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REVISED



**REGULAR MEETING AGENDA**  
125 E. College Street, Covina, California  
Council Chamber of City Hall  
**Tuesday, December 01, 2015**

**CITY COUNCIL/SUCCESSOR AGENCY TO THE COVINA  
REDEVELOPMENT AGENCY/COVINA PUBLIC FINANCING  
AUTHORITY/COVINA HOUSING AUTHORITY  
JOINT MEETING—OPEN SESSION  
7:30 p.m.**

**ROLL CALL**

Council/Agency/Authority Members Walter Allen III, Peggy A. Delach, Jorge Marquez, Mayor Pro Tem/Vice Chair Kevin Stapleton and Mayor/Chair John C. King

**PLEDGE OF ALLEGIANCE**

Led by Council Member Marquez

**INVOCATION**

Given by Police Chaplain Truax

**PRESENTATIONS**

Recognition of the Christmas Parade Committee

Recognition of the Covina Police Department Volunteer of the Year

**PUBLIC COMMENTS**

*To address the Council/Agency/Authority please complete a yellow speaker request card located at the entrance and give it to the City Clerk/Agency/Authority Secretary. Your name will be called when it is your turn to speak. Those wishing to speak on a LISTED AGENDA ITEM will be heard when that item is addressed. Those wishing to speak on an item NOT ON THE AGENDA will be heard at this time. State Law prohibits the Council/Agency/Authority Members from taking action on any item not on the agenda. Individual speakers are limited to five minutes each.*

**COUNCIL/AGENCY/AUTHORITY COMMENTS**

*Council/Agency/Authority Members wishing to make any announcements of public interest or to request that specific items be added to future Council/Agency/Authority agendas may do so at this time.*

**CITY MANAGER COMMENTS**

## **CONSENT CALENDAR**

*All matters listed under consent calendar are considered routine, and will be enacted by one motion. There will be no separate discussion on these items prior to the time the Council/Agency/Authority votes on them, unless a member of the Council/Agency/Authority requests a specific item be removed from the consent calendar for discussion.*

**CC 1. Minutes of the October 20, 2015, Regular and November 17, 2015, Study Session meetings of the City Council/Successor Agency to the Covina Redevelopment Agency/Public Financing Agency/Housing Authority.**

*Report:* [Minutes](#)

**CC 2. Payment of City demands in the amount of \$1,586,716.30.**

*Report:* [Payment of City Demands](#)

**CC 3. Payment of Agency demands in the amount of \$22,017.54.**

*Report:* [Payment of Agency Demands](#)

**CC 4. Consideration of Resolution No. 15-7425 confirming continued existence of an emergency condition for Roycove Reservoir and Pump Station.**

*Report:* [Resolution No. 15-7425](#)

**CC 5. Proposed Professional Services Agreement with Willdan Engineering for preparation of the Citywide Engineering and Traffic Survey.**

*Report:* [Resolution No. 15-7426](#)

**CC 6. Fourth Amendment to Professional Services Agreement with Interwest Consulting Group for Transit and Transportation Consulting Services.**

*Report:* [Interwest Consulting Group Agreement](#)

**CC 7. Appointment of designated representative to the San Gabriel Valley Mosquito & Vector Control District Board of Trustees.**

*Report:* [Appointment Staff Report](#)

**CC 8. Update on the Los Angeles Regional Interoperable Communications System Authority.**

*Report:* [LARICS Report](#)

**CC 9. Consideration of Resolution No. 15-7428 amending the Fee Schedule for the Entertainment Ordinance in Title 5 of the Covina Municipal Code.**

*Report:* [Resolution No. 15-7428](#)

**CC 10. Approval of a Proposal with Cornerstone Communications for Community Communications, Public and Media Relations Services; direction for City Attorney to prepare a Professional Services Agreement; and authorization for City Manager to execute the agreement on behalf of the City.**

*Report:* [Cornerstone Communications Agreement](#)

**CC 11. Direct staff to set a public hearing on December 15, 2015, pursuant to Section 16.08.130 of the Municipal Code, for the consideration of a Tentative Parcel Map (TPM) 73595, a subdivision and four single-family lots at 1732 East Ruddock Street – APN: 8427-022-031.**

*Report:* [Tentative Tract Map 73595](#)

**CC 12. Implementation of collection of Utility User Tax on prepaid wireless service.**

*Report:* [State Board of Equalization Agreement](#)

**CC 13. Consideration of proposed Ordinance 15-2046 repealing Chapter 5.12 (“Billiard Parlors, Billiard and Pool Tables”) and modifying regulations relating to dancing and entertainment by repealing Chapter 5.28 (“Dance and Dance Halls”) and adopting a new Chapter 5.28 (“Entertainment”) in Title 5 (Business Licenses and Regulations”) of the Covina Municipal Code – Second Reading and Adoption.**

*Report:* [Ordinance 15-2046](#)

## **PUBLIC HEARINGS**

**PH 1. Consideration of Resolutions authorizing annexation of territory to City of Covina Community Facilities District No. 2007-1 (Public Services) (Annexation No. 9) and to call and hold a special election (425 W. Center Street).**

*Report:* [Annexation No. 9 to CCFD No. 2007-1](#)

Staff Recommendation:

1. City Council to open the public hearing and consider public testimony and close the public hearing; and
2. Adopt Resolution No. 15-7422, authorizing the annexation of territory to Community Facilities District No. 2007-1 (Annexation No. 9) and authorizing the levy of a special tax and submitting the levy of tax to the qualified electors; and
3. Adopt Resolution No. 15-7423, calling a special election and submitting to the voters of Annexation No. 9 of City of Covina Community Facilities District No. 2007-1 (Public Services), propositions regarding the annual levy of special taxes within Annexation No. 9 to finance public services, and the establishment of an appropriations limit; and
4. Adopt Resolution No. 15-7424, making certain findings, certifying the results of an election and adding property to Community Facilities District No. 2007-1 (Public Services), Annexation No. 9.

**PH 2. Public Hearing of 2015 Annual Report for the Covina Downtown Business Area Enhancement District.**

*Report:* [Resolution No. 15-7432](#)

Staff Recommendation:

- A. Conduct the public hearing of the 2015 Annual Report for the Covina Downtown Business Area Enhancement District and Proposed Assessment; and
- B. Adopt Resolution No. 15-7432, confirming the 2015 Annual Report for the Covina Downtown Business Area Enhancement District, and levying the assessment described therein.

**PH 3. Levy of proposed annual assessment for the Fiscal Year 2015-2016 in the Prospero Park Business Area Enhancement District.**

*Report:* [Resolution No. 15-7433](#)

Staff Recommendation:

- A. Conduct the public hearing of the 2015 Annual Report for the Prospero Park Business Area Enhancement District and Proposed Assessment; and
- B. Adopt Resolution No. 15-7433, confirming the 2015 Annual Report for the Prospero Park Business Area Enhancement District, and levying the assessment described therein.

**CONTINUED BUSINESS**

**CB 1. Consideration of Resolution No. 15-7427 voiding and revoking Conditional-Use Permit No. 11-006 authorizing a restaurant with outside dining with alcohol and entertainment located upon real property at 211 North Citrus Avenue, Covina: Applicant: JP United, LLC and temporarily staying said revocation of Conditional-Use Permit No. 11-006 to allow permittee the opportunity to apply for a conditional-use permit modification.**

*Report:* [Resolution No. 15-7427](#)

Staff Recommendation:

Adopt City Council Resolution No. 15-7427, revoking (“voiding”) Conditional-Use Permit No. 11-006.

**NEW BUSINESS**

**NB 1. Establish a Health Reimbursement Arrangement for City of Covina Retirees.**

*Report:* [Health Reimbursement Arrangement](#)

Staff Recommendation:

Authorize the City Manager, or her designee, to execute all required documents to establish a Health Reimbursement Arrangement for City of Covina retirees.

**NB 2. Exception to the 180-Day wait period to hire an Interim Executive Assistant to the Police Chief.**

**Report:** [Limited-Term Appointment Agreement](#)

Staff Recommendation:

1. Adopt Resolution No. 15-7430 authorizing an exception to the 180-day wait period for employment of a retiree.
2. Adopt Resolution No. 15-7431 appointing Debra Quick as Interim Executive Assistant to the Police Chief.
3. Approve a limited-term appointment agreement with Debra Quick.

**ADJOURNMENT**

The Covina City Council/Successor Agency to the Covina Redevelopment Agency/Covina Public Finance Authority/Covina Housing Authority will adjourn to its next regular meeting of the Council/Agency/Authority scheduled for Tuesday, December 15, 2015, at 5:00 p.m. for study session in the Covina Library Community Room at 234 N. Second Avenue, Covina, California 91723; and 6:30 p.m. for closed session and 7:30 p.m. for open session inside the Council Chamber, 125 East College Street, Covina, California, 91723.

Any member of the public may address the Council/Agency/Authority during both the public comment period and on any scheduled item on the agenda. Comments are limited to a maximum of five minutes per speaker unless, for good cause, the Mayor/Chairperson amends the time limit. Anyone wishing to speak is requested to submit a yellow Speaker Request Card to the City Clerk; cards are located near the agendas or at the City Clerk's desk.

MEETING ASSISTANCE INFORMATION: In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at (626) 384-5430. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

If you challenge in court any discussion or action taken concerning an item on this agenda, you may be limited to raising only those issues you or someone else raised during the meeting or in written correspondence delivered to the City at or prior to the City's consideration of the item at the meeting.

The Covina City Clerk's Office does hereby declare that, in accordance with California Government Code Section 54954.2(a), the agenda for the Tuesday, December 01, 2015 meeting was posted on November 27, 2015, on the City's website and near the front entrances of: 1) Covina City Hall, 125 East College Street, Covina; 2) the Covina Public Library, 234 N. Second Avenue, Covina; and 3) the Joslyn Center, 815 N. Barranca Avenue, Covina.

MATERIALS RELATED TO AN ITEM ON THIS AGENDA, AND SUBMITTED TO THE CITY COUNCIL AFTER PUBLICATION OF THE AGENDA, ARE AVAILABLE TO THE PUBLIC IN THE CITY CLERK'S OFFICE AT 125 E. COLLEGE STREET, COVINA.

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ITEM NO. CC 1

**MINUTES OF OCTOBER 20, 2015**

**REGULAR MEETING OF THE COVINA CITY COUNCIL/SUCCESSOR AGENCY TO THE COVINA REDEVELOPMENT AGENCY /COVINA PUBLIC FINANCING AUTHORITY/COVINA HOUSING AUTHORITY HELD IN THE COUNCIL CHAMBER OF CITY HALL, 125 EAST COLLEGE STREET, COVINA, CALIFORNIA**

**CALL TO ORDER**

Mayor King called the Council/Agency Authority meeting to order at 6:30 p.m. All City Council Members were present. The closed session items were announced. There were no public comments.

**ROLL CALL**

**Council Members Present:** Walter Allen III, Peggy A. Delach, Jorge Marquez, Mayor Pro Tem/Vice Chair Kevin Stapleton and Mayor/Chair John C. King

**Council Members Absent:** None

**Elected Members Present:** City Treasurer Geoffrey Cobbett and City Clerk Mary Lou Walczak

**Staff Members Present:** City Manager Andrea M. Miller, City Attorney Candice K. Lee, Police Chief Kim Raney, Acting Assistant Fire Chief Jim Enriquez, Human Resources Director Danielle Tellez, Public Works Director Siobhan Foster, Community Development Director Brian Lee, GIS Technician James Knox, and Chief Deputy City Clerk Sharon F. Clark.

**CLOSED SESSION**

**A. G.C. §54956.8 CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Property: 1162 N. Citrus Avenue

Property Negotiator: Charles McKeag, MLC Holdings, Inc.

Agency Negotiator: Andrea Miller, City Manager

Under negotiation: Negotiations to include both price and terms of payment

**B. CONFERENCE WITH LEGAL COUNSEL— ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9 - Number of potential cases: 1

**RECONVENE AND CALL TO ORDER**

The City Council/Successor Agency to the Covina Redevelopment Agency/Public Financing Authority/Housing Authority meeting was called to order at 7:30 p.m. Mayor King announced that all Council Members were present.

City Attorney Lee announced that the City Council/Agency/Authority met in closed session with all members present. There were no reportable actions related to closed session items and direction was given to staff.

## **PLEDGE OF ALLEGIANCE**

Mayor King led the Pledge of Allegiance.

## **INVOCATION**

Police Chaplain David Truax gave the invocation.

## **PRESENTATIONS**

### *Breast Cancer Awareness Proclamation*

Mayor King and Council Member Allen presented Rich Jett, current board member and former chair of Citrus Valley Health Partners, with a proclamation proclaiming October 2015 as National Breast Cancer Awareness Month, recognized Citrus Valley Health Partners Cancer Care Center and thanked them for their dedication to cancer survivors and their families, and encouraged Covina residents to join in activities that increase cancer awareness.

### *Red Ribbon Week Proclamation*

Mayor King presented Police Chief Raney with a proclamation proclaiming the week of October 23 - 31, 2015, as Red Ribbon Week, encouraged everyone to demonstrate their commitment to a drug-free community by wearing a red ribbon to show their support of the fight against drug abuse, and to promote the drug-free cause in every possible way.

Police Chief Raney accepted the proclamation, thanked the Council, and encouraged schools, community groups, and parents to help guide children to make the right decisions.

### *Public Safety Committee Plaque Presentation*

Police Chief Raney commended Tim Cromartie, lobbyist for the League of California Cities Public Safety Committee, for his involvement and leadership in partnering with the police chiefs over the last two years to craft legislation to regulate and control the marijuana industry that was initiated with Proposition 215 and Senate Bill 420.

Mr. Cromartie presented Council Member Allen, outgoing Chair of the League of California Cities Public Safety Committee, with a plaque and commended him for his service.

## **PUBLIC COMMENTS**

Speaker Leonard Wayne Rose, Jr. shared his religious beliefs and commented on Homeboy Industries rehabilitation programs.

Speaker Barbara Jordan commented on her visit to the Covina Public Library on February 9, 2015, where she felt she was unjustly evicted from the Library and informed Council that she would like her Library privileges reinstated.

Mayor King explained to Ms. Jordan that no action will be taken by Council because the item is not on the agenda.

City Manager Miller informed Ms. Jordan that she will follow up with her by email since Ms. Jordan notified Council that she does not currently have a phone.

Speaker Dale Kunesh expressed his appreciation and gratitude for Council, Police Chief Raney, and City staff for the great job they are doing with the City of Covina.

**COUNCIL/AGENCY/AUTHORITY COMMENTS**

Mayor King requested the City Council support his request for the preparation of a report regarding the election of board members for Covina Irrigating Company for Council review at a meeting in December 2015. Mayor Pro Tem Stapleton agreed.

Mayor Pro Tem Stapleton wished the community a safe Halloween, and encouraged the community to attend the Halloween Carnival at Covina Park on Saturday, October 31, 2015, and the City Council Special Meeting with Los Angeles County Supervisor Michael Antonovich on Wednesday, October 21, 2015.

Council Member Allen thanked the Downtown Business Association and the Parks and Recreation Department for a job well-done hosting Thunderfest. He requested that the meeting be adjourned in memory of Bob Bartlett, former Mayor and Council Member of Monrovia.

Mayor King agreed to adjourn in memory of Mr. Bartlett and commended his achievements.

Council Member Marquez congratulated Council Member Allen for the Public Safety Award he had received, announced the Dump Your Junk event for hazardous and e-waste disposal to be held on October 24, 2015, and asked for clarification on the requirements to participate in the event. City Manager Miller responded that anyone wanting to participate in the Dump Your Junk event must live in Covina and show proof of residency in the form of a utility bill.

Council Member Delach reported that Bob Bartlett was a founding member of Foothill Transit and that the Foothill Transit Governing Board Meeting she had attended last Friday, October 16, 2015, was adjourned in his memory. She provided updates on the Gold Line, Pilot Line, ridership trends, and Rose Bowl shuttle service, and gave kudos to the Covina Chamber of Commerce, Downtown Business Association, and to the Parks and Recreation Department for the Thunderfest event.

Mayor King commented on the success of Thunderfest and thanked all who partnered for the event, including the Police Department. Mayor King announced the following events: 1) Special City Council Meeting with Los Angeles County Supervisor Michael Antonovich on Wednesday, October 21, 2015, from 8 a.m. to 10 a.m.; 2) Halloween Carnival on Saturday, October 31, 2015, from 5:30 p.m. to 8:30 p.m. at Covina Park, 301 North 4<sup>th</sup> Avenue; and 3) Dia de los Muertos on Sunday, November 1, 2015, from 11 a.m. to 7 p.m. at Forest Lawn Covina Hills, 21300 Via Verde Drive.

**CITY MANAGER COMMENTS**

City Manager Miller requested that Resolution No. 15-7397 on Consent Calendar Item CC 5 be amended prior to Council consideration by adding a section 3 that indicates the City Manager is hereby authorized to execute the grant agreement with Metro on behalf of the City Council. She reported that a petition had been received from Mark and Irma Lopez regarding Consent Calendar Item CC 12. Council acknowledged they had received the petition.

Mayor King, on behalf of the Council, acknowledged the receipt of petition and stated it had been reviewed.

## CONSENT CALENDAR

On a motion made by Mayor Pro Tem Stapleton, seconded by Council Member Allen, the City Council approved Consent Calendar items CC 1 through CC4 and CC 6 through CC 18 as presented, and CC 5 as amended.

*Motion approved the Consent Calendar items CC 1 through CC 18 as follows:*

**AYES: ALLEN, DELACH, KING, MARQUEZ, STAPLETON**

**NOES: NONE**

**ABSTAIN: NONE**

**ABSENT: NONE**

- CC 1. City Council approved minutes of the September 15, 2015 Regular meeting of the City Council/Successor Agency to the Covina Redevelopment Agency/Public Finance Authority/Housing Authority.
- CC 2. City Council approved the payment of demands in the amount of \$3,288,615.54.
- CC 3. Successor Agency to the Redevelopment Agency approved payment of demands in the amount of \$13,513.11.
- CC 4. City Council adopted **Resolution No. 15-7397**, appropriating \$29,305 in available Measure R Fund Balance and increasing the Fiscal Year 2014-15 Capital Projects Fund Budget in the amount of \$29,305, approved Change Orders for Project T0814B, Pedestrian and Metrolink Station Improvements, and authorized the City Manager to execute the grant agreement with Metro on behalf of the City Council.
- CC 5. City Council approved entering into an agreement with Los Angeles County Metropolitan Transportation Authority for the acceptance of the MTA Transit-Oriented Development Planning Grant.
- CC 6. City Council approved Change Orders for Project No. T-0733, Glendora Avenue and Cienega Street Traffic Signal Installation and adopted **Resolution No. 15-7402** appropriating \$45,508 in available Measure R Fund Balance and increasing the Fiscal Year 2015-16 Capital Projects Fund Budget in the Amount of \$45,508.
- CC 7. City Council adopted **Resolution No. 15-7403** appropriating \$5,187 in Available Measure R Fund Balance and Increasing the Fiscal Year 2015-16 Capital Projects Fund Budget in the Amount of \$5,187, and authorized Final Acceptance and Filing Notice of Completion of Public Works Project No. P-1304, Federal Project No. STPL-5118(018): Resurfacing of Streets at Hollenbeck Avenue, Cypress Street, et al.
- CC 8. City Council authorized the City Manager to execute the Second Amendment to the Agreement with Absolute Security International, Inc. for security services at Covina Metrolink Station and Parking Complex.
- CC 9. City Council adopted **Resolution No. 15-7405**, confirming the continued existence of an emergency condition for Roycove Reservoir and Pump Station pursuant to Chapter 2.5 (Emergency Contracting Procedures) of the Public Contracts Code.

- CC 10. City Council adopted **Resolution No. 15-7406**, amending Fiscal Year 2015-16 Parks & Recreation Department, Library Services Division Budget by \$19,500 for the purchase of books and periodicals utilizing the Joseph J. Borrello Funds.
- CC 11. City Council approved Change Order Nos. 47-49 for Cougar Park Project #M-1204 reflecting a decrease in the construction contract with GMZ Engineering, Inc. in the amount of \$30,165.75.
- CC 12. City Council adopted **Resolution Nos. 15-7407 and 15-7408**, relating to the annexation of territory to Community Facilities District No. 2007-1 (425 W. Center Street).
- CC 13. City Council authorized the City entering into a Funding Agreement for Community Engagement Activities related to the Countywide Parks Needs Assessment.
- CC 14. City Council approved an Information Support Services Agreement with BreaIT Solutions, a division of the City of Brea, and authorized the City Manager to execute the agreement on behalf of the City.
- CC 15. City Council approved a Professional Services Agreement with Arroyo Background Investigations for Background Investigations for the Police Department.
- CC 16. City Council approved a Professional Services Agreement Amendment 2 for Alliant Consulting, Inc. for Cougar Park Project M-1204 in the amount of \$30,032 and extending the term of the agreement to December 31, 2015.
- CC 17. City Council approved an increase to the compensation amount for Legal Services with Liebert Cassidy Whitmore, a Professional Law Corporation, and authorized the City Manager to execute.
- CC 18. City Council approved Professional Services Agreement Amendment No. 1 with Van Dam Engineering for design services for Cougar Park Project M-1204 to extend the term of the Agreement.

### **PUBLIC HEARING**

**PH 1. Consideration of Urgency Ordinance No. 15-2045 which would extend the moratorium on issuing any new or renewing dance and entertainment permits, by ten (10) months and fifteen (15) days.**

Mayor King opened the Public Hearing.

City Manager Miller and Community Development Director Lee presented the staff report.

Mayor King called for public comment. There was no public comment; therefore, Mayor King closed the public hearing.

On a motion made by Council Member Allen, seconded by Council Member Delach, the City Council approved **Urgency Ordinance No. 15-2045** extending the moratorium on issuing any new dance and entertainment permits.

*Motion adopted Urgency Ordinance No. 15-2045 as listed under Public Hearing item PH 1, as follows:*

**AYES: ALLEN, DELACH, KING, MARQUEZ, STAPLETON**  
**NOES: NONE**  
**ABSTAIN: NONE**  
**ABSENT: NONE**

## **NEW BUSINESS**

### **NB 1. Consideration of Conditional-Use Permit Modification Scenarios for CUP No. 11-006 (authorizing a restaurant with outside sidewalk dining with alcohol and entertainment located on real property at 211 North Citrus Avenue, Covina)**

City Manager Miller and Community Development Director Lee presented the staff report. City Manager Miller indicated that this item was presented because information on the timeframe had been requested, and as planned, resolutions will be presented for action at a November 2015 meeting.

On a motion made by Council Member Delach, seconded by Council Member Allen, the City Council moved to receive and file the report.

*Motion approved for New Business item NB1 as follows:*

**AYES: ALLEN, DELACH, KING, MARQUEZ, STAPLETON**  
**NOES: NONE**  
**ABSTAIN: NONE**  
**ABSENT: NONE**

### **NB 2. City Council and City Manager Roles and Responsibilities, Code of Conduct, and Procedural Guidelines for the Conduct of Council Meetings**

Mayor King expressed gratitude for the professionalism and respect that Council has for one another, staff and the community. He commended City Manager Miller, City Attorney Lee, and City staff for their dedication and hard work.

City Manager Miller presented the staff report.

Council Member Delach commented on Council always working very hard to be respectful and professional, on being proud to be on the Council, and on the importance of periodically reviewing procedural guidelines.

Council Member Allen commented on Council not being restricted and having the ability to be involved with other regional groups; revamping or removing boards and commissions that are not active; more community involvement by having virtual town hall meetings; and commended Council for their respectful behavior and bringing success to the community by working together.

Council Member Marquez commented on being considerate of staff time; on use of technology on the dais and suggested that staff look into a policy; and noted that if the Council representative cannot attend a committee meeting, the alternate should be notified to attend.

Mayor Pro Tem Stapleton commented on the use of technology at the dais during meetings; on the City of Livingston policy on City Council duties; on current policies having been enacted due to past abuses by council members; on interpretation of page 318 of the agenda packet regarding Council and communication with staff; and on the need to develop policies so that staff perception and Council perception are the same and there are no misunderstandings.

City Manager Miller responded that policy language can be changed if unclear.

Mayor Pro Tem Stapleton commented on the importance of reporting back as Council liaisons to boards and commissions and outside agencies; suggested dividing reporting sections on the agenda for Council comments and Council reports; and requested training or assessment of committee members.

Council Member Delach commented on the importance of making one's alternate aware of the Council representative being unable to attend meetings so that the City can still be represented, and of reporting back from meetings to make everyone aware of happenings.

Council Member Allen commented on trainings for proper decorum for Council and Boards and Commissions.

Mayor King suggested the Council implement a regular study session meeting schedule in a less formal place that supports the study, dialogue and discussion on matters prior to formal action. Council discussed the possible times and frequency for study sessions.

Mayor Pro Tem Stapleton made a motion, seconded by Council Member Delach, that New Business Item NB 2 be referred to a subcommittee to meet with staff to develop a more inclusive document and brought back to the first Study Session, November 17, 2015 at 5 p.m.

Following brief discussion, Mayor Pro Tem Stapleton, with the agreement of Council Member Delach, amended his motion and moved that New Business Item NB 2 be brought back to the first Study Session meeting on November 17, 2015 at 5 p.m., which will begin the regular study sessions to take place every third Tuesday at 5:00 p.m. Council Member Allen seconded the motion.

***Motion approved for New Business item NB2 as follows:***

**AYES: ALLEN, DELACH, KING, MARQUEZ, STAPLETON**  
**NOES: NONE**  
**ABSTAIN: NONE**  
**ABSENT: NONE**

**ADJOURNMENT**

Mayor King reminded the community of the memorial service on October 21, 2015, at 12:00 p.m. for Police Volunteer Rudy Fonseca.

At 9:12 p.m., the Covina City Council/Successor Agency to the Covina Redevelopment Agency/Covina Public Financing Authority/Covina Housing Authority adjourned in memory of

Bob Bartlett to the next regular meeting of the Council/Agency/Authority on Wednesday, October 21, 2015 at 8:00 a.m. in the Council Chamber located inside of City Hall, 125 East College Street, Covina, California, 91723.

Respectfully Submitted:

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Sharon F. Clark, CMC  
Chief Deputy City Clerk

Approved this 1st day of December, 2015:

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John C. King, Mayor/Chair



## MINUTES OF NOVEMBER 17, 2015

REGULAR STUDY SESSION MEETING OF THE COVINA CITY COUNCIL/SUCCESSOR AGENCY TO THE COVINA REDEVELOPMENT AGENCY /COVINA PUBLIC FINANCING AUTHORITY/COVINA HOUSING AUTHORITY HELD IN THE COUNCIL CHAMBER OF CITY HALL, 125 EAST COLLEGE STREET, COVINA, CALIFORNIA

### CALL TO ORDER

Mayor King called the Council/Agency/Authority meeting to order at 5:17 p.m. He announced that Council Member Delach had been delayed and would arrive shortly, and that Council Member Allen would not be present due to the passing away of his mother.

### ROLL CALL

**Council Members Present:** Peggy A. Delach (arrived 5:33 p.m.), Jorge Marquez, Mayor Pro Tem Vice-Chair Kevin Stapleton, and Mayor/Chair John C. King

**Council Members Absent:** Walter Allen III

**Elected Members Present:** City Treasurer Geoffrey Cobbett and City Clerk Mary Lou Walczak

**Staff Members Present:** City Manager Andrea M. Miller, City Attorney Candice K. Lee, Police Chief Kim Raney, Public Works Director Siobhan Foster, Community Development Director Brian Lee, Human Resources Director Danielle Tellez, Parks & Recreation Director Amy Hall-McGrade, Interim Finance Director John Michicoff, Assistant to the City Manager Angel Carrillo, Executive Assistant Monica Vargas, and Chief Deputy City Clerk Sharon F. Clark.

**PUBLIC COMMENTS** – None.

**COUNCIL/AGENCY/AUTHORITY COMMENTS** – None.

### CITY MANAGER COMMENTS

City Manager Miller requested that the meeting be reordered to take New Business item NB 2 first in deference to members of the Covina Irrigating Company (CIC) who were present to participate in that item.

### NEW BUSINESS

**NB 2. Covina Irrigating Company – Update on October 15, 2015, Election of Board of Directors.**

The staff report was presented by City Manager Miller and Public Works Director Foster.

The following Covina Irrigating Company (CIC) Board Members, who represent the City of Covina on the Board, were present: Rod Capotosto, Geoffrey Cobbett, Richard Jett, and Henry Morgan. Also present were Covina Irrigating Company President David De Jesus and Executive Administrative Assistant Tara Biddle.

Discussion included:

- Decisions by CIC impact the City;
- The loss of surface-supply water due to diversion and the resulting change to imported-water supply;
- The change in focus by Los Angeles County on November 1 from water conservation to flood control;
- CIC's board members approved a process that would allow the Company to, when needed, bring in imported water at no additional cost to the City;
- The imported water allocation will be treated at the CIC facility for the same cost, which is a benefit now and in years to come;
- The City's number of board-member representatives was changed from five to four due to a shareholder electing to bring smaller shareholders together in a voting block;
- CIC's \$20 million in upgrades completed in the last 10 years with less than \$5 million of debt, including ultra-violet light modification at the treatment plant;
- An \$8 million upgrade to the well field which will be addressed later this year;
- The positive contributions Board Member Richie Rich has brought to the Company including a plan to blend water with Three Valleys Municipal Water District and his helpfulness in bringing Covina Public Works Director Foster up to speed;
- The unlikelihood of the current Board approving a rate increase for the next fiscal year, due, in part, to a re-determination by the Los Angeles County Assessor's Office to exempt improvements from a property-tax increase;
- The City is on a list of purchasers for water shares which may become available;
- CIC has agreed to update the Council on a quarterly basis;
- The County's concern related to storm-water issues is risk and liability;
- The County's intent to clean out dam areas to provide more water-storage space;
- The need for the City to move water from the surface to below-ground storage;
- An imported-water connection is online now, which is seamless to staff and City operations;
- Concern about County supervisors pushing for recreational use of drinking-water sources;
- Plans for an annual study session with CIC; and
- Monthly Board agendas will be distributed to Council, and City Manager Miller and Public Works Director Foster will monitor and relay concerns to Council.

**NB 1. Discussion of City Council and City Manager Roles and Responsibilities, Code of Conduct, and Procedural Guidelines for the Conduct of Council Meetings.**

Mayor King expressed appreciation for this type of study session with its more informal atmosphere over food and with open discussion, commended Council and staff for their collegial manner of interaction, and thanked them for their commitment to the community and respect to each other.

The staff report was presented by City Manager Miller who commented that study sessions help staff understand the Council's expectations on issues before formulating policy recommendations and before items are agendized for action at a formal meeting. She expressed

her commitment to cancel the meetings if there are no items to be presented, noting she does not anticipate this will be the case as staff had identified many topics for discussion.

Discussion included:

- The need to ensure Council members with strong personalities do not unduly influence staff;
- The desire of Council members to have the freedom to interact with and ask questions of staff in order to exercise oversight and promote teamwork;
- Consensus of the Council that work product should not be requested directly through staff;
- Council's trust issues because of poor experiences with past city leadership;
- Positive changes in the City organization and commendations of new directors;
- Council's desire to work hand-in-hand, in the best interests of the community;
- Council's role as policy-makers while staff manages the day-to-day operations of the City;
- The importance of Council going directly to the City Manager who will evaluate and deal with issues, as staff members may not have a global perspective; and
- The problems created for staff and the organization when Council goes directly to staff.

City Manager Miller reinforced the Council's study sessions will be held on the second Council meeting of each month and upcoming topics will include the Utility Users Tax and Community Development Block Grant (CDBG) funding; that a tentative agenda will be created; that, based on the discussion this evening, there will be no changes made to the 2009 Resolution establishing the Council Code of Conduct; and that training will be scheduled to provide commissioners with additional guidance.

### **ADJOURNMENT**

At 6:35 p.m., the meeting of the Covina City Council/Successor Agency to the Covina Redevelopment Agency/Covina Public Finance Authority/Covina Housing Authority was adjourned to its next regular meeting of the Council/Agency/Authority scheduled for Tuesday, November 17, 2015, at 6:30 p.m. for closed session and 7:30 p.m. for open session inside the Council Chamber, 125 East College Street, Covina, California, 91723.

Respectfully Submitted:

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Sharon F. Clark, CMC  
Chief Deputy City Clerk

Approved this 1st day of December 2015:

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John C. King, Mayor/Chair

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# CITY OF COVINA AGENDA REPORT

ITEM NO. CC 2

**MEETING DATE:** December 1, 2015  
**TITLE:** Payment of Demands  
**PRESENTED BY:** John Michicoff, Interim Finance Director  
**RECOMMENDATION:** Approve Payment of Demands in the amount of \$1,585,983.60

**BACKGROUND:**

Attached is a list of warrants and demands which are being presented for approval and are summarized as follows:

<u>DATE OF DEMANDS</u>	<u>DEMAND NUMBERS</u>	<u>AMOUNT</u>
<b>ACCOUNTS PAYABLE WARRANTS</b>		
Oct. 30 - Nov. 12, 2015	Wires/EFTs 5038-5042	\$ 14,242.10
	Checks 77181-77380	\$ 987,982.76
<b><u>PAYROLL</u></b>		
10/31/15		\$ 539,975.86
<b><u>VOIDS</u></b>		
	76482	\$ (366.35)
<b><u>WORKERS COMPENSATION</u></b>		
10/30/15		\$ 23,594.69
11/2-11/06/15		\$ 12,816.86
11/9/15		\$ 1,262.50
11/10/15		\$ 6,368.38
11/12/2015		\$ 106.80
	<b>GRAND TOTAL:</b>	<b>\$ 1,585,983.60</b>

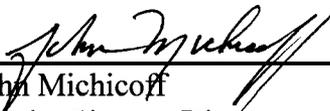
**DISCUSSION:**

**FISCAL IMPACT:**

Sufficient funding is available and the related costs are included in the Fiscal Year 15/16 Adopted Budget.

**CEQA (CALIFORNIA ENVIRONMENTAL QUALITY ACT):**

Respectfully submitted,

  
 \_\_\_\_\_  
 John Michicoff  
 Interim Finance Director

<b>City Manager</b>	<b>City Attorney</b>	<b>Finance</b>	<b>City Clerk</b>

**ATTACHMENTS:**

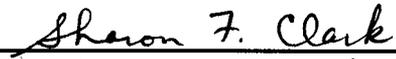
Attachment A: Accounts Payable Register

STATE OF CALIFORNIA        )  
  ) ss:  
COUNTY OF LOS ANGELES    )

I, John Michicoff, being first duly sworn, declare that I am the Interim Finance Director of the City of Covina and have read the attached Register(s) of Audited Demands for the City of Covina Accounts Payable for 10/30 - 11/04/15; Payroll for 10/31/15; Worker's Compensation and voids for 10/30 – 11/12/15; know the contents thereof, and do certify as to the accuracy of the attached demands and the availability of funds for their payment pursuant to the Government Code Section 37202.

  
John Michicoff,  
Interim Finance Director

Subscribed and sworn to before me  
this 25<sup>th</sup> day of November, 2015

  
\_\_\_\_\_  
Chief Deputy City Clerk

CITY OF COVINA  
Check Register  
OCT. 30 - NOV. 12, 2015

Check #	Check Date	Vendor	Name	Amount
5038	11/9/15	4160	ICMA	65.00
5039	11/9/15	1405	ICMA RETIREMENT	4,245.87
5040	11/9/15	4003	MidAmerica	2,440.85
5041	11/9/15	2033	NATIONWIDE RETI	6,740.38
5042	11/9/15	4223	ZUMWALT, KRISTI	750.00
			<b>subtotal EFT/wires</b>	<b>\$14,242.10</b>
77181	11/5/15	3	12 MILES OUT.CO	1,200.00
77182	11/5/15	4378	3M	300.00
77183	11/5/15	4195	789, CHARLES BELL	12,533.63
77184	11/5/15	32	ACE-1 AUTO SERV	334.63
77185	11/5/15	84	AIRGAS-WEST	121.10
77186	11/5/15	4079	ASSOCIATED TRAN	741.00
77187	11/5/15	254	AZUSA LIGHT & W	1,700.25
77188	11/5/15	4279	BOSS JANITORIAL	5,599.00
77189	11/5/15	4307	BROADSPEC INC	32,250.00
77190	11/5/15	411	BRODART CO	29.48
77191	11/5/15	475	CALIBER POOL AN	2,816.35
77192	11/5/15	487	CaIPERS	27,340.00
77193	11/5/15	536	CARQUEST AUTO P	14.81
77194	11/5/15	565	CASTRO, VIVIAN	210.72
77195	11/5/15	600	CERTIFIED UNDER	171.99
77196	11/5/15	649	CINTAS CORP #69	497.44
77197	11/5/15	653	CITRUS AUTO UPH	127.25
77198	11/5/15	682	CLINICAL LAB OF	420.00
77199	11/5/15	706	COMMERCIAL DOOR	524.45
77200	11/5/15	3715	CONTRUCTION EQU	590.54
77201	11/5/15	737	COOPERATIVE PER	1,167.25
77202	11/5/15	4207	CORNERSTONE COM	8,000.00
77203	11/5/15	878	DELTA DENTAL OF	366.06
77204	11/5/15	4292	DUDEK	42.55
77205	11/5/15	970	EDISON CO	35,340.08
77206	11/5/15	3911	FACTORY MOTOR P	1,076.65
77207	11/5/15	1055	FEDEX	34.80
77208	11/5/15	1075	FLEET SERVICES	11.92
77209	11/5/15	3800	GARVEY EQUIPMEN	104.64
77210	11/5/15	1156	GAS COMPANY, TH	2,269.05
77211	11/5/15	1231	GFOA	135.00
77212	11/5/15	1197	GLOBAL WATER MA	56,793.91
77213	11/5/15	1204	GOLDEN STATE WA	229.40
77214	11/5/15	1235	GRAINGER	358.03
77215	11/5/15	3934	HF & H CONSULTA	1,468.75
77216	11/5/15	1361	HOLLIDAY ROCK C	465.99
77217	11/5/15	1387	HUNTER, JOHN L.	4,497.50

CITY OF COVINA  
Check Register  
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77218	11/5/15	1441	INTERSTATE BATT	341.71
77219	11/5/15	1463	J.G. TUCKER AND	94.50
77220	11/5/15	1531	JW LOCK CO INC	61.59
77221	11/5/15	1561	KEYSTONE UNIFOR	561.64
77222	11/5/15	4251	KOFILE PRESERVA	16,703.37
77223	11/5/15	1663	LAW ENFORCEMENT	165.00
77224	11/5/15	1694	LEWIS ENGRAVING	10.90
77225	11/5/15	4344	LILLEY PLANNING	5,568.00
77226	11/5/15	1792	MANNING & MARDE	3,062.21
77227	11/5/15	1933	MISSION LINEN S	83.92
77228	11/5/15	4360	MOORE IACOFANO	1,380.25
77229	11/5/15	3810	MYERS & SONS HI	279.04
77230	11/5/15	2091	O REILLY AUTO P	47.97
77231	11/5/15	4362	O'NEIL VENTURES	4,062.50
77232	11/5/15	2104	OFFICE DEPOT	117.68
77233	11/5/15	2104	OFFICE DEPOT	118.05
77234	11/5/15	99999	GEORGIANNA ALVAREZ	454.80
77235	11/5/15	99999	JORGE GONZALEZ	91.08
77236	11/5/15	99999	VERONICA PALACIOS	104.01
77237	11/5/15	2275	POIRIER, ROBERT	14.50
77238	11/5/15	2343	QUICK CRETE PRO	6,219.54
77239	11/5/15	2415	REPUBLIC MASTER	263.47
77240	11/5/15	3796	RICHARD, WATSON	1,341.75
77241	11/5/15	2714	SOUTHERN CA GAS	575.00
77242	11/5/15	2737	STAPLES INC	998.81
77243	11/5/15	3729	SUNBELT RENTALS	197.29
77244	11/5/15	2853	THYSSENKRUPP EL	9,137.50
77245	11/5/15	2855	TIME WARNER CAB	557.51
77246	11/5/15	2900	TRIFORMIS CORPO	154.00
77247	11/5/15	2922	TURNER, JOSHUA	36.00
77248	11/5/15	2935	UNDERGROUND SER	97.50
77249	11/5/15	2954	URBAN GRAFFITI	6,000.00
77250	11/5/15	2980	VARGAS, MONICA	43.38
77251	11/5/15	2999	VERIZON CALIFOR	447.17
77252	11/5/15	3001	VERIZON WIRELES	807.91
77253	11/5/15	3004	VICTORY EXTERMI	25.00
77254	11/5/15	3043	WARREN DISTRIBU	269.54
77255	11/5/15	3082	WESTERN WATER W	829.88
77256	11/5/15	3159	ZUMWALT, JOHN	36.00
77257	11/9/15	68	AFLAC	3,916.90
77258	11/9/15	69	AFSCME	780.00
77259	11/9/15	487	CaIPERS	74,927.67
77260	11/9/15	3846	CLEA	477.75
77261	11/9/15	3846	CLEA	110.25

CITY OF COVINA  
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77262	11/9/15	775	COVINA POLICE A	2,600.00
77263	11/9/15	789	COVINA-FSA, CIT	1,094.20
77264	11/9/15	878	DELTA DENTAL OF	7,280.01
77265	11/9/15	1106	FRANCHISE TAX B	250.00
77266	11/9/15	1106	FRANCHISE TAX B	125.00
77267	11/9/15	1247	GREAT WEST LIFE	4,843.72
77268	11/9/15	3795	LEGAL SHIELD	274.08
77269	11/9/15	2234	PERS	142,380.24
77270	11/9/15	2235	PERS LONG TERM	136.57
77271	11/9/15	2946	UNITED WAY OF G	17.50
77272	11/9/15	3014	VISION SERVICE	730.34
77273	11/9/15	4255	VOYA FINANCIAL	4,410.11
77274	11/9/15	3764	WAGeworks	26.00
77275	11/9/15	3045	WASHINGTON NATI	76.17
77276	11/12/15	23	ABORTA BUG INC	70.00
77277	11/12/15	26	ABSOLUTE SECURI	7,676.88
77278	11/12/15	4188	ACCO ENGINEERED	5,217.82
77279	11/12/15	68	AFLAC	8.20
77280	11/12/15	84	AIRGAS-WEST	213.30
77281	11/12/15	113	ALL CITY MANAGE	5,236.54
77282	11/12/15	3977	ALLIANT CONSULT	1,755.00
77283	11/12/15	128	ALLIANT INSURAN	1,122.00
77284	11/12/15	3789	AMAZON LLC	143.83
77285	11/12/15	3789	AMAZON LLC	161.96
77286	11/12/15	160	AMERICAN WEST C	100.00
77287	11/12/15	4380	APPLE ANNIE'S R	1,380.00
77288	11/12/15	236	AUTOMATIC STORE	715.42
77289	11/12/15	254	AZUSA LIGHT & W	145.56
77290	11/12/15	376	BOND LOGISTIX	5,041.10
77291	11/12/15	3929	BOOT BARN INC	250.00
77292	11/12/15	457	CA PARKS AND RE	340.00
77293	11/12/15	475	CALIBER POOL AN	2,477.90
77294	11/12/15	4357	CASTELLANOS	130.00
77295	11/12/15	565	CASTRO, VIVIAN	15.50
77296	11/12/15	568	CAT SPECIALTIES	1,319.40
77297	11/12/15	572	CATHOLIC CHARIT	20,241.00
77298	11/12/15	615	CHARLES E THOMA	281.11
77299	11/12/15	634	CHEVRON PRODUCT	379.05
77300	11/12/15	649	CINTAS CORP #69	210.70
77301	11/12/15	703	COMBINED GRAPHI	25.07
77302	11/12/15	710	COMMUNICATIONS	170.00
77303	11/12/15	720	COMPUTER SERVIC	13,095.75
77304	11/12/15	3715	CONTRUCTION EQU	1,197.91
77305	11/12/15	749	COUNSELING TEAM	300.00

CITY OF COVINA  
Check Register  
OCT. 30 - NOV. 12, 2015

77306	11/12/15	766	COVINA DISPOSAL	12,716.60
77307	11/12/15	3268	DESERT DIAMOND	259.00
77308	11/12/15	894	DF POLYGRAPH	450.00
77309	11/12/15	896	DH MAINTENANCE	6,267.94
77310	11/12/15	970	EDISON CO	46,184.86
77311	11/12/15	991	EMERGENCY PHYSI	68.90
77312	11/12/15	1055	FEDEX	198.64
77313	11/12/15	1235	GRAINGER	208.50
77314	11/12/15	1241	GRAND PRINTING	736.90
77315	11/12/15	1317	HdL Coren & Con	695.00
77316	11/12/15	4237	HILLCREST CONTR	232,973.79
77317	11/12/15	1361	HOLLIDAY ROCK C	83.94
77318	11/12/15	1364	HOME DEPOT	1,596.10
77319	11/12/15	3988	HYDRO CONNECTIO	65.20
77320	11/12/15	1417	IMS COMMERCIAL	127.50
77321	11/12/15	1428	INGRAM DIST GRO	83.35
77322	11/12/15	1429	INLAND EMPIRE S	3,914.50
77323	11/12/15	4349	Intelli-Tech	682.34
77324	11/12/15	1505	JOHNNY'S POOL S	46.22
77325	11/12/15	3731	JUNIOR LIBRARY	96.74
77326	11/12/15	4220	KJ SERVICES ENV	120.00
77327	11/12/15	1617	LA CNTY REGISTR	75.00
77328	11/12/15	1707	LIEBERT CASSIDY	105.00
77329	11/12/15	4383	LIPKA, EDWARD A	95.00
77330	11/12/15	1754	LOWE'S COMPANIE	58.91
77331	11/12/15	1788	MAMMOTH AUDIO S	2,550.00
77332	11/12/15	1858	MCMASTER CARR S	301.35
77333	11/12/15	1895	MERRIMAC ENERGY	19,444.66
77334	11/12/15	1924	MILLERS & ISHAM	64.50
77335	11/12/15	1933	MISSION LINEN S	79.28
77336	11/12/15	2091	O REILLY AUTO P	38.77
77337	11/12/15	2104	OFFICE DEPOT	189.67
77338	11/12/15	4201	OFFICE TEAM	444.80
77339	11/12/15	99999	CRISTINA WAHBA	26.17
77340	11/12/15	99999	DOLORES HEMSWORTH	72.00
77341	11/12/15	99999	ELSA MANCILLAS	84.00
77342	11/12/15	99999	FIDELIA POAGE	40.00
77343	11/12/15	99999	GLORIA SANCHEZ	108.00
77344	11/12/15	99999	HOWARD WANG	30.00
77345	11/12/15	99999	JUDY TURNER	19.00
77346	11/12/15	99999	MARCIA SALDANA	60.00
77347	11/12/15	99999	RENA TRIEU	3.99
77348	11/12/15	99999	SHEYLA MELENDEZ	15.00
77349	11/12/15	99999	SUNI HSIEH	30.00

CITY OF COVINA  
Check Register  
OCT. 30 - NOV. 12, 2015

77350	11/12/15	99999	VALERIE LARA	79.62
77351	11/12/15	99999	VERONICA P CORTEZ	18.00
77352	11/12/15	99999	VICKY VAN ANROOY	25.00
77353	11/12/15	99999	XIOMARA ANTONIEWICZ	40.00
77354	11/12/15	2134	ORKIN PEST CONT	114.13
77355	11/12/15	3722	OSCAR LUQUE	130.00
77356	11/12/15	2238	PEST OPTIONS IN	95.00
77357	11/12/15	2309	PROFESSIONAL AC	538.00
77358	11/12/15	50	PROGREEN BLDG M	1,543.10
77359	11/12/15	2345	QUILL	66.90
77360	11/12/15	2415	REPUBLIC MASTER	256.51
77361	11/12/15	3796	RICHARD, WATSON	495.00
77362	11/12/15	4381	SAUNDERS, TIM,	61.80
77363	11/12/15	2646	SHOWCASES	366.35
77364	11/12/15	2660	SIMPLEX GRINNEL	175.65
77365	11/12/15	4386	SOLOMON, SALTSM	60,000.00
77366	11/12/15	2719	SPARKLETTS	20.18
77367	11/12/15	3729	SUNBELT RENTALS	394.58
77368	11/12/15	2778	SUPERIOR PAVEME	8,062.80
77369	11/12/15	2926	TYLER TECHNOLOG	400.00
77370	11/12/15	2958	US POSTMASTER	744.80
77371	11/12/15	2958	US POSTMASTER	4,500.00
77372	11/12/15	2966	V & V MANUFACTU	105.51
77373	11/12/15	4107	VALLEY ATHLETIC	538.32
77374	11/12/15	2999	VERIZON CALIFOR	548.71
77375	11/12/15	3004	VICTORY EXTERMI	395.00
77376	11/12/15	3023	VULCAN MATERIAL	290.25
77377	11/12/15	3043	WARREN DISTRIBU	89.84
77378	11/12/15	4133	WESTERN A/V	480.00
77379	11/12/15	3134	XEROX CORPORATI	247.44
77380	11/12/15	3137	Y TIRE SALES	527.45

<i>subtotal checks</i>	<b>\$ 987,982.76</b>
<i>subtotal payroll</i>	<b>\$ 539,975.86</b>
<i>subtotal voids</i>	<b>\$ (366.35)</b>
<i>subtotal Worker's Compensation</i>	<b>\$ 44,149.23</b>

<b>TOTAL checks/EFTs</b>	<b>\$ 1,585,983.60</b>
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**SUCCESSOR AGENCY TO THE  
COVINA REDEVELOPMENT AGENCY**

**AGENDA REPORT**

ITEM NO. CC 3

**MEETING DATE:** December 1, 2015  
**TITLE:** Payment of Demands  
**PRESENTED BY:** John Michicoff, Interim Finance Director  
**RECOMMENDATION:** Approve Payment of Demands in the amount of \$22,017.54

**BACKGROUND:**

Attached is a list of warrants and demands which are being presented for approval and are summarized as follows:

<u>DATE OF DEMANDS</u>	<u>DEMAND NUMBERS</u>	<u>AMOUNT</u>
<b>ACCOUNTS PAYABLE WARRANTS</b>		
Oct. 30 - Nov. 12, 2015	Checks 1252-1255	\$11,130.01
 <b><u>PAYROLL</u></b>		
Oct. 31, 2015 Payroll		\$10,887.53
 <b><u>VOIDS</u></b>		
	<b>GRAND TOTAL:</b>	<b>\$22,017.54</b>

**DISCUSSION:**

**FISCAL IMPACT:**

Sufficient funding is available and the related costs are included in the Fiscal Year 15/16 Adopted Budget.

**CEQA (CALIFORNIA ENVIRONMENTAL QUALITY ACT):**

Respectfully submitted,

  
\_\_\_\_\_  
John Michicoff  
Interim Finance Director

<b>City Manager</b>	<b>Agency Counsel</b>	<b>Finance</b>	<b>City Clerk</b>

**ATTACHMENTS:**

Attachment A: Accounts Payable Register

SUCCESSOR AGENCY TO THE  
 COVINA REDEVELOPMENT AGENCY  
 Check Register  
 OCT. 30 - NOV. 12, 2015

Check #	Check Date	Vendor	Name	Amount	
1252	11/12/15	572	CATHOLIC CHARIT	6,436.00	11/12/2015
1253	11/12/15	1317	HdL Coren & Con	3,465.00	11/12/2015
1254	11/12/15	1364	HOME DEPOT	19.01	11/12/2015
1255	11/12/15	3796	RICHARD, WATSON	1,210.00	11/12/2015
			<i>subtotal checks</i>	<b>\$11,130.01</b>	
			<i>subtotal Payroll</i>	<b>\$10,887.53</b>	
			<b>TOTAL CHECKS/EFT's</b>	<b>\$22,017.54</b>	

STATE OF CALIFORNIA        )  
  ) ss:  
COUNTY OF LOS ANGELES    )

I, John Michicoff, first duly sworn, declare that I am the Interim Finance Director of the City of Covina and have read the attached Register(s) of Audited Demands for the Covina Successor Agency to the Covina Redevelopment Agency Accounts Payable for 10/30 – 11/12/15 and Payroll for 10/31/15; know the contents thereof, and do certify as to the accuracy of the attached demands and the availability of funds for their payment pursuant to the Government Code Section 37202.



John Michicoff,  
Interim Finance Director

Subscribed and sworn to before me

this 25<sup>th</sup> day of November, 2015

Sharon F. Clark  
Chief Deputy City Clerk

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# CITY OF COVINA

## AGENDA REPORT

ITEM NO. CC 4

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**MEETING DATE:** December 1, 2015

**TITLE:** **Resolution No. 15-7425** Confirming Continued Existence of An Emergency Condition for Roycove Reservoir and Pump Station Pursuant to Chapter 2.5 (Emergency Contracting Procedures) of the Public Contracts Code

**PRESENTED BY:** Siobhan Foster, Director of Public Works

**RECOMMENDATION:** Adopt **Resolution No. 15-7425** confirming continued existence of an emergency condition for the Roycove Reservoir and Pump Station pursuant to Chapter 2.5 (Emergency Contracting Procedures) of the Public Contracts Code

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### **BACKGROUND:**

Roycove Reservoir and Pump Station, constructed in 1993 and located at 3001 N. Roycove Drive, has a 500,000-gallon capacity and provides water to Water Zone 5, which includes Terry Way, part of Via Verde Street, three residences on East Covina Hills Road, and Roycove Street. Recently two significant impediments to the operation of Roycove Reservoir and Pump Station have emerged and are in need of immediate attention.

The station recently failed two fire flow tests and did not perform adequately when field conditions simulated a third fire flow test due to the aged Variable Frequency Drive (VFD) system that controls the station's booster pumps. Frequent communication failures between the Roycove Reservoir and Pump Station Supervisory Control and Data Acquisition (SCADA) system and the SCADA base station located at the City Yard are also occurring.

These conditions are indicative of the station's inability to provide adequate water supply to Water Zone 5 for fire protection purposes, in the event of a major fire in Water Zone 5. Upgrade of the booster pump control panel and VFD and SCADA systems at the Roycove Reservoir and Pump Station, including the associated demolition and installation services, must be performed immediately to safeguard and mitigate the loss or impairment of life, health, property, or essential public services.

On October 6, 2015, the City Council adopted Resolution No. 15-7400 for the Roycove Reservoir and Pump Station Emergency Repair Project, declaring that the public interest and necessity demand the immediate expenditure of public money and completion of certain work without competitive bidding to safeguard life, health, or property pursuant to Chapter 2.5 (Emergency Contracting Procedures) of the Public Contracts Code and authorizing the City Manager to execute all necessary contracts and documents with qualified contractors and vendors to respond to the emergency conditions at Roycove Reservoir and Pump Station.

On October 20, 2015, the City Council adopted Resolution No. 15-7405 confirming the continued existence of an emergency condition for the Roycove Reservoir and Pump Station pursuant to Chapter 2.5 (Emergency Contracting Procedures) of the Public Contracts Code.

On November 3, 2015, the City Council adopted Resolution No. 15-7411 confirming the continued existence of an emergency condition for the Roycove Reservoir and Pump Station pursuant to Chapter 2.5 (Emergency Contracting Procedures) of the Public Contracts Code.

On November 17, 2015, the City Council adopted Resolution No. 15-7417 confirming the continued existence of an emergency condition for the Roycove Reservoir and Pump Station pursuant to Chapter 2.5 (Emergency Contracting Procedures) of the Public Contracts Code.

Public Contracts Code Section 22050 requires a governing body that takes action pursuant to subdivision (a) of that Section to review the emergency action at its next regularly scheduled meeting and, by a four-fifths vote, determine that there is a need to continue the action. Adoption of Resolution No. 15-7417 will confirm the continued existence of an emergency condition for Roycove Reservoir and Pump Station pursuant to Chapter 2.5 (Emergency Contracting Procedures) of the Public Contracts Code.

**DISCUSSION:**

The City Council’s adoption of Resolution No. 15-7405 on October 20, 2015 made the findings needed pursuant to the Public Contracts Code Sections 20168 and 22050 to allow the City Manager to immediately retain the services necessary to rehabilitate the Roycove Reservoir and Pump Station. The City retained without competitive bidding Brithinee Electric to design and build the booster pump control panel (VFD system), A & B Electric to perform demolition and booster pump control panel installation, and Control Automation Design, Inc. to complete the configuration and installation of the SCADA system controls.

The tentative project schedule is outlined below with project completion expected at the end of December 2015. A & B Electric has expressed concern with the Thanksgiving and Christmas holidays falling within the project schedule but at this juncture, staff is not sure if there will be any delay. Currently, the project is on schedule.

<b>October 2015</b>	<b>November 2015</b>	<b>December 2015</b>
Brithinee Electric: Design and build the booster pump control panel (VFD system)		
A & B Electric: Demolition and booster pump control panel installation		
Control Automation Design, Inc.: Configuration and installation of SCADA system controls		

A & B Electric will coordinate with the Water Division to relocate and rewire one operational VFD to a different location in the pump station before the demolition of the existing booster pump control panel. This will allow one motor and pump to remain operational at all times without interruption in pumping services to Zone 5. One pump is sufficient to operate the station to meet daily water needs in Zone 5.

As a contingency, the City’s water distribution system is designed to automatically have Zone 4 open by pressure control valves and pressurize Zone 5, if the Roycove Station fails. When this has occurred previously, the automatic transition occurred as designed. Other zones are also able to provide water to and pressurize Zone 5, if needed. The only repercussion of this zone

turnover is it provides the Zone 5 residences with 15 pounds per square inch (psi) of pressure instead of the normal 45 psi.

If there was a major fire in Zone 5, the Roycove Reservoir and Pump Station would not be able to provide adequate water supply for fire protection. While contingency plans are in place to provide Zone 5 with water from other booster stations, ongoing reliance on other stations is not optimal, especially in longer-term, emergency conditions. Zone 4 is able to provide water supply for Zone 5 fire protection with a gravity flow system from Roycove’s 500,000 gallon reservoir. As an added measure of protection, the Water Division will contact the Los Angeles County Fire Department prior to the start of the emergency repair project to alert the Fire Department of possible comprised fire protection in Zone 5. This will allow the Fire Department to be prepared ahead of time to ensure adequate water supply by, for example, using Zone 4 hydrants, which are located across the street from Zone 5 hydrants.

Pursuant to Public Contracts Code Section 22050, the City Manager, through the Department of Public Works, will provide project updates at every regularly scheduled City Council meeting until the emergency project is completed.

**FISCAL IMPACT:**

The estimated fiscal impact associated with the Roycove Reservoir and Pump Station Emergency Repair Project is approximately \$80,000. Sufficient funding for the proposed project is available in the Department of Public Works Department/Water Utility budget (account no. 6011-5060-55420). The following table represents a summary of the proposed project:

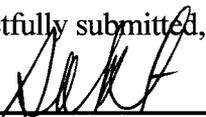
Booster Pump Control Panel/VFD System Upgrade	\$28,127
SCADA Upgrade	\$30,930
Demolition and Installation Services	\$12,570
Contingency Allowance	\$1,210
Contract Administration/Inspection	\$7,163
<b>Estimated Total</b>	<b>\$80,000</b>

The proposed emergency project has no General Fund impact.

**CEQA (CALIFORNIA ENVIRONMENTAL QUALITY ACT):**

This project has been determined to be categorically exempt under CEQA in accordance with Section 15301 Existing Facilities (Class 1). The project involves negligible or no expansion of an existing use.

Respectfully submitted,



Siobhan Foster  
 Director of Public Works

<b>City Manager</b>	<b>City Attorney</b>	<b>Finance</b>	<b>City Clerk</b>
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**ATTACHMENTS:**

Attachment A: Resolution No. 15-7425

**RESOLUTION NO. 15-7425**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
COVINA, CALIFORNIA, CONFIRMING THE CONTINUED  
EXISTENCE OF AN EMERGENCY CONDITION FOR ROYCOVE  
RESERVOIR AND PUMP STATION EMERGENCY REPAIR  
PROJECT, PURSUANT TO SECTION 22050 OF THE CALIFORNIA  
PUBLIC CONTRACT CODE**

**WHEREAS**, the City of Covina is a municipal corporation duly organized and existing pursuant to the Constitution and laws of the State of California ("City"); and

**WHEREAS**, the City endeavors to provide safe and reliable public facilities for public use; and

**WHEREAS**, from time-to-time City facilities will experience unexpected failure, stress, or damage in the course of routine operations; and

**WHEREAS**, the resolution of any unexpected failure, stress, or damage may occur at times when the competitive bidding process is not possible in order to bring a swift resolution to the interruption of regular services, requiring that the City contract with the vendors who are most readily and reasonably available to address the urgent situation; and

**WHEREAS**, the City of Covina has identified that one of the City's water pumping stations, Roycove Reservoir and Pump Station, is in need of immediate attention. The station recently failed two fire flow tests and did not perform adequately when unexpected field conditions simulated a third fire flow test due to aged Variable Frequency Drive (VFD) system that controls the Station's booster pumps. Frequent communication failures between the Roycove Reservoir and Pump Station Supervisory Control and Data Acquisition (SCADA) system and the SCADA base station located at the City Yard are also occurring. These conditions are indicative of the Station's inability to provide adequate water supply to Water Zone 5 for fire protection purposes, in the event of a major fire in Water Zone 5. Upgrade of the booster pump control panel and VFD and SCADA systems at the Roycove Reservoir and Pump Station, including the associated demolition and installation services, must be performed immediately to safeguard and mitigate the loss or impairment of life, health, property, or essential public services; and

**WHEREAS**, on October 6, 2015, the Covina City Council adopted Resolution No. 15-7400 declaring an emergency condition and declaring that the public interest and necessity requires certain work to be performed without competitive bidding pursuant to California Public Contract Code Sections 20168 and 22050; and

**WHEREAS**, under Section 22050 of the California Public Contract Code "a public agency, pursuant to a four-fifths vote of its governing body may repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary

equipment, services, and supplies for those purposes, without giving notice for bids to let contracts;” and

**WHEREAS**, the City Manager immediately retained the services necessary to rehabilitate the Roycove Reservoir and Pump Station without competitive bidding, including Brithinee Electric to design and build the booster pump control panel (VFD system), A & B Electric to perform demolition and booster pump control panel installation, and Control Automation Design, Inc. to complete the configuration and installation of the SCADA system controls; and

**WHEREAS**, the schedule for the Roycove Reservoir and Pump Station Emergency Repair Project runs tentatively from early-October 2015 through project completion estimated to occur at the end of December 2015; and

**WHEREAS**, on October 20, 2015, the Covina City Council adopted Resolution No. 15-7405 confirming the continued existence of an emergency condition for the Roycove Reservoir and Pump Station pursuant to Chapter 2.5 (Emergency Contracting Procedures) of the Public Contracts Code; and

**WHEREAS**, on November 3, 2015, the Covina City Council adopted Resolution No. 15-7411 confirming the continued existence of an emergency condition for the Roycove Reservoir and Pump Station pursuant to Chapter 2.5 (Emergency Contracting Procedures) of the Public Contracts Code; and

**WHEREAS**, on November 17, 2015, the Covina City Council adopted Resolution No. 15-7417 confirming the continued existence of an emergency condition for the Roycove Reservoir and Pump Station pursuant to Chapter 2.5 (Emergency Contracting Procedures) of the Public Contracts Code; and

**WHEREAS**, California Public Contract Code Section 22050, subdivision (c) provides that “If the governing body orders any action specified in subdivision (a), the governing body shall review the emergency action at its next regularly scheduled meeting and...at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths vote, that there is a need to continue the action;” and

**WHEREAS**, Resolution No. 15-7425 constitutes action specified in subdivision (a) of California Public Contract Code Section 22050; and

**WHEREAS**, emergency repairs to Roycove Reservoir and Pump Station are ongoing.

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED** by the City Council of the City of Covina, as follows:

SECTION 1. The City Council hereby reviews the emergency action approved in City Council Resolution No. 15-7400 to repair Roycove Reservoir and Pump Station pursuant to California Public Contract Code Section 22050.

SECTION 2. The City Council hereby determines that the emergency action to repair Roycove Reservoir and Pump Station needs to continue through project completion estimated to occur at the end of December 2015 in order to respond to the emergency pursuant to California Public Contract Code Section 22050.

SECTION 3. Such action shall be reviewed by the City Council at subsequent regular meetings to determine whether there is a need to further continue the action.

SECTION 4. The City Clerk shall certify to the adoption of this resolution.

**PASSED, APPROVED AND ADOPTED** this 1<sup>st</sup> day of December 2015.

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John C. King, Mayor

ATTEST:

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Sharon F. Clark, Chief Deputy City Clerk

APPROVED AS TO FORM:

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Candice K. Lee, City Attorney

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# CITY OF COVINA

## AGENDA REPORT

ITEM NO. CC 5

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- MEETING DATE:** December 1, 2015
- TITLE:** Proposed Professional Services Agreement with Willdan Engineering for Preparation of the Citywide Engineering and Traffic Survey
- PRESENTED BY:** Siobhan Foster, Director of Public Works
- RECOMMENDATION:**
- 1) Authorize the City Manager to execute the attached Professional Services Agreement with Willdan Engineering for the Preparation of the Citywide Engineering and Traffic Survey in an amount not-to-exceed \$20,790; and
  - 2) Adopt **Resolution No. 15-7426** appropriating \$20,790 in available Proposition C Fund balance (account no 4302-0000-33000) to the fiscal year 2015-16 budget and allocating the funds to the Citywide Engineering and Traffic Survey – Project T-1501 (account no. 4302-2100-51005-T1501).
- 

### **BACKGROUND:**

The Citywide Engineering and Traffic Survey (E&TS) is the basis for the establishment, revision, and enforcement of speed limits for streets within the City of Covina in accordance with California Vehicle Code (CVC) Sections 627 and 40802 and the California Manual on Uniform Traffic Control Devices 2014 (CA MUTCD), Section 2B.13.

The E&TS is required by the State of California to establish intermediate speed limits on local streets and enforce those limits using radar or other speed measuring devices. While these surveys must be updated every five, seven, or ten years to ensure the speeds reflect current conditions as dictated by the CVC, the practice of the Covina Department of Public Works is to survey all street segments every five years to ensure that City's traffic speed regulations reflect current conditions. Surveys may be extended up to seven years provided police officers issuing traffic citations have completed a 24-hour radar operator course and up to ten years when a registered engineer certifies that no changes in roadway or traffic conditions have occurred.

The CVC also requires that the surveys be conducted based on the methodology required by the CA MUTCD including the consideration of prevailing speeds as determined by traffic engineering measurements, collision records, and highway, traffic, and roadside conditions not readily apparent to the driver.

On April 5, 2011, the City Council approved the recommended speed limits from the 2011 E&TS conducted by ADVANTEC Consulting Engineers, Inc. on 77 street segments in the City of Covina.

**DISCUSSION:**

On January 20, 2015, the City Council approved the award of contracts to a pre-qualified on-call engineering services bench and authorized the Acting City Manager to execute all related documents on the City’s behalf. Three members of the on-call engineering bench offer traffic engineering services, including Iteris, Inc. (Iteris), Kimley-Horn and Associates, Inc. (Kimley-Horn), and Willdan Engineering (Willdan).

On October 22, 2015, the City issued the attached Request for Proposals (RFP) for Citywide Engineering and Traffic Survey to Iteris, Kimley-Horn, and Willdan. By 4:00 p.m. on November 12, 2015, the City of Covina City Clerk’s Office had received proposals from two firms, Kimley-Horn, and Willdan.

A review committee consisting of David Gilbertson, City Engineer/Traffic Engineer, Siobhan Foster, Director of Public Works, and Kristen Weger, Management Analyst, evaluated the two proposals. Proposal review focused on the following criteria, as outlined in the RFP:

1. Cost proposal (40 points). Value of firm’s proposal relative to the submitted project understanding/project approach.
2. Project schedule (40 points). Thoroughness of the project schedule; ability to complete the project within the selected timeframe.
3. Project understanding/project approach (20 points). The firm’s proposal adequately demonstrates an understanding of the project and of the California Vehicle Code and California Supplement to the 2014 MUTCD. This understanding can be demonstrated in various manners, including but not limited to, the firm’s successful completion of Engineering and Traffic Surveys for other cities in accordance with the California Vehicle Code and California Supplement to the 2014 MUTCD and identification of critical issues to the project and methods to address those issues to ensure timely and on budget completion of the project.

The review committee rated the proposals based on the above criteria. The following table summarizes the rankings of the proposals.

**Table 1 – Summary of Proposal Ratings**

Firm	Cost Proposal (120 pts)	Project Schedule (120 pts)	Project Understanding (60 pts)	Total (300 pts)	Average	Rank
Kimley-Horn	97	99	57	253	84.3	2
Willdan	113	105	55	273	91.0	1

The Department of Public Works subsequently prepared the attached Professional Services Agreement between the City and Willdan. Under the terms and conditions of the agreement, Willdan will provide all services necessary for the completion of the Citywide E&TS (77 street segments) by March 22, 2016 at a not-to-exceed cost of \$20,790.

**FISCAL IMPACT:**

The fiscal impact of the proposed contract with Willdan for preparation of the Citywide E&TS is a not-to-exceed amount of \$20,790. The approval of a \$20,790 appropriation from available Proposition C Fund

balance (account no. 4302-0000-33000) to the fiscal year 2015-16 budget and allocation of the funds to Citywide Engineering and Traffic Survey – Project T-1501 (account no. 4302-2100-51005-T1501) is necessary at this time to fund the Citywide E&TS.

**CEQA (CALIFORNIA ENVIRONMENTAL QUALITY ACT):**

The project has been reviewed for compliance with the California Environmental Quality Act (CEQA) and is exempt per Section 15061 (b) (3). The project is covered by the General Rule that CEQA applies to projects that have the potential for causing a significant effect on the environment. The Citywide E&TS will not result in any significant effect on the environment.

Respectfully submitted,



\_\_\_\_\_  
Siobhan Foster  
Director of Public Works

<b>City Manager</b>	<b>City Attorney</b>	<b>Finance</b>	<b>City Clerk</b>

**ATTACHMENTS:**

- Attachment A: Professional Services Agreement with Willdan for Citywide E&TS
- Attachment B: Request for Proposals for Preparation of the Citywide E&TS (w/o attachments)
- Attachment C: Proposals Received in Response to RFP for Preparation of the Citywide E&TS (on file in City of Covina City Clerk’s Office)
- Attachment D: Resolution No. 15-7426

**CITY OF COVINA  
PROFESSIONAL SERVICES AGREEMENT**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this FIRST day of DECEMBER, 2015 by and between the City of Covina, a municipal corporation organized under the laws of the State of California with its principal place of business at 125 East College Street, Covina, California 91723 (“City”) and WILLDAN ENGINEERING, a CORPORATION with its principal place of business at 13191 CROSSROADS PARKWAY NORTH, SUITE 405, INDUSTRY, CA 91746 (“Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

**2. RECITALS.**

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing ENGINEERING AND TRAFFIC SURVEY services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project

City desires to engage Consultant to render such services for the CITYWIDE ENGINEERING AND TRAFFIC SURVEY, Project No. T-1501 (“Project”) as set forth in this Agreement.

**3. TERMS.**

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional TRAFFIC ENGINEERING consulting services necessary for the Project (“Services”). The Services are more particularly described in Exhibit “A” attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules, and regulations.

3.1.2 Term. The term of this Agreement shall be from DECEMBER 1, 2015 to JUNE 30, 2016, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

### 3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: LEW GLUESING, PE, TE, PTOE; VANESSA MUNOZ, PE, TE, PTOE; JEFFREY LAU, PE; AND NICOLLE SPANN, EIT.

3.2.5 City's Representative. The City hereby designates ANDREA M. MILLER, CITY MANAGER, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates LEW GLUESING, P.E., T.E, P.T.O.E. , or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Period of Performance and Liquidated Damages. Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Consultant shall also perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be separately agreed upon in writing by the City and Consultant ("Performance Milestones"). Consultant agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such Project Milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage. Laws and Regulations; Employee/Labor Certifications. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom.

Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees, and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.9.1 Employment Eligibility; Consultant. By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Consultant. Consultant also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Consultant shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Consultant shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Consultant's compliance with the requirements provided for in Section 3.2.10 or any of its sub-sections.

3.2.9.2 Employment Eligibility; Subcontractors, Consultants, Sub-subcontractors and Subconsultants. To the same extent and under the same conditions as Consultant, Consultant shall require all of its subcontractors, consultants, sub-subcontractors and subconsultants performing any work relating to the Project or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in Section 3.2.10.1.

3.2.9.3 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Consultant verifies that they are a duly authorized officer of Consultant, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Consultant or its subcontractors, consultants, sub-subcontractors or subconsultants to meet any of the requirements provided for in Sections 3.2.10.1 or 3.2.10.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Consultant under Section 3.2.10.2); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.

3.2.9.4 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.2.9.5 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.2.9.6 Air Quality. To the extent applicable, Consultant must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Although the SCAQMD and CARB limits and requirements are more broad, Consultant shall specifically be aware of their application to "portable equipment", which definition is considered by SCAQMD and CARB to include any item of equipment with a fuel-powered engine. Consultant shall indemnify City against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Consultant, its subconsultants, or others for whom Consultant is responsible under its indemnity obligations provided for in this Agreement.

### 3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence Services under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this Section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this Section.

3.2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subconsultants. Consultant shall also require all of its subconsultants to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

A. Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. The policy shall not contain any exclusion contrary to the Agreement, including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 29); or (2) cross liability for claims or suits by one insured against another.

B. Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$2,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$2,000,000 per accident for bodily injury or disease. Defense costs shall be paid in addition to the limits.

C. Notices; Cancellation or Reduction of Coverage. At least fifteen (15) days prior to the expiration of any such policy, evidence showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or materially reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, the City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by the City will be promptly reimbursed by Consultant or the City may withhold amounts sufficient to pay premium from Consultant payments. In the alternative, the City may suspend or terminate this Agreement.

3.2.10.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$2,000,000 per claim, and shall be endorsed to include contractual liability. Defense costs shall be paid in addition to the limits.

3.2.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

A. General Liability. The general liability policy shall include or be endorsed (amended) to state that: (1) using ISO CG forms 20 10 and 20 37, or endorsements providing the exact same coverage, the City of Covina, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Services or ongoing and completed operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) using ISO form 20 01, or endorsements providing the exact same coverage, the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any excess insurance shall contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of the City, before the City's own primary insurance or self-insurance shall be called upon to protect it as a named insured. Any insurance or self-insurance maintained by the City, its directors, officials,

officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way. Notwithstanding the minimum limits set forth in Section 3.2.11.2(B), any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section 3.2.11.4(A).

B. Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (1) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way. Notwithstanding the minimum limits set forth in Section 3.2.11.2(B), any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section 3.2.11.4(B).

C. Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

D. All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days (10 days for nonpayment of premium) prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents, and volunteers. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officials, officers, employees, agents and volunteers, or any other additional insureds.

3.2.10.5 Separation of Insureds; No Special Limitations; Waiver of Subrogation. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents, and volunteers. All policies shall waive any right of subrogation of the insurer against the City, its officials, officers, employees, agents, and volunteers, or any other additional insureds, or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, its officials, officers, employees, agents, and volunteers, or any other additional insureds, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

3.2.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Consultant shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents, and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

3.2.10.7 Subconsultant Insurance Requirements. Consultant shall not allow any subconsultants to commence work on any subcontract relating to the work under the Agreement until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. If requested by Consultant, the City may approve different scopes or minimum limits of insurance for particular subconsultants. The Consultant and the City shall be named as additional insureds on all subconsultants' policies of Commercial General Liability using ISO form 20 38, or coverage at least as broad.

3.2.10.8 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.

3.2.10.9 Verification of Coverage. Consultant shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.10.10 Reporting of Claims. Consultant shall report to the City, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.12 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records

shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

### 3.2.13 Storm Water Management.

3.2.13.1 Generally. Storm, surface, nuisance, or other waters may be encountered at various times during the Services. Consultant hereby acknowledges that it has investigated the risk arising from such waters, and assumes any and all risks and liabilities arising therefrom.

3.2.13.2 Compliance with Water Quality Laws, Ordinances and Regulations. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 *et seq.*); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant shall additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges.

3.2.13.3 Standard of Care. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the work assigned to them without impacting water quality in violation of the laws, regulations and policies described in Sections 3.2.14 of this Agreement. Consultant further warrants that it, its employees and subcontractors have or will receive adequate training, as determined by the City, regarding these requirements as they may relate to the Services, and will provide the City with documentation of training acceptable to the City on request.

### 3.2.13.4 Liability for Non-compliance.

(A) Indemnity: Failure to comply with laws, regulations, and ordinances listed in Section 3.2.14 of this Agreement is a violation of federal and state law. Notwithstanding any other indemnity contained in this Agreement, Consultant agrees to indemnify and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the Services, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

(B) Defense: City reserves the right to defend any enforcement action or civil action brought against the City for Consultant's failure to comply with any applicable water quality law, regulation, or policy. Consultant hereby agrees to be bound by, and to reimburse the City for the costs associated with, any settlement reached between the City and the relevant enforcement entity.

(C) Damages: City may seek damages from Consultant for delay in completing the Services caused by Consultant's failure to comply with the laws, regulations and policies described in Section 3.2.14 of this Agreement, or any other relevant water quality law, regulation, or policy.

### 3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed TWENTY THOUSAND SEVEN HUNDRED NINETY DOLLARS (\$20,790) without written approval of City's CITY MANAGER. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.3.5 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. IF the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and IF the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing

rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.3.6 Registration. Effective March 1, 2015, IF the Services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such Services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements.

### 3.4 Termination of Agreement.

3.4.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.4.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.4.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

### 3.5 Ownership of Materials and Confidentiality.

3.5.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of City, and shall not be used in whole or in substantial part by Consultant on other projects without the City's express written permission. Within thirty (30) days

following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to City reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.5.2 Subconsultants. Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the City.

3.5.3 Right to Use. City shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at City's sole risk. If City uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

3.5.4 Indemnification. Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by City of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.5.5 Confidentiality. All Documents & Data, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by

Consultant. All Documents & Data shall not, without the prior written consent of City, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Documents & Data to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant that is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

### 3.6 General Provisions.

3.6.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**Consultant:**

Willdan Engineering  
13191 Crossroads Parkway North, Suite 405  
Industry, CA 91746-3443  
Attn: Lew Gluesing, PE, TE, PTOE

**City:**

City of Covina  
125 E. College St.  
Covina, CA 91723  
Attn: Siobhan Foster, Director of Public Works

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

### 3.6.2 Indemnification.

3.6.2.1 Scope of Indemnity. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code

Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

3.6.2.2 Additional Indemnity Obligations. Consultant shall defend, with Counsel of City's choosing and at Consultant's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.6.2.1 that may be brought or instituted against City or its directors, officials, officers, employees, volunteers and agents. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse City for the cost of any settlement paid by City or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Consultant shall reimburse City and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents, or volunteers.

3.6.3 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Los Angeles County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

3.6.4 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.6.5 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.6.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.6.7 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecatees or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.6.8 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

3.6.9 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.6.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.6.11 No Third Party Beneficiaries. Except to the extent expressly provided for in Section 3.6.7, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.6.12 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.6.13 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.6.14 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.6.15 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this

Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.6.16 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.6.17 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6.18 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

**[SIGNATURES ON NEXT PAGE]**

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF COVINA  
AND WILLDAN ENGINEERING**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the FIRST day of DECEMBER, 2015.

City:

City of Covina,  
a California municipal corporation

Contractor:

Willdan Engineering,  
a California corporation

By: \_\_\_\_\_  
Name: Andrea M. Miller  
Title: City Manager

Attest:

By: \_\_\_\_\_  
Name: Sharon F. Clark  
Title: Chief Deputy City Clerk

Approved as to Form:

By: \_\_\_\_\_  
Name: Candice K. Lee  
Title: City Attorney

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title:  Chairman  President  
 Vice President

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title:  Secretary  Asst. Secretary  
 Chief Finance Officer  Asst. Treasurer

[Two signatures required for corporations pursuant to California Corporations Code Section 313, unless corporate documents authorize only one person to sign this Agreement on behalf of the corporation.]

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

Consultant shall provide professional traffic engineering consulting services for the preparation of a citywide engineering and traffic survey, as required by Section 40802 of the California Vehicle Code.

**EXHIBIT “B”  
SCHEDULE OF SERVICES**

The project shall commence following the Notice to Proceed. The project shall be completed by March 22, 2015 per the schedule below.

**Project Schedule:**

Notice to Proceed	December 2, 2015
Task 1 – Kick Off Meeting	December 10, 2015
Task 2 – Radar Data Collection	January 8, 2016 – February 4, 2016
Task 3 – Radar Data Analysis	February 5, 2016 – February 11, 2016
Task 4 – Roadway Segment Characteristics Review	January 8, 2016 – February 4, 2016
Task 5 – Accident History Review and Accident Rate Calculation	January 29, 2016 – February 4, 2016
Task 6 – Completion of Speed Zone Survey and Summary of Recommendations Chart	February 12, 2016 – February 18, 2016
Task 7 & 8 – Preparation of Draft and Final Speed Survey Report	February 26, 2016 – March 22, 2016
Submit Draft	February 26, 2016
City Review	February 29, 2016 – March 11, 2016
Meeting	March 14, 2016
Revise E&T	March 15, 2016
Final E&T	March 22, 2016

## EXHIBIT "C" COMPENSATION

Total compensation shall not exceed twenty thousand seven hundred ninety dollars.



### WILLDAN ENGINEERING Schedule of Hourly Rates *Effective July 1, 2015 to June 30, 2016*

ENGINEERING		CONSTRUCTION MANAGEMENT		BUILDING AND SAFETY	
Technical Aide I	59.00	Labor Compliance Specialist	105.00	Senior Construction Permit Specialist	110.00
Technical Aide II	75.00	Labor Compliance Manager	131.00	Supervising Construction Permit Specialist	115.00
Technical Aide III	93.00	Utility Coordinator	138.00	Building Inspector*	115.00
Drafter I	94.00	Assistant Construction Manager	131.00	Supervisor Code Enforcement	126.00
Drafter II	110.00	Construction Manager	156.00	Senior Building Inspector	126.00
Senior Drafter	121.00	Senior Construction Manager	164.00	Plans Examiner	126.00
GIS Analyst I	126.00	Project Manager IV	181.00	Supervising Building Inspector	138.00
GIS Analyst II	143.00	Deputy Director	200.00	Senior Plans Examiner	138.00
GIS Analyst III	159.00	Director	203.00	Inspector of Record	154.00
Designer I	126.00	<b>INSPECTION SERVICES</b>		Deputy Building Official	154.00
Designer II	131.00	Public Works Observer I*	81.00	Plan Check Engineer	154.00
Senior Designer I	138.00	Public Works Observer II*	89.00	Building Official	159.00
Senior Designer II	145.00	Senior Public Works Observer I*	97.00	Supervising Plan Check Engineer	159.00
Assistant Engineer I	100.00	Senior Public Works Observer II*	108.00	Principal Project Manager	190.00
Assistant Engineer II	119.00	Senior Public Works Observer III*	116.00	Deputy Director	200.00
Assistant Engineer III	125.00	Senior Public Works Observer IV*	123.00	Director	203.00
Assistant Engineer IV	130.00	Senior Public Works Observer V*	131.00	<b>PLANNING</b>	
Associate Engineer I	132.00	<b>MAPPING AND EXPERT SERVICES</b>		Community Development Technician	93.00
Associate Engineer II	139.00	Survey Analyst I	110.00	Planning Technician	93.00
Associate Engineer III	146.00	Survey Analyst II	126.00	Assistant Planner	115.00
Design Manager	148.00	Calculator I	110.00	Assistant Community Development Planner	115.00
Senior Design Manager	156.00	Calculator II	121.00	Associate Community Development Planner	126.00
Senior Engineer I	149.00	Calculator III	132.00	Associate Planner	126.00
Senior Engineer II	154.00	Senior Survey Analyst	143.00	Senior Community Development Planner	143.00
Senior Engineer III	160.00	Supervisor – Survey & Mapping	164.00	Senior Planner	143.00
Senior Engineer IV	173.00	Principal Project Manager	190.00	Principal Community Development Planner	159.00
Supervising Engineer	177.00	<b>LANDSCAPE ARCHITECTURE</b>		Principal Planner	159.00
Project Manager I	135.00	Assistant Landscape Architect	110.00	Deputy Director	200.00
Project Manager II	157.00	Associate Landscape Architect	126.00	Director	203.00
Project Manager III	174.00	Senior Landscape Architect	138.00	<b>ADMINISTRATIVE</b>	
Project Manager IV	190.00	Principal Landscape Architect	159.00	Administrative Assistant I	68.00
Program Manager	195.00	Principal Project Manager	190.00	Administrative Assistant II	83.00
Traffic Engineer I	175.00	<b>BUILDING AND SAFETY</b>		Administrative Assistant III	97.00
Traffic Engineer II	190.00	Assistant Code Enforcement Officer	77.00	Project Accountant I	78.00
City Engineer I	190.00	Plans Examiner Aide	83.00	Project Accountant II	91.00
City Engineer II	200.00	Assistant Construction Permit Specialist	93.00		
Principal Project Manager	190.00	Construction Permit Specialist	88.00		
Deputy Director	200.00	Code Enforcement Officer	88.00		
Director	203.00	Assistant Building Inspector*	105.00		
Principal Engineer	221.00	Senior Code Enforcement Officer	105.00		

Mileage reimbursement will be charged at the current Federal guideline rate at the time of billing. Vehicles will be charged at a monthly rate of \$500.00.  
\* \$138 per hour For Prevailing Wage Project



# CITY OF COVINA

125 East College Street • Covina, California 91723-2199

## Request for Proposals (RFP) for Citywide Engineering and Traffic Survey

The City of Covina, California ("City") is requesting proposals from qualified consultants on the Pre-Qualified On-Call Engineering Services Bench to prepare a citywide engineering and traffic survey.

### 1. Introduction

The City of Covina is seeking a qualified professional engineering firm (Consultant) to provide professional traffic engineering consulting services for the preparation of a citywide engineering and traffic survey, as required by Section 40802 of the California Vehicle Code.

Advantec Consulting Engineers prepared the most recent citywide engineering and traffic survey in February of 2011. A copy of that survey is attached to this RFP.

### 2. Proposal Requirements

Each proposal submitted in response to this RFP shall be submitted in a sealed envelope, as follows:

- A. An envelope clearly labeled with the firm's name, address, telephone number and e-mail address. The envelope shall be clearly identified as "**Technical Proposal – Citywide Engineering and Traffic Survey.**" The Technical Proposal shall be limited to ten (10), single-spaced, single-sided pages plus a cover letter (maximum two pages.) The Proposal shall be submitted in sufficient detail to allow a thorough evaluation and comparative analysis. The Technical Proposal should include, as a minimum, the following information in addition to the areas outlined within Section III, "Scope of Services:"
  - i. **Work plan:** A statement of your understanding of the project; and detailed description of your approach to implement all of the items listed under Section III, "Scope of Services."

- ii. **Organizational chart:** A chart identifying the key personnel assigned to this project, including the name of the project manager and individual authorized to negotiate the contract on behalf of the consulting firm.
- iii. **Schedule and deadlines:** A comprehensive schedule for the completion of the tasks as outlined under Section 3, "Scope of Services," to reflect the time frame or period for each; and a total time for completion.
- iv. **Staffing plan:** Identify key personnel for prime consultant and sub-consultants for this project, including the work load of the project manager and key team members and their availability to complete the scope of work.
- v. **Objections to Professional Services Agreement**
- vi. **Cost Proposal:** A comprehensive cost proposal shall provide a summation of fees for each task described under Section 3, "Scope of Services."
- vii. **Schedule of Work:** The proposed Cost Proposal shall be presented within a schedule of work items on a task-by-task basis with the following detail:
  - a. Time estimates for principals, staff, sub-consultants, etc. with hourly billing rates.
  - b. Cost for materials and incidental services, including travel expenses, copying, printing, and plotting.
  - c. Total fee per task breakdown.
  - d. The fee proposal shall be an amount "Not to Exceed."
- viii. **Hourly Rate Schedule:** A statement of hourly rates for all proposed classifications, including rates for sub-consultants, if any, as well as any proposed percentage mark-up for reimbursable expenses.

### 3. Scope of Services

The Scope of Services is comprised of the following tasks:

#### Task 1 – Kick-Off Meeting

The Consultant shall attend a project kick-off Meeting with City staff to discuss project parameters, scheduling constraints, and other relevant information regarding services required by this Request for Proposals. An overall project schedule shall be reviewed, revised and updated by the Consultant.

## **Task 2 – Radar Field Data Collection**

The Consultant shall conduct field radar traffic speed surveys at locations identified in the 2011 survey.

A minimum sample of one hundred (100) traffic speed observations shall be obtained from each traveled direction at each of the locations identified. The Consultant shall provide proof of radar speed meter certification(s) prior to conducting any traffic speed surveys. The traffic speed surveys shall be performed during good weather conditions and shall be scheduled on Tuesdays, Wednesdays, and Thursdays or as directed by the City Engineer. Radar field data collection shall be obtained while school is still in session. Prior to radar field data collection, the Consultant shall submit a schedule of the dates proposed for data collection for each location for the City Engineer's approval.

The Consultant shall check each specified location for representative free flow speeds in order to verify that speeds are not influenced by local conditions or construction work.

## **Task 3 – Speed Data Analysis**

The Consultant shall summarize all field data and provide traffic speed survey data sheets.

## **Task 4 – Roadway Segment Characteristics Review**

The Consultant shall drive and observe each specified location and determine, on the basis of an experienced traffic engineering judgment, whether or not there are any roadway characteristics not readily apparent to the average motorist that would justify reduction or increase of the proposed speed limit to the maximum permitted under the established guidelines.

The Consultant shall summarize each of the specified locations and identify those locations where a reduction or increase of the recommended traffic speed limit is justified.

## **Task 5 – Accident History Review and Accident Rate Calculations**

The Consultant shall review all mid-block accident history of each specified location, using the City maintained accident report data available on file in the Public Works Department. The Consultant shall calculate an appropriate accident rate for each specified location, and compare the calculated accident rate with the expected accident rate as established by Caltrans for various types of roadways.

The Consultant shall utilize at least a three-year time period for accident review in accordance with Traffic Manual requirements.

**Task 6 – Completion of Speed Zone Survey and Summary of Recommendations Chart**

The Consultant shall compile Tables for Segment Spot Speed Summary and Accident Analysis to be included in the Draft and Final Traffic Speed Survey Report.

The Consultant shall include all conclusions reached during accident history reviews and field surveys in the traffic speed survey data summaries to constitute the basis for changing recommended traffic speed limit(s) from the 85th percentile speed.

The Consultant shall provide a summary table showing the posted traffic speed limit, the 85th percentile traffic speed, and the recommended traffic speed limit for each specified location. The summary table shall be reviewed and approved by the City Engineer prior to preparation of the final report.

**Task 7 – Preparation of Draft Traffic Speed Survey Report**

The Consultant shall prepare a draft report to include the following items:

- i. Certification Statement
- ii. Radar Speed Survey Operational Procedures
- iii. Description of the Purpose and Methodology of Speed Zone Establishment
- iv. Description of the Statistical Analysis Factors
- v. Description of the Field Data Used in Analyzing the Related Roadway Characteristics
- vi. Accident History for the Street Segments
- vii. Results and Recommendations
- viii. Summary Table of Speed Limit Recommendations

**Task 8 – Preparation of Final Speed Survey Report**

The Consultant shall prepare a Final Traffic Speed Survey Report after review and approval of the draft report by the City Engineer. The Final Traffic Speed Survey Report shall be certified, stamped, and signed by a Registered Traffic Engineer in the State of California. Ten (10) color copies of the Final Traffic Speed Survey Report and ten (10) Color Speed Survey Maps designating the different posted traffic speed limits for each specified location, shall be provided to the City. Electronic copies of the Final Traffic Speed Survey Report and Color Speed Survey Maps shall also be provided to the City in PDF or other electronic format approved by the City. The Consultant shall attend the City Council meeting at which time the Final Traffic Speed Survey Report is adopted.

**4. Deliverables**

The Consultant shall provide to the City the following products as part of this project:

- A. For each specified location, one copy of the Speed Zone Survey Sheet, Cumulative Speed Curve Sheet, and Vehicle Speed Survey Sheet. The sheets shall comply with Figures 2B-101, 2B-102, 2B-103, and 2B-104 of the California Supplement to the 2014 MUTCD.
- B. Ten (10) copies of the draft and final Traffic Speed Survey Report shall include:
  - i. Study Methodology.
  - ii. Survey Results.
    - a. Street Surveillance.
    - b. Accident Rate Analysis.
    - c. Spot Speed Survey.
    - d. Survey Findings and Recommendations.
  - iii. Summary and Conclusions

All project files and correspondence relating to this project shall be given to the City at the completion of the contract. This includes all working and field data, background information and other information used in creating the Deliverables requested.

## **5. Proposal Submission**

Proposal packages (technical and cost proposal) are to be submitted to the City on/before 4:00 p.m. on November 12, 2015 to the following address:

Siobhan Foster, Director of Public Works  
City of Covina  
c/o City of Covina City Clerk's Office  
125 E. College Street  
Covina, CA 91723

No oral, faxed, emailed, or telephonic proposals or alternatives will be considered.

Proposals are to be submitted inside an envelope marked on the outside with "Citywide Engineering and Traffic Survey Proposal." A proposal may be withdrawn without prejudice upon written request by the proposer, filed with the City Clerk, before the proposal submission deadline. Proposals must remain valid and shall not be subject to withdrawal for 45 calendar days after the deadline for submission of proposals.

Proposals received after the stated deadline will not be accepted. The time of delivery shall be definitively determined by the time-stamping clock located in the City of Covina City Clerk's Office, 125 E. College Street, Covina, CA 91723. It is the Proposer's sole responsibility to see that its proposal is received in proper time, and proposers assume all risks arising out of the means of delivery. Any proposal received after the deadline will be

returned to the proposer unopened. All accepted proposals shall become the property of the City.

## 6. Inquiries and Addenda

For inquiries regarding this RFP, please contact David Gilbertson, City Engineer via electronic mail at [dgilbertson@covinaca.gov](mailto:dgilbertson@covinaca.gov). Proposers must e-mail inquiries no later than November 9, 2015. Inquiries received after that date will be disregarded. Please include the following in the subject line of the email: "Inquiry re: Citywide Engineering and Traffic Survey Proposal". Telephonic inquiries will not be taken. The City will issue any revisions to this RFP as addenda. The City will distribute addenda to all potential proposers. Proposers are responsible for receipt of all addenda. To this end, each proposer should contact the City to verify that he or she has received all addenda issued, if any. The City's issuance of a written addendum is the only official method whereby the City will interpret, clarify, or provide additional information concerning this RFP. No oral revisions to any provision in this RFP shall be binding.

## 7. Anticipated Schedule

<b>Milestone</b>	<b>Date</b>
RFP Issued	Thursday, October 22, 2015
Deadline for Clarifications/Inquiries	Thursday, November 5, 2015
Deadline for Proposals	Thursday, November 12, 2015
Award of Contract (tentative)	Tuesday, December 1, 2015
Notice to Proceed (tentative)	Wednesday, December 2, 2015

## 8. Evaluation Procedure

City staff, selected by the City Manager, or her designee, will evaluate each proposal for completeness and content. Each proposal will be evaluated based upon the relevant qualifications and experience of the consultant. The proposal review will focus on the following criteria:

- A. **Cost proposal (40 points).** Value of firm's proposal relative to the submitted project understanding/project approach.
- B. **Project schedule (40 points).** Thoroughness of the project schedule; ability to complete the project within the selected timeframe.

C. **Project understanding/project approach (20 points).** The firm's proposal adequately demonstrates an understanding of the project and of the California Vehicle Code and California Supplement to the 2014 MUTCD. This understanding can be demonstrated in various manners, including but not limited to, the firm's successful completion of Engineering and Traffic Surveys for other cities in accordance with the California Vehicle Code and California Supplement to the 2014 MUTCD and identification of critical issues to the project and methods to address those issues to ensure timely and on budget completion of the project.

The City will identify the firm that best meets the needs of the City and enter contract negotiations with that highest ranked firm. Should the City fail to reach agreement with the top ranked firm, the City may enter negotiations with the next highest rated firm and so on. City Staff will make a recommendation to the City Council for the award of the Professional Services Agreement to the firm that best furthers the City's objectives.

The successful consultant will be expected to execute the attached Professional Services Agreement (Exhibit A) at a minimum of five (5) calendar days prior to the date of City Council consideration (tentatively scheduled for December 1, 2015) of the contract award, if an award is made. Additionally, the successful consultant shall also secure all insurance required under the Professional Services Agreement, and provide copies to the City, within fifteen (15) calendar days from the date of the contract award, if an award is made. Any consultant with objections to terms contained in the City's Professional Services Agreement must advise the City of such objections and request modifications as part of its Technical Proposal. Failure of a proposer to accept the terms of the City's Professional Services Agreement may result in the rejection of the proposal. It shall be the responsibility of the prospective consultants to review all sections and exhibits of the Professional Services Agreement, including insurance requirements. If no objections are received, the City will assume the proposer is able to and will enter into the Professional Services Agreement and fulfill the terms and requirements set therein. The City may recover any damages accruing to the City as a result of the successful consultant's failure or refusal to execute the City's Professional Services Agreement.

## **9. Acceptance or Rejection of Proposal**

The City reserves the right to accept or reject any and all proposals. The City also reserves the right to waive any informality or irregularity in any proposal or in the bidding as deemed to be in its best interest. Additionally, the City may, for any reason, decide not to award an agreement as a result of this RFP or cancel the RFP process. The City shall not be obligated to respond to any proposal submitted, nor be legally bound in any manner by the submission of the proposal. The City reserves the right to negotiate project deliverables and associated costs.

**Exhibits:**

- A. City of Covina Professional Services Agreement
- B. 2011 Citywide Engineering and Traffic Study

**RESOLUTION NO. 15-7426**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COVINA,  
CALIFORNIA, TO AMEND THE FISCAL YEAR 2015-2016  
PUBLIC WORKS DEPARTMENT BUDGET TO REFLECT AN  
APPROPRIATION OF \$20,790 FROM PROPOSITION C FUND BALANCE FOR  
PROJECT T-1501, AND INCREASING THE FISCAL YEAR 2015-2016 PROPOSITION  
C FUND BUDGET (ACCOUNT NO. 4302-2100-51005-T1501) IN THE AMOUNT OF  
\$20,790 FOR EXPENDITURE FOR PROJECT T-1501,  
CITYWIDE ENGINEERING AND TRAFFIC SURVEY**

**WHEREAS**, the City of Covina is a municipal corporation duly organized and existing pursuant to the Constitution and laws of the State of California (“City”); and

**WHEREAS**, the budget for the City of Covina for fiscal year commencing July 1, 2015 and ending June 30, 2016 was approved on June 23, 2015; and

**WHEREAS**, the approved budget is in accordance with all applicable ordinances of the City and all applicable statutes of the State; and

**WHEREAS**, the reallocation of the appropriations between departmental activities may be made by the City Manager, amendments (increases/decreases) to the Budget shall be by approval and Resolution of the City Council; and

**WHEREAS**, the City of Covina wishes to allocate funds for the preparation of the Citywide Engineering and Traffic Survey (E&TS) contract administration.

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED** by the City of Covina, as follows:

**SECTION 1.** Amend the fiscal year 2015-2016 Public Works Department operating budget as follows: \$20,790 from Proposition C Fund balance (account no. 4302-0000-33000) to (account no. 4302-2100-51005-T1501) for the preparation of the Citywide E&TS.

**SECTION 2.** The City Clerk shall certify to the adoption of this Resolution.

**PASSED, APPROVED AND ADOPTED** this 1<sup>st</sup> day of December 2015.

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John C. King  
Mayor

ATTEST:

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Sharon F. Clark  
Chief Deputy City Clerk

APPROVED AS TO FORM:

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Candice K. Lee  
City Attorney

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# CITY OF COVINA

## AGENDA REPORT

ITEM NO. CC 6

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**MEETING DATE:** December 1, 2015

**TITLE:** Fourth Amendment to Professional Services Agreement with Interwest Consulting Group for Transit and Transportation Consulting Services

**PRESENTED BY:** Siobhan Foster, Director of Public Works

**RECOMMENDATION:** Authorize the City Manager to Execute Fourth Amendment to Professional Services Agreement with Interwest Consulting Group for transit and transportation consulting services and reallocate \$42,840 within the Department of Public Works approved fiscal year 2015-16 budget from Proposition A – Transit Administration Regular Full-Time Employees (account no. 2400-0000-50010) to Proposition A – Transit Administration Consulting Fees (account no. 2400-0000-51005).

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### **BACKGROUND:**

On November 19, 2013, the City Council approved a Professional Services Agreement with Interwest Consulting Group for the provision of plan check and building services through December 1, 2016. Compensation for the Agreement is based upon a percentage of the plan review fee.

In fiscal year 2013-2014, the City entered into a First Amendment to Professional Services Agreement with Interwest Consulting Group for inspection services and Geographic Information Systems (GIS) programming related to the Rental Inspection Program for the remittance of \$28,900.

On March 10, 2015 the City executed the Second Amendment to Professional Services Agreement with Interwest Consulting Group to expand the Scope of Services to include Community Development Project Management Services augmenting planning services in the Community Development Department for an amount not-to-exceed \$25,000.

On July 21, 2015, the City Council approved the Third Amendment to the Professional Services Agreement with Interwest Consulting Group. The Third Amendment facilitates a further augmentation to planning services in the Community Development Department on a case-by-case with the addition of 560 hours of planning consultant services and an \$82,000 increase to the compensation amount of the Agreement.

**DISCUSSION:**

In October 2015, the City's Transit Coordinator (Management Analyst) unexpectedly initiated an extended leave of absence from City employment resulting in a significant void in Department of Public Works operations. Current key initiatives managed by this position include the joint procurement and implementation of transit operations services with the Cities of Duarte and Monrovia, review of Metrolink parking subsidies, and the purchase and installation of new cameras at the Covina Metrolink Station and Parking Complex, which will feed into the Covina Police Department's camera system. Day-to-day responsibilities involve the provision of transit and parking operations customer service, management of multiple service contracts, and oversight of the City's Proposition A and C and Measure R Local Return programs/funds.

Following the review of various temporary, consultant and other staffing options in coordination with the Human Resources Department, the Department of Public Works proposes to retain an Associate Engineer from Interwest Consulting Group at an hourly rate of \$85/hour. The Associate Engineer and will be supported by other Interwest personnel on an as needed basis at no cost to the City.

The proposed Fourth Amendment to the Professional Services Agreement with Interwest Consulting Group would expand the Scope of Services to include transit and transportation consulting services at a not-to-exceed amount of \$42,840 through June 30, 2016. This compensation level supports the provision of twelve hours of service on a weekly basis (total of 360 hours) plus an additional 144 hours that will be allocated as needed to implement major programs.

Since the consultant will be working on less than a full-time basis, duties will focus on the delivery of key initiatives including the implementation of a new transit operations contract/service provider, analysis of Metrolink parking subsidies, and the new security camera system. Other available consultant time will be used to support the day-to-day responsibilities of the position that have been temporarily divided among several staff members in the Administration and Environmental Services Divisions of the Department of Public Works with assistance from the Parks and Recreation and Finance Departments.

The Department of Public Works will continue to closely monitor the workload and performance of the personnel temporarily assisting with the responsibilities of the Transit Coordinator position and be prepared to expediently augment the level of effort with additional outside resources. This may entail the retention of temporary administrative support or other services.

**FISCAL IMPACT:**

The fiscal impact associated with the proposed Fourth Amendment to the Professional Services Agreement with Interwest Consulting Group is a not-to-exceed amount of \$42,840. Following the reallocation of \$42,840 from Proposition A – Transit Administration Regular Full-Time Employees (account no. 2400-0000-50010) to Proposition A – Transit Administration Consulting Fees (account no. 2400-0000-51005), sufficient funding for the Fourth Amendment will be available in Proposition A – Transit Administration Consulting Fees (account no. 2400-0000-51005).

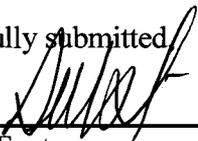
There is no General Fund impact associated with this item.

**CEQA (CALIFORNIA ENVIRONMENTAL QUALITY ACT):**

The project has been reviewed for compliance with the California Environmental Quality Act (CEQA) and is exempt per Section 15061 (b) (3). The project is covered by the General Rule

that CEQA applies on to projects that have the potential for causing a significant effect on the environment. The Fourth Amendment to the Professional Services Agreement with Interwest Consulting Group agreement for transit and transportation consulting services will not result in any significant effect on the environment.

Respectfully submitted,



\_\_\_\_\_  
Siobhan Foster  
Director of Public Works

<b>City Manager</b>	<b>City Attorney</b>	<b>Finance</b>	<b>City Clerk</b>

**ATTACHMENTS:**

- Attachment A: Professional Services Agreement with Interwest Consulting Group
- Attachment B: First Amendment to Professional Services Agreement with Interwest Consulting Group unexecuted copy attached
- Attachment C: Second Amendment to the Professional Services Agreement with Interwest Consulting Group
- Attachment D: Third Amendment to the Professional Services Agreement with Interwest Consulting Group
- Attachment E: Fourth Amendment to the Professional Services Agreement with Interwest Consulting Group

## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is entered into this 19th day of November, 2013, by and between the CITY OF COVINA, a California municipal corporation (hereinafter referred to as "CITY") and INTERWEST CONSULTING GROUP, a Colorado corporation (hereinafter referred to as "CONSULTANT").

The parties do agree as follows:

### **SECTION 1. RECITALS.**

This Agreement is made and entered into with respect to the following facts:

- (a) CITY has considered the proposal, dated October 30, 2013 (the "Proposal"), from CONSULTANT for professional services including but not limited to, providing the services as described below in Section 6 of this Agreement.
- (b) CITY desires to have a highly qualified company to perform such services.
- (c) CONSULTANT represents and warrants that it is qualified to perform such services and has agreed to do so pursuant to this Agreement; and
- (d) CITY desires to contract with CONSULTANT on the basis of the following terms and conditions.

### **SECTION 2. EMPLOYMENT.**

CITY hereby employs CONSULTANT and CONSULTANT hereby accepts such employment, to perform those services under this Agreement.

### **SECTION 3. INDEPENDENT CONTRACTOR.**

The parties hereby acknowledge that CONSULTANT is an independent contractor and shall not be considered to be an employee of CITY.

### **SECTION 4. PRINCIPAL REPRESENTATIVE**

Kalieh Honish, Interim Director of Public Works for CITY, shall be the principal representative of CITY for purposes of this Agreement. Tim D'Zmura, Municipal Services Director, shall be the principal representative of CONSULTANT for purposes of this Agreement.

### **SECTION 5. CONSULTANT NOT AGENT OF CITY.**

A. CONSULTANT shall have no authority, expressed or implied, to act on behalf of CITY in any capacity whatsoever as an agent.

B. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement to bind CITY to any obligation whatsoever.

**SECTION 6.            SCOPE OF SERVICES.**

CONSULTANT will diligently perform the tasks, in a good and workmanlike manner, which are more specifically identified in the Scope of Services, attached hereto and incorporated herein by reference as Attachment A, unless otherwise instructed by City.

**SECTION 7.            STANDARD OF PERFORMANCE.**

CONSULTANT shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged in the geographical area in which CONSULTANT practices his or her profession.

**SECTION 8.            TIME.**

A. CONSULTANT shall devote such time to the performance of services pursuant to the Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT's obligations pursuant to this Agreement.

B. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

**SECTION 9.            QUALIFICATIONS.**

A. CONSULTANT represents and warrants to CITY that it has all necessary professional licenses and/or certificates to legally perform the Services under this Agreement.

B. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement all necessary licenses and certificates required of CONSULTANT to perform the services.

**SECTION 10.           TERM.**

The term of this Agreement shall be the period commencing from the effective date of this Agreement, as first shown above, and shall terminate on December 1, 2016.

**SECTION 11.           COMPENSATION.**

A. For plan review services, the City shall retain 34% of the of the plan review fee. The construction valuation shall be based on the most recent valuation multiplier published by the International Code Council – Building Valuation Data Table (BVD), ENR 20 Cities Construction Cost Index as published by Engineering News-Record - McGraw-Hill Publishing Company, or by the City Building Official's cost estimate.

C. Authorized work shall be in strict compliance with the provisions of this Agreement. Except as expressly set forth herein, CONSULTANT shall provide all labor, materials and equipment, as necessary to perform the services under this Agreement without any additional charge or compensation.

D. CONSULTANT shall submit to CITY an invoice which indicates Services

completed. Provided the Services have been rendered satisfactorily to CITY and in accordance with this Agreement, CITY shall tender payment to CONSULTANT not later than thirty (30) working days following CITY's receipt of an invoice.

E. CITY shall make no payment for any extra, further, or additional services not expressly set forth in this Agreement unless such extra service and the price thereof is agreed to in writing and executed by CITY prior to the time that such extra service is rendered.

**SECTION 12. COMPENSATION WITHHELD.**

A. When the CITY shall have reasonable grounds for believing that CONSULTANT will be unable to perform this Agreement fully and satisfactorily within the time fixed for performance; or a meritorious claim exists or will exist against CONSULTANT or CITY arising out of the negligence of CONSULTANT or CONSULTANT's breach of any provision of this Agreement, then the CITY may withhold payment of any amount otherwise due and payable to CONSULTANT under this Agreement.

B. Any amount so withheld may be retained by CITY for that period as it may deem advisable to protect CITY against any loss and may, after written notice to CONSULTANT, be applied in satisfaction of any claim described here.

C. This provision is intended solely for the benefit of CITY and no person shall have any right against the CITY or claim against CITY by reason of the CITY's failure or refusal to withhold monies.

D. No interest shall be payable by CITY on any amounts withheld under this provision.

E. This provision is not intended to limit or in any way prejudice any other right of CITY.

**SECTION 13. RIGHT TO AUDIT AND INSPECT.**

CITY shall have the right to audit and inspect all books and records kept by CONSULTANT in connection with the Services performed under this Agreement.

**SECTION 14. USE OF MATERIALS/CONFIDENTIALITY.**

A. Any and all copyrights, designs, and other intellectual property embodied in plans, specifications, data and materials, which are prepared by CONSULTANT under this Agreement ("Documents & Data") shall remain the property of CONSULTANT. Notwithstanding the above, CITY shall have a non-exclusive and perpetual license to copy, use, modify or reuse any such Documents & Data. CONSULTANT represents and warrants that it has the legal right to license any and all Documents & Data. CITY shall not be limited in any way in its use of the Documents & Data at any time, provided however that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

B. All materials, specifications, plans, and data provided to CONSULTANT by CITY or its agents in connection with the performance of this Agreement shall be held confidential by CONSULTANT. Such materials, specifications, plans and data shall not,

without the prior written consent of CITY, be used by CONSULTANT for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services.

**SECTION 15. RIGHT OF TERMINATION.**

A. This Agreement may be terminated by either party with or without cause, upon ten (10) days written notice to the other party.

B. All work shall cease at the conclusion of the notice period and CONSULTANT shall be paid for all services satisfactorily provided prior to termination in accordance with the rates as provided in this Agreement.

**SECTION 16. INDEMNITY.**

CONSULTANT hereby agrees to and does indemnify, defend and hold harmless CITY, and any and all of its officers, employees and representatives from any and all claims, liability and expenses, including attorney fees and costs, that arise out of or are related to CONSULTANT's negligent performance of this Agreement.

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

**SECTION 17. CONSULTANT'S LIABILITY FOR PUBLIC LIABILITY AND PROPERTY DAMAGE.**

CONSULTANT shall assume all responsibility for damages to property or injuries to persons, including accidental death, which may be caused by CONSULTANT's negligent performance of this Agreement, whether such performance be by itself, or its agents, or whether such damage shall accrue or be discovered before or after termination of this Agreement.

**SECTION 18. LIABILITIES.**

A. CONSULTANT shall not assert any claim arising out of any act or omission by any officer, agent, or employee of CITY in the execution or performance of this Agreement against that officer, agent or employee.

B. Nothing in this Agreement shall be construed to give any person other than CITY and CONSULTANT any legal or equitable rights, remedy or claim under this Agreement.



compliance with the provisions of this Agreement.

D. CITY'S consent to one assignment shall not be deemed to constitute consent to future assignments. CONSULTANT acknowledges that CITY'S written consent must be first obtained prior to each assignment, transfer, conveyance, pledge or other disposition.

**SECTION 23. COMPLIANCE WITH LAWS.**

CONSULTANT shall comply with all applicable laws in performing its obligations under this Agreement.

**SECTION 24. INSURANCE.**

A. Time for Compliance. Contractor shall not commence Work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this Section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this Section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

B. Minimum Requirements. Contractor shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

C. Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. The policy shall not contain any exclusion contrary to the Agreement, including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 29); or (2) cross liability for claims or suits by one insured against another.

D. Minimum Limits of Insurance. Contractor shall maintain limits no less than: (1) *General Liability*: \$2,000,000.00 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000.00 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000.00 per accident for bodily injury or disease.

E. Notices; Cancellation or Reduction of Coverage. At least fifteen (15) days prior to the expiration of any such policy, evidence showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, the City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by the City will be promptly reimbursed by Contractor or the City may withhold amounts sufficient to pay premium from Contractor payments. In the alternative, the City may suspend or terminate this Agreement.

F. Insurance Endorsements. The insurance policies shall contain the following provisions, or Contractor shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

a. General Liability. The general liability policy shall include or be endorsed (amended) to state that: (1) using ISO CG forms 20 10 and 20 37, or endorsements providing the exact same coverage, the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insured with respect to the Services or ongoing and completed operations performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such work; and (2) using ISO form 20 01, or endorsements providing the exact same coverage, the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any excess insurance shall contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of the City, before the City's own primary insurance or self-insurance shall be called upon to protect it as a named insured. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way. Notwithstanding the minimum limits set forth in Section 3.2.11.2(B), any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section 3.2.11.3(A).

b. Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (1) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Contractor or for which the Contractor is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way. Notwithstanding the minimum limits set forth in Section 3.2.11.2(B), any available insurance

proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section 3.2.11.3(B).

G. Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Contractor.

H. All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days (10 days for nonpayment of premium) prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents and volunteers. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officials, officers, employees, agents and volunteers, or any other additional insureds.

I. Separation of Insureds; No Special Limitations; Waiver of Subrogation. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents, and volunteers. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents and volunteers. All policies shall waive any right of subrogation of the insurer against the City, its officials, officers, employees, agents, and volunteers, or any other additional insureds, or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, its officials, officers, employees, agents, and volunteers, or any other additional insureds, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

J. Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents, and volunteers; or (2) the Contractor shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

K. Subcontractor Insurance Requirements. Contractor shall not allow any subcontractors to commence work on any subcontract relating to the work under the Agreement until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. If requested by Contractor, the City may approve different scopes or minimum limits of insurance for particular subcontractors. The Contractor and the City shall be named as additional insureds on all subcontractors' policies of Commercial General Liability using ISO form 20 38, or coverage at least as broad.Acceptability of Insurers. Insurance is to be

placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.

L. Verification of Coverage. Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

M. Reporting of Claims. Contractor shall report to the City, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the Services under this Agreement.

N. Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

## **SECTION 25. DISCRIMINATION.**

A. CONSULTANT agrees that no person shall be excluded from employment in the performance of this Agreement on grounds of race, creed, color, sex, age, handicap or marital status, place of national origin or any other basis prohibited by local, State or Federal law.

B. CONSULTANT agrees to comply with all local, State and Federal laws relating to equal employment opportunity rights.

## **SECTION 26. ENTIRETY OF AGREEMENT.**

This Agreement contains the entire Agreement of CITY and CONSULTANT with respect to the subject matter hereof, and no other agreement, statement, or promise made by any party, or to any employee, officer, or agent of any party, which is not contained in this Agreement shall be binding or valid.

**SECTION 27.            ATTORNEYS FEES.**

In the event that any action or proceeding is instituted for the breach of this Agreement, the prevailing party shall be entitled to reasonable attorneys fees.

**SECTION 28.            CONSISTENCY WITH CURRENT LAW.**

A. It is the intent and understanding of the parties to this Agreement that every provision of law required to be inserted in this Agreement is inserted here.

B. If through mistakes or otherwise, any of those provisions are not inserted in correct form, then this Agreement shall upon application of either party, be amended by insertion so as to comply strictly with the law and without prejudice to the rights of either party.

C. If this Agreement contains any unlawful provisions, not an essential part of the Agreement and which appear not to have been a controlling or material inducement to the making of this Agreement, those provisions shall be deemed of no effect, and shall upon application of either party be stricken from the Agreement without affecting the binding force of the Agreement as it shall remain after omitting those provisions.

**SECTION 29.            VENUE.**

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the State courts of the County of Los Angeles or where appropriate, in the United States District Court, Central District of California, Los Angeles, California.

**SECTION 30.            INTERNAL INCONSISTENCIES.**

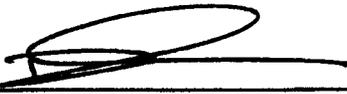
If this Agreement contains any errors, inconsistencies, ambiguities, or discrepancies, including typographical errors, CONSULTANT shall request a clarification of those items by writing to the City Manager whose decision shall be binding upon the parties.

**SECTION 31.            CAPTIONS AND HEADNOTES.**

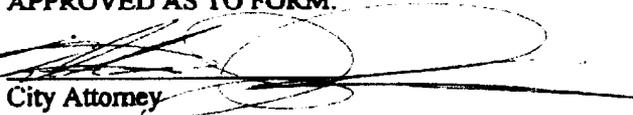
The captions and headnotes or sections of this Agreement, and marginal notes are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent of this Agreement.

**IN WITNESS WHEREOF, this Agreement for Professional services has been duly authorized and executed by the parties hereto on the day and year first herein above written.**

"CITY"  
City of Covina

By:   
Daryl Parrish, City Manager

ATTEST  
  
City Clerk  
*January 13, 2014*

APPROVED AS TO FORM:  
  
City Attorney

"CONSULTANT"  
INTERWEST CONSULTING GROUP, INC.  
a Colorado corporation

By:   
Its: MUNICIPAL SERVICES DIRECTOR

ATTACHMENT A  
TO AGREEMENT FOR PROFESSIONAL SERVICES

(Scope of Services)

CONSULTANT shall plan check project plans and revisions in conformance with the appropriate California Building Codes and California Amendments and/or effective State Mandated Codes. Current codes include: the 2010 California Building Code; Title 24 disabled access and energy requirements; 2010 California Fire Code with Los Angeles County Amendments; 2010 California Residential Code; 2010 California Mechanical Code; 2010 California Plumbing Code; 2010 California Electrical Code; 2010 Cal Green Building Code and the City of Covina's ordinances and regulations.

**1) Consultant Responsibilities**

- a) Perform traditional preliminary plan review consultations via remote communication (phone or video).
- b) Upon receipt of plans, contractor will review plans for compliance with all current codes, including any typical plan attachments such as soils and geological reports, grading, truss design plans and calculations, and structural design calculations when submitted.
- c) Provide the applicant's designee and the City with a typed list of items needing clarification or change to achieve conformance with all regulations.
- d) Perform all necessary liaisons with applicant's designee by mail, telephone, email, fax, video or in contractor's main office to ensure compliance with all Codes and local policy interpretations.
- e) Perform plan reviews of revisions to plans that have previously been approved for permit issuance.
- f) Perform extra work when requested in writing by the City.
- g) Attend meetings related to the proposed building projects at the request of the City Building Official at locations other than the contractor's office.

**2) City Responsibilities**

- a) Arrange and pay the cost of shipping one set of plans and documents to the consultant's office.
- b) Obtain from the applicant, at the time of the project submittal, the necessary items to allow plan review to be completed in the shortest overall time frame.
- c) Provide the valuation for the proposed construction.

**Service Level Goals**

- For buildings less than four stories and of normal complexity, complete initial plan review in less than ten (10) working days.
- For buildings four or more stories in height or of unusual complexity, complete initial plan review in less than fifteen (15) working days or as agreed by the City Building Official.

- For residential and minor building projects, complete initial plan review in less than five (5) working days.
- If a client requests “expedited” services, delivery of initial plan review in one-half of the designated time for double the initial plan review fee.

The City of Covina is open from Monday through Thursday from 7:00 AM to 6:00 PM, excluding holidays and a holiday furlough in late December.

**SECTION 4**

**Fee**

**PART I - SCHEDULE OF HOURLY RATES FOR SERVICES OUTSIDE OF PLAN REVIEW SERVICES**

<b>Certified Classification</b>	<b>Hourly Rate</b>
	\$ 115
Building Official	95
Deputy Building Official	35
Permit Technician I	40
Permit Technician II	45
Permit Technician III	60
Code Enforcement Specialist I	70
Code Enforcement Specialist II	85
Engineer I	95
Engineer II	85
Supervising Building Inspector	60
Building Inspector I	65
Building Inspector II	70
Building Inspector III	85
CASp Specialist	45
Code Enforcement Assistant I	55
Code Enforcement Assistant II	

*Rates are typically reviewed yearly on July 1 and may be subject to revision unless under specific contract obligations. There is no charge for mileage.*

**PART II - PLAN CHECK FEES BASED ON CITY FEES**

We propose the following fee schedule for plan check services based on the City's Master Fee Schedule:

- ✓ 66% for first time check and any required re-check
- ✓ 66% for expedited plan check (based on the double fee schedule for expedited work)
- ✓ There is no charge for courier or shipping services
- ✓ There is no charge for mileage

**BILLING PROCESS**

Invoices are typically generated upon the conclusion of the month. Interwest Consulting Group will work with the City to supply the necessary billing information.

**FIRST AMENDMENT TO  
PROFESSIONAL SERVICES AGREEMENT  
WITH INTERWEST CONSULTING GROUP**

**(For Additional Services Under Attachment A: 1(f) "Scope of Services" of Original Agreement)**

This First Amendment to Professional Services Agreement ("First Amendment") is entered into between (i) The City of Covina ("CITY"), a California municipal corporation, and (ii) Interwest Consulting Group, a California corporation ("CONTRACTOR"). This First Amendment is intended to authorize the remittance of \$28,900 in payment for services provided in Fiscal Year 2013-2014 in relation to inspection services and Geographic Information Systems programming related to the Rental Inspection Program. This First Amendment shall become effective upon the date of the last signature to this First Amendment.

**EFFECT UPON ORIGINAL AGREEMENT.** The Original Professional Services Agreement, dated November 19th, 2013, ("Original Agreement") remains in full force and effect according to its terms, unless otherwise expressly amended by this First Amendment.

**SIGNATURE AND AUTHORITY TO EXECUTE.** The Parties hereto further represent and declare that they carefully read this First Amendment and know the contents thereof, and that they sign the same freely and voluntarily. Each Party represents and warrants that it has the legal right, power and authority to enter into this First Amendment and to consummate the transactions contemplated hereby.

**[signatures on following page]**

**THE CITY OF COVINA,  
a California municipal corporation**

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

**By:** \_\_\_\_\_  
**Daryl Parrish, City Manager**

***Attest:***

\_\_\_\_\_  
**City Clerk**

***Approved as to Form:***

\_\_\_\_\_  
**City Attorney**

**Interwest Consulting Group,  
a California corporation**

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

**By:** \_\_\_\_\_

**Its:** \_\_\_\_\_



March 10, 2015

Andrea Miller, City Manager  
Covina City Hall  
125 E. College Street  
Covina, CA 91723-2199

**RE: Proposal to Provide Community Development Project Management Services**

Thank you for contacting Interwest Consulting Group regarding Community Development Project Management Services. We are excited about the opportunity to serve the City of Covina.

We are very aware of the challenges and requirements for municipal governments since many of our staff have held senior and executive management positions within numerous California cities. Our staff includes former Building Officials, Public Works Directors, City Engineers, Capital Projects Managers and Construction Managers. This background and experience is important since serving in the capacity of the "owner", especially local agencies, requires a high level of sensitivity towards community and special interest group issues. Accordingly, our professional staff truly understands and values the importance of maintaining a focus on representing the interests of our public agency clients in a manner which reflects positively on the cities we serve. Interwest Consulting Group (ICG) staff will be selected based on the expertise required for the specific assignment received from the City. The City reserves the right of refusal of any ICG staff assigned. Assigned personnel shall be billed at the hourly rate of \$125.00. The initial term of service will commence March 30, 2015 and continue up to and including Tuesday, June 30, 2015. ICG will invoice the City on a monthly basis. The total cost of services provided during the term shall not exceed \$25,000 without the prior written approval of the City Manager of the City of Covina and approval of the City Council.

Tim D'Zmura, PE, CBO, ACIP, will serve as Principal-in-Charge and as the management contact to the City of Covina. Mr. D'Zmura is an authorized representative of Interwest Consulting Group and has the authority to sign all necessary agreements. Services will be directed out of our Los Angeles office with contact information listed below.

Tim D'Zmura  
Interwest Consulting Group  
15061 Springdale Street  
Huntington Beach, CA 92649  
714.975.9048 Office  
714-625-5840 Mobile  
[tdzmura@interwestgrp.com](mailto:tdzmura@interwestgrp.com)

Thanks again and we look forward to this assignment.

Sincerely,

Tim D'Zmura, PE, CBO, ACIP  
Director of Municipal Services

Approved:

\_\_\_\_\_  
Andrea Miller, City Manager

March 10, 2015

INTERWEST CONSULTING GROUP

Andrea Miller, City Manager  
Covina City Hall  
125 E. College Street  
Covina, CA 91723-2199

**RE: Proposal to Provide Community Development Project Management Services**

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Tim D'Zmura, PE, CBO, ACIP, will serve as Finance and Chair and as the management contact to the City of Covina. Mr. D'Zmura is an authorized representative of Interwest Consulting Group and has the authority to sign all necessary agreements. Services will be directed out of our Los Angeles office with contact information listed below.

Tim D'Zmura  
Interwest Consulting Group  
15061 Springdale Street  
Huntington Beach, CA 92649  
44.976.8048 Office  
714-825-5840 Mobile  
tdzmura@interwestgrp.com

Thanks again and we look forward to this assignment.

Sincerely,

Approved:

  
Tim D'Zmura, PE, CBO, ACIP  
Director of Municipal Services

  
Andrea Miller, City Manager

INTERWEST CONSULTING GROUP | www.interwestgrp.com

**AMENDMENT NO. 3 TO THE PROFESSIONAL SERVICES AGREEMENT  
("AGREEMENT") FOR COMMUNITY DEVELOPMENT PROJECT MANAGEMENT  
SERVICES BETWEEN THE CITY OF COVINA AND  
INTERWEST CONSULTING GROUP, INC.**

This Amendment No. 3 is hereby entered into by and between the City of Covina, a municipal corporation (hereinafter referred to as "CITY") and Interwest Consulting Group, Inc. (hereinafter referred to as "Consultant"), a Colorado Corporation, with respect to that certain Amendment No. 2 to the Agreement for community development project management services between the parties dated March 10, 2015.

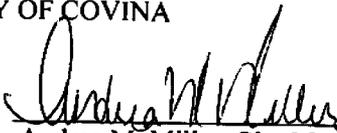
The parties agree as follows:

1. The second paragraph is hereby amended to extend the term of services to expire on June 30, 2016, unless amended;
2. The second paragraph is hereby amended to increase the total budget amount for Community Development Project Management Services established in the second amendment from \$25,000 to \$107,000. For the current FY 2015/2016, the increase in funding is \$82,000; and,
3. All the remaining terms and provisions of the Agreement are hereby reaffirmed.

In witness whereof the parties have executed this Amendment No. 3 on the date set forth below.

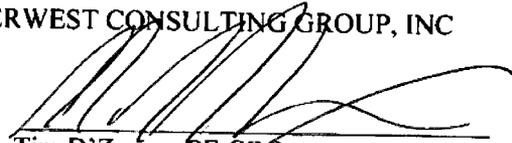
CITY OF COVINA

By:

  
Andrea M. Miller, City Manager

INTERWEST CONSULTING GROUP, INC

By:

  
Tim D'Zmura, PE CBO  
Director of Municipal Services

Dated: July 30, 2015

ATTEST:

  
Evelyn Leach  
Interim Chief Deputy City Clerk

FOURTH AMENDMENT TO  
AGREEMENT FOR PROFESSIONAL SERVICES  
WITH INTERWEST CONSULTING GROUP

This Fourth Amendment to the November 19, 2013 Agreement for Professional Services (“Agreement”) between the City of Covina, a California municipal corporation (“City”) and Interwest Consulting Group, Inc., a Colorado corporation (“Consultant”), is dated and effective December 1, 2015 and is between City and Consultant.

RECITALS

A. City and Consultant entered into the Agreement for Consultant’s performance of plan check and building services.

B. The parties amended the Agreement in Fiscal Year 2013-2014 to modify the total compensation amount to include inspection services and Geographic Information Systems programming services related to the Rental Inspection Program (“First Amendment”).

C. The parties amended the Agreement on March 15, 2015 to modify the (1) scope of services to include Community Development Project Management Services and (2) the compensation amount for Community Development Project Management Services (“Second Amendment”).

D. The parties amended the Agreement on July 30, 2015 to (1) extend the term of the Agreement to June 30, 2016, and (2) modify the compensation amount for Community Development Project Management Services (“Third Amendment”).

E. The parties desire to further amend the Agreement to modify the (1) scope of services to include transit and transportation consulting services and (2) the not-to-exceed compensation amount for transit and transportation consulting services.

The parties therefore agree as follows:

Section 1. Subsection (a) of Section 1 (“Recitals”) is hereby amended in its entirety to read as follows:

“(a) CITY has considered the proposals attached hereto and incorporated herein as Attachment A (“Scope of Services”); B (“First Amendment to Professional Services Agreement with Interwest Consulting Group”); C (“Proposal to Provide Community Development Project Management Services”); and D (“Amendment No. 3 to the Professional Services Agreement for Community Development Project Management Services between the City of Covina and Interwest Consulting Group, Inc.”) (collectively, the “Proposal”) from CONSULTANT for professional services, including, but not limited to, providing the services as described in Section 6 of this Agreement.”

Section 2. Section 6 (“Scope of Services”) is hereby amended in its entirety to read as follows:

“CONSULTANT will diligently perform the tasks, in a good and workmanlike manner, which are more specifically identified in the Scope of Services, attached hereto and incorporated herein by reference in Attachments A, B, C and D, unless otherwise instructed by City. Further, CONSULTANT shall provide transit and transportation consulting services, as more particularly described in Attachment E.”

Section 3. A new Subsection F. is hereby added to Section 11 (“Compensation”) to read as follows:

“F. As full compensation for transit and transportation consulting services provided under this Agreement, CITY shall pay CONSULTANT a sum not-to-exceed Forty-Two Thousand Eight Hundred Forty Dollars (\$42,840), based on the hourly rates for the “Engineer I” certified classification set forth in Attachment A.”

Section 4. Attachments B, C, D, and E are hereby added to the Agreement to read as Exhibits B, C, D, and E of this Fourth Amendment.

Section 5. Except as expressly modified or supplemented by this Fourth Amendment, all of the provisions of the Agreement, as amended by the First, Second and Third Amendments, shall remain unaltered and in full force and effect. In the event of a conflict between the provisions of this Fourth Amendment and the provisions of the Agreement or the First, Second and Third Amendments, the provisions of this Fourth Amendment shall control.

*[SIGNATURE PAGE FOLLOWS]*

The parties are signing this Fourth Amendment as of the date stated in the introductory clause:

City:

City of Covina,  
a California municipal corporation

Contractor:

Interwest Consulting Group,  
a Colorado corporation

By: \_\_\_\_\_

Name: Andrea M. Miller  
Title: City Manager

By: \_\_\_\_\_

Name: Terry J. Rodrigue  
Title:  Chairman  President  
 Vice President

Attest:

By: \_\_\_\_\_

Name: Sharon F. Clark  
Title: Chief Deputy City Clerk

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title:  Secretary  Asst. Secretary  
 Chief Finance Officer  Asst. Treasurer

Approved as to Form:

[Two signatures required for corporations pursuant to California Corporations Code Section 313, unless corporate documents authorize only one person to sign this Agreement on behalf of the corporation.]

By: \_\_\_\_\_

Name: Candice K. Lee  
Title: City Attorney

## AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is entered into this 19th day of November, 2013, by and between the CITY OF COVINA, a California municipal corporation (hereinafter referred to as "CITY") and INTERWEST CONSULTING GROUP, a Colorado corporation (hereinafter referred to as "CONSULTANT").

The parties do agree as follows:

### SECTION 1. RECITALS.

This Agreement is made and entered into with respect to the following facts:

- (a) CITY has considered the proposal, dated October 30, 2013 (the "Proposal"), from CONSULTANT for professional services including but not limited to, providing the services as described below in Section 6 of this Agreement.
- (b) CITY desires to have a highly qualified company to perform such services.
- (c) CONSULTANT represents and warrants that it is qualified to perform such services and has agreed to do so pursuant to this Agreement; and
- (d) CITY desires to contract with CONSULTANT on the basis of the following terms and conditions.

### SECTION 2. EMPLOYMENT.

CITY hereby employs CONSULTANT and CONSULTANT hereby accepts such employment, to perform those services under this Agreement.

### SECTION 3. INDEPENDENT CONTRACTOR.

The parties hereby acknowledge that CONSULTANT is an independent contractor and shall not be considered to be an employee of CITY.

### SECTION 4. PRINCIPAL REPRESENTATIVE

Kalieh Honish, Interim Director of Public Works for CITY, shall be the principal representative of CITY for purposes of this Agreement. Tim D'Zmura, Municipal Services Director, shall be the principal representative of CONSULTANT for purposes of this Agreement.

### SECTION 5. CONSULTANT NOT AGENT OF CITY.

A. CONSULTANT shall have no authority, expressed or implied, to act on behalf of CITY in any capacity whatsoever as an agent.

B. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement to bind CITY to any obligation whatsoever.

**SECTION 6.            SCOPE OF SERVICES.**

CONSULTANT will diligently perform the tasks, in a good and workmanlike manner, which are more specifically identified in the Scope of Services, attached hereto and incorporated herein by reference as Attachment A, unless otherwise instructed by City.

**SECTION 7.            STANDARD OF PERFORMANCE.**

CONSULTANT shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged in the geographical area in which CONSULTANT practices his or her profession.

**SECTION 8.            TIME.**

A. CONSULTANT shall devote such time to the performance of services pursuant to the Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT's obligations pursuant to this Agreement.

B. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

**SECTION 9.            QUALIFICATIONS.**

A. CONSULTANT represents and warrants to CITY that it has all necessary professional licenses and/or certificates to legally perform the Services under this Agreement.

B. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement all necessary licenses and certificates required of CONSULTANT to perform the services.

**SECTION 10.         TERM.**

The term of this Agreement shall be the period commencing from the effective date of this Agreement, as first shown above, and shall terminate on December 1, 2016.

**SECTION 11.         COMPENSATION.**

A. For plan review services, the City shall retain 34% of the of the plan review fee. The construction valuation shall be based on the most recent valuation multiplier published by the International Code Council – Building Valuation Data Table (BVD), ENR 20 Cities Construction Cost Index as published by Engineering News-Record - McGraw-Hill Publishing Company, or by the City Building Official's cost estimate.

C. Authorized work shall be in strict compliance with the provisions of this Agreement. Except as expressly set forth herein, CONSULTANT shall provide all labor, materials and equipment, as necessary to perform the services under this Agreement without any additional charge or compensation.

D. CONSULTANT shall submit to CITY an invoice which indicates Services

completed. Provided the Services have been rendered satisfactorily to CITY and in accordance with this Agreement, CITY shall tender payment to CONSULTANT not later than thirty (30) working days following CITY's receipt of an invoice.

E. CITY shall make no payment for any extra, further, or additional services not expressly set forth in this Agreement unless such extra service and the price thereof is agreed to in writing and executed by CITY prior to the time that such extra service is rendered.

## **SECTION 12. COMPENSATION WITHHELD.**

A. When the CITY shall have reasonable grounds for believing that CONSULTANT will be unable to perform this Agreement fully and satisfactorily within the time fixed for performance; or a meritorious claim exists or will exist against CONSULTANT or CITY arising out of the negligence of CONSULTANT or CONSULTANT's breach of any provision of this Agreement, then the CITY may withhold payment of any amount otherwise due and payable to CONSULTANT under this Agreement.

B. Any amount so withheld may be retained by CITY for that period as it may deem advisable to protect CITY against any loss and may, after written notice to CONSULTANT, be applied in satisfaction of any claim described here.

C. This provision is intended solely for the benefit of CITY and no person shall have any right against the CITY or claim against CITY by reason of the CITY's failure or refusal to withhold monies.

D. No interest shall be payable by CITY on any amounts withheld under this provision.

E. This provision is not intended to limit or in any way prejudice any other right of CITY.

## **SECTION 13. RIGHT TO AUDIT AND INSPECT.**

CITY shall have the right to audit and inspect all books and records kept by CONSULTANT in connection with the Services performed under this Agreement.

## **SECTION 14. USE OF MATERIALS/CONFIDENTIALITY.**

A. Any and all copyrights, designs, and other intellectual property embodied in plans, specifications, data and materials, which are prepared by CONSULTANT under this Agreement ("Documents & Data") shall remain the property of CONSULTANT. Notwithstanding the above, CITY shall have a non-exclusive and perpetual license to copy, use, modify or reuse any such Documents & Data. CONSULTANT represents and warrants that it has the legal right to license any and all Documents & Data. CITY shall not be limited in any way in its use of the Documents & Data at any time, provided however that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

B. All materials, specifications, plans, and data provided to CONSULTANT by CITY or its agents in connection with the performance of this Agreement shall be held confidential by CONSULTANT. Such materials, specifications, plans and data shall not,

without the prior written consent of CITY, be used by CONSULTANT for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services.

**SECTION 15. RIGHT OF TERMINATION.**

A. This Agreement may be terminated by either party with or without cause, upon ten (10) days written notice to the other party.

B. All work shall cease at the conclusion of the notice period and CONSULTANT shall be paid for all services satisfactorily provided prior to termination in accordance with the rates as provided in this Agreement.

**SECTION 16. INDEMNITY.**

CONSULTANT hereby agrees to and does indemnify, defend and hold harmless CITY, and any and all of its officers, employees and representatives from any and all claims, liability and expenses, including attorney fees and costs, that arise out of or are related to CONSULTANT's negligent performance of this Agreement.

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

**SECTION 17. CONSULTANT'S LIABILITY FOR PUBLIC LIABILITY AND PROPERTY DAMAGE.**

CONSULTANT shall assume all responsibility for damages to property or injuries to persons, including accidental death, which may be caused by CONSULTANT's negligent performance of this Agreement, whether such performance be by itself, or its agents, or whether such damage shall accrue or be discovered before or after termination of this Agreement.

**SECTION 18. LIABILITIES.**

A. CONSULTANT shall not assert any claim arising out of any act or omission by any officer, agent, or employee of CITY in the execution or performance of this Agreement against that officer, agent or employee.

B. Nothing in this Agreement shall be construed to give any person other than CITY and CONSULTANT any legal or equitable rights, remedy or claim under this Agreement.



compliance with the provisions of this Agreement.

D. CITY'S consent to one assignment shall not be deemed to constitute consent to future assignments. CONSULTANT acknowledges that CITY'S written consent must be first obtained prior to each assignment, transfer, conveyance, pledge or other disposition.

**SECTION 23. COMPLIANCE WITH LAWS.**

CONSULTANT shall comply with all applicable laws in performing its obligations under this Agreement.

**SECTION 24. INSURANCE.**

A. Time for Compliance. Contractor shall not commence Work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this Section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this Section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

B. Minimum Requirements. Contractor shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

C. Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. The policy shall not contain any exclusion contrary to the Agreement, including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 29); or (2) cross liability for claims or suits by one insured against another.

D. Minimum Limits of Insurance. Contractor shall maintain limits no less than: (1) *General Liability*: \$2,000,000.00 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000.00 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000.00 per accident for bodily injury or disease.

E. Notices; Cancellation or Reduction of Coverage. At least fifteen (15) days prior to the expiration of any such policy, evidence showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, the City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by the City will be promptly reimbursed by Contractor or the City may withhold amounts sufficient to pay premium from Contractor payments. In the alternative, the City may suspend or terminate this Agreement.

F. Insurance Endorsements. The insurance policies shall contain the following provisions, or Contractor shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

a. General Liability. The general liability policy shall include or be endorsed (amended) to state that: (1) using ISO CG forms 20 10 and 20 37, or endorsements providing the exact same coverage, the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insured with respect to the Services or ongoing and completed operations performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such work; and (2) using ISO form 20 01, or endorsements providing the exact same coverage, the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any excess insurance shall contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of the City, before the City's own primary insurance or self-insurance shall be called upon to protect it as a named insured. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way. Notwithstanding the minimum limits set forth in Section 3.2.11.2(B), any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section 3.2.11.3(A).

b. Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (1) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Contractor or for which the Contractor is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way. Notwithstanding the minimum limits set forth in Section 3.2.11.2(B), any available insurance

proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section 3.2.11.3(B).

G. Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Contractor.

H. All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days (10 days for nonpayment of premium) prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents and volunteers. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officials, officers, employees, agents and volunteers, or any other additional insureds.

I. Separation of Insureds; No Special Limitations; Waiver of Subrogation. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents, and volunteers. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents and volunteers. All policies shall waive any right of subrogation of the insurer against the City, its officials, officers, employees, agents, and volunteers, or any other additional insureds, or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, its officials, officers, employees, agents, and volunteers, or any other additional insureds, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

J. Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents, and volunteers; or (2) the Contractor shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

K. Subcontractor Insurance Requirements. Contractor shall not allow any subcontractors to commence work on any subcontract relating to the work under the Agreement until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. If requested by Contractor, the City may approve different scopes or minimum limits of insurance for particular subcontractors. The Contractor and the City shall be named as additional insureds on all subcontractors' policies of Commercial General Liability using ISO form 20 38, or coverage at least as broad.Acceptability of Insurers. Insurance is to be

placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.

L. Verification of Coverage. Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

M. Reporting of Claims. Contractor shall report to the City, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the Services under this Agreement.

N. Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

## **SECTION 25. DISCRIMINATION.**

A. CONSULTANT agrees that no person shall be excluded from employment in the performance of this Agreement on grounds of race, creed, color, sex, age, handicap or marital status, place of national origin or any other basis prohibited by local, State or Federal law.

B. CONSULTANT agrees to comply with all local, State and Federal laws relating to equal employment opportunity rights.

## **SECTION 26. ENTIRETY OF AGREEMENT.**

This Agreement contains the entire Agreement of CITY and CONSULTANT with respect to the subject matter hereof, and no other agreement, statement, or promise made by any party, or to any employee, officer, or agent of any party, which is not contained in this Agreement shall be binding or valid.

**SECTION 27.            ATTORNEYS FEES.**

In the event that any action or proceeding is instituted for the breach of this Agreement, the prevailing party shall be entitled to reasonable attorneys fees.

**SECTION 28.            CONSISTENCY WITH CURRENT LAW.**

A. It is the intent and understanding of the parties to this Agreement that every provision of law required to be inserted in this Agreement is inserted here.

B. If through mistakes or otherwise, any of those provisions are not inserted in correct form, then this Agreement shall upon application of either party, be amended by insertion so as to comply strictly with the law and without prejudice to the rights of either party.

C. If this Agreement contains any unlawful provisions, not an essential part of the Agreement and which appear not to have been a controlling or material inducement to the making of this Agreement, those provisions shall be deemed of no effect, and shall upon application of either party be stricken from the Agreement without affecting the binding force of the Agreement as it shall remain after omitting those provisions.

**SECTION 29.            VENUE.**

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the State courts of the County of Los Angeles or where appropriate, in the United States District Court, Central District of California, Los Angeles, California.

**SECTION 30.            INTERNAL INCONSISTENCIES.**

If this Agreement contains any errors, inconsistencies, ambiguities, or discrepancies, including typographical errors, CONSULTANT shall request a clarification of those items by writing to the City Manager whose decision shall be binding upon the parties.

**SECTION 31.            CAPTIONS AND HEADNOTES.**

The captions and headnotes or sections of this Agreement, and marginal notes are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent of this Agreement.

IN WITNESS WHEREOF, this Agreement for Professional services has been duly authorized and executed by the parties hereto on the day and year first herein above written.

"CITY"  
City of Covina

By:   
Daryl Parrish, City Manager

ATTEST  
  
City Clerk  
January 13, 2014

APPROVED AS TO FORM:  
  
City Attorney

"CONSULTANT"

INTERWEST CONSULTING GROUP, INC.  
a Colorado corporation

By: 

Its: MUNICIPAL SERVICES DIRECTOR

ATTACHMENT A  
TO AGREEMENT FOR PROFESSIONAL SERVICES

(Scope of Services)

CONSULTANT shall plan check project plans and revisions in conformance with the appropriate California Building Codes and California Amendments and/or effective State Mandated Codes. Current codes include: the 2010 California Building Code; Title 24 disabled access and energy requirements; 2010 California Fire Code with Los Angeles County Amendments; 2010 California Residential Code; 2010 California Mechanical Code; 2010 California Plumbing Code; 2010 California Electrical Code; 2010 Cal Green Building Code and the City of Covina's ordinances and regulations.

**1) Consultant Responsibilities**

- a) Perform traditional preliminary plan review consultations via remote communication (phone or video).
- b) Upon receipt of plans, contractor will review plans for compliance with all current codes, including any typical plan attachments such as soils and geological reports, grading, truss design plans and calculations, and structural design calculations when submitted.
- c) Provide the applicant's designee and the City with a typed list of items needing clarification or change to achieve conformance with all regulations.
- d) Perform all necessary liaisons with applicant's designee by mail, telephone, email, fax, video or in contractor's main office to ensure compliance with all Codes and local policy interpretations.
- e) Perform plan reviews of revisions to plans that have previously been approved for permit issuance.
- f) Perform extra work when requested in writing by the City.
- g) Attend meetings related to the proposed building projects at the request of the City Building Official at locations other than the contractor's office.

**2) City Responsibilities**

- a) Arrange and pay the cost of shipping one set of plans and documents to the consultant's office.
- b) Obtain from the applicant, at the time of the project submittal, the necessary items to allow plan review to be completed in the shortest overall time frame.
- c) Provide the valuation for the proposed construction.

**Service Level Goals**

- For buildings less than four stories and of normal complexity, complete initial plan review in less than ten (10) working days.
- For buildings four or more stories in height or of unusual complexity, complete initial plan review in less than fifteen (15) working days or as agreed by the City Building Official.

- For residential and minor building projects, complete initial plan review in less than five (5) working days.
- If a client requests “expedited” services, delivery of initial plan review in one-half of the designated time for double the initial plan review fee.

The City of Covina is open from Monday through Thursday from 7:00 AM to 6:00 PM, excluding holidays and a holiday furlough in late December.

**SECTION 4**

**Fee**

**PART I - SCHEDULE OF HOURLY RATES FOR SERVICES OUTSIDE OF PLAN REVIEW SERVICES**

<b>Certified Classification</b>	<b>Hourly Rate</b>
Building Official	\$ 115
Deputy Building Official	95
Permit Technician I	35
Permit Technician II	40
Permit Technician III	45
Code Enforcement Specialist I	60
Code Enforcement Specialist II	70
Engineer I	85
Engineer II	95
Supervising Building Inspector	85
Building Inspector I	60
Building Inspector II	65
Building Inspector III	70
CASp Specialist	85
Code Enforcement Assistant I	45
Code Enforcement Assistant II	55

*Rates are typically reviewed yearly on July 1 and may be subject to revision unless under specific contract obligations. There is no charge for mileage.*

**PART II - PLAN CHECK FEES BASED ON CITY FEES**

We propose the following fee schedule for plan check services based on the City's Master Fee Schedule

- ✓ 66% for first time check and any required re-check
- ✓ 66% for expedited plan check (based on the double fee schedule for expedited work)
- ✓ There is no charge for courier or shipping services
- ✓ There is no charge for mileage

**BILLING PROCESS**

Invoices are typically generated upon the conclusion of the month. Interwest Consulting Group will work with the City to supply the necessary billing information.

Attachment B  
(Attached)

**FIRST AMENDMENT TO  
PROFESSIONAL SERVICES AGREEMENT  
WITH INTERWEST CONSULTING GROUP**

(For Additional Services Under Attachment A: 1(f) "Scope of Services" of Original Agreement)

This First Amendment to Professional Services Agreement ("First Amendment") is entered into between (i) The City of Covina ("CITY"), a California municipal corporation, and (ii) Interwest Consulting Group, a California corporation ("CONTRACTOR"). This First Amendment is intended to authorize the remittance of \$28,900 in payment for services provided in Fiscal Year 2013-2014 in relation to inspection services and Geographic Information Systems programming related to the Rental Inspection Program. This First Amendment shall become effective upon the date of the last signature to this First Amendment.

**EFFECT UPON ORIGINAL AGREEMENT.** The Original Professional Services Agreement, dated November 19th, 2013, ("Original Agreement") remains in full force and effect according to its terms, unless otherwise expressly amended by this First Amendment.

**SIGNATURE AND AUTHORITY TO EXECUTE.** The Parties hereto further represent and declare that they carefully read this First Amendment and know the contents thereof, and that they sign the same freely and voluntarily. Each Party represents and warrants that it has the legal right, power and authority to enter into this First Amendment and to consummate the transactions contemplated hereby.

[signatures on following page]

Attachment B to  
Attachment E

**THE CITY OF COVINA,  
a California municipal corporation**

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

By: \_\_\_\_\_  
Daryl Parrish, City Manager

*Attest:*

\_\_\_\_\_  
City Clerk

*Approved as to Form:*

\_\_\_\_\_  
City Attorney

**Interwest Consulting Group,  
a California corporation**

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

By: \_\_\_\_\_

Its: \_\_\_\_\_

Attachment C  
(Attached)



March 10, 2015

Andrea Miller, City Manager  
Covina City Hall  
125 E. College Street  
Covina, CA 91723-2199

**RE: Proposal to Provide Community Development Project Management Services**

Thank you for contacting Interwest Consulting Group regarding Community Development Project Management Services. We are excited about the opportunity to serve the City of Covina.

We are very aware of the challenges and requirements for municipal governments since many of our staff have held senior and executive management positions within numerous California cities. Our staff includes former Building Officials, Public Works Directors, City Engineers, Capital Projects Managers and Construction Managers. This background and experience is important since serving in the capacity of the "owner", especially local agencies, requires a high level of sensitivity towards community and special interest group issues. Accordingly, our professional staff truly understands and values the importance of maintaining a focus on representing the interests of our public agency clients in a manner which reflects positively on the cities we serve. Interwest Consulting Group (ICG) staff will be selected based on the expertise required for the specific assignment received from the City. The City reserves the right of refusal of any ICG staff assigned. Assigned personnel shall be billed at the hourly rate of \$125.00. The initial term of service will commence March 30, 2015 and continue up to and including Tuesday, June 30, 2015. ICG will invoice the City on a monthly basis. The total cost of services provided during the term shall not exceed \$25,000 without the prior written approval of the City Manager of the City of Covina and approval of the City Council.

Tim D'Zmura, PE, CBO, ACIP, will serve as Principal-in-Charge and as the management contact to the City of Covina. Mr. D'Zmura is an authorized representative of Interwest Consulting Group and has the authority to sign all necessary agreements. Services will be directed out of our Los Angeles office with contact information listed below.

Tim D'Zmura  
Interwest Consulting Group  
15061 Springdale Street  
Huntington Beach, CA 92649  
714.975.9048 Office  
714-625-5840 Mobile  
tdzmura@interwestgrp.com

Thanks again and we look forward to this assignment.

Sincerely,

Tim D'Zmura, PE, CBO, ACIP  
Director of Municipal Services

Approved:

\_\_\_\_\_  
Andrea Miller, City Manager

March 10, 2015

INTERWEST CONSULTING GROUP

Andrea Miller, City Manager  
Covina City Hall  
125 E. College Street  
Covina, CA 91723-2199

**RE: Proposal to Provide Community Development Project Management Services**

Thank you for contacting Interwest Consulting Group regarding Community Development Project Management Services. We are excited about the opportunity to serve the City of Covina.

We are very aware of the challenges and requirements for municipal governments since many of our staff have held senior and executive management positions within numerous California cities. Our staff includes former Building Officials, Public Works Directors, City Engineers, Capital Projects Managers and Construction Managers. This background and experience is important since serving in the capacity of the "owner", especially local agencies, requires a high level of sensitivity towards community and special interest group issues. Accordingly, our professional staff truly understands and values the importance of maintaining a focus on representing the interests of our public agency clients in a manner which reflects positively on the client. We serve Interwest Consulting Group (ICG) staff will be selected based on the expertise required for the specific assignment received from the City. The City reserves the right of refusal of any ICG staff assigned. Assigned personnel shall be billed at the hourly rate of \$125.00. The initial term of service will commence March 30, 2015 and continue up to and including Tuesday, June 30, 2015. ICG will invoice the City on a monthly basis. The total cost of services provided during the term shall not exceed \$25,000 without the prior written approval of the City Manager or the City of Covina and approval of the City Council.

Tim D'Zmura, PE, CBO, ACIP, will serve as Project Lead/Coordinator and as the management contact to the City of Covina. Mr. D'Zmura is an authorized representative of Interwest Consulting Group and has the authority to sign all necessary agreements. Services will be directed out of our Los Angeles office with contact information listed below.

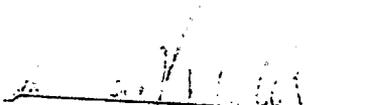
Tim D'Zmura  
Interwest Consulting Group  
1808 S. Normandie Street  
Huntington Beach, CA 92648  
Tel: 949-650-4800  
Fax: 949-650-4800  
tdzmura@interwestgrp.com

Thanks again and we look forward to this assignment.

Sincerely,

  
Tim D'Zmura, PE, CBO, ACIP  
Director of Municipal Services

Approved:

  
Andrea Miller, City Manager

INTERWEST CONSULTING GROUP [www.interwestgrp.com](http://www.interwestgrp.com)

Attachment D  
(Attached)

**AMENDMENT NO. 3 TO THE PROFESSIONAL SERVICES AGREEMENT  
("AGREEMENT") FOR COMMUNITY DEVELOPMENT PROJECT MANAGEMENT  
SERVICES BETWEEN THE CITY OF COVINA AND  
INTERWEST CONSULTING GROUP, INC.**

This Amendment No. 3 is hereby entered into by and between the City of Covina, a municipal corporation (hereinafter referred to as "CITY") and Interwest Consulting Group, Inc. (hereinafter referred to as "Consultant"), a Colorado Corporation, with respect to that certain Amendment No. 2 to the Agreement for community development project management services between the parties dated March 10, 2015.

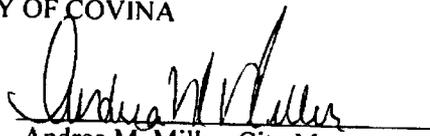
The parties agree as follows:

1. The second paragraph is hereby amended to extend the term of services to expire on June 30, 2016, unless amended;
2. The second paragraph is hereby amended to increase the total budget amount for Community Development Project Management Services established in the second amendment from \$25,000 to \$107,000. For the current FY 2015/2016, the increase in funding is \$82,000; and,
3. All the remaining terms and provisions of the Agreement are hereby reaffirmed.

In witness whereof the parties have executed this Amendment No. 3 on the date set forth below.

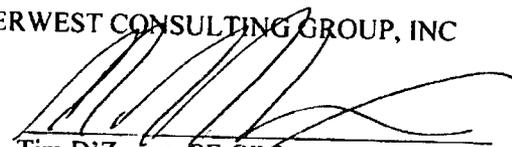
CITY OF COVINA

By:

  
Andrea M. Miller, City Manager

INTERWEST CONSULTING GROUP, INC

By:

  
Tim D'Zmura, PE CBO  
Director of Municipal Services

Dated: July 30, 2015

ATTEST:

  
Evelyn Leach

Interim Chief Deputy City Clerk

Attachment E  
(Attached)



November 11, 2015

Siobhan Foster  
Director of Public Works  
125 E. College Street  
Covina, CA 91723

Dear Siobhan,

Thank you for meeting with Al Cablay and Kevin Ko this week to discuss possible assistance with various transportation needs. Kevin's proposed billing rate is \$85 per hour as an Associate Engineer I. As conveyed during the interview, the City will not be billed for any time Al, I or other experts on our staff assist and provide direction to Kevin. If a specific assignment which would require other individuals than Kevin is requested by the City, we would provide a task specific proposal for approval.

Kevin is available to the City immediately and can start either on a full time or part time basis as you determine your needs. In addition, should your needs increase or decrease over time we can adjust Kevin's schedule accordingly.

Thank you for the opportunity to propose on this assignment. I would be happy to answer any questions or provide any additional information.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Terry J. Rodrigue".

Terry J. Rodrigue  
Interwest Consulting Group  
President

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# CITY OF COVINA

## AGENDA REPORT

ITEM NO. CC 7

---

**MEETING DATE:** December 1, 2015

**TITLE:** Designated Representative to the San Gabriel Valley Mosquito & Vector Control District Board of Trustees

**PRESENTED BY:** Andrea M. Miller

**RECOMMENDATION:** Reappoint Mr. Henry Morgan to the San Gabriel Valley Mosquito & Vector Control District Board of Trustees for a four-year term expiring December 31, 2019.

---

**BACKGROUND:**

The City has been a participant, along with twenty-three other cities and the County of Los Angeles, in the San Gabriel Valley Mosquito & Vector Control District since the passage of Resolution No. 89-5011 in February 1989.

Pursuant to California Health and Safety Code §2022 and §2024, a representative must be an elector, be a resident of the City that is within the district, and may be appointed or re-appointed to a term of two or four years.

**DISCUSSION:**

City Administration received a letter from the San Gabriel Valley Mosquito & Vector Control District stating that the term of the City's current representative, Henry Morgan, is due to expire on December 31, 2015, with a request that an appointment of a City representative be made prior to the January 8, 2016 meeting of the Board of Trustees.

Mr. Morgan has indicated his interest in continuing to serve the City as a representative to the Board of Trustees for the term of January 1, 2016, through December 31, 2019. He has represented Covina on the Board since 1992.

The Board meets at District headquarters on the second Friday of each month at 7:00 a.m.

**FISCAL IMPACT:**

None

**CEQA (CALIFORNIA ENVIRONMENTAL QUALITY ACT):**

Not applicable.

Respectfully submitted,

---

Andrea M. Miller  
City Manager

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# CITY OF COVINA

## AGENDA REPORT

ITEM NO. CC 8

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**MEETING DATE:** December 1, 2015

**TITLE:** An update on the Los Angeles Regional Interoperable Communications System Authority (LA-RICS)

**PRESENTED BY:** Kim J. Raney, Chief of Police

**RECOMMENDATION:** Receive and file report.

---

### **BACKGROUND:**

Following the events of September 11, 2001, the National 9-11 Commission, in its report to Congress and the President, identified very serious weaknesses throughout the nation, particularly in major metropolitan areas, in their abilities to communicate between multi-agencies during large disasters. The lack of interoperable radio and data communications has the potential to delay or even thwart first responders' abilities to coordinate and direct emergency resources to the locations where they are most needed. As was seen on September 11, 2001, this lack of communication can even result in placing first responders in harms way. In response to this need, a national priority was established to encourage the development of interoperable communications systems throughout the nation so that the multitude of agency responders have a mechanism and ability to communicate and share information and data during major crises. Through the design, construction and use of shared frequencies and interoperable equipment, a coordinated response to major disasters/crises is very valuable for both disaster response and day-to-day first responder activities.

In 2009, over 80 cities in Los Angeles County formed a JPA named LA-RICS (Los Angeles Regional Interoperable Communications System). Covina is a member of LA-RICS, and holds one of the 17 Board of Director seats.

As provided in the Joint Powers Agreement, agencies that initially joined the LA-RICS JPA would not incur any financial obligations to the JPA Authority until such time as a Funding Plan was adopted by the Board and for a limited review period thereafter. Upon conclusion of the review period (known as the "Opt-Out Date"), those agencies electing to continue their participation in the LA-RICS Authority would become contractually and financially obligated to contribute their proportionate share of costs for the ongoing and continuing administrative, operational, maintenance, and grant match costs associated with the implementation and activation of the LA-RICS system, including the administrative/operational costs for FY 2014-15 and FY 2015-16. While the Funding Plan was initially released in 2014, the Opt-Out Date has been extended twice. The current Opt-Out Date was November 23, 2015.

Covina is a "hybrid" city, with its own municipal Police Department and contracts for fire services through the Los Angeles County Fire Department. Covina maintains its own land mobile radio/data system for police services (first responders), as well as a separate radio system

for Public Works/Water Department (secondary responders). Communications services for fire services are provided by LA County Fire.

Covina is also a member of Com-Net, a JPA with member cities including Azusa, Covina, Glendora, Irwindale, La Verne, and West Covina. Com-Net is a subsidiary of ICIS (Interagency Communications Interoperability System), whose member cities include Beverly Hills, Burbank, Culver City, Glendale, Montebello, Pasadena, and Pomona. ICIS also provides radio services to Alhambra, Arcadia, Monrovia, Monterey Park, San Fernando, San Marino, Sierra Madre, and South Pasadena.

Com-Net provides a trunked, regional, digital UHF radio system currently used by the Police Department. Data service for Mobile Data Computers and tablets is contracted through Verizon.

**DISCUSSION:**

The LA-RICS JPA has projected Covina’s annual costs for LMR (radio) and LTE (data) as follows:

	JPA Operations	LMR	LTE	Total
2014/2015	\$ 2,129	\$ -	\$ -	\$ 2,129
2015/2016	\$ 7,034	\$ -	\$ 2,762	\$ 9,796
2016/2017	\$ 4,357	\$ -	\$ 10,309	\$ 14,666
2017/2018	\$ 4,444	\$ 1,700	\$ 10,546	\$ 16,690
2018/2019	\$ 4,533	\$ 10,196	\$ 10,733	\$ 25,462
2019/2020	\$ 4,623	\$ 10,005	\$ 11,276	\$ 25,904
2020/2021	\$ 4,716	\$ 19,955	\$ 11,361	\$ 36,032
2021/2022	\$ 4,810	\$ 19,991	\$ 11,565	\$ 36,366
2022/2023	\$ 4,906	\$ 19,916	\$ 11,774	\$ 36,596
2023/2024	\$ 5,005	\$ 19,841	\$ 11,987	\$ 36,833
2024/2025	\$ 5,105	\$ 19,879	\$ 12,204	\$ 37,188
2025/2026	\$ 5,207	\$ 19,806	\$ 12,426	\$ 37,439
2026/2027	\$ 5,311	\$ 19,845	\$ 12,651	\$ 37,807
2027/2028	\$ 5,417	\$ 19,886	\$ 12,882	\$ 38,185
2028/2029	\$ 5,525	\$ 19,815	\$ 13,117	\$ 38,457
2029/2030	\$ 5,636	\$ 19,857	\$ 13,357	\$ 38,850
2030/2031	\$ 5,749	\$ 19,900	\$ 12,474	\$ 38,123
2031/2032	\$ 5,864	\$ 19,944	\$ 12,723	\$ 38,531

Costs for LMR and LTE for Fire services will be included in the Los Angeles County Fire contract.

In FY 2015/16, Covina’s cost for Com-Net is \$18,167.

As a member of both LA-RICS and Com-Net, Covina is in a unique situation. While Com-Net is currently providing radio services for three of the member cities, including Covina, three other member cities have not been able to utilize the system due to design and frequency issues. A private vendor has filed a lawsuit against Com-Net and Motorola. As a potential remedy, ICIS has obtained eight public safety frequencies for Com-Net to transition to, and that process is currently pending FCC approval. Concurrently, LA-RICS has offered frequencies for Com-Net to operate on, and those frequencies are being field tested by member agencies, including Covina.

There are several benefits of the LA-RICS system as it is proposed to be (1) a “high grade” communications network designed to withstand certain levels of calamity and natural disaster; and (2) only available to public agency first and secondary responders, with dedicated frequencies, and interoperable capabilities; and (3) will not be overwhelmed by the general public, as will likely be the case with commercial cell systems. Cities that currently operate robust voice or data radio communications systems may want to consider remaining a member of the LA-RICS Authority in order to access the services and opportunities that the system will provide.

At this point, staff recommends maintaining dual membership in both Com-Net and LA-RICS. Covina remains committed to Com-Net and ICIS, however if the current challenge with the frequencies cannot be successfully resolved, LA-RICS can provide a solution to the City’s public safety radio needs. LA-RICS will also provide a secure, public safety data network for mobile data devices, providing a solution to sharing the system with a commercial vendor.

As of November 23, 2015, approximately 50 member cities have withdrawn from LA-RICS, including the cities of Los Angeles and Long Beach. Discussions are currently under way regarding “affiliate” membership to LA-RICS for those cities who have withdrawn but in the future chose to utilize the LA-RICS system for either LMR or LTE, or both.

**FISCAL IMPACT:**

The cost for 2014/2015 and 2015/2016 is \$11,925 and is included in the budget adopted by the City Council.

**CEQA (CALIFORNIA ENVIRONMENTAL QUALITY ACT):**

None

Respectfully submitted,



Kim J. Raney, Chief of Police  
Police Department

<b>City Manager</b>	<b>City Attorney</b>	<b>Finance</b>	<b>City Clerk</b>

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# CITY OF COVINA AGENDA REPORT

ITEM NO. CC 9

**MEETING DATE:** December 1, 2015

**TITLE:** Resolution of the City Council of the City of Covina, California Amending the City of Covina Fee Schedule as it pertains to Title 5 of the Covina Municipal Code – Entertainment Permits.

**PRESENTED BY:** Kim Raney, Chief of Police  
Derek Webster, Police Captain  
Stephanie Stabio, Associate Planner  
Brian Lee, Director of Community Development  
John Michicoff, Interim Finance Director

**RECOMMENDATION:** Adopt Resolution No. **15-7428**, amending the City Fee Schedule as it pertains to the Entertainment Ordinance in Title 5 of the Covina Municipal Code.

**BACKGROUND:**

The City charges a diverse set of fees to recover all or a portion of the costs incurred to provide a service. This is to mitigate the impact of the “fee payer’s” activities on the balance of the community. Best practices dictate that all user-based fees be reviewed at least annually, and the City engaged Willdan and Associates to conduct a review. Additionally, Willdan’s proposed fees and the City’s current fees are being compared to six (6) cities in this area as part of an analysis being performed by the Rose Institute of State and Local Government at Claremont McKenna College on behalf of the City. These reports and findings are being finalized and will be presented at an upcoming meeting for Council consideration.

**DISCUSSION:**

Recently, the City Council adopted an Ordinance No. 15-2046 regulating the provision of entertainment in the City by business establishments and requiring operators of businesses and others providing entertainment to obtain various permits and meet certain requirements. These new regulations resulted in the establishment of new permits which are not addressed in the current fee schedule.

Attached is a resolution which would establish the new permits referenced in Ordinance No. 15-2046 and set a fee that would ensure the City recovers the actual costs associated with processing applications and make determinations on issuance. These permits and fees, if approved by the City Council this evening, would be incorporated into the new fee schedule currently being developed.

The fee schedule recommended this evening has different categories based on criteria such as occupancy load and non-live versus live entertainment. Additionally, there are separate fees for processing applications submitted by promoters and for filing an appeal (details are outlined in the Entertainment Ordinance No. 15-2046). The recommended fees were determined by estimating the amount of staff time each review would require and apply a fully burdened (salary plus benefits) hourly rate to that time estimate. The estimated time was based on similar applications that have been processed in the past. Since the City is prohibited from charging fees in excess of the cost to provide the service for which the fee is paid, staff will contemporaneously review the time spent on entertainment permit applications to confirm the City is not collecting an excess amount. As the amount of time incurred and related costs change, future Fee Schedules will be modified to reflect those changes.

Every entertainment venue with a large occupancy limit (100 or more occupancy) is unique and has many variables that make it virtually impossible to determine the amount of time staff will need to complete each application process. These variables include, but are not limited to the following:

- The number of business owners
- Complexity of security plan
- Proposed entertainment

Promoter applications and appeals processes are also unique and difficult to calculate. Therefore, the City is proposing that the fee include an up-front deposit before staff time will be incurred. In the above instances (large venues of 100 or more occupancy, promoter applications, and appeals) collecting a deposit, documenting actual staff time spent on the item, and charging actual costs is the most equitable method of collecting fees. The deposit will be applied to the costs of completing each process and should the actual costs be less than the deposit amount, a refund will be returned to the applicant/appellant.

**FISCAL IMPACT:**

Currently, the City charges a flat fee for similar applications. However, the methodology for the fee calculation has since been modified to reflect actual time spent and related costs. The fees are designed to recover actual costs associated with enforcement of the entertainment regulations established pursuant to Ordinance No. 15-2046.

**CEQA (CALIFORNIA ENVIRONMENTAL QUALITY ACT):**

The adoption of this Resolution is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Respectfully submitted,

---

Kim Raney, Chief of Police  
Police Department

<b>City Manager</b>	<b>City Attorney</b>	<b>Finance</b>	<b>City Clerk</b>

**ATTACHMENTS:**

Attachment A: Resolution No. 15-7428

**RESOLUTION NO. 15-7428**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
COVINA, CALIFORNIA, AMENDING THE CITY OF COVINA  
FEE SCHEDULE AS IT PERTAINS TO TITLE 5 OF THE COVINA  
MUNICIPAL CODE – ENTERTAINMENT PERMITS**

**WHEREAS**, updating the fees associated with processing entertainment permit applications provides the means to recover actual costs associated with enforcement of the City entertainment ordinance; and

**WHEREAS**, the City charges a diverse set of fees to recover all or a portion of the costs incurred to provide services and this amended fee schedule is to mitigate the impact of the fee payer's activities on the balance of the community; and,

**WHEREAS**, amending the fee schedule will allow the City to recover actual costs associated with processing applications and make determinations on issuance of permits; and

**WHEREAS**, the fees are designed to recover actual costs associated with enforcement of the City of Covina Entertainment Ordinance;

**NOW, THEREFORE, BE IT REOLVED AND ORDERED** by the City Council of the City of Covina, as follows:

SECTION 1. Amend the City of Covina Fee Schedule as it pertains to Title 5 of the Covina Municipal Code – Entertainment Permits.

SECTION 2. The City Clerk shall certify to the adoption of this Resolution

**PASSED, APPROVED AND ADOPTED** this 1<sup>st</sup> day in December, 2015

---

John C. King, Mayor

**ATTEST:**

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Sharon Clark, Chief Deputy City Clerk

**APPROVED AS TO FORM:**

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City Attorney

**CERTIFICATION**

I, Sharon Clark, Chief Deputy City Clerk of the City of Covina, California, do hereby certify that Resolution No. 15-7428 was adopted by the Covina City Council at a regular meeting thereof held this 1st day of December 2015, and was approved and passed by the following vote:

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

\_\_\_\_\_  
Sharon Clark, Chief Deputy City Clerk

City Of Covina Fee Schedule for the Entertainment Ordinance in  
Title 5 of the Covina Municipal Code.

Fee Schedule

	Non-Live Entertainment	Live Entertainment
0-49 Occupancy	\$312	\$377
50-99 Occupancy	\$573	\$652
100 & Up Occupancy	\$1,000 Deposit +/- Actual Costs	\$1,000 Deposit +/- Actual Costs
Promoter Application	\$500 Deposit +/- Actual Costs	\$500 Deposit +/- Actual Costs
Appeal	\$500 Deposit +/- Actual Costs	\$500 Deposit +/- Actual Costs

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## CITY OF COVINA

# AGENDA REPORT

ITEM NO. CC 10

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**MEETING DATE:** December 1, 2015

**TITLE:** Communications, Public and Media Relations Services

**PRESENTED BY:** Andrea M. Miller, City Manager

**RECOMMENDATION:** Approve the Proposal with Cornerstone Communications for Community Communications, Public and Media Relations Services; direct the City Attorney to Prepare a Professional Services Agreement; and authorize the City Manager to execute the Agreement on behalf of the City.

---

### **BACKGROUND:**

A goal of the City's public information activity is to foster an informed and engaged community and develop mutual understanding and support by ensuring timely, relevant, and accurate public information. Specifically, we are working to strengthen the City's identity and image, build trust, and promote areas of opportunity through strategic messaging.

### **DISCUSSION:**

One of the most effective ways to communicate with members of the community is through the use of dynamic, relevant and timely printed materials that may be repurposed onto the City's social media and website. Because effective communication requires a unique combination of media, marketing, and public relations savvy, it is recommended the City engage the services of a consultant with experience and a proven track record of effective, strategic communications campaigns resulting in top-tier media placements, successful crisis communications, and impactful community relations programs.

Recently, the City engaged Cornerstone Communications to redesign and rebrand the City's existing newsletter and identify ways to reduce the overall publication and printing costs by repurposing the content for other venues. As part of this process, Cornerstone redesigned the existing newsletter format into an attractive, easy-to-read publication that bears the name, *Covina Today*. Cornerstone also created the content, graphics and photography for the first edition of *Covina Today*, which was printed and mailed to the homes and businesses in Covina in November. The redesigned newsletter has been received favorably, and the City has received comments on the user-friendly format and timely, relevant and positive content.

Given the quality and impact of the new publication, it is recommended that the City engage Cornerstone Communications to create the content including graphics and photography for *Covina Today*, repurpose the newsletter content onto the City's social media and website, develop strategic press releases to promote the City's efforts, provide speech-writing and copy-

writing services, and enhance the City’s social media engagement. Engaging a company with the depth of experience such as Cornerstone Communications would also ensure that, in a crisis or emergency situation, the City has capable professionals available to provide important information to the community.

A Proposal submitted by Cornerstone Communications for Community Communications, Public and Media Relations Services is attached. The scope of work includes: creating the content, including graphics and photography, for *Covina Today*, that would be published every other month, with three of the six editions including the parks and recreation activity schedule; repurposing the newsletter content onto the City’s social media and redesigned website; identifying and pitching newsworthy stories to targeted media; drafting and distributing strategic press releases to promote efforts Citywide; and enhancing the City’s social media engagement. To accomplish these tasks, Cornerstone Communications would dedicate 50 hours of work each month including assigning a team member on-site for 5 hours each week. The cost is \$8,000 per month, or \$160 per hour. The proposed annual cost is \$96,000, which compares favorably when compared to the cost of performing these services in-house. The costs for printing and distribution of the newsletters and any other publications produced are not included in the monthly rate proposed by Cornerstone Communications.

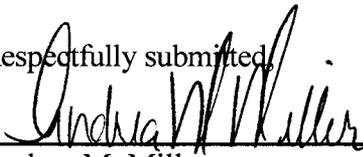
If the proposal is accepted by the City Council, staff recommends the City Attorney prepare a Professional Services Agreement for Communications, Public and Media Relations Services with Cornerstone Communications through December 31, 2016, with two additional one-year terms upon written notice from the City Manager. The agreement would be able to be terminated without cause with written notice by either party.

**FISCAL IMPACT:**

The annual cost for the communications, public and media relations services is \$8,000 per month, or \$96,000 per year. Funding is available in the FY 2015/16 Adopted Budget through a combination of funds budgeted for this professional service and savings related to other professional services contemplated at the time the budget was adopted and subsequently not engaged. In future years, the funding will be proposed for inclusion by the City Council in the adopted budgets.

**CEQA (CALIFORNIA ENVIRONMENTAL QUALITY ACT):**

Not applicable.

Respectfully submitted,  
  
 \_\_\_\_\_  
 Andrea M. Miller  
 City Manager

<b>City Manager</b>	<b>City Attorney</b>	<b>Finance</b>	<b>City Clerk</b>

**ATTACHMENTS:**

Attachment A: Proposal for Communications, Public and Media Relations Services submitted by Cornerstone Communications



**CORNERSTONE**  
C O M M U N I C A T I O N S

## **City of Covina**

Proposal for Community Communications, Public & Media Relations Services  
November 16, 2015

Prepared for:

Andrea Miller  
City Manager, City of Covina

Prepared by:

Bill Rams  
Cornerstone Communications

## **SITUATION**

The City of Covina has been operating without a communications plan for years, and does not employ staff with communications/public relations experience. It has been a number of years since the city employed a public-information officer.

Strategic messaging and a thoughtful strategy - as well as a professional on-line and print appearance - is needed to strengthen the city's identity and image and promote the city's existing areas of opportunity to attract much needed key retailers and restaurants to maintain service levels that residents have come to enjoy.

With Cornerstone's assistance, the The City recently launched "Covina Today," a branded newsletter that will replace *City View*, a parks and recreation-focused magazine it distributed three times annually to Covina residents and businesses. The city also operates a Twitter page and Facebook page, and a handful of city departments also operate Facebook pages.

## **ISSUES**

- The City of Covina is providing a lot of value to its citizens and is positioned for future success. But residents aren't aware of it.
- The City doesn't want to get left behind more progressive cities, which are aggressively telling their stories to lure new businesses, enhance community pride and set themselves apart.
- The city also needs to maintain the support and confidence of residents - so that they know that those they've entrusted with their tax dollars are investing responsibly.
- The city's real estate owners are faced with some vacancies. How can the city help them attract significant retail and restaurant destinations to bolster the city's economic revenue stream?

## **SCOPE OF WORK**

To accomplish your goals, we recommend the following scope of work:

- Create content, including graphics and photography, for a dynamic *Covina Today* that would be published every other month – and three of the six editions would include the parks and recreation schedule. The newsletter will include informative, newsy content on major/notable city improvement projects, feature stories on longtime community members as well as city employees who are making a difference. Deliver these via mail.
- Repurpose the newsletter content onto the city's social media and redesigned and reimagined website.
- Find positive and newsworthy stories to pitch to targeted media
- Draft and distribute strategic press releases to promote efforts from multiple departments across the city including new development, Parks & Recreation, Planning, etc

- Cornerstone will assign a team member to spend five hours/week at Covina City Hall to streamline the process.
- Providing writing services for the city that could include:
  - Speeches
  - Web copy
  - Talking points that are responsive to media or citizen inquiries
- Social media strategic assistance
  - Help the city of Covina develop a plan to enhance social media engagement on Facebook and Twitter
- Crisis communications counsel
  - Cornerstone will be available to provide assistance in crisis situations as they arise
  - Internal communications strategy development and assistance
  - Cornerstone will assist The City in messaging talking points and be available to consult on internal communications matters

#### **PROJECT FEES**

The fees for the scope of work is \$8,000/month, which includes up to 50 hours of work/month.

Term: One year, beginning on Nov. 18, 2015.

Note: Costs for printing and distribution of the newsletters/magazines are not included in this proposal. Also, Cornerstone will bill an hourly rate of \$150 for excess hours, more than three rounds of edits on the newsletter; it will not bill those additional hours without notifying you and receiving written approval first.

#### **ABOUT CORNERSTONE COMMUNICATIONS**

Cornerstone Communications provides inspired businesses an honest, innovative approach to public relations. We offer our clients the perfect marriage of media and PR savvy. Our team is composed of both award-winning, veteran journalists from major media outlets and seasoned public relations and corporate communications executives with a proven record of effective, strategic communications campaigns resulting in top-tier media placements, successful crisis communications and impactful community relations programs. Our strong approach and high ethical standards help our clients increase awareness, build trust and accomplish their communications goals.

Cornerstone's principals served as the senior executive strategic communications team for the Irvine Company, and during their tenure, they directed strategic communications efforts on The Irvine Ranch that resulted in securing government entitlement approvals for more than a dozen major projects, including 30,000+ housing units, millions of square feet of office and retail development, and a world-class luxury resort on Newport Coast. They also provided strategic communications counsel on the

positioning and execution of the company's open space and education campaigns, which were designed to support business plan goals and reinforce the company's brand.

## **OUR TEAM**

**Bill Rams** has spent the past decade innovating strategic communications for clients in real estate, healthcare, law, law enforcement and more after a successful career as a journalist. He is the founder of [BehindTheBadgeOC.com](http://BehindTheBadgeOC.com), and trains police chiefs throughout California on strategic and crisis communications. Prior to co-founding Cornerstone, he served as director of media relations for the Irvine Company. Before that, he was an investigative reporter for the *Orange County Register*, where his work was evidence in the corruption trial of former Sheriff Michael Carona and used to convict the killers of two Orange County doctors.

**Kat Nguyen** joined Cornerstone Communications in 2012 after serving as PR Manager for South Coast Plaza, one of the country's most successful shopping centers with \$1.6 billion in annual sales. As PR Manager, Kat worked with a diverse array of established brands from the center's 250 retailers. Kat also spent a decade as a reporter at *The Orange County Register*. As a cities reporter, Kat's beat over the years included Anaheim, Cypress, Seal Beach, Los Alamitos, Westminster and Garden Grove, where she reported on local municipal issues, community affairs and Little Saigon. Kat segued from hard news into the features department at the newspaper, where she wrote about lifestyle and cultural trends while covering breaking news on the weekend. Currently she handles media outreach and PR for the Irvine Company's retail portfolio of nearly 40 shopping centers, including Fashion Island, Irvine Spectrum Center and The Market Place.

**Kathleen Freed** spent more than 20 years working in senior advisory roles in the public and private sectors before co-founding Cornerstone Communications. She previously served as senior vice president of corporate communications at the Irvine Company, where she provided strategic counsel on approach, positioning and execution of the company's entitlement, open space and education campaigns. Kathleen also spent 10 years working for Orange County Supervisor Roger Stanton where she served as a policy advisor on transportation, land use planning, housing, water quality, waste management, social service, and environmental issues. She was the primary liaison with community stakeholders, business and elected officials, and represented the Supervisor on numerous countywide committees and boards.

**John Christensen** brings more than 20 years of experience as a strategic communications executive. John co-founded the firm after nearly 10 years at the Irvine Company, where he managed the company's media relations activities and crisis management, provided strategic communications counsel to senior management and participated in the creation of communication strategies and initiatives that advanced the company's business objectives. Prior to Irvine Company, John spent a decade with the Portland Trail Blazers of the National Basketball Association. John was selected by his peers to serve on the NBA's Public Relations Advisory Board, which established and

implemented league-wide communications policies, and was invited by USA Basketball to be part of the public relations team for the original Men's Basketball "Dream Team" in 1992.

#### **REFERENCES**

- Dan Hughes, Chief of Police, City of Fullerton: (714) 738-6825, [dhughes@ci.fullerton.ca.us](mailto:dhughes@ci.fullerton.ca.us)
- Janice M. Mittermeier, former Orange County CEO, (714) 637-9191, [jmittermeier@91expresslanes.com](mailto:jmittermeier@91expresslanes.com)
- David Maggard, Chief of Police, City of Irvine; Past President California Police Chiefs Association: (714) 724-7101, [dmaggard@ci.irvine.ca.us](mailto:dmaggard@ci.irvine.ca.us)

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# CITY OF COVINA

## AGENDA REPORT

ITEM NO. CC 11

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- MEETING DATE:** December 1, 2015
- TITLE:** Set a public hearing date of December 15, 2015 for the consideration of Tentative Parcel Map (TPM) 73595, a subdivision four single-family lots at 1732 East Ruddock Street – APN: 8427-022-031.
- PRESENTED BY:** Brian K. Lee, AICP, Community Development Director
- RECOMMENDATION:** Direct staff to set a public hearing date of December 15, 2015.
- 

### **BACKGROUND/DISCUSSION:**

The applicant and property owner, Mark Volk, submitted the Tentative Tract Map (TTM) 73595 for the subdivision of his property into 4 single-family lots in May 2015. In addition to the subdivision, the applicant also requested a Site Plan Review for the construction of 4 single-family houses and a Minor Variance for 10 percent reduction of lot width and lot size. After working with staff to address the various project and site deficiencies including grading, setbacks and other architectural design elements, the applicant resubmitted the development plans for staff review in September. As a result of a review, staff determined the revised development plans were complete and scheduled it for Planning Commission review on November 10, 2015.

At the November 10, 2015 regular meeting, the Planning Commission held a public hearing on the project. The applicant was in agreement with the staff report and the conditions of approval. There were no public comments at the meeting. After the close of the public hearing, the Planning Commission unanimously (5-0-0) voted to recommend approval of the Tentative Tract Map 73595 to the City Council. Municipal Code Chapter 16.08.130 states: “At the next regular meeting of the City Council following the filing of the Planning Commission’s recommendation report with the Council, the City Council shall fix the public hearing date at which the tentative tract map will be considered by it, which date shall not be later than 30 days thereafter.” Based on this section of the Municipal Code, staff requests to set a public hearing date of December 15, 2015 for the project.

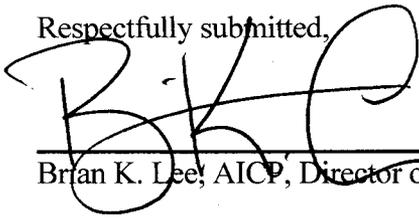
### **FISCAL IMPACT:**

There is no fiscal impact.

**CEQA (CALIFORNIA ENVIRONMENTAL QUALITY ACT):**

Setting a public hearing is exempt from CEQA.

Respectfully submitted,



Brian K. Lee, AICP, Director of Community Development

<b>City Manager</b>	<b>City Attorney</b>	<b>Finance</b>	<b>City Clerk</b>

**ATTACHMENTS:**

Attachment A: November 10, 2015-Planning Commission Staff Report

Attachment B: Resolution No. 15-021PC

Attachment A  
November 10, 2015-Planning Commission  
Staff Report



# CITY OF COVINA

## PLANNING COMMISSION AGENDA REPORT ITEM NUMBER PH1 NOVEMBER 10, 2015

**TO:** Chairman and Members of the Planning Commission

**FROM:** Brian K. Lee, Community Development Director

**SUBJECT:** Application(s) Tentative Parcel Map (TPM) 73595, Site Plan Review (SPR) 15-014, and Minor Variance (MV) 15-003 - a proposed subdivision of four lots with the development of four new detached single-family dwelling units on a .91-acre property in the "R-1-10,000 Residential Single Family Zone" at 1732 East Ruddock Street

### SITE AND PROJECT DESCRIPTION

#### A. Project Information:

Request: Four lot subdivision and development of four detached single-family houses  
 Applicant and Property Owner: Mark Volk  
 Applicant's Architect: RED Architectural Group  
 Location: 1732 East Ruddock Street  
 Assessor Parcel Map No: 8427-022-031

#### B. Site and Surrounding Land Uses-Table 1:

	General Plan	Zoning	Existing Uses
Site	Low Density Residential	R-1-10,000 (Single Family Residential)	Single Family Dwelling Unit
North	Low Density Residential	R-1-10,000 (Single Family Residential)	Single Family Dwelling Unit
South	School	R-1-7,500 (Single Family Residential)	Badillo Elementary School
East	Low Density Residential	R-1-10,000 (Single Family Residential)	Single Family Dwelling Unit
West	Low Density Residential	R-1-10,000/PCD-Planned Community Development (Single Family Residential)	Single Family Dwelling Unit

#### C. Site Characteristics:

The overall site is 39,730 sq. ft. or .91 acres. The site slopes from Ruddock Street southerly towards the existing single-family residence at approximately 11 percent grade, and from

the rear of the house and towards Badillo Street, it is relatively flat. The street frontage of Ruddock Street is not improved with curb, gutter and sidewalks abutting this site while the street frontage of Badillo Street is fully improved with curb, gutter and sidewalks abutting the site.

- D. Development Standards and Project Data: The following Table 2 illustrates the propose project compliance with Development standards Section 17.22 of the Covina Municipal Code (CMC).

	Development Standards	Code Requirements	Proposal	Comments
1.	Density	0-6 Units Per Acre (or 1 single family dwelling unit per lot)	1 single family dwelling unit per lot	
2.	Lot Area	Min. 10,000 Sq. Ft.		
	Parcel 1		9,026.75 Sq. Ft.	Addressed under minor variance
	Parcel 2		9,032.65 Sq. Ft.	Addressed under minor variance
	Parcel 3		10,475.55 Sq. Ft.	
	Parcel 4		10,511.67 Sq. Ft.	
3.	Lot Dimensions			
	Width	80 Feet		
	Parcel 1		73 Feet	Addressed under minor variance
	Parcel 2		73 Feet	Addressed under minor variance
	Parcel 3		72 Feet	Addressed under minor variance
	Parcel 4		72 Feet	Addressed under minor variance
	Depth	120 Feet	123 Feet or more	
4.	Land Coverage	35%	33%	
5.	Building Height	2 ½ Stories or 35 Ft	23 Feet, 8 Inches	
7.	Setbacks			
	Front	25 Feet	25 Feet	
	Interior Side	10 Feet	10 Feet	
	Second Story	12 Feet 6 Inches	12 Feet 7 Inches	
	Rear	25 Feet	25 Feet or more	
9.	Off-Street Parking	2 car garages	3 car garages	
10.	Fence/Wall Height	3 Feet Front Yard 6 Feet Side Yard	3 Feet Front Yard 6 Feet Side Yard	

## ANALYSIS

### A. Background and Proposed Project:

The Applicant and his team has contacted staff back in January and February 2015 to obtain information on the City's development standards and review process for his proposed development concept of a 4-lot subdivision. According to the Applicant, it is his intention to demolish the existing single-family house, the pool and accessory structures to accommodate his proposed development. The Applicant formally submitted the applications on May 15, 2015. Since that time, staff has maintained a dialogue with the applicant on various project and site deficiencies including grading, setbacks and other architectural design elements. The final project design was submitted on September 16, 2015 for Planning Commission review. As stated previously, the proposed project is to subdivide the 39,730 square-foot parcel into 4 lots with the development of a two-story house on each lot. Each house will have 4 bedrooms and 3 ½ bathrooms and an attached 3-car garage. Further, each house is provided with a front porch, a small covered patio, and an open lath patio in the rear of the house.

### B. Site Plan Review:

1. Site Design. The proposed subdivision will create 2 new lots that face East Ruddock Street and East Badillo Street. The proposed project will require to complete the required public improvements such as but not limited to curb, gutter, sidewalk and new drive approaches. The houses and their garages are oriented parallel to the streets. The size of the rear yard for each lot exceeds the minimum required 25 feet. In summary, the site design generally meets the development standards and the provisions of the Covina Design Guidelines, with the exception of the lot sizes and widths as noted in the Summary Table above. The proposed 10 percent deviation from the Development Standards will be addressed under the Minor Variance section the report.
2. Parking. The required parking for a single-family house is a two-car garage. Each lot proposes to construct an attached three-car garage consisting of 720 square feet. The proposed development meets the required parking for each lot.
3. Architecture. The proposed architecture for the houses is reflective of Craftsman style with low-pitch gable roof, asphalt shingles for roof material, wood siding and ledger stones accent. The applicant proposes two design schemes. The first scheme proposes lap siding to simulate natural grain wood, ledger stacked stones and stucco walls and the second scheme will share similar exterior wall materials with the exception of river rock. These styles will compliment and add variety to the diverse architectural styles that are evident in many surrounding houses. Therefore, staff concluded that the materials and colors conform to the Covina Design Guidelines.

4. Landscape Design. Front yard landscaping is proposed for each lot with more than 20 new trees, various shrubs, ground cover and an overall landscape design which considers drought and water efficient provisions to generally meet the Zoning Code-development standards and the provisions of the Covina Design Guidelines. In addition, only one oak tree is identified on site but it does not meet the size requirements for preservation under the Covina Municipal Code. Finally, one mature amber tree will be conserved in place and will be integrated into the landscape design.
  5. Grading. The proposed grading concept consists of a cut of 2,144 cubic yards and a fill of 2,054 cubic yards with an export of 90 cubic yards. The site is almost balanced in the earthwork and the export of 90 cubic yards is not considered a significant environmental impact.
- C. Minor Variance (MV) 15-003. The purpose of a Minor Variance is to allow a slight modification to certain development standards such as lot area, lot width, lot depth, fence height and setback, to name a few. The slight modification in the development standards may allow creative design and accommodate unique site conditions for the proposed project. The Applicant requests a Minor Variance for the reduction of the lot area (parcels 1 and 2) and lot width (4 parcels) by 10 percent. Staff found that the odd shape of the project site and the double street frontages do create exceptional and unique circumstances not applicable to other properties of the same zone. The existing lots adjacent to the project site already have reduction of lot width to 72 feet. Therefore, staff could make the findings to support the Minor Variance. According to Section 17.78.160, the designated planning official has the authority to approve a Minor Variance. Upon approval by the Planning Commission of the proposed Tentative Parcel Map and Site Plan Review, staff will follow up with approval of the Minor Variance.
- D. Tentative Maps Findings (CMC 16.08.140).
1. The design and improvements of the proposed subdivision is consistent with the General Plan and all applicable codes and regulations.  
  
Facts: The proposed development, the key elements of which would be building size/location, usable yard areas, parking areas, and landscaping, would meet or conform to the intent of the development standards of Ch. 17.22 of the Covina Municipal Code and General Plan. A Minor Variance application to address the 10 percent reduction of lot area and lot width was submitted to the City in conjunction with the Tentative Parcel Map. Upon approval by the Planning Commission of the proposed application, the planning official will subsequently grant approval of the Minor Variance.
  2. The subdivision is physically suitable for the type and proposed density of development proposed by the tentative map.

Facts: The overall size of the site is 39,730 sq. ft. or .91 acres. The proposed density is within the allowed by the “LDR- Low Density Residential” General Plan Land Use Designation. The subdivision is physically suitable for the development of single-family houses per lot.

3. The design of the subdivision and proposed improvements, with conditions of approval will not be likely to cause significant environmental damage or substantially and avoidably injure fish or wildlife or their habitat; or

Facts: The site currently contains an existing single-family dwelling unit. The site is not designated a fish or wildlife habitat nor is it located nearby to any such territory. The design of the subdivision and proposed improvements will not be likely to cause significant environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

4. The design of the subdivision and the type of improvements are not likely to cause serious public health problems.

Facts: The design of the proposed project is generally attractive, functional, and well integrated to the surrounding properties. It will be harmonious, consistent, and complete within itself. The design of the subdivision and the type of improvements are not likely to cause serious public health problems.

5. The design of the subdivision provide for future passive or natural heating and cooling opportunities in the subdivision to the extent feasible.

Facts: The design of the subdivision and its proposed residential development will provide the possibility and opportunity to have passive or natural heating and cooling for the buildings. Furthermore, the residential development will have to comply with Title 24 of the Uniform Building Code.

6. Focusing on the design of the subdivision and the type of improvements to be required, the project will not conflict with easements acquired by the public at large for access through or the use of the subdivision or with the design of alternate easements that are substantially equivalent to those previously acquired by the public.

Facts: The design of the subdivision will not conflict with existing City rights-of-way or other public access easements.

7. The proposed project with its subdivision design is consistent with the city’s parkland dedication requirements (Quimby Act – Chapter 16.28 CMC).

Facts: The proposed subdivision of 5 or fewer parcels is exempt from the city’s parkland dedication requirements. Development Impact fees and annexation into the

city's Communities Facilities District is applicable. A condition of approval is in place to address fiscal impacts to city services and parks.

8. The applicant has demonstrated that a sufficient water supply will be available to serve the subdivision, in accordance with California Government Code Section 66473.7.

Facts: According to the water purveyor which services this area in the City of Covina, Golden State Water Company, there is sufficient capacity to provide water to serve the subdivision without negative impact to other properties in the City as identified in the letter dated October 12, 2015 (Exhibit 5 of the Staff Report).

E. Site Plan Review Findings (CMC 17.64.070)

1. All provisions of the Zoning Ordinance are complied with.

Facts: The proposed development, the key elements of which would be building size/location, usable yard areas, parking areas, and landscaping, would meet or conform to the intent of the development standards of the Single-Family Residential Zone and other provisions of the Zoning Code. A Minor Variance application to address the 10 percent reduction of lot area and lot width was submitted to the City in conjunction with the Tentative Parcel Map and the Site Plan Review. Upon approval by the Planning Commission of the proposed applications, the planning official will subsequently grant approved of the Minor Variance.

2. The basic project elements are so arranged that traffic congestion is avoided, pedestrian and vehicular safety and welfare are protected, and no adverse effects will occur on surrounding property.

Facts: The development will require a street dedication and public improvements on East Ruddock Street where a new sidewalk and two drive approaches will be constructed per city standards. In addition, the development will construct two new drive approaches on East Badillo Street. The garages and driveways have been designed so that vehicles will exit in a forward motion and not back out onto the street. In addition, the number of new trips that would be generated would have a negligible impact on existing, surrounding traffic conditions. It can be concluded that project-related traffic congestion would be avoided, and the project would have no negative impact on adjacent streets and sidewalks.

3. The project design conforms to the General Plan and any Design Guidelines or Specific Plan that may be applicable to the project.

Facts: The project would comply with the land use-, circulation-, and housing-related components of the General Plan. Moreover, the overall design of the proposed building will comply with the applicable provisions of the Covina Design Guidelines.

4. The project design is harmonious, consistent, and complete within itself and functionally and visually compatible with neighboring land uses.

Facts: The design of the proposed project is generally attractive, functional, and well integrated—or, harmonious, consistent, and complete within itself. Furthermore, the proposed project would be functionally and visually compatible with neighboring developments and land uses.

6. The development will constitute an adequate environment for the intended use by sustaining the desirability and stability of the neighborhood and community.

Facts: The proposed project is well designed for the intended residential use. Also, the project will provide viable, additional housing in the neighborhood and the overall community. In addition, the proposed conditions of approval will provide the City with adequate safeguards for preventing any issues.

7. Proposed lighting is so arranged as to reflect the light away from adjoining properties.

Facts: The proposed project will include exterior wall-mounted lighting. The light fixtures will be required to be directed downwards to prevent light spilling over onto adjacent properties. A detailed lighting plan must be submitted for review for compliance with the applicable safety-, security-, and design-related provisions of the Zoning Code and the Design Guidelines.

8. Proposed signs will not, by size, location, color, or lighting, interfere with traffic or limit visibility.

Facts: The proposed development will not contain any signage. Any signs are not permitted in residential zones. The project will comply with the provisions of the Zoning Code.

- F. Conclusion: Staff believes the findings can be made for Tentative Parcel Map and Site Plan Review and recommends approval for the subdivision of four lots and the development of four detached single-family dwelling units.

### **PUBLIC HEARING NOTICE AND NOTIFICATION**

The applicant was given a copy of the staff report with the attachments. All property owners within a radius of at least 300 feet from the overall project site were mailed notices of the

Planning commission public hearing on October 29, 2015, a minimum of ten (10) days before the hearing as required by law. In addition, the public hearing notice was published in the San Gabriel Examiner newspaper on October 29, 2015.

**ENVIRONMENTAL DETERMINATION**

Staff has determined that the project is exempt from the requirements of the California Environmental Quality Act (CEQA) Guidelines. The project qualified as a Class 32 exemption under State CEQA Guidelines Section 15332, which consists of projects characterized as in-fill development meeting the conditions described below. The project consists of a subdivision of four lots and the development of four detached single-family dwelling units on .91 acres property. Staff finds that there is no substantial evidence that the project will have a significant effect on the environment and no additional analysis is required. The proposed development meets the following conditions:

- (a) The proposed project is consistent with the general plan designation and all applicable general plan policies as well as with zoning designation and regulations.
- (b) The proposed development occurs within city limits on a project site of no more than five acres and substantially surrounded by urban uses.
- (c) The project site has no value as habitat for endangered, rare or threatened species.
- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- (e) The site can be adequately served by all required utilities and public services.

**RECOMMENDATION**

- 1. Adopt Resolution No. 2015-021PC recommending approval to the City Council Tentative Parcel Map (TPM) 73595, and
- 2. Adopt Resolution No. 2015-019PC approving Site Plan Review (SPR) 15-014, and
- 3. Direct Staff to approve the Minor Variance.

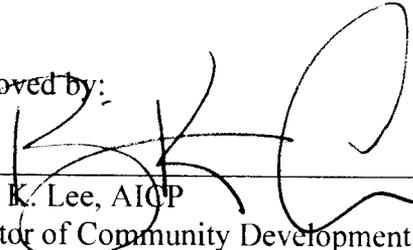
Prepared by:

  
\_\_\_\_\_  
Vidal F. Marquez, Assistant Planner

Reviewed by

\_\_\_\_\_  
Alan Carter, City Planner

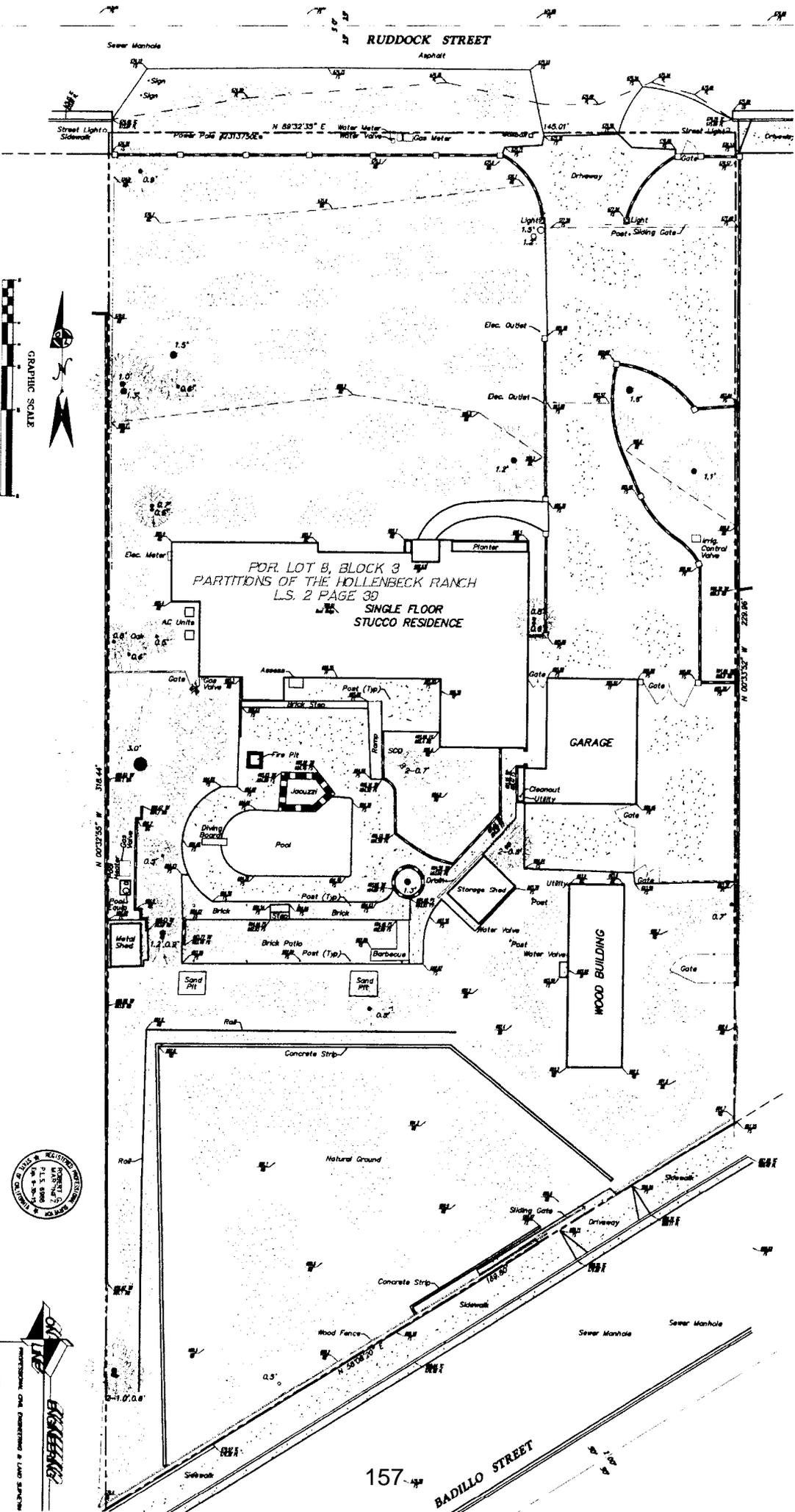
Approved by:

  
\_\_\_\_\_  
Brian K. Lee, AICP  
Director of Community Development

## **EXHIBITS**

1. Application
2. Area Map
3. 300-foot Radius Map and Notification
4. Project Plans (reductions), full size under separate cover
5. Water District Letter
6. Resolution 2015-021PC with Conditions of Approval
7. Resolution 2015-019PC with Conditions of Approval

1732 E RUDDOCK STREET - COVINA, CA 91794  
 A.P.N. 8427-022-031



**TOPOGRAPHIC SURVEY**

**COVINA PARCEL ENTITLEMENTS**

COVINA, CALIFORNIA

**R-E-D Architectural Group**  
 PLANNING ■ ARCHITECTURE ■ INTERIORS

3436 N. VERNON ROAD, STE 200, GLENDALE, CALIFORNIA 91208  
 P 818.957.7765 F 818.957.7761

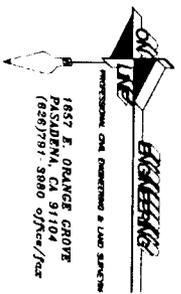


THIS MAP WAS PREPARED UNDER THE SUPERVISION OF THE ABOVE NAMED LICENSED LAND SURVEYOR  
 PREPARED BY: MARK VOLK, LICENSED LAND SURVEYOR  
 DATE: AUGUST 12, 2015

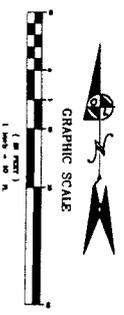
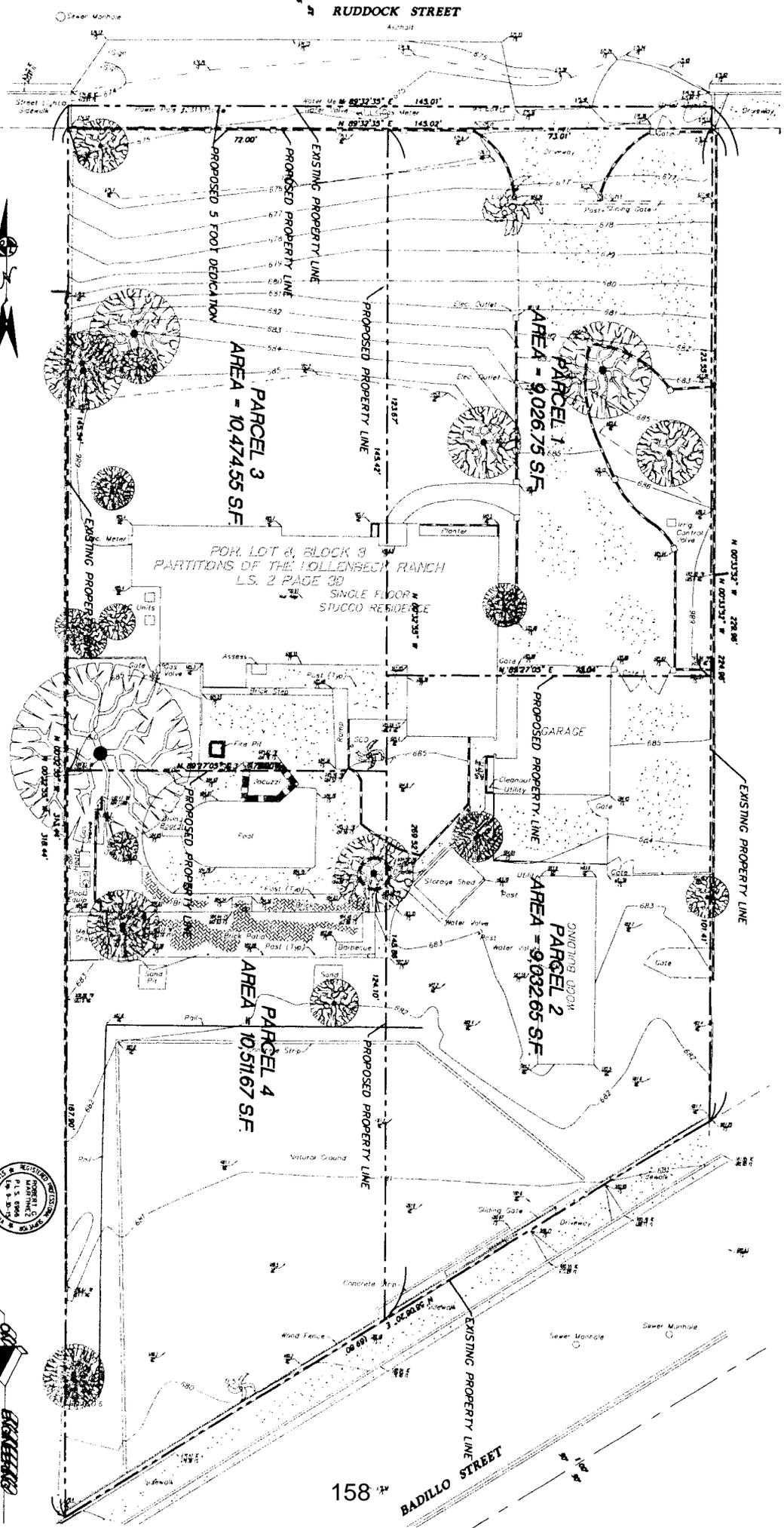
MARK VOLK (626) 331-3881

PAGE 2

DATE: AUGUST 12, 2015  
 PROJECT NO.: 428.1401.01



732 E RUDDOCK STREET - COVINA, CA 91724  
 APN: 8427-022-031



**TENTATIVE PARCEL MAP NO. 73595**

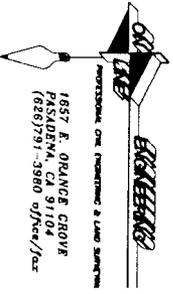
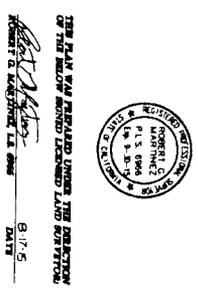
**COVINA PARCEL ENTITLEMENTS**

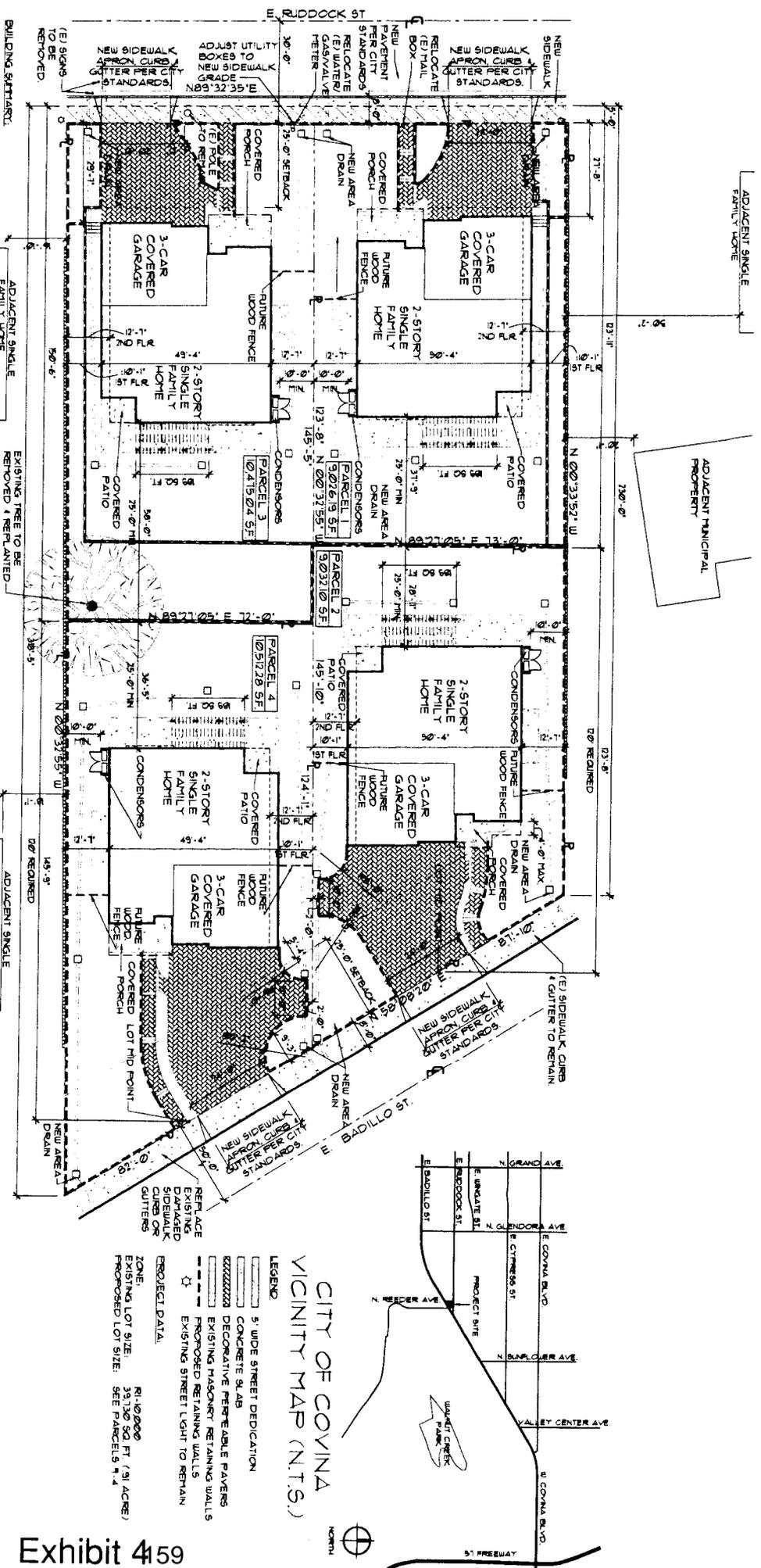
**R-E-D Architectural Group**  
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 3436 N. VERDUCCO ROAD, STE 200, GLENDALE, CALIFORNIA 91208  
 P 818.957.7765 F 818.957.7767

COVINA, CALIFORNIA

MARK VOLK (626) 331-3881 PAGE 10

DATE: AUGUST 17, 2015  
 PROJECT NO: 428.1401.01



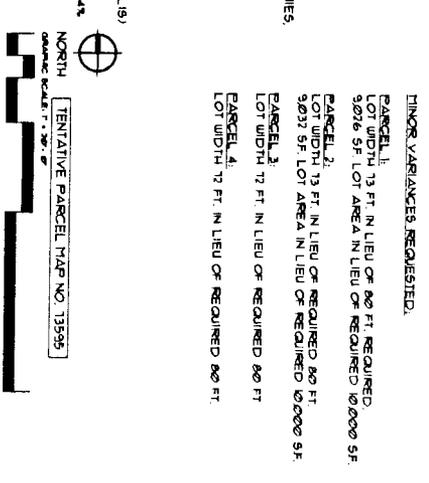


**PARCEL 1**  
 LOT AREA: 9,276 SQ. FT.  
 (10,000 MIN. LOT SIZE REQUIRED)  
 PROPOSED 2-STORY SINGLE FAMILY HOME  
 1ST FLOOR:  
 REQUIRED: 1,000 SF MIN.  
 PROPOSED: 1,943 SF (GAROS6)  
 (EXCLUDING GARAGES, BASEMENTS, BALCONIES, PORCHES AND PATIOS)  
 2ND FLOOR:  
 PROPOSED: 1,100 SF (GAROS6)  
 COVERED PORCHES/PATIOS: 236 SQ. FT.  
 GARAGE: 170 SF (3-CAR GARAGE)  
 MAXIMUM LOT COVERAGE ALLOWED: 35%  
 LOT COVERAGE PROPOSED: 35% (INCLUDES COVERED PATIO/PORCHES, EXCLUDES TRELLIS)  
 MAX. PLAYED ACCESS IN FRONT YARD: 50%  
 PROPOSED PLAYED AREA IN FRONT YARD: 43%  
 PROPOSED LANDSCAPING: 1%

**PARCEL 2**  
 LOT AREA: 9,271 SQ. FT.  
 (10,000 MIN. LOT SIZE REQUIRED)  
 PROPOSED 2-STORY SINGLE FAMILY HOME  
 1ST FLOOR:  
 REQUIRED: 1,000 SF MIN.  
 PROPOSED: 1,943 SF (GAROS6)  
 (EXCLUDING GARAGES, BASEMENTS, BALCONIES, PORCHES AND PATIOS)  
 2ND FLOOR:  
 PROPOSED: 1,100 SF (GAROS6)  
 COVERED PORCHES/PATIOS: 119 SQ. FT.  
 GARAGE: 170 SF (3-CAR GARAGE)  
 MAXIMUM LOT COVERAGE ALLOWED: 35%  
 LOT COVERAGE PROPOSED: 35% (INCLUDES COVERED PATIO/PORCHES, EXCLUDES TRELLIS)  
 MAX. PLAYED ACCESS IN FRONT YARD: 50%  
 PROPOSED PLAYED AREA IN FRONT YARD: 50%  
 PROPOSED LANDSCAPING: 2%

**PARCEL 3**  
 LOT AREA: 9,271 SQ. FT.  
 (10,000 MIN. LOT SIZE REQUIRED)  
 PROPOSED 2-STORY SINGLE FAMILY HOME  
 1ST FLOOR:  
 REQUIRED: 1,000 SF MIN.  
 PROPOSED: 1,943 SF (GAROS6)  
 (EXCLUDING GARAGES, BASEMENTS, BALCONIES, PORCHES AND PATIOS)  
 2ND FLOOR:  
 PROPOSED: 1,100 SF (GAROS6)  
 COVERED PORCHES/PATIOS: 236 SQ. FT.  
 GARAGE: 170 SF (3-CAR GARAGE)  
 MAXIMUM LOT COVERAGE ALLOWED: 35%  
 LOT COVERAGE PROPOSED: 35% (INCLUDES COVERED PATIO/PORCHES, EXCLUDES TRELLIS)  
 MAX. PLAYED ACCESS IN FRONT YARD: 50%  
 PROPOSED PLAYED AREA IN FRONT YARD: 43%  
 PROPOSED LANDSCAPING: 1%

**PARCEL 4**  
 LOT AREA: 9,272 SQ. FT.  
 (10,000 MIN. LOT SIZE REQUIRED)  
 PROPOSED 2-STORY SINGLE FAMILY HOME  
 1ST FLOOR:  
 REQUIRED: 1,000 SF MIN.  
 PROPOSED: 1,943 SF (GAROS6)  
 (EXCLUDING GARAGES, BASEMENTS, BALCONIES, PORCHES AND PATIOS)  
 2ND FLOOR:  
 PROPOSED: 1,100 SF (GAROS6)  
 COVERED PORCHES/PATIOS: 236 SQ. FT.  
 GARAGE: 170 SF (3-CAR GARAGE)  
 MAXIMUM LOT COVERAGE ALLOWED: 35%  
 LOT COVERAGE PROPOSED: 35% (INCLUDES COVERED PATIO/PORCHES, EXCLUDES TRELLIS)  
 MAX. PLAYED ACCESS IN FRONT YARD: 50%  
 PROPOSED PLAYED AREA IN FRONT YARD: 44%  
 PROPOSED LANDSCAPING: 2%



PROPOSED SITE PLAN  
 PROPOSED LANDSCAPING: 1%

Exhibit 459

**Attachment B**  
**Resolution No. 15-021PC**

**RESOLUTION NO. 2015-021 PC**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COVINA, CALIFORNIA RECOMMENDING TO THE CITY COUNCIL APPROVAL OF TENTATIVE PARCEL MAP (TPM)73595 FOR THE SUBDIVISION AND DEVELOPMENT OF FOUR DETACHED SINGLE-FAMILY HOUSES ON FOUR LOTS AT 1732 EAST RUDDOCK STREET – APN: 8427-022-031**

WHEREAS, Mark Volk (Applicant and Property Owner) has filed a Tentative Parcel Map (Application) to subdivide and construct four detached single family dwelling units (one dwelling unit on each lot) and associated improvements on a 39,730 sq. ft or .91-acre property located at 1732 East Ruddock Street, California 91724 (Property); and

WHEREAS, on November 10, 2015 the Planning Commission conducted a duly noticed public hearing at which time the oral and written evidence along with written recommendation from the Planning Division was presented to the Planning Commission. The Planning Commission concluded said hearing on that date.

**NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF COVINA, CALIFORNIA DOES HEREBY RESOLVE AS FOLLOWS:**

SECTION 1. The foregoing recitals are true and correct and are incorporated herein and made an operative part of this Resolution.

SECTION 2. Based upon the entire record made available at the November 10, 2015 public hearing, the staff report, the oral presentation, and related documents submitted to the Planning Commission prior to and at the public hearing, the Planning Commission hereby finds and determines as follows:

- A. Tentative Maps Findings (CMC 16.08.140)
  - 1. The design and improvements of the proposed subdivision is consistent with the General Plan and all applicable codes and regulations.

Facts: The proposed development, the key elements of which would be building size/location, usable yard areas, parking areas, and landscaping, would meet or conform to the intent of the development standards of Ch. 17.22 of the Covina Municipal Code and General Plan. A Minor Variance application to address the 10 percent reduction of lot area and lot width was submitted to the City in conjunction with the Tentative Parcel Map. Upon approval by the Planning Commission of the proposed application, the planning official will subsequently grant approval of the Minor Variance.

- 2. The subdivision is physically suitable for the type and proposed density of development proposed by the tentative map.

Facts: The overall size of the site is 39,730 sq. ft. or .91 acres. The proposed

density is within the allowed by the “LDR- Low Density Residential” General Plan Land Use Designation. The subdivision is physically suitable for the development of single family houses per lot.

3. The design of the subdivision and proposed improvements, with conditions of approval will not be likely to cause significant environmental damage or substantially and avoidably injure fish or wildlife or their habitat; or

Facts: The site currently contains an existing single family dwelling unit. The site is not designated a fish or wildlife habitat nor is it located nearby to any such territory. The design of the subdivision and proposed improvements will not be likely to cause significant environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

4. The design of the subdivision and the type of improvements are not likely to cause serious public health problems.

Facts: The design of the proposed project is generally attractive, functional, and well integrated to the surrounding properties. It will be harmonious, consistent, and complete within itself. The design of the subdivision and the type of improvements are not likely to cause serious public health problems.

5. The design of the subdivision provide for future passive or natural heating and cooling opportunities in the subdivision to the extent feasible.

Facts: The design of the subdivision and its proposed residential development will provide the possibility and opportunity to have passive or natural heating and cooling for the buildings. Furthermore, the residential development will have to comply with Title 24 of the Uniform Building Code.

6. Focusing on the design of the subdivision and the type of improvements to be required, the project will not conflict with easements acquired by the public at large for access through or the use of the subdivision or with the design of alternate easements that are substantially equivalent to those previously acquired by the public.

Facts: The design of the subdivision will not conflict with existing City rights-of-way or other public access easements.

7. The proposed project with its subdivision design is consistent with the city’s parkland dedication requirements (Quimby Act – Chapter 16.28 CMC).

Facts: The proposed subdivision of 5 or fewer parcels is exempt from the city’s parkland dedication requirements. Development Impact fees and annexation into the city’s Communities Facilities District is applicable. A condition of approval is in place to address fiscal impacts to city services and parks.

8. The applicant has demonstrated that a sufficient water supply will be available to serve the subdivision, in accordance with California Government Code Section

66473.7.

Facts: According to the water purveyor which services this area in the City of Covina, Golden State Water Company, there is sufficient capacity to provide water to serve the subdivision without negative impact to other properties in the City as identified in the letter dated October 12, 2015 (Exhibit 5 of the Staff Report).

SECTION 3. Pursuant to and in compliance with the provisions of the California Environmental Quality Act (CEQA) Guidelines, Staff has determined that the project is exempt from the requirements of the California Environmental Quality Act (CEQA) Guidelines. The project qualified as a Class 32 exemption under State CEQA Guidelines Section 15332, which consists of projects characterized as in-fill development meeting the conditions described below. The project entails the subdivision of four lots and the development of four detached single family dwelling units on .91 acres property. Staff finds that there is no substantial evidence that the project will have a significant effect on the environment and no additional analysis is required. The proposed development meets the following conditions:

- (a) The proposed project is consistent with the general plan designation and all applicable general plan policies as well as with zoning designation and regulations.
- (b) The proposed development occurs within city limits on a project site of no more than five acres and substantially surrounded by urban uses.
- (c) The project site has no value as habitat for endangered, rare or threatened species.
- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- (e) The site can be adequately served by all required utilities and public services.

SECTION 4. Based upon the findings and conclusion set forth in Sections 1, 2 and 3 above, the Planning Commission hereby approves the application:

- A. Application Tentative Parcel Map (TPM) 73595 is hereby recommended for approval to the City Council, subject to the conditions of approval set forth in the written record before the Commission incorporated herein and attached hereto as Exhibit "A."
- B. The Secretary of the Planning Commission is directed to serve, by first-class mail, a written notice of this decision to the Applicant within five (5) days.
- C. The Planning Commission's approval of Applications Site Plan Review (SPR) 15-014 is contingent upon approval of the Tentative Parcel Map by the City Council.

SECTION 5. This Resolution shall become effective immediately upon its adoption, subject to a 10 calendar-day appeal period.

**PASSED, APPROVED AND ADOPTED** by the members of the Planning Commission of the City of Covina at a regular meeting thereof held on the 10<sup>th</sup> day of November, 2015.

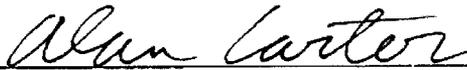


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CHARLES HODAPP  
CITY OF COVINA PLANNING COMMISSION

I hereby certify that the foregoing is a true copy of a resolution adopted by the Planning Commission of the City of Covina at a regular meeting thereof held on the 10<sup>th</sup> day of November, 2015 by the following vote of the Planning Commission:

AYES: CONNORS, HODAPP, MANNING, MCMEEKIN, PATTERSON  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE



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COVINA PLANNING COMMISSION SECRETARY

**CITY OF COVINA  
RESOLUTION NO. 2015-021 PC  
TENTATIVE PARCEL MAP (TPM) 73595  
1732 EAST RUDDOCK STRET  
EXHIBIT A - CONDITIONS OF APPROVAL  
NOVEMBER 10, 2015**

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**1.0 TIME LIMITS:**

- 1.1 The approval of Tentative Parcel Map (TPM) 73595 shall expire 24 months from the date of the map approval by the Planning Commission.
- 1.2 Failure to cause a timely filing in accordance with CMC 16.08.160 (Extensions of time for tentative map) with the city within 24 months after approval shall terminate all proceedings, and any subdivision of the same land shall require the filing and processing of a new tentative map. The subdivider shall be responsible for keeping a record as to when a map will expire.

**2.0 GENERAL REQUIREMENTS:**

- 2.1 The approval is for the subdivision and construction of four detached single family dwelling units (one dwelling unit on each lot) and associated improvements on a 39,730 sq. ft or .91-acre property, as shown in the submitted plans and associated representations of record on file with the City.
- 2.2 Failure to comply with any conditions of approval noted herein or any future violation of conditions may result in revocation of project approval by the City.
- 2.3 Under the provisions of the California Environmental Quality Act (CEQA), the project qualified as a Class 32 exemption under State CEQA Guidelines Section 15332, which consists of projects characterized as in-fill development meeting the conditions described. The project entails the subdivision of four lots and the development of four detached single family dwelling units on .91 acres property. The proposed project has been determined to be categorically exempt in accordance to 15332 of the CEQA Guidelines. Notice of Exemption shall be filed within
- 2.4 This approval will not be effective until the applicant/property owner has filed with the Planning Division an affidavit of acceptance stating that he/she is aware of and agrees to all of the conditions of the approval.
- 2.5 The project or uses may proceed only in accordance with the approved plans on file with the Community Development Department, all representations of record

made by the applicant(s), the conditions contained herein, the Covina Municipal Code, and the Covina Design Guidelines.

- 2.6** Approval of this request shall not waive compliance with all other sections of the Covina Municipal Code, the Covina Design Guidelines, and all other applicable plans and non-City laws and regulations that are in effect at the time of building permit issuance.
- 2.7** Applicant shall, at its own expense and with counsel selected by City, fully defend, indemnify and hold harmless City, its officials, officers, employees, and agents ("Indemnified Parties"), from and against any and all claims, suits, causes of action, fines, penalties, proceedings, damages, injuries or losses of any name, kind or description, specifically including attorneys' fees, ("Liabilities"), arising in any way out of City's approval of the Applications or the Project. Applicant's indemnification obligation shall include, but not be limited to, actions to attack, set aside, void, or annul the City's approval of the Applications, and Liabilities premised on, related to or invoking CEQA, including those arising out of City's decisions related to the Project's CEQA documents. City shall promptly notify Applicant of any such claim, action or proceeding, and shall cooperate fully in the defense of such claim, action, or proceeding. Applicant's indemnification obligations shall not be limited to the amount of insurance coverage that may be available to Applicant, and shall not otherwise be restricted or confined by the presence or absence of any policy of insurance held by City or Applicant.
- 2.8** Pursuant to California Government §66474.9, the subdivider also agrees to defend, indemnify and hold harmless, the Indemnified Parties from any claim, action or proceeding against the Indemnified Parties to attack, set aside, void or annul any map approval of the City, whether by its City Council, Planning Commission or other authorized board or officer of this subdivision, which action is brought within the time period provided for in Government Code §66499.37. The City shall promptly notify the subdivider and applicant of any such claim, action or proceeding, and the City shall cooperate fully in the defense.
- 2.9** Applicant's obligations, as set forth above, shall survive the completion or abandonment of the Project or the issuance of a certificate of occupancy with respect thereto. However, Applicant's obligations after the issuance of a certificate of compliance for the Project shall be limited to indemnifying and defending the Indemnified Parties from legal challenges filed to set aside any part of the Project or its related components. The provisions of this condition are intended by the Parties to be interpreted and construed to provide the fullest protection possible under the law to the City. Further, all obligations and Liabilities under this Agreement are to be paid by the Applicant as they are incurred. Applicant's obligations to indemnify under this Agreement shall include the obligation of the Applicant to defend City with legal counsel of City's own choosing. In the event City elects not to select such counsel, the designation of

such counsel shall be made by the Applicant but shall be subject to prior approval by City.

- 2.10** If any provision of this approval is held or declared to be invalid, then the entire approval shall be void and the privileges granted hereunder shall lapse.
- 2.11** The permittee shall reimburse the City for all fees and costs for special review of this application by both (i) the City's retained planning, engineering, and related consultants and (ii) the Covina City Attorney's Office. Such special review includes, but is not limited to, review of the Project's compliance with Covina parking regulations. City shall invoice the permittee for said fees and costs and permittee shall pay the invoiced amount not later than sixty (60) calendar days following permittee's receipt of the invoice.
- 2.12** The costs and expenses of any code enforcement activities, including, but not limited to, attorneys' fees, caused by applicant's violation of any condition or mitigation measure imposed by this application or any provision of the Covina Municipal Code must be paid by the applicant.
- 2.13** All grading and all exterior (during construction and following project completion) drainage on the property shall conform to all applicable requirements of the Public Works and Community Development Departments.
- 2.14** A Phasing Plan must be submitted illustrating the number and sequence of each development phase (if phasing is proposed).
- 2.15** The provisions of application Minor Variance (MV) 15-003, which addressed certain minor shortfalls in lot area and lot widths, shall remain applicable to the overall project and may be formally approved by Planning staff following approval of the SPR and TPM applications by the Planning Commission and City Council.
- 2.16** The TPM, SPR and MV zoning approvals shall run with the project site in perpetuity (unless revoked under appropriate procedures by the City for failure to comply with any conditions of approval) and shall supersede any prior similar site-related entitlements.

**3.0 PRIOR TO THE FILING OF THE FINAL MAP AND/OR ISSUANCE OF A BUILDING PERMIT, WHICHEVER COME FIRST:**

**3.0 The following are requirements for tentative maps:**

- A. A signed statement by all owners in fee simple estate, or authorized agents thereof, consenting to such filing of the subdivision of the parcel(s) involved.
- B. A legal description of the land within the proposed subdivision.

- C. The disposition to be made of all existing structures, tree rows, and other significant vegetation and natural features, wells, tanks, irrigation facilities and public utility lines.
  - D. A statement as to the intention of the subdivider in regard to slope planting and erosion control.
  - E. Source, name of supplier, quality and estimate of available quantity of water, or, if to be served by an established mutual water company or an established public utility, a letter shall be furnished to indicate that satisfactory arrangements have been made or can be made for water supply.
  - F. A description of the proposed method and plan of sewage disposal.
  - G. A certification by the applicant supported by a preliminary title report, that the design of the subdivision and the type of improvements will not conflict with easements acquired by the public at large for access through, or use of, land within the proposed subdivision.
  - H. List of all proposed deviations to city standards for map, street and storm drainage design, together with justification for each.
  - I. A preliminary drainage report describing the proposed method and plan of storm water disposal prepared by a state registered civil engineer.
  - J. A soils report, prepared by a civil or geotechnical engineer registered in the state of California and based upon adequate test borings to adequate depths, will be required for use in evaluating and reporting the impact that the subdivision may have upon the environment.
- 3.1** The project is subject to a total Development Impact Fee of \$34,782.00 (refer to calculation attachment). This fee must be paid prior to the Final occupancy of the first dwelling unit. (Credit for the one originally established dwelling unit on the site has been provided, thus resulting in the total Impact Fee being based on 3 new dwelling units created.)
- 3.2** The proposed subdivision of 5 or fewer parcels is exempt from the city's parkland dedication requirements. Development Impact fees and annexation into the city's Communities Facilities District is applicable.
- 3.3** To eliminate the negative fiscal impact on certain municipal services associated with this proposal, the Project will be required to annex to Community Facilities District 2007-01 (the "CFD") for the purpose of financing the Project's proportionate share of the cost for police response, fire and emergency medical response, and park services. The applicant shall petition the City to annex to the CFD under the California Mello-Roos Community Facilities Act (Government Code, Section 53311 et seq.) (the "Act"). The applicant agrees to cooperate and not to oppose annexation to the CFD for purposes set forth above.

Alternatively, at the applicant's option, in lieu of annexation to the CFD as set forth above, applicant may make a lump sum payment to the City ("In Lieu Payment") representing the Project's proportionate share of the cost for police

- L. All easements existing at the time of the Tract Map approval must be accounted for on the approved Tentative Map. This includes the location, owner, purpose, and recording reference for all existing easements. If an easement is blanket in nature or indeterminate in nature, a statement to that effect must be shown on the Tentative Map in lieu of its location.
- M. Prior to issuance of any permits, all utilities shall be placed underground in accordance with Covina Municipal Code Section 16.30.020, including facilities and wires for the supply and distribution of electrical energy, telephone, cable television, etc., to the satisfaction of the Community Development Director and City Engineer
- N. The applicant shall obtain a public works permit for all work in or adjacent to the public right-of-way (ROW). All work within the public ROW shall be in accordance with applicable standards of the City of Covina, i.e. Standard Specifications for Public Works Construction (green Book), and the Work Area Traffic Control Handbook (WATCH), and further that construction equipment ingress and egress be controlled by a plan approved by the City Engineer.
- O. The applicant shall be responsible for any repairs within the limits of the development, including streets and paving, curbs and gutters, sidewalks, and street lights, as determined by the City Engineer.
- P. Building foundation inspections shall not be performed until a rough grading certification, survey stakes in place, and a final soils report have been filed with the City and approved. All drainage facilities must be operable.
- Q. The applicant shall provide drainage improvements to carry runoff of storm water in the area proposed to be developed, and for contributing drainage from adjoining properties to the satisfaction of the City Engineer. The proposed drainage improvements shall be based on a detailed hydrology study conforming to the current Los Angeles County Methodology. The proposed storm drain improvements shall be privately maintained by each property owner.
- R. The applicant shall dedicate 5-feet of street right-of-way on Ruddock Street to the satisfaction of the City Engineer.
- S. The applicant shall submit street improvement plans for the widening of Ruddock Street including but not limited to AC pavement, curb and gutter, sidewalk, and drive approaches to the satisfaction of the City Engineer.
- T. The applicant shall submit street improvements plans for Badillo Street including but not limited to drive approaches to the satisfaction of the City Engineer.

**3.5 The following are requirements from the Los Angeles County Fire Department – Land Development Unit :**

- A. Final Map Requirements: The Final Map shall be submitted to our office for review and approval prior recordation. All existing streets shall be clearly depicted on the Final Map.

- L. All easements existing at the time of the Tract Map approval must be accounted for on the approved Tentative Map. This includes the location, owner, purpose, and recording reference for all existing easements. If an easement is blanket in nature or indeterminate in nature, a statement to that effect must be shown on the Tentative Map in lieu of its location.
- M. Prior to issuance of any permits, all utilities shall be placed underground in accordance with Covina Municipal Code Section 16.30.020, including facilities and wires for the supply and distribution of electrical energy, telephone, cable television, etc., to the satisfaction of the Community Development Director and City Engineer
- N. The applicant shall obtain a public works permit for all work in or adjacent to the public right-of-way (ROW). All work within the public ROW shall be in accordance with applicable standards of the City of Covina, i.e. Standard Specifications for Public Works Construction (green Book), and the Work Area Traffic Control Handbook (WATCH), and further that construction equipment ingress and egress be controlled by a plan approved by the City Engineer.
- O. The applicant shall be responsible for any repairs within the limits of the development, including streets and paving, curbs and gutters, sidewalks, and street lights, as determined by the City Engineer.
- P. Building foundation inspections shall not be performed until a rough grading certification, survey stakes in place, and a final soils report have been filed with the City and approved. All drainage facilities must be operable.
- Q. The applicant shall provide drainage improvements to carry runoff of storm water in the area proposed to be developed, and for contributing drainage from adjoining properties to the satisfaction of the City Engineer. The proposed drainage improvements shall be based on a detailed hydrology study conforming to the current Los Angeles County Methodology. The proposed storm drain improvements shall be privately maintained by each property owner.
- R. The applicant shall dedicate an additional 5-feet of street right-of-way on Ruddock Street to the satisfaction of the City Engineer.
- S. The applicant shall submit street improvement plans for the widening of Ruddock Street including but not limited to AC pavement, curb and gutter, sidewalk, and drive approaches to the satisfaction of the City Engineer.
- T. The applicant shall submit street improvements plans for Badillo Street including but not limited to drive approaches to the satisfaction of the City Engineer.

**3.5 The following are requirements from the Los Angeles County Fire Department – Land Development Unit :**

- A. Final Map Requirements: The Final Map shall be submitted to our office for review and approval prior recordation. All existing streets shall be clearly depicted on the Final Map.

- B. Verification for compliance will be performed during the architectural plan review prior to building permit issuance.
- C. Fire Department apparatus shall be extended to within 150 feet of all portions of the exterior walls of any future buildings or structures.
- D. Access as noted on the Tentative and Exhibit Maps shall comply with Title 21 (County of Los Angeles Subdivision Code) and Section 503 of the Title 32 (County of Los Angeles Fire Code), which requires all weather access.
- E. Provide a minimum unobstructed width of 20 feet, exclusive of shoulders, and an unobstructed vertical clearance "clear to sky" Fire Department vehicular access to within 150 of all portions of the exterior walls of the first story of the building, as measured by an approved route around the exterior of the building. Fire Code 503.1.1 & 503.2.1.
  - i. Badillo Street & Ruddock Street serves as the Fire Apparatus Access Roads for the proposed development.
- F. All hydrants shall measure 6" x 4" x 2-1/2" brass or bronze, conforming to current AWWA standard C503 or approved equal.
- G. The required fire flow for public fire hydrants on this residential development is **1750 gallons per minute at 20 psi for duration of 2 hours**, over and above maximum daily demand.
  - i. The fire flow for the public fire hydrant on Badillo Street (08/28/2015) and on Ruddock Street (09/16/15) is adequate per the Golden State Water Company.
- H. All proposed structures shall be equipped with fire sprinkler systems that are designed and maintained in accordance with NFPA 13D.
- I. This project will require an additional review by the Fire Prevention Engineering Unit during the Building Plan Check phase.

**4.0 PRIOR TO THE ISSUANCE OF CERTIFICATES OF OCCUPANCY/FINAL BUILDING PERMITS:**

- 4.1** All building and site improvements along with landscaping and irrigation must be installed in accordance with plans and information on file with the Planning, Building, and Engineering Divisions, and the irrigation systems must be fully operational. Furthermore, all on-site landscaped areas must be maintained free of weeds and debris.
- 4.2** All building, structural, parking, lighting, and landscape improvements shall be constructed, installed, or handled in a good workmanlike manner, consistent with the standard best practices of the subject trades and in a manner acceptable to the City.
- 4.3** All exterior lighting fixtures must be installed in accordance with plans and analyses on file with the Planning and Building Divisions, and the lighting fixtures must be fully operational.

- 4.4 The project site must be clean and free of trash and construction debris, and all construction equipment must be removed from the site.
- 4.5 Any broken, damaged, or blighted features of the property or any building(s) thereon shall be repaired or removed.
- 4.6 The applicant must comply with all of the requirements listed above as well as requirements determined during the Building Plan Check process.
- 4.7 Final occupancy shall not be granted until such time as the applicant has obtained approval from the City Planner who has inspected the premises and the use for compliance with all terms and conditions of this of approval.

- END OF CONDITIONS -



# CITY OF COVINA

## AGENDA REPORT

ITEM NO. CC 12

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**MEETING DATE:** December 1, 2015

**TITLE:** Implementation of Collection of Utility User Tax on Prepaid Wireless Service

**PRESENTED BY:** Angel Carrillo, Assistant to the City Manager

**RECOMMENDATION:** Adopt Resolution No. 15-7429 Authorizing the City Manager to execute an agreement with the State Board of Equalization for implementation of the Local Prepaid Mobile Telephony Service Collection Act and Adopt Resolution No. 15-7434 Authorizing the Examination of Prepaid Mobile Telephony Services Surcharge and Local Charge Records.

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### **BACKGROUND:**

The City has had a Utility Users Tax (UUT) in place since 1992. Over the years, there have been changes to the ordinance including rate increases, rate decreases, extensions, amendments and a sunset. In 1999, in accordance with Proposition 218, voters approved extending the tax for ten years. In 2004, Ordinance No. 04-1899 was adopted and amended Chapter 3.14 of the Covina Municipal Code (CMC) to clear up ambiguous language and clarified the existing regulations with respect to imposition and collection of the UUT. In 2008, voters again approved an extension of the UUT setting a new sunset date of March 2019.

Chapter 3.14 of the CMC details the various utilities to be taxed under the UUT, including a “Telephone users tax”, which explicitly includes mobile telecommunications services. Currently there is no method for collection of the City’s UUT on prepaid wireless service. Recognizing this challenge, in September 2014, AB1717 was signed into State law creating a mechanism for cities to collect UUT on prepaid mobile telephone services through the Board of Equalization (BOE). The Prepaid Mobile Telephony Services Surcharge Collection Act allows for prepaid mobile telephony services, which are frequently sold by a third-party retailer that is not the provider of mobile telephony services, to collect UUT at the time of the retail transaction. The State law incorporated a tiered rate structure for collection of UUT. The City’s current rate is 6%, but pursuant to AB 1717, the City would collect 5.5% on prepaid wireless service.

### **DISCUSSION:**

The BOE advised the City of its ability to collect the UUT. If the City wishes to pursue this, the BOE requires the City enter into a Mobile Telephony Services (MTS) Surcharge agreement with the BOE and a certification as required by the State BOE. The agreement between the City and the BOE would allow for the collection of local charges by the State. The BOE also requires the City to certify that there is an ordinance in place authorizing the collection of UUT on prepaid mobile services and defines the local jurisdiction’s responsibilities which include the defending

of any claims regarding the validity of the City ordinance, responding to specified consumer claims, refunding taxes if required, and enforcing and auditing the collection of taxes. Furthermore, the agreement also requires the City to designate a representative to examine the local charge records and surcharges on prepaid mobile telephone services.

AB1717 has a sunset provision of 2020; therefore if the City chooses to enter into an agreement with the BOE by December 1, collection of UUT would begin on April 1, 2016 and conclude on January 1, 2020. However, the City would only be able to collect the tax as long as the City's ordinance is in place. The current UUT has a sunset of March 2019. Alternatives available to the City Council include:

- 1) Adopt Resolution No. 15-7429 authorizing the City Manager to execute an agreement with the State Board of Equalization for implementation of the Local Prepaid Mobile Telephony Service Collection Act and adopt Resolution No. 15-7434 authorizing the examination of Prepaid Mobile Telephony Services Surcharge and Local Charge Records.
- 2) Take no action and continue to collect UUT on telephone users with the exception of those using prepaid mobile telephony service sold at local retailers.

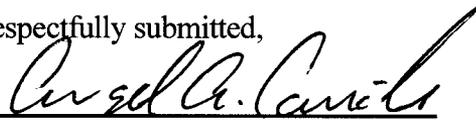
**FISCAL IMPACT:**

AB1717 sets a tiered rate for collection on MTS UUT. The City's rate is currently set at 6%, but would be reduced to 5.5% under the MTS agreement with BOE. It is not known at this time the amount that will be collected.

**CEQA (CALIFORNIA ENVIRONMENTAL QUALITY ACT):**

Not applicable.

Respectfully submitted,

  
Angel Carrillo  
 Assistant to the City Manager

<b>City Manager</b>	<b>City Attorney</b>	<b>Finance</b>	<b>City Clerk</b>
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**ATTACHMENTS:**

- Attachment A: Local Charges Agreement with BOE
- Attachment B: Resolution No. 15-7429 Authorizing the City Manager to Execute Documents Required by the BOE to Collect the City's UUT on Prepaid Wireless Service
- Attachment C: Resolution No. 15-7434 Authorizing the Examination of Prepaid Mobile Telephony Services Surcharge and Local Charge Records
- Attachment D: Certification of UUT rates and ordinance

**AGREEMENT FOR STATE COLLECTION AND ADMINISTRATION OF  
LOCAL CHARGES**

This Agreement is for the purpose of implementing the Local Prepaid Mobile Telephony Services Collection Act (Part 21.1, commencing with Section 42100) of Division 2 of the Revenue and Taxation Code), hereinafter referred to as the Local Charge Act. The City of Covina insert name of local jurisdiction and the State Board of Equalization, hereinafter called the Board, do agree as follows:

**ARTICLE I  
DEFINITIONS**

Unless the context requires otherwise, wherever the following terms appear in this Agreement they shall be interpreted to mean the following:

**A. “Administrative Expenses”** means all expenses incurred by the Board in the administration and collection of the local charges, including preparation and wind down costs which are reimbursable to the Board from the revenues collected by the Board on behalf of the local jurisdiction.

**B. “Contingent Fee”** includes, but is not limited to, a fee that is based on a percentage of the tax liability reported on a return, a fee that is based on a percentage of the taxes owed, or a fee that depends on the specific tax result attained.

**C. “Direct Seller”** means a prepaid Mobile Telephony Service (MTS) provider or service supplier, as defined in section 41007, that makes a sale of prepaid mobile telephony services directly to a prepaid consumer for any purpose other than resale in the regular course of business. A direct seller includes, but is not limited to, a telephone corporation, a person that provides an interconnected Voice over Internet Protocol (VoIP) service, and a retailer as described in section 42004(b)(1).

**D. “Local Charges”** means a utility user tax imposed on the consumption of prepaid mobile telephony services, as described in section 42102, and charges for access to communication services or to local “911” emergency telephone systems imposed by a local jurisdiction, as described in section 42102.5.

**E. “Local Jurisdiction” or “local agency”** means a city, county, or city and county, which includes a charter city, county, or city and county of this State, which has adopted an ordinance imposing a local charge of the kind described in Part 21.1 of Division 2 of the Revenue and Taxation Code and has entered into a contract with the Board to perform all functions incident to the collection of the local charges.

**F. “Ordinance”** means an ordinance of a local jurisdiction imposing a local charge, including any local enactment relating to the filing of a refund or a claim arising under the ordinance, attached hereto, as amended from time to time.

**G. “Quarterly local charges”** means the total amount of local charges transmitted by the Board to a local jurisdiction for a calendar quarter, as set forth in section 42106(a)(1).

**H. “Refund”** means the amount of local charges deducted by the Board from a local jurisdiction’s quarterly local charges in order to pay that jurisdiction’s share of a local charge refund due to one taxpayer.

**I. “Section”** – all section references are to the Revenue and Taxation Code.

**J. “Seller”** means a person that sells prepaid mobile telephony service to a person in a retail transaction.

## **ARTICLE II BOARD ADMINISTRATION AND COLLECTION OF LOCAL CHARGES**

**A. Administration.** The Board and the local jurisdiction agree that the Board shall perform functions incident to the collection of the local charges from sellers that are not direct sellers.

**B. Collection.** The Board shall collect the local charges in the same manner as it collects the prepaid MTS Surcharge in the Prepaid Mobile Telephony Services Surcharge Collection Act, subject to specified limitations in the Local Charge Act for which the local jurisdiction is responsible, as set forth in Article III of this Agreement.

**C. Audits.** The Board’s audit duties shall be limited to verification that the seller that is not a direct seller complied with the Local Charge Act.

**D. Other applicable laws.** The Board and the local jurisdiction agree that all provisions of law applicable to the administration and operation of the Local Charge Act, Prepaid Mobile Telephony Services Surcharge Collection Act, and the Fee Collection Procedures Law (FCPL) shall be applicable to the collection of local charges. References in the FCPL to feepayer include a person required to pay the local charge, including the seller. All future amendments to applicable laws are automatically incorporated into this Agreement.

**E. Deposit of Local Charges.** All local charges collected by the Board shall be deposited in the Local Charges for Prepaid Mobile Telephony Services Fund in the State Treasury to be held in trust for the local taxing jurisdiction. Local charges shall consist of all taxes, charges, interest, penalties, and other amounts collected and paid to the Board, less payments for refunds and reimbursement to the Board for expenses incurred in the administration and collection of the local charges, including preparation and wind-down costs.

**F. Allocation of Expenses.** The Board shall allocate the total combined annual expenses incurred for administration and collection pursuant to the Prepaid Mobile Telephony Services Surcharge Collection Act and the Local Charge Act on a pro rata basis according to revenues collected for: (1) the emergency telephone users surcharge portion of the prepaid MTS surcharge, (2) the Public Utilities Commission surcharges

portion of the prepaid MTS surcharge, and (3) local charges. The Board shall charge a local jurisdiction its pro rata share of the Board's cost of collection and administration.

**G. Transmittal of money.** All local charges collected by the Board shall be transmitted to the local jurisdiction once in each calendar quarter. Transmittals may be made by mail or by deposit to the account of the local jurisdiction in a bank designated by that jurisdiction. The Board shall furnish a statement quarterly indicating the amounts paid and withheld for expenses of the Board.

**H. Rules.** The Board shall prescribe and adopt such rules and regulations as in its judgment are necessary or desirable for the administration and collection of local charges and the distribution of the local charges collected.

**I. Security.** The Board agrees that any security which it hereafter requires to be furnished under the FCPL section 55022 will be upon such terms that it also will be available for the payment of the claims of the local jurisdiction for local taxes owing to it as its interest appears. The Board shall not be required to change the terms of any security now held by it, and the local jurisdiction shall not participate in any security now held by the Board.

**J. Records of the Board.**

1. Information obtained by the local jurisdiction from the examination of the Board's records shall be used by the local jurisdiction only for purposes related to the collection of the prepaid mobile telephony services surcharge and local charges by the Board pursuant to this Agreement.

2. When requested by resolution of the legislative body of a local jurisdiction, the Board shall permit any duly authorized officer or employee or other person designated by that resolution to examine any information for its own jurisdiction that is reasonably available to the Board regarding the proper collection and remittance of a local charge of the local jurisdiction by a seller, including a direct seller, subject to the confidentiality requirements of sections 7284.6, 7284.7 and 19542. (sections 42110(b), 42103(e).).

3. The resolution of the local jurisdiction shall certify that any person designated by the resolution, other than an officer and an employee, meets all of the following conditions:

- a. Has an existing contract with the local jurisdiction that authorizes the person to examine the prepaid MTS surcharge and local charge records.
- b. Is required by that contract with the local jurisdiction to disclose information contained in or derived from, those records only to an officer or employee of the local jurisdiction authorized by the resolution to examine the information.
- c. Is prohibited by that contract from performing consulting services for a seller during the term of that contract.
- d. Is prohibited by that contract from retaining information contained in, or derived from, those prepaid MTS surcharge and local charge records, after that contract has expired.

4. Any third party contract between the local jurisdiction and an entity or person authorized by the local jurisdiction to request information from the Board shall be subject to the following limitations:

a. Any third party shall, to the same extent as the Board, be subject to Section 55381, relating to unlawful disclosures.

b. A third party contract shall not provide, in whole or in part, in any manner a contingent fee arrangement as payment for services rendered.

5. Information obtained by examination of Board records shall be used only for purposes related to the collection of the prepaid MTS surcharge and local charges by the board pursuant to the contract, or for purposes related to other governmental functions of the local jurisdiction set forth in the resolution.

6. If the Board believes that any information obtained from the Board's records related to the collection of the prepaid MTS surcharge and local charges has been disclosed to any person not authorized or designated by the resolution of the local jurisdiction, or has been used for purposes not permitted by section 42110(b), the board may impose conditions on access to its local charge records that the board considers reasonable, in order to protect the confidentiality of those records. (section 42110 (c).)

7. The costs incurred by the Board in complying with a request for information shall be deducted by the Board from those revenues collected by the Board on behalf of the local jurisdiction making the request, as authorized by section 42110(b)(1).

**ARTICLE III  
LOCAL JURISDICTION  
ADMINISTRATION AND RESPONSIBILITIES**

**A. The local jurisdictions shall be solely responsible for all of the following:**

1. Defending any claim regarding the validity of the ordinance in its application to prepaid mobile telephony service. The claim shall be processed in accordance with the provisions of the local ordinance that allows the claim to be filed.

2. Interpreting any provision of the ordinance, except to the extent specifically superseded by section 42105 of the Local Charge Act. The claim shall be processed in accordance with the provisions of the local enactment that allows the claim to be filed.

3. Responding to specified consumer claims for refund involving: (1) rebutting the presumed location of the retail transaction; (2) a consumer claim of exemption from the local charge under the ordinance; or (3) any action or claim challenging the validity of a local tax ordinance, in whole or part. The claim shall be processed in accordance with the provisions of the local enactment that allows the claim to be filed.

4. Refunding the taxes in the event a local jurisdiction or local government is ordered to refund the tax under the local ordinance.

5. Reallocating local charges as a result of correcting errors relating to the location of the point of sale of a seller or the known address of a consumer, for up to two past quarters from the date of knowledge.

6. Collecting local charges on prepaid mobile telephony service and access to communication services or access to local 911 emergency telephone systems imposed on direct sellers.

7. Enforcement, including audits, of the collection and remittance of local charges by direct sellers pursuant to the ordinance.

8. The local jurisdiction shall be the sole necessary party defendant on whose behalf the local charge is collected in any action seeking to enjoin collection of a local charge by a seller, in any action seeking declaratory relief concerning a local charge, in any action seeking a refund of a local charge, or in any action seeking to otherwise invalidate a local charge. There shall be no recovery from the State for the imposition of any unconstitutional or otherwise invalid local charge that is collected under the Local Act.

9. Entering into an agreement with the Board to perform the functions incident to the collection of the local charges imposed on sellers that are not direct sellers.

10. Submitting an executed Certification to the Board, certifying that:

(a) the local jurisdiction's ordinance applies the local charge to prepaid mobile telephony services;

(b) the amount of the rate charged for access to local 911 emergency telephone systems or access to communications services complies with the requirements of section 42102.5; and/or applies the tiered rate for the utility user tax, as identified in section 42102.

(c) The local jurisdiction shall further certify that it agrees to indemnify and to hold harmless the Board, its officers, agents, and employees for any and all liability for damages that may result from the Board's collection pursuant to this Agreement.

11. Submitting signed documents to the Board to include agreement(s), certification, copy of ordinance(s), and resolution(s).

12. Providing payment to the Board of the local jurisdiction's pro rata share of the Board's cost of collection and administration as established pursuant to subdivision (e) of section 42020.

**ARTICLE IV  
LOCAL CHARGES**

**A. Local Charges – Timeliness – This part shall remain in effect until proposed California Code of Regulations, title 18, section 2460 is adopted by the Board and approved by the Office of Administrative Law.**

**1. Ordinances in effect as of September 1, 2015.**

On or after January 1, 2016, a local charge imposed by a local jurisdiction on prepaid mobile telephony services shall be collected from the prepaid consumer by a seller at the same time and in the same manner as the prepaid MTS surcharge is collected under Part 21 (commencing with section 42001) provided that, on or before September 1, 2015, the local jurisdiction enters into a contract with the Board pursuant to section 42101.5. Thereafter, all subsequently enacted local charges, increases to local charges, or other changes thereto, shall become operative pursuant to paragraphs (2), (3), and (4).

2. New charges. When a local jurisdiction adopts a new local charge after September 1, 2015, the local jurisdiction shall enter into a contract with the Board, pursuant to section 42101.5, on or before December 1<sup>st</sup>, with collection of the local charge to commence April 1<sup>st</sup> of the next calendar year.

3. **Increases in local charges.** When a local jurisdiction increases an existing local charge after September 1, 2015, the local jurisdiction shall provide the Board written notice of the increase, on or before December 1<sup>st</sup>, with collection of the local charge to commence April 1<sup>st</sup> of the next calendar year.

4. **Inaccurate rate posted on the Board’s website.** When a local jurisdiction notifies the Board in writing that the rate posted on the Board’s Internet Web site (posted rate) for a local charge imposed by that local jurisdiction is inaccurate, including scenarios where the local charge was reduced or eliminated, the recalculated rate applicable to the local jurisdiction shall become operative on the first day of the calendar quarter commencing more than 60 days from the date the Board receives the local jurisdiction’s written notification that the posted rate is inaccurate.

**A. Local Charges – Timeliness – This part shall take effect and supersede the above “Local Charges – Timeliness section when California Code of Regulations, title 18, section 2460 is adopted by the Board and approved by the Office of Administrative Law.**

**1. Ordinances in effect as of September 1, 2015.** On or after January 1, 2016, a local charge imposed by a local jurisdiction on prepaid mobile telephony services shall be collected from the prepaid consumer by a seller at the same time and in the same manner as the prepaid MTS surcharge is collected under Part 21 (commencing with section 42001) provided that, on or before September 1, 2015, the local jurisdiction enters into a contract with the Board pursuant to section 42101.5.

In the event a local jurisdiction does not enter into a contract with the Board by September 1, 2015, the local jurisdiction may enter into a contract with the Board, pursuant to section 42101.5, on or before December 1<sup>st</sup>, with collection of the local charge to commence April 1<sup>st</sup> of the next calendar year. Thereafter, all subsequently

enacted local charges, increases to local charges, or other changes thereto, shall become operative pursuant to paragraphs (2), (3), (4) and (5) of this subdivision.

**2. New charges.** When a local jurisdiction adopts a new local charge after September 1, 2015, the local jurisdiction shall enter into a contract with the Board, pursuant to section 42101.5, on or before December 1<sup>st</sup>, with collection of the local charge to commence April 1<sup>st</sup> of the next calendar year.

**3. Increases in local charges.** When a local jurisdiction increases an existing local charge after September 1, 2015, the local jurisdiction shall provide the Board written notice of the increase, on or before December 1<sup>st</sup>, with collection of the local charge to commence April 1<sup>st</sup> of the next calendar year.

**4. Advance written notification.** When a local charge is about to expire or decrease in rate, the local jurisdiction imposing the local charge shall notify the Board in writing of the upcoming change, not less than 110 days prior to the date the local charge is scheduled to expire or decrease. The change shall become operative on the first day of the calendar quarter commencing after the specified date of expiration or decrease in rate.

If advance written notice is provided less than 110 days prior to the specified date of expiration or decrease in rate, the change shall become operative on the first day of the calendar quarter commencing more than 60 days after the specified date of expiration or decrease.

**5. Inaccurate Rate Posted on the Board's Web site.** When a local jurisdiction notifies the Board in writing that the rate posted on the Board's Internet Web site (posted rate) for a local charge imposed by that local jurisdiction is inaccurate, including scenarios where the local charge was reduced or eliminated and the local jurisdiction failed to provide advance written notice pursuant to paragraph 4 of this subdivision, the recalculated rate applicable to the local jurisdiction shall become operative on the first day of the calendar quarter commencing more than 60 days from the date the Board receives the local jurisdiction's written notification that the posted rate is inaccurate. The local jurisdiction shall promptly notify the Board in writing of any such discrepancies with the posted rate that are known or discovered by the local jurisdiction.

## **ARTICLE V COMPENSATION**

The local jurisdiction agrees to pay the Board its pro rata share of the Board's cost of collection and administration of the local charges, as established pursuant to section 42020, subdivision (e). Such amounts shall be deducted from the local charges collected by the Board for the local jurisdiction.

## **ARTICLE VI MISCELLANEOUS PROVISIONS**

**A. Communications.** Communications and notices may be sent by first-class United States Mail. A notification is complete when deposited in the mail. Communications and notices to be sent to the Board shall be addressed to:

State Board of Equalization  
P.O. Box 942879 MIC: 27  
Sacramento, California 94279-0001

Attention: Supervisor,  
Local Revenue Allocation Unit

Communications and notices to be sent to the local jurisdiction shall be addressed to:

Director of Finance  
City of Covina  
125 East College Street  
Covina, CA. 91723

**B. Term.** The date of this Agreement is the date on which it is approved by the Department of General Services. The Agreement shall take effect on the first day of the calendar quarter next succeeding the date of such approval, but in no case before the operative date of the local jurisdiction's ordinance, nor on a day other than the first day of a calendar quarter. This Agreement shall be renewed automatically from year to year until January 1, 2020, when the Local Charge Act is repealed, unless a statute enacted prior to that date extends that date. In such event, this Agreement will continue to renew automatically from year to year to the date authorized by statute.

**STATE BOARD OF EQUALIZATION**

By \_\_\_\_\_  
Administrator,  
Return Analysis and Allocation Section

LOCAL  
JURISDICTION \_\_\_\_\_ City of Covina

By \_\_\_\_\_  
*(Signature on this line)*

\_\_\_\_\_  
Andrea M. Miller  
*(Type name here)*

\_\_\_\_\_  
City Manager  
*(Type title here)*

**RESOLUTION NO. 15-7429**

**A RESOLUTION OF THE CITY OF COVINA AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE STATE BOARD OF EQUALIZATION FOR IMPLEMENTATION OF THE LOCAL PREPAID MOBILE TELEPHONY SERVICES COLLECTION ACT**

**WHEREAS**, on December 1, 2015, the City Manager certified that Ordinance No. 08-1956 applies its local charge(s) (access to 911 or communication services and/or utility user tax) to prepaid mobile telephony services; and

**WHEREAS**, the Local Prepaid Mobile Telephony Services Collection Act, mandates the Board of Equalization (Board) to administer and collect the local charges for all applicable local jurisdictions (Rev. & Tax Code section 42103); and

**WHEREAS**, the Board will perform all functions incident to administration and collection of the local charges for the City of Covina; and

**WHEREAS**, the Board requires that the City enter into an “Agreement for State Collection and Administration of Local Charges” prior to implementation of the Local Prepaid Mobile Telephony Services Collection Act, and

**WHEREAS**, the Board requires that the City authorize the agreement.

**NOW, THEREFORE BE IT RESOLVED** by the City Council of the City of Covina that the attached “Agreement for State Collection and Administration of Local Charges” is hereby approved and the City Manager is hereby authorized to execute the agreement.

**PASSED, APPROVED AND ADOPTED** this 1st day of December, 2015.

\_\_\_\_\_  
John C. King, Mayor

ATTEST:

\_\_\_\_\_  
Sharon F. Clark, Chief Deputy City Clerk

APPROVED AS TO FORM;

\_\_\_\_\_  
Candace K. Lee, City Attorney

**CERTIFICATION**

I, Sharon F. Clark, Chief Deputy City Clerk of the City of Covina, hereby CERTIFY that Resolution No. 15-7429 was duly adopted by the City Council of the City of Covina at a REGULAR meeting held on the 1st day of December, 2015, by the following vote:

AYES:           COUNCIL MEMBERS:  
NOES:           COUNCIL MEMBERS:  
ABSENT:        COUNCIL MEMBERS:  
ABSTAIN:       COUNCIL MEMBERS:

Dated:

Clerk

\_\_\_\_\_  
SHARON F. CLARK, Chief Deputy City

**RESOLUTION NO.** 15-7434

**A Resolution Authorizing the Examination of Prepaid Mobile Telephony Services Surcharge and Local Charge Records**

**WHEREAS**, pursuant to Ordinance No., 08-1956 of the City of Covina and the Local Prepaid Mobile Telephony Services Collection Act, the City of Covina, hereinafter called Local Jurisdiction, entered into a contract with the State Board of Equalization, hereafter referred to as the Board, to perform all functions incident to the administration and collection of the prepaid mobile telephony services surcharge and local charges (Rev. & Tax. Code, § 42101.5); and

**WHEREAS**, the Local Jurisdiction deems it desirable and necessary for authorized representatives of the Local Jurisdiction to examine confidential prepaid mobile telephony services surcharge and local charge records pertaining to the prepaid mobile telephony services surcharge and local charges collected by the Board for the Local Jurisdiction pursuant to that contract;

**WHEREAS**, the Board will make available to the Local Jurisdiction any information that is reasonably available to the Board regarding the proper collection and remittance of a local charge of the Local Jurisdiction by a seller, including a direct seller, subject to the confidentiality requirements of Sections 7284.6, 7284.7 and 19542 of the Revenue and Taxation Code; and

**WHEREAS**, Sections 42110 and 42103 of the Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of Board of Equalization records and establishes criminal penalties for the unlawful disclosure of information contained in or derived from the prepaid mobile telephony services surcharge and local charge records of the Board;

**NOW, THEREFORE IT IS RESOLVED AND ORDERED AS FOLLOWS:**

**Section 1.** That the Finance Director or other officer or employee of the Local Jurisdiction designated in writing by the City Manager to the Board is hereby appointed to represent the Local Jurisdiction with authority to examine prepaid mobile telephony services surcharge and local charge records of the Board pertaining to prepaid mobile telephony services surcharge and local charges collected for the Local Jurisdiction by the Board pursuant to the contract between the Local Jurisdiction and the Board. The information obtained by examination of Board records shall be used only for purposes related to the collection of the Local Jurisdiction's prepaid mobile telephony services surcharge and local charges by the Board pursuant to the contract.

**Section 2.** That the Finance Director or other officer or employee of the Local Jurisdiction designated in writing by the City Manager to the Board is hereby appointed to represent the Local Jurisdiction with authority to examine those prepaid mobile telephony services surcharge and local charge records of the Board for purposes related to the following governmental functions of the Local Jurisdiction:

- a) Revenue Collection
- b) N/A
- c) N/A





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# CITY OF COVINA

## AGENDA REPORT

ITEM NO. CC 13

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- MEETING DATE:** December 1, 2015
- TITLE:** Proposed Ordinance Repealing Chapter 5.12 (“Billiard Parlors, Billiard and Pool Tables”) and Modifying Regulations Relating To Dancing and Entertainment By Repealing Chapter 5.28 (“Dance And Dance Halls”) and Adopting A New Chapter 5.28 (“Entertainment”) In Title 5 (“Business Licenses And Regulations”) of the Covina Municipal Code – Second Reading and Adoption
- PRESENTED BY:** Chief Kim Raney, Covina Police Department  
Captain Derek Webster, Covina Police Department  
Stephanie Stabio, Associate Planner, Covina Police Department  
Brian K. Lee, AICP, Community Development Director
- RECOMMENDATION:** Conduct Second Reading of and Adopt Ordinance **No. 15-2046** to Repeal Chapter 5.12 (“Billiard Parlors, Billiard and Pool Tables”) and Modifying Regulations Relating To Dancing and Entertainment By Repealing Chapter 5.28 (“Dance And Dance Halls”) and Adopting A New Chapter 5.28 (“Entertainment”) In Title 5 (“Business Licenses And Regulations”) of the Covina Municipal Code
- 

### **BACKGROUND:**

On November 17, 2015, by a 4-0 vote, The City Council introduced Ordinance **No. 15-2046** to repeal Chapter 5.12 (“Billiard Parlors, Billiard and Pool Tables”) and Modifying Regulations Relating To Dancing and Entertainment By Repealing Chapter 5.28 (“Dance And Dance Halls”) and Adopting A New Chapter 5.28 (“Entertainment”) In Title 5 (“Business Licenses And Regulations”) of the Covina Municipal Code. This action was based on the need to revise and strengthen its entertainment regulations, both live and non-live, in order to (i) keep pace with the changes in the entertainment industry – including the regulation of event promoters used by establishments that provide entertainment, (ii) to provide clear direction to City businesses and City staff, and (iii) to continue efforts to deter the adverse and potentially deleterious impacts resulting from such business establishments.

For these reasons, which are explained in further detail in the attached November 17, 2015 Agenda Report, the Police and Community Development Departments recommend the City Council conduct the second reading of and adopt Ordinance **No. 15-2046**.

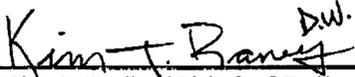
**FISCAL IMPACT:**

None at this time as the fees for the Entertainment Permits and Event Promoter Permits would cover the City's costs related to the administration of the Ordinance.

**CEQA (CALIFORNIA ENVIRONMENTAL QUALITY ACT):**

The adoption of this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Respectfully submitted,

  
\_\_\_\_\_  
Kim J. Raney/Chief of Police  
Police Department

<b>City Manager</b>	<b>City Attorney</b>	<b>Finance</b>	<b>City Clerk</b>

**ATTACHMENTS:**

Attachment A: Ordinance No. 15-2046

Attachment B: November 17, 2015 Agenda Report, Item No. PH 1

**ORDINANCE NO. 15-2046**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINA  
REPEALING CHAPTER 5.12 ("BILLIARD PARLORS, BILLIARD AND POOL  
TABLES") AND  
MODIFYING REGULATIONS RELATING TO  
DANCING AND ENTERTAINMENT BY REPEALING CHAPTER 5.28 ("DANCE  
AND DANCE HALLS") AND ADOPTING A NEW CHAPTER 5.28  
("ENTERTAINMENT") IN TITLE 5 ("BUSINESS LICENSES AND  
REGULATIONS") OF THE  
COVINA MUNICIPAL CODE**

WHEREAS, Section VII of Article XI of the California Constitution provides that a City may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and,

WHEREAS, the City of Covina encourages the development of art and culture in the City, and recognizes that locations that provide or otherwise allow entertainment provide a means for such development; and,

WHEREAS, the City Council of the City of Covina recognizes that the variety of entertainment venues within the City provide a rich and diverse cultural experience for the residents and visitors to the City; and,

WHEREAS, the City Council of the City of Covina also recognizes that many non-alcoholic entertainment venues provide a safe place for families and young adults to gather; and,

WHEREAS, the City Council of the City of Covina finds that the operation of establishments that provide or otherwise allow entertainment (live and/or non-live entertainment) presents an environment with the demonstrated potential for excessive noise generation and disorderly conduct by patrons, particularly at closing times and in exterior portions of the establishments (e.g., parking lots or adjacent rights-of-way), with attendant adverse impacts upon the health, safety, and welfare of surrounding businesses and residential community; and,

WHEREAS, Police Department data supports the premise that establishments providing or otherwise allowing entertainment (especially those that also provide alcoholic beverages) routinely generate a greater percentage of police-related calls and require a greater number of police service hours than establishments that do not provide entertainment; and,

WHEREAS, many establishments that provide entertainment utilize "event promoters" that control the selection of entertainment, advertise the entertainment, or otherwise control the entertainment establishment with respect to specific events and who typically directly or indirectly receive compensation,

consideration, or other revenue from sponsors, private donors, or managers and/or owners of the event site; and,

WHEREAS, "event promoters" are often difficult for City Personnel (including, but not limited to, Fire Department, Health Department, Police Department, Code Enforcement Division, and Finance Department) to identify in their efforts to enforce provisions of the Covina Municipal Code or to otherwise protect the health, safety, and welfare of the patrons of the establishment and the general public; and,

WHEREAS, the City Council of the City of Covina seeks to support the vibrant nightlife in the City by revising and strengthening its current dance and entertainment regulations to mitigate any negative impacts associated with these venues, and to minimize calls for service while ensuring a reduced fiscal impact on the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COVINA HEREBY ORDAINS AS FOLLOWS:

**SECTION 1:** Chapter 5.12 ("Billiard Parlors, Billiards and Pool Tables") of Title 5 ("Business Licenses and Regulations") of the Covina Municipal Code is hereby repealed and deleted in its entirety; however, such repeal shall not affect or excuse any violation of said Chapter that occurred prior to the effective date of this Ordinance, nor shall such repeal impede, deter, impact, or negate any administrative, civil, or criminal enforcement of any violation of said Chapter that occurred prior to the effective date of this Ordinance.

**SECTION 2:** Chapter 5.28 ("Dance and Dance Halls") of Title 5 ("Business Licenses and Regulations") of the Covina Municipal Code is hereby repealed and deleted in its entirety; however, such repeal shall not affect or excuse any violation of said Chapter that occurred prior to the effective date of this Ordinance, nor shall such repeal impede, deter, impact, or negate any administrative, civil, or criminal enforcement of any violation of said Chapter that occurred prior to the effective date of this Ordinance.

**SECTION 3:** A new Chapter 5.28 ("Entertainment") is hereby added to Title 5 ("Business Licenses and Regulations") of the Covina Municipal Code to read as follows:

**"Chapter 5.28  
ENTERTAINMENT**

Sections:

Article I. Entertainment Permit

- 5.28.010 Purpose, and Intent.
- 5.28.020 Definitions.
- 5.28.030 Entertainment Permit Required.
- 5.28.040 Exemptions from the Entertainment Permit Requirement.
- 5.28.050 Entertainment Permit - Application and Contents Thereof.
- 5.28.060 Entertainment Permit – Investigation and Action Thereon.
- 5.28.070 Entertainment Permit – Duration.
- 5.28.080 Entertainment Permit – Non-Transferable.
- 5.28.090 Entertainment Permit – Modification, Suspension, or Revocation.
- 5.28.100 Entertainment Permit – Appeals.
- 5.28.110 Effect of Denial and Revocation of an Entertainment Permit.
- 5.28.120 Issuance of Subsequent Entertainment Permit.
- 5.28.130 Service of Notices and Orders.
- 5.28.140 Operating Standards
- 5.28.150 Indemnification
- 5.28.160 Permits Issued Prior to the Effective Date of this Chapter.
- 5.29.170 Violations and Penalties
- 5.28.180 Cumulative Remedies, Procedures, and Penalties.

Article II. Event Promoter

- 5.28.200 Event Promoter Permit Required.
- 5.28.210 Exemptions from the Event Promoter Permit Requirement.
- 5.28.220 Event Promoter Permit - Application and Contents Thereof.
- 5.28.230 Event Promoter Permit – Investigation and Action Thereon.
- 5.28.240 Event Promoter Permit – Duration.
- 5.28.250 Event Promoter Permit – Non-Transferable.
- 5.28.260 Event Promoter Permit – Modification, Suspension, or Revocation.
- 5.28.270 Event Promoter Permit – Appeals.
- 5.28.280 Effect of Denial and Revocation of an Event Promoter Permit.
- 5.28.290 Issuance of Subsequent Event Promoter Permit.
- 5.28.300 Event Promoter Contract Required.
- 5.28.310 Operating Regulations and Conditions

## Article I. Entertainment Permit

### 5.28.010 Purpose and Intent.

It is the purpose of this Chapter to regulate the operation of establishments that provide or otherwise allow entertainment (including live and non-live entertainment) for the public health, safety, and welfare. All permittees will be held responsible for controlling patron conduct in and around the establishments, making adequate provisions for security and crowd control, protecting the City's youth from criminal activity and minimizing disturbances as a result of the operation of the entertainment.

It is the intent of this Chapter to provide options to the Chief of Police in regulating the variety of businesses and events that provide or otherwise allow entertainment. The City Council of the City of Covina finds that the imposition of conditions tailored to the particular establishment will allow the business or event to flourish while meeting the City's public health and safety needs.

### 5.28.020 Definitions.

For the purpose of this Chapter, the words, terms, and phrases shall be defined as set forth in this section, unless the context clearly indicates a different meaning is intended.

Words, terms, and phrases used in this Chapter that are not specifically defined shall be construed according to their context and the customary usage of the language.

A. "*ABC license*" means a license issued by the California Department of Alcoholic Beverage Control authorizing the sale of alcoholic beverages.

B. "*Business day*" means any day, Monday through Thursday, excluding City-observed holidays, during which all City departments are regularly open for business.

C. "*Chief of Police*" means the Chief of Police of the City of Covina and his or her duly authorized designee.

D. "*City*" means the City of Covina.

E. "*City Manager*" means the City Manager of the City of Covina and his or her duly authorized designee.

F. "*Dance*" and "*dancing*" means movement of the human body, accompanied by music or rhythm.

G. *"Disorderly conduct"* means any of the following: consumption of alcoholic beverages on public property, public drunkenness, obstruction of the free passage of pedestrians over public sidewalks, obstruction of the free passage of vehicles within the public right-of-way, littering, fighting, excessive noise in violation of Chapter 9.40 of this Code, the operation of automobile audio systems in a manner that violates Chapter 9.40 of this Code, and any other conduct that constitutes a public nuisance or violation of law.

H. *"Entertainment"* means any single event, a series of events, or an ongoing activity or business, occurring alone or as part of another business, to which persons (including patrons and guests) are invited or allowed to watch, listen, or participate or that is conducted for the purposes of holding the attention of, gaining the attention of, or diverting or amusing guests or patrons. Entertainment shall include both live entertainment and non-live entertainment, as defined by this Chapter.

I. *"Entertainment establishment"* means any building, structure, or premises where entertainment occurs.

J. *"Entertainment Permit"* means a permit issued pursuant to the provisions of this Chapter authorizing entertainment to be presented or allowed at an entertainment establishment.

K. *"Event"* means any activity requiring a permit under the provisions of this Chapter.

L. *"Event promoter"* and *"promoter"* means any person who:

1. Is directly or indirectly responsible for the promotion of an event as evidenced by activities such as, but not limited to, contracting with the permittee or other person providing entertainment to serve as a promoter, selecting entertainment, advertising, or otherwise holding out the event to members of the general public, inviting participants to the event, or renting or controlling the event site; and,

2. In exchange for engaging in the promotion of the event as explained in Subsection 1, directly or indirectly receives or shares in any of the following:

a. Admission or entrance fees paid by participants or spectators;

b. Compensation, consideration, or other revenue from sponsors, private donors or managers, and/or owners of the event site; or,

c. Revenues from concessions or other sales at the event

An "event promoter" and "promoter" shall not include any of the following:

3. A print, broadcast, or internet medium that is paid solely for page space or broadcast time to advertise an event, but exercises no other financial or promotional responsibilities in connection with the event;

4. A ticket seller who sells admission tickets to an event from its own place of business, off-site and in advance of such an event, but exercises no other financial or promotional responsibilities in connection with the event;

5. An entertainer or performer who is paid solely for his or her performance at an event;

6. An agent of an entertainer or a performer who is compensated solely for negotiating his or her client's contract to perform at an event;

7. Any person who is permitted pursuant to Article I, Chapter 5.28 of this Code that engages in event promoter activities for events that the person's permit authorizes;

8. Any person that solely works for, or is exclusively employed by, any person permitted pursuant to Article I, Chapter 5.28 of this Code, who in the course of his or her employment, promotes events that are authorized under the permit issued to his or her employer;

9. An agent, officer, or employee of the City of Covina who engages in event promoter activities exclusively for the City of Covina in the course of his or her position as an agent, officer, or employee of the City.

M. "*Hearing Officer*" means the City employee or other representative appointed by the City Manager, or a designee thereof, to hear all timely appeals set forth in this Chapter.

N. "*Live Entertainment*" means every form of live performance -- whether a single event, a series of events, or an ongoing activity or business, occurring alone or as a part of another business, to which persons (including patrons and/or guests) are invited or allowed to watch, listen, or participate or that is conducted for the purposes of holding the attention of, gaining the attention of, or diverting or amusing guests or patrons, whether or not they are compensated for the performance. Live Entertainment shall include, but shall not be limited to:

1. Presentations by single or multiple performers, such as hypnotists, pantomimes, comedians, musical song or dance acts (including karaoke performances), plays, concerts, any type of contest; sporting events, exhibitions, carnivals, rodeos, or circus acts; demonstrations of talent; shows, revues; and any other similar activities.

2. Presentation of recorded music played on equipment that is operated by an agent or contractor of the entertainment establishment, commonly known as a "disc jockey" or "DJ".

3. Dancing to live or recorded music (whether by performers, patrons, or guests).

O. "*Manager*" means any person performing the type of duties generally performed by a general manager or supervisor, an assistant manager or supervisor, or a security manager or supervisor, including, but not limited to the following: supervising employees or agents of the permittee; making business decisions about the permittee's public entertainment business, including, but not limited to, hiring, disciplining or firing employees, and contracting with agents or other persons; making decisions regarding the resolution of significant operational issues that arise during the permittee's hours of operation; making final decisions about the scheduling of the permittee's employees or agents; having primary responsibility for the opening or closing of the permittee's entertainment establishment; and, being a person to whom permittee's employees and agents direct any City Official responsible for enforcing the provisions of this Code for responses to directives, questions, or requests for information.

P. "*Non-live Entertainment*" includes any form of entertainment that is not defined as "live entertainment". Non-live entertainment shall include, but shall not be limited to, jukeboxes, MP3 players, billiard tables, arcade or other electronic gaming devices, pinball machines, and televisions.

Q. "*Patron*" means any person present at the entertainment establishment, whether such person is a paying customer or guest. "Patron" does not include owners or employees of the entertainment establishment.

R. "*Permittee*" means the holder of an Entertainment Permit and any persons required to be permitted under the provisions of this Chapter, whether or not such persons are actually so permitted.

S. "*Performer*" means any person who performs any live entertainment.

T. "*Person*" means and includes any individual, partnership of any kind, corporation, limited liability company, association, joint venture or other organization, however formed, as well as trustees, heirs, executors, administrators, or assigns, or any combination of such persons.

U. "*Premises*" means the location of an entertainment establishment.

V. "*Reasonable efforts*" means the adoption, posting, and enforcement of operating policies that are consistent with the requirements of this Code and any permits, license, and approvals for an entertainment establishment, the documented training of employees and contractors in the carrying out of the establishment operating policies, the provision of adequate number of licensed security personnel at the entertainment establishment, notifying the Covina Police Department of apparent criminal activity at the entertainment establishment, and the taking of all additional measures, consistent with sound business judgment, necessary to accomplish the required result.

W. "*Responsible person*" means the permittee (including any person for whom information was required to be provided for an Entertainment Permit pursuant to Section 5.28.050 and an Event Promoter Permit pursuant to Section 5.28.220), owner, proprietor, manager, assistant manager, promoter, or other person exercising control over the operation of an entertainment establishment, whether or not that person is a named permittee.

X. "*Special event*" means entertainment conducted on private property where all of the following circumstances exist:

1. The premises or location where the entertainment is to be conducted is not the subject of an existing Entertainment Permit issued pursuant to the provisions of this Chapter;

2. The person sponsoring or offering the entertainment is not in the business of regularly offering entertainment to the public;

3. Entertainment will only be offered for a limited period of time, not to exceed five (5) calendar days;

4. The entertainment is not a recurring or regularly scheduled event or celebration.

#### **5.28.030 Entertainment Permit Required.**

Unless exempted pursuant to Section 5.28.040 of this Chapter, it is unlawful for any person to provide, permit, allow, or otherwise suffer any form of

entertainment without a current and valid Entertainment Permit for said form of entertainment, issued in accordance with the provisions of this Chapter.

**5.28.040 Exemptions from the Entertainment Permit Requirement.**

A. The following types of entertainment and events are exempt from the Entertainment Permit required by this Chapter. However, an exemption does not relieve any person providing or allowing entertainment from complying with all other applicable laws, including, but not limited to, those regulating occupancy loads, noise levels, disturbances of the peace, and other public nuisances.

1. The presentation of ambient or incidental recorded music played on radio, stereo, music recording machine, MP3 player, or other similar device without a disk jockey, so long as no other entertainment (including dancing) as defined in this Chapter is provided or allowed and that there is no fee, charge, donation, or other compensation required for entry or admission into the entertainment establishment.

2. Entertainment provided for those guests individually invited and admitted to a private event (such as a wedding, reception, recital, or celebration) at a residence where there is no fee, charge, donation, or other compensation required for entry or admission into the entertainment establishment, and where the entertainment is not audible at a distance of fifty feet (50') or more from the premises upon which the entertainment is occurring.

3. Performances at educational institutions as defined by the California Education Code where such performances are part of an educational or instructional curriculum or program. This does not exempt such institutions from any other approval, permit, or license otherwise required by law.

4. An adult-oriented business, as defined in Chapter 9.30 of this Code, that has and is operating in accordance with a current and valid adult-oriented business regulatory permit issued pursuant to Chapter 9.30.

5. Non-amplified entertainment, excluding any form of dancing (whether by performers, patrons, or guests), conducted in any establishment or venue with a maximum occupancy of forty-nine (49) or fewer persons, so long as the actual occupancy does not exceed forty-nine (49) persons and there is no fee, charge, donation, or other compensation required for entry or admission into the entertainment establishment.

6. Entertainment consisting of 5 or fewer televisions (with the sound emanating solely from the internal speakers of said televisions) in any establishment or venue with a maximum occupancy of forty-nine (49) or fewer persons, so long as the actual occupancy does not exceed forty-nine (49)

persons, where there is no other form of entertainment provided at said entertainment establishment (including, but not limited to, dancing by performers, patrons, or guests), and there is no fee, charge, donation, or other compensation required for entry or admission into the entertainment establishment.

7. Amusements, exhibitions, meetings, and shows operating pursuant to and in accordance with a permit issued pursuant to the provisions of Chapter 5.08 of this Code.

8. Entertainment sponsored by the City of Covina or any agency of the City of Covina. The leasing or subleasing of the real property to an entertainment establishment does not constitute sponsorship of the entertainment by a public agency.

B. Any person providing or sponsoring the following entertainment shall not be exempt from the requirement for an Entertainment Permit, however, shall be exempt from payment of the Entertainment Permit fee. Said person shall not be exempt from payment of any fees associated with fingerprinting unless otherwise exempt by law.

1. Entertainment conducted or sponsored by any corporation, organization, bona fide club, society or association that is exempt from taxation pursuant to United State Internal Revenue Code Section 501(c)(3) and that holds meetings in the City other than for such entertainment at regular stated intervals; when all proceeds, if any, arising from such entertainment are used exclusively for the benevolent, charitable, religious, literary, or educational purposes of such organization, club, society, or association.

**5.28.050 Entertainment Permit – Application and Contents Thereof.**

A. Every person wishing to provide or allow entertainment as defined in this Chapter shall file an application with the Chief of Police on forms approved by the Chief of Police at least sixty (60) calendar days prior to the commencement of the offering of such entertainment. Such application shall, at a minimum, set forth the following information:

1. The name (if applicable) and address of the particular place for which the Entertainment Permit is desired;

2. The name(s), residence(s), business address, and telephone number(s) of the applicant (s), and, if the applicant(s) is/are a corporation, limited liability company, general or limited partnership, or any other fictitious entity, the name(s), residence(s), and telephone number(s) of:

a. All directors and officers of the corporation or limited liability company;

b. All persons who own or hold 10% or more of an ownership interest in the corporation or limited liability company;

c. All persons who are members or managers of the limited liability company;

d. All persons who are partners in the general partnership;

e. All persons who are general partners in the limited partnership;

3. A fully-dimensioned, scaled and detailed floor/site plan of the premises where the entertainment will be provided or allowed. The floor/site plan must adhere to any ABC license, all land use regulations, including any conditions of any applicable conditional use permit or other land use entitlement applicable to the entertainment establishment or premises whereon the entertainment will be presented, and shall depict, at a minimum, the following:

a. The location of primary entrances and exits for patron use;

b. The location of all emergency exits;

c. The location and dimensions of any area used for entertainment (including, but not limited to, stage, dance floor, amusement machines, pool tables, televisions, etc.);

d. The location and dimensions of any fixed and/or mobile bar(s);

e. The location and square footage of the alcohol storage area;

f. The location of all restrooms and dressing rooms;

g. The location and seating capacity of all areas where tables and/or chairs will be placed for patron use;

h. The maximum occupancy for all areas as approved by the City Building Official;

i. The location of the parking area provided for patrons;

j. The location of the designated queuing area (interior and exterior, as applicable), including the location of any stanchions or other barriers;

k. The posting locations of any required security guards;

l. The location of all security cameras; and,

m. Such other information as the Chief of Police deems necessary for the proper processing and review of the floor/site plan, for fulfilling the goals of this Chapter, and/or for the safeguarding of the public health, safety, and general welfare;

4. The proposed opening date and hours of operation of the entertainment establishment;

5. A detailed description of the specific type(s) of proposed entertainment, and the dates and times when the entertainment will be provided or allowed;

6. For special events, as defined by this Chapter, the date or dates, hours, and location of the proposed entertainment;

7. A statement as to whether an event promoter will participate in the entertainment establishment;

8. The name, permanent address, and a copy of a valid government issued identification card for any event promoter organizing, overseeing, or otherwise promoting an entertainment event;

9. A statement as to whether food or alcoholic beverages or both are to be served or permitted upon the premises and, if so, the type and provisions for dispensing same for all hours of operation. A copy of the menu listing the food and/or alcoholic beverages that are served during all hours of operation will be sufficient for compliance with this Subsection;

10. A security plan (subject to the approval of the Chief of Police) that shall address, at a minimum, the following items:

a. The name, address, telephone number, and copy of Covina Business License for who will be providing required security services. If security services will be provided by a private patrol operator (as defined by California Business & Professions Code Section 7582.1), applicant must provide a copy of the Covina Private Patrol Operator permit as issued pursuant to Covina Municipal Code Chapter 5.40);

b. A description and/or photograph of the uniform/clothing to be worn by the security personnel. Said uniform/clothing shall be approved by the Chief of Police and shall not resemble a uniform of any law enforcement agency with jurisdiction in the City;

c. Procedures for management of queuing lines;

d. Procedures for counting the number of occupants entering and exiting the entertainment establishment for purposes of complying with and enforcing approved occupancy limits;

e. The method for establishing a reasonable ratio of employees to patrons, based upon activity level, in order to ensure adequate staffing levels to monitor beverage sales and patron behavior;

f. Procedures for verifying the age of patrons for purposes of alcohol sales;

g. Procedures for ensuring that servers monitor patrons to ensure that drinking limit/potential intoxication is not exceeded. This procedure should include a description of the procedure the server would use to warn, or refuse to serve, the patron;

h. Procedures for handling obviously intoxicated persons;

i. Procedures for the provision of alternate transportation services to patrons. This may include procedures for access to a telephone, the provision of a list of taxi services, or other service that will ensure the safe travel of any patron, particularly those who are intoxicated, in leaving the entertainment establishment;

j. Procedures for handling patrons involved in fighting, arguing, disruptive behavior, or loitering about the entertainment establishment and/or the immediate adjacent area that is owned, leased, rented, or used under agreement by the permittee;

k. Procedures for contacting the Covina Police Department regarding observed or reported criminal activity; and,

l. Such other information as the Chief of Police deems necessary for the proper processing and review of the security plan, for fulfilling the goals of this Chapter, and/or for the safeguarding of the public health, safety, and general welfare;

11. The proposed security arrangements for the safety and control of patrons (including within all adjacent rights-of-way and parking areas);

12. The name or names of the person or persons managing or supervising the proposed entertainment, or any business or premises wherein the entertainment is proposed to be located;

13. A statement indicating whether the applicant and/or any person for whom information is required to be provided pursuant to this Section has ever had a permit for the same or any similar business denied, suspended, or revoked anywhere, and, if so, the circumstances, time and place of such denial, suspension, and/or revocation. The denial, suspension, revocation, or cancellation of any ABC license shall be considered as included for purposes of this Subsection;

14. A statement indicating whether the applicant and/or any person for whom information is required to be provided pursuant to this Section has ever been convicted of a misdemeanor or felony and, if so, the details of such conviction;

15. The name and address of the owner of the real property upon which it is proposed to provide or allow entertainment;

16. Written consent for the proposed entertainment on the premises from the owner of the real property on which the entertainment is to be conducted;

17. Such other information as the Chief of Police deems necessary for the proper processing and review of the application, for fulfilling the goals of this Chapter, and/or for the safeguarding of the public health, safety, and general welfare; and,

18. The signature, under penalty of perjury, of the applicant and of all persons for whom information was required to be provided pursuant to Sections 5.28.050.A.2.

B. Each application submitted pursuant to this Section shall be accompanied by a non-refundable fee that shall be established by (and modified from time to time) by resolution of the City Council.

C. The applicant and all persons for whom information was required to be provided pursuant to Sections 5.28.050.A.2 and 5.28.050.A.11 shall submit a complete set of fingerprints to the Chief of Police in a manner and form approved by the Chief of Police. Any fees for the fingerprints shall be paid by the applicant.

**5.28.060 Entertainment Permit – Investigation and Action Thereon.**

A. **Determination of Completeness.** The Chief of Police shall, within fifteen (15) calendar days, review the submission of any application for an Entertainment Permit and supporting documents to determine if the Application contains all of the requisite information set forth in Section 5.28.050. Any application that is missing information required pursuant to Section 5.28.050 or that is not accompanied by the requisite fee shall be deemed incomplete and shall not be processed by the Chief of Police. In such case, the Chief of Police shall issue a Notice of Incompleteness to the applicant specifying the information that is missing resulting in the incomplete application.

B. **Investigation.** Upon receipt of a complete Entertainment Permit application (and requisite fees), the Chief of Police shall conduct a thorough investigation of the application. The Chief of Police may request supplemental investigation, information, reports, and/or recommendations pertaining to relevant zoning, building, health, safety, fire, law enforcement, or other factors from any appropriate department of the City or other appropriate agency.

Among other things, the Chief of Police shall be required to check local and State summary criminal history information, including CLETS/NCIC, and to certify whether disqualifying criminal history has been discovered. Accordingly, pursuant to Penal Code Sections 11105 and 13300, the City Council explicitly authorizes the Chief of Police to obtain such information as it relates to disqualifying convictions or conduct related to the crimes and offenses described in this Chapter.

C. **Approval.** The Chief of Police shall, within sixty (60) calendar days of the submission of a completed application for an Entertainment Permit (including payment of applicable fees), approve the issuance of an Entertainment Permit, subject to the conditions set forth in Section 5.28.060.E, unless he or she determines:

1. Except for permits issued pursuant to Title 14 of this Code, other approvals, permits, licenses, or inspections are required for the activities at the subject premises or real property for which the permit is sought and the applicant and/or owner of the subject real property have not yet acquired same;

2. The issuance of the permit and conduct of the entertainment at the proposed location is inconsistent with Federal, State, and/or local laws, rules, regulations, and/or any existing permit or land-use entitlement;

3. That issuance of the permit at the proposed location will constitute an undue burden on the neighborhood because of its proximity to residences, inadequate parking, or other neighborhood circumstances and, irrespective of reasonable conditions that could be imposed thereon, will

otherwise interfere with the reasonable use and enjoyment of the neighborhood by its residents and guests;

4. The applicant or any other person for whom information is required to be provided pursuant to Section 5.28.050 has, within the past seven (7) years, been convicted of any felony or of any misdemeanor crime involving moral turpitude or which is substantially related to the qualifications, functions, or duties of a proprietor, manager, or other responsible person for an entertainment establishment;

5. The applicant or any other person for whom information is required to be provided pursuant to Section 5.28.050 has a history of committing, permitting, or failing to prevent significant violations of Federal, State, or local law, or of any license or permit, in connection with an entertainment establishment in any jurisdiction for which he or she was an owner, operator, or otherwise responsible person;

6. Based upon the information before the Chief of Police, the applicant or any other person for whom information is required to be provided pursuant to 5.28.050, has knowingly provided false or misleading information, or has otherwise omitted information in the application or in any amendment or report required to be made under this Chapter;

7. The applicant or any other person for whom information is required to be provided pursuant to Section 5.28.050 has had an Entertainment Permit denied or revoked within the twelve (12) months preceding the current application;

8. The applicant or any other person for whom information is required to be provided pursuant to Section 5.28.050 owes the City of Covina a fee authorized by Section 5.28.050.B, an administrative penalty resulting from a violation of any provision of this Chapter or of a condition of any entertainment permit issued pursuant to this Chapter, or any other fee related to the business establishment (including, but not limited to, false alarm fines, fees, or later charges authorized pursuant to Covina Municipal Code Chapter 8.20); and/or,

9. The application is otherwise incomplete.

**D. Denial.** In the event the Chief of Police does not approve an Entertainment Permit, the Chief of Police shall issue a written Notice of Denial to the applicant notify the applicant of the denial and the reasons therefor within sixty (60) calendar days of the submission of a completed application for an Entertainment Permit (including payment of applicable fees). The Notice of Denial shall also advise the applicant of the applicant's appeal rights (including method and timeline for requesting an appeal) as set forth in Section 5.28.100.

**E. Conditions of Approval.** Entertainment Permits shall be subject to conditions in order to ensure compliance with this Chapter, applicable Federal, State, and local law, and otherwise to protect the public health, safety, and welfare.

1. If the applicant or any person for whom information was required to be provided pursuant to Sections 5.28.050 has been issued an ABC license, conditional use permit, other special permit, or land-use entitlement applicable to the entertainment establishment or the entertainment sought to be provided or allowed, conditions placed thereon shall constitute additional conditions of the Entertainment Permit issued under authority of this Chapter.

a. The Chief of Police may require an applicant for an Entertainment Permit to demonstrate compliance with applicable conditions of existing ABC license, conditional use permit(s), other special permit(s), and/or land-use entitlement(s) prior to the issuance of the Entertainment Permit or may issue the permit conditioned on the applicant obtaining any other additional necessary special permit or other City, County, or State approval.

2. The Operating Standards set forth in Section 5.28.140 shall constitute conditions of any Entertainment Permit issued pursuant to the provisions of this Chapter.

3. The acquisition of any permit required under Title 14 of this Code for the construction, alteration, repair, improvement, modification, or demolition of any building, structure, electrical system, mechanical system, or plumbing system, or any part(s) thereof, that facilitates the entertainment being authorized under the Entertainment Permit shall be a condition of approval for any Entertainment Permit issued pursuant to the provisions of this Chapter.

4. The Chief of Police may, based upon specific and articulable facts reasonably related to insuring the public health, safety, and welfare – impose conditions upon an Entertainment Permit (including the security plan) relating to the operation of the entertainment establishment including, but not limited to:

- a. The days, hours and locations of operation;
- b. Restrictions designed to prevent minors from obtaining alcoholic beverages, such as separate entrances, exits, and restroom facilities on the premises;
- c. The number and age of persons allowed on the premises;

d. Whether licensed security guards are required, and, if so, how many;

e. Specific measures the permittee must undertake to control the conduct of patrons so as to prevent or minimize disorderly conduct within the entertainment establishment, parking areas, and adjacent public rights-of-ways;

f. Specific measures the permittee must undertake to remove trash attributable to the establishment or its patrons in and around the entertainment establishment, the surrounding neighborhood, and the adjacent public rights-of-way;

g. Specific measures the permittee must undertake to prevent the entertainment and its patrons from disturbing the peace and quiet of the surrounding neighborhood;

h. Specific measures the permittee must undertake to prevent its patrons from engaging in disorderly conduct in the surrounding neighborhood;

i. Whether the Chief of Police must receive advance notice of the date of a particular event if that event is not held as part of the regularly scheduled events of the business; or,

j. Other matters related to the public health, safety, and welfare.

5. Nothing in this Section shall be construed to limit the authority of the Chief of Police to place conditions upon the permit that are more restrictive than the conditions of any applicable conditional use permit, special permit, or land-use entitlement, or of any applicable Operating Standard;

6. No condition may be imposed upon any Entertainment Permit that conflicts with Federal, State or local law, or that conflicts with the permittee's ABC license – however, nothing in this Subsection is intended to prevent the Chief of Police from imposing any condition related to the age of patrons inside an entertainment establishment with an ABC license if the ABC license does not address that issue. The intent of this Subsection is to allow the sale and service of food to minors in a bona fide eating establishment (ABC license types 41, 47, and various club licensed premises) with reasonable conditions imposed to prevent curfew violations and to protect minors from alcohol and other criminal activity;

7. Conditions shall be listed on, or attached to, the Entertainment Permit;

8. The imposition of any conditions other than those imposed by Sections 5.28.060.E.1, 5.28.060.E.2, and 5.28.060.E.3 is subject to appeal in accordance with the time constraints and provisions set forth in Section 5.28.100.

**5.28.070 Entertainment Permit – Duration.**

A. Except as provided in Subsection B of this Section, Entertainment Permits issued pursuant to this Chapter are valid for a period of one (1) year from the date of issuance.

B. An Entertainment Permit issued for a special event is valid for the term stated in the permit, but in no event for a period greater than one (1) year from the date of issuance.

**5.28.080 Entertainment Permit – Non-Transferable**

No person shall assign or transfer any Entertainment Permit issued pursuant to this Chapter to another person or another location, and any attempt to assign or transfer any Entertainment Permit issued pursuant to this Chapter shall render the Entertainment Permit null-and-void and shall be immediately surrendered to the Chief of Police.

**5.28.090 Entertainment Permit – Modification, Suspension, or Revocation**

A. **General.** The Chief of Police may modify the conditions of an Entertainment Permit or may suspend or revoke any Entertainment Permit issued pursuant to this Chapter if the Chief of Police makes any of the following findings and/or determinations:

1. There exists any ground for denial of the Entertainment Permit pursuant to Section 5.28.060 of this Chapter;

2. The permittee or other responsible person has knowingly made any false, misleading, or fraudulent statement of material fact or has knowingly omitted a material fact in the application for the Entertainment Permit or any report or records required to be filed by law;

3. Entertainment has been conducted at the entertainment establishment in a manner contrary to the Entertainment Permit or conditions thereof;

4. The permittee or other responsible person has failed to comply with one or more conditions of the permit, or any other entitlement

granted by the City or other government agency (including any conditions of an ABC license);

5. The permittee or other responsible person has violated or is violating any ordinance, law, rule, or regulation of the City, County of Los Angeles, State of California, or the United States of America, in the course of exercising any rights under the Entertainment Permit;

6. The permittee or other responsible person has operated an entertainment establishment or otherwise caused or allowed entertainment in violation of any Notice of Denial, Order of Suspension, or Order of Revocation issued pursuant to this Chapter;

7. The permittee or other responsible person has been held liable for, or has been convicted of, any offense involving the maintenance of a nuisance resulting from any act performed in exercising any rights under the Entertainment Permit; and/or,

8. The continued operation under the Entertainment Permit (and any applicable conditions) would endanger, disrupt, or otherwise be detrimental to the public peace, health, safety, morals, or general welfare of the City, its residents or guests, and/or the general public, or would otherwise constitute a public nuisance.

**B. Order of Modification, Suspension, and/or Revocation.** Where the Chief of Police has determined that the conditions of an Entertainment Permit shall be modified or that an Entertainment Permit shall be suspended or revoked, the Chief of Police shall provide written notice of his or her decision to the permittee.

1. **Order of Modification.** The Chief of Police shall serve a written Order of Modification upon the permittee stating the grounds for the modification, the specific modifications being imposed upon the Entertainment Permit, the effective date of the modified conditions, and the permittee's appeal rights (including method and timeline for requesting an appeal).

2. **Order of Suspension.** The Chief of Police shall serve a written Order of Suspension upon the permittee stating the grounds for the suspension, the length of the suspension, the effective date of the suspension, and the permittee's appeal rights (including method and timeline for requesting an appeal).

a) An Entertainment Permit may be suspended for a period not to exceed thirty (30) calendar days per violation, and no more than ninety (90) calendar days per suspension.

3. **Order of Revocation.** The Chief of Police shall serve a written Order of Revocation upon the permittee stating the grounds for the revocation, the effective date of the revocation, and the permittee's appeal rights (including method and timeline for requesting an appeal).

**C. Effective Date of Modification, Suspension, and/or Revocation.**

1. **General.** Except as provided in Section 5.28.090.C.2, any Order of Modification, Suspension, or Revocation issued pursuant to the provisions of this Section shall become effective, and the permittee shall adhere to such Order, after the expiration of ten (10) calendar days following service of the Order of Modification, Suspension, and/or Revocation.

a) Every person to whom a permit has been issued under this Chapter shall immediately surrender his or her permit to the Chief of Police upon the effective date of its revocation.

2. **Summary Modification, Suspension, or Revocation.** The Chief of Police may summarily and immediately modify, suspend, or revoke an Entertainment Permit issued pursuant to the provisions of this Chapter if the Chief of Police determines that any ground for modification, suspension, or revocation set forth in Section 5.28.090.A exists to the extent or degree that it creates an imminent peril or threat to the public health, safety, or welfare of the patrons, guests, or general public. Notwithstanding the provisions of Section 5.28.090.C.1, any modification, suspension, or revocation pursuant to this Subsection shall be effective immediately, however, a written Order of Modification, Suspension, and/or Revocation as set forth in Subsection 5.28.090.B must be served upon the permittee within three (3) business days of the summary action.

a) Where the Chief of Police has taken summary action pursuant to Subsection 5.28.090.C.2, he or she may also require the immediate closure of the entertainment establishment and dispersal of all patrons for the remainder of that day's operations.

b) It is unlawful and a misdemeanor for any person to fail to comply with any directive issued by the Chief of Police under authority of Section 5.28.090.C.2.

c) Pursuant to Section 5.28.100.C, a summary modification, suspension, or revocation of an Entertainment Permit pursuant to this Section is not stayed pending an appeal.

## **5.28.100 Entertainment Permit – Appeals**

**A. Request for Appeal.** Any applicant for an Entertainment Permit that has received a Notice of Denial, any permittee that has received an Entertainment Permit subject to conditions of approval pursuant to Section 5.28.060.E, and any permittee that has received an Order of Modification, Suspension, and/or Revocation of an Entertainment Permit pursuant to the provisions of this Chapter may appeal said Notice or Order by filing a request for an appeal with the City Clerk, and tendering a filing and processing fee as set by resolution of the City Council, within ten (10) calendar days of service of the Notice, Order, or conditions of approval. The request for an appeal must be made in writing and must contain, at a minimum, the following information:

1. The name of all appellants and the address of the applicable entertainment establishment where the appellant was authorized (or was seeking to be authorized) to provide or allow entertainment pursuant to the Entertainment Permit (or Entertainment Permit Application) subject to the Notice or Order;

2. The date of the imposition of conditions, or of denial, modification, suspension, or revocation by the Chief of Police;

3. A statement as to all grounds for appeal in sufficient detail to enable a Hearing Officer to understand the nature of the controversy, however, a permittee may only appeal a summary modification, suspension, or revocation based upon the grounds for the modification, suspension, or revocation and not the Chief of Police's determination that such grounds existed to the extent or degree that it creates an imminent peril or threat to the public health, safety, or welfare of the patrons, guests, or general public;

4. The signature of each appellant under penalty of perjury as to the contents of the request for appeal.

**B.** Failure of the City Clerk to receive a timely appeal and payment of the appeal fee(s) constitutes a waiver of the right to contest the imposition of conditions, a Notice of Denial or Order of Modification, Suspension, and/or Revocation, and such conditions, Notice and/or Order shall be deemed final and binding.

**C. Stay of Modification, Suspension, and/or Revocation.** Where a request for an appeal has been timely filed (and all fees therefor timely tendered), any modification, suspension, or revocation of an Entertainment Permit imposed pursuant to Sections 5.28.090.A and 5.28.090.B shall be stayed pending the resolution of the appeal by the Hearing Officer pursuant to the provisions of this Chapter. However, the filing of an appeal shall not stay any summary modification, suspension, or revocation of an Entertainment Permit imposed pursuant to Section 5.28.090.C.2.

D. Upon timely receipt of a request for an appeal and applicable fees, the City Clerk shall set this matter for consideration before the Hearing Officer no later than thirty (30) calendar days from receipt of the request and payment of applicable fees. The City Clerk shall issue written notice to the appellant(s) of the date, time, and location of the appeal hearing at least ten (10) calendar days prior to the hearing.

1. If the request for an appeal seeks to challenge a summary modification, suspension, or revocation of an Entertainment Permit, the City Clerk shall set the matter for consideration before the Hearing Officer no later than ten (10) business days from receipt of the request and payment of applicable fees. The City Clerk shall issue written notice to the appellant(s) of the date, time and location of the appeal hearing at least five (5) calendar days prior to the hearing.

E. Any request by an appellant to continue an appeal hearing must be submitted to the City Clerk in writing no later than two (2) business days before the date scheduled for the hearing. The hearing officer may continue a hearing for good cause or on his/her own motion; however, in no event may the hearing be continued for more than thirty (30) calendar days without stipulation by all parties.

1. Notwithstanding Subsection 5.28.100.E, if the appeal seeks to challenge a summary modification, suspension, or revocation of an Entertainment Permit, the Hearing Officer may not continue the hearing on his/her own motion for more than five (5) business days without stipulation by all parties.

F. **Appeal Hearing.** Appeal hearings conducted pursuant to the provisions of this Chapter shall comply with the following:

1. The appeal hearing shall proceed solely on those issues or defenses raised in the request for an appeal filed by the appellant(s), and all matters not contested in said request shall be deemed admitted into evidence;

2. The Chief of Police shall have the burden to establish the grounds for the imposition of conditions, denial, modification, suspension, or revocation that has been contested by the appellant by a preponderance of the evidence. The Notice of Denial and/or the Orders of Modification, Suspension, and/or Revocation (and all documents or reports relied upon and/or prepared in relation to the Notice or Order) shall be admitted into evidence and shall constitute prima facie evidence of the grounds for the imposition of conditions, denial, modification, suspension, or revocation. The Chief of Police will have the right to present additional written and/or oral evidence in support of the

imposition of conditions, denial, modification, suspension, and/or revocation subject to the appeal;

3. The appellant(s) may appear at the hearing in person or by written declaration executed under penalty of perjury. Said declaration and any documents in support thereof shall be tendered to and received by the Office of the City Clerk at least three (3) business days prior to the hearing. If the appellant(s) elects to appear at the hearing by written declaration, the Chief of Police shall not be required to attend or participate at the hearing, and may instead submit a written response to the Hearing Officer to be considered at the time of the hearing;

4. The appellant, if present at the hearing, shall be given an opportunity to testify and to present written and/or oral evidence relating to the matters raised in the appellant's request for an appeal, and shall have the right to examine and cross-examine any documents and witnesses presented by the Chief of Police in support of the imposition of conditions, denial, modification, suspension, and/or revocation subject to the appeal. The Chief of Police will also have the right to examine and cross-examine any documents and witnesses presented by the appellant(s). The hearing officer may question any person who presents evidence or who testifies at any hearing. If additional evidence is presented at the hearing by any party, the hearing officer may continue a hearing on his or her own motion if additional time is required for the review or presentation of evidence, or to otherwise ensure due process to all parties;

5. The City, at its discretion, may record the hearing by stenographer or court reporter, audio recording, or video recording;

6. If the appellant(s) fails to appear, or to otherwise submit a written declaration or any admissible evidence contesting the existence of all grounds for the imposition of conditions, denial, modification, suspension, or revocation subject to the appeal, the hearing officer shall cancel the hearing and send a notice thereof to the appellant(s) by first class mail to the address(es) stated on the appeal form. A cancellation of a hearing due to non-appearance of the appellant shall constitute the appellant's waiver of the right to appeal. In such instances, the initial conditions of approval, Notice, or Order is deemed final and binding;

7. After exhaustion of all administrative remedies, judicial review of a final administrative action is subject to the provisions and time limits set forth in California Code of Civil Procedure Sections 1094.6 et seq.

**5.28.110 Effect of Denial and Revocation of an Entertainment Permit**

A. If an application for an Entertainment Permit is denied or revoked by the Chief of Police pursuant to the provisions of this Chapter, no application for an Entertainment Permit submitted by the same applicant or any person for whom information was required to be provided for the denied or revoked Entertainment Permit pursuant to Section 5.28.050 shall be considered by the Chief of Police for a period of twelve (12) months from the date of denial or revocation.

B. If an application for an Entertainment Permit is revoked by the Chief of Police pursuant to the provisions of this Chapter, no application for an Entertainment Permit at the same premises as named in an application or Entertainment Permit shall be considered by the Chief of Police for a period of twelve (12) months from the date of denial or revocation.

C. **Exception.** Notwithstanding the provisions of Subsections A and B of this Section, the Chief of Police may consider an application for an Entertainment Permit in less than the stated period if the application is accompanied by evidence that the ground or grounds for denial of the previous application no longer exist. This exception does not apply to permits that have been revoked.

**5.28.120 Issuance of Subsequent Entertainment Permit**

Applications for a new Entertainment Permit for the same location as authorized in a current and valid Entertainment Permit shall be submitted and processed in the same manner and timeframes as set forth in Sections 5.28.050 and 5.28.060.

**5.28.130 Service of Notices and Orders**

A. Except as otherwise expressly required by a provision of this Chapter, any notice or order required by this Chapter may be served upon any responsible person by personal delivery or by first class mail. The date of service shall be the date it is personally delivered or placed in a U.S. Postal Service receptacle.

1. Any Order of Suspension or Order of Revocation shall, in addition to being served upon a responsible party in accordance with Subsection 5.28.130.A, shall also be posted at or upon the main entry of the entertainment establishment subject to the Order.

B. Except as otherwise expressly required by a provision of this Chapter, any notice or order issued by mail to a responsible person shall be sent to the mailing address listed on the application for an Entertainment Permit or a request for an appeal (or any other address provided by the responsible person for purposes of receiving mail). Failure of any responsible person to receive a properly addressed notice by mail shall not invalidate any action or proceeding pursuant to this Chapter.

#### **5.28.140 Operating Standards**

Unless otherwise exempt from the requirement for an Entertainment Permit pursuant to the provisions of this Chapter, all entertainment establishments shall strictly adhere to the following operating standards.

##### **A. Hours of Operation.**

1. Except as otherwise provided in an approved Entertainment Permit, all entertainment establishments shall be closed and all patrons shall vacate the premises between 2:00 a.m. and 6:00 a.m.

2. Except as otherwise provided in an approved Entertainment Permit, all live entertainment at an entertainment establishment shall cease at least thirty (30) minutes prior to the scheduled closing time for the establishment or 1:30 a.m., whichever is earlier.

##### **B. Posting and Exhibition of Entertainment Permit**

1. The permittee holding an Entertainment Permit shall keep a copy of the Entertainment Permit (along with all applicable conditions thereon) posted in a conspicuous location at the entertainment establishment named in the Entertainment Permit.

2. Any Entertainment Permit issued pursuant to this Chapter shall be kept in a readily accessible place and shown upon request to any City official responsible for enforcing the provisions of this Chapter or any other provision of this Code.

C. **Security.** Responsible persons for an entertainment establishment shall maintain on the premises of the entertainment establishment and shall strictly adhere to a written security plan submitted in accordance with Section 5.28.050.A.10 and approved by the Chief of Police.

1. Unless otherwise set forth in the approved security plan or as a condition of an Entertainment Permit, responsible persons for an entertainment establishment shall provide at least one (1) uniformed, state licensed security guard for every fifty (50) persons on the premises of an entertainment establishment and within any queue to enter the establishment (i) commencing at least thirty (30) minutes prior to scheduled entertainment or 9:00 p.m., whichever is earlier, and (ii) lasting until all activity at the entertainment establishment has ceased and all patrons have cleared the establishment and parking area.

2. Notwithstanding any other provision of law, no responsible person shall cause, allow, permit, or suffer any security personnel to, and no security personnel shall, be in possession of any firearm while on duty at the entertainment establishment.

3. Unless otherwise set forth in the approved security plan or as a condition of an Entertainment Permit, in addition to any security required pursuant to an approved security plan, an Entertainment Permit, and/or this Section, each entertainment establishment shall provide a minimum of one parking lot attendant with a reflective vest or other clothing/uniform approved by the Chief of Police to monitor activities commencing at least thirty (30) minutes prior to scheduled entertainment and lasting until all activity at the entertainment establishment has ceased and all patrons have cleared the establishment and parking area.

4. Each responsible person (including security personnel) shall use reasonable efforts to cause the orderly dispersal of individuals in the vicinity of the entertainment establishment (including the parking area and rights-of-way adjacent to the establishment) at closing time, and shall not allow individuals to congregate within fifty (50) feet of the establishment in a disorderly fashion.

5. No responsible person shall cause, allow, permit, or suffer, and no security personnel shall, sit at the bar, consume alcoholic beverages or any controlled substance, be under the influence of alcoholic beverages or any controlled substance, or engage in any other violations of law while on duty at the entertainment establishment.

6. Each entertainment establishment shall install, use, and maintain in good working condition a video security system capable of viewing and recording events at the entertainment establishment as approved by the Chief of Police. The video security system must be clearly identified and approved within the security plan submitted in accordance with Section

5.28.050.A.10. The video security system shall be on and operating at all times during business hours and until all activity at the entertainment establishment has ceased and all patrons have cleared the establishment and parking area. The video security system shall be of such to provide images of such a resolution as to clearly identify individuals for later identification.

a. The entertainment establishment shall ensure that at least one employee or other person is present on the premises during normal business hours with the necessary knowledge and skill to operate the video security system so that he or she is able to provide the Covina Police Department copies of video recordings immediately upon request.

b. Responsible persons shall preserve the video security system's recorded information of each business day for a period of not less than ten (10) business days thereafter for the Covina Police Department's review in connection with a criminal or other investigation.

**D. Queues.** Queuing lines shall be managed in an orderly manner and all disruptive and intoxicated persons shall be denied entry. Any queue located on the exterior of a building shall not obstruct the entry or exit doors of adjacent businesses and residences, and shall be located in such a manner that the adjacent sidewalk has at least three feet (3') of unobstructed clearance. All requisite City approvals and permits shall be obtained prior to placing or using any stanchions, rope, balusters, or similar barriers for queues.

**E. Alcoholic Beverages on Premises.** No person shall cause, allow, permit, or suffer any alcoholic beverage at an entertainment establishment unless otherwise authorized pursuant to and in compliance with a current and valid ABC license (unless otherwise exempt from such license).

1. All responsible persons for the entertainment establishment shall be responsible for verifying the age of those persons desiring to purchase and/or consume alcoholic beverages at the establishment in order to ensure compliance with State law restricting the age of the sale and consumption of alcohol to those twenty-one (21) years of age and older. This verification process may include such techniques as the manual checking of identification by a trained employee, the use of an identification scanner or similar device, or other method as approved in the security plan.

**F. Nuisances.** Responsible persons shall not cause, allow, permit, or suffer any nuisance condition at the entertainment establishment, parking area,

or adjacent public right-of-way. Such nuisances include, but are not limited to, disorderly conduct, disturbances of the peace, public drunkenness, consumption of alcohol in public, harassment of passersby, gambling, prostitution, loitering, public urination, lewd conduct, and possession, use, or sales of controlled substances.

G. **Graffiti.** Any graffiti painted or marked upon the premises of an entertainment establishment or any adjacent area under the ownership, possession, or control of the responsible person for the entertainment establishment shall be removed or painted over within 24 hours of its application.

H. The premises shall not be operated as an adult-oriented business as defined in Chapter 9.30 of this Code.

I. There shall be no public telephones located on the exterior of the premises of an entertainment establishment. All interior pay phones shall be designed to allow outgoing calls only.

J. **Maximum Occupancy.** A sign indicating the maximum occupancy as approved by the City shall be posted as directed by the City Building Official. No responsible person shall cause, allow, permit, or suffer any person to enter or remain in the entertainment establishment (or any area thereof) in excess of the approved maximum occupancy.

K. **Reporting Requirement.** Responsible persons shall notify the Chief of Police, in writing, within five (5) calendar days of:

1. Any enforcement action either proposed or actually taken by Alcohol Beverage Control against the entertainment establishment or any responsible person in connection with the entertainment establishment. As used herein, "enforcement action" includes, but is not limited to, the issuance of any "309 Letters", the issuance of a criminal citation to an officer/member, employee, or agent of the responsible persons for alleged violations of law at the entertainment establishment, as well as the initiation of an administrative or civil action against the entertainment establishment or responsible persons for alleged violations of law at the entertainment establishment. "Violations of law" as used herein includes failures to comply with regulations that govern liquor licenses and the premises for which they are issued;

2. Any conditions at the entertainment establishment that substantially affect the public safety which the responsible persons (including any manager and security personnel) know or reasonably should know exist at the time of occurrence;

3. Any incidents of disorderly conduct as defined by this Chapter – including any possession, use, or sale of controlled substances, that have been brought to the attention of responsible persons, or that otherwise the responsible persons know or reasonably should know to have occurred at the entertainment establishment.

**L. Event Promoters.** No responsible person shall use, hire, employ, or avail himself or herself of the service of an event promoter, as defined in this Chapter, for an entertainment establishment unless the event promoter has a current and valid Event Promoter Permit issued in accordance with the provisions of Article II of this Chapter (commencing with Section 5.28.200).

1. Responsible persons shall maintain a copy of any contracts or agreements between the entertainment establishment or responsible persons and the event promoter on file at the entertainment establishment for a period of not less than two (2) years. The two (2) year period shall commence on the later of the last day of operation of the specific event being promoted or the contract's/agreement's expiration date.

**M.** Responsible persons shall provide consent for and access by any person responsible for the enforcement of the provisions of this Chapter or any other provision of this Code to enter any portion of the entertainment establishment, without charge, at any time during normal business hours or during which any operations are occurring at the entertainment establishment in order to verify compliance with any Entertainment Permit (including an approved security plan and ABC license), the provisions of this Chapter or any other portion of this Code, or any other applicable law or regulation.

1. A permittee and all responsible persons shall fully cooperate with any investigation conducted in order to verify compliance with any Entertainment Permit (including an approved security plan and ABC license), an Event Promoter Permit, the provisions of this Chapter or any other portion of this Code, or any other applicable law or regulation. Cooperation shall include, but shall not be limited to, allowing investigators the immediate opportunity upon request to review any video, writing, or other record required pursuant to the provisions of an Entertainment Permit or other applicable license or permit, this

Chapter, or any other provision of law, and providing a copy of said video, writing, or other record within 72 hours.

N. A permittee and responsible persons shall be responsible for all activities occurring on the premises of an entertainment establishment (including parking areas), including those conducted by employees, managers, event promoters, and other persons acting for the benefit of the entertainment establishment, as well as by the patrons.

**5.28.150 Indemnification.**

Permittees and all responsible persons shall indemnify and hold the City harmless from any and all losses, claims, actions or damages suffered by any person or persons by reason of or resulting from any negligence of the permittee or its agents, employees, or patrons or on account of any act or omission of the permittee in its exercise of its Entertainment Permit or use of any premises in connection with such permit. In the event any suit or action is brought against the City, the permittee and all responsible persons shall, upon notice of the commencement thereof, defend the same, at no cost or expense to the City, and promptly satisfy any final judgment adverse to the City or to the City and the permittee jointly; provided, that in the event the City determines that one (1) or more principles of governmental or public law are involved, the City retains the right to participate in such action. The above liability shall not be diminished by the fact, if it be a fact, that any such death, injury, damage, loss, cost or expense may have been, or may be alleged to have been, contributed to by the negligence of the City or its officers, employees, or agents; provided, however, that nothing contained in this Section shall be construed as requiring the permittee to indemnify the City against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the City, or its officers, employees, or agents.

**5.28.160 Permits Issued Prior to the Effective Date of this Chapter**

Unless an earlier expiration date is specified in the terms or conditions of the permit itself, any permit for dance and/or entertainment in the City or for any billiard parlor or billiard or pool tables in the City issued before the effective date of the ordinance codified in this Section shall be valid for one year from the effective date of this Section and shall terminate thereafter. Notwithstanding any other provisions of this Chapter, all permits issued for dance or entertainment in the City or for a billiard parlor or billiard or pool tables in the City before the effective date of the ordinance codified in this Section shall be subject to suspension, modification, or revocation pursuant to the provisions of Section 5.28.090.

**5.28.170 Violations and Penalties**

A. Any person who violates any provision of this Chapter, or fails to comply with any obligation or requirement of this Chapter, or who fails to comply with any order or notice issued pursuant to the provisions of this Chapter, is guilty of a misdemeanor offense punishable in accordance with Chapter 1.16 of Title 1 of this Code.

B. Any person who defaces, alters, or removes any Notice or Order posted as required in this Chapter is guilty of a misdemeanor offense punishable in accordance with Chapter 1.16 of Title 1 of this Code.

C. Nothing in this Chapter shall prevent the City Attorney or City Prosecutor from prosecuting a violation of this Chapter as an infraction, at his/her discretion, as set forth in Chapter 1.16 of Title 1 of this Code.

D. Nothing in this Chapter shall prevent the City Attorney or City Prosecutor from bringing a civil action, at his/her discretion, to seek the abatement of any violation of this Code or any nuisance activity at an entertainment establishment.

E. Nothing in this Chapter shall prevent any City enforcement officer from issuing an administrative citation for violations of the provisions of this chapter, as set forth in Chapter 1.26 of this Code.

F. Each person shall be guilty of a separate offense for each and every day, or part thereof, during which a violation of this Chapter, or of any law or regulation referenced herein, is allowed, committed, continued, maintained or permitted by such person, and shall be punishable accordingly.

G. Public Nuisance. In addition to the penalties provided by this Chapter, any condition or activity caused or permitted to exist in violation of any provision, restriction, or requirement of this Chapter or any notice, order, or permit issued pursuant to this Chapter, shall be deemed a public nuisance and may be summarily abated by the City by any and all means (civil, administrative, and/or equitable) as provided by law or in equity.

**5.28.180 Cumulative Remedies, Procedures, and Penalties.**

Unless otherwise expressly provided, the remedies, procedures, and penalties provided by this Chapter are cumulative to each other and to any others available under City, State, or Federal law.

**Article II. Event Promoter**

**5.28.200 Event Promoter Permit Required.**

Unless exempted pursuant to Section 5.28.210 of this Code, it is unlawful for any person to be an event promoter or to engage in event promotion activities in the City without first having obtained an Event Promoter Permit from the Chief of Police.

**5.28.210 Exceptions from the Event Promoter Permit Requirement.**

An Event Promoter Permit shall not be required for any person promoting entertainment that is otherwise exempt from an Entertainment Permit as provided in Article I, Chapter 5.28 of this Code.

**5.28.220 Event Promoter Permit – Application and Contents Thereof.**

A. Every person wishing to be an event promoter or engage in the activities of an event promoter in the City shall file an application with the Chief of Police on forms approved by the Chief of Police at least thirty (30) calendar days prior to the commencement of the engaging in such activities. Such application shall, at a minimum, set forth the following information:

1. The name(s), residence(s), business address, and telephone number(s) of the applicant(s), and, if the applicant(s) is/are a corporation, limited liability company, general or limited partnership, or any other fictitious entity, the name(s), residence(s), and telephone number(s) of:

a. All directors and officers of the corporation or limited liability company;

b. All persons who own or hold 10% or more of an ownership interest in the corporation or limited liability company;

c. All persons who are members or managers of the limited liability company;

d. All persons who are partners in the general partnership;

e. All persons who are general partners in the limited partnership;

2. A copy of a current and valid government issued driver's license or identification card for each person providing information pursuant to this Section;

3. A copy of the applicant's current and valid Covina Business License to engage in the activities of an event promoter;

4. The name and address of the venue(s) for which the applicant will be engaging in the activities of an event promoter;

5. A copy of the current and valid Entertainment Permit for the venue(s) for which the applicant will be engaging in the activities of an event promoter;

6. The name(s) of any person(s) who will be managing or supervising the event and/or venue for which the applicant will be serving as an event promoter;

7. Whether the applicant and/or any person for whom information is required to be provided pursuant to this Section has ever had a permit for the same or any similar business denied, suspended, or revoked anywhere, and, if so, the circumstances, time and place of such denial, suspension, and/or revocation;

8. Whether the applicant and/or any person for whom information is required to be provided pursuant to this Section has ever been convicted of a misdemeanor or felony and, if so, the details of such conviction;

9. The signature, under penalty of perjury, of the applicant and of all persons for whom information was required to be provided pursuant to this Section;

10. Such other information as the Chief of Police deems necessary for the proper processing and review of the application, for fulfilling the goals of this Chapter, and/or for the safeguarding of the public health, safety, and general welfare.

B. Each application submitted pursuant to this Section shall be accompanied by a non-refundable fee that shall be established by (and modified from time to time) by resolution of the City Council.

C. The applicant and all persons for whom information was required to be provided pursuant to this Section shall submit a complete set of fingerprints to the Chief of Police in a manner and form approved by the Chief of Police. Any fees for the fingerprints shall be paid by the applicant.

**5.28.230 Event Promoter Permit – Investigation and Action Thereon.**

A. **Determination of Completeness.** The Chief of Police shall, within ten (10) calendar days, review the submission of any application for an Event Promoter Permit and supporting documents to determine if the Application contains all of the requisite information set forth in Section 5.28.220. Any application that is missing information required pursuant to Section 5.28.220 or that is not accompanied by the requisite fee shall be deemed incomplete and shall not be processed by the Chief of Police. In such case, the Chief of Police shall issue a Notice of Incompleteness to the applicant specifying the information that is missing resulting in the incomplete application.

B. **Investigation.** Upon receipt of a complete Event Promoter Permit application (and requisite fees), the Chief of Police shall conduct a thorough investigation of the application. The Chief of Police may request supplemental investigation, information, reports, and/or recommendations pertaining to relevant zoning, building, health, safety, fire, law enforcement, or other factors from any appropriate department of the City or other appropriate agency.

Among other things, the Chief of Police shall be required to check local and State summary criminal history information, including CLETS/NCIC, and to certify whether disqualifying criminal history has been discovered. Accordingly, pursuant to Penal Code Sections 11105 and 13300, the City Council explicitly authorizes the Chief of Police to obtain such information as it relates to disqualifying convictions or conduct related to the crimes and offenses described in this Chapter.

C. **Approval.** The Chief of Police shall, within thirty (30) calendar days of submission of a completed application for an Event Promoter Permit, approve the issuance of an Event Promoter Permit, subject to the conditions set forth in Section 5.28.230.E, unless he or she determines:

1. Other approvals, permits, licenses, or inspections are required in order for the applicant to engage in the activities of an event promoter as set forth in the application, including, but not limited to, an Entertainment Permit for the venue for which the applicant will be serving as an event promoter;

2. The applicant or any other person for whom information is required to be provided pursuant to Section 5.28.220 has, within the past seven (7) years, been convicted of any felony or of any misdemeanor crime involving moral turpitude or which is substantially related to the qualifications, functions, or

duties of a proprietor, manager, or other responsible person for an entertainment establishment;

3. The applicant or any other person for whom information is required to be provided pursuant to Section 5.28.220 has a history of committing, permitting, or failing to prevent significant violations of Federal, State, or local law, or of any license or permit, in connection with an entertainment establishment for which he or she was an owner, operator, or otherwise responsible person;

4. Based upon the information before the Chief of Police, the applicant or any other person for whom information is required to be provided pursuant to 5.28.220, has knowingly provided false or misleading information, or has otherwise omitted information in the application or in any amendment or report required to be made under this Chapter;

5. The applicant or any other person for whom information is required to be provided pursuant to Section 5.28.220 has had an Event Promoter Permit denied or revoked within the twelve (12) months preceding the current application;

6. The applicant or any other person for whom information is required to be provided pursuant to Section 5.28.220 owes the City of Covina a fee authorized by Section 5.28.220.B or an administrative penalty resulting from a violation of any provision of this Chapter or of a condition of any permit issued pursuant to this Chapter; and/or,

7. The application is otherwise incomplete.

**D. Denial.** In the event the Chief of Police does not approve an Event Promoter Permit, the Chief of Police shall issue a written Notice of Denial to the applicant notifying the applicant of the denial and the reasons therefor within thirty (30) calendar days of the submission of a completed application for an Event Promoter Permit. The Notice of Denial shall also advise the applicant of the applicant's appeal rights (including method and timeline for requesting an appeal) as set forth in Section 5.28.270.

**E. Conditions of Approval.** Event Promoter Permits shall be subject to conditions in order to ensure compliance with this Chapter, applicable Federal, State, and local law, and otherwise to protect the public health, safety, and welfare.

1. The conditions placed imposed upon any Entertainment Permit, ABC license, conditional use permit, other special permit, or land-use entitlement applicable to the entertainment establishment for which the applicant

shall be engaging in the services of an event promoter shall constitute conditions of the Event Promoter Permit issued under authority of this Chapter.

a. The Chief of Police may require an applicant for an Event Promoter Permit to demonstrate compliance with applicable conditions of existing Entertainment Permit, ABC license, conditional use permit(s), other special permit(s), and/or land-use entitlement(s) prior to the issuance of the Event Promoter Permit or may issue the permit conditioned on the applicant obtaining any other additional necessary special permit or other City, County, or State approval.

2. The Operating Regulations and Conditions set forth in Section 5.28.310 shall constitute conditions of any Event Promoter Permit issued pursuant to the provisions of this Chapter.

3. The Chief of Police may, based upon specific and articulable facts reasonably related to insuring the public health, safety, and welfare – impose conditions upon an Event Promoter Permit relating to the operation of the entertainment establishment including, but not limited to:

a. The days, hours and locations of entertainment being provided;

b. Restrictions designed to prevent minors from obtaining alcoholic beverages, such as separate entrances, exits, and restroom facilities on the premises;

c. The number and age of persons allowed on the premises;

d. Whether licensed security guards are required, and, if so, how many;

e. Specific measures the permittee must undertake to control the conduct of patrons so as to prevent or minimize disorderly conduct within the entertainment establishment, parking areas, and adjacent public rights-of-ways;

f. Specific measures the permittee must undertake to remove trash attributable to the establishment or its patrons in and around the entertainment establishment, the surrounding neighborhood, and the adjacent public rights-of-way;

g. Specific measures the permittee must undertake to prevent the entertainment and its patrons from disturbing the peace and quiet of the surrounding neighborhood;

h. Specific measures the permittee must undertake to prevent its patrons from engaging in disorderly conduct in the surrounding neighborhood;

i. Whether the Chief of Police must receive advance notice of the date of a particular event if that event is not held as part of the regularly scheduled events of the business; or,

j. Other matters related to the public health, safety, and welfare.

4. Nothing in this Section shall be construed to limit the authority of the Chief of Police to place additional conditions upon the Event Promoter Permit that are more restrictive than the conditions of any applicable Entertainment Permit, conditional use permit, special permit, or land-use entitlement, or of any applicable Operating Regulation and Condition;

5. No condition may be imposed upon any Event Promoter Permit that conflicts with Federal, State or local law;

6. Conditions shall be listed on, or attached to, the Event Promoter Permit;

7. The imposition of any conditions other than those imposed by Sections 5.28.230.E.1 and 5.28.230.E.2 is subject to appeal in accordance with the time constraints and provisions set forth in Section 5.28.270.

**5.28.240 Event Promoter Permit – Duration.**

A. Except as provided in Subsection B of this Section, Event Promoter Permits issued pursuant to this Chapter are valid for a period of one (1) year from the date of issuance.

B. An Event Promoter Permit issued for a special event is valid for the term stated in the permit, but in no event for a period greater than one (1) year from the date of issuance.

**5.28.250 Event Promoter Permit – Non-Transferable**

No person shall assign or transfer any Event Promoter Permit to any other person issued pursuant to this Chapter, and any attempt to assign or transfer any Event Promoter Permit issued pursuant to this Chapter shall render the Event Promoter Permit null-and-void and shall be immediately surrendered to the Chief of Police.

**5.28.260 Event Promoter Permit – Modification, Suspension, or Revocation**

A. **General.** The Chief of Police may modify the conditions of an Event Promoter Permit or may suspend or revoke any Event Promoter Permit issued pursuant to this Chapter if the Chief of Police makes any of the following findings and/or determinations:

1. There exists any ground for denial of the Event Promoter Permit pursuant to Section 5.28.230 of this Chapter;

2. The permittee or other responsible person has knowingly made any false, misleading, or fraudulent statement of material fact or has knowingly omitted a material fact in the application for the Event Promoter Permit or any report or records required to be filed by law;

3. The permittee or other responsible person has failed to comply with one or more conditions of the Event Promoter Permit, or any other entitlement granted by the City or other government agency (including any conditions of an Entertainment Permit or ABC license) issued for the venue for which the permittee is serving as an event promoter;

4. The permittee or other responsible person has violated or is violating any ordinance, law, rule, or regulation of the City, County of Los Angeles, State of California, or the United States of America, in the course of exercising any rights under the Event Promoter Permit or the Entertainment Permit issued for the venue for which the permittee is serving as an event promoter;

5. The permittee or other responsible person has engaged in the activities of an event promoter in violation of any conditions of approval, Notice of Denial, Order of Suspension, or Order of Revocation issued pursuant to this Chapter;

6. The permittee or other responsible person has been held liable for, or has been convicted of, any offense involving the maintenance of a nuisance resulting from any act performed in exercising any rights under the Event Promoter Permit or the Entertainment Permit issued for the venue for which the permittee is serving as an event promoter; and/or,

7. Continued activities under the Event Promoter Permit (and any applicable conditions) would endanger, disrupt, or otherwise be detrimental to the public peace, health, safety, morals, or general welfare of the City, its residents or guests, and/or the general public, or would otherwise constitute a public nuisance.

**B. Order of Modification, Suspension, and/or Revocation.**

1. Where the Chief of Police has determined that the conditions of an Event Promoter Permit shall be modified or that an Event Promoter Permit shall be suspended or revoked, the Chief of Police shall provide written notice of his or her decision to the permittee in the same manner as that set forth for the modification, suspension, and/or revocation of an Entertainment Permit pursuant to Section 5.28.090 of this Chapter.

2. The effective date of a modification, suspension, and/or revocation of an Event Promoter Permit shall be the same as that set forth for the modification, suspension, and/or revocation of an Entertainment Permit pursuant to Section 5.28.090 of this Chapter.

**5.28.270 Event Promoter Permit – Appeals**

A. **Request for Appeal.** Any applicant for an Event Promoter Permit that has received a Notice of Denial, any permittee that has received an Event Promoter Permit subject to conditions of approval pursuant to Section 5.28.230, and any permittee that has received an Order of Modification, Suspension, and/or Revocation of an Event Promoter Permit pursuant to the provisions of this Chapter may appeal said Notice or Order by filing a request for an appeal with the City Clerk, and tendering a filing and processing fee as set by resolution of the City Council, within ten (10) calendar days of service of the Notice, Order, or conditions of approval. The procedures and timelines for an appeal shall be the same as those set forth for an appeal of a modification, suspension, and/or revocation of an Entertainment Permit pursuant to Section 5.28.100 of this Chapter

**5.29.280 Effect of Denial and Revocation of an Event Promoter Permit**

A. If an application for an Event Promoter Permit is denied or revoked by the Chief of Police pursuant to the provisions of this Chapter, no application for an Event Promoter Permit submitted by the same applicant or any person for whom information was required to be provided for the denied or revoked Event Promoter Permit pursuant to Section 5.28.220 shall be considered by the Chief of Police for a period of twelve (12) months from the date of denial or revocation.

B. **Exception.** Notwithstanding the provisions of Subsection A of this Section, the Chief of Police may consider an application for an Event Promoter Permit in less than the stated period if the application is accompanied by evidence that the ground or grounds for denial of the previous application no longer exist. This exception does not apply to permits that have been revoked.

**5.28.290 Issuance of Subsequent Event Promoter Permit**

Applications for a new Event Promoter Permit for the same promoter providing services for the same location as authorized in a current and valid Event Promoter Permit shall be submitted and processed in the same manner as set forth in Sections 5.28.220 and 5.28.230.

**5.28.300 Event Promoter Contract Required.**

A. No event promoter shall promote an event except pursuant to a written contract executed between the event promoter and the person hiring the event promoter which may include, but is not limited to, the owner, manager, lessee, or renter of the entertainment establishment or premises where the event is scheduled to occur.

B. The contract shall include, at a minimum, the following information:

1. The complete name, address, telephone number, and date of birth for the event promoter;

2. A photocopy of the event promoter's government issued driver's license or identification card;

3. The event promoter's Event Promoter Permit number and Covina Business License number;

4. A photocopy, or other legible reproduction, of the event promoter's Event Promoter Permit and Covina Business License;

5. The address and name (if applicable) of the entertainment establishment where the entertainment will occur;

6. The number of the Entertainment Permit, ABC license, and any other license or permit required for the event;

7. A photocopy, or other legible reproduction of, the Entertainment Permit, ABC license, and any other license or permit required for the event;

8. The legally-authorized maximum occupancy limit of the event site, including each room, floor, or other area where the event is scheduled to occur;

9. A telephone number for the event promoter at which the event promoter will respond for the duration of the event and for two (2) hours before and after such time as the event is scheduled to occur;

10. The time(s), date(s), and length of the event(s);

11. A list naming all entertainers and performers who are scheduled to perform during the event;

12. A general description of the methods that will be used for the promotion, marketing, and advertising of the event;

13. The complete name of each employee, agent, or other representative of the event promoter that will be present at the event and the general description of their respective duties;

14. Language prohibiting the placement of signs in the City of Covina without all requisite City approvals, permits, and inspection, or within the public right-of-way.

C. A copy of the contract required by this Section shall be kept and maintained at the entertainment establishment for the duration of the event (as well as for two hours before and after such time as the event is scheduled to occur), and shall be made available by the event promoter and any responsible person for inspection and copying upon request of the Chief of Police or any City Official responsible for enforcing the provisions of this Code.

D. If the parties to the contract make any changes to the terms or provisions thereof between the time the contract is executed and the time when the event occurs, those changes shall be reflected in an amended contract which shall comply with the requirements set forth in Subsections A through C, above.

#### **5.28.310 Operating Regulations and Conditions.**

All event promoters shall strictly adhere to the following Operating Regulations and Conditions. Event promoters shall be jointly responsible for any violations of these Operating Regulations and Conditions – which shall not relieve any other responsible person of any obligations set forth in this Chapter.

A. Event promoters shall comply with the following:

1. Conditions of any applicable Event Promoter Permit, Entertainment Permit (including approved security plan), Conditional Use Permit, or other special permit or land-use entitlement;

2. All applicable Federal, State, County, and City laws, ordinances, rules, and/or regulations;

**B. Record Keeping.** Each event promoter shall maintain on file, for a period of not less than two (2) years from the later of the last day of operation of the specific event being promoted or the contract's expiration date, complete and accurate records of all business activities related to events for which the event promoter has performed any services or activities that are subject to the provisions of this Chapter. Such records shall include, but shall not be limited to the following:

1. All contracts required by this Chapter, as well as any contracts with performers; and,

a. Contracts with performers shall contain, at a minimum, the true name of the performer along with any fictitious/stage name under which the performer is being promoted.

2. Records of advance ticket sales, tickets sold at events, other admission or entrance fees or donations, or any other fees, charges, or donations collected at such events.

The records required by this Section shall be made available for inspection by the Chief of Police or any City Official responsible for enforcing the provisions of this Code. Clear and legible copies of such records shall be provided within seventy-two (72) hours of any request by the Chief of Police or any City Official responsible for enforcing the provisions of this Code.

**C. On-Site Presence During Event.** The event promoter or agent thereof (at least 21 years of age or older) shall be on-site for the entire duration of the event he or she is promoting, as well as for one (1) hour before the event is scheduled to occur and thirty (30) minutes after the conclusion of the event (unless the business establishment closes prior thereto).

**D. Advertising.** Event promoters shall ensure that all promotional materials, including, but not limited to, handbills, dodgers, circulars, booklets, cards, pamphlets, sheets, other written or printed notices, and/or any sample products, any of which advertise the event being promoted, contain plainly printed or stamped on the first page thereof, or on the front thereof, in a space free of other matter, the number of the applicable Event Promoter permit.

**E.** Cooperate fully with the Chief of Police or any City Official responsible for enforcing the provisions of this Code with any inquiry, inspection, reasonable request, or investigation necessary or appropriate to implement the requirement of this Code or to enforce any other Federal, State, County, or City law;

F. Immediately report to the Covina Police Department and, if necessary, emergency medical services at 911, any conditions which the event promoter (or his or her designated representative) knows, or reasonably should know, exist at the event and could result or could have resulted in harm or an immediate threat of harm to the health, safety, and general welfare of the spectators of the event or any member of the public.

**SECTION 3:** If any Article, section, subsection, paragraph, sentence, clause or phrase of this Chapter is declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council declares that it would have adopted this Chapter, and each Article, section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more Articles, sections, subsections, phrases, or portions be declared invalid or unconstitutional.

**SECTION 4.** This Ordinance shall take effect thirty (30) days after its adoption.

**SECTION 5:** The City Clerk, or her duly appointed deputy, shall attest to the adoption of this Ordinance. Not later than fifteen (15) days following the passage of this ordinance, the ordinance, or a summary of the ordinance, along with the names of the City Council members voting for and against the ordinance, shall be published in a newspaper of general circulation in the City of Covina.

**SECTION 6:** The City Council finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SIGNED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
JOHN C. KING, MAYOR

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney



## CITY OF COVINA

# AGENDA REPORT

ITEM NO. PH 1

**MEETING DATE:** November 17, 2015

**TITLE:** Proposed Ordinance Repealing Chapter 5.12 (“Billiard Parlors, Billiard and Pool Tables”) and Modifying Regulations Relating To Dancing and Entertainment By Repealing Chapter 5.28 (“Dance And Dance Halls”) and Adopting A New Chapter 5.28 (“Entertainment”) In Title 5 (“Business Licenses And Regulations”) of the Covina Municipal Code

**PRESENTED BY:** Chief Kim Raney, Covina Police Department  
Captain Derek Webster, Covina Police Department  
Stephanie Stabio, Associate Planner, Covina Police Department  
Brian K. Lee, AICP, Community Development Director

**RECOMMENDATIONS:** (1) Conduct a public hearing considering Ordinance No. 15-2046; close the public hearing; introduce and waive further reading of Ordinance No. 15-2046; and direct staff to agendize the Ordinance for second reading and adoption.

(2) Direct staff to analyze costs related to various permits established pursuant to the proposed ordinance and prepare a resolution establishing the fees for City Council consideration; and

(3) Direct staff to create a “one-time CUP Modification” program related to entertainment-related conditions of approval and present the proposed program to the City Council for further consideration at a future meeting.

---

### **BACKGROUND:**

The City of Covina has a long history of encouraging the development of art and culture in the City, and it recognizes that the variety of entertainment venues within the City provide a rich and diverse cultural experience for its residents and visitors. The City also recognizes that establishments that provide entertainment – especially when alcohol is also furnished at that location, have the potential to generate excessive noise disturbances, disorderly conduct by patrons both inside and outside of the establishment, and other adverse impacts upon the health, safety, and welfare of surrounding business and residential community.

Since 1964, in an effort to mitigate the negative impacts generated from entertainment establishments, the City has required the owner to obtain a regulatory permit before providing dance or other forms of entertainment within the City. However, other than a few minor modifications in 1972 and 1973, the City’s regulation of establishments that provide or allow dance and/or entertainment has remained static since 1964.

In addition to regulating dance and/or entertainment through a regulatory permit, some business establishments that provide entertainment are also regulated through a conditional use permit (e.g., restaurants that furnish alcoholic beverages and entertainment). However, there are several establishments that provide a form of live or non-live entertainment that do not fall within the parameters of a conditionally permitted use and it is only through a regulatory entertainment permit that the City can impose conditions designed to prevent the adverse impacts resulting from such establishments.

Since 1964, there has been a surge in establishments that provide some form of entertainment, whether live or non-live, in an effort to gain or hold the attention of patrons – especially at establishments that serve food and alcoholic beverages. Most recently, there has been an increase in restaurants that have been approved by the City and the Department of Alcoholic Beverage Control to be bonafide eating establishments that, through the provision of alcohol and entertainment, are morphing into “nightclub” establishments without adequate regulations designed to prevent the adverse secondary impacts that such establishments create.

Despite strong efforts by City staff to enforce the current regulations pertaining to dance and other forms of entertainment, Police Department data supports the premise that establishments that provide or otherwise allow entertainment (especially those that also provide alcoholic beverages) routinely generate a greater percentage of police-related calls and require a greater number of police service hours than establishments that do not provide entertainment.

Although the City remains committed to supporting the vibrant nightlife that exists in Covina, it is imperative that the City revise and strengthen its entertainment regulations, both live and non-live, in order to (i) keep pace with the changes in the entertainment industry – including the regulation of event promoters used by establishments that provide entertainment, (ii) to provide clear direction to City businesses and City staff, and (iii) to continue efforts to deter the adverse and potentially deleterious impacts resulting from such business establishments.

In an effort to allow staff to draft a comprehensive ordinance regulating live and non-live entertainment, in September 2015, the City Council adopted Ordinance No. 15-2040 which imposed a moratorium that prohibited for a period of forty-five days (1) the issuance of any new permits for dances or entertainment venues and uses and (2) the establishment or expansion of dance or entertainment venues or uses. In October 2015, the City Council adopted Ordinance No. 15-2044 which extended the moratorium originally created by Ordinance 15-2040 for an additional ten (10) months and fifteen (15) days, with the provision that the moratorium would expire upon the effective date of a new and comprehensive ordinance regulating live and non-live entertainment as adopted by the City Council.

#### **DISCUSSION:**

Ordinance 15-2046 would regulate both live and non-live forms of entertainment provided in the City of Covina, while still providing ample opportunity for entertainment to be presented for the benefit of guests. Amongst other actions, Ordinance 15-2046 seeks (i) to enhance the definitions of terms used in the Covina Municipal Code in connection with the regulation of entertainment; (ii) to clearly set forth the procedures to apply for an “Entertainment Permit” or “Event Promoter Permit”, as well as the review of said applications and the grounds for approving, approving with conditions, and denying said applications; (iii) to authorize and set forth the grounds for the suspension and revocation of Entertainment Permits and Event Promoter Permits; and (iv) to protect an applicant’s and/or permittee’s due process rights in the case of a denial, suspension, or revocation of an Entertainment Permit and Event Promoter Permits.

**Entertainment Permit**

Pursuant to Ordinance 15-2046, any person who provides, permits, or allows any form of entertainment must obtain a current and valid Entertainment Permit issued by the Covina Police Chief, unless otherwise exempted.

Ordinance 15-2046 includes the following definitions:

*“Entertainment”* means any single event, a series of events, or an ongoing activity or business, occurring alone or as part of another business, to which persons (including patrons and guests) are invited or allowed to watch, listen, or participate or that is conducted for the purposes of holding the attention of, gaining the attention of, or diverting or amusing guests or patrons. Entertainment shall include both live entertainment and non-live entertainment, as defined by this Chapter.

*“Live Entertainment”* means every form of live performance – whether a single event, a series of events, or an ongoing activity or business, occurring alone or as a part of another business, to which persons (including patrons and/or guests) are invited or allowed to watch, listen, or participate or that is conducted for the purposes of holding the attention of, gaining the attention of, or diverting or amusing guests or patrons, whether or not they are compensated for the performance

*“Non-live Entertainment”* includes any form of entertainment that is not defined as “live entertainment”. Non-live entertainment shall include, but shall not be limited to, jukeboxes, MP3 players, billiard tables, arcade or other electronic gaming devices, pinball machines, and televisions

Although an Entertainment Permit is required for entertainment establishments, certain types of establishments that have not demonstrated a tendency to create adverse impacts upon the community are exempt from the requirement to obtain such a permit. Amongst the establishments that are exempt from the requirement to obtain an Entertainment Permit are those that provide:

The presentation of ambient or incidental recorded music played on radio, stereo, music recording machine, MP3 player, or other similar device without a disk jockey, so long as no other entertainment (including dancing) as defined in this Chapter is provided or allowed and that there is no fee, charge, donation, or other compensation required for entry or admission into the entertainment establishment

Entertainment provided for those guests individually invited and admitted to a private event (such as a wedding, reception, recital, or celebration) at a residence where there is no fee, charge, donation, or other compensation required for entry or admission into the entertainment establishment, and where the entertainment is not audible at a distance of fifty feet (50') or more from the premises upon which the entertainment is occurring.

Non-amplified entertainment, excluding any form of dancing (whether by performers, patrons, or guests), conducted in any establishment or venue with a

maximum occupancy of forty-nine (49) or fewer persons, so long as the actual occupancy does not exceed forty-nine (49) persons and there is no fee, charge, donation, or other compensation required for entry or admission into the entertainment establishment

Entertainment consisting of 5 or fewer televisions (with the sound emanating solely from the internal speakers of said televisions) in any establishment or venue with a maximum occupancy of forty-nine (49) or fewer persons, so long as the actual occupancy does not exceed forty-nine (49) persons, where there is no other form of entertainment provided at said entertainment establishment (including, but not limited to, dancing by performers, patrons, or guests), and there is no fee, charge, donation, or other compensation required for entry or admission into the entertainment establishment

In addition to authorizing the Chief of Police or his or her designee to impose conditions upon an Entertainment Permit, Ordinance 15-2046 sets forth operating standards applicable to entertainment establishments including, but not limited to, hours of operation, security requirements, regulation of queues, abatement of nuisances (including graffiti, excessive noise, disturbances of the peace, public drunkenness, and loitering), and a requirement for operators to cooperate with law enforcement investigations.

Entertainment Permits would be valid for one (1) year from the date of issuance. Permittees desiring to continue providing entertainment without interruption after the expiration of an Entertainment Permit are required to apply for a new or subsequent Entertainment Permit at least sixty (60) days prior to the expiration of the Entertainment Permit.

#### **Event Promoter Permit**

In a further attempt to protect the community from the adverse impacts of entertainment establishments within the City, Ordinance 15-2406 also requires persons engaging in the activities of an event promoter to obtain an Event Promoter Permit. An "Event Promoter" includes, but is not limited to, persons who promote an event in exchange for direct or indirect receipt of compensation, admission or entrance fees paid by spectators, or concessions or other sales at the event.

As with an Entertainment Permit, Ordinance 15-2046 authorizes the Chief of Police to impose conditions of approval upon an Event Promoter Permit in order to ensure compliance with the Ordinance and protect the public health, safety, and welfare of the community.

#### **Fees**

The Police Department, Community Development Department, and the Finance Department are currently reviewing the proposed Ordinance and determining the appropriate fees to be assessed for processing applications for Entertainment Permits, Event Promoters, and appeals. The fees will be based on the costs that will be borne by the City in the processing and review of the applications and will likely include a tiered fee schedule to differentiate those applications related to establishments desiring to provide solely non-live entertainment versus those that seek to provide live entertainment or a combination of live and non-live entertainment which requires more analysis and investigation.

A proposed resolution establishing the permit fees will be presented for the City Council's consideration at an upcoming meeting.

### **Public Outreach**

In October 2015, City staff convened a “Merchants’ Workshop” to review the framework of the City’s proposed regulation of entertainment establishments with business owners who may have an interest in this topic. Representatives of all of the dining establishments in the Downtown area that provide entertainment (or who have expressed an interest in providing entertainment in the near future) were invited to the workshop as well as the Covina Chamber of Commerce.

Based on comments and suggestions by the merchants, proposed Ordinance 15-2046 was refined. Staff believes that the proposed recommendations are responsive to the feedback received from the merchants.

### **Existing Conditional Use Permits**

During the October 2015 Merchant’s Workshop, one issue that was raised regarding the implementation of the proposed Entertainment Ordinance provisions, was the relationship of the new Entertainment Permit with existing CUP conditions. Although the CUP and the Entertainment Permit would work together to provide a regulatory framework for the operation of establishments subject to both such entitlements, there are significant differences between the two. A conditional use permit “runs with the land” and can therefore outlive the initial business for which it was designed – making such regulations applicable to a subsequent business, while an Entertainment Permit is “tailor made” for each requesting establishment, with the potential for the permit conditions to be modified as the business establishment’s operation evolves.

In the past, explicit operating conditions pertinent to the entertainment activity would be part of the menu of the CUP Conditions of Approval. One challenge of regulating the entertainment activity with the CUP Conditions of Approval is the only method of altering the adopted conditions is to modify the approved CUP; which procedurally mirrors the public hearing process of the original CUP application. Thus, the time commitment comprises potentially three (3) to six (6) months (or potentially longer if an appeal is undertaken by either the applicant or neighboring property owners), along with the fee of the CUP application. The logistical burden of modifying the existing CUP is not appealing to an operating business; and introduces an atmosphere of frustration towards the City. Conversely, from the City staff perspective, it is always challenging to try and anticipate potential business operational desires, and therefore, develop appropriate Conditions of Approval that aren’t unnecessarily burdensome while providing appropriate public safety protections. It is this challenge that the proposed Entertainment Permit ordinance is intended to address; along with creating a system that has a higher level of protection for the community while being more responsive to the ongoing operating business cycles.

In an effort to create a user-friendly foundation, it is recommended that a program be created to provide a "one-time" CUP modification "window" for all existing CUP's with entertainment-related Conditions of Approval. (Note: All business operations that will have an entertainment component, as defined by the pending Entertainment Ordinance, will be required to obtain an Entertainment Permit, regardless of whether or not the business has an existing CUP.) During this window, the existing entertainment-oriented Conditions of Approval would be eliminated and replaced with a new Condition of Approval that provide that an Entertainment Permit would govern the entertainment component of the business. An example of a new CUP Condition of Approval may be as follows: *An Entertainment Permit shall be obtained as required by the provisions of the Covina Municipal Code, and any conditions of approval of such Entertainment Permit shall constitute conditions of this CUP.* Therefore, all entertainment-oriented operational conditions and related public safety conditions would be set by the Entertainment Permit – and could be modified as appropriate through the Entertainment Permit process – while still being enforceable as Conditions of Approval of the corresponding CUP.

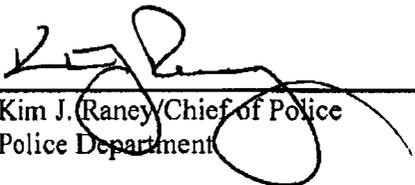
**FISCAL IMPACT:**

None at this time as the fees for the Entertainment Permits and Event Promoter Permits would cover the City's costs related to the administration of the Ordinance.

**CEQA (CALIFORNIA ENVIRONMENTAL QUALITY ACT):**

The adoption of this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Respectfully submitted,



Kim J. Raney, Chief of Police  
Police Department

<b>City Manager</b>	<b>City Attorney</b>	<b>Finance</b>	<b>City Clerk</b>

**ATTACHMENTS:**

Attachment A: Ordinance No. 15-2046

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## CITY OF COVINA

# AGENDA REPORT

ITEM NO. PH 1

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**MEETING DATE:** December 1, 2015

**TITLE:** Public Hearing to consider Resolutions authorizing annexation of territory to City of Covina Community Facilities District No. 2007-1 (Public Services) (Annexation No. 9), and to call and hold a special election (425 W. Center Street)

**PRESENTED BY:** Brian K. Lee, Director of Community Development

**RECOMMENDATION:**

1. City Council to open the public hearing and consider public testimony and close the public hearing; and
2. Adopt **Resolution No. 15-7422**, authorizing the annexation of territory to Community Facilities District No. 2007-1 (Annexation No. 9) and authorizing the levy of a special tax and submitting the levy of tax to the qualified electors; and
3. Adopt **Resolution No. 15-7423**, calling a special election and submitting to the voters of Annexation No. 9 of City of Covina Community Facilities District No. 2007-1 (Public Services), propositions regarding the annual levy of special taxes within Annexation No. 9 to finance public services, and the establishment of an appropriations limit; and
4. Adopt **Resolution No. 15-7424**, making certain findings, certifying the results of an election and adding property to Community Facilities District No. 2007-1 (Public Services), Annexation No. 9.

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### **BACKGROUND:**

At the October 20, 2015, City Council meeting, the Council adopted the boundary map showing territory proposed to be annexed as Annexation No. 9, and declared its intention to authorize the annexation of that territory to Community Facilities District (CFD) No. 2007-1 (Public Services).

The purpose of the CFD is to finance the public safety and park services that are provided to the territory within the District beyond that provided by the City generally. In Fiscal Year 2015-2016 it has been determined that the cost of these services, for each additional multi-family residential home, is \$473.45 per year. This program has been conceived with the intention that all future residential development, which results in a net increase of non-exempted residential units, would be required to annex to the CFD. The project at 425 W. Center Street has a total of two new units. One existing unit will be demolished, resulting in a net increase of one (1) new residential unit. The special tax will be applicable to one (1) unit in Annexation No. 9.

**DISCUSSION:**

The purpose of the public hearing is to 1) authorize the annexation of territory to the CFD (Annexation No. 9); 2) call and hold an election of property owners within the CFD, and 3) authorize the levy of a special tax within Annexation No. 9 to the CFD. The related resolutions are hereby presented to the City Council, pursuant to the Conditions of Approval for two (2) apartments to be built at 425 W. Center Street, Covina, California development, of which one (1) unit is subject to the Community Facilities District tax.

Pursuant to the Conditions of Approval for development of a two-unit apartment development at 425 W. Center Street, Covina, the applicant agreed to annex to the CFD, or to pay an in lieu fee based on the financial impact on Police, Fire, Emergency, and Parks services. The builder opted to annex into the CFD. Under the proposed CFD, in Fiscal Year 2015-2016, any newly constructed, non-exempted multi family or mixed-use units are charged \$473.45 per year for the following services: police, fire protection and suppression, paramedic services, and park maintenance. This Special Tax appears on the annual Property Tax bill for each unit. The Special Tax authorized by the CFD shall be levied on all units for which building permits were issued on or before May 1 of the preceding fiscal year.

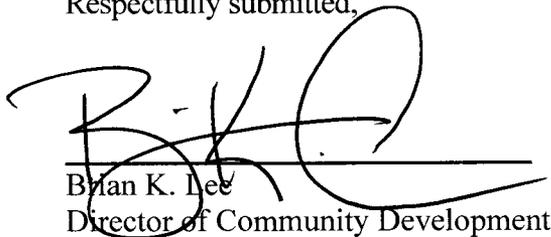
**FISCAL IMPACT:**

The "Special Tax" authorized by the proposed Community Facilities District (CFD) will generate \$473.45 annually, based on one apartment unit at the FY 2015-2016 tax rate of \$473.45 per multi-family unit and will be deposited to Account No. 2740-4800-45800. The Special Tax shall be used to pay for the following additional services in the District: police, fire protection and suppression, paramedic services, and park maintenance. The Special Tax will increase annually by the greater of two percent (2.00%), or the percentage change in the Consumer Price Index.

**CEQA (CALIFORNIA ENVIRONMENTAL QUALITY ACT):**

This activity will not result in a reasonably foreseeable change to the physical environment; it is exempt from CEQA under State CEQA Guidelines 15061 (b ) (2) and (3) and does not constitute a project.

Respectfully submitted,

  
Bryan K. Lee  
Director of Community Development

<b>City Manager</b>	<b>City Attorney</b>	<b>Finance</b>	<b>City Clerk</b>

**ATTACHMENTS:**

- A. Map of 425 W. Center Street, Covina, Annexation No. 9
- B. Resolution No. 15-7422
- C. Resolution No. 15-7423
- D. Resolution No. 15-7424

FILED IN THE OFFICE OF THE CITY CLERK THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016.

I HEREBY CERTIFY THAT THE WITHIN MAP SHOWING PROPOSED BOUNDARIES OF ANNEXATION NO. 9 TO COMMUNITY FACILITIES DISTRICT NO. 2007-1 (PUBLIC SERVICES), CITY OF COVINA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF COVINA AT A REGULAR MEETING THEREOF, HELD ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016, BY ITS RESOLUTION NO. \_\_\_\_\_.

CITY CLERK  
CITY OF COVINA

FILED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016, AT THE HOUR OF \_\_\_\_\_ O'CLOCK \_\_\_\_\_ M. IN THE BOOK OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS, PAGE(S) \_\_\_\_\_ AND AS INSTRUMENT NO. \_\_\_\_\_ IN THE OFFICE OF THE COUNTY RECORDER IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA.

BY DEPUTY  
COUNTY RECORDER  
COUNTY OF LOS ANGELES  
STATE OF CALIFORNIA

REFERENCE IS MADE TO THAT BOUNDARY MAP OF COMMUNITY FACILITIES DISTRICT NO. 2007-1 (PUBLIC SERVICES) OF THE CITY OF COVINA RECORDED IN THE LOS ANGELES COUNTY RECORDER'S OFFICE ON MAY 18, 2007, AS DOCUMENT NO. 2007121337 IN THE BOOK OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS.

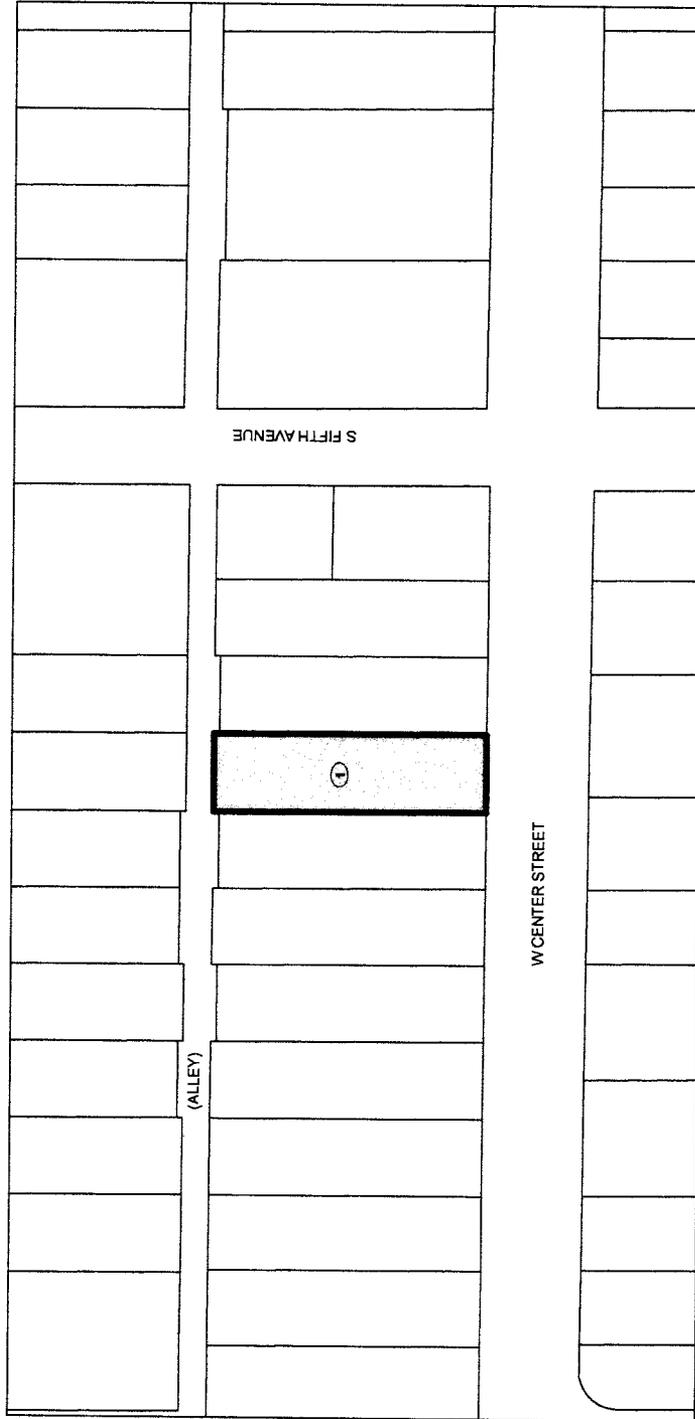
THE LINES AND DIMENSIONS OF EACH LOT OR PARCEL SHOWN ON THIS DIAGRAM SHALL BE THOSE LINES AND DIMENSIONS AS SHOWN ON THE LOS ANGELES COUNTY ASSESSOR'S MAPS FOR THOSE PARCELS LISTED.

THE LOS ANGELES COUNTY ASSESSOR'S MAPS SHALL GOVERN FOR ALL DETAILS CONCERNING THE LINES AND DIMENSIONS OF SUCH LOTS OR PARCELS.

SHEET 1 OF 1

# ANNEXATION MAP NO. 9 COMMUNITY FACILITIES DISTRICT NO. 2007-1 (PUBLIC SERVICES)

CITY OF COVINA  
COUNTY OF LOS ANGELES  
STATE OF CALIFORNIA



MAP REFERENCE NUMBER	1
ASSESSOR'S PARCEL NUMBER	844-034-020

**LEGEND**

Annexation Boundary

Map Reference Number



**ATTACHMENT B**

**RESOLUTION NO. 15-7422**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COVINA, CALIFORNIA, AUTHORIZING THE ANNEXATION OF TERRITORY TO COMMUNITY FACILITIES DISTRICT NO. 2007-1 (ANNEXATION NO. 9) AND AUTHORIZING THE LEVY OF A SPECIAL TAX AND SUBMITTING THE LEVY OF TAX TO THE QUALIFIED ELECTORS**

**WHEREAS**, this Council, on October 20, 2015, adopted Resolution No. 15-7407 (hereafter referred to as the “Resolution of Intention”) stating its intention to annex territory to City of Covina Community Facilities District No. 2007-1 (Public Services) (“CFD No. 2007-1”), pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the “Act”); and

**WHEREAS**, a copy of the Resolution of Intention, which states the authorized services to be provided and financed by CFD No. 2007-1, and a description and map of the proposed boundaries of the territory to be annexed to CFD No. 2007-1 (“Annexation No. 9”), is on file with the City Clerk and the provisions thereof are fully incorporated herein by this reference as if fully set forth herein; and

**WHEREAS**, on the 1<sup>st</sup> of December, 2015, this Council held a noticed public hearing as required by the Act and the Resolution of Intention relative to the proposed annexation of territory to CFD No. 2007-1; and

**WHEREAS**, at said hearing all interested persons desiring to be heard on all matters pertaining to the annexation of territory to CFD No. 2007-1 and the levy of said special taxes within the area proposed to be annexed were heard and a full and fair hearing was held; and

**WHEREAS**, prior to the time fixed for said hearing, written protests had not been filed against the proposed annexation of territory to CFD No. 2007-1 by (i) 50% or more of the registered voters, or six registered voters, whichever is more, residing in CFD No. 2007-1, or (ii) 50% or more of the registered voters, or six registered voters, whichever is more, residing in the territory proposed to be annexed to CFD No. 2007-1, or (iii) owners of one-half or more of the area of land in the territory within CFD 2007-1 and not exempt from special tax, or (iv), owners of one-half or more of the area of land in the territory proposed to be annexed to CFD No. 2007-1 and not exempt from the special tax; and

**WHEREAS**, a boundary map for Annexation No. 9 to CFD No. 2007-1 has been filed with the County Recorder of the County of Los Angeles, which map shows the territory to be annexed in these proceedings, and a copy thereof is on file with the City Clerk.

**NOW, THEREFORE, BE IT RESOLVED**, determined and ordered by the City Council for the City of Covina Community Facilities District No. 2007-1, Annexation No. 9 as follows:

**SECTION 1 Recitals.** The above recitals are all true and correct.

**SECTION 2 Authorization.** All prior proceedings taken by this Council with respect to CFD No. 2007-1 and the proposed annexation of territory thereto have been duly considered and are hereby determined to be valid and in conformity with the Act.

**SECTION 3 Boundaries.** The description and map of the boundaries of the territory to be annexed to CFD No. 2007-1, on file with the City Clerk, are hereby finally approved, are incorporated herein by reference, and shall be included within the boundaries of CFD No. 2007-1, and said territory is hereby annexed to CFD No. 2007-1, subject to voter approval of the levy of the special taxes therein as hereinafter provided.

**SECTION 4 Services.** The services which CFD No. 2007-1 is authorized to finance are in addition to those provided in or required for the territory within CFD No. 2007-1 and the territory to be annexed to CFD No. 2007-1 and will not be replacing services already available. A general description of the services to be financed is as follows:

#### PUBLIC SERVICES

New police services, fire protection and suppression services, paramedic services, and park maintenance, including but not limited to (i) the costs of contracting services, (ii) related facilities, equipment, vehicles, ambulances, fire apparatus and supplies, (iii) the salaries and benefits of City staff that directly provide police services, fire protection and suppression services, paramedic services, and park maintenance respectively, and (iv) City overhead costs associated with providing such services within CFD No. 2007-1. The Special Tax provides only partial funding for Public Services.

**SECTION 5 Special Taxes.** It is the intention of this City Council that, except where funds are otherwise available, a special tax sufficient to pay for said services to be provided in CFD No. 2007-1 and the territory proposed to be annexed as part of Annexation No. 9, secured by recordation of a continuing lien against all non-exempt real property in Annexation No. 9, will be levied annually within the boundaries of Annexation No. 9 from and after the annexation of such property to CFD No. 2007-1. The special taxes shall be those as originally authorized through the formation of CFD No. 2007-1 and adopted by Ordinance of this legislative body, and no changes or modifications are proposed in the special taxes from those as originally set forth and made applicable to CFD No. 2007-1.

For particulars as to the rate and method of apportionment of the proposed special tax (the "RMA"), reference is made to the attached and incorporated Exhibit "A," which sets forth in sufficient detail the method of apportionment to allow each landowner or resident within Annexation No. 9 to clearly estimate the maximum annual amount that said person will have to pay on said special tax.

**SECTION 6** Election. The provisions of the Resolution of Intention of the City, each as heretofore adopted by this Council, are by this reference incorporated herein as if fully set forth herein.

(a) Pursuant to the provisions of the Act, the proposition of the levy of the special tax within Annexation No. 9 shall be submitted to the voters within Annexation No. 9 at an election called therefore as hereinafter provided. This Council hereby finds that twelve (12) or more persons have not been registered to vote within Annexation No. 9 for each of the 90 days preceding the close of the hearing heretofore conducted and concluded by this Council for the purposes of these annexation proceedings. Accordingly, and pursuant to Section 53326 of the Act, this Council finds that for purposes of these proceedings the qualified electors are the landowners within Annexation No. 9 and that the vote shall be by said landowners, each having one vote for each acre or portion thereof such landowner owns in Annexation No. 9.

(b) Pursuant to Section 53326 of the Act, the election shall be conducted by mail ballot under applicable sections of the California Elections Code, commencing with Section 4000 of said code with respect to elections conducted by mail. The Council called a special election to consider the measures described and incorporated in the ballot, attached as Exhibit "B," which election was held on December 1, 2015, (hereafter referred to as "Election Day"). The City Clerk was the election official to conduct the election and provided each landowner in the territory to be annexed to CFD No. 2007-1, a ballot in the form of Exhibit "B", which form is hereby approved. The City Clerk has accepted the ballots of the qualified electors received prior to 7:30 p.m. on Election Day, whether received by mail or by personal delivery.

(c) This Council hereby further finds that the provision of Section 53326 of the Act requiring a minimum of 90 days to elapse before said election is for the protection of voters, has been waived by the voters and the date for the election hereinabove specified is established accordingly.

**SECTION 7** The City Clerk shall certify to the adoption of this resolution.

PASSED, APPROVED AND ADOPTED this 1st day of December, 2015.

\_\_\_\_\_  
John C. King, Mayor

ATTEST:

\_\_\_\_\_  
Sharon F. Clark, Chief Deputy City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**CERTIFICATION**

I, Sharon F. Clark, Chief Deputy City Clerk of the City of Covina, hereby CERTIFY that Resolution No. 15-7422 was adopted by the Covina City Council at a regular meeting of the City Council held this 1st day of December, 2015, and was approved and passed by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Sharon F. Clark  
Chief Deputy City Clerk

**EXHIBIT A**

**FIRST AMENDED RATE AND METHOD OF APPORTIONMENT**

# FIRST AMENDED RATE AND METHOD OF APPORTIONMENT

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## CITY OF COVINA

### COMMUNITY FACILITIES DISTRICT NO. 2007-1 (PUBLIC SERVICES)

A special tax as hereinafter defined shall be levied on and collected for Community Facilities District No. 2007-1 (Public Services) of the City of Covina ("CFD No. 2007-1") each Fiscal Year, commencing in Fiscal Year 2007-2008, in an amount determined by the City Council of the City of Covina through the application of the appropriate Special Tax for "Developed Property," as described below. All of the real property in CFD No. 2007-1, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent, and in the manner herein provided.

#### A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

**"Act"** means the Mello-Roos Communities Facilities Act of 1982 as amended, being Chapter 2.5, Division 2 of Title 5 of the Government Code of the State of California.

**"Administrative Expenses"** means any actual ordinary and necessary expense of the City of Covina, or designee thereof or both, to carry out the administration of CFD No. 2007-1 related to the determination of the amount of the levy of the Special Tax, the collection of the Special Tax including the expenses of collecting delinquencies, the payment of a proportional share of salaries and benefits of any City employee whose duties are directly related to the administration of CFD No. 2007-1, fees and expenses for counsel, Special Tax consultant and other consultants hired by the City in relation to CFD No. 2007-1, costs associated with responding to public inquiries regarding CFD No. 2007-1, and costs otherwise incurred in order to carry out the authorized purposes of CFD No. 2007-1.

**"Affordable Housing"** means any Unit within CFD No. 2007-1 that is subject to a written and recordable covenant, deed restriction, resale restriction, regulatory agreement or similar agreement with either the City of Covina or the Redevelopment Agency of the City of Covina, which restricts the amount of rent for that Unit to "affordable rent" (as that term is defined in California Health and Safety Code Section 50053) for a period of not less than fifty-five (55) years, or which restricts the purchase price for that Unit to "affordable housing cost" (as that term is defined in California Health and Safety Code Section 50052.5) for a period of not less than forty-five (45) years. A Unit shall no longer be considered Affordable Housing following the expiration or termination of the applicable covenant, restriction or agreement.

**"Annual Escalation Factor"** means for the Special Tax, the greater of (i) two percent (2.00%), or (ii) the percentage change in the Consumer Price Index for the Calendar Year ending in December of the prior Fiscal Year.

**"Assessor's Parcel"** means a lot or parcel of land designated on an Assessor's Parcel Map with an assigned Assessor's Parcel number within the boundaries of CFD No. 2007-1.

**“Assessor’s Parcel Map”** means an official map of the Assessor of the County designating parcels by Assessor’s Parcel number.

**“Base Year”** means Fiscal Year ending June 30, 2008.

**“Boundary Map”** means the map of the boundaries for CFD No. 2007-1, as approved by the City Council, and recorded with the County in maps of assessments and community facilities districts.

**“Building Permit”** means a permit for new construction for a residential dwelling Unit. For purposes of this definition, “Building Permit” shall not include permits for construction or installation of retaining walls, utility improvements, or other such improvements not intended for human habitation.

**“Calendar Year”** means the period commencing January 1 of any year and ending the following December 31.

**“CFD Administrator”** means an official of the City, or designee thereof, responsible for determining the Special Tax Requirements and providing for the levy and collection of the Special Tax.

**“CFD No. 2007-1”** means Community Facilities District No. 2007-1 (Public Services) established by the City under the Act.

**“City”** means the City of Covina.

**“City Council”** means the City Council of the City, acting as the Legislative Body of CFD No. 2007-1, or its designee.

**“Consumer Price Index”** means the index published by the U.S. Department of Labor, Bureau of Labor Statistics for all urban consumers in the Los Angeles-Riverside-Orange County area.

**“County”** means the County of Los Angeles.

**“Developed Property”** means all Assessor’s Parcels within CFD No. 2007-1 for which Building Permits were issued on or before May 1 preceding the Fiscal Year for which the Special Tax is being levied, provided that a Final Map was created on or before January 1 of the prior Fiscal Year and that each such Assessor’s Parcel is associated with a Lot, as determined reasonably by the City and/or CFD administrator.

**“Exempt Property”** means all Assessor’s Parcels within CFD No. 2007-1 designated as being exempt from the Special Tax as determined in Section F.

**“Final Map”** means a subdivision of property evidenced by the recordation of a final map, parcel map, or lot line adjustment, pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.) or the recordation of a condominium plan pursuant to California Civil Code 1352 that creates individual lots for which Building Permits may be issued without further subdivision.

**“Fiscal Year”** means the period commencing on July 1 of any year and ending the following June 30.

**“Lot”** means an individual legal lot created by a Final Map for which a Building Permit could or has been issued.

**“Maximum Special Tax”** means the Maximum Special Tax determined in accordance with Section C, which can be levied by CFD No. 2007-1 in any Fiscal Year on Taxable Property within CFD No. 2007-1.

**“Mixed-Use Property”** means all Assessor’s Parcels of Developed Property for which Building Permit(s) have been issued for purposes of constructing Non-Residential Property and Residential Property. Residential Units on Mixed-Use Property shall be classified as Multi-Family Residential.

**“Multi-Family Residential”** means all Assessor’s Parcels of Developed Property for which a Building Permit has been issued for purposes of constructing a residential structure consisting of two or more residential Units that share common walls, including, but not limited to, duplexes, triplexes, town homes, condominiums, apartment Units, and residential Units on Assessor’s Parcels that are considered Mixed-Use Property.

**“Non-Residential Property”** means all Assessor’s Parcels for which a Building Permit was issued for any type of non-residential use.

**“Public Property”** means any property within the boundaries of CFD No. 2007-1 that is owned by or irrecoverably dedicated to the City, the federal government, the State of California, the County, CFD No. 2007-1, or other public agency. For purposes of this definition, property owned by the Redevelopment Agency of the City of Covina is **not** considered Public Property and any property owned by the Redevelopment Agency will be subject to the levy of a Special Tax in accordance with Sections C and D herein.

**“Public Services”** means new police services, fire protection and suppression services, paramedic services, and park maintenance, including but not limited to (i) the costs of contracting services, (ii) related facilities, equipment, vehicles, ambulances, fire apparatus and supplies, (iii) the salaries and benefits of City and Fire District staff that directly provide police services, fire protection and suppression services, paramedic services, and park maintenance, and (iv) City and Fire District overhead costs associated with providing such services within CFD No. 2007-1. The Special Tax provides only partial funding for police, fire protection services, paramedic services, and park maintenance.

**“Special Tax”** means any special tax authorized to be levied by CFD No. 2007-1 pursuant to the Act to fund the Special Tax Requirement.

**“Single-Family Residential”** means all Assessor’s Parcels of Developed Property for which a Building Permit has been issued for purposes of constructing one single-family residential dwelling Unit.

**“Taxable Property”** means all Assessor’s Parcels within CFD No. 2007-1 that are not exempt from the levy of the Special Tax.

**“Tax Class”** means any of the classes listed in Table 1 below.

**“Undeveloped Property”** means all Assessor’s Parcels within CFD No. 2007-1 for which Building Permits have not been issued and that is not classified as Approved Property or Public Property.

“Unit” means any separate residential dwelling unit in which a person or persons may live, which comprises an independent facility capable of conveyance separate from adjacent residential dwelling units and is not considered to be for commercial or industrial use.

**B. CLASSIFICATION OF ASSESSOR’S PARCELS**

Each Fiscal Year, beginning with Fiscal Year 2007-2008, each Assessor’s Parcel within CFD No. 2007-1 shall be classified as Developed Property or Exempt Property. In addition, each Fiscal Year, beginning with Fiscal Year 2007-2008, each Assessor’s Parcel of Developed Property shall be further classified as Single-Family Residential, Multi-Family Residential, or Mixed-Use Property.

**C. MAXIMUM ANNUAL SPECIAL TAX**

The Maximum Special Tax for each Assessor’s Parcel classified as Single-Family Residential, Multi-Family Residential, and Mixed-Use Property in Fiscal Year 2007-2008 shall be equal to the Maximum Special Tax set forth in Table 1.

**TABLE 1  
MAXIMUM ANNUAL SPECIAL TAX RATES  
Fiscal Year 2007-2008**

Tax Class	Description	Maximum Special Tax
1	Single-Family Residential	\$527 per Unit
2	Multi-Family Residential	\$395 per Unit
3	Mixed-Use Property	\$395 per Unit

For each subsequent Fiscal Year following the Base Year, the Maximum Special Tax for each Assessor’s Parcel classified as Developed Property shall be adjusted by the Annual Escalation Factor.

**Multiple Tax Classes**

In some instances an Assessor’s Parcel may contain more than one Tax Class. The Maximum Special Tax levied on such Assessor’s Parcel shall be the sum of the Maximum Special Tax that can be imposed on all Tax Classes located on that Assessor’s Parcel.

**D. METHOD OF APPORTIONMENT OF SPECIAL TAX**

Commencing with Fiscal Year 2007-2008, and for each subsequent Fiscal Year, the Special Tax shall be levied on each Assessor’s Parcel of Developed Property at the applicable Maximum Special Tax as set forth in Section C.

**E. TERMINATION OF SPECIAL TAX**

The Special Tax shall be levied in perpetuity to fund Public Services provided to CFD No. 2007-1.

## **F. EXEMPTIONS**

The City shall classify as Exempt Property: (i) Public Property, (ii) Non-Residential Property, (iii) Undeveloped Property, (iv) Affordable Housing, or (v) Assessor's Parcels with public or utility easements making impractical their utilization for other purposes than those set forth in the easement.

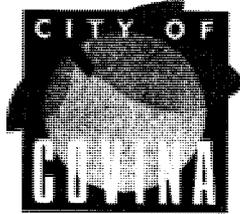
## **G. APPEALS**

Any property owner claiming that the amount or application of the Special Tax is not correct may file a written notice of appeal with the City Council not later than twelve months after having paid the first installment of the Special Tax that is disputed. A representative(s) of CFD No. 2007-1 shall promptly review the appeal, and if necessary, meet with the property owner, consider written and oral evidence regarding the amount of the Special Tax, and rule on the appeal. If the representative's decision requires that the Special Tax for an Assessor's Parcel be modified or changed in favor of the property owner, a cash refund shall not be made, but an adjustment shall be made to the Special Tax on that Assessor's Parcel in the subsequent Fiscal Year(s).

## **H. MANNER OF COLLECTION**

The annual Special Taxes shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that CFD No. 2007-1 may collect the Special Taxes at a different time or in a different manner if necessary to meet its financial obligations.

**EXHIBIT B**  
**SAMPLE BALLOT**



OFFICIAL BALLOT  
SPECIAL ELECTION

City of Covina  
Community Facilities District No. 2007-1  
(Public Services)  
Annexation No. 9

This ballot is for a special landowner election. You must return this ballot in the enclosed postage paid envelope to the Office of the City Clerk of the City of Covina no later than 7:30 p.m. on December 1, 2015, either by mail or in person. Ballots received after the special election with a postmark of the special election date, or earlier date, shall not be considered. The City Clerk's office is located at 125 East College Street, Covina, California, 91723.

To vote, mark a cross (X) or a check mark in the voting square after the word "YES" or after the word "NO". All distinguishing marks otherwise made are forbidden and make the ballot void.

If you wrongly mark, tear, or deface this ballot, return it to the City Clerk of the City of Covina and obtain another.

<p><b>PROPOSITION A:</b> Shall special taxes be levied annually on taxable property within the territory to be annexed into the City of Covina Community Facilities District No. 2007-1 (Public Services), County of Los Angeles, State of California ("Annexation No. 9") and collected so long as the special taxes are needed to pay for police services, fire protection and suppression services, paramedic services, and park maintenance at the special tax rates and pursuant to the method of apportioning the special taxes set forth in Exhibit "B" to the Resolution of Intention, Resolution No. 07-6578, adopted by the City Council of the City of Covina on May 1, 2007, and as amended by Resolution No. 09-6743?</p>	<input type="checkbox"/>	Yes
	<input type="checkbox"/>	No
<p><b>PROPOSITION B:</b> Shall an appropriations limit, as defined by subdivision (h) of Section 8 of Article XIII B of the California Constitution, be established for Annexation No. 9 to the City of Covina Community Facilities District No. 2007-1 (Public Services), County of Los Angeles, State of California, in the amount of \$100,000 per annum?</p>	<input type="checkbox"/>	Yes
	<input type="checkbox"/>	No

Number of votes: 1 Property Owner: Mark Lopez and Irma Lopez

By: \_\_\_\_\_  
Mark Lopez

By: \_\_\_\_\_  
Irma Lopez

**ATTACHMENT C**

**RESOLUTION NO. 15-7423**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COVINA, CALIFORNIA, CALLING A SPECIAL ELECTION AND SUBMITTING TO THE VOTERS OF ANNEXATION NO. 9 OF CITY OF COVINA COMMUNITY FACILITIES DISTRICT NO. 2007-1 (PUBLIC SERVICES) PROPOSITIONS REGARDING THE ANNUAL LEVY OF SPECIAL TAXES WITHIN ANNEXATION NO. 9 TO FINANCE PUBLIC SERVICES, AND THE ESTABLISHMENT OF AN APPROPRIATIONS LIMIT**

**WHEREAS**, pursuant to Section 53339.7 of the California Government Code the City Council (hereafter referred to as the “City Council”) of the City of Covina (the “City”) has adopted the resolution authorizing the annexation of territory to City of Covina Community Facilities District No. 2007-1 (Public Services), County of Los Angeles, State of California (“CFD No. 2007-1”); and

**WHEREAS**, by that resolution, the City Council called a special election on the propositions to be submitted to the voters of the territory proposed to be annexed to CFD No. 2007-1 (“Annexation No. 9”) with respect to the levy of special taxes therein for the financing of public services within CFD No. 2007-1; and

**WHEREAS**, pursuant to Section 53326 of the California Government Code, it is necessary that the City Council submit to the voters of Annexation No. 9 the annual levy of special taxes on taxable property within Annexation No. 9; and

**WHEREAS**, pursuant to Section 53325.7 of the California Government Code and the provisions of said Code, the City Council may also submit to the voters of Annexation No. 9 a proposition for the establishment of an appropriations limit for Annexation No. 9; and

**WHEREAS**, twelve (12) or more registered voters have not resided within the territory of Annexation No. 9 for each of the ninety (90) days preceding December 1, 2015.

**NOW, THEREFORE, BE IT RESOLVED**, determined and ordered by the City Council for the City of Covina Community Facilities District No. 2007-1, Annexation No. 9 as follows:

**SECTION 1 Findings.** The City Council finds that: (i) the foregoing recitals are true and correct; (ii) 12 persons have not been registered to vote within the territory to be annexed to CFD No. 2007-1 for each of the 90 days preceding the close of the public hearing on December 1, 2015; (iii) pursuant to Section 53326 of the California Government Code, as a result of the findings set forth in clause (ii) above, the vote in the special election called by this resolution shall be by the landowners of the territory to be annexed to CFD No. 2007-1, whose property would be subject to the special taxes if they

were levied at the time of the election, and each landowner shall have one vote for each acre, or portion thereof, which he or she owns within Annexation No. 9 which would be subject to the proposed special taxes if they were levied at the time of the election; (iv) the owners of all of the land in Annexation No. 9 by written consent (a) waived the time limits set forth in Section 53326 of the California Government Code for holding the election called by this resolution and the election on the propositions (b) consented to the holding of the election on December 1, 2015, (c) waived notice and mailed notice of the time and date of the election, (d) waived an impartial analysis by the City Attorney of the ballot propositions pursuant to Section 9280 of the California Elections Code and arguments and rebuttals pursuant to Sections 9281 to 9287, inclusive, and 9295 of that Code, and mailing of a statement pursuant to Section 9401 of that Code, and (e) waived a synopsis of the measures to be included in the official ballot for said elections pursuant to Section 12111 of that Code; and (v) the City Clerk (hereafter referred to as the "City Clerk") has consented to the holding of the election on December 1, 2015.

**SECTION 2 Call of Election.** The City Council hereby calls and schedules an election for December 1, 2015, on the proposition of the annual levy of special taxes on taxable property within Annexation No. 9 to CFD No. 2007-1 to finance public services within the CFD No. 2007-1, and on the proposition of the establishment of an appropriations limit for Annexation No. 9 to CFD No. 2007-1.

**SECTION 3 Propositions.** The propositions to be submitted to the voters of Annexation No. 9 at such special election shall be as follows:

***Proposition A:*** Shall special taxes be levied annually on taxable property within the territory to be annexed into the City of Covina Community Facilities District No. 2007-1 (Public Services), County of Los Angeles, State of California ("Annexation No. 9"); and collected so long as the special taxes are needed to pay for police services, fire protection and suppression services, paramedic services, and park maintenance at the special tax rates and pursuant to the method of apportioning the special taxes set forth in Exhibit "B" to the Resolution of Intention, Resolution No. 07-6578, adopted by the City Council of the City of Covina on May 1, 2007, and as amended by Resolution No. 09-6743?

***Proposition B:*** Shall an appropriations limit, as defined by subdivision (h) of Section 8 of Article XIII B of the California Constitution, be established for Annexation No. 9 to the City of Covina Community Facilities District No. 2007-1 (Public Services), County of Los Angeles, State of California, in the amount of \$100,000 per annum?

The First Amended Rate and Method of Apportionment is attached as Exhibit A.

**SECTION 4 Conduct of Election.** Except as otherwise provided in Section 5 hereof, the special election shall be conducted by the City Clerk in accordance with the provisions of the California Elections Code governing mail ballot elections of cities, and in particular the provisions of Division 4 (commencing with Section 4000), of that Code, insofar as they may be applicable.

**SECTION 5** Election Procedures. The procedures to be followed in conducting the special election on (i) the proposition with respect to the levy of special taxes on taxable property within Annexation No. 9 to CFD No. 2007-1 to pay for public services, and (ii) the proposition with respect to the establishment of an appropriations limit for Annexation No. 9 to CFD No. 2007-1 in the amount of \$100,000 per annum shall be as follows:

- (a) Pursuant to Section 53326 of the California Government Code, ballots for the special election shall be distributed to the qualified electors by the City Clerk by mail or by personal service.
- (b) Pursuant to applicable sections of the California Elections Code governing the conduct of mail ballot elections of cities, and in particular Division 4 (commencing with Section 4000) of that Code with respect to election conducted by mail, the City Clerk, or designated official, shall mail or deliver to each qualified elector an official ballot in the appropriate form, and shall also mail or deliver to all such qualified electors a ballot pamphlet, instructions to voter, and a return identification envelope addressed to the City Clerk for the return of voted official ballots.
- (c) The official ballot to be mailed or delivered by the City Clerk to each landowner-voter shall have printed or typed thereon the name of the landowner-voter and the number of votes to be voted by the landowner-voter.
- (d) The return identification envelope mailed or delivered by the City Clerk to each landowner-voter shall have printed or typed thereon the following: (i) the name of the landowner, (ii) the address of the landowner, (iii) a declaration under penalty of perjury stating that the voter is the landowner or the authorized representative of the landowner entitled to vote the enclosed ballot and is the person whose name appears on the identification envelope, (iv) the printed name and signature of the voter, (v) the address of the voter, (vi) the date of signing and place of execution of the declaration, and (vii) a notice that the envelope contains an official ballot and is to be opened only by the City Clerk.
- (e) The information to voter form to be delivered by the City Clerk to the landowner-voter shall inform them that the official ballot shall be returned to the City Clerk properly voted as provided thereon and with the certification appended thereto properly completed and signed in the sealed return identification envelope with the certification thereon completed and signed and all other information to be inserted thereon properly inserted by 7:30 p.m. on the 1st day of December, 2015; provided that if all qualified electors have voted, the election shall be closed with the concurrence of the City Clerk.

(f) Upon receipt of the return identification envelope, which are returned prior to the voting deadline on the date of the election, the City Clerk shall canvass the votes cast in the election, and shall file a statement with the City Council as to the results of such canvass and the election on each proposition set forth in the official ballot.

**SECTION 6** The City Clerk shall certify to the adoption of this resolution.

PASSED, APPROVED AND ADOPTED this 1st day of December, 2015.

---

John C. King, Mayor

ATTEST:

---

Sharon Clark, Chief Deputy City Clerk

APPROVED AS TO FORM:

---

City Attorney

**CERTIFICATION**

I, Sharon F. Clark, Chief Deputy City Clerk of the City of Covina, hereby CERTIFY that Resolution No. 15-7423 was adopted by the Covina City Council at a regular meeting of the City Council held this 1st day of December, 2015, and was approved and passed by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

Sharon F. Clark  
Chief Deputy City Clerk

**EXHIBIT A**  
**FIRST AMENDED RATE AND METHOD OF APPORTIONMENT**

(Please see Exhibit A to Resolution 15-XXXX, Attachment B, in this same packet)

**ATTACHMENT D**

**RESOLUTION NO. 15-7424**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COVINA, CALIFORNIA, MAKING CERTAIN FINDINGS, CERTIFYING THE RESULTS OF AN ELECTION AND ADDING PROPERTY TO COMMUNITY FACILITIES DISTRICT NO. 2007-1 (PUBLIC SERVICES), ANNEXATION NO. 9**

**WHEREAS**, the City Council of the City of Covina (the “City Council”), has previously formed a Community Facilities District pursuant to the provisions of the “Mello-Roos Community Facilities Act of 1982”, being Chapter 2.5, Part 1, Division 2, Title 5 of the Government Code of the State of California, said Article 3.5 thereof. The existing Community Facilities District being designated as Community Facilities District No. 2007-1 (Public Services) (hereafter referred to as CFD No. 2007-1); and,

**WHEREAS**, the City Council initiated proceedings to annex certain territory to Community Facilities District No. 2007-1 (Public Services), Annexation No. 9 (hereafter referred to as “Annexation No. 9”); and

**WHEREAS**, at this time the unanimous consent to the annexation of Annexation No. 9 has been received from the property owner or owners of such territory; and

**WHEREAS**, twelve (12) or more registered voters have not resided within the territory of Annexation No. 9 for each of the ninety (90) days preceding December 1, 2015, therefore, pursuant to the Act the qualified electors of Annexation No. 9 shall be the “landowners” of Annexation No. 9 as such term is defined in Government Code Section 53317(f) and each such landowner who is the owner of record, or the authorized representative thereof, shall have one vote for each acre or portion of an acre of land that she or he owns within; and

**WHEREAS**, the time limit specified by the Act for conducting an election to submit the levy of the special taxes on the property within Annexation No. 9 to the qualified electors of Annexation No. 9 and the requirements for impartial analysis and ballot arguments have been waived with the unanimous consent of the qualified electors of Annexation No. 9; and

**WHEREAS**, the City Clerk of the City of Covina has caused ballots to be distributed to the qualified electors of Annexation No. 9, has received and canvassed such ballots and made a report to the City Council regarding the results of such canvas, a copy of which is attached as Exhibit A hereto and incorporated herein by this reference; and

**WHEREAS**, at this time the measure voted upon and such measure did receive the favorable 2/3’s vote of the qualified electors, and the City Council desires to declare the results of the election; and

**WHEREAS**, a map showing the territory to be annexed and designated as Annexation No. 9 (hereafter referred to as the “Annexation Map”), a copy of which is attached as Exhibit B hereto and incorporated herein by this reference, and a list of Properties to be annexed and landowners, a copy of which is attached as Exhibit C hereto and incorporated herein by this reference, has been submitted to the City Council.

**NOW, THEREFORE, BE IT RESOLVED**, determined and ordered by the City Council for the City of Covina Community Facilities District No. 2007-1, Annexation No. 9 as follows:

**SECTION 1** Recitals. The above recitals are all true and correct.

**SECTION 2** Findings. This City Council does hereby determine as follows:

(a) The unanimous consent to the annexation of Annexation No. 9 to CFD No. 2007-1 has been given by all of the owners within Annexation No. 9 and such consent shall be kept on file in the Office of the City Clerk.

(b) Twelve (12) or more registered voters have not resided within the territory of Annexation No. 9 for each of the ninety (90) days preceding December 1, 2015, therefore, pursuant to the Act the qualified electors of Annexation No. 9 shall be the “landowners” of such Annexation No. 9 as such term is defined in Government Code Section 53317(f).

(c) The qualified electors of Annexation No. 9 have unanimously voted in favor of the levy of special taxes within Annexation No. 9 upon its annexation to CFD No. 2007-1.

**SECTION 3** Annexed Area. The boundaries and parcels of territory within Annexation No. 9 and on which special taxes will be levied in order to pay for the costs and expenses of authorized public services are shown on the Annexation Map as submitted to and hereby approved by this City Council.

**SECTION 4** Declaration of Annexation. The City Council does hereby determine and declare that Annexation No. 9 is now added to and becomes a part of CFD No. 2007-1. The City Council, acting as the legislative body of CFD No. 2007-1, is hereby empowered to levy the authorized special tax within Annexation No. 9.

**SECTION 5** Notice. Immediately upon adoption of this Resolution, notice shall be given as follows:

An Amendment to the Notice of Special Tax Lien (Notice of Annexation) shall be recorded in the Office of the County Recorder no later than fifteen (15) days after the date of adoption of this Resolution.

**SECTION 6** The City Clerk shall certify to the adoption of this resolution.

PASSED, APPROVED AND ADOPTED this 1st day of December, 2015.

\_\_\_\_\_  
John C. King, Mayor

ATTEST:

\_\_\_\_\_  
Sharon F. Clark, Chief Deputy City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

CERTIFICATION

I, Sharon F. Clark, Chief Deputy City Clerk of the City of Covina, hereby CERTIFY that Resolution No. 15-7424 was adopted by the Covina City Council at a regular meeting of the City Council held this 1st day of December, 2015, and was approved and passed by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Sharon F. Clark  
Chief Deputy City Clerk

**EXHIBIT A**  
**CERTIFICATE OF ELECTION OFFICIAL AND STATEMENT OF VOTES CAST**



**EXHIBIT B**  
**ANNEXATION MAP**

FILED IN THE OFFICE OF THE CITY CLERK THIS  
 DAY OF \_\_\_\_\_, 2015.

I HEREBY CERTIFY THAT THE WITHIN MAP SHOWING  
 PROPOSED BOUNDARIES OF ANNEXATION NO. 9 TO  
 COMMUNITY FACILITIES DISTRICT NO. 2007-1 (PUBLIC  
 SERVICES), CITY OF COVINA, COUNTY OF LOS ANGELES,  
 STATE OF CALIFORNIA, WAS APPROVED BY THE CITY  
 COUNCIL OF THE CITY OF COVINA AT A REGULAR  
 MEETING THEREOF, HELD ON THE \_\_\_\_\_ DAY OF  
 \_\_\_\_\_, 2015, BY ITS RESOLUTION NO. \_\_\_\_\_.

CITY CLERK  
 CITY OF COVINA

FILED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2015, AT THE  
 HOUR OF \_\_\_\_\_ O'CLOCK \_\_\_\_\_ IN THE ROOM  
 OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES  
 DISTRICTS, PAGE(S) \_\_\_\_\_ AND AS INSTRUMENT NO. \_\_\_\_\_  
 IN THE OFFICE OF THE COUNTY  
 RECORDER IN THE COUNTY OF LOS ANGELES, STATE OF  
 CALIFORNIA.

BY DEPUTY  
 COUNTY RECORDER  
 COUNTY OF LOS ANGELES  
 STATE OF CALIFORNIA

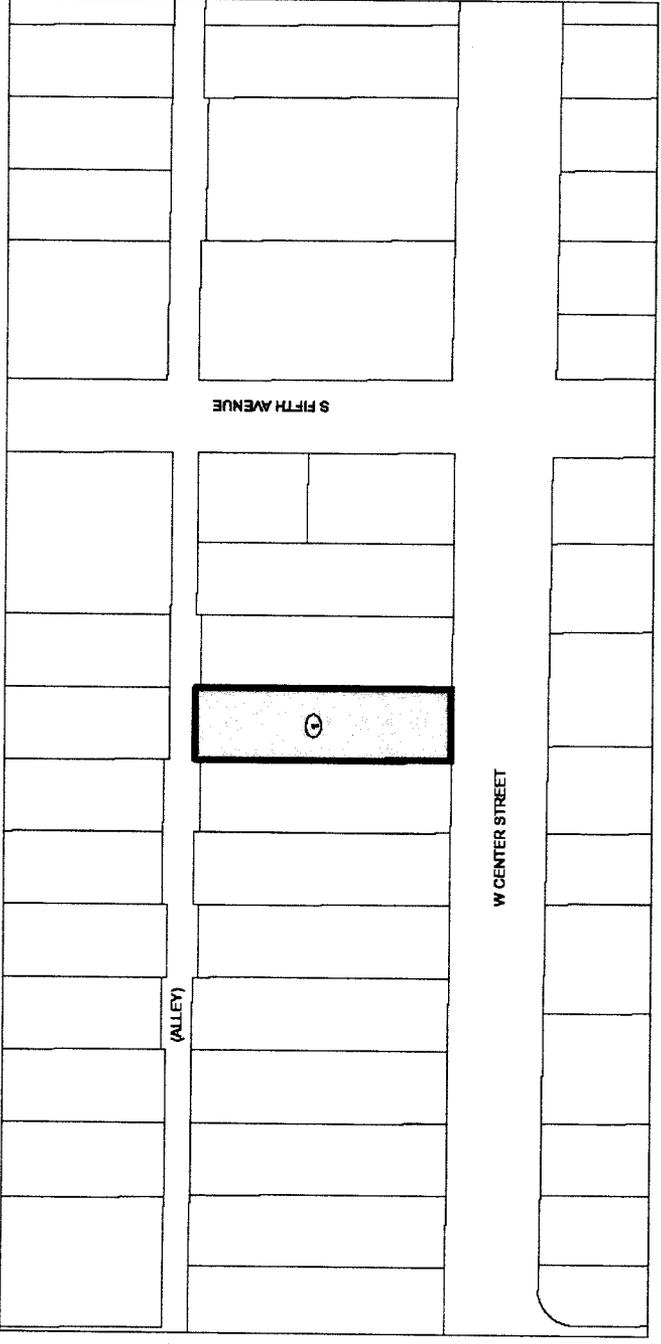
REFERENCE IS MADE TO THAT BOUNDARY MAP OF  
 COMMUNITY FACILITIES DISTRICT NO. 2007-1 (PUBLIC  
 SERVICES) OF THE CITY OF COVINA RECORDED WITH  
 THE LOS ANGELES COUNTY RECORDER'S OFFICE ON  
 MAP REFERENCE NUMBER INC. 2007-1-0037 IN THE  
 BOOK OF MAPS OF ASSESSMENT AND COMMUNITY  
 FACILITIES DISTRICT.

THE LINES AND DIMENSIONS OF EACH LOT OR PARCEL  
 SHOWN ON THIS DIAGRAM SHALL BE THOSE LINES AND  
 DIMENSIONS AS SHOWN ON THE LOS ANGELES COUNTY  
 ASSESSOR'S MAPS FOR THOSE PARCELS LISTED.

THE LOS ANGELES COUNTY ASSESSOR'S MAPS SHALL  
 GOVERN FOR ALL LINES AND DIMENSIONS OF THE LINES AND  
 DIMENSIONS OF SUCH LOTS OR PARCELS.

**ANNEXATION MAP NO. 9  
 COMMUNITY FACILITIES DISTRICT NO. 2007-1  
 (PUBLIC SERVICES)**  
 CITY OF COVINA  
 COUNTY OF LOS ANGELES  
 STATE OF CALIFORNIA

SHEET 1 OF 1



**LEGEND**

Proposition Boundary

Map Reference Number

MAP REFERENCE NUMBER	ASSESSOR'S PARCEL NUMBER
1	2007-1-0037



**EXHIBIT C**  
**LIST OF PROPERTIES TO BE ANNEXED**

**LIST OF PROPERTIES TO BE ANNEXED**

**ANNEXATION #9**

**ASSESSOR PARCEL NO(S)**

**8444-004-020**

**Vesting Tract No.**

n/a

**Address**

**425 West Center Street, Covina, CA**

**Landowner**

**Mark Lopez and Irma Lopez  
P. O. Box 1377  
Covina, CA 91722**



# CITY OF COVINA

## AGENDA REPORT

ITEM NO. PH 2

---

**MEETING DATE:** December 1, 2015

**TITLE:** Public Hearing of 2015 Annual Report for the Covina Downtown Business Area Enhancement District (BAED)

**PRESENTED BY:** John Michicoff, Interim Finance Director

**RECOMMENDATION:** A. Conduct the public hearing of the 2015 Annual Report for the Covina Downtown Business Area Enhancement District and Proposed Assessment; and

B. Adopt Resolution No. 15-7432, confirming the 2015 Annual Report for the Downtown Covina Business Area Enhancement District, and levying the assessment described therein.

---

### BACKGROUND:

At the City Council meeting of November 3, 2015, Council was presented with the Annual Report for the 2015 Covina Downtown Business Area Enhancement District (BAED). The Report was approved and Resolution 15-7414 was adopted expressing the Council's intention to levy an annual assessment for the fiscal year 2015-2016.

The adopted Resolution established a date of December 1, 2015 for a public hearing on this assessment.

### DISCUSSION:

Legal requirements for the continuation of this assessment obligate the City to:

- 1) Approve the Annual Report (Attachment A)
- 2) Adopt a Resolution of Intention to Levy an Annual Assessment
- 3) Hold a Public Hearing on this Assessment
- 4) Adopt a Resolution confirming the Annual Report and Assessment (Attachment B)

The previous meeting satisfied the first two of these requirements. The second two items are being addressed at this meeting.

There are no proposed changes from the Advisory Board this year.

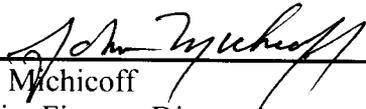
### FISCAL IMPACT:

None

**CEQA (CALIFORNIA ENVIRONMENTAL QUALITY ACT):**

No CEQA involvement

Respectfully submitted,

  
\_\_\_\_\_  
John Michicoff  
Interim Finance Director

<b>City Manager</b>	<b>City Attorney</b>	<b>Finance</b>	<b>City Clerk</b>

**ATTACHMENTS:**

Attachment A: Business Area Enhancement District Annual Report

Attachment B: Resolution No. 15-7432

October 8, 2015

Theresa Franke  
City of Covina  
125 East College Street  
Covina, California 91723

RE: Benefit Area Enhancement District

Dear Theresa,

The Board of Directors of the Covina Downtown Association has prepared the following report in order to levy BAED assessment in the Downtown area for the year 2016.

**1. Boundary Changes**

The Board of Directors requests no changes in the boundaries of the BAED district at this time.

**2. Planned Activities for 2016**

The Board of Directors has adopted a plan for the fiscal year 2016 which includes continued print and direct mail advertising, promoting the Downtown shopping experience through our website and directories, light pole banner program, and the lighting of the trees on Citrus Avenue.

We also plan to continue our Frist Saturday Art Walk, the Covina Charities Wine Walks, Hops Madness and Oktoberfest, the Thunderfest Car & Music Festival and our Winter Wonderland Christmas promotions.

**3. Projected budget for 2016 fiscal year**

Our budget for the fiscal year 2016 will be \$55,600 with estimated \$7,500.00 coming from the BAED. We have budgeted 77% to advertising and promotional events, 15% for the Covina.com website, and 5% for insurance and other operating expenses.

**4. Method of levying Assessment**

The fiscal assessment would be the same as in past years at \$125.00 per business.

**5. Carryover Revenues**

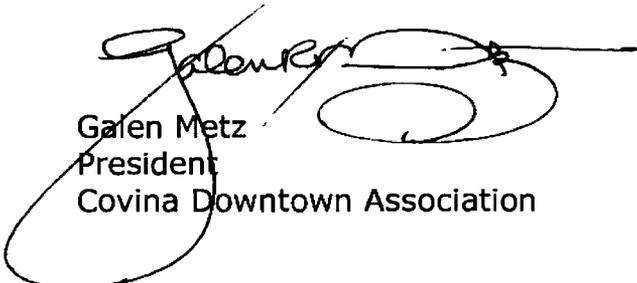
Our 2015 fiscal budget will fund all of the CDMA activities, leaving an estimated \$2000.00 to begin the next fiscal year.

**6. Outside Contributions**

We will continue to solicit associate members, using Puente Street to the railroad track, and Second Street to Fourth Avenue as our perimeters for the district. We will continue to solicit sponsorships to bring in additional funds to supplement our events and assessments.

On Behalf the Covina Downtown Association, I would like to thank the City for your continued support of our activities in the Downtown area.

Respectfully submitted,



Galen Metz  
President  
Covina Downtown Association

**Downtown Covina Business Area Enhancement District**

**Proposed Budget for Fiscal Year 2016**

Jan 1, 2016 to Dec 31, 2016

**INCOME**

Assesment	7500.00	
Associate Memberships	900.00	
Events (Wine Walks, Beer Walks)	12225.00	
Art Walk	1900.00	
Thunderfest	35000.00	
<b>Total Income</b>		<b>57525.00</b>

**EXPENSES**

Administrative	2750.00	
Advertising Events	42200.00	
Businees District Map	2300.00	
Web Development	8350.00	
<b>Total Expenses</b>		<b>55600.00</b>

**NET INCOME** 1925.00

**RESOLUTION NO. 15-7432**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COVINA, CALIFORNIA, CONFIRMING THE 2015 ANNUAL REPORT FOR THE COVINA DOWNTOWN BUSINESS AREA ENHANCEMENT DISTRICT AND LEVYING THE ASSESSMENT DESCRIBED THEREIN**

**WHEREAS**, the City Council has previously established the Downtown Business Area Enhancement District (the “BAED”), created pursuant to the Parking and Business Improvement Area Law of 1989 (California Streets and Highways Code, Sections 36500 et seq.), and;

**WHEREAS**, the City Council desires to continue the BAED by levying the annual assessment permitted by the Ordinance which established the BAED.

**WHEREAS**, in accordance with State law, the City Council has previously conducted a public hearing to consider the annual report on the BAED; and

**WHEREAS**, the City Council did pass the resolution of intention to levy an annual assessment for the fiscal year 2015-2016 in the Covina Downtown BAED.

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED** by the City Council of the City of Covina as follows:

**SECTION 1.** The City Council of the City of Covina does hereby confirm the annual report for the Covina Downtown BAED for 2015.

**SECTION 2.** In accordance with California Streets and Highways Code section 36535(c), the adoption of this resolution shall constitute the levy of the assessment for the fiscal year 2015-2016 in the BAED, as described in the Resolution of Intention.

**SECTION 3.** The City Clerk shall certify as to the adoption of this Resolution and shall cause the same to be processed in the manner required by law.

**PASSED, APPROVED AND ADOPTED** this 1<sup>st</sup> day of December, 2015.

\_\_\_\_\_  
Mayor, City of Covina

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney



# CITY OF COVINA

## AGENDA REPORT

ITEM NO. PH 3

---

**MEETING DATE:** December 1, 2015

**TITLE:** Public Hearing of 2015 Annual Report for the Prospero Park Business Area Enhancement District and Proposed Assessment

**PRESENTED BY:** John Michicoff, Interim Finance Director

**RECOMMENDATION:** A. Conduct the public hearing of the 2015 Annual Report for the Prospero Park Business Area Enhancement District and Proposed Assessment; and.

B. Adopt **Resolution No. 15-7433** confirming the 2015 Annual Report for the Prospero Park Business Area Enhancement District and levying the assessment described therein.

---

### **BACKGROUND:**

At the City Council meeting of November 3, 2015, Council was presented with the Annual Report for the 2015 Prospero Park Business Area Enhancement District (BAED). The Report was approved and Resolution #15-7410 was adopted expressing the City Council's intention to levy an annual assessment for the fiscal year 2015-2016.

The adopted Resolution established a date of December 1, 2015 for a public hearing on this assessment.

### **DISCUSSION:**

Legal requirements for the continuation of this agreement obligate the City to:

- 1) Approve the Annual Report (Attachment A)
- 2) Adopt a Resolution of Intention to Levy an Annual Assessment
- 3) Hold a Public Hearing on this Assessment
- 4) Adopt a Resolution confirming the Annual Report and Assessment (Attachment B).

The previous meeting satisfied the first two of these requirements. The second two items are being addressed at this meeting.

There are no proposed changes from the Advisory Board this year.

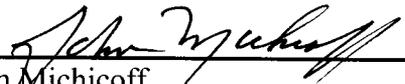
### **FISCAL IMPACT:**

None

**CEQA (CALIFORNIA ENVIRONMENTAL QUALITY ACT):**

No CEQA involvement

Respectfully submitted,

  
\_\_\_\_\_  
John Michicoff  
Interim Finance Director

<b>City Manager</b>	<b>City Attorney</b>	<b>Finance</b>	<b>City Clerk</b>

**ATTACHMENTS:**

Attachment A: Prospero Park Business Area Enhancement District Annual Report

Attachment B: Resolution No. 15-7433

# PROSPERO PARK OWNER'S ASSOCIATION, INC.

## **ANNUAL REPORT 2015 – PROSPERO PARK OWNER'S ASSOCIATION Business Area Enhancement District**

### **1. Boundary Changes**

The Board of Directors will request no changes to the boundaries of the Prospero Park Area.

### **2. 2015 Activities**

The Board of directors plans a similar distribution of funds for the 2016 fiscal year. The funds are currently being used for the Covina Night Out Against Crime block party, monthly newsletter, eradicating graffiti and liability insurance.

The eradication of graffiti in the Prospero Park area will be continued by Urban Graffiti Enterprises to canvas the area on a bi-weekly basis and remove tagging on all properties that have given permission to enter the premise to do work.

A web page has been designed to advertise apartment vacancies in the Prospero Park area. It is now available to Prospero Park Owners.

**3. Projected Costs for 2016** Presently we do not know the exact number of owners that will participate in the association. With the information we have we estimate our budget for the year 2016 to be \$7,240 plus approximately \$11,000.00 to be carried over from year 2015. A copy of the proposed budget is enclosed.

### **4. Method of levying assessment**

The 2016 assessment will be \$125.00 per business in the BAED district. This is the same assessment as in 2015.

### **5. Surplus/Deficit**

Currently we project \$11,000.00 to be left in the Association fund through December 31, 2015. All budgeted expenses are covered prior to our receiving new owner's dues for 2016.

### **6. Outside funding**

We continue to have an interest bearing checking account which should produce an additional \$18.00 annually. The only other source of income would possibly be matching funds from the City of Covina.

On behalf of the owners in the Prospero Park Owner's Association, Inc we thank you for all your support and look forward to the strong relationship with the City of Covina.

Respectfully submitted,



Norman Shintaku

President

Prospero Park Owner's Association, Inc.

City of Covina Letter 2015 BAED

**PROSPERO PARK OWNERS ASSOCIATION, INC**

**PROPOSED BUDGET FOR FISCAL YEAR 2016  
JULY 1, 2015 TO JUNE 30, 2016**

<b>INCOME</b>	Owner's Dues	\$7,222.00
	Interest on checking account	18.00
		<b>\$7,240.00</b>

**EXPENSES**

Postage (Quarterly mailer)	\$ 350.00
Stationary	75.00
P.O. Box 4632	56.00
Insurance	2,134.00
Accountant	375.00
Legal fees	300.00
Covina Night out against crime	800.00
Urban Graffiti Enterprise	3,000.00
Web page maintenance	100.00
Yearly California State Forms	50.00

**TOTAL EXPENSES**                      **\$ 7,240.00**

**RESOLUTION NO. 15-7433**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COVINA, CALIFORNIA, CONFIRMING THE 2015 ANNUAL REPORT FOR THE PROSPERO PARK BUSINESS AREA ENHANCEMENT DISTRICT AND LEVYING THE ASSESSMENT DESCRIBED THEREIN.**

**WHEREAS**, the City Council has previously established the Prospero Park Business Area Enhancement District (the "BAED"), created pursuant to the Parking and Business Improvement Area Law of 1989 (California Streets and Highways Code, Sections 36500 et seq.), and;

**WHEREAS**, the City Council desires to continue the BAED by levying the annual assessment permitted by the Ordinance which established the BAED.

**WHEREAS**, IN ACCORDANCE WITH State law, the City Council has previously conducted a public hearing to consider the annual report on the BAED; and

**WHEREAS**, the City Council did pass the resolution of intention to levy an annual assessment for the fiscal year 2015-2016 in the Prospero Park BAED.

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED** by the City Council of the City of Covina as follows:

**SECTION 1.** The City Council of the City of Covina does hereby confirm the annual report for the Prospero Park BAED for 2015.

**SECTION 2.** In accordance with California Streets and Highways Code section 36535(c), the adoption of this resolution shall constitute the levy of the assessment for the fiscal year 2015-2016 in the BAED, as described in the Resolution of Intention.

**SECTION 3.** The City Clerk shall certify as to the adoption of this resolution and shall cause the same to be processed in the manner required by law.

**PASSED, APPROVED AND ADOPTED** this 1<sup>st</sup> day of December, 2015.

\_\_\_\_\_  
Mayor, City of Covina

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

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# CITY OF COVINA

## AGENDA REPORT

ITEM NO. CB 1

**MEETING DATE:** December 1, 2015

**TITLE:** City Council Resolution No. 15-7427; a resolution revoking (“voiding”) Conditional Use Permit No. 11-006 (authorizing a restaurant with outside sidewalk dining with alcohol and entertainment located upon real property at 211 North Citrus Avenue, Covina) for non-compliance with the conditions of approval; violations of the Covina Municipal Code; numerous calls for service from the Covina Police Department between October 2013 and April 2015; sales of a controlled substance; and non-compliance with the corresponding Dance and Entertainment Permit and other applicable laws and regulations.

**PRESENTED BY:** Brian K. Lee, Director of Community Development

**RECOMMENDATION:** Adopt City Council Resolution No. 15-7427, revoking (“voiding”) Conditional Use Permit No. 11-006.

---

### **BACKGROUND:**

On October 6, 2015, the City Council conducted a public hearing to consider the revocation (“voiding”) of Conditional Use Permit (CUP) No. 11-006. This conditional use permit was for the RED restaurant located at 211 North Citrus Avenue and was originally approved in December 6, 2011 to authorize a restaurant with outside sidewalk dining with alcohol and entertainment.

City staff scheduled the noticed public hearing on October 6, 2015 for the City Council to consider the revocation (“voiding”) of Conditional Use Permit No. 11-006 based upon non-compliance with the conditions of approval; violations to the Covina Municipal Code; numerous calls for service from the Covina Police Department between October 2013 through April 2015; sales of a controlled substance; and non-compliance with the corresponding Dance and Entertainment Permit and other applicable laws and regulations.

At the conclusion of the public hearing and after considering all documentary and testimonial evidence presented at the hearing, the City Council directed the City staff and the City Attorney as follows:

- City Staff to work with the applicant (Vivian Xie) to modify the CUP to address the various and specific issues that were discussed at the October 6, 2015 public hearing (including those that were set forth in the Notice of Public Hearing to Consider Voiding (“Revocation”) of Conditional Use Permit (CUP) No. 11-006 issued on September 10, 2015);

- City Attorney to prepare a revised resolution revoking Conditional Use Permit No. 11-006 and temporarily staying the revocation to a specific date in order to provide the opportunity to the applicant to seek modifications to the conditional use permit that are acceptable to City staff and the City Council to address the concerns addressed in the September 10, 2015 Notice of Public Hearing and at the October 6, 2015 public hearing; and,
- City staff to report to the City Council at the October 20, 2015 City Council meeting as to the timeframe necessary to process a modification to a conditional use permit.

**DISCUSSION:**

Pursuant to the discussion at the October 6, 2015 CUP revocation public hearing, representatives of the property owner (Vivian Xie) stated they were going to be contacting City staff to present a prospective operator to replace the RED operator. The meeting with the property owner's representative, the prospective replacement operator and City staff occurred on October 15, 2015.

As part of the discussion that occurred with the property owner's representative and the prospective replacement operator was the Conditional Use Permit modification process, including the time period involved and the information that needed to be submitted to City staff in order to evaluate the replacement operator and analyze the anticipated CUP modification. Specifically, the property owner's representative and prospective replacement operator were advised that an application to modify the Conditional Use Permit would be processed in the same manner and the same time frame as an initial Conditional Use Permit. Subsequent to the October 15, 2015 meeting, the CUP application materials were provided to the property owner's representative, and the need for the timely submittal of operating information and other relevant material was stressed. As of the writing of this staff report, no further contact has been made by the property owner's representative or the prospective operator that attended the October 15, 2015 meeting with City staff.

It should be noted, pursuant to Covina Municipal Code Section 17.62.170.D, where the use which is the subject of a conditional use permit is replaced or discontinued for a period of 180 days, then the conditional use permit shall be considered void. The RED use activity ended on July 31, 2015 when the property owner surrendered the Dance and Entertainment Permit. Therefore, notwithstanding any other action by the City, pursuant to the Covina Municipal Code Section 17.62.170.D, on January 26, 2016 the RED conditional use permit would be considered void. Therefore, City staff recommends that the stay on the revocation of the CUP expire on January 26, 2016, or the date upon which the conditional use permit would be considered void by operation of law.

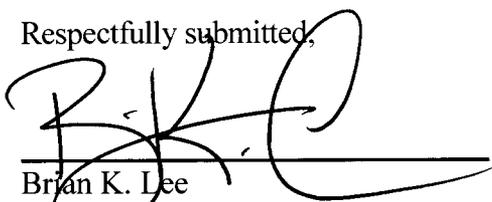
**FISCAL IMPACT:**

None at this time.

**CEQA (CALIFORNIA ENVIRONMENTAL QUALITY ACT):**

The adoption of Resolution No. 15-7427 is exempt pursuant to the provisions of CEQA.

Respectfully submitted,



\_\_\_\_\_  
 Brian K. Lee  
 Director of Community Development

	N/A	N/A	
<b>City Manager</b>	<b>City Attorney</b>	<b>Finance</b>	<b>City Clerk</b>

**ATTACHMENTS:**

Attachment A: City Council Resolution No. 15-7427

**RESOLUTION NO. 15-7427**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COVINA, CALIFORNIA, VOIDING AND REVOKING CONDITIONAL USE PERMIT NO. 11-006 AUTHORIZING A RESTAURANT WITH OUTSIDE DINING WITH ALCOHOL AND ENTERTAINMENT LOCATED UPON REAL PROPERTY AT 211 NORTH CITRUS AVENUE, COVINA; APPLICANT: JP UNITED, LLC AND TEMPORARILY STAYING SAID REVOCATION OF CONDITIONAL USE PERMIT NO. 11-006 TO ALLOW PERMITTEE THE OPPORTUNITY TO APPLY FOR A CONDITIONAL USE PERMIT MODIFICATION**

THE CITY COUNCIL OF THE CITY OF COVINA DOES HEREBY RESOLVE AS FOLLOWS:

**SECTION 1. RECITALS.** This Resolution is adopted with respect to the following facts and purposes:

A. Covina Municipal Code Section 17.62.170 provides that the City Council may by resolution, upon notice and a hearing, void any conditional use permit for noncompliance with the conditions set forth in granting the conditional use permit;

B. On September 8, 2015, the City of Covina (“City”) staff notified the applicant (“JP United, LLC”) and the owner of the real property at 211 North Citrus Avenue, Covina (“Citrus International, LLC”) in writing of the public hearing to consider voiding (“revoking”) Conditional Use Permit No. 11-006 (“CUP”), which authorized a restaurant with outside dining with alcohol and entertainment located upon the real property at 211 Citrus Avenue, Covina, California (“subject property” or “site”), for non-compliance with conditions of approval of the CUP, non-compliance with conditions of approval with the corresponding Dance and Entertainment Permit (“D&E Permit”), and violations of the Covina Municipal Code and other applicable laws and regulations; and

C. On September 10, 2015, a Notice of Public Hearing regarding the proposed CUP revocation was published in the San Gabriel Valley Examiner; and

D. On September 24, 2015, a Notice of Public Hearing regarding the Proposed CUP revocation was mailed to all property owners within 300 feet of the subject property; and

E. On September 24, 2015, a Notice of Public Hearing regarding the Proposed CUP Revocation was posted at Covina City Hall (located at 125 East College Street, Covina, California) and at the Covina Public Library (located at 234 North Second Avenue, Covina, California); and

F. All requisite notices of public hearing were duly given, issued, mailed, and posted in the time, form, and manner as required by law; and

G. On October 6, 2015, the City Council of the City of Covina conducted a duly noticed public hearing to consider revoking the CUP and concluded and closed said hearing on that date; and

H. During the course of said public hearing, the City Council considered testimony of City staff, representatives of the applicant and owner of the subject property, and the public, as well as all written evidence submitted to the City Council for purposes of the public hearing; and

I. At the conclusion of the public hearing, the City Council determined, based upon the evidence presented at the public hearing, that there have been repeated instances of non-compliance with the condition of approval of the CUP that were detrimental to and threatened the health, safety, and welfare of the public and that justify voiding (“revoking”) the CUP.

**SECTION 2. FINDINGS.** Based upon the evidence (written, oral, or otherwise) presented at the public hearing of October 6, 2015, and the recitals set forth hereinabove, each of which is incorporated herein by reference, the City Council does hereby find, determine, and resolve that the following findings exist to jointly and severally support voiding the CUP:

- A. All facts stated in the Recitals of this Resolution are true and correct.
- B. On September 3, 2013, the Covina Police Department issued correspondence to JP United, LLC dba R.E.D. (the “applicant”) informing the applicant that on August 30, 2013, the Police Department confirmed that R.E.D. had an insufficient number of on-duty security guards posted at the site in violation of the approved conditions of its D&E Permit. The correspondence also addressed an unapproved form of entertainment (“burlesque”) advertised at the business establishment.
- C. On May 19, 2014, the Covina Police Department issued correspondence to JP United, LLC dba R.E.D. informing the applicant that on that same date, the Covina Police Department confirmed that R.E.D. was operating after 2:00 a.m., in violation of its D&E Permit (“D&E Permit”).
- D. On June 9, 2014, the Covina Police Department issued correspondence to JP United, LLC dba R.E.D. (the applicant) informing the applicant that the Police Department had reason to believe that R.E.D. was once again failing to adhere to the applicable conditions of the D&E Permit pertaining to security guards.
- E. On July 10, 2014, the Covina Police Department and the Office of the City’s Code Enforcement Attorney/Prosecutor met with Everett Ramos (a representative of JP United, LLC and an operator of R.E.D.) to discuss compliance with the conditions of JP United, LLC’s CUP and D&E Permit – and JP United, LLC’s ability to seek a modification of its CUP if it felt that R.E.D. could no longer adhere to the conditions of approval of the CUP;

- F. On July 15, 2014, the Office of the City’s Code Enforcement Attorney/Prosecutor issued correspondence to JP United, LLC discussing the results of the July 10<sup>th</sup> meeting – including the violations that were confirmed by City Staff and/or the Police Department, or that were otherwise admitted to by JP United, LLC;
- G. On February 25, 2015, representatives of JP United, LLC dba R.E.D. met with officials of the Covina Police Department to discuss activities and conditions that had occurred at R.E.D. that constituted violations of its CUP and D&E Permit, as well as that constituted public nuisances that threatened and/or were otherwise detrimental to the public health, safety, and welfare – including, but not limited to:
- 1) Sale of alcohol to obviously intoxicated persons on February 13, 2015, February 14, 2015, February 20, 2015, and February 22, 2015;
  - 2) Changes that R.E.D. had instituted to the procedures approved by the Covina Police Department (in accordance with the CUP and D&E Permit) for the queuing of patrons without prior approval – including, but not limited to, failing to have required security to monitor the queue and allowing the queue to obstruct the pedestrians’ path of travel on the public sidewalk;
  - 3) Unauthorized changes in the approved use and approved site plan including, but not limited to:
    - i. Creation of a second area (under the stairs) for a DJ – other than the designated and approved stage;
    - ii. Expansion of dancing area (by removal of tables and chairs);
    - iii. Installation of glass partitions and locking doors between the north and south portion of the business establishment;
    - iv. Providing entertainment after 1:00 a.m. and the continuation of business operations (including serving patrons) after 2:00 a.m., as prohibited by conditions of approval of the CUP and D&E Permit
  - 4) Unapproved use of the stage by allowing non-performers to be on the stage while a DJ was performing;
  - 5) Excessive noise disturbances emanating from the subject property resulting in disturbances of the peace;
  - 6) Failing to install and maintain an approved video security system and ensuring the preservation of the recordings thereof for a period of not less than ten (10) business days;

- H. On March 3, 2015, City staff conducted an inspection of the subject property with the consent of JP United, LLC, and determined that numerous conditions (as subsequently set forth in the Notice of Administrative Investigation issued to JP United, LLC on July 28, 2015) were non-compliant with the approved conditions of its CUP and D&E Permit.
- I. On July 28, 2015, the Covina Police Department issued a written Notice of Administrative Investigation to JP United, LLC dba R.E.D. informing the applicant that the Police Department was conducting an administrative investigation pertaining to JP United, LLC's application to renew its D&E Permit, as well as alleged violations of the then existing D&E Permit and Conditional Use Permit Application No. 11-006. The Notice of Administrative Investigation reiterated the unpermitted conditions and activities discussed during the meeting that occurred on February 25, 2015 and confirmed during the inspection on March 3, 2015. The Notice of Administrative Investigation also requested copies of records which reflect separately the gross sale of food and the gross sale of alcoholic beverages at RED for each month for the period of time between January 1, 2014 and July 28, 2015, as requested by the Covina Police Department to ensure compliance with the CUP and the D&E Permit, as well as other applicable laws and regulations.
- J. On August 19, 2015, City staff conducted an inspection of the subject property with the consent of JP United, LLC, to ascertain whether unapproved conditions previously observed at the March 3, 2015 inspection were still present at the subject property and whether any other conditions not authorized by the CUP were present. City staff confirmed in an Inspection Report that the:
- 1) Dance floor was expanded without approval of a revised CUP and a revised D&E Permit;
  - 2) The platform and lounge seating was completed without approval of a revised CUP, a revised D&E Permit or building permits;
  - 3) The stage area was altered without approval of a revised CUP, a revised D&E Permit and building permits;
  - 4) Construction of glass partitions and locking doors were completed without approval of a revised CUP, a revised D&E Permit and building permits;
  - 5) A disk jockey area was constructed under the staircase without approval of a revised CUP, a revised D&E Permit and building permits;
  - 6) An additional dance floor was installed without approval of a revised CUP or a revised D&E Permit.

**SECTION 3. VIOLATIONS AND NONCOMPLIANCE.** Based upon the findings of fact set forth in Sections 1 and 2 above, as well as the evidence (documentary, testimonial, and/or otherwise) presented at the public hearing of October 6, 2015, each of which is incorporated herein by reference, the City Council does hereby further find, determine, and declare that the applicant repeatedly failed to comply with conditions of approval as set forth in the CUP, the D&E Permit, ABC license for R.E.D., and other applicable laws and regulations, and that the use of the site for a restaurant with outside dining with alcohol and entertainment constitutes a public nuisance that threatens or otherwise is detrimental to the public health, safety, and welfare. Such specific violations and instances of non-compliance include:

A. Violation of CUP Conditions 2.16.8, 2.16.19, 2.16.31, 2.22, 2.25, and 2.37; violation of D&E Conditions 2, 3, 4, 8, 9, 10, 11, 12, 13, 24, 25; violation of Covina Building Code Section 105.1; and violation of Covina Municipal Code 8.40.030.B; 8.40.030.F; 8.40.030.G as follows:

- 1) The business establishment has been remodeled, improved, altered, or otherwise operated in contradiction to the approved plans on file with the City, all representations of record made by the applicant/permittee throughout the CUP process, and the Covina Municipal Code. Such unauthorized alterations and improvements include, but are not limited to:
  - i. Expansion of the dance floor (by removal of tables and chairs);
  - ii. Replacement of tables and chairs with platform lounge seating;
  - iii. Installation of seating on the stage area;
  - iv. Glass partitions and locking doors have been installed between the north and south portions of the restaurant;
  - v. Change of use of area below a stairwell from storage to DJ area;
  - vi. Installation of additional dance floor (in northern portion of establishment);
  - vii. The removal of a partition wall located in the northern portion of the establishment;
  - viii. The occurrence and allowance of dancing in areas other than the approved dance floor;
  - ix. The allowance of persons other than “Approved Performers” have on the stage;
  - x. The queuing of patrons in violation of the queuing procedures approved by the Covina Police Department; and,

- xi. The use of a room on the second floor as an extension of R.E.D. for a banquet room, including the service of food and alcoholic beverages.
- B. Violation of CUP Conditions 2.16.1, 2.16.2, 2.16.3, 2.16.4, 2.16.5, and violation of D&E Conditions 1(d) and 1(e) as follows:
- 1) R.E.D. provided entertainment after 1:00 a.m., served alcoholic beverages after 1:30 a.m., and continued operating after 2:00 a.m.;
- C. Violation of CUP Conditions 2.16.9, 2.16.23, 2.16.24; and violation of D&E Conditions 15, 16, 17, 18, 19, 20 as follows:
- 1) The owners, operators, and/or managers failed to fully cooperate with all police investigations – including, but not limited to, failing to maintain an approved video security system and ensure the preservation of the recordings thereof for a period of not less than ten (10) business days.
  - 2) The owners, operators, and/or managers also failed to provide copies of records which reflect separately the gross sale of food and the gross sale of alcoholic beverages at RED for each month for the period of time between January 1, 2014 and July 28, 2015, as requested by the Covina Police Department to ensure compliance with the CUP and the D&E Permit, as well as other applicable laws and regulations.
- D. Violation of CUP Conditions 2.16.11, 2.16.12, 2.16.13, 2.16.15, 2.16.16, 2.25; D&E Conditions 15, 20, 25; California Health & Safety Code Section 11352(a); and Covina Municipal Code 8.40.030.D as follows:
- 1) The owner or operator failed to utilize security guards that were duly licensed by the State of California and remained in good standing throughout their time of employment.
  - 2) The business establishment did not always provide the required number of security guards at the premises;
  - 3) The security guards were allowed to provide services while not in approved uniforms.
  - 4) On three (3) separate occasions, a security guard sold controlled substances to patrons while on duty at the premises – resulting in (i) the revocation of the Covina Private Patrol Operator’s Permit for Executive Sentry Services; (ii) the criminal conviction of the unlicensed security guard for a violation of California Health & Safety Code Section 11352(a) [“Sale of Controlled Substance (to wit, cocaine)”]; and (iii) the placement of the ABC license-holder on probation for a period of thirty-six (36)

months by ABC – with an actual suspension of the ABC license for a period of twenty (20) days.

- E. Violation of CUP Condition 2.16.28 and 2.25; and violation of D&E Condition 25 as follows:
  - 1) Instances of persons allowed inside the establishment in excess of the approved occupancy load.
  
- F. Violation of CUP Conditions 2.16.31 and 2.25; violation of D&E Conditions 23 and 25; and violation of Covina Municipal Code Sections 8.40.030.A.39 and 8.40.030.E as follows:
  - 1) Excessive instances of fights involving patrons of the site (both inside and outside of the business establishment), intoxicated patrons, excessive and/or loud noise disturbances, and other general disturbances of the peace resulting in multiple responses by the Covina Police Department.
  
- G. Violation of CUP Conditions 2.8, 2.16.8, 2.16.9, 2.21, and 2.25 as follows:
  - 1) On a regular basis, and typically after 10:00 p.m., R.E.D. (the previous business operator) changed its use from a restaurant with ancillary entertainment and alcohol service (consistent with its Type 47 ABC license) to a nightclub and bar use which focused more on alcohol service and entertainment than food and dining service. This was evidenced by significantly decreased food service after 10:00 p.m., removal of tables and chairs used for dining service in order to provide an expanded dancing and entertainment area, advertisements that focused more on alcohol service and entertainment than food and dining service, and statements by R.E.D.’s operators admitting to these changes in operation.

**SECTION 4. REVOCATION.** Based on the foregoing and the evidence in the record, the City Council hereby finds that the applicant has violated multiple provisions of the Covina Municipal Code and numerous conditions of approval to the CUP and hereby voids (“revokes”) Conditional Use Permit No. 11-006. Furthermore, the City Council hereby finds that each finding set forth hereinabove is alone sufficient to support voiding Conditional Use Permit No. 11-006, and that it would have determined to void Conditional Use Permit No. 11-006 upon such finding alone regardless of the existence of any other finding.

**SECTION 5. TEMPORARY STAY.** Notwithstanding Section 4 of this Resolution, the City Council hereby temporarily stays the revocation of the CUP until January 26, 2016, to allow the applicant the opportunity to apply for modifications to the CUP to address the violations and noncompliance and the issues related to the use of the property that gave rise to the CUP revocation proceeding. In the event the Planning Commission has not approved a modification to the applicant’s CUP by January 26, 2016, this stay on the revocation of the CUP shall be automatically lifted, and the revocation will be effective immediately on January 27, 2016, in which case the privileges granted by the CUP shall be of no further force or effect and

no person shall cause, permit, allow, or suffer the use of the subject property for a restaurant with outside dining with alcohol and entertainment without first obtaining all requisite City approvals, permits, licenses, and inspections.

**SECTION 6.** The City Clerk shall certify to the passage and adoption of this Resolution and shall enter the same in the Book of Original Resolutions.

**PASSED, APPROVED AND ADOPTED** this 1st day of December 2015.

\_\_\_\_\_  
John C. King, Mayor

ATTEST:

\_\_\_\_\_  
Sharon F. Clark, Chief Deputy City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Candice K. Lee, City Attorney

**CERTIFICATION**

I, Sharon Clark, Chief Deputy City Clerk of the City of Covina, California, do hereby certify that Resolution No. 15-7427 was adopted by the Covina City Council at a regular meeting thereof held this 1st day of December 2015, and was approved and passed by the following vote:

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

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SHARON F. CLARK  
CHIEF DEPUTY CITY CLERK



# CITY OF COVINA

## AGENDA REPORT

ITEM NO. NB 1

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**MEETING DATE:** December 1, 2015

**TITLE:** Establish a Health Reimbursement Arrangement for City of Covina Retirees

**PRESENTED BY:** Danielle Tellez, Director of Human Resources  
John Michicoff, Interim Finance Director

**RECOMMENDATION:** Authorize the City Manager, or her designee, to execute all required documents to establish a Health Reimbursement Arrangement for City of Covina Retirees

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### **BACKGROUND:**

As part of the City's budget process for the 2015-16 Adopted Budget, the City Manager was authorized to reduce the workforce within established guidelines and procedures. As part of the continuing efforts to realize personnel cost savings and efficiencies, the City Council subsequently authorized staff to explore early retirement incentives for all full time employees.

### **DISCUSSION:**

Over the last several months, staff has reviewed and considered several early retirement incentive programs with major consideration being given to what the City can afford to offer employees as an early incentive to retire.

One of the obstacles facing retirees prior to becoming Medicare eligible is the cost of health insurance. As such, staff focused on programs that would be mutually beneficial to retirees and the City. After extensive review, staff found that the best option would be to establish a program known as a Health Reimbursement Arrangement "HRA". An HRA is an employer-established account that is governed by IRC Sec. 105(h)(6). They are direct health expense reimbursement plans, that are consumer directed, and allow a vehicle for retirees to receive tax-free reimbursements for qualified health expenses.

Included in the implementation process of an HRA the City will enter into a service agreement (Attachment A) with our current insurance brokerage firm, Keenan & Associates, who will provide program oversight and ensure that the program's integrity is maintained. The City will also establish a Health Reimbursement Arrangement Trust (Attachment B), which sets forth terms and conditions to secure and hold funds contributed by the City on behalf of the retiree for appropriate distribution at a later date. The trust will be administered by Mid-America Administrative Solutions, Inc. (Attachment C)

Currently, depending on the employee group, separating employees may cash out up to either 50% or 55% of their accrued sick leave, which is subject to Federal and state taxes. The remaining balance of accrued sick leave is reported to CalPERS for conversion to service credit.

The proposed early retirement incentive program that would be applied in a non-discriminant manner (offered to all full time employees) would include the following eligibility requirements:

- Voluntary participation
- Eligible for Retirement (Safety age 50; Miscellaneous age 55)
- Vested with CalPERS (Minimum 5 years of service credit in CalPERS)
- Minimum of 5 years of service with the City of Covina

Employees who meet the above eligibility criteria would be given an offer to have the balance of sick leave accrual paid at an increased rate of 75% of the value. A one-time contribution of these funds would be made by the City to the HRA on the employee’s behalf, tax free. Employees will be given a 45-day window in which to accept the offer. Should they accept, they will enter into an agreement with the City to retire on a mutually agreeable date. Additionally, the cash out contributions will be funded over a period of five (5) years.

**FISCAL IMPACT:**

Fiscal impact is dependent upon the number of employees who accept the offer. Staff has identified 26 current employees who would be eligible to accept the offer based on the identified eligibility criteria. Should all of the 26 participate, the difference between the current cash out obligations of 50% and 55% and the increased rate cash out of 75% is approximately \$250,000. Since there is a five (5) year contribution period, the actual annual increase would be a maximum of \$50,000. Funding for these additional cash outs will be paid out of available reserves.

However, with this program the City would realize future cost savings to offset these increased costs and provide other opportunities such as the ability to control future personnel costs by hiring new employees at a lower salary rate, retirement cost savings by hiring employees not currently in the PERS system that would be subject to PEPRA, and realizing potential savings from vacant positions. Additionally, this would allow departments a degree of flexibility to restructure staffing levels, provide promotional opportunities to current employees, thereby increasing morale.

**CEQA (CALIFORNIA ENVIRONMENTAL QUALITY ACT):** None.

Respectfully submitted,

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Danielle Tellez  
 Director of Human Resources

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John Michicoff  
 Interim Finance Director

<b>City Manager</b>	<b>City Attorney</b>	<b>Finance</b>	<b>City Clerk</b>
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**ATTACHMENTS:**

Attachment A: Health Reimbursement Arrangement Service Agreement (Keenan & Associates)

Attachment B: Health Reimbursement Arrangement Trust Agreement

Attachment C: Service Agreement for Trust Administration (MidAmerica)

**SERVICE AGREEMENT  
HEALTH REIMBURSEMENT ARRANGEMENT**

This Service Agreement (“Agreement”) is made and entered into by and between City of Covina (“Employer”) and Keenan & Associates (“Keenan”), as of December 1, 2015 (“Effective Date”).

**RECITALS**

**WHEREAS.** Employer seeks to establish a Health Reimbursement Arrangement (“HRA”);

**WHEREAS,** Keenan provides certain services to employers seeking to establish HRA’s and acts as broker of record for annuities purchased for HRA’s; and

**WHEREAS,** MidAmerica Administrative Solutions, Inc. (“MidAmerica”), is a provider of administrative services and technical support for HRA’s and

**WHEREAS,** Employer desires to utilize the services of Keenan and MidAmerica for its HRA.

**THEREFORE, IN CONSIDERATION OF** the mutual covenants herein contained and for other good and valuable consideration the receipt and sufficiency is hereby acknowledged, it is mutually agreed as follows:

**AGREEMENT**

**1. TERM**

A. This Agreement shall be for an initial term of three years (the “Initial Term”), beginning with the Effective Date of this Agreement and expiring on December 31, 2018. Upon expiration of the Initial term, the Agreement shall automatically renew for successive one year terms (each renewal year a “Successive Term” and, collectively with the Initial Term, the “Term”), provided that either party may terminate the Agreement at any time without cause or penalty upon no less than ninety (90) days written notice to the other.

**2. KEENAN SERVICES AND RELATIONSHIP OF THE PARTIES**

A. Employer elects and Keenan shall provide the services indicated in Exhibit A attached hereto and incorporated herein (“Services”).

B. The relationship of Keenan and Employer shall be that of an independent contractor and Keenan shall at all times remain responsible for its own operational and personnel expenses. Under no circumstance shall any employee of one party look to the other party for any payment or the provision of any benefit, including without exception, workers’ compensation coverage. Except as may be expressly set forth in or contemplated by this Agreement, neither party shall have the right to act on behalf of the other, or to bind the other to any contract or other obligation.

C. In providing the Services, Keenan shall act exclusively in an advisory and consultative capacity. Employer shall at all times have the right to determine whether to act on or implement the information, recommendations, and suggestions provided by Keenan, and the manner by which any such action or implementation shall be undertaken.

Except for Keenan's responsibilities with respect to funds obtained from or on behalf of Employer, Keenan shall not be a fiduciary of Employer.

- D. Keenan shall not provide any legal, tax, or accounting service, advice, or opinion, and the Services shall not be interpreted as representing any such service, advice or opinion. Employer's shall consult its own attorney on all legal issues and its own tax and accounting experts on all tax, accounting, and financial matters relating to its operations, including without limitation, the establishment, implementation and operation of the HRA.
- E. In providing its Services, Keenan shall comply with all applicable state and federal laws and regulations, and obtain and maintain all necessary licenses, registrations, and/or permits necessary for the performance of its duties under this Agreement.
- F. The Services provided to Employer are non-exclusive and Keenan reserves the right to provide the same or similar services to other Employers who may be in the same industry, business, or service as Employer.

### **3. EMPLOYER'S DUTIES AND RESPONSIBILITIES**

- A. Employer shall retain decision-making authority for its HRA, and shall manage the day-to-day activities of the HRA, except for those duties and/or functions expressly assigned to Keenan under this Agreement or to MidAmerica under the Administrative Services Agreement executed contemporaneously herewith.
- B. Employer shall provide Keenan with timely access to such information and individuals, including its outside advisors and consultants, as may be necessary for Keenan to perform the Services. Keenan shall not be responsible for any delay in its performance that results from the failure of Employer, or any person acting on behalf of Employer, to make available any information or individual in a timely manner.
- C. All information provided to Keenan, either in anticipation of or during the term of this Agreement, shall be complete and accurate, and that Keenan may rely upon such information.
- D. Employer shall execute the Broker of Record Designation attached hereto as Exhibit B.

### **4. COMPENSATION**

- A. Keenan shall receive compensation for the Services as set forth on Exhibit C.
- B. Keenan shall comply with all applicable state and/or federal laws and regulations regarding disclosure of compensation. We embrace industry efforts for transparency and believe it is important that Employers have access to information that may be relevant to their choice of insurance products, including the cost of such insurance and services, and, the compensation that may be directly or indirectly paid to Keenan in connection with the products or services that are selected. If you have questions regarding any of these items or desire additional information, you may contact your Keenan account representative to discuss this matter in more detail.

## 5. INSURANCE

Keenan shall procure and maintain during the term of this Agreement the following insurance coverage's, and shall provide certificates of insurance to Client upon Client's request.

- i. Workers' Compensation: Coverage in conformance with the laws of the State of California and applicable federal laws;
- ii. General Liability: Coverage (including motor vehicle operation) with a One Million Dollar (\$1,000,000) limit of liability for each occurrence and a Two Million Dollar (\$2,000,000) aggregate limit of liability; and
- iii. Errors and Omissions: Coverage with a One Million Dollar (\$1,000,000) limit of liability for each occurrence and a Two Million Dollar (\$2,000,000) aggregate limit of liability.

## 6. INDEMNIFICATION

If either party breaches this Agreement, then the breaching party shall defend, indemnify and hold harmless the non-breaching party, its officers, agents and employees against all claims, losses, demands, actions, liabilities, and costs (including, without limitation, reasonable attorneys' fees and expenses) arising from such breach. In addition, if Keenan (i) becomes the subject of a subpoena or is otherwise compelled to testify or (ii) becomes the subject of a claim, demand, action or liability brought or asserted by one of Client's employees, vendors or any third party ("Third-Party Demand") relating to the Services and such Third-Party Demand is not a direct result of Keenan's negligence or willful misconduct, then Client shall defend, indemnify and hold Keenan harmless from all losses, payments, and expenses incurred by Keenan in resolving such Third-Party Demand.

## 7. LIMITATION OF LIABILITY

Notwithstanding anything to the contrary in this Agreement, in no event shall either party be liable for any punitive damages, fines, penalties, taxes or any indirect, incidental damages incurred by the other party, its officers, employees, agents, contractors or consultants whether or not foreseeable and whether or not based in contract or tort claims or otherwise, arising out of or in connection with this Agreement even if advised of the possibility of such damage. Keenan's liability under this Agreement shall further be limited to, and shall not exceed, the amount of its available insurance coverage, but not exceeding the limits of coverage outlined in Section 5.

## 8. DISPUTE RESOLUTION

A. Disputes arising out of or relating to this Agreement, other agreements between the parties, or any other relationship involving Client and Keenan (whether occurring prior to, as part of, or after the signing of this Agreement) shall first be resolved by good faith negotiations between representative of the parties with decision-making authority. If either party determines that the dispute cannot be resolved through informal negotiation then the dispute shall be submitted to non-binding mediation. The site of the mediation and the selection of a mediator shall be determined by mutual agreement of the parties.

If the dispute is not resolved through mediation within sixty (60) days following the first notification of a request to mediate, then either party shall have the right to require the matter to be resolved by final and binding arbitration in accordance with JAMS dispute resolution service pursuant to its Streamlined Arbitration Rules and Procedures, or such other arbitration procedures as may be agreed to in writing by the parties. Negotiation, mediation, and arbitration shall be the exclusive means of dispute resolution between Client and Keenan and their respective members, agents, employees and officers.

- B. Arbitration shall be before a single arbitrator in the County of Los Angeles, California. The Arbitrator shall apply the Federal Arbitration Act and California substantive law, and shall accompany the award with a reasoned opinion. The arbitrator shall have no authority to award punitive or other damages not measured by the prevailing party's actual damages. The prevailing party shall be entitled to an award of reasonable attorneys' fees. A judgment of any court having jurisdiction may be entered upon the award.
- C. Either party may apply to the arbitrator seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party also may, without waiving any remedy under this Agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the controversy).

## 9. **TERMINATION**

- A. This Agreement may be terminated upon the occurrence of any of the following events:
  - i. By either party upon the dissolution or insolvency of a party to this Agreement;
  - ii. By either party following the filing of a bankruptcy petition by or against either party (if the petition is not dismissed within sixty (60) days in the case of an involuntary bankruptcy petition);
  - iii. If the application of any law, rule, regulation, or court or administrative decision prohibits the continuation of this Agreement or would cause a penalty to either party if the Agreement is continued, and if the Agreement cannot be amended to conform to such law, rule, regulation, or court or administrative decision in a manner that would preserve the original intent of the parties with respect to their rights and duties under this Agreement; or
  - iv. By the non-breaching party if a breach of this Agreement is not cured within thirty (30) days following receipt of written notice of the breach from the non-breaching party.
- B. Termination of this Agreement shall terminate the Administrative Services Agreement entered into between Employer and MidAmerica. Neither Keenan nor MidAmerica (except as specifically provided for under the Administrative Services Agreement) shall be obligated to provide any further service to the HRA as of the termination date of

this Agreement. It shall be the sole responsibility of the Employer to provide, directly or through an alternate service provider. Additionally, the termination of this Agreement and the subsequent termination of MidAmerica Administrative Services Agreement may result in the termination of the group annuity contract purchased for the HRA. In such event, HRA assets may be subject to surrender charges if so stated in the carrier's group annuity contract.

**10. GENERAL**

- A. This Agreement, its recitals and all exhibits attached to the Agreement contain the entire understanding of the parties related to the subject matter covered by this Agreement and supersede all prior and collateral statements, presentations, communications, reports, agreements or understandings, if any, related to such matter(s).
- B. This Agreement is made for the benefit of the parties and is not intended to confer any third party benefit or right. The enforcement of any remedy for a breach of this Agreement or claim related to the Services may only be pursued by the parties to this Agreement.
- C. No modification or amendment to this Agreement shall be binding unless it is in writing and signed by authorized representatives from both parties. Any waiver or delay by a party in enforcing this Agreement shall not deprive that party of the right to take appropriate action at a later time or due to another breach. This Agreement shall be interpreted as if written jointly by the parties.
- D. Any provision determined by a court of competent jurisdiction to be partially or wholly invalid or unenforceable shall be severed from this Agreement and replaced by a valid and enforceable provision that most closely expresses the intention of the invalid or unenforceable provision. The severance of any such provision shall not affect the validity of the remaining provisions of this Agreement.
- F. Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, power outages, failure of computer systems, machinery or supplies, vandalism, strikes, or other work interruptions, or any similar or other cause that is beyond the reasonable control of either party. Each party shall make a good faith effort to perform under this Agreement in the event of any such circumstances, and shall resume full performance once the cause of the delay has abated.
- G. All notices hereunder shall be in writing and sent to the parties at the addresses as set forth below, or to such other individual or address as a party may later designate. Notices shall be sent via personal delivery, courier service, United States mail (postage pre-paid, return receipt requested), express mail service, electronic mail, or fax. Notice shall be effective when delivered, or if refused, when delivery is attempted. Notices delivered during non-working hours shall be deemed to be effective as of the next business day.

If the notice relates to a legal matter or dispute, a copy shall be sent to:

Keenan and Associates  
 2355 Crenshaw Blvd., Ste. 200  
 Torrance, CA 90501  
 Attn: Legal Department

- H. Neither this Agreement nor Keenan’s duties hereunder may be assigned without the prior written approval of Employer.
- I. This Agreement may be executed in counterparts and by fax signatures and each shall be deemed to be an original.
- J. Each person signing this Agreement on behalf of a party represents and warrants that he or she has the necessary authority to bind such party and that this Agreement is binding on and enforceable against such party.

<b><u>City of Covina</u></b>		<b><u>Keenan &amp; Associates</u></b>	
<b><u>Signature:</u></b>		<b><u>Signature:</u></b>	
<b><u>By:</u></b>	<b>Andrea Miller</b>	<b><u>By:</u></b>	<b>J. Daniel Keenan</b>
<b><u>Title:</u></b>	<b>City Manager</b>	<b><u>Title:</u></b>	<b>Senior Vice President</b>
<b><u>Address</u></b>	<b>125 E. College Street Covina, CA 91723-2199</b>	<b><u>Address</u></b>	<b>2355 Crenshaw Blvd., Ste. 200 Torrance, CA 90501</b>
<b><u>Phone:</u></b>	<b>626-384-5551</b>	<b><u>Phone</u></b>	<b>310-212-0363</b>
<b><u>Fax</u></b>	<b>626-384-5556</b>	<b><u>Fax</u></b>	<b>310-533-1329</b>
<b><u>Attention</u></b>	<b>Danielle Tellez</b>	<b><u>Attention</u></b>	<b>Dan Keenan</b>

**EXHIBIT A**  
**Keenan's Services**

Keenan shall:

1. With respect to Plan Design Consulting & Oversight:
  - a) Determine Plan Provisions
  - b) Plan Setup Assistance
2. Select vendors to provide products and services to the program ("Vendors").
3. Evaluate and review the performance of the Vendors.
4. In its discretion, remove, replace or change Vendors.
5. Act as liaison between Employer and the Vendors.
6. Act as Broker in securing one or more group annuity contracts for Employer's HRA.
7. Conduct periodic meetings with Employer to review the status of its HRA
8. Inform Employer of any changes affecting the program, including, without limitation, any change in Vendors.
9. Coordinate the services of the Vendors.
10. Assist Employer in the implementing of the HRA.
11. Provide ongoing consultation to Employer with respect to the HRA.
12. Work with the Vendors to resolve any customer service issues
13. Review communication, sales, marketing and customer service materials prepared by Vendors.
14. Assist Employer in informing its employees about the availability of the HRA.
15. Assist Employer in providing educational programs about the HRA to employees.

**EXHIBIT B**  
**Broker of Record Designation**

This letter confirms that as of December 1, 2015, the organization listed below (“Employer”) has appointed Keenan & Associates (“Keenan”) as the Broker of Record for the group annuity contract(s) to be issued in conjunction with Employer’s HRA.

It is understood and agreed that American United Life Insurance Company (“AUL”) is currently Keenan’s exclusive provider of group annuity products for HRA’s.

Employer shall not seek to acquire annuity products directly from any insurance carrier or through any other broker for its HRA.

Keenan is authorized to provide a copy of this letter to AUL, and/or any subsequent HRA annuity provider, to demonstrate Keenan’s authority to obtain one or more annuities for Employer’s HRA. This appointment rescinds any and all previous appointments Employer may have made with respect to the HRA, and shall remain in full force and effect until Employer terminates its Service Agreement with Keenan.

Employer authorizes Keenan to provide representatives of prospective insurers and other coverage providers with all information regarding Employer, its operations, employees, and financial status as may be necessary for AUL, and/or any subsequent group annuity provider, to issue the group annuity contract to Employer.

Acknowledged and agreed to by:

<b><u>City of Covina</u></b>		<b><u>Keenan &amp; Associates</u></b>	
<b><u>Signature:</u></b>		<b><u>Signature:</u></b>	
<b><u>By:</u></b>	<b>Andrea Miller</b>	<b><u>By:</u></b>	<b>J. Daniel Keenan</b>
<b><u>Title:</u></b>	<b>City Manager</b>	<b><u>Title:</u></b>	<b>Senior Vice President</b>
<b><u>Date:</u></b>		<b><u>Date:</u></b>	

### Exhibit C

Client shall pay Keenan a one-time consulting fee of Waived(\$0.0). This fee is due during the first year of the contract. Payment will be due in full thirty (30) days following receipt of Keenan's invoice. Keenan shall have the right to suspend performance of its Services if any payment remains unpaid for more than thirty (30) days from the due date.

In exchange for the administrative and other services provided by Keenan to MidAmerica and the carrier(s) providing annuities for the HRA program, Keenan shall receive certain fees and/or commissions from MidAmerica and such carrier(s). Keenan shall receive 3.00 per employee of the Administrative Fee collected by Mid America as specified in the agreement executed between the Client and MidAmerica. Notwithstanding the foregoing, Client shall pay a minimum monthly Administrative Fee of \$75.00 per month. Of the monthly minimum MidAmerica shall receive \$50.00 and Keenan will receive \$25.00 for their respective services.

If Keenan receives any commissions from the sale of annuities, such commissions will be as provided for under a separate agreement between Keenan and the applicable carrier(s).

# Health Reimbursement Arrangement for Retirees

## ADOPTION AGREEMENT

### for

## City of Covina

**Employer Address:** 125 E. College Street  
Covina, CA 91723

**Employer Telephone Number:** (626) 384-5551

**Employer Identification Number:** 95-6000699



The undersigned Employer, by executing this Adoption Agreement, hereby adopts and implements the Health Reimbursement Arrangement for Retirees (hereinafter referred to as the "Plan" or the "HRA") and agrees to abide by the terms of the Plan. With this Adoption Agreement, and by its authorized signature below, the Employer hereby makes the following designations.

**Effective Date.** The Plan's Original Effective Date is December 1, 2015. The Plan's Restated Effective Date is \_\_\_\_\_.

The Plan is available to Retirees of the Employer effective December 1, 2015.

**Plan Year.** The Plan Year ends on December 31.

**Eligible Classes.** The class or classes of Retirees covered by this Plan are: *(See attached Class Specifications.)*

Class RetA: Retirees on CalPERS Medical Plan      Class RetB: Retirees not on CalPERS Medical Plan  
 Class RetC: \_\_\_\_\_      Class RetD: \_\_\_\_\_  
 Class RetE: \_\_\_\_\_      Class RetF: \_\_\_\_\_

**Designation of Plan Administrator.** The Employer hereby designates the following initial Plan Administrator: MidAmerica Administrative & Retirement Solutions, Inc.

**Designation of Individuals to Have Access to Protected Health Information ("PHI").** The following Employees, classes of Employees, or other persons shall be given access to the PHI to be disclosed:

Business Office Personnel      HR Department Personnel      \_\_\_\_\_

The Employer hereby agrees to the provisions of the Plan and has executed this Adoption Agreement on this 1<sup>st</sup> day of December, 2015.

Name of Employer: City of Covina

Signature: \_\_\_\_\_

Print Name: Andrea Miller

Title: City Manager

Employer CONTACT (print): Theresa Franke

Title: Interim Finance Manager

E-Mail: tfranke@covinaca.gov

Telephone: 626-384-5508      Ext. \_\_\_\_\_

Fax: (626) 384-5556

IRS Circular 230 Notice: We are required to advise you no person or entity may use any tax advice in this communication or any attachment to (i) avoid any penalty under federal tax law or (ii) promote, market or recommend any purchase, investment or other action.

**Employer Representations**

- The Employer intends to reduce its Retirees' medical expenses by providing reimbursement of such expenses, in a limited capacity. The Employer anticipates that participation in the HRA will encourage prospective Retirees to retire earlier, as they will be better able to afford quality health care prior to the age at which they are Medicare eligible.
- The Employer may allow Retirees to participate in both the HRA and the Special Pay Plan (403(b)).
- Retirees are not permitted to make any election or choice between cash, the HRA, and/or the Special Pay Plan, or any other tax deferred program.
- The Employer will base HRA allocations on its estimates of the costs required to provide a certain amount of medical reimbursements to its Retiree population as that population approaches Medicare age.
- The Employer has discretion in determining classes of Employees eligible to participate in the Retiree HRA. Once determined, Retirees in the class shall be treated uniformly and be provided a uniform allocation to the HRA. Such class shall remain in effect for the Employer's entire fiscal year for all affected Retirees in such year and for all future contributions to such class. Each year, the Employer may reevaluate allocations and classes for new Retirees only.
- The Employer may gather information from the Retiree to determine the appropriate allocation to the HRA, but individual Participants are not allowed to elect or to determine their allocation.
- The Employer will monitor all rehires to ensure that less than two employees are in the Retiree HRA Plan.
- The Employer acknowledges that it has received the Plan document for the HRA and agrees with all the terms therein.
- The Employer understands that whether a contribution to the HRA is non-elective for tax purposes is a facts and circumstances determination, and the Employer is responsible for whether the contribution is truly non-elective or not. The Employer understands that MidAmerica Administrative & Retirement Solutions, Inc. and its agents and employees are not tax or legal advisors. They may provide general information regarding the tax treatment of health reimbursement arrangements, but the Employer should consult with its own tax or legal advisors as to how tax and other rules may apply to its own facts and circumstances.
- The Employer will not provide any information or forms or enter into any contracts inconsistent with the preceding.

**Effective Date** December 1, 2015      **Employer Initials** \_\_\_\_\_

**Eligible Class RetA:** Retirees on CalPERS Medical Plan

**Defined as:** \_\_\_\_\_

**Employment Status** Upon the initial contribution to the Plan, Participant employment status shall be:

- Retiree  Active with no access to benefit until retirement or separation of service

**Contribution Types** All funds for the Plan shall come exclusively from the Employer and shall be determined in accordance with the following formula:

- Dollar Amount  Percentage of Compensation or Retirement Pay

**Contribution Frequency**

- One Time  Annually  Quarterly  
 Semi-Annually  Monthly  Other \_\_\_\_\_

**Vesting Schedule** Participants shall own their account balance in accordance with the following vesting schedule:

- 100% Immediate  
 100% upon Retirement, meeting the Employer's eligible requirements for retirement  
 100% upon Separation of Service  
 Other \_\_\_\_\_  
 100% upon death (can be selected in addition to "other" above)

**Forfeitures** Employees who are not 100% vested under the Vesting Schedule at the time of termination shall forfeit their unvested funds. In the event of the death of the Participant, the Participant's spouse, and all of the Participant's qualifying dependents, any vested funds remaining in the account shall be forfeited. In the event that the Participant opts out of participation in the Plan, all vested and unvested funds shall be forfeited. Forfeitures shall:

- Reduce future Employer contributions  
 Be redistributed pro-rata at the end of each Plan Year to all Plan Participants who are actively employed as of the end of the Plan Year

**Run-off Times** Participants will be allowed 0 (zero) days to continue incurring expenses after the date that their Participation in the Plan ends. The Run-off time for Participants to submit claims for reimbursement from funds that shall be forfeited will be 90 (ninety) days. The Run-off time for funds that shall be forfeited due to death will be one year.

**Reimbursements** Reimbursements shall be for:

- All eligible Medical Expenses specified in section 213(d) of the Internal Revenue Code  
 Limited Purpose \_\_\_\_\_  
 Post Deductible  
 Premium Only Medical Expenses

**HRA/FSA Ordering**

- The Employer maintains a Flexible Spending Account (FSA) plan in which Participants may elect to participate.  
 The Plan permits reimbursements for expenses eligible to be reimbursed by the FSA plan and therefore the HRA shall not reimburse before expenses exceeding the dollar amount of any FSA have been paid.  
 The Plan permits reimbursements for Limited Purpose, Deductible or Premium Only expenses which are not eligible to be reimbursed by the FSA plan and therefore the HRA shall reimburse before the Participant's FSA account is exhausted.

**Administration Fees:** Administrative Fees are paid by the Employee.

\$7 per participant per month

**Distribution Fees:** A reimbursement processing fee of \$5.00 for each claim processed manually or \$2.50 for each claim submitted online, up to an annual maximum of six claims shall be Not Applicable.

**Reimbursement Eligibility** A Participant shall be eligible for reimbursement of medical expenses at the time selected below.

- Immediate  
 Upon becoming 100% vested  
 Upon Retirement or Separation of Service

**Investment Selection**

**Investment Provider:** Non-Interest Holding Account

**Type of Investment:**  Fixed annuity only

- Variable annuities – Default \_\_\_\_\_ Forfeiture Default \_\_\_\_\_  
 Employer directed  
 Participant directed; restrictions are:  
 None  
 100% vested  
 At Retirement  
 Account balance in excess of \$ \_\_\_\_\_  
 Other \_\_\_\_\_  
 Funds limited (see attachment)

**Effective Date** December 1, 2015

**Employer Initials** \_\_\_\_\_

**Eligible Class RetB:** Retirees not on CalPERS Medical Plan

**Defined as:** \_\_\_\_\_

**Employment Status** Upon the initial contribution to the Plan, Participant employment status shall be:

- Retiree  Active with no access to benefit until retirement or separation of service

**Contribution Types** All funds for the Plan shall come exclusively from the Employer and shall be determined in accordance with the following formula:

- Dollar Amount  Percentage of Compensation or Retirement Pay

**Contribution Frequency**

- One Time  Annually  Quarterly  
 Semi-Annually  Monthly  Other \_\_\_\_\_

**Vesting Schedule** Participants shall own their account balance in accordance with the following vesting schedule:

- 100% Immediate  
 100% upon Retirement, meeting the Employer's eligible requirements for retirement  
 100% upon Separation of Service  
 Other \_\_\_\_\_  
 100% upon death (can be selected in addition to "other" above)

**Forfeitures** Employees who are not 100% vested under the Vesting Schedule at the time of termination shall forfeit their unvested funds. In the event of the death of the Participant, the Participant's spouse, and all of the Participant's qualifying dependents, any vested funds remaining in the account shall be forfeited. In the event that the Participant opts out of participation in the Plan, all vested and unvested funds shall be forfeited. Forfeitures shall:

- Reduce future Employer contributions  
 Be redistributed pro-rata at the end of each Plan Year to all Plan Participants who are actively employed as of the end of the Plan Year

**Run-off Times** Participants will be allowed 0 (zero) days to continue incurring expenses after the date that their Participation in the Plan ends. The Run-off time for Participants to submit claims for reimbursement from funds that shall be forfeited will be 90 (ninety) days. The Run-off time for funds that shall be forfeited due to death will be one year.

**Reimbursements** Reimbursements shall be for:

- All eligible Medical Expenses specified in section 213(d) of the Internal Revenue Code  
 Limited Purpose \_\_\_\_\_  
 Post Deductible  
 Premium Only Medical Expenses

**HRA/FSA Ordering**

- The Employer maintains a Flexible Spending Account (FSA) plan in which Participants may elect to participate.  
 The Plan permits reimbursements for expenses eligible to be reimbursed by the FSA plan and therefore the HRA shall not reimburse before expenses exceeding the dollar amount of any FSA have been paid.  
 The Plan permits reimbursements for Limited Purpose, Deductible or Premium Only expenses which are not eligible to be reimbursed by the FSA plan and therefore the HRA shall reimburse before the Participant's FSA account is exhausted.

**Administration Fees:** Administrative Fees are paid by the Employee.

\$7 per participant per month

**Distribution Fees:** A reimbursement processing fee of \$5.00 for each claim processed manually or \$2.50 for each claim submitted online, up to an annual maximum of six claims shall be Not Applicable.

**Reimbursement Eligibility** A Participant shall be eligible for reimbursement of medical expenses at the time selected below.

- Immediate  
 Upon becoming 100% vested  
 Upon Retirement or Separation of Service

**Investment Selection**

**Investment Provider:** American United Life Insurance Company

- Type of Investment:**  Fixed annuity only  Variable annuities – Default \_\_\_\_\_ Forfeiture Default \_\_\_\_\_  
 Employer directed  
 Participant directed; restrictions are:  
 None  
 100% vested  
 At Retirement  
 Account balance in excess of \$ \_\_\_\_\_  
 Other \_\_\_\_\_  
 Funds limited (see attachment)

**Effective Date** December 1, 2015 **Employer Initials** \_\_\_\_\_

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# Health Reimbursement Arrangement for Retirees

## PLAN DOCUMENT

The Plan's Original Effective Date is December 1, 2015. The Plan's Restated Effective Date is \_\_\_\_\_. The Plan is available to Retirees of the Employer effective December 1, 2015.

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**MidAmerica**

Administrative & Retirement Solutions, Inc.

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### ***Introduction***

The Employer has established and adopted the MidAmerica Administrative & Retirement Solutions, Inc. Health Reimbursement Arrangement for Retirees (the "Plan") to enable eligible former employees and their dependents to be reimbursed tax-free for eligible medical and dental expenses. Contributions to the Plan shall be made by the Employer and credited to Participants' accounts. Claims for reimbursement shall be processed and reimbursements paid out on a tax-free basis for medical expenses in accordance with Internal Revenue Service Guidelines for Health Reimbursement Agreements, IRS Publication 502, Internal Revenue Code (the "Code") Sections 213(d), 105 and 106 as described in Revenue Ruling 2002-41 and IRS Notice 2002-45.

### ***Legal Status***

This Plan is intended to qualify as an employer-provided medical reimbursement plan under Code Sections 105 and 106 and regulations issued thereunder, as a health reimbursement arrangement as described in IRS Notice 2002-45 and Revenue Ruling 2002-41, and to comply with IRS Notice 2013-54 and shall be interpreted to accomplish those objectives. The expenses reimbursed under the Plan are intended to be eligible for exclusion from Participants' gross income under Code Section 105(b).

Notwithstanding anything to the contrary, the portion of the Plan that reimburses Highly Compensated Individuals, as defined in Code Section 105(h), for premiums paid under an insured plan shall be treated as a separate plan that is not subject to the requirements of Code Section 105(h), pursuant to Treasury Regulation Section 1.105-11(b)(2).

### ***Participation***

Eligible former employees of the class or classes set forth by the Employer in the Plan Adoption Agreement will be Participants in the Plan. Notwithstanding any election in the Plan Adoption Agreement to the contrary, eligible former employees of the class or classes set forth by the Employer in the Plan Adoption Agreement who are Highly Compensated Individuals, as defined in Code Section 105(h), and whose benefits exceed those of other Plan Participants, will be Participants only in that portion of the Plan that reimburses Participants for "premium only medical expenses," as described below. Under no circumstances are such individuals eligible for reimbursements of any medical and dental expenses other than premium expenses. For purpose of this section, a retiree who was a Highly Compensated Individual prior to his or her retirement from the Employer shall be treated as a Highly Compensated Individual thereafter and during retirement.

### ***Participation Opt Out***

At least once per Plan Year, Participants shall be entitled to permanently opt out of participation in the Plan. Any such opt out will result in the forfeiture of the Participant's account balance, including any vested funds, and the waiver of any future reimbursements from the Plan. The Participant may, however, continue to submit claims for reimbursement of expenses incurred prior to the opt out date, pursuant to the Run-Off Times section of the Plan Adoption Agreement. Any forfeited amount shall be applied as elected by the Employer in the Plan Adoption Agreement.

In the event that the Participant is reemployed as an active employee of the Employer and terminates employment with the Employer, the Participant shall be entitled to permanently opt out of participation in the Plan at the time of termination. In addition to the forfeiture of unvested funds as provided for in the Forfeiture section of the Plan Adoption Agreement, any such opt out will result in the forfeiture of any vested funds and the waiver of any future reimbursements from the Plan. The Participant may, however, continue to submit claims for reimbursement of expenses incurred prior to the opt out date, pursuant to the Run-Off Times section of the Plan Adoption Agreement. Any forfeited amount shall be applied as elected by the Employer in the Plan Adoption Agreement.

***Benefits and Eligibility for Benefits***

A Participant shall be entitled to reimbursements of eligible medical and dental expenses upon the occurrence of the event selected in the Plan Adoption Agreement, but in no event until after expenses exceeding the dollar amount of any flexible spending arrangement ("FSA") in which the Participant shall also participate have been paid, or, if the medical or dental expense is reimbursable from a health savings account ("HSA"), amounts shall only be available from this Plan in accordance with paragraph 9 of the Administration section herein.

If the Employer indicates in the Adoption Agreement that Reimbursements shall be for "all eligible section 213(d) medical expenses," eligible medical and dental expenses for purposes of this Plan are those expenses that are:

- a. incurred by the Participant, spouse or tax dependent (as defined in paragraph 9 of the "Administration" section);
- b. incurred for Medical Care - "Medical Care" shall have the same meaning as in section 213(d) of the Code, and shall include: (i) amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body, except that eligible medical and dental expenses shall specifically exclude expenses for a medicine or drug incurred on or after January 1, 2011, unless such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin, and (ii) premiums for medical and dental coverage, including premiums under part B and part D of title XVIII of the Social Security Act (relating to supplementary medical insurance for the aged and prescription drug coverage, respectively); and
- c. not compensated through insurance and not paid for with a tax-free distribution from a Medical Savings Account (MSA), Health Savings Account (HSA), or Health Flexible Spending Arrangement and not attributable to a deduction allowed under Code section 213(d) for any prior taxable year.

If the Employer indicates in the Adoption Agreement that reimbursements shall be for "premium only medical expenses," eligible medical and dental expenses for purposes of this Plan are those expenses that are:

- a. incurred by the Participant, spouse or tax dependent (as defined in paragraph 9 of the "Administration" section);
- b. premiums for medical and dental coverage, including premiums under part B and part D of title XVIII of the Social Security Act (relating to supplementary medical insurance for the aged and prescription drug coverage, respectively); and
- c. not paid for with a tax-free distribution from a Medical Savings Account (MSA) or Health Savings Account (HSA) and not attributable to a deduction allowed under Code section 213(d) for any prior taxable year.

***Funding***

All funds for the Plan shall come exclusively from the Employer and shall constitute either a specified dollar amount and/or a specific percentage of the former employees' compensation or retirement pay as the Employer shall from time to time determine. The amount or percentage to be determined by the Employer shall be subject to, and not in contravention of, the Employer's obligations to its former employees. Subject to any vesting schedule which may be elected in the Plan Adoption Agreement, all funds in the Plan belong to the individual Participants as allocated to their accounts. Also subject to any vesting schedule which may be elected in the Plan Adoption Agreement, once funds are allocated to the Plan, the Employer relinquishes all right, title, control, and interest to such funds.

***Interest Credit***

Interest shall be credited on a daily basis to Participant accounts based on the rate credited by the underlying AUL fixed annuity investment option. If variable annuity investments are allowed pursuant to the Adoption Agreement, earnings and losses shall be credited on a daily basis based on the investment funds selected.

***Vesting***

Funds in a Participant's account shall vest and be available to pay eligible medical expenses in accordance with the vesting schedule elected by the Employer in the Plan Adoption Agreement. If a Participant is not fully vested in his account balance when participation hereunder of the Participant and his surviving spouse and/or dependents ends as described in the section hereof entitled "Death Benefit," any forfeited amount shall be applied as elected by the Employer in the Plan Adoption Agreement.

***Continuation Coverage***

***COBRA continuation coverage ("COBRA coverage").*** COBRA coverage shall be available on the same terms and conditions as described herein with respect to Participants upon payment of the applicable COBRA premium. Each qualified beneficiary (i.e., the Participant's former spouse and former eligible dependents) shall be entitled to COBRA coverage for a period of 36 months upon the qualifying events of death of Participant, divorce from Participant, or a dependent reaching an age under which he/she is ineligible under the terms of the Plan. The level of coverage will be the Participant's account balance at the time of the qualifying event (adjusted for investment earnings and losses), plus Employer contributions, and minus reimbursements for claims paid from the account. Contributions shall be made at the same times as they are made for similarly situated Participants who have not experienced a qualifying event. The balance of the Participant's account shall be available to all qualified beneficiaries electing continuation coverage on an aggregate basis.

The COBRA premium shall be a single premium regardless of the number of qualified beneficiaries electing COBRA coverage. That premium shall be as determined annually by the Employer. The Employer shall have no obligation to pay any portion of the COBRA premium.

***Coverage in lieu of COBRA.*** As an alternative to COBRA continuation coverage, qualified beneficiaries may choose to continue to access the Participant's account via coverage in lieu of COBRA. No additional contributions will be made to the Participant's account during the coverage in lieu of COBRA period and no premium will be charged for the coverage. Administrative fees as indicated herein will be applied. The balance of the Participant's account shall be available to all qualified beneficiaries electing coverage in lieu of COBRA on an aggregate basis. Furthermore, if some qualified beneficiaries elect COBRA and others select coverage in lieu of COBRA, all qualified beneficiaries will have access to the Participant's account on an aggregate basis.

***Plan Investments***

Plan investments will be made in accordance with the Employer's elections in the Plan Adoption Agreement, and will consist of investments in either fixed or variable annuities.

***Plan Administrator***

The Employer designates as the initial Plan Administrator the entity named in the Plan Adoption Agreement. The initial Plan Administrator shall serve as Plan Administrator until such time as a new Plan Administrator is appointed.

***Administrative Fees***

An administration fee shall be payable by the Employer. Participants may be charged a distribution fee by the Plan's administrative services provider in such amount as shall be agreed to by the Employer.

***Administration***

1. Health reimbursement requests may be made monthly with no minimum reimbursement dollar amount for recurring claims. There is a \$100 minimum claim amount for all other claims unless the participant account balance is less than \$100. Additionally, a reimbursement request can only be made for expenses incurred subsequent to the date the Participant first becomes enrolled in the Plan.
2. Participants are entitled to request reimbursements from their accounts as soon as the accounts are funded by the Employer, but only for medical expenses incurred subsequent to the date the Participant first becomes enrolled in the Plan. Hardship withdrawals or loans are not permitted under this Plan and Plan funds may only be used to reimburse Participants and their dependents for qualified medical expenses.
3. In order to receive reimbursement for eligible medical expenses, Participants shall provide the Plan Administrator with whatever information is reasonably required. This Plan shall not and cannot reimburse for any claims other than those allowed under Code Section 213(d) and the regulations thereunder, as generally described in IRS Publication 502.
4. When a request is approved it shall be scheduled for disbursement. Disbursements shall be made not later than the fifteenth (15<sup>th</sup>) day of each month for all reimbursement requests received by the Plan Administrator prior to the end of the preceding month.
5. Subject to the Claims Procedures rules below, decisions of the Plan Administrator shall be final on the issue of eligible expenditures and such decisions shall be based on Code Section 213(d) and the regulations thereunder, as interpreted by the IRS or court rulings or directives concerning the deductibility of medical expenses for Federal Income Tax purposes, which interpretations shall be controlling for purposes of determining reimbursement eligibility under this Plan.
6. Other than establishing this Plan and providing funding for the Plan, the Employer does not assume any responsibility for any aspect of any Participant's health care. Participant questions shall be directed to the Plan Administrator.
7. Each Participant shall be notified by the Plan Administrator of his or her account balance at the time a deposit is made to his or her account. The Plan Administrator shall provide each Participant with a quarterly statement setting forth the Participant's account balance and earnings and disbursements for the quarter. Additionally, the Plan Administrator shall provide a Participant with a statement of account balance in conjunction with each reimbursement distribution.
8. Funds in a Participant's account at the end of each year shall be rolled into the following year.
9. Reimbursement is available for the Participant, the Participant's spouse, the Participant's tax dependents as defined in Internal Revenue Code Section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof, and any child (as defined in Code Section 152(f)(1)) of the Participant who as of the end of the taxable year has not attained age twenty-seven (27). For purposes of this Plan, such qualified tax dependents and children shall collectively be referred to as "dependents." Submission of a request for reimbursement on behalf of someone other than the Participant shall be deemed a representation by the Participant that the request for reimbursement is made on behalf of a spouse or dependent.

***Death Benefit***

If a Participant dies prior to exhausting his vested account balance, the Participant's surviving spouse and/or dependents are eligible to be reimbursed under this Plan for their eligible medical expenses until the vested account balance is exhausted. In the event of the death of the Participant, the Participant's spouse, and all of

the Participant's qualifying dependents, any funds remaining in the account shall be forfeited. Forfeitures shall be applied as elected by the Employer in the Plan Adoption Agreement.

***Plan Amendments***

The Employer has the authority to amend this Plan at any time, in whole or in part. Participants will be notified of any Plan changes. Any amendment to the Plan shall not adversely affect the rights of existing Participants. Changes imposed by the Internal Revenue Service, either by law change, regulations, or rulings, will be effective immediately and without notice.

***Involuntary Access to Funds***

Funds in a Participant's Plan account are not assignable by a Participant, either in law or in equity, or subject to estate tax, or to execution, levy, attachment, garnishment, or any other legal processes.

***Plan Termination***

In the event the Employer elects to terminate this Plan, which it may do, in its sole discretion, at any time and for any reason, amounts credited to Participants' accounts will remain in the Participants' accounts and Participants will continue to utilize their accounts as set forth in this Plan Document until their accounts are exhausted.

***HIPAA Compliance***

1. Disclosure of Summary Health Information to the Employer

In accordance with the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Standards") issued and pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), the Plan may disclose Summary Health Information to the Employer, if the Employer requests the Summary Health Information for the purpose of (a) obtaining premium bids from health plans for providing health insurance coverage under this Plan or (b) modifying, amending or terminating the Plan.

"Summary Health Information" may be individually identifiable health information and it summarizes the claims history, claims expenses or the type of claims experienced by individuals in the Plan, but it excludes all identifiers that must be removed for the information to be de-identified, except that it may contain geographic information to the extent that it is aggregated by five-digit zip code.

2. Disclosure of Protected Health Information ("PHI") to the Employer for Plan Administration Purposes

In order that the Employer may receive and use a Participant's individually identifiable health information or PHI (including electronic PHI) for "Plan Administration" purposes, the Employer agrees to:

- a. Not use or further disclose PHI other than as permitted or required by the Plan Documents or as Required by Law (as defined in the Privacy Standards);
- b. Ensure that any agents, including a subcontractor, to whom the Employer provides PHI received from the Plan agree to the same restrictions and conditions that apply to the Employer with respect to such PHI;
- c. Not use or disclose PHI for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the Employer, except pursuant to an authorization which meets the requirements of the Privacy Standards;

- d. Report to the Plan any PHI use or disclosure that is inconsistent with the uses or disclosures provided for of which the Employer becomes aware, including any security incident or actual or suspected breach that may compromise PHI.;
- e. Make available PHI in accordance with Section 164.524 of the Privacy Standards (45 CFR 164.524);
- f. Make available PHI for amendment and incorporate any amendments to PHI in accordance with Section 164.526 of the Privacy Standards (45 CFR 164.526);
- g. Make available the information required to provide an accounting of disclosures in accordance with Section 164.528 of the Privacy Standards (45 CFR 164.528);
- h. Make its internal practices, books and records relating to the use and disclosure of PHI received from the Plan available to the Secretary of the U.S. Department of Health and Human Services ("HHS"), or any other officer or employee of HHS to whom the authority involved has been delegated, for purposes of determining compliance by the Plan with Part 164, Subpart E, of the Privacy Standards (45 CFR 164.500 et seq);
- i. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI;
- j. If feasible, return or destroy all PHI received from the Plan that the Employer still maintains in any form and retain no copies of such PHI when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible; and
- k. Ensure that adequate separation between the Plan and the Employer, as required in Section 164.504(f)(2)(iii) of the Privacy Standards (45 CFR 164.504(f)(2)(iii)), is established as follows:
  - i. The employees, or classes of employees, or other persons under control of the Employer who are identified in the Plan Adoption Agreement, shall be given access to the PHI to be disclosed.
  - ii. The access to and use of PHI by the individuals described in subsection (i) above shall be restricted to the Plan Administration functions that the Employer performs for the Plan.
  - iii. In the event any of the individuals described in subsection (i) above do not comply with the provisions of the Plan Documents relating to use and disclosure of PHI, the Plan Administrator shall impose reasonable sanctions as necessary, in its discretion, to ensure that no further non-compliance occurs. Such sanctions shall be imposed progressively (for example, an oral warning, a written warning, time off without pay and termination), if appropriate, and shall be imposed so that they are commensurate with the severity of the violation.

"Plan Administration" activities are limited to activities that would meet the definition of payment or health care operations, but do not include functions to modify, amend or terminate the Plan or solicit bids from prospective issuers. "Plan Administration" functions include quality assurance, claims processing, auditing, monitoring and management of carve-out plans, such as vision and dental. It does not include any employment-related functions or functions in connection with any other benefit or benefit plans.

3. Disclosure of Certain Enrollment Information to the Employer

Pursuant to Section 164.504(f)(1)(iii) of the Privacy Standards (45 CFR 164.504(f)(1)(iii)), the Plan may disclose to the Employer information on whether an individual is participating in the Plan or is enrolled in or has disenrolled from a health insurance issuer or health maintenance organization offered by the Plan to the Employer.

4. Disclosure of PHI to Obtain Stop-loss or Excess Loss Coverage

The Employer hereby authorizes and directs the Plan, through the Plan Administrator or its third party administrator, to disclose PHI to stop-loss carriers, excess loss carriers or managing general underwriters (MGUs) as directed by the Employer for underwriting and other purposes in order to obtain and maintain stop-loss or excess loss coverage related to benefit claims under the Plan, provided that genetic information will not be used for underwriting purposes. Such disclosures shall be made in accordance with the Privacy Standards. The Employer certifies that such disclosures are for Plan administration purposes and that any third party to whom the Employer directs disclosure from the Plan has agreed to also comply with this amendment, as set out in Section 2.b.

5. Other Disclosures and Uses of PHI

With respect to all other uses and disclosures of PHI, the Plan shall comply with the Privacy Standards.

***Claims Procedure***

A Participant, spouse or dependent (the "Claimant") shall apply for Plan benefits in writing on a form provided by the Plan Administrator, or in such other manner as prescribed by the Plan Administrator. A communication regarding benefits that is not made in accordance with these procedures will not be treated as a claim under these procedures. Claims shall be evaluated by the Plan Administrator or such other person or entity designated by the Plan Administrator and shall be approved or denied in accordance with the terms of the Plan and Plan Adoption Agreement. All references to the Plan Administrator shall include any such delegate. No Claimant shall be entitled to benefits unless the Plan Administrator or its delegate determines in its discretion that the Claimant is entitled to benefits.

1. Claims

The Plan Administrator shall make a determination within a reasonable period of time, but not later than 30 days after receipt of the claim. This period may be extended one time by the Plan for up to 15 days, provided that the Plan Administrator both determines that such an extension is necessary due to matters beyond the control of the Plan and notifies the Claimant, prior to the expiration of the initial 30-day period, of the circumstances requiring the extension of time and the date by which the Plan expects to render a decision. If such an extension is necessary due to a failure of the Claimant to submit the information necessary to decide the claim, the notice of extension shall specifically describe the required information, and the Claimant shall be afforded at least 45 days from receipt of the notice within which to provide the specified information and the period for making the benefit determination shall be tolled from the date on which the notice of extension is sent to the Claimant until the date on which the Claimant responds to the request for additional information, or the deadline to submit the additional information, if earlier.

2. Notice of Denial

If the claim is denied in whole or in part, the Claimant will receive a written notice that includes:

- a. The specific reason or reasons for the denial;

- b. Reference to the specific Plan provision(s) on which the denial is based;
- c. A description of any additional material or information needed from the Claimant in connection with the claim and the reason such material or information is needed;
- d. An explanation of the claims review procedures and the applicable time limits, including a statement concerning the Claimant's right to bring a civil action following an adverse determination on review;
- e. A statement regarding any internal rule, guideline, protocol or other criterion that was relied upon in making the adverse determination (or a statement that a copy will be provided free upon request);
- f. If the denial is based on a medical necessity or experimental treatment or similar exclusion or limit, an explanation of the scientific or clinical judgment that led to this determination (or a statement that a copy will be provided free upon request);
- g. Any other information required by law.

3. Right to Request Review: Internal Appeal

The Claimant must make a written request for review to the Plan Administrator within 180 days of the initial denial of the claim. If a written request for review is not made within such 180- day period, the Claimant shall forfeit his or her right to review. The Claimant's written request for review may (but is not required to) include issues, comments, documents, and other records the Claimant wants considered in the review. All the information the Claimant submits will be taken into account on review, even if it was not reviewed as part of the initial decision. The appeal will be conducted by a person different from the person who made the initial decision. No deference will be given to the initial decision. The Claimant may ask to examine or receive free copies of Plan documents, records, and other information relevant to the claim by asking the Plan Administrator.

The Claimant will be given the identity of medical or vocational experts if requested, whose advice was obtained by the Plan in connection with the Claimant's initial claim denial, if any, even if their advice was not relied upon in making the initial decision. Where an adverse determination is based in whole or in part on a medical judgment, including determinations with regard to whether a particular treatment, drug or other item is experimental, investigational, or not medically necessary or appropriate, the Plan will consult with a health care professional who has experience in the field of medicine involved in the medical judgment to decide the Claimant's appeal. The Plan Administrator reserves the right to delegate its authority to make decisions.

4. Decision Upon Review: Internal Appeal

The Plan Administrator shall make a determination within a reasonable period of time, but not later than 60 days after receipt by the Plan of the Claimant's request for review of adverse determination.

5. Notice of Denial of Internal Appeal

If the decision on the appeal is denied, the Claimant will receive a written notice that includes:

- a. The specific reason or reasons for the denial;
- b. Reference to the specific Plan provisions on which the denial is based;

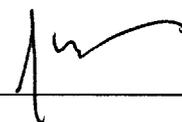
- c. A statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to the Claimant's claim for benefits;
- d. A statement explaining any voluntary appeal procedures offered by the Plan and the Claimant's right to bring a civil action;
- e. A statement regarding any internal rule, guideline, protocol or other criterion that was relied upon in making the adverse determination (or a statement that a copy will be provided free upon request);
- f. If the denial is based on a medical necessity or experimental treatment or similar exclusion or limit, an explanation of the scientific or clinical judgment that led to this determination (or a statement that a copy will be provided free upon request);
- g. Any other information required by law.

6. External Appeal Process

Where required by law, a Claimant may be able to file an external appeal with an independent review organization. The independent review organization may overturn the Plan's decision, and the independent review organization's decision will be binding on the Plan. A Claimant must file a claim for external review within four (4) months of the date the Claimant receives the internal appeal denial notice. Filing a request for external review will not affect a Claimant's ability to bring a legal claim in court. When a Claimant files a request for external review, the Claimant will be required to authorize release of any medical records that may be required to be reviewed for the purpose of reaching a decision on the external review. Additional information on the external review process, where applicable, will be included in the internal appeal determination notice, or the Claimant may contact the Plan Administrator to request such additional information.

**IN WITNESS WHEREOF**, this Plan has been executed this \_\_\_\_ day of \_\_\_\_\_, 20 15, by **MidAmerica Administrative & Retirement Solutions, Inc.**

**MIDAMERICA ADMINISTRATIVE & RETIREMENT SOLUTIONS, INC.**

By:  \_\_\_\_\_

Its: President \_\_\_\_\_

IRS Circular 230 Notice: We are required to advise you no person or entity may use any tax advice in this communication or any attachment to (i) avoid any penalty under federal tax law or (ii) promote, market or recommend any purchase, investment or other action.

# Health Reimbursement Arrangement Section 115 Employee Benefit Trust

## ADOPTION AGREEMENT

for

# City of Covina

This Adoption Agreement is executed on this, the 1<sup>st</sup> day of December, 2015, by and between City of Covina, the Grantor, and City of Covina as the Trustee, and sets forth the designations required by the Trust.

1. Trust Administrator: **MidAmerica Administrative and Retirement Solutions, Inc.** is hereby designated as the Trust Administrator.
2. Custodian: **American United Life** is hereby designated as Custodian of the Trust assets.

**By:**

Grantor & Trustee\*: City of Covina

[\* The Trustee may be a governmental employer if permitted under applicable local authority. This Adoption Agreement should be executed below by a duly authorized representative on behalf of the governmental employer. The employer representative is not the trustee and is merely signing for the employer, the trustee.]

Signature: \_\_\_\_\_  
 Print Name: Andrea Miller  
 Title: City Manager  
 Date: \_\_\_\_\_

IRS Circular 230 Notice: We are required to advise you no person or entity may use any tax advice in this communication or any attachment to (i) avoid any penalty under federal tax law or (ii) promote, market or recommend any purchase, investment or other action.

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Health Reimbursement Arrangement Trust  
for  
City of Covina

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**MidAmerica**  
Administrative & Retirement Solutions, Inc.

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**EMPLOYEE BENEFIT TRUST**

THIS TRUST AGREEMENT is made this 1<sup>st</sup> day of December, 2015 by and between City of Covina (the "Employer") and City of Covina, as Trustee ("Trustee").

**WITNESSETH:**

**WHEREAS**, the Employer has adopted Benefit Plans and Programs for Employees and Former Employees of the Employer, and

**WHEREAS**, the Employer desires to establish a Trust to secure and hold funds that will be contributed by the Employer and held for the benefit of the employees and their eligible dependents under and in accordance with the Employer's Employee Benefit Plans and Programs, and

**WHEREAS**, the Employer desires the Trustee to hold and administer the Trust, and the Trustee is willing to hold and administer such Trust, pursuant to the terms of this Agreement, and

**WHEREAS**, the Employer, by action of its duly authorized officer or governing body, has designated the Trustees to serve as the trustees for the Trust,

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

1. **NAME AND PURPOSE.** The name of this Trust, and the Trust Account established pursuant to this Trust, shall be the City of Covina Employee Benefit Trust Account. The exclusive purpose of this Trust is to provide a source of funds for the Employer's employee welfare benefit obligations.
2. **COMPLIANCE WITH LAWS.** This Trust is to be interpreted in accordance with the laws of the State in which the Employer is located.
3. **ACCEPTANCE.** The Trustee accepts the Trust and agrees to perform the obligations imposed on it by the terms and conditions set forth in this Trust document.
4. **RECEIPT OF CONTRIBUTIONS.** The Trustee is accountable to the Employer for the funds contributed to it by the Employer. The Trustee is not obliged to collect any contributions from the Employer.
5. **BENEFICIARIES.** The Trust assets, including any earnings accruing on them, shall be held solely for the purpose of providing funding for payment of the Employer's employee welfare benefit obligations and for payment of Trust expenses as provided for herein. It shall be impossible at any time for any part of the Trust to be used for or diverted to purposes other than to provide the benefits identified and contemplated under the Plans referenced herein for the exclusive benefit of covered employees and their dependents. No portion of the principal or income of this Trust shall revert to the Employer.

6. INVESTMENT POWERS. Subject to applicable State law and its fiduciary responsibility, the Trustee has full discretion and authority with regard to the investment of the Trust assets, except with respect to an asset under the control or direction of a properly appointed investment manager, or with respect to an asset subject to Employer direction of investment.
7. ADMINISTRATION. The administration of the Trust shall be provided by the Trust Administrator designated by the Employer in the Adoption Agreement for this Trust. By its agreement to serve as Trustee, the Trustee accepts the Employer's designation of the Trust Administrator. The Employer may designate another Trust Administrator at any time, with proper notice to the Trustee and subject to the Trustee's approval. The Trust Administrator shall be responsible for all administrative aspects of the Trust, including the filing of all reports and tax returns, if any, required of the Trust.
8. CUSTODIAN. The Employer shall appoint a Custodian of the Trust Assets. The Custodian shall be designated and appointed in the Adoption Agreement. The Custodian shall invest the Trust assets as directed by the Trustee. The Custodian shall not have any discretion as to the investment of the Trust assets and shall at all times follow the direction and instruction of the Trustee. So long as the Custodian invests the Trust assets pursuant to the instructions of the Trustee, the Custodian shall not have any liability for following the Trustee's instructions.
9. RECORDS AND STATEMENTS. The records of the Trustee, Custodian, and Trust Administrator, pertaining to the Trust, must be open to the inspection of the Employer at all reasonable times and may be audited from time to time by any person or persons as the Employer may specify in writing.
10. FEES AND EXPENSES FROM FUND. The Trustee and Trust Administrator may receive reasonable annual compensation as may be agreed upon from time to time between the Employer and the Trustee and the Trust Administrator. The Trustee will pay, from the Trust Fund, all fees and expenses reasonably incurred by the Trust to the extent such fees and expenses are for the ordinary and necessary administration and operation of the Trust unless the Employer pays such fees and expenses directly. The above notwithstanding, the Trustee shall not be entitled to compensation if the Trustee is also the Employer.
11. PARTIES TO LITIGATION. Any final judgment entered in any court proceeding involving the Trust will be binding on the Employer, Trustee, Trust Administrator, and the Custodian.
12. PROFESSIONAL AGENTS. The Trustee may employ and pay from the Trust Fund reasonable compensation to, agents, attorneys, accountants and other persons, to advise the Trustee as in its opinion may be necessary. The Trustee may delegate to any agent, attorney, accountant, or other person selected by it, any non-Trustee power or duty vested in it by the Trust, and the Trustee may act or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.
13. DISTRIBUTION OF CASH OR PROPERTY. The Trustee may make distributions from the Trust in cash or property, or partly in each, at its fair market value as determined by the Trustee. No distributions shall be made from this Trust other than for the payment of benefits identified under the Plans, except that payments of reasonable expenses for the administration of the Trust shall be permitted in accordance with paragraph 10 above.
14. DISTRIBUTION DIRECTIONS. If no one claims a payment or distribution made from the Trust, the Trustee shall return the payment to the corpus of the Trust.

15. THIRD PARTY / MULTIPLE TRUSTEES. No person dealing with the Trustee is obligated to see to the proper application of any money paid or property delivered to the Trustee, or to inquire whether the Trustee has acted pursuant to the terms of this Trust. Each person dealing with the Trustee may act upon any notice, request, or representation in writing by the Trustee, or by the Trustee's duly authorized agent, and is not liable to any person in so acting. If two persons act as Trustee and reach a deadlock, the Grantor shall appoint a third person as temporary Trustee to cast a vote in order to break the deadlock. A decision of the majority of the Trustees shall control with respect to any decision regarding the administration or investment of the Trust Fund or of any portion of the Trust Fund with respect to which such persons act as Trustees. However, the signature of only one Trustee is necessary to effect any transaction on behalf of the Trust.
16. RESIGNATION. The Trustee may resign its position at any time by giving 30 days written notice in advance to the Employer. If the Employer fails to appoint a successor Trustee within 60 days of its receipt of the Trustee's written notice of resignation, the Trustee will treat the Employer as having appointed itself as Trustee and as having filed its acceptance of appointment with the former Trustee.
17. REMOVAL. The Employer, by giving 30 days' written notice in advance to the Trustee, may remove any Trustee. In the event of the resignation or removal of a sole Trustee, the Employer must appoint a successor Trustee if it intends to continue the Trust. If multiple persons hold the position of Trustee and one or more, but less than all, are removed as Trustee, in the event of the removal of one such person, the remaining person or persons shall act as Trustee.
18. INTERIM DUTIES AND SUCCESSOR TRUSTEE. Each successor Trustee succeeds to the title to the Trust vested in his predecessor by accepting in writing his appointment as successor Trustee and by filing the acceptance with the former Trustee and the Employer without the signing or filing of any further statement. The resigning or removed Trustee, upon receipt of acceptance in writing of the Trust by the successor Trustee, must execute all documents and do all acts necessary to vest the title of record in any successor Trustee. Each successor Trustee has and enjoys all of the powers, discretionary and ministerial, conferred under this Agreement upon his predecessor. A successor Trustee is not personally liable for any act or failure to act of any predecessor Trustee, except as required under applicable law. With the approval of the Employer, a successor Trustee, with respect to the Plan, may accept the account rendered and the property delivered to it by a predecessor Trustee without incurring any liability or responsibility for so doing.
19. VALUATION OF TRUST. The Trustee must value the Trust Fund as of each Accounting Date to determine the fair market value of the Trust. The Trustee also must value the Trust Fund on such other valuation dates as directed in writing by the Employer. Accounting Date shall mean the last day of the Employer's fiscal year.
20. RECORDS AND REPORTS. The Trustee and the Trust Administrator shall create and maintain records that are appropriate to the administration of the Trust.
21. TERMINATION OF TRUST. This Trust shall terminate when all Trust funds have been expended for the fulfillment of the Employer's welfare benefit obligations to its employees, and the Employer notifies the Trustee and all other interested parties that the Employer will not be providing any additional funds to the Trust.
22. IRREVOCABLE. This Trust is irrevocable by the Employer.

23. SUCCESSORS and ASSIGNS. This Trust Agreement and the rights and duties hereunder shall not be assignable by either of the parties hereto. The assets held under this Trust shall not be subject to the rights of the creditors of the Employer, the Trustees, or the Custodian, and shall be exempt from execution, attachment, prior assignment, or any other judicial relief or order for the benefit of creditors or other third persons.
24. AMENDMENTS. This Trust Agreement may be amended from time to time by an instrument in writing executed by duly authorized officers of the Employer and Trustee.
25. NO THIRD PARTY BENEFIT. This Agreement is intended for the exclusive benefit of the parties to this Agreement and nothing contained in this Agreement shall be construed as creating any rights or benefits in or to any other party.
26. INCORPORATION OF ADOPTION AGREEMENT. The Trust Adoption Agreement, any Appendix thereto, and any future modifications, are incorporated in this Trust Document and made a part thereof as though specifically set forth herein.
27. EMPLOYER REPRESENTATION. The Employer represents and warrants that:
- (A) it is a State or political subdivision of a State or agency or instrumentality of the foregoing within the meaning of Code Section 414(d);
  - (B) it has authority under State law to enter into, maintain, and establish this Trust and the Plan(s).
  - (C) the funding of the Trust is from employer contributions or contributions of employees of the Employer;
  - (D) the Trust is exempt from taxes under Code Section 115; and
  - (E) the Trust and Plan is a governmental plan as defined in Code Section 414(d), established for the exclusive benefit of the employees of the Employer.

IN WITNESS WHEREOF, the parties hereto have caused this Trust Agreement to be SIGNED, SEALED, and DELIVERED on 1st day of December, 2015.

**By:**

Employer Name: City of Covina  
Signature: \_\_\_\_\_  
Print Name: Andrea Miller  
Title: City Manager  
Date: \_\_\_\_\_

**and**

Trustee: City of Covina  
Signature: \_\_\_\_\_  
Print Name: Andrea Miller  
Title: City Manager  
Date: \_\_\_\_\_

IRS Circular 230 Notice: We are required to advise you no person or entity may use any tax advice in this communication or any attachment to (i) avoid any penalty under federal tax law or (ii) promote, market or recommend any purchase, investment or other action.

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# Health Reimbursement Arrangement for Retirees

## Service Agreement

### for

# City of Covina

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The undersigned Employer, City of Covina, hereby appoints MidAmerica Administrative & Retirement Solutions, Inc. ("MidAmerica") to provide administrative services on behalf of City of Covina Health Reimbursement Arrangement (the "Plan"), including processing Participant claims for eligible health care expense reimbursements. The Employer shall provide to MidAmerica any and all information which is necessary in order for MidAmerica to fulfill its obligations hereunder. Administrative Services are described in Appendix A.

MidAmerica shall at all times adhere to the terms and conditions of the Employer's Health Reimbursement Arrangement.

This Service Agreement may be cancelled by the Employer at any time upon written notice to MidAmerica. In the event of such termination, MidAmerica shall complete claims that are in process, but shall otherwise follow the instructions of the Employer with respect to the transition of claims processing.

**Hold Harmless Agreement and Indemnity.** MidAmerica and the Employer agree that they will each be responsible for the prompt and complete performance of the services each has agreed to provide under this Agreement, as set forth above. In addition to these undertakings, the parties assume the following responsibilities:

(a) **Hold Harmless Agreement of MidAmerica:** MidAmerica shall indemnify and hold harmless the Employer, any member of the governing board, and Employees from every claim, demand or suit which may arise out of, be connected with, or be made due to the negligence of MidAmerica or failure of MidAmerica to meet the requirements of this Agreement. However, this indemnification shall not cover any claim, demand, or suit based on erroneous information provided by the Employer or Employees or their willful misconduct or negligence. MidAmerica's liability hereunder shall be limited to actual damages and out-of-pocket legal fees and expenses only.

(b) **Other Providers:** If the services provided by MidAmerica under this Agreement were previously provided by the Employer or a third party, the Employer agrees that MidAmerica shall not be responsible for any failure of the prior Plan document or administrative services to comply with the requirements for employer-provided medical reimbursement Plan under Code Sections 105 and 106 and regulations issued thereunder, and as a health reimbursement arrangement as described in IRS Notice 2002-45 and Revenue Ruling 2002-41, other applicable law, or the prior Plan. This does not exempt or diminish MidAmerica's responsibility as the active administrator and other responsibilities as described herein and required under IRS regulations. MidAmerica is also not responsible for the accuracy and completeness of participant and payroll data provided by the Employer or any third party provider. Employer agrees that MidAmerica and its affiliates and employees will be indemnified by any responsible third parties from any claim asserted against any of them for any of these reasons, and will further be indemnified from any cost and expense they incur, including reasonable attorney's fees, due to the assertion of such a claim, or by the Employer if not adequately indemnified by third parties. Nothing herein will prevent the assertion of any claim directly against any third party by MidAmerica or the Employer.

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**Fees, Payment, Other Revenue.** MidAmerica will charge fees for its services in accordance with the Fee Schedule on the Adoption Agreement and will bill these fees to the Employer or to the Participants as provided in the Fee Schedule, or as specifically instructed by the Employer in writing. If the Employer agrees to pay the fees, but either (a) does not do so within 60 days from the date of the Fee Invoice, or (b) the Employer instructs MidAmerica to pay the fees from Plan contributions and MidAmerica accepts such instructions, the fees will be paid out of contributions and, if necessary, allocated to Participant accounts.

If fees are Employer paid, such fees shall be invoiced to Employer on a quarterly basis by MidAmerica following the end of the quarter.

The Fee Schedule shall remain in effect in the amounts described in Fee Schedule for a term of three (3) Plan years in which MidAmerica is providing administrative services. Thereafter, any changes to the fee agreement will be supplied to the Employer 60 days prior to the effective date of the changes.

**Notices and Communications.**

(a) **Notices.** All notices provided for herein shall be sent by confirmed facsimile, or guaranteed overnight mail with tracing capability or by first class United States mail, with postage prepaid, addressed to the other party at its respective address set forth below or such other addresses as either party may designate in writing to the other from time to time for such purposes. All notices provided for herein shall be deemed given or made when received.

(b) **Addresses.** The MidAmerica address for notices as described above is MidAmerica Administrative & Retirement Solutions, Inc., 402 South Kentucky Avenue, Suite 500, Lakeland, FL 33801. The Plan/Employer address for notices as described above is 125 E. College St.  
Covina, CA 91723.

(c) **Communications.** The Employer agrees that MidAmerica may communicate confidential, protected, privileged or otherwise sensitive information to the Employer through a named contact designated by the Employer (“Named Contact”) and specifically agrees to indemnify MidAmerica and hold it harmless; (i) for any such communication directed to the Employer through the Named Contact attempted via fax, mail, telephone, e-mail or any other media, acknowledging the possibility that such communication may be inadvertently misrouted or intercepted; and (ii) from any claim for the improper use or disclosure of any health information by MidAmerica where such information is used or disclosed in a manner consistent with its duties and responsibilities hereunder.

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**Assignment.** Some or all of the rights and duties of MidAmerica hereunder may be assigned to an affiliate of MidAmerica, or to any successor through merger, reorganization, or sale of assets. Some or all of the duties of MidAmerica may also be performed by others under subcontract to MidAmerica, without the release of MidAmerica for responsibility for such services. MidAmerica may, by letter or other writing, agree to extend this Agreement to any other Plan of the Employer or Plans sponsored by affiliates of the Employer. Otherwise, no party may assign this Agreement nor any rights or duties hereunder without written consent from the other party.

**Confidentiality.** Except as noted herein, MidAmerica will not disclose to any third party any of Employer's information that is of a confidential nature, including employee-specific information. MidAmerica agrees to the HIPAA Business Associate Addendum for any program subject to HIPAA. MidAmerica agrees to amend this Agreement as is necessary from time to time to comply with the requirements of the privacy rules under HIPAA or other legislation.

**Standard of Care; Erroneous Payments.** MidAmerica shall use reasonable care and due diligence in the exercise of its powers and the performance of its duties under this Agreement. If MidAmerica makes any payment under this Agreement to an ineligible person, or if more than the correct amount is paid, MidAmerica shall make a diligent effort to recover any payment made to or on behalf of an ineligible person or any overpayment. However, MidAmerica will not be liable for such payment, unless MidAmerica would otherwise be liable under another provision of this Agreement.

**Compliance; non-waiver.** Failure by the Employer or MidAmerica to insist upon strict performance of any provision of this Agreement will not modify such provision, render it unenforceable, or waive any subsequent breach. No waiver or modification of any of the terms or provisions of this Agreement shall be valid unless in each instance the waiver or modification is accomplished pursuant to the amendment provisions of Assignment Section.

**Compliance with the law.** The Employer is responsible for the Plan's compliance with all applicable federal and state laws and regulations. The Employer acknowledges that MidAmerica is not providing tax or legal advice and that the Employer shall be solely responsible for determining the legal and tax status of the Plan.

**Severability.** If any term of this Agreement is declared invalid by a court, the same will not affect the validity of any other provision, provided that the basic purposes of this Agreement are achieved through the remaining valid provisions.

**Mandatory Arbitration.** Any controversy or claim arising out of or relating to this Agreement may be properly submitted to binding arbitration in accordance with the rules of the American Arbitration Association. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction. The cost and expenses of arbitration, including the fees of the arbitrators, shall be borne by the losing party or in such proportions as the arbitrators may determine. The successful party shall recover as expenses all reasonable attorney's fees incurred in connection with the arbitration proceeding or any appeals therefrom.

**Entire Agreement; Governing Law.** This Agreement (including the Appendix) is the full Agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements and representations between the parties. Any waiver, modification or amendment of any provision of this Agreement shall be effective only if in writing and signed by both parties. This Agreement shall be construed, enforced, and governed by the laws of the State of Florida.

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By the signature of its authorized agent below, MidAmerica Administrative & Retirement Solutions, Inc. hereby agrees to provide all administrative services called for under the herein referenced Plan for the Employer and charge only those fees permitted under the Plan.

Name of Employer: City of Covina  
Signature: \_\_\_\_\_  
Print Name: Andrea Miller  
Title: City Manager  
Date: \_\_\_\_\_

**MidAmerica Administrative & Retirement Solutions, Inc.**

Signature:   
Print Name: J. Wesley Compton, CPA, CEBS  
Title: President  
Date: \_\_\_\_\_

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# Appendix A

## Health Reimbursement Arrangement for Retirees

### Administrative Services

This is an outline of the standard services offered by MidAmerica Administrative & Retirement Solutions, Inc. to administer a Health Reimbursement Arrangement for Retirees. MidAmerica will customize this standard service offering to accommodate Plan design.

- Post contributions to participant accounts in accordance with the terms of the Plan and any additional information provided by the Plan Sponsor.
- Deposit funds to the selected funding choices of the Plan based on the latest allocation instructions.
- Daily valuation of the funding choices, including earnings, for the Plan and each Plan participant's account.
- Daily post and process all transfers among the funding choices to the appropriate Plan and Plan participant account.
- Daily post and process all distributions, forfeitures, and withdrawals from the appropriate Plan participant account.
- Prepare quarterly participant statements of account balances and distribute to each participant.
- Prepare quarterly Plan reports of transactions for distribution to the Plan Sponsor and Plan participants. The Plan Sponsor and Plan participants will have access to account and Plan level information daily through MidAmerica's website. Participants and employer are able to print customized statements and reports via the website.
- Prepare and distribute claim forms. Claim forms are available at any time via MidAmerica's website, [www.midamerica.biz](http://www.midamerica.biz), or upon request by calling the toll-free customer service line at (800) 430-7999.
- Claims adjudication services administration for the Plan. MidAmerica reviews all claims for eligibility before processing. HRA claims are processed weekly.
- Issue distribution checks to participants every Friday. Direct deposit is available for claims payment.
- Toll-free telephone access for employer and participants of each Plan to communicate with a service representative who can answer questions about the Plan and a participant's account.
- To ensure proper monitoring and support of the program on an ongoing basis, MidAmerica will provide the following additional services at no additional cost:
  - A quarterly review of the investment performance experienced by the Plan, if necessary
  - Periodic meetings with employees to explain the program and answer questions, if necessary
  - Additional supplies of employee brochures to explain the program to newly eligible employees
  - Implementation and compliance support provided on an as-needed basis

**HIPAA BUSINESS ASSOCIATE ADDENDUM**

THIS HIPAA BUSINESS ASSOCIATE ADDENDUM (“**Addendum**”) supplements and is made a part of City of Covina Health Reimbursement Arrangement Agreement (“**Agreement**”) by and between MidAmerica Administrative & Retirement Solutions, Inc. (“**MidAmerica**”), which is acting as the Business Associate to a health plan covered by the HIPAA Privacy & Security Rule, and City of Covina (“**Covered Entity**”), and is effective as of December 1, 2015 (the “**Addendum Effective Date**”).

**RECITALS:**

**WHEREAS**, Covered Entity wishes to disclose certain information to MidAmerica pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“**PHI**”) (as hereinafter defined); and

**WHEREAS**, the parties intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“**HIPAA**”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (“**HIPAA Privacy & Security Rule**”) and other applicable laws; and

**WHEREAS**, the HIPAA Privacy & Security Rule (as hereinafter defined) requires the parties to enter into a contract containing specific requirements prior to the disclosure of PHI;

**NOW THEREFORE**, in consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

1. **Definitions.**

Unless otherwise defined, terms used in this Addendum have the same meaning as those terms in the HIPAA Privacy & Security Rule.

- a. “**Business Associate**” means MidAmerica.
- b. “**Covered Entity**” means City of Covina.
- c. “**HIPAA Privacy & Security Rule**” shall mean the Standards for Privacy of Individually Identifiable Health Information or the HIPAA Security Standards found at 45 CFR Parts 160-164.
- d. “**Protected Health Information**” or “**PHI**” means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with

respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

e. “Designated Record Set” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

f. “Treatment” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

g. “Payment” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

h. “Health Care Operations” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

## 2. **Obligations of Business Associate.**

a. Use or Disclosure of PHI. MidAmerica agrees not to use or disclose PHI, other than as permitted or required by the Agreement or as Required By Law.

b. Prohibited Uses and Disclosures. MidAmerica shall not use PHI other than as permitted by the HIPAA Privacy & Security Rule or this Addendum. MidAmerica shall not disclose PHI in any manner that would constitute a violation of the Privacy Rule if disclosed by the Covered Entity, except that MidAmerica may disclose PHI in a manner permitted pursuant to this Addendum.

c. Appropriate Safeguards. MidAmerica shall implement appropriate safeguards as are necessary to protect the confidentiality of PHI or to prevent its use or disclosure of PHI other than as permitted by this Addendum or the HIPAA Privacy & Security Rule.

d. Reporting of Improper Use or Disclosure. MidAmerica shall report to Covered Entity any use or disclosure of PHI other than as provided for by this Addendum of which it becomes aware. MidAmerica further agrees to mitigate, to the extent possible, the harmful effects of the unauthorized disclosure.

e. Disclosure to Agents. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), MidAmerica agrees to ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of MidAmerica agree to the same restrictions, conditions, and requirements that apply to MidAmerica with respect to such information.

f. Access to PHI. MidAmerica agrees to provide individuals with access to their PHI, as held in a Designated Record Set by MidAmerica, in order to meet the requirements under 45 CFR 164.524.

g. Amendment of PHI. MidAmerica agrees to make any amendment(s) to PHI it holds in a Designated Record Set, as directed by the Covered Entity pursuant to 45 CFR 164.526.

h. Accounting Rights. MidAmerica agrees to document and provide a description of any disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. MidAmerica agrees to provide such information to Covered Entity, or to an individual at the direction of the Covered Entity, in order for Covered Entity to comply with the accounting requirements in 45 CFR 164.528.

i. Governmental Access to Records. MidAmerica shall make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary of the U.S. Department of Health and Human Services (the “**Secretary**”) for purposes of determining Covered Entity’s compliance with the HIPAA Privacy & Security Rule within a reasonable time of a request for the same.

j. Covered Entity's Right to Restrict. MidAmerica agrees to comply, upon communication by Covered Entity, with any restrictions to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522.

k. HIPAA Security Standards. MidAmerica agrees to comply with the HIPAA Privacy & Security Rule with respect to any Electronic PHI (“EPHI”) that MidAmerica holds on behalf of the Plan.

1. MidAmerica agrees to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to EPHI to prevent use or disclosure of PHI other than as provided for by the Addendum.

2. MidAmerica agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that it creates, receives, maintains, or transmits on behalf of Covered Entity, as required in the HIPAA Privacy & Security Rule.

3. MidAmerica agrees to ensure that any agent, including a subcontractor, to whom it provides EPHI agrees to implement reasonable and appropriate safeguards to protect such information.

4. MidAmerica agrees to report to Covered Entity any security incident under the HIPAA Privacy & Security Rule of which it becomes aware, including the identities of any individual whose EPHI was breached.

l. Responsibilities If Security Breach. MidAmerica shall notify Covered Entity immediately if there is a breach by either MidAmerica or one of its agents of unsecured PHI, as defined in, and consistent with, the HITECH Act and any regulations or guidance issued thereunder, including 45 CFR Part 164, Subpart D. Such notification shall:

1. Be made in writing to the Covered Entity's Privacy Officer or other designated party.

2. Be made within sixty (60) days of discovery.

3. Include the names of the individuals whose information was breached, the circumstances surrounding the breach, the date of the breach and date of discovery, the information breached, any steps the individuals should take to protect themselves, the steps MidAmerica (or its agent) is taking to investigate the breach, mitigate losses, and protect against future breaches, and a contact person for more information.

If requested by MidAmerica, Covered Entity shall allow MidAmerica to approve the content of any notification in advance.

If requested by Covered Entity, MidAmerica shall notify the individuals involved, or the media or the US Department of Health and Human Services, as applicable, in accordance with the HITECH Act, and regulations or guidance issued thereunder, including 45 CFR Part 164, Subpart D. For purposes of this provision, MidAmerica is considered an independent contractor of Covered Entity.

3. **Permitted Uses and Disclosures by Business Associate.**

a. **Disclosures Generally.** Except as otherwise provided in this Addendum, MidAmerica may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the HIPAA Privacy & Security Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

b. **To Carry Out Covered Entity Obligations.** To the extent MidAmerica is to carry out one or more of Covered Entity's obligations under Subpart E of 45 CFR Part 164, MidAmerica agrees to comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

c. **Management and Administration.**

1. MidAmerica may use PHI for the proper management and administration of MidAmerica or to carry out the legal responsibilities of MidAmerica.

2. MidAmerica may disclose PHI for the proper management and administration of MidAmerica, provided that disclosures are: (a) required by law or (b) MidAmerica obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it is disclosed to the person, and the person notifies MidAmerica of any instances of which it is aware in which the confidentiality of the information has been breached.

d. **Data Aggregation and De-Identification.** Except as otherwise limited in this Addendum, MidAmerica may use PHI to provide Data Aggregation services to Covered Entity or to de-identify PHI. Once information is de-identified this Addendum shall not apply.

e. **Required By Law.** MidAmerica may use or disclose PHI as required by law.

4. **Termination.**

a. **Material Breach.** A breach by MidAmerica of any material provision of this Addendum shall constitute a material breach of the Agreement and shall provide grounds for termination of the Agreement by Covered Entity. In the event of such breach, Covered Entity shall provide MidAmerica with written notice of the breach and thirty (30) days in which to cure the

breach. If the breach is not cured within thirty (30) days, Covered Entity shall terminate the Agreement.

b. Effect of Termination. Upon termination of the Agreement for any reason, MidAmerica shall return or destroy all PHI that MidAmerica or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, MidAmerica shall continue to extend the protections of Section 2 of this Addendum to such information, and limit further use or disclosure of such PHI to those purposes that make the return or destruction of such PHI infeasible.

5. **Amendment.**

a. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA Privacy & Security Rule and other applicable laws relating to the security or confidentiality of PHI. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Privacy & Security Rule or other applicable laws.

b. Amendment of Addendum. This Addendum may be modified or amended by mutual agreement of the parties at any time without amendment of the Agreement.

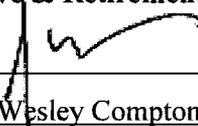
6. **Conflicts.** The terms and conditions of this Addendum will override and control any conflicting term or condition of the Agreement. All non-conflicting terms and conditions of the Agreement will remain in full force and effect.

7. **Relationship of Parties.** The parties intend that MidAmerica is an independent contractor and not an agent of Covered Entity.

**Covered Entity Health Plan**

Name of Employer: City of Covina  
Signature: \_\_\_\_\_  
Print Name: Andrea Miller  
Title: City Manager  
Date: \_\_\_\_\_

**MidAmerica Administrative & Retirement Solutions, Inc.**

Signature:  \_\_\_\_\_  
Print Name: J. Wesley Compton, CPA, CEBS  
Title: President  
Date: \_\_\_\_\_

# Unallocated Fixed Contract Application, Acceptance, & New Business Agreement

American United Life Insurance Company®  
P. O. Box  
Indianapolis, Indiana 46206-0368

Version 1.0 -- 04/2008

Contract Number G80419

Contract Effective Date December 1, 2015

Contract Suffix Number \_\_\_\_\_

Plan Sponsor's State of Domicile CA

The Proposed Contractholder identified below hereby applies to American United Life Insurance Company (AUL) for the Group Annuity Contract Number identified above. This completed form must be approved by the AUL Corporate Office before a group annuity contract will be issued.

## Contract Type:

Unallocated Fixed-Only (15FP)

## Select Governmental or Non-Governmental Plan Sponsor (select only one):

Governmental (non-registered)     Private Sector (registered)

## Select Plan Type (select only one):

(1) 3121 or Special Pay 401(a)     (3) 3121 or Special Pay or Employer-Sponsored 401(a)/403(b)     (7) 3121  
457(b)  (R) HRA Trust/VEBA     (S) HSA     (T) GASB 45 OPEB Trust/VEBA

## Select Product Type (select only one):

E0     E1     R2     E0B     E1B     R2B

## Select Business Type (select only one):

Start-up     Takeover

## General Information

Proposed Contractholder: City of Covina			
Employer's Identification Number (EIN): 95-6000699			
Executive Contact: Andrea Miller	Phone # : (626) 384-5551	Fax # : (626) 384-5556	
Executive Contact's Address: 125 E. College Street	Covina	CA	91723
Executive Contact's Email Address: dtellez@covinaca.gov			
Administrative Contact: Theresa Franke	Phone # : 626-384-5508	Fax # : (626) 384-5556	
Administrative Contact's Address: 125 E. College Street	Covina	CA	91723
Administrative Contact's Email Address: tfranke@covinaca.gov			

## Producer Information

Primary Producer: Dan Keenan	Primary B/D: N/A
Primary Producer Address: PO Box 4328, Torrance, CA 90510	
Primary Producer Email Address: dkeenan@keenan.com	
Primary Phone: 800-444-9995	Primary Fax: 310-533-1329

**TPA Information**

**MidAmerica, Administrative & Retirement Solutions, Inc.**

402 S. Kentucky Ave., Ste. 500

Lakeland, FL 33801

800.430.7999

**Investment Option Selection**

The AUL Fixed Interest Account(FIA) (I2) will be the only annuity investment option made available.

**Withdrawal Charge**

A withdrawal charge will not be applied under this contract.

**Summary of Billable Expenses**

Currently, there are none.

**Contract Termination Provisions**

Upon termination of the contract, the FIA Withdrawal Value must be taken in 5 equal annual installments. A cash lump-sum payment of monies invested in the FIA is not an available option. This restriction applies to all Contribution sources.

**AUL Recordkeeping/Administrative Services Agreement**

The Proposed Contractholder hereby requests **only** investment recordkeeping for assets held in the applied-for Contract, and does not request any other recordkeeping or administrative services. AUL will only maintain recordkeeping of assets at a contract/plan-level. Furthermore, AUL will not be providing statements, confirmations, or any other reporting to the Contractholder.

The Proposed Contractholder hereby acknowledges and agrees that, as Plan Fiduciary, it has the sole responsibility for assuring that the Plan complies with all applicable state and federal law, including ERISA, the Internal Revenue Code, and securities laws, both in form and in operation.

The Proposed Contractholder hereby acknowledges and agrees that MidAmerica Administrative & Retirement Solutions, Inc. is the Third Party Administrator (TPA) and Plan Administrator, and that, other than in this Unallocated Contract Application, Acceptance, and Agreement form, AUL shall accept direction and instructions regarding both the Plan and the Contract only from MidAmerica, and shall not accept direction and instructions directly from the Contractholder.

**Facsimile/Electronic Media Acceptance Agreement**

Instructions provided to AUL and its agents to execute, cancel, or otherwise proceed with transactions including those related to, but not limited to, enrollments, loan applications, distributions, and correspondence will be accepted via facsimile, copy, or via other electronic media. This agreement does not include retirement plan adoption agreements, group annuity contracts, amendments thereto, the annual census, and Notice, Election & Release or Contract Settlement Agreement documents.

This agreement includes instructions from the TPA, Plan Sponsor, Plan Administrator, and/or Contractholder. The Contractholder and TPA will indemnify and hold harmless AUL for all claims, losses, liabilities and expenses, including legal fees and expenses, resulting from any action taken or not taken by AUL in good faith in accordance with this agreement.

## **Preliminary Agreement for the Group Annuity Contract**

- (1) Upon the date a contribution is made to the Contract following the Proposed Contractholder's receipt of the Contract (but no earlier than 60 days after the Contract Date of Issue), if AUL does not receive a signed acceptance of the Contract at its Corporate Office by that date, the Proposed Contractholder shall be deemed to have accepted the Contract and any accompanying amendment to the Contract by the making of such contribution. The Contract and any accompanying amendment shall be effective as of the effective dates shown on the Contract and amendment.
- (2) If the Contract is not accepted or deemed accepted, and if the Proposed Contractholder notifies AUL at its Corporate Office in writing that it will not accept the Contract, the following amount shall be paid in a single sum to the Proposed Contractholder on a mutually agreed-upon date: any contributions to the Contract which have been allocated to AUL's general asset account, plus interest credited thereon as determined pursuant to the Contract, which remain in AUL's general asset account as of such date of payment. AUL shall make such payment only upon receipt at its Corporate Office of a proper form signed by the Proposed Contractholder and, if applicable, by the employer sponsoring the retirement plan for which the Contract is to be a funding vehicle, releasing AUL, its agents, and its employees from any and all liability arising out of such payment by AUL.
- (3) This Preliminary Agreement shall terminate when:
  - (A) the signed Contract acceptance is received by AUL at its Corporate Office; or
  - (B) the Contract is deemed accepted under Section (1) above; or
  - (C) payment is made by AUL pursuant to Section (2) above.

### **Electronic Contribution Processing and Employee Data Gathering**

The Employer/Plan Sponsor/TPA has elected to send contributions and employee information electronically using tools provided by AUL. The Employer/Plan Sponsor agrees to allow AUL to debit its checking account for the allocable contribution amount shown on each of its contribution listings submitted to AUL. Additionally, the Employer/Plan Sponsor/TPA agrees that AUL can rely on information provided through the electronic data transmission vehicles. To establish electronic data transmission accounts, you must first complete an Electronic Data Transmission Account Profile available from AUL.

### **Fiduciary Acceptance**

Any reference to Contractholder in this Application, Acceptance, and Agreement should be read as Proposed Contractholder until the applied-for group annuity contract goes into effect.

I, the undersigned, as TPA/Plan Administrator of the City of Covina Plan ("Plan"), hereby appoints AUL as the TPA/Plan Administrator's agent for the sole purpose of executing the Plan's investment instructions through the OneAmerica TeleServe® and Account Services systems. It is understood that AUL will execute the Plan's investment instructions received through the OneAmerica TeleServe® and Account Services systems effective as of the close of business on the valuation date, as referenced in your contract, in which AUL receives the request. It is further understood that AUL has no direction or authority to alter or decline to execute any Plan's investment instructions received through the OneAmerica TeleServe® or Account Services systems, unless such instructions are impossible to execute. If any such instructions are impossible to execute, AUL will so notify the TPA/Plan Administrator before the instructions are accepted by OneAmerica TeleServe® or Account Services. All investment instructions received and executed through the OneAmerica TeleServe® or Account Services system will be confirmed in writing to the TPA/Plan Administrator within ten business days.

The Contractholder, TPA/Plan Administrator, and AUL hereby agree by signing below, that they will be bound by the terms of this Application, Acceptance, and Agreement as of the date of AUL's acceptance. The terms of the Preliminary Agreement are superseded by the terms of the applied-for Contract as issued by AUL, and the Contract is accepted or is deemed accepted under the provisions of the Preliminary Agreement. If an amendment accompanies the issued contract, the Contractholder must sign and date the amendment and return a copy to AUL.

Electronic acceptance of this Application, Acceptance, and Agreement by AUL, Indianapolis, Indiana indicates that AUL has reviewed its contents along with all other required materials and has accepted its terms, and is equivalent to AUL's written signature.

**NON-REGISTERED FIXED ANNUITY OFFERING REPRESENTATION**  
**(For governmental applicants with an HRA or a GASB 45 OPEB Plan)**

The undersigned Employer and Trustee(s) understand that American United Life Insurance Company (AUL), in reliance on the following representations and warranties, will offer a non-registered fixed annuity contract to the Employee Benefit Trust or the VEBA Trust entered into by and between the Employer and the Trustee, dated December 1, 2015, in connection with certain benefit plans offered by the Employer for the exclusive benefit of its employees. Such offer is based upon the governmental plan exception to securities registration under Section 3(a)(2) of the Securities Act of 1933.

**REPRESENTATIONS AND WARRANTIES**

**EMPLOYER**

The Employer hereby represents and warrants that:

- (1) the Employer is a State, or political subdivision of a State, or agency or instrumentality of a State or political subdivision, within the meaning of Section 414(d) of the Internal Revenue Code of 1986 ("Code");
- (2) the Employer has authority under applicable State laws and regulations to enter into, maintain, and establish said Employee Benefit Trust or VEBA Trust (and benefit plan(s) thereunder);
- (3) any contributions to the Trust shall be made exclusively by the Employer or its employees and be held for the exclusive benefit of the employees;
- (4) the Employee Benefit Trust is exempt from taxes under Code Section 115, or the VEBA Trust is exempt from taxes under Code Section 501(c)(9); and
- (5) the Employee Benefit Trust or the VEBA Trust (and benefit plan(s) thereunder) is a governmental plan as defined in Code Section 414(d), established for the exclusive benefit of the employees of the Employer.

**TRUSTEE**

The Trustee hereby represents and warrants that:

- (1) the Employee Benefit Trust or the VEBA Trust was established to secure and hold funds to be contributed by the Employer under certain benefit plans sponsored by the Employer;
- (2) the Trust assets will be held for the exclusive benefit of the Employer's employees, and no portion of the corpus or income of the Trust will revert to the Employer or otherwise divert to third parties, except to pay for reasonable administrative expenses incurred by the Trust;
- (3) the Employee Benefit Trust is exempt from taxes under Code Section 115, or the VEBA Trust is exempt from taxes under Code Section 501(c)(9); and
- (4) the Employee Benefit Trust or the VEBA Trust (and benefit plan(s) thereunder) is a governmental plan as defined in Code Section 414(d), established for the exclusive benefit of the employees of the Employer.

IN WITNESS WHEREOF, the undersigned have executed this Representation on the signature page below, on the date(s) set forth on the signature page below.

**Application for, and Acceptance of, the Contract:**

**APPLICATION TO THE AMERICAN UNITED LIFE INSURANCE COMPANY FOR  
A GROUP ANNUITY CONTRACT**

City of Covina \_\_\_\_\_ (hereinafter called the Applicant) hereby applies for Group Annuity Contract Number G 80419 \_\_\_\_\_. This application is made a part of said contract, which is hereby approved and its provisions and conditions accepted. This application is executed in duplicate, one counterpart being attached to said contract, and the other being returned to American United Life Insurance Company. It is agreed that this application supersedes any previous application for said contract.

**STATE NOTIFICATION**

*All states excluding those states listed below: Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to civil fines and criminal penalties.*

**In Colorado,** any person who knowingly provides false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company commits a crime. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.

**In Florida,** any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.

**In Louisiana, Pennsylvania, and Tennessee,** any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.

**In Maine and Washington,** any person who knowingly provides false, incomplete or misleading information to an insurance company for the purpose of defrauding the company commits a crime. Penalties may include imprisonment, fines or denial of insurance benefits.

**In New Jersey and Virginia,** any person who includes any false or misleading information on any application for an insurance policy is subject to criminal and civil penalties.

**In Florida:** Does this group annuity contract replace any existing group annuity contract?

\_\_\_\_\_ Yes      \_\_\_\_\_ No

If yes, submit any required replacement forms.

By signing and completing the information below, the following parties hereby agree to this Unallocated Contract Application, Acceptance, and New Business Agreement.

Dated at City of Covina on \_\_\_\_\_

APPLICANT/PROPOSED CONTRACTHOLDER/PLAN FIDUCIARY

Signature: \_\_\_\_\_

Printed Name: Andrea Miller

Title: City Manager

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

AUL RETIREMENT SERVICES OFFICER

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

TPA/PLAN ADMINISTRATOR

Signature: \_\_\_\_\_

Printed Name: J. Wesley Compton, CPA, CEBS

Title: President

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

SOLICITING PRODUCER

Signature: \_\_\_\_\_

Printed Name: Dan Keenan

Title: Senior Vice President

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

Florida License ID No. (for Florida Applications)

ID No. \_\_\_\_\_

For governmental employers applying for a fixed group annuity contract to be used with an HRA or a GASB 45 OPEB Plan, by signing and completing the information below, the following parties hereby agree to the "Non-Registered Fixed Annuity Offering Representation" above.

"EMPLOYER" (with respect to Employer representations only)

City of Covina

Dated: \_\_\_\_\_

By: \_\_\_\_\_

TRUSTEE(S) (with respect to Trustee representations only)

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: Andrea Miller

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

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## *Administrative Procedures*

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Please mail the signed Implementation Binder to Plan Implementation at **MidAmerica Administrative & Retirement Solutions, Inc.** Once MidAmerica has reviewed the documents, the binder will be mailed back to you with sample Participant correspondence.

**Please make checks payable to: AUL.** Please ensure that the Data Requirements, listing each Participant contribution, accompany the check and the total contributions listed equals the check amount. Upon receipt of a Participant's initial contribution to the Plan, he/she will receive a Welcome Kit describing the program in detail. **Note: Contributions can only be posted to the account if the Data Requirements are supplied with the contribution check.**

Checks and Data Requirements (with each contribution submission) should always be MAILED TO:

MidAmerica Administrative & Retirement Solutions, Inc.  
402 South Kentucky Ave, Suite 500  
Lakeland, FL 33801  
Attn: Contribution Processing

Premiums may be ACH or wired, as follows:

ROUTING NUMBER: 026009593 (for wires only)  
ROUTING NUMBER: 063100277 (for ACH only)  
ACCOUNT NUMBER: 005561906347  
TITLE ON ACCOUNT: AUL Health Benefit Trust / MidAmerica Administrative  
& Retirement Solutions, Inc  
BANK NAME: Bank of America, N.A.  
BANK BRANCH: Lakeland, FL  
BANK PHONE NUMBER: (863) 616-5318  
REFERENCE: (Employer Name) AUL Policy Number

*(A copy of the wire confirmation must be sent to MidAmerica with data requirements.)*

Contribution deduction registers (data requirements) can be submitted the following ways:

- Upload your contribution data file via FTP. Just type in the following website address: <http://www.midamerica.biz>, select *Forms*, and select *Contribution File Uploads*. Under "Employer", you can start populating your Employer name and your information will appear. Select your Employer and Plan type that you will be submitting contribution data for. Populate the other required fields, select 'file upload' to attach your data file, and click submit!
- An Excel file can be submitted through an attachment via email to [contributions@midamerica.biz](mailto:contributions@midamerica.biz). Please reference your Employer name and the total deposit amount being submitted.
- Enclose a hardcopy deduction register with the contribution check and mail directly to MidAmerica.

Please contact Bridget Magee, Department Supervisor of Health and Welfare, at MidAmerica's toll free number 1-855-329-0095, ext. 139 (for Employers and Agents only) for questions concerning submitting contributions or Participant accounts.

## *Data Requirements*

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Social Security Number (Numeric)

Last Name (Alphanumeric)

First Name (Alphanumeric)

Address (Alphanumeric)

City (Alphanumeric)

State (Alphanumeric)

Zip (Numeric)

Home Phone Number (Numeric)

Date of Birth (DD/MM/YYYY)

Date of Hire (DD/MM/YYYY)

Date of Separation (Leave Blank if Active) (DD/MM/YYYY)

Health Contribution (Numeric)

District Payment Frequency (A-Annual, S-Semi-Annual, Q-Quarterly, M-Monthly, SM- Semi-Monthly, L-Lump Sum, O-Other\*)

\*If code O is used please indicate payment frequency

Data may be sent via e-mail to: [contributions@midamerica.biz](mailto:contributions@midamerica.biz). (Please include the check total in subject line of email and password protect your spreadsheet for encryption purposes, providing us with the password under a separate cover.) Please direct data requirement questions to Bridget Magee at 800-430-7999, extension 139.



# CITY OF COVINA

## AGENDA REPORT

ITEM NO. NB 2

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- MEETING DATE:** December 1, 2015
- TITLE:** Exception to the 180-Day Wait Period to Hire an Interim Executive Assistant to the Police Chief
- PRESENTED BY:** Danielle Tellez, Director of Human Resources
- RECOMMENDATION:** That the City Council approve the following actions:
1. Adopt Resolution No. 15-7430 Authorizing an Exception to the 180-Day Wait Period for Employment of a Retiree;
  2. Adopt Resolution No. 15-7431, Appointing Debra Quick as Interim Executive Assistant to the Police Chief; and
  3. Approve A Limited-Term Appointment Agreement with Debra Quick.
- 

### **BACKGROUND:**

Debra Quick has been an exemplary employee of the City of Covina for over 25 years in the Police Department. Since 2009, she has served as the Executive Assistant to the Police Chief. In October, 2015 Ms. Quick announced that she would retire from her position with the City with an effective date of December 25, 2015. Therefore, the position will be vacant effective December 26, 2015.

A recruitment was initiated in October and is currently underway to find a qualified replacement. Oral interviews were held on Monday, November 23, and second interviews with the department will take place on Monday, November 30. Pending selection of a candidate, a thorough background check will need to be performed. Additionally, the selected candidate will need to provide appropriate notice to his or her current employer. Considering time constraints with the background and notice requirements, as well as upcoming holidays, staff anticipates that it will be mid to late January before the selected candidate will be available to commence employment with the City of Covina.

In order to ensure continuity with critical clerical functions with the Police Department, as well the need to provide adequate training to the selected candidate, staff recommends that the City enter into a limited-term appointment agreement with Debra Quick to be appointed to the Interim position of Executive Assistant to the Police Chief immediately following her retirement.

### **DISCUSSION:**

Because the City of Covina is a contracting agency with the California Public Employees Retirement System (CalPERS), there are specific rules and procedures that the City must adhere

to when hiring a retired CalPERS member. On January 1, 2013 the Public Employees' Pension Reform Act of 2013 (PEPRA) went into effect. In part, this legislation governs the process in which CalPERS contracting agencies must follow to hire retired members. This legislation provides for a 180-day waiting period that the retired member in certain classes of employment must wait prior to being employed by a CalPERS agency post-retirement in a retired annuitant status, unless the governing board of the agency passes a resolution approving an exception to this rule. There are other requirements mandated by CalPERS; however, the City has met those requirements.

Under section 7522.56 and 21221(h) CalPERS retirees can be hired into retired annuitant positions to perform work of limited duration for up to a maximum of 960 hours per fiscal year, they may be paid up the maximum hourly rate paid to employees doing similar work without any other compensation or benefits, and must have the skill set needed to perform the retired annuitant work. The City Council's approval of Resolution No. 15-7430 will satisfy the CalPERS requirement of the agency's board approving an exception to the 180-Day wait period.

Additionally, Resolution No. 15-7431 will confirm the City Council's approval of appointing Debra Quick to the Interim position of Executive Assistant to the Police Chief for a limited duration, with a not to exceed date of March 31, 2016 and the limited-term appointment agreement outlines the specific rules set forth by PEPRA.

**FISCAL IMPACT:**

Funding for this Interim appointment is available in the Police Department General Fund Acct. No. 1010-1000-50015.

**CEQA (CALIFORNIA ENVIRONMENTAL QUALITY ACT):** N/A

Respectfully submitted,

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Danielle Tellez  
 Director of Human Resources

<b>City Manager</b>	<b>City Attorney</b>	<b>Finance</b>	<b>City Clerk</b>

**ATTACHMENTS:**

- Attachment A: Resolution No. 15-7430
- Attachment B: Resolution No. 15-7431
- Attachment C: Limited-Term Appointment Agreement

**RESOLUTION NO. 15-7430**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COVINA AUTHORIZING AN EXCEPTION TO THE 180-DAY WAIT PERIOD FOR EMPLOYMENT OF A CalPERS RETIREE**

**WHEREAS**, in compliance with Government Code section 7522.56 the City of Covina must provide CalPERS this certification resolution when hiring a retiree before 180 days has passed since his or her retirement dates; and

**WHEREAS**, Debra Quick will retire from the City of Covina in the position of Executive Assistant to the Police Chief effective December 26, 2015; and

**WHEREAS**, section 7522.56 requires that post-retirement employment commence no earlier than 180 days after the retirement date, which is June 23, 2016 without this certification resolution; and

**WHEREAS**, section 7522.56 provides that this exception to the 180 day wait period shall not apply if the retiree accepts any retirement-related incentive; and

**WHEREAS**, the City Council of the City of Covina and Debra Quick certify that Debra Quick has not and will not receive a Golden Handshake or any other retirement-related incentive; and

**WHEREAS**, the City Council hereby appoints Debra Quick as an interim appointment retired annuitant to the vacant position of the Executive Assistant to the Police Chief for the City of Covina under Government Code section 21221(h), effective December 28, 2015; and

**WHEREAS**, an appointment under Government Code section 21221(h) requires an active, publicly posted recruitment for a permanent replacement; and

**WHEREAS**, the current status of this recruitment is active; and

**WHEREAS**, this section 21221(h) appointment shall only be made once and therefore will end on March 31, 2016; and

**WHEREAS**, the entire employment agreement, contract or appointment document between Debra Quick and the City of Covina has been reviewed by this body and is attached herein; and

**WHEREAS**, no matters, issues, terms or conditions related to this employment and appointment have been or will be placed on a consent calendar; and

**WHEREAS**, the employment shall be limited to 960 hours per fiscal year; and

**WHEREAS**, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable

duties, divided by 173.333 to equal the hourly rate; and

**WHEREAS**, the maximum base salary for this position is \$64,913.83 and the hourly equivalent is \$31.21; and

**WHEREAS**, the hourly rate paid to Debra Quick will be \$31.21; and

**WHEREAS**, Debra Quick has not and will not receive any other benefit, incentive, compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate; and

**NOW THEREFORE, BE IT RESOLVED, DECLARED, DETERMINED AND ORDERED** by the City Council of the City of Covina, California hereby certifies the nature of the appointment of Debra Quick as described herein and detailed in the attached employment agreement/contract/appointment document and that this appointment is necessary to fill the critically needed position of the Executive Assistant to the Police Chief for the City of Covina by December 28, 2015 because a recruitment commenced to permanently fill the vacant position in October, 2015 and is currently underway. The nature of the position of Executive Assistant to the Police ensures that critical services are provided to the Police Chief, City of Covina Staff, and the Public at large. Debra Quick possesses skills needed to perform the work for a limited duration as well as to assist with the recruitment, hiring, and training of a permanent replacement.

**PASSED, APPROVED AND ADOPTED** this 1<sup>st</sup> day of December, 2015.

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John C. King, Mayor

ATTEST:

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Mary Lou Walczak, City Clerk

APPROVED AS TO FORM:

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City Attorney

**RESOLUTION NO. 15-7431**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COVINA APPOINTING DEBRA QUICK AS INTERIM EXECUTIVE ASSISTANT TO THE POLICE CHIEF AND APPROVING A LIMITED-TERM APPOINTMENT AGREEMENT**

**WHEREAS**, Government Code Section 21221(h) permits the City Council to appoint a California Public Employees' Retirement System ("CalPERS") retiree to a vacant position requiring specialized skills during recruitment for a permanent appointment, and provides that such appointment will not subject the retired person to reinstatement from retirement or loss of benefits so long as it is a single appointment that does not exceed 960 hours in a fiscal year; and

**WHEREAS**, the position of Executive Assistant to the Police Chief will become vacant on December 26, 2015 due to the retirement of Debra Quick on December 25, 2015; and

**WHEREAS**, to ensure the efficient continued operations of the City's Police department clerical functions, the City Council desires to retain the services of Debra Quick, who will be a retired member of CalPERS, to serve as Interim Executive Assistant to the Police Chief, effective December 28, 2015 and

**WHEREAS**, Debra Quick has over 25 years of experience with the City of Covina in the Police Department and has an extensive history in heading the clerical functions of the department; and

**WHEREAS**, pending the recruitment, selection and employment of a qualified replacement, the City desires to appoint Debra Quick as Interim Executive Assistant to the Police Chief, pursuant to the authority provided under Government Code Section 21221(h), to provide the critical skills necessary to ensure continued service to the Police Chief, City Staff and the public at large; and

**WHEREAS**, it is understood by Debra Quick and the City that the combined total hours to be served by Debra Quick in any fiscal year for all CalPERS employers shall not exceed the 960 hour limitation set forth in California Government Code Section 21221(h); and

**WHEREAS**, the City Council has reviewed a proposed limited-term appointment agreement, attached as Exhibit C, by and between Debra Quick and the City of Covina.

**NOW THEREFORE, BE IT RESOLVED, DECLARED, DETERMINED AND ORDERED** by the City Council of the City of Covina, California, as follows:

**SECTION 1.** As required by Government Code Section 21221(h), the City Council makes the following findings:

- (a) All facts set forth in the Recitals to this Resolution are true and correct; and

(b) Debra Quick has the specialized skills needed to perform the work required of the Interim Executive Assistant to the Police Chief until a permanent replacement is appointed and thereafter begins his or her service; and

(c) It is in the best interests of the City of Covina to enter into a limited-term appointment agreement with and to appoint Debra Quick as Interim Executive Assistant to the Police Chief for the City of Covina pursuant to the authority provided under Government Code Section 21221(h).

**SECTION 2.** Debra Quick is appointed as Interim Executive Assistant to the Police Chief and of the City of Covina in accordance with Government Code Section 21221(h) and with the provisions of the limited-term appointment agreement on file with the City Clerk.

**SECTION 3.** The employment agreement with Debra Quick, a copy of which is on file with the City Clerk, is approved by the City Council of the City of Covina, effective December 28, 2015.

**SECTION 4.** The Mayor is authorized to execute said agreement on behalf of the City of Covina, with such technical amendments as may be deemed appropriate by the Mayor and City Attorney.

**PASSED, APPROVED AND ADOPTED** this 1<sup>st</sup> day of December, 2015.

\_\_\_\_\_  
John C. King, Mayor

ATTEST:

\_\_\_\_\_  
Mary Lou Walczak, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**ATTACHMENT C**  
**LIMITED-TERM APPOINTMENT AGREEMENT**  
**(CALPERS RETIREES)**

**CITY OF COVINA  
LIMITED-TERM APPOINTMENT AGREEMENT  
(CALPERS RETIREES)**

Dear Debra Quick:

If accepted by you and approved by the City Council, this agreement represents the terms of your appointment as interim Executive Assistant to the Police Chief with the City of Covina ("City"). In light of your status as a CalPERS retiree, this is a limited-term appointment subject to the requirements set forth in this letter.

This agreement is made in light of your departure from the Executive Assistant to the Police Chief position and the need to have you assist the City during the recruitment, hiring and training of a permanent replacement, as well as to maintain the current service level to the City of Covina staff. We have determined that your employment during this time is necessary in order to prevent the stoppage of public business.

The terms of this agreement include:

- The term of your appointment will be from December 28, 2015 until such time as a permanent replacement for the position of Executive Assistant to the Police Chief has been selected, or if earlier, the City Council terminates this agreement.
- Your rate of pay in the position will be an hourly salary of \$31.21.
- You will not receive any further payments or benefits other than the hourly rate unless required by state or federal law.
- Your hours **cannot exceed 960 hours** in a fiscal year (inclusive of all hours worked for any CalPERS employer).

The City and you make this agreement with the mutual understanding that the appointment complies with the requirements applicable to the employment of CalPERS retirees, as codified in Government Code Sections 7522.56 and 21221(h). Specifically, an appointment under Sections 7522.56 and 21221(h) is permissible if all of the following requirements are met:

- (1) The appointment is made by the City Council;
- (2) The appointment is to a vacant position during recruitment for a permanent appointment;
- (3) The appointment is either during an emergency to prevent stoppage of public business or because the retiree has specialized skills needed in performing the work;
- (4) The retiree is appointed to the vacant position no more than once;
- (5) The compensation received by the retiree is not more than the maximum monthly base salary paid to other employees performing comparable duties as listed on the City's publicly available pay schedule, reflected as an hourly rate by dividing the monthly base pay by 173.333;
- (6) The compensation paid to the retiree is limited to the hourly rate and no other benefits may be provided;

- (7) The total hours worked by the retiree in a fiscal year, for all CalPERS employers, cannot exceed 960 hours;
- (8) The retiree cannot have received unemployment insurance payments in the prior 12-month period arising from work performed as a retiree for any public employer; and
- (9) For any retirees with a retirement effective date on or after January 1, 2013, the appointment must occur at least 180 days following the date of retirement unless the employer certifies that the appointment is necessary to fill a critically needed position before 180 days have expired and the governing body approves the appointment in a public meeting.

With respect to the requirement at (1), your appointment to the position of interim Executive Assistant to the Police Chief will not be effective unless and until it is approved by resolution of the City Council.

In addition, the City, in good faith, has determined that your appointment meets (2) – (7) of the foregoing requirements as follows:

- (2) If approved, your appointment will be to the vacant interim Executive Assistant to the Police Chief position during the City's recruitment for a permanent appointment;
- (3) This appointment is made because we have determined that your employment during this time is necessary in order to prevent the stoppage of public business.
- (4) If approved, the appointment will be a one-time appointment and will not be renewed.
- (5) The compensation you will receive is no more than the maximum monthly base salary paid to other employees performing comparable duties as listed on the City's publicly available pay schedule divided by 173.333 to determine an hourly rate.
- (6) Your compensation consists of the hourly rate only; no further benefits will be provided.
- (7) Your hours will not exceed 960 hours in a fiscal year.

By executing this agreement, you are also, in good faith, determining that your appointment meets each of the foregoing requirements, including the unemployment insurance requirement noted at (8) above. That is, while the City is not in a position to do so, by signing the acknowledgment at the conclusion of this agreement you are certifying that you have not received unemployment insurance payments within the past 12 months arising from work performed as a retiree for any public employer.

Notwithstanding (6) above, the City has no way of monitoring the hours that you work for another CalPERS employer. As such, it is your responsibility to ensure that the total hours worked for the City and any other CalPERS employer do not exceed 960 hours during the fiscal year.

There is no right to public employment expressed by this agreement. All limited-term appointments are subject to the business necessity of the City and are at-will; therefore, the appointment may end with or without cause or advance notice.

If you have additional questions or comments feel free to contact me directly.

Sincerely,

John c. King, Mayor  
City of Covina

**Acknowledgment:**

I, Debra Quick, agree to this Limited-Term Appointment Agreement (CalPERS Retiree), and hereby warrant that I understand and agree with all of the terms and conditions of employment as set forth in this letter. Further, I hereby certify to the City of Covina that I have not received unemployment insurance payments within the past 12 months arising from work performed as a retiree for any public employer.

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Debra Quick

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

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