CITY OF WEST COVINA

CITY COUNCIL/SUCCESSOR AGENCY

REVISED 3/16/2023

MARCH 21, 2023, 7:00 PM
REGULAR MEETING

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

Mayor Rosario Diaz
Mayor Pro Tem Brian Tabatabai
Councilman Tony Wu
Councilwoman Letty Lopez-Viado
Councilman Ollie Cantos

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 MARCH 21, 2023, 7:00 PM
REGULAR MEETING

INVOCATION
Led by Pastor Samuel Martinez from Amazing Love Ministries

PLEDGE OF ALLEGIANCE
Led by Councilman Cantos

ROLL CALL

REPORTING OUT FROM CLOSED SESSION

PRESENTATIONS

- Certificate of Recognition for Student Government Day
- Certificate of Recognition to Peters El Loco Restaurant
- Proclamation Declaring March as Red Cross Month

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) CONSIDERATION OF APPROVAL OF THE MARCH 7, 2023, CITY COUNCIL/SUCCESSOR AGENCY REGULAR SESSION MEETING MINUTES. THE REGULAR CLOSED SESSION MEETING WAS CANCELED.

It is recommended that the City Council approve the March 7, 2023, Regular Session Meeting Minutes.

COMMISSION SUMMARY OF ACTIONS

2) MINUTES OF COMMUNITY AND SENIOR SERVICES COMMISSION REGULAR MEETING HELD ON SEPTEMBER 13, 2022

It is recommended that the City Council receive and file the minutes of the regular meeting of the Community and Senior Services Commission held on September 13, 2022.

CITY MANAGER'S OFFICE

3) CONSIDERATION OF AN ORDINANCE AMENDING SECTION 2-402 OF ARTICLE VIII OF CHAPTER 2 OF THE WEST COVINA MUNICIPAL CODE RELATING TO CAMPAIGN DONATIONS

It is recommended that the City Council consider adoption of the following ordinance:

ORDINANCE NO. 2513 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, AMENDING SECTION 2-402 OF ARTICLE VIII OF CHAPTER 2 OF THE WEST COVINA MUNICIPAL CODE RELATING TO CAMPAIGN FINANCE REGULATIONS

4) CONSIDERATION OF RESOLUTION NO. 2023-19 CONTINUING THE LOCAL EMERGENCY RELATED TO SEVERE WINTER STORMS

Staff recommends that the City Council adopt the following resolution:

RESOLUTION NO. 2023-19 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, DETERMINING THE NEED TO FURTHER CONTINUE THE LOCAL EMERGENCY PROCLAIMED ON JANUARY 11, 2023 AND PREVIOUSLY CONTINUED ON FEBRUARY 21, 2023 RELATED TO SEVERE WINTER STORMS

COMMUNITY DEVELOPMENT

5) CONSIDERATION OF ORDINANCE NO. 2511 ESTABLISHING DEVELOPMENT STANDARDS AND REQUIREMENTS FOR SHOPPING CART CONTAINMENT

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

ORDINANCE NO. 2511 - AN ORDINANCE OF THE CITY COUNCIL OF WEST COVINA, CALIFORNIA, AMENDING PORTIONS OF CHAPTERS 15 AND 26 OF THE WEST COVINA MUNICIPAL CODE TO AUTHORIZE DEVELOPMENT STANDARDS AND REQUIREMENTS FOR CART CONTAINMENT AND FINDING THE ORDINANCE IS EXEMPT FROM ENVIRONMENTAL REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO CEQA GUIDELINES SECTION 15061(B)(3)

6) CONSIDER REPORT REGARDING ACTIONS TAKEN TO ALLEVIATE CONDITIONS LEADING TO THE ADOPTION OF THE MORATORIUM PROHIBITING NEW DRIVE-THROUGH FOOD ESTABLISHMENTS

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

PUBLIC SERVICES

7) CONSIDERATION OF RATIFICATION OF AUTHORIZATIONS PROVIDED IN CONNECTION WITH THE WEST COVINA CENTENNIAL CELEBRATION DINNER, THE CENTENNIAL SPRING FESTIVAL, AND THE 2023 4TH OF JULY CELEBRATION

It is recommended that the City Council find that compliance with the City's bidding requirements and procedures is impractical in connection with the procurements of carnival services for the Centennial Spring Festival and fireworks displays for the Centennial Celebration Dinner and the 2023 4th of July Celebration, and ratify the following authorizations provided in connection with the Centennial Celebration Dinner, the Centennial Spring Festival, and the 2023 4th of July Celebration:

a. Agreement with Pyro Spectaculars, Inc. for fireworks for the Centennial Celebration Dinner with a cost of $12,000.
b. Agreement with Paul Maurer dba Paul Maurer Shows for carnival services for Centennial Spring Festival.
c. Agreement with Pyro Spectaculars, Inc. for fireworks for the City's 4th of July with a cost of $35,000.
d. Permit for fireworks display at West Covina Sportsplex for Centennial Celebration Dinner.
e. In exchange for Film It West Covina's assistance with promotion, ticket sales, set-up, tear-down, ticket distribution and providing festival activities including over 300 hours of volunteer service, Film It West Covina will receive a donation of $2,223.90 from the carnival ride sales. This donation serves the public purpose and benefit of contributing to a non-profit organization that provides members of the community an opportunity to experience film making and to showcase at a Film Festival at no cost.

END OF CONSENT CALENDAR

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.)

8) CONSIDERATION OF REMOVAL OF MAYOR PRO TEM BRIAN TABATABAI FROM POSITION OF MAYOR PRO TEM

It is recommended that the City Council decide whether to remove Mayor Pro Tem Brian Tabatabai from position of Mayor Pro Tem.

CITY COUNCIL COMMENTS

ADJOURNMENT

Next Tentative City Council Meeting

Regular Meeting	April 4, 2023	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 ITEM NO. 1

AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: March 21, 2023

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT: CONSIDERATION OF APPROVAL OF THE MARCH 7, 2023, CITY COUNCIL/SUCCESSOR AGENCY REGULAR SESSION MEETING MINUTES. THE REGULAR CLOSED SESSION MEETING WAS CANCELED.

RECOMMENDATION:

It is recommended that the City Council approve the March 7, 2023, Regular Session Meeting Minutes.

DISCUSSION:

That the City Council adopt the attached minutes.

Prepared by: Lisa Sherrick; Assistant City Clerk

Attachments

Attachment No. 1 - 3/7/2023 Regular Session Minutes Draft

CITY COUNCIL GOALS & OBJECTIVES: Enhance City Image and Effectiveness

ATTACHMENT NO. 1

CITY OF WEST COVINA

CITY COUNCIL/SUCCESSOR AGENCY

MARCH 7, 2023, 7:00 PM
REGULAR MEETING

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

Mayor Rosario Diaz
Mayor Pro Tem Brian Tabatabai
Councilman Tony Wu
Councilwoman Letty Lopez-Viado
Councilman Ollie Cantos

MINUTES

DRAFT

CALL TO ORDER
A Regular Session Meeting was called to order by Mayor Rosario Diaz on Tuesday, March 7, 2023, at 7:00 p.m., in the Council Chambers, 1444 West Garvey Avenue South, West Covina, California

INVOCATION
Led by Mr. Andrew Salas, Tribal Chairperson from the Gabrieleño Band of Mission Indians Tribal Government, Kizh Nation

PLEDGE OF ALLEGIANCE
Led by Mayor Diaz

ROLL CALL
Present: Council Members Tony Wu, Letty Lopez-Viado, Cantos Mayor Pro Tem Brian Tabatabai, Mayor Rosario Diaz

REPORTING OUT FROM CLOSED SESSION
The March 7, 2023, Closed Session Council Meeting was Cancelled.

PRESENTATIONS

- Certificates of Recognition presented to the Pony League Champions
- Mr. Andrew Salas, Tribal Chairperson from the Gabrieleño Band of Mission Indians Tribal Government, Kizh Nation

ORAL COMMUNICATIONS - Five (5) minutes per speaker.
Angie Gillingham
Mike Greenspan
Armando Hermon
Peggy Martinez
Darryl Spivey
Jim Grivich
David Schwartz
Brian Gutierrez
R. Robinson
Bill Elliot
Jamie Rocha

CITY MANAGER'S REPORT
Presentation given by Mr. Carmany.

CONSENT CALENDAR
ACTION: Motion by Councilwoman Lopez-Viado, Second by Mayor Pro Tem Tabatabai 5-0 to: *Approve Consent Calendar Items 1 through 31 except for Items 4 and 5.*
ACTION: Motion by Councilman Cantos, Second by Councilwoman Lopez-Viado 5-0 to: *Approve Consent Calendar Item 4 (This item was pulled for discussion by Councilman Wu).*
ACTION: Motion by Councilman Wu, Second by Councilman Wu 5-0 to: *Approve Consent Calendar Item 2 (This item was pulled for discussion by Councilman Cantos and Councilwoman Lopez-Viado).*

DRAFT

APPROVAL OF MEETING MINUTES

1) **CONSIDERATION OF APPROVAL OF THE FEBRUARY 21, 2023, CITY COUNCIL/SUCCESSOR AGENCY REGULAR SESSION MEETING MINUTES. THE REGULAR CLOSED SESSION MEETING WAS CANCELED.**

Carried 5-0 to It is recommended that the City Council approve the February 21, 2023, Regular Session Meeting Minutes.

COMMUNITY DEVELOPMENT

2) **CONSIDERATION OF SUMMARY VACATION OF PORTION OF RIGHT-OF-WAY LOCATED AT 1024 WEST WORKMAN AVENUE ALONG NORTH VINCENT AVENUE**

Carried 5-0 to: adopt the following resolution:

RESOLUTION NO. 2023-2 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, ORDERING THE VACATION OF THE 1,801 SQUARE FOOT PORTION OF THE RIGHT-OF-WAY LOCATED AT 1024 WEST WORKMAN AVENUE ALONG NORTH VINCENT AVENUE

3) **CONSIDERATION OF APPROVAL OF TRAFFIC RECOMMENDATIONS FROM THE TRAFFIC COMMITTEE MEETINGS BETWEEN JUNE 2022 THROUGH JANUARY 2023**

Carried 5-0 to: approve the traffic recommendations listed below for traffic engineering improvements citywide from the Traffic Committee Meetings held between June 2022 through January 2023.

1. Traffic Review of S. Citrus Street Crosswalk Between Walnut Creek Parkway and E. Cortez Street (June 2022 Traffic Committee Meeting)
2. Traffic Review of Evangelina Street from Elena Avenue to Woodgate Drive (June 2022 Traffic Committee Meeting)
3. Traffic Review of Willow Avenue at Farlington Street (June 2022 Traffic Committee Meeting)
4. Red Curb Review of 1500 E. Cameron Avenue (August 2022 Traffic Committee Meeting)
5. Red Curb Review of 1831 Gemini Street (August 2022 Traffic Committee Meeting)

DRAFT

6. Traffic Review on Rowland Avenue Between Vincent Avenue to Lark Ellen Avenue (September 2022 Traffic Committee Meeting)
7. Traffic Review on California Avenue Between Service Avenue to West Covina Parkway (September 2022 Traffic Committee Meeting)
8. Traffic Review of Durness Street Between Sunset Avenue and California Avenue (October 2022 Traffic Committee Meeting)
9. Traffic Review at the Intersection of Orange Avenue and Pacific Lane (October 2022 Traffic Committee Meeting)
10. Traffic Review of S. Morganfield Avenue from E. Hollingworth Street to E. Pinefalls Drive (October 2022 Traffic Committee Meeting)
11. Traffic Review of NB Citrus Street at Garvey Avenue S (December 2022 Traffic Committee Meeting)
12. Traffic Review of 534 N Azusa Avenue Green Curb (December 2022 Traffic Committee Meeting)
13. Line of Sight Review of Jubilee Christian School (January 2023 Traffic Committee Meeting)
14. Traffic Review of E. Garvey Avenue S Between Azusa Avenue and Hollenbeck Avenue (January 2023 Traffic Committee Meeting)
15. Line of Sight Review of Woodgate Drive and Evangelina Street (January 2023 Traffic Committee Meeting)

4) **ADOPTION OF CITIZEN REQUEST POLICY FOR TRAFFIC REVIEWS**

Carried 5-0 to: receive and file the City's New Citizen Request for Traffic Review Application Tool.

POLICE DEPARTMENT

5) **CONSIDERATION OF ADOPTION AND PROMULGATION OF AN UPDATED CITY EMERGENCY OPERATIONS PLAN**

Carried 5-0 to: adopt the following resolution:

RESOLUTION NO. 2023-18 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, ADOPTING THE CITY OF WEST COVINA EMERGENCY OPERATIONS PLAN

END OF CONSENT CALENDAR

DRAFT

HEARINGS

PUBLIC HEARINGS

6) **PUBLIC HEARING REGARDING THE FISCAL YEAR (FY) 2023-2024 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ACTION PLAN**

Public Comments in Favor
None

Public Comments Neither in Favor nor Opposed
Armando Hermon
Mike Greenspan

Public Comments in Opposition
None

---End of Public Comment---

ACTION: Motion by Councilman Wu, Second by Mayor Pro Tem Tabatabai Wu 5-0 to: take the following actions: Conduct the public hearing; and Direct staff to develop a draft FY 2023-2024 CDBG Action Plan, based on the needs and priorities approved for the FY 2020-2024 Consolidated Plan.

MAYOR/COUNCILMEMBERS REPORTS

- Councilman Cantos submitted his report and action steps to be published online

CITY COUNCIL REQUESTS FOR REPORTS, STUDIES OR INVESTIGATION

The following are requests from Council:

- Request staff to get in touch with Caltrans regarding weeds that are growing along the freeway on the West Covina border.
- Consider removal of Mayor Prom Tem Tabatabai from position of Mayor Pro Tem.

CITY COUNCIL COMMENTS

ADJOURNMENT

DRAFT

A motion to adjourn the Regular Meeting was made by Mayor Diaz, and the meeting was adjourned at 10:08 p.m. The next regularly scheduled Regular City Council Meeting will be held on Tuesday, March 21, 2023, at 7:00 p.m. in the Council Chambers, 1444 West Garvey Avenue South, West Covina, California.

Submitted by:

_____
Lisa Sherrick
Assistant City Clerk

_____
Rosario Diaz
Mayor

DRAFT

AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: March 21, 2023

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT: MINUTES OF COMMUNITY AND SENIOR SERVICES COMMISSION REGULAR MEETING HELD ON SEPTEMBER 13, 2022

RECOMMENDATION:

It is recommended that the City Council receive and file the minutes of the regular meeting of the Community and Senior Services Commission held on September 13, 2022.

BACKGROUND:

The attached meeting minutes are for the regular Community and Senior Services Commission meeting held on September 13, 2022.

Prepared by: Deborah Johnston, Administrative Assistant II

Fiscal Impact

FISCAL IMPACT:

This agenda item is to receive and file, therefore; there is no fiscal impact associated with this action.

Attachments

Attachment No. 1 - September 13, 2022, Community & Senior Services Commission Meeting Minutes.

CITY COUNCIL GOALS & OBJECTIVES: A Creative and Active Community
Enhance City Image and Effectiveness

CITY OF WEST COVINA
COMMUNITY AND SENIOR SERVICES COMMISSION

TUESDAY, SEPTEMBER 13, 2022, 6:00 PM
REGULAR MEETING
CORTEZ PARK COMMUNITY & SENIOR CENTER NORTH WING
2501 E. CORTEZ ST. WEST COVINA, CALIFORNIA 91791

MINUTES

Chair Robert H. Torres
Vice-Chair Carole Mullner
Commissioner Hector Diaz
Commissioner Sherry Fischer
Commissioner Jennifer Gutierrez
Commissioner Gayle Mason
Commissioner Cecilia Munoz
Commissioner Betty Valles
Commissioner Alfred Williams
Commissioner Vacant

AMERICANS WITH DISABILITIES ACT
The Commission complies with the Americans with Disabilities Act (ADA). If you will need special assistance at Commission Meetings, please call (626) 939-8433 (voice) or (626) 960-4422 (TTY) from 8:00 a.m. to 5:00 p.m. Monday through Thursday, at least 48 hours prior to the meeting to make arrangements.

AGENDA MATERIAL
Agenda material is available for review at the West Covina City Clerk's Office, Room 317 in City Hall, 1444 W. Garvey Avenue 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 Commission 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 during normal business hours.

PUBLIC COMMENTS
ADDRESSING THE COMMUNITY AND SENIOR SERVICES COMMISSION

Any person wishing to address the Commission 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 Commission Secretary

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 three (3) minutes per speaker.

CALL TO ORDER at 6:30 p.m. by: Chair Torres.
PLEDGE OF ALLEGIANCE / MOMENT OF SILENT PRAYER by: Chair Torres.
ROLL CALL

Commissioners Present: Chair Robert H. Torres, Vice-Chair Carole Mullner, Commissioner Sherry Fischer, Commissioner Gayle Mason, Commissioner Cecilia Munoz, Commissioner Alfred Williams.

Commissioners Absent: Commissioner Jennifer Gutierrez, Commissioner Betty Valles, and Commissioner Hector Diaz.

ORAL COMMUNICATIONS - Three (3) minutes per speaker
Please state your name and city of residence for the record when recognized by the Commission Chair.

Speaker: Phillip Moreno, Speaker: Lorraine Cardenas, Speaker: JD

CONSENT CALENDAR

APPROVAL OF MEETING MINUTES

1) July 12, 2022, Community and Senior Services Commission Meeting Minutes.

It is recommended that the Commission approve the July 12, 2022, Community and Senior Services Commission Special Meeting Minutes.

Motion By: Commissioner Fisher, 2nd by: Commissioner Mason, motion carried by a vote of 6 to 0 with 3 absent.

AYES: Commissioner Fischer, Mason, Munoz, Mullner, Torres and Williams.
NOES: none.
ABSENT: Commissioner Diaz, Gutierrez & Valles.
ABSTAIN: None.

NEW BUSINESS

2) Potential Park Project Utilizing Measure A Funding.

It is recommended that the Commission receive and file this report.

1st Motion By: Chair Torres, 2nd by: Commissioner Fischer, to place the below parks in order of importance to apply for Measure A funding in the future, option A:

1) Dog Park (Del Norte)
2) Gingrich Park

Motion carried by a vote of 6 to 0 with 2 absent.
AYES: Commissioner Fischer, Mason, Munoz, Mullner, Torres and Williams.
NOES: none.
ABSENT: Commissioner Diaz, Gutierrez & Valles.
ABSTAIN: None.

2nd Motion By: Commissioner Torres, 2nd by: Commissioner Mullner, to place the below parks in order of importance to apply for Measure A funding in the future, option B (alternate):

1) Dog Park (Del Norte)
2) Woodgrove Park.

Motion carried by a vote of 6 to 0 with 2 absent.
AYES: Commissioner Fischer, Mason, Munoz, Mullner, Torres and Williams.
NOES: none.
ABSENT: Commissioner Diaz, Gutierrez & Valles.
ABSTAIN: None.

CONTINUED BUSINESS

AD HOC COMMITTEE REPORTS Nothing to report

COMMISSIONERS REPORTS

Chair Robert H. Torres - Attended Cortez opening.

Vice Chair Carole Mullner – Attended Cortez opening

Commissioner Sherry Fischer - Attended the supermarket grand opening which was a huge event in the South Hills Shopping Center on Azusa. Hosted the Community service Group meet and greet at Merrill Gardens facility.

Commissioner Gayle Mason – Attended Cortez opening.

ITEMS TO BE AGENDIZED

Commissioner Torres: Carry over items from previous meetings that haven't been discussed yet. Programming at Ridge Riders.

Commissioner Munoz: Carry over items from prior meetings: CA Utility item. Homelessness at parks, Maverick, and Ridge Riders usage.

ADJOURNMENT at: 8:31 p.m. By: Chair Torres. All approved.

2022-2023 Community and Senior Services Commission Meetings

Tuesday, November 8, 2022 - CANCELLED - Election Night Tuesday, January 10, 2023, at 6:00 p.m.

Meeting Minutes By: Deborah Johnston, Administrative Assistant II, Public Services Department:

Signature_____ Date: 9/13/2022

AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: March 21, 2023

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT: CONSIDERATION OF AN ORDINANCE AMENDING SECTION 2-402 OF ARTICLE VIII OF CHAPTER 2 OF THE WEST COVINA MUNICIPAL CODE RELATING TO CAMPAIGN DONATIONS

RECOMMENDATION:

It is recommended that the City Council consider adoption of the following ordinance:

ORDINANCE NO. 2513 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, AMENDING SECTION 2-402 OF ARTICLE VIII OF CHAPTER 2 OF THE WEST COVINA MUNICIPAL CODE RELATING TO CAMPAIGN FINANCE REGULATIONS

BACKGROUND:

The City of West Covina's campaign finance regulations are codified in Article VIII (Campaign Contributions) of Chapter 2 (Administration) of the West Covina Municipal Code. At the February 7, 2023 City Council meeting, the City Council introduced Ordinance No. 2513, amending Section 2-402 of Article VIII of Chapter 2 of the West Covina Municipal Code.

DISCUSSION:

City Council adoption of Ordinance No. 2513

LEGAL REVIEW:

The City Attorney's Office prepared this ordinance and report.

OPTIONS:

1. Adoption of ordinance; or
2. Provide alternative direction.

Prepared by: Thomas P. Duarte, City Attorney

Attachments

Attachment No. 1 - Ordinance No. 2513

ATTACHMENT NO. 1

ORDINANCE NO. 2513

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, AMENDING SECTION 2-402 OF ARTICLE VIII OF CHAPTER 2 OF THE WEST COVINA MUNICIPAL CODE RELATING TO CAMPAIGN FINANCE REGULATIONS

WHEREAS, the City of West Covina's campaign finance regulations are codified in Article VIII (Campaign Contributions) of Chapter 2 (Administration) of the West Covina Municipal Code; and

WHEREAS, on January 17, 2023, the City Council adopted Ordinance No. 2510 to update and clarify the City's campaign finance regulations, including increasing the maximum contribution amount to $650 and providing that committees are subject to such limitation; and

WHEREAS, the City Council desires to amend Section 2-402 of Article VIII of Chapter 2 to remove language that was inadvertently included in Ordinance No. 2510; and

WHEREAS, all legal prerequisites prior to the adoption of this Ordinance have occurred.

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

SECTION 1. Recitals. The City Council finds that all of the recitals set forth herein are true and correct.

SECTION 2. Amendment to Section 2-402 of Article VIII of Chapter 2. Section 2-402 (Contributions by Persons) of Article VIII (Campaign Contributions) of Chapter 2 (Administration) of the West Covina Municipal Code is hereby amended to read as follows:

Sec. 2-402. Contributions by persons.

No person shall make, and no candidate or committee shall receive from any person, any contribution in support of or in opposition to any candidate for elective city office in excess of six hundred fifty dollars ($650.00) in any calendar year. This amount shall automatically be adjusted on January 1 of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index for the prior year utilizing the standard as established by the Bureau of Labor Statistics of the U.S. Department of Labor for all urban consumers in the Los Angeles, Riverside and Orange County areas. This adjustment shall be rounded to the nearest one dollar ($1.00). This adjustment shall also be published on the city's website, if it exists, and posted at three (3) public places for at least ninety (90) days from its effective date. The contribution limit set forth in this section shall not apply to committees that limit their activities to making independent expenditures.

SECTION 3. Environmental Compliance. Pursuant to the provisions of the California Environmental Quality Act ("CEQA") (California Public Resources Code Sections 21000 et seq.) and State CEQA Guidelines (Sections 15000 et seq.), the City Council finds that this Ordinance is not a "project" and further, that it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment, either directly or indirectly, and that therefore no environmental review under the CEQA is required, pursuant to CEQA Guidelines Section 15061(b)(3) (Common Sense Exception).

SECTION 4. 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 5. Certification. The City Clerk shall certify passage of this ordinance and shall cause the same to be published as required by law.

SECTION 6. Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after the date of its passage.

PASSED, APPROVED AND ADOPTED this 21st day of March, 2023.

_____
Rosario Diaz
Mayor

APPROVED AS TO FORM

_____
Thomas P. Duarte
City Attorney

ATTEST

_____
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. 2513 was introduced at a regular meeting of the City Council held on the 7th day of February, 2023, and adopted at a regular meeting of the City Council held on the 21st day of March, 2023, 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: March 21, 2023

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT: CONSIDERATION OF RESOLUTION NO. 2023-19 CONTINUING THE LOCAL EMERGENCY RELATED TO SEVERE WINTER STORMS

RECOMMENDATION:

Staff recommends that the City Council adopt the following resolution:

> **RESOLUTION NO. 2023-19 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, DETERMINING THE NEED TO FURTHER CONTINUE THE LOCAL EMERGENCY PROCLAIMED ON JANUARY 11, 2023 AND PREVIOUSLY CONTINUED ON FEBRUARY 21, 2023 RELATED TO SEVERE WINTER STORMS**

BACKGROUND:

California experienced significant winter storms in January 2023.

On January 4, 2023, Governor Newsom proclaimed a state of emergency throughout California in order to support the ongoing response to the winter storms.

On January 8, 2023, President Biden declared that an emergency exists in the State of California and ordered Federal assistance to supplement State, tribal, and local response efforts due to the emergency conditions resulting from successive and severe winter storms, flooding, and mudslides beginning on January 8, 2023, and continuing.

On January 10, 2023, Los Angeles County proclaimed a local emergency due to the winter storms.

On January 11, 2023, the Acting City Manager, acting in the capacity of the City's Acting Director of Emergency Services, proclaimed a local emergency as authorized by Government Code section 8630 and West Covina Municipal Code section 8-7(a)(1) related to the severe winter storms.

The City Council ratified the local emergency proclamation on January 17, 2023, and the City Council previously continued the local emergency on February 21, 2023.

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

DISCUSSION:

The City has submitted its Proclamation of Local Emergency to the Governor's Office of Emergency Services (Cal OES) and request for state and federal assistance as a result of the severe winter storms.

As staff is still processing claims associated with the severe winter storms, staff is requesting that the City Council determine there is a need to continue this local emergency.

LEGAL REVIEW:

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

OPTIONS:

The City Council has the following options:

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

Prepared by: David Carmany, City Manager

Attachments

Attachment No. 1 - Resolution No. 2023-19

CITY COUNCIL GOALS & OBJECTIVES: Protect Public Safety

ATTACHMENT NO. 1

RESOLUTION NO. 2023-19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, DETERMINING THE NEED TO FURTHER CONTINUE THE LOCAL EMERGENCY PROCLAIMED ON JANUARY 11, 2023 AND PREVIOUSLY CONTINUED ON FEBRUARY 21, 2023 RELATED TO SEVERE WINTER STORMS

WHEREAS, the California Emergency Services Act (Government Code Section 8550 et seq.), authorizes the City Council, or an official designated by ordinance of 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, or are likely to be, beyond the control of the services, personnel, equipment, and facilities of the City; and

WHEREAS, if the City Council is not in session, West Covina Municipal Code Section 8-7 empowers the City Manager, as the Director of Emergency Services, to proclaim the existence or threatened existence of a local emergency when the City is affected or likely to be affected by a public calamity which is, or is likely to be, beyond the control of the services, personnel, equipment, and facilities of the City, requiring the combined forces of other political subdivisions to combat; and

WHEREAS, in January 2023, as a result of a series of atmospheric river systems, the City of West Covina was impacted by high winds, substantial precipitation, and flooding; and

WHEREAS, on January 11, 2023, the Acting City Manager, as the City's Acting Director of Emergency Services, proclaimed a local emergency as authorized by Government Code section 8630 and West Covina Municipal Code section 8-7(a)(1); and

WHEREAS, on January 17, 2023, the City Council adopted Resolution No. 2023-5, ratifying the Acting 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, on February 21, 2023, the City Council adopted Resolution No. 2023-17, determining there was a need to continue the local emergency; and

WHEREAS, the City has submitted its Proclamation of Local Emergency to the Governor's Office of Emergency Services (Cal OES) and request for state and federal

assistance as a result of the severe winter storms. Staff is still processing claims associated with the severe winter storms; 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 determine there is a need to continue the local emergency in order to keep the City's request with Cal OES active.

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. 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 21st day of March, 2023.

Rosario Diaz
Mayor

APPROVED AS TO FORM

Thomas P. Duarte
City Attorney

ATTEST

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. 2023-19 was duly adopted by the City Council of the City of West Covina, California, at a regular meeting thereof held on the 21st day of March, 2023, 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: March 21, 2023

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT: CONSIDERATION OF ORDINANCE NO. 2511 ESTABLISHING DEVELOPMENT STANDARDS AND REQUIREMENTS FOR SHOPPING CART CONTAINMENT

RECOMMENDATION:

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

> **ORDINANCE NO. 2511 - AN ORDINANCE OF THE CITY COUNCIL OF WEST COVINA, CALIFORNIA, AMENDING PORTIONS OF CHAPTERS 15 AND 26 OF THE WEST COVINA MUNICIPAL CODE TO AUTHORIZE DEVELOPMENT STANDARDS AND REQUIREMENTS FOR CART CONTAINMENT AND FINDING THE ORDINANCE IS EXEMPT FROM ENVIRONMENTAL REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO CEQA GUIDELINES SECTION 15061(B)(3)**

BACKGROUND:

The City has been experiencing an increase of abandoned and/or misused shopping carts littering City streets and sidewalks with an average of 180 abandoned shopping carts retrieved per month.

Planning Commission Review

At the October 11, 2022 Planning Commission meeting, the Planning Commission adopted Resolution No. 22-6116A recommending that the City Council adopt an ordinance establishing standards and requirements for cart containment measures in order to make businesses responsible for securing their own carts. During the meeting, the Planning Commission brought up concerns that small businesses may experience financial hardships due to the cost associated with adopting cart containment measures.

City Council Review

Based upon the actions and recommendations of the Planning Commission, the City Council held a public hearing and introduced Ordinance No. 2511 at the February 21, 2023 City Council meeting.

DISCUSSION:

Ordinance No. 2511 will allow the City to enforce fines for businesses not containing their carts and dispose of abandoned carts left on the public right-of-way.

If adopted, approximately 35 businesses in the City would be impacted by the Ordinance, one-third (1/3) of which already have cart containment measures in place. The impacted businesses include grocery stores, retail stores, and laundromats. Business utilizing carts will be provided 12 months to install their proposed/approved cart containment measure.

The Ordinance will take effect on the 31st day after adoption, which is on or about April 21, 2023.

LEGAL REVIEW:

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

OPTIONS:

The City Council has the following options:

1. Adopt Ordinance No. 2511; or
2. Provide alternative direction.

ENVIRONMENTAL REVIEW:

The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and is found to be exempt pursuant to CEQA Guidelines Section 15061(b)(3), in that the proposed action consists of a code amendment, which does not have the potential for causing a significant effect on the environment.

Prepared by: Jo-Anne Burns, Planning Manager

Fiscal Impact

FISCAL IMPACT:

The proposed ordinance includes a fine for impoundment. The city may fine a shopping cart owner fifty dollars ($50) for each occurrence in excess of three (3) during a six (6)-month period for failure to retrieve shopping carts.

This action may increase General Fund revenue generated from imposed fines. The number of fines is unknown, therefore the fiscal impact cannot be estimated at this time.

Attachments

Attachment No. 1 - Ordinance No. 2511

CITY COUNCIL GOALS & OBJECTIVES: Protect Public Safety
Address Homeless Issues
A Well-Planned Community
Enhance City Image and Effectiveness

ATTACHMENT NO. 1

ORDINANCE NO. 2511

AN ORDINANCE OF THE CITY COUNCIL OF WEST COVINA, CALIFORNIA, AMENDING PORTIONS OF CHAPTERS 15 AND 26 OF THE WEST COVINA MUNICIPAL CODE TO AUTHORIZE DEVELOPMENT STANDARDS AND REQUIREMENTS FOR CART CONTAINMENT AND FINDING THE ORDINANCE IS EXEMPT FROM ENVIRONMENTAL REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO CEQA GUIDELINES SECTION 15061(B)(3)

WHEREAS, on July 12, 2022, the Planning Commission initiated Code Amendment No. 22-04 related to development standards and requirements for cart containment; and

WHEREAS, on October 11, 2022, the Planning Commission conducted a duly noticed public hearing as prescribed by law regarding proposed Code Amendment No. 22-04. At the conclusion of the public hearing, the Planning Commission approved Planning Commission Resolution No. 22-6116, recommending that the City Council approve Code Amendment No. 22-04; and

WHEREAS, on February 21, 2023, the City Council conducted a duly noticed public hearing as prescribed by law regarding this ordinance approving Code Amendment No. 2611; and

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

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

SECTION 1. Code Amendment. Chapter 15 (Miscellaneous Provisions Relating to Public Health and Safety) of the West Covina Municipal Code is hereby amended to add Article XIV (Abandoned Carts – Retrieval and Impoundment) as follows:

ARTICLE XIV – ABANDONED CARTS – RETRIEVAL AND IMPOUNDMENT

Sec. 15-600. - Purpose.

This article regulates the process for abandoned cart retrieval and impoundment. It constitutes a public nuisance and a potential hazard to the health and safety of the public when carts are removed from the premises of businesses and left abandoned.

Sec. 15-601. - Definitions.

For the purposes of this article, the following words, phrases and terms shall have the meaning set forth as follows:

Abandoned Cart. The term “abandoned cart” means (i) any cart owned by, or otherwise furnished to, a business establishment which is placed or otherwise located outside of outer perimeter of the premises upon which business establishment is located; or (ii) any other cart left unattended in the public right-of-way, on a public street or on private property without the consent of the private property owner.

Business Establishment. The term “business establishment” refers to any person, as defined herein, engaged in a for-profit or non-profit enterprise, undertaking or activity for which a City of West Covina business license and/or business permit is required, including but not limited to any for-profit commercial retail business or enterprise.

Cart. The term “cart” means any basket or other like container of any size, dimension or material which is mounted on wheels or a similar device and is typically (but not necessarily exclusively) used by customers, agents, or employees of a business establishment for the purpose of transporting items of any kinds.

Cart Owner. The term “cart owner” means (i) any person who owns a cart that is use or otherwise located within the City of West Covina; (ii) any business establishment located in the City of West Covina which is furnished with a cart for use by its customers, agents, or employees; or (iii) any business establishment which uses a cart in connection with its operations in the City of West Covina.

City. The term “city“ means the City of West Covina, California.

Director. The term “director” means the Community Development Director or designee.

Parking Area. The term “parking area” means any area within the perimeter of a premises as defined herein that is designated or otherwise used for the parking, stopping, loading or unloading of vehicles, including, but not limited to, any and all motor vehicles used by customers of the business establishment located on the premises.

Public Area. The term “public area” means any real property within the territorial boundaries of the City of West Covina that is open to, or otherwise accessible by, members of the general public, including, but not limited to, any public right-of-way, any public street and those areas of privately owned real property that are customarily open to, or otherwise accessible by, members of the general public such as the parking areas or common areas within a premises as defined herein.

Sec. 15-602. - Unauthorized use of carts by business establishments.

It shall be unlawful for the owner of any business establishment to provide or offer, or permit to be provided or offered, any carts to customers of said business establishment without an approved cart containment plan as required by division 31 (Cart Containment) of article XII (Special Regulations for Unique Uses) of chapter 26 (Zoning) of this Code.

Sec. 15-603. - Unauthorized removal of carts from the premises.

Unauthorized removal of a shopping cart from the premises or parking area of a retail establishment is prohibited. Procedures related to removal and possession of any shopping carts shall be pursuant to Business and Professions Code, Section 22435 et seq.

Sec. 15-604. - Abandoned shopping Carts – abatement, removal, and storage.

(a) Impounding. The city may impound any cart without the permanently affixed sign required by section 26-685.14200 of this Code and/or any cart that has the required permanently affixed sign, provided both of the following conditions have been met:
  (1) The shopping cart is located outside the business premises.
  (2) The shopping cart is not retrieved within twenty-four (24) hours from the date the shopping cart owner receives actual notice from the city of such cart's discovery and location.
(b) Immediate Retrieval. Notwithstanding other provisions of this section, the city may immediately retrieve a cart from public or private property when the location of such cart will impede emergency services, obstructs the sidewalk/street and is a hazard to pedestrians/vehicle traffic, and/or is deemed a public hazard/safety concern, as determined by the director or his/her designee.
(c) Location of Impoundment. Any shopping cart that has been impounded by the city pursuant to paragraph (1) or (2) of subsection (a) (Impounding) of this section shall be held at a location that is reasonably convenient to the shopping cart owner and is open for business at least six (6) hours of each business day.
(d) Cost Recovery. When the city has impounded a shopping cart pursuant to paragraph (1) or (2) of subsection (a) (Impounding) of this section, the city may recover its actual costs for providing such service.
(e) Fines for Impoundment. The city may fine a shopping cart owner fifty dollars ($50) for each occurrence in excess of three (3) during a six (6)-month period for failure to retrieve shopping carts in accordance with this section. For purposes of this paragraph, an occurrence shall include all shopping carts impounded in accordance with this section during a calendar day.
(g) Unclaimed Carts. The city or its authorized agent may sell or dispose of any shopping cart not reclaimed by the owner within thirty (30) calendar days of receipt of actual notice from the city.
(h) No Required Signage. Notwithstanding other provisions of this section, the city may immediately impound, sell and/or dispose of any shopping cart that does

not contain a permanently affixed sign required pursuant to this section and whose ownership cannot otherwise be ascertained.

(i) Revocation. An approved cart containment plan per section 26-685.14200 of this Code authorizing the use of carts by the business establishment may be revoked by the director upon his/her determination that any of the following grounds for revocation exist, and shall be subject to revocation procedures in division 12 of article VI of chapter 26 of this Code (Revocation Procedures):

(1) The owner of any establishment has received notice that the establishment is operating, or is permitting operation of, the establishment in violation of one or more of the provisions of said approved plan(s) and has failed to correct said violation(s) for a period of at least sixty (60) calendar days following the date of receipt of written notice of such violation(s) from the city.

(2) The mandatory cart containment and retrieval plan is inadequate to reasonably prevent the removal of shopping carts from the premises of the retail establishment or to reasonably provide for the prompt retrieval of lost, stolen, or abandoned shopping carts which have been removed from the premises of the retail establishment.

(j) Use of Shopping Carts Following Revocation is Prohibited. No business establishment owner shall provide or make available carts for the use of customers following the effective date of any decision revoking a required cart containment and retrieval plan pursuant to this section unless and until a new proposed cart containment and retrieval plan is approved by the city for such retail establishment.

SECTION 2. Code Amendment. Article XII (Special Regulations for Unique Uses) of Chapter 26 (Zoning) of the West Covina Municipal Code is hereby amended to add Division 31 (Cart Containment) as follows:

DIVISION 31. - CART CONTAINMENT

Sec. 26-685.14000. - Purpose.

This division sets forth a uniform set of standards for any business establishment that uses carts in its operations, or that provides, or otherwise makes carts available for the use of its customers. Business establishments utilizing carts shall employ and/or install physical containment devices and/or equipment designed to prevent the unauthorized removal of such carts from the premises where they are located.

Sec. 26-685.14100. - Definition.

For purposes of this division, the following definition shall apply:

Cart means any basket or other like container of any size, dimension or material construction which is mounted on wheels or a similar device and is typically (but not necessarily exclusively) used by the customers, agents or employees of a business establishment for the purpose of transporting items of any kind.

Sec. 26-685.14200. - Cart containment regulations.

(a) Each business establishment shall have a sign permanently affixed to all carts complying with the requirements of the Business and Professions Code Section 22435.1, shall have signage installed on site notifying customers that removal of the carts from the premises is prohibited, and shall be required to employ and/or install one or more of the following physical containment measures, subject to the community development director's review and approval of a cart containment plan specifically indicating the means of cart containment proposed to be utilized:
   (1) Equipping all carts with a wheel locking or stopping mechanism used in conjunction with an electronic or magnetic barrier running along or within the perimeter of the premises. Such wheel locking or stopping mechanism must activate when the cart crosses the electronic or magnetic barrier;
   (2) Equipping all carts with devices and/or equipment which physically prevents the carts from being removed from the interior of any building or structure in which they are used;
   (3) Installing physical barriers within all buildings or structures which physically prevent carts from being removed from the interior of any building or structure in which they are used;
   (4) Installing an alternative cart containment system proposed by the specific business establishment and approved by the community development director.

(b) The employment and/or installation of any one or more of the options set forth under subsections (a)(1) through (a)(3) of this section shall be required within sixty (60) calendar days of a written determination by the community development director determining that an approved alternative cart containment system option does not reliably prevent the removal of carts from the premises. A containment system shall be deemed not to reliably prevent the removal of carts from the premises if the number of carts removed from the premises or found abandoned exceeds three (3) carts in a thirty (30)-day period and/or eight (8) total carts in any calendar year.

Sec. 26-685.14300. - Cart containment approval process.

Approval by Community Development Director. Commencing upon the effective date of this division, every new or existing business establishment utilizing carts must either: (i) submit documentation proving, to the reasonable satisfaction of the community development director, that the business establishment has installed any one or more of the measures set forth under section 26-685.14200(a)(1) through (a)(3) and that such system is operational and in good working condition; or (ii) submit to the community development director a proposal for the installation of an alternative cart containment system. The community development director shall have thirty (30) calendar days from the date of submission to review any proposal for a barrier system contemplated under section 26-685.14200(a)(4) and may thereafter approve the proposal; deny the proposal; approve the proposal subject to modifications and amendments aimed at enhancing its

cart containment reliability and/or its architectural and aesthetic consistency with other on-premises improvements; or forward the proposal to the planning commission for review and render the final decision. No new business establishment shall be issued a certificate of occupancy until the requirements of this section are satisfied.

Sec. 26-685.14400. - Implementation and amortization.

All existing business establishments which do not have cart containment measures employed in accordance with section 26-685.14200(a)(1) through (a)(3) or have an approved alternative containment measure employed per section 26-685.14200(a)(4), as of the effective date of the ordinance codified in this section, shall so comply within twelve (12) months after the effective date. A business establishment and/or owner of the premises upon which the business establishment is located may apply for an extension of time from the amortization period no more than ninety (90) days prior to the expiration date or no more than thirty (30) days after the expiration date.

(a) The extension of time request shall be reviewed by the community development director. The community development director may only consider one extension of time per business establishment. In no case shall an extension of time greater than six (6) months be granted. The planning commission, upon appeal, shall make the following findings in approving or conditionally approving an application for the extension of time request:
  (1) That the strict application of the required cart containment measure will create an unreasonable hardship upon the applicant, which was not brought about by an act of the applicant.
  (2) That the extension of time request will not be materially detrimental to the public health, safety, or general welfare, or to the use, enjoyment or valuation of property of other persons located within the vicinity.
  (3) That sufficient evidence has been submitted to support the need for the extension of time and appropriate amount of time.

(b) Written notice of time and place of hearings conducted by the planning commission upon appeal relating to such matter shall be given not less than ten (10) consecutive calendar days in advance of such hearing to the applicant and property owner whose property is within a three hundred (300) foot radius of the subject lot. The applicant shall be responsible for providing the city with the required radius map and mailing labels. All persons interested in such matter shall be given reasonable opportunity to present relevant evidence relating to the request.

Sec. 26-685.14500. - Requirement for securing carts.

All carts located on the premises of any business (other than business establishments open 24 hours per day) shall be collected at the end of each business day by employees of the establishment and shall be collectively confined in a secure manner until the commencement of the next business day.

Sec. 26-685.14600. - Cart retrieval requirements.

The cart owner shall secure and continuously maintain a service to retrieve shopping carts which have been removed from their business premises within 24 hours of the removal or notice of removal.

SECTION 3. Environmental Compliance. Pursuant to the provisions of the California Environmental Quality Act ("CEQA") (California Public Resources Code Sections 21000 et seq.) and State CEQA Guidelines (Sections 15000 et seq.), the City Council finds that this Ordinance is not a "project" and further, that it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment, either directly or indirectly, and that therefore no environmental review under the CEQA is required, pursuant to CEQA Guidelines Section 15061(b)(3) (Common Sense Exception).

SECTION 4. Severability. If any section, subsection, sentence, clause, phrase, or portionof 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 5. Certification. The City Clerk shall certify passage of this Ordinance and shall cause the same to be published as required by law.

SECTION 6. Effective Date. This Ordinance shall take effect and be in force thirty (30) days from and after the date of its passage.

PASSED, APPROVED AND ADOPTED on the 21st day of March, 2023.

Rosario Diaz
Mayor

APPROVED AS TO FORM

Thomas P. Duarte
City Attorney

ATTEST

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. 2511 was introduced at a regular meeting of the City Council held on the 21st day of February, 2023, and adopted at a regular meeting of the City Council held on the 21st day of March, 2023, 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: March 21, 2023

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT: CONSIDER REPORT REGARDING ACTIONS TAKEN TO ALLEVIATE CONDITIONS LEADING TO THE ADOPTION OF THE MORATORIUM PROHIBITING NEW DRIVE-THROUGH FOOD ESTABLISHMENTS

RECOMMENDATION:

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

BACKGROUND:

A moratorium is a temporary land use regulation. It is a mechanism by which a zoning regulation is adopted for a limited period of time without having to go through the normal process of public hearings. On February 21, 2023, the City Council by 4/5 vote enacted a moratorium prohibiting review and approval of any new drive-through food establishments within the City by adopting Interim Urgency Ordinance No. 2512. The moratorium was enacted for an initial period of 45 days. At a duly noticed public hearing on April 4, 2023, the City Council will consider an action to extend the moratorium for up to 10 months and 15 days The moratorium will expire on April 7, 2023, if not extended. This report provides interested parties constructive notice of actions taken by the City to alleviate the conditions leading to the adoption of the moratorium. Beyond constructive notice, broad citizen and stakeholder participation has not been solicited.

California Government Code section 65858(d) provides: "Ten days prior to the expiration of that interim ordinance or any extension, the legislative body shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance."

This report is intended to provide the report of measures taken to alleviate the conditions that led to the adoption of the Interim Urgency Ordinance as required by Government Code section 65858(d).

DISCUSSION:

Since Council's adoption of the Interim Urgency Ordinance, different alternatives may be studied regarding the future of drive-through food establishments in the City. These alternatives will define the work plan during the Moratorium for the Development Code Update. Staff has identified the following alternatives:

- Policy Analysis – This will analyze the current Zoning Code as it pertains to drive-through food establishments and recommend amendments to development standards and adoption of performance standards based on current drive-through trends.

- Conditional Use Permit – Prior to the adoption of the moratorium, drive-through food establishments required approval of a conditional use permit with limited submittal and development standards. Conditional use permits require that specific findings be made regarding the compatibility of drive-through use in the City and require that specific conditions be met to ensure compatibility with surrounding uses. This analysis will study the possibility of revising the current conditional use permit submittal requirements and findings, including an analysis of traffic impact and vehicle stacking, as well as potential conditions of approval that could be reasonably imposed.
- Prohibit Use – This alternative would consider prohibiting drive-through food establishments in the City, or in certain parts of the City. This alternative will be developed based on the findings of the proposed policy analysis and will identify the potential impacts of prohibiting such use.

At its April 4, 2023 meeting, the City Council will be presented with the intent of obtaining direction and guidance for the Development Code Update regarding drive-through food establishment uses.

LEGAL REVIEW:

The City Attorney's Office has reviewed this report.

Prepared by: Jo-Anne Burns, Planning Manager

Fiscal Impact

FISCAL IMPACT:

This is strictly an administrative item, therefore; there is no fiscal impact associated with this action.

CITY COUNCIL GOALS & OBJECTIVES: A Well-Planned Community
Enhance City Image and Effectiveness

AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: March 21, 2023

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT: CONSIDERATION OF RATIFICATION OF AUTHORIZATIONS PROVIDED IN CONNECTION WITH THE WEST COVINA CENTENNIAL CELEBRATION DINNER, THE CENTENNIAL SPRING FESTIVAL, AND THE 2023 4TH OF JULY CELEBRATION

RECOMMENDATION:

It is recommended that the City Council find that compliance with the City's bidding requirements and procedures is impractical in connection with the procurements of carnival services for the Centennial Spring Festival and fireworks displays for the Centennial Celebration Dinner and the 2023 4th of July Celebration, and ratify the following authorizations provided in connection with the Centennial Celebration Dinner, the Centennial Spring Festival, and the 2023 4th of July Celebration:

a. Agreement with Pyro Spectaculars, Inc. for fireworks for the Centennial Celebration Dinner with a cost of $12,000.
b. Agreement with Paul Maurer dba Paul Maurer Shows for carnival services for Centennial Spring Festival.
c. Agreement with Pyro Spectaculars, Inc. for fireworks for the City's 4th of July with a cost of $35,000.
d. Permit for fireworks display at West Covina Sportsplex for Centennial Celebration Dinner.
e. In exchange for Film It West Covina's assistance with promotion, ticket sales, set-up, tear-down, ticket distribution and providing festival activities including over 300 hours of volunteer service, Film It West Covina will receive a donation of $2,223.90 from the carnival ride sales. This donation serves the public purpose and benefit of contributing to a non-profit organization that provides members of the community an opportunity to experience film making and to showcase at a Film Festival at no cost.

BACKGROUND:

City staff coordinated and produced the City of West Covina's Centennial Celebration Dinner and Spring Festival. The Centennial Celebration Dinner took place on February 16th at the West Covina Sportsplex. The Centennial Spring Festival took place on February 17th through February 19th at the Historic Downtown on South Glendora Avenue. The Centennial Spring Festival featured a carnival, cultural performances, live entertainment, food and retail vendors. City staff estimates festival attendance at 10,000 over the three-day event.

The City's 2023 4th of July Celebration will be held at the West Covina Sportsplex and is expected to draw a large number of attendees.

DISCUSSION:

Section 2-335(10) of Division 2 of Article VII of Chapter 2 of the West Covina Municipal Code provides an exemption from competitive bidding requirements: "When the city council determines, by minute action or resolution, that compliance with the bidding requirements and procedures is inefficient, impractical, or not in the best interest of the city, based on specifically identified conditions set forth on the record."

The City of West Covina's Centennial festivities commenced with the Centennial Dinner, followed by the three-day Centennial Spring Festival in February 2023. In preparation for the Centennial events, the City procured services to support the events that were outside the routine timeline and methods for purchasing. Due to a lack of available fireworks providers and carnival companies that could provide services for the dates of the Centennial Spring Festival, the City contracted with two vendors to provide these services whose availability of product and equipment matched the needs of the events.

The City executed agreements with Pyro Spectaculars, Inc. for a firework display for the Centennial Dinner and Paul Maurer dba Paul Maurer Shows for the carnival that would take place during the Centennial Spring Festival. Additionally, staff experienced a similar challenge in planning for the 2023 4th of July Celebration when looking for a vendor for fireworks. Therefore, the City entered into an agreement with Pyro Spectaculars, Inc. for the City's upcoming 4th of July festivities. Based on the challenges identified in connection with these procurements, staff is requesting that the City Council determine that compliance with bidding requirements and procedures is impractical. The agreements with Pyro Spectaculars, Inc. for fireworks shows for the City's Centennial Celebration Dinner and the 2023 4th of July Celebration cost $12,000 and $35,000, respectively.

The agreement with Paul Maurer dba Paul Maurer Shows to provide carnival services for the 2023 Spring Festival did not require direct payment from the City. However, the City's Purchasing Procedures require services with a value between $60,000 and $200,000 to follow informal bidding procedures. Through the agreement, the vendor was able to generate revenue through operating rides and games. Paul Maurer Shows generated $64,826.00 in gross revenues from ride sales. . In exchange for Film It West Covina's assistance with promotion, ticket sales, set-up, tear-down, ticket distribution and providing festival activities including over 300 hours of volunteer service the Carnival Operator agrees to share gross revenues from ticket sales for amusement rides, including all advance and onsite sales of wristbands, coupons, and coupon books, with the Film It West Covina, a nonprofit corporation.Pursuant to the City's agreement with Paul Maurer Shows, if Paul Maurer Shows generated between $50,001 and $75,000 in gross revenues from ride sales, Paul Maurer Shows would donate 15% of such revenues to Film It West Covina. Based on the gross revenues from ride sales, Paul Maurer shows will donate $2,223.90 to Film It West Covina.

LEGAL REVIEW:

The City Attorney's Office has reviewed this report.

Prepared by: Roxanne Lerma, Assistant City Manager/Director Public Services

---

Fiscal Impact

FISCAL IMPACT:

The cost of the contract with Pyro Spectaculars, Inc. in the amount of $12,000 for fireworks at the City's Centennial Celebration Dinner will be paid in the Fiscal Year 2022-2023 Community Services Foundation budget under other special events (account no. 220.11.1120.6188). Table 1 below provides a preliminary summary of the total revenue and expenditures for the Centennial Spring Festival and Dinner.

Table 1. Preliminary Summary of Centennial Spring Festival and Dinner Revenue and Expenditures

Type	Account No.	FY2022-23 Estimate	Preliminary YTD Actual*	Over/Under Estimate

Revenue	220.11.4649	0	47,222	(47,222)
Expenditures	220.11.1120.6188	82,000	112,444	(30,444)
Revenue Less Expenditures		**-$82,000**	**-$65,222**	**$16,778**

**Preliminary YTD Actual only includes payments received and/or paid as of 3/14/2023, payments may still be pending.*

The cost of the contract with Pyro Spectaculars, Inc. in the amount of $35,000 for fireworks at the 2023 4th of July Celebration will be included in the Fiscal Year 2023-2024 Proposed Budget.

Attachments

Attachment No. 1 - Pyro Spectaculars

Attachment No. 2 - Paul Maurer dba Paul Maurer Shows

Attachment No. 3 - Pyro Spectaculars - 4th of July

CITY COUNCIL GOALS & OBJECTIVES: A Creative and Active Community
Expand Economic Development Opportunities

CITY OF WEST COVINA
AGREEMENT FOR SERVICES
WITH
PYRO SPECTACULARS, INC.
FOR
FIREWORKS PRODUCTION

THIS AGREEMENT FOR SERVICES is made and entered into as of February 1, 2023 ("Effective Date"), by and between the CITY OF WEST COVINA, a municipal corporation ("City"), and PYRO SPECTACULARS, INC., a California corporation ("Contractor").

RECITALS

A. City proposes to utilize the services of Contractor as an independent contractor to City to produce and provide a fireworks production for the City's Centennial Celebration on February 16, 2023, as more fully described herein; and

B. Contractor represents that it has that degree of specialized expertise necessary and holds all necessary licenses to practice and perform the services herein contemplated; and

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

D. 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 Work. Contractor shall provide the equipment and perform the tasks to produce a fireworks production for the City's Centennial Celebration on February 16, 2023 (the "Production") in accordance with the Scope of Work, attached hereto as Exhibit "A" and Contractor's Proposal, attached hereto as Exhibit "B," both incorporated herein. Contractor shall furnish, at Contractor's expense, all properly skilled personnel, labor, materials, necessary tools, equipment, and all taxes, utility and transportation services required to provide the Production and related work under this Agreement. Contractor shall provide the Production in accordance with the Schedule of Performance, attached hereto as Exhibit "C" and incorporated herein.

1.2. Professional Practices. All services to be provided by Contractor pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by persons in similar fields and circumstances in accordance with sound professional practices. Contractor shall keep itself informed of federal, state and local laws and regulations which in any manner affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. Contractor shall at all times observe and comply with all such laws and regulations. City officers and employees shall not be liable at law or in equity for any claims or damages occurring as a result of failure of the Contractor to comply with this section.

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

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

1.5. Proprietary Rights. Contractor represents and warrants that it owns all copyrights, including performance rights, to the Production, except that Contractor does not own City-owned material or third-party material that has been included in the Production, and as to such City-owned and third party-owned material, City assumes full responsibility therefor. City agrees that Contractor shall retain ownership of, and all copyrights and other rights to, the Production, except that Contractor shall not acquire or retain any ownership or other rights in or to City-owned material and third party-owned material and shall not be responsible in any way for such material. If applicable, City consents to the use of City-owned material and represents that is has or will obtain any permission from appropriate third parties sufficient to authorize public exhibition of any such material in connection with the Production. Contractor reserves the ownership rights in its trade names that are used in or are a product of the Production. Any reproduction by sound, video or other duplication or recording process by City without the express written permission of Contractor is prohibited.

2.0. COMPENSATION

2.1. Compensation. City agrees to pay Contractor a fee of Twelve Thousand Dollars ($12,000.00) ("Contractor's Fee") plus permit fees, standby fees and regulatory costs. Contractor shall be paid in accordance with the payment schedule set forth in Section 2.2.

2.2. Payment Schedule. City agrees to pay Contractor an initial payment equal to fifty percent (50%) of Contractor's Fee plus estimated permit and standby fees and other regulatory costs totaling One Thousand Seven Hundred Ninety-Five Dollars ($1,795.00), for a total of Seven Thousand Seven Hundred Ninety-Five Dollars ($7,795.00) ("Initial Payment") upon execution of this Agreement by both parties, but no later than February 9, 2023. The Initial Payment is partial payment toward the preproduction services and costs set forth in the Scope of Work. City agrees to pay the remaining fifty percent (50%) of Contractor's Fee no later than February 17, 2023.

2.3. Additional Costs and Expenses. Contractor shall pay all normal expenses directly related to the Production including freight, insurance as set forth herein, pyrotechnic products, pyrotechnic equipment, experienced pyrotechnic personnel to set up and discharge the pyrotechnics, and those additional items outlined as Contractor's responsibility in the Scope of Work. City shall pay all costs related to the Production not supplied by Contractor, including those items outlined as City's responsibility in this Agreement and the Scope of Work.

2.4. Additional Services. Contractor shall not receive compensation for any services provided outside the scope of services specified in this Agreement unless the City, prior to Contractor performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or

additional compensation shall be barred and are unenforceable. Should the City request in writing additional services that increase the Scope of Work, an additional fee based upon the Contractor's standard hourly rates shall be paid to the Contractor for such additional services.

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

3.0. TERM AND TERMINATION

3.1. Term. This Agreement shall commence on the Effective Date and continue through February 17, 2023 upon completion of all tasks described herein, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

3.2. 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 prior to the Production, by providing written notice to Contractor.

In the event this Agreement is terminated pursuant to this Section, City agrees to pay Contractor 100% of Contractor's Fee as liquidated damages.

If City cancels the Production, it will be impractical or extremely difficult to fix the actual amount of Contractor's damages. Therefore, the parties agree that the foregoing represents a reasonable estimate of the damages Contractor will suffer if City cancels the Production.

If City terminates pursuant to this Section, the parties acknowledge and agree that City will pay Contractor 50% of Contractor's Fee, which amount represents the 100% liquidated damages amount less the 50% paid as part of the Initial Payment.

4.0. INSURANCE

4.1. Minimum Scope and Limits of Insurance. Contractor shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company 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 Five Million Dollars ($5,000,000.00) per occurrence.

(b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than Five Million Dollars ($5,000,000.00) combined single limit per accident for bodily injury and property damage.

(c) Workers' compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than One Million Dollars ($1,000,000.00) per accident for bodily injury

or disease. Contractor agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers for losses arising from work performed by Contractor for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

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

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

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

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

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

(a) Additional Insureds: The City of West Covina and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Contractor pursuant to its contract with the City; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; automobiles owned, leased, hired, or borrowed by the Contractor.

(b) Notice of Cancelation: Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City by Contractor.

(c) Primary Coverage: The Contractor's insurance coverage shall be primary insurance as respects the City of West Covina, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of West Covina shall be excess and not contributing with the insurance provided by this policy.

(d) Waiver of Subrogation: Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to

affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

(e) Coverage Not Affected: Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of West Covina, its officers, officials, agents, employees, and volunteers.

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

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

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

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

5.0. GENERAL PROVISIONS

5.1. 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.

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

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

5.3. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery 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; and b) 72 hours after deposit in the U.S. Mail as reflected by the official U.S.

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

IF TO CONTRACTOR:

Pyro Spectaculars, Inc.
P.O. Box 2329
Rialto, CA 92377
Tel: (909) 355-8120
Attn: Aaron Beargeon

IF TO CITY:

City of West Covina
1444 West Garvey Ave. South
West Covina, CA 91790
Tel: (626) 939-8475
Attn: Roxanne Lerma

5.4. 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.

5.5. 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.

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

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

5.8. Limitation of Damages. Except in the case of bodily injury and property damage as provided in the insurance and indemnification provisions set forth herein, in the event City claims Contractor has breached this Agreement or was otherwise negligent in performing the Production, City shall not be entitled to claim or recover monetary damages from Contractor beyond the amount City has paid to Contractor under this Agreement, and shall not be entitled to claim or recover any consequential damages from Contractor including, without limitation, damages for loss of income, business or profits.

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

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

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

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

5.12. Conflict of Interest. Contractor and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Contractor's services under this agreement, including, but not limited to, the Political Reform Act of 1974 (Government Code Section 81000, *et seq.*) and Government Code Sections

1090-1092. Contractor covenants that none of Contractor's officers or principals have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of the services hereunder, including in any manner in violation of the Political Reform Act. Contractor further covenants that in the performance of this Agreement, no person having such interest shall be used by Contractor as an officer, employee, agent, or subconsultant. Contractor further covenants that Contractor has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City and further covenants and agrees that Contractor and/or its 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.

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

5.14. 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.

5.15. 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.

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

5.17. 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.

5.18. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement and have had an adequate opportunity to review each and every provision of the Agreement and submit the same to counsel or other consultants for review and comment. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

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

5.20. 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.

5.21. 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.

5.22. 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.

5.23. 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.

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

5.25. Price Firm Date. City acknowledges and agrees that the executed Agreement and the Initial Payment must be delivered to Contractor no later than February 9, 2023 ("Price Firm Date"). City acknowledges that failure to deliver the executed Agreement and Initial Payment to Contractor by the Price Firm Date may result in cancellation of the Production and termination of this Agreement, in Contractor's discretion. If Contractor elects to cancel the Production and terminate this Agreement as permitted by this Section, Contractor shall provide notice of same to City within fifteen (15) days of receipt of the executed Agreement and Initial Payment. In such event, Contractor shall return the Initial Payment to City and City shall not owe Contractor any compensation pursuant to this Agreement.

[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: 2-9-23

CONTRACTOR

James R. Souza
President

Date: 2/6/2023

ATTEST:

Lisa Sherrick
Assistant City Clerk

APPROVED AS TO FORM:

Thomas P. Duarte
City Attorney

Date: 02/09/23

APPROVED AS TO INSURANCE:

Lisa Handy
Interim Human Resources and Risk Management Director

Date: 2/8/2023

EXHIBIT A

SCOPE OF WORK

A. The Production shall be substantially as outlined in Contractor's Proposal set forth in Exhibit B.

B. Contractor's Duties.

1. Contractor shall provide all pyrotechnic equipment, trained pyrotechnicians, shipping, pyrotechnic products, application for specific pyrotechnic permits (the costs of which, including standby fees, will be paid by City) relating to the Production, insurance covering the Production and preproduction services.

2. Contractor shall provide preproduction services and costs for the production, including advance acquisition of materials and products; design; engineering, programming, handling, staging, storage, and maintenance of products, props, and systems; preparation of drawings, diagrams, listings schedules, inventory controls, choreography, and computer code; picking, packing, labeling, staging, and loading of equipment, materials, and systems; transportation, and logistics and crew scheduling and support; explosive storage magazines with legally mandated distances, surfaces, security, housekeeping, and access controls; and necessary and appropriate vehicles, including legally mandated insurance, including MCS90 explosives transportation coverage, parking, security and maintenance.

3. Contractor will apply for permits for the firing of pyrotechnics only from the West Covina Fire Department, FAA, and USCG, if required. Contractor shall comply with or exceed the applicable National Fire Protection Association (NFPA) 1123 standards in regard to the fireworks display area. The display will have a radius of at least 70 feet per inch of the largest diameter pyrotechnic from the firing site in all directions to any parking area, spectators, inhabited buildings, public roads, or active railroad.

4. Contractor shall provide the musical soundtrack for the Production supplied in a format agreed upon with the City.

5. Contractor shall be responsible for the removal of all equipment provided by Contractor and clean-up of any live pyrotechnic debris made necessary by Contractor.

C. City's Duties.

1. City shall provide a suitable site ("Site") for the Production, security for the Site, access to the Site, and any permission necessary to use the Site for the Production. All Site arrangements are subject to Contractor's reasonable approval as to pyrotechnic safety, suitability, and security. All other conditions of the Site shall be the responsibility of the City, including, but not limited to, access, use, control, parking and general safety with respect to the public, City personnel and other contractors.

2. City shall provide adequate security personnel, barricades, and Police Department services as may be necessary to preclude individuals other than those authorized by Contractor from entering into an area to be designated by Contractor as the area for the set-up and discharge of the Production, including a fallout area satisfactory to Contractor where the pyrotechnics may safely rise and any debris may safely fall.

Contractor shall have no responsibility for monitoring or controlling City's other contractors, providers or volunteers; the public; areas to which the public or contractors have access; or any other public of contractor facilities associated with the Production.

3. City shall provide all on-site labor costs, if any, not provided or performed by Contractor personnel including, but not limited to, all Site security, Police and Fire Department standby personnel, stagehands, electricians, audio and fire control monitors, carpenters, plumbers and clean-up crew, at City's expense.

4. City shall coordinate any applicable non-pyrotechnic permitting with any local, state or federal government that may hold authority over the Production and shall make arrangements for Police Departments, Fire Departments, road closures, event/activity permits or land use permits or any permission or permit required by any local, regional, state or federal government as City deems appropriate or necessary for the Production.

5. City shall pay the costs of all permits required for the presentation of the Production and the event as a whole.

6. City shall provide a Safety Zone in accordance with applicable standards and all requirements of the authorities having jurisdiction throughout the entire time that the pyrotechnics are at the Site or the load site (if different) on the date of the Production and all set-up and load-out dates.

7. City shall provide a professional grade audio system including all necessary equipment, installation of such equipment and trained audio engineers for operation based on audio and communication requirements provided by Contractor.

8. City shall provide general services including, but not limited to, Site and audience security, fencing, adequate work light, dumpster accessibility, a secure office for Contractor's personnel within the venue, secure parking for Contractor's vehicles, access to washrooms, tents, equipment storage, hazmat storage, electrical power, fire suppression equipment, access to worksites, necessary credentialing, etc., as necessary for the event and the Production.

9. City shall be responsible for all clean-up not provided by Contractor, including any environmental clean-up.

D. Safety. Contractor and City shall each comply with applicable federal, state and local laws and regulations and employ safety programs and measures consistent with recognized applicable industry standards and practices. At all times before and during the Production, it shall be within Contractor's discretion to determine whether or not the Production may be safely discharged or continued. It shall not constitute a breach of the Agreement by Contractor for fireworks to fail or malfunction, or for Contractor to determine that the Production cannot be discharged or continued as a result of any conditions or circumstances affecting safety beyond the reasonable control of Contractor. If Contractor makes such determination prior to or during the Production, City shall have the option to reschedule the Production in accordance with provisions set forth in the Schedule of Performance (Exhibit C).

EXHIBIT B

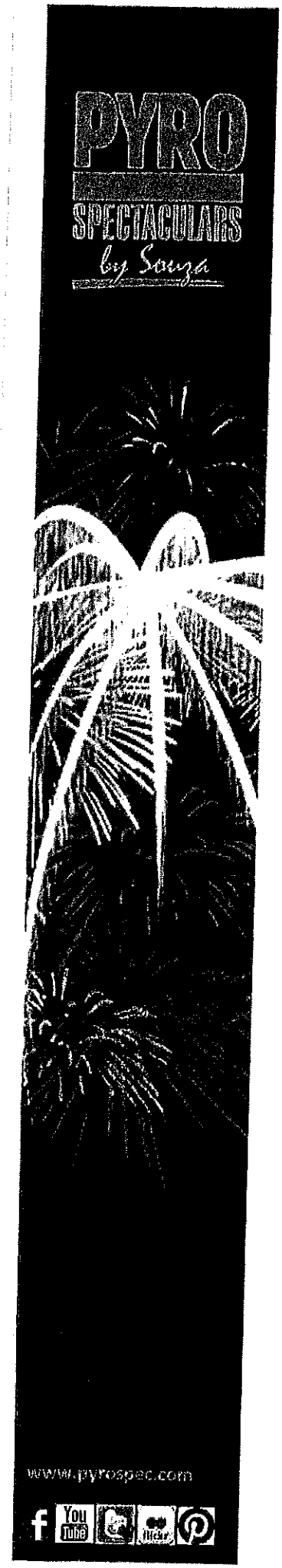
CONTRACTOR'S PROPOSAL

2023 PYRO SPECTACULARS by Souza®

Pyrotechnic Proposal

City of West Covina

February 16, 2023



January 18, 2023

City of West Covina
Roxanne E. Lerma
1444 W Garvey Ave. Room 317
West Covina, CA 91790

Dear Ms. Lerma,

Pyro Spectaculars, Inc. is happy to provide our pyrotechnic proposal for your February 16, 2023 event. The following proposal outlines your custom designed **Sky Concert™** Program "A" for the amount of $12,000.00.

Our full service program includes necessary preproduction services, music production and choreography, the services of a licensed pyrotechnic operator, specialized crew, an electronic firing system, and pyrotechnic safety equipment used for support and protection. The price also includes insurance coverage, sales tax, and delivery. To help ensure public safety, we work directly with the local fire authority, and we apply for the necessary fireworks related permits. Our winning combination of products, people, and production capabilities help produce the best fireworks entertainment package for your event.

Your organization will be responsible for payment of permit fees and/or standby firemen fees, if any. The Fire Department may bill you directly for any additional standby fees for inspections. Your organization will also be responsible for providing the display location, necessary security for the display site, and other event permits.

Please review the enclosed Proposal, Product Synopsis, Production Agreement, and Scope of Work in detail. In order to reserve your program, it is imperative that you return the fully executed agreement, your initial payment, and permit fees to our office by February 2, 2023, the price firm date in your production agreement. The program, pricing, and show date may not be available beyond the price firm date.

If you wish to discuss your program or need more information, please call either me or your Customer Service Representative Luis Ruiz at (909) 355-8120 ext. 227.

Sincerely,

PYRO SPECTACULARS, INC.

Aaron Beargeon

Aaron Beargeon

PYRO Show Producer

AB/lr

Enclosures

Pyro Spectaculars, Inc.
P.O. Box 2329 • Rialto, CA 92377 • Phone: (909) 355-8120 or (888) 477-PYRO • Fax: (909) 355-9813

Product Synopsis • Pyrotechnic Proposal

City of West Covina

PROGRAM A – February 16, 2023

$12,000.00

Main Body - Aerial Shells

Description	Quantity
♦ 2.5" Souza Designer Selections	100
♦ 3" Souza Designer Selections	90
Total of Main Body - Aerial Shells	**190**

Pyrotechnic Devices

Description	Quantity
♦ Sousa Platinum Line Custom Multishot Device	320 Shots
♦ Sousa Diamond Line Custom Multishot Device	30 Shots
♦ Sousa Emerald Line Custom Multishot Device	300 Shots
♦ Sousa Silver Line Custom Multishot Device	369 Shots
Total of Pyrotechnic Devices	**1,019**

Grand Finale

Description	Quantity
♦ 2" Souza Designer Bombardment Shells	100
♦ 2.5" Souza Designer Bombardment Shells	72
♦ 3" Souza Designer Bombardment Shells	100
Total of Grand Finale	**272**
Grand Total	**1,481**

Product descriptions are for specification of product quality, classification, and value. Final product selections will be based on availability, suitability, and overall artistic style.

EXHIBIT C

SCHEDULE OF PERFORMANCE

A. The Production shall take place on February 16, 2023, at approximately 8:00 PM, at the West Covina Sportsplex North Baseball Field (Fenway), located at 2100 S. Azusa Ave., West Covina, CA.

B. City agrees to assume the risks of weather, strike, civil unrest, terrorism, military action, governmental action, and any other causes beyond the control of Contractor which may prevent the Production from being safely discharged on the scheduled date, which may cause cancellation of the event for which City has purchased the Production, or which may affect or damage such portion of the exhibits as may be placed and exposed a necessary time before the Production. If, for any such reason, Contractor is not reasonably able to safely discharge the Production on the scheduled date, or at the scheduled time, or should the event for which City has purchased the Production be canceled as a result of such causes, City may reschedule the Production and pay Contractor the sums set forth in subsection C herein.

C. If City elects to reschedule the Production, City shall pay Contractor (1) the balance of Contractor's Fee, (2) all additional expenses made necessary by such rescheduling, and (3) a 15% service fee on such additional expenses. Said expenses will be invoiced separately and payment will be due in full within fourteen (14) days of receipt. City and Contractor will agree upon the rescheduled date taking into consideration availability of permits, materials, equipment, transportation and labor. The Production shall be rescheduled to a date not more than 90 days subsequent to the first date set for the Production. The Production shall not be rescheduled to a date, or for an event, that historically has involved a fireworks production. The Production shall not be rescheduled between June 15th and July 15th unless the original date was July 4th of that year, or between December 15th and January 15th unless the original date was December 31st of the earlier year unless Contractor agrees that such rescheduling will not adversely affect normal business operations during those periods.

DRAYTON INSURANCE BROKERS, INC.

2500 CENTER POINT ROAD, SUITE 301
BIRMINGHAM, ALABAMA 35215
TELEPHONE: (205) 854-5806

POST OFFICE BOX 94067
BIRMINGHAM, ALABAMA 35220
FAX: (205) 854-5899

CERTIFICATE OF INSURANCE

NO. 312059

We certify that insurance is afforded as stated below. This Certificate does not affirmatively or negatively amend, extend or alter the coverage afforded by the insurance policy and the insurance afforded is subject to all the terms, exclusions and conditions of the policy.

INSURER Admiral Insurance Company **POLICY NO.** CA000002771-37

NAMED INSURED Pyro Spectaculars, Inc.
Pyro Events, Inc.
Pyro Spectaculars Productions, Inc.
P.O. Box 2329
Rialto, California 92377

Pyro Spectaculars by Souza
Pyro Spectacular Industries, Inc.
North American Fireworks Co., Inc. (NAFCO)
San Diego Fireworks

POLICY TERM January 13, 2023 to January 13, 2024; Both Days 12:01 A.M. Standard Time

COVERAGE Commercial General Liability: ☒ Occurrence Basis ☐ Claims Made Basis

LIMIT OF LIABILITY $5,000,000 each occurrence, $10,000,000 general aggregate, $5,000,000 products/completed operations aggregate
The limit of liability shall not be increased by the inclusion of more than one insured or additional insured.

INSURED OPERATIONS Public fireworks display and special effects contractor

It is certified that, if named below, this policy includes as Additional Insureds 1) the sponsor(s), promoter(s), organizer(s) (including other entities having similar interests), of insured pyrotechnic events and/or 2) the owner(s) of real property (or barges) at which insured pyrotechnic events are held and/or 3) the owner(s), manager(s), tenant(s), mortgagee(s) (including other entities having similar interests), of buildings, stadiums, arenas and similar facilities at which insured pyrotechnic events are held and/or 4) the licensing or permitting authority, or other authority having jurisdiction, issuing licenses/permits for insured pyrotechnic events and/or 5) any other entity for which the insurance is required to be afforded under written contract. Coverage applies only as respects the legal liability of such Additional Insured(s) for bodily injury and property damage caused by the operations of the Named Insured. The insurance afforded any Additional Insured does not include coverage for any bodily injury or property damage arising from the failure of such Additional Insured to fulfill its obligations specified in its contract with the Named Insured.

NAME & ADDRESS OF INSURED SPONSORS, PROPERTY OWNERS, LICENSORS

City of West Covina
1444 W Garvey Ave. Room 317
West Covina, CA 91790

ADDITIONAL INSURED(S) **City of West Covina, West Covina Fire Department,** officers, agents, employees and volunteers when acting in their official capacity as such.

DISPLAY LOCATION
West Covina Sportsplex
West Covina, CA

DISPLAY DATE(S)
February 16, 2023

It is certified that this policy requires a 30 day mutual notice of cancellation between the Insurer and the Named Insured. In the event of such cancellation we will endeavor to mail 10 days written notice to the Additional Insured(s), whose name and address is shown hereon, but failure to mail such notice shall impose no obligation or liability of any kind upon the insurer and/or the undersigned.

DRAYTON INSURANCE BROKERS, INC.

February 7, 2023
DATE OF ISSUE

A.J. STRINGER, PRESIDENT
CALIFORNIA LICENSE NO. 0A18664

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - BLANKET

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
PROFESSIONAL LIABILITY COVERAGE PART

It is hereby declared and agreed that the following entities are included as Additional Insured(s) hereunder.

1) Sponsor(s), promoter(s), organizer(s) (including other entities having similar interests), of insured pyrotechnic events and/or insured pyrotechnic premises.

2) Owner(s) of real property (or barges) at which insured pyrotechnic events are held and/or insured pyrotechnic premises are located.

3) Owner(s), manager(s), tenant(s), mortgagee(s) (including other entities having similar interests), of buildings, stadiums, arenas, stores and other similar facilities at which insured pyrotechnic events are held and/or insured pyrotechnic premises are located.

4) The licensing or permitting authority, or other authority having jurisdiction, issuing licenses/permits for insured pyrotechnic events and/or insured pyrotechnic premises.

5) Any duly licensed pyrotechnician acting either as a licensing cover for an insured pyrotechnic event or, alternatively, as an operator for a pyrotechnic event fired by the Named Insured.

6) Any other entity for which the Named Insured is contractually obligated to provide insurance such as is afforded by the terms of this policy.

but only if such entities are listed as additional insured(s) in a certificate of insurance issued under the terms of this endorsement and always subject to the limitations or conditions set out in such certificate of insurance.

The coverage afforded such Additional Insured(s) does not apply to injury or damage arising from the failure of any such Additional Insured to fulfill its obligations specified in its contract with the Named Insured.

Effective Date:1/13/2023

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COVERAGE AMENDMENT-PRIMARY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM
COMMERCIAL PROPERTY COVERAGE FORM
PROFESSIONAL LIABILITY COVERAGE FORM

It is hereby declared and agreed that, if so stated in a certificate of insurance, the coverage afforded any entity included as an Additional Insured under the terms of this policy shall

1) Be primary and non-contributory with any policy of insurance (or self-insurance) issued directly to the Additional Insured.
2) Provide a waiver of subrogation in favor of such Additional Insured.

CARNIVAL AGREEMENT

THIS CARNIVAL AGREEMENT is made and entered into as of January 20, 2023 ("Effective Date"), by and between PAUL MAURER, an individual DBA PAUL MAURER SHOWS ("Carnival Operator"), and the CITY OF WEST COVINA, a California municipal corporation ("City").

WHEREAS, City is hosting its Centennial Spring Festival on February 17, 2023, February 18, 2023 and February 19, 2023 (the "Festival") at Historic Downtown West Covina; and

WHEREAS, Carnival Operator is engaged in the business of providing amusement rides, attractions, games and food concessions; and

WHEREAS, City desires to utilize Carnival Operator's amusement rides, attractions games and food concessions for the Festival; and

WHEREAS, the parties desire to set forth their rights, duties and liabilities in connection with the services to be provided.

NOW, THEREFORE, in consideration of the covenants contained herein and other good and valuable consideration, the parties hereto agree to the following:

1. Amusement Rides and Concessions. Carnival Operator will provide between twelve (12) and fourteen (14) amusement rides and attractions, including a combination of spectacular/adult rides, major/adult rides, and kiddie rides. Examples of the amusement rides that will be provided are detailed in Exhibit A, attached hereto and incorporated herein. Carnival Operator may not furnish any other rides without City's prior consent. Carnival Operator will also provide a minimum of one (1) food concession, such as floss or a candy apple wagon, and a minimum of six (6) family game concessions. Examples of the family games to be provided are detailed in Exhibit B, attached hereto and incorporated herein. City agrees that it will not receive any share of Carnival Operator's revenues from sales for such games and concessions.

2. Space for Rides and Games. The City will provide space for the placement of the amusement rides, attractions, games and concessions at the parking lot located at 1200 Lakes Drive and a portion of S. Glendora Avenue between E. Dalewood Street and south of E. Garvey Avenue, as depicted in Exhibit C, attached hereto and incorporated herein. The space designated for Carnival Operator's use will be referred to in this Agreement as the "Premises."

3. Health Permit. City will obtain a Community Event Organizer permit from the Los Angeles County Department of Public Health for the Festival, and will list Carnival Operator as a food vendor on such permit.

4. Carnival Layout. Carnival Operator shall provide to City for City's approval the proposed layout for the amusement rides, attractions, games and concessions no later than January 27, 2023. Carnival Operator shall not modify the approved layout without City's approval.

5. Term of Agreement; Termination.

a. Term. The term of this Agreement shall commence on the Effective Date and end on February 21, 2023.

b. Termination. City may terminate this Agreement at any time, with or without cause, by providing written notice to Carnival Operator.

6. Schedule of Events. Carnival Operator will provide its amusement rides, attractions, games and food concessions for the duration of the Festival, in accordance with the schedule of events detailed below. The schedule of events may be revised upon mutual agreement of Carnival Operator and City.

Schedule of Events:

Monday, February 13, 2023	Equipment begins to arrive at Premises
Wednesday, February 15, 2023	Carnival Operator begins set-up of rides and attractions at 10:00am
Thursday, February 16, 2023	Carnival Operator continues set-up of rides
Friday, February 17, 2023	Carnival Operator completes set-up of rides and attractions and cleans and inspects all rides
Friday, February 17, 2023	Carnival open: 6:00pm-10:00pm
Saturday, February 18, 2023	Carnival open: 11:00am-10:00pm
Sunday, February 19, 2023	Carnival open: 12:00pm-8:00pm Carnival Operator begins tear down of equipment immediately after Festival closes
Monday, February 20, 2023	Carnival Operator removes all equipment from the street no later than 6:00am
Tuesday, February 21, 2023	Carnival Operator finishes tear down and removes all equipment from the Premises by no later than 6:00pm

7. Ticket Sales and Prices.

a. The parties agree that tickets for amusement rides shall be sold as unlimited ride wristbands or coupons at the following prices:
   i. Unlimited Ride Wristbands
      1. Advance Purchase: “Daily” Unlimited Ride Wristband =$30.00 each
      2. Onsite at Festival: “Daily” Unlimited Ride Wristband=$40.00 each
   ii. Coupons
      1. Onsite at Festival: Sheet of 24 coupons=$20.00 each
      2. Onsite at Festival: Single (1) coupon=$1.00 each
b. The parties acknowledge that each ride requires three (3) to six (6) ride coupons, per person.
c. Carnival Operator will provide all advance purchase unlimited ride wristband coupons to the City within five (5) days from execution of this Agreement. Carnival Operator will permit such coupons to be redeemed for wristbands at any carnival ticket box at the Festival.

d. City agrees to cease selling advance unlimited ride wristband coupons at 7:00pm on Thursday, February 16, 2023.
e. City agrees to return all unsold advance unlimited wristband coupons to Carnival Operator by 4:00pm on Friday, February 17, 2023, or such other time as agreed to by City and Carnival Operator, at the carnival office. City further agrees to issue a check, made payable to "Paul Maurer," to Carnival Operator for all monies collected from the advance unlimited wristband coupon sales by 4:00pm on Friday, February 17, 2023, at the carnival office.
f. Carnival Operator will provide ticket sellers for the duration of the Festival, unless otherwise agreed to by City and Carnival Operator.

8. Ticket Sale Revenue. Carnival Operator agrees to share gross revenues from ticket sales for amusement rides, including all advance and onsite sales of wristbands, coupons, and coupon books, with the Film It West Covina, a nonprofit corporation, as follows:
   a. If gross revenues from ticket sales for amusement rides totals $50,000 or less, Film It West Covina will not receive any share of the gross revenue from such sales.
   b. If gross revenues from ticket sales for amusement rides totals between $50,001 and $75,000, Carnival Operator will provide Film It West Covina with 15% of the gross revenue from such sales.
   c. If gross revenues from ticket sales for amusement rides totals $75,001 or more, Carnival Operator will provide Film It West Covina with 20% of the gross revenue from such sales.

   Carnival Operator will provide a final and complete settlement from the total ride gross revenues to City on Sunday, February 19, 2023, within forty-five (45) minutes after the closing of all rides. The parties will meet in the carnival office for such settlement. During such meeting, Carnival Operator shall provide City Film It West Covina's share, if any, of the ride gross revenues by issuing a check made payable to "Film It West Covina." The City will transmit such check to Film It West Covina.

   The parties acknowledge that Carnival Operator has an "open door" policy with Festival sponsors, and agrees to permit authorized City personnel to come into the carnival office any time to check or verify the ticket sales amount or status during operating hours.

9. Electrical Power. Carnival Operator shall provide its own generated electrical power for the operation of the amusement rides, attractions, games and food concessions.

10. Operation of Amusement Rides and Concessions. Carnival Operator shall have exclusive control of the operation of all amusement rides, attractions, games and food concessions provided by Carnival Operator pursuant to this Agreement. Carnival Operator shall operate such rides, attractions, games and concessions on each day of the Festival in accordance with the schedule of events detailed herein, or as otherwise agreed to by the parties.

11. Installation and Removal of Amusement Rides and Concessions. Carnival Operator shall furnish at its own expense all personnel and equipment required to erect, operate, dismantle and remove all amusement rides, attractions, games, concessions and other equipment provided by Carnival Operator on the Premises.

12. Carnival Operator Representative. At all times Carnival Operator or any of Carnival Operator's personnel are present on the Premises, there shall also be present a "Representative" of Carnival Operator who shall be responsible for Carnival Operator's operations and the conduct of its personnel under this Agreement.

13. Condition of Premises. Carnival Operator agrees to clean up any leftover debris caused by the operation of the amusement rides, attractions, games and food concessions provided by Carnival Operator at the end of each day of the Festival. Carnival Operator further agrees to surrender the Premises to the City at the end of the Festival in the same condition as existed on the Effective Date of this Agreement, ordinary use and wear thereof excepted. Carnival Operator shall be responsible for any damage caused to the Premises by Carnival Operator's amusement rides, attractions, games and/or food concessions.

14. Advertising. City shall be solely responsible for advertising the Festival and the amusement rides, attractions, games, and food concessions to be provided by Carnival Operator. Time permitting, Carnival Operator will provide to City 1,000 half-page, double-sided fliers, with one side in English and the other side in Spanish, in a form approved by City. If City requests additional fliers, City agrees to reimburse Carnival Operator for the costs of printing such additional fliers.

15. Permits. City agrees to obtain and pay for all licenses and permits required for the operation of the Festival and Carnival Operator's rides and attractions. Carnival Operator shall obtain and pay for its City of West Covina business license.

16. Offices and Living Quarters. City agrees to designate a location onsite at the Premises for Carnival Operator's management offices, living quarters, which are fully self-contained, and crew bunkhouses. Such facilities shall be moved in and torn down in accordance with the schedule of events outlined herein.

17. Drinking Water. City agrees to provide Carnival Operator with access to one (1) fresh drinking water outlet for Carnival Operator's use for the duration of the Festival.

18. Other Amusement Operators. City agrees that it will not sponsor or book any other vendor providing amusement rides, attractions or games for the Festival.

19. Cancelation. City reserves the right to cancel the use of Carnival Operator's rides, attractions, games and concessions in the event of cancelation of the Festival, an act of God, inclement weather, natural disaster, bomb or threat, or for any other reason determined to be in the public interest as determined in the City's sole discretion. Carnival Operator hereby waives any claims it may have against the City relating to any such cancelation.

20. Force Majeure. 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. Carnival Operator shall not be liable for any delay or failure to perform if Carnival Operator presents documentation satisfactory to the City to substantiate such delay or failure to perform.

21. Insurance.

a. Minimum Scope and Limits of Insurance. Carnival Operator 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:

i. Broad-form commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, with a policy limit of not less than Ten Million Dollars ($10,000,000.00) per occurrence, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury and bodily injury. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

ii. Automobile liability insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Carnival Operator arising out of or in connection with work to be performed and services to be provided under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, with a policy limit of not less than One Million Dollars ($1,000,000.00) combined single limit for each accident.

iii. 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. Carnival Operator 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 Carnival Operator for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

iv. Sexual abuse/molestation insurance in an amount not less than One Million Dollars ($1,000,000.00) per occurrence, Two Million Dollars ($2,000,000.00) general aggregate. This coverage may be part of commercial general liability coverage or a separate policy.

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

i. 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 Carnival Operator pursuant to its contract with the City; products and completed operations of Carnival Operator; premises owned, occupied or used by Carnival Operator; automobiles owned, leased, hired, or borrowed by Carnival Operator.

ii. Notice of Cancelation: Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

iii. 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.

iv. Coverage Applies Separately: Carnival Operator'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.

c. Primary Coverage/Noncontributing. Carnival Operator'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 shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

d. Waiver of Subrogation. All insurance maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against the City, its elected and appointed officials, officers, employees, agents and volunteers or shall specifically allow Carnival Operator or others providing insurance evidence in compliance with these specifications to waive their right to recovery prior to a loss. Carnival Operator hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

e. Requirements Not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If Carnival Operator maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by Carnival Operator. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

f. 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 Carnival Operator 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.

g. Certificates of Insurance. Carnival Operator, at its sole cost, shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, including the waiver of subrogation endorsement for workers' compensation, in a form and content approved by City, prior to performing any services under this Agreement. Current certification of insurance shall be kept on file with City at all times during the term of 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.

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

22. Indemnification and Hold Harmless. It is expressly understood and agreed by and between the parties that in no case shall City be liable to Carnival Operator, or any other person or persons, for any injury, loss and/or damage to any person or property on the Premises or arising from the amusement rides, attractions, games and/or concessions provided by Carnival Operator or by virtue of any act, error, or omission of Carnival Operator or its employees, agents and/or subcontractors. Carnival Operator agrees to defend, with counsel of City's choosing, indemnify and hold harmless the City, its elected and appointed officials, officers, agents and employees, at Carnival Operator'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 from or relating to the use or operation of the amusement rides, attractions, games and/or concessions provided by Carnival Operator or arising from any act, error or omission of Carnival Operator, its employees, agents and/or subcontractors in the performance of this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Carnival Operator, its employees, agents and/or subcontractors. Notwithstanding the foregoing, Carnival Operator 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.

23. Compliance with All Laws. Carnival Operator shall comply and shall require its employees, agents and subcontractors to comply with all laws, ordinances and regulations adopted or established by federal, state or local governmental agencies or bodies, with the terms of this Agreement, all relevant health and fire codes and all trademark, copyright and other intellectual property laws. Carnival Operator agrees that at all times it and its employees and agents will conduct its activities with full regard for public safety.

24. Rules and Regulations. Carnival Operator agrees to comply with all rules and regulations from time to time adopted or prescribed by City, for the operation and management of the Premises and Festival. Carnival Operator further agrees to cooperate with the City in its performance of this Agreement and comply with all reasonable requests of the City in connection with Carnival Operator's performance of this Agreement.

25. 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 CARNIVAL OPERATOR:	IF TO CITY:
Paul Maurer Shows	City of West Covina
14514 Valley View Ave.	1444 West Garvey Ave. South
La Mirada, CA90638	West Covina, CA 91790
Tel: (619) 823-5204	Tel: (626) 939-8475
Email: robineames1@aol.com	Email: rlerma@westcovina.org
Attn: Robin Eames, Booking Agent	Attn: Roxanne Lerma

26. Entire Agreement; Amendment. 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.

27. 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.

[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

_____ Date: _____
David Carmany
City Manager

CARNIVAL OPERATOR

_____ Date: _____
Paul Maurer

ATTEST:

_____
Lisa Sherrick
Assistant City Clerk

APPROVED AS TO FORM:

_____ Date: _____
Thomas P. Duarte
City Attorney

APPROVED AS TO INSURANCE:

_____ Date: _____
Lisa Handy
Interim Human Resources and Risk
Management Director

EXHIBIT A

AMUSEMENT RIDES

Adult & Teen Rides

Rock Star
Super Shot
Zipper
Kite Flyer
Force 10 (Gravitron)
Deluxe Sizzler
Eli-16 (70’ high) Traditional Ferris Wheel
Swinger

Kiddie Rides

Carousel (Merry-go-Round)
Fun Slide
Dino’s
Super Trucks
Dizzy Dragon
Go Gator Kiddie Coaster

EXHIBIT B

GAMES

Family Games

Water-race
Balloon Pop
Gold Fish
Ring-a-Duck
Hi-Striker
Tubs of Fun
Long Range Basketball
Ring-a-Bottle

EXHIBIT C

CARNIVAL LOCATION

CITY OF WEST COVINA
AGREEMENT FOR SERVICES
WITH
PYRO SPECTACULARS, INC.
FOR
FIREWORKS PRODUCTION

THIS AGREEMENT FOR SERVICES is made and entered into as of February 24, 2023 ("Effective Date"), by and between the CITY OF WEST COVINA, a municipal corporation ("City"), and PYRO SPECTACULARS, INC., a California corporation ("Contractor").

RECITALS

A. City proposes to utilize the services of Contractor as an independent contractor to City to produce and provide the City's July 4, 2023 fireworks production, as more fully described herein; and

B. Contractor represents that it has that degree of specialized expertise necessary and holds all necessary licenses to practice and perform the services herein contemplated; and

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

D. 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 Work. Contractor shall provide the equipment and perform the tasks to produce the City's July 4, 2023 fireworks production (the "Production") in accordance with the Scope of Work, attached hereto as Exhibit "A" and Contractor's Proposal, attached hereto as Exhibit "B," both incorporated herein. Contractor shall furnish, at Contractor's expense, all properly skilled personnel, labor, materials, necessary tools, equipment, and all taxes, utility and transportation services required to provide the Production and related work under this Agreement. Contractor shall provide the Production in accordance with the Schedule of Performance, attached hereto as Exhibit "C" and incorporated herein.

1.2. Professional Practices. All services to be provided by Contractor pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by persons in similar fields and circumstances in accordance with sound professional practices. Contractor shall keep itself informed of federal, state and local laws and regulations which in any manner affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. Contractor shall at all times observe and comply with all such laws and regulations. City officers and employees shall not be liable at law or in equity for any claims or damages occurring as a result of failure of the Contractor to comply with this section.

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

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

1.5. Proprietary Rights. Contractor represents and warrants that it owns all copyrights, including performance rights, to the Production, except that Contractor does not own City-owned material or third-party material that has been included in the Production, and as to such City-owned and third party-owned material, City assumes full responsibility therefor. City agrees that Contractor shall retain ownership of, and all copyrights and other rights to, the Production, except that Contractor shall not acquire or retain any ownership or other rights in or to City-owned material and third party-owned material and shall not be responsible in any way for such material. If applicable, City consents to the use of City-owned material and represents that is has or will obtain any permission from appropriate third parties sufficient to authorize public exhibition of any such material in connection with the Production. Contractor reserves the ownership rights in its trade names that are used in or are a product of the Production. Any reproduction by sound, video or other duplication or recording process by City without the express written permission of Contractor is prohibited.

2.0. COMPENSATION

2.1. Compensation. City agrees to pay Contractor a fee of Thirty-Five Thousand Dollars ($35,000.00) ("Contractor's Fee") plus permit fees, standby fees and regulatory costs. Contractor shall be paid in accordance with the payment schedule set forth in Section 2.2.

2.2. Payment Schedule. City agrees to pay Contractor an initial payment equal to fifty percent (50%) of Contractor's Fee plus estimated permit and standby fees and other regulatory costs totaling One Thousand Seven Hundred Ninety-Five Dollars ($1,795.00), for a total of Nineteen Thousand Two Hundred Ninety-Five Dollars ($19,295.00) ("Initial Payment") upon execution of this Agreement by both parties, but no later than February 24, 2023. The Initial Payment is partial payment toward the preproduction services and costs set forth in the Scope of Work. City agrees to pay the remaining fifty percent (50%) of Contractor's Fee no later than July 5, 2023, provided that Contractor has provided City an invoice for such balance at least thirty (30) days prior to such date.

2.3. Additional Costs and Expenses. Contractor shall pay all normal expenses directly related to the Production including freight, insurance as set forth herein, pyrotechnic products, pyrotechnic equipment, experienced pyrotechnic personnel to set up and discharge the pyrotechnics, and those additional items outlined as Contractor's responsibility in the Scope of Work. City shall pay all costs related to the Production not supplied by Contractor, including those items outlined as City's responsibility in this Agreement and the Scope of Work.

2.4. Additional Services. Contractor shall not receive compensation for any services provided outside the scope of services specified in this Agreement unless the City, prior to

Contractor performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable. Should the City request in writing additional services that increase the Scope of Work, an additional fee based upon the Contractor's standard hourly rates shall be paid to the Contractor for such additional services.

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

3.0. TERM AND TERMINATION

3.1. Term. This Agreement shall commence on the Effective Date and continue through July 5, 2023 upon completion of all tasks described herein, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

3.2. 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 prior to the Production, by providing written notice to Contractor.

In the event this Agreement is terminated pursuant to this Section, City agrees to pay Contractor the following percentages of Contractor's Fee as liquidated damages:

(a) 50% if termination occurs 30 or more days prior to July 4, 2023;
(b) 75% if termination occurs 15 to 29 days prior to July 4, 2023;
(c) 100% if termination occurs within 14 days of July 4, 2023.

If City cancels the Production, it will be impractical or extremely difficult to fix the actual amount of Contractor's damages. Therefore, the parties agree that the foregoing represents a reasonable estimate of the damages Contractor will suffer if City cancels the Production.

If City terminates pursuant to subsection (a), the parties acknowledge and agree that no additional payment will be made to Contractor. If City terminates pursuant to subsection (b), the parties acknowledge and agree that the City will pay Contractor twenty-five percent (25%) of Contractor's Fee, which amount represents the 75% liquidated damages amount less the 50% paid as part of the Initial Payment. If City terminates pursuant to subsection (c), the parties acknowledge and agree that City will pay Contractor 50% of Contractor's Fee, which amount represents the 100% liquidated damages amount less the 50% paid as part of the Initial Payment.

4.0. INSURANCE

4.1. Minimum Scope and Limits of Insurance. Contractor shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company 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 Five Million Dollars ($5,000,000.00) per

occurrence.

(b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than Five Million Dollars ($5,000,000.00) combined single limit per accident for bodily injury and property damage.

(c) Workers' compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than One Million Dollars ($1,000,000.00) per accident for bodily injury or disease. Contractor agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers for losses arising from work performed by Contractor for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

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

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

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

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

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

(a) Additional Insureds: The City of West Covina and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Contractor pursuant to its contract with the City; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; automobiles owned, leased, hired, or borrowed by the Contractor.

(b) Notice of Cancelation: Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City by Contractor.

(c) Primary Coverage: The Contractor's insurance coverage shall be primary insurance as respects the City of West Covina, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of West Covina shall be excess and not contributing with the insurance provided by this policy.

(d) Waiver of Subrogation: Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

(e) Coverage Not Affected: Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of West Covina, its officers, officials, agents, employees, and volunteers.

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

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

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

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

5.0. GENERAL PROVISIONS

5.1. 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.

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

Contractor shall designate a representative for purposes of this Agreement who

shall be authorized to issue all consents, approvals, directives and agreements on behalf of Contractor called for by this Agreement, except as otherwise expressly provided in this Agreement.

5.3. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery 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; and b) 72 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONTRACTOR:	IF TO CITY:
Pyro Spectaculars, Inc. P.O. Box 2329 Rialto, CA 92377 Tel: (909) 355-8120 Attn: Aaron Beargeon	City of West Covina 1444 West Garvey Ave. South West Covina, CA 91790 Tel: (626) 939-8475 Attn: Roxanne Lerma

5.4. 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.

5.5. 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.

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

5.7. Indemnification and Hold Harmless. Contractor agrees to defend, with reasonable counsel of City's choosing, indemnify, hold free and harmless the City, its elected and appointed officials, officers, agents and employees, at Contractor's sole expense, from and against any and all claims, demands, actions, suits or other legal proceedings brought against the City, its elected and appointed officials, officers, agents and employees arising from any act, error or omission of Contractor, its employees, agents and/or authorized subcontractors in the performance of this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Contractor, its employees, agents and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Contractor, its employees, agents and/or authorized subcontractors, and/or whenever any claim, action,

complaint or suit asserts liability against the City, its elected and appointed officials, officers, agents and employees based upon the work performed by the Contractor, its employees, agents and/or authorized subcontractors under this Agreement, whether or not the Contractor, its employees, agents and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Contractor shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Contractor's Proposal, which shall be of no force and effect.

5.8. Limitation of Damages. Except in the case of bodily injury and property damage as provided in the insurance and indemnification provisions set forth herein, in the event City claims Contractor has breached this Agreement or was otherwise negligent in performing the Production, City shall not be entitled to claim or recover monetary damages from Contractor beyond the amount City has paid to Contractor under this Agreement, and shall not be entitled to claim or recover any consequential damages from Contractor including, without limitation, damages for loss of income, business or profits.

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

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

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

any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

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

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

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

5.14. 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.

5.15. 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.

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

5.17. 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.

5.18. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement and have had an adequate opportunity to review each and every provision of the Agreement and submit the same to counsel or other consultants for review and comment. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement,

this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

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

5.20. 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.

5.21. 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.

5.22. 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.

5.23. 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.

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

5.25. Price Firm Date. City acknowledges and agrees that the executed Agreement and the Initial Payment must be delivered to Contractor no later than February 24, 2023 ("Price Firm Date"). City acknowledges that failure to deliver the executed Agreement and Initial Payment to Contractor by the Price Firm Date may result in cancellation of the Production and termination of this Agreement, in Contractor's discretion. If Contractor elects to cancel the Production and terminate this Agreement as permitted by this Section, Contractor shall provide notice of same to City within fifteen (15) days of receipt of the executed Agreement and Initial Payment. In such event, Contractor shall return the Initial Payment to City and City shall not owe Contractor any compensation pursuant to this Agreement.

[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

_____ Date: 2-19-23
David Carmany
City Manager

CONTRACTOR

_____ Date: 02/01/2023
James R. Souza
President

OKK

ATTEST:

_____
Lisa Sherrick
Assistant City Clerk

APPROVED AS TO FORM:

_____ Date: 02/14/23
Thomas P. Duarte
City Attorney

APPROVED AS TO INSURANCE:

_____ Date: 2-14-2023
Lisa Handy
Interim Human Resources and Risk
Management Director

EXHIBIT A

SCOPE OF WORK

A. The Production shall be substantially as outlined in Contractor's Proposal set forth in Exhibit B.

B. Contractor's Duties.

1. Contractor shall provide all pyrotechnic equipment, trained pyrotechnicians, shipping, pyrotechnic products, application for specific pyrotechnic permits (the costs of which, including standby fees, will be paid by City) relating to the Production, insurance covering the Production and preproduction services.

2. Contractor shall provide preproduction services and costs for the production, including advance acquisition of materials and products; design; engineering, programming, handling, staging, storage, and maintenance of products, props, and systems; preparation of drawings, diagrams, listings schedules, inventory controls, choreography, and computer code; picking, packing, labeling, staging, and loading of equipment, materials, and systems; transportation, and logistics and crew scheduling and support; explosive storage magazines with legally mandated distances, surfaces, security, housekeeping, and access controls; and necessary and appropriate vehicles, including legally mandated insurance, including MCS90 explosives transportation coverage, parking, security and maintenance.

3. Contractor will apply for permits for the firing of pyrotechnics only from the West Covina Fire Department, FAA, and USCG, if required. Contractor shall comply with or exceed the applicable National Fire Protection Association (NFPA) 1123 standards in regard to the fireworks display area. The display will have a radius of at least 70 feet per inch of the largest diameter pyrotechnic from the firing site in all directions to any parking area, spectators, inhabited buildings, public roads, or active railroad.

4. Contractor shall provide the musical soundtrack for the Production supplied in a format agreed upon with the City.

5. Contractor shall be responsible for the removal of all equipment provided by Contractor and clean-up of any live pyrotechnic debris made necessary by Contractor.

C. City's Duties.

1. City shall provide a suitable site ("Site") for the Production, security for the Site, access to the Site, and any permission necessary to use the Site for the Production. All Site arrangements are subject to Contractor's reasonable approval as to pyrotechnic safety, suitability, and security. All other conditions of the Site shall be the responsibility of the City, including, but not limited to, access, use, control, parking and general safety with respect to the public, City personnel and other contractors.

2. City shall provide adequate security personnel, barricades, and Police Department services as may be necessary to preclude individuals other than those authorized by Contractor from entering into an area to be designated by Contractor as the area for the set-up and discharge of the Production, including a fallout area satisfactory to Contractor where the pyrotechnics may safely rise and any debris may safely fall.

Contractor shall have no responsibility for monitoring or controlling City's other contractors, providers or volunteers; the public; areas to which the public or contractors have access; or any other public of contractor facilities associated with the Production.

3. City shall provide all on-site labor costs, if any, not provided or performed by Contractor personnel including, but not limited to, all Site security, Police and Fire Department standby personnel, stagehands, electricians, audio and fire control monitors, carpenters, plumbers and clean-up crew, at City's expense.

4. City shall coordinate any applicable non-pyrotechnic permitting with any local, state or federal government that may hold authority over the Production and shall make arrangements for Police Departments, Fire Departments, road closures, event/activity permits or land use permits or any permission or permit required by any local, regional, state or federal government as City deems appropriate or necessary for the Production.

5. City shall pay the costs of all permits required for the presentation of the Production and the event as a whole.

6. City shall provide a Safety Zone in accordance with applicable standards and all requirements of the authorities having jurisdiction throughout the entire time that the pyrotechnics are at the Site or the load site (if different) on the date of the Production and all set-up and load-out dates.

7. City shall provide a professional grade audio system including all necessary equipment, installation of such equipment and trained audio engineers for operation based on audio and communication requirements provided by Contractor.

8. City shall provide general services including, but not limited to, Site and audience security, fencing, adequate work light, dumpster accessibility, a secure office for Contractor's personnel within the venue, secure parking for Contractor's vehicles, access to washrooms, tents, equipment storage, hazmat storage, electrical power, fire suppression equipment, access to worksites, necessary credentialing, etc., as necessary for the event and the Production.

9. City shall be responsible for all clean-up not provided by Contractor, including any environmental clean-up.

D. Safety. Contractor and City shall each comply with applicable federal, state and local laws and regulations and employ safety programs and measures consistent with recognized applicable industry standards and practices. At all times before and during the Production, it shall be within Contractor's discretion to determine whether or not the Production may be safely discharged or continued. It shall not constitute a breach of the Agreement by Contractor for fireworks to fail or malfunction, or for Contractor to determine that the Production cannot be discharged or continued as a result of any conditions or circumstances affecting safety beyond the reasonable control of Contractor. If Contractor makes such determination prior to or during the Production, City shall have the option to reschedule the Production in accordance with provisions set forth in the Schedule of Performance (Exhibit C).

EXHIBIT B

CONTRACTOR'S PROPOSAL

2023 PYRO SPECTACULARS by Souza®

Pyrotechnic Proposal

City of West Covina

July 4, 2023

November 8, 2022

City of West Covina
Roxanne E. Lerma
1444 W Garvey Ave., Room 317
West Covina, CA 91790

Dear Ms. Lerma,

Pyro Spectaculars, Inc. is happy to provide our pyrotechnic proposal for your July 4, 2023 event. The following proposal outlines your custom designed **Sky Concert™** Program "A" for the amount of $35,000.00.

Our full service program includes necessary preproduction services, music production and choreography, the services of a licensed pyrotechnic operator, specialized crew, an electronic firing system, and pyrotechnic safety equipment used for support and protection. The price also includes insurance coverage, sales tax, and delivery. To help ensure public safety, we work directly with the local fire authority, and we apply for the necessary fireworks related permits. Our winning combination of products, people, and production capabilities help produce the best fireworks entertainment package for your event.

Your organization will be responsible for payment of permit fees and/or standby firemen fees, if any. The Fire Department may bill you directly for any additional standby fees for inspections. Your organization will also be responsible for providing the display location, necessary security for the display site, and other event permits.

Please review the enclosed Proposal, Product Synopsis, Production Agreement, and Scope of Work in detail. In order to reserve your program, it is imperative that you return the fully executed agreement, your initial payment, and permit fees to our office by December 30, 2022, the price firm date in your production agreement. The program, pricing, and show date may not be available beyond the price firm date.

If you wish to discuss your program or need more information, please call either me or your Customer Service Representative Luis Ruiz at (909) 355-8120 ext. 227.

Sincerely,

PYRO SPECTACULARS, INC.

Aaron Beargeon

Aaron Beargeon

Pyro Show Producer

AB/ag

Enclosures

Pyro Spectaculars, Inc.
P.O. Box 2329 • Rialto, CA 92377 • Phone: (909) 355-8120 or (888) 477-PYRO • Fax: (909) 355-9813

Product Synopsis • Pyrotechnic Proposal

City of West Covina

PROGRAM A – July 4, 2023

$35,000.00

Main Body - Aerial Shells

Description	Quantity
♦ 2.5" Sky Concert Selections	192
♦ 3" Sky Concert Selections	200
♦ 4" Sky Concert Selections	180
Total of Main Body - Aerial Shells	**572**

Grand Finale

Description	Quantity
♦ 2.5" Sky Concert Bombardment Shells	126
♦ 3" Sky Concert Bombardment Shells	85
♦ 4" Sky Concert Bombardment Shells	60
Total of Grand Finale	**271**
Grand Total	**843**

Product descriptions are for specification of product quality, classification, and value. Final product selections will be based on availability, suitability, and overall artistic style.

EXHIBIT C

SCHEDULE OF PERFORMANCE

A. The Production shall take place on July 4, 2023, at approximately 9:00 PM, at the West Covina Sportsplex North Baseball Field (Fenway), located at 2100 S. Azusa Ave., West Covina, CA.

B. City agrees to assume the risks of weather, strike, civil unrest, terrorism, military action, governmental action, and any other causes beyond the control of Contractor which may prevent the Production from being safely discharged on the scheduled date, which may cause cancellation of the event for which City has purchased the Production, or which may affect or damage such portion of the exhibits as may be placed and exposed a necessary time before the Production. If, for any such reason, Contractor is not reasonably able to safely discharge the Production on the scheduled date, or at the scheduled time, or should the event for which City has purchased the Production be canceled as a result of such causes, City may reschedule the Production and pay Contractor the sums set forth in subsection C herein.

C. If City elects to reschedule the Production, City shall pay Contractor (1) the balance of Contractor's Fee, (2) all additional expenses made necessary by such rescheduling, and (3) a 15% service fee on such additional expenses. Said expenses will be invoiced separately and payment will be due in full within fourteen (14) days of receipt. City and Contractor will agree upon the rescheduled date taking into consideration availability of permits, materials, equipment, transportation and labor. The Production shall be rescheduled to a date not more than 90 days subsequent to the first date set for the Production. The Production shall not be rescheduled to a date, or for an event, that historically has involved a fireworks production. The Production shall not be rescheduled between June 15th and July 15th unless the original date was July 4th of that year, or between December 15th and January 15th unless the original date was December 31st of the earlier year unless Contractor agrees that such rescheduling will not adversely affect normal business operations during those periods.

AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: March 21, 2023

TO: Mayor and City Council

FROM: David Carmany
City Manager

SUBJECT: CONSIDERATION OF REMOVAL OF MAYOR PRO TEM BRIAN TABATABAI FROM POSITION OF MAYOR PRO TEM

RECOMMENDATION:

It is recommended that the City Council decide whether to remove Mayor Pro Tem Brian Tabatabai from position of Mayor Pro Tem.

BACKGROUND:

Section 2-21 of the West Covina Municipal Code describes the duties of the Mayor and the order of the mayoral succession, as follows:

(a) The mayor, sometimes herein referred to as the "presiding officer," shall preserve strict order and decorum at all meetings of the city council. The mayor shall state every question coming before the council, announce the decision of the council on all subjects and decide all questions of order, subject, however, to an appeal to the council, in which event a majority vote of the council members present shall govern and conclusively determine such question of order. Voting on all ordinances shall be by roll call vote called by the city clerk; and the mayor shall be entitled to vote last on all questions.
(b) The mayor shall be the official head of the city for all ceremonial purposes and shall perform all duties imposed upon the mayor by the laws of the state or by ordinance of the city. The mayor shall serve in such capacity at the pleasure of the city council.

(c) The city council shall conduct its annual reorganization during its second regularly scheduled meeting of November, except in even-numbered years when the reorganization will occur at the time the city council confirms the official canvass of the municipal election results as required by California Government Code section 36801.

(d) The order of mayoral succession shall be determined by the length of the current term of incumbency, as defined by the date of elsection. When two (2) or more council members have equal terms of incumbency, the order shall be determined by the highest number of votes received at their election to the city council.

(e) In the event that the position of mayor or mayor pro tem becomes vacant for any reason, succession order shall remain the same, however, if both the mayor and the mayor pro tem have changed prior to the next regularly scheduled reorganization, the council members appointed to complete the vacant

terms shall continue to serve as the mayor and mayor pro tern, respectively, for the term they would have held in the absence of the vacancy.

Thereafter, the outgoing mayor's name will rotate to the bottom of the previous year's mayoral succession list, with all other names moving up one (1) position, in order that the outgoing mayor pro tem shall become the new mayor, and the next council member on the list shall become the new mayor pro tem.

(f) Newly elected council members shall be added to the bottom of the mayoral succession list, following the outgoing mayor in that election year's council reorganization. When there are two (2) or more newly elected council members, the order will be determined by the person who received the highest number of votes at the election.

(g) Any individual appointed to fill a vacancy in a city council seat shall be added immediately to the bottom of the mayoral succession list.

(h) The city council by a minimum of four (4) votes may modify the mayoral succession list or remove and replace the mayor or mayor pro tem at any time.

The current order of the Mayoral succession is as follows:

Rosario Diaz, Mayor
Brian Tabatabai, Mayor Pro Tem
Tony Wu, Council Member
Letty Lopez-Viado, Council Member
Ollie Cantos, Council Member

DISCUSSION:

At the March 7, 2023 City Council meeting, Councilman Cantos moved that Council agendize consideration of the removal of Mayor Pro Tem Tabatabai from the position of Mayor Pro Tem. The motion was seconded by Councilwoman Lopez-Viado and approved on a 4-1 vote, with aye votes by Councilman Cantos, Councilman Wu, Councilwoman Lopez-Viado, and Mayor Diaz. Mayor Pro Tem Tabatabai voted no.

LEGAL REVIEW:

The City Attorney's Office has reviewed this report

OPTIONS:

Per City Council direction, consider whether to remove Mayor Pro Tem Tabatabai from the position of Mayor Pro Tem.

Prepared by: David N. Carmany, City Manager