



CITY OF WEST COVINA

CITY COUNCIL/SUCCESSOR AGENCY

**OCTOBER 20, 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. Pursuant to the Executive Orders, Council Members may attend City Council meetings telephonically and the City Council is not required to make available a physical location from which members of the public may observe the meeting and offer public comment.

On June 18, 2020, the California Department of Public Health issued guidance mandating that people in California wear cloth face coverings in specified circumstances, including when they are inside, or in line to enter, any indoor public space. 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 and participate in the City Council meeting in person. All persons attending the meeting are required to wear cloth face coverings and observe social distancing protocols.

Members of the public may also watch City Council the meeting live on the City's website at: <https://www.westcovina.org/departments/city-clerk/agendas-and-meetings/current-meetings-and-agendas> under the "Watch Live" tab or through 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 live via the links set forth above.

REMOTE PUBLIC PARTICIPATION: In lieu of attending the meeting in person, members of the public can submit public comments via email or address the City Council by telephone using the methods described below.

EMAILED PUBLIC COMMENT. Members of the public can submit public comments to the City Clerk via e-mail at City_Clerk@westcovina.org. The subject line should specify either "Oral Communications or Public Hearing – 10/20/2020". Please include your full name and address in your e-mail. All emails received by 4:00 P.M. on the day of the Council meeting will be posted to the City's website under "Current Meetings and Agendas" and provided to the City Council prior to the meeting. No comments will be read out loud during the meeting. All comments received by the start of the meeting will be made part of the official public record of the meeting.

TELEPHONIC ACCESSIBILITY. Members of the public that wish to address the Council by telephone during Oral Communications or a public hearing may contact the City Clerk by email City_Clerk@westcovina.org or by telephone (626) 939-8433 by 5:30 P.M. on the day of the Council meeting for instructions regarding addressing the City Council by telephone during the meeting.

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 OCTOBER 20, 2020, 7:00 PM
REGULAR MEETING

INVOCATION

Led by Reverend Tracey Johnson from Murph-Chapel St. Paul A.M.E. Church

PLEDGE OF ALLEGIANCE

Led by Councilmember Shewmaker

ROLL CALL

REPORTING OUT FROM CLOSED SESSION

PRESENTATIONS

- **November 3, 2020 Election Presentation**

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) **OCTOBER 6, 2020 CITY COUNCIL/SUCCESSOR AGENCY CLOSED SESSION MEETING MINUTES
OCTOBER 6, 2020 CITY COUNCIL/SUCCESSOR AGENCY REGULAR SESSION MEETING MINUTES**

It is recommended that the City Council approve the October 6, 2020, Closed Session Meeting Minutes, and the October 6, 2020 Regular Session Meeting Minutes.

CLAIMS AGAINST THE CITY

- 2) **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. GEICO ASO Ian Torres vs. City of West Covina
2. Vernanell Gibson vs. City of West Covina

CITY ATTORNEY'S OFFICE

- 3) **CONSIDERATION OF ENGAGEMENT OF BEST BEST & KRIEGER LLP IN CONNECTION WITH
THE WHITHORN V. WEST COVINA AND TAYLOR V. CITY OF WEST COVINA MATTERS**

It is recommended that the City Council authorize the City Manager to negotiate and execute any documents necessary for the continued engagement of Best Best & Krieger LLP to provide legal services to the City in connection with the *Whithorn v. West Covina* and *Taylor v. City of West Covina* matters.

CITY MANAGER'S OFFICE

- 4) **CONSIDERATION OF RESOLUTION RATIFYING USE OF PEG FUNDS FOR THE EMERGENCY
PURCHASE OF COUNCIL CHAMBERS AUDIO SYSTEM**

It is recommended that the City Council approve a resolution approving a budget amendment and ratifying the use of dedicated funding through the public, educational and governmental (PEG) fund (Account No. 205.80.7001.7900) for the emergency purchase of the new City Council Chambers audio system from Key Code Media, Inc., in the amount of \$75,210.38.

- 5) **CONSIDERATION OF RESOLUTION NO. 2020-105 CLARIFYING THE CITY MANAGER'S
EMERGENCY POWERS AND EXTENDING THE LOCAL EMERGENCY DECLARATION**

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

RESOLUTION NO. 2020-105 - 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, JUNE 23, 2020, JULY 21, 2020, AUGUST 18, 2020, SEPTEMBER 15, 2020, AND OCTOBER 6, 2020.

6) CONSIDERATION OF A RESOLUTION No. 2020-108 EXPRESSING OPPOSITION TO STATE PLANNING AND ZONING LEGISLATION THAT DIMINISHES LOCAL CONTROL

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

RESOLUTION NO. 2020-107 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, EXPRESSING OPPOSITION TO STATE PLANNING AND ZONING LEGISLATION THAT USURPS LOCAL CONTROL AND EXPRESSING SUPPORT FOR CALIFORNIA CITIZENS FOR LOCAL CONTROL

COMMUNITY DEVELOPMENT

7) CONSIDERATION OF ARCHITECTURAL SERVICES CONSULTANT LIST

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

1. Approve Gynne Pugh Urban Studio and KTG Architecture + Planning for the architectural services consultant list. The cost of these services shall be paid by project applicants through a reimbursement agreement.
2. Authorize the City Manager to negotiate and execute a Professional Services Agreement with Gynne Pugh Urban Studio and KTG Architecture + Planning for architectural consulting services for a two-year period, commencing October 20, 2020 and ending October 19, 2022, with a possible two-year extension.

8) CONSIDERATION OF APPROVAL OF THE TRAFFIC COMMITTEE MEETING MINUTES AND TRAFFIC COMMITTEE RECOMMENDATIONS FROM THE SEPTEMBER 8, 2020 TRAFFIC COMMITTEE MEETING

It is recommended that the City Council approve the Traffic Committee Meeting Minutes and Traffic Committee recommendations from the September 8, 2020 Traffic Committee Meeting for the following item:

1. Parking Conditions Review on Fairgrove Avenue

- a. **Request:** The City received a request from the West Covina Police Department to review the existing parking conditions on Fairgrove Avenue due to various complaints received regarding loitering, littering, and trespassing/congregating in the undeveloped areas past the gates.
- b. **Review Standard:** The CAMUTCD Section 2B.46. Parking, Standing, and Stopping Signs (R7 and R8 Series) states the following: “No Parking Anytime – Parking should be prohibited at locations where the prohibition is necessary to accommodate other activities and objectives, such as street sweeping, snow removal, public safety or preferential parking” and that “The NO PARKING ANY TIME with arrow (R28(CA)) or without arrow (R26(CA)) signs may be used to inform motorists of a parking prohibition at a specific location.
- c. **Recommendation:** It was unanimously recommended to install No Parking signs along the segment to serve as a productive countermeasure to improve public safety along this segment of Fairgrove Avenue per the CAMUTCD which includes the installation of signs on both sides of the segment indicating the “No Parking” limits.

9) CONSIDERATION OF ACCEPTANCE OF PUBLIC IMPROVEMENTS FOR FISCAL YEAR 2017-18 RESIDENTIAL STREET REHABILITATION PROGRAM - PROJECT NO. SP-18032

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

1. Accept project completion for Fiscal Year 2017-18 Residential Street Rehabilitation Program (Project No. SP-18032) as performed by Onyx Paving Company, Inc., with a final contract amount of \$1,360,000; and
2. Authorize the recordation of Notice of Completion with the Los Angeles County Recorder and the release of retention funds 35 days thereafter.

FINANCE DEPARTMENT

10) CONSIDERATION OF AUGUST FINANCIAL REPORT FOR FISCAL YEAR 2020-21

It is recommended that the City Council receive and file the August Financial Report for Fiscal Year 2020-21 and adopt Resolution No. 2020-108 to approve the budget amendments attached to this report.

RESOLUTION NO. 2020-108 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, ADOPTING BUDGET AMENDMENTS FOR THE FISCAL YEAR COMMENCING JULY 1, 2020 AND ENDING JUNE 30, 2021

FIRE DEPARTMENT

11) CONSIDERATION OF PROFESSIONAL SERVICE AGREEMENTS FOR FIRE PREVENTION PLAN CHECK 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 plan check services by finding that it would be impracticable and uneconomical to comply with such requirements and it would promote the public interest to dispense with such requirements, in accordance with the requirements of Section 2-330(b) of the West Covina Municipal Code.
2. Authorize the City Manager to negotiate and execute a Professional Services Agreement with Susan Privitera-Johnson dba KJ Consultants for Fire Prevention plan check and inspection services, for a term of one (1) year, with the option to extend the agreement for a maximum of four (4) successive one (1) year periods, in an annual amount not-to-exceed \$30,000.
3. Authorize the City Manager to negotiate and execute a Professional Services Agreement with MAK Fire Protection Engineering and Consulting, Inc. for Fire Prevention plan check services, for a term of one (1) year, with the option to extend the agreement for a maximum of four (4) successive one (1) year periods, in an annual amount not-to-exceed \$15,000.
4. Authorize the City Manager to negotiate and execute a Professional Services Agreement with PE Consulting Group, for Fire Prevention plan check services, for a term of one (1) year, with the option to extend the agreement for a maximum of four (4) successive one (1) year periods, in an annual amount not-to-exceed \$15,000.
5. Authorize the City Manager to negotiate and execute future amendments to the agreements.

POLICE DEPARTMENT

12) CONSIDERATION OF PURCHASE OF SIMULATOR TRAINING TECHNOLOGY EQUIPMENT FOR POLICE DEPARTMENT

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

1. In accordance with Municipal Code Chapter 2, Article VII, Division 2, Sec. 2-333 (i) (2), and the findings of the West Covina Finance Department, find that the U.S. General Services Administration (GSA) purchase contract # GS-00F-113DA satisfies West Covina's bid process, and authorize the purchase of a comprehensive simulator training system, directly from Meggitt Training Systems, for a total of \$50,295.77, including taxes and fees, using previously appropriated federal asset forfeiture funds.

PUBLIC SERVICES

13) WEST COVINA COMMUNITY SERVICES FOUNDATION FISCAL YEAR 2019-2020 ANNUAL REPORT

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

END OF CONSENT CALENDAR

PUBLIC HEARINGS

14) PUBLIC HEARING TO CONSIDER CODE AMENDMENT NO. 20-07 TO ALLOW AND REGULATE OFF-SALE (RETAIL SALES FOR OFF-SITE CONSUMPTION) OF BEER AND WINE AS AN ACCESSORY USE TO A SERVICE STATION

It is recommended that the City Council approve Code Amendment No. 20-07 by:

1. Conducting a public hearing regarding Code Amendment No. 20-07; and
2. Introducing for first reading, by title only, further reading waived, the following ordinance:

ORDINANCE NO. 2474 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA TO AMEND CHAPTER 26 OF THE WEST COVINA MUNICIPAL CODE TO ALLOW ALCOHOL (BEER AND WINE) SALES AT SERVICE STATIONS

DEPARTMENTAL REGULAR MATTERS

CITY MANAGER'S OFFICE

15) CONSIDERATION OF RESOLUTION 2020-104 CONFIRMING A WASTE MANAGEMENT AGENCY AND DESIGNATING A LOCAL ENFORCEMENT AGENCY FOR ENFORCEMENT OF A SOLID WASTE MANAGEMENT PROGRAM

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

1. Adopt a resolution confirming a Waste Management Enforcement Agency and designating a Local Enforcement Agency (Attachment No. 1):

RESOLUTION NO. 2020-104 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, CONFIRMING A WASTE MANAGEMENT ENFORCEMENT AGENCY AS A DIVISION OF THE FIRE DEPARTMENT AND DESIGNATING A LOCAL ENFORCEMENT AGENCY FOR ENFORCEMENT OF A SOLID WASTE MANAGEMENT PROGRAM IN THE CITY OF WEST COVINA, and

2. Authorize the City Manager to negotiate and execute a Professional Services Agreement between the City of West Covina and Rincon Environmental, LLC for Local Enforcement Agency (LEA) services.

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

November 17, 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: October 20, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT: OCTOBER 6, 2020 CITY COUNCIL/SUCCESSOR AGENCY CLOSED SESSION MEETING MINUTES
OCTOBER 6, 2020 CITY COUNCIL/SUCCESSOR AGENCY REGULAR SESSION MEETING MINUTES

RECOMMENDATION:

It is recommended that the City Council approve the October 6, 2020, Closed Session Meeting Minutes, and the October 6, 2020 Regular Session Meeting Minutes.

DISCUSSION:

That the City Council adopt the attached minutes.

Prepared by: Lisa Sherrick, Assistant City Clerk

Attachments

Attachment No. 1 - 10/06/2020 Closed Session Minutes Draft

Attachment No. 2 - 10/06/2020 Regular Session Minutes Draft

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



CITY OF WEST COVINA

CITY COUNCIL/SUCCESSOR AGENCY

**OCTOBER 6, 2020, 6:00 PM
REGULAR MEETING - CLOSED SESSION**

**MANAGEMENT RESOURCE CENTER
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, October 06, 2020 at 6:00 p.m., in the Management Resource Center Conference Room on the 3rd Floor, 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, Russell Hildebrand Deputy City Attorney, Thomas P. Duarte City Attorney, Bruce Lindsay Deputy City Attorney, Helen Tran Human Resources Director, Robbeyn Bird Finance Director, Paulina Morales Economic Development Manager. Krista MacNevin Jee Deputy City Attorney, Matt Ashley Irell & Manella, Brian Irell and Manella, Oliver Yee Liebert Cassidy Whitmore Outside Counsel.

PUBLIC COMMENTS ON ITEMS ON THE AGENDA

None

CLOSED SESSION

1. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

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

Number of Cases: Five (5)

2. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code § 54956.8

1) Property: APN No. 8474-011-028

Agency Negotiator: Carmany, Persico, Morales, Duarte

Negotiating Parties: Waterford Property Company

Under Negotiation: Terms of Purchase and Sale Agreement

2) Property: APN No. 8486-008-905

Agency Negotiator: Carmany, Persico,

Negotiating Parties: Neryssa Flores

Under Negotiation: Lease Terms

3. 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

With regard to Item #1, on a vote of 5-0 Council directed staff to initiate litigation. The identity of the defendant will be disclosed upon filing of the complaint.

ADJOURNMENT

The Closed Session Meeting adjourned at 6:50 p.m., by Mayor Wu. The next regularly scheduled Closed Session City Council Meeting will be held on Tuesday, October 20, 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

OCTOBER 06, 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

MINUTES

INVOCATION

Led by Pastor Jillian Lutes from West Covina Hills Seventh-Day Adventist Church

PLEDGE OF ALLEGIANCE

Led by Mayor Pro Tem Lopez-Viado

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.

CLOSED SESSION

1. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

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

Number of Cases: Five (5)

2. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code § 54956.8

1) Property: APN No. 8474-011-028

Agency Negotiator: Carmany, Persico, Morales, Duarte

Negotiating Parties: Waterford Property Company

Under Negotiation: Terms of Purchase and Sale Agreement

2) Property: APN No. 8486-008-905

Agency Negotiator: Carmany, Persico,

Negotiating Parties: Neryssa Flores

Under Negotiation: Lease Terms

3. 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 with regard to Item #1, on a vote of 5-0 Council directed staff to initiate litigation. The identity of the defendant will be disclosed upon filing of the complaint

PRESENTATIONS

- Senator Ling Ling Chang Certificate Presentation for Friendship City Tainan, Taiwan
- Certificate of Recognition Islands Restaurant meals donation to the Senior Meals Program
- Certificate of Recognition Sprouts Farmers Market meals donation to the Senior Meals Program

- Proclamation – National Breast Cancer Awareness Month of October
- Proclamation – Domestic Violence Awareness Month of October

ORAL COMMUNICATIONS - Five (5) minutes per speaker

- Al Contreras
- Fredrick Sykes
- Angie Gillingham
- Jim Grivich
- Steve Bennett
- Minerva Avila
- Celeste

CITY MANAGER'S REPORT

Presentation given by Mr. Carmany.

CONSENT CALENDAR

ACTION: Motion by Councilman Castellanos, Second by Mayor Pro Tem Lopez-Viado 5-0
to: Approve Consent Calendar Items 1, 2, 4, 7, 13, 14 and 15.

ACTION: Motion by Councilman Castellanos, Second by Mayor Pro Tem Lopez-Viado
Carried 5-0 to: Approve Consent Calendar Item 3. (Item 3 pulled for discussion from the Consent Calendar by Councilmember Shewmaker).

ACTION: Motion by Councilmember Shewmaker, Second by Councilman Johnson Carried
5-0 to: Approve Consent Calendar Item 5. (Item 5 pulled for discussion from the Consent Calendar by Councilmember Shewmaker).

ACTION: Motion by Mayor Pro Tem Lopez-Viado, Second by Castellanos
Carried 5-0 to: Approve Consent Calendar Item 6. (Item 6 pulled for discussion from the Consent Calendar by Mayor Pro Tem Lopez-Viado).

ACTION: Motion by Councilman Castellanos, Second by Councilman Johnson Carried 5-0
to: Table Consent Calendar Item 8. (Item 8 pulled for discussion from the Consent Calendar by Councilman Castellanos).

ACTION: Motion by Councilman Castellanos, Second by Mayor Pro Tem Lopez-Viado
Carried 4-1 to: (No: Johnson) Approve Consent Calendar Items 9, 10, 11, and 12. (Item 9-12 pulled for discussion from the Consent Calendar by Councilman Johnson).

APPROVAL OF MEETING MINUTES

- 1) **SEPTEMBER 15, 2020 CITY COUNCIL/SUCCESSOR AGENCY CLOSED
SESSION MEETING MINUTES**

**SEPTEMBER 15, 2020 CITY COUNCIL/SUCCESSOR AGENCY REGULAR
SESSION MEETING MINUTES**

Carried 5-0 to: approve the September 15, 2020, Closed Session Meeting Minutes, and the September 15, 2020.

COMMISSION SUMMARY OF ACTIONS

- 2) **Summary of Actions for the Community and Senior Services Commission Meeting Minutes for the March 10, 2020 meeting.**

Carried 5-0 to: receive and file the Summary of Actions for the Regular Community and Senior Services Commission Meeting of March 10, 2020.

INVESTMENT REPORT

- 3) **INVESTMENT REPORT FOR THE MONTH ENDED AUGUST 31, 2020**

Carried 5-0 to: receive and file the Investment Report for the month ended August 31, 2020.

CITY CLERK'S OFFICE

- 4) **BIENNIAL REVIEW OF THE CONFLICT OF INTEREST CODE AS REQUIRED BY THE POLITICAL REFORM ACT**

Carried 5-0 to: receive and file the 2020 Local Agency Biennial Notice.

CITY MANAGER'S OFFICE

- 5) **CONSIDERATION OF RESOLUTION NO. 2020-101 EXTENDING THE LOCAL EMERGENCY DECLARATION**

Carried 5-0 to: adopt the following resolution: *on the Condition that it would return on the next Council Meeting with the discussed amendments.*

RESOLUTION NO. 2020-101 - 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, JUNE 23, 2020, JULY 21, 2020, AUGUST 18, 2020
AND SEPTEMBER 15, 2020.**

COMMUNITY DEVELOPMENT

6) CONSIDERATION OF ACCEPTANCE OF PUBLIC IMPROVEMENTS FOR THE ORANGE AVENUE CATCH BASIN INSTALLATION PROJECT (PROJECT NO. 19027)

Carried 5-0 to: take the following actions:

1. Accept project completion for the Orange Avenue Catch Basin Installation project (Project No. 19027) as performed by GRBCON, Inc. with a final contract amount of \$73,235; and
2. Authorize the recordation of Notice of Completion with the Los Angeles County Recorder and the release of retention funds 35 days thereafter.

FINANCE DEPARTMENT

7) PROPOSITION A EXCHANGE - FOOTHILL TRANSIT

Carried 5-0 to: approve the Proposition A Local Return Fund Exchange with Foothill Transit and authorize the City Manager to negotiate and execute the Assignment Agreement.

FIRE DEPARTMENT

8) CONSIDERATION OF THREE PROFESSIONAL SERVICE AGREEMENTS FOR FIRE PREVENTION PLAN CHECK SERVICES

(Item 8 was tabled from the Agenda by Councilman Castellanos)

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 plan check services by finding that it would be impracticable and uneconomical to comply with such requirements and it would promote the public interest to dispense with such requirements, in accordance with the requirements of Section 2-330(b) of the West Covina Municipal Code.
2. Authorize the City Manager to negotiate and execute a Professional Services Agreement with Susan Privitera-Johnson dba KJ Consultants for Fire Prevention plan check and inspection services, for a term of three (3) years, with the option to extend the agreement for two (2) additional years, in an annual amount not-to-exceed \$30,000.
3. Authorize the City Manager to negotiate and execute a Professional Services Agreement with MAK Fire Protection Engineering and Consulting, Inc. for Fire

Prevention plan check services, for a term of three (3) years, with the option to extend the agreement for two (2) additional years, in an annual amount not-to-exceed \$15,000.

4. Authorize the City Manager to negotiate and execute a Professional Services Agreement with PE Consulting Group, for Fire Prevention plan check services, for a term of three (3) years, with the option to extend the agreement for two (2) additional years, in an annual amount not-to-exceed \$15,000.
5. Authorize the City Manager to negotiate and execute future amendments to the agreements

HUMAN RESOURCES/RISK MANAGEMENT

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

Carried 4-1 (No: Johnson) to: 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)

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

Carried 4-1 (No: Johnson) to: 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) REPRESENTED BY CITY EMPLOYEES ASSOCIATES (CEA)

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

Carried 4-1 (No: Johnson) to: 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) REPRESENTED BY CITY EMPLOYEES ASSOCIATES (CEA)

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

Carried 4-1 (No: Johnson) to: 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) REPRESENTED BY CITY EMPLOYEES ASSOCIATES (CEA)

13) CONSIDERATION OF GOVERNMENT TORT CLAIMS

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

1. Ian Torres vs. City of West Covina
2. Sandra Ip vs. City of West Covina
3. Shadow Oaks Villas vs. City of West Covina

PUBLIC SERVICES

14) CONSIDERATION OF AGREEMENT WITH BETTER 4 YOU MEALS FOR THE SENIOR MEALS PROGRAM

Carried 5-0 to: take the following actions:

1. Ratify the agreement between the City of West Covina and Better 4 You Breakfast, Inc. dba Better 4 You Meals to provide frozen meals for the senior nutrition program;
2. Authorize the City Manager to negotiate and execute future extensions to the agreement, provided that the total compensation under the agreement and any extensions does not exceed \$518,000; and
3. Adopt the following Resolution:

RESOLUTION NO. 2020-100 – 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 (CARES ACT)

15) SUBAWARD AGREEMENT WITH LOS ANGELES COUNTY WORKFORCE DEVELOPMENT, AGING AND COMMUNITY SERVICES FOR OLDER AMERICANS ACT FUNDS FOR THE SENIOR MEALS PROGRAM

Carried 5-0 to: adopt the following resolution:

RESOLUTION NO. 2020-99 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, AUTHORIZING A SUBAWARD AGREEMENT WITH LOS ANGELES COUNTY WORKFORCE DEVELOPMENT, AGING AND COMMUNITY SERVICES FOR OLDER AMERICANS ACT FUNDS AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE THE SUBAWARD AGREEMENT AND RELATED DOCUMENTS

END OF CONSENT CALENDAR

PUBLIC HEARINGS

16) CONSIDERATION OF APPROVAL OF AGREEMENTS FOR ENERGY SYSTEMS UPGRADES PROJECT

Carried 4-1 (No: Shewmaker) to: construct a bathroom with utility connections at Shadow Oak Park with an appropriation of \$404,936 and take the following actions:

1. Conduct the public hearing.
2. At the conclusion of the public hearing, adopt the following resolution:

RESOLUTION NO. 2020-103 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLATION AGREEMENT AND RELATED MEASUREMENT AND VERIFICATION AGREEMENT AND SOLAR POWER PURCHASE AGREEMENTS AND SOLAR ENERGY SYSTEM LEASE AGREEMENTS, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A FINANCING AGREEMENT, AND MAKING FINDINGS REQUIRED BY GOVERNMENT CODE SECTION 4217.10 ET SEQ. IN CONNECTION WITH THE CITY'S ENERGY SYSTEMS UPGRADES PROJECT

3. Authorize the City Manager to negotiate and execute any amendments to the agreements authorized by the Resolution.

MAYOR/COUNCILMEMBERS REPORTS

None

CITY COUNCIL REQUESTS FOR REPORTS, STUDIES OR INVESTIGATION

17) REQUEST FOR CONSIDERATION FROM MAYOR PRO TEM LOPEZ-VIADO REQUESTING STAFF TO RESEARCH AND PROVIDE A RECOMMENDATION

REGARDING "CALIFORNIA CITIZENS FOR LOCAL CONTROL" INITIATIVE

Carried 5-0 to: research and provide a resolution in support of "California Citizens FOR Local Control".

Request from Councilman Castellanos – Request staff to look at bring Building Staff back in-house and as the contract with MV (Go West Shuttle Services) expires request staff to look at changing the routes and creative alternatives.

Request from Councilwoman Shewmaker – Add onto the MV request and look at other options form our seniors – Purchase buses and shuttle seniors and even negotiate with Uber and or Lyft.

CITY COUNCIL COMMENTS

None

ADJOURNMENT

This meeting was adjourned in memory of Jay Johnstone. Mr. Johnstone grew up in West Covina and attended Edgewood High School, also won a World Series with the Yankees in 1978. Johnstone played 20 seasons in the major leagues, including his first five seasons with the California Angels, and parts of four seasons with the Dodgers.

His pinch-hit homer in Game 4 of the 1981 World Series fueled a boisterous 8-7 victory for L.A. at Dodger Stadium, as the team came back from a two games to defeat the Yankees in six games. Our deepest condolences to his wife Mary Jane Johnstone and daughter, and his family at this heartbreaking time.

A motion to adjourn the Regular Meeting was made by Councilman Johnson, and the meeting was adjourned at 9:40 p.m. The next regularly scheduled Regular City Council Meeting will be held on Tuesday, October 20, 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: October 20, 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. GEICO ASO Ian Torres vs. City of West Covina
2. Vernanell Gibson 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.

Prepared by: Helen Tran, Director of Human Resources/Risk Management Department

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



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: October 20, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT: CONSIDERATION OF ENGAGEMENT OF BEST BEST & KRIEGER LLP IN CONNECTION WITH THE WHITHORN V. WEST COVINA AND TAYLOR V. CITY OF WEST COVINA MATTERS

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to negotiate and execute any documents necessary for the continued engagement of Best Best & Krieger LLP to provide legal services to the City in connection with the *Whithorn v. West Covina* and *Taylor v. City of West Covina* matters.

BACKGROUND:

On or about April 13, 2020, to avoid a potential conflict of interest with City Attorney firm Jones & Mayer, the City Manager entered into an Engagement Agreement with Best Best & Krieger (BB&K), for the firm to provide legal services to the City in connection with the *Whithorn* matter. On or about September 2, 2020, the City Manager authorized the engagement of BB&K for the firm to provide legal services to the City in connection with the *Taylor* matter.

Staff now seeks City Council authorization for the City Manager to negotiate and execute any documents necessary for the continued engagement of BB&K in connection with both matters.

DISCUSSION:

Howard Golds, a partner at BB&K, is the lead attorney representing the City in the *Whithorn* and *Taylor* matters. Mr. Golds is part of BB&K's Labor & Employment practice group and oversees all the firm's litigation for a number of public agencies and private corporations. Mr. Golds has experience handling litigation matters on behalf of public agency clients, including employment claims.

OPTIONS:

The City Council has the following options:

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

Prepared by: Thomas P. Duarte, City Attorney

FISCAL IMPACT:

BB&K's hourly rates are charged to Account Number 110.11.1140.6111 for both matters and the hourly rates for BB&K are as follows:

- Partners/Of Counsel - \$315.00/hour
- Associates - \$270.00/hour

Attachments

Attachment No. 1 - Engagement Agreement (Whithorn)

Attachment No. 2 - Confirmation of Engagement for Legal Services (Taylor)

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

Indian Wells
(760) 568-2611

Irvine
(949) 263-2600

Los Angeles
(213) 617-8100

Manhattan Beach
(310) 643-8448

Ontario
(909) 989-8584



BEST BEST & KRIEGER
ATTORNEYS AT LAW

3390 University Avenue, 5th Floor, P.O. Box 1028, Riverside, CA 92502
Phone: (951) 686-1450 | Fax: (951) 686-3083 | www.bbklaw.com

Sacramento
(916) 325-4000

San Diego
(619) 525-1300

Walnut Creek
(925) 977-3300

Washington, DC
(202) 785-0600

April 13, 2020

VIA EMAIL DELIVERY: DCARMANY@WESTCOVINA.ORG

Mr. David Carmany
City Manager
City of West Covina
1444 W Garvey Ave S
Room 305
West Covina, CA 91790

Re: Engagement Agreement

Dear Mr. Carmany:

ABOUT OUR REPRESENTATION

Best Best & Krieger LLP is pleased to represent the City of West Covina (the "City"). Specifically, we will defend the City in the lawsuit entitled *Larry Whithorn v. City of West Covina, West Covina Fire Department, Lloyd Johnson, an individual, Tony Wu, an individual, Glenn Kennedy, an individual, David Carmany, an individual, and DOES 1 to 100, inclusive*; Los Angeles Superior Court Case No. 20STCV08916. At the City's expense we will also represent all of the other named defendants in the case: [LINDA FILL IN]. This letter constitutes our agreement setting the terms of our representation. If the City want us to represent it and agrees to the terms set forth in this letter, after you review the letter please sign it and return the signed copy to us.

CONFIDENTIALITY AND ABSENCE OF CONFLICTS

An attorney-client relationship requires mutual trust between the client and the attorney. It is understood that communications exclusively between counsel and the client are confidential and protected by the attorney-client privilege.

To also assure mutuality of trust, we have maintained a conflict of interest index. The California Rules of Professional Conduct defines whether a past or present relationship with any party prevents us from representing the City. Similarly, the City will be included in our list of clients to ensure we comply with the Rules of Professional Conduct with respect to the City.

We have checked the following names against our client index: City of West Covina, West Covina Fire Department, Glenn Kennedy, David Carmany, Tony Wu, Lloyd Johnson, Larry Whithorn, Shegarian & Associates and Carney R. Shegarian. Based on that check, we can



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Mr. David Carmany
City Manager
City of West Covina
April 13, 2020
Page 2

represent the City if we obtain written consent from all affected parties as discussed in the accompanying two letters describing a conflict of interest or potential conflict of interest. Please review the list to see if any other persons or entities should be included. If you do not tell us to the contrary, we will assume that this list is complete and accurate. We request that you update this list for us if there are any changes in the future.

YOUR OBLIGATIONS ABOUT FEES AND BILLINGS

Howard Golds, a partner of our firm, will be the lead attorney on this case. Partners and Of Counsel will be billed at the rate of \$315 per hour; associates will be billed at the rate of \$270 per hour.

The billing rates for others are described in the memorandum attached to this letter which is entitled "Best Best & Krieger LLP's Billing Policies." It also describes the other aspects of our firm's billing policies. You should consider the Billing Policies memorandum part of this agreement as it binds both of us. For that reason, you should read it carefully.

INSURANCE

We understand that the City is not now insured or have any insurance that may cover potential liability or attorneys' fees in this case. If you think the City may have such insurance, please notify me immediately.

We are also pleased to let you know that Best Best & Krieger LLP carries errors and omissions insurance with Lloyd's of London. After a standard deductible, this insurance provides coverage beyond what is required by the State of California.

NEW MATTERS

When we are engaged by a new client on a particular matter, we are often later asked to work on additional matters. You should know that such new matters will be the subject of a new signed supplement to this agreement. Similarly, this agreement does not cover and is not a commitment by either of us that we will undertake any appeals or collection procedures. Any such future work would also have to be agreed upon in a signed supplement.

BBK
BEST BEST & KRIEGER
ATTORNEYS AT LAW

Mr. David Carmany
City Manager
City of West Covina
April 13, 2020
Page 3

CIVILITY IN LITIGATION

In litigation, courtesy is customarily honored with opposing counsel, such as extensions to file pleadings or responses to other deadlines. In our experience, the reciprocal extension of such courtesies saves our clients' time and money. By signing this letter on behalf of the City, you will be confirming its approval of this practice in the above-reference case.

HOW THIS AGREEMENT MAY BE TERMINATED

The City, of course, has the right to end our services at any time. If the City does so, it will be responsible for the payment of fees and costs accrued but not yet paid, plus reasonable fees and costs in transferring the case to the City and its new counsel. By the same token, we reserve the right to terminate our services to the City upon written notice, order of the court, or in accordance with our attached Billing Policies memorandum. This could happen if the City fails to pay our fees and costs as agreed, fail to cooperate with us in this matter, or if we determine we cannot continue to represent the City for ethical or practical concerns.

CLIENT FILE

If the City does not request the return of its file, we will retain the City's file for five years. After five years, we may have the City's file destroyed. If the City would like its file maintained for more than five years or returned, the City must make separate arrangements with us.

THANK YOU

On a personal note, we are pleased that the City has selected Best Best & Krieger LLP. We look forward to a long and valued relationship with the City and appreciate its confidence in selecting us to represent the City in this case. If there are any questions at any time about our services or billings, please do not hesitate to call me.

If this letter meets with the City's approval, please sign and date it, and return the original to us. Unless this agreement is signed, dated and returned electronically by April 10, 2020, we

BBK
BEST BEST & KRIEGER
ATTORNEYS AT LAW

Mr. David Carmany
City Manager
City of West Covina
April 13, 2020
Page 4

will not represent the City or the other defendants in any capacity, and we will assume that the City has made other arrangements for legal representation.

Very truly yours,



Richard T. Egger
of BEST BEST & KRIEGER LLP

RTE:lt

AGREED AND ACCEPTED:

CITY OF WEST COVINA

By: _____

David Carmany

Its: City Manager

Dated: _____

4-13-20

Indian Wells
(760) 568-2611

Los Angeles
(213) 617-8100

Manhattan Beach
(310) 643-8448

Ontario
(909) 989-8584



BEST BEST & KRIEGER
ATTORNEYS AT LAW

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(916) 325-4000

San Diego
(619) 525-1300

Walnut Creek
(925) 977-3300

Washington, DC
(202) 785-0600

September 2, 2020

VIA EMAIL DELIVERY: DCARMANY@WESTCOVINA.ORG

Mr. David Carmany
City Manager
City of West Covina
1444 W Garvey Ave S
Room 305
West Covina, CA 91790

Re: Confirmation of Engagement for Legal Services
Taylor v. City of West Covina, et al.

Dear Mr. Carmany:

Best Best & Krieger LLP is pleased to represent the City of West Covina ("the "City") as defendant in the lawsuit entitled *Marc A. Taylor v. City of West Covina and Does 1 to 24 inclusive*, Los Angeles Superior Court case number 20STCV23682.

Except as to the above scope of our representation in this matter, the terms of our representation are set forth in our prior engagement agreement dated April 13, 2020, with the City for the case entitled *Larry Whithorn v. City of West Covina, West Covina Fire Department, Lloyd Johnson, an individual, Tony Wu, an individual, Glenn Kennedy, an individual, David Carmany, an individual, and DOES 1 to 100, inclusive*; Los Angeles Superior Court Case No. 20STCV08916, and subject to the same rates.

We have checked the following names against our conflict of interest database: Marc A. Taylor, and have and have determined that there is no conflict with this individual. If you are aware of any other involved parties whom we should run against our database, please let us know immediately.

BBK
BEST BEST & KRIEGER
ATTORNEYS AT LAW

Mr. David Carmany
City Manager
City of West Covina
September 1, 2020

If you have any questions or concerns about the terms of our representation, please contact me. Thank you for the opportunity to represent you.

Very truly yours,



Richard T. Egger
of BEST BEST & KRIEGER LLP

RTE:lt



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: October 20, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT: CONSIDERATION OF RESOLUTION RATIFYING USE OF PEG FUNDS FOR THE EMERGENCY PURCHASE OF COUNCIL CHAMBERS AUDIO SYSTEM

RECOMMENDATION:

It is recommended that the City Council approve a resolution approving a budget amendment and ratifying the use of dedicated funding through the public, educational and governmental (PEG) fund (Account No. 205.80.7001.7900) for the emergency purchase of the new City Council Chambers audio system from Key Code Media, Inc., in the amount of \$75,210.38.

BACKGROUND:

The COVID-19 pandemic forced the closure of most public buildings and the County Public Health Department Order required non-essential workers to stay at home. Many cities locally ceased meetings of all types. But the City of West Covina immediately pivoted to on-line, virtual meetings in order to conduct the public's business. The City Council never canceled a meeting due to the pandemic, a fact that the community can be proud of. While the transition worked, it wasn't easy.

Shortly after transitioning to virtual City Council meetings the audio system in the City Council Chambers experienced a catastrophic failure, and due to its age and proprietary system could not be fixed. In short order, the entire audio system had to be replaced because without it no meetings could be broadcast. This required immediate action and required staff to find a vendor with the ability to quickly rebuild the audio system. The City Manager authorized the emergency purchase of equipment and the hiring of a vendor to address the immediate issue.

On September 15, 2020, the City Council was asked to ratify the emergency purchase. The item was continued for further discussion between vendor, city staff and Council Members. On October 1, 2020, a meeting was held to review the changes made to the audio system.

DISCUSSION:

As outlined above, immediate replacement of the system was necessary to make City meetings accessible to the public and comply with the Brown Act. The City Manager approved the use of PEG funds for the emergency purchase in the amount of \$68,799.38. Pursuant to the City's Purchasing Policy, staff is required to obtain proper authorization for the emergency procurement at the earliest opportunity after the emergency has been addressed. Due to COVID-19 additions of extra microphones for distancing and module for phone calls into audio system, the amount of the Purchase Order must be increased by \$6,411.00, for a revised amount of \$75,210.38. Therefore, staff

is requesting that the City Council ratify the emergency purchase of the new City Council Chambers audio system in the amount of \$75,210.38. No general funds will be used.

Prepared by: Shawn Granger, IT Manager

Fiscal Impact

FISCAL IMPACT:

Staff recommends using \$75,210.38 from the public, educational and governmental (PEG) fund that was collected for the public access channel so that there is no impact on City General Fund.

Attachments

Attachment No. 1 - Council Chambers Audio
Attachment No. 2 - Wireless Antenna Quote
Attachment No. 3 - Phone Integration Programming
Attachment No. 4 - Emergency PO
Attachment No. 5 - Purchase Order Amendment
Attachment No. 6 - Resolution No. 2020-109
Attachment No. 7 - Budget Amendment - PEG Fund

CITY COUNCIL GOALS & OBJECTIVES: Enhance City Facilities and Infrastructure
Enhance the City Image and Effectiveness
Engage in Proactive Economic Development

Key Code Media - California

270 S. Flower Street
Burbank, CA 91502
818-303-3900
www.keycodemedia.com

ATTACHMENT NO. 1



A/V Upgrade

Quote # 209285 Version 1

Prepared for:
City of West Covina

Prepared by:
Brian Boring

Equipment

No.	Part #	Description	Qty	Price	Ext. Price
1	MEG 14-40-L B	Sennheiser "Gooseneck microphone (cardioid, condenser) with 5-pin XLR-M, 12-48 V phantom power and illuminated light ring. MAT 153-S table stand available separately "	12	\$229.95	\$2,759.40
2	MAT 153-S B	Table stand for MEG 14-40-L II	11	\$249.95	\$2,749.45
3	EX-LOGIC	Tesira PoE Controller with 16 logic GPIO	2	\$447.50	\$895.00
4	TesiraFORTÉ DAN VT	Fixed I/O DSP with 12 analog inputs, 8 analog outputs, 8 channels configurable USB audio, 32 x 32 channels of Dante, AEC technology (all 12 inputs), 2 channel VoIP, and standard FXO telephone interface	2	\$2,297.70	\$4,595.40
5	55UT640S0UA	55IN LCD TV 3840X2160 UHD TAA MNTR SIMPLE EDITOR SMART WIFI HDMI 3YR	3	\$867.25	\$2,601.75
6	TSW-1060-B-S	10.1" Touch Screen, Black Smooth	1	\$1,560.00	\$1,560.00
7	TSW-760-B-S	Crestron 7" Touch Screen, Black Smooth	1	\$1,000.00	\$1,000.00
8	TSW-1060-TTK-B-S	Tabletop Kit for TSW-1060, Black Smooth	1	\$145.00	\$145.00
9	TSW-760-TTK-B-S	Crestron TSW-760-TTK-B-S Tabletop Kit for TSW-760, Black Smooth	1	\$125.00	\$125.00
10	CP3N	(Crestron) 3-Series Control System®	1	\$1,690.00	\$1,690.00
11	DM-NVX-350	DigitalMedia 4K60 4:4:4 HDR Network AV Encoder/Decoder	4	\$1,000.00	\$4,000.00
12	DM-NVX-D30	DM NVX™ 4K60 4:4:4 HDR Network AV Decoder	2	\$750.00	\$1,500.00
13	DM-NVX-352	DM NVX™ 4K60 4:4:4 HDR Network AV Encoder/Decoder with Dante® Audio	1	\$1,400.00	\$1,400.00
14	AM-200	AirMedia® Presentation System 200	1	\$1,170.00	\$1,170.00
15	AMP-X300	X Series Amplifier - 70 volt model	2	\$520.00	\$1,040.00
16	HAI-100-4K	Extron Introduces HDMI Audio Embedder with Support for 4K	1	\$1,170.00	\$1,170.00
17	SRS2-8	Middle Atlantic 2 Slide Srs,8 Space	1	\$550.80	\$550.80
18	C10AT70	Atlas 8" Dual Cone In-Ceiling Speaker with 5-Watt 70V Transformer and 10oz Magnet	12	\$51.99	\$623.88

Subtotal: \$29,575.68

Professional Services

No.	Part #	Description	Qty	Price	Ext. Price
19	INT-MAT	Integration Materials - Cables/Connectors/Misc mounts and Hardwares	1	\$4,000.00	\$4,000.00
20	Professional Services	Design, Drawing Package and runlist	1	\$2,400.00	\$2,400.00
21	Profesional Services	Demo/Decommissioing (By others)	1	\$0.00	\$0.00
22	Profesional Services	Project Mangement/site Superintendet	1	\$4,200.00	\$4,200.00
23	Profesional Services	Cabling	1	\$1,600.00	\$1,600.00
24	Profesional Services	Terminations/Equipment Installation/Rack Dressing/Power up	1	\$7,000.00	\$7,000.00
25	Profesional Services	Commissioning-Configurations- Testing	1	\$1,920.00	\$1,920.00
26	Profesional Services	Training	1	\$1,600.00	\$1,600.00
27	Profesional Services	Crestron Programming/Biamp Programming/Testing	1	\$12,000.00	\$12,000.00
				Subtotal:	\$34,720.00

A/V Upgrade

Prepared by:

Key Code Media - California

Brian Boring
(818) 303-3900
Fax 818-303-3901
bboring@keycodemedia.com

Bill To:
City of West Covina

1444 W Garvey Ave S
West Covina, CA 91790-2716
Shawn Granger
626-939-8410
SGranger@westcovina.org

Ship To:
City of West Covina

1444 W Garvey Ave S
West Covina, CA 91790-2716
Shawn Granger
626-939-8410
SGranger@westcovina.org

Quote Information:
Quote #: 209285

Version: 1
Delivery Date: 05/06/2020
Expiration Date: 06/05/2020
Terms: Net 30 Days

Quote Summary

Description	Amount
Equipment	\$29,575.68
Professional Services	\$34,720.00
Subtotal:	\$64,295.68
Shipping:	\$1,200.00
Estimated Tax:	\$3,303.70
Total:	\$68,799.38

This Sales Quote ("SO") incorporates the Terms and Conditions found at <http://www.keycodemedia.com/terms/salesorder> ("T&C") and constitutes an offer or counter-offer, as applicable, by Key Code Media, Inc. or Burst Communications ("Seller"). This SO, including the T&C incorporated therein, shall become binding on the buyer listed herein ("Buyer") on the earliest of Buyer's: (i) acknowledgement hereof; or (ii) receipt of any goods and/or services ordered hereunder. No Buyer acknowledgement form, purchase order, or other document shall modify the SO or the T&C.

Key Code Media - California

City of West Covina

Signature:



Name:

Brian Boring

Title:

Director, Product Development

Date:

05/06/2020

Signature:

Name:

Shawn Granger

Date:

Key Code Media - California

270 S. Flower Street
Burbank, CA 91502
818-303-3900
www.keycodemedia.com

ATTACHMENT NO. 2



Shure Add ons

Quote # 210508 Version 1

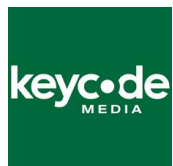
Prepared for:
City of West Covina

Prepared by:
Brian Boring

Equipment

No.	Part #	Description	Qty	Price	Ext. Price
1	ULXD4D=-G50	Shure Single Digital Wireless Receiver with PS41US Power Supply, 1/2 Wave Antenna and Rack Mounting Hardware	1	\$3,131.00	\$3,131.00
2	UA221	Shure Passive Antenna Splitter/Combiner Kit. Includes Two Splitter/Combiners, Four Coaxial Cables, and Attaching Hardware	1	\$151.00	\$151.00
3	SBC200	Shure Dual Docking Charger, Power Supply NOT Included	1	\$200.00	\$200.00
4	BETA87C	Shure Cardioid Condenser, for Handheld Vocal Applications	2	\$311.00	\$622.00
				Subtotal:	\$4,104.00

Shure Add ons

Prepared by:

Key Code Media - California

Brian Boring
(818) 303-3900
Fax 818-303-3901
bboring@keycodemedia.com

Bill To:
City of West Covina

1444 W Garvey Ave S
West Covina, CA 91790-2716
Shawn Granger
626-939-8410
SGranger@westcovina.org

Ship To:
City of West Covina

1444 W Garvey Ave
West Covina, CA 91793
Shawn Granger
626-939-8410
SGranger@westcovina.org

Quote Information:
Quote #: 210508

Version: 1
Delivery Date: 07/15/2020
Expiration Date: 08/14/2020
Terms: Net 30 Days

Quote Summary

Description	Amount
Equipment	\$4,104.00
Subtotal:	\$4,104.00
Shipping:	\$225.00
Estimated Tax:	\$411.25
Total:	\$4,740.25

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Key Code Media - California

Signature:



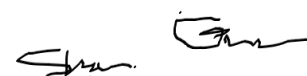
Name: Brian Boring

Title: Director, Product Development

Date: 07/15/2020

City of West Covina

Signature:



Name: Shawn Granger

Initials: SG

Date: 7/15/2020 3:36:11 PM

IP Address: 24.182.45.114

Email Address: sgranger@westcovina.org

PO Number: 20-00329

Key Code Media - California

270 S. Flower Street
Burbank, CA 91502
818-303-3900
www.keycodemedia.com

ATTACHMENT NO. 3



Additional Programming Quote

Quote # 210919 Version 1

Prepared for:
City of West Covina

Prepared by:
Brian Boring

Equipment

No.	Part #	Description	Qty	Price	Ext. Price
1	LABOR	Programming & Commissioning	1	\$1,670.45	\$1,670.45
Subtotal:					\$1,670.45

Additional Programming Quote

Prepared by:



Key Code Media - California

Brian Boring
(818) 303-3900
Fax 818-303-3901
bboring@keycodemedia.com

Bill To:

City of West Covina

1444 W Garvey Ave S
West Covina, CA 91790-2716
Shawn Granger
626-939-8410
SGranger@westcovina.org

Ship To:

City of West Covina

1444 W Garvey Ave
West Covina, CA 91793
Shawn Granger
626-939-8410
SGranger@westcovina.org

Quote Information:

Quote #: 210919


Version: 1
Delivery Date: 08/04/2020
Expiration Date: 09/03/2020
Terms: Net 30 Days

Quote Summary

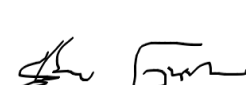
Description	Amount
Equipment	\$1,670.45
Total:	\$1,670.45

This Sales Quote ("SO") incorporates the Terms and Conditions found at <http://www.keycodemedia.com/terms/salesorder> ("T&C") and constitutes an offer or counter-offer, as applicable, by Key Code Media, Inc. or Burst Communications ("Seller"). This SO, including the T&C incorporated therein, shall become binding on the buyer listed herein ("Buyer") on the earliest of Buyer's: (i) acknowledgement hereof; or (ii) receipt of any goods and/or services ordered hereunder. No Buyer acknowledgement form, purchase order, or other document shall modify the SO or the T&C.

Key Code Media - California

Signature: 
Name: Brian Boring
Title: Director, Product Development
Date: 08/04/2020

City of West Covina

Signature: 
Name: Shawn Granger
Initials: SG
Date: 8/4/2020 4:12:07 PM
IP Address: 24.182.45.114
Email Address: sgranger@westcovina.org
PO Number:



EMERGENCY PURCHASE EXCEEDING \$2,500

Date: March 18, 2020

To: David N. Carmany, City Manager

Requested By: Shawn Granger, IT Manager

Prepared By: Shawn Granger, IT Manager

Requested Purchase: City Council Chambers Audio System

Suggested Vendor: Keycode Media

Purchase Order: Total Cost: \$68,799.38

To comply with Sec. 2-154 of the West Covina Municipal Code that states,

"In case of disaster which threatens the life or property of the people of the city, the city manager is hereby empowered to award contracts and make purchases as may be necessary to meet such emergency, providing he shall file with the council at the next meeting a certificate defining the emergency and the necessity for such action together with a detailed account of all expenditures."

The Emergency Purchase Order request is submitted for your approval.

NATURE OF EMERGENCY: Due to a catastrophic failure of the current audio system in the City Council Chambers, the City cannot currently televise Council Chamber meetings to the public. The system was past end-of-life and its proprietary nature means the entire system must be replaced to resume service. It is vital for the City to have a working audio system so that City Council Meetings abide by the Brown Act. Besides the urgency, we are currently under the COVID-19 emergency. The City needs a vendor who already is familiar with current audio / video systems in the City Council Chambers so that the replacement can be made immediately to have the shortest amount of downtime for the public. Funds for this replacement will come from PEG funds; monies reserved for City Council meeting broadcasting.

Reviewed: Robbeyn Bird
Robbeyn Bird, Finance Director

Approved: David N. Carmany
David N. Carmany, City Manager

Dated: 5-12-20

Dated: 5-12-20

(Please forward signed document to Purchasing)

City of West Covina
Request for Purchase Order Increase/Decrease

Purchase Order No.: 20-00339 Date of Request: 8/31/2020

Vendor Name: Key Code Media Inc.

Account # 205.80.7001.7900

Original Line Item Amount:	<u>\$68,799.38</u>	
	Amount	Reason for Change
Previous Changes:		
1st	<u>\$ -</u>	
2nd	<u>\$ -</u>	
3rd	<u>\$ -</u>	
4th	<u>\$ -</u>	
Current Request	<u>\$6,411.00</u>	<u>Added microphone for COVID19 seating And programming</u>
Revised Amount	<u><u>\$ 75,210.38</u></u>	



Sufficient Funds Available



Appropriation increase approved by Council on _____

Requested by / Date: _____

Department Head Approval / Date: _____

Purchasing Approval / Date: _____

Finance Review Approval / Date: _____

City Manager Approval / Date: _____



Email Revised PO to Vendor

Email _____

RESOLUTION NO. 2020-109

**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**

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 of 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.

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. 020, attached hereto as ATTACHMENT 7 to correct account numbers in the 2020-2021 budget document.

SECTION 2. The City Clerk shall certify to the adoption of these resolutions and shall enter the same in the book of original resolutions and it shall become effective immediately.

APPROVED AND ADOPTED this 20th day of October 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. 2020-109 was duly adopted by the City Council

of the City of West Covina, California, at a regular meeting thereof held on the 20th day of October, 2020, by the following vote of the City Council:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lisa Sherrick
Assistant City Clerk

Date Posted:

Fiscal Year:	2020-2021
Amount:	\$107,579.00
Description:	Funding from PEG Funds

☐ Approved ☐ Denied



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: October 20, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

**SUBJECT: CONSIDERATION OF RESOLUTION NO. 2020-105 CLARIFYING THE CITY
MANAGER'S EMERGENCY POWERS AND EXTENDING THE LOCAL EMERGENCY
DECLARATION**

RECOMMENDATION:

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

RESOLUTION NO. 2020-105 - 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, JUNE 23, 2020, JULY 21, 2020, AUGUST 18, 2020, SEPTEMBER 15, 2020, AND OCTOBER 6, 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, June 23, 2020, July 21, 2020, August 18, 2020, September 15, 2020 and October 6, 2020.

During a proclaimed local emergency, the City Manager, as the Director of Emergency Services, has the powers enumerated in Section 8-7 of the WCMC. At the October 6, 2020 City Council meeting, the City Council sought clarification that the exercise of the City Manager's emergency powers was limited to actions directly related to responding to the COVID-19 emergency.

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 October 11, 2020, there were 37,109,851 confirmed cases of COVID-19 globally. On October 11, 2020, California reported that, as of October 10, 2020, there were 846,579 confirmed cases in California. As of October

10, 2020, there were 282,135 confirmed cases in Los Angeles County, including 3,036 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.

Due to the cancellation of the November 3, 2020 City Council meeting, it is necessary that the City Council review the need to continue the local emergency at the October 20, 2020 meeting in order to comply with the West Covina Municipal Code requirement that the City Council review the need for continuing the local emergency at least once every 30 days. Staff is requesting that the City Council continue the local emergency. Per City Council direction, the Resolution also clarifies that the City Manager's exercise of the powers enumerated in Section 8-7 of the WCMC are limited to actions directly related to responding to the COVID-19 pandemic.

LEGAL REVIEW:

The City Attorney's Office has reviewed the resolution and approved it 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. 2020-105

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

RESOLUTION NO. 2020-105**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, JUNE 23, 2020, JULY 21, 2020, AUGUST 18, 2020, SEPTEMBER 15, 2020, AND OCTOBER 6, 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 October 11, 2020, the WHO reported 37,109,851 confirmed cases globally, 1,070,355 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 October 11, 2020, CDPH reported that, as of October 10, 2020, there were 846,579 confirmed cases in California, 16,564 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 October 11, 2020, the LA County Health

Department reported that, as of October 10, 2020, Los Angeles County had 282,135 confirmed cases, 6,771 of which resulted in death; and

WHEREAS, as of October 10, 2020, the LA County Health Department reported 3,036 confirmed cases in the City of West Covina, 67 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, on July 21, 2020, the City Council adopted Resolution No. 2020-85, determining there was a need to continue the local emergency; and

WHEREAS, on August 18, 2020, the City Council adopted Resolution No. 2020-91, determining there was a need to continue the local emergency and confirming a written order promulgated by the City Manager; and

WHEREAS, on September 15, 2020, the City Council adopted Resolution No. 2020-96, determining there was a need to continue the local emergency; and

WHEREAS, on October 6, 2020, the City Council adopted Resolution No. 2020-101, 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; and

WHEREAS, the City Council desires to clarify the City Manager's emergency powers while the local emergency remains in effect.

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.

SECTION 3. While the local emergency remains in effect, the City Manager shall limit the exercise of the powers granted to the City Manager, as the Director of Emergency Services, during a proclaimed local emergency pursuant to Section 8-7 of the West Covina Municipal Code, to actions directly related to responding to the COVID-19 pandemic.

SECTION 4. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

APPROVED AND ADOPTED this 20th day of October, 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.2020-105 was duly adopted by the City Council of the City of West Covina, California, at a regular meeting thereof held on the 20th day of October, 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: October 20, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

**SUBJECT: CONSIDERATION OF A RESOLUTION No. 2020-108 EXPRESSING OPPOSITION TO
STATE PLANNING AND ZONING LEGISLATION THAT DIMINISHES LOCAL CONTROL**

RECOMMENDATION:

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

**RESOLUTION NO. 2020-107 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
WEST COVINA, CALIFORNIA, EXPRESSING OPPOSITION TO STATE PLANNING AND
ZONING LEGISLATION THAT USURPS LOCAL CONTROL AND EXPRESSING SUPPORT
FOR CALIFORNIA CITIZENS FOR LOCAL CONTROL**

BACKGROUND:

Councilmember Mike Griffiths from the City of Torrance contacted members of the City Council and requested that the City of West Covina join a growing coalition of California cities called "California Cities for Local Control" or the "California Citizens for Local Control." The goal of this group is to band cities together to oppose State legislation that affects local control, specifically regarding land use and zoning issues. Cities that have expressed support for the California Citizens for Local Control group include Torrance, Brawley, Glendora, Beverly Hills, Rolling Hills, Hawthorne, Palo Verde, El Segundo, Lawndale, Manhattan Beach, and Santa Cruz.

On October 6, 2020, following a request from Mayor Pro Tem Lopez-Viado, the City Council directed that staff return with a resolution expressing support for the California Citizens for Local Control initiative.

DISCUSSION:

At City Council's direction, staff has prepared a resolution for adoption expressing opposition to State planning and zoning legislation that diminishes local control and support for the California Citizens for Local Control volunteer organization and its efforts. The Mission Statement for California Citizens for Local Control is as follows:

"Our mission is to spread awareness and enlist support to ensure that Cities can continue to manage their own land use and zoning issues. We must not allow the State Legislature to mandate changes to our Cities that will remove local control and be detrimental to our communities.

We do this by reaching out to California City Elected Officials to educate and enlist them to our cause. Our

activities include, but are not limited to, signing petitions, having Cities pass resolutions in support of our efforts, and seeking out allies for possible legal action against the State and/or to promote efforts for a balance initiative to legislate the desired results.

With this alliance of City Elected Officials working together as one, we stand a better chance of having our message resonate loud and clear to all groups that proclaim to support us.

WE WILL NOT STAND FOR THIS LOSS OF LOCAL CONTROL AND UNFUNDED MANDATES
being imposed upon us by our State."

The State has long been known for treading on local governments' local control especially in the areas of land use and zoning. Although there is a need for increasing housing locally to meet the housing demands, communities need to retain control over zoning and development to ensure that local communities can mitigate the impacts of new development and ensure that new developments are meeting the needs of the communities where they are being constructed.

In general, when a city loses local control, it is stripped of its ability to govern and make decisions based on its own local values, needs, and interests.

LEGAL REVIEW:

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

OPTIONS:

The options available to the City Council are as follows:

1. Adopt the resolution as submitted.
2. Provide alternative direction.

Prepared by: Lisa Sherrick, Assistant City Clerk

Attachments

Attachment No. 1 - Resolution No. 2020-017

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

RESOLUTION NO. 2020-107

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, EXPRESSING OPPOSITION TO STATE PLANNING AND ZONING LEGISLATION THAT USURPS LOCAL CONTROL AND EXPRESSING SUPPORT FOR CALIFORNIA CITIZENS FOR LOCAL CONTROL

WHEREAS, the Legislature of the State of California has proposed several bills addressing a range of planning and zoning; and

WHEREAS, the majority of these bills usurp the authority of local jurisdictions to determine for themselves the land use policies and practices that best suit their cities and residents and instead impose mandates that do not take into account the needs and differences of jurisdictions for actions that are not in their best interests; and

WHEREAS, the City Council of the City of West Covina feels strongly that our local government is best able to assess the needs of our community and objects to the proliferation of State legislation that deprives us of that ability; and

WHEREAS, the California Citizens for Local Control group is a volunteer organization that aims to spread awareness and enlist support to ensure that cities can continue to manage their own land use and zoning issues.

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

SECTION 1. The City Council registers its strong opposition to the current practice of the State Legislature of proposing and passing multitudes of bills that directly impact and interfere with the ability of cities to control their own destiny through use of the zoning authority that has been granted to them.

SECTION 2. The City Council declares that, should the State continue to pass legislation that attacks local municipal authority, control and revenue, the City of West Covina will support actions that would limit the State's ability to control local activities and strengthen local democracy and land use authority.

SECTION 3. The City Council states its support of the California Citizens for Local Control volunteer organization and its efforts to protect local control for cities.

SECTION 4. 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 20th day of October, 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. 2020-107 was duly adopted by the City Council of the City of West Covina, California, at a regular meeting thereof held on the 20th day of October, 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: October 20, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT: CONSIDERATION OF ARCHITECTURAL SERVICES CONSULTANT LIST

RECOMMENDATION:

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

1. Approve Gynne Pugh Urban Studio and KTG Architecture + Planning for the architectural services consultant list. The cost of these services shall be paid by project applicants through a reimbursement agreement.
2. Authorize the City Manager to negotiate and execute a Professional Services Agreement with Gynne Pugh Urban Studio and KTG Architecture + Planning for architectural consulting services for a two-year period, commencing October 20, 2020 and ending October 19, 2022, with a possible two-year extension.

BACKGROUND:

The City's Downtown Plan provides a vision for the Downtown area as well as zoning standards for development within the area. The Downtown Plan is a form-based Code.

The stated intent of the Downtown Code is to achieve the highest standards of urban design, architecture, and landscaping at the scale of the neighborhood, block, lot, and building according to the zoning area. The vision for the Downtown is for a compact, walkable, and mixed use form. The urban form is intended to be inviting, comfortable, safe and ecologically resilient. The Downtown Code allows for a mix of uses with a walkable environment.

The selected consultant will work with staff to review development projects in the Downtown area to fulfill policies and actions in the Downtown Plan. When a development project located in the Downtown Plan is submitted, the project will then be routed to the selected architectural and urban design consultant for review. In some cases, it may be necessary for the architectural consultant to meet with staff and/or the applicant to discuss revisions to the submitted plans. Additionally, there may be times when it is necessary for the architectural consultant to make presentations or be available at Planning Commission and City Council meetings.

DISCUSSION:

The City released a Request for Proposal (RFP) on July 13, 2020 for Architectural Services. The RFP was completed with the intention of selecting at least two consultants based on their qualifications, as the selected consultants would be an extension of staff reviewing a specific development project. The types of projects that the consultants might be utilized for are unknown as architectural review is only required for submitted projects located within the Downtown Plan area. On August 5, 2020, the City received proposals from the following 10 consultant firms:

Onyx Architects
Placeworks
RRM Design Group
KTTY Architecture + Planning
Miller Architectural Corporation
Gwynne Pugh Urban Studio
Studioneleven
Interwest Consulting Group
John Kaliski Architects
Gensler

The proposals were reviewed by staff for relevant experience/qualifications, size of firm, and consultant's proposed schedule of costs. The selected consultants are: a) Gwynne Pugh Urban Studio and b) KTTY Architecture + Planning.

LEGAL REVIEW:

The City Attorney's office will review and approve as to form the Professional Services Agreements prior to execution.

OPTIONS:

The City Council has the following options:

1. Approve staff's recommendation; or
2. Select another firm based on those that submitted proposals; or
3. Select additional firms based on those that submitted proposals creating a list that exceeds two consulting firms; or
4. Provide alternative direction.

Fiscal Impact**FISCAL IMPACT:**

There would be no fiscal impact to the City. The City would contract with the consultant for each development project as needed. The applicant for the development project would deposit a check with the City to cover the cost for the architectural consulting services. The consultant would be paid from the amount deposited into the City's Planning Deposit Trust (Account No. 550.22221).

CITY COUNCIL GOALS & OBJECTIVES: Enhance the City Image and Effectiveness
Engage in Proactive Economic Development



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: October 20, 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 SEPTEMBER 8, 2020 TRAFFIC COMMITTEE MEETING

RECOMMENDATION:

It is recommended that the City Council approve the Traffic Committee Meeting Minutes and Traffic Committee recommendations from the September 8, 2020 Traffic Committee Meeting for the following item:

1. Parking Conditions Review on Fairgrove Avenue

- a. **Request:** The City received a request from the West Covina Police Department to review the existing parking conditions on Fairgrove Avenue due to various complaints received regarding loitering, littering, and trespassing/congregating in the undeveloped areas past the gates.
- b. **Review Standard:** The CAMUTCD Section 2B.46. Parking, Standing, and Stopping Signs (R7 and R8 Series) states the following: “No Parking Anytime – Parking should be prohibited at locations where the prohibition is necessary to accommodate other activities and objectives, such as street sweeping, snow removal, public safety or preferential parking” and that “The NO PARKING ANY TIME with arrow (R28(CA)) or without arrow (R26(CA)) signs may be used to inform motorists of a parking prohibition at a specific location.
- c. **Recommendation:** It was unanimously recommended to install No Parking signs along the segment to serve as a productive countermeasure to improve public safety along this segment of Fairgrove Avenue per the CAMUTCD which includes the installation of signs on both sides of the segment indicating the “No Parking” limits.

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, PTP, RSP, Project Manager

Fiscal Impact

FISCAL IMPACT:

The recommended items will be installed and scheduled as funding becomes available through a Public Services budget appropriation.

Attachments

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

CITY COUNCIL GOALS & OBJECTIVES: Protect Public Safety
Respond to the Global COVID-19 Pandemic



CITY OF WEST COVINA

Traffic Committee Meeting Minutes

MEETING MINUTES FROM SEPTEMBER 8, 2020 MEETING

Meeting Name: Traffic Committee Regular Meeting

Date: Tuesday, September 8, 2020

Time: 3:00 p.m.

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

Attendees: **City Representatives:** Officer Robert Nyquist (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.

2. **Previous Items Recap**

a. **Parking Conditions Review on Hooper Drive East of Hills Drive:**

- i. The City received inquiries from residents to review the parking conditions along Hooper Drive east of Hills Drive adjacent to the undeveloped area due to vehicles loitering along the segment. It was unanimously recommended to install No Parking signs along the segment to serve as a productive countermeasure to improve public safety by deterring loitering along this segment of Hooper Drive per the CAMUTCD which includes the installation of two signs on both sides of the segment indicating the "No Parking" limits.

3. **New Traffic Committee Items Presented at the Traffic Committee Meeting:**

a. **Parking Conditions Review on Fairgrove Avenue**

- i. **Request:** The City received a request from the West Covina Police Department to review the existing parking conditions on Fairgrove Avenue due to various complaints received regarding loitering, littering, and trespassing/congregating in the undeveloped areas past the gates.
- ii. **Review Standard:** The CAMUTCD Section 2B.46. Parking, Standing, and Stopping Signs (R7 and R8 Series) states the following: "No Parking Anytime – Parking should be prohibited at locations where the prohibition is necessary to accommodate other activities and objectives, such as street sweeping, snow removal, **public safety** or preferential parking" and that "The NO PARKING ANY TIME with arrow (R28(CA)) or without arrow (R26(CA)) signs may be used to inform motorists of a parking prohibition at a specific location.
- iii. **Recommendation:** It was unanimously recommended to install No Parking signs along the segment to serve as a productive countermeasure to improve public safety along this segment of Fairgrove Avenue per the CAMUTCD which includes the installation of signs on both sides of the segment indicating the "No Parking" limits.

4. **Audience Comments on Items Not on Agenda:** None.



CITY OF WEST COVINA

Traffic Committee Meeting Minutes

MEETING MINUTES FROM SEPTEMBER 8, 2020 MEETING

5. **Committee Member Comments on Items Not on Agenda:** None.

6. **Adjourn:** Meeting adjourned.



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: October 20, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT: CONSIDERATION OF ACCEPTANCE OF PUBLIC IMPROVEMENTS FOR FISCAL YEAR 2017-18 RESIDENTIAL STREET REHABILITATION PROGRAM - PROJECT NO. SP-18032

RECOMMENDATION:

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

1. Accept project completion for Fiscal Year 2017-18 Residential Street Rehabilitation Program (Project No. SP-18032) as performed by Onyx Paving Company, Inc., with a final contract amount of \$1,360,000; and
2. Authorize the recordation of Notice of Completion with the Los Angeles County Recorder and the release of retention funds 35 days thereafter.

DISCUSSION:

On March 17, 2020, the City Council awarded a contract to Onyx Paving Company, Inc., in the amount of \$1,182,920 for the Fiscal Year 2017-18 Residential Street Rehabilitation Program. The project included asphalt coldmill and overlay, construction of slurry seal, concrete curb ramps, installation of signage and striping at various locations Citywide.

The City Council also authorized the City Manager to approve change orders in an amount not to exceed \$177,438 (15% of awarded contract) for unanticipated project costs. The total established construction budget was \$1,360,358.

All required improvements were constructed in conformance with the approved plans and specifications. The project was substantially completed on May 29, 2020, within the project schedule and approved contract amount, for a total cost of \$1,360,000. The City Council's acceptance of the project during the public meeting and recordation of the Notice of Completion notifies all subcontractors and material suppliers that retention will be released after 35 days. This provides sufficient time for the subcontractors or material suppliers to file a claim for payment if they have not been paid by the general contractor. The City retains five percent (5%) of each payment to the contractor as retention to ensure payment to subcontractors and material suppliers before final payment to the contractor.

OPTIONS:

The City Council has the following options:

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

Prepared by: Okan Demirci, PE, CIP Manager

Fiscal Impact

FISCAL IMPACT:

The following table shows the total budget approved with funds coming from Measure M and LA County Park Bond Maintenance and Servicing (M&S) and the actual cost for this project:

No.	Item	Fund	Approved Budget	Actual Cost
1.	Construction Contract	Measure M	\$1,305,802	\$1,186,080
2.	Construction Contract	LA County Park Bond Maintenance and Servicing (M&S)	\$191,312	\$173,920
Total			\$1,497,114	\$1,360,000

CITY COUNCIL GOALS & OBJECTIVES: Enhance the City Image and Effectiveness
Protect Public Safety
Respond to the Global COVID-19 Pandemic



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: October 20, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT:

CONSIDERATION OF AUGUST FINANCIAL REPORT FOR FISCAL YEAR 2020-21

RECOMMENDATION:

It is recommended that the City Council receive and file the August Financial Report for Fiscal Year 2020-21 and adopt Resolution No. 2020-108 to approve the budget amendments attached to this report.

RESOLUTION NO. 2020-108 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, ADOPTING BUDGET AMENDMENTS FOR THE FISCAL YEAR COMMENCING JULY 1, 2020 AND ENDING JUNE 30, 2021

BACKGROUND:

The City of West Covina adopts a budget annually for each fiscal year (FY) which starts on July 1 and ends on June 30. The FY 2020-21 annual budget was adopted on June 23, 2020 by the City Council. Due to the economic uncertainty mainly surrounding the revenue projections, staff assured the City Council that a monthly report of revenues and expenditures would be presented and recommendations for any necessary adjustments would be made.

DISCUSSION:

The City of West Covina has completed the second month (August) of the Fiscal Year 2020-21. The focus of this report is the General Fund revenues and expenditures.

For the first two months of the 2020-21 Fiscal Year, the City has collected 3.4% of the General Fund revenues. For the first two months of the 2019-20 Fiscal Year, the City had collected 6.2% of its General Fund revenues. Therefore, revenues have decreased in the current fiscal year by approximately 2.8%. The decline is attributable to the delay of exchanging Prop A monies for General Fund monies. Each year, the City exchanges approximately \$2.2 million of Prop A funds in exchange for \$1.6 million of General Fund monies. This is typically done in July. This year, the exchange was delayed in anticipation of revised estimates in the amount of Prop A monies that the City can expect to receive.

Expenditures for the month of August 2020 were \$4,626,132 or 6.9%. The cumulative total for expenditures for the General Fund is \$7,712,898 or 11.6%. When compared to August 2019, expenditures, excluding the unfunded pension liability payment, were \$7,760,645 or 11.8%. The expenditures for the current fiscal year are slightly less than the FY 2019-20 fiscal year. This is due to the Department Heads being extremely fiscally aware and ensuring

that the budget is adhered to.

The overtime budgets for the Police and Fire Departments are reviewed monthly by City staff.

Overtime in the Police Department is \$160,705 for the month of August. The cumulative total for Police Department overtime is \$283,612 or 16.4% of the budgeted amount, which is on track for the current fiscal year.

The Fire Department regular overtime is \$267,485 for the month of August. The cumulative total for Fire Department overtime is \$519,486 or 91.4%. City staff is continuing to look at alternative solutions to the costs that are borne by the City's General Fund for the Fire Department. If the Fire Department overtime continues at this pace, the cost for Fiscal Year 2020-21 will be close to \$3 million.

The overtime costs listed above do not include mutual aid overtime. The cumulative cost for mutual aid overtime through the end of August are \$173,117 or 80.7% of the budgeted amount. Although the budget to actual costs appear high, these costs are fully reimbursable by the entities affected by the fire. A budget amendment will be prepared for City Council approval when the mid-year budget report is presented.

In addition to receiving and filing the August report, staff is requesting that the City Council adopt the proposed resolution, which adopts budget amendments to: correct account numbers in the budget document, amend the budget for the issuance of Pension Obligation Bonds, remove the amount budgeted for the Contractors License Tax, and increase the budget for SB 1 maintenance of effort.

Prepared by: Robbeyn Bird, Finance Director

Attachments

Attachment No. 1 - Resolution No. 2020-108

Attachment No. 2 - Exhibit A to Resolution No. 2020-108

Attachment No. 3 - Exhibit B to Resolution No. 2020-108

Attachment No. 4 - Exhibit C to Resolution No. 2020-108

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

RESOLUTION NO. 2020-108

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF WEST COVINA, CALIFORNIA, ADOPTING BUDGET
AMENDMENTS FOR THE FISCAL YEAR COMMENCING
JULY 1, 2020 AND ENDING JUNE 30, 2021**

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 of 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.

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. 015, attached hereto as Exhibit A, to correct account numbers in the 2020-2021 budget document.

SECTION 2. The City Council hereby approves Budget Amendment No. 018, attached hereto as Exhibit B, to correct account numbers in the 2020-2021 budget document.

SECTION 3. The City Council hereby approves Budget Amendment No. 019, attached hereto as Exhibit C, to amend the budget for issuance of the Pension Obligation Bonds, to eliminate the budgeted Contractors License Tax, and to increase the budget for the SB1 maintenance of effort.

SECTION 4. The City Clerk shall certify to the adoption of these resolutions and shall enter the same in the book of original resolutions and it shall become effective immediately.

APPROVED AND ADOPTED this 20th day of October 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. 2020-108 was duly adopted by the City Council of the City of West Covina, California, at a regular meeting thereof held on the 20th day of October, 2020, by the following vote of the City Council:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lisa Sherrick
Assistant City Clerk

EXHIBIT A

BUDGET AMENDMENT NO. 015

EXHIBIT B

BUDGET AMENDMENT NO. 018

EXHIBIT C

BUDGET AMENDMENT NO. 019

**CITY OF WEST COVINA
BUDGET AMENDMENT**

BA # 015

Posted By:

Date Posted:

Date: 9/30/2020
 Requested by: F Maldonado
 Dept/Div: Finance

Fiscal Year: 2020-21
 Amount: \$0.00
 Description: Reclass Budget Funds
 to Current Account Structure

EXPENDITURES

Account Number	Dept/Account Description	Current Budget	Proposed Amendment	Amended Budget
189.61.7003.7900	CIP - Misc	75,000.00	(75,000.00)	-
189.80.7007.7300	Sewer	-	75,000.00	75,000.00
189.61.7003.7900	CIP - Misc	152,600.00	(152,600.00)	-
189.80.7007.7300	Sewer	-	152,600.00	152,600.00
189.61.7003.7900	CIP - Misc	1,500,000.00	(1,500,000.00)	-
189.80.7007.7300	Sewer	-	1,500,000.00	1,500,000.00
189.61.7003.7900	CIP - Misc	295,000.00	(295,000.00)	-
189.80.7007.7300	Sewer	-	295,000.00	295,000.00
189.61.7003.7900	CIP - Misc	230,000.00	(230,000.00)	-
189.80.7007.7300	Sewer	-	230,000.00	230,000.00
189.61.7003.7900	CIP - Misc	140,000.00	(140,000.00)	-
189.80.7007.7300	Sewer	-	140,000.00	140,000.00
188.61.4141.7200	Streets	500,000.00	(500,000.00)	-
188.80.7005.7200	Streets	-	500,000.00	500,000.00
122.80.7003.7900	CIP - Misc	10,000.00	(10,000.00)	-
122.80.7005.7200	Streets	-	10,000.00	10,000.00
237.80.7005.7700	CIP - Park	2,067,148.00	(2,067,148.00)	-
237.80.7005.7200	Streets	-	2,067,148.00	2,067,148.00
197.61.4160.7900	CIP - Misc	1,000,000.00	(1,000,000.00)	-
197.80.7005.7200	Streets	-	1,000,000.00	1,000,000.00
189.61.7003.7900	CIP - Misc	50,000.00	(50,000.00)	-
189.80.7005.7200	Streets	-	50,000.00	50,000.00
124.61.4150.7900	CIP - Misc	60,000.00	(60,000.00)	-
124.80.7006.7800	St Light & Traffic Signal	-	60,000.00	60,000.00
124.61.4150.7900	CIP - Misc	30,000.00	(30,000.00)	-
124.80.7006.7800	St Light & Traffic Signal	-	30,000.00	30,000.00
119.61.4183.7900	CIP - Misc	40,000.00	(40,000.00)	-
119.80.7008.7170	Vehicles & Mobile Equipment	-	40,000.00	40,000.00
		6,149,748.00	-	6,149,748.00

REVENUES

Account Number	Account Description	Current Budget	Proposed Amendment	Amended Budget
				-

REASON/JUSTIFICATION (Please be specific)

This amendment is to correct the budgeted funds into the prior years' account structure.

APPROVALSCity 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

**CITY OF WEST COVINA
BUDGET AMENDMENT**

BA # 018

Posted By:

Date Posted:

Date:	<u>9/30/2020</u>	Fiscal Year:	<u>2020-21</u>
Requested by:	<u>F Maldonado</u>	Amount:	<u>\$0.00</u>
Dept/Div:	<u>Finance</u>	Description:	<u>Reclass Budget Funds to Current Account Structure</u>

EXPENDITURES

Account Number	Dept/Account Description	Current Budget	Proposed Amendment	Amended Budget
820.22.2210.7700	CIP - Parks	310,000.00	(310,000.00)	-
162.80.7003.7900	CIP - Misc		310,000.00	310,000.00
				-
236.80.7004.7700	CIP - Parks	80,000.00	(80,000.00)	-
143.80.7004.7700	CIP - Parks		80,000.00	80,000.00
				-
236.80.7004.7700	CIP - Parks	500,000.00	(500,000.00)	-
143.80.7004.7700	CIP - Parks		500,000.00	500,000.00
				-
				-
				-
				-
				-
				-
				-
				-
		890,000.00	-	890,000.00

REVENUES

Account Number	Account Description	Current Budget	Proposed Amendment	Amended Budget
				-
				-

REASON/JUSTIFICATION (Please be specific)

This amendment is to correct the budgeted fund and account number into the prior years' account structure.

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: October 20, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT: CONSIDERATION OF PROFESSIONAL SERVICE AGREEMENTS FOR FIRE PREVENTION PLAN CHECK 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 plan check services by finding that it would be impracticable and uneconomical to comply with such requirements and it would promote the public interest to dispense with such requirements, in accordance with the requirements of Section 2-330(b) of the West Covina Municipal Code.
2. Authorize the City Manager to negotiate and execute a Professional Services Agreement with Susan Privitera-Johnson dba KJ Consultants for Fire Prevention plan check and inspection services, for a term of one (1) year, with the option to extend the agreement for a maximum of four (4) successive one (1) year periods, in an annual amount not-to-exceed \$30,000.
3. Authorize the City Manager to negotiate and execute a Professional Services Agreement with MAK Fire Protection Engineering and Consulting, Inc. for Fire Prevention plan check services, for a term of one (1) year, with the option to extend the agreement for a maximum of four (4) successive one (1) year periods, in an annual amount not-to-exceed \$15,000.
4. Authorize the City Manager to negotiate and execute a Professional Services Agreement with PE Consulting Group, for Fire Prevention plan check services, for a term of one (1) year, with the option to extend the agreement for a maximum of four (4) successive one (1) year periods, in an annual amount not-to-exceed \$15,000.
5. Authorize the City Manager to negotiate and execute future amendments to the agreements.

BACKGROUND:

At the October 6, 2020 City Council meeting, City Council requested additional information from Staff. A plan check survey was conducted with surrounding cities (see Attachment No. 1).

The Fire Prevention Bureau of the Fire Department conducts plan check services for all construction projects within the City. Projects are reviewed to ensure compliance with the California Fire Code, California Building Code, and California Health & Safety Code. Due to reduction in staffing in the Fire Prevention Bureau, the City hires consultants to provide plan check services for submitted construction projects. This has resulted in savings to the City by having consultants, paid by permit fees, to review plans rather than hiring full-time staff to review plans.

In July 2015, the Fire Department solicited proposals from six consulting firms to provide plan check services. At the August 13, 2015 City Council meeting, the City awarded contracts to MAK Fire Protection Engineering and Consulting, Inc. (MAK Fire Protection) and PE Consulting Group (PE Consulting) to provide plan check services. The agreements provided that the compensation for each consultant would not exceed \$30,000 per year and for an initial term of three years, ending on June 30, 2018. The agreements were each extended through June 30, 2020. On occasion, MAK Fire Protection and PE Consulting were overburdened with plan check reviews, therefore, causing turnaround times of plan checks to be delayed.

DISCUSSION:

To ensure a reliable service delivery model for submitted construction projects, the Fire Prevention Bureau previously contracted with two consultants, MAK Fire Protection and PE Consulting, to provide plan check services. However, as noted above, MAK Fire Protection and PE Consulting have at times been overburdened with plan check reviews, which resulted in delays in turnaround times. To address this issue, staff solicited a proposal from a third consultant, KJ Consultants. Staff believes that having three consultants available will result in faster turnaround times.

The annual cost amount for each consultant for plan check services is hard to predict as the workload is determined by the number of submitted construction projects per year. For reference purposes, listed below is the cost amount associated with MAK Fire Protection and PE Consulting over the last five years.

Vendor	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20
MAK Fire Protection	\$16,110	\$33,720	\$10,380	\$18,240	\$22,360
PE Consulting	\$26,522	\$20,660	\$12,960	\$16,590	\$24,810

As shown above, the annual cost varied. However, 100% of the consultant costs were charged to the applicant. The decreased cost amount with each consultant is attributed to a part-time staff member taking on the responsibility of performing plan check services in-house for a limited term. That staff member left the Fire Department in June 2019.

Based on the information presented, the Fire Department recommends executing agreements with three consultants; Susan Privitera-Johnson dba KJ Consultants, MAK Fire Protection, and PE Consulting.

LEGAL REVIEW:

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

OPTIONS:

The City Council has the following options:

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

Prepared by: Vincent A. Capelle, Fire Chief

Additional Approval: Thomas P. Duarte, City Attorney

Additional Approval: Robbeyn Bird, Finance Director

Fiscal Impact

FISCAL IMPACT:

There is no fiscal impact on the general fund. Cost for services are allocated out of the Fire Departments Fire Prevention, Professional Services Account No. 110.32.3230.6110. Expenditures are directly offset by revenues obtained. Revenues are reflected in Fire Department Fire Prevention Revenue Account No. 110.32.4630.

Attachments

Attachment No. 1 - Plan Check Survey

Attachment No. 2 - Agreement with Susan Privitera-Johnson dba KJ Consultants

Attachment No. 3 - Agreement with MAK Fire Protection Engineering and Consulting, Inc.

Attachment No. 4 - Agreement with PE Consulting Group

CITY COUNCIL GOALS & OBJECTIVES: Protect Public Safety

ATTACHMENT NO. 1
PLAN CHECK SURVEY

	Fee Type	Plan check	hrs available	Permit Application fee	Building Plans	Field Inspection	Fire Protection	Fire Suppression	Fire Alarm	Expedite fee	Resubmit fee	Plan check fee (consultant)
West Covina	Local Code	Consultant	M-Th 7:30-5:30	\$99 + Consultant	10% Building Fee	3/ \$135 hr	\$338 - \$813	\$338 - \$677	\$542 (24 devices)	\$99 + Consultant	\$99 + Consultant	\$50 - \$200/ hr
Alhambra	Local Code	In House	M-Th 7:00-5:30	\$0	\$80 - \$160/ \$80 per hr	1/\$80 hr	\$288 - \$470	\$288 - \$470	\$288 - \$470	NA	\$80.00	\$0.00
Arcadia	Local Code	In House	M-Th 7:30-5:30	Based on Valuation	\$280/ hr (TI) 9.75% Building Fee (New)	2/ \$225	\$280 - \$980	\$280 - \$840	\$280 - \$980	\$180	Varies	\$0.00
Monrovia	Local Code	Consultant	M-Th 7:00-6:00	\$250	\$0.90 sq ft \$2 sq ft (non)	Unlimit	\$18 per device	\$18 per device	\$18 per device	\$100	\$250	\$0.00
Monterey Park	Local Code	Consultant	M-Th 7:30-5:30	\$260.50	\$172.40/ hr	\$88.10 / hr	\$270.3/ \$7.45 per device	\$270.3/ \$7.45 per device	\$270.3/ \$7.45 per device	\$172.40/ hr	\$86	\$60 - \$200/ hr
Azusa	LACo Code	In House	M-F 8 -4	\$0	\$491 - \$675	\$332 - \$665 (unlimit)	\$245 - \$736	\$368	\$245 - \$859	\$122.50/ 2 hrs	1 Free/ \$123 hr	\$0.00
Baldwin Park	LACo Code	In House	M-F 8 -4	\$0	\$491 - \$675	\$332 - \$665 (unlimit)	\$245 - \$736	\$368	\$245 - \$859	\$122.50/ 2 hrs	1 Free/ \$123 hr	\$0.00
City of Industry	LACo Code	In House	M-F 8 -4	\$0	\$491 - \$675	\$332- \$665 (unlimit)	\$245 - \$736	\$368	\$245 - \$859	\$122.50/ 2 hrs	1 Free/ \$123 hr	\$0.00
Covina	LACo Code	In House	M-F 8 -4	\$0	\$491 - \$675	\$332- \$665 (unlimit)	\$245 - \$736	\$368	\$245 - \$859	\$122.50/ 2 hrs	1 Free/ \$123 hr	\$0.00
Pomona	LACo Code	In House	M-F 8 -4	\$0	\$491 - \$675	\$332- \$665 (unlimit)	\$245 - \$736	\$368	\$245 - \$859	\$122.50/ 2 hrs	1 Free/ \$123 hr	\$0.00
Walnut	LACo Code	In House	M-F 8 -4	\$0	\$491 - \$675	\$332- \$665 (unlimit)	\$245 - \$736	\$368	\$245 - \$859	\$122.50/ 2 hrs	1 Free/ \$123 hr	\$0.00

**CITY OF WEST COVINA
PROFESSIONAL SERVICES AGREEMENT
WITH
SUSAN PRIVITERA-JOHNSON DBA KJ CONSULTANTS
FOR
PLAN CHECK SERVICES FOR THE FIRE DEPARTMENT**

THIS AGREEMENT is made and entered into as of the 1st day of October, 2020 ("Effective Date"), by and between the CITY OF WEST COVINA, a municipal corporation ("City"), and SUSAN PRIVITERA-JOHNSON, an individual DBA KJ CONSULTANTS ("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 plan check and inspection services for the West Covina Fire Department, 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 herein 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 following professional services:

- (a) Consultant shall perform engineering services for the City of West Covina Fire Department, including plan check review for new construction and remodeled plans, as requested by the City. Review is to ensure that all plans submitted to the City of West Covina Fire Prevention Bureau meet all applicable fire and life safety requirements as outlined in Federal, State, and local laws, codes, and regulations.
- (b) Consultant must ensure that all plan reviews are completed and returned to the Fire Prevention Bureau within seven (7) days of

Consultant's receipt or forty-eight (48) hours from receipt for expedited services.

- (c) Field inspection services, as requested by the City.
- (d) Consultant will, in a professional manner, furnish all of the labor, technical, administrative, professional and other personnel, supplies and materials, equipment, printing, vehicles, transportation, office space and facilities, and tests, testing and analyses, calculation, and all other means whatsoever, except as herein otherwise expressly specified to be furnished by the City, necessary or proper to perform and complete the work and provide the professional services required of Consultant by this Agreement.

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 annual compensation shall not exceed Thirty Thousand Dollars (\$30,000.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Consultant's Proposal unless the City, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable. Should the City request in writing additional services that increase the 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. 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 one (1) year, ending on September 30, 2021, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. Thereafter, this Agreement may be extended for a maximum of four (4) 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 Kurt Johnson, 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, Email or by U.S. mail. If by U.S. mail, it shall be addressed as set forth below and placed in a sealed envelope, postage prepaid, and deposited in the United States Postal Service. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by Email; and c) 72 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

KJ Consultants
12340 Seal Beach Blvd. Suite B-131
Seal Beach, CA 90740
Tel: (562) 600-0122
Email: kurt@kjconsultants.net
Attn: Kurt Johnson

IF TO CITY:

City of West Covina
1444 West Garvey Ave. South
West Covina, CA 91790
Tel: (626) 939-8830
Email: vcapelle@westcovina.org
Attn: Vincent Capelle, Fire Chief

6.5. Attorneys' Fees. If litigation is brought by any party in connection with this

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

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

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

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

6.9. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the

services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

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

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

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

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

6.13. Electronic Safeguards. 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

Susan Privitera-Johnson
Owner

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
FEE SCHEDULE

KJ Consultants-Fee Schedule

Plan Review Fees:

Plan Reviews	\$ 50.00 per hour (or portion thereof)
Expedited Plan Reviews	\$100.00 per hour (or portion thereof)

All plan reviews are billed at a minimum of at least one hour per plan review.

Travel time (to and from for plan pick up and drop off) is billed at \$35.00 per hour (or portion thereof), from Seal Beach Office address.

Field Inspection Fees:

All Field Inspections	\$100.00 per hour (or portion thereof)
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All field inspections are billed at a minimum of at least two hours.

Travel time (to and from) is billed at \$35.00 per hour (or portion thereof) from Seal Beach Office address.

**CITY OF WEST COVINA
PROFESSIONAL SERVICES AGREEMENT
WITH
MAK FIRE PROTECTION ENGINEERING AND CONSULTING, INC.
FOR
PLAN CHECK SERVICES FOR THE FIRE DEPARTMENT**

THIS AGREEMENT is made and entered into as of the 1st day of July, 2020 ("Effective Date"), by and between the CITY OF WEST COVINA, a municipal corporation ("City"), and MAK FIRE PROTECTION ENGINEERING & CONSULTING, INC., 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 plan check services for the West Covina Fire Department, 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 herein and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

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

E. WHEREAS, City and Consultant intend and desire that this Agreement be effective retroactive to the Effective Date.

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 following professional services:

- (a) Consultant shall perform engineering services for the City of West Covina Fire Department, including plan check review for new construction and remodeled plans, as requested by the City. Review is to ensure that all plans submitted to the City of West Covina Fire Prevention Bureau meet all applicable fire and life safety requirements as outlined in Federal, State, and local laws, codes,

and regulations.

- (b) Consultant must ensure that all plan reviews are completed and returned to the Fire Prevention Bureau within fourteen (14) days of Consultant's receipt or seven (7) days from receipt for expedited services.
- (c) Consultant will, in a professional manner, furnish all of the labor, technical, administrative, professional and other personnel, supplies and materials, equipment, printing, vehicles, transportation, office space and facilities, and tests, testing and analyses, calculation, and all other means whatsoever, except as herein otherwise expressly specified to be furnished by the City, necessary or proper to perform and complete the work and provide the professional services required of Consultant by this Agreement.

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 annual compensation shall not exceed Fifteen Thousand Dollars (\$15,000.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Consultant's Proposal unless the City, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable. Should the City request in writing additional services that increase the 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. 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 be effective retroactive to the Effective Date and continue for a period of one (1) year, ending on June 30, 2021, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. Thereafter, this Agreement may be extended for a maximum of four (4) 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 not 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 Mark Krikorian, 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, Email or by U.S. mail. If by U.S. mail, it shall be addressed as set forth below and placed in a sealed envelope, postage prepaid, and deposited in the United States Postal Service. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by Email; and c) 72 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

MAK Fire Protection Engineering &
Consulting, Inc.
12130 Rahn Avenue
Granada Hills, CA 91344
Tel: (818) 554-6058
Email: mak369@aol.com
Attn: Mark Krikorian

IF TO CITY:

City of West Covina
1444 West Garvey Ave. South
West Covina, CA 91790
Tel: (626) 939-8830
Email: vcapelle@westcovina.org
Attn: Vincent Capelle, Fire Chief

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

any of the terms, conditions, or provisions hereof.

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

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

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

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

worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

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

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

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

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

6.13. Electronic Safeguards. 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

Mark Krikorian
Principal

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
FEE SCHEDULE

MAK Fire Protection Engineering & Consulting, Inc. Fee Schedule

PLAN REVIEW FEES

FIRE SPRINKLERS	\$60.00 (flat fee) + \$1.00/head
SPRINKLER UNDERGROUND	\$120.00 (flat fee)
FIRE ALARM	\$60.00 (flat fee) + \$1.00/device
FIRE EXTINGUISHING SYSTEMS	\$60.00 (flat fee) + \$1.00/nozzle
ARCHITECTURAL/TI PLANS	\$60.00/hr (min. 2 hrs)

NOTE: ALL PLAN RECHECKS BILLED AT HOURLY RATE (MIN. ONE HOUR)

EXPEDITE SERVICE BILLED AT ABOVE RATE + \$200.00

ALL ADDITIONAL SERVICES ARE BILLED AT \$60.00/HOUR

**CITY OF WEST COVINA
PROFESSIONAL SERVICES AGREEMENT
WITH
PE CONSULTING GROUP
FOR
PLAN CHECK SERVICES FOR THE FIRE DEPARTMENT**

THIS AGREEMENT is made and entered into as of the 1st day of July, 2020 ("Effective Date"), by and between the CITY OF WEST COVINA, a municipal corporation ("City"), and PE 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 plan check services for the West Covina Fire Department, 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 herein and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

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

E. WHEREAS, City and Consultant intend and desire that this Agreement be effective retroactive to the Effective Date.

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 following professional services:

- (a) Consultant shall perform engineering services for the City of West Covina Fire Department, including plan check review for new construction and remodeled plans, as requested by the City. Review is to ensure that all plans submitted to the City of West Covina Fire Prevention Bureau meet all applicable fire and life safety requirements as outlined in Federal, State, and local laws, codes, and regulations.

- (b) Consultant must ensure that all plan reviews are completed and returned to the Fire Prevention Bureau within fourteen (14) days of Consultant's receipt or seven (7) days from receipt for expedited services.
- (c) Consultant will, in a professional manner, furnish all of the labor, technical, administrative, professional and other personnel, supplies and materials, equipment, printing, vehicles, transportation, office space and facilities, and tests, testing and analyses, calculation, and all other means whatsoever, except as herein otherwise expressly specified to be furnished by the City, necessary or proper to perform and complete the work and provide the professional services required of Consultant by this Agreement.

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 annual compensation shall not exceed Fifteen Thousand Dollars (\$15,000.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Consultant's Proposal unless the City, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable. Should the City request in writing additional services that increase the 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. 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 be effective retroactive to the Effective Date and continue for a period of one (1) year, ending on June 30, 2021, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. Thereafter, this Agreement may be extended for a maximum of four (4) 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 Ken Toh, 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, Email or by U.S. mail. If by U.S. mail, it shall be addressed as set forth below and placed in a sealed envelope, postage prepaid, and deposited in the United States Postal Service. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by Email; and c) 72 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

PE Consulting Group
1703 S. Sierra Vista Ave. #C
Alhambra, CA 91801
Tel: (626) 833-1882
Email: ktoh@live.com
Attn: Ken Toh

IF TO CITY:

City of West Covina
1444 West Garvey Ave. South
West Covina, CA 91790
Tel: (626) 939-8830
Email: vcapelle@westcovina.org
Attn: Vincent Capelle, Fire Chief

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

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

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

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

6.9. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers,

agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

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

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

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

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

6.13. Electronic Safeguards. 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

Ken Toh
Chief Executive Officer

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
FEE SCHEDULE

PE Consulting Group – Fee Schedule

PLAN CHECK FEES FOR FIRE DEPARTMENTS:

1. The regular plan review fee is \$70.00 per hour with one-hour minimum for each project.
2. The expedite plan review fee is \$125.00 for the first hour and \$95.00 for each additional hour.

The fees set above include plans shipping/ handling cost.

PLAN CHECK FEES FOR CONTRACTORS/APPLICANTS:

- | | |
|--|--------------------------|
| 1. <u>AUTOMATIC FIRE SPRINKLER SYSTEM:</u> | \$150.00 per system PLUS |
| A. \$1.00 per head | |
| B. \$10.00 per on-site fire hydrant | |
| C. \$100.00 per standpipe riser | |
| D. \$100.00 per water storage tank | |
| E. \$150.00 per fire pump | |
| 2. <u>T.I. SPRINKLER WITHOUT CALCULATION:</u> | \$125.00 per system PLUS |
| A. \$1.00 per head | |
| 3. <u>UNDERGROUND FIRE SYSTEM:</u> | \$150.00 per system PLUS |
| A. \$10.00 per on-site fire hydrant | |
| B. \$10.00 per fire sprinkler lead-in | |
| C. \$100.00 per standpipe riser | |
| D. \$100.00 per water storage tank | |
| E. \$150.00 per fire pump | |
| 4. <u>FIRE SPRINKLER MONITORING/ALARM SYSTEM</u> | \$150.00 per system PLUS |
| A. \$1.00 per device | |
| 5. <u>KITCHEN HOOD FIRE EXTINGUISHING SYSTEM</u> | \$150.00 per system PLUS |
| A. \$5.00 per nozzle | |
| 6. <u>OTHER FIRE SUPPRESSION SYSTEM</u> | \$200.00 per system PLUS |
| A. \$5.00 per nozzle/device | |

The fees set above include one plan check and one no-fee recheck. Any necessary subsequent plan check will require an additional fee, based on the actual hourly rate with \$70.00 minimum.



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: October 20, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

**SUBJECT: CONSIDERATION OF PURCHASE OF SIMULATOR TRAINING TECHNOLOGY
EQUIPMENT FOR POLICE DEPARTMENT**

RECOMMENDATION:

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

1. In accordance with Municipal Code Chapter 2, Article VII, Division 2, Sec. 2-333 (i) (2), and the findings of the West Covina Finance Department, find that the U.S. General Services Administration (GSA) purchase contract # GS-00F-113DA satisfies West Covina's bid process, and authorize the purchase of a comprehensive simulator training system, directly from Meggitt Training Systems, for a total of \$50,295.77, including taxes and fees, using previously appropriated federal asset forfeiture funds.

BACKGROUND:

The Department of Justice Asset Forfeiture Program has four primary goals: (1) To punish and deter criminal activity by depriving criminals of property used in or acquired through illegal activities. (2) To promote and enhance cooperation among federal, state, local, tribal, and foreign law enforcement agencies. (3) To recover assets that may be used to compensate victims when authorized under federal law and (4) To ensure the Program is administered professionally, lawfully, and in a manner consistent with sound public policy.

DISCUSSION:

On July 21, 2020 (agenda item #18), the City Council appropriated Federal Asset Forfeiture funds for a range of items for the Police Department, including simulator training equipment. Simulator training technology is an economical, realistic, and versatile method to train Officers in use-of-force decision-making, enhancing their performance and reducing liability.

Police Department staff researched and examined multiple Force Options simulator technologies, and found that Meggitt Training Systems offered the best system to meet West Covina's training goals. Meggitt's Firearms Training System (FATS) is customizable, portable, and can be tailored for use in a training room or in the WCPD firearms range. This realistic Force Options training incorporates verbal skills, de-escalation techniques, general tactics, use of less-lethal weapons, etc. This system contains current training scenarios used by law enforcement agencies nationwide, and will also allow WCPD to create and add realistic training scenarios based on actual WCPD events.

A leader in state of the art simulator training technology, Meggitt Training Systems has offered this comprehensive simulator training system to West Covina, under the U.S. General Services Administration purchasing contract program (current GSA contract # GS-00F-113DA)—see Attachment No. 1. The U.S. General Services Administration’s purchasing contract program uses the bulk buying power of the federal government to drive cost savings and obtain nationally bid contract pricing. By utilizing GSA purchasing contracts, local government agencies can expedite and purchase equipment much quicker than using traditional acquisition methods, at the economical prices already determined by the federal government. The City of West Covina’s purchasing policy as specified in Municipal Code Chapter 2, Article VII, Division 2, Sec. 2-333 (i) (2), allows local bidding to be waived in favor of this type of contract pricing, saving considerable staff time.

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 purchase of these simulator training equipment items will constitute no cost to the General Fund. Asset forfeiture funds were previously appropriated by the City Council in account #117.31.3110.7160 for this purchase.

Attachments

Attachment No. 1 - Price Quote from Meggitt Training Systems

CITY COUNCIL GOALS & OBJECTIVES: Protect Public Safety

DATE: 23-Sep-2020
SUBMITTED TO: West Covina Police Department
 1444 W. Garvey Ave.
 West Covina, CA 91790

POC: Lt. Ken Plunkett
 626.939.8684
ken.plunkett@wcpd.org

QUOTE NUMBER: MTS18USL3899 Rev 6
RE: 100P + Weapons
OFFER TYPE: GSA & Open Market Offer

MTSI is pleased to submit the following quotation for your consideration. Please free to contact your MTSI POC listed below should you have any questions. Thank you for the opportunity to submit a quotation.

BASE QUOTATION						
GSA / OPEN MARKET (OPN-MKT)	PART NO.	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL PRICE
GSA	V-SYS-100P-USG-HW	Virtual 1- Screen Law Enforcement System, mounted in a portable case with floor or ceiling projection options. Allows 1 to 4 officers to train in individual Marksmanship (Lanes), and 1 to 8 officers using lethal and less than lethal force techniques, as well as escalation/de-escalation, throughout the entire force continuum in Judgmental (Video). System includes installation and CONUS, and a 1-year warranty. Software and scenarios included in price. This system includes software and scenarios specific to the Federal Law Enforcement / Investigative Mission.	1	EA	\$ 14,799.84	\$ 14,799.84
GSA	V-SW-100P-USG-GE	Virtual Small Arms Trainer Generic Software Package. Includes Individual Marksmanship (Lanes) and Judgmental (Video) Applications; Generic Lanes courses of fire; video scenarios; Includes the capability for the user to author Lanes courses of fire and Judgmental scenarios.	1	EA	\$ 22,200.17	\$ 22,200.17
GSA	SA-17-BF-51-NS	Glock, Model 17 BlueFire® Weapon Simulator with Night Sights	1	EA	\$ 7,540.81	\$ 7,540.81

GSA	SA-TASER-X26-BF-50	Virtual TASER-X26P. FATS® BlueFire® weapon simulator uses Bluetooth technology to communicate with the system and provide sensor data feedback to control station. Simulation kit includes (1) X26P Blue Handle, (1) BlueFire® Smart Cartridge, charging cable and communication dongle.	1	EA	\$ 4,600.78	\$ 4,600.78
GSA	BF-FS-03	BlueFire® Fill Station w/Initial BlueFire® weapon magazine adapter: Filling Station supports the refill of the BlueFire® weapon magazines using compressed air or Nitrogen gas for generating weapon recoil. Due to restrictions MTSI ships empty gas containers.	1	EA	\$ 1,868.09	\$ 1,868.09
GSA	BF-FS-L-01-SYS	Compressed Air Bottle and Yoke Valve to be used with BlueFire® Fill Station (NOTE: MTSI supplied tank). Includes Yoke Valve Assembly. This price is applicable when purchased at the same time as system .	1	EA	\$ 422.52	\$ 422.52
OPN-MKT	WRNTY-3YR	3 Year Warranty: Includes initial 1 Year Warranty + two (2) additional years at No Charge. To include one Virtual 100P System and up to five simulated weapons.	1	LOT	NO CHARGE	NO CHARGE
Subtotal					\$	51,432.21
Customer Discount					-\$	5,500.00
NEW Subtotal					\$	45,932.21
CA Sales Tax (9.5%)					\$	4,363.56
TOTAL PRICE (USD)					\$	50,295.77

SPECIAL NOTES:

NOTE 1: Please reference MTS18USL3899 Rev 6 on your Purchase Order to expedite order processing.

NOTE 2: Orders may be faxed or emailed to: 678.288.1515 | MTSCONTRACTS@MEGGITT.COM, Attn: Contracts.

NOTE 3: All items listed are GSA or Open Market as specified. All subsequent GSA Purchase Orders / Contracts will be placed under GSA Contract GS-00F-113DA.

NOTE 4: GSA Pricing Includes:

- Freight: Freight & Delivery shall be FOB Destination (West Covina, CA) in accordance with Incoterms® 2000.
- Warranty: **3 Year Warranty**

NOTE 5: MTSI assumes the buyer will be purchasing the items / services listed herein with GSA funds. If purchase will be made with non-GSA funds, pricing will be adjusted to commercial rates accordingly.

NOTE 6: Extended Warranty pricing is based on the items and quantities listed above in the base offer (options not included). If an extended warranty is needed and actual items or quantities purchased vary from those offered herein, revised extended warranty pricing will need to be requested and provided before it can be purchased. Non-MTSI products such as, but not limited to Dvorak Laser Inserts are not covered under the extended warranty pricing.

NOTE 7: MTSI assumes the buyer is NOT tax exempt; therefore sales tax has been included in the Base Quotation price. If the buyer is tax exempt, please provide a tax exemption certificate along with your purchase order and exclude the tax in the total purchase order price.

NOTE 8: Supplier (Meggitt) shall not be liable to Purchaser if and for so long as it is unable to deliver because Supplier's (Meggitt's) production is suspended, or it cannot obtain necessary materials, or it cannot make delivery arrangements, due to the COVID-19 pandemic.

NOTE 9: Neither party shall be in default of its obligations under this Agreement by reason of delay or failure to perform if such delay or failure arises out of causes beyond the reasonable control and without the fault or negligence of the party including, but not restricted to, acts of God, acts of governments, fires, floods, epidemics, pandemics, quarantine restrictions, terrorism, war, labor unrest and unusually severe weather ("Excusable Delay").

The party experiencing the Excusable Delay shall give prompt written notice to the other party upon such party becoming aware of any circumstance or event which may reasonably be anticipated to cause or constitute an Excusable Delay as described herein. Such notice shall contain a description of the delay and of the affected portion of the Work. In the event that MTSI is the party experiencing the Excusable Delay, MTSI, in its discretion, may delay delivery, cancel delivery, make price adjustments and/or allocate delivery among customers as necessary due to such unexpected event and during the period of such Excusable Delay. If the Excusable Delay continues for a period of 90 days, the party not experiencing the Excusable Delay may terminate this Agreement with no cost or liabilities accruing to either party.

SALES TAX: If your organization is federal or state tax exempt, provide a copy of the tax exemption. MTSI is responsible for collecting sales tax in the following states: CA, CT, FL, MN, GA, IL, KY, VA, NJ, SD, and WA. If work is to be performed in any of these states under a Purchase order issued as a result of this proposal, any applicable sales tax will be added to the final invoice. If your organization is exempt from state sales tax, a copy of the tax exemption certificate will be required. Otherwise, please include the sales tax value on any resulting purchase order.

DELIVERY: Delivery on all items is 90-180 days After Receipt of order or sooner if available, unless otherwise noted below.

VALIDITY: Pricing and terms are a promotional offer and **valid until December 31, 2020**.

CONTRACTOR: **Meggitt Training Systems, Inc. (MTSI)**
296 Brogdon Road
Suwanee, GA 30024
Tel: 678-288-1090
Fax: 678-288-1515

PAYMENT TERMS: **100% NET 30 Days**
Payment address: Meggitt Training Systems, Inc.
P.O. BOX 100530
Atlanta, Ga. 30384-0530

TERMS AND CONDITIONS: GSA Items: GSA Terms and Conditions apply.
Open Market Items: The Meggitt Training Systems, Inc. (MTSI) Standard Terms & Conditions [MTS-DOM-001-REV5-03-26-2020] incorporated by reference herein shall apply to all Open Market Items. If the Seller is awarded the contract\purchase order by the Buyer, the Seller presumes that the buying agency has followed all required competition justification. MTSI shall provide the Terms & Conditions upon request.

PLEASE SUBMIT PURCHASE ORDERS TO:

EMAIL: MTSContracts@meggitt.com

FAX: 678.288.1515

MAIL: Attn: Contracts Dept.

Meggitt Training Systems, Inc. (MTSI)
296 Brogdon Road
Suwanee, GA 30024

GSA SCHEDULE: **GS-00F-113DA**

VENDOR INFO: **Meggitt Training Systems, Inc.**
Contract Administration Source: Carter Johnson, Sr. VP of Finance and Contracts
Business Size: Large
DUNS Number: 00-765-5863
CAGE Code: 087W6
TIN: 58-2272995

MTSI SALES POC:

MTSI POC: **Juan Carlos Barillas**
Law Enforcement Virtual Sales
Meggitt Training Systems, Inc.
296 Brogdon Road
Suwanee, GA 30024
470-266-8379
juan.barillas@meggitt.com

PREPARED BY: Melissa Boltz
Proposal Manager

USE & DISCLOSURE OF DATA:

Any and all information and data contained herein is the property of Meggitt Training Systems, Inc. (MTSI); and shall not for any reason, whether tangible or intangible, be disclosed, duplicated, or used, in whole or in part, for any reason other than to evaluate this proposal. If, however, a contract is awarded to MTSI as a result of, or in connection with, the submission of this proposal, the recipient (Buyer) shall have the right to duplicate, use, or disclose the information and data contained herein to the extent provided in the resulting contract. These restrictions do not limit Buyer's right to use information or if it is obtained from another, legitimate source without restriction.

DESTINATION CONTROL STATEMENT:

This document contains Technical Data that is subject to the Export Administration Regulations (EAR99). Diversion contrary to U.S. Law is prohibited.

END USER CERTIFICATE:

This product may only be sold to an authorized entity that must be authorized to receive such equipment. The order must be accompanied with an End User Certificate and the end user must be listed on the purchase order/contract.



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: October 20, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

**SUBJECT: WEST COVINA COMMUNITY SERVICES FOUNDATION FISCAL YEAR 2019-2020
ANNUAL REPORT**

RECOMMENDATION:

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

BACKGROUND:

On February 1, 2005, the City of West Covina authorized the formation of the West Covina Community Services Foundation (Foundation), a California Public Benefit Corporation. According to the by-laws (Attachment No. 1), the Foundation was organized for charitable purposes to “provide services beneficial to the public interest by seeking to offer, improve, or expand services that enhance the quality of life for residents.”

The Foundation does this by receiving gifts of funds from donors for specific purposes (i.e. 4th of July Celebration, Summer Concerts, etc.). In addition, funds are raised to provide new recreational opportunities, increase public safety services, preservation of City equipment and facilities, and the pursuit of other benefits of public interest. The formation of the Foundation also allows the City to be more competitive when seeking grant funding to help provide such services.

The Foundation’s Board of Directors consists of the West Covina City Council, with the Mayor as the Chairperson of the Board and the Mayor Pro Tem as the Vice Chairperson of the Board. The City Manager serves as the Corporation’s President, City Clerk as the Secretary, and Finance Director as the Chief Financial Officer. The Foundation received its Internal Revenue Service tax deductible 501(c)3 status on June 16, 2006 (Tax ID # 43-2085596).

The Community Services Foundation is to meet annually to adopt the annual report and reorganize the Board of Directors. To remain compliant with the by-laws, City staff is presenting this report to adopt the annual report at this time with the re-organization of the Board of Directors to take place in November 2020, concurrent with the re-organization of the City Council. No additional action is needed for the re-organization.

DISCUSSION:

The Finance Department is responsible for monitoring and preparing the Foundation's Annual Report. While the funds are listed in the City's Adopted Budget each year, the Foundation by-laws still require a report to the Board of Directors on an annual basis, within one hundred and twenty (120) days from the end of the Fiscal Year (June 30).

Attached to this report is a Balance Sheet and Statement of Revenues, Expenditures and Changes in Fund Balance for the Foundation for Fiscal Year 2019-20. (Attachment No. 2). The report shows that a cumulative total of \$122,454 in revenues were collected and \$32,809 in funds were expended. As of June 30, 2020, the Foundation has a fund balance of \$281,215.

Revenues have been collected in a variety of ways. In the past, Athens Services was contractually required to provide funding to offset the costs for City events and the Police Department's SWAT Team, however these funds now go into the General Fund as part of the adoption of the Fiscal Year (FY) 2019-20 budget. Additional funds come from businesses and residents wanting to donate for a special cause or program (i.e., Veterans Memorial, Police Wall of Honor, Fire Explorer Program, Youth Council, Galster Park Nature Center, Senior Services, National Night Out at Shadow Oak, etc.). Funds raised at community events are also set aside in the Foundation to offset the costs to offer those individual programs (i.e., sponsorships at Summer Concerts, Movies in the Park, Pumpkin Run, etc.). Donated funds are utilized for the projects and programs identified prior to any City General Fund dollars being utilized. Without these donations, many of these programs and events may not have happened, because of the impact to the City's General Fund. Unfortunately, due to COVID-19, many of these programs and events did not occur in FY 2019-2020.

Prepared by: Kelly McDonald, Public Services Manager

Additional Approval: Robbeyn Bird, Finance Director

Attachments

Attachment No. 1 - West Covina Community Services Foundation Bylaws

Attachment No. 2 - West Covina Community Services Balance Sheet, Statement of Revenues, Expenditures and Changes in Fund Balance

CITY COUNCIL GOALS & OBJECTIVES: Achieve Fiscal Sustainability and Financial Stability
Enhance the City Image and Effectiveness
Respond to the Global COVID-19 Pandemic

**BYLAWS
OF
West Covina Community Services Foundation, Incorporated
A CALIFORNIA PUBLIC BENEFIT CORPORATION**

**ARTICLE 1
NAME**

The name of this corporation is "West Covina Community Services Foundation, Incorporated."

**ARTICLE 2
OFFICES**

SECTION 1. PRINCIPAL OFFICE

The principal office of the Corporation for the transaction of its business is West Covina City Hall, 1441 West Garvey Avenue, West Covina, 91790 located in Los Angeles County, California.

SECTION 2. OTHER OFFICES

The Corporation may also have subordinate offices at such other places, within the city of West Covina, where it is qualified to do business, as its business may require and as the board of directors may, from time to time, designate.

**ARTICLE 3
PURPOSES**

SECTION 1. OBJECTIVES AND PURPOSES

This Corporation is organized and operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. The primary objectives and purposes of this Corporation shall be:

- (1) To provide services beneficial to the public interest by seeking to offer, improve, or expand services that enhance the quality of life for residents including, but not limited to:

- a. Recreational opportunities for residents, i.e., hiking, walking, and equestrian trails, aquatics, sports, parks and open space, classes, etc.;
 - b. Public safety services, i.e., police and fire services to residents;
 - c. Social services, i.e., nutritious meals for seniors and youth, case management, counseling, etc., for residents; and
 - d. Building and improving City facilities and infrastructure.
- (2) Preservation of buildings, structures, documents, etc., of historical significance to the community.
 - (3) To qualify and be more competitive when seeking to acquire grant funding to help provide such services to residents and in this way mitigate the financial impact to the City government.
 - (4) To receive gifts of funds for specific purposes.
 - (5) To pursue any other opportunities available that would benefit the public interest.

ARTICLE 4 DIRECTORS

SECTION 1. NUMBER

The Corporation shall have five (5) directors and collectively they shall be known as the Board of Directors. The Board of Directors shall consist of the members of the West Covina City Council. The number and requirement that the Directors be City Councilmembers may be changed by amendment of this Bylaw, or by repeal of this Bylaw and adoption of a new Bylaw, as provided in these Bylaws.

SECTION 2. POWERS

Subject to the provisions of the California Nonprofit Public Benefit Corporation law and any limitations in the Articles of Incorporation and Bylaws relating to action required or permitted to be taken or approved by the members, if any, of this Corporation, the activities and affairs of this Corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board of Directors. Unless otherwise provided pursuant to amendment of these bylaws, voting rights in this Corporation shall remain vested solely in the Board of Directors.

SECTION 3. DUTIES

It shall be the duty of the Directors to:

- (1) Perform any and all duties imposed on them collectively or individually by law, by the Articles of Incorporation of this Corporation, or by these Bylaws;
- (2) Appoint and remove, employ and discharge, and, except as otherwise provided in these Bylaws, prescribe the duties, of all officers, agents and employees of the Corporation;
- (3) Supervise all officers, agents and employees of the Corporation to assure that their duties are performed properly;
- (4) Meet at such times and places as required by these Bylaws;
- (5) Register their addresses with the Secretary of the Corporation and notices of meetings mailed or telegraphed to them at such addresses shall be valid notices thereof.

SECTION 4. DESIGNATION OF CHAIRPERSON AND VICE CHAIRPERSON.

The Mayor shall serve as the Chairperson of the Board during his or her term as Mayor, or until he or she resigns or is otherwise disqualified to serve, whichever occurs first. However, should the Mayor wish that another Board Member replace him or her the as Chairperson, then the Board shall elect another Board Member as the Chairperson. The Mayor Pro-Tem shall serve as the Vice Chairperson of the Board during his or her term as Mayor Pro-Tem, or until he or she resigns or is otherwise disqualified to serve, whichever occurs first. However, should the Mayor Pro-Tem wish that another Board Member replace him or her the as Vice Chairperson, then the Board shall elect another Board Member as Vice Chairperson. At no time shall the same person serve concurrently as Chairperson and the Vice Chairperson of the Board.

SECTION 5. DUTIES OF CHAIRPERSON OF THE BOARD

The Chairperson shall supervise and manage/direct the affairs of the Corporation. He or she shall perform all duties incident to his or her position as Chairperson and such other duties as may be required by law, by the Articles of Incorporation or the Bylaws, or which may be prescribed from time to time by the Board of Directors. The Chairperson shall preside at all meetings of the Board. Except as otherwise expressly provided by law, by the Articles of Incorporation, or by these Bylaws, he or she shall, in the name of the Corporation, execute such

deeds, mortgages, bonds, contracts, checks or other instruments which may from time to time be authorized by the Board of Directors.

SECTION 6. DUTIES OF VICE CHAIRPERSON OF THE BOARD

In the absence of the Chairperson, or in the event of his or her inability to or refusal to act, the Vice Chairperson shall perform all the duties of the Chairperson and when so acting shall have all the powers of, and be subject to all the restrictions of the Chairperson. The Vice Chairperson shall have other powers and perform such other duties as may be prescribed by law, by the Articles of Incorporation, or by these bylaws, or as may be prescribed by the Board of Directors.

SECTION 7. TERMS OF OFFICE

The term of office for each Director shall run concurrently with his or her term of office on the City Council.

SECTION 8. PLACE OF MEETINGS

Meetings shall be held at the principal office of the Corporation unless otherwise provided in these Bylaws or at such place within the City of West Covina, which has been designated from time to time by resolution of the Board of Directors.

SECTION 9. REGULAR AND ANNUAL MEETINGS

Regular meetings of the Board of Directors shall be held, as needed, on the first and/or third Tuesday of each month at 7:00 PM, unless such day falls on a legal holiday, in which event the regular meeting shall be held at the same hour and place two weeks hence.

The annual meeting of the Board of Directors shall coincide with the annual meeting at which the City Council is reorganized. This meeting occurs typically in mid-March.

SECTION 10. SPECIAL MEETINGS

Special meetings of the Board of Directors may be called by the Chairperson of the Board of Directors, or by any two Directors, and such meetings shall be held at the place, within the City of West Covina, designated by the person or persons calling the meeting, and in the absence of such designation, at the principal office of the Corporation.

SECTION 11. NOTICE OF MEETINGS

Noticing of all meetings shall be done in compliance with Govt. Codes 54954.2 and 54956 (Brown Act). Regular meetings shall be noticed at least seventy-two (72) hours in advance of the meeting. Special meetings shall be noticed at least twenty-four (24) hours in advance of the meeting.

Notice shall be given of any adjourned regular or special meeting to Directors absent from the original meeting if the adjourned meeting is held more than twenty-four (24) hours from the time of the original meeting.

SECTION 12. QUORUM FOR MEETINGS

A quorum shall consist of three (3) Directors.

Except as otherwise provided in these Bylaws or in the Articles of Incorporation of this Corporation, or by law, no business shall be considered by the Board of Directors at any meeting at which a quorum, as defined above, is not present, and the only motion which the Chair shall entertain at such meeting is a motion to adjourn. However, a majority of the Directors present at such meeting may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors.

The Directors present at a duly called and held meeting at which a quorum is initially present may continue to do business notwithstanding the loss of a quorum at the meeting due to a withdrawal of Directors from the meeting, provided that any action thereafter taken must be approved by at least a majority of the required quorum for such meeting or such greater percentage as may be required by law, or the Articles of Incorporation or Bylaws of this Corporation.

SECTION 13. MAJORITY ACTION AS BOARD ACTION

Every act or decision done or made by a majority of the Directors present at a meeting duly held at which a quorum is present is the act of the Board of Directors, unless the Articles of Incorporation or Bylaws of this Corporation, or provisions of the California Nonprofit Public Benefit Corporation Law, particularly those provisions relating to appointment of committees (Section 5212), approval of contracts or transactions in which a director has a material financial interest (Section 5233) and indemnification of directors (Section 5238e), require a greater percentage or different voting rules for approval of a matter by the board.

SECTION 14. CONDUCT OF MEETINGS

Meetings of the Board of Directors shall be presided over by the Chairperson of the Board, or, if no such person has been so designated or, in his or her absence, the Vice Chairperson or, in his or her absence, by the Director chosen a majority of the Directors present at the meeting. The Secretary of the Corporation shall act as Secretary of all meetings of the Board of Directors, provided that, in his or her absence, the presiding officer shall appoint another person to act as Secretary of the Meeting.

The provisions of the Brown Act (Gov. Code §54950 et seq.) shall apply to the conduct of meetings of the Corporation. Meetings shall be governed by Roberts's Rules of Order, as such rules may be revised from time to time, insofar as such rules are not inconsistent with or in conflict with these Bylaws, with the Articles of Incorporation of this Corporation, or with provisions of law.

SECTION 15. NON-LIABILITY OF DIRECTORS

The Directors shall not be personally liable for the debts, liabilities, or other obligations of the Corporation.

SECTION 16. INSURANCE FOR CORPORATE AGENTS

Members of the Board of Directors and Officers of the Corporation shall be named as insureds under the City's umbrella insurance policy for liability caused or incurred while acting within the scope of their duties as Members of the Board of Directors and/or Officers of the Corporation.

ARTICLE 5 OFFICERS

SECTION 1. NUMBER OF OFFICERS

The officers of the Corporation shall be a President, Secretary and Chief Financial Officer. The City Manager shall serve as President, the City Clerk shall serve as the Secretary and the Finance Director shall serve as the Chief Financial Officer. Any number of offices may be held by the same person, except that neither the Secretary nor the Chief Financial Officer may serve concurrently as the President, Chairperson or Vice Chairperson of the Board.

SECTION 2. QUALIFICATION AND TERM OF OFFICE

The City Manager, City Clerk and Finance Director shall serve as President, Secretary and Chief Financial Officer, respectively, until he or she resigns or is removed by a majority vote of the Board of Directors, or is otherwise disqualified to serve, whichever occurs first.

SECTION 3. SUBORDINATE OFFICERS

The Board of Directors may appoint such other officers or agents as it may deem desirable, and such officers shall serve such terms, have such authority, and perform such duties as may be prescribed from time to time by the Board of Directors.

SECTION 4. VACANCIES

Any vacancy caused by the death, resignation, removal, disqualification, or otherwise, of any officer shall be filled by the Board of Directors in accordance with these Bylaws and applicable law.

SECTION 5. DUTIES OF PRESIDENT

The President shall be the administrative head of the Corporation and its affairs and he/she shall operate under the direction and control of the Board of Directors except as otherwise provided by law, by the Articles of Incorporation, or by these Bylaws. He/she shall be responsible for the efficient administration of all the affairs of the Corporation which are under his/her control. He/she shall prescribe such administrative rules and procedures as he may deem proper or necessary for the general conduct and operation of the Corporation's affairs under his control. He/she shall perform any and all duties imposed on him/her by law, by the Articles of Incorporation, by these Bylaws or by the Board. Upon the request and authorization of the Board, the President may enter into any contract, or execute and deliver any instrument, in the name of and on behalf of, the Corporation. The President shall supervise all agents of the Corporation to assure that their duties are performed properly. He/she shall meet at such times and places as required by these bylaws. It shall be the duty of the President to recommend to the Board the adoption of measures he/she deems necessary for the efficient operation of the Corporation. Unless provided for in

SECTION 6. DUTIES OF SECRETARY

The Secretary shall:

- (1) Certify and keep at the principal office of the Corporation the original, or a copy of these Bylaws as amended or otherwise altered to date.
- (2) Keep at the principal office of the Corporation or at such other place as the board may determine, a book of minutes of all meetings of the directors, and, if applicable, meetings of committees of directors and of members, recording therein the time and place of holding, whether regular or special, how called, how notice thereof was given, the names of those present or represented at the meeting, and the proceedings thereof.
- (3) See that all notices are duly given in accordance with the provisions of these Bylaws or as required by law.
- (4) Be custodian of the records and of the seal of the Corporation and see that the seal is affixed to all duly executed documents, the execution of which on behalf of the Corporation under its seal is authorized by law or these Bylaws.
- (5) Keep at the principal office of the Corporation a membership book containing the name and address of each and any members, and, in the case where any membership has been terminated, he or she shall record such fact in the membership book together with the date on which such membership ceased.
- (6) Exhibit at all reasonable times to any director of the Corporation, or to his or her agent or attorney, on request therefore, the Bylaws, the membership book, and the minutes of the proceedings of the directors of the Corporation.
- (7) In general, perform all duties incident to the office of Secretary and such other duties as may be required by law, by the Articles of Incorporation of this Corporation, or by these Bylaws, or which may be assigned to him or her from time to time by the Board of Directors

SECTION 7. DUTIES OF CHIEF FINANCIAL OFFICER

Subject to the provisions of these Bylaws relating to the "Execution of Instruments, Deposits and Funds," the Chief Financial Officer shall:

- (1) Have charge and custody of, and be responsible for, all funds and securities of the Corporation, and deposit all such funds in the name of the Corporation in such banks, trust companies, or other depositories as shall be selected by the Board of Directors.
- (2) Receive, and give receipt for, monies due and payable to the Corporation from any source whatsoever.
- (3) Disburse, or cause to be disbursed, the funds of the Corporation as may be directed by the Board of Directors, taking proper vouchers for such disbursements.
- (4) Keep and maintain adequate and correct accounts of the Corporation's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains and losses.
- (5) Exhibit at all reasonable times the books of account and financial records to any director of the Corporation, or to his or her agent or attorney, upon request
- (6) Render to the Board of Directors, whenever requested, an account of any or all of his or her transactions as Chief Financial Officer and of the financial condition of the Corporation.
- (7) Prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports.
- (8) In general, perform all duties incident to the office of Chief Financial Officer and such other duties as may be required by law, by the Articles of Incorporation of the Corporation, or by these Bylaws, or which may be assigned to him or her from time to time by the Board of Directors.

ARTICLE 6

EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS

SECTION 1. EXECUTION OF INSTRUMENTS

The Board of Directors, except as otherwise provided in these Bylaws, may by resolution authorize any officer or agent of the Corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. Unless so authorized, no officer, agent, or employee shall have any

power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable monetarily for any purpose or in any amount.

SECTION 2. CHECKS AND NOTES

Except as otherwise specifically determined by resolution of the Board of Directors, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness of the Corporation shall be signed by the Chief Financial Officer and countersigned by the Chairperson of the Board of Directors.

SECTION 3. DEPOSITS

All funds of the Corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositories as the Board of Directors may select.

SECTION 4. GIFTS

The Board of Directors may accept on behalf of the Corporation any contribution, gift, bequest, or devise for the charitable or public purposes of this corporation. Limitations on gifts to individual Directors shall comply with the Political Reform Act and the Fair Political Practices Commission.

ARTICLE 7 CORPORATE RECORDS, REPORTS AND SEAL

SECTION 1. MAINTENANCE OF CORPORATE RECORDS

The Corporation shall keep at its principal office in the State of California:

- (1) Minutes of all meetings of directors, committees of the board and , indicating the time and place of holding such meetings, whether regular or special, how called, the notice given, and the names of those present and the proceedings thereof;
- (2) Adequate and correct books and records of account, including accounts of its properties and business transactions and accounts of its assets, liabilities, receipts, disbursements, gains and losses;

- (3) A copy of the corporation's Articles of Incorporation and Bylaws as amended to date, which shall be open to inspection by the members, if any, of the Corporation at all reasonable times during office hours.

SECTION 2. CORPORATE SEAL

The Board of Directors may adopt, use, and at will alter, a corporate seal. Such seal shall be kept at the principal office of the Corporation. Failure to affix the seal to corporate instruments, however, shall not affect the validity of any such instrument.

SECTION 3. DIRECTORS' INSPECTION RIGHTS

Every director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the Corporation.

SECTION 4. RIGHT TO COPY AND MAKE EXTRACTS

Any inspection under the provisions of this Article may be made in person or by agent or attorney and the right to inspection includes the right to copy and make extracts.

SECTION 5. ANNUAL REPORT

The Board shall cause an annual report to be furnished not later than one hundred and twenty (120) days after the close of the Corporation's fiscal year to all directors of the Corporation and, if this Corporation has members, to any member who requests it in writing, said report shall contain the following information in appropriate detail:

- (1) The assets and liabilities, including the trust funds, of the Corporation as of the end of the fiscal year;
- (2) The principal changes in assets and liabilities, including trust funds, during the fiscal year;
- (3) The revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, for the fiscal year;
- (4) The expenses or disbursements of the Corporation, for both general and restricted purposes, during the fiscal year;

The annual report shall be accompanied by any report thereon of independent accountants, or, if there is no such report, the certificate of an authorized officer of the Corporation that such statements were prepared without audit from the books and records of the corporation.

ARTICLE 8 FISCAL YEAR

SECTION 1. FISCAL YEAR OF THE CORPORATION

The fiscal year of the Corporation shall begin on July 1 and end on the June 30 in each year.

ARTICLE 9 AMENDMENT OF BYLAWS

SECTION 1. AMENDMENT

Subject to any provision of law applicable to the amendment of Bylaws of public benefit nonprofit corporations, these Bylaws, or any of them, may be altered, amended, or repealed and new Bylaws adopted as follows:

- (1) Subject to the power of members, if any, to change or repeal these Bylaws under Section 5150 of the Corporations Code, by approval of the Board of Directors unless the Bylaw amendment would materially and adversely affect the rights of members, if any, as to voting or transfer, provided, however, if this Corporation has admitted any members, then a Bylaw specifying or changing the fixed number of directors of the Corporation, the maximum or minimum number of directors, or changing from a fixed to variable board or vice versa, may not be adopted, amended, or repealed except as provided in subparagraph (2) of this Section; or
- (2) By approval of the members, if any, of this Corporation.

ARTICLE 10 AMENDMENT OF ARTICLES

SECTION 1. AMENDMENT OF ARTICLES BEFORE ADMISSION OF MEMBERS

Before any members have been admitted to the Corporation, any amendment of the Articles of Incorporation may be adopted by approval of the Board of Directors.

SECTION 2. AMENDMENT OF ARTICLES AFTER ADMISSION OF MEMBERS

After members, if any, have been admitted to the Corporation, amendment of the Articles of Incorporation may be adopted by the approval of the Board of Directors and by the approval of the members of this Corporation.

SECTION 3. CERTAIN AMENDMENTS

Notwithstanding the above sections of this Article, this Corporation shall not amend its Articles of Incorporation to alter any statement which appears in the original Articles of Incorporation of the names and addresses of the first directors of this Corporation, nor the name and address of its initial agent, except to correct an error in such statement or to delete such statement after the corporation has filed a "Statement by a Domestic Non-Profit Corporation" pursuant to Section 6210 of the California Nonprofit Corporation Law.

ARTICLE 11 MEMBERS

SECTION 1. DETERMINATION OF MEMBERS

If this Corporation makes no provision for members, then, pursuant to Section 5310(b) of the Nonprofit Public Benefit Corporation Law of the State of California, any action which would otherwise, under law or the provisions of the Articles of Incorporation or Bylaws of this Corporation, require approval by a majority of all members or approval by the members, shall only require the approval of the Board of Directors.

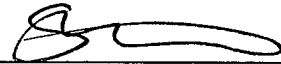
WRITTEN CONSENT OF DIRECTORS ADOPTING BYLAWS

We, the undersigned, are all of the persons named as the initial Directors in the Articles of Incorporation of the West Covina Community Services Foundation, Incorporated, a California Nonprofit Public Benefit Corporation, and, pursuant to the authority granted to the Directors by these Bylaws to take action by unanimous written consent without a meeting, consent to, and hereby do, adopt the foregoing Bylaws, consisting of fourteen (14) pages, as the Bylaws of this Corporation.

Dated: _____



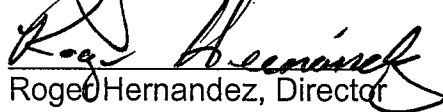
Michael Miller, Director



Shelley Sanderson, Director



Steve Herfert, Director



Roger Hernandez, Director

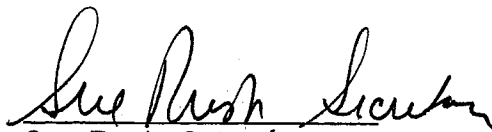


Ben Wong, Director

CERTIFICATE

This is to certify that the foregoing is a true and correct copy of the Bylaws of the corporation named in the title thereto and that such Bylaws were duly adopted by the Board of Directors of said Corporation on the date set forth below.

Dated: 7-26-05



Sue Rush, Secretary

ATTACHMENT NO. 2

West Covina Community Services Foundation, Inc.
Balance Sheet
June 30, 2020

Cash	\$ 254,652
Accounts Receivable	28,028
Interest Receivable	-
Total Assets	<u><u>\$ 282,680</u></u>

Accounts Payable	\$ 1,465
Fund Balance	<u>281,215</u>
Total Liabilities and Fund Balance	<u><u>\$ 282,680</u></u>

West Covina Community Services Foundation, Inc.
Statement of Revenues, Expenditures and Changes in Fund Balance
For the year ended June 30, 2020

Revenues

Interest	\$ 2,301
Charges for Services	11,088
Other Revenues	109,064
Total Revenues	<u>122,454</u>

Expenditures

FN - Taxes filings	25
FR - Explorer Program	1,453
PS - Youth Council	84
PS - Misc supplies, plaques, etc.	19,573
PS - Summer Concerts	6,104
PS - Galster Park Nature Center	-
CS - Senior Center - Supplies, etc.	5,570
Total Expenditures	<u>32,809</u>

Net Change in Fund Balance	<u>89,645</u>
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Fund Balance - Beginning of Year	<u>191,570</u>
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Fund Balance - End of Year	<u><u>\$ 281,215</u></u>
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AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: October 20, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT: PUBLIC HEARING TO CONSIDER CODE AMENDMENT NO. 20-07 TO ALLOW AND REGULATE OFF-SALE (RETAIL SALES FOR OFF-SITE CONSUMPTION) OF BEER AND WINE AS AN ACCESSORY USE TO A SERVICE STATION

RECOMMENDATION:

It is recommended that the City Council approve Code Amendment No. 20-07 by:

1. Conducting a public hearing regarding Code Amendment No. 20-07; and
2. Introducing for first reading, by title only, further reading waived, the following ordinance:

ORDINANCE NO. 2474 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA TO AMEND CHAPTER 26 OF THE WEST COVINA MUNICIPAL CODE TO ALLOW ALCOHOL (BEER AND WINE) SALES AT SERVICE STATIONS

BACKGROUND:

The City Council initiated Code Amendment No. 20-07 on September 1, 2020.

Currently, the Municipal Code prohibits the sale of alcoholic beverages at service stations. The proposed code amendment would amend the Municipal Code to allow the off-sale of alcohol at service stations subject to a conditional use permit.

The Planning Commission held a public hearing to consider the draft Ordinance on September 22, 2020 and voted 5-0 to recommend City Council approval of Code Amendment No. 20-07 with a request to the City Manager to direct the West Covina Police Department to provide the City Council with a statistical analysis of service calls for police in neighboring cities where sales of beer and wine are allowed in service station convenience stores. The Planning Commission discussed the contents of the draft Ordinance, including Councilmember Castellano's preference to eliminate the 2,000 square-foot floor area convenience store size threshold in order to allow a more open competition amongst service station owners, but ultimately voted to recommend approval of the draft Ordinance without any changes. The Planning Commission staff report and minutes are included as Attachment Nos. 3 and 4. During the Planning Commission meeting, three members of the public spoke in favor of the code amendment and five members of the public spoke against the code amendment.

Staff presented the Planning Commission a list that identifies businesses within the City with Type 20/21 alcohol licenses issued by the Department of Alcoholic Beverage Control (Attachment No. 5) and all gasoline stations with convenience stores within the City (Attachment No. 6). A Type 20 business is allowed to sell "off-site" beer and wine and a Type 21 business is allowed to sell "off-site" general alcohol, which includes all types. Currently, there

are 21 gasoline stations with convenience stores within the City. There are a total of 45 stores within the City that have active off-sale alcohol licenses (26 liquor stores/convenience stores/mini-marts and 19 supermarkets/pharmacies/department stores). Attached is a report that was presented to the Planning Commission from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Preservation titled: "How to Use Local Regulatory and Land Use Powers to Prevent Underage Drinking" (Attachment No. 7).

DISCUSSION:

Based on the Planning Commission's recommendations, the draft code amendment provides the following changes to the West Covina Municipal Code (WCMC):

- Adds a category for off-sale alcohol sales to the Land Use Matrix (WCMC Section 26-597) and identifies that a conditional use permit (CUP) is required for the use in the N-C, R-C, S-C, C-2, C-3, and M-1 zones, and off-sale alcohol sales is not allowed in other zoning designations.
- Removes "sale of alcoholic beverages" as prohibited in service stations (WCMC Section 26-664).
- Adds CUP requirement in Alcoholic Beverage Service portion of Municipal Code (WCMC Section 26-685.103) and cross-references Section 26-685.103.3.
- Adds new section to the Municipal Code (WCMC Section 26-685.103.3) that identifies the CUP process for service stations selling alcohol and lists the following standards:
 1. Beer and wine sales shall only be allowed in convenience stores greater than 2,000 square feet in floor area.
 2. A maximum of ten (10) percent of the retail floor area shall be allowed for the display and sale of alcohol. Merchandise stacking shall not be included in the retail floor area calculation when determining the maximum area for display and alcohol sales.
 3. The sale of beer in quantities fewer than three containers is prohibited and no alcoholic beverage shall be sold in unit quantities less than the distributor's intended resale units.
 4. No beer and wine shall be displayed within five feet of the cash register or front door.
 5. The advertisement for beer and wine shall not be permitted at motor fuel islands.
 6. Identification card reader is required to determine the authenticity of the identification that displays the age of the individual.
 7. No pay phone shall be permitted on the exterior of the premises.
 8. No beer and wine shall be sold from or displayed in an ice tub.
 9. No coin operated video games or video entertainment machines shall be permitted on the premises.
 10. Signage shall be posted in the parking lot and on the exterior of the building notifying persons that alcohol shall not be consumed on the premises.
 11. Signs shall be prominently posted, stating that California State Law prohibits the sale of beer and wine to persons under the age of 21 years.

GENERAL PLAN CONSISTENCY

The proposed code amendment is consistent with Policy 2.1 (Maintain and enhance the City's current tax base) and Action 2.1a (Continue to strengthen the City's retail base) of the General Plan. The code amendment would allow service station convenience stores to better compete with similar sized markets, which may improve their generation of taxable sales for the City.

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 and adopt the Ordinance;
2. Provide alternative direction; or
3. Receive and file.

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 only revise development standards for alcohol sales within service stations.

Prepared by: Jo-Anne Burns, Planning Manager

Attachments

Attachment No. 1 - Ordinance No. 2474

Attachment No. 2 - Planning Commission Resolution No 20-6045

Attachment No. 3 - Sept. 22, 2020 Planning Commission Report

Attachment No. 4 - September 22, 2020 Planning Commission Minutes (Excerpt)

Attachment No. 5 - List of Type 20 and 21 ABC Licenses

Attachment No. 6 - Gas Stations with Convenience Stores

Attachment No. 7 - DOJ Report

CITY COUNCIL GOALS & OBJECTIVES: Engage in Proactive Economic Development

SECTION 2. Section 26-664 of the West Covina Municipal Code is hereby amended to read as follows:

- (a) A service station shall not be established or maintained without facilities to pump gasoline.
- (b) Garage, mechanical repair service not specifically mentioned in Section 26-663, including but not limited to the following items are prohibited:
 - (1) Battery repair.
 - (2) Tire rebuilding or recapping.
 - (3) Painting.
 - (4) Body work.
 - (5) Steam cleaning or radiator repair.
 - (6) Transmission rebuilding.
 - (7) Motor repairs involving the removal of the head or crank case.
- ~~(c) Sale of alcoholic beverages.~~
- ~~(d)~~ (c) Subleasing of floor space or site area except for any use specifically authorized by section 26-663, subparagraphs (a) through (i), (k) and (m).

SECTION 3. Section 26-685.103 of the West Covina Municipal Code is hereby amended to read as follows:

An administrative use permit is required in specified commercial and manufacturing zones for any business that sells alcohol for off-site consumption, except for service stations that sell alcohol which requires a conditional use permit pursuant to Section 26-685.103.3.

SECTION 4. Section 26-685.103.3 is hereby added to Chapter 26 of the West Covina Municipal Code to read as follows:

Sec. 26-685.103.3 Service Stations Selling Beer and Wine for Off-Premises Consumption

- (a) Conditional Use Permit Required. Any service station located in specified commercial and manufacturing zones may sell beer and wine for off-site consumption with a conditional use permit. The sales of distilled spirits shall not be allowed.
 - (1) The site shall comply with all current development standards for service stations as set forth in the West Covina Municipal Code including, but not limited to, the minimum number of parking spaces prior to the approval of a conditional use permit to allow off-sale of alcohol.
- (b) Unless otherwise noted, the following requirements shall apply to all gasoline service stations selling beer and wine:
 - (1) Beer and wine sales shall only be allowed in convenience stores greater than 2,000 square feet in floor area.
 - (2) A maximum of ten (10) percent of the retail floor area shall be allowed for the display and sale of alcohol. Merchandise stacking shall not be included in the retail floor area calculation when determining the maximum area for display and alcohol sales.
 - (3) The sale of beer in quantities fewer than three containers is prohibited and no alcoholic beverage shall be sold in unit quantities less than the distributor's intended resale units.
 - (4) No beer and wine shall be displayed within five feet of the cash register or front door.

- (5) The advertisement of beer and wine shall not be permitted at motor fuel islands.
- (6) Identification card reader is required to determine to the authenticity of the identification that displays the age of the individual.
- (7) No pay phone shall be permitted on the exterior of the premises.
- (8) No beer and wine shall be sold from or displayed in an ice tub.
- (9) No coin operated video games or video entertainment machines shall be permitted on the premises.
- (10) Signage shall be posted in the parking lot and on the exterior of the building notifying persons that alcohol shall not be consumed on the premises.
- (11) Signs shall be prominently posted, stating that California State Law prohibits the sale of beer and wine to persons under the age of 21 years.

SECTION 5. Environmental Compliance. The City Council hereby finds that it can be seen with certainty that there is no possibility the adoption and implementation of this Ordinance may have a significant effect on the environment. The Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

SECTION 6. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of West Covina hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 7. Effective Date. This Ordinance shall take effect and be in force thirty (30) days from and after the date of its passage.

SECTION 8. Certification. The City Clerk shall certify to the passage of this Ordinance and shall cause the same to be published as required by law.

PASSED, APPROVED AND ADOPTED on the ____ day of _____, 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 Ordinance No. 2474 was introduced at a regular meeting of the City Council held on the 20th day of October, 2020, and adopted at a regular meeting of the City Council held on the ____ day of _____, 2020, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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 . 20-6045

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF
WEST COVINA, CALIFORNIA, RECOMMENDING TO THE CITY
COUNCIL APPROVAL OF CODE AMENDMENT NO. 20-07, CODE
AMENDMENT RELATED TO ALCOHOL SALES AT SERVICE
STATIONS**

CODE AMENDMENT NO. 20-07

GENERAL EXEMPTION

APPLICANT: City of West Covina

LOCATION: Citywide

WHEREAS, on the 1st day of September 2020, the City Council initiated a code amendment to Chapter 26 (Zoning) of the West Covina Municipal Code related to the sale of alcoholic beverages at service stations; and

WHEREAS, the Planning Commission, upon giving the required notice, did on the 22th day of September 2020, conduct a duly advertised public hearing as prescribed by law; and

WHEREAS, studies and investigations made by this Commission and on its behalf reveal the following facts:

1. The City's provisions regarding alcohol uses were last updated in 2017.
2. The Municipal Code currently does not allow sales of alcohol at service stations.
3. It is necessary to revise the standards in order to allow service station convenience stores to fairly compete with other small market and convenience stores which are allowed to sell alcohol for off-site consumption.
4. 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, THE PLANNING COMMISSION OF THE CITY OF WEST COVINA, CALIFORNIA DOES HEREBY RESOLVE 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. 20-07 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. 20-07.

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. 20-07 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.

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 22th day of September 2020, by the following vote.

AYES: Heng, Holtz, Jaquez, Kennedy, and Redholtz

NOES: None

ABSTAIN: None

ABSENT: None



Sheena Heng, Chairperson
Planning Commission



Mark Persico, Secretary
Planning Commission

EXHIBIT A

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA TO AMEND CHAPTER 26 OF THE WEST COVINA MUNICIPAL CODE TO ALLOW ALCOHOL (BEER AND WINE) SALES AT SERVICE STATIONS

WHEREAS, the City's provisions regarding alcohol uses were last updated in 2017; and

WHEREAS, the City currently does not allow alcohol sales at service stations; and

WHEREAS, on the September 1, 2020, the City Council initiated a code amendment to Chapter 26 (Zoning) of the West Covina Municipal Code related to the sale of alcoholic beverages at service stations; and

WHEREAS, the Planning Commission, upon giving the required notice, did on September 22, 2020, conduct a duly advertised public hearing as prescribed by law to make recommendations to the City Council to approve Code Amendment No. 20-07; and

WHEREAS, the City Council, upon giving the required notice, did on the ____ day of _____ 2020, conduct a duly advertised public hearing as prescribed by law on the proposed ordinance; and

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

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

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

SECTION NO. 1: Section 26-597 of the West Covina Municipal Code is hereby amended to include the following use within the table, to be inserted consistent with alphabetical ordering:

			M	M	M	M											
	R	R	F	F	F	F	O	N	R	S	C	C	M	I		P	O
	A	1	8	15	20	45	P	C	C	C	2	3	1	P		B	S
<u>Alcohol off-sale, service stations (see art XII, div. 15)</u>								<u>c</u>	<u>c</u>	<u>c</u>	<u>c</u>	<u>c</u>	<u>c</u>				

SECTION NO. 2: Section 26-664 of the West Covina Municipal Code is hereby amended to read as follows:

- (a) A service station shall not be established or maintained without facilities to pump gasoline.
- (b) Garage, mechanical repair service not specifically mentioned in Section 26-663, including but not limited to the following items are prohibited:
 - (1) Battery repair.
 - (2) Tire rebuilding or recapping.
 - (3) Painting.
 - (4) Body work.
 - (5) Steam cleaning or radiator repair.
 - (6) Transmission rebuilding.
 - (7) Motor repairs involving the removal of the head or crank case.
- ~~(c) Sale of alcoholic beverages.~~
- ~~(d)~~ (c) Subleasing of floor space or site area except for any use specifically authorized by section 26-663, subparagraphs (a) through (i), (k) and (m).

SECTION NO. 3: Section 26-685.103 of the West Covina Municipal Code is hereby amended to read as follows:

An administrative use permit is required in specified commercial and manufacturing zones for any business that sells alcohol for off-site consumption, except for service stations that sell alcohol which requires a conditional use permit pursuant to Section 26-685.103.3.

SECTION NO. 4: Section 26-685.103.3 is hereby added to Chapter 26 of the West Covina Municipal Code to read as follows:

Sec. 26-685.103.3 Service Stations Selling Beer and Wine for Off-Premises Consumption

- (a) Conditional Use Permit Required. Any service station located in specified commercial and manufacturing zones may sell beer and wine for off-site consumption with a conditional use permit. The sales of distilled spirits shall not be allowed.

- (1) The site shall comply with all current development standards for service stations as set forth in the West Covina Municipal Code including, but not limited to, the minimum number of parking spaces prior to the approval of a conditional use permit to allow off-sale of alcohol.
- (b) Unless otherwise noted, the following requirements shall apply to all gasoline service stations selling beer and wine:

 - (1) Beer and wine sales shall only be allowed in convenience stores greater than 2,000 square feet in floor area.
 - (2) A maximum of ten (10) percent of the retail floor area shall be allowed for the display and sale of alcohol. Merchandize stacking shall not be included in the retail floor area calculation when determining the maximum area for display and alcohol sales.
 - (3) The sale of beer in quantities fewer than three containers is prohibited and no alcoholic beverage shall be sold in unit quantities less than the distributor's intended resale units.
 - (4) No beer and wine shall be displayed within five feet of the cash register or front door.
 - (5) The advertisement of beer and wine shall not be permitted at motor fuel islands.
 - (6) Identification card reader is required to determine to the authenticity of the identification that displays the age of the individual.
 - (7) No pay phone shall be permitted on the exterior of the premises.
 - (8) No beer and wine shall be sold from or displayed in an ice tub.
 - (9) No coin operated video games or video entertainment machines shall be permitted on the premises.
 - (10) Signage shall be posted in the parking lot and on the exterior of the building notifying persons that alcohol shall not be consumed on the premises.
 - (11) Signs shall be prominently posted, stating that California State Law prohibits the sale of beer and wine to persons under the age of 21 years.

SECTION NO. 5: That the City Clerk shall certify to the passage of this ordinance and shall cause the same to be published as required by law.

SECTION NO. 6: This ordinance shall take effect and be in force thirty (30) days from and after the date of its passage.

APPROVED AND ADOPTED on this ____ day of ____ 2020.

Tony Wu
Mayor

APPROVED AS TO FORM

ATTEST

Thomas P. Duarte

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. ____ was duly adopted by the City Council of the City of West Covina, California, at a regular meeting thereof held on the ____ day of _____, 2020, by the following vote of the City Council:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lisa Sherrick
Assistant City Clerk

AGENDA

ITEM NO. 3.

DATE: September 22, 2020

PLANNING DEPARTMENT STAFF REPORT

SUBJECT

CODE AMENDMENT NO. 20-07

GENERAL EXEMPTION

LOCATION: City Wide

REQUEST: The proposed code amendment consists of an amendment to Chapter 26 (Zoning) of the West Covina Municipal Code to allow and regulate off-sale (retail sales for off-site consumption) of beer and wine as an accessory use to a service station.

BACKGROUND

Code Amendment No. 20-07 was initiated by the City Council on September 1, 2020.

Currently, the Municipal Code prohibits the sale of alcoholic beverages at service stations. The proposed code amendment would amend the Municipal Code to allow the off-sale of alcohol at service stations subject to a conditional use permit. The Planning Commission has considered this issue several times over the last few years. In 2008, Code Amendment No. 08-02 was initiated by the City Council to consider amending the code to allow alcohol sales at service stations. That consideration was subsequently abandoned. In 2010, the Planning Commission initiated Code Amendment No. 10-03 to consider the concept. The Code Amendment was later rescinded by the Commission. Most recently in 2018, Code Amendment No. 18-04 was initiated by the Planning Commission and was recommended for City Council approval. Code Amendment No. 18-04 was eventually presented to the City Council in October 2019 but was not adopted by the City Council.

Given that it has been less than one year since the subject has been discussed, staff has noticed Code Amendment No. 20-07 as a public hearing and will present the same language that the Planning Commission recommended for City Council approval in October 2019. Noticing for the proposed code amendment public hearing was published in the San Gabriel Valley Tribune on September 10, 2020.

For reference staff has included a list that identifies all gasoline stations with convenience stores within the City (Attachment No. 2) and a list of businesses within the City with Type 20/21 alcohol licenses issued by the Department of Alcoholic Beverage Control (Attachment No. 3) with this staff report. Currently, there are 21 gasoline stations with convenience stores within the City. There are a total of 45 stores within the City that have active off-sale alcohol licenses (26 liquor stores/convenience stores/mini-marts and 19 supermarkets/pharmacies/department stores).

DISCUSSION

The draft code amendment provides the following changes to the West Covina Municipal Code (WCMC):

- Adds a category for off-sale alcohol sales to the Land Use Matrix (WCMC Section 26-597) and identifies that a conditional use permit (CUP) is required for the use in the N-C, R-C, S-C, C-2, C-3, and M-1 zones, and is not allowed in other zoning designations.
- Removes "sale of alcoholic beverages" as prohibited in service stations (WCMC Section 26-664).
- Adds CUP requirement in Alcoholic Beverage Service portion of Municipal Code (WCMC Section 26-685.103) and cross-reference Section 26-685.103.3.
- Adds new section to the Municipal Code (WCMC Section 26-685.103.3) that identifies the CUP process for service stations selling alcohol and lists the following standards:

1. Beer and wine sales shall only be allowed in convenience stores greater than 2,000 square feet in floor area.
2. A maximum of ten (10) percent of the retail floor area shall be allowed for the display and sale of alcohol. Merchandise stacking shall not be included in the retail floor area calculation when determining the maximum area for display and alcohol sales.
3. The sale of beer in quantities fewer than three containers is prohibited and no alcoholic beverage shall be sold in unit quantities less than the distributor's intended resale units.
4. No beer and wine shall be displayed within five feet of the cash register or front door.
5. The advertisement for beer and wine shall not be permitted at motor fuel islands.
6. Identification card reader is required to determine the authenticity of the identification that displays the age of the individual.
7. No pay phone shall be permitted on the exterior of the premises.
8. No beer and wine shall be sold from or displayed in an ice tub.
9. No coin operated video games or video entertainment machines shall be permitted on the premises.
10. Signage shall be posted in the parking lot and on the exterior of the building notifying persons that alcohol shall not be consumed on the premises.
11. Signs shall be prominently posted, stating that California State Law prohibits the sale of beer and wine to persons under the age of 21 years.

During City Council initiation of Code Amendment No. 20-07, Councilmember Castellanos stated that his preference is to eliminate the 2,000 square-foot floor area convenience store size threshold in order to allow a more open competition amongst service station owners. The Planning Commission may choose to make no changes to, to eliminate, revise, or add on to the draft Code.

GENERAL PLAN CONSISTENCY

The proposed code amendment is consistent with Policy 2.1 (Maintain and enhance the City's current tax base) and Action 2.1a (Continue to strengthen the City's retail base) of the General Plan. The code amendment would allow service station convenience stores to better compete with similar sized markets, which may improve their generation of taxable sales for the City.

ENVIRONMENTAL DETERMINATION

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

STAFF RECOMMENDATIONS

Staff recommends that the Planning Commission adopt a resolution recommending approval of Code Amendment No. 20-07 to the City Council.

Submitted by: Jo-Anne Burns, Planning Manager

Attachments

Attachment No. 1 - Resolution Recommending Approval

Attachment No. 2 -Gasoline Stations with Convenience Stores

Attachment No. 3 - List of Businesses with Type 20/21 ABC Licenses

Motion by Redholtz, seconded by Holtz, to continue this matter to a date uncertain to allow time for the Planning Commission to visit the site, for staff to obtain ownership information, and to expand the public hearing notification to a 1,000-foot radius. Motion carried 5-0.

Chairperson Heng said this matter will be rescheduled for a public hearing before the Planning Commission on a date to be determined.

Chairperson Heng called a recess at 9:15 p.m.

Chairperson Heng reconvened the meeting at 9:27 p.m.

3. CODE AMENDMENT NO. 20-07

GENERAL EXEMPTION

LOCATION: City Wide

REQUEST: The proposed code amendment consists of an amendment to Chapter 26 (Zoning) of the West Covina Municipal Code to allow and regulate off-sale (retail sales for off-site consumption of beer and wine as an accessory use to a service station.

Planning Manager Jo-Anne Burns presented the staff report. During her presentation she told the Commission that this matter had been considered less than one year ago and, as such, she was presenting the code amendment as it was drafted a year ago. She reviewed the proposed changes to Sections 26-597, 26-664 and 26-685.103. In addition she presented the wording from the Department of Alcohol and Beverage Control for the required signage. Ms. Burns also told the Commission that she had checked the ABC website to determine how many off-sale licenses are in West Covina as well as checking with the city's independent contractor for business licenses, HdL.

Chairperson Heng opened the public hearing.

PROPOSERS:

Rich Brito, Sally Morales and Rommel Cipriano, for Mr. Karimi, spoke in favor of the code amendment saying they support the expanded business in service station convenience stores.

OPPOSERS:

Kim Sutcliffe, Fred Sykes, Steve Bennet, Colleen Rozatti and Robert Torres spoke in opposition to the code amendment. They expressed their concern with drinking and driving, public safety, and compromising the standard of living in West Covina. In addition, the opponents expressed their concern with endangering residents, increased service calls to the police department and preserving West Covina's ability to prohibit the sale of beer and wine at service station convenience stores.

Planning Manager Jo-Anne Burns said an email in opposition to this request was received from Jerri Potras and read it into the record.

Chairperson Heng closed the public hearing.

Commissioner Redholtz commented that this matter has been considered numerous times by the Planning Commission and City Council. He also commented that the request isn't to increase revenue but to allow service stations with convenience stores to compete with other convenience stores not associated with service stations. In addition he said he would not be in favor of reducing the floor area to allow more service station convenience stores to sell alcoholic beverages and that there were conditions proposed to regulate the sales of beer and wine in service station convenience stores.

Chairperson Heng expressed her concern with the code amendment, including that police will not remove intoxicated people from convenience stores and they might attract homeless people to purchase alcoholic beverages.

Motion by Jaquez, seconded by Heng, to recommend to the City Council approval of Code Amendment No. 20-27, with a request to the City Manager to direct the West Covina Police Department to provide the City Council with a statistical analysis of service calls for police in neighboring cities where sales of beer and wine are allowed in service station convenience stores. Motion carried 5-0.

This matter will be considered by the City Council at a public hearing scheduled for October 20, 2020.

NON-HEARING ITEMS - None

COMMISSION REPORTS/COMMENTS AND MISCELLANEOUS ITEMS

Commissioner Holtz said that Sizzler USA has filed for bankruptcy. There was a short discussion regarding whether the West Covina Sizzler will be affected.

Commissioner Redholtz spoke about the City of Pasadena Planning Commission recommending to the City Council that they increase penalties for unlicensed contractors working in the City.

Commissioner Jaquez asked about the process to be utilized in rewriting the Municipal Code.

Plaza West Covina has been sold by Starwood and there was a short discussion regarding the potential project that had been proposed for the site.

List of Businesses in the City with Active Type 20/21 Licenses from the Department of Alcoholic Beverage Control

	Status	License Type	Primary Owner	Premises Addr.	Business Name
1	ACTIVE	21	VONS COMPANIES INC THE	777 S GLENDORA AVE, WEST COVINA, CA 91790	VONS 2123
2	ACTIVE	21	THRIFTY PAYLESS, INC.	1528 E AMAR RD, WEST COVINA, CA 91792	RITE AID STORE 5610
3	ACTIVE	21	STATER BROS MARKETS	1025 E AMAR RD, WEST COVINA, CA 91792	STATER BROS MARKETS 54
4	ACTIVE	21	STATER BROS MARKETS	375 N AZUSA AVE, WEST COVINA, CA 91791	STATER BROS MARKETS 106
5	ACTIVE	21	FOOD 4 LESS OF CALIFORNIA INC	615 N AZUSA AVE, WEST COVINA, CA 91791	FOOD 4 LESS 337
6	ACTIVE	21	KASSAB, ZIAD	2017 W PACIFIC AVE, WEST COVINA, CA 91790	PACIFIC LIQUOR
7	ACTIVE	21	A & B AZUSA INC	1525 E AMAR RD, WEST COVINA, CA 91792-1619	SEAFOOD CITY SUPERMARKET
8	ACTIVE	20	7 ELEVEN INC	2887 E VALLEY BLVD, WEST COVINA, CA 91792	7 ELEVEN STORE 2175 14003C
9	ACTIVE	21	AZUSA SUPERMARKET INC	1512 E AMAR RD, WEST COVINA, CA 91792-1618	ISLAND PACIFIC SUPERMARKET
10	ACTIVE	20	TARGET CORPORATION	2831 E EASTLAND CTR DR, WEST COVINA, CA 91791-1624	TARGET T1028
11	ACTIVE	21	SAFAR, ZOUHAIR GEORGE	1915 W SAN BERNARDINO RD, WEST COVINA, CA 91790	KEG LIQUOR
12	ACTIVE	21	KAUR, SATINDER	1413 W PUENTE AVE, WEST COVINA, CA 91790	BIG BOB'S LIQUOR & MARKET
13	ACTIVE	21	NORTHGATE GONZALEZ LLC	1320 W FRANCISQUITO AVE, WEST COVINA, CA 91790-4630	NORTHGATE MARKET 22
14	ACTIVE	21	TARGET CORPORATION	2370 S AZUSA AVE, WEST COVINA, CA 91792-1511	TARGET T2147
15	ACTIVE	21	GARFIELD BEACH CVS LLC	727 S GLENDORA AVE, WEST COVINA, CA 91790-3707	CVS PHARMACY STORE 9735
16	ACTIVE	21	HK2 OF WEST COVINA LLC	987 S GLENDORA AVE, WEST COVINA, CA 91790-4205	
17	ACTIVE	21	GARFIELD BEACH CVS LLC	3670 S NOGALES ST, WEST COVINA, CA 91792-2714	CVS PHARMACY 9748
18	ACTIVE	21	GARFIELD BEACH CVS LLC	702 N AZUSA AVE, WEST COVINA, CA 91791-1010	CVS PHARMACY 9687
19	ACTIVE	20	WALGREEN CO	2453 S AZUSA AVE, WEST COVINA, CA 91792-1536	WALGREENS 09560
20	ACTIVE	20	7 ELEVEN INC	235 N AZUSA AVE, STE D & E, WEST COVINA, CA 91791-1356	7 ELEVEN
21	ACTIVE	21	MARUKAI CORPORATION	1420 S AZUSA AVE, WEST COVINA, CA 91791	TOKYO CENTRAL
22	ACTIVE	20	HEREDIA, JUAN	322 S GLENDORA AVE, WEST COVINA, CA 91790-3043	EL PILON MEAT MARKET & RESTAURANT
23	ACTIVE	21	PATEL, INDIRA RAMESH	2125 W FRANCISQUITO AVE, WEST COVINA, CA 91790-3205	FRANCISQUITO DRIVE IN DAIRY
24	ACTIVE	21	WALMART INC.	2753 E EASTLAND CENTER DR, WEST COVINA, CA 91791-6612	WALMART 5954
25	ACTIVE	20	PATEL, DHARINI RAJESH	1818 E ROWLAND AVE, WEST COVINA, CA 91791-1136	ROYAL CREST DAIRY
26	ACTIVE	20	7 ELEVEN INC	1319 W MERCED AVE, WEST COVINA, CA 91790-3904	7 ELEVEN STORE 14004B
27	ACTIVE	21	BEVERAGES & MORE INC	2970 E WORKMAN AVE, WEST COVINA, CA 91791-1610	BEVMO!
28	ACTIVE	21	LA AMAPOLA INC	130 PLAZA DR, WEST COVINA, CA 91790-2870	LA AMAPOLA
29	ACTIVE	21	AWAN, NUSRAT SHAHEEN	522 E VINE AVE, WEST COVINA, CA 91790-5101	RANCH TOWN MARKET
30	ACTIVE	21	WEST COVINA LIQUOR	1341 S AZUSA AVE, WEST COVINA, CA 91790-3902	WEST COVINA LIQUOR
31	ACTIVE	20	TOUHEY, DEBBIE JOYCE	551 E VINE AVE, WEST COVINA, CA 91790-5102	ROCKVIEW DAIRY #29
32	ACTIVE	21	S&T ENTERPRISE INC.	100 N GRAND AVE, BLDG A, WEST COVINA, CA 91791-1746	7 ELEVEN STORE 39860A
33	ACTIVE	20	99 CENTS ONLY STORES LLC	1516 E AMAR RD, WEST COVINA, CA 91792-1618	99 CENTS ONLY STORE #428
34	ACTIVE	21	TR & V CORP	1005 E AMAR RD, WEST COVINA, CA 91792-1300	CHANTRY'S PANTRY LIQUOR
35	ACTIVE	21	CHONOS, DIANE DENISE	2612 E GARVEY AVE S, WEST COVINA, CA 91791-2113	JUG N JIGGER
36	ACTIVE	20	7 ELEVEN INC	1347 S AZUSA AVE, STE A, WEST COVINA, CA 91791-3965	7 ELEVEN STORE 29939D
37	ACTIVE	21	GOODLIFE SOLUTIONS, LLC	1925 W BADILLO ST, WEST COVINA, CA 91790-1133	BOLAVARD
38	ACTIVE	21	JABBAR, WASILEH GHANEM	430 N AZUSA AVE, WEST COVINA, CA 91791-1347	QUICK STOP LIQUOR & MARKET
39	ACTIVE	21	YOUNAN, WAFA	130 N VINCENT AVE, WEST COVINA, CA 91790-2205	FREEWAY LIQUOR
40	ACTIVE	21	ABOU EID, MATANOS HADI	1230 W FRANCISQUITO AVE, WEST COVINA, CA 91790-4722	LOUIES LIQUOR II
41	ACTIVE	20	SF MARKETS LLC	2630 E WORKMAN AVE, UNIT 315A, WEST COVINA, CA 91791-1627	SPROUTS FARMERS MARKET #438
42	ACTIVE	21	INDER BRAR, INC.	334 N AZUSA AVE, WEST COVINA, CA 91791-1345	LEPRECHAUN LIQUOR & MARKET
43	ACTIVE	21	KING SPIRITS, INC.	944 W WEST COVINA PKWY, WEST COVINA, CA 91790	JERRY'S HOUSE OF SPIRITS
44	ACTIVE	21	CHOWDHURY, RAIHAN KABIR	1211 S GLENDORA AVE, WEST COVINA, CA 91790-4925	STONE LIQUOR
45	ACTIVE	20	7 ELEVEN INC	711 N AZUSA AVE UNIT A, WEST COVINA, CA 91791-1011	7-ELEVEN STORE 38590A

Gasoline Stations with Convenience Stores with Active Business Licenses within West Covina

Business Name	Business Address	City, State, Zip	Phone Number	Rate Type (STD)	Business Type	NAICS Description	Business Status	License Status
76 CIRCLE K	1200 S GLENDORA AVE	WEST COVINA, CA 91790-4924	(626) 850-5300	Retail Businesses	GAS STATION	Gasoline Stations With Convenience Stores	Active	Pending - Taxpayer
A R C O AM PM 83044	1333 W MERCED AVE	WEST COVINA, CA 91790	(626) 962-6129	Retail Businesses	GAS STATION	Gasoline Stations With Convenience Stores	Active	Current
ALL SMOG & TUNE ARCO GAS STATION	645 N SUNSET AVE	WEST COVINA, CA 91790-1661	(626) 337-7422	Retail Businesses	GAS STATION	Gasoline Stations With Convenience Stores	Active	Current
ARCO #42303	201 N GRAND AVE	WEST COVINA, CA 91791-1726	(626) 966-7711	Retail Businesses	GAS STATION	Gasoline Stations With Convenience Stores	Active	Current
AZUSA ARCO	300 N AZUSA AVE	WEST COVINA, CA 91791-1345	(909) 877-4477	Retail Businesses	GAS STATION	Gasoline Stations With Convenience Stores	Active	Current
BADILLO ARCO	901 N SUNSET AVE	WEST COVINA, CA 91790	(909) 877-4477	Retail Businesses	GAS STATION	Gasoline Stations With Convenience Stores	Active	Current
CIRCLE K #2709500	201 S AZUSA AVE	WEST COVINA, CA 91791-1904	(951) 270-5168	Retail Businesses	GAS STATION	Gasoline Stations With Convenience Stores	Active	Current
EASTLAND CHEVRON	246 N CITRUS ST	WEST COVINA, CA 91791	(626) 339-3929	Retail Businesses	GAS STATION	Gasoline Stations With Convenience Stores	Active	Current
FAMILY OIL COMPANY	2010 W PACIFIC AVE	WEST COVINA, CA 91790	(626) 961-0061	Retail Businesses	GAS STATION	Gasoline Stations With Convenience Stores	Active	Current
G & M OIL #117	801 S GLENDORA AVE	WEST COVINA, CA 91790	(626) 851-8796	Retail Businesses	GAS STATION	Gasoline Stations With Convenience Stores	Active	Current
GOLDEN MOTEUR INC	1200 S GLENDORA AVE	WEST COVINA, CA 91790-4924	(626) 850-5300	Retail Businesses	GAS STATION	Gasoline Stations With Convenience Stores	Active	Current
M & J SHELL	700 S SUNSET AVE	WEST COVINA, CA 91790-3544	(626) 337-1003	Retail Businesses	GAS STATION	Gasoline Stations With Convenience Stores	Active	Current
MY GOODS MARKET #5647	105 S VINCENT AVE	WEST COVINA, CA 91790-2901	(616) 338-4643	Retail Businesses	GAS STATION	Gasoline Stations With Convenience Stores	Active	Current
SOUTH HILLS 76	150 S CITRUS ST	WEST COVINA, CA 91791-2142	(626) 339-8018	Retail Businesses	GAS STATION	Gasoline Stations With Convenience Stores	Active	Current
SUNSET SERVICE CENTER, INC	901 N SUNSET AVE	WEST COVINA, CA 91790	(626) 960-9229	Retail Businesses	GAS STATION	Gasoline Stations With Convenience Stores	Active	Current
TRIPLE S CHEVRON SERVICE	1209 S SUNSET AVE	WEST COVINA, CA 91790-3960	(626) 338-6527	Retail Businesses	GAS STATION	Gasoline Stations With Convenience Stores	Active	Current
UNITED MORGAN ASSOCIATES LLC	901 N SUNSET AVE	WEST COVINA, CA 91790-1244	(909) 877-4477	Retail Businesses	GAS STATION	Gasoline Stations With Convenience Stores	Active	Pending - Taxpayer
UNITED OIL #189	123 N GRAND AVE	WEST COVINA, CA 91791-1710	(310) 323-3992	Retail Businesses	GAS STATION	Gasoline Stations With Convenience Stores	Active	Current
UNITED OIL #190	2450 S AZUSA AVE	WEST COVINA, CA 91792-1512	(310) 323-3992	Retail Businesses	GAS STATION	Gasoline Stations With Convenience Stores	Active	Current
VINCENT CHEVRON	206 N VINCENT AVE	WEST COVINA, CA 91790-2206	(626) 331-3312	Retail Businesses	GAS STATION	Gasoline Stations With Convenience Stores	Active	Current
WEST COVINA SHELL AUTO CARE	200 S AZUSA AVE	WEST COVINA, CA 91791	(626) 915-6431	Retail Businesses	GAS STATION	Gasoline Stations With Convenience Stores	Active	Current



U.S. Department of Justice
Office of Justice Programs
Office of Juvenile Justice and Delinquency Prevention

How To Use Local Regulatory and Land Use Powers To Prevent Underage Drinking

What do local regulatory and land use powers have to do with preventing underage drinking?

Communities all over the country are concerned about underage drinking and the many serious problems that go along with alcohol consumption by young people. Whether and how much young people drink depends to a large extent on community norms and expectations about drinking. These norms and expectations emerge from and reflect the community *alcohol landscape* or *alcohol environment*, including such elements as messages regarding alcohol use in the media and elsewhere; the ease with which young people can obtain alcohol through commercial and noncommercial sources; and the role of alcohol in community events. This landscape can be shaped by local regulations and land use ordinances, which are forms of *alcohol policy*.

Often communities take their alcohol landscape as a given or as the sole province of state and federal lawmakers. But many communities now are challenging these assumptions, developing local alcohol policies that have had impressive results. Local governments in most states do not have to wait for state legislatures or Congress to act to reshape their alcohol environments. This fact sheet gives a menu of local alcohol policy options that can reduce youthful drinking in our communities.

What are local regulatory and land use powers?

Local governments have the responsibility and authority to protect the public's general health, safety, and welfare. They fulfill this responsibility in part through their land use powers—by determining what activities may occur on the land within their jurisdiction. Both commercial and noncommercial activities associated with alcohol fall within these broad powers. Unless preempted by state or federal law (see “Beware of Preemption,” below), local communities can rely on land use zoning to determine where alcohol may be sold or consumed and how it is

distributed and marketed. Some states allow local governments to license commercial alcohol establishments. Licensing amplifies local zoning powers as a means to shape the local alcohol environment.

Community zoning ordinances identify the type of development that is permitted within a geographical area. For example, an R-1 zone typically identifies an area where construction of single family residences are permitted as a matter of right – no special license or public hearing is required to build a single family home in an R-1 zone. In addition to such permitted uses, however, other uses might also be permitted, but only after they have been reviewed for potential negative impacts on the area and special conditions placed on the development to minimize these negative impacts. For instance, in an R-1 zone, communities will often permit development of child care centers, schools, parks, and senior housing projects, but only after conditions have been placed on these developments to respond to concerns about the traffic, noise, and other potential negative impacts such developments might pose to the quality of life people expect in a single family neighborhood.

Although the exact term and approval process may differ from state to state, these *Conditional Use Permits* (CUPs) are a central feature of zoning laws in most states. Zoning ordinances specify which land uses require a CUP, and specify the public notice and hearing process that will be conducted to identify potential negative impacts and to decide the specific conditions that will be required to mitigate these negative impacts.

Zoning ordinances can require that any given land use, including retail alcohol outlets, must obtain a conditional use permit in order to conduct business. CUPs serve as a useful adjunct to other types of regulations and allow for specific and public consideration of each business development proposing to sell alcohol. A very important aspect of the CUP requirement is that municipalities may

revoke the CUP at some later date should the required conditions be violated. This opportunity to monitor the continuing operation of an alcohol outlet, and to take corrective action if necessary, is an important feature supporting community zoning ordinances that require that all alcohol outlets be subject to a conditional use permit.

How do local regulatory and land use powers influence the alcohol environment over time?

Specific regulatory and land use provisions affect how alcohol is made available in the community. Sales practices change over time as marketers and retailers develop innovative strategies and tactics for attracting new customers and increasing sales among current users. Once the changes occur, they become part of the community's landscape and are very difficult to reverse. For example, in the early 1980s, oil companies aggressively entered the convenience store industry, converting gas stations from auto repair centers to mini-marts that rely heavily on alcohol sales. This new marketing concept raises public health concerns because it increases the availability of alcohol (particularly in residential areas and near schools, where children are likely to be present) and combines the sales of alcohol and gasoline (possibly sending an unhealthy message about drinking and driving). Yet today, these alcohol/gas outlets are an accepted part of many communities' alcohol environment. Some entrepreneurs are now introducing alcohol to fast food outlets, beauty salons, and laundromats, marketing plans that raise similar public health and safety concerns.

If communities do not use their regulatory and land use provisions, changes such as these in their alcohol environments will respond solely to economic considerations, without attention to potential public health and safety costs. If, for example, a local jurisdiction had enacted in 1980 a land use restriction that prohibited alcohol and gasoline sales at the same retail outlet, then this marketing scheme would not have taken hold in that locality. Communities should be alert to the health and safety concerns raised by alcohol sales practices and anticipate potential problems. They can then act early to prevent these problems through regulation.

What is the relationship of local regulatory and land use powers to state regulation?

The 21st Amendment to the U.S. Constitution, enacted at the repeal of Prohibition, gives the state the primary authority for regulating alcoholic beverages. States vary widely in the degree to which they have handed this

authority to local jurisdictions. In a few cases, states have given local government the primary authority for regulating alcohol, providing only minimal statewide standards. At the opposite end of the spectrum, a few states exercise exclusive authority over alcohol commerce, taking away (or *preempting*) related local regulatory and land use powers. The large majority of states fall between these extremes, establishing overlapping (or *concurrent*) local and state regulatory powers. States are most likely to allow at least some forms of local land use zoning powers, with local licensing authority a less common practice. Ideally, the state establishes minimum standards for regulating alcohol use and distribution and allows localities wide discretion in developing additional standards to meet their particular needs and circumstances. This is the case in many states.

Concerned citizens and groups who wish to make maximum use of local power should research state and local laws. Local officials and attorneys who specialize in these issues can be good resources for information.

Beware Preemption

The fact that states can take away local powers raises a note of caution: A common strategy of commercial alcohol interests is to seek state preemption in order to eliminate local regulatory and land use policies they oppose. These preemption proposals are sometimes couched in public health terms, mandating relatively weak state controls but eliminating the possibility of more stringent local ordinances.

How do regulatory and land use policies respond to alcohol marketing practices?

A helpful typology for categorizing regulatory and land use policies is the four *P*'s of marketing—**p**roduct, **p**lace, **p**romotion and **p**rice. Marketers use these four elements to develop “total marketing” campaigns that target specific demographic groups. For example, specific *products* have been developed that appeal to young college students (e.g., 40-ounce beer containers and sweetened alcohol products). They are made available in *places* frequented by students and are offered at discount *prices* (recognizing that students have limited discretionary income). They are *promoted* using messages and images with youthful, college themes. Marketing campaigns targeting older, affluent, white males; inner-city African American youth; suburban

“soccer moms,” or any other demographic group will have a very different marketing mix. Unchecked, these marketing tactics can create unsafe alcohol environments for youth. Many college communities, for example, have college bars and drinking events as the primary venue for entertainment and are saturated with promotions and low price offerings that encourage heavy drinking.

Communities can use these same marketing strategies to develop alcohol-safe environments for young people. Each of the four P’s has a set of corresponding preventive responses. These responses should be coordinated with each other and applied in a comprehensive manner, targeting specific demographic groups. At stake is the shape of the alcohol environment and the level of risk to which a given population group is exposed. Here is a checklist of possible community policy options, using the four P’s typology.

What specific *place* regulations can be used to reduce alcohol availability to young people?

1. Restrict the location/number of commercial alcohol outlets.

- Prohibit alcohol outlets within specified distances from schools, child care centers, youth centers, and other locations where children congregate.
- Prohibit alcohol outlets from locating within specific distances of other alcohol outlets.
- Restrict the total number of alcohol outlets based on a population ratio.

The city of Salinas, California, enacted a CUP ordinance that mandates public review and comment of most proposals to open new alcohol retail outlets. As a result, the city has limited the number of new outlets and imposed strict conditions on those that have been approved. In one case, neighborhood protests prompted the city council to reject a proposal to open a liquor store in a new development. The neighborhood already had an over-concentration of alcohol outlets and wanted a day care center on the proposed site. The residents subsequently convinced the developer of the feasibility of the day care center and assisted him and the city in financing the center.

The picturesque and historic city of Old San Juan, Puerto Rico, had become a public health and safety nightmare because of heavy drinking in the streets, underage drinking, littering of beer bottles and other alcohol-generated debris, vandalism, and noise. Traffic was gridlocked by young people cruising and drinking in cars. Residents, merchants and tourists complained to city officials. As a result, a committee was formed including representatives of all concerned parties and new policies were established prohibiting sales on the streets, sales of beverages in glass containers, consumption of alcohol in cars, and unnecessary noise. High fines were established for failing to check age identification and for sales to minors. As a result of this well-publicized effort, the atmosphere in Old San Juan has been transformed and dramatic decreases in crime have occurred.

2. Restrict the types of commercial alcohol outlets.

- Restrict/prohibit concurrent sales of alcohol and gasoline.
- Restrict alcohol sales at mini-marts.
- Prohibit alcohol sales in non-traditional outlets (e.g., laundromats, movie theaters, beauty salons).
- Clearly distinguish between bars/nightclubs and restaurants (e.g., by limiting restaurants’ alcohol sales to a maximum of 40 percent of their receipts; restricting late hour operations; prohibiting separate bar areas), and permit bars only in “adult” zoned areas.
- In restaurants, require that all alcohol sales be made only in conjunction with food service and sales.

3. Require commercial alcohol outlets to use responsible serving/sales practices.

- Require good management policies and training to ensure that servers and clerks routinely and effectively check age identification.
- Require minimum age of 21 for all servers and clerks.
- Prohibit employee alcohol consumption while on duty.
- Prohibit minors' access to bars and nightclubs.
- Prohibit video games and other forms of entertainment popular with teenagers in alcohol establishments where minors can be present.
- Limit the amount of square footage and shelf space dedicated to alcohol sales in retail outlets.
- Restrict home delivery sales.
- Restrict hours of sale.
- Require adequate lighting to enable staff to discern easily the appearance and conduct of persons in the outlet and adjacent areas.
- Prohibit all public nuisance activities in and around alcohol outlets, including loitering, littering, harassment of passersby, graffiti, loud noise, violations of state ABC code provisions, and criminal conduct.
- Restrict/prohibit public telephones (to deter drug dealing).
- Require adequate security, including, if warranted, the employment of a security guard.
- Conduct routine, effective compliance checks.

More than a dozen communities nationwide (as well as 16 states) have enacted ordinances that either mandate or create incentives to encourage Responsible Beverage Service programs for retail alcohol outlet managers and/or servers. The programs include reviews of current business practices, training on how to check age identification, and procedures for handling intoxicated patrons.

The cities of Petaluma, Vallejo, and Santa Rosa, California, have enacted teen party ordinances that prohibit any gathering in a private residence of five or more persons under 21 years of age, at least one of whom possesses alcohol; hold the person responsible for the event (homeowner, organizer, etc.) liable to the city for the cost of police services if a police officer at the scene determines that the gathering is a threat to the public peace, health, safety, or general welfare of the community; and impose a fine on the homeowner or renter who permits such a gathering to occur at his or her residence.

4. Restrict minors' access to noncommercial sources of alcohol.

- Restrict alcohol service at community events such as fairs and holiday celebrations.
- Create alcohol-safe community events.
- Restrict the availability of alcohol in public settings such as parks and recreation centers.
- Enact keg registration and teen party ordinances to reduce the availability of alcohol to young people in noncommercial settings.
- Enact teen party ordinances that hold adults accountable for hosting teen parties.

What specific *promotion* regulations can be used to reduce minors' exposure to alcohol advertising/promotions?

- Prohibit outdoor advertising and billboards in areas where children are present (including residential zones and within 1,000 feet of schools, playgrounds and other child-oriented facilities).
- Restrict alcohol advertising to the interior of commercial alcohol outlets, and prohibit advertising inside the store that is visible from outside.
- Require signs prominently posted in commercial establishments regarding minimum age for alcohol purchase.
- Require signs prominently posted in public parks/facilities stating that it is illegal to consume alcoholic beverages.
- Prohibit the use of cartoon characters and other child-oriented images and slogans in alcohol advertising.
- Prohibit alcohol advertising by local retailers on television or radio programs with underage audiences exceeding 25 percent.
- Place limitations on the percentage of store window space devoted to advertising.
- Prohibit distribution or sale of any alcohol industry promotional materials to minors (e.g., as prizes at local fairs).
- Restrict alcohol industry sponsorship of any event sponsored or cosponsored by local government, any youth event (e.g., youth athletic events), or any event located on public property.

The cities of Baltimore, Chicago, Cleveland, Los Angeles, and Oakland (and many others) have enacted local ordinances restricting alcohol and tobacco billboards in residential areas and other locations where children are likely to be present. The Los Angeles ordinance includes strict controls on alcohol and tobacco advertising placed on storefront windows.

What specific *product* regulations can be used to reduce minors' exposure to alcohol marketing that encourages overconsumption or appeals especially to youth?

- Require that 12-ounce or smaller containers of beer be sold in six-packs only – no single can sales (which encourage street drinking).
- Restrict the size of single beer containers to no more than one quart.
- Require that wine be sold in containers of at least 750 milliliters in volume or in minimum four-pack cooler containers.
- Permit corked wine containers only – prohibit screw-top wine bottles.
- Prohibit sales of distilled spirits in mini-bottles unless sold in multiples.
- Prohibit/restrict sales of fortified wine and malt liquors (at least in residential areas) or specify that these products may not be chilled for sale.
- Prohibit sales of “alcopops” and other alcoholic products with characteristics that clearly appeal to youth (e.g., sweet taste; cartoon characters on packaging).

What specific *price* regulations can be used to deter discounting and to increase the cost of alcohol to minors?

- Impose fees on all commercial alcohol outlets to cover local code and law enforcement costs.
- Impose/increase alcohol taxes (if local option available), and encourage increased taxes at state and federal levels.
- Prohibit discounted alcohol prices that are lower than standard prices in the community.
- Prohibit price promotions, such as flat fee “drink and drown” night.

The Coalition on Alcohol Outlet Issues, a grassroots community group in Oakland, California, spearheaded a successful drive in 1993 to enact a local ordinance designed to reduce public nuisance problems associated with problem alcohol outlets (such as violations of alcohol laws, violence, loitering, drug dealing, public drinking, and graffiti). The ordinance imposes a \$600 fee on most alcohol retailers in the city, with the fee earmarked for code and law enforcement and merchant education. Despite significant problems in implementing the ordinance (including a law suit filed by the merchants but rejected by the California Court of Appeals that claimed the ordinance was preempted by state law), residents and the city saw significant reductions in the targeted problems. Two California cities, Vallejo and Santa Cruz, have enacted similar ordinances.

In Gallup, New Mexico, local activists persuaded the state legislature to permit a local alcohol sales tax if adopted through a voter initiative process. Voters overwhelmingly supported a 5 percent tax proposal, with the revenue designated for a local alcoholism treatment and prevention center. The tax, combined with other interventions, including a voluntary Responsible Beverage Service program, prohibitions on drive-up windows, and restrictions on new alcohol outlets, resulted in substantial reductions in alcohol-related crime, violence, and injuries.

Best Practices for Implementation

- Alcohol is a legal but potentially hazardous product that requires special regulatory and planning attention. To the extent permitted by law in each state, local governments should retain oversight and promote public involvement to ensure a safe alcohol environment. This means that communities should maintain an *active* regulatory posture regarding land use controls for alcohol outlets. Permits should not be issued automatically based on an unvarying set of criteria. Each case should be considered individually based on its potential to be an asset to the community rather than a liability.
- State alcohol licensing agencies usually examine the character and business history of the applicant in making decisions about granting a license. In order to complement the state review, community planning and land use decisions about alcohol outlets should focus on the nature of the business activity and its community impacts. Business owners come and go, but an alcohol outlet once approved is often a permanent fixture in a community. Land use permits should include conditions that define business practices and the manner and mode of business operations consistent with community values and standards, independent of the qualifications of current or future business owners.

- No local planning process can predict the problems or conditions that may occur in the future. As a consequence, when there is a proposed change in ownership or in the manner and mode of operation of an alcohol outlet, local governments should require a new public hearing to review the conditions placed on the alcohol outlet. The sale of alcohol is a regulated public privilege, and land use ordinances provide important opportunities to bring and retain balance between public and private interests.

Conclusions

In most states, communities have the power to establish local regulations and land use policies. These policies can help create and maintain an environment with regard to alcohol that protects public health and safety and that, in particular, protects young people from underage drinking. Communities should explore the scope of the powers they have in their particular state and use policy to control the place, product, pricing, and promotion practices used to sell alcohol. These actions can be extremely effective in reducing underage alcohol use and the serious problems related to alcohol.



Where can I get more information?

Other publications from the Office of Juvenile Justice and Delinquency Prevention's Underage Drinking Laws Program (Available by contacting the Underage Drinking Enforcement Training Center at 11140 Rockville Pike, 6th floor Rockville, MD 20852. 1-800-335-1287):

Regulatory Strategies for Preventing Youth Access to Alcohol: Best Practices (1999).

This publication reviews 22 regulatory options for reducing youth access to alcohol, assessing available research on their effectiveness and presenting criteria for prioritizing their implementation.

Strategies To Reduce Underage Alcohol Use: Typology and Brief Overview

This document provides a summary of the various strategies commonly used to reduce underage drinking and indicates the level of effect that might be expected from each strategy. The information is designed to assist states in setting priorities for activities to be funded with block grant money.

Guide to Conducting Alcohol Purchase Surveys

Guide to Conducting Youth Surveys

These two documents provide step-by-step information for data collection efforts that can be undertaken by states or localities to identify specific problem areas and to measure and monitor changes over time in alcohol use, sources of alcohol, and merchant compliance with the law.

The Cost of Underage Drinking

This document provides information on the various health and social problems related to underage drinking and can be used by state coordinators and others to generate support for enforcement of underage drinking laws.

Strategic Media Advocacy for Enforcement of Underage Drinking Laws

The vast majority of states identified media campaigns as a major component of their state action plans. In addition, media coverage is an essential component of enforcement. This guide provides state coordinators and others with practical information on using the media efficiently and effectively to bring about better enforcement of underage drinking laws.

Tips for Soliciting Cohesive Program Plans (Writing Effective RFPs for the Sub-granting Process)

This brief document provides state coordinators with a format for constructing requests for proposals that are likely to elicit cohesive and effective plans from local communities.

Preventing Sales of Alcohol to Minors: What You Should Know About Merchant Education Programs

This fact sheet defines merchant education and distills current research knowledge on the effectiveness of merchant education programs, the components they should include, and how these programs fit within a larger community effort.

Publications on land use controls and their application to alcohol availability:

Wittman, F. and Shane, P. Manual for Community Planning to Prevent Problems of Alcohol Availability, Berkeley, CA: CLEW Associate, 1988.

Wittman, F. Development and Use of Conditional Use Permits to Prevent Problems Related to Retail Alcohol Outlets: An Overview. *University of California at Berkeley, Institute for the Study of Social Change, 1994.*

These two publications provide an excellent overview of community zoning principles and applications to alcohol land uses. Although they focus particularly on California law (which has state preemption statutes that are unique to that state), the presentations of land use concepts and strategies are applicable to communities in other states. Contact: Community Prevention Planning Program, Institute for the Study of Social Change, 837 Folger Ave., Berkeley, CA 94710, 510-540-4717.

Sparks, M. The Conditional Use Permit as a Prevention Tool. *The Alcohol and Other Drug Prevention Extension. Folsom, CA: The EMT Group, Inc. 1998.*

This is the workbook used for a one-day training with the same title developed by the EMT Group under the auspices of the California Department of Alcohol and Drug Programs. It also focuses on California law but is a useful tool for those from other states. For information on the training and manual availability contact: The EMT Group, Inc., 771 Oak Avenue Parkway, Suite 2, Folsom, CA 95630, 916-983-6680.

Publications reviewing specific land use/local regulatory options:

Pratt, L., Rothstein, C., Meath, J., and Toomey, T. Keeping Alcohol Away from Underage Youth: Policy Solutions. *Minneapolis, MN: Alcohol Epidemiology Program, University of Minnesota, 1997.*

La Fond, C., Klaudt, K., Toomey, T., and Gehan, J. Model Alcohol Ordinances. *Minneapolis, MN: Alcohol Epidemiology Program, University of Minnesota, 1998.*

These two publications provide background information on and sample ordinance language for 12 specific local policy options for reducing youth access to alcohol. Available on the Internet at <http://www.epi.umn.edu/alcohol/default.htm> or contact: Alcohol Epidemiology Program, School of Public Health, University of Minnesota, 1300 South Second Street, #300, Minneapolis, MN 55454-1015, 612-626-9070.

Resources on Environmental Prevention Strategies for Preventing Alcohol-Related Problems:

Center for Substance Abuse Prevention, Environmental Prevention Strategies: Putting Theory into Practice. *Training and Resource Guide. Rockville, MD: CSAP, 1999.*

This guide includes a 30-minute video, research review, and resource materials. It is an excellent tool for introducing environmental prevention concepts and strategies, including local land use/regulatory strategies, to community groups and policy makers. Materials may be ordered from NCADI via mail, fax, telephone, or e-mail. Phone (toll free) 800-729-6686 to speak to an information specialist, or write to The National Clearinghouse for Alcohol and Drug Information, PO Box 2345, Rockville, MD 20847-2345. Fax 301-468-6433. E-mail: info@health.org

Marin Institute for the Prevention of Alcohol and Other Drug Problems, The Alcohol Policy Slide Set Series: Resources for Organizing and Advocacy, Marin Institute: San Rafael, CA, 1997.

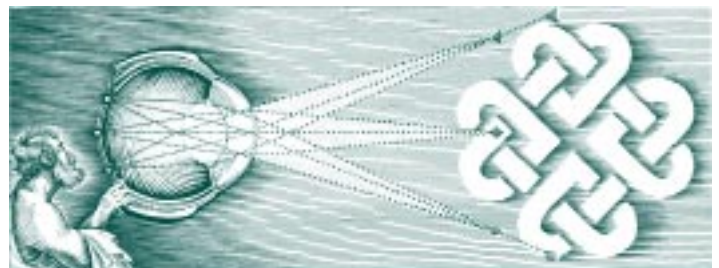
This compilation of six sets of scripted slides (with topics including alcohol and violence, alcohol outlets and community economic development, alcohol availability regulatory options, and alcohol advertising) is an additional resource for introducing environmental strategies to community groups and policy makers. Contact: Marin Institute, 24 Belvedere Street, San Rafael, CA 94901, 415-456-5692.

This guide was written by James F. Mosher, J.D., of the Marin Institute for the Prevention of Alcohol and Other Drug Problems and Bob Reynolds of the Pacific Institute for Research and Evaluation.

Prepared by

Pacific Institute
FOR RESEARCH AND EVALUATION

In support of the
**OJJDP Enforcing the
Underage Drinking Laws Program**



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The Underage Drinking Enforcement
Training Center

www.pire.org/udetc



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: October 20, 2020

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT: CONSIDERATION OF RESOLUTION 2020-104 CONFIRMING A WASTE MANAGEMENT AGENCY AND DESIGNATING A LOCAL ENFORCEMENT AGENCY FOR ENFORCEMENT OF A SOLID WASTE MANAGEMENT PROGRAM

RECOMMENDATION:

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

1. Adopt a resolution confirming a Waste Management Enforcement Agency and designating a Local Enforcement Agency (Attachment No. 1):

RESOLUTION NO. 2020-104 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, CONFIRMING A WASTE MANAGEMENT ENFORCEMENT AGENCY AS A DIVISION OF THE FIRE DEPARTMENT AND DESIGNATING A LOCAL ENFORCEMENT AGENCY FOR ENFORCEMENT OF A SOLID WASTE MANAGEMENT PROGRAM IN THE CITY OF WEST COVINA, and

2. Authorize the City Manager to negotiate and execute a Professional Services Agreement between the City of West Covina and Rincon Environmental, LLC for Local Enforcement Agency (LEA) services.

BACKGROUND:

On April 7, 1992, the City Council adopted Resolution No. 8807 creating a Waste Management Enforcement Agency (WMEA) and designating the City as the Local Enforcement Agency (LEA). On July 29, 1992, the California Integrated Waste Management Board (predecessor agency to the Department of Resources Recycling and Recovery - CalRecycle) approved the City of West Covina Enforcement Program Plan and the City's designation as the LEA. Over the following decades the City undertook a series of reorganizations and the WMEA responsibilities were shifted, but the original resolution was not correspondingly amended.

On February 27, 2020, the City received a Notice of Intent to Decertify the LEA for the City of West Covina from CalRecycle (Attachment No. 2). The Notice cited three primary concerns:

1. The LEAs failure to exercise appropriate oversight of BKK regarding the Post Closure Maintenance Plan;
2. The LEAs failure to maintain proper certifications; and
3. The LEAs conflict-of-interest due to a departmental reorganization.

On March 4, 2020, the City terminated the contract with the LEA, and retained the services of Rincon Environmental LLC and its President, Steve Samaniego as the new LEA. Mr. Samaniego is a former City employee who served as LEA and helped oversee post-closure maintenance. He has over twenty years of knowledge regarding BKK, and possesses the professional certification required to meet State standards.

On March 9, 2020, the City entered into a Legal Services Agreement with Cole Huber because one of the partners, Elizabeth Martyn, served as the City Attorney for West Covina during the late 1980s until 2000 and participated in the City's efforts to close the BKK Landfill.

DISCUSSION:

Protecting public safety is one of the City's major goals. Regulatory compliance and positive intergovernmental relations are essential and integral parts in achieving that goal. Since being retained in March, Mr. Samaniego and Ms. Martyn have traveled to Sacramento with City staff to meet with CalRecycle to address the issues raised in their February 27, 2020 Notice of Intent. Over the past six months Mr. Samaniego has worked to update the Enforcement Program Plan (EPP), the Designated Information Plan (DIP). Concurrently, Ms. Martyn worked with counsel for CalRecycle to reach a "Stipulation for Continuance of Hearing and Order" (Attachment No. 3) to confirm the LEA and enter an 18-month probationary period provided the City meets the following requirements:

1. Adopt a resolution clarifying the reporting structure for the LEA, and move the LEA under the Fire Department, which is addressed by the resolution before the City Council (Attachment 3);
2. Update the EPP and DIP; and
3. Address other issues.

The Stipulation represents a significant step forward for the City and it assures local control over the former Class III Landfill. The Resolution the City Council is being asked to adopt has been reviewed and approved by CalRecycle staff and reaffirms the City's desire to serve as the Local Enforcement Agency. The duties of the LEA will be carried out under a contract with Rincon Environmental and the LEA will be housed within the Fire Department. This reporting structure addresses an issue identified by CalRecycle. Steve Samaniego is a Registered Environmental Health Specialist (REHS #4589) as mandated by State law. Upon approval of the Resolution by the City Council, the EPP and DIP will be amended accordingly.

Through the stipulation agreement, the City and CalRecycle have identified and agreed to mutually work toward resolution of the issues regarding the Class III Landfill. The Stipulation confirms cooperation between the City and CalRecycle. The City appreciates CalRecycle's willingness to address mutual issues of concern.

To effectuate the LEA Resolution and reach a cooperative agreement with CalRecycle, the existing Professional Services Agreements with Rincon Environmental and Cole Huber need to be amended to extend the term and increase the budget. Rincon's current Agreement is for \$64,990 and extends through June 30, 2021. Cole Huber's current Agreement is for \$29,990 with no term. Staff is recommending that the City enter into a new Professional Services Agreement with Rincon Environmental at a total cost not to exceed \$120,000 and a term through June 30, 2022, and terminate the existing Agreement (Attachment No. 4). Staff is also recommending that the budget for Cole Huber be increased by \$35,000 with no term. Funding has been identified in the General Fund to pay these expenses.

Staff is also seeking approval to install a section of fence on City property that was removed several years ago when the commercial pads were graded for Big League Dreams and the Heights Shopping Center. Staff is in the process of securing three bids, and it is anticipated that the lowest bidder will be an amount not to exceed \$35,000. This expense will also be paid from the City's General Fund budget.

LEGAL REVIEW:

The City Attorney's Office has reviewed and approved the Professional Services Agreement as to form.

OPTIONS:

Options available to the City Council include:

1. Approve the Local Enforcement Agency Resolution as presented, or
2. Provide alternative direction to staff.

Prepared by: Mark Persico, Assistant City Manager

Fiscal Impact

FISCAL IMPACT:

The funds to pay for the Rincon Environmental Services Professional Services Agreement (\$120,000) to increase the Cole Huber budget (\$35,000) and install the fence (\$35,000) total \$190,000 and are available through the General Fund (Account No. 110.22211).

Attachments

- Attachment No. 1 - Resolution 2020-104 (Local Enforcement Agency)
 - Attachment No. 2 - Notice of Intent to Decertify
 - Attachment No. 3 - Stipulation for Continuance of Hearing and Order
 - Attachment No. 4 - Professional Services Agreement - Rincon Environmental
-

CITY COUNCIL GOALS & OBJECTIVES: Achieve Fiscal Sustainability and Financial Stability
Protect Public Safety
Engage in Proactive Economic Development

RESOLUTION NO. 2020-104

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA CONFIRMING A WASTE MANAGEMENT ENFORCEMENT AGENCY AS A DIVISION OF THE FIRE DEPARTMENT AND DESIGNATING A LOCAL ENFORCEMENT AGENCY FOR ENFORCEMENT OF A SOLID WASTE MANAGEMENT PROGRAM IN THE CITY OF WEST COVINA

WHEREAS, on April 7, 1992, the City Council of the City of West Covina adopted Resolution No. 8807 "CREATING A WASTE MANAGEMENT ENFORCEMENT AGENCY, DESIGNATING A LOCAL ENFORCEMENT AGENCY AND CONFIRMING THE HEARING PANEL FOR ENFORCEMENT OF A SOLID WASTE MANAGEMENT PROGRAM IN THE CITY OF WEST COVINA, AND APPOINTING A LOCAL ENFORCEMENT AGENCY PROGRAM MANAGER;" and

WHEREAS, on July 29, 1992, the California Integrated Waste Management Board (predecessor agency to the Department of Resources Recycling and Recovery – CalRecycle) approved the City of West Covina Enforcement Program Plan and during this period also certified the West Covina Waste Management Enforcement Agency (WMEA) as the City's designated Local Enforcement Agency (LEA) for the City of West Covina; and

WHEREAS, since that time the City has had several reorganizations and the WMEA responsibilities have been assigned to various City Departments, the designation of which as the LEA were never formalized by amendment of Resolution No. 8807; and

WHEREAS, after consultation with CalRecycle, CalRecycle and the City agree that the designation of the successor department to be housing the LEA should be confirmed by the City and the reporting structure reflected in this resolution and thereafter in a current organizational chart and posted on the City's website; and

WHEREAS, the City Council does hereby again confirm, find, determine and declare that California Public Resources Code section 43203(c) authorizes the City Council to designate a separate Local Enforcement Agency for the City of West Covina; and

WHEREAS, On October 7, 2014, the City Council adopted Resolution No. 2014-44 establishing the criteria for appointment of a hearing officer pursuant to Public Resources Code section 44308(d) and Title 14, California Code of Regulations section 18060 with the hearing officer to conduct all hearings required by Public Resources Code Part 4, Chapter 4, and Part 5, Chapter 1; and

WHEREAS, On July 16, 2019, the City Council adopted Resolution No. 2019-53 establishing Mr. Mike Hambel as the LEA Hearing Officer.

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

SECTION 1. Resolution No. 8807 is hereby rescinded.

SECTION 2. Resolution No. 2014-44 shall remain in full force and effect.

SECTION 3. Resolution No. 2019-53 is hereby rescinded.

SECTION 4. The City shall appoint a qualified hearing officer pursuant to the procedures set forth in Resolution No. 2014-44 as soon as possible and shall report that information to CalRecycle through an update to its Enforcement Program Plan.

SECTION 5. The City Council does confirm the establishment of the City of West Covina Waste Management Enforcement Agency ("WMEA")

SECTION 6. The WMEA shall be a division of the Fire Department and shall be separate and apart from the Community Development Department consistent with the conflict of interest provisions of Public Resources Code Section 43207; and

SECTION 7. Pursuant to California Public Resources Code section 43203(c), the City does hereby designate the WMEA to be the LEA for the City of West Covina, as a division of the Fire Department.

SECTION 8. The Chief of the Fire Department is authorized to act independently of the City to carry out the responsibilities of the WMEA.

SECTION 9. The Fire Department on behalf of the WMEA may contract for a qualified Local Enforcement Agency program manager pursuant to applicable statutory and regulatory requirements.

SECTION 10. The provisions of this Resolution have been reviewed by and are acceptable to CalRecycle staff.

SECTION 11. This resolution shall be effective upon administrative approval by CalRecycle staff no later than November 10, 2020.

SECTION 12. The City Clerk shall certify to the adoption of this Resolution and shall enter the same in the book of original resolutions.

APPROVED AND ADOPTED this 20th day of October, 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. 2020-104 was duly adopted by the City Council of the City of West Covina, California, at a regular meeting thereof held on the 20th day of October, 2020, by the following vote of the City Council:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lisa Sherrick
Assistant City Clerk

California Environmental Protection Agency

CalRecycle 
Department of
Resources Recycling and Recovery

Gavin Newsom
California Governor

Jared Blumenfeld
Secretary for Environmental Protection

Ken DaRosa
CalRecycle Acting Director

February 27, 2020

Sent via Email and U.S. Mail

David Carmany
City Manager
City of West Covina
1444 W. Garvey Avenue South, Room 305
West Covina, CA 91790

**Re: Notice of Intent to Decertify the LEA for the City of West Covina
for the LEA's Failure to Fulfill Its Responsibilities and Obligations
under the Public Resources Code Division 30, Part 4, Chapter 2 and
Its Implementing Regulations**

Dear Mr. Carmany:

The purpose of this letter is to inform you that due to the City of West Covina's (the City) chronic failure to comply with and maintain its certification requirements for its local enforcement agency (LEA) designation¹ and its failure to acknowledge its jurisdiction and enforcement obligations over the BKK Sanitary Landfill (Landfill), the Department of Resources Recycling and Recovery (CalRecycle) intends to begin procedures to decertify the City as LEA and assume enforcement agency duties over solid waste facilities within the City's jurisdiction.

If the City would like to avoid a decertification action, it may withdraw its LEA designation by issuing a notice to CalRecycle as required by Title 14, section 18056 of the California Code of Regulations (CCR). CalRecycle must receive this notice by Monday, March 30, 2020. If CalRecycle does not receive such notice by that date, it will begin decertification proceedings, as required by Article 2.3, Chapter 5, Division 7, Title 14 of the CCR.

¹ It is important to note that, in addition to the issues raised in this letter, CalRecycle's records show that the City originally designated the Waste Management Enforcement Agency (WMEA) as its LEA in 1992. This designation has not been updated with CalRecycle although the WMEA no longer exists. This letter continues to refer to an LEA for the City, but this designation issue was not resolved.

Discussion

CalRecycle brought the issues in this letter to the City's attention at an in-person meeting at your offices on October 16, 2019. We were hoping to meet directly with you and other City leadership; however, the only City representatives present were Community Development Director, Jeff Anderson, and City Engineer, Michael Ackerman. At that meeting, we discussed information that had come to light regarding postclosure maintenance of the BKK Sanitary Landfill as well as continued issues with the LEA's maintenance of its certification requirements.

The LEA's Jurisdiction and Enforcement Obligations over the BKK Sanitary Landfill

The primary reason for the meeting on October 16, 2019, was for CalRecycle to impress upon the City's representatives CalRecycle's concern over the LEA's apparent misconceptions concerning the scope and extent of the LEA's jurisdiction and enforcement obligations with regard to the BKK Sanitary Landfill. This issue arose from CalRecycle staff's notation in a September 29, 2016, Postclosure Maintenance Plan (PCMP) Update Comment letter of certain deficiencies in BKK's proposed Update, which, among other things, stated:

[T]he Update should include the portions of the landfill property that have been previously omitted. The portions of the landfill property that have not been incorporated in the Update include the Target and Home Depot stores, along with the baseball park and associated recreational facilities. In order for CalRecycle to accept the Update, the matter of landfill boundary should be resolved by the operator and subsequently reflected in the Update. The Update should be revised to incorporate the entire landfill permitted boundary. Furthermore, should the operator propose modifying the permitted boundary, CalRecycle staff would like to point out that any changes in the physical boundaries of the landfill can be accepted only when such changes do not compromise the effectiveness of the landfill gas subsurface migration system, allowing for unbiased monitoring, not influenced by the presence of collection by the presence of collection system. Thus, only when the operator can demonstrate the monitoring system can be fully effective and functional, may CalRecycle concur with such proposal.

BKK's response to these deficiencies in their follow-up June 8, 2017, PCMP Update Comment letter appears to assert that the LEA's jurisdictional authority to enforce solid waste law over the portions of the permitted boundary of the Landfill that fall outside the waste footprint of the landfill was vitiated upon the

Landfill's closure: "The difference between the *historic* permit boundary for the 583-acre site and the current BKK parcel ownership of 424 acres is an *administrative issue*...[and] BKK does not propose to allocate postclosure funds to address the administrative issue of the permit boundary." (Emphasis added.) These statements suggest that, according to BKK, the permit's inclusion of the parcels outside of the waste footprint but within the permitted boundary are an "administrative issue" and thus not worthy of pursuit. CalRecycle thereafter advised BKK in the March 25, 2019, PCMP Update Comment letter (which, as all such letters, was copied to the LEA) that CalRecycle rejected this argument.

These statements by BKK took on critical significance to CalRecycle when the LEA made the following assertion: "The LEA agrees with BKK that the boundary issue between the historic 583-acre permit boundary and the current 424-acre BKK ownership boundary is an administrative issue." (Letter from LEA contractor TRC Solutions to BKK, Nov. 30, 2018.) While it is not clear what BKK or the LEA means by "administrative issue," it appears from the LEA's statement that the LEA has adopted the position that the LEA's jurisdictional authority to enforce solid waste law over portions of the permitted boundary of the Landfill outside of the waste footprint was vitiated upon the Landfill's closure. Such a position is a serious abrogation of the LEA's obligations and undercuts state solid waste law.

At the October 16, 2019, meeting, CalRecycle staff impressed this point upon the City representatives. CalRecycle staff explained the basic tenets of the permitting structure that forms the foundation of solid waste law in California. Particularly relevant here are the requirements that solid waste facilities have a long-term "buffer zone" between the edge of the waste footprint and the facility boundary delineated in the permit, and also that owners and operators of solid waste facilities bear the burden of maintaining the facility during its postclosure period. These requirements are critical for the continued protection of public health, safety, and the environment.

In the case of the BKK Sanitary Landfill, the owners/operators are responsible for the ongoing maintenance of the Landfill during its postclosure period. The Landfill consists of the waste footprint as well as the "buffer zone," which, when combined, forms the 583-acre permitted boundary of the Landfill. As you should be aware, the existence of this "buffer zone" is critical because it is meant to ensure that any explosive methane gases being generated as the waste decomposes can be controlled prior to reaching the Landfill boundary. And, in addition to the operator, all parties that own parcels within the permitted boundary of the Landfill are subject to the jurisdiction of the LEA so that the LEA can oversee the institutional controls for landfill gas and enforce against any such parties if there is noncompliance with the permit and solid waste laws.

Accordingly, unless and until the permitted boundary of the Landfill is revised, all parties that own parcels with the 583-acre permitted boundary are subject to the enforcement jurisdiction of the LEA. And, as discussed above, the Landfill boundary cannot be changed until it is clear that the boundary change will not compromise the effectiveness of the landfill gas subsurface migration system. This means the operator must be able to demonstrate the monitoring system can be fully effective and functional. As this has not happened, the 583-acre landfill boundary continues to constitute the boundary of the Landfill subject to enforcement oversight by the LEA.

After the foregoing was explained to City representatives at the October 16, 2019, meeting, CalRecycle staff and the City representatives agreed to a schedule whereby, among other things, the City would clarify its position on the issue of the LEA's jurisdictional authority to enforce solid waste law over the portions of the Landfill's permitted boundary outside of the waste footprint during postclosure.

However, when the City submitted documents to CalRecycle on December 31, 2019 and February 26, 2020, to address the deficiencies discussed at the October 16, 2019 meeting, those documents included the following statement:

The BKK Sanitary Landfill Solid Waste Facility Permit (SWFP) No. 19-AF-0001 dated April 27, 1979 *expired* as of the landfill closure to receipt of waste on September 14, 1996. (Emphasis added.)

By this statement, it appears that the City has nevertheless determined to maintain the position that the LEA's jurisdictional authority to enforce solid waste law over the portions of the Landfill's permitted boundary out of the waste footprint vitiated upon closure. For the forestated reasons, such a position cannot stand.

The City's Failure to Maintain its LEA Certification

The secondary reason for the October 16, 2019, meeting was to address the ongoing failure of the City to maintain its LEA certification requirements. Most recently, the LEA has failed to demonstrate that there is no conflict of interest between LEA oversight and BKK operational activities. In addition, the LEA has not been meeting other certification requirements and benchmarks required by the LEA's October 4, 2018 Evaluation Workplan.

In response to the October 16, 2019, meeting with CalRecycle, the City requested the option to submit a Designation Information Package (DIP) and an updated Enforcement Program Plan (EPP). CalRecycle provided task milestones and a due date of November 21, 2019 (this date was based on the LEA's next EPP due date). This date was extended to December 31, 2019, and again to February 26, 2020. The City submitted documents on November 27,

2019, December 31, 2019, and February 26, 2020. These documents were intended to update the LEA's EPP and bring the LEA into compliance with its certification requirements. Nevertheless, and even after back and forth communications with CalRecycle staff, the City was not able to demonstrate that it has resolved its outstanding certification requirements.

Conflict of Interest

Where a local jurisdiction has a department that is the "operating unit"² for a solid waste facility, whether currently operating or closed, it must house its enforcement agency in a separate department in order to avoid a conflict of interest:

No local governmental department or agency, or any employee thereof, which is the operating unit for a solid waste handling or disposal operation shall be the enforcement agency, or an employee thereof, for the types of solid waste handling or disposal operation it conducts unless authorized by the board to act in that capacity.

(Pub. Resource Code, § 43207.)

This provision is meant to ensure the same department responsible for operations or contracts for operations over a solid waste facility is not also responsible for enforcement activities over its actions as operator. Typically, this provision is satisfied with an organizational chart in the EPP that clearly shows the separation between operations and enforcement.

In the documents the City submitted to CalRecycle on December 31, 2019 and February 26, 2020, the City states that it has designated the Community Development Division as the LEA and the Community Development Director, Jeff Anderson, will be the LEA Program Manager and oversee the contract with TRC Solutions, the contractor providing the LEA services (TRC Contract). Nevertheless, the TRC Contract states that TRC Solutions will meet the following needs:

The City took over remedial operations from BKK Corporation in October 2004 providing oversight on remediation and closure activities. Under the City and the Successor Agency to the Redevelopment Agency oversight, the former landfill is being transformed to support 360,000 square feet of commercial property,

² ""Operating unit" means a local agency within the jurisdiction of the designating local governing body that operates, causes to operate, or administers contracts or agreements for any portion of a facility or solid waste handling and disposal system." (Cal. Code Regs., tit. 14, § 18011, subd. (a)(17).)

an 18-hole golf course, and a 47-acre natural habitat preserve....
The City and Successor Agency are seeking professional services in support of monitoring on-going operation and maintenance (O&M) activity at the landfill to insure [sic] human health and safety as development and expansion of new public use continues.

The contract goes on to state that TRC Solutions will serve both as LEA and as consultant to the Successor Agency in its development oversight of the BKK Sanitary Landfill site. According to the City's public webpage, the Successor Agency is also housed in the Community Development Division under Jeff Anderson.

The documents submitted by the City on December 31, 2019, also included a contract with Rincon Environmental, LLC and the Successor Agency (Rincon Contract) for "LEA environmental consulting and oversight inspection services to the [Successor] Agency with respect to the BKK landfill Site." Publicly available information also suggests that the Successor Agency manage or administers contracts or agreements relative to parcels within the Landfill boundary. The February 26, 2020 document submittal did not include the Rincon Contract and included a notation on the DIP checklist that "Steve Samaniego & Rincon do not perform LEA duties for the City of West Covina." Nevertheless, CalRecycle has received no information to suggest that the Rincon Contract has been amended or voided. Merely removing it from the document submittal does not change the contract's terms. And, as shown herein, cancelation or amendment of the Rincon Contract alone does not alleviate the LEA's apparent conflict of interest issues.

The documents submitted on February 26, 2020, also amend the City's organizational chart to move Landfill Operations (under Mitch Kaplan of BKK) into the Community Development Department under Community Development Director, Jeff Anderson, who, as the organization charts states, is also the LEA Program Manager. This appears to mean that the LEA, the Successor Agency, and Landfill Operations are not only all housed in the same department, but also report to the same person. The accompanying draft resolution does not repair this apparent conflict of interest. As stated above, the department responsible for operations cannot also be responsible for enforcement.

In addition to the documents submitted to CalRecycle by the City, CalRecycle has received additional information that suggest a conflict of interest. Inspection reports submitted to CalRecycle include statements that make it appear the LEA is acting on behalf of the BKK owner/operator by taking actions related to

recommendations from CalRecycle's May 2017 investigation report.³ Further, in the EA30 grant application submitted to CalRecycle, the grant application stated: "As the Local Enforcement Agency (LEA) for the BKK Class III Landfill, the City of West Covina intends to use the FY 2019-2020 funds to conduct vapor probe inspections, evaluate conditions of existing perimeter vapor probes, replace existing vapor probes with new probes, and install additional fencing for site security to prevent trespassers from entering landfill without approval." Actions like installing probes and security fencing appear to be related to site maintenance rather than LEA oversight activities, and LEA grant funds are only available for LEA activities.

As discussed in the previous section, the LEA has jurisdictional authority over all owners and operators of the BKK Sanitary Landfill, including those who own property within the "buffer zone" of the permitted boundary. The Community Development Department houses the Successor Agency, the LEA, and Landfill Operations, as well as the TRC Contract and Rincon Contract, both of which appear to contain scopes of work related to the maintenance and development of the BKK Sanitary Landfill site as well as LEA oversight activities. The contracts and agreements for development of the Landfill site as well as Landfill maintenance activities appear to make the Community Development Department the operating unit for the Landfill, which means the LEA cannot also be housed in the Community Development Department. Further, the contractor providing LEA services cannot also perform maintenance and operational duties for the Landfill the LEA is overseeing, which is what is stated in the TRC Contract and suggested in the EA30 grant and inspection reports prepared by TRC Solutions.

Failure to Meet Other Requirements

In addition to the foregoing, the LEA has a history of noncompliance with certification requirements. The LEA has failed to provide the formal documentation necessary to meet EPP certification in 2018 and 2019. As a result of findings in the City's last LEA Evaluation, a formal Evaluation Workplan to correct deficiencies was approved in October 2018. The LEA has missed several key milestones required by the Workplan. Specifically, the LEA has not compelled the owner/operator of the BKK Sanitary Landfill to take actions related to landfill gas monitoring probe investigation statuses; the LEA continues to cite "areas of concern" without increasing those citations to "violations" when the areas of concern are repeatedly not corrected; and the LEA has not consistently cited site security violations.

³ *Viability and Integrity Assessment of Landfill Gas Compliance Wells BKK Landfill City of West Covina, Los Angeles County Facility No. 19-AF-0001*. Prepared by Gino Yekta, PE, REHS, Senior Waste Management Engineer on May 31, 2017.

Additionally, in the documents submitted to CalRecycle on December 31, 2019 and February 26, 2020, the City states in the LEA time task analysis that the total staff for the LEA constitute 0.23 FTE. LEAs are required to maintain at least one or more full time staff members dedicated solely to solid waste and one of these dedicated staff must be a registered environmental health specialist (REHS). (Cal. Code Regs., tit. 14, § 18072, subd. (a).) The City's time task analysis states that the contract REHS will work 20 hours per week if needed and "will be hired on an as need [sic] basis depending on workload." As such, the time task analysis does not meet LEA certification requirements for technical resources.

Conclusion

Based on the foregoing, CalRecycle has determined that proceeding with decertification of the LEA for the City is necessary for the protection of public health, safety, and the environment.

If the City would like to avoid a decertification action, it may withdraw its LEA designation by issuing a notice to CalRecycle as required by Title 14, section 18056 of the CCR. CalRecycle must receive this notice by Monday, March 30, 2020. If CalRecycle does not receive such notice by that date, it will begin decertification proceedings, as required by Article 2.3, Chapter 5, Division 7 of Title 14 of the CCR.

This letter does not constitute a complete list of grounds for action over the LEA as permitted by Article 2.3, Chapter 5, Division 7 of Title 14 of the CCR. CalRecycle reserves the right to add any and all applicable grounds should it pursue an action over the LEA.

Should you have any questions, you may contact Kate Nitta at (916) 341-6067.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kathleen Nitta', followed by a stylized flourish.

Kathleen Nitta
Senior Staff Counsel

CC: Jeff Anderson
Community Development Director & LEA Program Manager,
City of West Covina

Michael Ackerman
City Engineer, City of West Covina

Kris Kazarian
BKK Corporation

Kelly P. McGregor
President, Tetra Tech BAS, agent for BKK Corporation

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Acting Chief Counsel
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Sacramento, CA 95812-4025
5 Telephone: (916) 341-6067
Facsimile: (916) 319-7765
6 Email: kathleen.nitta@calrecycle.ca.gov

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11 Email: matrynlaw2000@aol.com

12 Special Counsel for CITY OF WEST COVINA

13
14 STATE OF CALIFORNIA

15 DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

16 In the matter of:)
17)
18 The Decertification of the Local)
Enforcement Agency for the City of West)
Covina)
19)
20)
21)

STIPULATION FOR CONTINUANCE OF
HEARING AND ~~PROPOSED~~ ORDER

HEARING DATE: September 30, 2020

22 As agreed with Hearing Officer Douglas Jensen by telephone conference on Monday,
23 September 14, 2020, the briefs in this matter will be due on September 23, 2020 by 5:00 p.m.
24 with the hearing on September 30, 2020, unless the Parties otherwise agree in a written

1 stipulation. After significant and ongoing discussions between the Parties, the Parties hereby
2 request that the September 30, 2020 hearing date be postponed, under the following terms
3 and timelines to which the parties hereby stipulate and agree:

4 **With regard to Local Enforcement Agency (LEA) designation:**

5 1. The City of West Covina will bring to its City Council a proposed Resolution, and
6 schedule that Resolution to be considered at the October 20, 2020 City Council meeting. That
7 Resolution shall properly designate a City department as LEA, and the Parties shall agree on
8 Resolution language prior to October 6, 2020. The designated department shall not be
9 affiliated with the Community Development Department, which currently houses, among other
10 divisions, the Community and Economic Division, which houses the West Covina Successor
11 Agency.

12 2. If the City Council passes the Resolution, the City will:

13 A. If a new division of the designated department is to carry out LEA
14 responsibilities, fully establish and staff the division, so that it is operational and
15 appears on public-facing documents and the City's official website; and

16 B. Update its Designation Information Package (DIP) and Enforcement
17 Program Plan (EPP) to make those documents compliant and consistent with the
18 aforementioned Resolution and submit these updates to the Department of
19 Resources Recycling and Recovery (Department) on or before October 26, 2020.

20 Specifically, the City will:

21 i. Submit an organizational chart showing non-conflict of interest (i.e.,
22 no affiliation with the aforementioned department housing the West
23 Covina Successor Agency); and

1 ii. Submit a time task analysis showing at least one full time staff
2 person, one of which is an REHS.

3 3. The Department agrees to work with the City prior to its submittal of the updated
4 DIP and EPP and shall approve the updates by November 10, 2020, provided they meet
5 applicable statutory and regulatory requirements. This will allow the City to continue to
6 maintain a LEA through the pendency of these proceedings.

7 **With regard to issues of LEA performance obligations:**

8 1. The Parties shall diligently work to agree upon and resolve remaining issues
9 regarding LEA performance obligations. As of the date of this stipulation, the Parties have
10 identified the following issues for careful identification and potential resolution:

11 A. The Department's assertion that the LEA has yet to comply with the LEA
12 Final Evaluation Workplan of October 4, 2018, with respect to compelling the
13 operator of the BKK landfill to address deficiencies in the landfill gas monitoring
14 system;

15 B. The Department's assertion that the LEA is not exercising its authority and
16 carrying out its obligation with respect to enforcement of violations of site security
17 standards, as set forth in the closure and postclosure maintenance regulations;
18 and

19 C. The Department's assertion that the Closure Permit issued for the BKK
20 Landfill on June 15, 2020, was improperly issued, as it impermissibly includes
21 substantive change to aspects of the permit, which necessitated the permit
22 undergoing the permit modification process prior to issuance.

23 2. Any issues not identified here will be identified in writing prior to October 20,
24 2020 and agreed upon by the Parties.

1 3. The Parties shall make diligent efforts to identify and resolve all LEA
2 performance issues on or before November 10, 2020.

3 4. In the event the Parties are able to agree on a resolution of all issues the hearing
4 shall be postponed for a period of 18 months during which the LEA and Department will have
5 regular meetings to monitor the LEA's compliance with its LEA duties and obligations. The
6 Parties shall agree to the terms of this monitoring period on or before November 13, 2020.

7 5. As all conditions of this Stipulation shall be completed by November 13, 2020
8 (through resolution of issues and/or identification of unresolved issues), the Parties hereby
9 request that the Hearing Officer schedule a further pre-hearing conference within fourteen
10 days thereafter so that the Parties may provide an update and a new hearing date may be set
11 accordingly.

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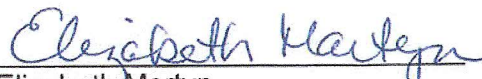
1 In accordance with the foregoing, if all deadlines are met and all issues have been
2 resolved to the Parties satisfaction, by November 13, 2020, the parties shall so stipulate
3 at the upcoming pre-hearing conference and request that the hearing be postponed for
4 a date to be set approximately 18 months thereafter. The Parties do hereby stipulate and
5 agree to the foregoing.

6
7 Date: 9/22/2020

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9 

10 Kathleen Nitta
11 Attorney for the Department of
Resources Recycling and Recovery

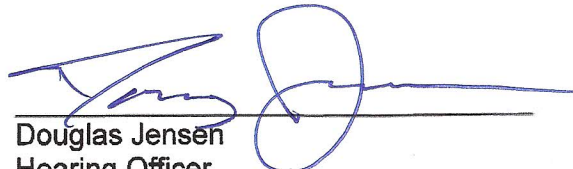
Date: 9/22/2020



Elizabeth Martyn
Special Counsel for
City of West Covina

12 **IT IS SO ORDERED.** A prehearing conference is scheduled for December 2, 2020 at 10:00
13 am.

14
15 Date: 9/22/2020

16
17 
18 Douglas Jensen
Hearing Officer

**CITY OF WEST COVINA
PROFESSIONAL SERVICES AGREEMENT
WITH
RINCON ENVIRONMENTAL LLC
FOR
LOCAL ENFORCEMENT AGENCY REGULATORY COMPLIANCE SERVICES**

THIS AGREEMENT is made and entered into this 20th day of October, 2020 ("Effective Date"), by and between the CITY OF WEST COVINA, a municipal corporation ("City"), and RINCON ENVIRONMENTAL LLC, a California limited liability company.

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 advice to the Waste Management Enforcement Agency (WMEA) as the Local Enforcement Agency (LEA) as a division of the Fire Department, 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, the provisions of the Public Resources Code and 14 CCR, Division 7, Chapter 5, Article 2.2, and is certified as Registered Environmental Health Specialist 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. Furthermore, Consultant shall maintain all required licenses and certifications for the duration of this Agreement; 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. Such services shall be available on a full-time basis.

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 WMEA as the LEA as a division Fire Department in its independent capacity. Evaluations of the work will be conducted by the Fire Chief or his/her designee. If the quality of work is not satisfactory, the Fire Chief in his 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 a rate of One Hundred Sixty-Five Dollars (\$165.00) per hour. Consultant's total compensation shall not exceed One Hundred Thousand Dollars (\$120,000.00).

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

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

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

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. Unless otherwise agreed to by the parties, the professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. 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, pandemic or epidemic, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond

the reasonable control of a party. If a delay beyond the control of the Consultant is encountered, a time extension may be mutually agreed upon in writing by the City and the Consultant. The Consultant shall present documentation satisfactory to the City to substantiate any request for a time extension.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue through June 30, 2022, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

- a. Termination of Existing Agreement. The existing Professional Services Agreement between the City of West Covina and Rincon Environmental LLC entered into on March 4, 2020 and the First Amendment to the Agreement dated July 31, 2020 are hereby terminated effective upon execution of 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) As applicable, 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. In the event the Consultant does not have employees, Consultant shall provide a certification that so states.

- (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, including, but not limited to, the Professional Services Agreement between City and Consultant, dated March 4, 2020, as amended by the First Amendment to Professional Services Agreement, dated July 31, 2020. 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 Steven Samaniego, who shall coordinate directly with the WMEA.

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

IF TO CONSULTANT:

Rincon Environmental LLC
22505 Lark Spring Terrace
Diamond Bar, CA 91765
Tel: (909) 964-2628
Email: stevesamaniego@gmail.com
Attn: Steve Samaniego

IF TO CITY:

City of West Covina
1444 West Garvey Ave. South
West Covina, CA 91790
Tel: (626) 939-8401
Email: dcarmany@westcovina.org
Attn: David Carmany, City Manager

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.

Except as otherwise provided by state law or regulation 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

Steven Samaniego
President

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

Rincon Environmental LLC provide the following services:

- **Professional expertise to the Waste Management Enforcement Agency (WMEA) as the Local Enforcement Agency (LEA) as a division of the Fire Department.**
- **Assuring the Class III Landfill is in compliance with CalRecycle Solid Waste Lanfill regulations.**
- **Be available to address matters on a full-time basis.**