

CITY OF INDUSTRY

CITY COUNCIL SPECIAL MEETING AGENDA

JUNE 30, 2023
9:00 AM



Mayor Cory C. Moss
Mayor Pro Tem Cathy Marcucci
Council Member Michael Greubel
Council Member Mark D. Radecki
Council Member Newell Ruggles

Addressing the Council:

- ▶ **Agenda Items:** Members of the public may address the Council on any matter listed on the Agenda. Anyone wishing to speak to the Council is asked to complete a Speaker's Card which can be found at the back of the room and at the podium. The completed form should be submitted to the City Clerk prior to the Agenda item being called and prior to the individual being heard by the Council.
- ▶ **Public Comments (Agenda Items Only):** During public comments, if you wish to address the City Council during this Special Meeting, under Government Code Section 54954.3(a), you may only address the City Council concerning any item that has been described in the notice for the Special Meeting.

At the time of publication, no Councilmembers intend to take part in the meeting remotely under the provisions of AB 2449. Should that change between the time of publication and the start of the meeting, a live webcasting of the meeting will be accessible via the link, meeting ID, and meeting passcode listed below. Whenever possible, an announcement will be made at the start of the meeting via the live webcast to confirm whether or not a Councilmember will join remotely. If they will not be joining remotely, then the live webcast will terminate after the announcement.

www.microsoft.com/microsoft-teams/join-a-meeting

Meeting ID: 256 236 621 954

Meeting Passcode: aJPbaP

Or call in (audio only)

+1 657-204-3264, United States, Anaheim

Phone Conference ID: 144 815 238#

Americans with Disabilities Act:

- ▶ In compliance with the ADA, if you need special assistance to participate in any City meeting (including assisted listening devices), please contact the City Clerk's Office (626) 333-2211. Notification of at least 48 hours prior to the meeting will assist staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting.

Agendas and other writings:

- ▶ In compliance with SB 343, staff reports and other public records permissible for disclosure related to open session agenda items are available at City Hall, 15625 Mayor Dave Way, Suite 100, City of Industry, California, at the office of the City Clerk during regular business hours, Monday through Thursday 8:00 a.m. to 5:00 p.m., Friday 8:00 a.m. to 4:00 p.m. Any person with a question concerning any agenda item may call the City Clerk's Office at (626) 333-2211.

1. Call to Order
2. Flag Salute
3. AB 2449 Vote on Emergency Circumstances (if necessary)
4. Roll Call
5. Public Comments
6. **ACTION ITEM**
 - 6.1 Consideration of a License Agreement with American Promotional Events Inc. - West, dba TNT Fireworks, and Workman Quarterback Club, for access to the parking lot located at 100 North Hacienda Boulevard to utilize for the sale of safe and sane fireworks

RECOMMENDED ACTION: Approve the Agreement.
7. Adjournment. The next regular City Council Meeting will be Thursday, July 13, 2023 at 9:00 a.m.

CITY COUNCIL

ITEM NO. 6.1

Backup Material will be a Hand-out prior to Meeting

CITY COUNCIL MEETING
JUNE 30, 2023

ITEM NO. 6.1

HAND-OUT ITEM



CITY OF INDUSTRY

MEMORANDUM

To: Honorable Mayor Moss and Members of the City Council

From: Joshua Nelson, City Manager

Staff: Bing Hyun, Assistant City Manager

Date: June 30, 2023

SUBJECT: Consideration of a License Agreement with American Promotional Events Inc. - West, dba TNT Fireworks, and Workman Quarterback Club, for access to the parking lot located at 100 North Hacienda Boulevard to utilize for the sale of safe and sane fireworks

Background:

American Promotional Events Inc. - West ("TNT Fireworks") and Workman Quarterback Club ("Workman") requested permission from the City to utilize the parking lot located at 100 N. Hacienda Boulevard to be used for the sale of safe and sane fireworks. Workman is a non-profit organization that oversees the fundraising of the Workman High School Football team. This year they are selling fireworks as a fundraising effort for their organization. TNT Fireworks has provided them with the fireworks and set up the stand to be used for the sales.

Discussion:

To support the high school football team and its fundraising efforts, City Staff is requesting that the City Council approve the License Agreement ("Agreement") with TNT Fireworks and Workman through July 12, 2023. The proposed Agreement contains revisions to the City's standard indemnification and insurance provisions requested by TNT Fireworks.

Fiscal Impact:

The Agreement set the lease rate at \$150 per month. The prorated amount is \$4.93 per day. A payment of \$118.32 will be due to the City from TNT Fireworks

Recommendation:

Staff recommends that the City Council approve the License Agreement with American Promotional Events Inc. - West, dba TNT Fireworks, and Workman Quarterback Club, dated June 19, 2023.

Exhibit:

A. License Agreement with American Promotional Events Inc. - West, dba TNT Fireworks, and Workman Quarterback Club, dated June 19, 2023

EXHIBIT A

License Agreement with American Promotional Events Inc. - West, dba TNT Fireworks,
and Workman Quarterback Club, dated June 19, 2023

[Attached]

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“**Agreement**”), dated June 19, 2023, (“**Effective Date**”) is entered into by and between the City of Industry, a municipal corporation, (“**Licensor/City**”), and American Promotional Events, Inc. - West d.b.a. TNT Fireworks, a California corporation (“**Licensee**”) and Workman Quarterback Club, (“**Non-Profit Organization**”) (Licensor and Licensee are individually referred to as “**Party**” and collectively referred to as the “**Parties**”).

RECITALS

WHEREAS, the City is the owner of certain property located at 100 N. Hacienda Boulevard, generally located at the southeast corner of Mayor Dave Way and Hacienda Boulevard, and Licensee desires to enter the portion of the property forth in Exhibit A, attached hereto and incorporated herein by reference (“**Premises**”); and

WHEREAS, Licensee desires to utilize the Premises for the sale of safe and sane fireworks by Non-Profit Organization.

WHEREAS, Licensee acknowledges that Licensee is entering onto the Premises at its sole risk and expense, and Licensor does not have any liability to Licensee under this Agreement.

NOW, THEREFORE, for valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

TERMS

1. License to Enter the Premises. Licensor hereby grants to Licensee and to Non-Profit Organization a non-exclusive license (the “**License**”) granting permission to enter upon the Premises as of the Effective Date of this Agreement, and to use a portion of the Premises, as depicted in Exhibit A, to use to setup a firework stand for the sale of safe and sane fireworks (collectively, “**Permitted Use**”); provided, that Licensee’s use of the Premises shall not interfere with the operation of business activities, if any, then being conducted on the Premises, and provided Licensee provides written notice to the Licensor at least five (5) days prior to Licensee first entering upon the Premises (said written notice shall state the purpose for the entry upon the Premises, and said entry shall not exceed the stated purpose). Prior to any initial entry pursuant to the License, Licensee shall, provide to Licensor proof of insurance as set forth in Section 7 of this Agreement. Licensee shall not permit any other party, except the duly-authorized representatives, agents, employees and contractors (collectively “**Representatives**”) of Licensee to enter or use the Premises during the term of this License, without Licensor’s prior written consent, and in all events the sole reason for entry and use of the Premises shall be for the performance of Licensee’s Permitted Use. Notwithstanding the foregoing, customers of Licensee and Non-Profit Organization shall be permitted on the Premises, and any governmental entity which requires inspection of the Permitted Use. Licensee and Non-Profit Organization hereby acknowledges that it is only permitted to utilize the portion of the Premises designated as set forth in Exhibit A, and that Licensor may grant a license to other entities to utilize other portions of the Premises (as set forth in Exhibit A); provided, that, Licensee has no duties, obligations or responsibilities arising under this Agreement for any portion(s) of the Premises licensed to other entities or individuals.

2. Payment. Licensee shall pay the Licensor, and Licensor shall accept One Hundred Eighteen Dollars and Thirty Two Cents (\$118.32) (“**License Payment**”), for the use of the Premises. Payment in full, shall be due and payable upon execution of agreement. Payment shall be made to Licensor at 15625 Mayor Dave Way, City of Industry, CA 91744.

3. Permitted Use. The Permitted Use is hereby also defined to include parking for patrons during the sale of safe and sane fireworks from June 28, 2023 through July 4, 2023. Along with overnight parking for a RV trailer. Upon execution of this Agreement, Licensee shall provide a site plan to the Licensor, which shall detail the configuration of the use of the Premises, and which shall provide sufficient ingress and egress for public safety vehicles. Licensee shall obtain any and all approvals required by the Los Angeles County Fire Department for the Permitted Use, prior to entering the Premises. Licensee shall exercise due care in the performance of the Permitted Use and such use shall be exercised in a manner which complies with all applicable laws.

4. Maintenance of Premises. During the term of this Agreement, Licensee and Non-Profit Organization shall maintain the Premises in a reasonably good condition similar to that in which the Premises were delivered to Licensee pursuant to this Agreement. Upon termination of the License, Licensee shall repair any damage done to the Premises by Licensee or its duly authorized Representatives, and shall restore the Premises to its condition as of the Effective Date of this Agreement.

5. Government Regulations and Other Obligations of Licensee. As a condition precedent to commencement of the Permitted Use, if required, Licensee shall obtain at its sole cost and expense all governmental permits and authorizations of whatever nature required, if any (“**Permits**”) by any and all governmental authorities having jurisdiction over the Premises for Licensee’s exercise of the Permitted Use. Licensor shall use commercially reasonable efforts to cooperate with Licensee and to support any and all applications or request for said Permits submitted by Licensee or on Licensee’s behalf. Licensee shall, in all activities undertaken pursuant to this Agreement, and cause its Representatives to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees.

6. Liens.

6.1 Licensee shall not cause or permit to be filed, recorded or enforced against the Premises, or any part thereof, any mechanics’, material men’s, contractors’ or subcontractors’ liens arising from the Permitted Use or any claim or action affecting the title to the Premises arising from the Permitted Use, and Licensee shall pay or cause to be paid, or otherwise removed or bonded over, the full amount of all such liens or claim within fifteen (15) days of receiving written notice thereof. In addition to and not in limitation of Licensor’s other rights and remedies under this Agreement or under law, should Licensee fail within fifteen (15) business days of a written notice from Licensor to pay and discharge or bond over any lien arising out of Licensee’s use of the Premises, then a material breach under this Agreement shall be deemed to have occurred which, at Licensor’s election, shall entitle Licensor to terminate this License effective upon notice by Licensor to Licensee so stating.

6.2 If Licensee desires to contest in good faith the validity of any lien or any claim or demand that could result in a lien against the Premises or any portion thereof for which Licensor could become liable if not successfully resolved, as a condition to such contest, Licensee shall notify Licensor of Licensee’s intent to contest the lien or claim and the grounds for such

contest. Notwithstanding anything to the contrary set forth herein, Licensee shall pay and satisfy any adverse judgment that may be rendered thereon before the enforcement thereof against Licensor or the Premises.

7. Insurance. Prior to entering the Premises and until the termination of this Agreement, Licensee shall maintain at its sole expense insurance limits as stipulated in this section.

7.1 Minimum Scope and Limit of Insurance. Coverage shall be at least as broad as:

(a) Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

(b) Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Licensee has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than \$1,000,000 per accident for bodily injury and property damage.

(c) Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

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

(a) Additional Insured Status. The Licensor and City Representatives, (as defined in Section 8, below) are to be additional insureds on the CGL policy with respect to liability arising out of Licensee's use of the Premises. General liability coverage can be provided in the form of an endorsement to the Licensee's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

(b) Primary Coverage. For any claims related to this Agreement, the Licensee's insurance coverage shall be primary insurance as respects the Licensor/City Representatives. Any insurance or self-insurance maintained by the Licensor/City Representatives, shall be excess of the Licensee's insurance and shall not contribute with it.

(c) Contractors and Subcontractors. Licensee shall require and verify that all contractors and subcontractors maintain insurance meeting all the requirements stated herein, and Licensee shall ensure that Licensor/City Representatives are additional insureds on insurance required from contractors/subcontractors. For CGL coverage contractors and subcontractors shall provide coverage with a format least as broad as CG 20 38 04 13.

(d) Notice of Cancellation. Each insurance policy required above shall state that coverage shall not be canceled during the term of this Agreement, except with notice to the City.

(e) Waiver of Subrogation. Licensee hereby grants to City a waiver of any right to subrogation which any insurer of said Licensee may acquire against the City by virtue of

the payment of any loss under such insurance . Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation provided such endorsement is available on commercially reasonable terms, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

(f) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Licensee to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

(g) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise acceptable to the City.

(h) Deductibles. All such insurance shall have deductibility limits of not greater than \$50,000.00 unless otherwise approved by the City.

(i) Verification of Coverage. Licensee shall furnish the City with original certificates and endorsements evidencing the insurance coverage required above. All certificates and endorsements are to be received and approved by the City before exercise of the Permitted use commences. However, failure to obtain the required documents prior to the exercise of the Permitted Use shall not waive the Licensee's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies, including endorsements, required by these specifications, at any time.

(j) Occurrence Basis Coverage. All policies shall be written on an occurrence basis unless otherwise approved by the City.

8. Indemnification. From and after the execution of this Agreement, Licensee hereby agrees to indemnify, defend, protect and hold harmless the City and all its officials, employees, officers, directors, , and council members of the City collectively, the "**City Representatives**" and each, a "**City Representative**"), and each of them, from and against all claims, causes of action, liabilities, losses, damages, injuries, expenses, charges, penalties, or costs (including attorney's fees and costs incurred by Licensee in defending the indemnified Party pursuant to this Section 8), whether to property or to person(s)(collectively "**Losses and Liabilities**"), related directly to, or arising out of of the activities of Licensee, its agents or employees, at the Premises during the term of this Agreement. Licensee's obligation to defend shall not arise to the extent any claim or assertion is that the City or any City Representative caused or contributed to the Losses and/or Liabilities, and Licensee's liability under this Section 8 will also be limited to the extent of any contributory negligence of Licensor or any City Representative.

9. Term, Termination and Remedies. The License shall commence as of the Effective Date of this Agreement, and shall automatically terminate on **July 12, 2023**. In the event Licensor sells or transfers the Premises during the term of this Agreement, this Agreement shall terminate upon seven (7) days written notice to Licensee. In addition, if Licensee shall be in breach of any of its obligations under this Agreement and shall fail to cure such breach within ten (10) business days of written notice from Licensor specifying the nature of any such breach, Licensor shall have the right to terminate this Agreement upon written notice to Licensee. Licensee acknowledges that this License is solely a license, and that Licensee has no rights as an owner, purchaser or tenant by virtue thereof. Upon termination of the Agreement, Licensee shall promptly vacate the Premises and

comply with the provisions of Section 4 above. No termination or expiration of this License shall relieve Licensee of its obligations hereunder.

10. Inspection and Access to Premises. Licensor and any of its duly authorized representatives, employees, agents or independent contractors shall be entitled to enter the Premises, to show the Premises to potential purchasers, to inspect the Premises, to inspect Licensee's use of the Premises, and for any other purpose, at any time

11. Assignability. This License cannot be assigned by Licensee or Non-Profit Organization whether voluntarily or by operation of law, and Licensee shall not permit any use of the Premises, or any part thereof during the Term of this License in violation of the provisions of this License, except with the consent of Licensor (which shall not be unreasonably withheld, conditioned or delayed), and any attempt to do so shall be null and void.

12. Cost of Enforcement. In the event it is necessary for either Party to employ an attorney or other person or commence an action to enforce or interpret any of the provisions of this License or for Licensor to remove Licensee from the Premises, the non-prevailing party agrees to pay to the prevailing party, in addition to such other relief as may be awarded by the court, City or other authority before which such suit or proceeding is commenced, all reasonable costs of enforcement in connection therewith including, but not limited to, reasonable attorneys' fees, expenses and costs of investigation.

13. Notices. All notices, consents, approvals, requests, demands and other communications provided for herein shall be in writing and shall be deemed to have been duly given upon the earlier of when personally delivered or served or twenty-four (24) hours after being deposited with FedEx or any other established overnight courier service to the intended party addressed as follows:

Licensor:	City Manager 15625 Mayor Dave Way City of Industry, CA 91744 Tel: (626) 333-2211
With a Copy to:	James M. Casso, City Attorney Casso & Sparks, LLP 13300 Crossroads Parkway North, Suite 410 City of Industry, CA 91746 Tel: (626) 269-2980 jcasso@cassosparks.com
Licensee:	Laura Lira American Promotional Events, - West, Inc., d.b.a. TNT Fireworks 555 N. Gilbert Street Fullerton, CA 92833
Non-Profit:	Glen Maughan Workman Quarterback Club 16303 Temple Avenue

14. Miscellaneous. This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof, and all prior and contemporaneous agreements, representations and understandings of the Parties hereto, oral or written, are hereby superseded and merged herein. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by the Parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver. The indemnifications under this Agreement, the obligations of Licensee hereunder to remove liens and Licensee's obligations hereunder with respect to vacating and repairing the Premises shall survive the expiration or termination of the License Term. This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of California. Any action brought concerning this Agreement shall be brought in the appropriate court for the County of Los Angeles, California. Each Party hereby irrevocably consents to the jurisdiction of said court. Licensee hereby expressly waives all provisions of law providing for a change of venue due to the fact that the City may be a party to such action, including, without limitation, the provisions of California Code of Civil Procedure Section 394. Licensee further waives and releases any right it may have to have any action concerning this Agreement transferred to Federal District Court due to any diversity of citizenship that may exist between City and Licensee. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions hereof. This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument. Neither this instrument nor a short form memorandum or assignment hereof shall be filed or recorded in any public office without Licensor's or Licensee's prior written consent.

15. Authority. Each person executing this Agreement hereby represents and warrants (i) their authority to do so, and (ii) that such authority has been duly and validly conferred.

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

“LICENSOR”

“LICENSEE”

CITY OF INDUSTRY

AMERICAN PROMOTIONAL EVENTS,
INC. – WEST dba TNT FIREWORKS

By: _____
Joshua Nelson, City Manager

By: _____
Laura Lira, _____

ATTEST:

“NON-PROFIT ORGANIZATION”
WORKMAN QUARTERBACK CLUB

Julie Gutierrez-Robles, City Clerk

By: _____
Glen Maughan, President

APPROVED AS TO FORM:

James M. Casso, City Attorney

EXHIBIT A

Legal Description

Assessors Parcel Number (APN) 8208-025-948 located at the southeast corner of Mayor Dave Way and Hacienda Boulevard, City of Industry, CA 91744. The area identified as "Project Site" in the map below identifies the area of the Premises, where the Permitted Use shall occur.

