMMENDING TO THE CITY
COUNCIL APPROVAL OF CODE AMENDMENT NO. 20-01, CODE
AMENDMENT RELATED TO FILM PERMIT STANDARDS**

CODE AMENDMENT NO. 20-01

GENERAL EXEMPTION

APPLICANT: City of West Covina

LOCATION: Citywide

WHEREAS, on the 21st day of January 2020, the City Council initiated a code amendment related to film permit standards; and

WHEREAS, the Planning Commission, did on February 11, 2020, conduct a study session to consider the initiated code amendment; and

WHEREAS, the Planning Commission, upon giving the required notice, did on the 10th day of March 2020, conduct a duly advertised public hearing as prescribed by law. At the conclusion of the public hearing, the Planning Commission approved Planning Commission Resolution No. 20-6030, recommending that the City Council approve Code Amendment No. 20-01; and

WHEREAS, on the 21st day of April 2020, the City Council conducted a duly noticed public hearing as prescribed by law regarding this ordinance and forwarded Code Amendment No. 20-01 back to the Planning Commission for further revisions; and

WHEREAS, studies and investigations made by this Commission and on its behalf reveal the following facts:

1. The City's provisions for film permits were last updated in March 7, 2000.
2. It is necessary to amend the municipal code because the current filming standards are too restrictive.
3. The proposed action is exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the

proposed action consists of a code amendment, which does not have the potential for causing a significant effect on the environment.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Commission of the City of West Covina as follows:

SECTION NO. 1: The above recitals are true and correct and are incorporated herein as if set forth herein in full.

SECTION NO. 2: Based on the evidence presented and the findings set forth, Code Amendment No. 20-01 is hereby found to be consistent with the West Covina General Plan and the implementation thereof, and that the public necessity, convenience, general welfare, and good zoning practices require Code Amendment No. 20-01.

SECTION NO. 3: Based on the evidence presented and the findings set forth, the Planning Commission of the City of West Covina hereby recommends to the City Council of the City of West Covina that it approves Code Amendment No. 20-01 to amend Chapter 26 (Zoning) of the West Covina Municipal Code as shown on Exhibit "A."

SECTION NO. 4: The Secretary is instructed to forward a copy of this Resolution to the City Council for their attention in the manner as prescribed by law and this Resolution shall go into force and effect upon its adoption.

[continued on next page]

I HEREBY CERTIFY, that the foregoing Resolution was adopted by the Planning Commission of the City of West Covina, at a regular meeting held on the 26th day of May, 2020, by the following vote.

AYES: Heng, Redholtz, Kennedy, Jaquez

NOES: None

ABSTAIN: None

ABSENT: Holtz

DATE: May 26, 2020



Herb Redholtz, Chairman
Planning Commission



Mark Persico, Secretary
Planning Commission

EXHIBIT A

ORDINANCE NO. 2471

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA APPROVING CODE AMENDMENT NO. 20-01, RELATED TO FILM PERMIT STANDARDS

WHEREAS, the City's provisions for film permits were last updated on March 7, 2000;
and

WHEREAS, on January 21, 2020, the City Council initiated a code amendment related to film permit standards; and

WHEREAS, on February 11, 2020, the Planning Commission conducted a study session to discuss potential revisions to the film permit standards; and

WHEREAS, on March 10, 2020, the Planning Commission conducted a duly noticed public hearing as prescribed by law regarding proposed Code Amendment No. 20-01. At the conclusion of the public hearing, the Planning Commission approved Planning Commission Resolution No. 20-6030, recommending that the City Council approve Code Amendment No. 20-01; and

WHEREAS, on April 21, 2020, the City Council conducted a duly noticed public hearing as prescribed by law regarding this ordinance and forwarded Code Amendment No. 20-01 back to the Planning Commission for further revisions; and

WHEREAS, on May 26, 2020, the Planning Commission conducted a duly noticed public hearing as prescribed by law regarding proposed Code Amendment No. 20-01. At the conclusion of the public hearing, the Planning Commission approved Planning Commission Resolution No. 20-____, recommending that the City Council approve Code Amendment No. 20-01; and

WHEREAS, on _____, 2020, the City Council conducted a duly noticed public hearing as prescribed by law regarding this ordinance approving Code Amendment No. 20-01; and

WHEREAS, based on review of the State CEQA Guidelines, the City Council finds and determines that the 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.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Subsection (a) of Section 26-281 of Chapter 26, Article VI, Division 6 of the West Covina Municipal Code is hereby amended to read as follows:

(a) *Applicability.* A film permit may be approved by the planning director without notice or hearing for the following filming:

- (1) In single- and multi-family residential zones, filming for up to ~~three (3)~~ five (5) days, not including any setup and dismantling, in any three (3) months with a minimum of 90 days in between each time period, on any one (1) property.
- (2) In all other zoning districts, filming of up to ~~five (5)~~ 15 days, not including any setup and dismantling, in any three (3) months with a minimum of 30 days in between each time period, on any one (1) property or shopping center.
- (3) All filming, including any setup and dismantling, shall be done between the hours of 7:00 a.m. and 9:00 p.m. in residential zones, and between the hours of 6:00 a.m. and 11:00 p.m. in all other zoning districts. Film permit activities may extend outside these hours if the planning director finds that there will be no adverse impacts to nearby residents or business owners.
- (4) Filming which involves no exceptions to the general filming conditions in Section 26-280(e) above

SECTION 2: The City Clerk shall certify to the passage of this ordinance and shall cause the same to be published as required by law.

SECTION 3: This ordinance shall take effect and be in force thirty (30) days from and after the date of its passage.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2020.

Tony Wu
Mayor

APPROVED AS TO FORM

ATTEST

Thomas P. Duarte
City Attorney

Lisa Sherrick
Assistant City Clerk

ATTACHMENT NO. 1

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 the foregoing Ordinance, being Ordinance No. 2471, was introduced at the _____, 2020 regular Council meeting and adopted at a regular meeting of the City Council on _____, 2020, by the following roll call vote:

AYES:
NOES:
ABSENT:
ABSTAINED:

Lisa Sherrick
Assistant City Clerk

AGENDA

ITEM NO. 3.

DATE: May 26, 2020

PLANNING DEPARTMENT STAFF REPORT

SUBJECT

CODE AMENDMENT NO. 20-01

CATEGORICAL EXEMPTION

LOCATION: City-wide

REQUEST: The proposed code amendments consist of certain amendments to the Zoning section of the West Covina Municipal Code to modify motion picture filming/film permit standards. This Code Amendment was reviewed by the City Council on April 21, 2020 and was forwarded back to the Planning Commission for further revisions.

BACKGROUND

On January 21, 2020, the City Council adopted Resolution No. 2020-05 to initiate a Code Amendment to Section 26-281 of the West Covina Municipal Code (WCMC) pertaining to film permit standards.

On February 11, 2020, the Planning Commission held a study session to discuss the film permit code standards and directed staff to modify the number of days filming is allowed in residential and non-residential zones, and to modify the filming activity timeframe for non-residential zones. The ordinance was prepared based on the comments received from the Planning Commission during the study session.

On March 10, 2020, the Planning Commission held a public hearing to consider Code Amendment No. 20-01. During the hearing Mr. Lucas Purcell pointed out that the draft Code Amendment does not limit the amount of filming days allowed in non-residential zones. The Planning Commission voted 5-0 to approve Resolution No. 20-6030 recommending the City Council adopt Code Amendment No. 20-01 as presented.

On April 21, 2020, the City Council held a public hearing to consider Code Amendment No. 20-01. During the hearing the City Council expressed some concerns that the proposed Code Amendment does not place specific limits on the amount of filming days allowed in non-residential zones. The City Council provided the following direction:

- The City Council felt that the language needed further refinement in order to make it easier to understand; the language pertaining to filming in residential and non-residential zones should be made consistent.
- Limiting filming in residential zones to 5 days including set up seems too restrictive.
- Filming in non-residential zones should be regulated in the number of filming days, similar to the language regulating filming in residential zones.
- Allowing filming 20 times per year or 20 days at a time, with only 7 days in between activities in nonresidential zones is excessive.

The City Council voted 5-0 to forward Code Amendment No. 20-01 back to the Planning Commission for further revisions.

DISCUSSION

The proposed changes to the zoning code need to balance all the City's economic development priorities. Allowing for additional filming on commercial properties in some cases could be a disincentive to reuse of the property. For example, if the revenue from filming are substantial, a property owner has little incentive to reuse the property for its intended more economically beneficial commercial use. This is particularly important in the Auto Plaza BID area, where the City is encouraging new vehicle sales as the primary land use.

The City does not generate significant revenue from film permits. Film permit costs need to be competitive with other cities in the region if the City wishes to attract more filming. Additionally, having reasonable fees supports filming is an ancillary use of the property. A potential problem occurs when filming is the primary use of the property because the City loses sales tax revenues and receives only minimal revenue from the film permit.

The proposed Ordinance has been revised based on the City Council direction:

- **Residential Zones** - The previous version of the draft Ordinance allowed for 5 days of filming activity including setup and dismantling. The revised version does not include setup and dismantling in the allotted 5 days. In addition, the language has been revised so that it is clear that 90 days is the required "cool-off" period; the existing Code requires 3 months.
- **Non-Residential Zones** - The previous version of the draft Ordinance did not limit the amount of days allowed per activity; it limited the amount of times per calendar with only a 7-day "cool-off" period. The language in the revised version is similar to the texts for filming in residential zones. Staff has included place-holders in the number of filming days allowed and the amount of days required in between filming activities ("cool-off" period). Since the City Council felt that both 20 times and/or 20 days is too many and 7 days in between activities is too short, staff is

recommending that the Planning Commission select a figure within the following range:

- *Days*: a timeframe limit within the 8 to 15 day range would be reasonable.
- *"Cool-off" Period*: a "cool-off" period within the 30 to 60 day range would be reasonable.

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 simply revise existing film permit standards.

STAFF RECOMMENDATIONS

Staff recommends that the Planning Commission adopt a resolution recommending approval of Code Amendment No. 20-01 to the City Council.

Submitted by:

Jo-Anne Burns

Attachments

Attachment No. 1 - Approval Resolution

Attachment No. 2 - Planning Commission Resolution No. 20-6030

Attachment No. 3 - 4/21/20 City Council Staff Report

AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: April 21, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

**SUBJECT: PUBLIC HEARING TO CONSIDER CODE AMENDMENT NO.
20-01 FOR FILM PERMIT STANDARDS**

RECOMMENDATION:

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

ORDINANCE NO. 2471 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA APPROVING CODE AMENDMENT NO. 20-01, RELATED TO FILM PERMIT STANDARDS

BACKGROUND:

On January 21, 2020, the City Council adopted Resolution No. 2020-05 to initiate a Code Amendment to Section 26-281 of the West Covina Municipal Code (WCMC) pertaining to film permit standards.

On February 11, 2020, the Planning Commission held a study session to discuss the film permit code standards and directed staff to modify the number of days filming is allowed in residential and non-residential zones, and to modify the filming activity timeframe for non-residential zones. The ordinance was prepared based on the comments received from the Planning Commission during the study session.

On March 10, 2020, the Planning Commission held a public hearing to consider Code Amendment No. 20-01. During the hearing Mr. Lucas Purcell pointed out that the draft Code Amendment does not limit the amount of filming days allowed in non-residential zones. The Planning Commission voted 5-0 to approve Resolution No. 20-6030 recommending the City Council adopt Code Amendment No. 20-01 as presented.

DISCUSSION:

The proposed changes to the zoning code need to balance all the City's economic development priorities. Allowing for additional filming on commercial properties in some cases could be a disincentive to reuse of the property. For example, if the revenue from film permits is substantial, a property owner has little incentive to reuse the property for a better/higher use. This is particularly important in the Auto Plaza BID area, where the City is encouraging new vehicle sales as the primary land use. The City does not generate significant revenue from film permits. Film permit costs need to be competitive with other cities in the region if the City wishes to attract more filming. Additionally, having reasonable fees supports filming is an ancillary use of the property. A potential problem occurs when filming is the primary use of the property because the City loses sales tax revenues and receives only minimal revenue from the film permit.

The proposed ordinance provides the following changes to Section 26-281 of Division 6 of Article VI of Chapter 26 of the WCMC:

- The number of filming days for residential zones will be increased from 3 days to 5 days.
- The number of filming days for non-residential zones will be increased from 5 days to 20 times per production with a minimum of 7 days in between each time period.
- The hours for filming in non-residential zones will be revised from 7:00 am to 9:00 pm to 6:00 am to 11:00 pm.

LEGAL REVIEW:

The City Attorney's Office has reviewed the proposed ordinance and approved it as to form.

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 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 simply revise existing film permit standards.

Prepared by: Jo-Anne Burns, Planning Manager

Fiscal Impact

FISCAL IMPACT:

The proposed code amendment will have no fiscal impact. Applicants will be required to pay fees to cover any staff costs as well as hard costs required to process applications.

Attachments

Attachment No. 1 - Ordinance No. 2471

Attachment No. 2 - Planning Commission Resolution No. 20-6030

Attachment No. 3 - Mar. 10, 2020 Planning Commission Minutes

Attachment No. 4 - March 10, 2020, Planning Commission Staff Report

CITY COUNCIL GOALS & OBJECTIVES:

Enhance the City Image and Effectiveness

AGENDA

ITEM NO. 3.

DATE: March 10, 2020

PLANNING DEPARTMENT STAFF REPORT

SUBJECT

CODE AMENDMENT NO. 20-01

CATEGORICAL EXEMPTION

LOCATION: City-wide

REQUEST: The proposed code amendments consist of certain amendments to the Zoning section of the West Covina Municipal Code to modify motion picture filming/film permit standards.

BACKGROUND

On January 21, 2020, the City Council adopted Resolution No. 2020-05 (Attachment No. 1) to initiate a Code Amendment to Section 26-281 of the West Covina Municipal Code (WCMC) pertaining to film permit standards.

On February 11, 2020, the Planning Commission held a study session to discuss the film permit code standard and directed staff to modify the number of days filming is allowed in residential and non-residential zones, and to modify the filming activity timeframe for non-residential zones.

DISCUSSION

Based on the Planning Commission study session a draft ordinance has been prepared. The draft ordinance provides the following changes to the West Covina Municipal Code (WCMC):

- The number of filming days for residential zones were increased from 3 days to 5 days.
- The number of filming days for non-residential zones were increased from 5 days to 20 times per production with a minimum of 7 days in between each time period.
- The timeframe for filming in non-residential zones has been modified.

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 simply revise existing film permit standards.

STAFF RECOMMENDATIONS

Staff recommends that the Planning Commission adopt a resolution recommending approval of Code Amendment No. 20-01 to the City Council.

Submitted by: Jo-Anne Burns

Attachments

Attachment No. 1 - Code Amendment Approval Resolution

Attachment No. 2 Staff Report 2.11.20



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: July 21, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT: POLICE DEPARTMENT UPDATE

RECOMMENDATION:

It is recommended that the City Council receive and file this informational report.

BACKGROUND:

Due to the recent civil unrest, Police Departments across the country are taking steps to review their policies and the way that they engage with the public.

DISCUSSION:

The West Covina Police Department takes this matter seriously. In response to some of the questions from the general public and community groups, the Department would like to address some of these questions and concerns.

The Police Department provided City Council with copies of their use of force policies for review. Previously, staff has also provided Council with statistical data with respect to calls for service over the last three years which will be briefly discussed.

OPTIONS:

It is recommended that the City Council:

- 1) Receive and file the update from the Police Department

Prepared by: Richard Bell, Chief of Police

CITY COUNCIL GOALS & OBJECTIVES: Enhance Public Safety