



## **UPLAND CITY COUNCIL**

### **AGENDA**

**January 13, 2020  
City Council Chamber**

**DEBBIE STONE, MAYOR  
RICKY FELIX, MAYOR PRO TEM  
JANICE ELLIOTT, COUNCILMEMBER  
RUDY ZUNIGA, COUNCILMEMBER  
BILL VELTO, COUNCILMEMBER**

**ROSEMARY HOERNING, INTERIM CITY MANAGER  
STEVEN FLOWER, INTERIM CITY ATTORNEY**

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#### **DISRUPTION OF MEETINGS**

Individuals who demonstrate disruptive conduct during City Council meetings that prevent the City Council from conducting its meeting in an orderly manner are guilty of a misdemeanor as stated in PC403, disrupting a public meeting, and are subject to removal from the chamber or arrest.

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**6:00 PM - Closed Session**

- 1. CALL TO ORDER AND ROLL CALL**
- 2. ADDITIONS-DELETIONS TO AGENDA**
- 3. ORAL COMMUNICATIONS**

This is a time for any citizen to comment on item listed on the closed session agenda only. Anyone wishing to address the legislative body is requested to submit a speaker card to the City Clerk at or prior to speaking. The speakers are requested to keep their comments to no more than three (3) minutes. The use of visual aids will be included in the time limit.

- 4. CLOSED SESSION**

- A. CLOSED SESSION PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
Government Code Section 54957  
Title: City Manager
- B. CLOSED SESSION CONFERENCE WITH LABOR NEGOTIATORS  
Government Code Section 54957.6  
Unrepresented employee: Interim City Manager  
City designated representative: Interim City Attorney
- C. CLOSED SESSION CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION  
(Paragraph (1) of subdivision (d) of California Government Code Section 54956.9)  
Case Name: Inland Oversight Committee v. City of Upland  
Case Number: San Bernardino County Superior Court Case No. CIVDS 1936887
- D. CLOSED SESSION CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION  
(Paragraph (1) of subdivision (d) of California Government Code Section 54956.9)  
Case Name: Michael Wehner v. City of Upland  
Case Number: 5:19-cv-01155-GW-E
- E. CLOSED SESSION CONFERENCE WITH LEGAL COUNSEL - LIABILITY CLAIM  
Government Code Section 54956.9  
Claimant: Richard Vives  
Agency: City of Upland

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**7:00 PM**

**5. INVOCATION**

Reverend Jan Chase, Unity Church of Pomona

**6. PLEDGE OF ALLEGIANCE**

**7. PRESENTATIONS**

Update on San Antonio Water Company activities by General Manager Brian Lee

**8. CITY ATTORNEY**

**9. ORAL COMMUNICATIONS**

This is a time for any citizen to comment on any item listed on the agenda only. Anyone wishing to address the legislative body is requested to submit a speaker card to the City Clerk at or prior to speaking. The speakers are requested to keep their comments to no more than three (3) minutes. Speakers will be given five (5) minutes during public hearings. The use of visual aids will be included in the time limit.

**10. COUNCIL COMMUNICATIONS**

## 11. CONSENT CALENDAR

All matters listed under the Consent Calendar are considered to be routine and will be enacted by one roll call vote. There will be no separate discussion of these items unless members of the legislative body request specific items be removed from the Consent Calendar for separate action.

### A. APPROVAL OF MINUTES

Approve the Special Meeting Minutes of December 9, 2019 and the Regular Meeting Minutes of December 9, 2019. (Staff Person: Keri Johnson)

### B. APPROVAL OF WARRANT AND PAYROLL REGISTERS DECEMBER, 2019

Approve the December Warrant Registers and Direct Disbursements (check numbers 28106-28414) totaling \$5,115,129.65 and Payroll Registers totaling \$1,506,909.28 (check Numbers 161078-161282 and EFTs 18450-18952). (Staff Person: Londa Bock-Helms)

### C. TREASURY REPORT NOVEMBER 2019

Receive and file the November 2019 Treasury Report. (Staff Person: Londa Bock-Helms)

### D. FIRST AMENDMENT TO AGREEMENT WITH SFG RETIREMENT PLAN CONSULTING, LLC FOR INVESTMENT ADVISOR AND FIDUCIARY SERVICES

Approve amendment number one to the Retirement Plan Investment Advisory Agreement between the City of Upland and SFG Retirement Plan Consulting, LLC and authorize the Interim City Manager to execute the agreement. (Staff Person: Londa Bock-Helms)

### E. ACCEPTANCE OF RIGHT OF WAY DEDICATION (CORNER CUTBACK, GENERALLY LOCATED AT THE NORTHWEST CORNER OF 9TH STREET AND SAN ANTONIO AVENUE) FROM MR. MARIO SOSA HERRERA

Accept the street right of way offer of dedication from Mario Sosa Herrera and authorize recordation of document. (Staff Person: Rosemary Hoerning)

### F. APPROVAL OF PUBLIC IMPROVEMENT AGREEMENT AND ENCROACHMENT LICENSE AGREEMENT WITH BRIXMOR FOR PROJECT LOCATED ON THE NORTHWEST CORNER OF FOOTHILL BOULEVARD AND SAN ANTONIO AVENUE

Approve the Public Improvement Agreement and Encroachment License Agreement (ELA) with Brixmor Upland Town Square, LLC; and authorize the Interim City Manager to execute the ELA. It is further recommended that the City Council accept the Faithful Performance bond and the Labor Materials bond in the amount \$569,000 and \$285,000 respectively. (Staff Person: Rosemary Hoerning)

### G. ACCEPTANCE OF PUBLIC IMPROVEMENT FOR TRACT MAP 18867 LOCATED EAST OF EUCLID AVENUE AND SOUTH OF 19TH STREET (MERITAGE HOMES)

Accept the Tract Map 18867 public improvements performed by Meritage Homes and release the 25% bond. It is further recommended the City Council accept the pedestrian bridge improvements and reduce the bond to twenty five percent (25%) as a guaranty to be held for a period of 12 months after acceptance. (Staff Person: Rosemary Hoerning)

### H. APPROVAL OF AGREEMENT FOR CONSTRUCTION OF PUBLIC IMPROVEMENT AT 1160 E 19TH STREET BY WP FUND V UPLAND, LLC

Approve the Agreement for Construction of Public Improvements by WP Fund V Upland, LLC and accept the Performance Bond in the amount of \$469,000 and Labor and Materials Bond in the amount of \$235,000. (Staff Person: Rosemary Hoerning)

I. CONSIDERATION OF A RESOLUTION TO APPROVE MODIFICATIONS TO THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) EMERGENCY REPAIRS PROGRAM GUIDELINES/POLICIES

Approve a Resolution adopting amended program guidelines/policies with respect to the City's Emergency Repair Program. (Staff Person: Robert Dalquest)

J. ACCEPTANCE OF COVENANT AND AGREEMENT REGARDING WATER CONTROL MANAGEMENT PLAN AND STORM WATER BEST MANAGEMENT PRACTICES TRANSFER, ACCESS, AND MAINTENANCE

Accept and execute all the Covenant and Agreements Regarding Water Quality Management Plan and Storm Water Best Management Practices Transfer, Access, and Maintenance and authorize recordation of said agreements. (Staff Person: Rosemary Hoerning)

## 12. PUBLIC HEARINGS

A. CONSIDERATION OF AN ORDINANCE TO ADOPT BY REFERENCE THE 2019 EDITION OF THE CALIFORNIA BUILDING CODE STANDARDS

The City Council will consider an Ordinance to adopt by reference the 2019 California Building Standards Code, together with certain appendices and penalties.

Recommendation: 1) Staff Presentation

2) Hold Public Hearing

3) Close Public Hearing

4) Hold second reading by number and title only, and adopt Ordinance No. 1935 adopting by reference the 2019 California Administrative, Building, Fire, Green Building Standards, Mechanical, Residential, Plumbing, Electrical, Energy, Existing Building, Historical Building, and Referenced Standards Codes (Title 24, California Code of Regulations, Parts 1, 2, 2.5, 3, 4, 5, 6, 8, 9, 10, 11, and 12); the 1997 Uniform Housing Code; the 1997 Uniform Code for the Abatement of Dangerous Buildings; including certain appendices and penalties.

## 13. COUNCIL COMMITTEE REPORTS

A. SPECIAL POLICE AND FIRE COMMITTEE MEETING, DECEMBER 16, 2019

**3) PROPOSED PURCHASE OF AN ARMORED RESCUE VEHICLE** the Committee recommends the City Council authorize the exploration of external funding sources for the purchase of an Armored Rescue Vehicle.

## 14. BUSINESS ITEMS

A. AMENDMENT TO THE INTERIM CITY MANAGER'S EMPLOYMENT AGREEMENT

Consider the proposed amendment to the Interim City Manager's Employment Agreement, which would extend its term for six months. (Staff Person: Steven Flower)

## **15. ORAL COMMUNICATIONS**

This is a time for any citizen to comment on any item not listed on the agenda. Anyone wishing to address the legislative body is requested to submit a speaker card to the City Clerk at or prior to speaking. The speakers are requested to keep their comments to no more than three (3) minutes. The use of visual aids will be included in the time limit. Public comments and questions for the purpose of hearing current matters of concern in our community and to provide citizens a method for the public to hear those concerns in an open venue is encouraged. However, under the provisions of the Brown Act, the City Council is prohibited from discussion of items not listed on the agenda, and therefore, the City Council, City Manager, or City Attorney will take communications under advisement for consideration and appropriate response or discussion at a later time.

## **16. CITY MANAGER**

## **17. ADJOURNMENT**

The next regularly scheduled City Council meeting is Monday, January 27, 2020.

**NOTE:** If you challenge the public hearing(s) or the related environmental determinations in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Upland, at, or prior to, the public hearing.

All Agenda items and back-up materials are available for public review at the Upland Public Library, downstairs reference desk at 450 North Euclid Avenue, the City Clerk's Office at 460 North Euclid Avenue and the City website at [www.ci.upland.ca.us](http://www.ci.upland.ca.us), subject to staff's ability to post the documents before the meeting.

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, 931-4120. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.102-35.104 ADA Title II]

**POSTING STATEMENT:** On January 8, 2020 a true and correct copy of this agenda was posted on the bulletin boards at 450 N. Euclid Avenue (Upland Public Library) and 460 N. Euclid Avenue (Upland City Hall).

**MINUTES OF THE SPECIAL MEETING OF THE  
UPLAND CITY COUNCIL  
DECEMBER 9, 2019**

**OPENING**

The special meeting of the Upland City Council was called to order by Mayor Debbie Stone at 5:30 p.m. in the Council Chamber of the Upland City Hall.

**1. ROLL CALL**

Present: Mayor Debbie Stone, Council Members Janice Elliott, Ricky Felix, and Rudy Zuniga

Councilmember Velto joined the meeting via teleconference at the M Resort Spa and Casino in Henderson, Nevada

Staff: Interim City Manager Rosemary Hoerning, Interim City Attorney Steven Flower, and City Clerk Keri Johnson

**2. ORAL COMMUNICATIONS**

Natasha Walton, stated opposition to cell towers in public parks and requested the City Council update the Upland Municipal Code regarding land use for cell towers.

Lois Sicking Dieter, stated opposition to cell towers in public parks and requested the City Council update the Upland Municipal Code regarding land use for cell towers.

At 5:37 p.m. Mayor Stone announced the City Council would recess to Closed Session pursuant to Government Code Section

**3. CLOSED SESSION CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

(Paragraph (1) of subdivision (d) of California Government Code Section 54956.9)

Case Name: Michael Wehner v. City of Upland

Case Number: 5:19-cv-01155-GW-E

**4. CLOSED SESSION CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Government Code Section 54956.8

Property: An approximately 360-square foot area located in the northeast corner of Memorial Park in the City of Upland

Agency negotiators: Interim City Manager Hoerning, Development Services Director Dalquest, Development Services Manager Chavez, and Economic Development Coordinator Picazo

Negotiating parties: City of Upland and AT&T Mobility LLC

Under negotiation: Price and terms of payment for lease agreement

**5. CLOSED SESSION PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Government Code Section 54957

Title: City Manager

**6. CLOSED SESSION CONFERENCE WITH LABOR NEGOTIATORS**

Government Code Section 54957.6

Unrepresented employee: Interim City Manager

City designated representative: Interim City Attorney

The City Council reconvened in open session at 6:30 p.m.

Interim City Attorney Flower announced there was nothing to report from closed session.

The City Council recessed the special meeting to the conclusion of the regular meeting scheduled for December 9, 2019 at 7 p.m.

The City Council reconvened in open session at 9:19 p.m.

At 9:19 p.m. Mayor Stone announced the City Council would recess to Closed Session pursuant to Government Code.

The City Council reconvened in open session at 9:48 p.m.

Interim City Attorney Flower announced there was nothing to report from closed session.

**7. ADJOURNMENT**

Mayor Stone adjourned the meeting at 9:48 p.m. The next regular meeting of the City Council is January 13, 2020.

**SUBMITTED BY:**

  
\_\_\_\_\_  
Keri Johnson, City Clerk

**APPROVED:**

January 13, 2020

**MINUTES OF THE REGULAR MEETING OF THE  
UPLAND CITY COUNCIL  
DECEMBER 9, 2019**

**OPENING**

The regular meeting of the Upland City Council was called to order by Mayor Debbie Stone at 7:00 p.m. in the Council Chamber of the Upland City Hall.

**1. ROLL CALL**

Present: Mayor Debbie Stone, Council Members Janice Elliott, Ricky Felix, and Rudy Zuniga

Absent: Councilmember Bill Velto

Staff: Interim City Manager Rosemary Hoerning, Interim City Attorney Steven Flower, and City Clerk Keri Johnson

**2. ADDITIONS/DELETIONS TO AGENDA**

City Clerk Johnson announced that Items 11K and 11Q would be removed from the agenda.

**3. ORAL COMMUNICATIONS** None

**4. CLOSED SESSION** None

**5. INVOCATION** Alfredo Silvestre, Church of Jesus Christ of Latter-day Saints, Upland 4th Ward

**6. PLEDGE OF ALLEGIANCE** Mayor Stone

**7. PRESENTATIONS**

Assistant Chief Jeff Birchfield introduced San Bernardino County Fire Chief Dan Munsey.

Assistant Fire Chief Birchfield gave an informational presentation on the completed restoration of the historic fire engine.

Miranda Mulhall of San Bernardino County Fire Department gave a demonstration of Auto Pulse CPR Device.

**8. CITY ATTORNEY**

Interim City Attorney Flower announced there was nothing to report.

**9. ORAL COMMUNICATIONS**

Kati Parker, Upland, spoke in support of the approval of the Mills Act contracts for historic homes.

Marjorie Mikels, Upland, requested the City Treasurer provide the Treasury Report and further stated that parks are a valuable resource and should be protected.

**10. COUNCIL COMMUNICATIONS**

Councilmembers announced various activities throughout the community, including providing an update on the meetings they attended.

**11. CONSENT CALENDAR**

Mayor Stone removed Consent Calendar Items 11D and 11E and Councilmember Zuniga removed Consent Calendar Items 11F and 11J for separate action. Motion by Councilmember Felix to approve the remainder of the Consent Calendar, seconded by Councilmember Elliott, and carried with Councilmember Velto absent.

**A. APPROVAL OF MINUTES**

Approved the Special Meeting Minutes of November 25, 2019 and the Regular Meeting Minutes of November 25, 2019.

**B. APPROVAL OF WARRANT AND PAYROLL REGISTERS NOVEMBER, 2019**

Approved the November Warrant Registers and Direct Disbursements (check numbers 27737-28105) totaling \$5,125,035.07 and Payroll Registers totaling \$1,338,394.82 (check Numbers 161053-161077 and EFTs 17946-18449).

**C. TREASURY REPORT OCTOBER 2019**

Received and filed the October 2019 Treasury Report.

**G. 800 MHz RADIO SYSTEM ACCESS AND MAINTENANCE CONTRACT**

Approved a contract with the County of San Bernardino to provide access and maintenance for the City of Upland 800 MHz radios effective July 1, 2019 to June 30, 2023; and authorized the Interim City Manager to execute the agreement.

**H. CONSIDERATION OF A RESOLUTION TO PERMANENTLY CANCEL THE LAST REGULAR MEETINGS IN AUGUST AND DECEMBER OF THE CITY COUNCIL**

Adopted Resolution No. 6520 to rescind Resolution No. 6378 and permanently cancel the last regular meetings in August and December of the City Council.

**I. 2019 MILLS ACT CONTRACTS FOR SEVEN HISTORIC PROPERTIES**

Approved the Mills Act contracts for seven historic properties and authorized the Interim City Manager to execute the documents, subject to review and approval of the Mills Act contracts by the City Attorney.

**K. APPROVAL OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) EMERGENCY REPAIRS PROGRAM GUIDELINES/POLICIES MODIFICATIONS**

This item was removed from the agenda.

- L. ASSIGNMENT AND ASSUMPTION AGREEMENT BETWEEN BRAVEPARK PROPERTY, LLC, KB HOME, INC., AND THE CITY OF UPLAND, PERTAINING TO PORTIONS OF PLANNING AREA 3 OF THE SYCAMORE HILLS SPECIFIC PLAN, LOCATED NORTH OF BASELINE ROAD, SOUTH OF THE 1-210 FREEWAY AND WEST OF THE MOUNTAIN SHADOWS HOUSING DEVELOPMENT.

Approved the Assignment and Assumption Agreement by and between Bravepark Property, LLC, a Delaware limited liability company, KB Home Coastal, Inc, a California corporation, and the City of Upland, pertaining to Planning Area 3 of the Sycamore Hills Specific Plan.

- M. ACCEPTANCE OF STREET RIGHT OF WAY DEDICATION AND ONSITE UTILITY AND ACCESS EASEMENTS FROM THE RANCHO MONTE VISTA ANNEX, LLC LOCATED AT 365 NORTH CENTRAL AVENUE

Accepted the Offer of Dedication in Fee and dedication of onsite utility and access easements from RMV Annex, LLC and authorized the recordation of the documents.

- N. ACCEPTANCE OF PUBLIC IMPROVEMENTS AT BENSON AVENUE AND 13TH STREET AND SECURITY REDUCTION (1301 BENSON AVENUE)

Accepted the sewer and street intersection restoration work and authorized the Interim City Manager to release the cash security posted for the project and further authorized the Interim City Manager to accept a substitute guaranty bond of twenty five percent (25%) and Labor and Materials bond of fifty percent (50%)

- O. APPROVAL OF FINAL TRACT MAP 20151 FOR A CONDOMINIUM DEVELOPMENT LOCATED ON THE NORTHSIDE OF FOOTHILL BOULEVARD APPROXIMATELY 365 FEET EAST OF BENSON AVENUE AND ACCEPTANCE OF SUBDIVISION AGREEMENTS WITH GFR HOMES

Approved the Final Tract Map 20151 for 20151, LLC (a.k.a. GFR Homes), and authorized the Interim City Manager to execute the Subdivision Improvement Agreements, both public and private improvements, and an Encroachment License Agreement with GFR Homes; and accepted the faithful performance and labor and materials security bonds for both public and private improvements and authorized recordation of the Final Tract Map 20151 and Encroachment License Agreement.

- P. AMEND THE COMPENSATION PLAN FOR PART-TIME EMPLOYEES

Adopted Resolution No. 6521 amending the Compensation Plan for Part-Time Employees to comply with California Minimum Wage Law.

- Q. CONSIDERATION OF AN ENCROACHMENT LICENSE AGREEMENT FOR THE INSTALLATION OF AN ELECTRONIC CHANGEABLE-COPY SIGN FOR UPLAND HIGH SCHOOL LOCATED WITHIN THE CITY RIGHT-OF-WAY AT THE SOUTHEAST CORNER OF FOOTHILL BOULEVARD AND SAN ANTONIO AVENUE

This item was removed from the agenda.

ITEMS REMOVED FOR SEPARATE ACTION

D. SCHEDULED VACANCIES FOR COMMISSIONS, COMMITTEES, AND BOARDS FOR CALENDAR YEAR 2020

City Clerk Johnson answered questions posed by the Council regarding the upcoming scheduled vacancies and the application process for commissions, committees, and boards.

Motion by Mayor Stone to accept and file the Local Appointments List for all City commissions, committees, and boards for calendar year 2020, and direct the City Clerk to post the list, seconded by Councilmember Zuniga, and carried with Councilmember Velto absent.

E. APPOINTMENT OF MAYOR PRO TEM

There was discussion regarding the rotation of the Mayor Pro Tem.

Motion by Mayor Stone to ratify the appointment of Councilmember Ricky Felix as Mayor Pro Tem, term to expire in December 2020, seconded by Councilmember Zuniga, and carried with Councilmember Velto absent.

F. RESIGNATION OF CITY COUNCIL ADVISORY COMMITTEE MEMBER

The Council thanked Mr. Bierbaum for his service.

Motion by Councilmember Zuniga to accept the resignation from City Council Advisory Committee Member Steve Bierbaum and instruct the City Clerk to post the vacancy pursuant to Government Code Section 54974, seconded by Councilmember Elliott, and carried with Councilmember Velto absent.

J. WATER RATE ADJUSTMENT - STATUS UPDATE

There was discussion on the time frame for the water rate study and when the report would be ready for Council review.

Motion by Councilmember Zuniga to defer the water rate increase scheduled for January 1, 2020 until the water rate check-in study is completed, seconded by Mayor Stone, and carried with Councilmember Velto absent.

**12. PUBLIC HEARINGS** None

**13. COUNCIL COMMITTEE REPORTS**

A. SPECIAL PUBLIC WORKS COMMITTEE MEETING, NOVEMBER 26, 2019

1) SOLID WASTE RATE ADJUSTMENT

Councilmember Felix provided a recap of the meeting.

Interim City Manager Hoerning presented information on the solid waste rate study, and then introduced Rose Radford with R3 Consultants who

provided a PowerPoint presentation along with more detailed information regarding the study.

There was discussion on the need to educate the public on reducing waste and recycling, and the catch up fee.

Mike Arreguin, Vice President of Burrtec Waste Industries answered questions posed by the Council regarding the proposed rate increase.

Motion by Councilmember Elliott to direct staff to proceed forward with the Proposition 218 public notification processes to consider solid waste rate adjustments, seconded by Councilmember Felix, and carried with Councilmember Velto absent.

**B. ECONOMIC DEVELOPMENT COMMITTEE MEETING, DECEMBER 2, 2019**

Councilmember Felix provided a recap of the meeting, which is on file in the City Clerk's Office. This was for information only and no action was required.

**14. BUSINESS ITEMS**

**A. ADMINISTRATIVE SERVICES DEPARTMENT STAFFING LEVELS**

Acting Administrative Services Director Bock-Helms presented the staff report, which is on file in the City Clerk's Office.

There was discussion on the use of consultants to temporarily fill vacancies, the additional funding required for a full time position, and the current staffing level of the Human Resources Department.

The Council chose to table this item for future consideration and no action was taken.

**B. POTENTIAL ORDINANCE PROHIBITING SMOKING AND VAPING ON PUBLIC PROPERTIES (CITY GROUNDS AND PARKS)**

Interim City Manager Hoerning presented the staff report, which is on file in the City Clerk's Office.

There was discussion on state prohibitions on smoking, the potential health hazards of second hand smoke/vape, and whether the City should have stricter prohibitions in place.

Motion by Councilmember Felix to direct staff to bring back an ordinance creating a local vaping prohibition where state law prohibits smoking in public places, seconded by Councilmember Elliott, and carried with Councilmember Velto absent.

**C. AWARD OF BID FOR PROJECT NO. 7070 AND 7079, CITYWIDE CONCRETE MAINTENANCE PROJECT (BID NO. 2019-04)**

Public Works Operations Manager Smiderle presented the staff report, which is on file in the City Clerk's Office.

There was discussion on damage to sidewalks caused by trees and City policies regarding trees and sidewalk issues. The Council requested that the City tree policy be brought back to Council in the future for discussion.

Motion by Councilmember Felix, to award Project No. 7070 & 7079, Citywide Concrete Maintenance Contract for an initial three year contract beginning January 1, 2020 to D.M. Contracting Inc., in the amount of \$ 484,550.00, and approve a construction contingency of \$75,450.00, for a total amount of \$560,000.00, seconded by Councilmember Zuniga, and carried with Councilmember Velto absent.

**15. ORAL COMMUNICATION (items not on the agenda)**

Natasha Walton, Upland, spoke regarding the importance of trees in the community and further spoke in opposition of an electronic sign at Upland High School.

Lois Sicking Dieter, Upland, spoke regarding the importance of trees in the community and further spoke in opposition of an electronic sign at Upland High School.

Marjorie Mikels, Upland, stated opposition to the sale of park land.

Alfredo Silvestre, Upland, questioned whether the City would consider lowering water rates since the City is no longer in drought conditions.

**16. CITY MANAGER**

**17. ADJOURNMENT**

Mayor Stone adjourned the meeting at 9:19 p.m. The next regularly scheduled City Council meeting is Monday, January 13, 2020.

**SUBMITTED BY**

  
Keri Johnson, City Clerk

**APPROVED**

January 13, 2020



## STAFF REPORT

**ITEM NO. 11.B.**

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**DATE:** January 13, 2020  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** LONDA BOCK-HELMS, CPA, ACTING ADMINISTRATIVE SERVICES DIRECTOR  
**SUBJECT:** APPROVAL OF WARRANT AND PAYROLL REGISTERS DECEMBER, 2019

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### RECOMMENDED ACTION

It is recommended that the City Council approve the December Warrant Register and Direct Disbursements (check numbers 28106-28414) totaling \$5,115,129.65 and Payroll Registers totaling \$1,506,909.28 (check Numbers 161078-161282 and EFTs 18450-18952).

### GOAL STATEMENT

The proposed action supports the City's goal to manage the City's resources in a fiscally responsible and transparent manner.

### BACKGROUND

The City Council is presented with the financial disbursements for the purchase of materials, supplies, services, capital projects, and payroll warrants issued in the prior month. This process provides the City Council the opportunity to review the expenses of the City.

### ISSUES/ANALYSIS

In accordance with Government Code Section 37208, the Finance Officer hereby certifies that the attached Warrant Registers, Direct Disbursements, and Payroll Registers have been found to conform to the approved budget and have been paid. These demands are submitted to the City Council for review and approval.

**FISCAL IMPACTS**

Funds are available for the payment of the Warrant Registers, Direct Disbursements, and Payroll Registers.

**ALTERNATIVES**

Provide alternative direction to staff.

**ATTACHMENTS:**

**December Payment Register**

**City of Upland**  
**Accounts Payable Check Reconciliation Register**  
**12/01/19-12/31/19**

Check Number	Check Date	Check Type	Vendor Number	Vendor Name	Amount
28106	12/04/2019	PRINTED	37	5 STAR JANITORIAL	1,500.00
28107	12/04/2019	PRINTED	99181	ACCOUNTEMPS	5,496.58
28108	12/04/2019	PRINTED	14	ACTION AWARDS	781.92
28109	12/04/2019	PRINTED	1291	AMTECH ELEVATOR SERVICES	1,250.00
28110	12/04/2019	PRINTED	131971	ANNEALTA GROUP	23,168.00
28111	12/04/2019	PRINTED	884	ANYPROMO INC	541.36
28112	12/04/2019	PRINTED	1769	BIO-TOX LABORATORIES	110.00
28113	12/04/2019	PRINTED	819	BRINKS, INC	612.34
28114	12/04/2019	PRINTED	885	CADD MICROSYSTEMS	2,290.00
28115	12/04/2019	PRINTED	291	CARQUEST AUTO PARTS	280.65
28116	12/04/2019	PRINTED	12511	CCSINTERACTIVE	125.00
28117	12/04/2019	PRINTED	448	CINTAS CORPORATION	880.00
28118	12/04/2019	PRINTED	45421	COSTAR REALTY INFORMATION GROUP INC	473.58
28119	12/04/2019	PRINTED	401	DANIEL RODRIGUEZ	75.00
28120	12/04/2019	PRINTED	16636	DELL MARKETING LP	8,941.40
28121	12/04/2019	PRINTED	126011	DEPT OF INDUSTRIAL RELATIONS	450.00
28122	12/04/2019	PRINTED	82651	ECONOLITE SYSTEMS	15,782.56
28123	12/04/2019	PRINTED	2435	EVERSOFT	928.26
28124	12/04/2019	PRINTED	96251	FORD OF UPLAND	84.73
28125	12/04/2019	PRINTED	78	FRONTIER	45.83
28126	12/04/2019	PRINTED	78	FRONTIER	92.87
28127	12/04/2019	PRINTED	78	FRONTIER	121.71
28128	12/04/2019	PRINTED	78	FRONTIER	121.71
28129	12/04/2019	PRINTED	78	FRONTIER	1,426.50
28130	12/04/2019	PRINTED	5661	G & M BUSINESS INTERIORS	6,962.29
28131	12/04/2019	PRINTED	58311	G H A TECHNOLOGIES	327.07
28132	12/04/2019	PRINTED	833	G4S SECURE SOLUTIONS (USA) INC	17,248.66
28133	12/04/2019	PRINTED	11	GA TECHNICAL SERVICES INC	689.41
28134	12/04/2019	PRINTED	290	GRAINGER	275.82
28135	12/04/2019	PRINTED	329	HOLIDAY ROCK CO INC	568.72
28136	12/04/2019	PRINTED	629	HONEYCOTT, INC	809.00
28137	12/04/2019	PRINTED	16340	INFOSEND INC	4,081.96
28138	12/04/2019	PRINTED	153	INLAND EMPIRE UTILITIES AGENCY	972.00
28139	12/04/2019	PRINTED	4137	INLAND FAIR HOUSING MEDIATION BOARD/FHMB	3,464.41
28140	12/04/2019	PRINTED	106951	INTEGRATED TECHNOLOGY	1,149.58
28141	12/04/2019	PRINTED	635	ISOTECH PEST MGMT	840.00
28142	12/04/2019	PRINTED	32791	J J KELLER & ASSOCIATES INC	1,417.99
28143	12/04/2019	PRINTED	53241	KONICA MINOLTA BUSINESS SOLUTIONS	5,918.79
28144	12/04/2019	PRINTED	414	LIEBERT CASSIDY WHITMORE	60.00
28145	12/04/2019	PRINTED	122601	LOWE'S	2,200.42
28146	12/04/2019	PRINTED	16385	MAIN STREET SIGNS	947.45
28147	12/04/2019	PRINTED	238	MOUNTAIN VIEW CHEVROLET	52.29
28148	12/04/2019	PRINTED	16877	NEXTDAY DELIVERY SERVICE, LLC	148.20
28149	12/04/2019	PRINTED	30971	OCCUPATIONAL HEALTH CENTERS	195.00
28150	12/04/2019	PRINTED	64331	PACIFIC TELEMAGEMENT SERVICE	60.00
28151	12/04/2019	PRINTED	119	PRISTINE UNIFORMS LLC	1,685.05
28152	12/04/2019	PRINTED	349	RAIN MASTER IRRIGATION SYSTEMS	235.90
28153	12/04/2019	PRINTED	240	RICHARD BRADY AND ASSOCIATES	1,648.68
28154	12/04/2019	PRINTED	67381	ROUTE 66 CAR WASH INC	136.50
28155	12/04/2019	PRINTED	66771	SELEX ES INC	661.36
28156	12/04/2019	PRINTED	131121	SHRED-IT USA JV LLC	66.12
28157	12/04/2019	PRINTED	16607	STAPLES BUSINESS ADVANTAGE	940.84

**City of Upland**  
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Check Number	Check Date	Check Type	Vendor Number	Vendor Name	Amount
28158	12/04/2019	PRINTED	90177	SWRCB	18,155.00
28159	12/04/2019	PRINTED	11583	THOMPSON PLUMBING SUPPLY	107.84
28160	12/04/2019	PRINTED	21671	TIME WARNER CABLE	104.99
28161	12/04/2019	PRINTED	21671	TIME WARNER CABLE	151.52
28162	12/04/2019	PRINTED	21671	TIME WARNER CABLE	697.34
28163	12/04/2019	PRINTED	21671	TIME WARNER CABLE	1,287.40
28164	12/04/2019	PRINTED	62321	U.S. TELEPACIFIC CORP	1,720.92
28165	12/04/2019	PRINTED	125411	TYLER TECHNOLOGIES INC	32,473.95
28166	12/04/2019	PRINTED	133941	VERIZON	342.87
28167	12/04/2019	PRINTED	133941	VERIZON	1,450.45
28168	12/04/2019	PRINTED	14735	VERIZON WIRELESS	266.07
28169	12/04/2019	PRINTED	14735	VERIZON WIRELESS	1,805.14
28170	12/04/2019	PRINTED	14735	VERIZON WIRELESS	1,932.04
28171	12/04/2019	PRINTED	25	AGUILAR-RILEY, VIRGINIA	728.81
28172	12/04/2019	PRINTED	3987	BALDY VIEW GYMNASTICS	2,087.40
28173	12/04/2019	PRINTED	84141	CARTY, DIANE	136.80
28174	12/04/2019	PRINTED	321	CHANG, JAMIE	554.56
28175	12/04/2019	PRINTED	521	COUPLAND, DONNA	374.85
28176	12/04/2019	PRINTED	35791	DEL NEGRO, VINCENT	66.79
28177	12/04/2019	PRINTED	44891	FARLEY, SANDRA	1,934.10
28178	12/04/2019	PRINTED	111311	GARCIA, ROBYN	29.25
28179	12/04/2019	PRINTED	122151	GOSS, CAROLINA	77.10
28180	12/04/2019	PRINTED	132291	JOHNSON, VALERIE	538.65
28181	12/04/2019	PRINTED	93421	KABAYAN, ANTHONY	76.72
28182	12/04/2019	PRINTED	56981	KENDALL, ANDREA	1,652.40
28183	12/04/2019	PRINTED	29911	LASSETTER, SUELLEN	806.55
28184	12/04/2019	PRINTED	3013	MAYA QUINTERO	1,079.40
28185	12/04/2019	PRINTED	40871	MACIAS, LUIS	125.00
28186	12/04/2019	PRINTED	379	OTERO, JORDAN	133.00
28187	12/04/2019	PRINTED	33021	PELLITTERI, CHRISTOPHER	499.20
28188	12/04/2019	PRINTED	845	SCARLETT DREAMS	80.85
28189	12/04/2019	PRINTED	407	SINGLETON, DENICE	104.25
28190	12/04/2019	PRINTED	70251	STEESE, MARION	142.95
28191	12/04/2019	PRINTED	116791	TOVAR, DONNA	3.42
28192	12/04/2019	PRINTED	5193	ZAILO, ROBERT	647.70
28193	12/04/2019	PRINTED	999999	ADRIAN IBARRA	78.00
28194	12/04/2019	PRINTED	999999	ANDREW POLI	125.00
28195	12/04/2019	PRINTED	999999	BRETT THOMAS	125.00
28196	12/04/2019	PRINTED	999999	CRISTOPHER MERINO	78.00
28197	12/04/2019	PRINTED	999999	HECTOR SALCIDO	238.00
28198	12/04/2019	PRINTED	999999	MARVIN ESQUIVEL	125.00
28199	12/04/2019	PRINTED	999999	STEPHANIE KUNKEL	125.00
28200	12/11/2019	PRINTED	125761	CITY EMPLOYEE ASSOCIATES	299.00
28201	12/11/2019	PRINTED	751	FIDELITY SECURITY LIFE INSURANCE COMPANY	2,396.15
28202	12/11/2019	PRINTED	99418	FRANCHISE TAX BOARD	100.00
28203	12/11/2019	PRINTED	295	INLAND EMPIRE UNITED WAY	26.00
28204	12/11/2019	PRINTED	114711	METROPOLITAN LIFE INSURANCE CO	51,008.29
28205	12/11/2019	PRINTED	736	UPLAND POLICE MANAGEMENT ASSN	1,183.00
28206	12/11/2019	PRINTED	737	UPLAND POLICE OFFICERS ASSN	4,620.00
28207	12/11/2019	PRINTED	82591	1-800 RADIATOR	129.30
28208	12/11/2019	PRINTED	7683	PATRICK VAN DUSEN	454.13
28209	12/11/2019	PRINTED	99181	ACCOUNTEMPS	586.52

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28210	12/11/2019	PRINTED	14	ACTION AWARDS	3,510.50
28211	12/11/2019	PRINTED	479	ALLIANCE BUILDING SOLUTIONS, INC	106,852.80
28212	12/11/2019	PRINTED	291	CARQUEST AUTO PARTS	956.38
28213	12/11/2019	PRINTED	448	CINTAS CORPORATION	660.00
28214	12/11/2019	PRINTED	475	CITY OF MONTCLAIR	706.69
28215	12/11/2019	PRINTED	163	CLINICAL LABORATORY OF SAN BERNARDINO, INC	400.00
28216	12/11/2019	PRINTED	122791	CODE 3 INC	301.32
28217	12/11/2019	PRINTED	652	COMMERCIAL TRANSPORTATION SERVICES, INC	1,170.00
28218	12/11/2019	PRINTED	4696	CUCAMONGA VALLEY WATER DISTRIC	88.20
28219	12/11/2019	PRINTED	450	D&K CONCRETE	654.05
28220	12/11/2019	PRINTED	39021	EH WACHS CO	2,074.20
28221	12/11/2019	PRINTED	97141	EUROFINS EATON ANALYTICAL INC	5,618.00
28222	12/11/2019	PRINTED	2435	EVERSOFT	637.50
28223	12/11/2019	PRINTED	10485	EXPERIAN	77.00
28224	12/11/2019	PRINTED	96251	FORD OF UPLAND	397.43
28225	12/11/2019	PRINTED	78	FRONTIER	45.83
28226	12/11/2019	PRINTED	78	FRONTIER	63.22
28227	12/11/2019	PRINTED	78	FRONTIER	1,220.00
28228	12/11/2019	PRINTED	16410	GEOGRAPHICS	22,988.74
28229	12/11/2019	PRINTED	167	GOLDSTAR ASPHALT PRODUCTS	81.89
28230	12/11/2019	PRINTED	16829	GOURMET GOURMET CATERING	2,269.84
28231	12/11/2019	PRINTED	290	GRAINGER	105.16
28232	12/11/2019	PRINTED	90227	HEARD'S INVESTIGATIONS AND POLYGRAPH, LLC	300.00
28233	12/11/2019	PRINTED	329	HOLIDAY ROCK CO INC	443.94
28234	12/11/2019	PRINTED	629	HONEYCOTT, INC	234.00
28235	12/11/2019	PRINTED	16340	INFOSEND INC	893.27
28236	12/11/2019	PRINTED	153	INLAND EMPIRE UTILITIES AGENCY	92,107.20
28237	12/11/2019	PRINTED	195	INLAND VALLEY DAILY BULLETIN	537.92
28238	12/11/2019	PRINTED	6703	INSTITUTE FOR ENVIRONMENTAL HEALTH, INC	432.86
28239	12/11/2019	PRINTED	4719	INTERSTATE BATTERIES	860.55
28240	12/11/2019	PRINTED	635	ISOTECH PEST MGMT	350.00
28241	12/11/2019	PRINTED	83731	J & G ADVERTISING SPECIALTIES	4,283.28
28242	12/11/2019	PRINTED	284	J G BAUTISTA CONSULTING	6,225.00
28243	12/11/2019	PRINTED	32791	J J KELLER & ASSOCIATES INC	51.97
28244	12/11/2019	PRINTED	9463	JB'S POOLS & PONDS, INC	180.59
28245	12/11/2019	PRINTED	48371	JEEP CHRYSLER OF ONTARIO	148.16
28246	12/11/2019	PRINTED	9970	JON'S FLAGS & POLES	2,305.03
28247	12/11/2019	PRINTED	80561	KEENAN & ASSOCIATES	6,144.33
28248	12/11/2019	PRINTED	583	KING FENCING	4,400.00
28249	12/11/2019	PRINTED	26101	KONICA MINOLTA	4,369.27
28250	12/11/2019	PRINTED	53241	KONICA MINOLTA BUSINESS SOLUTIONS	901.22
28251	12/11/2019	PRINTED	53781	LEAD TECH ENVIRONMENTAL	200.00
28252	12/11/2019	PRINTED	197	LOS ANGELES FREIGHTLINER	342.30
28253	12/11/2019	PRINTED	16385	MAIN STREET SIGNS	3,930.72
28254	12/11/2019	PRINTED	21341	MATT CHLOR INC	283.17
28255	12/11/2019	PRINTED	16233	MPOWER COMMUNICATIONS	233.37
28256	12/11/2019	PRINTED	473	MUNICIPAL MAINTENANCE EQUIPMENT INC	476,660.41
28257	12/11/2019	PRINTED	203	MV CHENG & ASSOCIATE	450.00
28258	12/11/2019	PRINTED	536	NEW RESOURCES GROUP	1,745.34
28259	12/11/2019	PRINTED	83491	NOBEL SYSTEMS	24,000.00
28260	12/11/2019	PRINTED	117121	NUCKLES OIL COMPANY INC	24,923.29
28261	12/11/2019	PRINTED	30971	OCCUPATIONAL HEALTH CENTERS	174.50

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28262	12/11/2019	PRINTED	6625	P F SERVICES INC	150.00
28263	12/11/2019	PRINTED	4509	PARKHOUSE TIRE INC	1,373.42
28264	12/11/2019	PRINTED	119	PRISTINE UNIFORMS LLC	1,551.48
28265	12/11/2019	PRINTED	769	REGIONAL GOVERNMENT SERVICES AUTHORITY	578.75
28266	12/11/2019	PRINTED	11671	SAN BERNARDINO COUNTY	1,644.91
28267	12/11/2019	PRINTED	18151	SENDLDORFER, TRACY	1,465.00
28268	12/11/2019	PRINTED	637	SMART & FINAL IRIS CO	373.46
28269	12/11/2019	PRINTED	99141	SONSRAY MACHINERY LLC	469.80
28270	12/11/2019	PRINTED	861	SOUTHWEST MOBILE STORAGE, INC	133.93
28271	12/11/2019	PRINTED	16607	STAPLES BUSINESS ADVANTAGE	894.87
28272	12/11/2019	PRINTED	21671	TIME WARNER CABLE	92.27
28273	12/11/2019	PRINTED	21671	TIME WARNER CABLE	119.98
28274	12/11/2019	PRINTED	21671	TIME WARNER CABLE	129.98
28275	12/11/2019	PRINTED	21671	TIME WARNER CABLE	702.34
28276	12/11/2019	PRINTED	62321	U.S. TELEPACIFIC CORP	2,826.75
28277	12/11/2019	PRINTED	125411	TYLER TECHNOLOGIES INC	150.00
28278	12/11/2019	PRINTED	11484	U S BANK	1,750.00
28279	12/11/2019	PRINTED	67311	UNDERCAR PLUS UPLAND	200.78
28280	12/11/2019	PRINTED	133941	VERIZON	347.06
28281	12/11/2019	PRINTED	14735	VERIZON WIRELESS	35.15
28282	12/11/2019	PRINTED	14735	VERIZON WIRELESS	38.01
28283	12/11/2019	PRINTED	14735	VERIZON WIRELESS	38.01
28284	12/11/2019	PRINTED	14735	VERIZON WIRELESS	78.45
28285	12/11/2019	PRINTED	14735	VERIZON WIRELESS	114.09
28286	12/11/2019	PRINTED	14735	VERIZON WIRELESS	152.04
28287	12/11/2019	PRINTED	14735	VERIZON WIRELESS	211.68
28288	12/11/2019	PRINTED	14735	VERIZON WIRELESS	266.07
28289	12/11/2019	PRINTED	14735	VERIZON WIRELESS	433.78
28290	12/11/2019	PRINTED	14735	VERIZON WIRELESS	438.86
28291	12/11/2019	PRINTED	14735	VERIZON WIRELESS	545.65
28292	12/11/2019	PRINTED	857	WATERLINE TECHNOLOGIES, INC	359.89
28293	12/11/2019	PRINTED	1725	WEST COAST ARBORISTS INC	3,080.00
28294	12/11/2019	PRINTED	728	WEST CONSULTING	2,969.00
28295	12/11/2019	PRINTED	999999	LI QIN LIN	1,828.00
28296	12/11/2019	PRINTED	999999	ROCHELLE NUNEZ-RODRIGUEZ	126.00
28297	12/11/2019	PRINTED	999999	SANDRA MONSON	72.87
28298	12/18/2019	PRINTED	86261	ADORAMA	48.50
28299	12/18/2019	PRINTED	3	AIRGAS USA LLC	1,585.73
28300	12/18/2019	PRINTED	884	ANYPROMO INC	2,990.81
28301	12/18/2019	PRINTED	82	BISHOP CO	606.90
28302	12/18/2019	PRINTED	819	BRINKS, INC	654.18
28303	12/18/2019	PRINTED	5944	BURRTEC WASTE INDUSTRIES	1,504,308.14
28304	12/18/2019	PRINTED	325	CALIFORNIA ASSOCIATION OF CODE ENFORCEMENT	95.00
28305	12/18/2019	PRINTED	325	CALIFORNIA ASSOCIATION OF CODE ENFORCEMENT	95.00
28306	12/18/2019	PRINTED	83401	CARL WARREN & CO	3,862.60
28307	12/18/2019	PRINTED	291	CARQUEST AUTO PARTS	86.44
28308	12/18/2019	PRINTED	12511	CCSINTERACTIVE	125.00
28309	12/18/2019	PRINTED	14547	CHAVEZ, ELIZABETH	86.18
28310	12/18/2019	PRINTED	82791	CHEM PRO LABORATORY INC	298.00
28311	12/18/2019	PRINTED	1877	FRANCISCO MONRREAL	220.88
28312	12/18/2019	PRINTED	122791	CODE 3 INC	442.99
28313	12/18/2019	PRINTED	652	COMMERCIAL TRANSPORTATION SERVICES, INC	973.44

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28314	12/18/2019	PRINTED	366	CRAFCO INC	419.10
28315	12/18/2019	PRINTED	124	DEPARTMENT OF JUSTICE	703.00
28316	12/18/2019	PRINTED	4402	VARGAS, LUPE B	180.00
28317	12/18/2019	PRINTED	96251	FORD OF UPLAND	397.43
28318	12/18/2019	PRINTED	78	FRONTIER	575.81
28319	12/18/2019	PRINTED	167	GOLDSTAR ASPHALT PRODUCTS	253.21
28320	12/18/2019	PRINTED	16687	GOOD FAITH LIEN SVCS INC	237.00
28321	12/18/2019	PRINTED	290	GRAINGER	400.98
28322	12/18/2019	PRINTED	629	HONEYCOTT, INC	195.00
28323	12/18/2019	PRINTED	4495	HOSE-MAN INC	326.16
28324	12/18/2019	PRINTED	451	HUB CONSTRUCTION	440.48
28325	12/18/2019	PRINTED	195	INLAND VALLEY DAILY BULLETIN	2,689.60
28326	12/18/2019	PRINTED	785	INSTRUMENT & VALVE SERVICES COMPANY	1,015.29
28327	12/18/2019	PRINTED	106951	INTEGRATED TECHNOLOGY	1,149.58
28328	12/18/2019	PRINTED	53241	KONICA MINOLTA BUSINESS SOLUTIONS	4,597.59
28329	12/18/2019	PRINTED	53781	LEAD TECH ENVIRONMENTAL	1,300.00
28330	12/18/2019	PRINTED	469	LONDA BOCK-HELMS	188.21
28331	12/18/2019	PRINTED	903	MCC CARPET CLEANING INC	1,409.76
28332	12/18/2019	PRINTED	5109	MR KEYS-AABOC-JACKS	39.49
28333	12/18/2019	PRINTED	7816	MR T'S TOWING INC	1,950.00
28334	12/18/2019	PRINTED	16877	NEXTDAY DELIVERY SERVICE, LLC	208.24
28335	12/18/2019	PRINTED	30971	OCCUPATIONAL HEALTH CENTERS	44.50
28336	12/18/2019	PRINTED	64331	PACIFIC TELEMANAGEMENT SERVICE	60.00
28337	12/18/2019	PRINTED	4509	PARKHOUSE TIRE INC	2,220.28
28338	12/18/2019	PRINTED	612	RIDE ON POWEPWERSPORTS, INC	2,068.58
28339	12/18/2019	PRINTED	18941	ROBLES, JOHN	431.50
28340	12/18/2019	PRINTED	90591	S & J SUPPLY CO INC	183.18
28341	12/18/2019	PRINTED	3662	SAFETY-KLEEN SYSTEMS, INC	198.93
28342	12/18/2019	PRINTED	18062	SOFFA ELECTRIC INC	585.00
28343	12/18/2019	PRINTED	4640	DS SERVICES OF AMERICA INC	55.54
28344	12/18/2019	PRINTED	16607	STAPLES BUSINESS ADVANTAGE	775.02
28345	12/18/2019	PRINTED	211	STATEWIDE TRAFFIC SAFETY AND SIGNS INC	2,148.35
28346	12/18/2019	PRINTED	93351	STEVE'S FIVE STAR SERVICE INC	295.00
28347	12/18/2019	PRINTED	417	E&S TOWING ENTERPRISES, INC	2,850.00
28348	12/18/2019	PRINTED	2439	T K E ENGINEERING INC	23,747.50
28349	12/18/2019	PRINTED	18181	TIERRA WEST ADVISORS LLC	14,936.67
28350	12/18/2019	PRINTED	67311	UNDERCAR PLUS UPLAND	191.55
28351	12/18/2019	PRINTED	14735	VERIZON WIRELESS	1,222.92
28352	12/18/2019	PRINTED	14735	VERIZON WIRELESS	1,809.44
28353	12/18/2019	PRINTED	14735	VERIZON WIRELESS	3,227.79
28354	12/18/2019	PRINTED	48531	WALKERS AIR BRAKES	16.16
28355	12/18/2019	PRINTED	392	WAXIE SANITARY SUPPLY	1,516.34
28356	12/18/2019	PRINTED	1725	WEST COAST ARBORISTS INC	30,838.00
28357	12/18/2019	PRINTED	97071	WEST VALLEY MRF	4,556.57
28358	12/18/2019	PRINTED	83021	ZEP SALES & SERVICE	218.83
28359	12/18/2019	PRINTED	999999	LENNAR HOMES OF CA	466.86
28360	12/18/2019	PRINTED	999999	MARIA LUCANERA	167.95
28361	12/18/2019	PRINTED	999999	TAYLOR MORRISON	969.28
28362	12/18/2019	PRINTED	999999	BERNIE MOORMAN	33.44
28363	12/18/2019	PRINTED	999999	CHAOHUNG ALBERT CHEN	71.18
28364	12/18/2019	PRINTED	999999	DAVID KIM	64.15
28365	12/18/2019	PRINTED	999999	GARRETT ROCHE	125.16

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28366	12/18/2019	PRINTED	999999	JSMAJ INC	5.40
28367	12/18/2019	PRINTED	999999	MAHESH AYYALASOMAYAJULA	83.29
28368	12/18/2019	PRINTED	999999	MARIA DURAN	63.69
28369	12/18/2019	PRINTED	999999	MARIO SOSA	11,355.75
28371	12/18/2019	PRINTED	999999	MERITAGE HOMES	12,000.00
28372	12/18/2019	PRINTED	999999	MILLIE AND SEVERSON	640.00
28373	12/18/2019	PRINTED	999999	RAY SMILEY	143.37
28374	12/18/2019	PRINTED	999999	ROBERT WOOD	67.06
28375	12/18/2019	PRINTED	999999	TZU-ANG CHOW	83.84
28376	12/18/2019	PRINTED	999999	WAN H SUNG	76.93
28377	12/18/2019	PRINTED	999999	XIN CHENG	127.77
28378	12/18/2019	PRINTED	999999	YANG BO	133.61
28379	12/18/2019	PRINTED	999999	YU FAMILY TRUST	274.93
28380	12/18/2019	PRINTED	999999	MARIO SOSA	34,000.00
28381	12/25/2019	PRINTED	125761	CITY EMPLOYEE ASSOCIATES	299.00
28382	12/25/2019	PRINTED	99418	FRANCHISE TAX BOARD	100.00
28383	12/25/2019	PRINTED	295	INLAND EMPIRE UNITED WAY	26.00
28384	12/25/2019	PRINTED	736	UPLAND POLICE MANAGEMENT ASSN	1,183.00
28385	12/25/2019	PRINTED	737	UPLAND POLICE OFFICERS ASSN	4,539.00
28386	12/25/2019	PRINTED	99181	ACCOUNTEMPS	693.16
28387	12/25/2019	PRINTED	14	ACTION AWARDS	81.58
28388	12/25/2019	PRINTED	462	AMERIGAS	482.81
28389	12/25/2019	PRINTED	131971	ANNEALTA GROUP	7,650.00
28390	12/25/2019	PRINTED	6683	ATMAA INC	2,720.00
28391	12/25/2019	PRINTED	905	GOVERNMENT REVENUE SOLUTIONS HOLDINGS I, LLC	500.00
28392	12/25/2019	PRINTED	291	CARQUEST AUTO PARTS	411.50
28393	12/25/2019	PRINTED	4456	FEDERAL EXPRESS	13.88
28394	12/25/2019	PRINTED	96251	FORD OF UPLAND	38.44
28395	12/25/2019	PRINTED	129941	GENTRY GENERAL ENGINEERING INC	27,804.00
28396	12/25/2019	PRINTED	3231	HINDERLITER, DE LLAMAS & ASSOCIATES	6,584.25
28397	12/25/2019	PRINTED	329	HOLLIDAY ROCK CO INC	280.16
28398	12/25/2019	PRINTED	16340	INFOSEND INC	300.00
28399	12/25/2019	PRINTED	195	INLAND VALLEY DAILY BULLETIN	2,954.88
28400	12/25/2019	PRINTED	899	INTERNATIONAL CODE COUNCIL, INC	2,532.86
28401	12/25/2019	PRINTED	91491	LIBRARY SYSTEMS & SERVICES LLC	7,327.89
28402	12/25/2019	PRINTED	824	MK CONSULTING	1,759.96
28403	12/25/2019	PRINTED	7734	OFFICE DEPOT	20.30
28404	12/25/2019	PRINTED	805	R3 CONSULTING GROUP	1,618.75
28405	12/25/2019	PRINTED	10638	RICHARDS, WATSON & GERSHON	6,960.30
28406	12/25/2019	PRINTED	601	SAN ANTONIO WATER CO	229,079.32
28407	12/25/2019	PRINTED	4974	SAN BERNARDINO ASSOCIATED GOVT	9,960.00
28408	12/25/2019	PRINTED	16607	STAPLES BUSINESS ADVANTAGE	65.56
28409	12/25/2019	PRINTED	3557	UNDERGROUND SERVICE ALERT	578.77
28410	12/25/2019	PRINTED	760	WATER FACILITIES AUTHORITY	306,473.89
28411	12/25/2019	PRINTED	766	WEST END CONSOLIDATED WATER CO	30,964.17
28412	12/25/2019	PRINTED	999999	ANDREW FEOLA	100.00
28413	12/25/2019	PRINTED	999999	GEORGE DEPADEE	100.00
28414	12/25/2019	PRINTED	999999	KEITH CUMMINGS	100.00
120319001	12/03/2019	MANUAL	43651	U S BANK NATIONAL ASSN	34,256.51
120319002	12/03/2019	MANUAL	543	SOUTHERN CALIF GAS COMPANY	1,743.44
120319003	12/03/2019	MANUAL	32091	SOUTHERN CALIF EDISON CO	107,889.24
120419001	12/04/2019	MANUAL	116231	NEOPOST USA INC	5,000.00

**City of Upland**  
**Accounts Payable Check Reconciliation Register**  
**12/01/19-12/31/19**

Check Number	Check Date	Check Type	Vendor Number	Vendor Name	Amount
120519000	12/05/2019	MANUAL	132551	AMERICAN FIDELITY ASSURANCE	989.55
120519001	12/05/2019	MANUAL	132551	AMERICAN FIDELITY ASSURANCE	1,006.58
120519002	12/05/2019	MANUAL	618	ICMA-RC	2,272.91
120519003	12/05/2019	MANUAL	621	KAREN LONG	672.00
120519004	12/05/2019	MANUAL	441	MIDAMERICA ADMIN & RETIREMENT SOLUTIONS, LLC	1,451.20
120519005	12/05/2019	MANUAL	622	UPLAND CITY EMPLOYEE ASSOCIATION	940.00
120519006	12/05/2019	MANUAL	91491	LIBRARY SYSTEMS & SERVICES LLC	103,518.00
120619000	12/06/2019	MANUAL	65181	CALPERS	149,317.49
120619001	12/06/2019	MANUAL	624	DEPT OF THE TREASURY	550.00
120619002	12/06/2019	MANUAL	733	MASSACHUSETTS MUTUAL LIFE INSURANCE CO.	52,581.51
120619003	12/06/2019	MANUAL	83401	CARL WARREN & CO	24,094.46
120619004	12/06/2019	MANUAL	80561	KEENAN & ASSOCIATES	153,540.17
121019001	12/10/2019	MANUAL	32091	SOUTHERN CALIF EDISON CO	14,647.69
121119001	12/11/2019	MANUAL	153	INLAND EMPIRE UTILITIES AGENCY	525,315.00
121819001	12/18/2019	MANUAL	32091	SOUTHERN CALIF EDISON CO	71,189.53
121919000	12/19/2019	MANUAL	132551	AMERICAN FIDELITY ASSURANCE	4,551.85
121919001	12/19/2019	MANUAL	80561	KEENAN & ASSOCIATES	93,306.00
121919002	12/19/2019	MANUAL	621	KAREN LONG	672.00
121919003	12/19/2019	MANUAL	441	MIDAMERICA ADMIN & RETIREMENT SOLUTIONS, LLC	1,695.69
121919004	12/19/2019	MANUAL	622	UPLAND CITY EMPLOYEE ASSOCIATION	940.00
121919005	12/19/2019	MANUAL	618	ICMA-RC	2,285.41
122019000	12/20/2019	MANUAL	624	DEPT OF THE TREASURY	350.00
122019001	12/20/2019	MANUAL	441	MIDAMERICA ADMIN & RETIREMENT SOLUTIONS, LLC	24,508.91
122319000	12/23/2019	MANUAL	65181	CALPERS	141,422.18
122319001	12/23/2019	MANUAL	80561	KEENAN & ASSOCIATES	95,446.60
122319002	12/23/2019	MANUAL	733	MASSACHUSETTS MUTUAL LIFE INSURANCE CO.	59,193.32
122619001	12/26/2019	MANUAL	69831	COUNTY OF SAN BERNARDINO PUBLIC HEALTH,	6,574.00
123019000	12/30/2019	MANUAL	733	MASSACHUSETTS MUTUAL LIFE INSURANCE CO.	450.00
<b>Report Total</b>					<b>\$ 5,115,129.65</b>



# STAFF REPORT

**ITEM NO. 11.C.**

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**DATE:** January 13, 2020  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING INTERIM CITY MANAGER  
**PREPARED BY:** LONDA BOCK-HELMS CPA, ACTING ADMINISTRATIVE SERVICES DIRECTOR  
**SUBJECT:** TREASURY REPORT NOVEMBER 2019

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## **RECOMMENDED ACTION**

It is recommended that the City Council receive and file the November 2019 Treasury Report.

## **GOAL STATEMENT**

The proposed action supports the City's goal to manage the City's resources in a fiscally responsible manner.

## **BACKGROUND**

Per California Government Code Section 53646(b), the City's treasurer or fiscal officer shall render a treasury report to the City Council (at a minimum) on a quarterly basis. This report shall include the type of investment, issuer, date of maturity, par, and dollar amount invested on all securities, current market value as of the date of the report, investments and monies held by the local agency, and shall additionally include a description of any of the local agency's funds, investments, or programs, that are under the management of contracted parties, including lending programs. The report shall state compliance to the City's investment policy (approved June 10, 2019) and shall include a statement noting the City's ability to meet its expenditure requirements for the next six months.

## **ISSUES/ANALYSIS**

The submission of the monthly Treasury Report is a compliance measure.

## **FISCAL IMPACTS**

There is no fiscal impact associated with this action.

**ALTERNATIVES**

Provide alternative direction to staff.

**ATTACHMENTS:**

**Treasury Report November 2019**

**TREASURY REPORT**

City of Upland - Successor Agency - Public Financing Authority

**For Period Ended  
November 30, 2019**

Investment Portfolio	Cost	Par Value	Market Value	% of Portfolio
State Local Agency Investment Fund	\$ 21,590,037	N/A	\$ 21,749,903	23.6%
Bank Accounts and Change Funds	10,002,482	N/A	10,002,482	10.9%
ABS-Corporate Paydown Securities	-	N/A	-	0.0%
Money Market Fund	7,277,285	N/A	7,277,285	7.9%
Government Agency Securities	39,329,927	39,355,000	39,335,755	42.9%
Corporate Bonds	12,584,553	12,593,000	12,734,640	13.9%
US Treasury	602,322	600,000	599,502	0.7%
<b>Total Cash and Investments</b>	<b>\$ 91,386,605</b>	<b>\$ 52,548,000</b>	<b>\$ 91,699,567</b>	<b>100.0%</b>

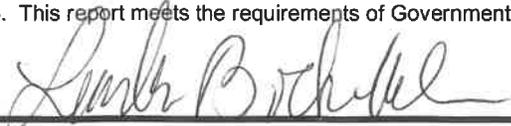
PARS Investment Portfolio	Cost	Market Value	% of Portfolio
115 Trust-OPEB Investment as of 11/30/19	1,162,627	1,162,627	14.4%
Pension Trust Investment as of 11/30/19	6,916,404	6,916,404	85.6%
<b>Total Cash and Investments</b>	<b>\$ 8,079,031</b>	<b>\$ 8,079,031</b>	<b>100.0%</b>

<b>Weighted Average Days to Maturity</b>	602.70
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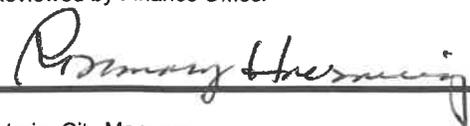
<b>Blended Yield:</b>	2.130%
<b>Benchmarks:</b>	
LAIF	2.103%
2yr U.S. Treasury	1.610%
5yr U.S. Treasury	1.620%

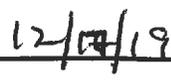
Restricted Funds with Fiscal Agent	Book Value	Market Value
Water System Lease Revenue Refunding Bonds 2011	14	14
Colonies CFD Area #2 2015	1,733,220	1,733,220
Colonies CFD Area #1 2012	2,386,272	2,386,272
Upland 54 CFD 2004	201,306	201,306
Successor Agency TAN 2013 / TAN 2016- Merged Project	2,458,811	2,458,811
Harvest at Upland CFD 2016-1	8,259,484	8,259,484
Sycamore Hills CFD 2015-1	8,807,839	8,807,839
<b>Total Restricted Funds</b>	<b>\$ 23,846,946</b>	<b>\$ 23,846,946</b>

- I hereby certify that the investments are in compliance with the investment policy adopted by the City Council in June 2018.
- The City has the ability to meet its budgeted expenditures for the next six months.
- The market values for funds held in banking institutions do not change. The amounts listed as market values for these items are the same as their book values.
- The book value for the State Pool is the withdrawal value provided by the State Treasurer. The market value of funds held by the State Treasurer equates to the City's pro-rata share of the market value of the entire State Pool.
- Sources for current market valuation are Account Statements and the Wall Street Journal GNMA Mortgage rates on the last trading day of the month.
- This report meets the requirements of Government Code Section 53646.

  
\_\_\_\_\_  
Reviewed by Finance Officer

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Interim City Manager

  
\_\_\_\_\_  
Date

**TREASURY REPORT**

City of Upland - Successor Agency - Public Financing Authority

**State Local Agency Investment Fund**

**For Period Ended  
November 30, 2019**

<u>Fund or Account</u>		<u>Account Balance</u>	
City	95-36-642	21,590,037	
			<b>Market Value (See Note 4)</b>
	<b>Totals</b>	<b>\$ 21,590,037</b>	<b>\$ 21,749,903</b>
<b>Yield for Period Ended</b>	<b>11/30/2019</b>	<b>2.103%</b>	

## TREASURY REPORT

City of Upland - Successor Agency - Public Financing Authority

### Bank Accounts and Change Funds

For Period Ended  
November 30, 2019

Account Name	Institution	Insured Deposits	Collateralized Deposits	Total Deposits
Petty Cash City of Upland	City of Upland	\$ -	\$ 11,400	\$ 11,400
City of Upland Payroll Zero Balance Account	Chase	-	-	-
City of Upland Checking Account	Chase	250,000	9,475,606	9,725,606
City of Upland Successor Agency	Chase	-	265,476	265,476
	<b>Totals</b>	<b>\$ 250,000</b>	<b>\$ 9,752,482</b>	<b>\$ 10,002,482</b>

**TREASURY REPORT**  
City of Upland - Successor Agency - Public Financing Authority  
**For Period Ended**  
**November 30, 2019**

Investment	Purchased From	Cusip #	Cost	Market Value	Stated Rate	Maturity Date
<b><u>Government Securities</u></b>						
FHLB	Wells Fargo Sec LLC	3130A0JR2	205,698	200,042	2.375%	12/13/2019
FHLB	Wells Fargo Sec LLC	3130A7PU3	199,088	199,708	1.200%	4/6/2020
FFCB	Wells Fargo Sec LLC	3133ECPD0	204,100	204,770	1.420%	5/13/2020
FHLB	Federal Home Loan Bks	313382J53	1,508,501	1,500,975	1.750%	9/28/2020
FNMA	Deutsche Bank Sec Intl	3135G0RM7	1,499,295	1,498,590	1.630%	10/30/2020
FNMA	Deutsche Bank Sec Intl	3135G0F73	1,492,515	1,497,315	1.500%	11/30/2020
FFCB	Federal Farm Credit Bks	3133EHYU1	1,236,313	1,250,000	1.840%	9/13/2021
FNMA	Deutsche Bank Sec Intl	3135G0Q89	1,481,400	1,492,905	1.375%	10/7/2021
FFCB	Federal Farm Credit Bks	3133EFPT8	2,020,180	2,011,040	1.960%	11/19/2021
FHLB	Federal Home Loan Bks	3130AGCU7	1,500,000	1,504,215	2.550%	5/6/2022
FFCB	Federal Farm Credit Bks	3133EKMN3	1,000,000	1,001,560	2.430%	6/3/2022
FHLMC	Federal Home LN Corp	3134GTSD6	1,500,000	1,500,030	2.500%	6/6/2022
FFCB	Federal Farm Credit Bks	3133EKVP8	3,000,000	3,003,090	2.110%	7/22/2022
FFCB	Federal Farm Credit Bks	3133EHYB3	1,232,838	1,250,013	1.940%	9/12/2022
FHLMC	Morgan Stanley & Co	3134GTKX0	2,000,000	2,002,020	2.780%	10/30/2023
FHLMC	Morgan Stanley & Co	3134GTDW0	2,000,000	2,005,500	2.750%	4/30/2024
FHLMC	Federal Home LN Corp MTN	3134GUPX2	1,500,000	1,500,315	2.000%	5/15/2024
FHLMC	Federal Home LN Corp	3134GTRZ8	2,000,000	2,000,080	2.650%	6/4/2024
FHLB	Federal Home Loan Bks	3130AGKB0	2,500,000	2,505,750	2.550%	6/5/2024
FHLMC	Federal Home LN Corp	3134GTRK1	1,000,000	1,001,850	2.550%	6/17/2024
FHLMC	Federal Home LN Corp	3134GTP56	1,500,000	1,501,110	2.300%	7/30/2024
FHLMC	Federal Home LN Corp	3134GTP98	1,500,000	1,500,420	2.400%	7/30/2024
FFCB	Federal Farm Credit Bks	3133EKZN9	1,500,000	1,484,565	2.060%	8/13/2024
FHLMC	Federal Home LN Corp	3134GUBY5	1,500,000	1,495,785	2.000%	9/18/2024
FHLB	Federal Home Loan Bks	3130AH7F4	1,250,000	1,232,988	2.000%	10/2/2024
FHLMC	Federal Home LN Corp MTN	3134GUPK0	1,500,000	1,493,355	2.000%	11/12/2024
FHLMC	Federal Home LN Corp MTN	3134GUTJ9	1,500,000	1,497,765	2.050%	11/25/2024
<b>Government Securities Subtotal</b>			<b>39,329,927</b>	<b>39,335,755</b>		
<b><u>Money Market Fund</u></b>						
City of Upland						
	US Bank	31846V203	7,277,285	7,277,285	0.93%	N/A
<b>Money Market Fund Subtotal</b>			<b>7,277,285</b>	<b>7,277,285</b>		
<b><u>Corporate Bonds</u></b>						
	Wex Bank Midvale CD	92937CHF8	250,000	250,095	2.550%	12/13/2019
	Bank of China CD	06428FMD6	250,000	250,058	1.950%	12/20/2019
	Bank Baroda New CD	06063HBF9	250,000	250,235	2.800%	12/27/2019
	Customers Bank CD	23204HHM3	250,000	250,085	1.950%	12/30/2019
	The Fahey CD	303117CQ6	250,000	250,275	2.500%	1/10/2020
	Union Bank CD	90520VAG8	250,000	250,363	2.650%	1/16/2020
	Merrick Bank CD	59013J5A3	250,000	250,413	2.700%	1/21/2020
	Radius Bank CD	75047ABK9	250,000	250,180	2.000%	1/29/2020
	Town and Country CD	89210PBZ5	250,000	250,185	2.000%	1/30/2020
	Valley N B CD	919853BX8	250,000	250,545	2.700%	2/7/2020
	Iberia Bank CD	45083ALH3	250,000	250,785	2.800%	3/2/2020
	Compass BK CD	20451PWE2	250,000	250,803	2.800%	3/4/2020
	Bank of OZK C D	06417NGZ0	250,000	250,875	2.350%	4/9/2020
	United Bankers CD	909557HZ6	250,000	251,460	2.850%	5/19/2020
	Brookline Bank CD	11373QFU7	250,000	251,608	2.900%	5/29/2020
	First Financial CD	32021SFP6	250,000	251,850	2.900%	6/26/2020
	Ally Bank Midvale Utah	02007GDM2	250,875	251,660	2.750%	6/29/2020

**TREASURY REPORT**  
City of Upland - Successor Agency - Public Financing Authority  
**For Period Ended**  
**November 30, 2019**

Investment	Purchased From	Cusip #	Cost	Market Value	Stated Rate	Maturity Date
TCF National Bank CD		87227RCN2	250,000	251,473	2.600%	7/2/2020
Wells Fargo Bank CD		949763SP2	249,873	251,985	2.800%	7/27/2020
Bank Pontiac ILL C D		064455AM0	250,000	251,343	2.350%	8/14/2020
State Street Bank Note		857477AS2	103,593	100,467	2.550%	8/18/2020
Bank of Hope CD		062683BX4	250,000	252,393	2.800%	9/14/2020
Comenity CAP BK CD		20033AXY7	250,000	250,935	2.000%	10/23/2020
First Internet CD		32056GDD9	250,000	253,780	3.000%	12/28/2020
JP Morgan Chase CD		48128F4V1	250,000	250,313	3.000%	1/8/2021
Live Oak CD		538036DX9	250,000	254,135	3.000%	2/9/2021
Eagle Bank CD		27002YDY9	250,000	253,910	2.800%	3/8/2021
CitiBank NA CD		17312QH93	250,000	253,820	2.750%	4/12/2021
Capital One NA CD		14042RFV8	246,218	251,083	2.250%	5/24/2021
B Bay LLC Promissory Notebal		05580ANK6	250,000	255,388	3.000%	7/13/2021
Capital One Bank CD		14042TBG1	250,000	251,830	2.100%	8/2/2021
Abacus Federal CD		00257TBA3	250,000	255,330	2.900%	8/31/2021
First Fid Bank C D		32024FAB7	250,000	255,208	2.850%	9/14/2021
Wells Fargo Bank CD		949763LT1	250,000	252,755	2.250%	12/8/2021
Synchorony Bank CD		87164WYK8	250,000	255,405	2.700%	3/8/2022
Sterling Bank CD		85916VCW3	250,000	257,653	3.100%	3/9/2022
Morgan Stanley CD		61690UFC9	250,000	255,993	2.800%	3/14/2022
American CD		02587DN38	249,675	249,173	2.400%	4/5/2022
First Northeast CD		33583FAB8	239,570	248,492	2.000%	4/19/2022
Old Missouri CD		68002LBL1	250,000	258,053	3.100%	5/5/2022
American Express CD		02587CFU9	250,000	253,093	2.400%	8/29/2022
BMO Harris CD		05581WN35	250,000	250,113	2.850%	9/14/2022
Cross Riv Bank C D		227563BJ1	250,000	250,275	1.850%	11/7/2022
Flagstar Bank FSB CD		33847E2V8	250,000	249,898	1.800%	11/15/2022
Apple Inc		037833DE7	494,750	507,365	2.400%	1/13/2023
Goldman Sachs CD		38148PYQ4	250,000	257,745	2.800%	2/28/2023
Sallie Mae Bank Salt Lke		795450P66	250,000	261,565	3.200%	5/9/2023
Discover Bank Greenwood Del CD		254673RF5	250,000	263,015	3.300%	7/11/2023
Morgan Stanley C D		61760AZR3	250,000	259,330	2.750%	5/2/2024
Jonesboro St Bank C D		48040PFB6	250,000	250,058	2.050%	9/16/2024
<b>Corporate Bonds Subtotal</b>			<b>12,584,553</b>	<b>12,734,640</b>		
<b>US Treasury</b>						
US T-note	Barclays Capital Inc	912828G61	199,188	200,000	1.500%	11/30/2019
US T-note	Citigroup Global Mkt Inc	912828H52	202,258	199,862	1.250%	1/31/2020
US T-note	Morgan Stanley	912828UV0	200,876	199,640	1.125%	3/31/2020
<b>US Treasury Subtotal</b>			<b>602,322</b>	<b>599,502</b>		
<b>Total Portfolio</b>			<b>\$ 59,794,089</b>	<b>\$ 59,947,183</b>		

**TREASURY REPORT**

City of Upland - Successor Agency - Public Financing Authority

	Market Value	Availability 11/30/19 12/01/19	No. of days until maturity	weight	days to maturity weighted average	Total by maturity	
<b>November 30, 2019</b>							
Petty Cash	11,400	12/01/19	1	0.0%	0.00		
Checking Account	9,725,606	12/01/19	1	10.6%	0.11		
Successor Agency	265,476	12/01/19	1	0.3%	0.00	10,002,482	
<b>Total Bank Accounts</b>	<b>10,002,482</b>						
<b>State Local Agency Investment Fund</b>	<b>21,749,903</b>	12/01/19	1	23.7%	0.24	21,749,903	
US Bank	7,277,285	12/01/19	1	7.9%	0.08	7,277,285	
<b>Total Money Market Accounts</b>	<b>7,277,285</b>						
Wells Fargo Sec LLC	200,042	12/13/19	13	0.2%	0.03	200,042	
<b>Government Securities</b>	<b>200,042</b>						
Wex Bank Midvale CD	250,095	12/13/19	13	0.3%	0.04		
Bank of China CD	250,058	12/20/19	20	0.3%	0.05		
Bank Baroda New CD	250,235	12/27/19	27	0.3%	0.07	750,388	
<b>Corporate Bonds</b>	<b>750,388</b>						
Barclays Capital Inc	200,000	11/30/19	-	0.2%	-	200,000	
<b>US Treasury</b>	<b>200,000</b>						
						<b>40,180,100</b>	<b>1 - 30 days</b>
The Fahey CD	250,275	01/10/20	41	0.3%	0.11		
Union Bank CD	250,363	01/16/20	47	0.3%	0.13		
Merrick Bank CD	250,413	01/21/20	52	0.3%	0.14		
Radius Bank CD	250,180	01/29/20	60	0.3%	0.16		
Customers Bank CD	250,085	12/30/19	30	0.3%	0.08	1,251,315	
<b>Corporate Bonds</b>	<b>1,251,315</b>						
						<b>1,251,315</b>	<b>31 - 60 days</b>
Town and Country CD	250,185	01/30/20	61	0.3%	0.17		
Valley N B CD	250,545	02/07/20	69	0.3%	0.19		
Iberia Bank CD	250,785	03/02/20	93	0.3%	0.25		
Compass BK CD	250,803	03/04/20	95	0.3%	0.26	1,002,318	
<b>Corporate Bonds</b>	<b>1,002,318</b>						
Citigroup Global Mkt Inc	199,862	01/31/20	62	0.2%	0.14	199,862	
<b>US Treasury</b>	<b>199,862</b>						
						<b>1,202,180</b>	<b>61 - 120 days</b>
Wells Fargo Sec LLC	199,708	04/06/20	128	0.2%	0.28		
Wells Fargo Sec LLC	204,770	05/13/20	165	0.2%	0.37	404,478	
<b>Government Securities</b>	<b>404,478</b>						
Bank of OZK C D	250,675	04/09/20	131	0.3%	0.36		
United Bankers CD	251,460	05/19/20	171	0.3%	0.47	502,135	
<b>Corporate Bonds</b>	<b>502,135</b>						
Morgan Stanley	199,640	03/31/20	122	0.2%	0.27	199,640	
<b>US Treasury</b>	<b>199,640</b>						
						<b>1,106,253</b>	<b>121 - 180 days</b>
Federal Home Loan Bks	1,500,975	09/28/20	303	1.6%	4.96		
Deutsche Bank Sec Intl	1,498,590	10/30/20	335	1.6%	5.47	2,999,565	
<b>Government Securities</b>	<b>2,999,565</b>						
Brookline Bank CD	251,608	05/29/20	181	0.3%	0.50		
First Financial CD	251,850	06/26/20	209	0.3%	0.57		
Ally Bank Midvale Utah	251,660	06/29/20	212	0.3%	0.58		
TCF National Bank CD	251,473	07/02/20	215	0.3%	0.59		
Wells Fargo Bank CD	251,985	07/27/20	240	0.3%	0.66		
Bank Pontiac ILL C D	251,343	08/14/20	258	0.3%	0.71		
State Street Bank Note	100,467	08/18/20	262	0.1%	0.29		
Bank of Hope CD	252,393	09/14/20	289	0.3%	0.80		
Comenity CAP BK CD	250,935	10/23/20	328	0.3%	0.90	2,113,712	
<b>Corporate Bonds</b>	<b>2,113,712</b>						
						<b>5,113,277</b>	<b>181 - 1 year</b>

**TREASURY REPORT**

City of Upland - Successor Agency - Public Financing Authority

	Market Value	Availability 11/30/19 12/01/19	No. of days until maturity	weight	days to maturity  weighted average	Total by maturity	
<b>November 30, 2019</b>							
Deutsche Bank Sec Intl	1,497,315	11/30/20	366	1.6%	5.98		
Federal Farm Credit Bks	1,250,000	09/13/21	653	1.4%	8.90		
Deutsche Bank Sec Intl	1,492,905	10/07/21	677	1.6%	11.02		
Federal Farm Credit Bks	2,011,040	11/19/21	720	2.2%	15.79	6,251,260	
<b>Government Securities</b>	<b>6,251,260</b>						
First Internet CD	253,780	12/28/20	394	0.3%	1.09		
JP Morgan Chase CD	250,313	01/08/21	405	0.3%	1.11		
Live Oak CD	254,135	02/09/21	437	0.3%	1.21		
Eagle Bank CD	253,910	03/08/21	464	0.3%	1.28		
CitiBank NA CD	253,820	04/12/21	499	0.3%	1.38		
Capital One NA CD	251,083	05/24/21	541	0.3%	1.48		
B Bay LLC Promissory Notebal	255,388	07/13/21	591	0.3%	1.65		
Capital One Bank CD	251,830	08/02/21	611	0.3%	1.68		
First Fid Bank C D	255,208	09/14/21	654	0.3%	1.82		
Abacus Federal CD	255,330	08/31/21	640	0.3%	1.78	2,534,795	
<b>Corporate Bonds</b>	<b>2,534,795</b>						
						<b>8,786,055</b>	<b>1- 2 years</b>
Federal Home Loan Bks	1,504,215	05/06/22	888	1.6%	14.57		
Federal Farm Credit Bks	1,001,560	06/03/22	916	1.1%	10.00		
Federal Home LN Corp	1,500,030	06/06/22	919	1.6%	15.03		
Federal Farm Credit Bks	3,003,090	07/22/22	965	3.3%	31.60		
Federal Farm Credit Bks	1,250,013	09/12/22	1,017	1.4%	13.86	8,258,908	
<b>Government Securities</b>	<b>8,258,908</b>						
Wells Fargo Bank CD	252,755	12/08/21	739	0.3%	2.04		
Synchronony Bank CD	255,405	03/08/22	829	0.3%	2.31		
Morgan Stanley CD	255,993	03/14/22	835	0.3%	2.33		
Sterling Bank CD	257,653	03/09/22	830	0.3%	2.33		
American CD	249,173	04/05/22	857	0.3%	2.33		
First Northeast CD	248,492	04/19/22	871	0.3%	2.36		
Old Missouri CD	258,053	05/05/22	887	0.3%	2.50		
American Express CD	253,093	08/29/22	1,003	0.3%	2.77		
BMO Harris CD	250,113	09/14/22	1,019	0.3%	2.78		
Cross Riv Bank C D	250,275	11/07/22	1,073	0.3%	2.93		
Flagstar Bank FSB CD	249,898	11/15/22	1,081	0.3%	2.95	2,780,900	
<b>Corporate Bonds</b>	<b>2,780,900</b>						
						<b>11,039,808</b>	<b>2- 3 years</b>
Morgan Stanley & Co	2,002,020	10/30/23	1,430	2.2%	31.22	2,002,020	
<b>Government Securities</b>	<b>2,002,020</b>						
Apple Inc	507,365	01/13/23	1,140	0.6%	6.31		
Goldman Sachs CD	257,745	02/28/23	1,186	0.3%	3.33		
Sallie Mae Bank Salt Lke	261,565	05/09/23	1,256	0.3%	3.58		
Discover Bank Greenwood Del CD	263,015	07/11/23	1,319	0.3%	3.78	1,289,690	
<b>Corporate Bonds</b>	<b>1,289,690</b>						
						<b>3,291,710</b>	<b>3- 4 years</b>
Morgan Stanley & Co	2,005,500	04/30/24	1,613	2.2%	35.28		
Federal Home LN Corp MTN	1,500,315	05/15/24	1,628	1.6%	26.64		
Federal Home LN Corp	2,000,080	06/04/24	1,648	2.2%	35.94		
Federal Home Loan Bks	2,505,750	06/05/24	1,649	2.7%	45.06		
Federal Home LN Corp	1,001,850	06/17/24	1,661	1.1%	18.15		
Federal Home LN Corp	1,501,110	07/30/24	1,704	1.6%	27.89		
Federal Home LN Corp	1,500,420	07/30/24	1,704	1.6%	27.88		
Federal Farm Credit Bks	1,484,565	08/13/24	1,718	1.6%	27.81		
Federal Home LN Corp	1,495,785	09/18/24	1,754	1.6%	28.61		
Federal Home Loan Bks	1,232,988	10/02/24	1,768	1.3%	23.77		
Federal Home LN Corp MTN	1,493,355	11/12/24	1,809	1.6%	29.46		
Federal Home LN Corp MTN	1,497,765	11/25/24	1,822	1.6%	29.76	19,219,483	
<b>Government Securities</b>	<b>19,219,483</b>						

**TREASURY REPORT**

City of Upland - Successor Agency - Public Financing Authority

	Market Value	Availability 11/30/19 12/01/19	No. of days until maturity	weight	days to maturity  weighted average	Total by maturity	
<b>November 30, 2019</b>							
Morgan Stanley C D	259,330	05/02/24	1,615	0.3%	4.57		
Jonesboro St Bank C D	250,058	09/16/24	1,752	0.3%	4.78	509,388	
<b>Corporate Bonds</b>	<b>509,388</b>						
						<b>19,728,870</b>	<b>4- 5 years</b>
<b>Total Investments</b>	<b>\$ 91,699,567</b>			100.00%	602.70	<b>\$ 91,699,567</b>	
	Average Maturity in Days		602.70				
	Average Maturity in Years:		1.651				
LAIF Amortized Cost	\$ 86,447,864,162						
LAIF Fair Value	\$ 87,087,977,482						
Check:	1.007404617						

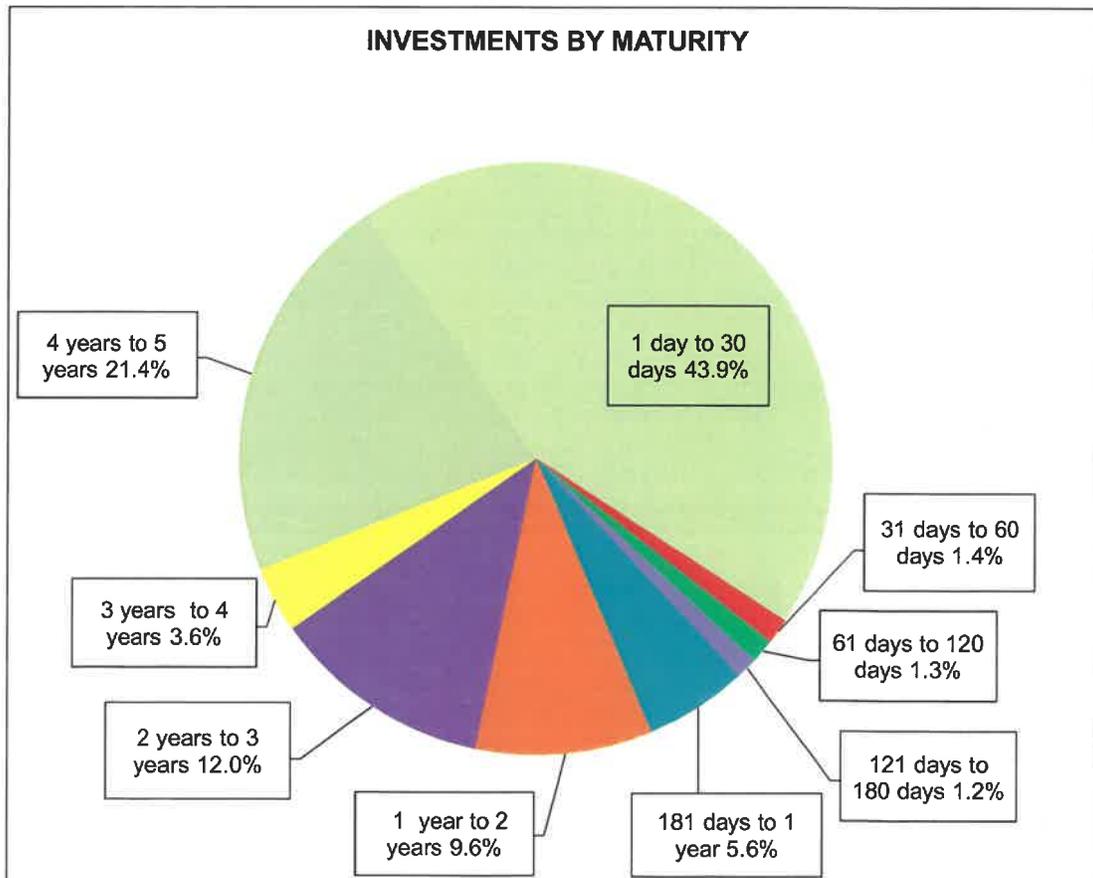
## TREASURY REPORT

City of Upland - Successor Agency - Public Financing Authority

November 30, 2019

### Par Values Maturing by Date and Type Maturities in Thousands of Dollars

Investment Portfolio	1 day to 30 days	31 days to 60 days	61 days to 120 days	121 days to 180 days	181 days to 1 year	1 year to 2 years	2 years to 3 years	3 years to 4 years	4 years to 5 years
State Local Agency Investment Fund	21,750	-	-	-	-	-	-	-	-
Bank Accounts and Change Funds	10,002	-	-	-	-	-	-	-	-
ABS	-	-	-	-	-	-	-	-	-
Government Securities	200	-	-	404	3,000	6,251	8,259	2,002	19,219
Money Market Fund	7,277	-	-	-	-	-	-	-	-
Corporate Bonds	750	1,251	1,002	502	2,114	2,535	2,781	1,290	509
US Treasury	200	-	200	200	-	-	-	-	-
<b>Total Cash and Investments</b>	<b>40,179</b>	<b>1,251</b>	<b>1,202</b>	<b>1,106</b>	<b>5,114</b>	<b>8,786</b>	<b>11,040</b>	<b>3,292</b>	<b>19,728</b>
<b>Percentage</b>	<b>43.9%</b>	<b>1.4%</b>	<b>1.3%</b>	<b>1.2%</b>	<b>5.6%</b>	<b>9.6%</b>	<b>12.0%</b>	<b>3.6%</b>	<b>21.4%</b>





## STAFF REPORT

**ITEM NO. 11.D.**

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**DATE:** January 13, 2020  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** LONDA BOCK-HELMS, CPA, ACTING ADMINISTRATIVE SERVICES DIRECTOR  
**SUBJECT:** FIRST AMENDMENT TO AGREEMENT WITH SFG RETIREMENT PLAN CONSULTING, LLC FOR INVESTMENT ADVISOR AND FIDUCIARY SERVICES

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### **RECOMMENDED ACTION**

It is recommended that the City Council approve amendment number one to the Retirement Plan Investment Advisory Agreement between the City of Upland and SFG Retirement Plan Consulting, LLC (SFG) and authorize the Interim City Manager to execute the agreement.

### **GOAL STATEMENT**

The proposed action supports the City's goals of providing fiscal stewardship of resources under the City's fiduciary responsibility and providing competitive benefits for participating employees and retirees.

### **BACKGROUND**

The City provides employer-sponsored deferred compensation plans under Section 457(b) and Section 401(a) of the Internal Revenue Code (IRC). The plans provide tax benefits to employees who make deposits into the plans on a pre-tax basis for their retirement. As the plan sponsor, the City has certain fiduciary duties and responsibilities under State law (California State Constitution, Article XVI Section 17). These duties and responsibilities focus on ensuring the operation and investment of the public retirement plan is for the exclusive purpose of providing benefits to participants and beneficiaries. Specifically, fiduciary responsibilities include:

- Investing the assets of the plan;
- Administering the plan; and
- Engaging in a prudent process for making all decisions related to the operation of the plan, including decisions related to the plan's investments and related services.

The City has had an exclusive agreement with ICMA-RC to be the recordkeeper and administrator for the 457(b) and 401(a) plans. At the conclusion of the term of the agreement, the City exercised its fiduciary responsibility by conducting a competitive bid process for these services. As a result of the RFP processes, staff along with the assistance of the employee Investment Plan Committee and Human Resources, reviewed all options and on November 12, 2018 council approved the transition of service providers from ICMA-RC to Mass Mutual. Additionally, council approved a contract with SFG Retirement Plan Consulting, LLC (SFG) to be retained as investment adviser and fiduciary of the City's 457(b) and 401(a) plans.

### **ISSUES/ANALYSIS**

SFG wishes to amend the current agreement with the City to include additional non-fiduciary services provided. The annual fees remain the same as approved in the original agreement.

### **FISCAL IMPACTS**

There is no fiscal impact to the City. The assets of the plan belong to the plan participants (employees/retirees) and the fees associated with administering the plan are paid from the plan. Participating employees will benefit from lower fees and a higher fixed interest rate.

### **ALTERNATIVES**

Provide alternative direction to staff.

### **ATTACHMENTS:**

**SFG Investment Advisor Agreement Amendment #1  
457 Plan Investment Policy**

**RETIREMENT PLAN INVESTMENT ADVISORY AGREEMENT BETWEEN  
THE CITY OF UPLAND  
AND  
SFG RETIREMENT PLAN CONSULTING, LLC  
AMENDMENT # 1**

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In consideration of the mutual undertakings in this Amendment Agreement (“Amendment”) and for other good and valuable consideration, the Agreement between SFG Retirement Plan Consulting, LLC (“SFGRPC”) and the City of Upland (“City”) which was executed by the parties with an effective date of October 1, 2018 is hereby amended by mutual agreement, with an effective date of September 1, 2019, as follows:

APPENDIX B. – FIDUCIARY SERVICES – is replaced in its entirety with the attached APPENDIX B – FIDUCIARY SERVICES.

APPENDIX C. – NON-FIDUCIARY SERVICES – is replaced in its entirety with the attached APPENDIX C – NON-FIDUCIARY SERVICES.

APPENDIX D. – FEE SCHEDULE is replaced in its entirety with the attached APPENDIX D – FEE SCHEDULE.

Except as set forth in this Amendment, the Agreement is unaffected and shall continue in full force and effect in accordance with its terms. If there is a conflict between this Amendment and the Agreement, the terms of this Amendment will prevail.

Plan Sponsor

SFG Retirement Plan Consulting, LLC

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NAME, TITLE

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Mark Shuster, Managing Member

## APPENDIX B – FIDUCIARY SERVICES

SFGRPC will perform the following fiduciary services:

1. Development of an investment policy statement (IPS). The IPS establishes the investment policies and objectives for the Plan(s), and shall set forth the asset classes and investment categories to be offered under the Plan(s), as well as the criteria and standards for selecting and monitoring the investments. The CITY shall have the ultimate responsibility and authority to establish such policies and objectives and to adopt the investment policy statement.
2. Consistent with the Investment Policy Statement, SFGRPC will select the initial investment options within the Plan(s).
3. SFGRPC will periodically review the investments within the Plan(s) and shall be responsible for making additions/deletions thereto.
4. SFGRPC will provide periodic investment advisory reports that document consistency of fund management and performance to the guidelines set forth in the IPS, and to make recommendations to maintain, or remove and replace investment options. Reports to include: Market Overview, In-Depth Portfolio Summary, Plan Asset Allocation Analysis and Fund Performance Comparison to the Index.
5. Meet with CITY on a periodic basis to discuss reports and recommendations.
6. Annually review the IPS with the CITY to ensure it continues to meet the City's needs.
7. Selection of a qualified default investment alternative (“QDIA”) for participants who fail to make an investment election.
8. Coordinate the Deferred Compensation Committee meetings, record the meeting minutes and provide minutes to the attending members.

## APPENDIX C – NON-FIDUCIARY SERVICES

SFGRPC will perform the following Non-Fiduciary services:

1. Education program strategy - Assist in the education of the participants in the Plan(s) about general investing principles and the investment alternatives. This includes on-site meetings, webinars, one-on-one consultations.
2. Distribute plan(s) level newsletters to the CITY
3. Distribute employee level memos to the CITY for distribution to their participants
4. Plan(s) design consulting and Plan document review
5. Assist the CITY in the transition of previous record-keeper(s) and/or Plan(s) provider(s)
6. Provide vendor management/issue resolution to the CITY
7. Provide consulting assistance on fiduciary best practices such as Fiduciary Education
8. Provide assistance with mandatory and optional legislative changes
9. Provide the CITY with custom communications when needed
10. Assist the CITY in their communications with record-keepers and/or Plan(s) providers
11. Provide the CITY with compliance updates and best practices
12. Provide initial (one-time) RFP services and Plan(s) fee negotiations on behalf of the CITY
13. Incumbent vendor and fee review (RFI) – No charge
14. Retiree meeting and consultations
15. Custom communications
16. Contract review support

## APPENDIX D – FEE SCHEDULE

1. All fees are billed in arrears.
2. The initial fee will be the amount, prorated for the number of days included in the initial billing period from the effective payment start date.
3. If this Agreement is terminated prior to the end of a billing period, SFGRPC shall be entitled to a fee, prorated for the number of days in the Billing Period prior to the effective date of termination.
4. All fees will be due and payable within 30 days and are payable to “SFG Retirement Plan Consulting, LLC”.
5. The annual fee for services shall be \$35,000.00 annually, paid monthly to SFGRPC in the amount of (\$2,916.67 each month). Fees will be deducted from Plan assets and will be paid to SFGRPC by the Record-Keeper.

At SFGRPC’s discretion the billing period described above may be adjusted to quarterly or annually.

## **City of Upland 457(b) and 401(a) Investment Policy Statement**

### Part I. THE PLAN

The City of Upland. (“City”) sponsors defined contribution plans (the “Plan”) for the benefit of its employees and their designated beneficiaries. The City will appoint a Committee to fulfill the City’s fiduciary duties in regards to Plan investments. The Plan is intended to provide participating employees the ability to create long-term accumulation of savings through contributions to individual participant accounts and the earnings thereon.

The Plan is a qualified employee benefit plan intended to comply with all applicable federal laws and regulations

The Plan’s participants and beneficiaries are expected to have different investment objectives, time horizons and risk tolerances. To meet these varying investment needs, participants and beneficiaries will be able to direct their account balances among a range of investment options to construct diversified portfolios that reasonably span the risk/return spectrum. Participants and beneficiaries alone bear the risk of gains or losses of their investment options and their asset allocation.

### Part II. THE PURPOSE OF THE INVESTMENT POLICY STATEMENT

This Investment Policy Statement is intended to assist the Plan’s fiduciaries by establishing nonbinding guidelines for making investment-related decisions in a prudent manner. It outlines the underlying philosophies and processes for the selection, periodic monitoring and evaluation of the investment options offered by the Plan.

Specifically, this Investment Policy Statement:

- Defines the Plan’s investment objectives.
- Defines the roles of those responsible for the Plan’s investments.
- Describes the criteria and procedures for selecting the investment options.
- Establishes investment procedures, measurement standards and monitoring procedures.
- Describes potential corrective actions the Committee (or an independent investment advisor, if delegated authority pursuant to Part III, hereinafter Advisor) can take should investment options (or their respective managers) fail to satisfy established objectives, if the Committee (or Advisor, if applicable) determines that such actions are prudent and advisable given the circumstances.
- Describes the types of educational materials to be provided to Plan participants and beneficiaries.
- Describes certain fiduciary obligations and related applicable laws and regulations.

The guidelines provided in this Investment Policy Statement do not constitute a contract. These guidelines are also not meant to be a statement of mandatory requirements. Rather, these guidelines are only an explanation of general principles and guidelines being currently applied for investment option selection, retention and replacement. Furthermore, these guidelines are not the sole factors considered by the Committee (or Advisor, if applicable) in the process. This Investment Policy Statement is not intended to, and shall not be deemed to expand the fiduciary duties of the Committee, or its individual members, (or Advisor, if applicable) or to create duties that do not exist under applicable law.

This Investment Policy Statement will be reviewed periodically, and, if appropriate, may be amended by the Committee at any time to reflect changes in the capital markets, Plan objectives, or other factors relevant to the Plan.

This Investment Policy Statement (including the criteria for the selection and monitoring of investment options under the Plan) does not apply to employer securities (also known as Company stock) if offered under the Plan.

### Part III. INVESTMENT OBJECTIVES

In accordance with the relevant terms of the Plan document, the Committee has delegated investment discretion to an independent investment advisor (the Advisor) (as limited by the last paragraph of Part VII). The Advisor will select the

Plan's investment options (as limited by the last paragraph of Part VII) based on criteria deemed relevant, from time to time, by the Advisor. These criteria may include, but are not limited to, the following:

- Maximization of return within reasonable and prudent levels of risk.
- Provision of returns comparable to returns for similar investment options.
- Provision of exposure to a wide range of investment opportunities in various asset classes and vehicles.
- Control administrative and management fees.
- Provision of appropriate diversification within investment vehicles.
- Investment manager's adherence to stated investment objectives and style.

#### Part IV. ROLES AND RESPONSIBILITIES

Subject to the terms of the Plan document, the Committee is responsible for:

- Selecting the trustee(s).
- Hiring the recordkeeper.
- Hiring, and periodically monitoring the Advisor.
- Establishing and maintaining the Investment Policy Statement.
- Periodically monitoring the performance and fees charged by service providers.
- Periodically monitoring any other Plan fees.
- Providing for Plan participant investment education and communication.

Subject to the terms of the Plan document and any contract or agreement entered into by and between the City and Advisor, the Advisor is responsible for:

- Selecting the investment options (as limited by the last paragraph of Part VII).
- Periodically evaluating the Plan's investments' performances and considering investment option changes (as limited by the last paragraph of Part VII).

In executing its responsibilities, the Committee and Advisor will make decisions in accordance with all applicable fiduciary standards as follows:

- Solely in the interest of Plan participants and beneficiaries, for the exclusive purpose of providing Plan benefits and defraying reasonable administrative fees;
- With the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and of like aims; and
- In accordance with the documents and instruments governing the Plan insofar as such documents and instruments are consistent with all applicable laws and regulations.

## Part V. MONITORING OF SERVICE PROVIDERS

The Committee should monitor service providers on an ongoing and regular basis. Administrative and/or recordkeeping service providers may be benchmarked against, but not limited to, industry averages and/or other provider quotes. Monitoring for these service providers should include, but not be limited to, an evaluation of the provider's:

- Investment offerings and services
- Recordkeeping technology and services
- Compliance services and support
- Technology
- Participant access and communications
- Fees

The ongoing monitoring of the Plan's service providers is to ensure that total Plan fees, services and investment opportunities are competitive and reasonable.

Advisor, and any other investment consultant service providers (Plan and participant level) should be monitored regularly and the evaluation should include, but not be limited to, consideration of the provider's:

- Investment due diligence processes
- Fiduciary guidance and services
- RFP/Benchmarking scope and services
- Technology
- Participant-level access, communications and advice (if applicable)
- Fees

## Part VI. SELECTION OF INVESTMENT OPTIONS

Set forth below are the considerations and guidelines that the Advisor should employ in fulfilling the fiduciary responsibility of selecting investment options for the Plan.

The Plan intends to provide an appropriate range of investment options that, in the aggregate, will allow Plan participants to construct portfolios consistent with their unique individual circumstances, goals, time horizons and tolerance for risk. The Advisor, shall be responsible for the Plan-level investment selection process, as set forth in this Investment Policy Statement, but cannot guarantee investment results for any selected investment option.

Major asset classes to be considered may include, but are not limited to:

### **Conservative Investments**

Cash and liquid investments including, but not limited to, money market, stable value and guaranteed interest accounts.

### **Income Investments**

Income oriented investments including, but not limited to, low, medium and high-quality bond investments, with short, intermediate and/or long-term duration. Management styles may be indexed and actively managed international, global and domestic styles.

### **Equity Investments**

Investments that invest in equity securities, both domestic and foreign, including, but not limited to, small, medium and large market capitalization, with value, blend and growth investment objectives, which may be actively managed or indexed.

### **Asset Allocation Investments**

Investments or accounts that invest in a combination of conservative, income, and equity investments, "fund of funds" accounts combining several of the above investments into one or a series of investments, and "manager of managers" accounts combining several different investment styles and fund managers into one account or a series of accounts.

### **Other Investments**

In addition to the foregoing major assets classes, the Advisor may also consider other appropriate investments in other styles or asset classes offered through vehicles such as commingled trusts, insurance company separate accounts through a group annuity contract and mutual funds. Notwithstanding the foregoing, the Advisor may consider, but is not required, to include in the investment menu any specific investment asset class, option or style.

After considering the desired asset classes, the Advisor will evaluate and choose the appropriate investment option(s) desired to be offered by the Plan's investment menu. I

The Advisor should consider the following standards for selection of all investments:

1. Investment performance should be competitive with an appropriate style-specific benchmark and the median return for an appropriate, style-specific peer group (where appropriate and available, long-term performance of an investment manager may be inferred through the performance of another investment with similar style attributes managed by such investment manager);
2. Specific risk and risk-adjusted return measures should be reviewed by the Advisor and be within a reasonable range relative to appropriate, style-specific benchmark and peer group;
3. The investment should demonstrate adherence to the stated investment objective, without excess style drift over trailing performance periods;
4. Fees and fee structures should be competitive compared with similar investments reasonably available to the Plan; part of this examination includes a review of the proper use of investment-generated fees (and related revenue) to offset Plan recordkeeper fees, which should also be reviewed on a periodic basis;
5. The investment should exhibit attractive qualitative characteristics, including, but not limited to, acceptable manager tenure; and
6. The investment should be able to provide performance, holdings and other relevant information in a timely fashion with specified frequency.

Furthermore, investments will be evaluated and selected utilizing a "score card," detailed below in Part VII (Investment Monitoring and Reporting).

### **Part VII. INVESTMENT MONITORING AND REPORTING**

The ongoing monitoring of investments is a regular and disciplined process intended to ensure that a previously selected investment option continues to satisfy the selection process and that an investment option continues to be a prudent option offered for investment in the Plan. The process of monitoring investment performance relative to specified guidelines will be consistently applied. Frequent change of investments is neither expected nor desired.

The Advisor will bear in mind any and all political, social, economic or other changes that may potentially require more frequent review and consideration of investments. The following are some, but not all, general factors that may be considered in ongoing monitoring:

- Current regulatory environment,
- Current state of capital markets,
- Performance of investment alternatives,
- Utilization of accounts by Plan demographic,
- The prudent applicability of this Investment Policy Statement as written, in light of prevailing facts and circumstances.

Monitoring will generally utilize the same investment selection criteria used in the original selection analysis, or such other criteria as deemed prudent by the Advisor. Unusual, notable, or extraordinary events should be communicated by each investment and/or provider on a timely basis to the Advisor. Examples of such events include portfolio manager or team departure, violation of investment guidelines, material litigation against the investment management firm, or material changes in firm ownership structure and announcements thereof.

If overall satisfaction with the investment option is acceptable, no further action is required. If areas of dissatisfaction exist, the Advisor will monitor whether the investment is taking appropriate and prudent steps to remedy the deficiency. If over a reasonable period the issue remains unresolved, removal of the investment option may result.

For supported asset classes, a “score card” will be maintained and documented (see addendum) to substantiate acceptable levels of performance and appropriate style characteristics. Based upon objective criteria, derived from modern portfolio theory concepts, each investment option will receive a score reflecting its overall performance.

If an investment fails to meet the criteria standards, as determined by its score, it may be placed on a “watch list” (as defined in the attached Addendum). If the investment maintains a watch list score for four consecutive quarters, or five out of eight quarters, the investment may be considered for further action (see Part IX below) by the Advisor. In the event an investment receives a score which is below that of “watch list” status, or experiences extraordinary circumstances which may render it imprudent to maintain, it may be considered for action (see Part IX below) by the Advisor at the earliest administratively practicable date.

If the investment meets criteria standards, as determined by its score as “acceptable” or “good” (as defined in the attached Addendum) for four consecutive quarters, it may be removed from the watch list.

Cash, or principal preservation, alternatives should be reviewed with a primary focus on the investment’s ability to preserve capital and minimize risk. Criteria reviewed should include, but not be limited to, credit quality, diversification, and stability of insurance provider, if applicable.

Asset allocation investments should be scored and monitored in the same manner as all other investments, using the previously described guidelines in Part VII. Because many of these investments contain separate underlying investment funds, it may also be appropriate to score and monitor those, as available and applicable. Unlike other investments which are monitored and scored individually, target-date investments, though potentially scored individually, should be evaluated as a group. Due to the unique importance of these investment options for participants in the Plan, investments or suites of investments (as may be applicable), or managed accounts failing to achieve criteria standards should be carefully reviewed before removal from the Plan (in the absence of a reasonable alternative).

In the event asset allocation investments have too brief a time history to be scored, the investment or suite should be evaluated both qualitatively and quantitatively on the underlying investments that may have a longer time history available, using a proxy, or a qualitative framework for all other instances.

Investments where no score is applied due to specialty focus, short time history or other unique circumstances should be reviewed using a proxy, where applicable and prudent, or a qualitative framework for all other instances.

The foregoing investment monitoring criteria shall not, under any circumstances, be taken as definitive, conclusive, or controlling for removal, termination or continuation of an investment option. All determinations should be made by the Advisor, in its sole discretion, taking into consideration all relevant facts and circumstances.

In the event the Plan document allows self-directed brokerage accounts, the Committee retains full responsibility for the offering and monitoring of any self-directed brokerage account(s) offered as an investment option, which will be reviewed periodically as determined by the City, and not the Advisor, based on criteria determined by the City. Special considerations should be contemplated and discussed before allowing either as an investment option.

#### **PART VIII: ASSET ALLOCATION AND DEFAULT STRATEGY**

The Advisor will evaluate and choose an investment or set of investments, or multiple investments, to serve as the default investment(s) for the Plan. The default investment(s) will be the designated investment for dollars contributed to the Plan by participants and/or the employer for which the Plan has no active employee direction on file.

Asset allocation investments and/or accounts (risk-based or target date-based) should be considered as the Plan’s default investment strategy due to the inherent benefits these options provide to participants including the diversification of assets across multiple asset classes.

## Part IX. MANAGER REMOVAL

An investment may be removed when the Advisor has lost confidence in the investment manager's ability to:

- Achieve performance, style, allocation and/or risk objectives.
- Maintain acceptable qualitative standards (e.g., stable organization, compliance guidelines).

If the investment manager has failed to adhere to and/or remedy one or both of the above conditions, the investment may be considered for removal from the Plan. The Advisor may also remove an investment option for any reason it deems necessary and prudent.

Any decision by the Advisor to remove such an investment will be made on an individual basis, and will be made based on all the known facts and circumstances, including, but not limited to:

- The objective analysis (described above)
- Administrative impact on the Plan
- Timing
- Employee communication issues
- The availability of other (potential replacement) investments
- Underwriting and Plan provider limitations
- Financial considerations (hard and soft dollar fees)
- Professional or client turnover
- A material change in the investment process
- Other relevant factors

Considerable judgment should be exercised in the Advisor decision-making process. The Advisor may administer the following approaches with an investment that fails to consistently meet criteria of this Investment Policy Statement:

- Remove and replace (map assets) with a reasonably similar alternative investment.
- Freeze the assets in the investment and direct new assets to an alternative, reasonably similar, investment.
- Phase out the investment over a specific time period.
- Remove the investment and do not provide a replacement investment and default assets into the Plan's QDIA.

Replacement of a removed investment follows the criteria outlined in Part VI (Selection of Investment Options).

## Part X. PARTICIPANT EDUCATION AND COMMUNICATION

The Plan should communicate to employees that they can direct their own investments and investment changes. Investment communications materials, educational materials, and enrollment support should be available to help Plan participants make educated and informed choices, and may include:

1. Periodic enrollment and investment education, through one or more of the following: on-site meetings, phone conference, web conference, Internet, phone (voice-response and live representatives), or written materials;
2. Summary plan description made available to all participants;
3. General information regarding investment risk, inflation, potential taxation impact, investment earnings, and asset classes;
4. Other investment tools (e.g., investment risk profile questionnaire) to assist participants and beneficiaries in making educated and informed investment decisions; and
5. All additional information required for disclosure by the Internal Revenue Code of 1986, and all other Federal and state statutes and all regulations promulgated hereunder, and all regulatory guidance provided thereto.

Notwithstanding the foregoing, all investment education provided by the Plan and/or Committee, and all communications connected thereto, is not intended, nor shall it be construed, as investment advice to Plan participants.

Part XI. COORDINATION WITH THE PLAN DOCUMENT AND APPLICABLE LAWS

Notwithstanding the foregoing, if any term or condition of this Investment Policy Statement conflicts with any section of the Internal Revenue Code, or regulations promulgated hereunder, or any term or condition in the Plan document, the terms and conditions of, the Internal Revenue Code, and the Plan document shall control.

Part XII. INVESTMENT INFORMATION AND ADMINISTRATIVE SUPPORT

The Committee and Advisor should require the investment manager and/or service provider (administrator, recordkeeper) to offer the following administrative information and support, competitive to that provided by other investment managers and/or service providers as it deems appropriate, which may include:

1. Daily valuation of all investments;
2. Daily access to account information via toll-free number and Internet access;
3. The ability to make investment transfers for both existing and future individual account balances on a daily basis (nonbusiness days and holidays excluded). Certain trading practices may be limited to comply with market timing, excess trading, liquidity driven and/or related policies and procedures of the service provider and/or specific investment options;
4. Participant account investment reports produced no less frequently than annually, with similar information available via the Internet at least quarterly; and
5. Quarterly investment performance updates available for participant review via the Internet.

Part XIII. REVIEW PROCEDURES

This Investment Policy Statement will be periodically reviewed and may be amended, if appropriate, at any time and without notice, by action of the Committee.

It is not expected that this Investment Policy Statement will change frequently. In particular, short-term changes in the financial markets should not require amendments to this Investment Policy Statement.

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Name of Plan Fiduciary	Signature	Date
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Name of Plan Fiduciary	Signature	Date
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Name of Plan Fiduciary	Signature	Date
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ADDENDUM TO PART VII: INVESTMENT MONITORING AND REPORTING

**Scorecard System Methodology™**

The **Scorecard System Methodology** incorporates both quantitative and qualitative factors in evaluating fund managers and their investment strategies. The **Scorecard System** is built around pass/fail criteria, on a scale of 0 to 10 (with 10 being the best) and has the ability to measure active, passive and asset allocation investing strategies. Active and asset allocation strategies are evaluated over a five-year time period, and passive strategies are evaluated over a three-year time period.

Eighty percent of the fund’s score is quantitative (made up of eight unique factors), incorporating modern portfolio theory statistics, quadratic optimization analysis, and peer group rankings (among a few of the quantitative factors). The other 20 percent of the score is qualitative, taking into account things such as manager tenure, the fund’s expense ratio relative to the average fund expense ratio in that asset class category, and the fund’s strength of statistics (statistical significance). Other criteria that may be considered in the qualitative score includes the viability of the firm managing the assets, management or personnel issues at the firm, and/or whether there has been a change in direction of the fund’s stated investment strategy. The following pages detail the specific factors for each type of investing strategies.

Combined, these factors are a way of measuring the relative performance, characteristics, behavior and overall appropriateness of a fund for inclusion into a plan as an investment option. General fund guidelines are shown in the “Scorecard Point System” table below. The Scorecard Point System is meant to be used in conjunction with our sample Investment Policy Statement, in order to help identify what strategies need to be discussed as a “watch-list” or removal candidate; what strategies continue to meet some minimum standards and continue to be appropriate; and/or identify new top-ranked strategies for inclusion into a plan.

<i>Scorecard Point System</i>	
<b>Good:</b>	<b>9-10 Points</b>
<b>Acceptable:</b>	<b>7-8 Points</b>
<b>Watch:</b>	<b>5-6 Points</b>
<b>Poor:</b>	<b>0-4 Points</b>

**Scorecard System Methodology™**

*Asset Allocation Strategies*

**Asset allocation strategies** are investment strategies that invest in a broad array of asset classes that may include U.S. equity, international equity, emerging markets, real estate, fixed income, high yield bonds and cash (to name a few asset classes). These strategies are typically structured in either a risk-based format (the strategies are managed to a level of risk, e.g., conservative or aggressive) or, in an age-based format (these strategies are managed to a retirement date or life expectancy date, typically growing more conservative as that date is approached). For this type of investment strategy, the **Scorecard System** is focused on how well these managers can add value from both asset allocation and manager selection.

Multisector Bond (MSB) asset class follows the same evaluation criteria with some slightly different tolerance levels where noted. These managers are also evaluated on both their asset allocation and security selection.

Weightings	Asset Allocation Strategies	Maximum Points
Style Factors 30%	<b>Risk Level:</b> The fund's standard deviation is measured against the category it is being analyzed in. The fund passes if it falls within the range for that category.	1
	<b>Style Diversity:</b> Fund passes if it reflects appropriate style diversity (returns-based) among the four major asset classes (Cash, Fixed Income, U.S. & International Equity) for the given category. MSB funds pass if reflect some level of diversity among fixed income asset classes (Cash, U.S. Fixed Income, Non-U.S. Fixed Income and High Yield/Emerging Markets).	1
	<b>R-Squared:</b> Measures the percentage of a fund's returns that are explained by the benchmark. Fund passes with an R-squared greater than 90 percent. This statistic measures whether the benchmark used in the analysis is appropriate.	1
Risk/Return Factors 30%	<b>Risk/Return:</b> Fund passes if its risk is less than the benchmark or its return is greater than the benchmark. Favorable risk/return characteristics are desired.	1
	<b>Up/Down Capture Analysis:</b> Measures the behavior of a fund in up and down markets. Fund passes with an up capture greater than its down capture. This analysis measures the relative value by the manager in up and down markets.	1
	<b>Information Ratio:</b> Measures a fund's relative risk and return. Fund passes if ratio is greater than 0. This statistic measures the value added above the benchmark, adjusted for risk.	1
Peer Group Rankings 20%	<b>Returns Peer Group Ranking:</b> Fund passes if its median rank is above the 50 <sup>th</sup> percentile.	1
	<b>Sharpe Ratio Peer Group Ranking:</b> Fund passes if its median rank is above the 50 <sup>th</sup> percentile. This ranking ranks risk-adjusted excess return.	1
Qualitative Factors 20%	Two points may be awarded based on qualitative characteristics of the fund. Primary considerations are given to manager tenure, fund expenses and strength of statistics, however, other significant factors may be considered. It is important to take into account nonquantitative factors, which may impact future performance.	2
<b>Total</b>		<b>10</b>

### Scorecard System Methodology™

#### Active Strategies

**Active strategies** are investment strategies where the fund manager is trying to add value and outperform the market averages (for that style of investing). Typically, these investment strategies have higher associated fees due to the active involvement in the portfolio management process by the fund manager(s). For this type of investment strategy, the **Scorecard System** is trying to identify those managers who can add value on a consistent basis within their own style of investing.

Weightings	Active Strategies	Maximum Points
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<b>Style Factors</b> 30%	<b>Style Analysis:</b> Returns-based analysis to determine the style characteristics of a fund over a period of time. Fund passes if it reflects the appropriate style characteristics. Style analysis helps ensure proper diversification in the Plan.	1
	<b>Style Drift:</b> Returns-based analysis to determine the behavior of the fund/manager over multiple (rolling) time periods. Fund passes if the fund exhibits a consistent style pattern. Style consistency is desired so that funds can be effectively monitored within their designated asset class.	1
	<b>R-Squared:</b> Measures the percentage of a fund's returns that are explained by the benchmark. Fund passes with an R-squared greater than 80 percent. This statistic measures whether the benchmark used in the analysis is appropriate.	1
<b>Risk/Return Factors</b> 30%	<b>Risk/Return:</b> Fund passes if its risk is less than the benchmark or its return is greater than the benchmark. Favorable risk/return characteristics are desired.	1
	<b>Up/Down Capture Analysis:</b> Measures the behavior of a fund in up and down markets. Fund passes with an up capture greater than its down capture. This analysis measures the relative value by the manager in up and down markets.	1
	<b>Information Ratio:</b> Measures a fund's relative risk and return. Fund passes if ratio is greater than 0. This statistic measures the value added above the benchmark, adjusted for risk.	1
<b>Peer Group Rankings</b> 20%	<b>Returns Peer Group Ranking:</b> Fund passes if its median rank is above the 50 <sup>th</sup> percentile.	1
	<b>Information Ratio Peer Group Ranking:</b> Fund passes if its median rank is above the 50 <sup>th</sup> percentile. This ranking ranks risk-adjusted excess return.	1
<b>Qualitative Factors</b> 20%	Two points may be awarded based on qualitative characteristics of the fund. Primary considerations are given to manager tenure, fund expenses and strength of statistics, however, other significant factors may be considered. It is important to take into account nonquantitative factors, which may impact future performance.	2
<b>Total</b>		<b>10</b>

## Scorecard System Methodology™

### Passive Strategies

**Passive strategies** are investment strategies where the fund manager is trying to track or replicate some area of the market. These types of strategies may be broad-based in nature (e.g., the fund manager is trying to track/replicate the entire U.S. equity market like the S&P 500) or may be more specific to a particular area of the market (e.g., the fund manager may be trying to track/replicate the technology sector). These investment strategies typically have lower fees than active investment strategies due to their passive nature of investing and are commonly referred to as index funds. For this type of investment strategy, the **Scorecard System** is focused on how well these managers track and/or replicate a particular area of the market with an emphasis on how they compare against their peers.

Weightings	Passive Strategies	Maximum Points
Style & Tracking Factors 40%	<b>Style Analysis:</b> Returns-based analysis to determine the style characteristics of a fund over a period of time. Fund passes if it reflects the appropriate style characteristics. Style analysis helps ensure proper diversification in the Plan.	1
	<b>Style Drift:</b> Returns-based analysis to determine the behavior of the fund/manager over multiple (rolling) time periods. Fund passes if the fund exhibits a consistent style pattern. Style consistency is desired so that funds can be effectively monitored within their designated asset class.	1
	<b>R-Squared:</b> Measures the percentage of a fund's returns that are explained by the benchmark. Fund passes with an R-squared greater than 95 percent. This statistic measures whether the benchmark used in the analysis is appropriate.	1
	<b>Tracking Error:</b> Measures the percentage of a fund's excess return volatility relative to the benchmark. Fund passes with a tracking error less than 4. This statistic measures how well the fund tracks the benchmark.	1
Peer Group Rankings 40%	<b>Tracking Error Peer Group Ranking:</b> Fund passes if its median rank is above the 75 <sup>th</sup> percentile.	1
	<b>Expense Ratio Peer Group Ranking:</b> Fund passes if its median rank is above the 75 <sup>th</sup> percentile.	1
	<b>Returns Peer Group Ranking:</b> Fund passes if its median rank is above the 75 <sup>th</sup> percentile.	1
	<b>Sharpe Ratio Peer Group Ranking:</b> Fund passes if its median rank is above the 75 <sup>th</sup> percentile.	1
Qualitative Factors 20%	Two points may be awarded based on qualitative characteristics of the fund. Primary considerations are given to fund expenses and strength of statistics, however, other significant factors may be considered. It is important to take into account nonquantitative factors, which may impact future performance.	2
<b>Total</b>		<b>10</b>

## Manager Research Methodology

### Beyond the Scorecard

The **Scorecard System™** uses an institutional approach which is comprehensive, independent, and utilizes a process and methodology that strives to create successful outcomes for plan sponsors and participants. The **Scorecard** helps

direct the additional research the Investment team conducts with fund managers throughout the year. Three of the primary factors that go into the fund manager research are people, process and philosophy.

PEOPLE	PROCESS	PHILOSOPHY
<p>Key Factors:</p> <ul style="list-style-type: none"> <li>• Fund manager and team experience</li> <li>• Deep institutional expertise</li> <li>• Organizational structure</li> <li>• Ability to drive the process and performance</li> </ul>	<p>Key Factors:</p> <ul style="list-style-type: none"> <li>• Clearly defined</li> <li>• Consistent application</li> <li>• Sound and established</li> <li>• Clearly communicated</li> <li>• Successfully executed process</li> </ul>	<p>Key Factors:</p> <ul style="list-style-type: none"> <li>• Research and ideas must be coherent and persuasive</li> <li>• Strong rationale</li> <li>• Logical and compelling</li> <li>• Focus on identifying skillful managers</li> </ul>

### Scorecard System Disclosures

Investment objectives and strategies vary among fund, and may not be similar for funds included in the same asset class.

All definitions are typical category representations. The specific share classes or accounts identified above may not be available or chosen by the Plan. Share class and account availability is unique to the client's specific circumstances. There may be multiple share classes or accounts available to the client from which to choose. All recommendations are subject to vendor/provider approval before implementation into the Plan. The performance data quoted may not reflect the deduction of additional fees, if applicable. If reflected, additional fees would reduce the performance quoted.

Performance data is subject to change without prior notice.

The information used in the analysis has been taken from sources deemed to be reliable, including, third-party providers such as *Markov Processes International*, *Morningstar*, firms who manage the investments, and/or the retirement plan providers who offer the funds.

Every reasonable effort has been made to ensure completeness and accuracy; however, the final accuracy of the numbers and information is the responsibility of the investment manager(s) of each fund and/or the retirement plan providers offering these funds. Discrepancies between the figures reported in this analysis, and those reported by the actual investment managers and/or retirement plan providers, may be caused by a variety of factors, including: Inaccurate reporting by the manager/provider; Changes in reporting by the manager/provider from the time this report was prepared to a subsequent retro-active audit and corrected reporting; Differences in fees and share-classes impacting net investment return; and, Scriveners error by your advisor in preparing this report.

The enclosed Investment Due Diligence report, including the **Scorecard System**, is intended for plan sponsor and/or institutional use only. The materials are not intended for participant use.

The purpose of this report is to assist fiduciaries in selecting and monitoring investment options. A fund's score is meant to be used by the Plan sponsor and/or fiduciaries as a tool for selecting the most appropriate fund.

Fund scores will change as the performance of the funds change and as certain factors measured in the qualitative category change (e.g., manager tenure). Fund scores are not expected to change dramatically from each measured period, however, there is no guarantee this will be the case. Scores will change depending on the changes in the underlying pre-specified Scorecard™ factors.

Neither past performance nor statistics calculated using past performance are guarantees of a fund's future performance. Likewise, a fund's score using the **Scorecard System™** does not guarantee the future performance or style consistency of a fund.

This report was prepared with the belief that this information is relevant to the Plan sponsor as the Plan sponsor makes investment selections.

Fund selection is at the discretion of the investment fiduciaries, which are either the Plan sponsor or the Committee appointed to perform that function.

Cash Equivalents (e.g., money market fund) and some specialty funds are not scored by the **Scorecard System**.

The enclosed Investment Due Diligence report and Scorecard™ is not an offer to sell mutual funds. An offer to sell may be made only after the client has received and read the appropriate prospectus.

For the most current month-end performance, please contact your advisor.

The Strategy Review notes section is for informational purposes only. The views expressed here are those of your advisor and do not constitute an offer to sell an investment. An offer to sell may be made only after the client has received and read the appropriate prospectus.

**Carefully consider the investment objectives, risk factors and charges and expenses of the investment company before investing. This and other information can be found in the fund's prospectus, which may be obtained by contacting your Investment Advisor/Consultant or Vendor/Provider. Read the prospectus carefully before investing.**

**For a copy of the most recent prospectus, please contact your Investment Advisor/Consultant or Vendor/Provider.**



# STAFF REPORT

**ITEM NO. 11.E.**

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**DATE:** January 13, 2020  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
PONCE YAMBOT, PRINCIPAL ENGINEER  
**SUBJECT:** ACCEPTANCE OF RIGHT OF WAY DEDICATION (CORNER CUTBACK, GENERALLY LOCATED AT THE NORTHWEST CORNER OF 9TH STREET AND SAN ANTONIO AVENUE) FROM MR. MARIO SOSA HERRERA

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## RECOMMENDED ACTION

It is recommended that the City Council accept the street right of way offer of dedication from Mario Sosa Herrera and authorize recordation of document.

## GOAL STATEMENT

The proposed action supports the City's goal to adhere to a review schedule for the processing of development matters in an efficient, professionally responsive, and courteous manner.

## BACKGROUND

Administrative Use Permit (AUP) AUP-17-13 and Design Review (DR-17-02) were conditionally approved on March 28, 2019. This conditional approval allows for the construction of a six-unit multi-family development.

This project is generally located at the northwest corner of 9th Street and San Antonio Avenue. It is surrounded by residential (multi and single-family) to the north, east, and west and commercial land uses to the south. The project site consists of two parcels, one vacant, and one currently developed as a single-family residential property which will be merged, resulting in a project area of 0.41 acres. The developer is also required to dedicate a "corner cutback" to enable construction of an ADA compliant access ramp.

## **ISSUES/ANALYSIS**

In compliance with the requirements, the developer submitted legal plats and dedication documents that the City has found acceptable and is recommending acceptance. The additional right of way dedication will provide construction of an ADA compliant access ramp within the City right of way.

## **FISCAL IMPACTS**

There is no fiscal impact associated with this action.

## **ALTERNATIVES**

Provide alternative direction to staff.

## **ATTACHMENTS:**

**Offer of dedication**

**Location map**

Recording requested by  
and when recorded mail to:

**City of Upland  
City Clerk's Office  
P.O. Box 460  
Upland, California 91785**

This document is exempt from the payment of a  
recording fee pursuant to Government Code Section 27383.

THIS SPACE FOR RECORDERS USE

### IRREVOCABLE OFFER OF DEDICATION IN FEE

Assessor Parcel Number(s)

104633324444

Grantor(s) Declares:

\$ \_\_\_\_\_

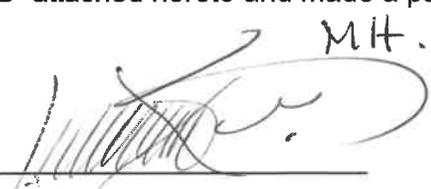
Grantor(s) \_\_\_\_\_



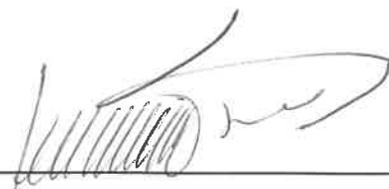
**FOR VALUABLE CONSIDERATION**, receipt of which is hereby acknowledged, Grantor(s) does hereby, pursuant to the procedures set forth in California Government Code Section 7050, irrevocably offer to dedicate in fee for any lawful public purpose(s), to **THE CITY OF UPLAND, A MUNICIPAL CORPORATION**, all that certain real property situated in the City of Upland, County of San Bernardino, State of California, more fully described as in Exhibit "A" and depicted in Exhibit "B" attached hereto and made a part thereof.

Dated: \_\_\_\_\_

10-07-19.



Grantor(s) \_\_\_\_\_



(Attach Notary Acknowledgement)

# CALIFORNIA CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of San Bernardino )

On October 07, 2019 before me, Adrian Cazares, Notary Public,  
(here insert name and title of the officer)

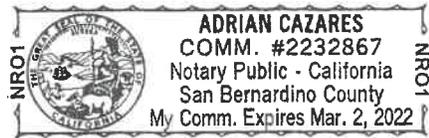
personally appeared Mario Rene Sosa Herrera

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Adrian Cazares*



(Seal)

## Optional Information

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

### Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of \_\_\_\_\_

containing \_\_\_\_\_ pages, and dated \_\_\_\_\_

The signer(s) capacity or authority is/are as:

- Individual(s)
- Attorney-in-Fact
- Corporate Officer(s) \_\_\_\_\_  
Title(s)
- Guardian/Conservator
- Partner - Limited/General
- Trustee(s)
- Other: \_\_\_\_\_

representing: \_\_\_\_\_  
Name(s) of Person(s) or Entity(ies) Signer is Representing

Additional Information	
<b>Method of Signer Identification</b>	
Proved to me on the basis of satisfactory evidence:	
<input type="radio"/> form(s) of identification <input type="radio"/> credible witness(es)	
Notarial event is detailed in notary journal on:	
Page # _____	Entry # _____
Notary contact: _____	
<b>Other</b>	
<input type="checkbox"/> Additional Signer(s)	<input type="checkbox"/> Signer(s) Thumbprint(s)
<input type="checkbox"/> _____	

**EXHIBIT 'A'**  
**STREET DEDICATION**  
**( CORNER CUTOFF )**  
**AT THE NORTHWEST CORNER OF NINTH STREET**  
**AND SAN ANTONIO AVENUE**

**LEGAL DESCRIPTION**

THAT PORTION OF LOT 50 OF BLAKESLEE'S SUBDIVISION, IN THE CITY OF UPLAND, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 17, PAGE 11 OF MAPS. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 50 AND THE WEST RIGHT OF WAY OF SAN ANTONIO AVENUE; THENCE NORTHERLY ALONG SAID WEST RIGHT OF WAY A DISTANCE OF 10.00 FEET; THENCE IN A SOUTHWESTERLY DIRECTION A DISTANCE OF 14.14 FEET MORE OR LESS TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF NINTH STREET ( 66.00' WIDE ), SAID POINT BEING 10.00' FROM THE SOUTHEAST CORNER OF SAID LOT 50; THENCE EASTERLY ALONG SAID NORTH RIGHT OF WAY A DISTANCE OF 10.00 FEET TO THE TRUE POINT OF BEGINNING.

 9-3-19  
BOYD SCHNEIDERWENT P.L.S. 5553                      DATED:

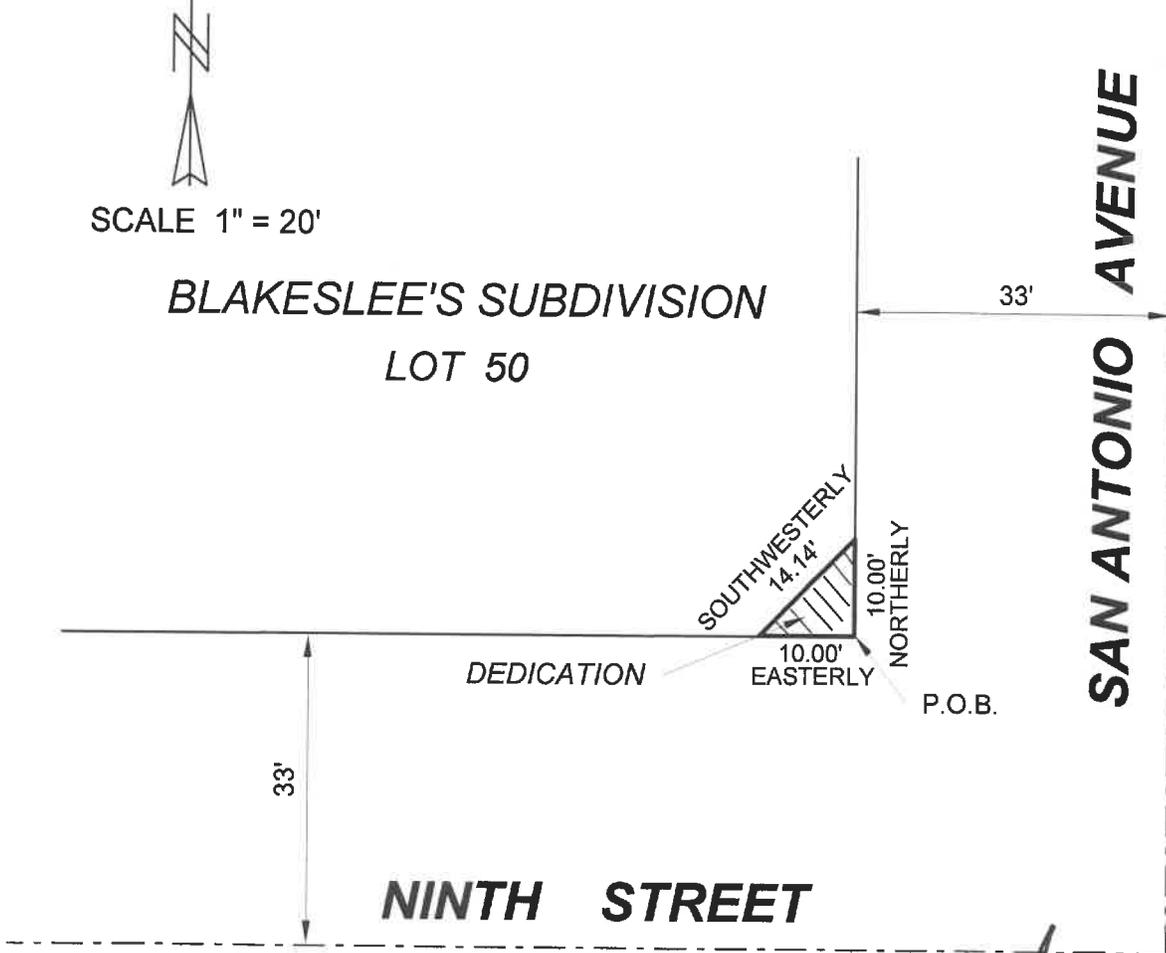


**EXHIBIT 'B'**  
**STREET DEDICATION**  
**( CORNER CUTOFF )**  
**AT THE NORTHWEST CORNER OF NINTH STREET**  
**AND SAN ANTONIO AVENUE**



SCALE 1" = 20'

**BLAKESLEE'S SUBDIVISION**  
**LOT 50**



*[Handwritten Signature]*  
LICENSED LAND SURVEYOR  
BOND SCHEIDERMENT  
No. 5553  
EXP. 6-30-21  
STATE OF CALIFORNIA

**CERTIFICATE OF ACCEPTANCE**

THIS IS TO CERTIFY that the interest in the real property conveyed by the deed or grant dated \_\_\_\_\_ from \_\_\_\_\_ Grantor(s), to the CITY OF UPLAND, CALIFORNIA, a California Municipal Corporation, is hereby accepted by order of the City Council on February 17, 1965 by Resolution No. 1736, and the grantee consents to the recordation thereof by its duly authorized officer.

Dated \_\_\_\_\_

**CITY OF UPLAND**

By: \_\_\_\_\_  
Keri Johnson, City Clerk

Provides for: \_\_\_\_\_  
\_\_\_\_\_





## STAFF REPORT

**ITEM NO. 11.F.**

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**DATE:** January 13, 2020  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
PONCE YAMBOT, PRINCIPAL ENGINEER  
**SUBJECT:** APPROVAL OF PUBLIC IMPROVEMENT AGREEMENT AND  
ENCROACHMENT LICENSE AGREEMENT WITH BRIXMOR FOR  
PROJECT LOCATED ON THE NORTHWEST CORNER OF FOOTHILL  
BOULEVARD AND SAN ANTONIO AVENUE

---

### RECOMMENDED ACTION

It is recommended that the City Council approve the Public Improvement Agreement and Encroachment License Agreement (ELA) with Brixmor Upland Town Square, LLC; and authorize the Interim City Manager to execute the ELA. It is further recommended that the City Council accept the Faithful Performance bond and the Labor Materials bond in the amount \$569,000 and \$285,000 respectively.

### GOAL STATEMENT

The proposed action supports the City's goal to adhere to a review schedule for the processing of development matters in an efficient, professionally responsive, and courteous manner.

### BACKGROUND

On February 27, 2019, the Planning Commission approved Resolution 4898, conditionally approving Brixmor application for Site Plan Review No. 18-11 allowing Brixmor to demolish two existing buildings and replace them with a new 9,434 square foot building. The project site is in the Upland Town Square on the northwest corner of Foothill Boulevard and San Antonio Avenue. This new building will house four new quick service restaurants, one of which will have a drive-thru window, and a retail space.

Under the ELA, Brixmor was allowed to use a portion of the existing frontage road for parking spaces and landscaping. Brixmor was also required to post performance and labor and

materials bonds for public improvements which will ensure that the required public improvements will be completed.

**ISSUES/ANALYSIS**

In conformance with the conditions of approval contained in Resolution No. 4898 by the Planning Commission, Brixmor has prepared all improvement plans, executed the public improvement agreement, posted the necessary securities, and executed the ELA and is now requesting approval by the City Council.

**FISCAL IMPACTS**

There is no fiscal impact associated with these actions.

**ALTERNATIVES**

Provide alternative direction to staff.

**ATTACHMENTS:**

- Location Map**
- Public Improvement Agreement**
- Encroachment License Agreement**
- Performance Bond**
- Labor and Materials Bond**



# LOCATION MAP

## AGREEMENT FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS

THIS AGREEMENT is entered into this 30th day of September, 2019 by and between Brixmor Property Group (hereinafter referred to as "**Builder**") and the CITY OF UPLAND, a municipal corporation (hereinafter referred to as "**City**").

### A. Recitals

- (i) There has been conditionally approved SP 18-11 and GP 19-07 for Brixmor Upland Plaza Northwest Corner Foothill Boulevard & San Antonio Avenue in the City of Upland, (hereinafter sometimes referred to as the "**Project**").
- (ii) Builder has conditional approval for construction permits to construct improvements in the public right-of-way and public easement as shown on City approved plan(s) SP 18-11 and GP 19-07.

### B. Agreement

It is agreed by and between the parties hereto as follows:

1. In consideration of the City's approval of construction permits for the Project, Builder undertakes and agrees that it will, at Builder's sole cost and expense, make all the improvements upon and in connection with the Project in accordance with plans and specifications therefore on file with the City, incorporated herein and made a part hereof, and including all matters required by the Planning Commission and City Council of City in connection with the various steps leading to approval of the Project. Builder also undertakes and agrees upon the same consideration to comply with all ordinances and regulations of City, and to do all other and further acts required of it pursuant to this Agreement. Builder agrees in connection therewith to pay or causes to be paid all amounts becoming due to contractors, subcontractors, and persons renting equipment or furnishing labor or materials with respect to such improvements, or to Builder with respect thereto. Builder agrees that all such improvements shall be constructed and completed in accordance with any applicable conditions as hereinabove referred to, and in accordance with the remaining provisions of this Agreement. In case of dispute, the good faith judgment of the City's City Engineer shall be final and binding upon the parties.

2. Builder agrees that all the improvements required hereunder shall be completed within three hundred sixty-five (365) days from the date of this Agreement, or prior to occupancy of the Project, whichever occurs first.

3. Should Builder fail to comply with any of the terms or provisions of this Agreement, Builder shall be liable to City for the reasonable value of any work or improvements not completed or improperly done or performed. In the event of any

Bond-PI

K:\LDT\_LDEV\099684001 - Upland Town Square\Mailbox\Incoming\City of Upland\2019\_0923 - Improvement Bond Agreement Example\improvement\_agreement\_.doc

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Rev. June 01, 2019

such failure, City shall give to Builder written notice thereof. Unless the work or improvements covered by said notice, including defective work and improvements, are commenced by, Builder within fifteen (15) days of the date of said notice and diligently prosecuted to completion, the City may at its option:

(a) Collect from Builder the reasonable value of the work and improvements not so done and performed by Builder, to be measured by the anticipated costs and expenses of completing the same; or

(b) City may complete said work and improvements not so completed by Builder and collect its costs and expenses in completing the same; or

(c) City may, as to some of such work and improvements, proceed under remedy (a) above, and as to the remainder, under remedy (b) above.

City may change any election prior to trial of any lawsuit, and prior thereto no election of remedies shall be binding upon City. In either event, there shall be included in said "costs and expenses", the reasonable overhead expenses of the City. In addition to the foregoing, Builder shall be liable to City for reasonable attorneys' fees and court costs incurred by City in enforcing the obligations of Builder under this Agreement.

4. Builder shall give bonds with a corporate bonding company, or similar instrument, satisfactory to City in the following amounts and for the following purposes:

(a) A bond for \$ 569,000 guaranteeing full performance of all the terms of this Agreement;

(b) A bond for 285,000 securing payment to the contractor, his subcontractor and to persons renting equipment or furnishing labor or materials to them with respect to said public improvements;

5. Acceptance of any work or improvements by City shall not constitute an acknowledgment by City that the work or improvements were done or performed, except those items or matters that are readily apparent from an inspection of that work or improvements. Except as to such matters so readily apparent, Builder shall repair any defects, which occur in the work of improvements within a one (1) year period thereof following acceptance by City.

As a condition precedent to the acceptance of the improvements hereunder as being complete and prior to the release of any bonds required under paragraph 4, hereof, securing the faithful performance of Builder's obligations hereunder, Builder shall give a bond with a corporate bonding company or similar instrument, satisfactory to City in the amount of \$145,000 UMC 16.20.010 as guarantee and warranty of the work for a one (1) year period following the completion and a acceptance thereof against any defective work or labor done, or defective materials furnished.

6. All notices to Builder may be sent to Kyle Godat, Brixmor Property Group, 1525 Faraday Avenue, Suite 350, Carlsbad, CA, 92008. or at such other address of which City shall actually receive notice in writing specifically calling attention to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

Brixmor Upland Town Square LLC

Mathew Berger, Vice President West

BY



BY

CITY OF UPLAND, a municipal Corporation

Debbie Stone, Mayor

Keri Johnson, City Clerk

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of San Diego )

On October 4, 2019 before me, Monica A. Cerda  
(insert name and title of the officer)

personally appeared Matthew Berger  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

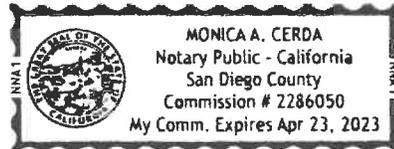
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_



(Seal)



RECORDING REQUESTED BY:  
WHEN RECORDED MAIL TO:

City Clerk  
City of Upland  
460 North Euclid Avenue  
Upland, California 91786

**This document is exempt from the  
Payment of a recording Fee pursuant  
To Government Code Section 27383**

(Space Above Line For Recorder's Use Only)

### ENCROACHMENT LICENSE AGREEMENT

The CITY OF UPLAND, a California municipal corporation ("City"), hereby grants a revocable license to Brixmor Upland Town Square LLC, a Delaware Limited Liability Company, ("Licensee"), to install and maintain the "Encroachment" (as defined below) upon the "Property" (as defined below) for the use and benefit of Licensee's Property, and in consideration thereof, Licensee agrees to comply with all terms and conditions set forth in this Encroachment License Agreement (this "Agreement").

1. Encroachment. Licensee shall be permitted to install, maintain, and use landscaping, pedestrian access vehicle access and parking, shown as as Exhibit B, attached hereto, or such other improvements as otherwise permitted by City from time to time (the "Encroachment").

2. Property. City is the owner of that certain property located in the City of Upland, County of San Bernardino, State of California, known as Frontage Road at Foothill Boulevard, and more particularly described as Exhibit A attached hereto (the "Property"). City's ownership of the Property shall not be affected by this Agreement in any manner whatsoever and Licensee shall not acquire any rights in the Property whatsoever as a result of the Encroachment except those rights specifically granted therein.

3. Condition. The Encroachment shall be installed and maintained or replaced in kind or better in a safe and sanitary condition and otherwise in accordance with all applicable governmental laws, ordinances and regulations at the sole cost, risk and responsibility of Licensee.

4. Indemnification. Licensee shall defend, indemnify and hold City free and harmless from, and pay in full, any and all claims, demands, losses, damages or expenses that City may sustain or incur in any manner resulting from the Encroachment (whether the construction, installation, removal, maintenance, use, repair, replacement or presence thereof), including any and all injuries (including personal injury, disability, dismemberment and death), illness, losses, loss of or damage to property, damages, claims, liabilities or expenses of any kind

or nature to any person that is not caused, or alleged to be caused, by the negligent acts or omissions of City or its agents or employees.

5. Insurance. Licensee shall maintain a policy of liability insurance issued by an insurance company that is admitted and licensed to do business in the State of California and that is rated A+VII or better according to the most recent A.M. Best Co. Rating Guide, with City named as an additional insured, that has an aggregate liability limit (subject to commercially reasonable adjustments) of at least One Million Dollars (\$1,000,000), and that will protect City from any claims that may arise from the Encroachments, including those for which Licensee is obligated to indemnify City against hereunder.

6. Indemnification - Licensee shall defend, indemnify and hold City, its officers, employees, agents, and volunteers harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the installation, presence of, and use of Frontage Road at Foothill Property Licensee will act in good faith to ensure that use is safe and compliant with all applicable codes.

7. City Work. Licensee's right to maintain the Encroachment is subject to City's right to cause construction, installation, removal, maintenance, repair and/or replacement work to be conducted on the Property from time to time provided that it shall give reasonable prior notice to Licensee of the commencement of such work and shall use its best efforts to not unreasonably interfere with the Encroachment during the performance of such work.

8. Revocation. Licensee must, at the sole cost, risk and responsibility of Licensee, remove and/or relocate the Encroachment, and restore the Property to substantially the same condition that existed prior to the Encroachment, reasonable wear and tear and damage due to casualty excepted, within one hundred eighty (180) days of written notice from the City, or, in case of an emergency, City may require that the work be done immediately or within less than such one hundred eighty day (180) period. If Licensee fails to so remove and/or relocate the Encroachment and restore the Property, City may cause such work to be done, and Licensee shall be liable to City for all costs incurred by City in connection therewith. In the event Licensee fails to reimburse City for such costs within fifteen (15) days of demand, such costs shall be a lien against Licensee's property. Furthermore, in the event City must maintain an action to enforce any of the obligations of Licensee under, or arising out of, this agreement, and is successful in such action, Licensee agrees to pay all cost and expenses, including reasonable attorney's fees, incurred by City in connection therewith. Notwithstanding the foregoing, the City agrees termination of this agreement in and of itself, shall not result in the automatic violation of governmental parking ratio requirement

9. Notices: Any notice, request, direction, demand, consent, waiver, approval or other communication required or permitted to be given hereunder shall not be effective unless it is given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, or (c) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and addressed to the parties at the addresses stated below, or at such other address as either party may hereafter notify the other in writing as aforementioned:



[This Space Intentionally Left Blank; Signatures Begin On The Next Page]

IN WITNESS WHEREOF, the parties hereto have entered into this Encroachment License Agreement as of \_\_\_\_\_, \_\_\_\_\_.

CITY: CITY OF UPLAND, a municipal corporation

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

Name: Rosemary Hoerning  
Its: Interim City Manager

ATTEST:

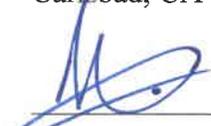
By: \_\_\_\_\_

Name: Keri Johnson  
Its: City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Name: ~~James L. Markman~~ Steven Flower  
Its: Interim City Attorney

LICENSEE: Brixmor Upland Town Square LLC, a Delaware Limited Liability Company  
of  
1525 Faraday Ave  
Carlsbad, CA 92008

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

Name: Matthew Berger

Its: Executive Vice President

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of San Diego )

On September 20, 2019 before me, Monica A. Cerda, Notary Public  
(insert name and title of the officer)

personally appeared Matthew Berger  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature LM Cerda (Seal)

**EXHIBIT "A"**

**ENCROACHMENT LICENSE AGREEMENT**

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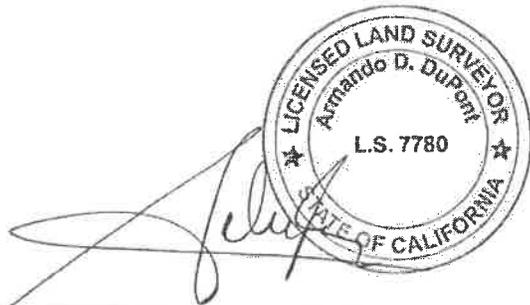
LEGAL DESCRIPTION:

THAT PORTION OF LOT 510 OF ONTARIO COLONY LANDS, IN THE CITY OF UPLAND, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 11, PAGE 6 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE NORTH 59 FEET OF THE SOUTH 64 FEET OF SAID LOT 510, EXCEPT THEREFROM THE EAST 171 FEET.

SEE EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

Prepared under my supervision:



Armando D. DuPont, L.S. 7780  
My Registration Expires 12/31/19

7/12/19

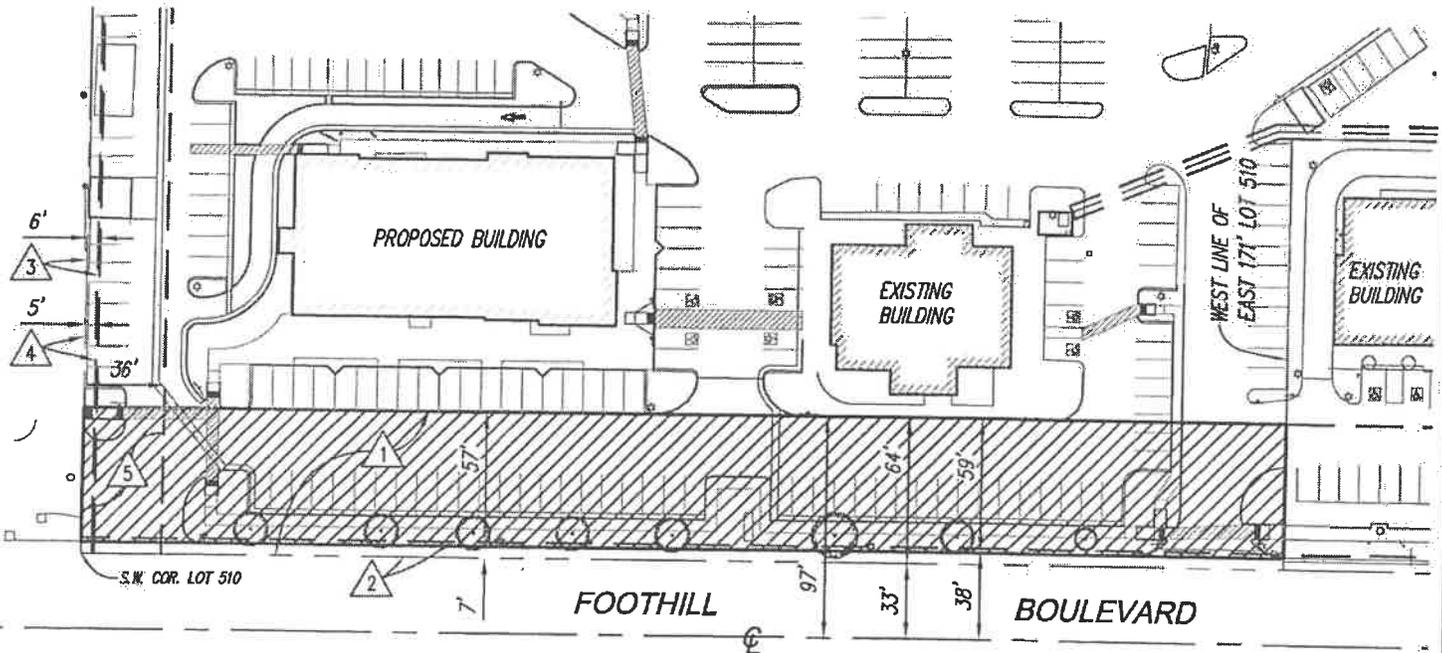
# EXHIBIT "B"

## PLAT TO ACCOMPANY DESCRIPTION



### LEGEND

- CENTER LINE
- RIGHT OF WAY LINE/PROPERTY LINE
- ENCROACHMENT LICENSE AGREEMENT AREA



### EASEMENTS

- 1 EASEMENT TO THE CITY OF UPLAND FOR STREET & RELATED PURPOSES PER BK. 6206, PAGE 50, O.R., REC. 8/11/1964.
- 2 7' EASEMENT TO THE STATE OF CALIFORNIA FOR HIGHWAY PURPOSES PER BK. 595, PAGE 30, O.R., REC. 1/15/1931.
- 3 6' EASEMENT TO THE GENERAL TELEPHONE CO. FOR POLE LINES AND CONDUITS PER BK. 6352, PAGE 494, O.R. REC. 3/19/1965.
- 4 5' EASEMENT TO THE SO. CAL. EDISON CO. FOR POLE LINES AND CONDUITS PER BK. 6622, PAGE 109, O.R., REC. 5/6/1966.
- 5 EASEMENT TO THE CITY OF UPLAND FOR WATER LINE PURPOSES PER INST. NO. 93-345768, O.R., REC. 8/11/1993.

PREPARED UNDER MY SUPERVISION:



ARMANDO D. DUPONT, P.L.S. 7780  
EXP. 12/31/19

7/12/19

# CALVADA

**SURVEYING, INC.**

411 JENKS CIRCLE, SUITE 205, CORONA, CA. 92880

Los Angeles • Denver

PHONE: 951-280-9960 FAX: 951-280-9746 www.calvada.com

Job No. 19323

# Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

## Performance Bond

Bond Number: K1354234A

### CONTRACTOR:

(Name, legal status and address)

Brixmor Upland Town Square LLC  
1525 Faraday Ave # 300  
Carlsbad, CA 92008

### SURETY:

(Name, legal status and principal place of business)

Westchester Fire Insurance Company  
436 Walnut Street  
Philadelphia, PA 19106-3703  
State of Inc: Pennsylvania

### OWNER:

(Name, legal status and address)

City of Upland  
460 North Euclid Avenue  
Upland, CA 91786

### CONSTRUCTION CONTRACT

Date: 9/30/2019

Amount: \$569,000.00

Description: (Name and location)

SP 18-11 and GP 19-07 - Public Improvements to Brixmor Upland Plaza - Northwest Corner Foothill Boulevard & San Antonio Avenue, Upland, CA

### BOND

Date: 10/3/2019

(Not earlier than Construction Contract Date)

Amount: \$569,000.00

Modifications to this Bond:  None  See Section 16

### CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Brixmor Upland Town Square LLC

Signature: \_\_\_\_\_

Name: Steven Siegel

And Title: ENR, General Counsel

(Any additional signatures appear on the last page of this Performance Bond)

### SURETY

Company: (Corporate Seal)

Westchester Fire Insurance Company

Signature: \_\_\_\_\_

Name

And Title: John B. O'Keefe, Attorney-in-Fact

(FOR INFORMATION ONLY - Name, address and telephone)

### AGENT or BROKER:

Marsh USA Inc.  
20 Church Street  
Hartford, CT 06103  
860-723-5686

### OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### § 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

**CONTRACTOR AS PRINCIPAL**

**SURETY**

Company: \_\_\_\_\_  
*(Corporate Seal)*

Company: \_\_\_\_\_  
*(Corporate Seal)*

Signature: \_\_\_\_\_  
Name and Title:  
Address

Signature: \_\_\_\_\_  
Name and Title:  
Address

# CALIFORNIA ALL- PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CT }

County of Hartford }

On 10/3/2019 before me, Stacie T. Dykins, Notary Public  
(Here insert name and title of the officer)

personally appeared John B. O'Keefe,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

**STACIE T. DYKINS**  
**NOTARY PUBLIC**  
MY COMMISSION EXPIRES NOV. 30, 2020

  
Notary Public Signature  
My Commission Expires: 11/30/2020

(Notary Public Seal)

### ADDITIONAL OPTIONAL INFORMATION

**DESCRIPTION OF THE ATTACHED DOCUMENT**

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages \_\_\_\_\_ Document Date \_\_\_\_\_

### CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
- Corporate Officer
- \_\_\_\_\_ (Title)
- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Other \_\_\_\_\_

### INSTRUCTIONS FOR COMPLETING THIS FORM

- This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.*
- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
  - Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
  - The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
  - Print the name(s) of document signer(s) who personally appear at the time of notarization.
  - Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is/are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
  - The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
  - Signature of the notary public must match the signature on file with the office of the county clerk.
    - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
    - ❖ Indicate title or type of attached document, number of pages and date.
    - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
  - Securely attach this document to the signed document with a staple.

Know All by These Presents, that WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY corporations of the Commonwealth of Pennsylvania, do each hereby constitute and appoint Joanne Czlapinski and John B. O'Keefe of Hartford, Connecticut -----

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY have each executed and attested these presents and affixed their corporate seals on this 17<sup>th</sup> day of July, 2019.

*Dawn M. Chloros*

Dawn M. Chloros, Assistant Secretary

*Stephen M. Haney*

Stephen M. Haney, Vice President



STATE OF NEW JERSEY

County of Hunterdon ss.

On this 17<sup>th</sup> day of July, 2019, before me, a Notary Public of New Jersey, personally came Dawn M. Chloros, to me known to be Assistant Secretary of WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros, being by me duly sworn, did depose and say that she is Assistant Secretary of WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that she signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that she is acquainted with Stephen M. Haney, and knows him to be Vice President of said Companies; and that the signature of Stephen M. Haney, subscribed to said Power of Attorney is in the genuine handwriting of Stephen M. Haney, and was thereto subscribed by authority of said Companies and in deponent's presence.

Notarial Seal



KATHERINE J. ADELAAR  
NOTARY PUBLIC OF NEW JERSEY  
No. 2316885  
Commission Expires July 16, 2024

*Katherine J. Adelaar*  
Notary Public

**CERTIFICATION**

Resolutions adopted by the Boards of Directors of WESTCHESTER FIRE INSURANCE COMPANY on December 11, 2006 ; ACE AMERICAN INSURANCE COMPANY on March 20, 2009:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a "Written Commitment"):

- (1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.
- (2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.
- (3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (4) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested."

I, Dawn M. Chloros, Assistant Secretary of WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY (the "Companies") do hereby certify that

- (i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,
- (ii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this 3<sup>rd</sup> day of October 2019



*Dawn M. Chloros*

Dawn M. Chloros, Assistant Secretary

IN THE EVENT YOU WISH TO VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT:  
Telephone (908) 903-3493 Fax (908) 903-3656 e-mail: surety@chubb.com

STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
SAN FRANCISCO

Nº 08847

Amended  
Certificate of Authority

THIS IS TO CERTIFY THAT, Pursuant to the Insurance Code of the State of California,  
Westchester Fire Insurance Company

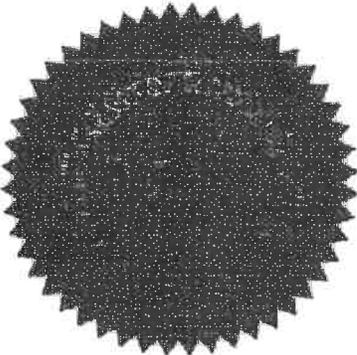
of Pennsylvania, organized under the  
laws of Pennsylvania, subject to its Articles of Incorporation or  
other fundamental organizational documents, is hereby authorized to transact within the State, subject to  
all provisions of this Certificate, the following classes of insurance:

Fire, Marine, Surety, Plate Glass, Liability, Workers' Compensation,  
Common Carrier Liability, Boiler and Machinery, Burglary, Credit, Sprinkler,  
Train and Vehicle, Automobile, Aircraft, and Miscellaneous

as such classes are now or may hereafter be defined in the Insurance Laws of the State of California.

THIS CERTIFICATE is expressly conditioned upon the holder hereof now and hereafter being in  
full compliance with all, and not in violation of any, of the applicable laws and lawful requirements made  
under authority of the laws of the State of California as long as such laws or requirements are in effect  
and applicable, and as such laws and requirements now are, or may hereafter be changed or amended.

IN WITNESS WHEREOF, effective as of the 1st  
day of January, 2011, I have hereunto  
set my hand and caused my official seal to be affixed this  
2nd day of December, 2010.



Steve Poizner  
Insurance Commissioner

By

  
Susan J. Stapp  
for Jesse Huff, Deputy  
Chief Deputy

**NOTICE:**

Qualification with the Secretary of State must be accomplished as required by the California Corporations Code promptly after issuance of this Certificate of Authority. Failure to do so will be a violation of Insurance Code Section 701 and will be grounds for revoking this Certificate of Authority pursuant to the covenants made in the application therefor and the conditions contained herein.

# Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

## Payment Bond

Bond Number: K1354234A

### CONTRACTOR:

(Name, legal status and address)

Brixmor Upland Town Square LLC  
1525 Faraday Ave # 300  
Carlsbad, CA 92008

### SURETY:

(Name, legal status and principal place of business)

Westchester Fire Insurance Company  
436 Walnut Street  
Philadelphia, PA 19106-3703  
State of Inc: Pennsylvania

### OWNER:

(Name, legal status and address)

City of Upland  
460 North Euclid Avenue  
Upland, CA 91786

### CONSTRUCTION CONTRACT

Date: 9/30/2019

Amount: \$285,000.00

### Description: (Name and location)

SP 18-11 and GP 19-07 - Public Improvements to Brixmor Upland Plaza - Northwest Corner Foothill Boulevard & San Antonio Avenue, Upland, CA

### BOND

Date: 10/3/2019

(Not earlier than Construction Contract Date)

Amount: \$285,000.00

Modifications to this Bond:  None  See Section 18

### CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Brixmor Upland Town Square LLC

Signature: \_\_\_\_\_

Name Steven Siegel  
And Title: EVP, General Counsel  
(Any additional signatures appear on the last page of this Payment Bond)

### SURETY

Company: (Corporate Seal)

Westchester Fire Insurance Company

Signature: \_\_\_\_\_

Name J.B. O'Keefe  
And Title: John B. O'Keefe, Attorney-in-Fact

(FOR INFORMATION ONLY – Name, address and telephone)

### AGENT or BROKER:

Marsh USA Inc.  
20 Church Street  
Hartford, CT 06103  
860-723-5686

### OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any

Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### § 16 Definitions

§ 16.1 **Claim.** A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 **Claimant.** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of the Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

**CONTRACTOR AS PRINCIPAL**

**SURETY**

Company: \_\_\_\_\_ (Corporate Seal)

Company: \_\_\_\_\_ (Corporate Seal)

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name and Title:

Name and Title:

Address

Address

# CALIFORNIA ALL- PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CT }

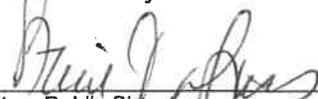
County of Hartford }

On 10/3/2019 before me, Stacie T. Dykins, Notary Public  
(Here insert name and title of the officer)

personally appeared John B. O'Keefe,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary Public Signature  
My Commission Expires: 11/30/2020

**STACIE T. DYKINS**  
**NOTARY PUBLIC**  
(Notary Public Commission Expires NOV. 30, 2020)

### ADDITIONAL OPTIONAL INFORMATION

#### DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages \_\_\_\_\_ Document Date \_\_\_\_\_

#### CAPACITY CLAIMED BY THE SIGNER

- Individual (s)  
 Corporate Officer

\_\_\_\_\_  
(Title)

- Partner(s)  
 Attorney-in-Fact  
 Trustee(s)  
 Other \_\_\_\_\_

### INSTRUCTIONS FOR COMPLETING THIS FORM

*This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.*

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are ) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

Power of Attorney

Westchester Fire Insurance Company | ACE American Insurance Company

Know All by These Presents, that WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY corporations of the Commonwealth of Pennsylvania, do each hereby constitute and appoint Joanne Czapinski and John B. O'Keefe of Hartford, Connecticut -----

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY have each executed and attested these presents and affixed their corporate seals on this 17th day of July, 2019.

Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

Stephen M. Haney

Stephen M. Haney, Vice President



STATE OF NEW JERSEY

County of Hunterdon

ss.

On this 17th day of July, 2019, before me, a Notary Public of New Jersey, personally came Dawn M. Chloros, to me known to be Assistant Secretary of WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros, being by me duly sworn, did depose and say that she is Assistant Secretary of WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that she signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that she is acquainted with Stephen M. Haney, and knows him to be Vice President of said Companies; and that the signature of Stephen M. Haney, subscribed to said Power of Attorney is in the genuine handwriting of Stephen M. Haney, and was thereto subscribed by authority of said Companies and in deponent's presence.

Notarial Seal



KATHERINE J. ADELAAR
NOTARY PUBLIC OF NEW JERSEY
No. 2316665
Commission Expires July 16, 2024

Signature of Katherine J. Adelaar

Notary Public

CERTIFICATION

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FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested."

I, Dawn M. Chloros, Assistant Secretary of WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY (the "Companies") do hereby certify that

- (i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,
(ii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this

2nd day of October 2019



Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

IN THE EVENT YOU WISH TO VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT:
Telephone (908) 903-3493 Fax (908) 903-3656 e-mail: surety@chubb.com

STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
SAN FRANCISCO

No 08847

Amended  
Certificate of Authority

THIS IS TO CERTIFY THAT, Pursuant to the Insurance Code of the State of California,  
Westchester Fire Insurance Company

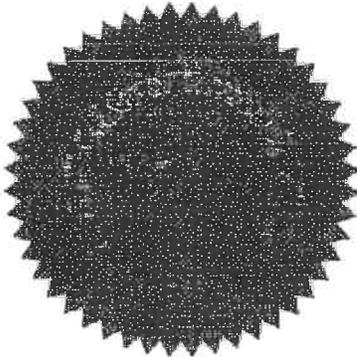
of Pennsylvania, organized under the  
laws of Pennsylvania, subject to its Articles of Incorporation or  
other fundamental organizational documents, is hereby authorized to transact within the State, subject to  
all provisions of this Certificate, the following classes of insurance:

Fire, Marine, Surety, Plate Glass, Liability, Workers' Compensation,  
Common Carrier Liability, Boiler and Machinery, Burglary, Credit, Sprinkler,  
Team and Vehicle, Automobile, Aircraft, and Miscellaneous

as such classes are now or may hereafter be defined in the Insurance Laws of the State of California.

THIS CERTIFICATE is expressly conditioned upon the holder hereof now and hereafter being in  
full compliance with all, and not in violation of any, of the applicable laws and lawful requirements made  
under authority of the laws of the State of California as long as such laws or requirements are in effect  
and applicable, and as such laws and requirements now are, or may hereafter be changed or amended.

IN WITNESS WHEREOF, effective as of the 1st  
day of January, 2011, I have hereunto  
set my hand and caused my official seal to be affixed this  
2nd day of December, 2010.



By

Steve Poizner  
Insurance Commissioner

  
Susan J. Stapp  
for Jesse Huff  
Chief Deputy

**NOTICE:**

Qualification with the Secretary of State must be accomplished as required by the California Corporations Code promptly after issuance of this Certificate of Authority. Failure to do so will be a violation of Insurance Code Section 701 and will be grounds for revoking this Certificate of Authority pursuant to the covenants made in the application therefor and the conditions contained herein.



# STAFF REPORT

**ITEM NO. 11.G.**

---

**DATE:** January 13, 2020  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
PONCE YAMBOT, PRINCIPAL ENGINEER  
**SUBJECT:** ACCEPTANCE OF PUBLIC IMPROVEMENT FOR TRACT MAP 18867  
LOCATED EAST OF EUCLID AVENUE AND SOUTH OF 19TH  
STREET (MERITAGE HOMES)

---

## **RECOMMENDED ACTION**

It is recommended that the City Council accept the Tract Map 18867 public improvements performed by Meritage Homes and release the 25% bond. It is further recommended the City Council accept the pedestrian bridge improvements and reduce the bond to twenty five percent (25%) as a guaranty to be held for a period of 12 months after acceptance.

## **GOAL STATEMENT**

The proposed action supports the City's goal to adhere to a review schedule for the processing of development matters in an efficient, professionally responsive, and courteous manner.

## **BACKGROUND**

On November 25, 2015 the City Council approved a partial acceptance of improvements for TM 18867 and authorized a faithful performance bond reduction to twenty five percent (25%) as a workmanship guaranty.

Meritage has since completed the construction of the pedestrian bridge. They are requesting the faithful performance bond be reduced to twenty five percent (25%) to serve as the guaranty. This guaranty can be released twelve months after acceptance of the work.

## **ISSUES/ANALYSIS**

Meritage has completed all the work and corrected all defects per inspection by the City. The pedestrian bridge and related improvements were also inspected and found to be in conformance to standards.

## **FISCAL IMPACTS**

There is no fiscal impact associated with these actions.

## **ALTERNATIVES**

Provide alternative direction to staff.

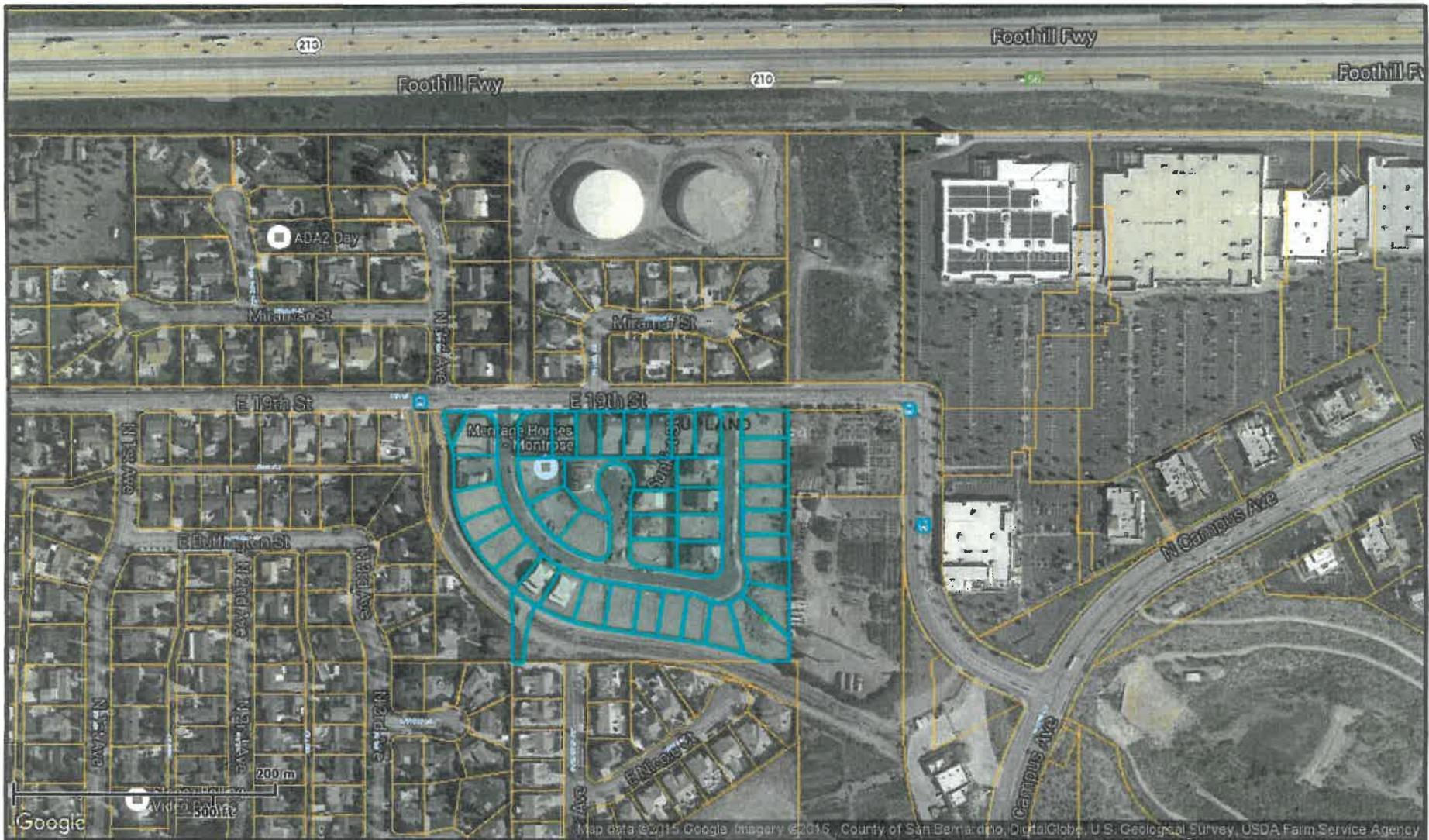
## **ATTACHMENTS:**

**Location map**

**Reduced bond**

**Ped Bridge Bond**

# TM 18867 - Location Map



<p>1" = 376 ft</p>	<p>East 19th Street</p>	<p><b>MERITAGE HOMES</b> <b>TRACT MAP 18867</b></p>	
--------------------	-------------------------	---	---

This map represents a visual display of related geographic information. Data provided hereon is not a guarantee of actual field conditions. To be sure of complete accuracy, please contact Upland for the most up-to-date information.

## RIDER

BOND NO. 59BSBGQ7527

To be attached and form a part of Bond No. 59BSBGQ7527 dated the 1st day of May, 2014, executed by Hartford Fire Insurance Company as surety, on behalf of Meritage Homes of California, Inc. as current principal of record, and in favor of City of Upland, as Obligee, and in the amount of One Million Fourteen Thousand Dollars and 00/100 (\$1,014,000.00).

In consideration of the agreed premium charged for this bond, it is understood and agreed that Hartford Fire Insurance Company hereby consents that effective from the 25th day of November, 2015, said bond shall be amended as follows:

THE BOND PENALTY SHALL BE Decreased:

FROM: One Million Fourteen Thousand Dollars and 00/100 (\$1,014,000.00)

TO: Two Hundred Fifty Three Thousand Five Hundred Dollars and 00/100 (\$253,500.00)

The Decrease of said bond penalty shall be effective as of the 25th day of November, 2015, and does hereby agree that the continuity of protection under said bond subject to changes in penalty shall not be impaired hereby, provided that the aggregate liability of the above mentioned bond shall not exceed the amount of liability assumed by it at the time the act and/or acts of default were committed and in no event shall such liability be cumulative.

Signed, sealed and dated this 15th day of December, 2015.

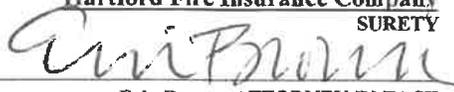
Meritage Homes of California, Inc.  
PRINCIPAL

BY: \_\_\_\_\_

  
Darin E. Rowe  
Vice President Asset Management

Hartford Fire Insurance Company  
SURETY

BY: \_\_\_\_\_

  
Erin Brown, ATTORNEY-IN-FACT

**SUBDIVISION BOND**

Bond No. 929621345

Principal Amount: \$125,000.00

KNOW ALL MEN BY THESE PRESENTS, that we Meritage Homes of California, Inc., 1250 Corona Pointe Court, Suite 210, Corona, CA 92879 as Principal, and The Continental Insurance Company a Pennsylvania Corporation, as Surety, are held and firmly bound unto City of Upland, 460 N. Euclid Avenue, Upland, CA 91786, as Oblige, in the penal sum of One Hundred Twenty Five Thousand and 00/100 Dollars (\$125,000.00) lawful money of the United States of America, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS Meritage Homes of California, Inc. has agreed to construct a pedestrian bridge as required by the conditions of approval for Tentative Tract Map 18867 for a subdivision located in Upland, CA.

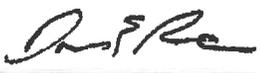
NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall construct, or have constructed, the improvements herein described, and shall save the Oblige harmless from any loss, cost or damage by reason of its failure to complete said work, then this obligation shall be null and void, otherwise to remain in full force and effect, and the Surety, upon receipt of a resolution of the Oblige indicating that the improvements have not been installed or completed, will complete the improvements or pay to the Oblige such amount up to the Principal amount of this bond which will allow the Oblige to complete the improvements.

Upon approval by the Oblige, this instrument may be proportionately reduced as the public improvements are completed.

Signed, sealed and dated, this 18<sup>th</sup> day of September, 2015.

Meritage Homes of California, Inc.  
Principal

The Continental Insurance Company  
Surety

By:   
Darin E. Rowe  
Vice President Finance

By:   
James I. Moore, Attorney-in-Fact



# STAFF REPORT

**ITEM NO. 11.H.**

---

**DATE:** January 13, 2020  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
PONCE YAMBOT, PRINCIPAL ENGINEER  
**SUBJECT:** APPROVAL OF AGREEMENT FOR CONSTRUCTION OF PUBLIC  
IMPROVEMENT AT 1160 E 19TH STREET BY WP FUND V UPLAND,  
LLC

---

## **RECOMMENDED ACTION**

It is recommended that the City Council approve the Agreement for Construction of Public Improvements by WP Fund V Upland, LLC and accept the Performance Bond in the amount of \$469,000 and Labor and Materials Bond in the amount of \$235,000.

## **GOAL STATEMENT**

The proposed action supports the City's goal to adhere to a review schedule for the processing of development matters in an efficient, professionally responsive, and courteous manner.

## **BACKGROUND**

On May 30, 2018, the Planning Commission conditionally approved Tentative Parcel Map 19856 and Site Plan Review (SP-18-01) through Resolution 4881. The Project located on the Colonies Development Planning Area 4 includes the subdivision of a 5.8-acre lot into two parcels. Parcel No. 1 will be a 475 Sq. Ft. Commercial Business Center, and open space and recreational amenities, in a multi-story setting.

This Public Improvement Agreement pertains to the development of Parcel No. 2, which will include 203 apartment units with associated parking. The site is generally located at 1160 E. 19th Street in Planning Area 4 of the San Antonio Specific Plan by Colonies.

As part of conditional approval, the developer was required to install a private sewer line that connects to the public sewer system on 19th Street. The Developer was also required to install

a public water line within a dedicated easement that will also serve as the point of connection for Parcel No. 1 improvements.

### **ISSUES/ANALYSIS**

Plans were prepared and approved. The improvement agreement with bonds is herewith presented for approval. An easement was also dedicated on the final Parcel Map 19856 and has been recorded in compliance with the conditions of approval.

### **FISCAL IMPACTS**

There is no fiscal impact associated with this action.

### **ALTERNATIVES**

Provide alternative direction to staff.

### **ATTACHMENTS:**

**Agreement for construction of public improvements**  
**Performance Bond and Labor and Materials Bond**  
**Location map**

## AGREEMENT FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by and between WP Fund V Upland, LLC (hereinafter referred to as "**Builder**") and the CITY OF UPLAND, a municipal corporation (hereinafter referred to as "**City**").

### A. Recitals

- (i) There has been previously approved a Site Plan 18-01, PM 19856 for Alta Upland located at 1160 East 19<sup>th</sup> Street in the City of Upland, (hereinafter sometimes referred to as the "**Project**").
- (ii) Builder seeks approval for construction permits to construct improvements in the public right-of-way and public easement as shown on City approved plan(s) GP 19-01 , W 19-01 and LS to be approved in the future

### B. Agreement

It is agreed by and between the parties hereto as follows:

1. In consideration of the City's approval of construction permits for the Project, Builder undertakes and agrees that it will, at Builder's sole cost and expense, make all the improvements upon and in connection with the Project in accordance with plans and specifications therefore on file with the City, incorporated herein and made a part hereof, and including all matters required by the Planning Commission and City Council of City in connection with the various steps leading to approval of the Project. Builder also undertakes and agrees upon the same consideration to comply with all ordinances and regulations of City, and to do all other and further acts required of it pursuant to this Agreement. Builder agrees in connection therewith to pay or causes to be paid all amounts becoming due to contractors, subcontractors, and persons renting equipment or furnishing labor or materials with respect to such improvements, or to Builder with respect thereto. Builder agrees that all such improvements shall be constructed and completed in accordance with any applicable conditions as hereinabove referred to, and in accordance with the remaining provisions of this Agreement. In case of dispute, the good faith judgment of the City's City Engineer shall be final and binding upon the parties.

2. Builder agrees that all the improvements required hereunder shall be completed prior to occupancy of the Project.

3. Should Builder fail to comply with any of the terms or provisions of this Agreement, Builder shall be liable to City for the reasonable value of any work or improvements not completed or improperly done or performed. In the event of any such failure, City shall give to Builder written notice thereof. Unless the work or

improvements covered by said notice, including defective work and improvements, are commenced by, Builder within fifteen (15) days of the date of said notice and diligently prosecuted to completion, the City may at its option:

(a) Collect from Builder the reasonable value of the work and improvements not so done and performed by Builder, to be measured by the anticipated costs and expenses of completing the same; or

(b) City may complete said work and improvements not so completed by Builder and collect its costs and expenses in completing the same; or

(c) City may, as to some of such work and improvements, proceed under remedy (a) above, and as to the remainder, under remedy (b) above.

City may change any election prior to trial of any lawsuit, and prior thereto no election of remedies shall be binding upon City. In either event, there shall be included in said "costs and expenses", the reasonable overhead expenses of the City. In addition to the foregoing, Builder shall be liable to City for reasonable attorneys' fees and court costs incurred by City in enforcing the obligations of Builder under this Agreement.

4. Builder shall give bonds with a corporate bonding company, or similar instrument, satisfactory to City in the following amounts and for the following purposes:

(a) A bond for \$469,000 guaranteeing full performance of all the terms of this Agreement;

(b) A bond for \$235,000 securing payment to the contractor, his subcontractor and to persons renting equipment or furnishing labor or materials to them with respect to said public improvements;

(c) A cash deposit for \$7,500 securing the setting of monuments.

5. Acceptance of any work or improvements by City shall not constitute an acknowledgment by City that the work or improvements were done or performed, except those items or matters that are readily apparent from an inspection of that work or improvements. Except as to such matters so readily apparent, Builder shall repair any defects, which occur in the work of improvements within a one (1) year period thereof following acceptance by City.

As a condition precedent to the acceptance of the improvements hereunder as being complete and prior to the release of any bonds required under paragraph 4, hereof, securing the faithful performance of Builder's obligations hereunder, Builder shall give a bond with a corporate bonding company or similar instrument, satisfactory to City in the amount of \$117,250 UMC 16.20.010 as guarantee and warranty of the work for a one (1) year period following the completion and a acceptance thereof against any defective work or labor done, or defective materials furnished.

6. All notices to Builder may be sent to WP West Builders CA, LLC – 7700 Irvine Center Drive, Suite 600 Irvine CA 92618 or at such other address of which City shall actually receive notice in writing specifically calling attention to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

\_\_\_\_\_  
WP Upland Fund V, LLC

\_\_\_\_\_  
Brian Hansen

BY  \_\_\_\_\_

BY \_\_\_\_\_

CITY OF UPLAND, a municipal Corporation

\_\_\_\_\_  
Debbie Stone, Mayor

\_\_\_\_\_  
Keri Johnson, City Clerk

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Orange )

On June 19th, 2019 before me, Kori Plejdrup, Notary Public  
(insert name and title of the officer)

personally appeared Brian Hansen  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Kori Plejdrup (Seal)

FIRST TERM PREMIUM FULLY EARNED  
Bond Number : CMS0333082  
Premium: 8,208.00

**SUBDIVISION BOND  
FAITHFUL PERFORMANCE**

KNOW ALL MEN BY THESE PRESENTS: That, WP Fund V Upland, LLC,  
as Principal, and the RLI Insurance Company, a  
corporation organized and existing under the laws of the State of IL and authorized to  
transact surety business in the State of CA as Surety, are held and firmly bound unto  
City of Upland, as Obligee, in the  
sum of Four Hundred Sixty Nine Thousand Dollars and 00/100  
DOLLARS ( \$469,000.00 ), for which the payment whereof, well and truly to be made, said  
Principal and Surety bind themselves, their heirs, administrators, successors, and assigns, jointly and  
severally, firmly by these presents.

THE Condition of the foregoing obligation is such that, whereas the above bounden Principal has entered  
into a contract/agreement, dated \_\_\_\_\_, with the Obligee to do and perform the  
following work; to wit:  
Alta Upland - Public Improvements - Street & Water Improvements

NOW, THEREFORE, if the above bounden Principal shall well and truly perform the work contracted to be  
performed under said contract, then this obligation shall be void; otherwise to remain in full force and  
effect.

SIGNED, SEALED, DATED: June 14, 2019

(Principal)  
WP FUND V UPLAND, LLC, a  
Delaware limited liability company

By:



Brian Hansen Vice President

(Surety)

RLI Insurance Company

By:



Margaret A. Ginem, Attorney In Fact

Inquiries: 813 281-4645

# All-Purpose Acknowledgement

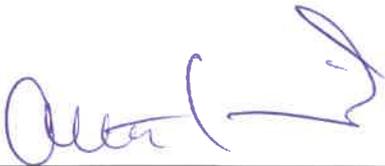
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy of validity of that document.

State of Florida )  
 ) ss  
County of Hillsborough )

On June 14, 2019, before me, Anett Cardinale, personally appeared Margaret A. Ginem, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature:   
Anett Cardinale, Notary Public  
(Print Name)

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Orange )

On June 17th, 2019 before me, Kori Plejdrup, Notary Public  
(insert name and title of the officer)

personally appeared Brian Hansen,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Kori Plejdrup (Seal)



# POWER OF ATTORNEY

## RLI Insurance Company Contractors Bonding and Insurance Company

9025 N. Lindbergh Dr. Peoria, IL 61615  
Phone: 800-645-2402

### Know All Men by These Presents:

That this Power of Attorney is not valid or in effect unless attached to the bond which it authorizes executed, but may be detached by the approving officer if desired.

That **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, each an Illinois corporation, (separately and together, the "Company") do hereby make, constitute and appoint:

David H. Carr, Anett Cardinale, Margaret A. Ginem, jointly or severally

in the City of Tampa, State of Florida its true and lawful Agent(s) and Attorney(s) in Fact, with full power and authority hereby conferred, to sign, execute, acknowledge and deliver for and on its behalf as Surety, in general, any and all bonds and undertakings in an amount not to exceed Twenty Five Million Dollars (\$25,000,000.00) for any single obligation.

The acknowledgment and execution of such bond by the said Attorney in Fact shall be as binding upon the Company as if such bond had been executed and acknowledged by the regularly elected officers of the Company.

**RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, as applicable, have each further certified that the following is a true and exact copy of a Resolution adopted by the Board of Directors of each such corporation, and is now in force, to-wit:

"All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

IN WITNESS WHEREOF, the **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, as applicable, have caused these presents to be executed by its respective Vice President with its corporate seal affixed this 18th day of October, 2018.



**RLI Insurance Company  
Contractors Bonding and Insurance Company**

By: B. W. Davis  
Barton W. Davis Vice President

State of Illinois }  
County of Peoria } SS

### CERTIFICATE

On this 18th day of October, 2018, before me, a Notary Public, personally appeared Barton W. Davis, who being by me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of the **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company** and acknowledged said instrument to be the voluntary act and deed of said corporation.

I, the undersigned officer of **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable; and furthermore, that the Resolution of the Company as set forth in the Power of Attorney, is now in force. In testimony whereof, I have hereunto set my hand and the seal of the **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company** this 14th day of June, 2019

By: Gretchen L. Johnigk  
Gretchen L. Johnigk Notary Public

**RLI Insurance Company  
Contractors Bonding and Insurance Company**  
By: Jean M. Stephenson  
Jean M. Stephenson Corporate Secretary



**SUBDIVISION BOND  
LABOR & MATERIAL/PAYMENT**

KNOW ALL MEN BY THESE PRESENTS: That we, WP Fund V Upland, LLC,  
as Principal, and RLI Insurance Company, as  
Surety, are held and firmly bound unto City of Upland, as  
Obligee, in the sum of Two Hundred Thirty Five Thousand Dollars and 00/100  
DOLLARS (\$235,000.00), lawful money of the United States of America, for the payment of  
which sum will and truly to be made, we bind ourselves jointly and severally, firmly by these presents.

THE CONDITION OF THIS OLBIGATION IS SUCH, That, Whereas, said Principal has entered into a  
Subdivision Agreement with the Obligee, dated \_\_\_\_\_, in which said Principal  
agrees to construct designated public improvements, as follows:  
Alta Upland - Public Improvements - Street & Water Improvements

And, as a condition of approving said Subdivision, the Principal is required to give Labor and Material  
Payment Bond as herein provided.

NOW, THEREFORE, if said Principal and/or contractor or subcontractor fails to pay for any materials,  
provisions, or rented equipment used in, upon, or for or about the construction of the public improvements  
for performance of the work to be done, or any work or labor done of any kind, in or on such  
improvements, said surety will pay the same in an amount not exceeding the sum set forth above.

This bond shall insure to the benefit of the contractor, his subcontractors, and to persons renting  
equipment or furnishing labor and materials to them for the improvements.

SIGNED, SEALED, DATED: June 14, 2019

(Principal)  
WP FUND V UPLAND, LLC, a  
Delaware limited liability company

By:



Brian Hansen Vice President

(Surety)

RLI Insurance Company

By:



Margaret A. Ginem, Attorney In Fact

Inquiries: 813 281-4645

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Orange )

On June 17th, 2019 before me, Kori Plejdrup, Notary Public  
(insert name and title of the officer)

personally appeared Brian Hansen,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Kori Plejdrup

(Seal)



# All-Purpose Acknowledgement

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy of validity of that document.

State of Florida )  
 ) ss  
County of Hillsborough )

On June 14, 2019, before me, Anett Cardinale, personally appeared Margaret A. Ginem, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



(Seal)

Signature:   
Anett Cardinale, Notary Public  
(Print Name)

# POWER OF ATTORNEY

## RLI Insurance Company Contractors Bonding and Insurance Company

9025 N. Lindbergh Dr. Peoria, IL 61615  
Phone: 800-645-2402

### Know All Men by These Presents:

That this Power of Attorney is not valid or in effect unless attached to the bond which it authorizes executed, but may be detached by the approving officer if desired.

That **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, each an Illinois corporation, (separately and together, the "Company") do hereby make, constitute and appoint:

David H. Carr, Anett Cardinale, Margaret A. Ginem, jointly or severally

in the City of Tampa, State of Florida its true and lawful Agent(s) and Attorney(s) in Fact, with full power and authority hereby conferred, to sign, execute, acknowledge and deliver for and on its behalf as Surety, in general, any and all bonds and undertakings in an amount not to exceed Twenty Five Million Dollars (\$25,000,000.00) for any single obligation.

The acknowledgment and execution of such bond by the said Attorney in Fact shall be as binding upon the Company as if such bond had been executed and acknowledged by the regularly elected officers of the Company.

**RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, as applicable, have each further certified that the following is a true and exact copy of a Resolution adopted by the Board of Directors of each such corporation, and is now in force, to-wit:

"All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

IN WITNESS WHEREOF, the **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, as applicable, have caused these presents to be executed by its respective Vice President with its corporate seal affixed this 18th day of October, 2018.



**RLI Insurance Company**  
**Contractors Bonding and Insurance Company**

By: B. A. W. Davis  
Barton W. Davis Vice President

State of Illinois }  
County of Peoria } SS

### CERTIFICATE

On this 18th day of October, 2018, before me, a Notary Public, personally appeared Barton W. Davis, who being by me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of the **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company** and acknowledged said instrument to be the voluntary act and deed of said corporation.

I, the undersigned officer of **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable; and furthermore, that the Resolution of the Company as set forth in the Power of Attorney, is now in force. In testimony whereof, I have hereunto set my hand and the seal of the **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company** this 14th day of June, 2019.

By: Gretchen L. Johnnik  
Gretchen L. Johnnik Notary Public

**RLI Insurance Company**  
**Contractors Bonding and Insurance Company**

By: Jean M. Stephenson  
Jean M. Stephenson Corporate Secretary



June 14, 2019

Wood Partners  
Attn: Kori Plejdrup  
7700 Irvine Center Drive, Suite 600  
Irvine, CA 92618

Re:           Type of Bond:       Performance & Payment Bonds  
              Bond Number:     CMS0333082  
              Obligee:           City of Upland CA  
              Description:       Alta Upland – Public Improvements  
              Bond Amount:     \$469,000.00 / \$235,000.00

Dear Kori,

In accordance with Grace Quesada's request, we are pleased to enclose the above referenced Bonds.

An authorized individual of WP Fund V Upland, LLC should sign the bonds before filing it with the obligee.

Your premium invoice will be sent to [risk@woodpartners.com](mailto:risk@woodpartners.com) as per usual.

Please do not hesitate to contact us should you have any questions.

Sincerely,

*Peggy Ginem*

Peggy Ginem  
Account Executive Lead - Surety

Enclosures



Wood Partners Apt.  
1160 East 19th Street

PCL 1

PCL 2

200 feet



## LOCATION MAP



## STAFF REPORT

ITEM NO. 11.I.

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**DATE:** January 13, 2020  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** ROBERT D. DALQUEST, DEVELOPMENT SERVICES DIRECTOR  
LIZ CHAVEZ, DEVELOPMENT SERVICES MANAGER  
GIOVANNI ARELLANO, CONTRACT REHABILITATION PROGRAMS ADMINISTRATOR  
**SUBJECT:** CONSIDERATION OF A RESOLUTION TO APPROVE MODIFICATIONS TO THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) EMERGENCY REPAIRS PROGRAM GUIDELINES/POLICIES

---

### RECOMMENDED ACTION

It is recommended that the City Council approve a Resolution adopting amended program guidelines/policies with respect to the City's Emergency Repair Program ("ERP").

### GOAL STATEMENT

The proposed action supports the City's goal to promote the development and implementation of housing projects to increase, improve, or provide/preserve affordable housing and prevent homelessness within the City for persons or families of low- to moderate-incomes.

### BACKGROUND

The City administers the U.S Department of Housing and Urban Development's ("HUD") Community Development Block Grant ("CDBG") funded ERP to assist low- to moderate-income homeowners, at or below 80% of the Area Median Income for Riverside - San Bernardino County Metropolitan Area (as established by HUD) make needed rehabilitation repairs; inclusive of immediate or exigent health and safety housing repairs, municipal code violations, building code violations, deferred and/or general housing maintenance, Americans with Disability Act (ADA) improvements, and/or any other housing repairs deemed necessary to meet the City's affordable housing goals.

On June 24, 2019, Council approved revised ERP guidelines/policies granting Council the authority to approve ERP grants. On November 11, 2019, City Council redirected staff to modify the ERP guidelines/policies reverting authority back to the Development Services Director to approve and expedite ERP grants and allow the City Manager to make modifications to program guidelines/policies as the need arises (Attachment A). This position provides the City the ability to immediately address health and safety needs of eligible City residents that may arise during the administration of the program and prevent any undue delays in providing housing rehabilitation assistance.

### **ISSUES/ANALYSIS**

The funding limits of ERP grants are within the established signature authority for the Development Services Director which is up to \$25,000. Due to the fact that the ERP is administered in the Development Services Department, this authority is consistent with City policy and can expedite assistance as needed.

The ERP provides initial grants up to a maximum of \$10,000 and an additional \$1:\$1 match from the applicant up to \$2,000, if needed. Additionally, up to a maximum of \$15,000.00 in lead based paint and/or asbestos abatement funding may be provided for abatement purposes, if required. Lastly, the cost of installing code required minimum items (i.e. smoke detectors, carbon monoxide detectors, seismic water heater straps, low flow toilets and ground fault circuit interrupter outlets) will be provided by the ERP.

### **FISCAL IMPACTS**

This item represents a policy change only and has no fiscal impact.

### **ALTERNATIVES**

Provide alternative direction to staff.

### **ATTACHMENTS:**

**Resolution amending the ERP program guidelines/policies  
Attachment A - Guidelines/Policies**

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
UPLAND ADOPTING AMENDED PROGRAM  
GUIDELINES/POLICIES WITH RESPECT TO THE CITY'S  
EMERGENCY REPAIR PROGRAM

Intent of the Parties and Findings

(i) The City currently administers the Emergency Repair Program (Program);  
and

(ii) The Program is funded with federal Community Development Block  
Grant (CDBG) Funds and City housing funds; and

(iii) Staff has recommended to amend Sections V4 and V5 of "Attachment  
A" allowing the Development Services Director or designee authority to approve  
and/or expedite emergency repair program projects inclusive of related funding;  
and

(iv) Add Section VIII to authorize the City Manager to amend such  
Program Guidelines/Policies on as needed basis.

NOW, THEREFORE, the Upland City Council hereby finds, determines and  
resolves as follows:

Section 1. The facts set forth above in this Resolution are true and correct.

Section 2. The amended Program Policy with respect to the Emergency  
Repair Program, as described on Attachment "A", is approved.

Section 3. Certification. The City Clerk of the City of Upland shall certify to  
the passage and adoption of this resolution and enter it into the book of original  
resolutions.

Section 4. This Resolution shall take effect upon the date of its adoption.

PASSED, APPROVED and ADOPTED this 13th day of January, 2020.

---

Debbie Stone, Mayor

Resolution No.

Page 2

I, Keri Johnson, City Clerk of the City of Upland, do hereby certify that the foregoing Resolution was adopted at a regular meeting of the City Council held on the 13th day of January, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

ATTEST:

\_\_\_\_\_  
Keri Johnson, City Clerk

# CITY OF UPLAND



## EMERGENCY REPAIRS PROGRAM GUIDELINES AND POLICIES

**CITY OF UPLAND  
HOUSING REHABILITATION  
EMERGENCY REPAIRS PROGRAM POLICIES  
(Amended November 26, 2019)**

**I. PROGRAM DESCRIPTION**

The Housing Rehabilitation Emergency Repairs Program ("Program") is designed to assist low to moderate-income Upland homeowners (whose income does not exceed 80% of the County median income as adjusted by family size as promulgated by the U.S. Department of Housing and Urban Development [HUD]), citywide, by providing up to a \$10,000 primary grant and up to a \$2,000 supplemental grant on an equal matching basis (i.e. dollar-for-dollar match for construction funds provided to the City by the applicant) for emergency repairs to their home as approved by City Council. This Program may be used in conjunction with any other housing program offered by the City of Upland.

**II. ASSISTANCE TYPE AND FUNDING LIMITS**

The assistance will be in the form of up to a \$10,000 primary grant for pre-approved work done by any appropriately licensed contractor. Moreover, up to an additional \$2,000 worth of assistance is available on an equal matching Program grant basis; match must come from the program applicant to the City in the form of a cashier's check or money order payable to the City of Upland. Pursuant to the definition of eligible improvements (as described below) the cost of installing GFCI outlets, garbage disposal, smoke/carbon detectors, water heater strapping, and "low flow" toilets are in addition to the \$12,000 annual Program maximum limit. The cost of abatement and mitigation of lead, asbestos or mold hazards shall be in addition to the primary Program grant. Mobile homeowners will only be allowed to apply for the Program every five (5) years while homeowners other than mobile homeowners will only be able to apply for the Program every ten (10) years.

**III. ELIGIBLE APPLICANTS**

Eligible applicants are owner-occupants of single-family residences, condominiums/townhomes and mobile/manufactured homes located within Upland's city limits whose household income does not exceed 80% of the San Bernardino County median, as adjusted by family size. Applicants must provide satisfactory evidence of their income and certify that with the Application form that they meet the income requirements of the Program.

City Councilmembers and any employee, official or agent of the City who exercises any policy or program decision-making function in connection with the Program, are ineligible for assistance under the Program for a period of one-year after their association with the City ends.

#### **IV. ELIGIBLE IMPROVEMENTS**

All repairs for emergency conditions that immediately affect the health and/or safety of the household or occupants of surrounding properties. Eligible repairs shall include structural or mechanical system repairs and any other housing repair deemed necessary by the City to alleviate deficient housing conditions as categorized below:

- Correction of code violations;
- Correction of incipient violations of the uniform building code;
- Removal of lead-based paint/asbestos hazards;
- Removal of barriers to the handicapped;
- Removal of termites/vermin (pest control);
- Repair/Replace roofing;
- Repair/Replace heating;
- Repair/Replace plumbing;
- Repair/Replace screens;
- Install new smoke/CO2 alarms;
- Repair/Replace bath fixtures;
- Repair/Replace countertops;
- Repair/Replace water heaters;
- Repair/Replace electrical work;
- Repair/Replace windows;
- Repair/Replace stucco;
- Exterior/Interior painting;
- Install new dead bolt locks;
- Replace floor coverings;
- Repair/Replace kitchen or bath cabinets;
- Repair/Replace fencing;
- Installation of new insulation;
- Permit costs, engineering, architectural and other reports deemed necessary to correct deficient housing conditions
- Any other housing repair items determined eligible by the City; and
- The elimination of specific conditions detrimental to public health and safety, which have been identified by City Building Inspector or Code Enforcement Officer

In addition to the maximum assistance, the Program will also provide funds for installation of GFCI outlets, garbage disposal, smoke and carbon monoxide detectors in each bedroom (if missing), provide funds to secure the water heater, if needed, and, if requested or necessary, provide "Low Flow" toilets. Similarly, the costs associated with lead, asbestos or mold abatement shall be in addition to the primary Program grant.

Any work requiring the off-premises relocation of occupants is not eligible under this Program unless the applicant waives all claims for relocation assistance. Because the Program is not a handyman program, maintenance items as determined by the City, other than those directly related to any eligible construction, reconstruction, repair or replacement are not eligible under this Program.

## **V. PROCEDURES**

1. Applications for participation in the Program are available from City Hall or any other location that may be designated by staff (as used herein, the term "staff" may include employees or consultants of the City's Development Services Department). Upon submittal of an application to staff, staff shall visit the subject property and evaluate the request. If the requested repairs are deemed eligible, and the applicant can provided staff with the following household supporting documents: 1) Grant Deed, Deed of Trust or HCD Registration Card (for mobile homes or other title evidencing document); 2) household annual income for all adults over the age of 18 that are living in the home inclusive of most recent federal tax returns, payroll stubs and bank statements; 3) recent utility bills 4) current property tax bill; 5) valid photographic government issued identification card such as a California Drivers License, Identification Card or Passport; and/or 6) other documents that may be requested by staff to determined household size or household income. Program policies and procedures shall be fully explained to the applicant at application submittal stage including the contractor procurement/selection process.

2. Upon receipt, the applicant shall complete the Application form, sign it acknowledging program policies and procedures and return the form to staff with all accompanying applicant supporting documentation.

3. Contractor procurement/selection: The applicant may either (1) authorize the City to engage contractors from its pre-approved vendor list; or (2) engage their own contractors to perform the required work that meets the city's procurement policy (minimum three bids required). If the applicant chooses the City supplied vendor option, staff will informally obtain cost quotes for the needed work from contractor(s) listed on the City's pre-approved vendor list. Once all project cost quotes are received, staff will inform the applicant of the outcome, specify the name(s) of the contractor(s) who would perform the required work and if necessary coordinate any adjustments to the scope of work or financing plan as may be required. Subsequent to obtaining the applicant's concurrence with respect to these matters, appropriate Program purchase orders may be issued to the affected contractor(s).

4. The City shall not be committed to fund a rehabilitation project prior to the Development Services Director authorizing the grant funds. Projects will be taken by Staff to the Development Services Director for funding consideration and final approval. The Development Services Director has authority to approve and/or expedite Program projects inclusive of related funding.

5. After grant approval, the applicant, contractor and Development Services Director will sign a Work Order form to allow the work to proceed. Staff will set up a purchase order and issue a notice to proceed to the contractor to carry out the work under the supervision of staff. Work program changes may only be authorized for change orders resulting from physical conditions experienced during inspection or construction, the identification of additional emergency repair items or to reduce the amount of requested assistance. The Development Services Director has authority to sign change orders as needed up to \$25,000 (director signature authority), if needed.

6. If the applicant agrees to proceed with a City-approved vendor/contractor, the City will pay the vendor directly for all approved work. The applicant will not have any financial responsibility other than the amount needed to match the City \$2,000 supplemental grant or any amount needed to finance project costs exceeding program-funding limits. The City will collect the owner contribution amount prior to engaging the vendor/contractor.

7. If the applicant chooses to directly engage their own contractor(s), the applicant may use any contractor of their choice as long as they hold appropriate professional licenses and a City of Upland business license and meet insurance minimums set by the program. Contractors that are not pre-approved will be paid the lower of a staff's confidential job cost estimate or the contractor's bid. Staff's estimate will not be made public until after submittal of the contractor's bid. If the applicant chooses to use a contractor/vendor other than one on the City's pre-approved list, said contractor must be approved by staff and sign a form acknowledging the necessary work, amount to be rebated for work performed. If the contractor feels he (or she) cannot do the work for that price, the applicant must pay the difference or choose a contractor or subcontractor from the approved list or the work will not be performed. Under the rebate approach, the applicant is primarily responsible for the contractor's payment. The City will only provide a rebate for the agreed upon work in the agreed upon amount. The applicant is solely responsible for any work or costs exceeding the pre-approved scope and amount. Repair work shall not exceed City's estimated scope and amount without written authorization of staff.

8. If the City supplied vendor approach is selected, upon completion of the work, the applicant or vendor shall so notify staff. Staff will verify the completion of work and obtain the applicant's approval. Once approved, the amount owed the pre-approved vendor will be processed for payment. If an applicant selected vendor approach is chosen, upon work completion, the applicant will submit the invoice to staff for payment. Staff will then conduct an inspection of the quality and substance of the repairs made, and if deemed appropriate, process the invoice for payment approval. In this case, payment will be issued to the applicant and vendor. Payment shall not be made for substandard work.

9. Individual projects will be financially closed subsequent to staff's approval of the work performed and affected owner signing a Notice of Completion, which will be filed with the County.

#### **VI. APPROVAL OF PROGRAM LEGAL DOCUMENTS**

All Program legal documents shall be approved as to form by legal counsel prior to their use.

#### **VII. AUTHORITY TO ADMINISTER**

The preparation and use of all required Program procedure manuals; forms, documents and agreements shall be administered by the City Manager or their designee in accordance with these Program policies.

#### **VIII. AUTHORITY TO MODIFY**

The City Manager or their designee has authority to amend the Program Guidelines on an as needed basis with the exception of federal regulations.



# STAFF REPORT

**ITEM NO. 11.J.**

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**DATE:** January 13, 2020  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
PONCE YAMBOT, PRINCIPAL ENGINEER  
**SUBJECT:** ACCEPTANCE OF COVENANT AND AGREEMENT REGARDING  
WATER CONTROL MANAGEMENT PLAN AND STORM WATER BEST  
MANAGEMENT PRACTICES TRANSFER, ACCESS, AND  
MAINTENANCE

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## **RECOMMENDED ACTION**

It is recommended that the City Council accept and execute all the Covenant and Agreements Regarding Water Quality Management Plan and Storm Water Best Management Practices Transfer, Access, and Maintenance (Agreement) and authorize recordation of said agreements.

## **GOAL STATEMENT**

The proposed action supports the City's goal to adhere to a review schedule for the processing of development proposals in an efficient, professionally responsive, and courteous manner.

## **BACKGROUND**

In compliance to the statewide General Permit for Storm Water Discharges from Construction Activity (Order No. 99-08-DWQ: NPDES No. CAS000002), as amended by 2010 NPDES Municipal Separate Storm Sewer System (MS4) Permit and subsequent amendments, which require preparation, installation, and maintenance of post construction Best Management Practices (BMP) for new development and significant redevelopment, the City of Upland was required as co-permittee with San Bernardino County and other surrounding cities to practice and implement the regulations. Among others, preparation and submittal of site specific Water Quality Management Plans (WQMP) are required. This same regulation requires maintenance of post construction BMPs. Hence, covenant and maintenance agreements are required.

## **ISSUES/ANALYSIS**

Since MS4's promulgation in November 16, 1990 by the Environmental Protection Agency (EPA) which instituted submission of WQMP, the WQMP Guidelines included a template titled " Covenant and Agreement Regarding Water Quality Management Plan and Storm Drain Best Management Practices Transfer, Access and Maintenance" (Agreement B). Seven development projects used Agreement B.

In March, 2019, the City of Upland revised the template (Agreement A), which includes an additional provision requiring a \$10,000 cash security. This cash security will be used if the owner reneges on maintenance responsibilities.

There are eight development projects using Agreement A and seven using Agreement B. A sample of each agreement is attached and location maps provide the site and project associated with each agreement.

## **FISCAL IMPACTS**

The proposed actions do not have a fiscal impact.

## **ALTERNATIVES**

Provide alternative direction to staff.

## **ATTACHMENTS:**

**Agreement A - Sample**  
**Agreement B - Sample**  
**Site location maps**

# **AGREEMENT A SAMPLE**

**RECORDING REQUESTED BY:**

City of Upland, California  
Department of Public Works

**AND WHEN RECORDED MAIL TO:**

City of Upland  
City Clerk's Office  
460 N. Euclid Avenue  
Upland, CA 91785

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

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**COVENANT AND AGREEMENT REGARDING WATER QUALITY  
MANAGEMENT PLAN AND STORMWATER BEST  
MANAGEMENT PRACTICES TRANSFER, ACCESS AND  
MAINTENANCE**

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING  
INFORMATION (Additional Recording Fees Apply)

**Covenant and Agreement Regarding Water Quality Management Plan and Storm  
Water Best Management Practices  
Transfer, Access and Maintenance**

**OWNER NAME:** \_\_\_\_\_

**PROPERTY ADDRESS:** \_\_\_\_\_  
\_\_\_\_\_

**APN:** \_\_\_\_\_

**THIS AGREEMENT** is made and entered into in

\_\_\_\_\_, California, this \_\_\_\_\_ day of

\_\_\_\_\_, by and between

\_\_\_\_\_, herein after referred to as

“Owner” and the CITY OF UPLAND, a municipal corporation, located in the County of San Bernardino, State of California hereinafter referred to as “City”;

**WHEREAS**, the Owner owns real property (“Property”) in the City, County of San Bernardino, State of California, more specifically described in Exhibit “A” and depicted in Exhibit “B”, each of which exhibits is attached hereto and incorporated herein by this reference; and

**WHEREAS**, at the time of initial approval of development project known as

\_\_\_\_\_ within the Property described herein, the City required the project to employ Best Management Practices, hereinafter referred to as “BMPs,” to minimize pollutants in urban runoff; and

**WHEREAS**, the Owner has chosen to install and/or implement BMPs as described in the Water Quality Management Plan, on file with the City, hereinafter referred to as “WQMP”, to minimize pollutants in urban runoff and to minimize other adverse impacts of urban runoff; and

**WHEREAS**, said WQMP has been certified by the Owner, and reviewed and approved by the City; and

**WHEREAS**, said BMPs, with installation and/or implementation on private property and draining only private property, are part of a private facility with all maintenance or replacement, therefore, the sole responsibility of the Owner in accordance with the terms of this Agreement; and

**WHEREAS**, the Owner is aware that periodic and continuous maintenance, including, but not necessarily limited to, filter material replacement and sediment removal, is required to assure peak performance of all BMPs in the WQMP and that, furthermore, such maintenance activity will require compliance with all Local, State, or Federal laws and regulations, including those pertaining to confined space and waste disposal methods, in effect at the time such maintenance occurs.

**NOW THEREFORE**, it is mutually stipulated and agreed as follows:

1. Owner shall comply with the WQMP.
2. All maintenance or replacement of BMPs proposed as part of the WQMP are the sole responsibility of the Owner in accordance with the terms of this Agreement.
3. Owner hereby provides the City of Upland's designee complete access, of any duration, to the BMPs and their immediate vicinity at any time, upon reasonable notice, or in the event of emergency, as determined by the City's Public Works Director, no advance notice, for the purpose of inspection, sampling, testing of the Device, and in case of emergency, to undertake all necessary repairs or other preventative measures at owner's expense as provided in paragraph 5 below. City shall make every effort at all times to minimize or avoid interference with Owner's use of the Property. Denial of access to any premises or facility that contain WQMP features is a breach of this Agreement and may also be a violation of the City's storm water drainage management regulations. If there is a reasonable cause to believe that an illicit discharge or breach of this Agreement is occurring on the premises then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction in addition to other enforcement actions. Owner recognizes that the City may perform inspections of BMPs. Owner or Owner's successors or assigns shall pay the City for all costs incurred by the City for inspections, sampling, testing of BMPs within thirty (30) calendar days of the City's invoice.
4. Owner shall use its best efforts diligently to maintain all BMPs in a manner assuring peak performance at all times. All reasonable precautions shall be exercised by Owner and Owner's representative or contractor in the removal and extraction of any material(s) from the BMPs and the ultimate disposal of the material(s) in a manner consistent with all relevant laws and regulations in effect at the time. As may be requested from time to time by the City, the Owner shall provide the City with documentation identifying the material(s) removed, the quantity, and disposal destination.
5. In the event Owner, or its successors or assigns, fails to accomplish the necessary maintenance contemplated by this Agreement, within five (5) days of being given written notice by the City, the City is hereby authorized to cause any maintenance necessary to be done and charge the entire cost and expense to the Owner or Owner's successors or assigns, including administrative costs, attorneys' fees and interest thereon at the maximum rate authorized by the Civil Code from the date of

the notice of expense until paid in full. Owner or Owner's successors or assigns shall pay the City within thirty (30) calendar days of the City invoice.

5. (a) To compensate the City for expenses incurred by the City to perform the aforementioned maintenance in event that Owner, its successors or assigns, fails to satisfactorily perform the necessary maintenance, which causes the City to perform it instead, Owner, its successors or assigns, is required to make a minimum cash deposit of \$10,000 with the City prior to issuance of permit(s) for precise or final grading. In such event that causes the City to use Owner deposit to cover for maintenance expenses, upon notice by the City, Owner, its heirs, successors, executors, administrators and assigns, shall replenish the cash deposit to meet the said minimum deposit requirement within thirty (30) calendar days of the City notice.

5. (b) Depending on the maintenance expense, including administrative costs, estimated or incurred by the City to perform the necessary maintenance contemplated by this Agreement, the City may require Owner to post additional security in form of bond(s) to make the combination of minimum cash deposit and security bonds to be at least of one hundred fifty percent (150%) of the maintenance expense. The additional bond(s) security period is for a time period determined by the City to guarantee the performance of the obligations stated herein. Should Owner fails to perform the obligations under the Agreement, the City can, in the case of a cash bond, act for Owner, using the proceeds from it, or in the case of a surety bond, require the surety(ies) to perform the obligations of this Agreement.

5. (c) The City agrees, from time to time, within ten (10) City business days after request of Owner, to execute and send to Owner, or Owner's designee, an estoppel certificate requested by Owner, stating that this Agreement is in full force and effect, and that Owner is not in default hereunder with regard to any maintenance or payment obligations (or specifying in detail the nature of Owner's default). Owner shall pay all costs and expenses incurred by the City in its investigation of whether to issue an estoppel certificate within thirty (30) calendar days after receipt of the City invoice and prior to the City's issuance of such certificate. Where the City cannot issue an estoppel certificate, Owner shall pay the City within thirty (30) calendar days of receipt of the City's invoice in association with its investigation of whether to issue an estoppel certificate.

6. The City may require the Owner to post security in form and for a time period satisfactory to the city to guarantee the performance of the obligations state herein. Should the Owner fail to perform the obligations under the Agreement, the City may, in case of a cash bond, act for the Owner using the proceeds from it, or in the case of a surety bond, require the sureties to perform the obligations of the Agreement. As additional remedies, the City may file a property lien from the County Recorder, or the Director may withdraw any previous storm water-related approval with respect to the property on which BMPs have been installed and/or implemented until such time as Owner repays to City its reasonable costs incurred in accordance with paragraph 5 above.

7. Owner shall not change any BMPs identified in the WQMP without an amendment to this Agreement approved by authorized representatives of both the City and the Owner.
8. The City and Owner shall comply with all applicable laws, ordinances, rules, regulations, court orders and government agency orders now or hereinafter in effect in carrying out the terms of this Agreement. If a provision of this Agreement is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.
9. This agreement shall be recorded in the Office of the Recorder of San Bernardino County, California, at the expense of the Owner and shall constitute notice to all successors and assigns of the title to said Property of the obligation herein set forth, and also a lien in such amount as will fully reimburse the City, including interest as herein above set forth, subject to foreclosure in event of default in payment.
10. In event of legal action occasioned by any default or action of the Owner, or its successors or assigns, then the Owner and its successors or assigns agree(s) to pay all costs incurred by the City in enforcing the terms of this Agreement, including reasonable attorney's fees and costs, and that the same shall become a part of the lien against said Property.
11. It is the intent of the parties hereto that burdens and benefits herein undertaken shall constitute covenants that run with said Property and constitute a lien there against.
12. The obligations herein undertaken shall be binding upon the heirs, successors, executors, administrators and assigns of the parties hereto. The term "Owner" shall include not only the present Owner, but also its heirs, successors, executors, administrators, and assigns. Owner shall notify any successor to title of all or part of the Property about the existence of this Agreement. Owner shall provide such notice prior to such successor obtaining an interest in all or part of the Property. Owner shall provide a copy of such notice to the City at the same time such notice is provided to the successor.
13. Time is of the essence in the performance of this Agreement.
14. Any notice to a party required or called for in this Agreement shall be served in person, or by deposit in the U.S. Mail, first class postage prepaid, to the address set forth below. Notice(s) shall be deemed effective upon receipt, or seventy-two (72) hours after deposit in the U.S. Mail, whichever is earlier. A party may change a notice address only by providing written notice thereof to the other party.

**IF TO CITY:**

**IF TO OWNER:**

Director of Public Works \_\_\_\_\_

\_\_\_\_\_

City of Upland \_\_\_\_\_

\_\_\_\_\_

460 N. Euclid Avenue \_\_\_\_\_

\_\_\_\_\_

Upland, CA 91785 \_\_\_\_\_

\_\_\_\_\_

**IN WITNESS THEREOF**, the parties hereto have affixed their signatures as of the date first written above.

**OWNER:**

\_\_\_\_\_  
Company/Trust

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

**OWNER:**

\_\_\_\_\_  
Company/Trust

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

**NOTARIES ON FOLLOWING PAGE(S)**

Notary acknowledgement is required for recordation (attach appropriate acknowledgement).

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA                    )  
  )  
COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA            )  
  )  
COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date first hereinabove written.

**CITY:**

CITY OF UPLAND

\_\_\_\_\_  
Debbie Stone, Mayor

ATTEST:

\_\_\_\_\_  
Keri Johnson, City Clerk

APPROVED:

\_\_\_\_\_  
Steven Flower, Interim City Attorney

**EXHIBIT A**  
**(Legal Description)**

**EXHIBIT B**  
**(Map/Illustration)**

# **AGREEMENT B SAMPLE**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

CITY OF UPLAND  
CITY CLERK'S OFFICE  
P.O. BOX 460  
UPLAND, CALIFORNIA 91786

Exempt Recording Fees per Government Code Sections 6103 and 27383

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**SPACE ABOVE FOR RECORDER'S USE ONLY**

**AGREEMENT**

Water Quality Management Plan and Stormwater BMP  
Transfer, Access and Maintenance Agreement

\_\_\_\_\_ and The City of Upland  
Property Address or Location: \_\_\_\_\_

APNs: \_\_\_\_\_

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THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING  
INFORMATION (Additional Recording Fees Apply)

**Water Quality Management Plan and Stormwater BMP  
Transfer, Access and Maintenance Agreement**

**OWNER NAME :** \_\_\_\_\_

**PROPERTY ADDRESS:** \_\_\_\_\_

\_\_\_\_\_

**APN:** \_\_\_\_\_

**THIS AGREEMENT** is made and entered into in

\_\_\_\_\_, California, this \_\_\_\_\_ day of

\_\_\_\_\_, by and between

\_\_\_\_\_, herein after

referred to as "Owner" and the CITY OF UPLAND, a municipal corporation, located in the County of San Bernardino, State of California hereinafter referred to as "CITY";

**WHEREAS**, the Owner owns real property ("Property") in the City of Upland, County of San Bernardino, State of California, more specifically described in Exhibit "A" and depicted in Exhibit "B", each of which exhibits is attached hereto and incorporated herein by this reference;

**WHEREAS**, at the time of initial approval of development project known as

\_\_\_\_\_ within the Property described herein, the City required the project to employ Best Management Practices, hereinafter referred to as "BMPs," to minimize pollutants in urban runoff;

**WHEREAS**, the Owner has chosen to install and/or implement BMPs as described in the Water Quality Management Plan, on file with the City, hereinafter referred to as "WQMP", to minimize pollutants in urban runoff and to minimize other adverse impacts of urban runoff;

**WHEREAS**, said WQMP has been certified by the Owner, reviewed and accepted by the City; and

**WHEREAS**, said BMPs, with installation and/or implementation on private property and draining only private property, are part of a private facility with all maintenance or replacement, therefore, the sole responsibility of the Owner in accordance with the terms of this Agreement;

**WHEREAS**, the Owner is aware that periodic and continuous maintenance, including, but not necessarily limited to, filter material replacement and sediment removal, is required to assure peak performance of all BMPs in the WQMP and that, furthermore, such maintenance activity will require compliance with all Local, State, or Federal laws and regulations, including those pertaining to confined space and waste disposal methods, in effect at the time such maintenance occurs.

**NOW THEREFORE**, it is mutually stipulated and agreed as follows:

1. Owner shall comply with the WQMP.
2. All maintenance or replacement of BMPs proposed as part of the WQMP are the sole responsibility of the Owner in accordance with the terms of this Agreement.
3. Owner hereby provides the City of Upland's designee complete access, of any duration, to the BMPs and their immediate vicinity at any time, upon reasonable notice, or in the event of emergency, as determined by the City's Public Works Director, no advance notice, for the purpose of inspection, sampling, testing of the Device, and in case of emergency, to undertake all necessary repairs or other preventative measures at owner's expense as provided in paragraph 5 below. City shall make every effort at all times to minimize or avoid interference with Owner's use of the Property. Denial of access to any premises or facility that contain WQMP features is a breach of this Agreement and may also be a violation of the City's stormwater drainage management regulations. If there is a reasonable cause to believe that an illicit discharge or breach of this Agreement is occurring on the premises then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction in addition to other enforcement actions. Owner recognizes that the City may perform inspections of BMPs. Owner or Owner's successors or assigns shall pay the City for all costs incurred by the City for inspections, sampling, testing of BMPs within thirty (30) calendar days of the City's invoice.
4. Owner shall use its best efforts diligently to maintain all BMPs in a manner assuring peak performance at all times. All reasonable precautions shall be exercised by Owner and Owner's representative or contractor in the removal and extraction of any material(s) from the BMPs and the ultimate disposal of the material(s) in a manner consistent with all relevant laws and regulations in effect at the time. As may be requested from time to time by the City, the Owner shall provide the City with documentation identifying the material(s) removed, the quantity, and disposal destination.
5. In the event Owner, or its successors or assigns, fails to accomplish the necessary maintenance contemplated by this Agreement, within five (5) days of being given written notice by the City, the City is hereby authorized to cause any maintenance necessary to be done and charge the entire cost and expense to the Owner or Owner's successors or assigns, including administrative costs, attorneys fees and interest thereon at the maximum rate authorized by the Civil Code from the date of the notice of expense until paid in full.

6. This agreement shall be recorded in the Office of the Recorder of San Bernardino County, California, at the expense of the Owner and shall constitute notice to all successors and assigns of the title to said Property of the obligation herein set forth, and also a lien in such amount as will fully reimburse the City, including interest as herein above set forth, subject to foreclosure in event of default in payment.
7. In event of legal action occasioned by any default or action of the Owner, or its successors or assigns, then the Owner and its successors or assigns agree(s) to pay all costs incurred by the City in enforcing the terms of this Agreement, including reasonable attorney's fees and costs, and that the same shall become a part of the lien against said Property.
8. It is the intent of the parties hereto that burdens and benefits herein undertaken shall constitute covenants that run with said Property and constitute a lien there against.
9. The obligations herein undertaken shall be binding upon the heirs, successors, executors, administrators and assigns of the parties hereto. The term "Owner" shall include not only the present Owner, but also its heirs, successors, executors, administrators, and assigns. Owner shall notify any successor to title of all or part of the Property about the existence of this Agreement. Owner shall provide such notice prior to such successor obtaining an interest in all or part of the Property. Owner shall provide a copy of such notice to the City at the same time such notice is provided to the successor.
10. Time is of the essence in the performance of this Agreement.
11. Any notice to a party required or called for in this Agreement shall be served in person, or by deposit in the U.S. Mail, first class postage prepaid, to the address set forth below. Notice(s) shall be deemed effective upon receipt, or seventy-two (72) hours after deposit in the U.S. Mail, whichever is earlier. A party may change a notice address only by providing written notice thereof to the other party.

**IF TO CITY:**

**IF TO OWNER:**

City Hall \_\_\_\_\_

\_\_\_\_\_

490 N. Euclid Avenue \_\_\_\_\_

\_\_\_\_\_

Upland, CA 91876 \_\_\_\_\_

\_\_\_\_\_

Attention: City Manager \_\_\_\_\_

\_\_\_\_\_

**IN WITNESS THEREOF**, the parties hereto have affixed their signatures as of the date first written above.

**OWNER:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

**OWNER:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

**NOTARIES ON FOLLOWING PAGE**

A notary acknowledgement is required for recordation (attach appropriate acknowledgement).

ACCEPTED BY:

---

*City Manager*  
*City of Upland, California*

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

Attachment: Standard Notary Acknowledgement

**EXHIBIT A**  
**(Legal Description)**

**EXHIBIT B**  
**(Map/Illustration)**



LOCATION OF SITES

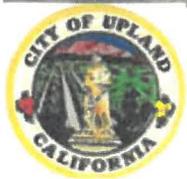
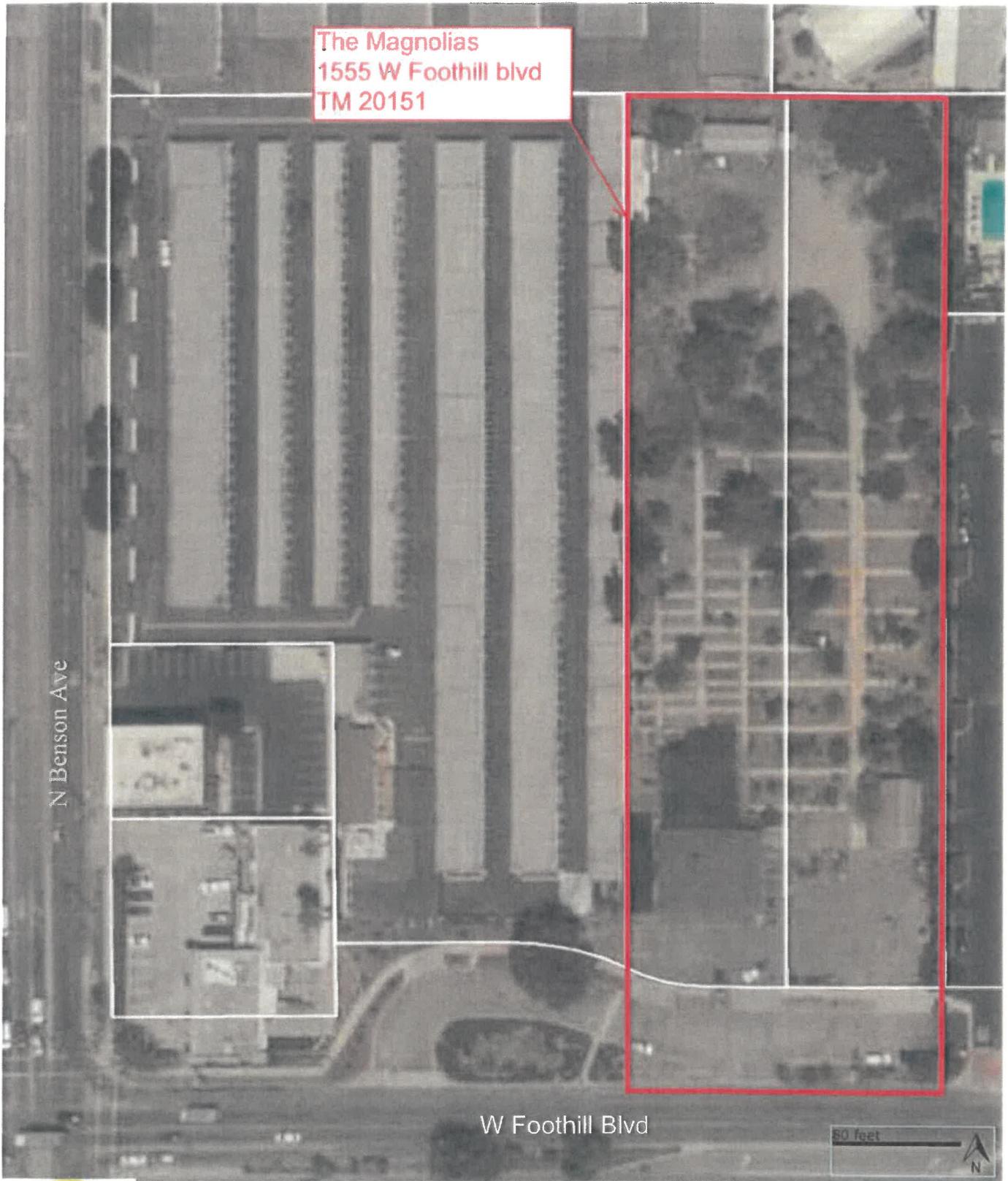
AGREEMENT A □  
 AGREEMENT B ○



# Site 1



Site 2



**Site 3**



Chase Upland, L.P.  
1690 & 1704 W 11th street  
College Heights Tract

11th St

N. Benson Ave.



Site4



Site **5**



San Antonio Regional Hospital  
Medical Office Bldg  
1100 San Bernardino rd.

San Bernardino Road

N 11th Ave

E Arrow Highway



Site 6



Site 7



805 W 9th Street  
6 UNIT APTS.

San Antonio Ave

W 9th Street



Site 8



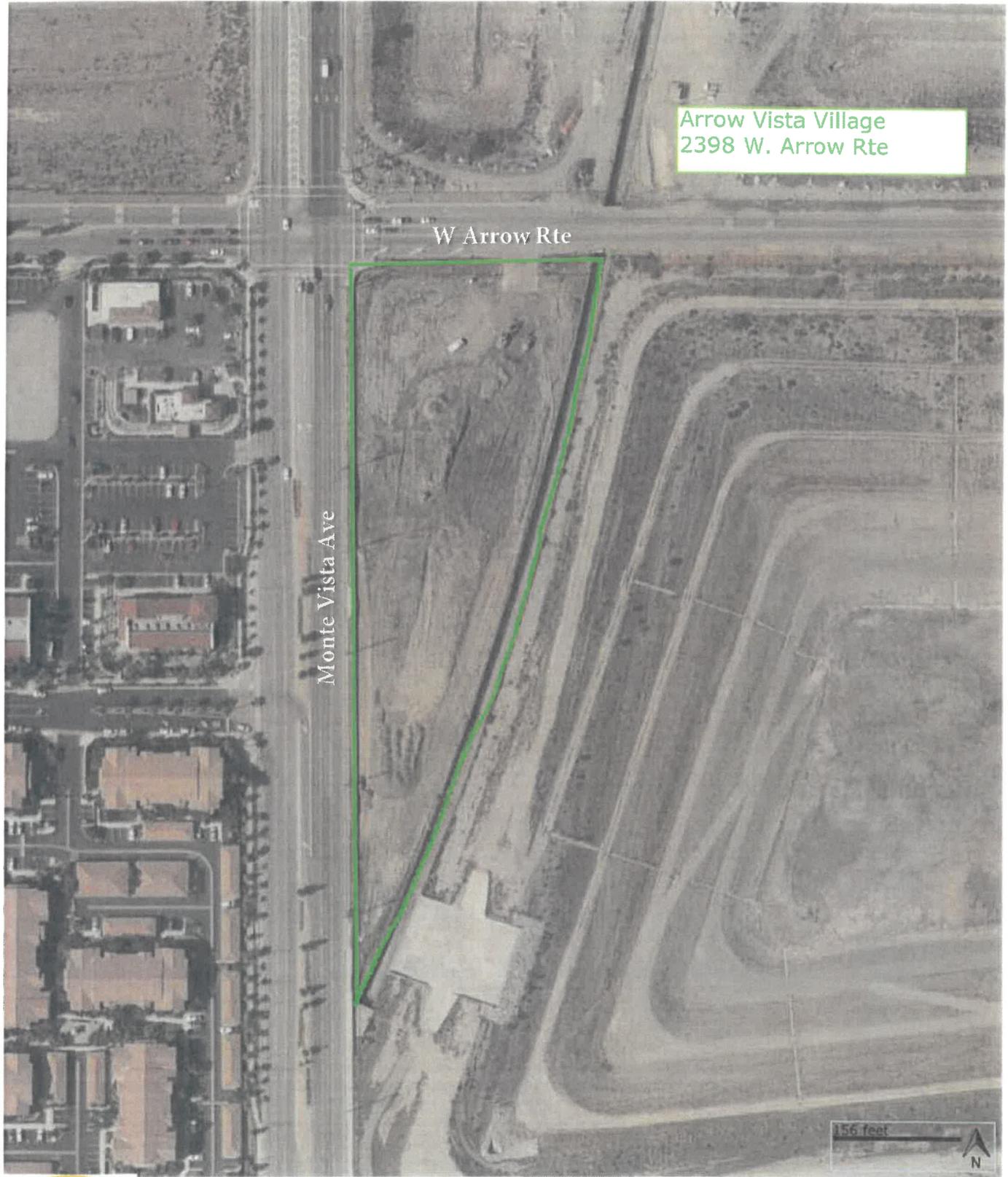
Site 9



Rancho Monte Vista  
Apts. Annex  
365 N Central Ave



Site 10



Arrow Vista Village  
2398 W. Arrow Rte

W Arrow Rte

Monte Vista Ave



Site 11



Watt Communities at Highline  
820 Highline Ave.

E 19th St

N Campus Ave

Colonies Pkwy



Site 12



Site 13



IN-N-OUT BURGERS  
1153. E 20th Street

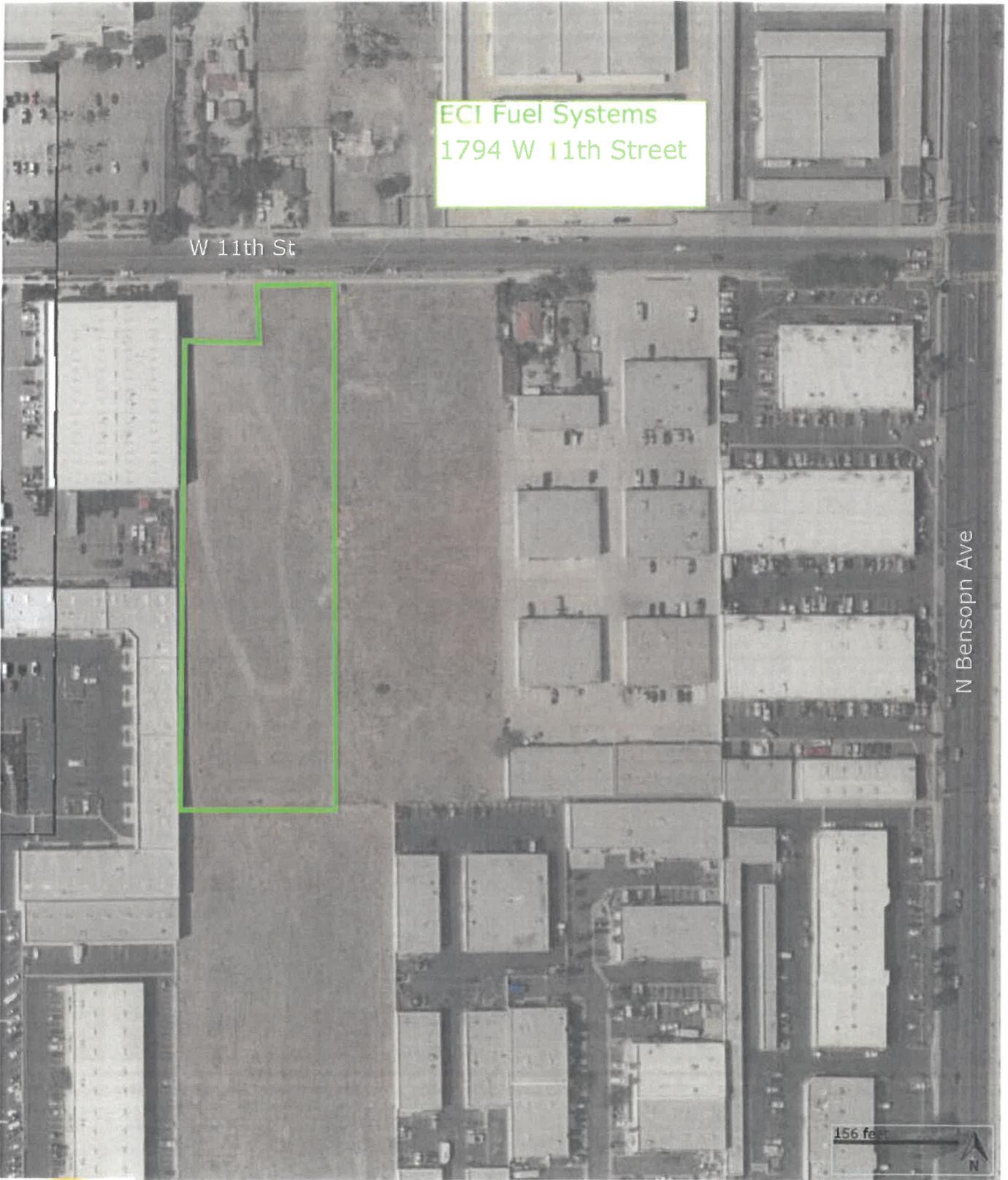
20th Street

N. Campus Ave

210 Freeway



Site 14



ECI Fuel Systems  
1794 W 11th Street

W 11th St

N Bensopn Ave

156 feet



Site 15



## STAFF REPORT

**ITEM NO. 12.A.**

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**DATE:** January 13, 2020  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** ROBERT D. DALQUEST, DEVELOPMENT SERVICES DIRECTOR  
TOM CAMPBELL, P.E., CONTRACT BUILDING OFFICIAL AND  
PLANS EXAMINER  
**SUBJECT:** CONSIDERATION OF AN ORDINANCE TO ADOPT BY REFERENCE  
THE 2019 EDITION OF THE CALIFORNIA BUILDING CODE  
STANDARDS

---

### RECOMMENDED ACTION

It is recommended that the City Council conduct a public hearing, hold second reading by number and title only, and adopt Ordinance No. 1935 adopting by reference the 2019 California Administrative, Building, Fire, Green Building Standards, Mechanical, Residential, Plumbing, Electrical, Energy, Existing Building, Historical Building, and Referenced Standards Codes (Title 24, California Code of Regulations, Parts 1, 2, 2.5, 3, 4, 5, 6, 8, 9, 10, 11, and 12); the 1997 Uniform Housing Code; the 1997 Uniform Code for the Abatement of Dangerous Buildings; including certain appendices and penalties.

### GOAL STATEMENT

The proposed action supports the City's goal to regulate and govern the safeguarding of life and property.

### BACKGROUND

California Health and Safety Code allows cities and counties to adopt and amend building standards that are published in the California Building Standards Code. If local jurisdictions do not amend such building standards, the provisions as published in the California Building Standards Code (Title 24) will become effective at the local level after 180 days from its publication, or at a later date established by the California Building Standards Commission. If the City chooses to not amend any of the Codes comprising the California Building Standards

Code, then as to those Codes, the State adopted building standards will apply within the City. However, the City could elect to amend any of those Codes at a later date.

At the time of adopting the State building standards, or anytime thereafter, the City may amend any of those standards, provided the City formally adopts express findings that each of such modifications is "reasonably necessary because of local climatic, geological or topographical conditions." The modifications cannot be less stringent than the State mandated building standards. The modifications, along with the specific findings supporting each amendment, must be filed with the California Building Standards Commission in order to become legally binding.

During the meeting of November 25, 2019, the City Council held first reading and set a public hearing date for January 13, 2020, for the adoption by reference of the 2019 edition of the California Building Code.

## **ISSUES/ANALYSIS**

The State's Health and Safety Code (Section 17958) mandates that the California Building Standards Commission adopt and publish the California Building Standards Code (Title 24 California Code of Regulations) every three (3) years. The 2019 Edition of the California Code of Regulations Title 24, which incorporates the below-listed model codes, becomes effective statewide on January 1, 2020. Significant changes to the 2019 California Building Standards Code are referenced in Exhibit A. If approved, the Ordinance would amend certain sections of Chapter 15 of the Upland Municipal Code by amending prior editions of the Construction Codes (Exhibit B).

The list below identifies the codes and model codes which are adopted, amended and published as the 2019 California Building Standards Code:

PART 1 - CALIFORNIA ADMINISTRATIVE CODE  
PART 2 - CALIFORNIA BUILDING CODE  
PART 2.5 - CALIFORNIA RESIDENTIAL CODE  
PART 3 - CALIFORNIA ELECTRICAL CODE  
PART 4 - CALIFORNIA MECHANICAL CODE  
PART 5 - CALIFORNIA PLUMBING CODE  
PART 6 - CALIFORNIA ENERGY CODE  
PART 8 - CALIFORNIA HISTORICAL BUILDING CODE  
PART 9 - CALIFORNIA FIRE CODE  
PART 10 - CALIFORNIA EXISTING BUILDING CODE  
PART 11 - CALIFORNIA GREEN BUILDING STANDARDS CODE  
PART 12 - CALIFORNIA REFERENCE STANDARDS CODE

## **RELATIONSHIP OF CHAPTER 15.15, UPLAND MUNICIPAL CODE FIRE CONSTRUCTION STANDARDS AND THE CALIFORNIA FIRE CODE AS AMENDED AND ADOPTED BY THE SAN BERNARDINO COUNTY FIRE DEPARTMENT**

California Fire Code, Part 9, incorporates fire and smoke protection features (Chapter 7), interior finish, decorative materials and furnishings (Chapter 8), fire protection and life safety systems (Chapter 9) and means of egress provisions (Chapter 10) that parallel the same chapters, sections and code requirements cited in the California Building Code, Part 2. It is the intent that these two construction standards provide equal enforcement by both the building and fire code enforcement departments for the fire- and life-safety requirements cited in these four chapters. Presently, ALL fire prevention and suppression services within the City of Upland are provided and maintained by the San Bernardino County Fire Department. In order to reconcile any discrepancies between Chapter 15.15, Upland Fire Construction Standards and the California Fire Code as amended and adopted by the San Bernardino

County Fire Department, Section 1.1.7.3 of the Upland Fire Construction Standards shall apply:

**1.1.7.3 Conflicts.**

*Where the requirements of this code conflict with the requirements of any other part of the California Building Standards Code, Title 24, the most restrictive requirements shall prevail.*

Therefore, any discrepancies between the City of Upland Fire Construction Standards and the California Fire Code as amended and adopted by the San Bernardino County Fire Department will be resolved by using the most restrictive code requirement.

**FISCAL IMPACTS**

The cost for enforcing the updated codes and providing subsequent staff training has been included in the adopted budget. No additional appropriations are required at this time.

**ALTERNATIVES**

Provide alternative direction to staff.

**ATTACHMENTS:**

**Exhibit A: Significant Changes to 2019 California Building Standards Code**

**Exhibit B: 2019 Building Standards Code Adoption Ordinance No. 1935**

## **2019 CALIFORNIA BUILDING STANDARDS CODE CHANGES - SUMMARY**

Changes in the 2019 California Building Standards Codes (Parts 1, 2, 2.5, 3, 4, 5, 6, 8, 9, 10, 11 and 12, California Code of Regulations, Title 24) provide the enforcement and design communities enhanced clarity and consistency in application of the Model Codes contained within Title 24. The basis for the majority of these changes resulted from California amendments to the 2018 Model Codes.

Part 1, California Administrative Code, became effective January 8, 2019.

Parts 2, 2.5, 3, 4, 5, 6, 8, 9, 10, 11 and 12 become effective January 1, 2020.

**Some of the most SIGNIFICANT changes to the Title 24 model codes include the following:**

### **PART 1 – CALIFORNIA ADMINISTRATIVE CODE:**

1. Clarifies when an addition is required to have a dedicated egress system.

### **PART 2 – CALIFORNIA BUILDING CODE:**

1. Aligns engineering requirements in the building code with major revisions to national standards for structural steel and masonry construction, minor revisions to standards for wood construction, and support and anchorage requirements of solar panels in accordance with industry standards.
2. Clarifies requirements for testing and special inspection of selected building materials during construction.
3. Recognizes and clarifies design requirements for buildings within tsunami inundation zones.

### **PART 4 – CALIFORNIA MECHANICAL CODE:**

1. Increases MERV (Minimum Efficiency Reporting Value) for air filters from 8 to 13.

### **PART 11 – CALIFORNIA GREEN BUILDING STANDARDS CODE:**

1. Requires electric vehicle charging infrastructure for new parking areas and additions to existing parking.
2. Sets minimum requirements for use of shade trees to provide shade to surface parking areas as well as landscape and hardscape areas.

**SUBSTANTIAL changes reflected in the 2019 California Building Standards Code Title 24 as are as follows:**

### **PART 1 – CALIFORNIA ADMINISTRATIVE CODE (CBC, EFFECTIVE JANUARY 2019)**

Section 4-306 - Clarifies when an addition is required to have a dedicated egress system for the occupants of that addition, independent of the existing building to which it is attached.

### **PART 2 – CALIFORNIA BUILDING CODE (CBC, EFFECTIVE JANUARY 2020)**

Section 106.1.1 - Revises existing DSA amendment to clarify posting requirements for design snow loads at floor levels and roofs.

Section 202 - Definitions were removed from Chapters 16, 16A – 26 and relocated into Chapter 2.

Section 302.1 - Occupancy classification for Occupied Roofs has been revised and includes detailed requirements.

Section 503.1 - Changes to Fire Wall Criteria to clarify their use for height and area adjustments.

Table 705.2 - Changes to roof projections adjacent to property lines.

Section 713.8.1 - Membrane penetrations are now allowed in shafts.

Chapters 11A & 11B -Numerous major and minor changes to the Accessibility requirements for both residential and commercial sites, buildings and facilities.

Chapter 10 - Common Path of Egress Travel has been clarified to include travel distance from a room or area.

Section 1502 - 2018 IBC relocated roof drainage provisions into Section 1502.

Section 1510.7.2.1 - Provides additional information regarding seismic and wind design requirements for roof top solar panels and references new sections added to ASCE 7 to ensure compliance of solar panel attachments after recent solar panel attachment failures.

Section 1617.7.1 - Revises amendment language to clarify the drift limit of single-story open “structures” (currently “buildings” in 2016 CBC), applies only where the structure is used for larger occupancies or emergency purposes (Seismic Risk Category III or IV).

Section 1617.9.4 - Adds amendment to note that ballasted PV systems must comply with ASCE 7 Section 13.6.12 (new provisions for Rooftop Solar Panels).

Section 1617.11.15 - Distinguishes between moveable and mobile equipment; mobile equipment anchorage not required when stored in a storage room, subject to specified conditions.

Section 2618 - Adopts new 2018 IBC adopted provisions for attachment of insulated exterior finishes to wood framing; similar to provisions previously adopted for steel framing.

#### **PART 4 – CALIFORNIA MECHANICAL CODE (EFFECTIVE JANUARY 2020)**

Section 401.2 - Adopts the increase to the minimum efficiency reporting value (MERV) rating requirements for HVAC filters from 8 to 13 to align with the 2019 Energy Efficiency Standards found in Part 6 *California Energy Code* promulgated by the California Energy

Table 1701.2 - This Table is new to the 2018 Uniform Mechanical Code and lists additional referenced standards, publications, practices and guides not referenced in other sections of the code, but are permitted to be referenced for the purpose of providing alternative materials and methods of construction.

#### **PART 5 – CALIFORNIA PLUMBING CODE (EFFECTIVE JANUARY 2020)**

Table 1701.2 - This Table is new to the 2018 Uniform Plumbing Code and lists additional referenced standards, publications, practices and guides not referenced in other sections of the code, but are permitted to be referenced for the purpose of providing alternative materials and methods of construction.

**PART 10 – CALIFORNIA EXISTING BUILDING CODE (CEBC, EFFECTIVE JANUARY 2020)**

Adopts selected sections of 2018 IEBC and carries forward existing amendments from the 2016 CEBC with updates to corresponding section references in the 2019 California Building Code.

Adopts a new non-structural performance level N-D to align with ASCE 41-17 which is the updated version adopted into the 2018 IEBC. Clarifies the non-structural N-D performance level need not exceed that for new construction.

Relocates 2016 CEBC Chapter 4: Prescriptive Compliance method into Chapter 5 to align with the 2018 IEBC. The 2018 IEBC moved this chapter and created a new Chapter 4: Repairs.

**PART 11 – CALIFORNIA GREEN BUILDING STANDARDS CODE (CALGREEN, EFFECTIVE JANUARY 2020)**

Section 5.106.5.3 - Requires electric vehicle charging infrastructure for new parking areas and additions to existing parking.

Section 5.106.12 - Requires shade trees to provide shade to 50% of new surface parking areas and additions to surface parking areas within 15 years, and shade to 20% of landscape areas and hardscape areas within 15 years.

ORDINANCE NO. 1935

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UPLAND ADOPTING, BY REFERENCE, THE 2019 CALIFORNIA ADMINISTRATIVE, BUILDING, FIRE, GREEN BUILDING STANDARDS, MECHANICAL, RESIDENTIAL, PLUMBING, ELECTRICAL, ENERGY, EXISTING BUILDING, HISTORICAL BUILDING, AND REFERENCED STANDARDS CODES (TITLE 24, CALIFORNIA CODE OF REGULATIONS, PARTS 1, 2, 2.5, 3, 4, 5, 6, 8, 9, 10, 11, AND 12); THE 1997 UNIFORM HOUSING CODE; THE 1997 UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS; INCLUDING CERTAIN APPENDICES AND PENALTIES

THE CITY COUNCIL OF THE CITY OF UPLAND DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Findings.

- A. WHEREAS, international construction codes and standards are developed, updated, and published periodically via a transparent public hearing process, by professional organizations consisting of architects, engineers, designers, code officials, specialized municipal inspectors, private industry experts, and State licensed contractors; and
- B. WHEREAS, these codes and standards are adopted, amended, and published by the State of California in Title 24 of the California Code of Regulations as the California Building Standards Code. Codes comprising the California Building Standards Code same may be adopted and amended by local communities; and
- C. WHEREAS, the City of Upland has the authority to establish appropriate administrative building permit process amendments for the purposes of enforcing the State Building Standards Code.
- D. THEREFORE, it is the purpose and intent of this Ordinance to adopt by reference Codes comprising the majority of the 2019 California Building Standards Code, together with certain appendices and penalties.

Section 2. Ordinance. Adoption of California Codes by Reference.

Chapter 15 of the Upland Municipal Code is hereby amended and the following Codes and certain appendices referenced therein are adopted, as set forth herein, regardless of the California Matrix Adoption Tables. The Codes adopted herein shall be known as the City of Upland Building Codes.

**Chapter 15.04  
CALIFORNIA ADMINISTRATIVE CODE**

Section 15.04.010 of Chapter 15.04 of Title 15 of the City of Upland Municipal Code is hereby amended to read as follows:

**15.04.010 California Administrative Code**

The 2019 California Administrative Code is adopted by reference, in its entirety, as the City of Upland Building Regulation Administrative Standards.”

**Chapter 15.08  
CALIFORNIA BUILDING CODE**

Sections 15.08.030, 15.08.030.1 through 15.08.030.19, 15.08.040, 15.08.050, 15.08.060, 15.08.070 and 15.08.080 of Chapter 15.08 of Title 15 of the City of Upland Municipal Code are hereby deleted.

Section 15.08.010 of Chapter 15.08 of Title 15 of the City of Upland Municipal Code is hereby amended to read as follows:

**15.08.010 California Building Code**

The 2019 California Building Code is adopted by reference, in its entirety, together with Appendix B Board of Appeals, Appendix H Signs, Appendix I Patio Covers, Appendix J Grading, and Appendix O Emergency Housing, as the City of Upland Building Construction Standards.”

**Chapter 15.10  
CALIFORNIA GREEN BUILDING STANDARDS CODE**

Section 15.10.010 of Chapter 15.10 of Title 15 of the City of Upland Municipal Code is hereby amended to read as follows:

**15.10.010 California Green Building Standards Code**

The 2019 California Green Building Standards Code is adopted by reference, in its entirety, as the City of Upland Green Building Construction Standards.

**Chapter 15.12  
CALIFORNIA MECHANICAL CODE**

Section 15.12.010 of Chapter 15.12 of Title 15 of the City of Upland Municipal Code is hereby amended to read as follows:

**15.12.010 California Mechanical Code**

The 2019 California Mechanical Code is adopted by reference, in its entirety, as the City of Upland Mechanical Construction Standards.

**Chapter 15.14  
CALIFORNIA RESIDENTIAL CODE**

Section 15.14.010.1 of Chapter 15.14 of Title 15 of the City of Upland Municipal Code is hereby deleted.

Section 15.14.010 of Chapter 15.14 of Title 15 of the City of Upland Municipal Code is hereby amended to read as follows:

**15.14.010 California Residential Code**

The 2019 California Residential Code is adopted by reference, in its entirety, together with Appendix H Patio Covers, Appendix T Solar-ready Provisions – Detached One- and Two-family Dwellings and Townhouses, Appendix V Swimming Pool Safety Act and Appendix X Emergency Housing, as the City of Upland Residential Construction Standards.

**Chapter 15.15 (New Chapter)  
CALIFORNIA FIRE CODE**

A new Chapter 15.15 is hereby added to Title 15 of the City of Upland Municipal Code to read as follows:

**Chapter 15.15 CALIFORNIA FIRE CODE**

**15.15.010 California Fire Code**

The 2019 California Fire Code is adopted by reference, in its entirety, as the City of Upland Fire Construction Standards.

**Chapter 15.16  
UNIFORM HOUSING CODE**

Section 15.16.10 of Chapter 15.16 of Title 15 of the City of Upland Municipal Code is hereby amended to read as follows:

**15.16.010 Uniform Housing Code**

The 1997 Edition of the Uniform Housing Code as published by the International Conference of Building Officials is adopted by reference, in its entirety, as the City of Upland Uniform Housing Code Standards.

**Chapter 15.20  
UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS**

Section 15.20.10 of Chapter 15.20 of Title 15 of the City of Upland Municipal Code is hereby amended to read as follows:

**15.16.010 Uniform Code for the Abatement of Dangerous Buildings**

The 1997 Uniform Code for the Abatement of Dangerous Buildings as published by

the International Conference of Building Officials is adopted by reference, in its entirety as the City of Upland Abatement of Dangerous Buildings Code Standards.

**Chapter 15.24**  
**CALIFORNIA PLUMBING CODE**

Section 15.24.010 of Chapter 15.24 of Title 15 of the City of Upland Municipal Code is hereby amended to read as follows:

**15.24.010 California Plumbing Code**

The 2019 California Plumbing Code is adopted by reference, in its entirety, as the City of Upland Plumbing Construction Standards.

**Chapter 15.28**  
**CALIFORNIA ELECTRICAL CODE**

Section 15.28.020 of Chapter 15.28 of Title 15 of the City of Upland Municipal Code is hereby deleted.

Section 15.28.010 of Chapter 15.28 of Title 15 of the City of Upland Municipal Code is hereby amended to read as follows:

**15.28.010 California Electrical Code**

The 2019 California Electrical Code is adopted by reference, in its entirety, as the City of Upland Electrical Construction Standards.

**Chapter 15.30**  
**CALIFORNIA ENERGY CODE**

Section 15.30.010 of Chapter 15.30 of Title 15 of the City of Upland Municipal Code is hereby amended to read as follows:

**15.30.010 California Energy Code**

The 2019 California Energy Code is adopted by reference, in its entirety, as the City of Upland Energy Construction Standards.

**Chapter 15.32**  
**CALIFORNIA EXISTING BUILDING CODE**  
**AND CALIFORNIA HISTORICAL BUILDING CODE**

Sections 15.32.010 and 15.32.020 of Chapter 15.32 of Title 15 of the City of Upland Municipal Code are hereby amended to read as follows:

**15.32.010 California Existing Building Code**

The 2019 California Existing Building Code is adopted by reference, in its entirety, as the City of Upland Existing Building Code Standards.

### **15.32.020 California Historical Building Code**

The 2019 California Historical Building Code is adopted by reference, in its entirety, as the City of Upland Historical Building Code Standards.

## **Chapter 15.33 (New Chapter) CALIFORNIA REFERENCED STANDARDS CODE**

A new Chapter 15.33 is hereby added to Title 15 of the City of Upland Municipal Code to read as follows:

### **Chapter 15.33 CALIFORNIA REFERENCED STANDARDS CODE**

#### **15.33.010 California Reference Standards Code**

The 2019 California Reference Standards Code is adopted by reference, in its entirety, as the City of Upland California Reference Standards Code Standards.

Section 3. Penalties. Subject to the provisions of Chapter 1.16 of Title 1 of this Code, violation of any of this Ordinance or any Code adopted herein shall be a misdemeanor unless otherwise specified to be an infraction. Violations shall be punishable as provided in Chapter 1.10 and/or Chapter 1.16.

Section 4. Compliance with California Environmental Quality Act. 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 State 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. Further, if the activity is deemed a project this City Council finds that this Ordinance is exempt pursuant to Section 15061(b)(3) of the State CEQA Guidelines.

Section 5. Severability. If any provision of this Ordinance or any Code adopted herein, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance or such Codes which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance and such Codes are severable. The City Council hereby declares that it would have adopted this Ordinance and the Codes herein irrespective of the invalidity of any particular portion thereof.

Section 6. Effective Date. This Ordinance shall become effective thirty (30) days from its adoption, but no sooner than January 1, 2020.

Section 7. Publication. The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published in a newspaper of general

circulation printed and published within the City of Upland, pursuant to all legal requirements.

PASSED, APPROVED, AND ADOPTED this 13th day of January, 2020.

\_\_\_\_\_  
Debbie Stone, Mayor

I, Keri Johnson, City Clerk of the City of Upland, California, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Upland held on the 25th day of November, 2019, and was adopted at a regular meeting of the City Council of the City of Upland on the 13th day of January, 2020, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

ATTEST:

\_\_\_\_\_  
Keri Johnson, City Clerk

**POLICE AND FIRE COMMITTEE MEETING  
DECEMBER 16, 2019**

\*\*\*\*\*

**CONCLUSION/ACTION SUMMARY**

In attendance: Committee Chairperson Zuniga, Committee Member Elliott, Councilmember Felix, Interim City Manager Hoerning, Police Chief Goodman, Captain Blanco, Lieutenant Dodt, Detective O'Brien, and Code Enforcement Officer Grady.

1) **ORAL COMMUNICATIONS**

Mark Walters spoke in opposition of purchasing a rescue vehicle and stated the vehicle is too expensive.

Mike Nunez spoke in support of purchasing a rescue vehicle.

Terry D. spoke in opposition of the rescue vehicle and stated she is concerned the Police Department is trying to become militarized. She would like the Police Department to host a workshop where citizen's questions can be answered.

Marjorie Mikels spoke in opposition of the rescue vehicle purchase and would like the City to spend their money on parks instead.

Janice Elliott requested the crime statistics and workers comp information for the City's that have the rescue vehicle. She is curious to see if both of these have improved.

Irmalinda Osuna spoke in opposition of the rescue vehicle and stated that she doesn't see the need for that type of vehicle in the City.

Mark Walters spoke in support of the rescue vehicle and stated he was unaware that the Police Department was trying to get a grant to pay for the vehicle.

Allen Nicely spoke in support of the rescue vehicle.

2) **PROPOSED AMENDMENT TO THE ADMINISTRATIVE CITATION ORDINANCE AND THE ADMINISTRATIVE CITATION FEES**, Code Enforcement Officer Grady and City Prosecutor Wright presented the staff report, along with a PowerPoint presentation. There was discussion regarding the varying degree of fines, the administrative fine process, and modifications to the proposed fine schedule. The Committee provided input on the proposed changes.

3) **PROPOSED PURCHASE OF AN ARMORED RESCUE VEHICLE**, Detective O'Brien presented the staff report, along with a verbal and PowerPoint presentation. Chief Goodman answered questions regarding grant funding sources for the purchase, appropriate uses, and outfitting of the vehicle. The Committee recommended the City Council authorize the exploration of external funding sources for the purchase of an Armored Rescue Vehicle.



## Special Police and Fire Committee Meeting

December 16, 2019

5:00 PM

Pinky Alder Room - City Hall

\*\*\*\*\*

- 
1. ORAL COMMUNICATIONS
  2. PROPOSED AMENDMENT TO THE ADMINISTRATIVE CITATION ORDINANCE AND THE ADMINISTRATIVE CITATION FEES
  3. PROPOSED PURCHASE OF AN ARMORED RESCUE VEHICLE

**NOTE:** All Agenda items and back-up materials are available for public review at the Upland Public Library, downstairs reference desk at 450 North Euclid Avenue, the City Clerk's Office at 460 North Euclid Avenue and the City website at [www.ci.upland.ca.us](http://www.ci.upland.ca.us), subject to staff's ability to post the documents before the meeting.

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 909.931.4120. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.102-35.104 ADA Title II]

**POSTING STATEMENT:** On December 12, 2019, a true and correct copy of this agenda was posted on the bulletin boards at 450 N. Euclid Avenue (Upland Public Library) and 460 N. Euclid Avenue (Upland City Hall).



## STAFF REPORT

**ITEM NO. 2.**

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**DATE:** December 16, 2019  
**TO:** POLICE AND FIRE COMMITTEE  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** DARREN L. GOODMAN, POLICE CHIEF  
DON DODT, POLICE LIEUTENANT  
**SUBJECT:** PROPOSED AMENDMENT TO THE ADMINISTRATIVE CITATION  
ORDINANCE AND THE ADMINISTRATIVE CITATION FEES

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### RECOMMENDED ACTION

It is recommended that the Police and Fire Committee provide input on the proposed Ordinance to create and implement a comprehensive and transparent process for the issuance, collection, and appeal of administrative citations; and a Resolution to amend the Master Fee schedule for the associated fines.

### GOAL STATEMENT

The proposed action supports the City's goal to protect property values and eliminate blight in the City of Upland.

### BACKGROUND

The City of Upland has an adopted Municipal Code with a stated purpose, among other things, to promote and protect public peace, health, safety and welfare, and to guide growth and development in keeping with the City's General Plan. Code Enforcement is the process by which the City gains compliance with the laws and regulations of the Upland Municipal Code ("UMC").

On April 8, 2013, the City Council adopted Ordinance 1892, establishing Chapter 1.10 of the UMC, creating a process for imposing administrative fines for violation of the UMC, and developing procedures for such fines.

On October 24, 2017, the City Council adopted Ordinance 1914, amending Chapter 1.10 of the UMC, and set fines for UMC Administrative Violations at \$500 per day for residential violations and \$1,000 per day for commercial violations.

## **ISSUES/ANALYSIS**

In the three years since the adoption of Ordinance 1914, Code Enforcement has utilized the Administrative Citation process with mixed success. The major problems are the excessive fine amounts and the daily compounding of fines for violation(s) that go uncorrected. Many times homeowners, and small business owners, have faced overdue fines ranging from the tens of thousands to hundreds of thousands of dollars. To resolve these exorbitant fine amounts, staff often holds settlement conferences where the fines are reduced to a fine commensurate to the seriousness of the violation.

To address this problem, bring the Administrative Citation process in line with legal and industry standards, and streamline the compliance of violations, it is recommended that Chapter 1.22 be adopted to replace chapter 1.10. The key changes in Chapter 1.22 are as follows:

1. Administrative fines will range from \$25 for minor violations up to \$1,000 for serious public health/safety violations. (See the attached Administrative Fine Schedule)
2. The maximum fine amount for any single violation will be \$1,000.
3. Continuing Violations. Each day a violation persists is a separate offense.
4. Pursuant to UMC section 1.22.040, a party is entitled to a reasonable opportunity to correct violations; that do not constitute a continuing violation, that do not create an immediate danger, and that are not the result of the illegal cultivation of cannabis as designated herein ("Grace Period"). Any violation of the UMC entitled to a Grace Period that is not otherwise designated herein shall be entitled to a Grace Period of at least three days.
5. The number of days a citee has to appeal an Administrative Citation will be increased from 5 days to 15 days.

The proposed changes to the UMC and creation of the Administrative Fine Schedule will ensure the "reasonableness" of the Grace Periods and Fine Amounts go through a public hearing and are adopted by the City Council. This will remove blame from Code and Law Enforcement for claimed unreasonableness, and ensures there is a fair, transparent, and uniform fine schedule used by all officers. That being said, while the initial fines are reasonable, they double daily to a set maximum so that uncooperative violators can still be dealt with quickly and effectively. Additionally, the truncated administrative process minimizes the time and resources required by Code Enforcement, while protecting the violators' due process.

## **FISCAL IMPACTS**

Staff anticipates that the proposed ordinance will result in an overall reduction of costs to the City by increasing rates and reducing staff time and legal costs.

## **ALTERNATIVES**

Provide alternative direction to staff.

## **ATTACHMENTS:**

**Proposed Administrative Citation Ordinance**  
**Proposed Amendment to the Master Fee Schedule**  
**Exhibit A - Fee Schedule**

ORDINANCE NO. \_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UPLAND, REPEALING UPLAND MUNICIPAL CODE CHAPTER 1.10 REGARDING ADMINISTRATIVE FINES AND ADDING CHAPTER 1.22 REGARDING ADMINISTRATIVE CITATIONS TO CREATE AND IMPLEMENT A COMPREHENSIVE AND TRANSPARENT PROCESS FOR THE ISSUANCE, COLLECTION, AND APPEALS OF ADMINISTRATIVE CITATIONS

THE CITY COUNCIL OF THE CITY OF UPLAND DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Findings.

A. California Constitution, article XI, section 7, authorizes the City of Upland ("City") to adopt and enforce local police, sanitary, and other ordinances and regulations that are not in conflict with the general laws.

B. Government Code section 53069.4(a)(1) authorizes the City to make any violation of its ordinances subject to an administrative fine or penalty and to set forth procedures for the imposition, enforcement, collection, and review of such administrative fine or penalty.

C. The City has previously adopted Upland Municipal Code ("UMC") Chapter 1.10 (Administrative Fines) to regulate issues related to administrative citations and fines within the City; however, the City now desires to streamline and update the processes in UMC chapter 1.10 to conform with recent changes in State law.

D. The City now desires to adopt this Ordinance to create and implement an effective, streamlined, transparent, and fair process to issue, collect, and appeal administrative citations that complies with all State laws concerning the imposition of administrative fines and penalties.

E. This Ordinance will also enhance the operational efficiency of the City's code enforcement and nuisance abatement efforts and provide for a greater level of public trust in the administrative citation process by providing individuals the ability to correct violations before administrative fines are imposed and the opportunity to conveniently appeal administrative citations.

SECTION 2. UMC chapter 1.10 (Administrative Fines) is hereby repealed in its entirety.

SECTION 3. UMC chapter 1.22 (Administrative Citations) is hereby added, and is to read in its entirety as follows:

## **Chapter 1.22**

### **ADMINISTRATIVE CITATIONS**

#### **Sections:**

- 1.22.010 Applicability**
- 1.22.020 Definitions**
- 1.22.030 Administrative Citations**
- 1.22.040 Administrative Fines and Fees**
- 1.22.050 Payment of Administrative Fines**
- 1.22.060 Hearing Request**
- 1.22.070 Hearing Officer**
- 1.22.080 Hearing Procedure**
- 1.22.090 Hearing Officer's Decision**
- 1.22.100 Recovery of Administrative Fines and Costs**
- 1.22.110 Right to Judicial Review**
- 1.22.120 Service of Notice**

#### **1.22.010 Applicability**

This Chapter provides for administrative citations, which are in addition to all other legal penalties and remedies, whether administrative, criminal, or civil, that may be imposed in connection with any violation of this Code. Any person violating, or who has violated, any provision of this Code may be issued an administrative citation by an Enforcement Official as provided for in this Chapter.

#### **1.22.020 Definitions**

For purposes of this Chapter, the following definitions shall apply, unless the context clearly indicates otherwise:

A. "City Manager's Designee" means and includes the City Manager or the person designated by the City Manager to fulfill the responsibilities required by this Chapter.

B. "Continuing Violation" means a violation of this Code that persists for more than 24 hours.

C. "Decision" means the decision of the Hearing Officer at the conclusion of an administrative hearing held in accordance with this Chapter.

D. "Enforcement Agency" means and includes any agency, department, or unit authorized to enforce any provision of this Code.

E. "Enforcement Official" means and includes any City employee or agent of the City authorized by this Code, the City Council, or the City Manager to issue administrative citations to enforce any provision of this Code.

F. "Grace Period" means the reasonable timeframe provided to a Responsible Party to correct a violation of this Code in accordance with this Chapter.

G. "Grace Period Exception" mean a code violation that is any of the following:

1. Not a Continuing Violation.
2. An Immediate Danger.
3. The result of, or used to facilitate, the illegal cultivation of cannabis, unless all the following are true:
  - a. The Nuisance Property is a rental property.
  - b. The relevant Responsible Party is the Nuisance Property owner or owner's agent.
  - c. A tenant is in possession of the Nuisance Property.
  - d. The relevant Responsible Party can provide evidence that the rental or lease agreement prohibits the cultivation of cannabis.
  - e. The relevant Responsible Party did not know the tenant was illegally cultivating cannabis and no complaint, property inspection, or other information caused the Responsible Party to have actual notice of the illegal cannabis cultivation.

H. "Hearing Officer" means the neutral and impartial hearing officer appointed to hold and conduct an administrative hearing in accordance with this Chapter.

I. "Immediate Danger" means that the cited condition poses a reasonable risk of causing immediate harm or damage to the health or safety of a person or property.

J. "Nuisance Property" means the parcel of real property upon which the violations cited in an administrative citation occurred.

K. "Person" means any natural person, business, organization, corporation, or other legal entity.

L. "Responsible Party" or "Responsible Parties" means and includes any of the following:

1. Any person or entity that causes, maintains, permits, or allows a violation of this Code.
2. Any person or entity that owns, possesses, or controls any parcel of real property in the City upon which a violation of this Code is maintained.
3. Any trustee of any trust that holds legal title to any parcel of real property in the City upon which a violation of this Code is maintained.
4. Any person or entity that owns, possesses, operates, manages, or controls any business within the City that is responsible for causing or maintaining a violation of this Code.

**1.22.030 Administrative Citations**

A. Whenever an Enforcement Official determines that a violation of this Code has occurred, the Enforcement Official shall have the authority to issue an administrative citation to each Responsible Party for that violation.

B. Each administrative citation shall contain the following information:

1. The date of the violations.
2. The address or a description of the location where the violations occurred.
3. The names of the Responsible Parties.
4. The Code sections violated and a description of the violations.
5. Designation per cited violation whether it poses an Immediate Danger.
6. Designation per cited violation whether it is a Continuing Violation.
7. Designation per cited violation whether it is the result of, or used to facilitate, the illegal cultivation of cannabis.
8. Grace Period (if any) to cure each cited violation in order to avoid the administrative fine.

9. The amount of the administrative fine for each cited violation that will be imposed if the cited violation is not cured within the Grace Period (if any). If there is no Grace Period, the administrative fine shall be immediately imposed.
  10. The amount (if any) of the Administrative Fee.
  11. An order prohibiting the continuation or repeated occurrence of the cited violations.
  12. A notice that the administrative fine amount may automatically re-accrue and double each day beyond the Grace Period (if any) that the cited violation persists, up to the statutory maximum per day.
  13. An order to the Responsible Parties that they must report to the relevant Enforcement Agency when each cited violation is cured, along with the necessary contact information for the relevant Enforcement Agency to verify.
  14. A description of the administrative citation review process, including the timeframe within which the administrative citation may be contested and the place to obtain a hearing request form.
  15. A description of the administrative fine payment process, including the timeframe to pay the administrative fine and Administrative Fee, the Late Fee for failure to pay on time, and any other consequences of failing to pay as required.
  16. The name and signature of the citing Enforcement Official.
- C. If a cited violation is a Grace Period Exception, then the administrative fine for that cited violation shall be immediately imposed.
- D. If a cited violation is not a Grace Period Exception, then the Responsible Parties shall be given a reasonable Grace Period to cure that cited violation in order to avoid the administrative fine for that cited violation.
- E. The Responsible Parties must cure each cited violation and must report to the relevant Enforcement Agency when each cited violation is cured within 24 hours of curing the violation. When reporting to the Enforcement Agency, the Responsible Parties must provide their contact information and make accommodations for the Enforcement Agency to verify compliance within 72 hours, unless further delay is permitted by the Enforcement Agency.

**1.22.040 Administrative Fines and Fees**

A. Administrative Fine. The administrative fines imposed pursuant to this Chapter for violations of this Code shall be in the amount set forth in this Code or an Administrative Fine Schedule established by resolution of the City Council.

B. Infractions.

1. For any infraction violation of a building and safety code pertaining to a property that is a commercial property that has an existing building at the time of the violation and the violation is due to failure by the owner to remove visible refuse or failure to prohibit unauthorized use of the property, and no lesser specific administrative fine is established in this Code or by the City Council, the maximum administrative fine shall be \$130 for the first offense and \$2,500 for each subsequent offense within 12 months.
2. For any other infraction violation of a building and safety code, for which no specific administrative fine is established in this Code or by the City Council, the maximum administrative fine shall be \$130 for the first offense, \$700 for the second offense within 12 months, and \$1,300 for each subsequent offense within 12 months.
3. For any other violation of this Code that is expressly punishable only as an infraction, and for which no specific administrative fine is established in this Code or by the City Council, the maximum administrative fine shall be \$100 for the first offense, \$200 for the second offense within 12 months, and \$500 for each subsequent offense within 12 months.

C. Misdemeanors. All violations of this Code are misdemeanors unless expressly stated otherwise. For any violation of this Code that is punishable as a misdemeanor, and for which no specific administrative fine is established in this Code or by the City Council, the maximum administrative fine shall be \$1,000 for each offense.

D. Continuing Violations. Each day a violation persists is a separate offense.

E. Grace Period. The Responsible Parties for any violations that are not a Grace Period Exception shall be given a reasonable Grace Period to cure the violation of not less than three calendar days, or as otherwise set by resolution of the City Council, in order to avoid the administrative fine for that violation.

F. Re-accruing Administrative Fines. The administrative fine for a cited violation shall automatically re-accrue and double, up to the statutory maximum (unless a lesser maximum has been expressly established by this Code or by resolution of the City Council), each day beyond the Grace Period (if any) that a cited violation persists.

G. Administrative Fee. The City may adopt an Administrative Fee to recover the administrative expenses associated with the issuance, enforcement, processing, and collection of administrative citations. The Administrative Fee shall be established by resolution of the City Council. The Administrative Fee shall be assessed on each administrative citation and collected in the same manner and at the same time as the administrative fine; however, the Administrative Fee shall be assessed only once per administrative citation.

H. Late Fee. Any person who fails to pay any administrative fine and Administrative Fee imposed pursuant to the provisions of this Chapter shall be liable for the payment of a Late Fee. The Late Fee shall be in an amount established by resolution of the City Council.

I. Nuisance Abatement Costs. In addition to the Administrative Fee, the City is entitled to recover all other code enforcement and nuisance abatement costs associated with enforcing this Code or abating any nuisances ("Nuisance Abatement Costs"). However, Nuisance Abatement Costs shall not include salary, fees, and hourly rates paid to attorneys, law enforcement, and inspectors for hours spent either investigating or enforcing a charged crime in relation to any criminal investigation, criminal prosecution, or criminal appeal in a criminal action pursuant to Penal Code section 688.5, unless specifically authorized by statute or ordered by a court.

J. Collection Costs. In addition to the Administrative Fee and Late Fee, the City is entitled to recover all costs, expenses, fees, and attorneys' fees associated with collecting upon any administrative fines, fees, or costs authorized by this Chapter.

#### **1.22.050 Payment of Administrative Fines**

A. Administrative fines shall be paid to the City within 30 days from the date of service of the administrative citation, unless a hearing is properly requested.

B. If a hearing is properly requested, and the fine is upheld or modified at that administrative hearing, then the confirmed fine amount shall be paid to the City within 30 days from the date of service of the Decision.

C. Payment of an administrative fine under this Chapter shall not excuse or discharge the obligation to cure the underlying violations.

**1.22.060 Hearing Request**

A. Any recipient of an administrative citation identified as a Responsible Party may contest the administrative citation by completing a hearing request form and returning it to the City within 15 days from the date of service of the administrative citation.

B. A hearing request form may be obtained from the City Clerk or the department specified on the administrative citation. The request may be for an in-person hearing or a hearing by written declaration.

C. If an in-person hearing is requested, then the City shall set the date and time for the administrative hearing. The Responsible Party requesting the in-person hearing shall be served written notice of the time and place set for the administrative hearing at least 10 days prior to the date of the administrative hearing.

D. If a request for hearing by written declaration is made, then the written declaration must be made under penalty of perjury and attached to the hearing request form. The written declaration must establish all defenses the contesting party may have and must attach all evidence the contesting party wishes the Hearing Officer to consider. The written declaration may not be augmented or supplemented unless permission to do so is obtained from the Hearing Officer prior to the issuance of the Decision.

E. Other than coordinating and scheduling the administrative hearing, no ex parte communications may occur with the Hearing Officer. Any other communications with the Hearing Officer must be in writing and submitted to all parties either prior to, or contemporaneously with, the written communication to the Hearing Officer.

F. The Enforcement Agency may submit a written report concerning the administrative citation to the Hearing Officer for consideration. If an in-person hearing is requested, then the report may be submitted at any time prior to the in-person hearing. If a hearing by written declaration is requested, then the report may be submitted within 30 days to the Hearing Officer.

G. Failure to timely and properly request a hearing as required by this Chapter, including the proper submission of a written declaration under penalty of perjury when a hearing by declaration is requested, shall constitute an admission to the existence of the cited violations, an admission to the cited party's liability for the cited violations, a waiver of the right to contest the administrative citation, and a failure to exhaust administrative remedies. The administrative citation, along with any imposed administrative fines and fees, shall be deemed final.

H. Upon the proper filing of a hearing request, the administrative fines and the Administrative Fee associated with the contested administrative citation shall be stayed pending the outcome of the administrative hearing.

**1.22.070 Hearing Officer**

The City Manager's Designee shall establish procedures for the selection of a Hearing Officer required in this Chapter. A Hearing Officer shall be a neutral third party contracted by the City and selected in a manner that avoids the potential for any bias against any parties to the hearing. The Hearing Officer's compensation, if any, shall be paid by the City; however, the non-prevailing party shall be liable to the City for the costs of the hearing and the Hearing Officer's compensation. The Hearing Officer's compensation shall not be directly or indirectly conditioned upon the outcome of the hearing.

**1.22.080 Hearing Procedure**

A. An in-person hearing before the Hearing Officer shall be set for a date that is not less than 15 days and not more than 60 days from the date that the request for an in-person hearing is submitted in accordance with the provisions of this Chapter. This timeframe may be extended by necessity or stipulation of the parties. Failure to hold the hearing within this timeframe shall not invalidate the administrative citation, shall not preclude proceeding with the hearing at a later date, and shall not invalidate the Hearing Officer's Decision.

B. If the Responsible Party requesting the in-person hearing fails to attend the scheduled hearing, it shall constitute an admission to the existence of the cited violations, an admission to that Responsible Party's liability for the cited violations, a waiver of the right to contest the administrative citation, and a failure to exhaust administrative remedies.

C. If an in-person hearing is requested, the Hearing Officer may continue the hearing and request additional evidence from the Enforcement Agency or the Responsible Party that requested the hearing prior to issuing a Decision. The Hearing Officer shall issue a Decision within 30 days from the date all necessary evidence is obtained. Failure by the Hearing Officer to strictly comply with this provision shall not invalidate the administrative citation nor the Hearing Officer's Decision.

D. If a hearing by written declaration is requested, the Hearing Officer shall review the requesting Responsible Party's written declaration and the enforcement agencies' report within 30 days of receipt. Within those 30 days, the Hearing Officer may request additional evidence from the Enforcement Agency or the requesting Responsible Party as necessary to render a Decision. Failure by the requesting Responsible Party to respond or produce additional evidence requested by the Hearing Officer may be deemed by the Hearing Officer as an abandonment of the hearing request. Failure by

the Enforcement Agency to respond or produce additional evidence requested by the Hearing Officer may be deemed by the Hearing Officer as admissions in the relevant Responsible Party's favor. The Hearing Officer shall issue a Decision within 30 days from the date all necessary evidence is obtained. Failure by the Hearing Officer to strictly comply with this provision shall not invalidate the administrative citation nor the Hearing Officer's Decision.

E. Administrative hearings are informal, and formal rules of evidence and discovery shall not apply. Each party shall have the opportunity to present evidence in support of that party's case and to cross-examine witnesses. The City bears the burden of proof at an administrative hearing to establish a violation of this Code by a preponderance of the evidence. The administrative citation, and any additional reports submitted by the Enforcement Agency, shall constitute prima facie evidence of the facts contained in those documents.

### **1.22.090 Hearing Officer's Decision**

A. Not later than 30 days after the date on which the administrative hearing concludes—or in the case of a hearing by written declaration, not later than 30 days after all necessary evidence is received—the Hearing Officer shall issue a written Decision to uphold, modify, or dismiss the contested administrative citation. Failure by the Hearing Officer to strictly comply with this provision shall not invalidate the administrative citation nor the Decision.

B. The Decision shall set forth the reasons for the Decision along with notice of the right to appeal pursuant to this Chapter. The Decision shall be final.

C. The Decision shall be served by first-class mail to all parties and shall be deemed to be served on the date the Decision is deposited with the United States Postal Service. Failure to receive a properly addressed Decision shall not invalidate the administrative citation nor the Decision.

D. If the administrative citation is upheld, the Hearing Officer shall award the City reimbursement of the Hearing Costs, including the Hearing Officer's compensation. If the administrative citation is only partially upheld, the Hearing Officer may reduce the reimbursement for Hearing Costs that the City is awarded as the Hearing Officer deems appropriate. If the administrative citation is dismissed entirely, then the City shall bear the Hearing Costs.

E. All upheld and awarded administrative fines, Administrative Fees, and Hearing Costs shall be paid by the Responsible Parties to the City within 30 days from the date the Decision is served.

F. If the Hearing Officer determines that an administrative citation should be dismissed, the City shall retain the authority to issue additional

administrative citations for additional violations, or to take any other enforcement action authorized by law.

### **1.20.100 Recovery of Administrative Fines and Costs**

The City may collect any past due administrative fines, Administrative Fees, Late Fees, Nuisance Abatement Costs, Collection Costs, and Hearing Costs by use of all available legal means, including, but not limited to, personal collection from the Responsible Parties and special assessment against the Nuisance Property if the Responsible Parties have or control title to the Nuisance Property. The procedures provided in this Section are in addition to all other remedies and cost recovery options available to the City by law or in equity, including, but not limited to, those provided in Chapter 1.20 of this Code.

### **1.22.110 Right to Judicial Review**

Within 20 days after service of the Decision upon a Responsible Party, that Responsible Party may seek review of the Decision by filing an appeal with the Superior Court of the State of California, in the County of San Bernardino, in accordance with Government Code section 53069.4. That Responsible Party shall serve upon the City Clerk, either in person or by first-class mail, a copy of the notice of appeal. If a Responsible Party fails to timely file a notice of appeal, the Hearing Officer's Decision shall be final and that Responsible Party's right to appeal shall be deemed waived and terminated.

### **1.22.120 Service of Notice**

A. The administrative citation and all notices required to be given by this Chapter may be served on the Responsible Parties in accordance with any of the following methods:

1. Personal service to the Responsible Parties.
2. First-class or certified mail to the Responsible Parties at each Responsible Parties' last known address.
3. For any Responsible Parties that reside at, or occupy, the Nuisance Property, by posting the administrative citation in a conspicuous place on the Nuisance Property, and then mailing a copy of the administrative citation to those Responsible Parties by first-class mail at that address.
4. If any Responsible Parties are an entity registered with the Secretary of State, then by certified mail to those Responsible Parties' agents for service of process at the address registered with the Secretary of State, or as otherwise permitted by law.

5. If a valid address for any Responsible Parties cannot be determined, then by posting the administrative citation in a conspicuous place on the Nuisance Property, and then mailing a copy of the administrative citation to those Responsible Parties at the Nuisance Property's address by first-class mail.

B. Service by posting shall be deemed effective at the time of posting. Service by mail in any manner described in this Section shall be deemed effective upon deposit in the mail.

C. The failure of any Responsible Party, or any other person with a legal or equitable interest in the Nuisance Property, to receive any administrative citation or notice served in accordance with this Section shall not affect the validity of the notice nor any proceeding conducted under this Code.

SECTION 4. Compliance with California Environmental Quality Act. The Upland City Council ("City Council") finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to California Code of Regulations, title 14, chapter 3 ("CEQA Guidelines"), 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) because it has no potential for resulting in physical change to the environment, directly or indirectly. Further, if the activity is deemed a project, the City Council finds that this Ordinance is exempt pursuant to CEQA Guidelines section 15061(b)(3).

SECTION 5. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 6. Effective Date. This Ordinance shall become effective 30 days from its adoption.

SECTION 7. Publication. The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published in a newspaper of general circulation printed and published within the City, pursuant to all legal requirements.

PASSED, APPROVED, and ADOPTED this \_\_\_th day of \_\_\_\_\_, 2020.

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Debbie Stone, Mayor

Ordinance No. \_\_\_\_

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I, Keri Johnson, City Clerk of the City of Upland, California, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Upland held on the \_\_th day of \_\_\_\_\_, 2020, and was adopted at a regular meeting of the City Council of the City of Upland on the \_\_th day of \_\_\_\_\_, 2020, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

ATTEST:

\_\_\_\_\_  
Keri Johnson, City Clerk

RESOLUTION NO. \_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
UPLAND AMENDING THE MASTER FEE SCHEDULE AND  
ESTABLISHING ADMINISTRATIVE FINES FOR CERTAIN  
VIOLATIONS OF THE UPLAND MUNICIPAL CODE

Intent of the Parties and Findings

(i) Upland Municipal Code ("UMC") chapter 1.22 (Administrative Citations) authorizes the imposition of fines for violations of the UMC through the issuance of administrative citations.

(ii) UMC section 1.22.040(A) provides that the amount of the administrative fine may be set forth in an Administrative Fine Schedule established by resolution of the City Council.

NOW, THEREFORE, the City Council hereby finds, determines and resolves as follows:

Section 1. The Administrative Fine Schedule for certain violations of the UMC as set forth in Exhibit A attached hereto and incorporated herein is hereby approved.

Section 2. The Grace Period, as defined in UMC section 1.22.020(E), for certain violations of the UMC as set forth in Exhibit A attached hereto and incorporated herein is hereby approved. Notwithstanding, the Grace Period may be extended on a case-by-case basis at the discretion of the Enforcement Official or the Enforcement Agency based on the complexity of correcting the violation and the propensity for harm posed by the continued existence of the violation.

Section 3. Compliance with California Environmental Quality Act. The Upland City Council ("City Council") finds that this Resolution is not subject to the California Environmental Quality Act ("CEQA") pursuant to California Code of Regulations, title 14, chapter 3 ("CEQA Guidelines"), 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) because it has no potential for resulting in physical change to the environment, directly or indirectly. Further, if the activity is deemed a project, the City Council finds that this Resolution is exempt pursuant to CEQA Guidelines section 15061(b)(3).

Section 4. This resolution shall prevail over any existing resolution in the event of a conflict.

Section 5. The fees adopted by this resolution shall become effective thirty days after adoption and shall remain in effect until repealed or amended.

Resolution No. \_\_\_\_

Page 2

Section 6. Certification. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original resolutions.

PASSED, APPROVED, and ADOPTED this \_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Debbie Stone, Mayor

I, Keri Johnson, City Clerk of the City of Upland, California, do hereby certify that the foregoing Resolution was adopted at a regular meeting of the City Council of the City of Upland held on the \_\_ day of \_\_\_\_\_, 2020, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

ATTEST:

\_\_\_\_\_  
Keri Johnson, City Clerk

## EXHIBIT A

### Administrative Fine Schedule

Pursuant to Upland Municipal Code (“UMC”) section 1.22.040 and subject to Government Code section 36900, each UMC violation designated below is subject to a fine of not more than the maximum fine amount specified herein. Each subsequent violation of the same UMC section shall be subject to double the fine of the previous violation up to a maximum of \$1,000 per violation. Any violation of the UMC not otherwise identified below is subject to a fine of no more than the maximum amount authorized in UMC section 1.22.040.

Pursuant to UMC section 1.22.040, a party is entitled to a reasonable opportunity to correct continuing or ongoing violations that do not constitute a continuing violation, that do not create an immediate danger, and that are not the result of the illegal cultivation of cannabis as designated herein (“Grace Period”). Any violation of the UMC entitled to a Grace Period that is not otherwise designated herein shall be entitled a Grace Period of at least three days.

<b>Code</b>	<b>Brief Description of Violation</b>	<b>Initial Fine Amount</b>	<b>Maximum Fine Amount</b>	<b>Grace Period</b>
5.02.010	Business License—Illegal Businesses	\$500.00	\$1,000.00	10 Days
5.04.090(A)	Business License—Failure to Procure License	\$25.00	\$1,000.00	30 Days
5.28.010	Solicitor, Canvasser or Peddler—Failure to Procure License	\$25.00	\$1,000.00	5 Days
5.40.020	Outdoor Festival—Failure to Procure License	\$500.00	\$1,000.00	N/A
5.44.020	Dwelling Unit Construction—Failure to Procure License	\$250.00	\$1,000.00	5 Days
5.48.030	Residential Property Transactions—Failure to Deliver Report of Residential Property	\$200.00	\$1,000.00	N/A
5.60.210(A)–(C)	Massage—Prohibited Services	\$500.00	\$1,000.00	N/A
5.60.050(A)–(Q)	Massage—Failure to Abide by Operating Requirements	\$250.00	\$1,000.00	5 Days
6.04.120(A)	Animals—Without A Leash	\$100.00	\$500.00	N/A
6.04.140	Animals—Causing Noise Disturbance	\$100.00	\$100.00	N/A
8.12.020(A)	Nuisance—Improper Drainage	\$50.00	\$50.00	15 Days
8.12.020(B)(1)	Nuisance—Accumulation of Discards and Rubbish	\$50.00	\$50.00	15 Days
8.12.020(B)(2)	Nuisance—Accumulation of Building Materials	\$50.00	\$50.00	15 Days
8.12.020(B)(3)	Nuisance—Accumulation of Firewood	\$50.00	\$50.00	15 Days
8.12.020(C)	Nuisance—Commercial Vehicles Stored on Residential Property	\$50.00	\$50.00	15 Days
8.12.020(D)(1)	Nuisance—Dead or Hazardous Vegetation	\$50.00	\$50.00	15 Days

**EXHIBIT A**

8.12.020(D)(2)	Nuisance—Overgrown Weeds	\$50.00	\$50.00	15 Days
8.12.020(D)(3)	Nuisance—Inadequate Landscaping	\$50.00	\$50.00	15 Days
8.12.020(D)(4)	Nuisance—Unmaintained Landscaping	\$50.00	\$50.00	15 Days
8.12.020(E)(1)	Nuisance—Partially Destroyed or Incomplete Construction	\$50.00	\$50.00	15 Days
8.12.020(E)(3)	Nuisance—Deteriorating Paint or Unpainted Surface	\$50.00	\$50.00	15 Days
8.12.020(E)(4)	Nuisance—Roofs With Loose Shingles	\$50.00	\$50.00	15 Days
8.12.020(E)(5)	Nuisance—Broken Windows and Doors	\$50.00	\$50.00	15 Days
8.12.020(E)(6)	Nuisance—Defective Steps, Rails, Walls, Driveways	\$50.00	\$50.00	15 Days
8.12.020(E)(7)	Nuisance—Defective Garage Doors	\$50.00	\$50.00	15 Days
8.12.020(E)(8)	Nuisance—Premise Detrimental to Health and Safety	\$50.00	\$50.00	15 Days
8.12.020(E)(9)	Nuisance—Graffiti on Premises	\$50.00	\$50.00	15 Days
8.12.020(E)(10)	Nuisance—Blight	\$50.00	\$50.00	15 Days
8.12.020(F)	Nuisance—Parking of Vehicles	\$50.00	\$50.00	15 Days
8.12.020(G)	Nuisance—Inoperative Vehicles	\$50.00	\$50.00	15 Days
8.12.020(H)	Nuisance—Unmaintained Swimming Pools and Ponds	\$50.00	\$50.00	15 Days
8.12.020(I)	Nuisance—Accumulation of Dirt and Debris	\$50.00	\$50.00	15 Days
8.20.010(A)(1)	Attractive Nuisance—Abandoned Vehicles	\$100.00	\$1,000.00	3 Days
9.04.070	Human Waste—Bodily Waste in Public Place	\$100.00	\$1,000.00	N/A
9.04.110(C)	Trespass Upon Private Property	\$75.00	\$1,000.00	N/A
9.08.020	Gambling—Betting	\$100.00	\$1,000.00	N/A
9.12.030(A)	Juvenile Curfew Violations	\$100.00	\$500.00	N/A
9.12.060	Juvenile Curfew Violations—Responsibility of Guardian	\$100.00	\$1,000.00	N/A
9.12.080(C)	Distribution of Harmful Materials to Minor	\$100.00	\$1,000.00	N/A
9.16.020(A)	Alcoholic Beverages—Drinking in Public	\$100.00	\$1,000.00	N/A
9.16.020(B)	Alcoholic Beverages—Intoxication in Public	\$100.00	\$1,000.00	N/A
9.16.030	Alcoholic Beverages—Possession or Consumption in Public Park	\$100.00	\$1,000.00	N/A
9.24.020	Firearms—Discharge of Firearm or Weapon	\$1,000.00	\$1,000.00	N/A

**EXHIBIT A**

9.24.030	Firearms—Minor in Possession of Firearm or Weapon	\$1,000.00	\$1,000.00	N/A
9.28.020	Live Entertainment—Without Obtaining Permit	\$250.00	\$1,000.00	3 Days
9.36.040	Graffiti—Application thereof	\$250.00	\$1,000.00	N/A
9.36.050	Defacing Public Buildings	\$250.00	\$1,000.00	N/A
9.36.060	Graffiti—Possession of Graffiti Implements	\$150.00	\$1,000.00	N/A
9.36.090	Maintaining Graffiti Unlawful—Public Nuisance	\$150.00	\$1,000.00	15 Days
9.40.060	Unnecessary Noise—Excessive	\$200.00	\$1,000.00	N/A
9.40.100	Noises Prohibited—Unnecessary Noise Standard	\$150.00	\$1,000.00	N/A
9.48.040	Marijuana—All Prohibited Marijuana Use and Activity	\$100.00	\$1,000.00	N/A
9.48.050	Marijuana—Unlawful Use of Structure or Property	\$100.00	\$1,000.00	N/A
9.52.030	Synthetic Drug—Sale and Distribution Thereof	\$100.00	\$1,000.00	N/A
9.52.050	Synthetic Drug—Possession Thereof	\$100.00	\$1,000.00	N/A
10.36.050	Vehicles and Traffic—Use of Street for Storage of Vehicles	\$50.00	\$1,000.00	5 Days
10.36.060	Vehicles and Traffic—Repairing or Maintaining Vehicles on Public Street	\$50.00	\$1,000.00	N/A
10.68.010	Vehicles and Traffic—Vegetation that Obstructs View of Vehicular Traffic	\$75.00	\$1,000.00	10 Days
10.72.010(A)	Vehicles and Traffic—Use of Skateboard or Similar Device To Travel On Roadway	\$100.00	\$500.00	N/A
10.72.010(B)	Vehicles and Traffic—Use of Skateboard or Similar Device on Property With Signs Prohibiting Such Acts	\$50.00	\$1,000.00	N/A
12.08.010(A)	Street Excavations—Failure to Obtain Permit	\$100.00	\$1,000.00	N/A
12.08.060(A)	Street Closures—Failure to Obtain Permit	\$100.00	\$1,000.00	N/A
12.16.010	Sidewalk or Street—Use for Display of Goods	\$100.00	\$1,000.00	N/A
12.16.040	Sidewalk or Street—Pool Discharge Into Streets	\$150.00	\$1,000.00	N/A
12.16.050	Sidewalk or Street—Encroaching Vegetation	\$150.00	\$1,000.00	15 Days
12.16.060	Sidewalk or Street—Animals Tethered in Public Place	\$50.00	\$1,000.00	N/A
12.16.070	Sidewalk or Street—Riding Bicycle in Street	\$50.00	\$1,000.00	N/A
12.16.080	Sidewalk or Street—Littering	\$200.00	\$1,000.00	N/A
12.24.060	Allowable Objects and Plantings in the Public-Right-of-Way	\$50.00	\$1,000.00	15 Days
12.24.110	Sidewalk or Street—Maintenance of Trees in the Public Right of Trees	\$50.00	\$1,000.00	10 Days

## EXHIBIT A

12.24.130	Sidewalk or Street—Maintenance of Property Landscaping	\$50.00	\$1,000.00	10 Days
12.36.050(A-Q)	Sidewalk or Street—Failure to Abide By Skateboard Park Regulations	\$100.00	\$500.00	N/A
12.40.030(A)	Sidewalk or Street—Camping in Public Areas	\$100.00	\$1000.00	N/A
12.44.040	Sidewalk or Street—Permit Required For Use of Park Facilities	\$100.00	\$500.00	N/A
13.16.020(A)(1)	Public Services—Failure to Conserve Water	\$100.00	\$500.00	N/A
13.24.130	Public Services—Failure to Obtain Permit To Connect to Public Sewer	\$100.00	\$1,000.00	30 Days
13.28.510	Public Services—Garbage Containers in Public View	\$50.00	\$1,000.00	10 Days
15.08.010	Building Code—Violation of Building Codes	\$50.00	\$1,000.00	30 Days
15.08.070	Building Code—Failure to Enclose Swimming Pools	\$50.00	\$1,000.00	30 Days
15.12.010	Mechanical Code—Unpermitted Mechanical Work	\$50.00	\$1,000.00	30 Days
15.14.010	Residential Code—Violation of Residential Codes	\$50.00	\$1,000.00	30 Days
15.16.010	Housing Code—Violation of Housing Codes	\$50.00	\$1,000.00	30 Days
15.20.010	Abatement of Dangerous Buildings Code—Violation of the Codes	\$50.00	\$1,000.00	30 Days
15.24.010	Plumbing Code—Unpermitted Plumbing Work	\$50.00	\$1,000.00	30 Days
15.28.010	Electrical Code—Unpermitted Electrical Work	\$50.00	\$1,000.00	30 Days
15.40.080	Address Numbering of Curb and Structures—Size, Color, and Location	\$50.00	\$1,000.00	15 Days
15.52.030	Building Code—Failure to Obtain Grading Permits	\$50.00	\$1,000.00	30 Days
15.56.080	Building Code—Failure to Obtain Development Permit	\$50.00	\$1,000.00	30 Days
17.13.040	Height Limits	\$50.00	\$1,000.00	15 Days
17.40.030	Light Trespass	\$50.00	\$1,000.00	15 Days
17.15.030	Signs—Failure to Obtain Permits	\$50.00	\$1,000.00	30 Days
17.15.050(C)	Signs—Prohibited Vehicle Signs	\$50.00	\$1,000.00	30 Days
17.15.050(E)	Signs—Prohibited Roof Signs	\$50.00	\$1,000.00	30 Days
17.15.050(D)	Signs—Temporary Signs	\$50.00	\$1,000.00	30 Days
17.15.060(A)	Signs—Prohibited On-Premise Signs	\$50.00	\$1,000.00	30 Days
17.15.060(B)	Signs—Prohibited Off-Premise Signs	\$50.00	\$1,000.00	30 Days
17.15.080(E)	Signs—Prohibited Signs Over Rights of Way	\$50.00	\$1,000.00	30 Days
17.15.110	Temporary Real Estate Signs	\$50.00	\$1,000.00	N/A

**EXHIBIT A**

17.15.130	Political Campaign Signs	\$50.00	\$1,000.00	N/A
17.15.150	Flags, Banners, Pennants, Balloons, Window and Interior Signs	\$50.00	\$1,000.00	N/A
17.16.030	Zoning Ordinance—Excessive Storage in Yards	\$50.00	\$1,000.00	30 Days
17.16.050(B)(1-9)	Zoning Ordinance—Unmaintained Structures	\$50.00	\$1,000.00	30 Days
17.16.050(C)	Zoning Ordinance—Damaged Structures	\$50.00	\$1,000.00	30 Days
17.16.060	Zoning Ordinance—Fence and Wall Maintenance	\$50.00	\$1,000.00	30 Days
17.16.080	Zoning Ordinance—Unmaintained Landscaping	\$50.00	\$1,000.00	30 Days
17.19.050	Zoning Ordinance—Accessory Uses and Structures in Residential Zones	\$50.00	\$1,000.00	30 Days
17.34.040	Parking, Storage, and Screening	\$50.00	\$1,000.00	3 Days



## STAFF REPORT

**ITEM NO. 3.**

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**DATE:** December 16, 2019  
**TO:** POLICE AND FIRE COMMITTEE  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** DARREN L. GOODMAN, POLICE CHIEF  
DON DODT, POLICE LIEUTENANT  
**SUBJECT:** PROPOSED PURCHASE OF AN ARMORED RESCUE VEHICLE

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### **RECOMMENDED ACTION**

It is recommended that the Police and Fire Committee recommend the City Council authorize the exploration of external funding sources for the purchase of an Armored Rescue Vehicle.

### **GOAL STATEMENT**

The proposed action supports the City's goal of providing effective public safety.

### **BACKGROUND**

The Upland Police Department currently does not possess an Armored Rescue Vehicle. The Upland Police Department is updating and preparing its tactical readiness in order to appropriately deal with modern day threats including domestic terrorism, homegrown violent extremist, and all too frequent active shooter occurrences.

### **ISSUES/ANALYSIS**

Armored Response Vehicles (ARV's) are armored vehicles used for high risk operations. They can be used for citizen rescue and evacuation during emergencies. The ARV itself can be a mobile shield in an active shooter situation. ARV's can also provide protection to officers during high risk search warrants and similar high risk tactical situations.

Upland Police Officers are encountering a growing number of armed suspects during routine investigations. In addition, on at least three occasions in 2019, Upland Police Department required the use of an ARV from neighboring agencies in order to protect officers while serving high risk search warrants related to violent crimes such as murder, armed robbery, and assault with a deadly weapon (shooting).

After considerable research the Department has determined that purchasing a refurbished G1 Bearcat ARV from Lenco Armored Vehicles is the best fit for the City. These refurbished vehicles have a new engine, steering, suspension, ballistic glass, interior and exterior paint, new air conditioning, and much more. The cost of a refurbished Bearcat is \$169,725 compared to \$241,000 for a new ARV.

The Police Department is ready to begin exploring funding sources such as grants and other outside sources for the purchase of an ARV.

### **FISCAL IMPACTS**

The cost of the ARV requested is \$169,725, however external funding sources may provide for a large portion of the cost.

### **ALTERNATIVES**

Provide alternative direction to staff.

### **ATTACHMENTS:**

**Build Sheet Invoice Lenco**  
**Power Point Presentation ARV**

# REFURBISHED G1 BEARCATS

The Lenco BearCat G1 is our legendary tactical armored vehicle for special operations units within the US Law Enforcement community. Since the early 2000s, agencies such as LAPD, LASD SEB, NYPD ESU, Dallas and other Federal, State and Local Law Enforcement agencies have made the BearCat G1 part of their standard operating procedure. The G1 has excellent on-road driving characteristics and maneuverability in tight urban settings. The large floor plan seats 8 – 10 fully equipped officers with features only found on the Lenco BearCat line of armored SWAT vehicles.

## \$169,725.00



### ADDITIONAL EQUIPMENT

- 96 Point Lenco/Ford Vehicle Inspection
- New Engine Assembly, Steering, & Suspension  
\*Full List Available Upon Request
- New Ballistic Glass
- New Interior & Exterior Paint
- New Interior Final Assembly Components
- Hydraulic Adjustable Ram
- New Rear A/C & Heater
- New Backup Camera

IMAGES MAY NOT REPRESENT REMAINING STOCK VEHICLES

#### STANDARD FEATURES

- .50 Cal Armor Rating / NIJ IV
- 4-Wheel Drive
- Seating for (10)
- Blast Resistant Floor Material
- Adjustable Height Gunner Stand
- 40 Gallon Armored Fuel Tank
- Rotating Roof Hatch
- 200-Watt Siren & PA System
- One Piece Side Walls
- Fully Aromored Hood



Rear Seating and Gunner Stand



Hydraulic Adjustable Ram

 [www.LencoArmor.com](http://www.LencoArmor.com)

 [GrantHelp@LencoArmor.com](mailto:GrantHelp@LencoArmor.com)

 [Sales@LencoArmor.com](mailto:Sales@LencoArmor.com)

 (413)-443-7359  
or toll free at 1-(800)-444-5362





Protecting Our Nation's Defenders™

10 Betnr Industrial Drive – Pittsfield, MA 01201  
PH (413) 443-7359 – FAX (413) 445-7865

# Quotation 16248

Quotation Date: May 25, 2018  
Lenco Tax ID#: 04-2719777

NELIN  New Albany Police Department 311 Hauss Square New Albany, IN 47150	<b>F.O.B.:</b> Origin, Pittsfield, MA
	<b>Ship Via:</b> Customer Pick Up
	<b>Payment Terms:</b> Payment Upon Pick Up
	<b>Estimated Completion:</b> 52 weeks ARO (Est.)
	<b>Inspection &amp; Acceptance:</b> At Lenco's Facility, Pittsfield, MA

**Terms and Conditions:** 1) Transfer of Vehicle Certificate of Origin to New Owner Done Upon Receipt of Payment in Full. 2) Lenco Does Not Collect Tax or Register Vehicles with DMV. 3) Cooperative Purchasing available under Lenco's GSA Contract# GS-07F-169DA (Schedule 84) or the 1122 Program. 4) Acceptance of this Quotation or entering into a purchase agreement with Lenco, the purchaser agrees to Lenco's full Terms and Conditions of Sale, available upon request.

Item:	Product #	Commercial	Net Price
Lenco BearCat (4WD, Rotating Hatch; Counter Balanced)	BC55003	\$209,255.79	\$198,793.00
V10 Gasoline Engine is Standard			
NIJ IV & Multi-hit .50 CAL BMG Armor Protection			
<b>Options:</b>			
Back up Camera System with Monitor	BCBU	2,417.89	2,297.00
Hydraulic Ram Upgrade wFront Mounted Receiver with Ram Post and Plate	BCHYDRAM	13,135.79	12,479.00
Radio Prep Package (1)	BCINSRA	528.42	502.00
Rear A/C-Heating System: Auxiliary High Capacity (Ceiling Mounted)	BCHAC	3,128.42	2,972.00
Roof Mounted Remote Control Spot Light LED (2)	BCSLLED	2,955.78	2,808.00
<b>Net Savings</b>		<b>\$11,571.09</b>	
		<b>\$231,422.09</b>	<b>\$219,851.00</b>
<b>Total Cost of (1) Lenco BearCat FOB Origin, Pittsfield, MA</b>			<b>\$219,851.00</b>

Specifications Subject to Change **PROPRIETARY**

**WARNING: Information Subject to Export Control Laws**  
 The technical data in this document is restricted by the Arms Export Control Act (Title 22, U.S.C., Sec 2751, et seq.) or the Export Administration Act of 1979, as amended, Title 50, U.S.C., App. 2401 et seq. and which may not be exported, released or disclosed to non-U.S. persons (i.e. persons who are not U.S. citizens or lawful permanent residents ["green card" holders]) inside or outside the United States, without first obtaining an export license. Violations of these export laws are subject to severe civil, criminal and administrative penalties.  
 THE WRITTEN APPROVAL OF THE DIRECTORATE OF US DEFENSE TRADE CONTROLS AND LENCO INDUSTRIES, INC. MUST BE OBTAINED BEFORE RESELLING, TRANSFERRING, TRANSSHIPPING, OR DISPOSING OF A DEFENSE ARTICLE TO ANY END USER, END USE OR DESTINATION OTHER THAN AS STATED ON THIS LENCO QUOTE OR THE SHIPPER'S EXPORT DECLARATION IN CASES WHERE AN EXEMPTION IS CLAIMED UNDER THIS SUBCHAPTER ITAR 123.9(A).

**WE ARE PLEASED TO SUBMIT THE ABOVE QUOTATION FOR YOUR CONSIDERATION. SHOULD YOU PLACE AN ORDER, BE ASSURED IT WILL RECEIVE OUR PROMPT ATTENTION. THIS QUOTATION IS VALID FOR 30 DAYS. THEREAFTER, IT IS SUBJECT TO CHANGE WITHOUT NOTICE.**

**ACCEPTANCE OF PROPOSAL** – The above prices are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

**Authorized Signature:** \_\_\_\_\_

Please sign and return

**LENCO INDUSTRIES, INC.**  
  
**Authorized Signature:**   
 James J. Massery

Thank You



# The Upland Police Department

Chief Darren L. Goodman



Prepared by Detective Kyle O'Brien

- ▶ What is an Armored Rescue Vehicle?
- ▶ Why is it necessary?
- ▶ What does it cost?
- ▶ What it's **NOT**

# What is an Armored Rescue Vehicle?

- ▶ An armored **vehicle** for high risk operations
- ▶ Citizen rescue / evacuation in emergencies
- ▶ The vehicle itself can be a mobile shield in active shooter situations
- ▶ The vehicle provides protection to officers during high risk search warrants



# Why is it necessary?

- ▶ Gets officers and rescue task force (RTF) personnel into the hot zone
- ▶ Armored protection for extraction
- ▶ Ability to shuttle to safe zone

Notice subjects circled, they are Fire / EMS, not officers.



Rescue Task Force consists of EMS and law enforcement personnel **who work together** to provide immediate medical care to victims.

A rescue vehicle get them into the incident and provide protection to officers, EMS, and can shuttle citizens

Outside the box uses, like Pulse Nightclub incident.



**\*Upland is part of the San Bernardino County RTF training\***



On June 12, 2016, Omar Mateen killed 49 people and wounded 53 others at the Pulse Nightclub in Orlando, Florida.

- ▶ Police used an armored rescue vehicle to knock down a wall to access the club, rescuing dozens of club-goers
- ▶ 11 officers stormed the club and exchanged gunfire with Mateen, killing him.



[www.thenational.ae/nightclub-massacre](http://www.thenational.ae/nightclub-massacre)

# Active Shooter Statistics

**27** incidents in **16** states

**213** casualties – excluding the shooters

**85** killed

**2** law enforcement officers

**1** unarmed security officer

**128** wounded<sup>5</sup>

**6** law enforcement officers

**27** shooters – **23** male, **3** female, **1** at large<sup>6</sup>

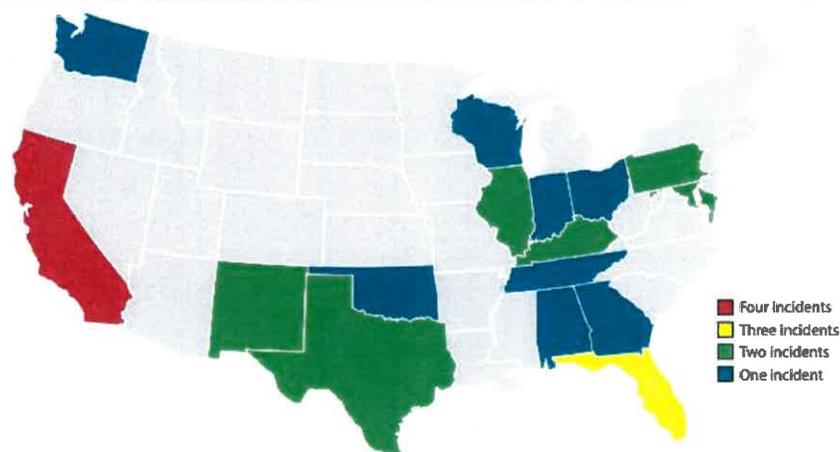
**10** committed suicide

**11** apprehended by police

**4** killed by police

**1** killed by citizens

**1** at large



The 27 active shooter incidents occurred in 16 states.

- Four incidents occurred in California.
- Three incidents occurred in Florida.
- Two incidents occurred in each of the following states: Illinois, Kentucky, Maryland, New Mexico, Pennsylvania, and Texas.
- One incident occurred in each of the following states: Alabama, Georgia, Indiana, Ohio, Oklahoma, Tennessee, Washington, and Wisconsin.

Ten of the 27 incidents met the criteria cited in the federal definition of “mass killings,”<sup>7</sup> that is, “three or more killings in a single incident.”<sup>8</sup>

<sup>7</sup>Investigative Assistance for Violent Crimes Act USC 539C (b)(1)(A)(i).

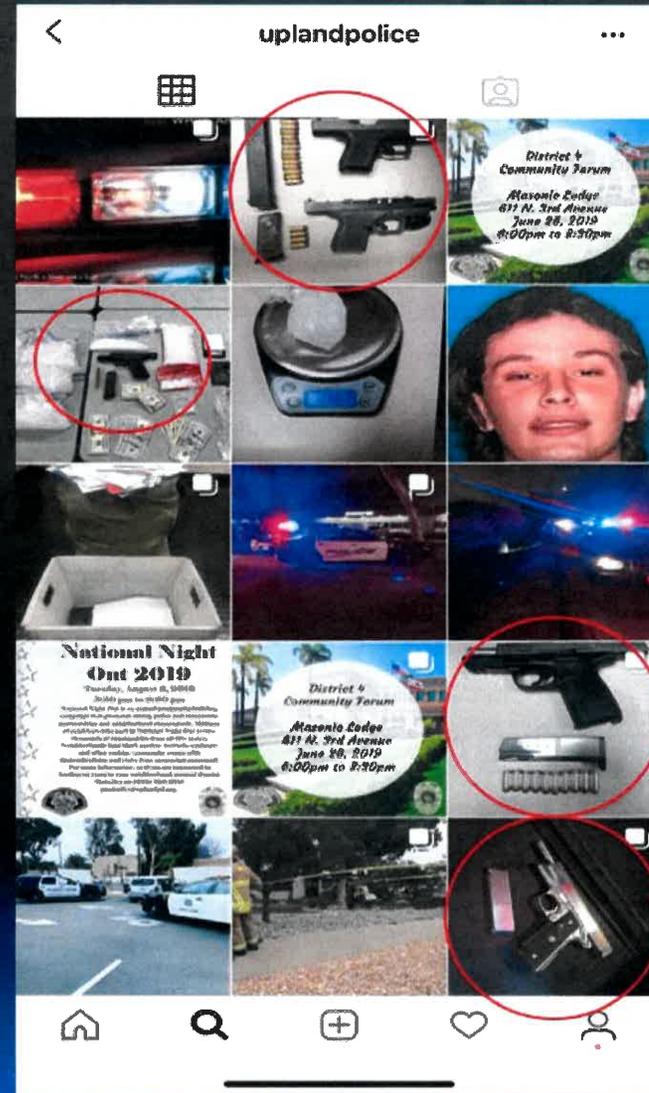
<sup>8</sup>The statute does not address the inclusion or exclusion of the shooter. The FBI does not include the shooter in its mass killing statistics.

<https://www.fbi.gov/file-repository>

- ▶ The threat of gun violence does not have boundary limitations.
- ▶ Upland has had **17** homicides since 2015
- ▶ All homicides are investigated by UPD detectives, each involving countless search warrants.



Suspects arrested relating to Upland homicide investigation

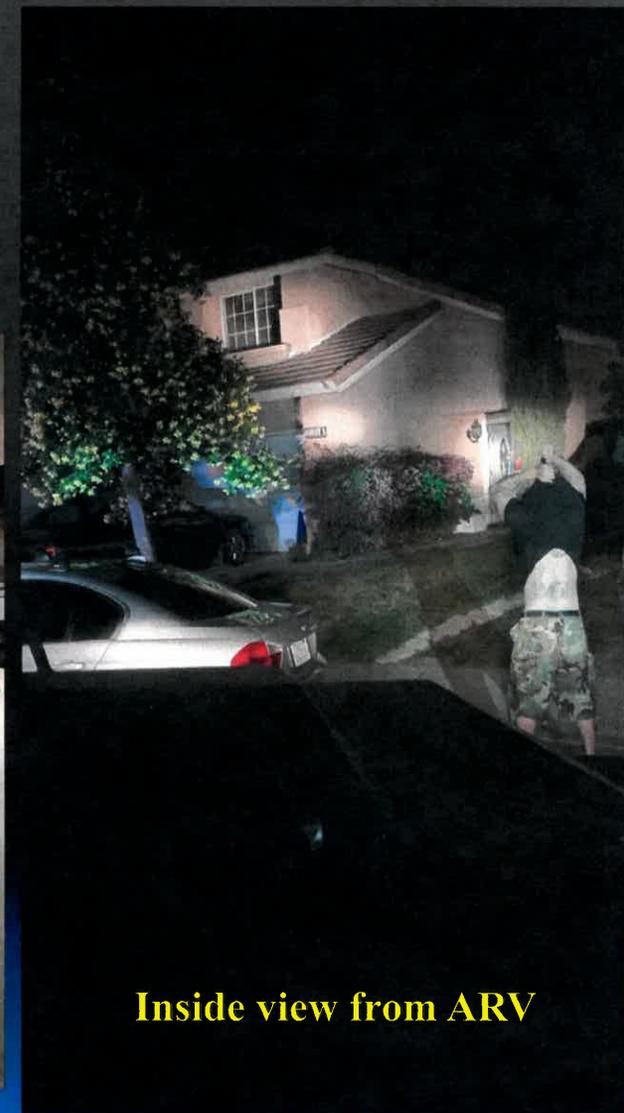


Screenshot of UPD Instagram.

# 2019 Homicide Investigation

UPD Case # 19103035

- ▶ UPD borrowed Fontana PD's ARV
- ▶ Surround and call out was successful
- ▶ Officers were protected while gaining compliance through command presence



**Inside view from ARV**



UPD Served a high-risk warrant that stemmed from a armed home-invasion robbery in Moreno Valley

## August, 2019

UPD had to borrow Montclair PD's rescue vehicle for two separate incidents



UPD served a high-risk warrant and a residence in Pomona after a car to car shooting in Upland

# LOS ANGELES, CALIFORNIA

## BALLISTIC ATTACK



City Population: 3.8 Million  
Violent Crime Rate: 14% above State Average

### LAPD SWAT

August 18, 2014

- Police tried to stop vehicle for reckless driving
- Vehicle sped off and opened fire on pursuing officers
- Chase ended hours later when suspect opened fire with high-powered rifle at SWAT team in approaching BearCat
- One officer shot in calf

*"The BearCat played a large role in the survival of his life ... We don't know what the outcome could've been. He could've been killed." Officer Wendy Reyes, LAPD*

# PASCO, WASHINGTON

## SEARCH & RESCUE



City Population: 59,700  
Violent Crime Rate: 3% above State Average

### Tri-City SWAT

July 10, 2014

- Suspect fired SKS 7.62 at a victim from home
- Victim takes cover behind a car
- Suspect fired 60-80 rounds throughout neighborhood
- SWAT positions BearCat between civilian and house
- Rescues civilian and brings to safety

*"(The suspect made) statements from what I understand that he wanted to die ... So there is some information out there that perhaps he wanted to die by suicide by cop." Sheriff Steve King*

# Junction City, KS

## PEACEFUL CONCLUSION



### Kansas Highway Patrol SRT

June 24, 2015

- Armed suspect attempts home invasion.
- When police arrive on scene, the suspect flees leading to a pursuit.
- The suspect eventually pulls into an open field and begins firing at state police aircraft.
- The Highway Patrol SRT BearCat is used to approach the suspect to begin negotiations.
- After speaking with negotiators in the BearCat, the suspect surrenders without incident.

City Population: 23,353

Violent Crime Rate: 44% Above State Average

*"Everyone agreed that the BearCat completely changed the dynamic of the operation in our favor. It is definitely a home run for our unit and the agency."* **Christopher Bowling, Kansas Highway Patrol**

# Additional Benefits

- ▶ Readily available for deployment vs waiting on another city / county to assist
- ▶ City of Upland's ability to manage and oversee tactics used (not currently possible once the Sheriff's Department is deployed)
- ▶ Long term fleet vehicle with minimal maintenance costs
- ▶ Community engagement



# What it costs

- ▶ The estimate for the most cost effective Lenco ARV is \$169,000 (used). New is \$241,000
- ▶ This vehicle will serve for the next **30 years** with minimal maintenance costs
- ▶ The vehicle will more than pay for itself once called to duty as it protects the lives of officers, citizens, and aids in peaceful outcomes

## **Average costs of current vehicles:**

- ▶ Police Explorer: \$56,250
- ▶ Police Charger \$50,250
- ▶ Street Maintenance hotpatch Ford F650 \$211,000.
- ▶ Vacuum Sewer Truck - \$490,100 (one purchased, another ordered)
- ▶ Chevrolet Colorado (Code Enforcement) - \$41,000

\*Chino PD purchased Lenco ARV in 2016, year to date maintenance cost: \$220 (oil and filter only)

Source: Mike Kitchen / Captain Mathews

# What it is not

- ▶ Its not a tank
- ▶ Its not “aggressive or militaristic,” it is purpose built on a Ford frame
- ▶ It’s a vehicle with steel to stop bullets, that is its only purpose
- ▶ It does not escalate an incident, its proven to de-escalate.



# We'll put our money in an armored car... but not our personnel





*“Proud to Serve”*





## STAFF REPORT

**ITEM NO. 14.A.**

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**DATE:** January 13, 2020  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** STEVEN FLOWER, INTERIM CITY ATTORNEY  
**PREPARED BY:** STEVEN FLOWER, INTERIM CITY ATTORNEY  
**SUBJECT:** AMENDMENT TO THE INTERIM CITY MANAGER'S EMPLOYMENT AGREEMENT

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### **RECOMMENDED ACTION**

It is recommended that the City Council consider the proposed amendment to the Interim City Manager's Employment Agreement, which would extend its term for six months.

### **GOAL STATEMENT**

The proposed action supports the City's goal to ensure continuity in the leadership of the City and proper oversight of the City's functions and employees.

### **BACKGROUND**

On June 24, 2019, the City Council approved an employment agreement ("Agreement") with Rosemary Hoerning for an initial six-month term. A copy of the Agreement is attached to this report.

On November 25, 2019, the City Council considered the Agreement in closed session. Based on the City Council's direction, the Interim City Attorney has prepared an amendment for its consideration in open session. A copy of the proposed amendment is also attached to this report.

### **ISSUES/ANALYSIS**

The amendment would extend the term of the Agreement for an additional six months. All other provisions of the Agreement would remain unchanged.

Pursuant to Section 54953(c)(3) of the Brown Act, the City Council must orally summarize any recommendation for a final action on the salary or other compensation paid to the City

Manager. Such a summary can be incorporated into a motion to approve the amendment stated as follows:

*"I move to approve the Amendment, which would extend the Interim City Manager's employment agreement for six months."*

**FISCAL IMPACTS**

The fiscal impact is dependent upon the direction of the Council.

**ALTERNATIVES**

Provide alternative direction to staff.

**ATTACHMENTS:**

**Amendment to Interim City Manager Agreement  
Interim City Manager Agreement**

**EMPLOYMENT AGREEMENT**  
**AMENDMENT No. 1**

THIS AMENDMENT No. 1, dated January 13, 2020, amends that certain Employment Agreement (“Agreement”) dated June 24, 2019 between the City of Upland, a California municipal corporation (“City”) and Rosemary Hoerning (“Employee”).

**RECITALS**

A. City and Employee are parties to the Agreement, pursuant to which City employs Employee as Interim City Manager and Interim Executive Director of the City’s Redevelopment Successor Agency.

B. City and Consultant wish to amend the Agreement to extend its term as provided herein.

**AMENDMENT**

NOW, THEREFORE and in consideration of the foregoing and of the mutual covenants and promises herein set forth, the parties agree to amend the Agreement as follows:

Section 1. Section 3 (“Term”) of the Agreement is hereby amended to read as follows:

“This Agreement shall be effective June 24, 2019, and will remain in full force and effect one (1) year unless terminated in accordance with the provisions hereof or extended by the agreement of both parties.”

Section 2. Except as expressly amended by this Amendment, all other terms and provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

**EMPLOYEE**

**CITY OF UPLAND**

\_\_\_\_\_  
Rosemary Hoerning  
INTERIM CITY MANAGER

\_\_\_\_\_  
Debbie Stone  
MAYOR

Approved as to form:

ATTEST:

\_\_\_\_\_  
Steven L. Flower  
INTERIM CITY ATTORNEY

\_\_\_\_\_  
Keri Johnson  
CITY CLERK

## EMPLOYMENT AGREEMENT

THIS AGREEMENT is made and entered into as of the 24th day of June 2019, by and between the CITY OF UPLAND, California, a Municipal Corporation, hereinafter called the "City", and ROSEMARY HOERNING, hereinafter called "Employee."

- A. City presently employs Employee as its Public Works Director/City Engineer pursuant to an Employment Agreement executed on behalf of City on August 3, 2011 ("the Public Works Agreement" hereinafter).
- B. On May 13, 2019, the City Council appointed Employee to Acting City Manager and she has since said date provided City services in the capacity of Acting City Manager and Public Works Director/City Engineer.
- C. On May 28, 2019, the City Council approved compensation grade of 9094/step 4, which is a compensation of \$16,696 monthly, during her tenure as Acting City Manager.
- D. City desires to now retain the services of Employee in the position of Interim City Manager, and Employee desires employment as Interim City Manager of the City.
- E. The City Council desires to:
  - (1) Retain the services of Employee
  - (2) Encourage the highest standards of fidelity and public service on the part of Employee.
  - (3) Evaluate Employee's performance acting as City's chief executive during the term hereof in conjunction with the City Council's need to employ a permanent City Manager.
  - (4) Provide a just means for terminating Employee's employment and this Agreement when City may desire to do so.
- F. The parties further desire to establish the Employee's conditions of employment.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained the parties agree as follows:

1. Duties. City hereby employs Employee as Interim City Manager of City and Interim Executive Director of the City's Redevelopment Successor Agency to perform the functions and duties of the City Manager and Executive Director as specified in City's Municipal Code and to perform such other legally permissible and proper duties and functions as the City Council may from time to time assign to Employee. Employee agrees to devote Employee's full time and effort to the performance of this Agreement and to remain in the exclusive employ of City and not to become otherwise employed while this Agreement is in effect without the prior written approval of the City Council.

2. Leave Accrual and Leave Compensation. Due to pressing work related matters, Employee was unable to use leave, as required. The position of Public Works Director as well as Interim City Manager does require attention which may not allow leave. Employee's lost leave shall be reinstated (approximately 9.58 hours) and an additional 40 hours of buy back leave shall be permitted for June 2019 to provide leave accrual capacity. The parties to this Agreement understand Employee has been pre-approved and intends to take leave from August 23, 2019 through September 9, 2019. During this period, she may be unavailable.

3. Term. This Agreement shall be effective June 24, 2019, and will remain in full force and effect through and including December 31, 2019 (approximately seven months from the date of appointment of Acting City Manager) unless terminated in accordance with the provisions hereof or extended by the agreement of both parties.

4. Salary. City shall pay Employee for the performance of Employee's duties as Interim City Manager. as follows:

- a) The salary for the position of Acting City Manager and Interim City Manager shall initially be the Range 9094, Step 4 of the City's salary scale or \$16,696 monthly under this Agreement.
- b) The Interim City Manager shall be paid at the same intervals and in the same manner as other City employees.
- c) Whenever a cost of living adjustment or other non-merit-based pay increase is provided to any other City executive management employee, there shall be a similar adjustment or increase to the Interim City Manager's Base Salary.
- d) Human resources shall also adjust the Public Works/City Engineer compensation reported to CalPERS to reflect the adjustment to any other City executive management employee Base Salary.
- e) The Interim City Manager shall be eligible for step increases under the same conditions and intervals as other employees.

5. Car Allowance. The Interim City Manager shall have the use of a City vehicle for her use in performing her obligations established in this Agreement or receive a monthly car allowance consistent with the established car allowance for executive staff members.

6. Benefits. To the extent benefits are not specifically addressed in this Agreement, the Employee shall be eligible to receive all benefits as they are normally provided to all City Executive Management Employees and referenced as "Executive Group Benefit Summary."

7. General Expenses and Business Equipment. City recognizes that certain expenses of a non-personal and job-related nature may be incurred by Employee. City agrees to reimburse Employee for reasonable expenses which are authorized by the City budget and which are supported by expense receipts, statements or personal affidavits, and audit thereof in like manner as other demands against the City.

8. Official and Professional Development Expenses. City shall pay reasonable sums for professional dues and subscriptions for Employee necessary in the judgment of the City Council for Employee's continued participation in associations and organizations, which memberships are necessary and desirable for the continued professional development of Employee and for the good of the City, such as the League of California Cities, International City/County Management Association, American Society for Public Administration, and California City Management Foundation. Notwithstanding the foregoing, the City Council shall have discretion to establish appropriate amounts, in the annual City budget or otherwise, for official and professional development expenses and travel costs.

9. Performance Evaluation. On or before July 31, 2019, the City Council and Employee shall develop mutually agreeable performance goals and criteria which the City Council shall use in reviewing Employee's performance. It shall be Employee's responsibility to initiate this process. There shall be an initial performance evaluation of Employee's performance by the City Council on or before October 14, 2019 and other evaluations may follow. Employee shall be afforded an adequate opportunity to discuss each evaluation with the City Council.

10. Indemnification. City shall defend, hold harmless and indemnify Employee against any claim, demand, judgment, or action of any type or kind arising with the course and scope of Employee's employment to the extent required by Government Code Sections 825 and 995.

11. Other Terms and Conditions of Employment.

- (a) The City Council may from time to time fix other terms and conditions of employment relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provision of this Agreement, the Municipal Code, or other applicable law.
- (b) The provisions of the City's Personnel Rules and Regulations ("Rules") shall apply to Employee to the extent they explicitly apply to the position of City Manager, except that if the specific provisions of this Agreement conflict with the Rules, the terms of this Agreement shall prevail. Without limiting the generality of the exception noted in the previous sentence, however, no provision of the Rules or this Agreement shall confer upon Employee a property right in Employee's employment or a right to be discharged only upon cause during Employee's tenure as Interim City Manager. At such times and employee is serving as Interim City Manager, Employee is an at-will employee serving at the pleasure of the Council and may be dismissed at any time with or without cause, subject only to the provisions of this Agreement.

12. General Provisions.

- (a) This Agreement constitutes the entire agreement between the parties. City and Employee hereby acknowledge that they have neither made nor

accepted any other promise or obligation with respect to the subject matter of this Agreement. This Agreement may be amended only by a writing signed by Employee, approved by the City Council, and executed on behalf of the City.

- (b) If any provision of any portion of this Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of the Agreement shall be deemed severable and shall not be affected and shall remain in full force and effect.
- (c) This Agreement may be terminated by City upon delivery of notice to Employee, with or without cause subject only to the requirements of paragraph 12 below. Notice of termination or Employee's resignation shall be given in writing to City, either by personal service or by registered or certified mail, postage prepaid, addressed to City as follows:

Mayor  
City of Upland  
460 N. Euclid Avenue  
Upland, CA 92786

Any notice to Employee shall be given in a like manner, and, if mailed, shall be addressed to Employee at the address then shown in City's personnel records. For the purpose of determining compliance with any time limit stated in this Agreement, a notice shall be deemed to have been duly given (a) on the date of delivery, if served personally on the party to whom notice is to be given, or (b) on the second (2nd) calendar day after mailing, if mailed in the manner provided in this section to the party to whom notice is to be given. Notwithstanding the foregoing, this Agreement shall automatically terminate on the death or permanent disability of Employee and Employee agrees to give City not less than 30 calendar days' written notice of her resignation. The City also agrees to provide Employee written notice of intent to terminate this Agreement not less than 30 calendar days of the effective date of her termination.

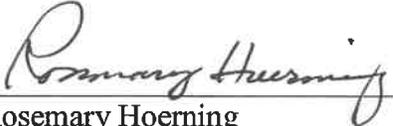
- (d) A waiver of any of the terms and conditions of this Agreement shall not be construed as a general waiver by the City and City shall be free to enforce any term or condition of this Agreement with or without notice to Employee notwithstanding any prior waiver of that term or condition.

13. Termination and Severance. City may terminate this contract without cause only upon a majority vote of the entire City Council. If City terminates this Contract without such cause as hereinafter defined in Exhibit "A" hereto, then, upon such termination, the Public Works Agreement shall be deemed to be reactivated and Employee shall immediately resume discharging her duties as City's Public Works Director/City Engineer. Employee shall have no right to the reactivation of the Public Works Agreement if terminated for cause.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

**EMPLOYEE**

**CITY OF UPLAND**

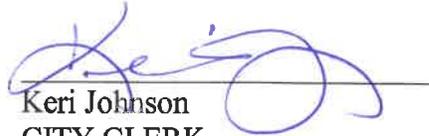
  
\_\_\_\_\_  
Rosemary Hoerning  
INTERIM CITY MANAGER

  
\_\_\_\_\_  
Debbie Stone  
MAYOR

Approved as to form:

ATTEST:

  
\_\_\_\_\_  
James Markman  
CITY ATTORNEY

  
\_\_\_\_\_  
Keri Johnson  
CITY CLERK

## **EXHIBIT "A"**

### **GROUNDNS FOR TERMINATION**

1. Dishonesty involving employment.
2. Being under the influence of alcohol or intoxicating drugs while on duty.
3. Addiction to or habitual use of alcoholic beverages, narcotics or any habit forming non-prescription drug which renders it more difficult for Employee to deliver public service.
4. Absence without leave.
5. Conviction of a crime or conduct constituting a violation of state law which renders it more difficult for Employee to deliver public service.
6. Improper or unauthorized use of City property.
7. Employee's failure to resolve a physical or mental infirmity(s) or defect(s) affecting job performance when it is with the capacity of the employee to do so.
8. Acceptance from any source of any emolument, reward, gift or other form of remuneration in addition to Employee's regular compensation, as a personal benefit to employee for actions performed in the normal course of Employee's assigned duties.
9. Falsification of any City report or record or of any report or record required to be, or filed by Employee.
10. A breach of Employee's employment agreement.