



## **UPLAND CITY COUNCIL**

### **AGENDA**

**July 27, 2020**

**City Council Chamber**

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

**ROSEMARY HOERNING, 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.

**\* \* \* \* \***

**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 CONFERENCE WITH LEGAL COUNSEL - EXISTING

LITIGATION

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

Case Name: San Antonio Heights Association v. Local Agency Formation Commission et al  
San Bernardino County Superior Court of California Case No.CIVDS1715504

B. CLOSED SESSION CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

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

Case Name: Clare Properties, LLC v. City of Upland et al  
San Bernardino County Superior Court of California Case No.CIVDS2012382

C. CLOSED SESSION PUBLIC EMPLOYEE PERFORMANCE EVALUATION, APPOINTMENT, AND RELATED ACTIONS

Pursuant to Government Code Section 54957  
Title: City Attorney

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**7:00 PM**

**5. INVOCATION**

Mike Ingram, Christian Science Faith

**6. PLEDGE OF ALLEGIANCE**

**7. PRESENTATIONS**

**8. CITY ATTORNEY**

**9. ORAL COMMUNICATIONS**

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**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 Regular Meeting Minutes of July 13, 2020. (Staff Person: Keri Johnson)

B. APPOINTMENT TO THE PLANNING COMMISSION

Ratify the Mayor's appointment of Christine Caldwell to the Planning Commission, term to expire June 2024. (Staff Person: Keri Johnson)

C. RATIFICATION OF THE CITY MANAGER'S ACCEPTANCE OF THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT (CARES ACT)

Ratify the City Manager's acceptance of funding from the Coronavirus Aid, Relief, and Economic Security (CARES Act). (Staff Person: Stephen Parker)

D. HOMELAND SECURITY GRANT PROJECT (HSGP FY18)

Accept the FY 2018 Homeland Security Grant funds in the amount of \$30,000 and authorize the appropriation of \$30,000 to purchase two Advanced Pole Camera Systems and one RF Body Wire Package. (Staff Person: Darren Goodman)

E. COMMUNITY FACILITIES DISTRICTS 2003-1, 2003-2 IMPROVEMENT AREAS 1 AND 2, 2015-1 IMPROVEMENT AREA 1, 2016-1 IMPROVEMENT AREA 1, 2016-2 AND 2017-1: INTENT TO LEVY AND COLLECT SPECIAL TAXES

Adopt a Resolution authorizing the levy of special taxes in: Community Facilities District 2003-1 (Upland 54); Community Facilities District 2003-2 (The Colonies at San Antonio) - Improvement Area No. 1 and Improvement Area No. 2; Community Facilities District 2015-1 (Sycamore Hills) Improvement Area No. 1; Community Facilities District 2016-1 (Harvest at Upland) Improvement Area No. 1; Community Facilities District 2016-2 (Harvest Maintenance) and; Community Facilities District 2017-1 (Sycamore Hills Maintenance) for Fiscal Year 2020-21. (Staff Person: Stephen Parker)

F. SAN ANTONIO REGIONAL HOSPITAL AGREEMENTS: AMENDMENT TO PURCHASE AND SALE AGREEMENT, ADDENDUM TO REIMBURSEMENT AGREEMENT (MEMORIAL PARK, 1299 SAN BERNARDINO ROAD, A PORTION OF ASSESSORS PARCEL NUMBER 1046-183-01)

Consider approval of: (1) an Amendment to the Purchase and Sale Agreement with San Antonio Regional Hospital (SARH) regarding a 4.63-acre portion of Memorial Park, 1299 San Bernardino Road (portion of APN 1046-183-01); and (2) an Addendum to the Reimbursement Agreement with SARH related to SARH's request that the City hold an election on the question of discontinuing use of that property for park purposes.

Approval would not commit the City to holding the election; but it will allow the City to recover costs related to the sale and the election in the event the City Council decides to hold the election.

(Staff Person: Rosemary Hoerning)

G. CONSIDERATION TO ADOPT A RESOLUTION OF THE CITY COUNCIL RATIFYING EXECUTIVE ORDER 2020-6 OF THE DIRECTOR OF EMERGENCY SERVICES

Adopt a Resolution ratifying the Director of Emergency Services Executive Order 2020-6 permitting temporary outdoor merchandise display and sales until October 31, 2020 for the purpose of complying with public health orders during the local emergency caused by the COVID-19 pandemic. (Staff Person: Robert Dalquest)

## 12. PUBLIC HEARINGS

### A. SUBSTANTIAL AMENDMENT TO FY 2020-2021 ANNUAL ACTION PLAN AND AMENDMENT TO THE CITIZEN PARTICIPATION PLAN IN RESPONSE TO THE CARES ACT

The Council will consider a substantial Amendment to the Community Development Block Grant FY 2020-2021 Annual Action Plan and an amendment to the Citizen Participation Plan. (Staff Person: Robert Dalquest)

- Recommendation:
- 1) Staff Presentation
  - 2) Hold Public Hearing
  - 3) Close Public Hearing
  - 4) Adopt a Resolution approving the Substantial Amendment to the Community Development Block Grant FY 2020-2021 Annual Action Plan; adopt a Resolution approving Upland's Citizen Participation Plan amendment in connection with the City's federal Community Development Block Grant Program; and authorize the City Manager to execute any and all necessary and related documents to implement the FY 2020-2021 CDBG-CV Plan in response to the CARES Act.

### B. CONSIDERATION OF A RESOLUTION APPROVING THE ASSESSMENT REPORT, ASSESSING ADMINISTRATIVE FINES, AND ESTABLISHING SPECIAL ASSESSMENT LIENS RELATING TO UNPAID ADMINISTRATIVE FINES

Adopt a Resolution approving the assessment report, assessing administrative fines, and establishing special assessment liens against parcels of real property in the City of Upland relating to unpaid administrative fines pursuant to Section 1.10.090 of the Upland Municipal Code. (Staff Person: Darren Goodman)

- Recommendation:
- 1) Staff Presentation
  - 2) Hold Public Hearing
  - 3) Close Public Hearing
  - 4) Adopt a Resolution approving the assessment report, assessing administrative fines, and establishing special assessment liens against parcels of real property in the City of Upland relating to unpaid administrative fines pursuant to Section 1.10.090 of the Upland Municipal Code.

### C. LANDSCAPE MAINTENANCE DISTRICT LM-84-1: INTENT TO LEVY AND COLLECT ASSESSMENTS

The City Council will consider the Fiscal Year 2020-21 assessment to be levied upon Assessment District LM-84-1 for providing street lights and street sweeping to Tract 12339 and street lights, landscape irrigation, and street sweeping adjacent to Tract 18376. (Staff Person: Stephen Parker)

- Recommendation:
- 1) Staff Presentation
  - 2) Hold Public Hearing
  - 3) Close Public Hearing
  - 4) Accept the Finance Officer's report pertaining to

Landscape Maintenance District LM-84-1 and adopt a Resolution declaring its intention to levy and collect assessments within Landscape Maintenance District LM-84-1 for Fiscal Year 2020-21.

D. DELINQUENT WATER, SEWER, AND REFUSE SERVICE CHARGES TO BE COLLECTED ON THE TAX ROLL

The City Council will consider the placement of delinquent water, sewer, and refuse services being placed on the tax roll. (Staff Person: Stephen Parker)

Recommendation: 1) Staff Presentation

2) Hold Public Hearing

3) Close Public Hearing

4) Accept the report of delinquent water, sewer, and refuse service charges, and authorize the delinquent charges to be placed on the tax roll.

E. ORDINANCE CALLING A SPECIAL ELECTION ON THE ABANDONMENT AND DISCONTINUANCE OF USE OF AN APPROXIMATELY 4.63 ACRE PORTION OF MEMORIAL PARK MEMORIAL PARK, 1299 SAN BERNARDINO ROAD (A PORTION OF ASSESSORS PARCEL NUMBER 1046-183-01)

The City Council will consider holding an election on whether to abandon and discontinue use of an approximately 4.63-acre portion of Memorial Park so that it may be sold at a price not less than \$4,300,000.00 to San Antonio Regional Hospital (SARH). (Staff Person: Rosemary Hoerning)

Recommendation: 1) Staff Presentation

2) Hold Public Hearing

3) Close Public Hearing

4) Consider any public protests to holding an election on whether to abandon and discontinue use of an approximately 4.63-acre portion of Memorial Park (1299 San Bernardino Road, a portion of APN 1046-183-01) so that it may be sold at a price not less than \$4,300,000.00 to San Antonio Regional Hospital (SARH).

If the City Council wishes to call the election, it is recommended that the City overrule any protests from the public and adopt the proposed ordinance calling a special election on the park question on November 3, 2020.

### 13. COUNCIL COMMITTEE REPORTS

A. PUBLIC WORKS COMMITTEE MEETING, JULY 14, 2020

1) **Acceptance of recommendation to proceed with historic downtown Upland Streetscape Beautification Program**, the Committee recommends the City Council accept the Development Services Department's recommendation to proceed with the Historic Downtown Streetscape Beautification Program.

## **14. BUSINESS ITEMS**

### **A. LOCAL RECOVERY AND ESSENTIAL SERVICES SALES TAX MEASURE**

Adopt a Resolution approving an ordinance enacting a 1-cent Local Recovery and Essential Services Tax Measure to be administered by the California Department of Tax and Fee Administration and Ordering the submittal of said ordinance to the voters at the November 3, 2020 Election. (Staff Person: Rosemary Hoerning)

## **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, August 10, 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.uplandca.gov](http://www.uplandca.gov).

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 July 22, 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) and the City website at [www.uplandca.gov](http://www.uplandca.gov).

**MINUTES OF THE REGULAR MEETING OF THE  
UPLAND CITY COUNCIL  
JULY 13, 2020**

**OPENING**

The regular meeting of the Upland City Council was called to order by Mayor Debbie Stone at 6:00 p.m. in the Council Chamber of the Upland City Hall.

**1. ROLL CALL**

Present: Mayor Debbie Stone, Council Members Janice Elliott, Bill Velto, and Rudy Zuniga

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

**2. ADDITIONS/DELETIONS TO AGENDA** None

**3. ORAL COMMUNICATIONS**

Lois Sicking Dieter, Upland, spoke in opposition of the Villa Serena development and requested the council to have the Developer complete an Environmental Impact Report.

Shari Wasson stated the Villa Serena development would impact the wildlife on the property and cause environmental impacts. She further stated that the initial study was incomplete and did not address the biological complexity of the site.

Caryn Zappia, encouraged the Council to require an Environmental Impact Report for the Villa Serena development and stated concerns about the weed abatement activity on the property.

Joe Hudson, requested the Council to have the Developer complete an Environmental Impact Report and stated concerns about the wildlife that would be impacted by the development of the property.

Marjorie Mikels, Upland, spoke in support the Friends of the Upland Wetlands and stated opposition to the Villa Serena Development, due to loss of animal habitat and the catch basin for water percolation. She further requested the address for item 4C.

**4. CLOSED SESSION**

At 6:16 p.m. Mayor Stone announced the City Council would recess to Closed Session pursuant to Government Code Section

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

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

Case Name: Friends of the Upland Wetlands v. City of Upland  
San Bernardino County Superior Court of California Case No. CVIDS2010521

**B. CLOSED SESSION CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9: (one case).

- C. CLOSED SESSION CONFERENCE WITH REAL PROPERTY NEGOTIATORS  
Government Code Section 54956.8  
Property: APNs 1046-591-13, 1046-591-12, 1046-591-11, 1046-591-10,  
1046-591-09, 1046-591-08

Agency Negotiators: City Manager Hoerning and Development Services  
Director Dalquest

Negotiating Parties: City of Upland and prospective buyers

Under Negotiation: Price and terms - Instructions in dealing with prospective  
buyers

The City Council reconvened in open session at 7:09 p.m.

- 5. INVOCATION** Rev. Jan Chase, Unity Church of Pomona  
**6. PLEDGE OF ALLEGIANCE** Mayor Pro Tem Zuniga  
**7. PRESENTATIONS** None  
**8. CITY ATTORNEY**

Interim City Attorney Flower announced there was no reportable action from Closed Session.

- 9. ORAL COMMUNICATIONS (due to the local emergency concerning the COVID-19 virus public comment was also taken via telephone)**

Marjorie Mikels, questioned the cost of the Kosmont hotel study and why the City would pay for a hotel study instead of Developers. She further spoke about the history of the Colonies flood control channel.

Steven Bicksler, spoke in opposition of the street closures in the downtown and stated that it was affecting the merchants ability to do business since there was no parking for customers.

Linda Trawnik, spoke in support of the staff and Council working to create a plan to assist the downtown restaurants with outdoor seating options during the COVID-19 restrictions.

- 10. COUNCIL COMMUNICATIONS**

Councilmembers commented on recent events and activities throughout the community.

- 11. CONSENT CALENDAR**

City Clerk Johnson announced a correction to the Regular Meeting Minutes of June 22, 2020 and stated the minutes would be for approval as corrected.

Councilmember Elliott removed Consent Calendar Item 11I for separate action. Motion by Councilmember Velto to approve the remainder of the Consent Calendar, seconded by Councilmember Zuniga, and carried unanimously.

A. APPROVAL OF MINUTES

Approved the Special Meeting Minutes of June 19, 2020, the Special Meeting Minutes of June 22, 2020, the Regular Meeting Minutes of June 22, 2020, and the Special Meeting Minutes of June 25, 2020.

B. APPROVAL OF JUNE WARRANT AND PAYROLL REGISTERS

Approved the June Warrant Registers (check numbers 30575-30941 and Direct Disbursements totaling \$6,497,841.40 and Payroll Registers totaling \$1,430,978.79 (check Numbers 161396-161549 and EFT's 21915-22151).

C. TREASURY REPORT MAY 2020

Received and filed the May 2020 Treasury Report.

D. FOURTH AMENDMENT TO PROFESSIONAL SERVICE AGREEMENT WITH TKE ENGINEERING, INC.

Authorized an amendment to the professional services agreement with TKE Engineering for an amount of \$200,000 to provide map and improvement plan checking services and an additional amount of \$150,000 to provide special engineering and staff augmentation services for a total amount authorized for \$350,000 for fiscal year 2020/21.

E. PROFESSIONAL SERVICES AGREEMENT FOR THE DESIGN OF STREET AND UTILITY IMPROVEMENTS ON ARROW HIGHWAY, BETWEEN BENSON AVENUE AND SAN ANTONIO AVENUE

Approved a Professional Services Agreement for the preparation of street and utility improvement construction documents for Arrow Highway, between Benson Avenue and San Antonio Avenue, with KOA Corporation in the amount of \$177,145.00, and authorize a contingency of \$15,855.00, for a total amount of \$193,000.00; and authorized the City Manager to execute the agreement.

F. SENATE BILL 1 (SB1) ROAD MAINTENANCE AND REHABILITATION ACCOUNT FUNDING AND PROJECT LIST

Adopted Resolution No. 6552 approving a list of projects for Fiscal Year 2020-2021 funded by SB 1: the Road Repair and Accountability Act of 2017.

G. AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT WITH ECONOLITE SYSTEMS, INC. FOR TRAFFIC SIGNAL MAINTENANCE SERVICES

Approved an Amendment to the Professional Services Agreement with Econolite Systems, Inc. and authorized the City Manager to execute the amendment.

H. AMENDMENTS TO THE PROGRAM GUIDELINES/POLICIES FOR THE UPLAND HOMELESS OUTREACH PREVENTION AND EDUCATION PROGRAM

Approved and adopted the amended Program guidelines/policies with respect to the Upland – Homeless Outreach Prevention and Education (U-HOPE) Program.

ITEMS REMOVED FOR SEPARATE ACTION

I. CONSIDERATION TO ADOPT A RESOLUTION OF THE CITY COUNCIL RATIFYING EXECUTIVE ORDER 2020-5 OF THE DIRECTOR OF EMERGENCY SERVICES

Development Services Director Dalquest and City Manager Hoerning answered questions posed by the Council regarding the street closures, security for the downtown area and management of the security contract, and the potential use of sidewalk space for merchants to display merchandise.

Motion by Mayor Stone to adopt Resolution No. 6553 ratifying the Director of Emergency Services Executive Order 2020-5 permitting temporary outdoor dining until October 31, 2020 for the purpose of complying with public health orders during the local emergency caused by the COVID-19 pandemic; and authorize the establishment of a small business grant program to assist businesses with establishing suitable outdoor dining space at \$1,000 per business & authorize up to \$29,000 for use by the Downtown Merchant Board for private security funding in the downtown during street closure operations (through October 31, 2020), seconded by Councilmember Zuniga, and carried unanimously.

**12. PUBLIC HEARINGS**

A. PERMANENT LOCAL HOUSING ALLOCATION (PLHA) FIVE-YEAR APPLICATION AND PLAN

Development Services Director Dalquest introduced Christian Rodriguez of LDM who then presented the staff report along with a PowerPoint presentation, which is on file in the City Clerk's office.

Mayor Stone opened the public hearing.

Marjorie Mikels, questioned the percentage of money that would go to residents with above moderate income and stated that the residents who are really in need are the homeless.

Development Services Director Dalquest stated for clarification that the chart that Ms. Mikels referred to regarding the residents with above moderate income was actually from the Housing Element and was not referencing the distribution of public money.

There being no other speakers, Mayor Stone closed the public hearing.

Motion by Councilmember Elliott to adopt Resolution No. 6554 approving the City of Upland Five-Year Permanent Local Housing Allocation (PLHA) Application and Plan; and authorize the City Manager to execute any and all necessary

related documents to implement the PLHA Application and Plan, seconded by Councilmember Velto, and carried unanimously.

**13. COUNCIL COMMITTEE REPORTS**

A. SPECIAL ECONOMIC DEVELOPMENT COMMITTEE MEETING, JUNE 29, 2020

Councilmember Zuniga 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. RESOLUTION AUTHORIZING AN EXCEPTION TO THE 180 DAY WAITING PERIOD WHEN HIRING A RETIREE FOR A CRITICAL POSITION

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

Motion by Councilmember Stone to adopt Resolution No. 6555 authorizing an exception to the 180-day wait period when hiring a retiree for a critical position pursuant to Government Code Sections 7522.56 and 21224, seconded by Councilmember Zuniga, and carried unanimously.

B. PRESENTATION OF A HOTEL MARKET DEMAND ANALYSIS PREPARED BY KOSMONT COMPANIES

Development Services Director Dalquest presented the staff report, which is on file in the City Clerk's Office.

There was discussion regarding the hotel occupancy rates in the months before the COVID-19 pandemic, the desirability of the site off the 210 freeway and Campus based on visibility and less competition, and the type of hotel that would be proposed for that location.

This item was for information only, no action was taken.

C. POLICY DISCUSSION CONCERNING THE REQUIREMENTS IN THE HISTORIC DOWNTOWN UPLAND SPECIFIC PLAN REGARDING MURALS

Development Services Director Dalquest presented the staff report, which is on file in the City Clerk's Office.

There was discussion regarding the location being in a historic district, the guidelines for murals in the area, and that temporary art could be a venue for attracting people to the downtown.

There was a suggestion to form an art committee for the City and for staff to work on the item and bring it back to Council for direction.

This item was for information only, no action was taken.

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

Stefanie Padilla, stated that the Police Department should stop posting pictures on social media of suspects who are arrested and felt it was a violation of their privacy rights.

Marjorie Mikels, requested that residents attend the public hearing scheduled for July 27, 2020 regarding the potential election for the sale of park land.

Natasha Walton, requested that residents attend the public hearing scheduled for July 27, 2020 regarding the potential election for the sale of park land.

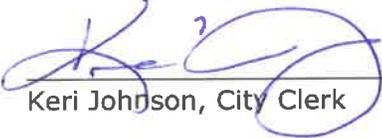
**16. CITY MANAGER**

City Manager Hoerning provided an update on the discussions with San Antonio Regional Hospital regarding the appraisal of land and the reimbursement agreement for election costs. She also provided an update regarding a potential tax measure on the ballot for November 2020 and the progress of the 2020 Census.

**17. ADJOURNMENT**

Mayor Stone adjourned the meeting at 9:29 p.m. The next regularly scheduled City Council meeting is Monday, July 27, 2020.

**SUBMITTED BY**



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Keri Johnson, City Clerk

**APPROVED**

July 27, 2020

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## STAFF REPORT

**ITEM NO. 11.B.**

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**DATE:** July 27, 2020  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, CITY MANAGER  
**PREPARED BY:** STEPHEN PARKER, ASSISTANT CITY MANAGER  
KERI JOHNSON, CITY CLERK  
**SUBJECT:** APPOINTMENT TO THE PLANNING COMMISSION

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### RECOMMENDED ACTION

It is recommended that the City Council ratify the Mayor's appointment of Christine Caldwell to the Planning Commission, term to expire June 2024.

### GOAL STATEMENT

The proposed action supports the City's goal to provide opportunities for the citizenry to participate in local government through service on various committees, commissions, and boards.

### BACKGROUND

The Planning Commission was established in 1930 pursuant to the Planning Act of 1929. Changes to the Commission were later made in 1950 in accordance with the Conservation and Planning Act. The powers and duties of the Planning Commission include periodic review and revision of the General Plan and performing such other land use-related functions pursuant to State laws pertaining to conservation, planning, and zoning. The Commissioners also serve as Airport Land Use Committee members and as the Historic Preservation Committee.

Pursuant to Government Code Section 54972, the expiring terms of commission and committee members were duly posted prior to December 31, 2019. There were two seats on the Planning Commission with terms expiring in June 2020.

The Mayor considered the applicants for the Planning Commission and at the regular meeting of June 8, 2020, based on the rankings from interviews conducted in February 2020, the Mayor chose to appoint Thomas Grahn and Lorraine Kindred to the Planning Commission

subject to ratification by the Council. The Council chose to ratify the appointment of Thomas Grahn, but did not ratify the appointment of Lorraine Kindred.

The Mayor again considered applicants for the Planning Commission and at the regular meeting of June 22, 2020, based on the rankings from the February 2020 interviews, the Mayor chose to appoint Brinda Sarathy to the Planning Commission with a term ending in June 2024. At the beginning of the meeting the Mayor withdrew her appointment of Brinda Sarathy and directed staff to recruit applicants for the Planning Commission and schedule interviews of the applicants.

On July 15, 2020 Mayor Stone, Mayor Pro Tem Zuniga, Planning Commission Chair Aspinall, and the Development Services Director (in an advisory capacity only) interviewed a total of 13 applicants for consideration to one vacancy on the Planning Commission. At that time they ranked all candidates using a forced choice ranking system. The top candidate was Christine Caldwell.

### **ISSUES/ANALYSIS**

Pursuant to Government Code Section 40605 and Resolution No. 6539 the Mayor shall appoint the Committee, Board, and Authority members subject to the ratification by a majority of the Council. The Mayor wishes to appoint Christine Caldwell to the Planning Commission. The subject appointment is for a term ending in June 2024.

### **FISCAL IMPACTS**

There is no fiscal impact associated with this action.

### **ALTERNATIVES**

Provide alternative direction to staff.

### **ATTACHMENTS:**

**Application - Caldwell, Christine**



# City of Upland Public Service Application for Commissions, Committees, or Boards

I am applying for all commissions, committees, and boards.

I am applying specifically for the following:

Planning Commission

Name: Christine S. Caldwell

Home Address: [Redacted] Upland CA 91784

Primary Phone: [Redacted] Secondary Phone: [Redacted]

Email Address: [Redacted]

Which district do you live in?

- District 1
- District 2
- District 3
- District 4

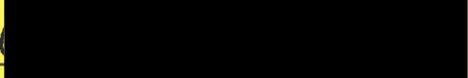
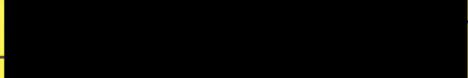
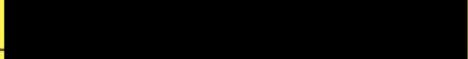
Current occupation: Deputy Director of Economic & Community Development

Professional/educational background: Bachelor of Science - Urban & Regional Planning from Cal Poly Pomona. I currently work in Planning, Economic Development & Housing for the City of Montclair. I am a member of the City Manager's Executive Management Team. Resume is attached.

Why are you interested in serving on a commission, committee, or board? As a 28-year Upland resident, I have seen a remarkable amount of growth in the City. My desire is to participate in the continued & future growth related to development & land use issues for the community.

Describe any other skill experience that you possess that will qualify you for the commission, committee, or board desired: Having worked for the City of Montclair in planning, economic development, housing & redevelopment, I have extensive experience in the development process related to large & small-scale industrial, residential, and commercial development. My strength and passion in the planning process is in design review, but I have wide-ranging experience with environmental review procedures, pro forma analysis, zoning, real estate, public speaking & the myriad of components associated with the development process.

List three (3) community references:

1. NAME: Lee C. McDougal PHONE: 
2. NAME: Michael Diaz PHONE: 
3. NAME: Deborah Ambruster PHONE: 

On a separate sheet please answer the following:

What do you feel are the most important issues facing the City of Upland?  
(300 words or less)

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I declare, under penalty of disqualification and termination, that all statements in this application are true and correct to the best of my knowledge. I further declare that if I am appointed, I will serve fairly, impartially, and to the best of my ability.

I am available at the time of the regularly scheduled meetings of the commission, committee, or board to which I am applying.

I further acknowledge that information contained in this application is a public record and may be subject to public inspection pursuant to the California Records Act (CA Gov. Code § 6250 et seq.). Applications are kept on file in the City Clerk's office for a period of three years.

Signature:  Date: 7-1-2020

I read and understand the above statement

**Please mail or return your completed, signed original application to:**

City of Upland  
Office of the City Clerk  
460 N Euclid Ave  
Upland, CA 91786

**Christine S. Caldwell Planning Commission Application**

***Answer to: What do you feel are the most important issues facing the City of Upland?***

I believe the City needs to prepare and respond to the ongoing challenges posed by current changing trends in the retail industry, since a vital retail sector is necessary for the convenience of our residents and critical in bolstering revenues for City services. We must prepare to address the re-purposing of the retail "big boxes," vacant storefronts, and underperforming retail centers. It will be necessary for the City to remain flexible and be open to new uses and ideas while still maintaining strong development standards. A healthy and vibrant commercial core will positively impact the overall community.

As a long-time resident, I am very interested in seeing the City proposer and continue to move forward with new quality and resident-friendly development. To that end, I believe I bring a strong background in planning and economic development that would be an asset to the Planning Commission. I believe I have the skills, experience, and knowledge of municipal review processes to be instrumental in reviewing future development plans as the City continues to adjust to the changing retail climate, considers future industrial growth, new residential (market rate and affordable), and other land use matters considered by the Planning Commission.

**Christine Sanchez Caldwell**

Upland, CA 91784

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**SKILLS AND QUALIFICATIONS**

- Thirty-two years municipal government experience; current member of the Executive Management Team
- Oversee and effectively manage broad and comprehensive programs: Affordable Housing, Economic Development, and Community Development Block Grant
- Strong design, site planning, and development review abilities
- Excel in effective and positive communications
- Ability to formulate strategies, tactics, and action plans to meet goals
- Annual budget preparation: Community Development Department and Montclair Housing Corporation
- Extensive construction management experience

---

**EDUCATION**

Bachelor of Science, Urban and Regional Planning	
School of Environmental Design, California Polytechnic State University, Pomona	1988
University of Southern California, Lusk Center for Real Estate RMPIRE Certificate	2019
Sorbonne Université, Architecture and City Planning Summer Session Paris, France	1987

---

**WORK EXPERIENCE**

City of Montclair

Deputy Director of Economic and Community Development 2020–present

Member of Executive Management Team; manage City’s Economic and Affordable Housing Programs; continue to manage advance planning development projects; design review; senior planner in the Department of Community Development; CDBG Project Manager; Inland Empire Complete Count Committee (IECCC) Interagency Sub-Committee Member; and, appointed to the COG Advisory Committee.

Assistant Director of Housing/Planning Manager 2016-2020

Member of Executive Management Team; manage Planning Division and Montclair Housing Corporation staff; develop ordinances; design review; manage advance planning development projects; key member of the General Plan Update Committee; collaborate with Executive Management Team on a number of large advance planning development projects and Specific Plans; CDBG Project Manager; attend both City Council and Planning Commission bi-weekly meetings; currently working on TOD Specific Plan projects; continue to manage the operation, budget, and management of the Montclair Housing Corporation; and, continue to showcase twice a year at the ICSC conferences.

Assistant Director of Redevelopment and Housing 2007-2016

Progressively increased management responsibility in carrying out the established goals and programs of the City Council; managed an expanding staff; acquired more single-family and apartment buildings (managed a total of 97 units--80 multifamily and 17 single-family); worked

with a nonprofit affordable housing developer to assemble properties; successfully worked with the nonprofit housing developer to develop four projects in the City; accomplished a \$1.5 million CDBG construction project in a low-income apartment neighborhood intended to stabilize and improve the appearance of the block in exchange for the formation of an owners association; continued to work with the Foundation Area apartment owners associations; member of the State of the City production committee; and, continued to showcase at the ICSC RECon Las Vegas and Western Conference and Deal Making.

Redevelopment and Housing Manager

1999 – 2007

Chairperson of the Housing Improvement Task Force; continued purchasing homes pursuant to the Central Avenue Acquisition Program; rehabilitated and deed-restricted all of the Agency-acquired properties; spearheaded the Exterior Housing Improvement Program, a grant program made available to income-qualifying applicants to make specific Health and Safety Code improvements; member of ICSC; administered small business loan program; and, in conjunction with Chamber of Commerce, began an outreach and visitation program for new or struggling small businesses in the City.

Administrative Analyst--Redevelopment Agency

1994 –1999

Managed affordable housing units; conducted Annual Income Certification of tenants; Helena Gardens Owners Association Board Member; administered the Homebuyer Assistance, Safe Home for Seniors, and Home Improvement Loan programs; developed the program guidelines for the Central Avenue Acquisition Program whereby the Agency began purchasing multifamily properties and distressed single-family homes and converting them to affordable housing units; responsible for representing the Agency in all real estate purchases; responsible for making recommendations to purchase properties; member of the Housing Improvement Task Force; worked with property owners to form homeowners associations in return for CDBG/Agency-funded public improvements; a speech writer for the City Council; and, lead staff member for State of the City.

Assistant Planner

1988-1994

Carried out the duties of entry-level planner that included working with residents and developers; development of Historic Preservation and Noise Ordinances; project development review; prepare staff reports; and, make presentations before the Planning Commission.

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**CURRENT VOLUNTEER ACTIVITY**

Upland Adult Literacy Program—Upland Public Library



## STAFF REPORT

**ITEM NO. 11.C.**

---

**DATE:** July 27, 2020  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, CITY MANAGER  
**PREPARED BY:** ROSEMARY HOERNING, CITY MANAGER  
STEPHEN PARKER, ASSISTANT CITY MANAGER  
**SUBJECT:** RATIFICATION OF THE CITY MANAGER'S ACCEPTANCE OF THE  
CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT  
(CARES ACT)

---

### **RECOMMENDED ACTION**

It is recommended that the City Council ratify the City Manager's acceptance of funding from the Coronavirus Aid, Relief, and Economic Security (CARES Act).

### **GOAL STATEMENT**

The proposed action supports the City's goal of fiscal stewardship for the City of Upland.

### **BACKGROUND**

The CARES Act established the Coronavirus Relief Fund, which appropriated \$150 billion to states and certain local governments. On June 29, 2020, the California State Legislature approved the State budget, and allocated \$500 million in CARES Act (State Cares Act) funding to California cities. Upland's share of those funds is \$973,127.

In order to receive the funds, cities had to submit a certification form to the Department of Finance by July 10, 2020 or lose the funds that had been set aside for the City's benefit.

### **ISSUES/ANALYSIS**

In an effort to maintain funding allocated to the City of Upland, City Manager Hoerning signed and submitted the certification form to the Department of Finance on July 8, 2020. The recommended action for Council is to ratify the City Manager's acceptance of State Cares Act aid in the amount of \$973,127.

Under current Federal regulations, general CARES Act funds (including State CARES Act) must be spent by December 30, 2020, but the State has imposed much more stringent guidelines of September 1, 2020 to obligate the funds and October 30, 2020 to spend them or show that they will be spent by the end of the year. The State CARES Act funds may help fund several City activities not supported by any other available external source. Examples include, but are not limited to, straight time for public safety and similar employees whose services are "substantially" dedicated to the response effort and expenses for sanitization and enhanced cleaning of City facilities. State CARES Act funds may also be used to fund "second order" effects of the pandemic, such as providing economic support to those suffering from unemployment or from business interruptions.

The action taken by City Council at the July 13, 2020 meeting that authorized the establishment of a small business grant program to assist businesses with establishing suitable outdoor dining space and to assist with private security in the downtown area would fall under the "second order" effects.

This State CARES Act funding source provides for a broader range of eligible activities than FEMA funds and will help reduce the budget shortfall in the prior fiscal year (FY 2019/20) and help prevent the current year's budget from having a larger shortfall by offsetting part of the cost of staff diverted to the response. It is important to note that State CARES Act funding cannot be used to offset government revenue shortfalls.

### **FISCAL IMPACTS**

The total State CARES Act funding for Upland is \$973,127. Approval of this item will increase revenue and appropriations in the Federal Grant - CARES Act Fund (Fund 226) in the current fiscal year, though a substantial portion of those funds will be used to reimburse the City for expenditures incurred in FY 2019/20 as well.

### **ALTERNATIVES**

Provide alternative direction to staff.

### **ATTACHMENTS:**

**Signed State CARES Act Certification Form**

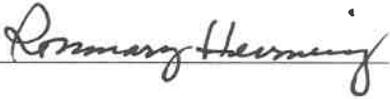
CERTIFICATION FOR RECEIPT OF FUNDS PURSUANT TO PARAGRAPHS (2) OR (3) OF  
SUBDIVISION (d) OF CONTROL SECTION 11.90 OF THE BUDGET ACT OF 2020

I, Rosemary Hoerning, am the chief executive or authorized designee of City of Upland, and I certify that:

1. I have the authority on behalf of City of Upland to request payment from the State of California ('State') pursuant to the applicable provisions of subdivision (d) of Control Section 11.90 of the Budget Act of 2020.
2. I understand the State will rely on this certification as a material representation in making a direct payment to City of Upland.
3. City of Upland's proposed uses of the funds provided as direct payment under the applicable provisions of subdivision (d) of Control Section 11.90 of the Budget Act of 2020 will be used only for costs that:
  - a. Are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19)
  - b. Were not accounted for in the budget most recently approved as of March 27, 2020, for City of Upland.
  - c. Were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.
4. City of Upland agrees to do all of the following as a condition of receipt of funds:
  - a. Adhere to federal guidance and the state's stay-at-home requirements and other health requirements as directed in gubernatorial Executive Order N-33-20, any subsequent Executive Orders or statutes, and all California Department of Public Health orders, directives, and guidance in response to COVID-19 emergency.
  - b. Use the funds in accordance with all applicable provisions of subdivision (d) of Control Section 11.90 of the Budget Act of 2020.
  - c. Report on expenditures and summarize regional collaboration and non-duplication of efforts within the region by September 1, 2020, and return any funds that are unspent by October 30, 2020 (unless extended by the Department of Finance based on reported expenditures to date), and repay the state for any cost disallowed after federal review.
  - d. Retain records to support reported COVID-19 eligible expenditures and participate in audits as outlined by the federal government and State.

CERTIFICATION FOR RECEIPT OF FUNDS PURSUANT TO PARAGRAPHS (2) OR (3) OF  
SUBDIVISION (d) OF CONTROL SECTION 11.90 OF THE BUDGET ACT OF 2020

By: Rosemary Hoerning

Signature: 

Title: City Manager

Date: July 8, 2020

The completed certification must be submitted by email to:

[CRFApplications@dof.ca.gov](mailto:CRFApplications@dof.ca.gov)

Certifications must be received by no later than 11:59 p.m. Pacific Daylight Time on July 10, 2020. Certifications received after that time may be disallowed. The subject line of the email shall only contain the name of the local government entity (i.e. City of xxx or County of xxx).



## STAFF REPORT

**ITEM NO. 11.D.**

---

**DATE:** July 27, 2020  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, CITY MANAGER  
**PREPARED BY:** DARREN GOODMAN, POLICE CHIEF  
DON DODT, POLICE LIEUTENANT  
**SUBJECT:** HOMELAND SECURITY GRANT PROJECT (HSGP FY18)

---

### **RECOMMENDED ACTION**

It is recommended that the City Council accept the FY 2018 Homeland Security Grant funds in the amount of \$30,000 and authorize the appropriation of \$30,000 to purchase two Advanced Pole Camera Systems and one RF Body Wire Package.

### **GOAL STATEMENT**

The proposed action supports the City's goal of providing safe and effective law enforcement services for the residents of Upland.

### **BACKGROUND**

The Homeland Security Grant Program (HSGP) is a state grant with funding allocated and controlled by the County of San Bernardino. The funds must be expended exclusively to provide "front-line" public safety services by police and fire. In addition, grant monies must be used to supplement existing services and not used to supplant any existing funds for public safety.

The County has requested that cities act quickly to ensure timely distribution so that purchases may be made by March 31, 2021.

### **ISSUES/ANALYSIS**

Several key staff members met to discuss how the funds could be best utilized. It has been determined that FY 2018 funds in the amount of \$30,000 would be used to purchase two Advanced Pole Camera Systems and one RF Body Wire Package.

Both of the items to be purchased are sole sourced. The Vendor for the pole camera system manufactures, sells and is the sole distributor of this product. There are no outside agents or dealers authorized to represent this product. The vendor is the only manufacturer the Department is aware of currently with a product that incorporates a pan-tilt-zoom IP camera housed in a unique covert weather resistant powder-coated steel enclosure that allows the camera to have a 250+ degree horizontal view as well as unique software features. The vendor for the RF Body Wire is both the manufacturer and sole distributor the Department is aware of currently offering a product with a cigarette pack transmitter, synthesized audio receiver and a weatherproof tactical repeater.

The total cost to purchase the two portable surveillance systems will not exceed the grant award of \$30,000. Should there be an excess remaining in the grant fund, the police department will spend the remainder of the grant money consistent with the agreement and rules of the original grant for other goods and/or services related to the goal statement.

### **FISCAL IMPACTS**

The City's approved budget for FY 2020-2021 will increase by the recommended appropriation of \$30,000 in the Homeland Security Grant Program Fund. Since the expenditure is fully reimbursable, the City's revenues will also increase by the same amount. There will not be any impact to the General Fund.

### **ALTERNATIVES**

Provide alternative direction to staff.

### **ATTACHMENTS:**

**Call for Projects**

**Law Jurisdiction Allocation**

**Subrecipient Application Workbook**

**HSGP 2018 Approval Authority Policy**

**HSGP 2018 Project Narrative**

**HSGP 2018 Expenditure Authorization Letter**



# SAN BERNARDINO COUNTY FIRE DISTRICT

1743 Miro Way • Rialto, CA 92376 • (909) 356-3998 • Fax (909) 356-3965

Office of Emergency  
Services  
[www.sbcfire.org](http://www.sbcfire.org)

Mark A. Hartwig  
Fire Chief/Fire Warden

Mike Antonucci  
Emergency Services  
Manager

December 6, 2017

**TO: SAN BERNARDINO COUNTY FIRE AND POLICE CHIEFS; SAN BERNARDINO COUNTY PUBLIC HEALTH OFFICER; HOMELAND SECURITY GRANT SOLE POINTS OF CONTACT; SAN BERNARDINO COUNTY OPERATIONAL AREA COORDINATING COUNCIL; HOMELAND SECURITY GRANT APPROVAL AUTHORITY; INLAND COUNTIES EMERGENCY MEDICAL AGENCY; AND OTHERS**

**SUBJECT: FISCAL YEAR 2018 HOMELAND SECURITY GRANT PROGRAM (HSGP) CFDA 97.067 - CALL FOR PROJECTS AND ADDITIONAL INFORMATION  
- TIME SENSITIVE -**

This correspondence contains important time-sensitive information regarding the completion of the Fiscal Year 2018 (FY18) Homeland Security Grant Program (HSGP) Application.

Although Federal Officials have not yet announced the funding opportunity for the FY18 HSGP, the State is requesting applications to be submitted prior to the State guidelines, Federal Notice of Funding Opportunity and award amounts being announced. Therefore, the proposed allocations will be based on prior award information. The State has instructed jurisdictions to begin planning for a potential 25% match requirement. Please be aware that this is the preliminary application phase of FY18 HSGP and jurisdictions will be notified of any award, program or other changes to the grant.

**Please read this and the attached subrecipient application workbook carefully for detailed instructions on submitting your jurisdiction's grant application.** Regional projects are encouraged. Please note that all project proposals **MUST** meet the Homeland Security Grant Program criteria in order to be accepted and **MUST** be submitted during time of application to be considered. Project proposals of different amount ranges are preferable for Regional or Additional Projects (non-allocations).

Submit completed worksheets and narratives in **Word** and **Excel format via e-mail to Lauri Lockwood at [llockwood@sbcfire.org](mailto:llockwood@sbcfire.org)**. Late and/or incomplete applications **WILL NOT** be accepted or considered. Failure to meet the deadline will result in the denial of the jurisdiction's project application.

**Applications are due by 5:00 p.m. on January 3, 2017**

Should you have any questions, please contact me at (909) 356-3998. Thank you.

Sincerely,

**MICHAEL ANTONUCCI**, Emergency Services Manager  
San Bernardino County Fire Protection District  
Office of Emergency Services

MA:ll:kc

## BOARD OF SUPERVISORS

Robert A. Lovingood  
Chair, First District

Janice Rutherford  
Second District

James Ramos  
Third District

Curt Hagman  
Vice Chair, Fourth  
District

Josie Gonzales  
Fifth District

Gary McBride  
Chief Executive Officer

Attachments

- 1 – FY18 HSGP Call for Projects Letter
- 2 – FY18 HSGP Law Jurisdiction Allocation
- 3 – FY18 HSGP Fire Jurisdiction Allocation
- 4 – FY18 HSGP – Subrecipient Application Workbook
- 5 – FY18 Project Narrative
- 6 – FY18 HSGP – Project Worksheets
- 7 – FY18 HSGP – Cal OES' Investment Justifications
- 8 – FY18 HSGP Core Capabilities
- 9 – FY18 HSGP Table of Deadlines
- 10 – Homeland Security Approval Authority Policy 14-01
- 11 – Grants Check List
- 12 – FY18 SAFECOM Guidance
- 13 – FY18 HSGP Call for Projects Email Attachments

**FY2018**  
**Homeland Security Grant Program**  
**Law Jurisdiction's Allocations**

No.	Law Jurisdictions	Population (POP)	Percentage based on POP		Total District Allocation
			Base		
1	Adelanto (Sheriff)	33,497	\$ 12,000	\$ 4,045.39	\$ 16,045
2	Apple Valley (Sheriff)	74,656	12,000	\$ 9,016	\$ 21,016
3	Barstow	24,360	12,000	\$ 2,941.92	\$ 14,942
4	Big Bear Lake (Sheriff)	4,905	12,000	\$ 592.37	\$ 12,592
5	Chino	85,934	12,000	\$ 10,378	\$ 22,378
6	Chino Hills (Sheriff)	78,866	12,000	\$ 9,525	\$ 21,525
7	Colton	53,351	12,000	\$ 6,443	\$ 18,443
8	Fontana	209,895	12,000	\$ 25,349	\$ 37,349
9	Grand Terrace (Sheriff)	12,315	12,000	\$ 1,487.27	\$ 13,487
10	Hesperia (Sheriff)	93,226	12,000	\$ 11,259	\$ 23,259
11	Highland (Sheriff)	53,645	12,000	\$ 6,479	\$ 18,479
12	Loma Linda (Sheriff)	24,649	12,000	\$ 2,976.83	\$ 14,977
13	Montclair	38,686	12,000	\$ 4,672	\$ 16,672
14	Needles (Sheriff)	5,035	12,000	\$ 608.07	\$ 12,608
15	Ontario	169,869	12,000	\$ 20,515	\$ 32,515
16	Rancho Cucamonga (Sheriff)	175,251	12,000	\$ 21,165	\$ 33,165
17	Redlands	68,368	12,000	\$ 8,257	\$ 20,257
18	Rialto	107,330	12,000	\$ 12,962	\$ 24,962
19	San Bernardino	215,491	12,000	\$ 26,025	\$ 38,025
20	Twentynine Palms (Sheriff)	26,138	12,000	\$ 3,157	\$ 15,157
21	Unincorporated/Sheriff	309,759	12,000	\$ 37,409.18	\$ 49,409
22	Upland	75,774	12,000	\$ 9,151	\$ 21,151
23	Victorville (Sheriff)	123,510	12,000	\$ 14,916	\$ 26,916
24	Yucaipa (Sheriff)	53,779	12,000	\$ 6,495	\$ 18,495
25	Yucca Valley (Sheriff)	21,281	12,000	\$ 2,570	\$ 14,570
<b>Total</b>		<b>2,139,570</b>	<b>\$ 300,000</b>	<b>\$ 258,393</b>	<b>\$ 558,393</b>

**FY2018  
Homeland Security Grant Program  
Law Jurisdiction's Allocations**

<b>\$</b>	<b>2,233,572</b>	<b>FY17 HSGP Allocation -</b>
<b>\$</b>	<b>558,393</b>	<b>Law Allocation (Preliminary 25%)</b>
<b>\$</b>	<b>(300,000)</b>	<b>Total \$12,000 Base</b>
<b>\$</b>	<b>258,393</b>	<b>Ballistic equipment for County Fire</b>
<b>\$</b>	<b>258,393</b>	<b>% Base on POP</b>

**FISCAL YEAR 2018**  
**Homeland Security Grant Program**  
*CFDA 97.067*

**Subrecipient Application Workbook**



**Funding Provided by**  
**California Governor's Office of Emergency Services**  
**(Cal OES)**

**Through Funding Distributed by**  
**The United States Department of Homeland Security (DHS)**  
**Federal Homeland Security Grant Program Agency**

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## INTRODUCTION

The State Homeland Security Grant Program (HSGP) is designed to secure and provide the nation with the capabilities required across the whole community to prevent, protect against, mitigate, respond to, and recover from threats, hazards and acts of terrorism and other catastrophic events that pose a great risk to the United States. The Homeland Security Grant Program is one tool among a comprehensive set of federal measures administered by Cal OES to help strengthen the state against risks associated with potential terrorist attacks. San Bernardino County Fire Protection District (SBCFPD) is a subgrantee of the HSGP and oversees the administration of grant funds for San Bernardino's Operational Area.

## GRANT PURPOSE

The purpose of the Fiscal Year 2018 (FY18) Homeland Security Grant Program (HSGP) is to support comprehensive Homeland Security Grant Programs at the local level and to encourage the improvement of mitigation, preparedness, response and recovery capabilities for all hazards. Cal OES has accepted, approved, and awarded this grant and will continue providing support to the San Bernardino County Operational Area's efforts to implement the objectives and strategies of the Homeland Security Grant Program and as well as respond to other catastrophic events. HSGP subrecipients are encouraged to consider national areas for improvement identified in the FY2018 National Preparedness Report (NPR), which includes the following core capabilities:

- Cybersecurity;
- Infrastructure Systems;
- Economic Recovery;
- Housing; and
- Operational Coordination.

## USE OF FUNDS

Funds provided under the HSGP must be used to support local Homeland Security Grant Program activities that contribute to the San Bernardino County Operational Area's capability to prevent, prepare for, mitigate against, respond to and recover from emergencies and disasters, whether natural or man-made.

## ELIGIBLE JURISDICTIONS

The County and any City/Town or District in the Operational Area (OA) may apply upon the approval of the Approval Authority members.

## GRANT CHANGES AND NEW REQUIREMENTS

The following key changes have been made to the FY2018 HSGP:

- **Project Modifications:** Subrecipients must provide a written justification for all project modification requests. Justifications must explain why the project is being modified. Justifications for project modifications that reconcile or "true-up" costs may be simply stated as such. More detailed justification is required when reallocating funding to other projects, implementing new projects or to describe complicated situations that have led to the need for the modification, such as prolonged EHP approval processes.
- **Investment Justifications:** Investment Justifications have changed and are listed below (Changes are in red).

## GRANT PROJECT CRITERIA

All projects are required to align to at least one of the six solution areas, five mission areas and the 32 core capabilities of the grant, as follows:

### GRANT SOLUTION AREA:

1. Equipment
2. Training

3. Planning
4. Exercise
5. Organization
6. Management & Administration (SBCFPD – OES only)

### **GRANT MISSION AREAS:**

1. Prevention
2. Protection
3. Mitigation
4. Response
5. Recovery

### **GRANT CORE CAPABILITIES:**

1. Access Control and Identity Verification
2. Community Resilience
3. Critical Transportation
4. Cybersecurity
5. Economic Recovery
6. Environmental Response/Health and Safety
7. Fatality Management Services
8. Fire Management and Suppression
9. Forensics and Attribution
10. Health and Social Services
11. Housing
12. Infrastructure Systems
13. Intelligence and Information Sharing
14. Interdiction and Disruption
15. Logistics and Supply Chain Management
16. Long-term Vulnerability Reduction
17. Mass Care Services
18. Mass Search and Rescue Operations
19. Natural and Cultural Resources
20. On-Scene Security, Protection and Law Enforcement
21. Operational Communications
22. Operational Coordination
23. Physical Protective Measures
24. Planning
25. Public Health, Healthcare and Medical Services
26. Public Information and Warning
27. Risk and Disaster Resilience Assessment
28. Risk Management for Protection Programs and Activities
29. Screening, Search, and Detection
30. Situational Assessment
31. Supply Chain Integrity and Security
32. Threats and Hazard Identification

Applicants will be required to align each project to the solution area, mission area and core capabilities in accordance to the National Preparedness Goal as outlined above.

### **STATE FUNDING INVESTMENT JUSTIFICATIONS**

1. **Strengthen Capabilities of the State Threat Assessment System**
2. Protect Critical Infrastructure and Key Resources
3. Enhance Cyber Security

4. Strengthen **Emergency** Communications Capabilities Through Planning, Governance, Technology and Equipment
5. Enhance Medical and Public Health Preparedness
6. Preventing Violent Extremism Through Multi-Jurisdictional/Inter-Jurisdictional Collaboration and Coordination
7. Enhance Community Resilience, Including Partnerships with Volunteers and Community Based Organizations and Programs
8. **Strengthen Information Sharing and Collaboration**
9. Enhance Multi-Jurisdictional/Inter-Jurisdictional All-Hazards Incident Planning, Response & Recovery
10. Homeland Security Exercise, Evaluation and Training Programs

## GRANT APPLICATION

Once the application is received by San Bernardino County Fire Protection District (SBCFPD) and approved by Cal OES, ***jurisdictions will be notified if their project is approved. Please note the approved project and allocation amount may differ from the proposed project.*** Once you are notified, additional documentation will be required, such as the subrecipient agreement package and any additional forms needed. Please read the remainder of this document to ensure that you can comply with grant requirements prior to accepting the award.

## SUBRECIPIENT GRANT PACKAGES

Subrecipient packages consist of the following: signed Subrecipient Agreement/Assurances, Cover Letter, Certification Letter, signed Application Workbook Certification, proof of SAM.gov registration, Subrecipient Grant Management Assessment Form, and Single Audit Report, if applicable. Subrecipient packages will be provided to jurisdictions that have approved projects prior to receiving the authorization to spend letter. Jurisdictions are NOT permitted to spend funds until all required documentation is submitted and they are issued an authorization to spend letter. If the project requires an EHP, EOC, Sole Source, or other type of approval indicated on the approved project worksheet, a request ***must*** be submitted to the Grants Unit. Once approval is obtained, projects can commence.

### Subrecipient Agreement

The subrecipient agreement must be completed in **BLUE INK** with each page initialed at the bottom of the page. Original subrecipient packages must be submitted to:

SBCo. Fire Protection District  
Grants Unit  
Attn: Tina Sutera  
157 W. 5<sup>th</sup> Street, Floor 2  
San Bernardino, CA 92415

### Cover Letter

The cover letters must be on the jurisdiction's letterhead. Please certify that the documentation is clear and correct. Include your contact information on the "Certification Box" of the cover letter.

### Certification Letter

Complete the certification letter with the following information:

**Box 1:** Name of the entity receiving the grant award. Indicate law or fire jurisdiction.

**Boxes 2-5:** Use this table to include all federal grant funds the jurisdiction has/will receive for the fiscal year, including EMPG, SAFER, etc. (Consult with your budget or fiscal personnel for more information.)

**Box 6:** Include a DUNS number.

**Box 7:** List total compensation and names of the top five executives if salaries are paid with grant funds. *(If applicable as per The Federal Funding Accountability and Transparency Act of 2006 (FFATA) or Transparency Act P.L. 109-282, as amended by section 6202(a) of P.L. 110-252, requires all new Federal awards of \$25,000 or more are subject to the FFATA reporting requirements)*

**Subrecipient Grants Management Assessment**

The Subrecipient Grant Management Assessment form must be completed and signed in **BLUE INK** and submitted with your subrecipient package.

**System for Award Management (SAM)**

Subrecipients must have a valid DUNS number and be currently registered with the System for Award Management (SAM) per the Federal Funding Accountability and Transparency Act (FFATA). It is a one-time registration. Proof of registration can be fulfilled by providing a screen shot of the email confirmation or website registration confirmation.

**Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)**

To obtain a DUNS number agencies must register at no cost directly to this web site: [www.sam.gov](http://www.sam.gov) in order to apply and receive federal financial assistance your agency must have a valid DUNS number.

**GRANT PERFORMANCE PERIOD**

The FY18 HSGP has a 3 year performance period (September 1, 2018, to March 31, 2021).

**PROPOSED PROJECTS NOT APPROVED**

All proposed projects not approved by the Approval Authority members at the time of the initial application will be kept on file for consideration for future funding should any savings/unspent funds become available during the grant performance timeline. If and when the Approval Authority members select your project to be funded you will be notified and instructions will be provided as to what requirements must be met.

**GRANT REQUIREMENTS**

**LAW ENFORCEMENT**

As in past years the grant requires that at least 25% of the HSGP funds be dedicated to law enforcement terrorism prevention activities linked to one or more core capabilities within the National Preparedness Goal (NPG).

**PROJECT MILESTONE DEADLINES**

Cal OES has assigned a performance milestone completion schedule for all projects to track the completion of goals throughout the grant performance period. In order to meet the State’s timeline and to ensure continuity of HSGP grant funding for the County, Cal OES requires the San Bernardino County Operational Area to complete the three milestones below for the project(s) during the life of the grant cycle. Failure to meet these milestones may result in denial of future fund requests until the project is back on track. Please also see the grant deadlines document.

Milestone	Percentage Required	Completion Date
First Milestone	30%	July 31, 2019
Second Milestone	60%	July 31, 2020
Third Milestone	100%	March 31, 2021

## STATUS REPORTS

Status reports must be sent by each jurisdiction to the Grants Administration Unit prior to the deadlines listed below. Information obtained will be reported by the Grants Unit to the CalOES and FEMA.

<u>Reporting Period</u>	<u>Report Due Date</u>
<del>9/1/2018-12/31/18</del>	<del>1/16/2019</del>
1/1/2019-6/30/2019	7/17/2019
7/1/2019-12/31/2019	1/15/2020
1/1/2020-6/30/2020	7/16/2020
7/1/2020-12/31/2020	1/15/2021
1/1/2021-3/31/2021 (Final/Cumulative)	4/10/2021

## MODIFICATIONS

It is mandatory for all subrecipients to obtain preapproval from the Grants Administration Unit for any project modifications. The County (as the State's subgrantee of the HSGP grant) is required to obtain preapproval from Cal OES for all project modifications, activity, and/or scope of work changes as described in the Cal OES State Supplement to the Federal Notice of Funding Opportunity. HSGP funds may only be expended for the intended purpose(s) for which they were requested and approved. Therefore, grant funds cannot be expended for projects that are modified without prior approval. Additionally, modification requests require a written justification, either in your email or on a separate word document, which explains in detail why the project is being changed.

An example of a required modification request and justification is if your jurisdiction completed one of three projects at a lower cost than the original budgeted amount, the subrecipient cannot spend the savings to pay for the shortfall of another project without the written preapproval of the Grants Administration Unit and Cal OES, as each project quantity and cost must match each line item. The modification justification for this situation would be to reconcile or "true-up" costs. Once the modification request is approved, funds can be expended. Subrecipients will not be reimbursed for unauthorized transactions. Cal OES will accept modification requests on a bi-monthly basis. Please plan accordingly.

Please contact the Grants Administration Unit for the required modification form and narrative. Do not start spending until your agency receives approval notification from the Grants Administration Unit.

## PROCUREMENT GUIDELINES

All jurisdictions must follow their respective written policies and procedures for the procurement of goods and services to be followed and measured in accordance with applicable federal rules under the 2 C.F.R. Part 200.317-200.326 and regulations (CFR Title 44, Section 13.36 (b)(1)). If there is a conflict between the jurisdiction's procurement policies and the County's policy, the jurisdiction must follow the more restrictive policy. Jurisdictions must ensure that all procurement transactions are conducted in a manner providing full and open competition.

### Writing Quotes/Bids

Subrecipients must document a minimum of three written price quotations/bids. The award is made to the responsible firm whose proposal is most advantageous for the program with price and other factors to consider.

### Sole Sources

Procurement by noncompetitive proposals (sole source) may be used only when the award of the contract is not feasible under small purchase procedures, sealed bids or competitive proposals, and one of the following circumstances applies:

1. The item is available only from one source;

2. After solicitation of at least three resources, competition is determined to be inadequate.

In concurrence with 2 CFR part 200.317 - 200.326, Cal OES requires the Operational Areas and its subrecipients to obtain preapproval for non-competitive procurement with vendor(s) that provide goods and services regardless of the amount. Failure to obtain preapproval for non-competitive procurement may result in the denial of the grant expenditure.

In addition, if the city/town/county's policy requires that non-competitive procurement be approved by the City Council or Governing Board prior to procurement, then that procedure must be followed. The supporting documents must be provided to the Grants Administration Unit with the reimbursement claims. In the event that there is conflict between the city's procurement policies and the policies of the County, please follow the more restrictive policy and call the Grants Administration Unit for clarification.

### Cost Benefit Analysis

Subrecipients will also need to provide a cost benefit analysis with the Request for Noncompetitive Procurement Request Form. The analysis will provide to Cal OES the justification/feasibility based on the comparison of the total expected costs of each bid/quote against the total expected benefits, to examine whether the benefits outweigh the costs. A Cost Benefit Analysis (CBA) must be submitted with the non-competitive procurement request form.

### Invitation for Bid (IFB)

An IFB is used to solicit prices for services or goods based on definitive specifications. A clear and accurate description of the services rendered or the material or products to be procured is required. The description must not contain unreasonable features that restrict the competition. Jurisdictions must ensure that all procurement transactions are conducted in a manner providing full and open competition. Some situations considered to be restrictive of competition include, but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business;
- Requiring unnecessary experience and excessive bonding;
- Noncompetitive pricing practices between firms or affiliated companies;
- Organizational conflicts of interest;
- Specifying only "brand name" instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement; and
- Any arbitrary action in the procurement process.

Jurisdictions may not use statutorily or administratively imposed local geographical preference in the evaluation of bids or proposals. (See 2 C.F.R. 200.37-200.326).

A jurisdiction that uses a consulting firm to write the specifications for a contract bid/proposal cannot award the contract to the same consulting firm. This is considered a conflict of interest.

### Formal Advertising

Procurement by Sealed Bids/Invitation for Bids require the subrecipient to formally advertise in a widely circulated publication; bids are solicited from an adequate number of qualified sources; and a firm-fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid conforms with all material items and conditions of the bid, and is the lowest price. See (2 C.F.R. 200.37-200.326 (d) (3) for additional guidance). Subrecipients must document a minimum of three responsible bids and proof

of advertisement and solicitation efforts must be forwarded to the Grants Administration Unit with your reimbursement claim.

Failure to adhere to the above procurement processes may result in a delay in processing your request and possible denial of your reimbursement.

## **SUPPLANTING**

Federal funds may not supplant, replace, or offset local funds. HSGP funds cannot be used to supplement the amount of funds that, in the absence of federal funds, would be made available for purposes consistent with the Homeland Security Grant Program. Per grant guidance, subrecipients may be required to supply documentation certifying that a reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

## **EQUIPMENT**

Funds for equipment must be used to enhance the capabilities of state and local emergency response agencies and all equipment must be identified by an Authorized Equipment List (AEL) number. The HSGP grant has 21 authorized equipment categories under the AEL and as in previous years, the AEL is presented, as follows:

1. Personal Protective Equipment
2. Explosive Device Mitigation and Remediation Equipment
3. CBRNE Operational and Search and Rescue Equipment
4. Information Technology
5. Cyber Security Enhancement Equipment
6. Interoperable Communications Equipment
7. Detection
8. Decontamination
9. Medical
10. Power
11. CBRNE Reference Materials
12. CBRNE Incident Response Vehicles
13. Terrorism Incident Prevention Equipment
14. Physical Security Enhancement Equipment
15. Inspection and Screening Systems
16. Animal Care and Foreign Animal Disease
17. CBRNE Prevention and Response Watercraft
18. CBRNE Aviation Equipment
19. CBRNE Logistical Support Equipment
20. Intervention Equipment
21. Other Authorized Equipment

### **NOTE: USE TAXES**

Effective immediately, the Grants Administration Unit will not reimburse for use taxes without a proper proof of payment.

### **AUTHORIZED EQUIPMENT LIST (AEL)**

To obtain the appropriate AEL authorized number, please check on the following web site:

<https://www.fema.gov/authorized-equipment-list>.

### **COMMUNICATION EQUIPMENT**

Subrecipients using FY18 HSGP funds to support emergency communications activities must comply with the FY2018 SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications. The SAFECOM guidance can be found at <https://www.dhs.gov/safecom/blog/2018/05/16/release-fy-2018-safecom-guidance-emergency-communications-grants>.

## PHARMACEUTICALS SUPPLIES

Special rules apply to pharmaceutical purchases and medical counter measures. Prior to procuring pharmaceuticals, subrecipients must have in place an inventory management plan to avoid large periodic variations in supplies due to coinciding purchase and expiration dates. This will also include antibiotics and antidotes for nerve agents, cyanide and other toxins. Purchase of pharmaceuticals must include a budget for the disposal of expired drugs within each fiscal year period of performance for HSGP. The plan must be submitted to the Grants Unit and preapproved by FEMA prior to incurring any cost.

## EHP's

Any equipment that requires installation is subject to the Environmental Planning and Historic Preservation (EHP) requirements. Subrecipients must complete and submit the required EHP Screening Form to the Grants Administration Unit for approval of Cal OES and FEMA. **It is mandatory that all EHP forms be approved by FEMA and Cal OES prior to incurring any project costs.** Refer to the Subrecipient Agreement and Assurances for information regarding the EHP Screening Form and other required documents.

## EOC's

For equipment dedicated to the Emergency Operations Center (EOC), the Establish/Enhance Emergency Operations Center (EOC) Request Form must be completed and submitted to the Grants Administration Unit for approval of Cal OES. **This form must be preapproved prior to incurring any project costs.**

## PLANNING/ORGANIZATION PROJECTS

Planning/Organization personnel must track actual hours worked on planning and organization projects. Required supporting documentation consists of the following:

1. Functional timesheets or signed payroll activity reports showing how many hours of the week were dedicated to the planning project;
2. Proof of Payment (Copy of paycheck is preferred or payroll registers with definition of codes);
3. TLR's (*Time, Labor Reports-showing Total Actual Hours worked for the pay period*).
4. Benefit cost analysis of actual benefit costs for the reporting period, if applicable. Weighted or estimated benefit costs are not allowable and will not be reimbursed.
5. Proof of hourly rate that is being calculated as project costs.

The grant will reimburse for salary and benefits for ACTUAL hours worked on planning or organization projects. Benefits should be calculated with actual benefits for the reporting period (no percentages), divided by the total hours worked for the pay period and then multiplied by the actual project hours.

Ex. Total Benefit Costs for Pay Period 1 = \$1050/80 hours (PP1) = 13.13 X 35 (hours worked on project) = \$459.55 total grant reimbursable benefit costs for Pay Period 1.

Benefits must be calculated for each reporting (pay) period as benefit costs may fluctuate.

For more information regarding allowable benefit costs, Refer to 2 C.F.R Ch. II (1-1-14 Edition) § 200.431 Compensation-fringe benefits.

## PLANNING DELIVERABLES OR FINAL PRODUCTS

Planning deliverables may include, but are not limited to:

1. Procedure Manuals
2. Policy Procedures
3. Standard Operating Procedures (SOP's)
4. Reports
5. Templates

6. Plans
7. Guideline Manuals
8. Directive Manuals
9. Operating Manuals
10. Official Procedures
11. News Letters
12. Training Manuals (Participants and Instructor)

Planning reports must be considerable and substantial in their contents and must be associated to the planning deliverables listed on the proposed projects. The amount of grant funds received for the planning project must justify the outcome of the delivery report.

### **CONTRACTOR/CONSULTANT**

Contractors and Consultant services are allowable under the HSGP. Contract and procurement awards must be made to the responsible contractor or vendor whose bid or offer is responsive to the solicitation and is most advantageous to the project, the methods of contracting are as follows:

- a) Formal Advertising
- b) Invitation for Bid (IFB)
- c) Request for Proposal (RFP)

Consideration should be given to such matters as contractor integrity, record of past performance, financial and technical resources, and /or accessibility to the necessary resources. A bidder is considered responsible when it has been established that the contractor meets the necessary requirements for the project, and is otherwise qualified and eligible.

**NOTE: Subrecipients must verify PRIOR to entering into the contract that the independent contractor or consultant services has not been suspended or debarred from participation in receiving federal awards. A dated screen printout must be obtained from the web site [www.sam.gov](http://www.sam.gov) as proof for reimbursement requests.**

All contract agreements must be prepared in accordance with existing State contract provisions and policies and clearly define the responsibilities of all parties. As per **Code of Federal Regulations (CFR) 2 C.F. R. 200.317 - 200.326 and Title 44 Emergency Management and Assistance, Part 13, Subpart C, Section 13.36 (i) 1-13**, these 13 provisions must be included in all contracts where federal grants are utilized.

(i) *Contract provisions.* A grantee's, subgrantee's and subrecipient's contract must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (Contracts more than the simplified acquisition threshold).

(2) Termination for cause and for convenience by the grantee, subgrantee or subrecipient including the manner by which it will be affected and the basis for settlement (All contracts in excess of \$10,000).

(3) Notice of awarding agency requirements and regulations pertaining to reporting.

(4) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

- (5) Awarding agency requirements and regulations pertaining to copyrights and rights in data.
- (6) Access by the grantee, the subrecipient, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- (7) Retention of all required records for three years after grantees or subrecipients make final payments and all other pending matters are closed.
- (8) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15) (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).
- (9) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871).

**For construction contracts, the following must also be included.**

- (1) Compliance with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees).
- (2) Compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair).
- (3) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a–7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2,000 awarded by grantees and subrecipients when required by Federal grant program legislation).
- (4) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees, subgrantees and subrecipients in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

### **SAM SUSPENSION AND DEBARMENT**

Subrecipients are required to obtain verification that the contractor or vendor selected is not debarred or suspended at the time of the award. The subrecipient must search the [www.sam.gov](http://www.sam.gov) website to verify that the vendor and/or contractor is not debarred or suspended from programs or activities involving federal financial and non-financial assistance. Vendor registration in SAM.gov is not required. However, vendor must not be debarred, suspended or excluded from receiving federal funds, which will be verified in the search. Subrecipients receiving federal funds must certify that they will adhere to Federal Executive order 12549, Debarment and Suspension. Subrecipients will not make any awards or enter into any contract with parties that are debarred, suspended or otherwise excluded or ineligible for participation in federal programs and activities.

The SAM.gov screenshot must be printed prior to hiring the vendor/contractor and must be submitted to Grants Administration Unit with the request for reimbursement. Failure to provide

this information may result in a delay in processing your request and possible denial of your claim.

## VEHICLE PURCHASES

As a result of numerous inquiries regarding the use of vehicles purchased with Homeland Security funds, the following guidance is being provided by the SBCFPD to subrecipients regarding authorized use of these vehicles:

- 1) For the purposes of the HSGP the vehicle identification is: *A means of transportation to be used for CBRNE response equipment and personnel to the incident site.*

Such forms of CBRNE transportation included, but are not limited to:

- Mobile Command Post Vehicle
- Hazardous Response (HAZMAT) Vehicle
- Prime movers for equipment trailers
- 2-wheel personnel transportation vehicle (for transporting fully suited bomb technicians to the hot zone)
- All-terrain, multi-wheeled vehicle
- Deployment vehicles
- Any type of authorized trailer (MCI, DECON, Shelter) **(not considered a vehicle, therefore, no performance bond is required)**
- Any type of marine vessel
- All classes of manned aircraft or rotorcraft.

Vehicle AEL Numbers:

12TR-00-H2OT	Trailer, Water/Source <b>(not a vehicle)</b>
12TR-00-MOVR	Mover, Prime, for Equipment/Water Trailers
12TR-00-TEQP	Trailer, Equipment <b>(not a vehicle)</b>
12VE-00-ABUS	Vehicle, Mass Casualty Transport
12VE-00-CMDV	Vehicle, Command, Mobile
12VE-00-MISS	Vehicle, Specialized Mission, CBRNE
12VE-00-SPEC	Vehicle, Specialized Emergency Management
17WC-00-BOAT	Watercraft, CBRNE Prevention and Response
18AC-00-ACFT	Aircraft, CBRNE

When subrecipients submit a proposal to purchase a vehicle, your agency must justify and identify which of the sub categories under CBRNE Response Vehicle relates to includes: 12VE-00-MISS, 17WC-00-BOAT & 18AC-00-ACFT only. All others must be related to homeland security. Also, your agency must be able to demonstrate how the purchase of the CBRNE Response Vehicle complies with the HSGP Strategy. Vehicles must be assigned to the Duty Officer or first responder who will respond to a given incident when required to provide response to any emergency event.

CBRNE Vehicles purchased with HSGP funds cannot be used as “General Use Vehicles”. General uses are defined as administrative and general use for a department and are unauthorized program expenditures (exceptions can be requested through IB 379). Examples of general use vehicles:

- Police Squad Cars (Patrol/Detective)
- Administrative Vehicles
- Executive Transportation

Note: “Prime Mover” vehicles can only be used when moving a HSGP-purchased trailer or other equipment to and from an HSGP-related events or training.

- 2) Vehicle licensing, registration and general maintenance fees are the responsibility of the subrecipient and are NOT allowable with grant funds.
- 3) All vehicles purchased with HSGP funds must be tagged and be part of the subrecipient inventory control.

## PERFORMANCE BOND

Subrecipients are required to obtain a performance bond for any equipment item over \$250,000, or any vehicle, aviation, or watercraft (regardless of the cost) financed with Homeland Security Grant dollars. A copy of the performance bond must be submitted to the Grants Administration Unit with your reimbursement claim. Failure to obtain the required performance bond will result in the disallowance of your HSGP project.

## UNALLOWABLE COSTS

Equipment purchased with HSGP funds cannot be charged to other federal grants to overcome fund deficiencies. Subrecipients will ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources. Additional unallowable costs:

- General purpose vehicles (executive transportation)
- General used software, general used computers and related equipment
- Weapons and ammunitions (The purchase of weapons and weapons accessories is not allowed with HSGP funds)
- Vehicle Licensing fees
- Hiring of public safety personnel for the purpose of fulfilling traditional public safety duties
- Items not in accordance with the AEL or previously listed allowable costs
- Tips
- Gasoline
- Environmental fees
- Tire Recycle fees

## ADDITIONAL FORMS

All other forms must be preapproved by Cal OES prior to incurring any costs.

- EHP Form
- EOC Form
- Request for Noncompetitive Procurement Form (Sole Source Vendor)
- Aviation Request Form
- Watercraft Request Form
- Controlled Equipment Request Form

## REIMBURSEMENT CLAIMS

Reimbursement shall be based upon authorized and allowable expenditures consistent with the approved project. All expenditures must be supported with the following source documentation:

- Reimbursement form with original wet signature
- Copy of invoices. Must be legible
- Three written quotes or Sole Source Request Form
- Screenshot of the SAM Debarment or Suspended website
- Proof of payment. Copy of front and back of the cancelled checks or credit card statement
- Copy of City Council Minutes (if applicable)
- At least one clear picture of each grant purchased equipment (serial number or other ID displayed).

**Note:** For each solution area reimbursement claim, ***please see Grants-Reimbursement Request – Check List.***

## PROOF OF PAYMENTS

Effective immediately ALL Subrecipients are required to submit copies of the front and the back of cancelled checks, as proof of payment for HSGP grant related expenditures. Subrecipients

that paid their vendors through an electronic fund transfer (EFT) must submit copy of the EFT transfer as proof of payment. The EFT transfer must include the name of the vendor/recipient of the transfer, the amount transferred, date of transfer and name of the jurisdiction doing the transfer.

## GRANT MONITORING

### JURISDICTIONAL GRANT MONITORING

As per new regulations under 2 CFR part 200.330 - 200.332, the Grants Administration Unit will be enforcing monitoring of subrecipient's project activity. Grant activities (both desk review and on-site) are reviewed during monitoring visits. These reviews may include, but are not limited to:

- Eligibility of Expenditures
- Project Activities
- Reimbursement Requests
- Modification Request
- Grant Statutes/Performance Reports
- Equipment
- Equipment Inventory Control Reports
- A review of the Corrective Action Plan (CAP) of the sub-recipient's Single Audit Report (if there is a finding on the report) in correspondence with A-133.

These new regulations supersede the 44 CFR. Part 13 and the OMB Circulars. The Grants Administration Unit will schedule site visits with subrecipients.

### INVENTORY CONTROL

Subrecipients must comply with all requirements set forth in 2 C.F.R. Part 200.313 for the active tracking and monitoring of property/equipment purchased with HSGP funds. Subrecipients must account for and reconcile inventory with the SBCFPD Grants Administration Unit's property records **prior** to deployment and at each scheduled inventory inspection. Subrecipients will develop and maintain a control tracking system to ensure adequate safeguards to prevent loss, damage or theft of grant funded equipment. When equipment purchased with grant funds is no longer needed or will be retired, subrecipients will request disposition instructions from SBCFPD, Grants Administration Unit. If items are damaged, lost, stolen, or retired, subrecipients will provide an explanation on the Damage, Lost, Stolen, or Retired (DLSR) form of how the damage happened and the subrecipient's plan in preventing damage from occurring in the future.

### GRANT PROJECT CLOSEOUT

All projects must be completed by the end of the performance milestone. Supporting documentation must be kept and equipment must be tracked by the subrecipients until notified otherwise by the Grants Administrative Unit.

### RECORDS RETENTION

Subrecipients are required to maintain accurate, complete, orderly and separate records for each grant year. All supporting documentation pertaining to the administrative, programmatic and financial management of the grant award must be retained by the subrecipient for at least three years following Cal OES's closeout of the Federal/State grant period including the resolution of any monitoring/audit findings. The Grants Administration Unit will notify all jurisdictions when to dispose of the supporting documentation for prior grant years, after Cal OES has provided authorization to dispose. If any jurisdiction is under audit review and there are any negative audit findings under the Homeland Security Program Grant funding, they must notify SBCFPD – Grants Unit as soon as possible.

## COUNTY OF SAN BERNARDINO HSGP PROGRAM CONTACTS:

Michael Antonucci, Emergency Services Manager  
E-mail: [michael.antonucci@oes.sbcounty.gov](mailto:michael.antonucci@oes.sbcounty.gov)  
Phone: (909) 356-3998

Daniel Munoz, Asst. Emergency Services Manager  
E-mail: [daniel.munoz@oes.sbcounty.gov](mailto:daniel.munoz@oes.sbcounty.gov)  
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Tina Sutera, Staff Analyst  
Grants Administration Unit  
Email: [tsutera@sbcfire.org](mailto:tsutera@sbcfire.org)  
(909) 387-5934

Ed Segura, Administrative Supervisor  
Grants Administration Unit  
Email: [esegura@sbcfire.org](mailto:esegura@sbcfire.org)  
Phone: (909) 387-6134

**~ PROCEED TO CERTIFICATION AND ACKNOWLEDGEMENT ON PAGE 19 ~**

**SAN BERNARDINO COUNTY OPERATIONAL AREA  
FY2018 HOMELAND SECURITY GRANT PROGRAM**

**APPLICATION WORKBOOK CERTIFICATION**

I, \_\_\_\_\_ as the Authorized Agent  
for \_\_\_\_\_ JURISDICTION,  
certify that our jurisdiction has read and acknowledges the Homeland Security Grant Program (HSGP)  
guidelines specified in the document hereof.

---

Authorized Agent Signature

Date

---

Print Name

---

Project Manager Signature

Date

---

Print Name

	<b>HOMELAND SECURITY GRANT PROGRAM (HSGP) APPROVAL AUTHORITY POLICY MANUAL</b>  <b>Policy</b>	<b>Policy: 14-01</b> <span style="float: right;">Page 1 of 1</span>  <b>Effective: 10/09/14</b>  <b>Last revision: None</b>
<b>SUBJECT: POLICY 14-01 – ACCEPTANCE/USE OF GRANT FUNDS</b>		<b>APPROVED: APPROVAL AUTHORITY MEMBERS, 10/06/14</b>

**PURPOSE**

The Homeland Security Grant Program Approval Authority (HSGPAA) is enacting this policy to prevent the Operational Area (OA) from losing Homeland Security Grant Program (HSGP) funding.

This is in response to the Federal Circular interpretation on funding regulations found in (44 CFR PART 13 - GOV) and (2 CFR PART 215 – CBO).

As you may know, OAs that do not fully expend grant funds allocated to them are penalized by a 10% reduction in total grant fund allocations in the grant cycle following the failure to expend funds.

**POLICY**

Upon accepting grant funds, sub subrecipients (hereby referred to as jurisdictions) that participate in the HSGP agree to follow the grant timeline as well as meet ALL grant deadlines as set forth by the OA through the HSGPAA. This includes, but is not limited to:

- All reports on grant fund expenditure status
- All deadlines (fund expenditures, quarterly reports, modifications, reimbursement requests etc.)

Upon accepting grant funds, jurisdictions also agree to fully expend the funds allocated to the jurisdiction. We do understand that some projects may have a cost savings – if this becomes the case, the San Bernardino County Fire Office of Emergency Services (OES) should be notified in a timely manner so that said funds may be reallocated well in advance of the final grant deadline. Jurisdictions will make every effort to expend funds in a timely manner and meet milestone deadlines and will immediately notify County Fire OES should circumstances arise that prevent the jurisdiction from doing so.

Should a jurisdiction fail to respond to our correspondences and thusly fail to indicate whether the jurisdiction will complete the expenditure of their grant allocation by the grant deadline, OR that the jurisdiction will release their allocation back to the OA, said jurisdiction’s allocation will be rescinded for reallocation by the HSGPAA on February 1<sup>st</sup> of the grant fiscal year cycle.

Failure to comply with this policy will result in funding allocations being disallowed for the jurisdiction in the following grant cycle.

The penalty will be in effect for one grant cycle.

**APPEAL PROCESS**

The HSGPAA is the governing body that will hear all appeals if the jurisdiction has circumstances that may call for the HSGPAA to consider action. The written appeal must be submitted within seven business days of the notification of funding being denied to your agency and be addressed to:

San Bernardino County Fire Office of Emergency Services  
ATTN: Emergency Services Manager  
1743 Miro Way  
Rialto, CA 92376

**FY 2018 HOMELAND SECURITY GRANT  
Project Narrative**

**Applicant** (agency/organization) \_\_\_\_\_

*NOTE: Complete a separate Project Description for each proposed project.*

**Project Title:** \_\_\_\_\_

**AEL No.** \_\_\_\_\_ **AEL Title:** \_\_\_\_\_

**Indicate the State Investment Strategies Supported by the Project:**

- IJ #1: Strengthen Capabilities of the State Threat Assessment System (STAS)
- IJ #2: Protect Critical Infrastructure and Key Resources
- IJ #3: Enhance Cybersecurity
- IJ #4: Strengthen Communications Capabilities Through Planning, Governance, Technology and Equipment
- IJ #5: Enhance Medical and Public Health Preparedness
- IJ #6: Preventing Violent Extremism Through Multi-Jurisdictional/Inter-Jurisdictional Collaboration and Coordination
- IJ #7: Enhance Community Resilience, Including Partnerships With Volunteers And Community Based Organizations and Programs
- IJ #8: Strengthen Information Sharing and Collaboration
- IJ #9: Enhance Multi-Jurisdictional/Inter-Jurisdictional All Hazards Incident Planning, Response & Recovery Capabilities
- IJ #10: Homeland Security Exercise, Evaluation and Training Programs

**Provide a detailed description of the proposed project and how it supports the IJ indicated above.**

*NOTE: Complete a separate Project Description for each proposed construction/renovation project.*

**For construction and renovation projects, provide the following additional information:**

- A description and location of the facility:
- A description of the vulnerability assessment and the date the assessment was conducted (the assessment does not have to be submitted with the application):
- A description of how the proposed project will address the vulnerabilities identified in the assessment:
- A description of the consequences if the project is not funded under HSGP FY2018:

**FY 2018 HOMELAND SECURITY GRANT  
Project Narrative**

- Provide a detailed description on how you plan to manage your proposed project.
- Provide a performance timeline for your proposed project. Make sure that the timeline you are proposing is “reasonable.”
- Indicate if your proposed project will be procured through “sole source” and/or is an EOC project, subject to the EHP, FBI requirement, or Safecom Guidance.

Please check the appropriate box:

Our agency/organization currently has spending authority for the requested funds.

Our agency/organization does not currently have spending authority for the requested funds.

See below for explanation:

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# SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT

1743 Miro Way • Rialto, CA 92376 • (909) 356-3998 • Fax (909) 356-3965

Office of Emergency  
Services  
sbcfire.org

Don Trapp  
Interim Fire Chief/Fire Warden

Mike Antonucci  
Emergency Services Manager

July 24, 2019

**TO: GRANTS PROGRAM MANAGER**

**SUBJECT: FISCAL YEAR 2018 HOMELAND SECURITY GRANT PROGRAM  
EXPENDITURE AUTHORIZATION**

This letter is to inform you that Cal OES has approved the project submitted by your jurisdiction. Please consider this letter as your authorization to make expenditures using FY18 Homeland Security Grant Program (HSGP) funds. During the procurement process, please make sure to follow grant guidelines and requirements. If the project requires an EHP, EOC or other type of approval as indicated on the project worksheet then procurement may not begin until a request has been submitted to the Grants Unit and an approval has been received to begin the project.

**Please be aware that your project allocation amount may have changed from when you originally submitted your project.** Please take note of the new amount shown on the attached project worksheet. Should you need to submit a modification request to change your project in any way, including increasing the quantity of items, please do so as soon as possible. The next deadline to submit modification requests is 09/05/19.

Please follow the procedures below:

- 1. First Milestone Deadline:** Due to the delay in the grant acceptance, the first milestone deadline has been extended. All projects should be 30% complete by **9/30/19**.
- 2. Modifications:** Changes to projects require obtaining preapproval from the State **prior** to incurring any costs. Modification requests are due to the Grants Unit every other month; please see Attachment No. 3 for exact deadlines. Submit requests as soon as possible to avoid delays.
- 3. Quotations/Bids:** Three (3) copies of quotes/bids must be submitted with the reimbursement request for all purchases over \$1,000. A noncompetitive procurement form must be submitted and approved for sole source purchases.
- 4. SAMS Verification:** Copy of a screen print out of the vendor verification report must be printed **prior** to hiring the vendor/contractor and **must be submitted** to Grants Unit with the request for reimbursement. *Note: It is not required that the vendor be registered in SAM.gov. It is only required that the vendor is not debarred from receiving federal funds, which will show up in your vendor search if the vendor has restrictions.*
- 5. Performance Bond:** Is required for any equipment item over \$250,000, **or** any vehicle, aviation, or watercraft, regardless of the cost.

## BOARD OF SUPERVISORS

Robert A. Lovingood  
First District

Janice Rutherford  
Second District

Dawn Rowe  
Third District

Curt Hagman  
Chairman  
Fourth District

Josie Gonzales  
Vice-Chair  
Fire District 9

Gary McBride

Chief Executive Officer

**FISCAL YEAR 2018 HOMELAND SECURITY GRANT PROGRAM EXPENDITURE  
AUTHORIZATION**

Page 2 of 3

6. **Proof of Payment:** Submit copies of the front and the back of cancelled checks, as proof of payment for HSGP grant related expenditures or a copy of an electronic transmittal of payment. NO EXCEPTIONS.
7. **Sole Source:** County requires that a Noncompetitive Procurement Justification Form be submitted for approval for all sole source purchases over \$1,000 **prior** to purchases being made. Purchases over \$150,000 will require preapproval from the State prior to procurement, following up with your governing board or council, if applicable. A cost benefit analysis will need to be included with the Noncompetitive Procurement Justification request form.
8. **Equipment Pictures:** Provide a photo copy of each grant purchased equipment and a photo of the serial number, if applicable. Provide the intended location of deployment/assignment of the equipment.

Equipment purchased with grant funds must be accounted for and reconciled with the Grants Administration Unit's property records at each scheduled inventory inspection. You must develop a control tracking system to ensure adequate safeguards are in place to prevent loss, damage or theft of grant funded equipment. When equipment purchased with grant funds is no longer needed or is being replaced, **you must request disposition instructions** from San Bernardino County Fire Protection District's Grants Administration Unit. If items are lost, stolen, or damaged, an explanation of how it happened and how your jurisdiction is going to prevent it from happening in the future is **required** on the Damage, Lost, Stolen, or Retired (DLSR) form.

Please follow the additional grant information from the TIME SENSITIVE - FY18 HSGP Subrecipient Agreement email sent on June 26, 2019.

If you have any questions, please feel free to contact me at 909-356-3998. Thank you.

Sincerely,



**MICHAEL ANTONUCCI**, Emergency Services Manager  
San Bernardino County Fire Protection District  
Office of Emergency Services

MA:ts:kc

cc: Daniel Munoz, Assistant Emergency Services Manager, County OES  
Ed Segura, Administrative Supervisor, SBCFPD  
Tina Sutera, Grant Analyst II, SBCFPD

Attachments:  
FY18 HSGP Project Approval Notification Letter  
Project Worksheet  
FY18 HSGP Table of Deadlines  
Grants Checklist

**FISCAL YEAR 2018 HOMELAND SECURITY GRANT PROGRAM EXPENDITURE  
AUTHORIZATION**

Page 3 of 3

Reimbursement Request Form  
Modification Request Form  
Milestone Extension Request Form  
Request for Noncompetitive Procurement Authorization Form  
DLSR Form  
Personnel Activity Report  
Bid Quotation Form  
HSGP Status Report  
EOC Request Form  
EHP Screening Form  
EHP Screening Form Instructions  
Homeland Security Grant Expenditure Authorization Email Attachments



## STAFF REPORT

**ITEM NO. 11.E.**

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**DATE:** July 27, 2020  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, CITY MANAGER  
**PREPARED BY:** STEPHEN PARKER, CPA, ASSISTANT CITY MANAGER  
LONDA BOCK-HELMS, CPA, FINANCE OFFICER  
**SUBJECT:** COMMUNITY FACILITIES DISTRICTS 2003-1, 2003-2  
IMPROVEMENT AREAS 1 AND 2, 2015-1 IMPROVEMENT AREA 1,  
2016-1 IMPROVEMENT AREA 1, 2016-2 AND 2017-1: INTENT TO  
LEVY AND COLLECT SPECIAL TAXES

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### RECOMMENDED ACTION

It is recommended that the City Council adopt a Resolution authorizing the levy of special taxes in: Community Facilities District 2003-1 (Upland 54); Community Facilities District 2003-2 (The Colonies at San Antonio) - Improvement Area No. 1 and Improvement Area No. 2; Community Facilities District 2015-1 (Sycamore Hills) Improvement Area No. 1; Community Facilities District 2016-1 (Harvest at Upland) Improvement Area No. 1; Community Facilities District 2016-2 (Harvest Maintenance) and; Community Facilities District 2017-1 (Sycamore Hills Maintenance) for Fiscal Year 2020-21.

### GOAL STATEMENT

The proposed action supports the City's goal of providing fiscal stewardship for the City of Upland.

### BACKGROUND

The City has, by previous resolutions, formed the indicated Community Facilities Districts. The Districts were formed pursuant to the terms and provisions of the "Mello-Roos Community Facilities Act of 1982," being Chapter 2.5, Part 1, Division 2, Title 5 of the Government Code of the State of California in order to finance certain public facilities; to secure the payment of any bonded indebtedness of the Districts for the improvement areas; to finance certain maintenance costs and; the payment of District administrative costs.

## **ISSUES/ANALYSIS**

The County of San Bernardino requires that a resolution be approved by the City Council requesting the levy. The levy of taxes is pursuant to Ordinance Nos. 1758 and 1759 previously passed by the City Council. The resolution will allow the City to proceed with the annual levy of special taxes for the Fiscal Year commencing July 1, 2020 and ending June 30, 2021.

## **FISCAL IMPACTS**

The revenue from the levy of special taxes will be used to make the payments: on the District bonds; associated administrative costs and/or; maintenance costs of certain Districts.

## **ALTERNATIVES**

Provide alternative direction to staff.

## **ATTACHMENTS:**

**Resolution approving CFD Assessments FY20-21**

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UPLAND, CALIFORNIA AUTHORIZING THE LEVY OF A SPECIAL TAX IN COMMUNITY FACILITIES DISTRICT NO. 2003-1 (UPLAND 54) AND COMMUNITY FACILITIES DISTRICT NO. 2003-2 (THE COLONIES AT SAN ANTONIO) - IMPROVEMENT AREA NO. 1 AND IMPROVEMENT AREA NO. 2, COMMUNITY FACILITIES DISTRICT NO. 2015-1 (SYCAMORE HILLS), IMPROVEMENT AREA NO. 1, COMMUNITY FACILITIES DISTRICT NO. 2016-1 (HARVEST AT UPLAND), IMPROVEMENT AREA NO. 1, COMMUNITY FACILITIES DISTRICT NO. 2016-2 (HARVEST MAINTENANCE) AND COMMUNITY FACILITIES DISTRICT NO. 2017-1 (MAINTENANCE SERVICES) FOR FISCAL YEAR 2020/2021

Intent of the Parties and Findings

(i) City Council of the City of Upland (hereinafter referred to as the "Agency"), has initiated proceedings, held a public hearing, conducted an election and received a favorable vote from the qualified electors relating to the levy of a special tax in a Community Facilities District, as authorized pursuant to the terms and provisions of the "Community Facilities Act of 1982", being Chapter 2.5, Part 1, Division 2, Title 5 of the Government Code of the State of California. These Community Facilities Districts shall hereinafter be referred to as "Districts"; and,

(ii) this City Council, by Ordinance as authorized by Section 53340 of the Government Code of the State of California, has authorized the levy of a special tax to pay for costs and expenses related to said Community Facilities Districts, and this City Council is desirous to establish the specific rate of the special tax to be collected for the next fiscal year.

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

Section 1. That the above recitals are true and correct.

Section 2. That the special tax rates for each tax category to be used to generate special tax revenues, which will be collected to pay for the costs and expenses for the next fiscal year (2020/2021) for the referenced Districts, is hereby determined and established as set forth in the attached, referenced and incorporated Exhibits "A", "B", "C", "D", "E", "F" and "G".

Section 3. That the rate as set forth above does not exceed the amount as previously authorized by Ordinance of this Council, and is not in excess of that as previously approved by the qualified electors of the Districts.

Section 4. The special tax shall be collected in the same manner as ordinary ad valorem property taxes are collected, and shall be subject to the same penalties and same procedure and sale in cases of any delinquency for ad valorem taxes, and

the Tax Collector is hereby authorized to deduct reasonable administrative costs incurred in collecting any said special tax.

Section 5. Monies above collected shall be paid into the District funds.

Section 6. The Auditor of the County is hereby directed to enter in the next County assessment roll on which taxes will become due, opposite each lot or parcel of land effected in a space marked "public improvements, special tax" or by any other suitable designation, the installment of the special tax, and for the exact rate and amount of said tax, reference is made to the attached Exhibits "A", "B", "C", "D", "E", "F" and "G".

Section 7. The County Auditor shall then, at the close of the tax collection period, promptly render to this Agency a detailed report showing the amount and/or amounts of such special tax installments, interest, penalties and percentages so collected and from what property collected, and also provide a statement of any percentages retained for the expense of making any such collection.

Section 8. Special Taxes are to be levied on non-exempt parcels within CFD No's. 2003-1, 2003-2, 2015-1, 2016-1, 2016-2 AND 2017-1. Should it be discovered that any taxable parcels are not submitted to the County Auditor for inclusion into the 2020/2021 Tax Roll subsequent to the submittal deadline of August 10, 2020, the City Council directs the City of Upland staff or their agents to bill such parcels directly via U.S. mail using the rates as approved in Exhibits "A", "B", "C", "D", "E", "F" and "G".

PASSED, APPROVED and ADOPTED this 27th day of July, 2020.

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

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 27th day of July 2020, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAINED:

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

**Exhibit "A"**  
**Community Facilities District No. 2003-1**  
**Upland 54**  
**Special Tax Rates**  
**Fiscal Year 2020/2021**

<b>LAND USE TYPE</b>	<b>BUILDING SQUARE FOOTAGE</b>	<b>MAXIMUM SPECIAL TAX RATE <sup>(1)</sup></b>	<b>PROPOSED SPECIAL TAX RATE <sup>(2)</sup></b>
Residential Property	Less than 1,900 SF	\$3,500.60/Unit	\$3,500.60/Unit
Residential Property	1,900 – 2,100 SF	\$3,637.88/Unit	\$3,637.88/Unit
Residential Property	Greater than 2,100 SF	\$3,740.84/Unit	\$3,740.84/Unit
Non- Residential Property	N/A	\$27,455.71/Taxable Acre	\$0.00/Taxable Acre

<sup>(1)</sup> The Maximum Special Tax shall escalate by two percent (2%) of the amount in effect of the previous fiscal year.

<sup>(2)</sup> The Annual Special Tax shall be levied proportionately on each Assessor's Parcel of Developed Property at up to 100% of the Proposed Special Tax rate listed above. However, if additional Special Taxes are needed to satisfy the Special Tax Requirement then the levy of the Special Tax on each Assessor's Parcel of Developed Property will be levied by the greater of the Proposed Special Tax Rate listed in the table above or the Backup Special Tax Rate of \$3,684.08 per unit.

**Exhibit "B"**  
**Community Facilities District No. 2003-2**  
**The Colonies of San Antonio**  
**Improvement Area 1**  
**Special Tax Rates**  
**Fiscal Year 2020/2021**

<b>SPECIAL TAX CLASSIFICATION</b>	<b>MINIMUM LOT AREA</b>	<b>MAXIMUM SPECIAL TAX RATE <sup>(1)</sup></b>	<b>PROPOSED SPECIAL TAX RATE <sup>(2)</sup></b>
<u>Developed Property</u>			
Residential Property			
Class 1	Greater than 5,750 SF	\$5,577.62/Lot or Dwelling Unit	\$5,577.62/Lot or Dwelling Unit
Class 2	5,250 – 5,749 SF	\$4,896.72/Lot or Dwelling Unit	\$4,896.72/Lot or Dwelling Unit
Class 3	4,750 – 5,249 SF	\$4,476.65/Lot or Dwelling Unit	\$4,476.65/Lot or Dwelling Unit
Class 4	4,250 – 4,749 SF	\$3,927.53/Lot or Dwelling Unit	\$3,927.53/Lot or Dwelling Unit
Class 5	Less than 4,250 SF	\$3,651.60/Lot or Dwelling Unit	\$3,651.60/Lot or Dwelling Unit
<u>Non-Residential Property</u>			
Class 6	NA	\$21,654.32/Taxable Acre	\$0.00/Taxable Acre
<u>Approved Property</u>			
Class 7	NA	\$21,654.32/Taxable Acre	\$0.00/Taxable Acre
<u>Undeveloped Property</u>			
Class 8	NA	\$21,654.32/Taxable Acre	\$0.00/Taxable Acre

<sup>(1)</sup> The Maximum Special Tax shall escalate by two percent (2%) of the amount in effect of the previous fiscal year.

<sup>(2)</sup> If additional Special Taxes are needed to satisfy the Special Tax Requirement after the parcels are levied proportionately on each assessor's parcel of the applicable Proposed Special Rates listed in the table above, then the levy of the Special Tax on each Assessor's Parcel of Developed Property will be levied by the greater of the Proposed Special Tax Rate listed in the table above or the Backup Special Tax Rate of \$21,654.32 per acre.

**Exhibit "C"**  
**Community Facilities District No. 2003-2**  
**The Colonies of San Antonio**  
**Improvement Area 2**  
**Special Tax Rates**  
**Fiscal Year 2020/2021**

<b>SPECIAL TAX CLASSIFICATION</b>	<b>MAXIMUM SPECIAL TAX RATE <sup>(1)</sup></b>	<b>PROPOSED SPECIAL TAX RATE <sup>(2)</sup></b>
Developed Property	\$17,846.21/Taxable Acre	\$17,846.21/Taxable Acre
Approved Property	\$17,846.21/Taxable Acre	\$17,846.21/Taxable Acre
Undeveloped Property	\$17,846.21/Taxable Acre	\$17,846.21/Taxable Acre

<sup>(1)</sup> The Maximum Special Tax shall escalate by two percent (2%) of the amount in effect of the previous fiscal year.

<sup>(2)</sup> The Annual Special Tax shall be levied proportionately on each Assessor's Parcel at up to 100% of the Proposed Special Tax rate listed above first on Developed Property, second on Approved Property and third on Undeveloped Property.

**Exhibit "D"**  
**Community Facilities District No. 2015-1**  
**Sycamore Hills**  
**Improvement Area 1**  
**Special Tax Rates**  
**Fiscal Year 2020/2021**

<b>SPECIAL TAX CLASSIFICATION</b>	<b>BUILDING SQUARE FOOTAGE</b>	<b>MAXIMUM SPECIAL TAX RATE <sup>(1)</sup></b>	<b>ASSIGNED SPECIAL TAX RATE <sup>(1) (2)</sup></b>
<u><i>Developed Property</i></u>			
Residential Property			
Class 1	Greater than 2,200 SF	See footnote (1) below	\$4,701/Lot or Residential Unit
Class 2	2,001 - 2,200 SF	See footnote (1) below	\$4,495/Lot or Residential Unit
Class 3	1,801 - 2,000 SF	See footnote (1) below	\$4,309/Lot or Residential Unit
Class 4	1,601 - 1,800 SF	See footnote (1) below	\$3,916/Lot or Residential Unit
Class 5	Less than or equal to 1,600 SF	See footnote (1) below	\$3,834/Lot or Residential Unit
<u><i>Undeveloped Property</i></u>			
Class 7	NA	\$42,423/Taxable Acre	\$42,423/Taxable Acre

<sup>(1)</sup> The Maximum Special Tax shall be the greater of the Assigned Special Tax for Developed Property and the Backup Special Tax for Developed Property (Backup Special Tax is \$42,423 per Acre).

<sup>(2)</sup> The Special Tax shall be levied Proportionately on each Assessor's Parcel of Developed Property at 100% of the applicable Assigned Special Tax; If additional monies are needed to satisfy the Special Tax Requirement after Step 1 has been completed, the Special Tax shall be levied Proportionately on each Assessor's Parcel of Undeveloped Property up to 100% of the Maximum Special Tax for Undeveloped Property; Step 3: If additional monies are needed to satisfy the Special Tax Requirement after the first two steps have been completed, then the Special Tax shall be levied Proportionately on each Assessor's Parcel of Provisional Property up to 100% of the Maximum Special Tax for Provisional Property; Step 4: If additional monies are needed to satisfy the Special Tax Requirement after the first three steps have been completed, then the Special Tax amount determined in Step 1 shall be increased Proportionately on each Assessor's Parcel of Developed Property up to 100% of the Maximum Special Tax for Developed Property.

**Exhibit "E"**  
**Community Facilities District No. 2016-1**  
**Harvest at Upland**  
**Improvement Area 1**  
**Special Tax Rates**  
**Fiscal Year 2020/2021**

<b>SPECIAL TAX CLASSIFICATION</b>	<b>BUILDING SQUARE FOOTAGE</b>	<b>MAXIMUM SPECIAL TAX RATE <sup>(1)</sup></b>	<b>ASSIGNED SPECIAL TAX RATE <sup>(1) (2)</sup></b>
<i>Developed Property</i>			
Residential Property			
Class 1	Greater than 2,050 SF	See footnote (1) below	\$4,699/Lot or Residential Unit
Class 2	1,901 - 2,050 SF	See footnote (1) below	\$4,540/Lot or Residential Unit
Class 3	1,751 - 1,900 SF	See footnote (1) below	\$4,381/Lot or Residential Unit
Class 4	1,601 - 1,750 SF	See footnote (1) below	\$4,222/Lot or Residential Unit
Class 5	Less than or equal to 1,600 SF	See footnote (1) below	\$4,063/Lot or Residential Unit
<i>Undeveloped Property</i>			
Class 7	NA	\$76,457/Taxable Acre	\$0.00/Taxable Acre

(1) The Maximum Special Tax shall be the greater of the Assigned Special Tax for Developed Property and the Backup Special Tax for Developed Property (Backup Special Tax is \$76,457 per Acre).

(2) The Special Tax shall be levied Proportionately on each Assessor's Parcel of Developed Property at 100% of the applicable Assigned Special Tax; If additional monies are needed to satisfy the Special Tax Requirement after Step 1 has been completed, the Special Tax shall be levied Proportionately on each Assessor's Parcel of Undeveloped Property up to 100% of the Maximum Special Tax for Undeveloped Property; Step 3: If additional monies are needed to satisfy the Special Tax Requirement after the first two steps have been completed, then the Special Tax shall be levied Proportionately on each Assessor's Parcel of Provisional Property up to 100% of the Maximum Special Tax for Provisional Property; Step 4: If additional monies are needed to satisfy the Special Tax Requirement after the first three steps have been completed, then the Special Tax amount determined in Step 1 shall be increased Proportionately on each Assessor's Parcel of Developed Property up to 100% of the Maximum Special Tax for Developed Property.

**Exhibit "F"**  
**Community Facilities District No. 2016-2**  
**Harvest Maintenance**  
**Special Tax Rates**  
**Fiscal Year 2020/2021**

<b>SPECIAL TAX CLASSIFICATION</b>	<b>ORIGINAL NUMBER OF PLANNED RESIDENTIAL UNITS</b>	<b>MAXIMUM SPECIAL TAX RATE <sup>(1)</sup></b>	<b>PROPOSED SPECIAL TAX RATE <sup>(2)</sup></b>
Residential Property	318	\$327.81 per Residential Unit	\$327.81 per Residential Unit

<sup>(1)</sup> The Maximum Special Tax shall escalate by the Consumer Price Index (All Items) in Riverside-San Bernardino-Ontario, CA, not to exceed 3%. The Consumer Price Index for this year is 3.03%; therefore the inflator for this year shall be 3%.

<sup>(2)</sup> The Annual Special Tax shall be levied proportionately on each Assessor's Parcel at up to 100% of the Proposed Special Tax rate listed above on Developed Property.

**Exhibit "G"**  
**Community Facilities District No. 2017-1**  
**Maintenance Services**  
**Special Tax Rates**  
**Fiscal Year 2020/2021**

<b>SPECIAL TAX CLASSIFICATION</b>	<b>TRACT</b>	<b>LAND USE CATEGORY</b>	<b>MAXIMUM SPECIAL TAX <sup>(1)</sup></b>	<b>ASSIGNED SPECIAL TAX <sup>(2)</sup></b>
<i>Developed Property</i>				
Tax Zone 1- Tax A Rates	TTM 18707 & TTM 20045	Single Family Residential Property	\$29.72/Residential Unit	\$29.72/Residential Unit
Tax Zone 1- Tax B (Contingent) Rates	TTM 18707 & TTM 20045	Single Family Residential Property	\$0/Residential Unit	\$0/Residential Unit
<i>Approved Property</i>				
Tax Zone 1- Tax A Rates	TTM 18707 & TTM 20045	Single Family Residential Property	\$29.72/Residential Unit	\$29.72/Residential Unit
Tax Zone 1- Tax B (Contingent) Rates	TTM 18707 & TTM 20045	Single Family Residential Property	\$0/Residential Unit	\$0/Residential Unit
<i>Undeveloped Property</i>				
Tax Zone 1- Tax A Rates	TTM 18707 & TTM 20045		\$832.39/Acre	\$832.39/Acre
Tax Zone 1- Tax B (Contingent) Rates	TTM 18707 & TTM 20045		\$0/Acre	\$0/Acre

(1) The Maximum Special Tax shall escalate by the percentage increase in the Consumer Price Index (All Items) for the Riverside-San Bernardino-Ontario, CA, or by 2%, whichever is greater.

(2) The Special Tax shall be levied Proportionately on all Assessor's Parcels of Developed Property up to 100% of the applicable Maximum Special Tax A to satisfy the Special Tax Requirement; and If additional moneys are needed to satisfy the Special Tax Requirement after the first step has been completed, the Special Tax shall be levied Proportionately on each Parcel of Approved Property at up to 100% of the Maximum Special Tax for Approved Property; and if additional monies are needed to satisfy the Special Tax Requirement after the first two steps have been completed, the Special Tax shall be levied Proportionately on all Assessor's Parcels of Undeveloped Property up to 100% of the Maximum Special Tax for Undeveloped Property.



## STAFF REPORT

**ITEM NO. 11.F.**

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**DATE:** July 27, 2020  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, CITY MANAGER  
**PREPARED BY:** ROSEMARY HOERNING, CITY MANAGER  
STEVEN L. FLOWER, INTERIM CITY ATTORNEY  
**SUBJECT:** SAN ANTONIO REGIONAL HOSPITAL AGREEMENTS: AMENDMENT TO PURCHASE AND SALE AGREEMENT, ADDENDUM TO REIMBURSEMENT AGREEMENT (MEMORIAL PARK, 1299 SAN BERNARDINO ROAD, A PORTION OF ASSESSORS PARCEL NUMBER 1046-183-01)

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### RECOMMENDED ACTION

It is recommended that the City Council consider approval of: (1) an Amendment to the Purchase and Sale Agreement with San Antonio Regional Hospital (SARH) regarding a 4.63-acre portion of Memorial Park, 1299 San Bernardino Road (portion of APN 1046-183-01); and (2) an Addendum to the Reimbursement Agreement with SARH related to SARH's request that the City hold an election on the question of discontinuing use of that property for park purposes.

Approval would not commit the City to holding the election; but it will allow the City to recover costs related to the sale and the election in the event the City Council decides to hold the election.

### GOAL STATEMENT

The proposed action supports the City Council's goal of ensuring cost recovery is obtained for work performed.

### BACKGROUND

On March 26, 2018, the SARH entered into a Purchase and Sale Agreement (Purchase Agreement) to acquire 4.63 acres of Memorial Park. At that time and since, some members of the public have maintained that the City's voters must be given the opportunity decide whether the City should go through with the sale.

Pursuant to the Purchase Agreement, the City filed a validation action to confirm that an election is not required. A validation action is a legal proceeding that a public entity may initiate to confirm the legal validity of certain actions. In this case, however, the court dismissed the City's case on the grounds that the contract was not subject to the validation statutes. So the court never settled the question of whether an election is required. Even though the court never decided that an election is required, SARH has concluded for its own reasons that an election is the best way forward and is requesting that the City place a measure on the ballot at the November 3, 2020 election. SARH also agreed to reimburse the City for the cost of the election.

On June 22, 2020, the City Council approved the Reimbursement Agreement with SARH. Pursuant to the Reimbursement Agreement, if the City Council calls the election, SARH will reimburse the City for its costs and indemnify the City in the event of any legal challenge to the election.

On that same date, the City Council took the first step toward holding an election when it adopted Resolution No. 6551, which declared the City Council's intent to call a special election and setting a public hearing for July 27, 2020 to consider any public protests. However, the City Council also requested that SARH: (1) further reimburse the City for costs related to the Purchase and Sale Agreement and the validation action; (2) make the payments owed to the City per a license agreement for temporary parking, which had been suspended by the Purchase and Sale Agreement; (3) amend the purchase price for the property if a reappraisal based on a proposed Office Professional zoning designation resulted in a higher price; and (4) reimburse the City for the cost of any reappraisal.

Based on this direction, the Interim City Attorney has prepared an Addendum to the Reimbursement Agreement and an Amendment to the Purchase and Sale Agreement. The City also obtained a new appraisal of the property based on the proposed Office Professional (OP) zoning designation. The appraisal determined that the fair market value of the property if zoned for OP use would be \$4,300,000, which is \$100,00 more than the current purchase price.

## **ISSUES/ANALYSIS**

### Addendum to the Reimbursement Agreement

The Addendum would only go into effect if the City Council calls the election. The Addendum would add new terms to the Reimbursement Agreement that the City Council approved on June 22. In addition to all of the reimbursement terms in the original agreement, the Addendum would require SARH to reimburse the City for all costs related to both the Purchase & Sale Agreement and the validation action, up to a maximum of \$130,000. Staff's preliminary estimate of the additional costs to date that would be eligible for reimbursement under the Addendum is \$115,970.

### Amendment to the Purchase and Sale Agreement

Like the Addendum, the Amendment would only go into effect if the City Council calls the election. If that happens, the Amendment would both add to and modify the terms of the Purchase agreement. It would increase the purchase price by \$100,000 per the new appraisal and also allow for the price to go higher in the event a later reappraisal establishes a higher fair market value. SARH would be required to pay for the cost of the new appraisal and any future appraisals. SARH's monthly payments per the license agreement for temporary parking would be reinstated (\$10,609/month plus a 3% annual escalator), and SARH would pay the City \$126,690 before August 27, 2020, which represents the payment of license fees that have been suspended under the Purchase and Sale Agreement. The license agreement would terminate at closing, and SARH would have an option to extend it through April 21, 2022 if

necessary to accommodate closing. The closing date would also be revised to account for the election and any legal challenge to the election.

**FISCAL IMPACTS**

Approval of the Addendum and the Amendment would have a positive financial impact by allowing the City to recover costs previously incurred, recover costs that it would incur if the City Council calls the election, recover license payments that were suspended, reinstate future license payments, and increasing the purchase price of the property in the event it is sold to SARH.

**ALTERNATIVES**

Provide alternative direction to staff.

**ATTACHMENTS:**

- Addendum No. 1 - Reimbursement Agreement**
- Reimbursement Agreement**
- First Amendment - Purchase & Sale Agreement**
- Purchase and Sale Agreement**
- Temp Parking License Agreement**
- COREL Program Application**

**ADDENDUM NO. 1  
REIMBURSEMENT AGREEMENT  
BETWEEN  
THE CITY OF UPLAND  
AND  
SAN ANTONIO REGIONAL HOSPITAL**

This Addendum No. 1 to Reimbursement Agreement (“Addendum”) is dated as of July 27, 2020 and amends that certain Reimbursement Agreement dated June 22, 2020 (“Reimbursement Agreement”), by and between the City of Upland, a California municipal corporation (“City”) San Antonio Regional Hospital, a California public benefit corporation (“Hospital”). Terms defined in the Reimbursement Agreement shall have the same meaning in this Addendum.

**RECITALS**

- A. City and Hospital are parties to the Reimbursement Agreement by which Hospital has agreed to reimburse City for all costs and expenses actually incurred by the City in the calling or conducting of the Election.
- B. On June 22, 2020, the City Council adopted Resolution No. 6551 declaring that the public interest or convenience requires the discontinuance of the use of the Property as a public park, declaring the City Council’s intent to call a special election to submit the question of discontinuance to the City’s electors, and setting a public hearing for July 27, 2020 to consider any protests from the public.
- C. City and Hospital mutually desire to amend the Reimbursement Agreement by adding thereto the terms and conditions stated below.

**ADDENDUM**

NOW, THEREFORE, in consideration of performance by the parties of the promises, covenants, and conditions herein contained, the parties agree as follows:

- 1. Recitals. The parties agree that the preceding recitals are true and correct.
- 2. Additional Terms and Conditions. Except for the addition of the new terms and conditions set forth in the following Section 3 of this Addendum, all terms and conditions of the Reimbursement Agreement shall remain unchanged and in full effect.
- 3. Reimbursement for Purchase Agreement and Judicial Validation Action Costs. If the Upland City Council, in its sole and absolute discretion, calls the Election, Hospital further agrees to reimburse City in full for all of City’s costs, fees and expenses incurred in connection with the Purchase Agreement and Judicial Validation Action up to an amount not to exceed \$130,000; which shall include

but not necessarily be limited to City staff costs, City's attorneys' fees, fees and costs for any consultants retained by the City in connection with the Purchase Agreement, Judicial Validation Action, or both and any fees and costs incurred by such consultants in connection with the Purchase Agreement, Judicial Validation Action, or both. Hospital acknowledges and agrees that Hospital's duty to reimburse City is not contingent upon any particular outcome in the Validation Action, the voters' approval in the Election of the proposed discontinuance of the use of the Property or any statements during the Election of any individual in support or opposition to the proposed transfer of the Property.

- A. Payment and Accounting. Hospital shall reimburse City within 30 days of receiving an accounting from the City of City's actual costs, fees and expenses incurred in connection with the Purchase Agreement and Validation Action as of the date of the accounting. Hospital acknowledges that City's first accounting may include all such costs, fees, and expenses incurred to date. City shall provide subsequent accounts on a monthly basis. In the event Hospital fails to reimburse any amount within the required 30 days, City may in its sole discretion deduct such amounts from the deposit Hospital as required to maintain under Section 3 of the Reimbursement Agreement. Any such deduction shall not relieve or diminish Hospital's minimum deposit obligation.
  - B. Control of Validation Action. City reserves all authority and discretion to establish the objectives of and control the direction of City's participation the Validation Action, and Hospital acknowledges and agrees that all decisions regarding the City's participation in the Validation Action shall remain solely within the discretion of the Upland City Council, and that nothing in the Reimbursement Agreement, this Addendum, or the Purchase Agreement shall be construed as requiring the City to take any particular action or position in the Validation Action. Hospital further acknowledges and agrees City shall have sole discretion to select which of its employees, attorneys, and consultants are assigned to work on the Validation Action, to determine what work is necessary for the Validation Action; to direct the work and evaluate the performance of attorneys, employees, and consultants assigned to work on the Validation Action, to terminate or replace at any time any such person, and to determine the amount of compensation paid to attorneys, employees, or consultants assigned to work on the Validation Action. City, not Hospital, shall pay attorneys, employees, and consultants assigned to work on the Validation Action from a City account."
4. Corporate Authority. Each person executing this Addendum on behalf of Hospital warrants that he or she is duly authorized to execute this Addendum on behalf of Hospital and that by his or her execution, Hospital is formally bound to the provisions of this Addendum.

IN WITNESS WHEREOF, the Parties hereto, through their respective authorized representatives have executed this Addendum as of the date above.

CITY OF UPLAND

SAN ANTONIO REGIONAL HOSPITAL

By: \_\_\_\_\_  
Debbie Stone  
Mayor

By: \_\_\_\_\_  
Name John Chapman  
Title President & CEO

ATTEST:  
  
\_\_\_\_\_  
Keri Johnson  
City Clerk

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
Steven L. Flower  
Interim City Attorney

**REIMBURSEMENT AGREEMENT  
BETWEEN  
THE CITY OF UPLAND  
AND  
SAN ANTONIO REGIONAL HOSPITAL**

This Reimbursement Agreement (“Reimbursement Agreement”) is made as of June 22, 2020, by and between the City of Upland, a California municipal corporation (“City”) San Antonio Regional Hospital, a California public benefit corporation (“Hospital”).

**RECITALS**

- A. City and Hospital are parties to that certain Agreement for Purchase and Sale and Joint Escrow Instructions dated March 26, 2018 (“Purchase Agreement”), by which City agreed to sell and Hospital agreed to buy certain real property described and defined as the “Property” in the Purchase Agreement. Terms defined in the Purchase Agreement shall have the same meaning in this Reimbursement Agreement.
- B. Among the conditions precedent to Hospital’s obligation to proceed to Closing, was the completion of a Judicial Validation Action to establish the validity of the transfer of park property contemplated in the Purchase Agreement, and to validate the transfer of the Property without the necessity of conducting an election to approve the transaction. City filed the Judicial Validation Action in the Superior Court of the State of California for the County of San Bernardino. On May 29, 2019, a judgement was entered in that case dismissing City’s complaint.
- C. On June 16, 2020, Hospital submitted a request for the City Council to call a special election pursuant to Government Code §§ 3844–38462 (the “Election”) to submit to the City electors the question of discontinuing use of the Property so it may be sold to Hospital pursuant to the Purchase Agreement.
- D. The parties agree and acknowledge that calling the Election, and any potential legal challenge to or related to the Election, would cause the City to incur costs not contemplated by the Purchase Agreement.
- E. Hospital agrees it will reimburse the City in full for all costs and expenses actually incurred by the City in the calling or conducting of the Election
- F. City and Hospital desire to enter into this Reimbursement Agreement so that the City will not incur any costs or expenses as a result of the Election.

**AGREEMENT**

NOW, THEREFORE, in consideration of performance by the parties of the promises, covenants, and conditions herein contained, the parties agree as follows:

- 1. Recitals. The parties agree that the preceding recitals are true and correct.

2. Reservation of Authority. City reserves all legislative and governmental authority, and Hospital acknowledges and agrees that the decision whether to call the Election or change the Zoning of the Property shall remain solely within the discretion of the Upland City Council, and that nothing in this Reimbursement Agreement or the Purchase Agreement shall be construed as requiring the City to call the Election or to take any other action to approve the Zone Change. Hospital further acknowledges and agrees City shall have sole discretion to select which of its employees and contractors are assigned to work on the Election, to determine what work is necessary for the Election; to direct the work and evaluate the performance of the employees and contractors assigned to work on the Election, to terminate or replace at any time any such person, and to determine the amount of compensation paid to employees or contractors assigned to work on the Election. City, not Hospital, shall pay employees and contractors assigned to work on the Election from a City account.
  
3. Reimbursement of Election Costs. Hospital agrees to reimburse City in full for all costs, fees and expenses incurred in connection with calling the Election; including but not necessarily limited to City staff costs, City's costs for attorneys' fees to review, evaluate, process, and perform research in connection with the Election and preparation or review of this Reimbursement Agreement, fees and costs for any consultants retained by the City in connection with the Election, and any fees and costs incurred by such consultants in connection with the Election. Hospital acknowledges and agrees that Hospital's duty to reimburse City is not contingent upon voters' approval in the Election of the proposed discontinuance of the use of the Property or the statements during the Election of any individual in support or opposition to the proposed transfer of the Property.
  - A. Deposit. Upon execution of this Agreement, Hospital shall deposit with City the sum of \$100,000 ("Initial Deposit"), which deposit represents City's preliminary estimate of Hospital's ultimate obligation hereunder. The Initial Deposit may be commingled with other funds of the City for the purposes of investment and safekeeping, but the City shall at all times maintain records as to the expenditure of the deposit. City shall deduct from such deposit, until the deposit is exhausted, all reimbursable costs.
  
  - B. Monthly Accounting. City shall monthly send to Hospital an accounting of amounts used over the preceding month. Hospital shall replenish the Initial Deposit when a minimum balance of \$50,000 is reached. In the event City subsequently determines that the Initial Deposit is insufficient to cover anticipated billings for any reimbursable costs, Hospital shall provide an additional deposit in the amount specified by the City ("Supplemental Deposit") within ten (10) days of receipt of City's written request. Any request for a Supplemental Deposit shall include a description of the work completed to date and the anticipated work remaining to be performed. Hospital agrees that the City's work on the Election shall be immediately suspended if at any time Hospital fails to make a Supplemental Deposit as directed by the City Manager.

- C. Deposit Refund. City shall refund to Hospital any amount of Hospital's deposits that remain unexpended after the date for any legal challenge to the Election or the results thereof has passed.
4. Notice. All notices permitted or required under this Reimbursement Agreement shall be deemed made when personally delivered or when mailed 48 hours after deposit in the United States Mail, first class postage prepaid and addressed to the party at the following addresses:

City: City of Upland  
4460 N. Euclid Avenue  
Upland, California 91786  
Attention: City Manager

Hospital: San Antonio Regional Hospital  
999 San Bernardino Road  
Upland California 91786  
Attention: Chief Executive Officer

Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

5. Indemnification, Hold Harmless, and Duty to Defend. In the event of any legal action challenging the validity, applicability, or interpretation of any provision of this Reimbursement Agreement, the Election, the results of the Election, or any action or alleged action of Indemnitees related to the Election, Hospital must indemnify, defend and hold harmless the Indemnitees, and each of them to the maximum extent permitted by law, with respect to all liability, costs, and expenses incurred by, and/or awarded against, City or any of the Indemnitees in relation to such action. If the Upland City Council, in its sole and absolute discretion, calls the Election, Hospital further agrees to indemnify Indemnitees with respect to any award of attorneys' fees in the Judicial Validation Action in an amount not to exceed \$125,000. City shall have the right to select counsel of its choice as to all claims and actions covered by this Section 5. The parties hereby agree to cooperate in defending any such action. In the event of any litigation challenging the effectiveness of this Reimbursement Agreement, or any portion hereof, this Reimbursement Agreement shall remain in full force and effect while such litigation, including any appellate review, is pending, unless otherwise ordered by a court of competent jurisdiction. This Section 5 shall survive the expiration or earlier termination of this Agreement.
6. Entire Agreement. This Reimbursement Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings, or agreements, and may only be modified by a writing signed by both parties.

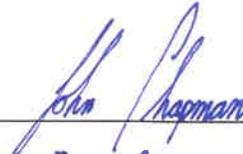
7. Severability. The invalidity in whole or in part of any provisions of this Reimbursement Agreement shall not void or affect the validity of the other provisions of this Agreement.
8. Venue; Interpretation; Governing Law. The venue for any litigation shall be San Bernardino County. In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of this Reimbursement Agreement shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the drafting party. This Reimbursement Agreement shall be governed by and interpreted under the laws of the State of California.
9. No Third Party Rights. No third party shall be deemed to have any rights hereunder against either party as a result of this Reimbursement Agreement .
10. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.
11. Headings. Headings used in this Reimbursement Agreement are for reference purposes only and shall not be deemed a part of this Agreement.
12. Prohibited Interests; Conflict of Interest. Hospital warrants and maintains that it has no knowledge that any officer or employee of City involved in making this Reimbursement Agreement or calling the Election has or any interest, whether contractual, noncontractual, financial, proprietary, or otherwise, in the business of Hospital, and that if any such interest comes to the knowledge of Hospital at any time during the term of this Reimbursement Agreement, Hospital shall immediately make a complete, written disclosure of such interest to City, even if such interest would not be deemed a prohibited "conflict of interest" under applicable laws.
13. Attorneys' Fees. If either party commences any legal, administrative, or other action against the other party arising out of or in connection with this Reimbursement Agreement, the prevailing party in such action shall be entitled to have and recover from the losing party all of its attorneys' fees and other costs incurred in connection therewith.
14. Corporate Authority. Each person executing this Reimbursement Agreement on behalf of Hospital warrants that he or she is duly authorized to execute this Reimbursement Agreement on behalf of Hospital and that by his or her execution, Hospital is formally bound to the provisions of this Reimbursement Agreement.

IN WITNESS WHEREOF, the Parties hereto, through their respective authorized representatives have executed this Agreement as of the Effective Date.

CITY OF UPLAND

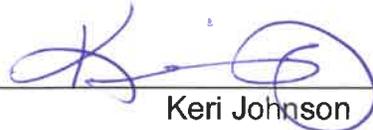
SAN ANTONIO REGIONAL HOSPITAL

By:   
Debbie Stone  
Mayor

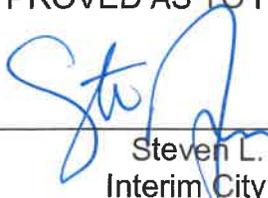
By:   
Name John Chapman  
Title President & CEO

ATTEST:

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

  
Keri Johnson  
City Clerk

APPROVED AS TO FORM:

  
Steven L. Flower  
Interim City Attorney

**FIRST AMENDMENT TO  
AGREEMENT FOR PURCHASE AND SALE AND JOINT ESCROW  
INSTRUCTIONS**

THIS FIRST AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS (the "Amendment") is dated as of July 27, 2020 and is entered into by and between the CITY OF UPLAND ("Seller") and SAN ANTONIO REGIONAL HOSPITAL, a California public benefit corporation ("Buyer").

**RECITALS**

A. Seller and Buyer entered into an Agreement for Purchase and Sale and Joint Escrow Instructions dated March 26, 2018 (the "PSA"). Capitalized terms used but not defined in this Amendment shall have the meanings ascribed thereto in the PSA.

B. Seller and Buyer desire to amend the PSA to modify the purchase price and other terms thereunder.

NOW, THEREFORE, in consideration of the foregoing recitals, the payment under Section 1(ii) below by Buyer to Seller, and other consideration, the adequacy of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. Conditions Precedent. The effectiveness of this Amendment is conditioned upon (i) the City Council of Seller acting, in its sole and absolute discretion, on July 27, 2020 to call an election on the question of discontinuing use of the Property as a public park and (ii) the People of the City of Upland voting in the affirmative in a public election to take place on November 3, 2020, to allow the City Council to sell the Property according to the terms stated in the PSA.

2. PSA Modifications.

a. The definition of "Closing Date" in Section 1.1 of the PSA is hereby replaced with: "The Closing Date shall be the later of (i) Ninety (90) days after satisfaction of all closing conditions as set forth in Section 9 below, including the expiration of any applicable appeal period and statute of limitations periods with no appeal or lawsuit having been filed, or, if an appeal or lawsuit has been filed, sixty (60) days after such challenge is resolved to Buyer's satisfaction, or (ii) November 30, 2021."

b. The definition of "Purchase Price" in Section 1.1 of the PSA is hereby replaced with: "\$4,300,000, or if the Closing does not occur by the date that is six (6) months after the date of the New Appraisal, then the greater of \$4,300,000 or the fair market value shown on a further appraisal update obtained at Buyer's cost, it being the intent of the parties that the Purchase Price shall be no less than the fair market value of the Property determined based on OP zoning and an appraisal or appraisal update that is not more than six (6) months old as of the Closing."

c. Buyer shall reimburse Seller for the cost of the New Appraisal and all appraisals and/or appraisal updates, as applicable, within ten (10) days after written demand from Seller with evidence of the cost.

d. Section 8(b) of the PSA is hereby replaced with: “The parties recognize that by authority of the Seller Buyer currently maintains a license to use the subject property for parking purposes (the “License”). It is agreed by and between Buyer and Seller that the License shall terminate upon Closing. In the event a Closing hereunder does not take place before the expiration of the License, Seller shall have the option to extend the License for twelve (12) additional periods of one month each provided the consideration Buyer pays to Seller for the License shall increase by 3% on the anniversary of the Effective Date of the License.” It is agreed by and between Buyer and Seller that the consideration Buyer pays to Seller for the License as of the date of this Amendment is \$10,609 per month.

e. Section 9(c) is hereby deleted.

3. Buyer’s Payment. Buyer will pay Seller \$126,690 before August 27, 2020, which amount represents backpayment of consideration payments previously suspended by the PSA.

4. General Provisions.

a. Entire Agreement. This Amendment constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings of the parties with respect to the subject matter hereof. This Amendment may not be modified, amended, supplemented, or otherwise changed, except by a writing executed by both parties hereto.

b. Waiver. No failure or delay by any party in the exercise of any right hereunder shall constitute a waiver thereof, nor shall any single or partial exercise of any such right preclude other or further exercise thereof, or any other right.

c. Counterparts. This Amendment may be executed in two or more counterparts and by different parties hereto on separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

d. Governing Law. This Amendment shall be deemed to be a contract made under the laws of the State of California and for all purposes shall be governed by and construed in accordance with the laws of the State of California.

e. Attorneys’ Fees and Costs. If a dispute arises under or in connection with this Amendment (including, without limitation, the enforcement or interpretation of this Amendment), the prevailing party (as determined by the trier of fact) shall be entitled to recover its reasonable attorneys’ fees and costs from the other party.

IN WITNESS WHEREOF, Buyer and Seller have entered into this agreement as of the day and year first above written.

**“SELLER”:**  
CITY OF UPLAND

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

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven L. Flower  
Interim City Attorney

**“BUYER”:**  
SAN ANTONIO REGIONAL HOSPITAL

By: John Chapman

Print: John Chapman

Title: President & CEO

**AGREEMENT FOR PURCHASE AND  
SALE AND JOINT ESCROW INSTRUCTIONS**

THIS AGREEMENT FOR PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS is made and entered into as of the 26 day of March, 2018 (the "Contract Date"), by and between the CITY OF UPLAND, a California municipal corporation (hereinafter referred to as "Seller"), and SAN ANTONIO REGIONAL HOSPITAL, a California public benefit corporation, or its permitted assignee (hereinafter referred to as "Buyer").

**WITNESSETH THAT:**

WHEREAS, Buyer wishes to purchase, and Seller wishes to sell, the Property (as hereinafter defined), but only upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of \$75,000.00, the Earnest Money, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

Section 1. Definitions and Exhibits.

1.1 Definitions. For purposes of this Agreement, each of the following terms, when used herein with an initial capital letter, shall have the meaning ascribed to it as follows:

Agreement. This Agreement for Purchase and Sale.

Broker. None.

California Environmental Quality Act ("CEQA"). Section 21000 et seq. of the California Public Resources Code and the CEQA Guidelines, 14 California Code of Regulations Sections 15000 et seq.

Closing. The closing and consummation of the purchase and sale of the Property pursuant hereto.

Closing Date. Ninety (90) days after satisfaction of all closing conditions as set forth in Section 9 below, but no later than December 1, 2018, or such other date as agreed between the Seller and Buyer, provided all closing conditions have been met.

Closing Statement. As defined in Section 10.2.5.

Contract Date. The date upon which this Agreement shall be deemed effective, which shall be the date first above written.

Deed. The Grant Deed to be executed by Seller substantially in the form attached hereto as Exhibit B.

Earnest Money. \$75,000.00.



Easement. A public parking easement from Buyer to Seller in the form attached hereto as Exhibit "C".

Escrow Agent. Fidelity Title Insurance Company is acting as Escrow Agent pursuant to the terms and conditions of Section 3 hereof.

Foreseeable Project. Future development of the Property consistent with the OP Zoning designation. All future development of the Property shall be subject to the issuance of all governmental approvals and permits and compliance with CEQA.

Improvements. Any buildings, structures and improvements located upon the Land, including Seller's interest in all systems, facilities, fixtures, machinery, equipment and conduits on the Land, including to provide fire protection, security, heat, exhaust, ventilation, air conditioning, electrical power, light, plumbing, refrigeration, gas, sewer and water thereto (including all replacements or additions thereto between the date hereof and the Closing Date).

Inspection Date. All inspections and studies have been performed and completed prior to the Inspection Date which date shall be the 90th day following the Contract Date.

Inspection Period. Defined in Section 6.1 below.

Land. The land described on Exhibit "A" and by this reference made a part hereof and all privileges, rights, easements, hereditaments and appurtenances thereto belonging.

Lease. The cell site lease described in Section 2.

Permitted Title Exceptions. (i) The lien of unpaid taxes and assessments not yet due and payable; (ii) matters which would be disclosed by a current, accurate survey of the Property (provided, however, this shall not affect Buyer's rights pursuant to Section 5 of this Agreement); and (iii) those matters disclosed on the Preliminary Title Report or Survey to which Buyer does not object, or which objection(s) Buyer waives, pursuant to Section 5 of this Agreement.

Personal Property. None.

Property. All of Seller's right, title and interest in, to and under the following property: (i) the Land, as shown or described on Exhibit "A" attached hereto; (ii) the Improvements if any; (iii) the Lease; and (iv) all rights of way or use, trade names and marks, tenements, hereditaments, appurtenances and easements now or hereafter belonging or pertaining to any of the foregoing.

Purchase Price. \$4,200,000.

Survey. An ALTA/ACSM survey of the Land and Improvements revising the survey provided by Seller during the Inspection Period and obtained by Buyer at its cost and at its election.

Tenant. TMO CA/NV LLC, formerly known as Pacific Wireless, LLC.

Title Commitment. Commitment(s) issued by Title Insurer for an owner's policy of a title insurance (in the form most recently adopted by ALTA) in the amount of the Purchase Price, covering title to the Property, and showing Seller as owner of the Property.

Title Insurer. Fidelity National Title Insurance Company, Attention: Missy Barth, 555 S. Flower Street, Suite 4420, Los Angeles, California 90071, telephone (213) 700-2076.

Judicial Validation Action. An in rem suit filed and processing to finality pursuant to California Code of Civil Procedure Sections 860 et. seq. to establish the validity of the transfer of park property contemplated in this Agreement and, specifically, to validate the transfer of the Property without the necessity of conducting an election to approve the transaction.

Vendor or Vendors. None.

Zoning. Appropriate zoning designation for the Foreseeable Project.

1.2 Exhibits. Attached hereto and forming an integral part of this Agreement are the following exhibits, all of which are incorporated into this Agreement as fully as if the contents thereof were set out in full herein at each point of reference thereto:

Exhibit "A" - Description of Land

Exhibit "B" - Form of Grant Deed

Exhibit "C" - Form of Public Parking Easement

Exhibit "D" - Non-Foreign Certificate

Section 2. Purchase and Sale.

Subject to and in accordance with the terms and provisions of this Agreement, Seller agrees to sell and Buyer agrees to purchase the Property. In connection therewith, Seller represents that it has no actual knowledge of any unrecorded agreements affecting the Property that purport and bind successor owners of the Property, except for that certain Lease dated in July, 2003 between City, as landlord, and Pacific Bell Wireless, LLC, as tenant, as amended by an "Amendment to Lease - Amendment No. 1" dated December 22, 2008 and a Second Amendment to Lease dated in November, 2008 ("Lease"), which lease shall be subject to Buyer's prior review and approval during the Inspection Period.

Section 3. Earnest Money.

3.1 Opening of Escrow/Earnest Money. Within two (2) business days following the end of the Inspection Period, Buyer and Seller shall open escrow with the Escrow Agent and deliver a copy of this executed Agreement and the Lease to Escrow Agent ("Lease"), and Buyer shall then promptly deposit with Escrow Agent the Earnest Money which, together with any interest or other income earned thereon, shall be held, invested and disbursed pursuant to the respective terms and provisions hereof.

3.2 INTENTIONALLY OMITTED.



3.3 Disbursement. Whenever the Earnest Money is by the terms hereof to be disbursed by Escrow Agent, Seller and Buyer agree promptly to execute and deliver such notice or notices as shall be necessary or, in the opinion of Escrow Agent, appropriate to authorize Escrow Agent to make such disbursement; provided, however, that the terms of this Agreement will supersede and control.

Section 4. Purchase Price; Commitment to Park.

4.1 Purchase Price to Be Used by Seller for Park. The Purchase Price, as adjusted by the prorations provided in Section 4.2 hereof, and as reduced by the Earnest Money, shall be paid by Buyer to Seller at the Closing through escrow in United States dollars, by Federal Reserve System wire transfer or other immediately available funds. Such net Purchase Price funds shall be used by Seller solely for making public improvements to the City park adjacent to the Property.

4.2 Prorations. Buyer and Seller will prorate all income and expenses, if any, relating to the Property based upon Buyer's and Seller's respective periods of ownership for the calendar year in which the Closing occurs with Buyer treated as the owner of the Property on the Closing Date, including, without limitation:

4.2.1 Real Estate Taxes and Assessments. Assessments, if any, will be prorated between Buyer and Seller as of the Closing Date. Seller is exempt from property taxes; consequently, Seller shall not be obligated to pay any property taxes and the purchase price shall not be decreased by the amount of any property taxes.

(i) Delinquent Assessments. Seller shall pay to the applicable tax authorities at or prior to the Closing all assessments with respect to the Property which are delinquent as of the Closing.

(ii) Prepaid Assessments. If any assessments paid by Seller with respect to the Property at or prior to the Closing, determined on a cash (rather than accrual) basis, relate to any time including or after the Closing, Buyer shall pay to Seller at the Closing the amount of such other assessments paid prorated for the number of days, from, including and after the Closing; provided, any such assessments are disclosed by Seller to Buyer prior to the Inspection Date.

4.2.2 Rents. Rents and other charges, rights and obligations under the Lease shall be prorated as of the Closing Date.

4.2.3 Utilities. Prior to the Closing, Seller will notify each of the utility companies which provide services to the Property of the scheduled transfer of the Property on the Closing, and shall make appropriate arrangements with the utility companies to bill Seller for services provided before the Closing, and to Buyer for services provided from and after the Closing. If such arrangements cannot, or are not, made as of the Closing, then Buyer shall make the appropriate arrangements promptly after the Closing, and promptly after such arrangements are made, Buyer shall pay to Seller an amount equal to the cost of the services that were billed to Seller for the period from and after Closing, and Seller shall pay the same to the appropriate utility company.

4.2.4 Closing Costs. Buyer shall pay the cost of any endorsements to the title insurance policy, the cost for extended coverage, the cost of any lender's policy of title insurance, one-half (1/2) of all escrow or closing agent charges by the Escrow Agent, all costs associated with any encumbrance Buyer places on the Property at Closing, all costs of Buyer's due diligence, the costs of the Survey if any, and any other costs which are customarily paid by buyers in the county where the Property is located. Seller shall pay for state and county transfer taxes, all costs for recording the Deed, including, if applicable, the Affordable Housing Fees imposed by the laws of the State of California and collected by the County Recorder's Office, one-half (1/2) of all escrow or closing agent charges, and the cost of an owner's policy of title insurance for the Property in the form most recently adopted by ALTA in the amount of the Purchase Price (excluding any endorsements thereto or for extended coverage). Each party shall pay its own attorneys. The obligations of the parties to pay applicable escrow or closing charges shall survive the termination of this Agreement.

Section 5. Title. Buyer will have until 5:00 p.m. (Pacific time) on the date that is twenty (20) business days after Seller causes the Title Commitment together with copies of or hyperlinks for all recorded documents to be delivered to Buyer (which will occur within the first month of the Inspection Period), to examine title to the Property, determine whether Buyer will be able to obtain any endorsements it desires, and give written notice to Seller of any objections to the title which Buyer may have. If Buyer fails to give any notice to Seller by such date, Buyer shall be deemed to have approved the title exceptions or defects. If Buyer does give Seller timely notice of objection to any title exceptions or defects and such objection is not reasonably cured or satisfied or undertaken to be reasonably cured or satisfied by Seller within fifteen (15) business days of receiving Buyer's objection, then Buyer may elect, by written notice to Seller within five (5) business days after Seller so responds to such objections, either to (a) terminate this Agreement, in which case the Earnest Money shall be returned to Buyer by Escrow Agent, and the parties shall have no further rights or obligations hereunder, except for those which expressly survive any such termination, or (b) waive its objections hereunder and proceed with the transaction pursuant to the remaining terms and conditions of this Agreement. If Buyer fails to so give Seller notice of its election, it shall be deemed to have elected the option contained in subpart (a) above. If Seller does so reasonably cure or satisfy, or undertake to reasonably cure or satisfy, such objection to the satisfaction of Buyer, then this Agreement shall continue in full force and effect. Buyer shall have the right at any time to waive any objections that it may have made and, thereby, to preserve this Agreement in full force and effect. Seller shall convey fee simple title to the Property to Buyer by the Deed, which will contain the description of the Property in the form originally conveyed to Seller, subject to the Permitted Title Exceptions. BUYER HAS BEEN ADVISED THAT THE SELLER IS EXEMPT FROM THE MAP ACT. SELLER MUST CREATE A SEPARATE LEGAL LOT FOR THE PROPERTY SOLD HEREUNDER REQUIRING THE SELLER TO FILE A COMPLIANCE CERTIFICATE TO ACCOMPLISH THAT FACT.

Section 6. Buyer's Inspection.

6.1 Physical Inspection. From and after the Contract Date, Buyer shall be entitled to ninety (90) day inspection period ("Inspection Period"). During the Inspection Period, Buyer shall have the right to inspect and investigate all aspects of the Property, including obtaining an updated ALTA Survey (if desired) the review and approval of all existing reports or results of investigations performed by or at the direction of Seller and in the possession of the Seller; title and survey review and approval (and Buyer shall have the right to object to title issues raised by the Survey during the Inspection Period); all other matters deemed necessary in good faith by Buyer in satisfaction of its due diligence efforts. In the event that Buyer determines, in its sole discretion, that the Property is not suitable for Buyer's intended use thereof, then Buyer may terminate this Agreement by delivery of written notice thereof to Seller on or before the expiration of the Inspection Period. Thereupon the Deposit shall be returned to Buyer and the parties shall have no further rights or obligations hereunder.

Section 7. Representations and Warranties.

7.1 Representations. As of the Contract Date, Seller hereby represents and warrants to Buyer that the following statements are true:

7.1.1 No Litigation. Seller has no knowledge of receipt of written notice of any actual or pending litigation or proceeding, including any action in condemnation and/or eminent domain, by any organization, person, individual or governmental agency against Seller with respect to the Property or against the Property.

7.1.2 There are no service or other Vendor contracts to which Buyer will be made subject following the Close of Escrow.

7.1.3 Hazardous Materials.

(a) In accordance with its obligations under California Health & Safety Code Section 25359.7, Seller hereby gives notice that it has no knowledge of the release of any Hazardous Materials in, or under or about the Property.

(b) Seller is not in possession any material reports, studies or written analysis that relate to the physical condition of the Property, including the existence of Hazardous Materials, or the development potential of the Property.

(c) To Seller's knowledge, all operations or activities upon, or use or occupancy of the Property, or any portion thereof, by Seller, is and has been in all material respects in compliance with all Governmental Regulations governing or in any way relating to the generation, handling, manufacturing, treatment, storage, use, transportation, spillage, leakage, dumping, discharge or disposal (whether accidental or intentional) of Hazardous Materials, and Seller has not engaged in nor permitted any dumping, discharge, disposal, spillage or leakage (whether legal or illegal, accidental or intentional) of such Hazardous Materials, at, on, in or about the Property, or any portion thereof during the time in which Seller has owned the Property. Seller has received no notice of the existence of any proceeding or inquiry by any Authority with respect to the presence of Hazardous Materials on the Property or the migration thereof from or to other property and to Seller's knowledge, no such proceeding or inquiry is pending or threatened.

(d) As to any prior owner of the Property or any portion thereof, Seller has no knowledge as to the operations or activities upon, or use or occupancy of the Property, or any portion thereof, by any such prior owner of the Property, or any portion thereof, and Seller makes no affirmative representation in regard to the same as relating to the generation, handling, manufacturing, treatment, storage, use, transportation, spillage, leakage, dumping, discharge or disposal (whether accidental or intentional) of Hazardous Materials (whether legal or illegal, accidental or intentional) at, on, in or about the Property, or any portion thereof; provided Seller affirmatively represents having received no written notice of the existence of any proceeding or inquiry by any Authority with respect to the presence of Hazardous Materials on the Property or the migration thereof from or to other property as relates to any such prior owner.

(e) Neither Seller nor any of its affiliates, nor any of their respective partners, members, shareholders of other equity owners, and none of their respective employees, officers, directors, representatives, or agents is, nor will they become, a person or entity with whom the United States persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC"), Department of the Treasury or under any statute, executive order or other governmental action and Seller is not or will not engage in any dealings or transactions or be other associated with such persons or entities.

7.1.4 Non-Foreign Status. Seller is not a "foreign person" as that term is defined in the Internal Revenue Code of 1986, as amended and the Regulations promulgated pursuant thereto.

7.1.5 Authority of Signatories; No Breach of Other Agreements, etc. The execution, delivery of and performance under this Agreement subject to the Validation Action has been duly authorized by Seller. The consummation of the transaction herein contemplated and the compliance by Seller with the terms of this Agreement do not and will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any agreement, arrangements, understanding, accord, document or instrument by which Seller is bound.

7.1.6 Compliance with Existing Laws. Seller has no knowledge of any written notice to Seller from any governmental authority or otherwise alleging any uncured existing violation of any applicable building, zoning, subdivision, health, safety or other governmental laws, statutes, ordinances, rules, codes, regulations or orders or any restrictive covenants or deed restrictions of record affecting the Property.

7.1.7 Assessments/Condemnation/Zoning. Seller has no knowledge of any written notice to Seller of any existing, pending, contemplated or threatened (i) special tax assessments pending against the Property that are not of record or disclosed in the Title Commitment, (ii) condemnation actions affecting the Property, or (iii) change in the current zoning classification of the Land or Improvements except as may be contemplated by Buyer.

7.2 Reaffirmation. Subject to the provisions of Section 11.2, at Closing Seller shall be deemed to have reaffirmed that the representations and warranties of Seller in this Section 7.

Section 8. Operations Pending Closing.

(a) Seller, at its expense, shall use reasonable efforts to maintain the Property until the Closing or until the termination of this Agreement, whichever is earlier,



substantially in its present condition, damage by fire or other casualty and condemnation excepted. After the Inspection Date, Seller will not, without Buyer's consent not unreasonably withheld, enter into any (i) contract for service to the Property unless it does not purport to bind Buyer or the Property, or (ii) any new lease or commission agreement or any modification, amendment, restatement, termination, or renewal of any Lease. Seller shall promptly deliver a copy of any item in (i) or (ii) of the preceding sentence entered into by Seller prior to the Inspection Date.

(b) The parties recognize that by authority of the Seller Buyer currently maintains a right to lease the subject property for parking purposes. In consideration of that right the Buyer currently pays to Seller the sum of \$10,000 per month. It is agreed by and between Seller and Buyer that from and after the Contract Date that said \$10,000 monthly payment will be suspended pending a closing of the within transaction after which the obligation shall cease entirely and the lease terminated. In the event a Closing hereunder does not take place, the Buyer agrees to pay to Seller all suspended payments to the date of such cancellation and the lease shall be re-instated as currently existing.

Section 9. Conditions to Closing.

9.1 Buyer's Conditions Precedent. Buyer's obligation to proceed to Closing under this Agreement is subject to the following conditions precedent:

(a) Seller shall have performed and satisfied each and all of Seller's obligations under this Agreement.

(b) Each and all of Seller's representations and warranties set forth in this Agreement shall be true and correct at the Contract Date and at the Closing Date in all material respects.

(c) Completion of the Judicial Validation Action by the City of Upland as set forth in Section 3.2 above.

(d) Seller shall have complied with CEQA with respect to the zoning change from current zoning to the OP Zone, and shall have filed/recorded a Notice of Determination in connection therewith.

(e) Change of the zoning for the Property to OP.

(f) Escrow Holder's commitment (as a title company) to issue the Title Policy to Buyer subject only to the Permitted Exceptions.

(g) Seller shall have prepared, executed and delivered to Escrow Holder for recording at the Close a "Certificate of Compliance" (duly acknowledged and in recordable form) evidencing the exemption from the Map Act (conveyance by a public entity) and confirming that the Property is a legal parcel.

In the event any of the foregoing conditions are not satisfied prior to or at the Closing, Buyer may terminate this Agreement by written notice to Seller and thereafter shall have no obligation to proceed with the Closing, the Earnest Money shall be returned and paid to Buyer, and neither party shall have any further obligation hereunder except those which expressly survive



the termination of this Agreement. Notwithstanding the foregoing, nothing contained herein shall waive or diminish any right or remedy Buyer may have for Seller's default or breach of this Agreement.

Section 10. Closing.

10.1 Time and Place. Provided that all of the conditions set forth in this Agreement are theretofore fully satisfied or performed, the Closing shall be held through the Escrow Agent on the Closing Date or such other date that is mutually agreeable to Buyer and Seller in writing, unless the Closing Date is postponed pursuant to the express terms of this Agreement.

10.2 Seller Deliveries. Seller shall obtain and deliver to Buyer at the Closing the following documents (all of which shall be duly executed, and notarized as necessary):

10.2.1 The Deed, and a Certificate of Acceptance for the Easement.

10.2.2 A Non-Foreign Certificate, substantially in the form attached as Exhibit "D" hereto.

10.2.3 A Closing Statement in form and substance mutually satisfactory to Buyer and Seller (the "Closing Statement").

10.2.4 An affidavit of title or other affidavit customarily and reasonably required of sellers by the Title Insurer to remove the standard exceptions from an owner's title insurance policy which are capable of being removed by such an affidavit.

10.2.5 Such further instructions, documents and information, including, but not limited to a Form 1099-S, as Buyer or Title Insurer may reasonably request as necessary to consummate the purchase and sale contemplated by this Agreement.

10.2.6 The Service Contracts, if any.

10.2.7 Possession of the Property, subject to the Permitted Title Exceptions.

10.3 Buyer Deliveries. Buyer shall deliver to Seller at closing the following:

10.3.1 The Purchase Price in immediately available funds less the Earnest Money, subject to the prorations provided for in this Agreement.

10.3.2 Counterpart original of the Easement, duly executed by Buyer and acknowledged.

10.3.3 Counterpart original duly executed by Buyer of the Closing Statement.

10.3.4 Such other documents or instruments that are reasonably necessary to consummate the Closing.

Buyer and Seller stipulate and agree that the Certificate of Compliance is to be recorded immediately after the Grant Deed, and the Easement is to be recorded immediately after the Certificate of Compliance.

Section 11. Default and Remedies.

11.1 Default by Buyer. IN THE EVENT THE CLOSING AND THE CONSUMMATION OF THE TRANSACTION HEREIN CONTEMPLATED DOES NOT OCCUR AS HEREIN PROVIDED BY REASON OF ANY DEFAULT OF BUYER, BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES WHICH SELLER MAY SUFFER. THEREFORE BUYER AND SELLER DO HEREBY AGREE THAT A REASONABLE ESTIMATE OF THE DAMAGES THAT SELLER WOULD SUFFER IN THE EVENT THAT BUYER DEFAULTS AND FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY IS AND SHALL BE, AS SELLER'S SOLE AND EXCLUSIVE REMEDY (WHETHER AT LAW OR IN EQUITY), AN AMOUNT EQUAL TO THE EARNEST MONEY AS REQUIRED OF BUYER BY THE TERMS HEREOF AS OF THE DATE OF OCCURRENCE OF SUCH DEFAULT. SAID AMOUNT SHALL BE THE FULL, AGREED AND LIQUIDATED DAMAGES FOR THE BREACH OF THIS AGREEMENT BY BUYER, ALL OTHER CLAIMS TO DAMAGES OR OTHER REMEDIES BEING HEREIN EXPRESSLY WAIVED BY SELLER. THE EARNEST MONEY SHALL CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1677. UPON DEFAULT BY BUYER, THIS AGREEMENT SHALL BE TERMINATED AND NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER, EACH TO THE OTHER EXCEPT FOR THE RIGHT OF SELLER TO COLLECT SUCH LIQUIDATED DAMAGES FROM BUYER OR (IF APPLICABLE) ESCROW HOLDER, AND, IF LEGAL ACTION IS REQUIRED TO COLLECT SUCH LIQUIDATED DAMAGES, TO RECOVER ITS ATTORNEYS' FEES AND COSTS PURSUANT TO PARAGRAPH 17.10. NOTWITHSTANDING THE FOREGOING, AND NOTWITHSTANDING THE TERMINATION OF THE AGREEMENT, EACH PARTY WILL STILL BE ENTITLED TO ANY INDEMNIFICATION PROVIDED IN THIS AGREEMENT.

BUYER'S INITIALS 

SELLER'S INITIALS BRM

Buyer shall be entitled to at least ten (10) business days' written notice and opportunity to cure any alleged defaults under this Agreement.



11.2 Seller's Default. In the event of a default by Seller under the terms of this Agreement which is not cured by Seller as provided hereunder, (except as the result of Seller's negligence and/or willful misconduct in which case damages may be sought) Buyer's sole and exclusive remedies hereunder shall be to either terminate this Agreement whereupon Buyer will receive a refund of the Earnest Money from Escrow Agent, or to seek specific performance of Seller's obligations under this Agreement.

Section 12. Condemnation or Destruction.

12.1 Condemnation. If, prior to the Closing, all or any material part of the Property is subject to a bona fide threat of condemnation by a body having the power of eminent domain, or is taken by eminent domain or condemnation, or sale in lieu thereof, then Buyer, by written notice to Seller, to be received within thirty (30) calendar days of Buyer's receiving Seller's written notice of such threat, condemnation or taking, or by the Closing Date, whichever is earlier, may elect to terminate this Agreement.

12.2 Damage or Destruction. If, prior to the Closing, all or any material part (which is deemed to be a restoration cost of \$75,000.00 or more) of the Property is damaged or destroyed by any cause, Seller agrees to give Buyer written notice of such occurrence and the nature and extent of such damage and destruction, and Buyer, by written notice to Seller, to be received within thirty (30) calendar days of Buyer's receipt of Seller's written notice of such damage or destruction, or by the Closing Date, whichever is earlier, may elect to terminate this Agreement.

12.3 Termination. If this Agreement is terminated as a result of the provisions of either Section 12.1 or Section 12.2 hereof, Buyer shall be entitled to receive a refund of the Earnest Money from Escrow Agent, whereupon the parties shall have no further rights or obligations hereunder, except for those which expressly survive any such termination.

12.4 Awards and Proceeds. If Buyer does not elect to terminate this Agreement following any notice of a threat of taking or taking by condemnation or notice of damage or destruction to the Property, as provided above, this Agreement shall remain in full force and effect and the conveyance of the Property contemplated herein, less any interest taken by eminent domain or condemnation, or sale in lieu thereof, shall be effected with no further adjustments. At the Closing, Seller shall assign, transfer and set over to Buyer all of Seller's right, title and interest in and to any awards, payments or insurance proceeds (excluding any deductible which is the responsibility of Seller) available to Seller for the actual value of the property lost or destroyed that have been or may thereafter be made for any such taking, sale in lieu thereof or damage or destruction, to the extent such awards, payments or proceeds shall not have theretofore been used for restoration of the Property.

Section 13. Assignment by Buyer. Buyer may assign its rights under this Agreement to an affiliated entity upon five (5) days' prior written notice to Seller accompanied by a copy of an executed assignment and assumption agreement and reasonable evidence that the assignee is such an affiliate, but without Seller's prior written consent hereunder; provided, however, no such assignment shall relieve Buyer of its obligations hereunder.

Section 14. Buyer's Representation and Warranty. Buyer does hereby represent and warrant to Seller as of the Contract Date and the Closing that it is a validly formed public benefit corporation; that is in good standing in the state of its organization; that it is not subject to any



involuntary proceeding for the dissolution or liquidation thereof; that it has all requisite authorizations to enter into this Agreement; and that the parties executing this Agreement on behalf of Buyer are duly authorized to so do.

Section 15. Brokers and Brokers' Commissions. None.

Section 16. Notices. Wherever any notice or other communication is required or permitted hereunder, such notice or other communication shall be in writing and shall be delivered by a nationally-recognized overnight express delivery service, or certified mail, return receipt requested, postage prepaid, to the addresses set out below or at such other addresses as are specified by written notice delivered in accordance herewith:

SELLER: City of Upland  
460 N. Euclid Avenue  
Upland, California 91786  
Attn: City Manager

BUYER: San Antonio Regional Hospital  
999 San Bernardino Road  
Upland, CA 91786  
Attn: Harris F. Koenig, President and CEO

WITH A COPY TO: Ervin Cohen & Jessup LLP  
9401 Wilshire Boulevard  
Suite 900  
Beverly Hills, CA 90212  
Attn: Alan M. Bergman, Esq.

Such notices shall be deemed received (a) on the date of delivery, if delivered by hand or overnight express delivery service; (b) on the date indicated on the return receipt if mailed.

Section 17. Miscellaneous.

17.1 Governing Law; Headings; Rules of Construction. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California, without reference to the conflicts of laws or choice of law provisions thereof. The titles of sections and subsections herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms or provisions herein. All references herein to the singular shall include the plural, and vice versa. The parties agree that this Agreement is the result of negotiation by the parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed against the maker thereof.



17.2 No Waiver. Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

17.3 Entire Agreement. Except for the terms and conditions set forth in the Lease Agreement, this Agreement contains the entire agreement of the parties hereto with respect to the Property and any other prior understandings or agreements are merged herein and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein or incorporated herein by reference shall be of any force or effect.

17.4 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

17.5 Amendments. No amendment to this Agreement shall be binding on any of the parties hereto unless such amendment is in writing and is executed by the party against whom enforcement of such amendment is sought.

17.6 Date For Performance. If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the Closing must be held, expires on a Saturday, Sunday or legal or bank holiday, then such time period shall be automatically extended through the close of business on the next regularly scheduled business day.

17.7 Counterparts. This Agreement may be executed in any number of counterparts (including via facsimile or telecopier transmission, either of which will be deemed an original signature or signatures), each of which shall be deemed to be an original, but all of which, when taken together, shall constitute but one and the same instrument.

17.8 Time of the Essence. Time shall be of the essence of this Agreement and each and every term and condition hereof.

17.9 Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any term or provision of this Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be held to be invalid or unenforceable, then such term or provision shall be ignored, and to the maximum extent possible, this Agreement shall continue in full force and effect, but without giving effect to such term or provision.

17.10 Attorneys' Fees. In the event that either party shall bring an action or legal proceeding for an alleged breach of any provision of this Agreement or any representation, warranty, covenant or agreement herein set forth, or to enforce, protect, determine or establish any term, covenant or provision of this Agreement or the rights hereunder of either party, the prevailing party shall be entitled to recover from the non-prevailing party, as a part of such action or proceedings, or in a separate action brought for that purpose, reasonable attorneys' fees and costs, expert witness fees and court costs as may be fixed by the court or jury.



17.11 Like-Kind Exchange. Each of the parties hereto agrees to cooperate with the other in effecting an I.R.C. § 1031 exchange, including Buyer's free assignment and transfer of this Agreement for such exchange purposes, and also executing and delivering any and all documents required by the exchange trustee or intermediary; provided, however, that the cooperating party shall have no obligation to execute any document, enter any transaction or arrangement or take or omit any other action, if such party determines in its sole discretion that the same would result in any liability, cost, expense, increased risk, delay or other detriment to the cooperating party.

17.12 City Manager Authority. The City Manager of Seller shall have the authority to give all consents and approvals on behalf of Seller hereunder provided they are in writing, and to enter into non-substantial amendments of this Agreement provided they are in writing.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized signatory, effective as of the day and year first above written.

**“SELLER”:**

CITY OF UPLAND,  
a California municipal corporation

By: Bill R. Manis  
Print Name: Bill R. Manis  
Title: City manager

**“BUYER”:**

SAN ANTONIO REGIONAL HOSPITAL  
a California public benefit corporation

By: Harris F. Koenig  
Harris F. Koenig  
President and CEO

**EXHIBIT "A"**

**DESCRIPTION OF LAND**

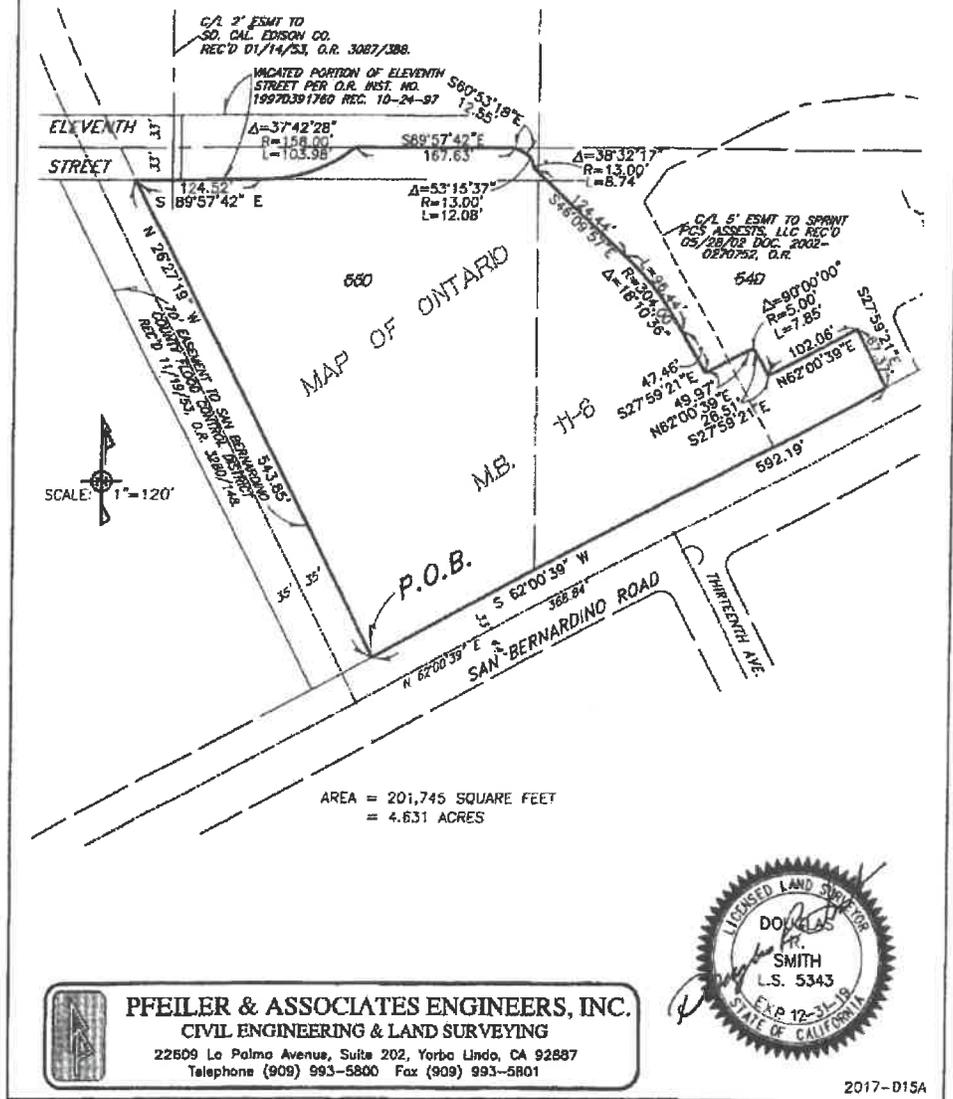
THOSE PORTIONS OF LOTS 549 AND 550 LYING NORTH OF THE NORTHWEST LINE OF SAN BERNARDINO ROAD, IN THE CITY OF UPLAND, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP OF ONTARIO PER PLAT RECORDED IN BOOK 11 PAGE 6, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAN BERNARDINO COUNTY BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHWEST LINE OF SAN BERNARDINO ROAD (77 FEET WIDE) AND THE EASTERLY LINE OF THAT CERTAIN 70 FOOT EASEMENT OF THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT PER BOOK 3280 PAGE 148 O.R., RECORDED NOVEMBER 19, 1953, RECORDS OF SAID COUNTY; THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID EASEMENT, NORTH 26°27'19" WEST, 543.85 FEET TO THE SOUTH LINE OF ELEVENTH STREET (66 FEET WIDE) AS SHOWN ON THE SAID MAP OF ONTARIO; THENCE EASTERLY ALONG THE SOUTHERLY LINE OF SAID ELEVENTH STREET AND ITS EASTERLY PROLONGATION, SOUTH 89°57'42" EAST, 124.52 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 158.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 37°42'28" AN ARC LENGTH OF 103.98 FEET TO THE EASTERLY PROLONGATION OF THE CENTERLINE OF ELEVENTH STREET; THENCE ALONG SAID CENTERLINE SOUTH 89°57'42" EAST, 167.63 FEET; THENCE LEAVING SAID CENTERLINE, SOUTH 60°53'18" EAST, 12.55 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 13.00 FEET; THENCE THROUGH A CENTRAL ANGLE OF 53°15'37" AN ARC LENGTH OF 12.08 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 13.00 FEET; THENCE THROUGH A CENTRAL ANGLE OF 38°32'17" AN ARC LENGTH OF 8.74 FEET; THENCE SOUTH 46°09'57" EAST, 124.44 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 304.00 FEET; THENCE THROUGH A CENTRAL ANGLE OF 18°10'36" AN ARC LENGTH OF 96.44 FEET; THENCE SOUTH 27°59'21" EAST, 47.46 FEET; THENCE NORTH 62°00'39" EAST, 49.97 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 5.00 FEET; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00" AN ARC LENGTH OF 7.85 FEET; THENCE SOUTH 27°59'21" EAST, 26.51 FEET; THENCE NORTH 62°00'39" EAST, 102.06 FEET; THENCE SOUTH 27°59'21" EAST, 67.37 FEET TO A POINT ON THE NORTH LINE OF SAN BERNARDINO ROAD (77 FEET WIDE); THENCE ALONG SAID STREET SOUTH 62°00'39" WEST, 592.19 FEET TO THE POINT OF BEGINNING.

DESCRIBED AREA = 201,745 SQUARE FEET = 4.631 ACRES.



# SKETCH TO ACCOMPANY LEGAL DESCRIPTION EXHIBIT "A"



14286.39:8163042.3

16

14286.39:8163042.3

16

**EXHIBIT "B"**

**FORM OF GRANT DEED**

RECORDING REQUESTED BY:

ERVIN COHEN & JESSUP LLP

AND WHEN RECORDED MAIL THIS DEED  
AND TAX STATEMENTS TO:

San Antonio Regional Hospital  
999 San Bernardino Road  
Upland, CA 91786  
Attn: Harris F. Koenig

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

**GRANT DEED**



APN: Portion of \_\_\_\_\_

The undersigned Grantor declares under penalty of perjury that the following is true and correct:

DOCUMENTARY TRANSFER TAX IS \$ \_\_\_\_\_

unincorporated area     City of Upland

**GRANTOR:** CITY OF UPLAND

hereby grants to

**GRANTEE:**

SAN ANTONIO REGIONAL HOSPITAL, a California public benefit corporation, the following real property in the City of Upland, County of San Bernardino, State of California:

SEE EXHIBIT A ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE, subject to all matters of record and all matters which would be revealed by an ALTA/ACSM survey, and all matters visible upon inspection.

Executed as of the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_

MAIL TAX STATEMENTS AS DIRECTED ABOVE



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, \_\_\_\_\_, a 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



**EXHIBIT "C"**

**FORM OF PUBLIC PARKING EASEMENT  
TO BE GRANTED BY BUYER TO SELLER  
AT CLOSING**

(Attached)



## PARKING EASEMENT AGREEMENT

This **PARKING EASEMENT AGREEMENT** (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2018, between **SAN ANTONIO REGIONAL HOSPITAL**, a California public benefit corporation, (“**SARH**”) and the **CITY OF UPLAND**, a California municipal corporation (the “**City**”). SARH and the City are collectively referred to as “Parties” or individually as a “Party”.

### RECITALS

A. SARH and the City have entered into an Agreement for Purchase and Sale and Joint Escrow Instructions dated \_\_\_\_\_, 2017 whereby SARH is purchasing from the City all of its right, title and interest in an approximate 5.5 acre parcel as more specifically described and set forth therein and shown on Exhibit A attached hereto and made a part hereof (the “**Property**”).

B. As a condition of the foregoing sale, SARH is required to grant to the City in the form of a Public Parking Permanent Easement, the right of public parking for automobiles upon the Property in accordance with the terms and conditions herein set forth.

**NOW, THEREFORE**, in consideration of the mutual covenants of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. **Grant of Easement.** Subject to the terms set forth in this Agreement, SARH agrees to design and construct within its plans for the development of the Property, at its cost and expense, not less than as currently provided, on a non-exclusive basis, parking spaces for public use upon the Property (the “**Public Spaces**”). The Public Spaces are hereby dedicated as an Easement for public use.

2. **Construction of Additional Spaces.** As part of its overall planned development for the Property, SARH shall design the Public Spaces, submit all necessary construction permit applications, construction bids and proceed to construct the Public Spaces at its sole cost and expense.

3. **Use of Property Prior to, During and Upon Completion of Project Construction.** Upon the acquisition of the Property by SARH and until new buildings or development is constructed on the Property by SARH, parking on the Property shall be provided in a surface parking lot on the Property for SARH use and shall remain available to the public for daily park use at no charge.



Upon completion of new buildings or the development on the Property for SARH's use, there shall be the same or greater number of Public Spaces made available to the public in a surface parking lot for daily park use at no charge.

If the construction of new buildings or development will temporarily disrupt the public parking SARH shall use reasonable efforts to diligently prosecute the new development to completion, subject to force majeure delays, to minimize the disruption.

If a multistory parking structure is part of any new development on the Property for SARH's use and the surface parking lot is removed, the Public Spaces made available to the public for daily park use, to the extent within the parking structure, shall be located on the first/ground floor.

If, at any time during the term of this Agreement, there is a conflict between SARH and the City in meeting the parking requirements for their respective uses, it is understood by the Parties that SARH shall retain the primary right to parking on the Property and its needs and requirements shall take priority over those of the City. However, in no event shall the parking available to the City for daily park use be less than 100 spaces. If such conflict shall arise SARH may, upon written notice to the City, initiate negotiation of a joint use agreement with the City to resolve this conflict in order to satisfy SARH's parking requirements. Should SARH and the City fail to resolve this conflict within 30 days of SARH's written notice, all claims and disputes arising under or relating to this Agreement shall be settled by binding arbitration in the State of California.

It is further understood and agreed that at all times during the existence of the within easement that SARH, at its sole cost and expense, shall maintain and keep in good order and repair all surface parking areas and, if applicable, the parking structure.

4. **Term.** The Easement shall remain on the Property in perpetuity provided the City's adjacent property remains as a public park. In the event of the cessation of such use or the sale of the City's adjacent park property for other than public park use, this Easement will terminate forthwith.

5. **Insurance.** Prior to the use by the public of the within easement the City shall obtain and maintain thereafter a policy of general liability insurance in an amount of no less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate, with such policy of insurance naming SARH, its affiliates, successors and assigns as an additional insured.

6. **Indemnity Obligation.** Each Party shall indemnify (the "Indemnifying Party"), defend and hold harmless every other Party (the "Indemnified Parties") for, from and against any and all losses, costs and expenses (including reasonable attorneys' fees and costs) to the extent caused during the term of this Agreement, by the acts, errors or omissions of the Indemnifying Party or its partners, members, shareholders, managers, officers, directors, agents, employees, contractors, sub-contractors, representatives, or delegates as the same are due to the exercise of the Indemnifying Party's rights or failure to fulfill its obligations under this Agreement, except to the extent of any such loss, cost or expense caused by one of the Indemnified Party's own negligence



or misconduct. The indemnity obligations set forth in this Section 6 shall survive a termination of this Agreement.

7. **Attorneys' Fees.** If any of the Parties hereto shall initiate suit against any other Party as a result of any alleged breach or failure of the other to fulfill or perform any covenants or obligations to be performed by it under this Agreement, or for declaratory relief seeking any determination of such Parties' rights or obligations hereunder, then in such event, the prevailing Party in such action shall, in addition to any other relief granted or awarded by the Court, be entitled to judgment for reasonable attorneys' fees incurred by reason of such action and all costs of suit and (those incurred in preparation thereof, at both trial and appellate levels).

8. **Entire Agreement.** This Agreement, together with all Exhibits attached hereto, contains the entire agreement and understanding of SARH and the City and supersedes all prior agreements and understandings, as to the subject matter hereof. This Agreement shall not be modified, superseded or revoked, except by an agreement in writing duly executed and delivered by the Parties hereto (or their successors, as appropriate).

9. **Benefits and Burdens Running With the Land.** This Agreement shall run with and bind the title of the Property hereto and shall be binding upon and inure to the benefit of the successors and assigns of SARH as the owner of the Property from time to time. This Agreement shall be recorded in the official records of the Recorder for the County of San Bernardino, and all provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law.

10. **No Waiver.** The waiver by one Party of the performance or observance of any covenant or condition to be performed or observed by the other hereunder shall not invalidate this Agreement, nor constitute a waiver by such Party of any other covenant or condition to be performed or observed by another hereunder.

11. **Cooperation.** SARH and the City shall in good faith cooperate with each other in connection with their respective rights and obligations under this Agreement, including, but not limited to, performing any acts and executing any further documents and taking such further actions that may be reasonably necessary to effectuate the purposes of or rights conferred under this Agreement.

12. **Construction.** This Agreement shall be construed in accordance with the laws of the State of California

13. **Notices.** All notices and requests under this Agreement shall be in writing and shall be sent by personal delivery or facsimile (with hard copy to follow the next business day by overnight mail), by certified or registered mail, postage prepaid, return receipt requested, nationally recognized overnight mail carrier (e.g. FedEx, Airborne) or delivered in person to the following street addresses:



SARH: c/o Harris F. Koenig  
President and CEO  
San Antonio Regional Hospital  
999 San Bernardino Road  
Upland, CA 91786

With a copy to: Alan M. Bergman, Esq.  
Ervin Cohen & Jessup LLP  
9401 Wilshire Blvd., 9<sup>th</sup> Floor  
Beverly Hills, California 90212  
Facsimile: (310) 877-6844

City of Upland: City Manager  
City of Upland  
460 N. Euclid Avenue  
Upland, CA 91786

With a copy to: James L. Markman, Esq.  
Richards Watson & Gershon  
355 South Grand Avenue, 40<sup>th</sup> Floor  
Los Angeles, CA 90071  
Facsimile: (213) 626-0078

All notices shall be effective upon the earlier of personal delivery or receipt of facsimile confirmation statement, if sent by facsimile (provided the hard copy notice is provided by an alternative method of delivery as required above), or receipt of confirmation of delivery or rejection, if delivered by a nationally recognized overnight mail carrier or seventy-two (72) hours after deposit in the United States mail. Either party may change its address or designate a new street address for notices under this Agreement by notice complying with the terms of this Section.

14. **Counterpart Execution.** This Agreement may be executed and acknowledged in counterpart originals and all such counterparts shall constitute one (1) agreement. Signature pages may be detached from the counterpart originals and attached to a single copy of this Agreement to physically form one (1) document.

15. **Severability.** If any provision of this Agreement or the application of this Agreement to any party to this Agreement or any other person is held to be invalid, void, or illegal, the remaining provisions shall nonetheless remain in full force and effect and shall not be affected by such invalidity or illegality.



**IN WITNESS WHEREOF**, SARH and the City have executed this Agreement as of the date first set forth above.

DATED: \_\_\_\_\_

San Antonio Regional Hospital

\_\_\_\_\_  
Harris F. Koenig, President and CEO

DATED: \_\_\_\_\_

City of Upland

By: \_\_\_\_\_  
City Manager

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 Los Angeles )

On \_\_\_\_\_, before me, \_\_\_\_\_, a 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 \_\_\_\_\_



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 Los Angeles )

On \_\_\_\_\_, before me, \_\_\_\_\_, a 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 \_\_\_\_\_



**EXHIBIT A**  
**DESCRIPTION OF THE PROPERTY**

[TO BE ATTACHED]



**EXHIBIT A**  
**DESCRIPTION OF THE PROPERTY**

[TO BE ATTACHED]



**EXHIBIT "D"**

**FORM OF FIRPTA AFFIDAVIT**

Transferor's Certification of Non-Foreign Status

To inform \_\_\_\_\_, ("**Transferee**"), that withholding of tax under Section 1445 of the Internal Revenue Code of 1986, as amended (the "**Code**"), will not be required upon the transfer of certain real property to Transferee by \_\_\_\_\_ ("**Transferor**"), the undersigned hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder);
2. Transferor's U.S. employer identification number is \_\_\_\_\_; and
3. Transferor's address is \_\_\_\_\_.

Transferor understands that this Certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

Dated as of: \_\_\_\_\_

\_\_\_\_\_



LICENSE AGREEMENT (CITY PROPERTY)

This License Agreement ("License Agreement," "License," or "Agreement") is entered into on October 16, 2017 ("Effective Date") by and between the City of Upland, a California municipal corporation ("City") and San Antonio Regional Hospital, a California non-profit public benefit corporation ("Licensee").

**License.** The City hereby grants an exclusive revocable license to Licensee with respect to the land owned by City and described and depicted on the Exhibit "A" attached hereto (the "Property") for construction staging related to a construction project by Licensee on property adjacent to the Property. Licensee is hereby authorized and permitted to use the Property for Employee Parking related to Licensee's demolition and construction of a new medical office building at 1100 San Bernardino Road. Licensee shall have the exclusive use of the portions of the Property designated as the "South and West Areas" in the description and as depicted on Exhibit "A" twenty four (24) hours a day of each and every day during the Term, as hereinafter defined. Licensee is authorized and permitted to install temporary fencing and other security measures around the South and West Areas. The City shall have no responsibility other than the City government services ordinarily provided within the City to any other property owner, lessee or licensee (including, without limitation, Police and Fire Department services) related to the security of the South Area or West Area during the West Area Exclusive Time. Licensee shall return the site to its' original condition by removing any fencing and other security measures installed on Property upon the expiration of the Term. Licensee represents and acknowledges that it has thoroughly inspected the Property, and accepts the Property in its current "AS-IS" condition, without representation or warranty, express or implied. The Licensee shall comply with the terms of the License Agreement Use Requirements set forth on Exhibit "B" attached hereto.

**Consideration.** Licensee shall pay to the City, as full and adequate consideration for the License for Term One (as hereinafter defined) the sum of \$120,000.00; paid on a month-to-month basis up to twelve (12) months, and as full and adequate consideration for the License for Term Two (as hereinafter defined) the sum of \$123,600; paid on a month-to-month basis inclusive of a 3% escalator for an additional twelve (12) months. One additional Option Term (as hereinafter defined) the sum of \$63,654.00, paid on a month-to-month basis inclusive of a 3% escalator for an additional six (6) months. The monthly payments for Term Year One shall be paid to the City no later than thirty (30) days prior to the commencement date of Term Year One, and will continue on a monthly basis for the entire twenty four (24) months. The consideration paid for the License Term for Term Year One, Term Year Two and Option Term (as hereinafter defined) is collectively referred to herein as the "Consideration." The City and Licensee acknowledge and agree that the Consideration equals or exceeds the fair market value of this License.

**Term: Option to Extend Term: Waiver of Relocation Benefits.** This License Agreement shall commence on the Effective Date and shall automatically continue without any further action by Licensee or the City for two (2) consecutive periods of one (1) year each (hereinafter "Term Year One" and "Term Year Two" respectively) unless terminated earlier by the City due to a "Default" by Licensee as defined in Section 10 (the "Initial Term"). Notwithstanding any provision of this License Agreement to the contrary, Licensee shall have option, ("Option") in the sole discretion of Licensee, to extend the Term beyond the Initial Term on a month to month basis following the expiration of the Initial Term, for eighteen (18) additional periods of one month each. Licensee shall exercise the option to extend the Term beyond the Initial Term for the first month by delivering written notice to the City of its election to extend the Term for the first month, no later than ten (10) days prior to the expiration date of the Initial Term. Licensee shall exercise the option to extend the Term beyond the first month for any successive months by delivering written notice to the City of its election to extend the Term for each respective month for which Licensee elects to exercise the Option no later than ten (10) days prior to the expiration date of the month immediately prior to the month for which Licensee is exercising its Option. The Initial Term and any months for which the Option has been exercised shall be collectively referred to as the "Term." Licensee shall pay to the City, as full and adequate consideration for the License for each month for which the Option has been exercised, the sum of \$10,300 ("Monthly Option Consideration") no later than ten (10) days prior to the commencement date of the respective month for which the Monthly Option Consideration applies. LICENSEE HEREBY WAIVES ANY AND ALL RIGHTS AND CLAIMS TO RELOCATION BENEFITS AND PAYMENTS ARISING FROM OR OTHERWISE RELATING TO THE EXPIRATION OR EARLIER TERMINATION OF THIS LICENSE AGREEMENT.

**Maintenance Covenants.** Licensee's use of the Property shall at all times be performed in a safe and sanitary manner and otherwise in accordance with all applicable governmental laws, ordinances and regulations at the sole cost, risk and responsibility of Licensee.

**Mechanics Liens.** Licensee shall keep the Property, and every estate, right, title and interest therein, or in or to any part thereof, including improvements by Licensee on the Property, if any, at all times during the term of this License, free and clear of any mechanics' liens and other liens, including, but not limited to, liens for labor, services, supplies, equipment, or material.

**Property Taxes.** Licensee shall pay all possessory interest taxes (if any) applicable to its possessory rights under this License Agreement.

**No Joint Venture: No Interest in Property.** Licensee, in the performance of any requirements of this License, will be acting in a wholly independent capacity and not as the agent, employee, partner, or joint venturer of City. This License Agreement does not create an interest of any nature whatsoever in the Property in favor of Licensee and shall not be recorded.

**Indemnification.** Licensee assumes all liability for, and Licensee shall defend, indemnify and hold City and its elected officials, officers, agents, and employees ("City Party")



harmless from, and pay in full, any and all claims, demands, liabilities, losses, damages, costs, attorney's fees, and other expenses of any kind whatsoever arising from, occasioned, caused by, or contributed to by Licensee's use of the Property, 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 (collectively, "Claims"). Notwithstanding the foregoing, Licensee shall have no liability for and have no obligation to defend or indemnify any City Party for Claims arising from, occasioned, caused by, or contributed to by any negligent or intentional act of any City Party.

**Insurance.**

a. The effectiveness of this License Agreement is conditioned upon Licensee having obtained all insurance required by this License Agreement and delivering reasonable evidence thereof (i.e., copies of insurance certificates to the City, c/o Risk Management).

b. Licensee shall at all times during the term of this License carry, maintain, and keep in full force and effect, a policy or policies of Commercial General Liability Insurance, for bodily injury, death and property damage for products/completed installation or operations and any and all other activities undertaken by the Licensee in connection with Licensee's use of the Property with no less than the following limits of coverage:

- i. \$2,000,000 (Two Million Dollars) for bodily injury or death;
- ii. \$1,000,000 (One Million Dollars) for property damage;

The total of the limits specified in subsections (i.) and (ii.), above, where a combined single limit is provided.

c. Licensee shall at all times during the term of this License carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive Automobile Liability Insurance covering personal injury and property damage, with minimum limits of \$1,000,000 (One Million Dollars) per occurrence combined single limit, covering any vehicles utilized by Licensee in connection with Licensee's use of the Property.

d. Each such policy of insurance required in paragraph (b) and (c) shall:

- i. Be subject to no deductible amount unless otherwise provided, or approved in writing by City;
- ii. Be issued by an insurance company approved in writing by City, which is admitted and licensed to do business in the State of California and which is rated A+VII or better according to the most recent A.M. Best Co. Rating Guide;
- iii. Name as additional insureds the City, its elected officials, officers, employees, attorneys and agents, and any other parties, including subcontractors, specified by City to be included;



- iv. Specify that it acts as primary insurance and that no insurance held or owned by the designated additional insureds shall be called upon to cover a loss under said policy;
- v. Specify that it applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability;
- vi. Contain a clause substantially in the following words:

"It is hereby understood and agreed that this policy may not be canceled nor the amount of coverage thereof reduced until thirty (30) days after receipt by City of written notice of such cancellation or reduction of coverage as evidenced by receipt of a registered letter."

- vii. Specify that any failure to comply with reporting or other provisions of the required policy, including breaches of warranty, shall not affect the coverage required to be provided;
- viii. Specify that the insurer waives all rights of subrogation against any of the named additional insureds;
- ix. Specify that any and all costs of adjusting and/or defending any claim against any insured, including court costs and attorneys' fees, shall be paid in addition to and shall not deplete any policy limits; and
- x. Otherwise be in form satisfactory to City in the reasonable discretion of the City.

e. Any insurance required to be obtained and maintained by Licensee (or any subcontractor) under this License shall not in any way limit Licensee's indemnification obligations of this License Agreement.

**Default.** Notwithstanding any other provision of this Agreement, Licensee shall be deemed to be in "Default" under this Agreement should Licensee be in default of any provision contained in this Agreement that remains uncured for a period of thirty (30) days following the date of receipt by Licensee of written notice of such default from the City (provided that if the default cannot be rectified or cured within such thirty (30) day period, the default will be deemed rectified or cured if Licensee within such thirty (30) day period, has commenced to rectify or cure the default and thereafter diligently prosecutes the same to completion). A "Default" under this Agreement, and shall be grounds for the termination of this Agreement by the City Manager by written notice to Licensee.

**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) by certified mail, postage prepaid, return receipt requested, or (b) 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:

**Licensee:** Harris F. Koenig  
President and Chief Executive Officer  
San Antonio Community Hospital  
999 San Bernardino Road  
Upland, California 9178

**City:** City of Upland  
460 North Euclid  
Upland, California 91786  
Attention: City Manager

**With a copy to:** Richards, Watson & Gershon  
355 South Grand Avenue, 40th Floor  
Los Angeles, California 90071  
Attention: James Markman, Esq.

Service of any such notice or other communications so made shall be deemed effective on the day of actual delivery (whether accepted or refused) as shown by the addressee's return receipt if by certified mail, and as confirmed by the courier service if by courier; provided, however, that if such actual delivery occurs after 5:00 p.m. (local time where received) or on a non-business day, then such notice or demand so made shall be deemed effective on the first business day immediately following the day of actual delivery. No communications via facsimile and/or electronic mail shall be effective to give any notice, request, direction, demand, consent, waiver, approval or other communications hereunder.

**Governing Law.** The validity of this License Agreement and any of its terms or provisions, as well as the rights and duties, shall be interpreted and construed pursuant to the law of the State of California.

**Jurisdiction and Venue.** Any action to enforce or interpret the terms of this License shall be subject to the exclusive jurisdiction of the courts in the County of San Bernardino, State of California.

**Modifications and Amendments.** This License Agreement may be modified or amended only by an agreement in writing executed by Licensee and the City Manager of City.

**Counterparts.** This License Agreement may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument, with the same effect as if all of the parties had executed the same counterpart.

**Time of Essence.** Time is of the essence of each and every provision of this License Agreement in which time is a factor.

**Representations Regarding Authority**

- a. The City has the absolute and unrestricted right, power and authority to



execute and deliver this Agreement and to perform its obligations under this Agreement, and such action has been duly authorized by all necessary action by the governing body of the City.

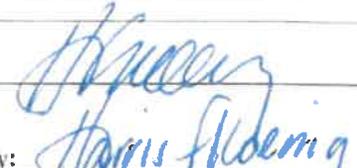
b. The Licensee has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, and such action has been duly authorized by all necessary action by the governing body Licensee.

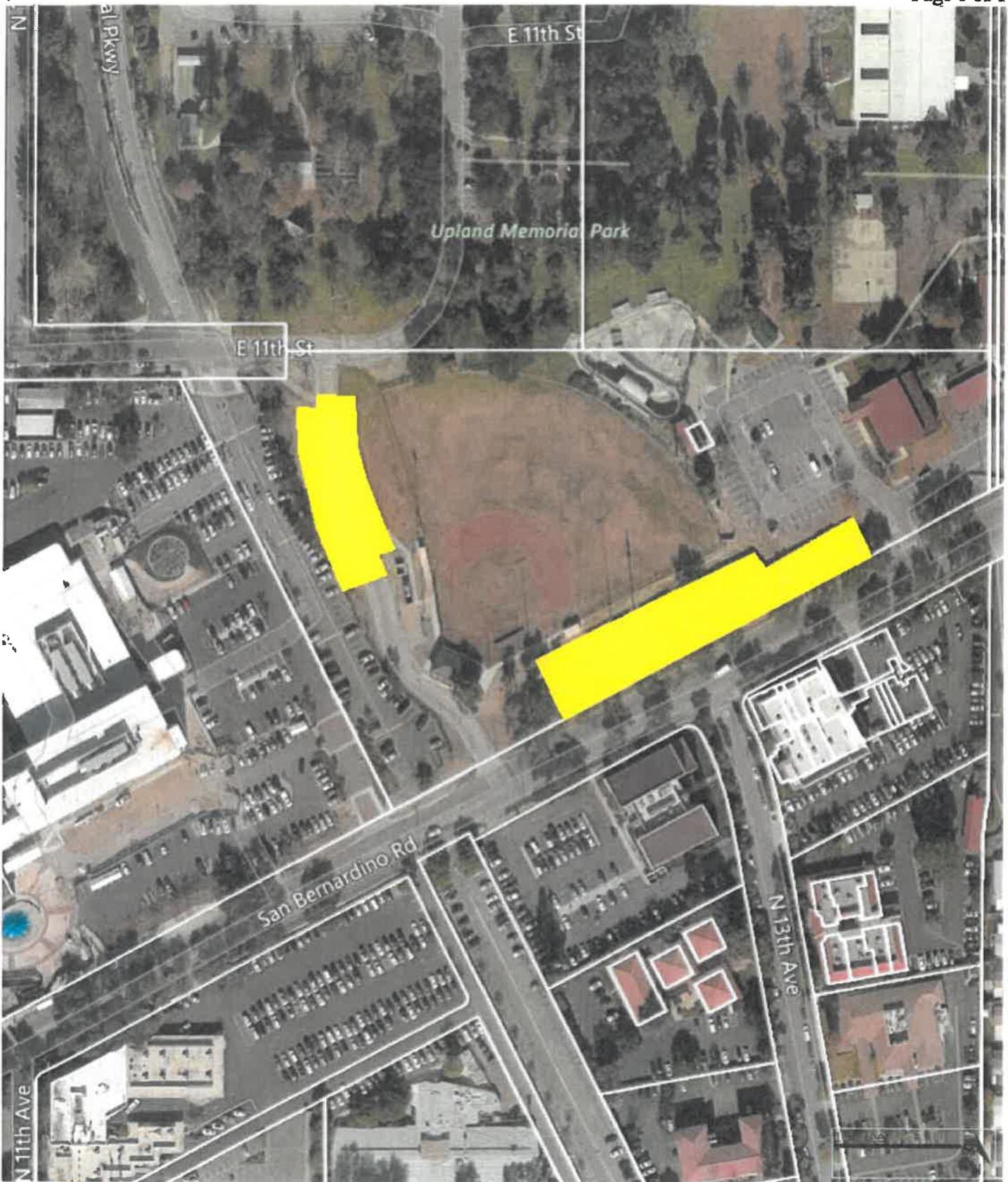
**Preservation of City's Governmental Powers.** This License Agreement is entered into by City in its proprietary (nongovernmental) capacity, and nothing herein waives or alters City's rights and powers as a governmental entity, or any municipal ordinance or regulations.

**No Assignment.** Licensee shall not assign any of its rights under this License Agreement without the express written consent of the City Manager.



IN WITNESS WHEREOF, the parties hereto have entered into this License Agreement as of the date first written above.

<b>CITY:</b>	CITY OF UPLAND a municipal corporation  Print Name: M. THOWEN Title: CITY MANAGER
<b>LICENSEE:</b>	 By: Harris Fleming Print Name: Title: President/CEO 10/16/17



**City-Owned Real Estate Licensing (COREL) Program Application**

1. Business Name: San Antonio Regional Hospital
  
2. Upland Business License: 919314
  
3. Property Desired: Portion of Memorial Park – Area surrounding the southern baseball field. Specifically the open area along San Bernardino Rd. that is south of ball-field and the parking lot west of southern ball field.
  
4. Improvements: N/A
  
5. Business Use: Employee parking
  
6. License Term: 12 month with option to extend an additional 1 year and an additional 6 month period.
  
7. Rental Rate: 10,000.00 per month
  
8. Reasonableness: Escalator to begin on month 13 at 3%. At the end of year two if SARH opts for a 6 month extension an additional 3% escalator will be added.
  
9. Insurance:  YES - Business entity has currently [or will obtain prior to occupancy] commercial general liability insurance against claims and liability for personal injury, death, or property damage arising from the use, occupancy, disuse, or condition of the COREL licensed premises, improvements, or adjoining areas or ways, providing protection of at least Two Million Dollars [\$2,000,000.00] per occurrence for bodily injury or death, and at least Five Hundred Thousand Dollars [\$500,000.00] for property damage.
  
10. Please provide justification for the request of the Lease/Amendment: Hospital will begin the construction of a 59,700 square foot medical office building located at 1100 San Bernardino Rd.

If you have any questions, please contact Liz Chavez, Development Services Manager at (909) 931-4146 or via email at [lchavez@ci.upland.ca.us](mailto:lchavez@ci.upland.ca.us)

[Signature]  
Signature

President/CEO  
Title

10/23/17  
Date

**October 19, 2017**  
**(Thursday 10:00 A.M., Caborca Room)**

**License Review Committee**

REVIEW AND APPROVE / DENY one (1) City-owned Real Estate Licensing Program (COREL) Application/Extension.

**SAN ANTONIO REGIONAL HOSPITAL**

**CRITERIA FOR APPROVAL:**

The COREL Program is available to any business entity with a valid City of Upland business license that meets the eligibility standards described in these policies. Businesses wishing to take advantage of the COREL Program must agree to:

- At all times use the City Property in a legal manner (i.e., be consistent with all City and other governmental requirements);
- For retailers, establish an Upland "point of sale" pursuant to SBE requirements for all sales generated from the City Property and its other Upland facilities, if any;
- As applicable, timely pay all sales tax remittances to the SBE; and
- Maintain a current City of Upland business license.

The following business types are ineligible for the COREL Program:

- Adult entertainment establishments, as defined in the Upland Municipal Code;
- Businesses that sell alcoholic beverages for on-premises consumption, except bona fide public eating places that allow minors in their dining rooms; and
- Businesses that sell alcoholic beverages for off-premises consumption, except bona fide grocery, drug or general merchandise stores.

cc: Martin Thouvenell, Interim City Manager  
Londa Helms, Finance Officer  
Jeff Zwack, Development Services Director  
Liz Chavez, Development Services Manager

**LICENSE APPROVAL COMMITTEE**  
City-Owned Real Estate Licensing (COREL) Program

Date: October 19, 2017

The following applicant were presented and approved by the above COREL Program License Review Committee on October 19, 2017.

Applicant

SAN ANTONIO REGIONAL HOSPITAL

WE THE UNDERSIGNED MEMBERS OF THE CITY'S LICENSE REVIEW COMMITTEE  
ACCEPT AND APPROVE THIS SCHEDULE AS PRESENTED.

By: [Signature] Date: 10-19-17  
Martin Thouvenell, Interim City Manager

By: [Signature] Date: 10/19/17  
Londa Helms, Finance Officer

By: [Signature] Date: 10/19/17  
Jeff Zwack, Development Services Director

Pre-Review: [Signature] Date: 10/18/17  
Liz Chavez, Development Service Manager



## STAFF REPORT

**ITEM NO. 11.G.**

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**DATE:** July 27, 2020  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, CITY MANAGER  
**PREPARED BY:** ROBERT D. DALQUEST, DEVELOPMENT SERVICES DIRECTOR  
**SUBJECT:** CONSIDERATION TO ADOPT A RESOLUTION OF THE CITY COUNCIL RATIFYING EXECUTIVE ORDER 2020-6 OF THE DIRECTOR OF EMERGENCY SERVICES

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### **RECOMMENDED ACTION**

It is recommended that the City Council adopt a Resolution ratifying the Director of Emergency Services Executive Order 2020-6 permitting temporary outdoor merchandise display and sales until October 31, 2020 for the purpose of complying with public health orders during the local emergency caused by the COVID-19 pandemic.

### **GOAL STATEMENT**

The proposed action supports the City's goal of supporting local businesses and business recovery programs within the City of Upland.

### **BACKGROUND**

On March 13, 2020, the City of Upland declared a Local Emergency in response to the COVID-19 pandemic. On March 19, 2020, the Governor of the State of California issued a stay at home order in response to minimizing the spread of the COVID-19 virus. On May 23, 2020, San Bernardino County businesses were allowed to reopen their retail and restaurant operations to include indoor dining compliant with the social distancing and best management practices. However, due to a recent spike in COVID-19 related cases and deaths, on July 13, 2020, the Governor issued a minimum three week closure of some businesses and operating restrictions for restaurant operations. Restaurant operations are currently restricted to take-out, delivery, and outdoor dining operations. As part of City Council's deliberations and review of the temporary relief program for restaurants, the City Council requested staff develop an outside merchandise display permit program for retail businesses in the Upland Historic Downtown area.

## **ISSUES/ANALYSIS**

In response to City Council's request to respond to interest from the retail community in Downtown Upland, staff has prepared a Temporary Merchandise Display Permit process for retail stores targeting the Upland Downtown where this activity is normally prohibited. In other commercial areas of the City, outside of downtown, commercial businesses are already allowed to maintain outdoor display areas. No permit is required; however, these businesses need to conform to the City's adopted Zoning Code development standards.

On July 22, 2020, the City Manager, acting as the City's Director of Emergency Services, issued Executive Order 2020-6 to provide Upland Downtown businesses the ability to have display retail merchandise outdoors subject to the Temporary Merchandise Display Permit.

This Executive Order provides an opportunity for retail businesses in the Upland Downtown to temporarily expand their services to safe and suitable outdoor sidewalk areas within the public right of way. This measure will assist local retail businesses in increasing customer awareness, increase their capacity to serve customers and help keep our local businesses in operation and COVID-19 compliant given the restrictive operating requirements.

Staff has worked collaboratively to develop a streamlined process to expedite issuance of Temporary Permits. The Temporary Permit will have conditions to ensure operations are safe and compliant with CDC guidance requirements.

## **FISCAL IMPACTS**

Minimal staff time. The Temporary Permit will be a "No Fee" permit to assist our local businesses during this difficult time.

## **ALTERNATIVES**

Provide alternative direction to staff.

## **ATTACHMENTS:**

**Resolution ratifying Executive Order No. 2020-6**  
**Executive Order No. 2020-6**

## RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UPLAND, CALIFORNIA RATIFYING THE DIRECTOR OF EMERGENCY SERVICES EXECUTIVE ORDER 2020-6 PERMITTING TEMPORARY OUTDOOR MERCHANDISE DISPLAY UNTIL OCTOBER 31, 2020 FOR THE PURPOSE OF COMPLYING WITH PUBLIC HEALTH ORDERS DURING THE LOCAL EMERGENCY CAUSED BY THE COVID-19 PANDEMIC

### Intent of the Parties and Findings

(i) International, national, state, and local health and governmental authorities are responding to an outbreak of a respiratory disease caused by a novel coronavirus named "SARS-CoV-2," and the disease it causes has been named "Coronavirus Disease 2019," abbreviated "COVID-19"; and

(ii) On March 4, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and to help the State prepare for the broader spread of COVID-19; and

(iii) On March 13, 2020, the President of the United States of America declared a national emergency and announced that the federal government would make emergency funding available to assist state and local governments in preventing the spread of and addressing the effects of COVID-19; and

(iv) On March 17, 2020, the Health Officer of the County of San Bernardino issued a public health order to prohibit all public and private gatherings and require the closure of all bars, adult entertainment establishments, and other business establishments that do not serve food, as well as movie theatres, gyms, and health clubs to help prevent the spread of COVID-19. On April 2, 2020, the Health Officer extended the order until such time that the Governor's Executive Order N-22-20 and the Health Officer's orders are rescinded; and

(v) On March 13, 2020, the Upland City Council adopted Resolution No. 6529 proclaiming the existence of a local emergency concerning the COVID-19 virus; and

(vi) On March 19, 2020, the Governor issued Executive Order N-33-20 to implement directives developed by the State Public Health Officer that require all individuals living in the State of California to stay at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure and other essential sectors; and

(vii) Based on the foregoing, the Centers for Disease Control and Prevention, the California Department of Public Health, and the San Bernardino County Department of Public Health have all issued public health recommendations to the community including, but not limited to, staying home if sick, social distancing from non-family members, canceling or postponing events and gatherings, and taking

other precautions to protect public health and prevent transmission of this communicable virus; and

(viii) These public health directives and City orders impact daily life in the community, as well as the livelihood and economic well-being of residents and businesses; and

(ix) Since the week of June 21, 2020, COVID-19 cases are rising at an alarming rate in California including San Bernardino County; and

(x) To further stem the increase in COVID-19 cases, on July 1, 2020, the Governor ordered the closure of indoor dining, as well as museums, zoos and entertainment centers for 19 counties in the state including San Bernardino County. The closure of indoor dining is scheduled to last three weeks; and

(xi) Prior to July 1, 2020, businesses and restaurants had already reduced capacity and were subject to social distancing requirements.

(xii) The City has permitted temporary use of the outdoor areas for dining as activities seemed to be considered safer.

(xiii) To provide relief to businesses in our downtown City sector, the City can assist local small retail stores by allowing outdoor merchandise displays to attract customers and increase store floor area capacity in compliance with these public health directives, orders, and guidelines related to COVID-19 by allowing portions of sidewalk areas located in City-owned public rights-of-way to be used for outdoor merchandise displays during the current City of Upland local emergency, subject to the requirements set forth in Executive Order 2020-6; and

(xiv) Pursuant to Chapter 2.20 of the Upland Municipal Code, the City Manager is the Director of Emergency Services, and is empowered to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided, however, such rules and regulations must be confirmed at the earliest practicable time by the City Council; and

(xv) On July 22, 2020, the Director of Emergency Services issued Executive Order 2020-6 pursuant to her authority under Section 2.20.060 of the Upland Municipal Code to act in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19 to allow restaurants otherwise licensed and/or approved to operate in the City to apply for a Temporary Outdoor Merchandise Display Permit (Upland Downtown – Only) to serve customers public areas, including portions of the public right of way and prohibiting any person to operate a retail sale display area on any public property or public right-of-way without an approved Temporary Outdoor Merchandise Display Permit or unless otherwise authorized by law; and

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

Section 1. The above findings are true and correct.

Section 2. Based on the above findings and pursuant to Section 2.20.060 of the Upland Municipal Code, the City Council hereby ratifies and confirms Executive Order 2020-6 issued by the Director of Emergency Services on July 22, 2020, which is attached hereto as Exhibit A and hereby incorporated as though set forth in full.

Section 3. 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 27th day of July 2020.

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

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 27th day of July, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

ATTEST:

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



**DIRECTOR OF EMERGENCY SERVICES  
EXECUTIVE ORDER 2020-6**

WHEREAS, COVID-19 has spread globally to over 70 countries, infecting more than 118,000 persons and killing more than 4,200 individuals worldwide. Due to the expanding list of countries with widespread transmission of COVID-19, and increasing travel alerts and warnings for countries experiencing sustained or uncontrolled community transmission issued by the Centers for Disease Control and Prevention (CDC), COVID-19 has created conditions that are likely to be beyond the control of local resources and require the combined forces of other political subdivisions to combat; and

WHEREAS, on March 4, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and to help the State prepare for the broader spread of COVID-19; and

WHEREAS, on March 13, 2020, the President of the United States of America declared a national emergency and announced that the federal government would make emergency funding available to assist state and local governments in preventing the spread of and addressing the effects of COVID-19; and

WHEREAS, on March 13, 2020, the City Council adopted Resolution No. 6529 declaring the existence of a local emergency concerning the COVID-19 virus pursuant to Government Code Section 8630; and

WHEREAS, the federal, state, and local authorities, including the California Department of Public Health and the Health Officer of the County of San Bernardino, have issued directives, orders, and guidelines to protect public health and prevent transmission of COVID-19, including, but not limited to, stay at home orders, social distancing, staying home if sick, canceling or postponing large group events, working from home, and other precautions to protect public health and prevent transmission of this communicable virus; and

WHEREAS these public health directives and orders impact daily life in the community, as well as the livelihood and economic well-being of residents and businesses; and

WHEREAS, the space limitations of some dine-in restaurants make it difficult or impossible to provide an essential service to the public while complying with these public health directives, orders, and guidelines related to COVID-19 and to assist dine-in restaurants to operate and serve patrons with the public health directives the City provided temporary permission to allow portions of City-owned public rights-of-way, including certain streets, to be used for outdoor dining during the current City of Upland local emergency, subject to the requirements below; and

WHEREAS, in the Upland Historic Downtown the City can assist retail stores to operate and serve patrons in compliance with these public health directives, orders, and guidelines related to COVID-19 by allowing portions of City-owned public rights-of-way, including certain sidewalks, to be used for temporary outside retail display during the current City of Upland local emergency, subject to the requirements below; and

WHEREAS, Section 2.20.060 of the Upland Municipal Code authorizes the Director of Emergency Services, to make and issue rules and regulations on matters reasonably related to the protection of life and property affected by such emergency; provided, such rules and regulations are subject to confirmation at the earliest practicable time by the City Council; and

WHEREAS, in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, it is necessary to exercise my authority pursuant to Section 2.20.060 of the Upland Municipal Code to order the adoption of the regulations below related to the protection of life and property.

NOW, THEREFORE, IT IS HEREBY ORDERED by the City Manager of the City of Upland, acting as the Director of Emergency Services as follows:

SECTION 1. Recitals. The preceding recitals are true and correct.

SECTION 2. Temporary Outdoor Merchandise Display Permits for the Historic Upland Downtown. Notwithstanding any provisions in the Upland Municipal Code to the contrary, outdoor retail display is hereby allowed in certain public places, including limited portions of the public right-of-way subject to the limitations and requirements below.

A. Retail businesses otherwise licensed and/or approved to operate in the Historic Upland Downtown may apply for a Temporary Outdoor Merchandise Display Permit to encourage customers to shop in public sidewalk areas, including portions of the public right of way. No person shall operate an outside merchandise display on any public property or public right-of-way without an approved Temporary Outdoor Merchandise Display Permit or otherwise authorized by law.

B. Applications for a Temporary Outdoor Merchandise Display Permit must be made on a form designated by the City and shall include such information as the City Manager or her designee shall reasonably require.

C. The City Manager or her designee shall have the sole authority to approve a Temporary Outdoor Merchandise Display Permit subject to following conditions and such other reasonable conditions deemed necessary or convenient to protect the public, health, safety, or welfare.

1. All outdoor Merchandise Display operations shall be conducted in a manner that is safe, orderly, neat, sanitary, and ADA accessible. Outdoor Merchandise Display shall not be conducted in any manner causing a public nuisance.

2. All Merchandise Display and retail operations must comply with all applicable public health directives, orders, and guidelines regarding COVID-19.

3. Permittees shall be solely responsible for the setup, operations, maintenance and removal of furniture and materials required to facilitate safe and satisfactory use of the outside area.

4. Permittees must agree to indemnify, defend, and hold the City, its officials, officers, employees, and agents free and harmless from any liability arising from the use of public areas, including any approved use of the public right-of-way, for or related to outdoor Merchandise Display operations.

6. Permits shall be limited to the hours of operation and for the term, if any, specified in the approval.

Executive Order 2020-6  
Director of Emergency Services

7. All retail operations must be conducted in accordance with federal, State, County and City laws, ordinances, rules and regulations as may from time to time be applicable to such business. The retail business shall be required to maintain a valid City business license.

8. The City may modify or revoke any permit for any reason or for no reason upon written notice to permittees. Permittees' use of the premises is subject to temporary modification or suspension at any time based on the public's priority for use of public property or right-of-way as determined solely by the City.

D. No Temporary Outdoor Merchandise Display Permit shall be considered an entitlement for use of an outdoor merchandise sales area in or on any public property or right-of-way, or to confer any vested rights or property interest to any ongoing or continuing activities beyond the expiration of the Temporary Outdoor Merchandise Display Permit or this Order. Permission granted to use the designated public right-of-way is revocable at any time at the City's sole discretion, or upon expiration of the City's emergency declaration, or in the interest of the public health, safety and welfare. The City shall at all times retain exclusive final authority over City property and the public right-of-way, including the right to use the right-of-way for maintenance of utilities, or other public infrastructure, and as necessary to protect the public health, safety, and welfare.

SECTION 3. Enforcement. This Order may be enforced in any manner allowed by law, and violations shall be a misdemeanor punishable by a fine not to exceed \$1,000.00, or by imprisonment not to exceed six months, or both, pursuant to the Upland Municipal Code.

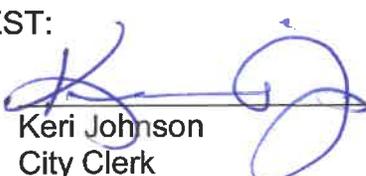
SECTION 4. Severability. The Director of Emergency Services declares that, should any section, subsection, subdivision, sentence, clause, phrase, or portion of this Order for any reason be held invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Order. The Director of Emergency Services hereby declares that she would have adopted this Order and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 5. Notice Order. Copies of this Order shall be disseminated to the public and be given widespread publicity and notice.

SECTION 6. Effective Date. This Order shall take effect immediately and shall remain in effect until terminated by the Director or the City Council or until the City Council declares the local emergency to be over.

ADOPTED this JULY 22, 2020

BY:   
Rosemary Hoerning  
City Manager/Director of Emergency Services

ATTEST:  
BY:   
Keri Johnson  
City Clerk



## STAFF REPORT

**ITEM NO. 12.A.**

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**DATE:** July 27, 2020  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, CITY MANAGER  
**PREPARED BY:** ROBERT DALQUEST, DEVELOPMENT SERVICES DIRECTOR  
LIZ CHAVEZ, DEVELOPMENT SERVICES MANAGER  
DEYANIRA PELAYO-BRITO, HOUSING COORDINATOR  
**SUBJECT:** SUBSTANTIAL AMENDMENT TO FY 2020-2021 ANNUAL ACTION PLAN AND AMENDMENT TO THE CITIZEN PARTICIPATION PLAN IN RESPONSE TO THE CARES ACT

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### RECOMMENDED ACTION

It is recommended that the City Council hold a public hearing and adopt a Resolution approving the Substantial Amendment to the Community Development Block Grant FY 2020-2021 Annual Action Plan; adopt a Resolution approving Upland's Citizen Participation Plan amendment in connection with the City's federal Community Development Block Grant Program; and authorize the City Manager to execute any and all necessary and related documents to implement the FY 2020-2021 Community Development Block Grant-Coronavirus (CDBG-CV) Plan in response to the CARES Act.

### GOAL STATEMENT

The proposed action supports the City's goal of providing decent housing, a sustainable living environment and expanded economic opportunities principally for low and moderate income persons.

### BACKGROUND

Consistent with applicable Community Development Block Grant (CDBG) regulations, the U.S. Department of Housing and Urban Development (HUD) requires grantees to prepare a Consolidated Plan and Citizen Participation Plan every five years. The Consolidated Plan establishes a strategic vision for housing, community and economic development actions. As a requirement of the Consolidated Plan, a Citizen Participation Plan must be adopted, which sets forth the policies and procedures for providing citizens and other interested parties with opportunities to participate in the planning, implementation and evaluation of the CDBG

program. The City Council adopted the FY 2020-2024 Consolidated Plan on May 11, 2020 and further adopted the FY 2020-2021 Annual Action Plan on May 11, 2020 that outlined the planned projects' one-year goals and budgets for CDBG to be implemented during the program year. Prior to the Plan approval, the City Council also adopted the FY 2020-2024 Citizen Participation Plan on October 14, 2019. In order to receive the CDBG-CV CARES Act funding, the City is required to submit a Substantial Amendment to the FY 2020-2021 Annual Action Plan and an amendment to the FY 2020-2024 Citizen Participation Plan.

## **ISSUES/ANALYSIS**

### **CDBG-CV Funding**

The U.S. Department of Housing and Urban Development (HUD) is providing a special allocation of CDBG funds to the City of Upland to be used to prevent, prepare for, and respond to the coronavirus (COVID-19). This allocation was authorized by the CARES Act, Public Law 116-136, which was signed by President Trump on March 27, 2020, to respond to the growing effects of this historic public health crisis. The City's allocation from HUD is \$375,735. As a requirement by HUD, the City's use of CDBG-CV funds for one year is to be reflected as a substantial amendment to the FY 2020-2021 Annual Action Plan. The CARES Act removes the maximum allocation of 15 percent (15%) public service cap and allows for 20 percent (20%) usage of funds toward administrative costs. CDBG funds are designed to assist the City in providing decent housing and a suitable living environment, addressing community service and facility needs, and expanding economic opportunities for primarily low and moderate income persons. The CDBG Committee, whose members are appointed by City Council, expedited the process (as recommended by HUD) to determine recommended funding amounts for the proposed FY 2020-2021 CDBG-CV program. These funds are to assist FY 2020-2021 programs/projects and must be expended immediately after approval of the Substantial Amendment and executed Standard Agreement. The CDBG Committee reviewed 11 proposals requesting a total of \$478,608. The CDBG Committee is recommending that a total of 8 projects, including administration costs, be funded utilizing the proposed \$375,735 CDBG-CV funds. (See Table 1).

### **Citizen Participation Plan**

A waiver request was submitted to HUD on May 21, 2020 to utilize two of the waivers relative to the CARES Act CDBG-CV funding and Citizen Participation Plan. The first waiver allows the City of Upland to change the 30-day minimum public comment period to a 5 day minimum public comment period for the FY 2020-2021 program year. The additional waiver allows the City of Upland to determine what constitutes reasonable notice and opportunity to comment for the FY 2020-2021 program year. Since such waivers were requested by the City of Upland and approved by HUD, an amendment to the Citizen Participation Plan has been made to reflect the changes. These changes can be located on the attached amendment to the Citizen Participation Plan in the highlighted section on Page 21. The Substantial Amendment and the amendment to the Citizen Participation Plan have been on file with the City Clerk and have been publicly noticed for a five (5) day public review period.

## **FISCAL IMPACTS**

The City of Upland CDBG fund is eligible to receive an allocation of \$375,735 from HUD. The Committee's funding recommendations are consistent with this limit and otherwise comply with applicable federal rules and regulations.

## **ALTERNATIVES**

Provide alternative direction to staff.

**ATTACHMENTS:**

**Table 1 Exhibit**

**Substantial Amendment to FY 2020-21 Action Plan**

**Resolution for Substantial Amendment to FY 2020-21 Action Plan**

**Amendment to the Citizen Participation Plan**

**Resolution for the Amendment to the Citizen Participation Plan**

**Waiver Submitted to HUD**

**TABLE 1**

**ACTIVITIES TO BE UNDERTAKEN FOR CDBG –CV FUNDING**

Table 1 summarizes recommendations of the CDBG Committee on public service projects and on capital projects to the City Council of Upland for the Substantial Amendment to the Action Plan FY 2020-21.

<b>Table 1: City of Upland CDBG-CV Program for FY 2020</b>	<b>Actual Allocation FY 20-21</b>
<b>Public Services</b>	
Foothill Family Shelter – Stepping Stone Program	25,000
St. Joseph’s Church – His Hands Food Program	5,000
Inland Valley Hope Partners – Food Security Program	10,000
Inland Valley Drug & Alcohol Recovery – Food Vouchers for Clients	12,000
Pacific Lifeline – Women’s Shelter	20,000
Inland Mediation Board – Landlord/Tenant	0
Inland Mediation Board – Fair Housing	0
Upland Homeless Outreach & Education Prevention (U-HOPE)	123,588
Recreation Division – Senior Grocery Delivery Service	45,000
KidCare International, Inc. – Expansion of Existing Food Bank	0
<b>Capital Projects</b>	
City of Upland - Upland Parklet Program	60,000
<b>Planning and Administration</b>	<b>\$75,147</b>
Administrative & Economic Development Costs	75,147
Program Income (none)	0.00
<b>Allocation for CDBG-CV Program for FY 2020-2021</b>	<b>\$375,735</b>
<b>Grand Total</b>	<b>\$375,735</b>



## The City of Upland

**2020-2021 ACTION PLAN – SUBSTANTIAL AMENDMENT  
Amendment of Community Development Block Grant – CARES Act  
(CDBG-CV) Allocation**

**DRAFT FOR PUBLIC COMMENT PERIOD**

**July 23 – July 27, 2020**

Si necesita más información sobre la traducción de documentos en español, comuníquese con Deyanira Pelayo-Brito ([dbrito@ci.upland.ca.us](mailto:dbrito@ci.upland.ca.us) o 909-931-4334)

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## Executive Summary

### Background

Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act and the President signed it on March 27, 2020 authorizing \$2.2 trillion in a variety of stimulus measures to prevent, prepare for, and respond to the COVID-19 pandemic. The law includes a special allocation of the Community Development Block Grant (CDBG-CV) to enable communities to effectively address the impact of COVID-19 on their communities, especially low- and moderate-income residents.

The City of Upland will receive (CDBG-CV) Community Development Block Grant – CARES Act funding. This substantial amendment contains changes to the City’s Consolidated Planning utilizing CDBG-CV funding for proposed projects of: public services, parklet installation, and planning & administration.

### Sources

The City of Upland will receive the following grants from HUD under the CARES Act:

CDBG-CV	\$375,735
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These funds are separate and distinct from the City’s regular CDBG funds. As of June 30, 2020, HUD continues to release guidance for these programs containing modified program requirements. Subject to the CARES Act and emerging policy from HUD, the City Council is responsible for determining how CDBG-CV funds will be used to prevent, prepare and respond to the COVID-19 virus. In consultation with key City departments and partners serving the needs of low- and moderate-income in the community, this submission to the City Council requests approval to invest CARES Act funding for the CDBG-CV projects listed below.

### Proposed Uses of Community Development Block Grant (CDBG-CV)

Public Services:	\$240,588
Parklet Installation:	\$60,000
Planning and Administration:	\$75,147

## Process

Given the urgency to design and launch programs with the CDBG-CV allocation, the CARES Act authorized grantees with the flexibility of providing 5-day public review periods and the authority to use virtual public hearings to fulfill applicable public hearing requirements. On March 31, 2020, HUD issued a memo authorizing grantees to modify public review and hearing requirements to comply with this flexibility. The City of Upland requested the use of these waivers on May 21, 2020 and received approval from HUD on May 23, 2020 to utilize them.

*Draft Substantial Amendment – for public review*

As such, the City of Upland is conducting a 5-day review period for this substantial amendment from July 23 – July 27, 2020. The City will conduct a public hearing for the substantial amendment as part of the July 27, 2020 City Council meeting.

<b>Sort Order</b>	<b>Activity</b>	<b>Target Population</b>	<b>Summary</b>	<b>Summary of Comments Received</b>
1.	Comment Period	<ul style="list-style-type: none"> <li>• Minorities</li> <li>• Non-English Speaking</li> <li>• Persons with disabilities</li> <li>• Broad community</li> <li>• Residents of public/assisted housing</li> <li>• Stakeholders</li> </ul>	The City conducted its comment period from July 23 – 27, 2020.	(to be completed after public hearing)
2.	Comment Period	<ul style="list-style-type: none"> <li>• Minorities</li> <li>• Non-English Speaking</li> <li>• Persons with disabilities</li> <li>• Broad community</li> <li>• Residents of public/assisted housing</li> <li>• Stakeholders</li> </ul>	The City conducted its public hearing to review the Substantial Amendment to the 2020-21 Action Plan on July 27, 2020.	(to be completed at close of public comment period)

**Table 1 – Resident Engagement**

## Expected Resources – 91.220(c)(1,2)

### Introduction

For the special allocation of CDBG-CV resources, the City anticipates it will receive an allocation of \$375,735. If HUD authorizes additional resources, the City will further amend this Action Plan.

### Anticipated Resources

Program	Source of Funds	Use of Funds	CARES Act Allocation	Narrative Description
CDBG-CV	Public-Federal	<ul style="list-style-type: none"> <li>• Public Services</li> <li>• Public Facilities</li> <li>• Housing</li> <li>• Economic Development</li> <li>• Planning and Administration</li> </ul>	\$375,735	CDBG activities to prevent, prepare for, and respond to COVID-19.

Table 2 - Expected Resources

### Explain how federal funds will leverage those additional resources (private, state and local funds), including a description of how matching requirements will be satisfied

In the initial planning and programming of these resources, the Community Development Department has worked closely with other city departments as well as County, State, and Federal partners to identify other available resources authorized through the CARES Act, the Small Business Administration (SBA), and Federal Emergency Management Agency (FEMA) that can be leveraged to maximize the impact of the CDBG-CV resources.

**Annual Goals and Objectives – 91.220(c)(3)**

To allocate the CDBG-CV program, the City of Upland has established the following goals for the 2020 Annual Action Plan.

**Goals Summary Information**

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
1	COVID-19 Response	2019	2022	Non-Housing Community Development	Citywide	COVID-19 Impact	CDBG: \$375,735	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit: 11,340 Persons Assisted  Public service activities other than Low/Moderate Income Housing Benefit: 1,200 Persons

**Table 3 – Annual Goals**

## Projects – 91.220(d)

### Introduction

With the CDBG-CV allocation, the City of Upland will fund the following projects.

### Projects

#	Project Name
1	Public Services
2	Parklet Installation
3	Planning and Administration

Table 4 – Project Information

### Describe the reasons for allocation priorities and any obstacles to addressing underserved needs

These projects were determined in consultation with City staff, departments, and stakeholders to identify critical needs resulting from COVID-19 within the City.

### Project Summary Information

<b>1</b>	<b>Project Name</b>	Public Services
	<b>Target Area</b>	Citywide
	<b>Goals Supported</b>	COVID-19 Response
	<b>Needs Addressed</b>	COVID-19 Impact
	<b>Funding</b>	CDBG: \$240,588
	<b>Description</b>	Provide public services to residents adversely impacted by COVID-19 pandemic.
	<b>Target Date</b>	9/30/2022
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	Assisted Public service activities other than Low/Moderate Income Housing Benefit: 1,200 Persons
	<b>Location Description</b>	Citywide

Draft Substantial Amendment – for public review

	<b>Planned Activities</b>	<p>Foothill Family Shelter – Stepping Stone Program: \$25,000</p> <p>St. Joseph’s Church – His Hands Food Program: \$5,000</p> <p>Inland Valley Hope Partners – Food Security Program: \$10,000</p> <p>Inland Valley Drug &amp; Alcohol Recovery – Food Vouchers for Clients: \$12,000</p> <p>Pacific Lifeline – Women’s Shelter; \$20,000</p> <p>Upland Homeless Outreach &amp; Education Prevent (U-HOPE): \$123,588</p> <p>Recreation Division – Senior Grocery Delivery Service: \$45,000</p>
2	<b>Project Name</b>	Parklet Installation
	<b>Target Area</b>	Citywide
	<b>Goals Supported</b>	COVID-19 Response
	<b>Needs Addressed</b>	COVID-19 Impact
	<b>Funding</b>	CDBG: \$60,000
	<b>Description</b>	Due to the impacts on businesses due to social distancing requirements caused by the COVID-19 pandemic, it has become apparent that a return to “business as usual” for businesses cannot happen at this time and residents are less able to enjoy downtown urban areas. In order to encourage Upland residents to be downtown in a safe manner in accordance with Federal and state guidance, the City will develop up to two socially distanced parklets. A parklet is a sidewalk extension, or pop out, that provides more space and amenities for people using the street.
	<b>Target Date</b>	9/30/2022
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	11,340 Persons Assisted
	<b>Location Description</b>	N. 2nd Avenue (between D and E C St)
	<b>Planned Activities</b>	Install up to 2 socially distanced parklets in the downtown area of the City of Upland.
3	<b>Project Name</b>	Planning and Administration
	<b>Target Area</b>	Citywide
	<b>Goals Supported</b>	COVID-19 Response

<b>Needs Addressed</b>	COVID-19 Impact
<b>Funding</b>	CDBG: \$75,147
<b>Description</b>	Planning and administration of the CDBG-CV program.
<b>Target Date</b>	9/30/2022
<b>Estimate the number and type of families that will benefit from the proposed activities</b>	N/A
<b>Location Description</b>	Citywide
<b>Planned Activities</b>	Planning and administration of the CDBG-CV Program: \$75,147

**Table 5 – Project Details**

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UPLAND, CALIFORNIA APPROVING THE SUBSTANTIAL AMENDMENT TO THE COMMUNITY DEVELOPMENT BLOCK GRANT FY 2020-2021 ANNUAL ACTION PLAN

Intent of the Parties and Findings

(i) Findings to support, the City of Upland is an Entitlement community in the U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) program; and

(ii) Additional finding, this designation entitles Upland to an annual grant of funds under the CDBG Program; and

(iii) Additional finding, for FY 2020-2021, the City initially received an allocation of \$638,715 in CDBG funds; and

(iv) Additional finding, pursuant to the CARES Act the City received an additional allocation in the amount of \$375,735; and

(v) Additional finding, the CDBG Committee (the "Committee") has reviewed project proposals for FY 2020-2021 CDBG-CV funding and made recommendations to the City Council which are summarized in the Substantial Amendment to the FY 2020-2021 Action Plan (the "Action Plan"); and

(vi) Additional finding, the City Council's July 27, 2020 public hearing to consider approving the Substantial Amendment to the FY 2020-2021 Action Plan was properly noticed for a five (5) day period prior to the date of the public hearing to allow the public an opportunity to provide comments on the Amendment; and

(vii) Additional finding, during the July 27, 2020 public hearing, the City Council heard and considered both oral and written comments; and

(viii) Pursuant to Title 14, California Code of Regulations, Chapter 3, Article 18, Section 15262 – Feasibility and Planning Studies, the City Council may determine in its independent judgment that the Substantial Amendment to the FY 2020-2021 Action Plan is exempt from the requirements of the California Environmental Quality Act of 1970, as amended.

NOW, THEREFORE, the 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 Substantial Amendment to the FY 2020-2021 Action Plan are exempt from the requirements of the California Environmental Quality Act of 1970, as amended.

Section 3. The Upland City Council does hereby approve the City of Upland Substantial Amendment to the FY 2020-2021 Action Plan.

Section 4. The City Council authorizes the City Manager or their designee to execute any and all necessary and related documents in order to effectuate the implementation of Substantial Amendment to the FY 2020-2021 Action Plan.

Section 5. This Resolution shall take effect on the date of its adoption.

Section 6. 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 27th day of July, 2020.

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Debbie Stone, Mayor

I, Keri Johnson, City Clerk of the City of Upland, do hereby certify that the foregoing Resolution was passed and adopted at a regular meeting of the City Council of the City of Upland held on the 27th day of July, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

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



## **City of Upland**

# **Citizen Participation Plan**

*U.S. Department of Housing and Urban Development (HUD)  
Community Planning and Development Grant Programs*

Draft – July 2020

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**Appendix: Proof of Public Notices and Public Comment**

## **Citizen Participation Plan City of Upland, California**

As required by the U.S. Department of Housing and Urban Development (HUD) regulations found at 24 CFR 91.105, this Citizen Participation Plan sets forth the City of Upland’s policies and procedures for providing citizens and other interested parties with opportunities to participate in an advisory role in the planning, implementation, and evaluation of the Community Development Block Grant (CDBG) program. The purpose of the CDBG program is the provision of decent housing, a suitable living environment, and expanded economic opportunities for low- and moderate-income residents earning less than 80 percent of the Area Median Income, or in predominantly low- and moderate-income neighborhoods where at least 51 percent of the households are low and moderate-income households.

As a recipient of CDBG funds, the City is required to produce the following Consolidated Plan Documents:

1. Citizen Participation Plan – the City’s policies and procedures for community participation in the planning, implementation, and evaluation of the CDBG program.
2. Analysis of Impediments to Fair Housing Choice or Assessment of Fair Housing (AI or AFH) – a five-year plan completed by the City individually or as part of a local consortium of other HUD grantees pursuant to HUD guidance for the evaluation of local housing conditions, economics, policies and practices and the extent to which these factors impact the range of housing choices and opportunities available to all residents in an environment free from discrimination.
3. Consolidated Plan – a five-year plan that documents the City of Upland’s housing and community development needs, outlines strategies to address those needs and identifies proposed program accomplishments.
4. Annual Action Plan – an annual plan that describes specific CDBG projects and activities that will be undertaken over the course of the program year, which runs from July 1 to June 30.
5. Consolidated Annual Performance and Evaluation Report (CAPER) – an annual report that evaluates the City’s accomplishments and use of CDBG funds.

The HUD requirements for citizen participation do not restrict the responsibility or authority of the City of Upland for the development and execution of the Consolidated Plan Documents, but rather facilitate citizen access to, and engagement with the CDBG program.

In accordance with the regulations, the minimum annual number of public hearings at which citizens may express their views concerning the Consolidated Plan Documents shall be two (2) public hearings. These public hearings shall occur at two different points during the program year, as directed by Upland city staff. Additional public hearings and comment periods will be held in the development of the AFH or AI 2019-2013, and the Consolidated Plan for 2020-2024 and in the event of

substantial amendments to the Citizen Participation Plan, Consolidated Plan, AFH or AI, or Action Plan become necessary as described later in this document. The City, at its discretion, may conduct additional outreach, public meetings or public hearings as necessary to foster citizen access and engagement.

### **A. Encouragement of Citizen Participation**

The City of Upland provides for and encourages citizens to participate in the development of the Citizen Participation Plan, Consolidated Plan, AFH or AI, Action Plan, and CAPER. The City encourages participation by low- and moderate-income persons, particularly those living in slum and blighted areas (if any such areas are formally designated) and in areas where CDBG funds are proposed to be used, and by residents of predominantly low- and moderate-income neighborhoods<sup>1</sup>. The City will also take appropriate actions to encourage the participation of all its citizens, including minorities and non-English speaking persons, as well as persons with disabilities.

The City will make a concerted effort to notify and encourage the participation of citizens, local and regional institutions, the local Continuum of Care organization addressing homelessness, and public and private organizations including businesses, developers, nonprofit organizations, philanthropic organizations, community-based and faith-based organizations, broadband internet service providers, organizations engaged in narrowing the digital divide, agencies whose primary responsibilities include the management of flood prone areas, public land or water resources, emergency management agencies, state and local health service providers, social service providers, fair housing organizations, state and local governments, public housing agencies, affordable housing developers, businesses, community and faith based organizations, and other stakeholders in the amendment of the Citizen Participation Plan or the development of the AI or AFH, Consolidated Plan, Annual Action Plans through mailings (including electronic mailings), online postings and public notices in the newspaper.

The City may also explore alternative public involvement techniques and quantitative ways to measure efforts that encourage citizen participation in a shared vision for change in communities and neighborhoods, and the review of program performance as directed by the Development Services Director. All communication, public comments, and complaints concerning the Citizen Participation Plan and the Consolidated Plan Documents should be directed to:

Development Services Manager  
Development Services Department  
460 N. Euclid Avenue  
Upland, CA 91786  
(909) 931-4146

### **B. Citizen Participation Plan**

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<sup>1</sup> Predominately low- and moderate-income neighborhoods are defined as those in which 51% of the residents have incomes at or below 80% of area median income, as determined with HUD-supplied data.

The following describes the process and procedures related to the development of the Citizen Participation Plan.

## **1. Plan Development**

The City's Citizen Participation Plan development procedures are outlined below.

### **a. Plan Considerations**

As a part of the Citizen Participation Plan process, and prior to the adoption of the Consolidated Plan, the City will make available the information required by HUD. This information will be made available to citizens, public agencies, and other interested parties.

### **b. Plan Review and Comment**

The draft Citizen Participation Plan shall be made available for public review for a 30-day period. The Citizen Participation Plan shall be provided in a format accessible to persons with disabilities upon request. Such formats may include, but are not limited to providing oral, Braille, electronic or large print versions of the plan to those visually impaired and delivering copies to those who are homebound. The Citizen Participation Plan will encourage comment and participation by minority and non-English speakers. Publication of the plan will be advertised in accordance with the City's Limited English Proficiency (LEP) Plan and translation services will be available upon request.

Written comments will be accepted by the Development Services Department Development Services Manager or designee during the public review period. A summary of all written comments and those received during the public hearing as well as the City's responses will be attached to the Citizen Participation Plan prior to submission to HUD.

### **c. Public Hearing**

The City Council shall conduct a public hearing to accept oral public comments on the draft Citizen Participation Plan. The City Council may approve or reject the Citizen Participation Plan.

### **d. Submittal to HUD**

The Citizen Participation Plan shall be approved as a stand-alone document. The City shall submit to HUD: the approved document, a summary of all written comments and those received during the public hearing as well as the City's responses, and proof of compliance with the minimum 30-day public review and comment period requirement. A summary of any comments or views not accepted and the reasons therefore shall be supplied to HUD.

## **2. Amendments**

The City shall amend the Citizen Participation Plan using the following procedures, as needed:

a. [Amendment Considerations](#)

The City shall amend the Citizen Participation Plan, as necessary, to ensure adequate engagement and involvement of the public in making decisions related to the programs and documents governed by 24 CFR Part 91. Formal amendment of the Citizen Participation Plan may be required should a provision of the Citizen Participation Plan be found by the City to conflict with HUD regulations.

b. [Public Review and Comment](#)

Amendments to the Citizen Participation Plan shall be made available for public review for a 30-day period. A public hearing shall be conducted by the City Council at a regularly scheduled meeting so that citizens may express their views. Written comments will be accepted by the Development Services Department Development Services Manager or designee during the public review period. A summary of all written comments and those received during the public hearing as well as the City's responses will be attached to the amended Citizen Participation Plan prior to submission to HUD.

Minor edits to the Citizen Participation Plan, such as updating contact information or technical details about schedules and publications, will not constitute a "Substantial Amendment", and therefore, will not be released for public review and comment. Copies will be made available following the process described in Section G of this document.

c. [Public Hearing](#)

The City Council shall conduct a public hearing to review and accept public comments on the draft amendment to the Citizen Participation Plan.

d. [Submittal to HUD](#)

A copy of the Amended Citizen Participation Plan, including a summary of all written comments and those received during the public hearing as well as the City's responses and proof of compliance with the minimum 30-day public review and comment period requirement shall be submitted to HUD for their records. A summary of any comments or views not accepted and the reasons therefore shall be supplied to HUD as applicable.

### **C. Five-Year Consolidated Plan**

The following paragraphs describe the policies and procedures for the development of the Five-Year Consolidated Plan. To comply with 24 CFR Part 91.105(b), the information supplied in the draft Consolidated Plan for public review will include:

- Amount of assistance the City expects to receive (grant funds and program income)
- Range of activities that may be undertaken
- Estimated amount of funding that will benefit low- and moderate-income persons

The City shall also provide an assessment of community development and housing needs and identify short term and long-term community development objectives directed toward the provision of decent housing and the expansion of economic opportunities primarily for persons of low- and moderate-income.

Additionally, the City must attest to its compliance with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR 24, as effectuated by the City’s adopted Residential Anti-Displacement and Relocation Assistance Plan, as required under Section 104(d) of the Housing and Community Development Act of 1974, as amended. Persons displaced as a result of HUD-assisted activities, whether implemented by the City or by others, shall receive relocation benefits as required under Federal Law.

The City will make this information available in the Consolidated Plan published for comment and review.

## **1. Plan Development**

The City encourages the participation of residents and stakeholders in the development of the Consolidated Plan. The City shall follow the following procedure to prepare and adopt the Consolidated Plan:

### **a. Plan Considerations**

The City will make a concerted effort to notify and encourage the participation of citizens, local and regional institutions, the local Continuum of Care organization addressing homelessness, and public and private organizations including businesses, developers, nonprofit organizations, philanthropic organizations, community-based and faith-based organizations, broadband internet service providers, organizations engaged in narrowing the digital divide, agencies whose primary responsibilities include the management of flood prone areas, public land or water resources, emergency management agencies, state and local health service providers, social service providers, fair housing organizations, state and local governments, public housing agencies, affordable housing developers, businesses, community and faith based organizations, and other stakeholders in the development of the Consolidated Plan through mailings (including electronic mailings), online postings and public notices in the newspaper.

When preparing the of the Consolidated Plan describing the City's homeless strategy and the resources available to address the needs of homeless persons (particularly chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) and persons at risk of homelessness, the jurisdiction must consult with:

- The San Bernardino County Homeless Provider Network (Continuum of Care "COC");
- Public and private agencies that address housing, health, social service, victim services, employment, or education needs of low-income individuals and families; homeless individuals and families, including homeless veterans; youth; and/or other persons with special needs;
- Publicly funded institutions and systems of care that may discharge persons into homelessness (such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); and
- Business and civic leaders.

When preparing the portion of the Consolidated Plan concerning lead-based paint hazards, the City shall consult with state or local health and child welfare agencies and examine existing data related to lead-based paint hazards and poisonings, including health department data on the addresses of housing units in which children have been identified as lead poisoned.

When preparing the description of priority non-housing community development needs, the City must notify adjacent units of general local government, to the extent practicable. The non-housing community development plan must be submitted to the state and to the county.

The City also will consult with adjacent units of general local government, including local government agencies with metropolitan-wide planning responsibilities, particularly for problems and solutions that go beyond the City's jurisdiction.

"The City will consult with the Housing Authority of San Bernardino County (HASBC) and the Upland Housing Authority, who is also managed by the HASBC, the local public housing agencies (PHA) concerning consideration of public housing needs and planned programs and activities.

If the City becomes eligible to receive Emergency Solutions Grants (ESG), the City will consult with the Continuum of Care in determining how to allocate its ESG grant for eligible activities; in developing the performance standards for, and evaluating the outcomes of, projects and activities assisted by ESG funds; and in developing funding, policies, and procedures for the operation and administration of the Homeless Management Information System (HMIS).

A variety of mechanisms may be utilized to solicit input from these persons/service providers/agencies. These include telephone or personal interviews, focus groups, surveys, and consultation and community workshops.

#### b. Plan Review and Comment

The complete, draft Consolidated Plan shall be made available for public review for a 30-day period. The Consolidated Plan shall be provided in a format accessible to persons with disabilities upon request. Such formats may include, but are not limited to providing oral, Braille, electronic or large print versions of the plan to those visually impaired and delivering copies to those who are homebound.

The plan will encourage comment and participation by minority and non-English speakers. Publication of the plan will be advertised in accordance with the LEP Plan and translation services will be available upon request.

The plan will encourage comment and participation by low- and moderate-income residents, especially those living in low- and moderate-income neighborhoods, in areas where CDBG funds are proposed to be used and residents of public and assisted housing. Activities to encourage participation may include, but are not limited to, advertising publication of the Consolidated Plan in target areas, hosting community meetings in target areas, and making copies of the plan available in these neighborhoods. Copies will be made available following the process described in Section G of this document.

Written comments will be accepted by Development Services Department Development Services Manager or designee during the public review period. A summary of all written comments and those received during the public hearing as well as the City's responses will be attached to the Consolidated Plan prior to submission to HUD.

#### c. Public Hearing

The City Council shall conduct a public hearing to accept public comments on the draft Consolidated Plan. Section G describes the process for publishing notice for and conducting public hearings.

#### d. Submittal to HUD

The Consolidated Plan shall be submitted to HUD with a summary of all written comments and those received during the public hearing as well as the City's responses and proof of compliance with the minimum 30-day public review and comment period requirement. A summary of any comments or views not accepted and the reasons therefore shall be supplied to HUD as applicable. The Consolidated Plan will be submitted to HUD 45 days before the program year pursuant to regulations, unless otherwise directed by HUD.

## **2. Consolidated Plan Amendment**

The City shall follow the following procedure to complete substantial and minor amendments to the Consolidated Plan, as needed:

a. [Amendment Considerations](#)

The City shall substantially amend the Consolidated Plan if a “substantial change” is proposed by City staff or the City Council. For the purpose of the Consolidated Plan, a “substantial change” is defined as:

- The City adds or removes Consolidated Plan - Strategic Plan goals.

The City may make minor changes to the Consolidated Plan, as needed, so long as the changes do not constitute a substantial amendment as described above. Changes to numeric accomplishment goals within an existing strategic plan goal shall not constitute a substantial amendment. Such changes to the Consolidated Plan will not require public review or a public hearing.

b. [Public Review and Comment](#)

The City encourages residents and stakeholders to participate in the development of substantial amendments. Substantial Amendments to the Consolidated Plan shall be made available for public review for a 30-day period. Written comments will be accepted by the Development Services Department Development Services Manager or designee during the public review period. A summary of the comments and the City’s responses to the comments will be attached to the Consolidated Plan Substantial Amendment.

The City will encourage participation from all residents, especially low- and moderate-income residents, minorities, groups identified in the LEP Plan, and those with disabilities. The City will take efforts to make the plan accessible to all such groups. Copies will be made available following the process described in Section G of this document.

c. [Public Hearing](#)

The City Council shall conduct a public hearing to accept public comments on the draft amendment to the Consolidated Plan. Section G describes the process for publishing notice for and conducting public hearings.

d. [Submittal to HUD](#)

A copy of the Amended Consolidated Plan, including a summary of all written comments and those received during the public hearing as well as the City’s responses and proof of compliance with the minimum 30-day public review and comment period requirement shall be submitted to HUD for their records. A summary of any comments or views not accepted and the reasons therefore shall be supplied to HUD as applicable.

## **D. Annual Action Plan**

The following describes the process and procedures related to the development of the Annual Action Plan.

### **1. Plan Development**

The City's procedures for preparing and adopting the Annual Action Plan include:

#### a. Plan Considerations

In addition to local residents, the City will ensure that public (including City staff) and private agencies that provide the following services will be consulted in the development of the Action Plan:

- Health Services Providers
- Social Services for: Children, Elderly, Disabled, Homeless, Persons With AIDS
- State and Local Health Agencies
- Adjacent Local Governments
- Economic Development Interests
- Housing Authority of Upland and San Bernardino County

#### b. Plan Review and Comment

The draft Annual Action Plan incorporating the City's proposed uses of CDBG funds shall be made available for public review for a 30-day period. The City will encourage participation from all residents, especially low- and moderate-income residents, minorities, groups identified in the LEP Plan, speakers and those with disabilities. The City will make the plan accessible to all such groups. Copies will be made available following the process described in Section G of this document.

Written comments will be accepted during public review period by the Development Services Manager, or designee, in the Development Services Department. A summary of the comments and the City's responses to the comments will be attached to the draft Action Plan.

#### c. Public Hearing

The City Council shall conduct two (2) public hearings during the preparation of the Action Plan:

- At least one public hearing will be held before the Upland CDBG Committee to accept public comments and hear applicant presentations to determine the funding priorities for the upcoming year and make a recommendation for funding to the City Council; and"

- 
- The second public hearing will be held before the Upland City Council to accept public comments on the draft Annual Action Plan.

The City Council shall approve or reject the Action Plan and authorize its submission to HUD. Section G describes the process for publishing notice for and conducting public hearings.

#### d. Submittal to HUD

Upon adoption of the Annual Action Plan pursuant to HUD regulations, the City Council shall direct City staff to submit the Action Plan to HUD. Documents related to the public participation process, including copies of public notices and a summary of all public comments received, shall be attached to Action Plan. The Action Plan will be submitted to HUD at least 45 days before the program year pursuant to regulations, or as otherwise allowed or required by HUD.

## 2. Annual Action Plan Amendment

The City shall follow the following procedure to complete substantial and minor amendments to the Annual Action Plan, as needed:

#### a. Amendment Considerations

The City shall substantially amend the Action Plan if a “substantial change” is proposed by City staff or the City Council. For the purpose of the Action Plan, a “substantial change” is defined as:

- Addition of a new activity not previously identified in the Action Plan, without regard to funding source;
- Cancellation of an existing activity identified in the Action Plan, without regard to funding source;
- A change in the purpose, scope, location or beneficiaries of an activity; or
- Changes in the use of CDBG funds from one eligible activity to another eligible activity meeting the following thresholds:

<b>Activity Budget Threshold*</b>	<b>Net Increase or Decrease</b>	<b>Trigger for Substantial Amendment</b>	<b>Minor Amendment</b>
< \$100,000	Net Increase	> 100% of the activity allocation	≤ 100% of the activity allocation
	Net Decrease	= 100% of the activity allocation	< 100% of the activity allocation
≥ \$100,000	Net Increase	> 50% of the activity allocation	≤ 50% of the activity allocation
	Net Decrease		
N/A	Net Increase	> \$300,000	Subject to the thresholds above
	Net Decrease		

\* As listed in a published Action Plan, or as amended

The City may make minor changes to the Action Plan, as needed, so long as the changes do not constitute a substantial amendment as described above. Such minor changes to the Action Plan will not require public review or a public hearing before the City Council.

**b. Public Review and Comment**

The City encourages citizen participation in the development of substantial amendments. Substantial Amendments to the Annual Action Plan shall be made available for public review for a 30-day period. Written comments will be accepted during public review period. Comments should be directed to the Development Services Department, Development Services Manager or designee. A summary of the comments and the City’s responses to the comments will be attached to the Action Plan Substantial Amendment.

The City will encourage participation from all residents, especially low- and moderate-income residents, minorities, groups identified in the LEP Plan, and those with disabilities. The City will take efforts to make the plan accessible to all such groups. Copies will be made available following the process described in Section G of this document.

**c. Public Hearing**

The City Council shall conduct a public hearing to review and consider the Substantial Amendment to the Action Plan. The City Council shall accept public comments on the Substantial Amendment to the Action Plan at the public hearing. After public comments are heard and considered by the City Council, the City Council shall approve, approve with modifications, or deny the request for a substantial amendment to the Action Plan. Section G describes the process for publishing notice for and conducting public hearings.

**d. Submittal to HUD**

A copy of the Substantial Amendment to the Annual Action Plan along with copies documenting the public participation process (i.e. public notices and public comments) shall be submitted to HUD for their records.

## **E. Consolidated Annual Performance and Evaluation Report (CAPER)**

The following describes the process and procedures related to the development of the Consolidated Annual Performance and Evaluation Report (CAPER):

### **1. Plan Development**

The City shall follow the following procedure in the drafting and adoption of Consolidated Annual Performance and Evaluation Report (CAPER):

#### **a. Plan Considerations**

Staff will evaluate and report the accomplishments of the previous program year for CDBG, and will summarize expenditures that took place during the previous program year.

#### **b. Plan Review and Comment**

The City encourages citizen participation in the development of the CAPER. The draft CAPER shall be made available for public review for a 15-day period. Written comments will be accepted during public review period by the Development Services Department Development Services Manager or designee. A summary of any written comments received, or oral comments provided during the public hearing and the City's responses to the comments will be attached to the draft CAPER. Copies will be made available following the process described in Section G of this document.

#### **c. Submittal to HUD**

Upon completion of the public review period, City staff shall submit the CAPER to HUD. Documents related to the public participation process, including copies of public notices and a summary of all public comments received, shall be attached to the CAPER. The CAPER shall be submitted to HUD within 90 days following the end of the program year pursuant to regulations.

## **F. Analysis of Impediments or Assessment of Fair Housing (AI or AFH)**

The Analysis of Impediments to Fair Housing Choice (AI) or Assessment of Fair Housing (AFH) is a five-year plan completed by the City individually or as part of a local consortium of other HUD grantees pursuant to HUD guidance for the evaluation of local housing conditions, economics, policies and practices and the extent to which these factors impact the range of housing choices and opportunities available to all residents in an environment free from discrimination. As of April 2019, HUD has suspended the AFH planning framework. HUD currently requires the submission of an AI for grantees submitting Consolidated Plans for FY2019. The following describes the process and procedures related to the development of the AI or AFH.

### **1. Plan Development**

The City shall follow the following procedure in the drafting and adoption of the AI or AFH:

#### **a. Plan Considerations**

As soon as feasible after the start of the public participation process for the AI or AFH, the City will make the HUD-provided data and any other supplemental information available to residents, public agencies and other interested parties by posting the data on the City's website and referencing this information in public notices.

The City will make a concerted effort to notify and encourage the participation of citizens, local and regional institutions, the local Continuum of Care organization addressing homelessness, and public and private organizations including businesses, developers, nonprofit organizations, philanthropic organizations, community-based and faith-based organizations, broadband internet service providers, organizations engaged in narrowing the digital divide, agencies whose primary responsibilities include the management of flood prone areas, public land or water resources, emergency management agencies, state and local health service providers, social service providers, fair housing organizations, state and local governments, public housing agencies, affordable housing developers, businesses, community and faith based organizations, and other stakeholders in the development of the AI or AFH through mailings (including electronic mailings), online postings and public notices in the newspaper, as well as telephone or personal interviews, mail surveys, and consultation workshops.

#### **b. Plan Review and Comment**

The draft AI or AFH shall be made available for public review for a 30-day period. Written comments will be accepted during public review period by the Development Services Manager or designee. A summary of the comments and the City's responses to the comments will be attached to the draft AI or AFH. Copies will be made available following the process described in Section G of this document.

c. Public Hearing

The City Council shall conduct a public hearing to accept public comments on the draft AI or AFH. The City Council, the City Council shall approve or reject the AI or AFH. Section G describes the process for publishing notice for and conducting public hearings.

d. Submittal to HUD

Upon adoption of an AI, the City shall retain the AI in its records and annually report on the status and disposition of the Fair Housing Plan recommendations. Upon adoption of an AFH, the City shall submit the AFH to HUD for review and acceptance or rejection. The goals of the AFH shall be incorporated into the Consolidated Plan prior to submission of the Consolidated Plan to HUD.

**2. AI or AFH Amendment**

The City shall follow the following procedure to complete substantial amendments to AI or AFH, as needed.

a. Amendment Considerations

The City shall substantially amend the AI if a "substantial change" is proposed by City staff or the City Council. For the purpose of the AI, a "substantial change" is defined as the addition or deletion of Fair Housing Plan recommendations.

The City shall substantially amend the AFH if a "substantial change" is proposed by City staff or the City Council or as otherwise required by HUD. An AFH that was previously accepted by HUD must be revised and submitted to HUD for review if a material change occurs. A material change is a change in circumstances in the jurisdiction of a program participant that affects the information on which the AFH is based to the extent that the analysis, the fair housing contributing factors, or the priorities and goals of the AFH no longer reflect actual circumstances. Examples include Presidentially declared disasters, under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), in the program participant's area that are of such a nature as to significantly impact the steps a program participant may need to take to affirmatively further fair housing; significant demographic changes; new significant contributing factors in the participant's jurisdiction; and civil rights findings, determinations, settlements (including Voluntary Compliance Agreements), or court orders; or, upon HUD's written notification specifying a material change that requires the revision. A revision to the AFH consists of preparing and submitting amended analyses, assessments, priorities, and goals that take into account the material change, including any new fair housing issues and contributing factors that may arise as a result of the material change.

## b. Public Review and Comment

The City encourages residents and stakeholders to participate in the development of substantial amendments. Substantial Amendments to the AI or AFH shall be made available for public review for a 30-day period. Written comments will be accepted by the Development Services Department Development Services Manager or designee during the public review period. A summary of the comments and the City's responses to the comments will be attached to the Consolidated Plan Substantial Amendment.

The City will encourage participation from all residents, especially low- and moderate-income residents, minorities, groups identified in the LEP Plan, and those with disabilities. The City will take efforts to make the plan accessible to all such groups. Copies will be made available following the process described in Section G of this document.

## c. Public Hearing

The City Council shall conduct a public hearing to accept public comments on the draft amendment to the AI or AFH. The City Council may approve or reject the amendment to the AI or AFH. A revised AFH must be submitted within 12 months of the onset of a material change that triggers a "Substantial Amendment," or at such later date as HUD may specify. Section G describes the process for publishing notice for and conducting public hearings.

## **G. Public Hearings, Notification and Access**

The following policies and procedures outlining the public hearing process and public hearing notification apply to the development and substantial amendment of the Consolidated Plan, Citizen Participation Plan, Annual Action Plan, CAPER, and AI or AFH.

### **1. Public Meetings and Hearings**

#### a. Public Hearing Process

The City will conduct at least two (2) public hearings per year to obtain citizens' views and comments on planning documents during the public review and comment period. These meetings will be conducted at different times of the program year and together will cover the following topics:

- Housing and Community Development Needs
- Development of Proposed Activities
- Review of Program Performance

During a program year when the City develops an AI or AFH and Consolidated Plan, at least one public hearing will be conducted prior to the draft AI or AFH and Consolidated Plan being published for comment.

b. Public Hearing Notification

Staff will ensure adequate advance notice of all public meetings and hearings. Notices will be printed/posted at least 14 calendar days prior to the meeting date. Adequate noticing will include:

- Printing a public notice in the *Daily Bulletin*, and possibly other newspaper(s) of general circulation in the City;
- Display copies of notices on the City’s website; and
- Posting notices at City Hall and at the Upland Public Library.

Notices will include information on the subject and topic of the meeting including summaries when possible and appropriate to properly inform the public of the meeting. Notices will be published in accordance with the City’s approved Limited English Proficiency Plan (LEP) and will be accessible to those with disabilities. Meeting locations and access is described below.

**2. Documents for Public Review**

Staff will ensure adequate advance notice of all public review/comment periods. Notices will be printed/posted prior to the commencement of the public review period alerting residents of the documents for review and providing a summary of the contents of the documents to include information on the content and purpose of the document and the list of locations where copies of the entire draft document(s) may be reviewed. The public comment period for each Consolidated Plan document and substantial amendment to each document subject to public review is listed below:

<b>Document</b>	<b>Length of Public Comment Period</b>
Consolidated Plan	30 days
Action Plan	30 days
CAPER	15 days
AI or AFH	30 days
Citizen Participation Plan	30 days

The City will ensure that documents are available for disabled, minority and groups identified in the LEP Plan residents.

Adequate noticing will include:

- Printing a public notice in the *Daily Bulletin*, and possibly other newspaper(s) of general circulation in the City;
- Display copies of notices on the City’s website; and
- Posting notices at City Hall and at the Upland Public Library.

The City will place an adequate supply of draft copies of each document and substantial amendments to each document subject to public review at the following locations:

**City Hall: City Clerk's Office**

460 North Euclid Avenue  
Upland, California 91786

**George M. Gibson Senior Center**

250 North Third Ave  
Upland, CA 91786

**Upland Public Library**

450 North Euclid Avenue  
Upland, California 91786

Materials will also be posted to the City website at:

<http://www.uplandpl.lib.ca.us/>

All printed reports and materials shall be made available in a form accessible to persons with disabilities, upon request.

### **3. Access to Meetings**

Unless otherwise noted, Public Hearings requiring City Council action will be conducted in front of the Upland City Council at 7:00 P.M. at the Upland City Hall Council Chambers (460 North Euclid Avenue, Upland, California 91786). For public hearings not requiring City Council participation, the City will make every reasonable effort to conduct such hearings in the low- and moderate-income target areas and at times accessible and convenient to potential and actual beneficiaries.

Efforts to ensure this may include, but are not limited to, scheduling meetings in target neighborhoods, scheduling meetings during the evening and weekend and requesting feedback from neighborhood groups and stakeholders for guidance in effective meeting scheduling. Such hearing will be posted and advertised to allow sufficient notice to all interested persons.

In accordance with the City's Limited English Proficiency Plan (LEP), Spanish translation is available at all public hearings if the Development Services Department Development Services Manager receives such a request at least 48 hours prior to the public hearing.

It is the intention of the City to comply with the Americans with Disabilities Act (ADA) in all respects. If an attendee or participant at a public hearing needs special assistance beyond what is normally provided, the City will attempt to accommodate these people in every reasonable manner. Efforts may include, but are not limited to, accessible seating, video recording for those homebound, sign language services and production of written transcripts. The City's Development

Services Department, Development Services Manager must be notified at least 48 hours prior to the public hearing. The Development Services Department Development Services Manager may be reached at:

Development Services Manager  
Development Services Department  
460 N. Euclid Avenue  
Upland, CA 91786  
(909) 931-4146

#### **4. Access to Consolidated Plan Documents and Records**

All approved Consolidated Plan Documents, and any approved amendments thereto, will be kept on file by the City at the City Hall Development Services Department (460 North Euclid Avenue, Upland, California 91786), online at: <http://www.uplandpl.lib.ca.us/> and can be made available to those requesting the plan. The Consolidated Plan Documents shall be provided in a format accessible to persons with disabilities upon request. Such formats may include, but are not limited to providing oral, Braille, electronic or large print versions of the plan to those visually impaired and delivering copies to those who are homebound. Upon request, the Consolidated Plan Documents or summaries of those documents will be made available in a manner accessible to groups in accordance with the City's approved Limited English Proficiency Plan (LEP) or those with disabilities.

The City will ensure timely and reasonable access to information and records related to the development of the Consolidated Plan Documents, and the use of HUD CPD funds from the preceding five years. Information to be made available will include budget and program performance information, meeting minutes, and comments received by the City during the development of the Consolidated Plan and its supporting documents.

Requests for information and records must be made to the City in writing. Staff will respond to such requests within 15 working days or as soon as possible thereafter.

#### **H. Technical Assistance**

Upon request, staff will provide technical assistance to groups representing extremely-low, low-, and moderate-income persons to develop funding requests for HUD CPD eligible activities. Technical assistance will be provided as follows:

- Establish an annual project proposal submission and review cycle (Notice of Funds Availability, or "NOFA") that provides information, instructions, forms and advice to interested extremely low-, low- and moderate-income citizens or representative groups so that they can have reasonable access to the funding consideration process.
- Provide self-explanatory project proposal forms and instructions to all persons who request them whether by telephone or by letter. The City's funding application form is designed to be easily understood and short, while

still addressing all key items necessary to assess the proposed project. Statistics concerning specific areas of the City are furnished by City staff upon request.

- Answer, in writing, all written questions and answer verbally all verbal inquiries received from citizens or representative groups regarding how to write or submit eligible project proposals.
- Meet with groups or individuals as requested, to assist in identifying specific needs and to assist in preparing project proposal applications.
- Obtain information in the form of completed project proposal forms from citizens or non-profit agencies and assemble a list of proposals available for public review.
- Conduct a project eligibility analysis to determine, at an early stage, the eligibility of each project. In cases where only minor adjustments are needed to make proposals eligible or otherwise practical, City staff will advise the applicants on the options available and desired changes to the proposals.
- Provide bilingual translation on as needed basis.

To request technical assistance, please contact the Development Services Department Development Services Manager at:

Development Services Manager  
Development Services Department  
460 N. Euclid Avenue  
Upland, CA 91786  
(909) 931-4146

## **I. Comments and Complaints**

### **1. Comments**

Citizens or the City government, as well as agencies providing services to the community, are encouraged to state or submit their comments in the development of the Consolidated Plan Documents and any amendments to the Consolidated Plan. Written and verbal comments received at public hearings or during the comment period, will be considered and summarized, and included as an attachment to the City's final Consolidated Plan. Written comments should be addressed to:

Development Services Manager  
Development Services Department  
460 N. Euclid Avenue  
Upland, CA 91786  
(909) 931-4146

A written response will be made to all written comments within ten working days, acknowledging the letter and identifying a plan of action, if necessary. Every effort

will be made to send a complete response within 15 working days to those who submit written proposals or comments.

Copies of the complete final Consolidated Plan and amendments to it will be available to residents at the following locations:

City Hall  
Development Services Department  
460 N. Euclid Avenue  
Upland, California 91786

## **2. Complaints**

A complaint regarding the Consolidated Planning process and Consolidated Plan amendments must be submitted in writing to the Development Services Department, Development Services Manager. A written response will be made to written complaints within 15 working days, acknowledging the letter and identifying a plan of action, if necessary.

The City will accept written complaints provided they specify:

- The description of the objection, and supporting facts and data; and
- Provide name, address, telephone number, and a date of complaint.

## **J. Language Access**

When a significant number of people speak and read a primary language other than English, translation services at public hearings will be provided in such language if translation services are requested in advance at least 48 hours prior to the public meeting. Requests should be addressed to the Development Services Department Development Services Manager. The Development Services Department Development Services Manager may be reached at:

Development Services Manager  
Development Services Department  
460 N. Euclid Avenue  
Upland, CA 91786  
(909) 931-4146

## **K. Appeals**

Appeals concerning the Consolidated Plan, statements, or recommendations of the staff should be made to the following persons in the order presented:

- Development Services Manager
- Development Services Director
- City Manager
- City Council

- Los Angeles Area Office of HUD (if concerns are not answered)

#### **L. Special Exceptions and Waivers**

When authorized by HUD via waiver or statute to respond to an exigent or emergency situation, the City of Upland may modify its Citizen Participation Plan approach to conform with the flexibilities granted by HUD. These exceptions may be applied to all documents referenced in this Citizen Participation Plan, including the Citizen Participation Plan, Consolidated Plan, Annual Action Plan, Consolidated Annual Performance and Evaluation Report, Analysis of Impediments/ Assessment of Fair Housing, and any amendments to these documents. Such modifications may include:

1. Reduced public review period,
2. Modified placement of notices and documents for public review,
3. Modified structure of public hearings, or
4. Alternative requirements, as identified and allowed by HUD.

#### **M. CDBG Disaster Recovery (CDBG-DR)**

In the event of a federally-declared major disaster or emergency for which the City of Upland is to receive and administer HUD disaster recovery assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act and related Congressional Appropriations, either directly from HUD or through the State of California, the following citizen participation requirements shall apply to the development of Action Plans and Substantial Amendments to Action Plans for disaster recovery:

1. Before the City adopts the Action Plan for a disaster recovery grant or any substantial amendment to a disaster recovery grant Action Plan, the City will publish the proposed plan or amendment on the City website and will cross-reference with any additional disaster recovery websites established to provide information to the public concerning assistance that may be available.
2. The City and/or subrecipients will notify affected citizens through USPS and/or electronic mailings, press releases, public service announcements, public notice(s), and/or through social media.
3. The City will ensure that all citizens have equal access to information about the programs, including persons with disabilities and Limited English Proficiency (LEP) persons. Program information will be made available in the appropriate languages for the City.
4. Subsequent to publication of the Action Plan or substantial amendment, the City will provide a reasonable opportunity of at least seven (7) days for receiving comments, or a longer period as prescribed by the Federal Register Notice governing administration of the HUD disaster recovery assistance.
5. The City will take comments via USPS mail to: Development Services Manager, Development Services Department, 460 N. Euclid Avenue, Upland, CA 91786.
6. In the action plan, the City will specify criteria for determining what changes

in the City's plan constitute a substantial amendment to the plan. At a minimum, the following modifications will constitute a substantial amendment: a change in program benefit or eligibility criteria; the addition or deletion of an activity; or the allocation or reallocation of a monetary threshold of more than \$750,000.

7. A public website shall be established and publicized specifically for the disaster. Initially, the City's CDBG website may be used at: <https://www.cityofUpland.us/98/Community-Development-Block-Grant-Program>. The website shall contain the Action Plan (including all amendments); each Quarterly Performance Report (QPR); procurement policies and procedures; executed contracts; status of services or goods currently being procured by the City (e.g., phase of the procurement, requirements for proposals, etc.).
8. The City will consider all written comments regarding the Action Plan or any substantial amendment. A summary of the comments and the City's response to each comment will be provided to HUD or the State with the Action Plan or substantial amendment.
9. The City will provide a timely written response to every citizen complaint. The response will be provided within 15 working days of the receipt of the complaint, to the extent practicable.
10. The City will notify HUD when it makes any plan amendment that is not substantial. HUD or the State will be notified at least five business days before the amendment becomes effective.

## **N. Anti-Displacement and Relocation**

The City's Anti-displacement and Relocation Plan describes how Upland will assist persons who must be temporarily relocated or permanently displaced due to the use of HUD CPD funds. This plan takes effect whenever the City funds projects that involve the following:

- Property acquisition;
- Potential displacement of people from their homes and the need to relocate people (either permanently or temporarily); and
- The demolition or conversion of low- and moderate-income dwelling units.

### **1. Background**

Two acts apply whenever any of the above issues are present: The Uniform Relocation Assistance and Real Property Policies Act of 1970 (URA) and Section 104(d) of the Housing and Community Development Act of 1974. Each of these acts places different obligations on the City.

The URA governs the processes and procedures which the City and the Finance Department must follow to minimize the burden placed on low- and moderate-income tenants, property owners, and business owners who must move (either

temporarily or permanently) as the result of a project funded in whole or in part by the CDBG program. The URA applies to:

- Displacement that results from acquisition, demolition, or rehabilitation for HUD-assisted projects carried out by public agencies, nonprofit organizations, private developers, or others;
- Real property acquisition for HUD-assisted projects (whether publicly or privately undertaken);
- Creation of a permanent easement or right of way for HUD-assisted projects (whether publicly or privately undertaken); and
- Work on private property during the construction of a HUD-assisted project even if the activity is temporary.

## **2. What is Displacement?**

Displacement occurs when a person moves as a direct result of federally assisted acquisition, demolition, conversion, or rehabilitation activities, because he or she is:

- Required to move; or
- Not offered a decent, safe, sanitary and affordable unit in the project; or
- Treated “unreasonably” as part of a permanent or temporary move.

A person may also be considered displaced if the necessary notices are not given or provided in a timely manner and the person moves for any reason.

## **3. What is a Displaced Person?**

The term *displaced person* means any person that moves from real property or moves his or her personal property from real property permanently as a direct result of one or more of the following activities:

- Acquisition of, written notice of intent to acquire, or initiation of negotiations to acquire such real property, in whole or in part, for a project;
- Rehabilitation or demolition of such real property for a project; and
- Rehabilitation, demolition, or acquisition (or written notice of intent) of all or a part of other real property on which the person conducts a business or farm operation, for a project.

Upland offers advisory and financial assistance to eligible tenants (or homeowners) who meet the above definition.

## **4. Persons Not Eligible for Assistance**

A person is not eligible for relocation assistance under the provisions of the URA if any of the following occurs:

- The person was evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State, or local law, or other good cause. However, if the person was evicted only to avoid the application of URA, then that person is considered displaced and is eligible for assistance;
- The person has no legal right to occupy the property under State or local law;
- The City determines that the person occupied the property to obtain relocation assistance and the HUD Field Office concurs in that determination;
- The person is a tenant-occupant that moved into the property after a certain date, specified in the applicable program regulation, and, before leasing and occupying the property, Upland or its subgrantee provided the tenant-occupant written notice of the application for assistance, the project's impact on the person, and the fact that he or she would not qualify as a "displaced person" because of the project;
- The person is a tenant-occupant of a substandard dwelling that is acquired or a tenant-occupant of a dwelling unit to which emergency repairs are undertaken and the HUD field office concurs that:
  - Such repairs or acquisition will benefit the tenant;
  - Bringing the unit up to a safe, decent, and sanitary condition is not feasible;
  - The tenant's new rent and average estimated monthly utility costs will not exceed the greater of: the old rent/utility costs or 30 percent of gross household income; and
  - The project will not impose any unreasonable change in the character or use of the property.
- The person is an owner-occupant of the property who moves because of an arm's length acquisition;
- Upland or its subgrantee notifies the person that they will not displace him or her for the project; and
- The person retains the right of use and occupancy of the real property for life following the acquisition.

Upland determines that the person is not displaced as a direct result of the acquisition, rehabilitation, or demolition for the project and the HUD field office concurs in the determination.

## **5. Minimizing Displacement**

Upland will take reasonable steps to minimize displacement occurring as a result of its CDBG activities. This means that the Development Services Department will:

- Consider if displacement will occur as part of funding decisions and project feasibility determinations;
- Assure, whenever possible that occupants of buildings to be rehabilitated are offered an opportunity to return;
- Plan substantial rehabilitation projects in “stages” to minimize displacement; and
- Meet all HUD notification requirements so that affected persons do not move because they have not been informed about project plans and their rights.

## **6. Anti-Displacement Policy**

The City seeks to minimize, to the greatest extent feasible, the displacement, whether permanently or temporarily, of persons (families, individuals, businesses, nonprofit organizations, or farms) from projects funded with CDBG involving single- or multi-family rehabilitation, acquisition, commercial rehabilitation, demolition, economic development, or capital improvement activities.

Projects that Upland deems beneficial but that may cause displacement may be recommended and approved for funding only if Upland or its subgrantee demonstrates that such displacement is necessary and vital to the project and that they take efforts to reduce the number of persons displaced. Further, they must clearly demonstrate that the goals and anticipated accomplishments of a project outweigh the adverse effects of displacement imposed on persons who must relocate.

## **7. Displacement Assistance**

Consistent with the goals and objectives of the CDBG program, Upland will take all reasonable steps necessary to minimize displacement of persons, even temporarily. If displacement occurs, the City will provide relocation assistance to all persons directly, involuntarily, and permanently displaced according to HUD regulations.

If Upland temporarily displaces a low- or moderate-income household, that household becomes eligible for certain relocation payments. The assistance applies to those persons residing in the residence at the time the application is processed and is based on the following procedures:

- If the structure and its occupants are determined eligible for temporary relocation assistance, the owner-occupants and tenants are eligible for the actual reasonable cost (based on fair market rent) of temporary lodging facilities until the structure is determined habitable by Upland’s housing inspector;

- Upland must approve housing and the Lessor and Lessee must sign a rent agreement before move-in. Housing must be comparable functionally to the displacement dwelling and decent, safe, and sanitary. This does not mean that the housing must be in comparable size. The term “functionally equivalent” means that it performs the same function, has the same principal features present, and can contribute to a comparable style of living. Approved lodging accommodations include apartments and houses. Upland does not reimburse “rental expenses” for living with a friend or family member;
- Either Upland will provide the owner-occupants and tenants a direct payment for moving expenses (to and from temporary housing) and storage costs, or Upland will arrange moving and storage of furniture with a moving company. If Upland makes a direct payment, complete documentation and receipts are necessary to process claims when storage costs exceed the amount assumed by the direct payment;
- Damage deposits, utility hookups, telephone hookups and insurance costs are not eligible for reimbursement; and
- The City may pay the cost of relocation assistance from Federal funds or funds available from other sources.

## **8. One-For-One Replacement Dwelling Units**

Upland will generally avoid awarding funds for activities resulting in displacement. However, should Upland fund an activity, specific documentation is required to show the replacement of all occupied and vacant dwelling units demolished or converted to another use. Upland will assure that relocation assistance is provided as described in 24 CFR 570.606(b)(2).

Before obligating or expending funds that will directly result in such demolition or conversion, Upland will make public and submit to the HUD field office the following information in writing:

- A description of the proposed assisted activity;
- The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than as low- and moderate-income units;
- A time schedule for the commencement and completion of the demolition or conversion;
- The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be provided as replacement units;
- The source of funding and a time schedule for the provision of replacement dwelling units; or

- The basis for concluding that each replacement dwelling unit will remain a low- and moderate-income unit for at least ten years from the date of initial occupancy.

Consistent with the goals and objectives of the CDBG program, Upland will take all reasonable steps necessary to minimize displacement of persons from their homes. The City will avoid funding projects that cause displacement of persons or businesses and will avoid funding any project that involves the conversion of low- and moderate-income housing to non-residential purposes.

## **9. Decent, Safe and Sanitary Dwelling**

The basic definition is found at 49 CFR 24.2(1). The term decent, safe, and sanitary dwelling means a dwelling that meets the following standards and any other housing and occupancy codes that are applicable. It will:

- Be structurally sound, weather tight, and in good repair;
- Contain a safe electrical wiring system adequate for lighting and other devices;
- Contain a safe heating system capable of sustaining a healthful temperature for the displaced person;
- Be adequate to accommodate the displaced person. There will be a separate, well lit, ventilated bathroom that provides privacy to the user and contains a toilet, sink, and a bathtub or shower, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. There should be a kitchen area that contains a fully usable sink, properly connected to hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator;
- Contain unobstructed egress to safe, open space at ground level;
- For a mobility-impaired person, be free of any barriers that would preclude reasonable ingress, egress, or use of the dwelling by such person. This requirement will be satisfied if the displaced person elects to relocate to a dwelling that they select and the displaced person determines that they have reasonable ingress, egress, and the use of the dwelling; and
- Comply with lead-based paint requirements of 24 CFR Part 35.

## **O. Real Property Policies**

The City and its CDBG subrecipients must follow specific guidelines regarding the acquisition and use of real property funded in whole or in part with CDBG funds.

### **1. Use of Real Property**

The following standards apply to real property within the recipient's control and acquired or improved, in whole or in part, using CDBG funds. These standards

will apply from the date funds are first spent for the property until five years after the project is audited and closed.

A recipient may not change the use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made unless the recipient gives affected citizens reasonable notice of, and opportunity to comment on, any such proposed change, and either:

- The use of such property qualifies as meeting a national objective and is not a building for the general conduct of government;
- The requirements in the paragraph below are met;
- If the recipient determines, after consultation with affected citizens, that it is appropriate to change the use of property to a use that does not qualify under the above paragraph, it may retain or dispose of the property. The Upland CDBG program must be reimbursed in the amount of the current fair market value of the property less any portion attributable to expenditures of non-federal funds for the acquisition of and improvements to the property;
- If the change of use occurs within five years of the project being audited and closed, income from the disposition of the real property will be returned to the Upland CDBG program; and
- Following the reimbursement of the federal program pursuant to the above paragraph of this section, the property is no longer subject to any federal requirements.

## **2. Real Property Acquisition**

All real property acquisition activities described in this section and funded in whole or in part with CDBG funds and all real property that must be acquired for an activity assisted with Federal funds, regardless of the actual funding source for the acquisition, are subject to the URA (as amended).

## **3. What is Real Property Acquisition?**

Real property acquisition is any acquisition by purchase, lease, donation, or otherwise, including the acquisition of such interests as rights-of-way and permanent easements.

HUD Handbook 1378 and 49 CFR Part 24 currently contains such regulations. These regulations detail a standard procedure for acquiring property and methods of determining a purchase price and outline other documents that must be provided to Upland before disbursement of funds. These regulations further require the applicant to provide relocation payments and assistance to any business or residential occupant of the property whom the acquisition will displace.

## **4. Eligible Activities**

Upland or its sub-grantee may acquire real property for a project using CDBG funds where the proposed use of the acquired property will be an activity that the City can demonstrate as beneficial to low- and moderate-income persons.

## **5. Environmental Review Process (24 CFR Part 58)**

HUD requires that all real property acquisition projects be reviewed before the commitment of Federal funds to assess the impact of a project on the environment. Upland will undertake this review process. The applicant should be aware, however, that this review process may delay the date by which CDBG funds may be available and, in case of serious adverse environmental impacts, may effectively stop a project.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL APPROVING  
UPLAND'S CITIZEN PARTICIPATION PLAN AMENDMENT IN  
CONNECTION WITH THE CITY'S FEDERAL COMMUNITY  
DEVELOPMENT BLOCK GRANT PROGRAM

Intent of the Parties and Findings

(i) The City of Upland is an entitlement jurisdiction in the U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) program; and

(ii) As an entitlement jurisdiction, Upland is required to comply with all regulations associated with the CDBG Program; and

(iii) The U.S. Department of Housing and Urban Development requires under 24 CFR 91.105, that all entitlement jurisdictions receiving federal funds, such as CDBG funds, afford its citizens the opportunity to participate in the development of the Consolidated Plan documents, including the Consolidated Plan, Annual Action Plans, Consolidated Annual Performance and Evaluation Reports, and Analysis of Impediments or Assessment of Fair Housing; and

(v) The City of Upland has amended the Citizen Participation Plan in accordance with the requirements of 24 CFR 91.105 and the flexibilities authorized by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which will serve as a federally required planning document that guides citizen participation requirements in conjunction with the CDBG Program and any other federal funding received; and

(vi) Pursuant to Title 14, California Code of Regulations, Chapter 3, Article 18, Section 15262 – Feasibility and Planning Studies, the City Council may determine in its independent judgment that the Citizen Participation Plan is exempted from the requirements of the California Environmental Quality Act of 1970, as amended.

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 Citizen Participation Plan is exempted from the requirements of the California Environmental Quality Act of 1970, as amended.

Section 3. The Citizen Participation Plan is approved.

Section 4. The City Manager or their designee is authorized to execute any and all necessary and related documents in order to effectuate the implementation of the Citizen Participation Plan.

Section 5. This Resolution shall take effect on the date of its adoption.

Section 6. 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 27<sup>th</sup> day of July, 2020

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

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 27th day of July, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

ATTEST:

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



**DEVELOPMENT SERVICES DEPARTMENT  
HOUSING DIVISION  
Telephone (909) 931-4334  
Facsimile (909) 931-4321**

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TO: Rufus Washington, CPD Director, Los Angeles Field Office

VIA: CPD\_COVID-19WaiverLA@hud.gov

COPY: Marilou Flores, Field Office Representative

REQUESTOR: Robert Dalquest, Development Services Director  
City of Upland  
(909) 931-4334  
rdalquest@ci.upland.ca.us

**SUBJECT: Waiver Request – Consolidated Plan – FY2019, FY2020, CDBG-CV Allocations**

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Disaster Area: Upland, CA (California Covid-19 Pandemic (DR-4482))  
Waiver Request Date: 5/21/2020  
Implementation Date: 5/23/2020

**Waivers Utilized:**

In accordance with the guidance it has received from the US Department of Housing and Urban Development (HUD) and as documented in the memo issued on March 31, 2020 titled "Availability of Waivers of Community Planning and Development (CPD) Grant Program and Consolidated Plan Requirements to Prevent the Spread of COVID-19 and Mitigate Economic Impacts Caused by COVID-19," the City of Upland will utilize the following waivers for the FY2019, FY2020, and CDBG-CV allocations:

- 8) Consolidated Planning Requirements – HOME, CDBG, HTF, ESG, and HOPWA Programs – Citizen Participation Public Comment Period for Consolidated Plan Amendment – 30-day minimum public comment period is changed to a minimum of 5 days for the 2020 program year
- 9) Consolidated Planning Requirements – HOME, CDBG, HTF, ESG, and HOPWA Programs – Citizen Participation Reasonable Notice and Opportunity to Comment – allows grantee to determine what constitutes reasonable notice and opportunity to comment for 2020 program year

Respectfully,

A handwritten signature in blue ink, appearing to read "RDalquest", is written over a horizontal line.

Robert Dalquest, Development Services Director

CC: Liz Chavez, Development Services Manager  
Rosemary Hoerning, City Manager



# STAFF REPORT

**ITEM NO. 12.B.**

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**DATE:** July 27, 2020  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, CITY MANAGER  
**PREPARED BY:** DARREN GOODMAN, POLICE CHIEF  
DONALD DODT, POLICE LIEUTENANT  
**SUBJECT:** CONSIDERATION OF A RESOLUTION APPROVING THE ASSESSMENT REPORT, ASSESSING ADMINISTRATIVE FINES, AND ESTABLISHING SPECIAL ASSESSMENT LIENS RELATING TO UNPAID ADMINISTRATIVE FINES

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## **RECOMMENDED ACTION**

It is recommended that the City Council adopt a Resolution approving the assessment report, assessing administrative fines, and establishing special assessment liens against parcels of real property in the City of Upland relating to unpaid administrative fines pursuant to Section 1.10.090 of the Upland Municipal Code.

## **GOAL STATEMENT**

The proposed action supports the City's goal to conduct a comprehensive fine and cost recovery program for all nuisance abatement actions.

## **BACKGROUND**

Police Department staff in conjunction with the City Prosecutor have identified multiple properties in the City that have been subject to administrative fines for violations of the Upland Municipal Code and have, to date, failed to pay the administrative fines. The parcels of real property that have outstanding administrative fines ("Subject Properties") are listed in Exhibit A of the attached Resolution and are presented to the City Council for approval.

## **ISSUES/ANALYSIS**

Government Code Section 53069.4 authorizes the legislative body of a local agency to establish by ordinance, procedures for the imposition, enforcement, collection, and

administrative review of administrative fines or penalties. Pursuant to Government Code section 53069.4, the City enacted Upland Municipal Code (UMC) Sections 1.10.010 through 1.10.090, which established the procedures for the imposition, enforcement, collection, and administrative review of administrative fines and penalties. UMC Section 1.10.090 authorizes the recovery of all administrative fines pursuant to any option available to the City by law or in equity. UMC Section 1.10.090(C) authorizes the special assessment of all unpaid administrative fines upon the parcel that contained the nuisance conditions or UMC violations.

In each case involving the Subject Properties listed in Exhibit A, City inspectors identified at least one violation of the UMC and issued an administrative citation with an administrative fine to the owner of each of the Subject Properties ("Cited Owners"). Cited Owners were provided an opportunity to request a hearing to contest the administrative citation and fine. In each case, either Cited Owners failed to request a hearing to contest the administrative citation and fine or a hearing was requested and the administrative citation and fine were upheld. The City conducted a thorough review of the records of all outstanding administrative fines and issued to each Cited Owner and all interested parties of the Subject Properties, a Notice of Lien and Special Assessment as well as a letter explaining the Notice of Lien and Special Assessment and the need to pay the outstanding administrative fines or a special assessment would be levied against the property. Each Cited Owner and interested party of the Subject Properties was afforded time to either pay the outstanding administrative fines or contact the City to provide a reason why they were not liable for the outstanding administrative fines.

After issuing the letters and Notices of Lien and Special Assessment, some of the outstanding administrative fines were paid or were dismissed due to prior payment or for other justification. The Subject Properties listed in Exhibit A are all the properties that have thus far failed to pay the outstanding administrative fines and have failed to contest liability for said fines. The City has recorded the Notices of Lien and Special Assessment against all the Subject Properties and seeks authorization from the City Council to levy the special assessments against the Subject Properties to recover the outstanding administrative fines pursuant to UMC section 1.10.090(C).

### **FISCAL IMPACTS**

Approval of the assessment of liens against parcels of real property may result in the collection of approximately \$3,100.00

### **ALTERNATIVES**

Provide alternative direction to staff.

### **ATTACHMENTS:**

**Resolution assessing administrative fines  
Exhibit A**

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UPLAND, CALIFORNIA, APPROVING THE ASSESSMENT REPORT, ASSESSING ADMINISTRATIVE FINES, AND ESTABLISHING SPECIAL ASSESSMENT LIENS AGAINST PARCELS OF REAL PROPERTY IN THE CITY OF UPLAND RELATING TO UNPAID ADMINISTRATIVE FINES PURSUANT TO SECTION 1.10.090 OF THE UPLAND MUNICIPAL CODE.

Intent of the Parties and Findings

- (i) California Constitution, article XI, section 7 grants cities the authority to make and enforce local ordinances pursuant to their police power; and
- (ii) Government Code section 53069.4 authorizes the legislative body of a local agency to establish by ordinance a procedure for the imposition, enforcement, collection, and administrative review of administrative fines or penalties; and
- (iii) pursuant to Government Code section 53069.4, the City of Upland ("City") enacted Upland Municipal Code ("UMC") sections 1.10.010 through 1.10.090, which establish procedures for the imposition, enforcement, collection, and administrative review of administrative fines and penalties; and
- (iv) UMC section 1.10.090 authorizes the recovery all administrative fines pursuant to any option available to the City by law or in equity; and
- (v) UMC section 1.10.090(C) authorizes the special assessment of all unpaid administrative fines upon the parcel that contained the nuisances.

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

Section 1. The City Council hereby finds and determines that the foregoing Recitals of this Resolution are true and correct and hereby incorporated into this Resolution as though fully set forth herein.

Section 2. Nuisance conditions and UMC violations have been determined to exist on each of the parcels of real property attached hereto as Exhibit A ("Nuisance Properties").

Section 3. Administrative, civil, or criminal nuisance abatement proceedings were initiated and adjudicated against all Nuisance Properties based on the nuisance conditions and UMC violations found thereon.

Section 4. In accordance with UMC section 1.10.090(C), the City served a Notice of Lien and Special Assessment on each owner of the Nuisance Properties and upon all parties with a recorded interest in the Nuisance Properties identifying the amount of outstanding administrative fines and penalties, the timeframe within which full payment for all Nuisance Costs must be completed, and the timeframe within which each property owner and party with a recorded interest may contest liability for the unpaid administrative fines or penalties.

Section 5. For all Nuisance Properties, the timeframe to contest the administrative citations and pay the full amount of unpaid administrative fines or penalties has expired.

Section 6. For all Nuisance Properties, either the full or a partial amount of administrative fines is unpaid as of the date of this Resolution.

Section 7. The City served all owners of the Nuisance Properties, and all parties with a recorded interest in the Nuisance Properties, by certified mail prior to recording, with the notice required by State law specifying that the property may be sold after three years by the tax collector for the unpaid delinquent assessments.

Section 8. The City has satisfied any and all necessary procedural requirements to recover the unpaid administrative fines and penalties under the UMC and all other applicable laws to levy special assessments against all Nuisance Properties and is hereby entitled to recover the unpaid administrative fines and penalties by special assessments against the Nuisance Properties. The levying of a special assessment upon each of the Nuisance Properties is authorized without regard to the valuation of the Nuisance Properties.

Section 9. Accordingly, the Special Assessment Amounts identified in Exhibit A are approved for special assessment against the corresponding Nuisance Properties.

Section 10. In accordance with UMC section 1.10.090(C), the City shall provide the County tax collector with a copy of this Resolution authorizing the levying of special assessments against the Nuisance Properties.

Section 11. 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 27th day of July, 2020.

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Debbie Stone, Mayor

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 27th day of July, 2020, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAINED:

ATTEST:

---

Keri Johnson, City Clerk



CITY OF UPLAND  
POLICE DEPARTMENT



"Proud to Serve"  
DARREN I. GOODMAN | CHIEF OF POLICE

**EXHIBIT A**

To: Upland City Council  
From: Darren Goodman, Chief of Police  
Date: July 15, 2020

**Subject: Special Assessment of Unpaid Administrative Fines**

Owner Name	Property Address	APN	Administrative Citation Number(s)	Special Assessment Amount
Irma and Carlos Castaneda	880 N. Campus Ave Upland, Ca 91786	1046-102-07-0000	UPL1557	\$1,550.00
Chang, Chi Hung Ivan / Shen Ge	1757 W. Andes Drive Upland, Ca 91786	1005-452-58-0000	UPL1584	\$1,550.00



# STAFF REPORT

**ITEM NO. 12.C.**

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**DATE:** July 27, 2020  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, CITY MANAGER  
**PREPARED BY:** STEPHEN PARKER, CPA, ASSISTANT CITY MANAGER  
LONDA BOCK-HELMS, CPA, FINANCE OFFICER  
**SUBJECT:** LANDSCAPE MAINTENANCE DISTRICT LM-84-1: INTENT TO LEVY  
AND COLLECT ASSESSMENTS

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## RECOMMENDED ACTION

It is recommended that the City Council accept the Finance Officer's report pertaining to Landscape Maintenance District LM-84-1 and adopt a Resolution declaring its intention to levy and collect assessments within Landscape Maintenance District LM-84-1 for Fiscal Year 2020-21.

## GOAL STATEMENT

The proposed action supports the City's goal of providing fiscal stewardship for the City of Upland.

## BACKGROUND

In June 1984, upon petition of the developer, the City formed a Landscape Maintenance Assessment District for Tract 12339, generally located on the south side of 8th Street, east of Mountain Avenue. This is a private development consisting of 21 four-plexes. The City provides street sweeping and street lighting for this tract.

In November 2005, upon petition of the developer, the City annexed Tract 18376 into Landscape Maintenance District LM-84-1. Tract 18376 is generally located north of Eureka Street, west of Benson Avenue and consists of 9 single family residences. The City provides street sweeping, street lighting, and landscaping irrigation for this tract.

## **ISSUES/ANALYSIS**

In order to continue providing street lighting, street sweeping and landscape irrigation services within Landscape Maintenance District LM-84-1 and recover the costs borne by the City to provide such services, the City must declare its intention to levy and collect the assessments with the District and set a public hearing date. The public hearing is proposed to be held on July 27, 2020.

Costs associated with the assessment district are calculated from actual costs incurred by the City in providing street lighting, street sweeping and landscape irrigation services. The cost per parcel for Tract 12339 for Fiscal Year 2020-21 is \$25.48. This is a decrease of \$22.97 per parcel from last year. The cost per parcel for Tract 18376, for Fiscal Year 2020-21 is \$341.57. This is an increase of \$139.60 per parcel from last year.

In the past, there has not been opposition to the assessment. The Finance Officer's Report presents the assessment district diagram (Exhibit C) and shows the calculation that consists of utilities (water and electricity), street sweeping services, advertising and administrative costs (Exhibit E). It also lists addresses of homeowners (Exhibit D), and a copy of the public notice (Exhibit F).

## **FISCAL IMPACTS**

The assessments for Landscape Maintenance District LM-84-1 for Fiscal Year 2020-21 total \$3,609. The City will recover its costs through the assessment.

## **ALTERNATIVES**

Provide alternative direction to staff.

## **ATTACHMENTS:**

**LM 84-1 Resolution**

**Finance Officer's Report LM 84-1**

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UPLAND DECLARING ITS INTENTION TO LEVY AND COLLECT ASSESSMENTS WITHIN LANDSCAPE MAINTENANCE DISTRICT LM-84-1 FOR THE 2020/21 FISCAL YEAR

Intent of the Parties and Findings

(i) The Street and Highways Code of the State of California authorized the City Council to levy and collect annual assessments within duly formulated assessment districts for the purpose of providing street sweeping and street lights; and

(ii) Landscape Maintenance Assessment District LM-84-1 was formed by the Upland City Council on June 4, 1984, by Resolution No. 3440 and amended on November 14, 2005, by Resolution No. 5737; and

(iii) Landscape Maintenance Assessment District LM-84-1 is Tract 12339, generally located on the South side of 8th Street, East of Mountain Avenue and Tract 18376, generally located North of Eureka Street and West of Benson Avenue; and

(iv) Existing improvements for Tract 12339 include five (5) street lights, approximately 740 linear feet of street pavement, and 1,680 linear feet of curbing and existing improvements for Tract 18376 include one (1) street light, approximately 150 feet of street pavement, and 360 linear feet of curbing; and

(v) The Finance Officer has filed a report with the City Clerk of Upland which sets forth a full and detailed description of the improvements, the boundaries of the landscape maintenance assessment district, and the proposed assessments upon assessable lots and parcel of land within and is appended hereto as Exhibits A-F.

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

Section 1. The City Council of the City of Upland hereby accepts the report of the Finance Officer and declares its intention to levy and collect assessments within Landscape Maintenance Assessment District LM-84-1 for the 2020/21 fiscal year; and

Section 2. The City Council of the City of Upland will conduct a public hearing on the levy of the proposed assessment on July 27, 2020, at 7:00 p.m. in the City Council Chambers of the City of Upland, 460 N. Euclid Avenue, at which time any interested person may, prior to the conclusion of the hearing, file a written protest with the City Clerk or, having previously filed a protest, may file a written withdrawal of that protest. A written protest shall state all grounds of objection. A protest by a property owner shall contain a description sufficient to identify the property owned.

Section 3. All interested persons are hereby afforded the opportunity to hear and be heard.

Resolution No.

Page 2

Section 4. 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 27th day of July, 2020.

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

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 27th day of July, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

ATTEST:

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

**FINANCE OFFICER'S REPORT**  
**LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT**  
**LM-84-1**  
**(TRACTS 12339 & 18376)**

Fiscal Year 2020-21

**EXHIBITS A-F**

**EXHIBIT A**

**LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT  
LM-84-1**

Located on the South side of 8<sup>th</sup> Street,  
East of Mountain Avenue

and

Located North of Eureka Street, West of Benson Avenue

Filed in the Office of the City Clerk  
Of this City of Upland, California  
This 27<sup>th</sup> day of July, 2020.

Prepared for Fiscal Year 2020/21

---

Rosemary Hoerning  
City Manager

---

Keri Johnson  
City Clerk

## EXHIBIT B

### LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT LM-84-1

#### ASSESSMENT OF THE COSTS OF IMPROVEMENT FOR FISCAL YEAR 2020/2021

Net amount to be assessed upon assessable lands within Landscape Maintenance Assessment District LM-84-1 equals \$535 for Tract 12339 and \$3,074 for Tract 18376. For a description of each parcel, please see County Assessor's rolls.

<b>Lot No. in Tract 12339, Book 167 of Maps Pages 27 &amp; 28</b>	<b>Assessment</b>	<b>Tax Assessor's Parcel Number</b>	<b>Property Address</b>
1	\$25.48	1008-111-17-0000	204 Grayson Way
2	25.48	1008-111-18-0000	218 Grayson Way
3	25.48	1008-111-19-0000	234 Grayson Way
4	25.48	1008-111-20-0000	242 Grayson Way
5	25.48	1008-111-21-0000	1061 Bennington
6	25.48	1008-111-22-0000	1039 Bennington
7	25.48	1008-111-23-0000	1015 Bennington
8	25.48	1008-111-24-0000	1007 Bennington
9	25.48	1008-111-25-0000	1008 Bennington
10	25.48	1008-111-26-0000	1016 Bennington
11	25.48	1008-111-27-0000	1034 Bennington
12	25.48	1008-111-28-0000	1042 Bennington
13	25.48	1008-111-29-0000	1056 Bennington
14	25.48	1008-111-30-0000	1070 Bennington
15	25.48	1008-111-31-0000	291 Grayson Way
16	25.48	1008-111-32-0000	275 Grayson Way
17	25.48	1008-111-33-0000	267 Grayson Way
18	25.48	1008-111-34-0000	249 Grayson Way
19	25.48	1008-111-35-0000	237 Grayson Way
20	25.48	1008-111-36-0000	221 Grayson Way
21	25.48	1008-111-37-0000	209 Grayson Way

<b>Lot No. in Tract 18376, Book 1005 of Maps Page 22</b>	<b>Assessment</b>	<b>Tax Assessor's Parcel Number</b>	<b>Property Address</b>
1	\$341.57	1005-221-11-0000	1852 Millsweet Drive
2	341.57	1005-221-12-0000	1856 Millsweet Drive
3	341.57	1005-221-13-0000	1860 Millsweet Drive
4	341.57	1005-221-14-0000	1864 Millsweet Drive
5	341.57	1005-221-15-0000	1861 Millsweet Drive
6	341.57	1005-221-16-0000	1859 Millsweet Drive
7	341.57	1005-221-17-0000	1857 Millsweet Drive
8	341.57	1005-221-18-0000	1851 Millsweet Drive
9	341.57	1005-221-19-0000	1855 Millsweet Drive

## **EXHIBIT C**

### **LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT LM-84-1**

#### **PLANS AND SPECIFICATIONS FOR FISCAL YEAR 2020/2021**

The area to be maintained by Landscape Maintenance Assessment District LM-84-1 is shown on the attached assessment diagrams.

This landscape maintenance assessment district was formed for the following purposes:

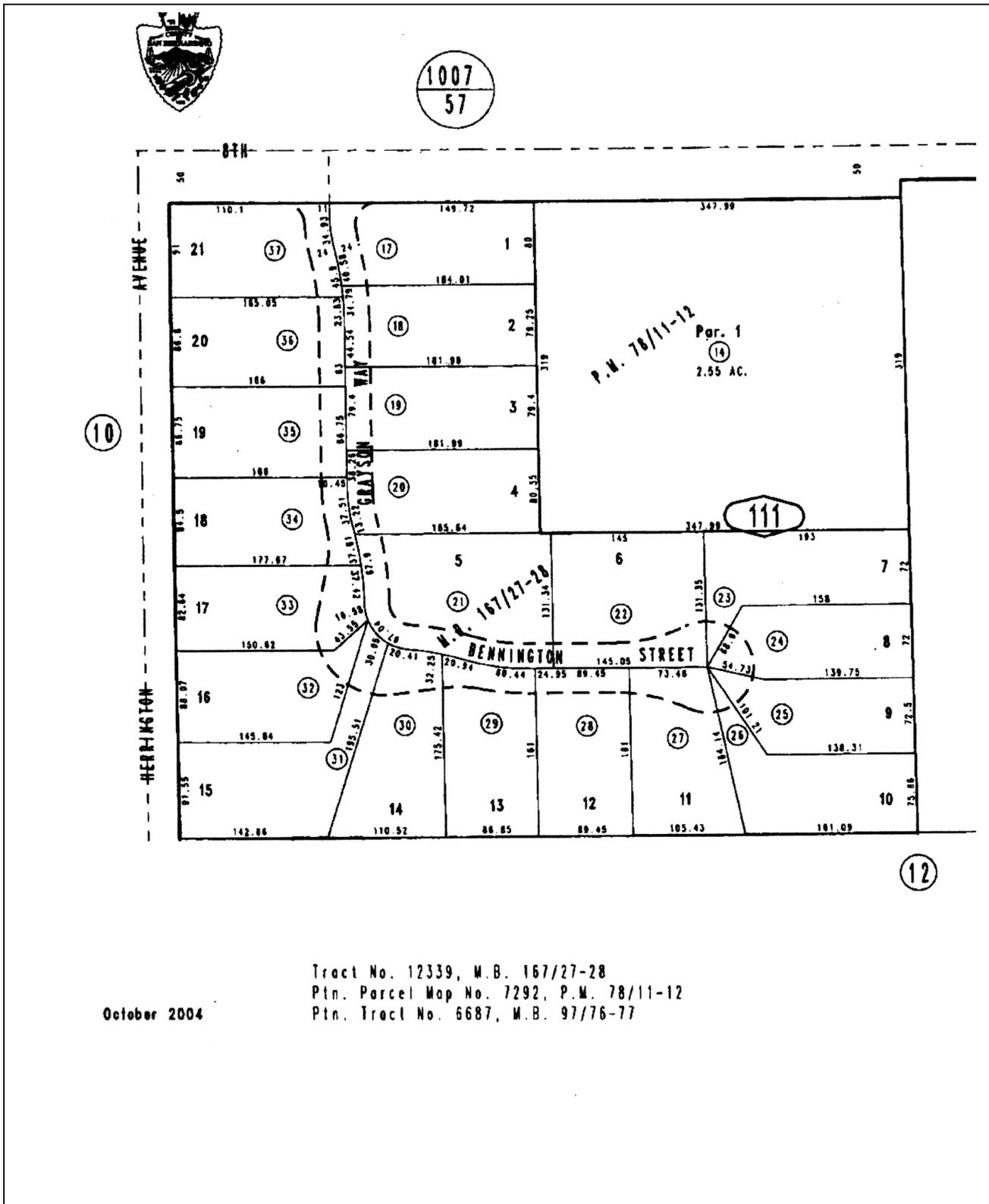
Providing of street sweeping and street lighting adjacent to Tract 12339, as recorded in Book 167 of Maps, Pages 27 and 28 in the records of the San Bernardino County, State of California.

There are five (5) street lights, approximately 740 linear feet of pavement and 1,680 linear feet of curbing.

Providing of street sweeping, landscape irrigation and street lighting adjacent to Tract 18376, as recorded in Book 1005 of Maps, Page 22 in the records of San Bernardino County, State of California.

There is one (1) street light, approximately 150 linear feet of pavement and 360 linear feet of curbing.

# EXHIBIT C (ATTACHMENT)



October 2004

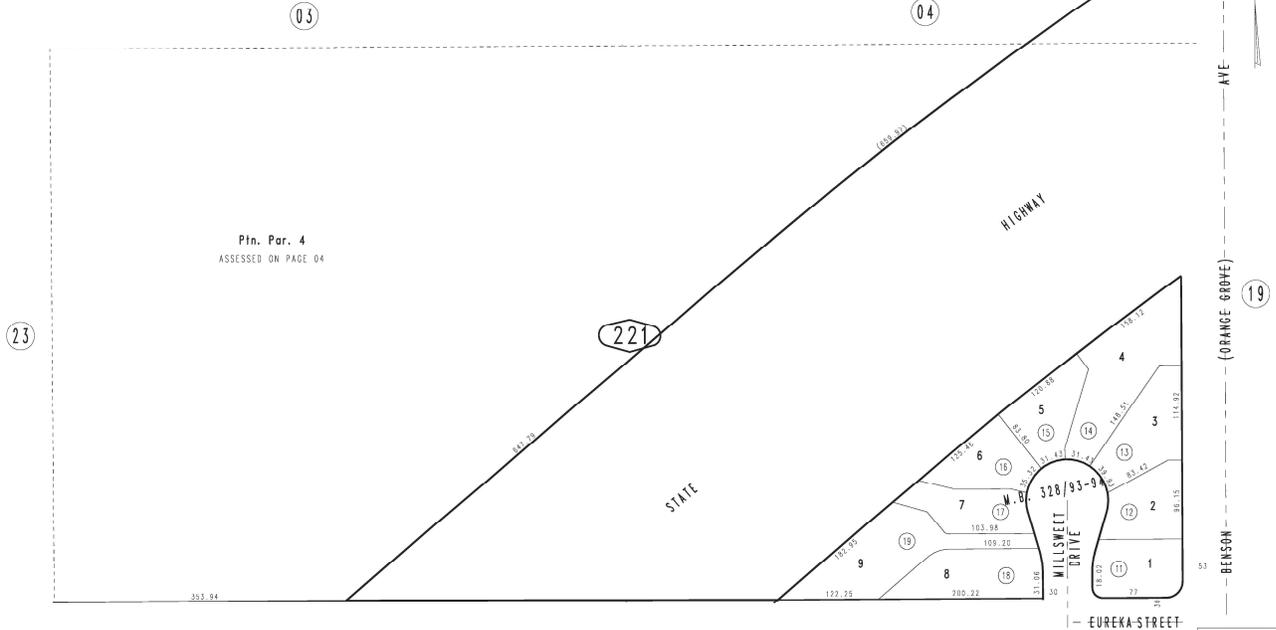
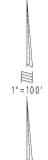
Tract No. 12339, M.B. 167/27-28  
 Ptn. Parcel Map No. 7292, P.M. 78/11-12  
 Ptn. Tract No. 6687, M.B. 97/76-77

THIS MAP IS FOR THE PURPOSE  
OF AD VALOREM TAXATION ONLY.

Pfn. Parcel Map No. 9295, P.M. 103/46-48

City of Upland  
Tax Rate Area  
8009

1005 - 22



August 2004

Tract No. 18376, M.B. 328/93-94

Pfn. N.E.1/4, Sec.35  
T.1N.,R.8W.

Assessor's Map  
Book 1005 Page 22  
San Bernardino County

REVISED  
01/25/06 GW  
08/07/07 RW

## EXHIBIT D

### LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT LM-84-1 FOR FISCAL YEAR 2020/2021 Tract 12339

<b>Tax Assessor's Parcel Number</b>	<b>Property Address</b>	<b>Owner/Address</b>
1008-111-17-0000	204 Grayson Way	Noel N. Singh 204 Grayson Way #A Upland, CA 91786-6359
1008-111-18-0000	218 Grayson Way	Brandsma Family Trust 13322 Branding Iron Place Chino, CA 91710-4705
1008-111-19-0000	234 Grayson Way	Ben N. Minamide Trust 425 Mallorca Ln, Brea, CA 92823-6389
1008-111-20-0000	242 Grayson Way	Sainath Shankarlingam Trust 1 Hillsborough Newport Beach, CA 92660
1008-111-21-0000	1061 Bennington	Keum Won Hwang 20825 Missionary Ridge Street Walnut, CA 91789-4002
1008-111-22-0000	1039 Bennington	Elzagitha L. Suhendra 1076 Regal Canyon Dr. Walnut, CA 91789
1008-111-23-0000	1015 Bennington	VSJ Family Trust 1156 N. Euclid Avenue Upland, CA 91786-2429
1008-111-24-0000	1007 Bennington	Esteve Family Trust 2309 Madrugada Drive Chino Hills, CA 91709
1008-111-25-0000	1008 Bennington	Sainath Shankarlingam 1 Hillsborough Newport Beach, CA 92660
1008-111-26-0000	1016 Bennington	Macias Antonio and Sara Living Trust 1632 Danbrook Place Upland, CA 91784-9204
1008-111-27-0000	1034 Bennington	William E. Dyke, Jr. 1433 Via Zurita Street Claremont, CA 91711

<b>Tax Assessor's Parcel Number</b>	<b>Property Address</b>	<b>Owner/Address</b>
1008-111-28-0000	1042 Bennington	Quetsch Family Trust 30 Villa Milano Lake Elsinore, CA 92532
1008-111-29-0000	1056 Bennington	Chen Yu LLC 2415 Fallen Dr. Rowland Heights, CA 91748
1008-111-30-0000	1070 Bennington	YJ Trust 15402 Los Molinos St. Hacienda Heights, CA 91745-5913
1008-111-31-0000	291 Grayson Way	Cun Family Trust 5826 Primrose Ave. Temple City, CA 91780-2110
1008-111-32-0000	275 Grayson Way	Brandsma Family Trust 13322 Branding Iron Place Chino, CA 91710-4705
1008-111-33-0000	267 Grayson Way	Robert R. Cardoza Trust 27742 Paseo Barona San Juan Capistrano, CA 92675
1008-111-34-0000	249 Grayson Way	David J. Legters Trust 565 E. Holt Avenue Pomona, CA 91767
1008-111-35-0000	237 Grayson Way	Hai-Chi Koo Lee Chang Koo 3656 Martz Street Simi Valley, CA 93063
1008-111-36-0000	221 Grayson Way	Tao Zheng 5546 Rosemead Blvd Unit 201 Temple City CA 91780
1008-111-37-0000	209 Grayson Way	Dominic J. Etchaberria Suzanne M. Etchaberria 2044 Winston Court Upland, CA 91784

## EXHIBIT D

### LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT LM-84-1 FOR FISCAL YEAR 2020/2021 Tract 18376

<b>Tax Assessor's Parcel Number</b>	<b>Property Address</b>	<b>Owner/Address</b>
1005-221-11-0000	1852 Millsweet Dr	Deann Hsu & Yu-sin Lai 1331 W Maitland Street Ontario, CA 91762
1005-221-12-0000	1856 Millsweet Dr	The Hartleb Family Living Trust 1856 N. Millsweet Drive Upland, CA 91784
1005-221-13-0000	1860 Millsweet Dr	Thomas Rice 1860 Millsweet Drive Upland, CA 91784
1005-221-14-0000	1864 Millsweet Dr	Lee R Trust 1864 Millsweet Drive Upland, CA 91784
1005-221-15-0000	1861 Millsweet Dr	Flores Sandra 1861 N. Millsweet Dr. Upland, CA 91784
1005-221-16-0000	1859 Millsweet Dr	Cermak Bradley Edward 1859 N. Millsweet Drive Upland, CA 91784-7460
1005-221-17-0000	1857 Millsweet Dr	Ryan Hinson 1857 N. Millsweet Drive Upland, CA 91784
1005-221-18-0000	1851 Millsweet Dr	Vayuvequla Bharathi Revocable Trust 1851 N. Millsweet Drive Upland, CA 91784
1005-221-19-0000	1855 Millsweet Dr	See-Prats Rosalina Living Trust 6854 Tourmaline Drive Eastvale, CA 92880

**EXHIBIT E**

**LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT  
LM-84-1  
Tract 12339  
FOR FISCAL YEAR 2020/2021**

	Actual 2017/18	Actual 2018/19	Estimated 2019/20	Actual 2019/20	Estimated 2020/21
Advertising	132	118	118	154	154
Utilities (Electric)	292	237	242	129	132
Labor: - Street Sweeping	202	202	202	-	-
Administration	530	530	530	529	529
Totals	1,156	1,087	1,092	812	815

**ANNUAL ASSESSMENT**

1	Total Annual Assessment Paid for 2019/20	\$1,092
2	Total Expenditures for 2019/20	\$812
3	(Surplus)/Deficit from 2019/20	(\$280)
4	Estimated Costs for 2020/21	\$815
5	Contributions from Other Sources	0
6	Assessment of Estimated Costs (Sum of items 3, 4 & 5)	\$535
<b>7</b>	<b>Cost per Parcel for 2020/21 (Item 6 divided by 21 parcels)</b>	<b>\$25.48</b>

**EXHIBIT E**

**LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT  
LM-84-1  
Tract 18376  
FOR FISCAL YEAR 2020/21**

	Actual 2017/18	Actual 2018/19	Estimated 2019/20	Actual 2019/20	Estimated 2020/21
Advertising	132	118	118	154	154
Utilities (Water)	1,615	1,458	1,626	2,289	2,396
Labor: - Street Sweeping	43	43	43	-	-
Administration	523	524	524	524	524
Totals	2,313	2,143	2,311	2,967	3,074

**ANNUAL ASSESSMENT**

<b>1</b>	Estimated Costs for 2020/21	\$3,074
<b>2</b>	Contributions from Other Sources	0
<b>3</b>	Assessment of Estimated Costs (Sum of items 3, 4 & 5)	\$3,074
<b>4</b>	<b>Cost per Parcel for 2020/21 (Item 6 divided by 9 parcels)</b>	<b>\$341.57</b>

## **EXHIBIT F PUBLIC NOTICE**

### **NOTICE OF PUBLIC HEARING**

NOTICE IS HEREBY GIVEN that the City Council of the City of Upland will hold a public hearing on July 27, 2020, at 7:00 p.m. in the Council Chamber of the Upland City Hall, 460 N. Euclid Avenue, Upland, California 91786, to consider the 2020/21 Fiscal Year assessment to be levied upon the following Assessment District:

#### **LM-84-1:**

**South side of 8<sup>th</sup> Street, East side of Mountain Avenue and Millsweet Drive, North of Eureka Street, West of Benson Avenue.**

This district was formed for the purpose of providing street lights and street sweeping adjacent to Tract Number 12339 and street lights, landscape irrigation and street sweeping adjacent to Tract 18376.

The cost per parcel for Tract 12339 for Fiscal Year 2020/21 is \$25.48. The cost per parcel for Tract 18376, for Fiscal Year 2020/21 is \$341.57. A full report describing existing improvements and the proposed assessments upon assessable lots within the district is on file in the Office of the City Clerk. For further information, please contact Saleha Kazmi at 909-931-4360.

Due to the ongoing emergency concerning the COVID-19 Coronavirus, public attendance at the City Council meeting will be limited to establish appropriate social distancing. A live audio broadcast of the meeting will be provided in the City Hall Courtyard to accommodate overflow attendance. To ensure public participation, public comments will be accepted through remote and in person participation. For detailed information on how to participate in remote public comment, please visit the City's website at: [www.uplandca.gov/city-council-agendasminutes](http://www.uplandca.gov/city-council-agendasminutes) or contact the City Clerk's Office at 909-931-4120.

All interested persons are invited to attend this public hearing and will be afforded the opportunity to present both oral and written statements, arguments and beliefs relevant to this proposal. All pertinent data may be inspected at the Office of the City Clerk, Upland City Hall, 460 N. Euclid Avenue, Upland, California 91786 prior to the public hearing.

Keri Johnson  
Upland City Clerk

Publish: July 16, 2020



## STAFF REPORT

**ITEM NO. 12.D.**

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**DATE:** July 27, 2020  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, CITY MANAGER  
**PREPARED BY:** STEPHEN PARKER, CPA, ASSISTANT CITY MANAGER  
LONDA BOCK-HELMS, CPA, FINANCE OFFICER  
TRACY SENDLDORFER, UTILITY BILLING SUPERVISOR  
**SUBJECT:** DELINQUENT WATER, SEWER, AND REFUSE SERVICE CHARGES  
TO BE COLLECTED ON THE TAX ROLL

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### RECOMMENDED ACTION

It is recommended that the City Council conduct a public hearing, accept the report of delinquent water, sewer, and refuse service charges, and authorize the delinquent charges to be placed on the tax roll.

### GOAL STATEMENT

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

### BACKGROUND

On June 9, 2014, pursuant to Health & Safety Code Sections 5473 and 5473a, the City Council elected to have delinquent charges for water and sewer service collected on the tax roll. On April 13, 2015, pursuant to Health & Safety Code Sections 5473 and 5473a, the City Council elected to have delinquent refuse service collected on the tax roll. Pursuant to Health & Safety Code Sections 5473 and 5473.11, the City Council directed City staff to prepare a written report which contains the amount of all delinquent water, sewer and refuse service accounts that have been unpaid for a least 60 days and a description of each parcel of real property with such an account.

### ISSUES/ANALYSIS

The City writes off approximately 150-200 accounts with delinquent water, sewer and refuse service charges on an annual basis. The City utilizes a collection agency to attempt to

recover this revenue but these efforts have been largely unsuccessful. Placing these delinquent charges on the tax roll will allow the City to recoup this revenue for services already provided.

Notification of the public hearing and the City's intent to place delinquent accounts on the tax roll was sent by mail to 51 property owners on June 29, 2020. This provided property owners with the opportunity to pay the delinquent charges or provide proof that the delinquent account balance was incurred before acquiring the property. Since notification, 23 accounts have been brought current and only 28 accounts remain on the lien list.

### **FISCAL IMPACTS**

As of the publication date of this report, staff is presenting 28 accounts with delinquent amounts outstanding for water, sewer, refuse and/or fees totaling \$8,322.62. The charges had been outstanding for more than 60 days. An additional administrative fee of \$53.14, as established by Resolution No. 6227, will be added to the amount of the assessment on the property to offset the City's cost, as well as the County fee for processing submitted assessments.

### **ALTERNATIVES**

Provide alternative direction to staff.

### **ATTACHMENTS:**

**Finance Officer's Lien Report-Water, Sewer, Refuse**

Line	Account #	Parcel #	Water	Fees	Refuse	Sewer	Account Total
1	311-0215.30	1007-571-23-0000	\$ 108.23	\$ -	\$ 98.27	\$ 79.17	\$ 285.67
2	325-1451.09	1007-442-06-0000	\$ 130.77	\$ -	\$ 61.74	\$ 84.12	\$ 276.63
3	325-1599.18	1007-442-25-0000	\$ 107.83	\$ 87.25	\$ 108.95	\$ 148.45	\$ 452.48
4	325-1806.30	1007-443-06-0000	\$ 123.21	\$ -	\$ 36.32	\$ 49.48	\$ 209.01
5	361-1300.28	1045-353-27-0000	\$ 262.37	\$ -	\$ 14.53	\$ 19.79	\$ 296.69
6	363-0338.18	1006-411-59-0000	\$ 430.33	\$ 15.03	\$ 42.84	\$ 48.50	\$ 536.70
7	365-1035.05	1006-532-07-0000	\$ 211.75	\$ 40.00	\$ -	\$ 149.76	\$ 401.51
8	381-1956.02	1005-491-07-0000	\$ 334.75	\$ 96.50	\$ -	\$ 107.91	\$ 539.16
9	385-3794.06	1005-191-38-0000	\$ 286.23	\$ -	\$ 54.21	\$ 61.36	\$ 401.80
10	385-4515.12	1005-461-18-0000	\$ 225.46	\$ 75.00	\$ 75.71	\$ 66.30	\$ 442.47
11	395-3008.15	1004-104-39-0000	\$ 196.15	\$ -	\$ 56.83	\$ 64.33	\$ 317.31
12	395-7128.11	1004-061-58-0000	\$ 53.94	\$ -	\$ 28.33	\$ 38.60	\$ 120.87
13	591-1850.05	1007-741-39-0000	\$ 262.23	\$ -	\$ -	\$ -	\$ 262.23
14	591-2072.02	1007-292-46-0000	\$ 42.49	\$ -	\$ 12.35	\$ 16.82	\$ 71.66
15	591-3039.02	1007-021-18-0000	\$ 66.25	\$ -	\$ 57.38	\$ 64.15	\$ 187.78
16	591-3051.02	1007-021-22-0000	\$ -	\$ -	\$ 53.75	\$ 13.76	\$ 67.51
17	602-0721.42	1047-072-20-0000	\$ 140.79	\$ -	\$ 44.31	\$ 60.37	\$ 245.47
18	602-2554.02	1046-574-32-0000	\$ 90.86	\$ -	\$ 13.07	\$ 17.81	\$ 121.74
19	604-2556.13	1047-121-27-0000	\$ -	\$ -	\$ 22.60	\$ -	\$ 22.60
20	604-2587.07	1047-121-79-0000	\$ 190.21	\$ 15.75	\$ 38.74	\$ 65.32	\$ 310.02
21	622-1446.05	1046-482-56-0000	\$ 163.71	\$ -	\$ 93.55	\$ 118.79	\$ 376.05
22	648-0900.36	1045-177-06-0000	\$ 147.53	\$ 53.00	\$ 83.94	\$ 95.01	\$ 379.48
23	676-9969.03	1003-031-18-0000	\$ -	\$ 244.76	\$ -	\$ 297.53	\$ 542.29
24	902-0078.01	1007-363-06-0000	\$ -	\$ -	\$ 51.17	\$ 34.83	\$ 86.00
25	902-0082.02	1007-362-14-0000	\$ -	\$ 15.75	\$ 138.33	\$ 137.94	\$ 292.02
26	902-1106.01	1007-362-01-0000	\$ -	\$ -	\$ 51.17	\$ -	\$ 51.17
27	902-1231.06	1007-362-04-0000	\$ -	\$ 299.25	\$ 322.63	\$ 275.88	\$ 897.76
28	902-2034.02	0202-251-37-0000	\$ -	\$ 15.75	\$ 112.79	\$ -	\$ 128.54
<b>TOTALS:</b>			<b>\$ 3,575.09</b>	<b>\$ 958.04</b>	<b>\$ 1,673.51</b>	<b>\$ 2,115.98</b>	<b>\$ 8,322.62</b>



## STAFF REPORT

**ITEM NO. 12.E.**

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**DATE:** July 27, 2020  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, CITY MANAGER  
**PREPARED BY:** ROSEMARY HOERNING, CITY MANAGER  
STEVEN L. FLOWER, INTERIM CITY ATTORNEY  
**SUBJECT:** ORDINANCE CALLING A SPECIAL ELECTION ON THE  
ABANDONMENT AND DISCONTINUANCE OF USE OF AN  
APPROXIMATELY 4.63 ACRE PORTION OF MEMORIAL PARK  
MEMORIAL PARK, 1299 SAN BERNARDINO ROAD (A PORTION OF  
ASSESSORS PARCEL NUMBER 1046-183-01)

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### RECOMMENDED ACTION

It is recommended that the City Council hold a hearing to consider any public protests to holding an election on whether to abandon and discontinue use of an approximately 4.63-acre portion of Memorial Park (1299 San Bernardino Road, a portion of APN 1046-183-01) so that it may be sold at a price not less than \$4,300,000.00 to San Antonio Regional Hospital (SARH).

If the City Council wishes to call the election, it is recommended that the City overrule any protests from the public and adopt the proposed ordinance calling a special election on the park question on November 3, 2020.

### GOAL STATEMENT

The proposed action would promote community engagement by putting to the voters the question of discontinuing use of a portion of Memorial Park so it may be sold to SARH.

### BACKGROUND

On March 26, 2018, the SARH entered into a Purchase and Sale Agreement (Purchase Agreement) with the City to acquire 4.63 acres of Memorial Park. At that time and since, some members of the public have argued that the City's voters must be given the opportunity to decide whether the City should go through with the sale.

Pursuant to the Purchase Agreement, the City filed a validation action to confirm that an election is not required. A validation action is a legal proceeding that public entities may initiate to confirm the legal validity of certain actions. In this case; however, the court dismissed the City's case on the grounds that the contract was not subject to the validation statutes. The court never settled the question of whether an election is required.

Even though the court never decided that an election is required, SARH has concluded for its own reasons that an election is the best way forward, and is requesting that the City put a measure on the ballot at the November 3, 2020 election. SARH has also agreed to reimburse the City for the cost of the election through a separate reimbursement agreement.

On June 22, 2020, the City Council took the first step toward holding an election when it adopted Resolution No. 6551, which declared the City Council's intent to call a special election and setting a public hearing for July 27, 2020 to consider any public protests.

Pursuant to further City Council direction, the City also obtained a new appraisal of the property based on the proposed Office Professional (OP) zoning designation. The appraisal determined that, if zoned for OP use, the fair market value of the property would be \$4,300,000, which is \$100,000 more than the original purchase price set forth in the Purchase Agreement. In a preceding item on this agenda, the City Council will consider an amendment to the Purchase Agreement with SARH that would, among other things, amend the purchase price so that it is not less than the new appraisal amount. In the event the Council does not approve that amendment but wishes to proceed with the election nonetheless, the proposed ordinance would need to be revised to reflect the original purchase price of \$4,200,000.

## **ISSUES/ANALYSIS**

### Election Process

Government Code Sections 38440 through 38462 establish a two-step process the City can use to call an election on whether to discontinue use of City parks so that such property can be sold or otherwise disposed.

The first step is adoption of a resolution that declares that the public interest or convenience requires discontinuing use of the land as a public park and that the City Council intends to call a special election on the issue; and sets a public hearing to consider public protests before calling the election. The City Council took this step on June 22, 2020.

The second step is this public hearing to consider any public protests to the discontinuance of the property for park purposes. Under Government Code Section 38450, "Protests are sustained unless overruled by two-thirds vote of the legislative body," which means in this case that at least three affirmative votes from Council Members are required to overrule any protests and call the election.

### Future Development

Even if the voters ultimately approve discontinuing use of the property as a park, SARH would need to complete two critical steps before closing on the sale and developing the property. Under the Purchase Agreement, SARH must also comply with the California Environmental Quality Act ("CEQA") and obtain the City Council's approval for a change in the property's zoning designation before closing. Nothing in the Purchase Agreement, reimbursement agreement, or the steps required to call the election require the City to approve the zone change or reach any particular CEQA decision. The City Council has retained its full authority over these questions and therefore still has the final say on whether the sale ultimately goes through.

**FISCAL IMPACTS**

None. SARH will bear all costs related to their request.

**ALTERNATIVES**

Provide alternative direction to staff.

**ATTACHMENTS:****Ordinance**

**City Council Staff Report, Item 14C., June 22, 2020**

**City Council Staff Report, Item 14A., March 26, 2018**

AN ORDINANCE OF THE CITY OF UPLAND CALLING A SPECIAL ELECTION ON NOVEMBER 3, 2020 TO SUBMIT TO THE CITY ELECTORS THE QUESTION OF ABANDONMENT AND DISCONTINUANCE OF USE AS A PUBLIC PARK AN APPROXIMATELY 4.63-ACRE PORTION OF MEMORIAL PARK; AND OVERRULING ALL PUBLIC PROTESTS REGARDING THE SAME

A. RECITALS.

(i) Memorial Park is an approximately 38.5-acre parcel owned by the City and operated as the City's largest public park. The City's acquisition of the park was not funded by any special assessment, bond, or any federal or state grant, nor was the land acquired via dedication pursuant to the Subdivision Map Act.

(ii) In 2017, San Antonio Regional Hospital ("SARH") approached the City about the possibility of selling approximately 4.63 acres in the southwest corner of Memorial Park, consisting of a baseball field, bleachers, scoreboard, lights, parking lot, vacant land and a snack bar/restrooms, more particularly described in the legal description found Exhibit A to this Ordinance (the "Park Parcel"). Since that time, SARH has completed a new 4-story patient tower, emergency room, and 60,000 square foot medical office building, all of which have created a demand for additional land for parking and future expansion opportunities. SARH intends to purchase the Park Parcel for no less than \$4,300,000.00, to add new facilities and increase capacity for critically-needed medical services.

(iii) If the City were to sell the Park Parcel, SARH would grant the City an easement for public parking on the Park Parcel, and the City would use the sale proceeds solely for making public improvements to the other parts of Memorial Park, which improvements may include a new baseball field, additional public parking and other new public amenities, landscaping, structures, and walking trails.

(iv) SARH has requested that the City Council submit the question of discontinuing use of the Park Parcel to the City's electors at the November 3, 2020 general election pursuant to Government Code Section 38440 *et seq.*, which establishes a procedure for the City Council to submit the question to the City's electors following notice and an opportunity for public protest and hearing.

(v) On June 22, 2020, the City Council adopted Resolution No. 6551, declaring that public interest or convenience requires the discontinuance of the use of the Park Parcel as a public park and the City Council's intention to call a special election to submit the question of discontinuance to the city electors so the Park Parcel may be sold to SARH, and setting a public hearing to hear and consider any protests from the public or persons particularly interested in the matter for July 27, 2020.

(vi) On July 27, 2020, the City Council held a duly noticed public hearing to hear and pass upon all written protests and to hear all persons wishing to speak on the matter.

(vii) The City Council has received all protests against the proposed abandonment and discontinuance of the Park Parcel or to the extent thereof provided to the City before adoption of this Ordinance.

(viii) All legal prerequisites to the adoption of this Ordinance have occurred.

B. ORDINANCE.

THE CITY COUNCIL OF THE CITY OF UPLAND ORDAINS AS FOLLOWS:

Section 1. Recitals. All facts set forth in the recitals above are correct.

Section 2. Protests Overruled. The City Council hereby overrules all protests presented to the City before and during the public hearing held on July 27, 2020.

Section 3. Election. The City Council has previously called a general municipal election to be held in the City on Tuesday, November 3, 2020, as established and implemented by the City Council in Resolution Number 6543, adopted on June 1, 2020. Pursuant to California Government Code Section 38450 and California Elections Code Section 9222, the City Council hereby orders that at the said election, an ordinance entitled "City of Upland Memorial Park Measure" be submitted to the voters for approval. The full text of the City of Upland Memorial Park Measure, which is attached to this Ordinance as Exhibit A and hereby incorporated by this reference, shall be printed in the voter pamphlet. The measure to be submitted to the voters shall appear and be printed on the ballot as follows:

In order to secure at least \$4,300,000 for the City of Upland to use solely for public improvements to Memorial Park, which may include a new baseball field, additional public parking and other new public amenities, landscaping, structures, and walking trails, shall the City discontinue using approximately 4.63 acres of Memorial Park so it may be sold to San Antonio Regional Hospital to add new facilities and increase capacity for critically-needed medical services?	Yes
	No

Section 4. Effect of Voter Approval. Pursuant to California Government Code Sections 38451 through 38460, if a majority of the City electors voting on the measure are in favor of it, the City Council shall adopt an ordinance declaring that use of the Park Parcel is discontinued and abandoned, and the land will be deemed held by the City in fee and may be sold or otherwise disposed of in the same manner as other property no longer required for municipal purposes. If less than a majority of City electors vote for the measure, the City Council shall not initiate proceedings for discontinuance of the use of the Park Parcel for park purposes for one year after the election.

Section 5. Ballots. The ballots to be used at the election shall be in the form and content as required by law. The City Clerk is authorized, instructed and directed to coordinate with the County of San Bernardino Registrar of Voters to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

Section 6. Impartial Analysis: The City Attorney is hereby directed to prepare an impartial analysis of the measure pursuant to Elections Code Section 9280.

Section 7. Ballot Arguments: That arguments for and against said measure may be filed in accordance with applicable provisions of the law. That the Council does not authorize the Council as a body or any individual member of the Council to file a written argument or any rebuttal argument for or against the measure. The City Clerk shall consider other arguments and rebuttal arguments filed by bona fide associations or individual residents who are eligible to vote in accordance with Elections Code Sections 9282 and 9285.

Section 8. Consolidation. Pursuant to Resolution No. 6543, adopted on June 1, 2020, the City Council previously called a general municipal election to be held in the City on Tuesday, November 3, 2020, and requested pursuant to the requirements of California Elections Code Section 10403, that the Board of Supervisors of the County of San Bernardino consent and agree to the consolidation of a General Municipal Election with the Statewide General Election to be held on the same date. Accordingly, the consolidated election shall be held and conducted in the manner prescribed in California Elections Code Section 10418.

Section 9. Conduct of the Election. The polls for the election shall be open at seven o'clock a.m. the day of the election and shall remain open continuously from that time until eight o'clock p.m. of the same day when the polls shall be closed, except as provided in California Elections Code Section 14401, or as determined by the County Elections Official for the consolidated election. In all particulars not recited in this Ordinance, the election shall be held and conducted as provided by law for holding consolidated municipal elections.

Section 10. Cost of Election. The City of Upland recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any costs, in accordance with the County's normal charges for such services, upon presentation of valid invoices from the County for the same.

Section 11. Notice of Election. Notice of the time and place of holding the election is given and the City Clerk is authorized, instructed, and directed to give further or additional notice of the election, in time, form, and manner as required by law. Notwithstanding the generality of the foregoing, the City Clerk is hereby instructed to act in conformance with Elections Code Section 10403 along with Resolution No. 6543, and to file a certified copy of this Ordinance with the Board of Supervisors of San Bernardino County, and to transmit a certified copy of the same to the San Bernardino County Elections Official.

Section 12. Effective Date. This Ordinance shall become effective immediately upon adoption pursuant to California Government Code Section 36937(a).

Section 13. Certification. The City Clerk shall certify the adoption of this Ordinance and cause it to be published in the manner required by law.

PASSED, APPROVED and ADOPTED this 27th day of July, 2020.

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

I, Keri Johnson, City Clerk of the City of Upland, do hereby certify that the foregoing Ordinance was introduced and adopted at a regular meeting of the City Council held on the 27th day of July, 2020, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAINED:

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

Exhibit A  
Full Text of Measure

City of Upland Memorial Park Measure

The People of the City of Upland do ordain as follows:

The City of Upland shall abandon and discontinue using for park purposes an approximately 4.63-acre portion of Memorial Park as further defined below, to allow the land to be sold to San Antonio Regional Hospital for a price not less than \$4,300,000 so that the City may use the proceeds solely for public improvements to Memorial Park, which may include a new baseball field, additional public parking and other new public amenities, landscaping, structures, and walking trails, and so that San Antonio Regional Hospital may add new facilities and increase capacity for critically-needed medical services. The legal description of the 4.63-acre property in the southwest corner of the parcel commonly referred to as Memorial Park is as follows:

THOSE PORTIONS OF LOTS 549 AND 550 LYING NORTH OF THE NORTHWEST LINE OF SAN BERNARDINO ROAD, IN THE CITY OF UPLAND, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP OF ONTARIO PER PLAT RECORDED IN BOOK 11 PAGE 6, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAN BERNARDINO COUNTY BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHWEST LINE OF SAN BERNARDINO ROAD (77 FEET WIDE) AND THE EASTERLY LINE OF THAT CERTAIN 70 FOOT EASEMENT OF THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT PER BOOK 3280 PAGE 148 O.R., RECORDED NOVEMBER 19, 1953, RECORDS OF SAID COUNTY; THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID EASEMENT, NORTH 26°27'19" WEST, 543.85 FEET TO THE SOUTH LINE OF ELEVENTH STREET (66 FEET WIDE) AS SHOWN ON THE SAID MAP OF ONTARIO; THENCE EASTERLY ALONG THE SOUTHERLY LINE OF SAID ELEVENTH STREET AND ITS EASTERLY PROLONGATION, SOUTH 89°57'42" EAST, 124.52 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 158.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 37°42'28" AN ARC LENGTH OF 103.98 FEET TO THE EASTERLY PROLONGATION OF THE CENTERLINE OF ELEVENTH STREET; THENCE ALONG SAID CENTERLINE SOUTH 89°57'42" EAST, 167.63 FEET; THENCE LEAVING SAID CENTERLINE, SOUTH 60°53'18" EAST, 12.55 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 13.00 FEET; THENCE THROUGH A CENTRAL ANGLE OF 53°15'37" AN ARC LENGTH OF 12.08 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 13.00 FEET; THENCE THROUGH A CENTRAL ANGLE OF 38°32'17" AN ARC LENGTH OF 8.74 FEET; THENCE SOUTH 46°09'57" EAST, 124.44 FEET TO THE

BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 304.00 FEET; THENCE THROUGH A CENTRAL ANGLE OF 18°10'36" AN ARC LENGTH OF 96.44 FEET; THENCE SOUTH 27°59'21" EAST, 47.46 FEET; THENCE NORTH 62°00'39" EAST, 49.97 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 5.00 FEET; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00" AN ARC LENGTH OF 7.85 FEET; THENCE SOUTH 27°59'21" EAST, 26.51 FEET; THENCE NORTH 62°00'39" EAST, 102.06 FEET; THENCE SOUTH 27°59'21" EAST, 67.37 FEET TO A POINT ON THE NORTH LINE OF SAN BERNARDINO ROAD (77 FEET WIDE); THENCE ALONG SAID STREET SOUTH 62°00'39" WEST, 592.19 FEET TO THE POINT OF BEGINNING.

DESCRIBED AREA = 201,745 SQUARE FEET = 4.631 ACRES.



## STAFF REPORT

**ITEM NO. 14.C.**

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**DATE:** June 22, 2020  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, CITY MANAGER  
**PREPARED BY:** ROSEMARY HOERNING, CITY MANAGER  
STEVEN L. FLOWER, INTERIM CITY ATTORNEY  
**SUBJECT:** RESOLUTION REGARDING SUBMITTING THE QUESTION OF DISCONTINUING USE OF 4.63 ACRES OF MEMORIAL PARK TO CITY VOTERS AT A SPECIAL ELECTION TO BE HELD NOVEMBER 3, 2020; APPROVAL OF A REIMBURSEMENT AGREEMENT WITH THE SAN ANTONIO REGIONAL HOSPITAL REGARDING ELECTION COSTS

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### RECOMMENDED ACTION

It is recommended that the City Council consider a request from the San Antonio Regional Hospital ("SARH") to submit the question of whether to discontinue use of a 4.63-acre portion of Memorial Park so that it may be sold at a price of \$4,200,000.00 to SARH for the expansion of healthcare services.

If the City Council wishes to call the election, it is recommended that the City Council approve the proposed reimbursement agreement with SARH to cover any costs to the City in holding the election and adopt the draft Resolution declaring the City's intent to discontinue use of that portion of Memorial Park and set a hearing to consider any protests.

### GOAL STATEMENT

The proposed action would promote community engagement by putting to the voters the question of discontinuing use of a portion of Memorial Park so it may be sold to SARH.

### BACKGROUND

On March 26, 2018, the SARH entered into a purchase and sale agreement to acquire 4.63 acres of Memorial Park. (Staff report and related documents are attached for reference.)

Since that time, some members of the public have requested that the City's voters be given the opportunity to decide whether the City should go through with the sale. SARH has now submitted a request that the City submit the question to the voters at a special election on November 3, 2020.

SARH has also agreed to reimburse the City for the cost of calling and holding such an election pursuant to an agreement prepared by the Interim City Attorney.

## **ISSUES/ANALYSIS**

### Election Process

Government Code Sections 38440 through 38462 establish a two-step process the City can use to call an election on whether to discontinue use of City parks so it can be sold or otherwise disposed.

The first step is adoption of a resolution that:

1. Declares that the public interest or convenience requires discontinuing use of the land as a public park;
2. Declares that the City Council intends to call a special election on the issue; and
3. Sets a public hearing to consider public protests before calling the election.

Adoption of the draft resolution attached to this report would meet these requirements.

The second step would be a public hearing to consider any public protests to the discontinuance of the property for park purposes. The hearing requires at least 20-days' notice to the public and must take place no less than 30 and no more than 60 days after the first step. In the event of any protests, the Council may call the election by adopting an ordinance by a two-thirds vote of the City Council.

Based on a proposed special election date of November, the last regular City Council meeting at which the hearing could occur would on July 27. This means that June 22 is the last regular City Council meeting at which the City Council could adopt the resolution of intent to call the election.

### Reimbursement Agreement

In recognition that an election would impose costs on the City, SARH has agreed to reimburse the City for the cost of the election pursuant to the proposed reimbursement agreement. If approved by the City Council, the attached agreement would require SARH to deposit at least \$100,000 from which the City could deduct all costs, fees and expenses connected to the election. This would include, but not be limited to, direct costs, staff time, legal costs, and any consultants. If the deposit balance drops below \$50,000, SARH would have to replenish the deposit to the full amount. SARH would also be required to indemnify and defend the City in the event of any legal challenge to the election.

### Future Development

Even if the voters ultimately approve discontinuing use of the property as a park, SARH would need to complete two critical steps before it's closing of the sale and developing the property. Under the purchase agreement, SARH must also comply with the California Environmental Quality Act ("CEQA") and obtain the City Council's approval for a change in the property's zoning designation before closing. Nothing in the purchase agreement, reimbursement agreement, or the steps required to call the election require the City to approve the zone change or reach any particular CEQA decision. The City Council has retained its full authority over these questions and therefore still has the final say on whether the sale ultimately goes

through.

**FISCAL IMPACTS**

None. SARH will bear all costs related to their request.

**ALTERNATIVES**

Provide alternative direction to staff.

**ATTACHMENTS:**

**Resolution of Intent  
Submittal letter from San Antonio Regional Hospital  
Reimbursement Agreement  
City Council Staff Report, March 26, 2018, Item 14A**

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UPLAND, CALIFORNIA DECLARING THAT THE PUBLIC INTEREST OR CONVENIENCE REQUIRES THE DISCONTINUANCE USE OF APPROXIMATELY 4.63-ACRE PORTION OF MEMORIAL PARK AS A PUBLIC PARK; DECLARING THE CITY COUNCIL'S INTENT TO CALL A SPECIAL ELECTION TO SUBMIT THE QUESTION OF DISCONTINUANCE TO THE CITY'S ELECTORS

Intent of the Parties and Purpose

(i) Memorial Park is an approximately 38.5-acre parcel owned by the City and operated as the City's largest public park. The City's acquisition of the park was not funded by any special assessment, bond, or any federal or state grant, nor was the land acquired via dedication pursuant to the Subdivision Map Act.

(ii) In 2017, San Antonio Regional Hospital ("SARH") approached the City about the possibility of selling approximately 4.63 acres in the southwest corner of Memorial Park, consisting of a baseball field, bleachers, scoreboard, lights, parking lot, vacant land and a snack bar/restrooms, more particularly described in Exhibit A to this Resolution, (the "Park Parcel"). Since that time, SARH has completed a new 4-story patient tower, emergency room, and 60,000 square foot medical office building, all of which have created a demand for additional land for parking and future expansion opportunities. SARH intends to purchase the Park Parcel for \$4,200,000.00, to add new facilities and increase capacity for critically-needed medical services.

(iii) If the City were to sell the Park Parcel, SARH would grant the City an easement for public parking on the Park Parcel, and the City would use the sale proceeds solely for making public improvements to the other parts of Memorial Park, which improvements may include a new baseball field, additional public parking and other new public amenities, landscaping, structures, and walking trails.

(iv) SARH has requested that the City Council submit the question of discontinuing use of the Park Parcel to the City's electors at the November 3, 2020 general election.

(v) State law (Government Code § 38440 *et seq.*) establishes a procedure, by which the City Council submit the question to the City's electors following notice and an opportunity for public protest and hearing.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UPLAND DOES HEREBY RESOLVE, DECLARE, AND ORDER AS FOLLOWS:

Section 1. Recitals. The recitals stated above are correct.

Section 2. Declaration. Based upon the above-stated Recitals, the City Council hereby declares that the public interest or convenience requires the discontinuance of the Park Parcel for public park use and that the City Council intends

to call a special election to submit the question of discontinuance to the City's electors.

Section 3. Hearing. The City Council shall hold a public hearing to hear and consider any protests from the public or persons particularly interested on July 27, 2020 in the Council Chambers at the Upland City Hall, 460 N. Euclid Avenue, Upland, California 7:00 p.m. or as soon thereafter as the matter may be heard; provided that such hearing may be held by teleconference consistent with the Governor's Executive Order N-29-20 if necessary due to the ongoing emergency concerning the COVID-19 virus. All notices and published or posted for the hearing shall include information regarding how the public may participate telephonically or otherwise electronically in the even the hearing is held telephonically.

Section 4. Certification; Publication. The City Clerk shall certify to the adoption of this Resolution and cause a true and correct copy of the same to be published in the manner required by Section 38445 of the Government Code.

Section 5 Posting. The City Manager shall cause notice of the adoption of this Resolution in the matter required by Sections 38446 and 38447 of the Government Code.

PASSED, APPROVED, and ADOPTED this 22nd day of June, 2020.

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Debbie Stone, Mayor

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 of the City of Upland held on the 22nd day of June, 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

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Keri Johnson, City Clerk

EXHIBIT A

LEGAL DESCRIPTION OF 4.63-ACRE PORTION IN THE  
SOUTHWEST CORNER OF PARCEL COMMONLY REFERRED  
TO AS MEMORIAL PARK

THOSE PORTIONS OF LOTS 549 AND 550 LYING NORTH OF THE NORTHWEST LINE OF SAN BERNARDINO ROAD, IN THE CITY OF UPLAND, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP OF ONTARIO PER PLAT RECORDED IN BOOK 11 PAGE 6, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAN BERNARDINO COUNTY BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHWEST LINE OF SAN BERNARDINO ROAD (77 FEET WIDE) AND THE EASTERLY LINE OF THAT CERTAIN 70 FOOT EASEMENT OF THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT PER BOOK 3280 PAGE 148 O.R., RECORDED NOVEMBER 19, 1953, RECORDS OF SAID COUNTY; THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID EASEMENT, NORTH 26°27'19" WEST, 543.85 FEET TO THE SOUTH LINE OF ELEVENTH STREET (66 FEET WIDE) AS SHOWN ON THE SAID MAP OF ONTARIO; THENCE EASTERLY ALONG THE SOUTHERLY LINE OF SAID ELEVENTH STREET AND ITS EASTERLY PROLONGATION, SOUTH 89°57'42" EAST, 124.52 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 158.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 37°42'28" AN ARC LENGTH OF 103.98 FEET TO THE EASTERLY PROLONGATION OF THE CENTERLINE OF ELEVENTH STREET; THENCE ALONG SAID CENTERLINE SOUTH 89°57'42" EAST, 167.63 FEET; THENCE LEAVING SAID CENTERLINE, SOUTH 60°53'18" EAST, 12.55 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 13.00 FEET; THENCE THROUGH A CENTRAL ANGLE OF 53°15'37" AN ARC LENGTH OF 12.08 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 13.00 FEET; THENCE THROUGH A CENTRAL ANGLE OF 38°32'17" AN ARC LENGTH OF 8.74 FEET; THENCE SOUTH 46°09'57" EAST, 124.44 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 304.00 FEET; THENCE THROUGH A CENTRAL ANGLE OF 18°10'36" AN ARC LENGTH OF 96.44 FEET; THENCE SOUTH 27°59'21" EAST, 47.46 FEET; THENCE NORTH 62°00'39" EAST, 49.97 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 5.00 FEET; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00" AN ARC LENGTH OF 7.85 FEET; THENCE SOUTH 27°59'21" EAST, 26.51 FEET; THENCE NORTH 62°00'39" EAST, 102.06 FEET; THENCE SOUTH 27°59'21" EAST, 67.37 FEET TO A POINT ON THE NORTH LINE OF SAN BERNARDINO ROAD (77 FEET WIDE); THENCE ALONG SAID STREET SOUTH 62°00'39" WEST, 592.19 FEET TO THE POINT OF BEGINNING.

DESCRIBED AREA = 201,745 SQUARE FEET = 4.631 ACRES.





June 15, 2020

To: Upland City Council

From: John T. Chapman, President and CEO – San Antonio Regional Hospital

Madam Mayor and Esteemed City Council Members,

As the President and Chief Executive Officer of San Antonio Regional Hospital, I am formally requesting the City put before the people of Upland the attached resolution to sell an underutilized portion of Upland Memorial Park to San Antonio Regional Hospital to expand its facilities and healthcare capacity.

We fully support having the community vote on this question by a ballot initiative on the November 3, 2020 general election. The Hospital shall absorb the costs to bring the ballot initiative to the citizens of Upland, and has signed a Reimbursement Agreement with the City to that effect.

As you know San Antonio Regional Hospital is a nonprofit hospital based and founded in Upland over 100 years ago. Over this time, the Hospital has grown to serve the changing healthcare needs of Upland residents. Most recently, we partnered with the City of Hope to develop a Cancer Center; we plan to accomplish the same strategy in the next few years for Cardiac Care, Orthopedics, and Neurosurgery. To meet the community's increasing demand for healthcare, the Hospital needs to expand its facilities efficiently and deliver critical services effectively.

Accordingly, the Hospital desires to purchase a portion of Upland Memorial Park directly adjacent to our emergency room entrance and main hospital entrance. Currently this area is heavily congested, and during a time of crisis it is crucial that the Hospital's entrances are easily accessible and provide staging areas for vital patient care. The additional land would allow the Hospital to bring enhanced services to the Upland Community, and construction of a new medical office building would provide hundreds of additional jobs to the community and benefit the local economy.

Also, the Hospital is mandated to comply with 2030 seismic standards and will be required to make substantial structural changes throughout our facilities. In order to accomplish the construction and maintain a quality level of service we will need additional land to stage the construction and temporarily deliver services.

Moreover, the proceeds of the sale, \$4.2 million, would be utilized solely for Memorial Park improvements and upgrades. The Hospital intends to partner with the City to renovate Upland Memorial Park and make it a place to be enjoyed by our patients, staff, and visitors, as well as the entire community. A revitalized park would be a



**SAN ANTONIO  
REGIONAL HOSPITAL**

beautiful and engaging place and a beloved outdoor destination of choice for all Upland citizens and their families.

For these reasons, we humbly request the City Council adopt a resolution allowing the community to determine, by a vote in November, this is a winning strategy for our community, our Hospital, and our Upland Memorial Park.

Respectfully,

John T. Chapman  
President & CEO  
San Antonio Regional Hospital

**REIMBURSEMENT AGREEMENT  
BETWEEN  
THE CITY OF UPLAND  
AND  
SAN ANTONIO REGIONAL HOSPITAL**

This Reimbursement Agreement (“Reimbursement Agreement”) is made as of June 22, 2020, by and between the City of Upland, a California municipal corporation (“City”) San Antonio Regional Hospital, a California public benefit corporation (“Hospital”).

**RECITALS**

- A. City and Hospital are parties to that certain Agreement for Purchase and Sale and Joint Escrow Instructions dated March 26, 2018 (“Purchase Agreement”), by which City agreed to sell and Hospital agreed to buy certain real property described and defined as the “Property” in the Purchase Agreement. Terms defined in the Purchase Agreement shall have the same meaning in this Reimbursement Agreement.
- B. Among the conditions precedent to Hospital’s obligation to proceed to Closing, was the completion of a Judicial Validation Action to establish the validity of the transfer of park property contemplated in the Purchase Agreement, and to validate the transfer of the Property without the necessity of conducting an election to approve the transaction. City filed the Judicial Validation Action in the Superior Court of the State of California for the County of San Bernardino. On May 29, 2019, a judgement was entered in that case dismissing City’s complaint.
- C. On June 16, 2020, Hospital submitted a request for the City Council to call a special election pursuant to Government Code §§ 3844–38462 (the “Election”) to submit to the City electors the question of discontinuing use of the Property so it may be sold to Hospital pursuant to the Purchase Agreement.
- D. The parties agree and acknowledge that calling the Election, and any potential legal challenge to or related to the Election, would cause the City to incur costs not contemplated by the Purchase Agreement.
- E. Hospital agrees it will reimburse the City in full for all costs and expenses actually incurred by the City in the calling or conducting of the Election
- F. City and Hospital desire to enter into this Reimbursement Agreement so that the City will not incur any costs or expenses as a result of the Election.

**AGREEMENT**

NOW, THEREFORE, in consideration of performance by the parties of the promises, covenants, and conditions herein contained, the parties agree as follows:

1. Recitals. The parties agree that the preceding recitals are true and correct.

2. Reservation of Authority. City reserves all legislative and governmental authority, and Hospital acknowledges and agrees that the decision whether to call the Election or change the Zoning of the Property shall remain solely within the discretion of the Upland City Council, and that nothing in this Reimbursement Agreement or the Purchase Agreement shall be construed as requiring the City to call the Election or to take any other action to approve the Zone Change. Hospital further acknowledges and agrees City shall have sole discretion to select which of its employees and contractors are assigned to work on the Election, to determine what work is necessary for the Election; to direct the work and evaluate the performance of the employees and contractors assigned to work on the Election, to terminate or replace at any time any such person, and to determine the amount of compensation paid to employees or contractors assigned to work on the Election. City, not Hospital, shall pay employees and contractors assigned to work on the Election from a City account.
  
3. Reimbursement of Election Costs. Hospital agrees to reimburse City in full for all costs, fees and expenses incurred in connection with calling the Election; including but not necessarily limited to City staff costs, City's costs for attorneys' fees to review, evaluate, process, and perform research in connection with the Election and preparation or review of this Reimbursement Agreement, fees and costs for any consultants retained by the City in connection with the Election, and any fees and costs incurred by such consultants in connection with the Election. Hospital acknowledges and agrees that Hospital's duty to reimburse City is not contingent upon voters' approval in the Election of the proposed discontinuance of the use of the Property or the statements during the Election of any individual in support or opposition to the proposed transfer of the Property.
  - A. Deposit. Upon execution of this Agreement, Hospital shall deposit with City the sum of \$100,000 ("Initial Deposit"), which deposit represents City's preliminary estimate of Hospital's ultimate obligation hereunder. The Initial Deposit may be commingled with other funds of the City for the purposes of investment and safekeeping, but the City shall at all times maintain records as to the expenditure of the deposit. City shall deduct from such deposit, until the deposit is exhausted, all reimbursable costs.
  
  - B. Monthly Accounting. City shall monthly send to Hospital an accounting of amounts used over the preceding month. Hospital shall replenish the Initial Deposit when a minimum balance of \$50,000 is reached. In the event City subsequently determines that the Initial Deposit is insufficient to cover anticipated billings for any reimbursable costs, Hospital shall provide an additional deposit in the amount specified by the City ("Supplemental Deposit") within ten (10) days of receipt of City's written request. Any request for a Supplemental Deposit shall include a description of the work completed to date and the anticipated work remaining to be performed. Hospital agrees that the City's work on the Election shall be immediately suspended if at any time Hospital fails to make a Supplemental Deposit as directed by the City Manager.

- C. Deposit Refund. City shall refund to Hospital any amount of Hospital's deposits that remain unexpended after the date for any legal challenge to the Election or the results thereof has passed.
4. Notice. All notices permitted or required under this Reimbursement Agreement shall be deemed made when personally delivered or when mailed 48 hours after deposit in the United States Mail, first class postage prepaid and addressed to the party at the following addresses:

City: City of Upland  
4460 N. Euclid Avenue  
Upland, California 91786  
Attention: City Manager

Hospital: San Antonio Regional Hospital  
999 San Bernardino Road  
Upland California 91786  
Attention: Chief Executive Officer

Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

5. Indemnification, Hold Harmless, and Duty to Defend. In the event of any legal action challenging the validity, applicability, or interpretation of any provision of this Reimbursement Agreement, the Election, the results of the Election, or any action or alleged action of Indemnitees related to the Election, Hospital must indemnify, defend and hold harmless the Indemnitees, and each of them to the maximum extent permitted by law, with respect to all liability, costs, and expenses incurred by, and/or awarded against, City or any of the Indemnitees in relation to such action. If the Upland City Council, in its sole and absolute discretion, calls the Election, Hospital further agrees to indemnify Indemnitees with respect to any award of attorneys' fees in the Judicial Validation Action in an amount not to exceed \$125,000. City shall have the right to select counsel of its choice as to all claims and actions covered by this Section 5. The parties hereby agree to cooperate in defending any such action. In the event of any litigation challenging the effectiveness of this Reimbursement Agreement, or any portion hereof, this Reimbursement Agreement shall remain in full force and effect while such litigation, including any appellate review, is pending, unless otherwise ordered by a court of competent jurisdiction. This Section 5 shall survive the expiration or earlier termination of this Agreement.
6. Entire Agreement. This Reimbursement Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings, or agreements, and may only be modified by a writing signed by both parties.

7. Severability. The invalidity in whole or in part of any provisions of this Reimbursement Agreement shall not void or affect the validity of the other provisions of this Agreement.
8. Venue; Interpretation; Governing Law. The venue for any litigation shall be San Bernardino County. In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of this Reimbursement Agreement shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the drafting party. This Reimbursement Agreement shall be governed by and interpreted under the laws of the State of California.
9. No Third Party Rights. No third party shall be deemed to have any rights hereunder against either party as a result of this Reimbursement Agreement .
10. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.
11. Headings. Headings used in this Reimbursement Agreement are for reference purposes only and shall not be deemed a part of this Agreement.
12. Prohibited Interests; Conflict of Interest. Hospital warrants and maintains that it has no knowledge that any officer or employee of City involved in making this Reimbursement Agreement or calling the Election has or any interest, whether contractual, noncontractual, financial, proprietary, or otherwise, in the business of Hospital, and that if any such interest comes to the knowledge of Hospital at any time during the term of this Reimbursement Agreement, Hospital shall immediately make a complete, written disclosure of such interest to City, even if such interest would not be deemed a prohibited "conflict of interest" under applicable laws.
13. Attorneys' Fees. If either party commences any legal, administrative, or other action against the other party arising out of or in connection with this Reimbursement Agreement, the prevailing party in such action shall be entitled to have and recover from the losing party all of its attorneys' fees and other costs incurred in connection therewith.
14. Corporate Authority. Each person executing this Reimbursement Agreement on behalf of Hospital warrants that he or she is duly authorized to execute this Reimbursement Agreement on behalf of Hospital and that by his or her execution, Hospital is formally bound to the provisions of this Reimbursement Agreement.

IN WITNESS WHEREOF, the Parties hereto, through their respective authorized representatives have executed this Agreement as of the Effective Date.

CITY OF UPLAND

SAN ANTONIO REGIONAL HOSPITAL

By: \_\_\_\_\_  
Debbie Stone  
Mayor

By: John Chapman  
Name John Chapman  
Title President & CEO

ATTEST:

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven L. Flower  
Interim City Attorney



## STAFF REPORT

ITEM NO. 14.A.

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**DATE:** March 26, 2018  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** BILL R. MANIS, CITY MANAGER  
**PREPARED BY:** JEFF ZWACK, DEVELOPMENT SERVICES DIRECTOR  
**SUBJECT:** AN AGREEMENT FOR PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS BETWEEN THE CITY OF UPLAND AND SAN ANTONIO REGIONAL HOSPITAL TO SELL APPROXIMATELY 4.631 ACRES OF REAL PROPERTY ADDRESSED AS 1299 SAN BERNARDINO ROAD (A PORTION OF ASSESSORS PARCEL NUMBER 1046-183-01).

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### RECOMMENDED ACTION

It is recommended that the City Council approve the Purchase and Sale Agreement and Joint Escrow Instructions between the City of Upland and San Antonio Regional Hospital to sell approximately 4.631 acres of real property addressed as 1299 San Bernardino Road (portion of APN 1046-183-01), approving certain related actions and authorizing the City Manager to execute all necessary documents.

### GOAL STATEMENT

The proposed action supports the City's goal of providing a community where members have access to a full range of health care as well as providing park lands that are fiscally sustainable while meeting the needs of residents.

### BACKGROUND

Memorial Park is Upland's largest Park with 38.5 acres. The land was acquired by the City in the 1930's and designed by Ralph Cornell, a famous Landscape Architect. Cornell's plan for a Recreational Park included a Baseball Field, Amphitheater, Swimming Pool, Tennis Courts, Basketball Courts, Bowling Green, Picnic Areas and a Botanic Garden. The central axis of the Park included a central open space with two parallel trails lined in three rows of Oak trees. Not all the recommended improvements of the Recreational Park were built such as the Swimming Pool, Botanic Garden and the Amphitheater. The Baseball Field in the north east

corner and most of the central axis of the Park, along with the majority of Oak Tree rows, remain true to the 1930 design, with the addition of a community Rose Garden. Over time, new developments including the Scheu Family YMCA and the Aquatic Center were constructed in the north west corner of the park. The City's Animal Shelter was constructed south of a second Baseball Field on the east side of the Park and the Loren and Kay Sanchez Childcare facility, the Landecena Building and Skate Park were all constructed in the south eastern portion of the Park. The third Baseball Field is located in the south west corner of the Park, on the site proposed to be sold to SARH.

More recently, Memorial Park became an under utilized public space due to an increase in illegal activities . It was more common to find a homeless person with a makeshift shelter and a shopping cart full of their belongings, than a group of Elementary School Children, or a local family, using the playground equipment. Calls for Police Department services were increasing as illegal activities such as drug use became more prevalent. The quality of the roads and conditions of the public buildings began to degrade. Lack of City funding hampered the Police Department and Public Works efforts to reduce illegal activities and improve the overall condition of the Park. During the past few years, strong partnerships with the Scheu Family YMCA and Upland National League, in addition to Upland Unified School District, have resulted in improvements to the Park. The Scheu Family YMCA has invested millions of dollars making their facilities one of the best in Southern California, complete with indoor weight training, Soccer, and a new Aquatic Center. Upland National League has invested resources to their Baseball Field including a new Snack Bar/ Restrooms and Equipment building. Public Works in partnership with Upland Unified School District replaced the wooden fence and made improvements to the Baseball field in the north eastern corner of the Park. The Police Department has coordinated efforts of many organizations to assist the local Homeless population obtain shelter and needed services. The results of this concerted effort has reduced illegal and criminal activities in Memorial Park and increased improvements to some of the Park facilities so that a greater number of area residents and families will use the Park, once again.

In 2017, San Antonio Regional Hospital ("SARH"), approached City staff to discuss the possibility of selling approximately 4.63 acres of Memorial Park. The "Property" under consideration is in the south west corner of the park and generally consists of a Baseball field, Bleachers, Scoreboard, Lights. Parking and a Snack Bar/Restrooms.

SARH is a 363 bed, regional acute care Hospital. Over the past 111 years. SARH has grown to become Upland's largest employer, experiencing 20% employee growth in 2017 alone. Recently, SARH completed and has fully occupied a 4-story Patient Tower and new Emergency Room. Under construction is a 60,000 square foot Medical Office Building that will be occupied in part by the City of Hope to expand diagnostic and cancer treatment for the region. SARH is also a training facility for Healthcare Professionals starting with the local public schools to raise interest and promoting this field.

It is because of the current expansion, creation of jobs and addition of employees and the increase in the attraction of area residents, that SARH is in need of land for parking and future expansion opportunities.

In order to facilitate a potential land sale, City and SARH staff along with their respective Attorneys have developed the attached Purchase and Sale Agreement and Joint Escrow Instructions (the "Agreement"), for City Council's consideration. If approved, this Agreement will allow the sale and transfer of approximately 4.63 acres of land in the south west corner of Memorial Park, to SARH. Proceeds from the land sale will be reinvested to implement the Memorial Park Master Plan.

## **ISSUES/ANALYSIS**

The major terms of the Agreement are as follows:

1. Closing of Escrow no later than December 1, 2018;
2. Prior to sale, the Courts shall render a Judicial Validation Action to allow the sale of Park Land to SARH;
3. Conduct CEQA analysis for land sale and Memorial Park Master Plan implementation;
4. Approval of General Plan Amendment and Zone Change for area subject to land sale changing zoning to Office Professional;
5. Approval of a permanent public parking easement from SARH for subject property to allow public use of parking for Park purposes.
6. Land sale price of \$4,200,000 (\$60,000 above appraised fair market value), to be 100% reinvested to implement portions of the Memorial Park Master Plan.

In order to identify needed park improvements and potential costs, staff contracted with Architerra Design Group, to work with staff and various Stakeholders to develop a phased plan to implement improvements to the Park. City staff from the Police Department, Public Works and Development Services, along with representatives from the YMCA, Upland National League, members from the Rose Garden Committee and area residents, met over the course of 12 months, to develop a plan to rehabilitate Memorial Park.

Key features of the Park rehabilitation include:

1. Developing a new Baseball Field south of the YMCA, along with additional public parking;
2. Restoring the central park axis design based on the original 1930's Plan;
3. Increase open space by removing the smaller Baseball Field, immediately north of the Animal Shelter.
4. Add additional public amenities, structures and walking trails, and reduce the amount of paved roadways and automobile traffic in the center of the park. By reinvesting all of the proceeds of the land sale back into Memorial Park improvements (\$4,200,000.00), Phase 1 improvements can be completed inclusive of adding the new Senior Division Baseball Field south of the YMCA (inclusive of reusing the lighting, bleachers and scoreboard from the existing Ball Field); retrofitting Atwood Kitchen to add a Snack Bar; adding additional parking and lighting south of the proposed Ball Field, along 11th St.; adding new sidewalks and walking trails around the Ball Field; and, replace the irrigation systems with water efficient system and new trees and landscaping in the new parking lot and around the new Ball Field. In addition, Phase 1 will include removal of the small Ball Field north of the Animal Shelter and constructing a new 85 stall, landscaped and lighted Parking lot. In addition, 10- 24" box Oak Trees will be planted in the Parking Lot.

Additional funding of approximately \$4 million, will be needed to complete additional parking and landscaping by the northerly entrance of the Park and to complete the Central Greenbelt area. Staff is already considering applicable Grants to cover the additional costs, in the event the City Council approves the Agreement with SARH.

## **FISCAL IMPACTS**

Staff, utilizing a third party prepared appraisal, determined the value of the Site is \$4,140,000. SARH has agreed to pay \$4,200,000 or approximately \$60,000.00 above market value for the land. All the proceeds from this land sale, if approved, will be reinvested in the improvement plans for Memorial Park. In order to pay for the approximate \$4 million dollar budget short fall, staff will be submitting grant applications so that no General Fund dollars are expended to implement the Park Master Plan.

## **ALTERNATIVES**

Provide alternative direction to staff.

## **ATTACHMENTS:**

**Purchase and Sale Agreement and Joint Escrow Instructions**

**Aerial Plan of Property**

**Proposed Park Master Plan**

**1930's Park Plan**

**Memorial Park Phasing Plan**

**AGREEMENT FOR PURCHASE AND  
SALE AND JOINT ESCROW INSTRUCTIONS**

THIS AGREEMENT FOR PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_ (the “Contract Date”), by and between the CITY OF UPLAND, a California municipal corporation (hereinafter referred to as “Seller”), and SAN ANTONIO REGIONAL HOSPITAL, a California public benefit corporation, or its permitted assignee (hereinafter referred to as “Buyer”).

**W I T N E S S E T H T H A T :**

WHEREAS, Buyer wishes to purchase, and Seller wishes to sell, the Property (as hereinafter defined), but only upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of \$75,000.00, the Earnest Money, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

Section 1. Definitions and Exhibits.

1.1 Definitions. For purposes of this Agreement, each of the following terms, when used herein with an initial capital letter, shall have the meaning ascribed to it as follows:

Agreement. This Agreement for Purchase and Sale.

Broker. None.

California Environmental Quality Act (“CEQA”). Section 21000 et seq. of the California Public Resources Code and the CEQA Guidelines, 14 California Code of Regulations Sections 15000 et seq.

Closing. The closing and consummation of the purchase and sale of the Property pursuant hereto.

Closing Date. Ninety (90) days after satisfaction of all closing conditions as set forth in Section 9 below, but no later than December 1, 2018, or such other date as agreed between the Seller and Buyer, provided all closing conditions have been met.

Closing Statement. As defined in Section 10.2.5.

Contract Date. The date upon which this Agreement shall be deemed effective, which shall be the date first above written.

Deed. The Grant Deed to be executed by Seller substantially in the form attached hereto as Exhibit B.

Earnest Money. \$75,000.00.

Easement. A public parking easement from Buyer to Seller in the form attached hereto as Exhibit "C".

Escrow Agent. Fidelity Title Insurance Company is acting as Escrow Agent pursuant to the terms and conditions of Section 3 hereof.

Foreseeable Project. Future development of the Property consistent with the OP Zoning designation. All future development of the Property shall be subject to the issuance of all governmental approvals and permits and compliance with CEQA.

Improvements. Any buildings, structures and improvements located upon the Land, including Seller's interest in all systems, facilities, fixtures, machinery, equipment and conduits on the Land, including to provide fire protection, security, heat, exhaust, ventilation, air conditioning, electrical power, light, plumbing, refrigeration, gas, sewer and water thereto (including all replacements or additions thereto between the date hereof and the Closing Date).

Inspection Date. All inspections and studies have been performed and completed prior to the Inspection Date which date shall be the 90th day following the Contract Date.

Inspection Period. Defined in Section 6.1 below.

Land. The land described on Exhibit "A" and by this reference made a part hereof and all privileges, rights, easements, hereditaments and appurtenances thereto belonging.

Lease. The cell site lease described in Section 2.

Permitted Title Exceptions. (i) The lien of unpaid taxes and assessments not yet due and payable; (ii) matters which would be disclosed by a current, accurate survey of the Property (provided, however, this shall not affect Buyer's rights pursuant to Section 5 of this Agreement); and (iii) those matters disclosed on the Preliminary Title Report or Survey to which Buyer does not object, or which objection(s) Buyer waives, pursuant to Section 5 of this Agreement.

Personal Property. None.

Property. All of Seller's right, title and interest in, to and under the following property: (i) the Land, as shown or described on Exhibit "A" attached hereto; (ii) the Improvements if any; (iii) the Lease; and (iv) all rights of way or use, trade names and marks, tenements, hereditaments, appurtenances and easements now or hereafter belonging or pertaining to any of the foregoing.

Purchase Price. \$4,200,000.

Survey. An ALTA/ACSM survey of the Land and Improvements revising the survey provided by Seller during the Inspection Period and obtained by Buyer at its cost and at its election.

Tenant. TMO CA/NV LLC, formerly known as Pacific Wireless, LLC.

Title Commitment. Commitment(s) issued by Title Insurer for an owner's policy of a title insurance (in the form most recently adopted by ALTA) in the amount of the Purchase Price, covering title to the Property, and showing Seller as owner of the Property.

Title Insurer. Fidelity National Title Insurance Company, Attention: Missy Barth, 555 S. Flower Street, Suite 4420, Los Angeles, California 90071, telephone (213) 700-2076.

Judicial Validation Action. An in rem suit filed and processing to finality pursuant to California Code of Civil Procedure Sections 860 et. seq. to establish the validity of the transfer of park property contemplated in this Agreement and, specifically, to validate the transfer of the Property without the necessity of conducting an election to approve the transaction.

Vendor or Vendors. None.

Zoning. Appropriate zoning designation for the Foreseeable Project.

1.2 Exhibits. Attached hereto and forming an integral part of this Agreement are the following exhibits, all of which are incorporated into this Agreement as fully as if the contents thereof were set out in full herein at each point of reference thereto:

Exhibit "A" - Description of Land

Exhibit "B" - Form of Grant Deed

Exhibit "C" - Form of Public Parking Easement

Exhibit "D" - Non-Foreign Certificate

Section 2. Purchase and Sale.

Subject to and in accordance with the terms and provisions of this Agreement, Seller agrees to sell and Buyer agrees to purchase the Property. In connection therewith, Seller represents that it has no actual knowledge of any unrecorded agreements affecting the Property that purport and bind successor owners of the Property, except for that certain Lease dated in July, 2003 between City, as landlord, and Pacific Bell Wireless, LLC, as tenant, as amended by an "Amendment to Lease - Amendment No. 1" dated December 22, 2008 and a Second Amendment to Lease dated in November, 2008 ("Lease"), which lease shall be subject to Buyer's prior review and approval during the Inspection Period.

Section 3. Earnest Money.

3.1 Opening of Escrow/Earnest Money. Within two (2) business days following the end of the Inspection Period, Buyer and Seller shall open escrow with the Escrow Agent and deliver a copy of this executed Agreement and the Lease to Escrow Agent ("Lease"), and Buyer shall then promptly deposit with Escrow Agent the Earnest Money which, together with any interest or other income earned thereon, shall be held, invested and disbursed pursuant to the respective terms and provisions hereof.

3.2 INTENTIONALLY OMITTED.

3.3 Disbursement. Whenever the Earnest Money is by the terms hereof to be disbursed by Escrow Agent, Seller and Buyer agree promptly to execute and deliver such notice or notices as shall be necessary or, in the opinion of Escrow Agent, appropriate to authorize Escrow Agent to make such disbursement; provided, however, that the terms of this Agreement will supersede and control.

Section 4. Purchase Price; Commitment to Park.

4.1 Purchase Price to Be Used by Seller for Park. The Purchase Price, as adjusted by the prorations provided in Section 4.2 hereof, and as reduced by the Earnest Money, shall be paid by Buyer to Seller at the Closing through escrow in United States dollars, by Federal Reserve System wire transfer or other immediately available funds. Such net Purchase Price funds shall be used by Seller solely for making public improvements to the City park adjacent to the Property.

4.2 Prorations. Buyer and Seller will prorate all income and expenses, if any, relating to the Property based upon Buyer's and Seller's respective periods of ownership for the calendar year in which the Closing occurs with Buyer treated as the owner of the Property on the Closing Date, including, without limitation:

4.2.1 Real Estate Taxes and Assessments. Assessments, if any, will be prorated between Buyer and Seller as of the Closing Date. Seller is exempt from property taxes; consequently, Seller shall not be obligated to pay any property taxes and the purchase price shall not be decreased by the amount of any property taxes.

(i) Delinquent Assessments. Seller shall pay to the applicable tax authorities at or prior to the Closing all assessments with respect to the Property which are delinquent as of the Closing.

(ii) Prepaid Assessments. If any assessments paid by Seller with respect to the Property at or prior to the Closing, determined on a cash (rather than accrual) basis, relate to any time including or after the Closing, Buyer shall pay to Seller at the Closing the amount of such other assessments paid prorated for the number of days, from, including and after the Closing; provided, any such assessments are disclosed by Seller to Buyer prior to the Inspection Date.

4.2.2 Rents. Rents and other charges, rights and obligations under the Lease shall be prorated as of the Closing Date.

4.2.3 Utilities. Prior to the Closing, Seller will notify each of the utility companies which provide services to the Property of the scheduled transfer of the Property on the Closing, and shall make appropriate arrangements with the utility companies to bill Seller for services provided before the Closing, and to Buyer for services provided from and after the Closing. If such arrangements cannot, or are not, made as of the Closing, then Buyer shall make the appropriate arrangements promptly after the Closing, and promptly after such arrangements are made, Buyer shall pay to Seller an amount equal to the cost of the services that were billed to Seller for the period from and after Closing, and Seller shall pay the same to the appropriate utility company.

4.2.4 Closing Costs. Buyer shall pay the cost of any endorsements to the title insurance policy, the cost for extended coverage, the cost of any lender's policy of title insurance, one-half (1/2) of all escrow or closing agent charges by the Escrow Agent, all costs associated with any encumbrance Buyer places on the Property at Closing, all costs of Buyer's due diligence, the costs of the Survey if any, and any other costs which are customarily paid by buyers in the county where the Property is located. Seller shall pay for state and county transfer taxes, all costs for recording the Deed, including, if applicable, the Affordable Housing Fees imposed by the laws of the State of California and collected by the County Recorder's Office, one-half (1/2) of all escrow or closing agent charges, and the cost of an owner's policy of title insurance for the Property in the form most recently adopted by ALTA in the amount of the Purchase Price (excluding any endorsements thereto or for extended coverage). Each party shall pay its own attorneys. The obligations of the parties to pay applicable escrow or closing charges shall survive the termination of this Agreement.

Section 5. Title. Buyer will have until 5:00 p.m. (Pacific time) on the date that is twenty (20) business days after Seller causes the Title Commitment together with copies of or hyperlinks for all recorded documents to be delivered to Buyer (which will occur within the first month of the Inspection Period), to examine title to the Property, determine whether Buyer will be able to obtain any endorsements it desires, and give written notice to Seller of any objections to the title which Buyer may have. If Buyer fails to give any notice to Seller by such date, Buyer shall be deemed to have approved the title exceptions or defects. If Buyer does give Seller timely notice of objection to any title exceptions or defects and such objection is not reasonably cured or satisfied or undertaken to be reasonably cured or satisfied by Seller within fifteen (15) business days of receiving Buyer's objection, then Buyer may elect, by written notice to Seller within five (5) business days after Seller so responds to such objections, either to (a) terminate this Agreement, in which case the Earnest Money shall be returned to Buyer by Escrow Agent, and the parties shall have no further rights or obligations hereunder, except for those which expressly survive any such termination, or (b) waive its objections hereunder and proceed with the transaction pursuant to the remaining terms and conditions of this Agreement. If Buyer fails to so give Seller notice of its election, it shall be deemed to have elected the option contained in subpart (a) above. If Seller does so reasonably cure or satisfy, or undertake to reasonably cure or satisfy, such objection to the satisfaction of Buyer, then this Agreement shall continue in full force and effect. Buyer shall have the right at any time to waive any objections that it may have made and, thereby, to preserve this Agreement in full force and effect. Seller shall convey fee simple title to the Property to Buyer by the Deed, which will contain the description of the Property in the form originally conveyed to Seller, subject to the Permitted Title Exceptions. BUYER HAS BEEN ADVISED THAT THE SELLER IS EXEMPT FROM THE MAP ACT. SELLER MUST CREATE A SEPARATE LEGAL LOT FOR THE PROPERTY SOLD HEREUNDER REQUIRING THE SELLER TO FILE A COMPLIANCE CERTIFICATE TO ACCOMPLISH THAT FACT.

Section 6. Buyer's Inspection.

6.1 Physical Inspection. From and after the Contract Date, Buyer shall be entitled to ninety (90) day inspection period ("Inspection Period"). During the Inspection Period, Buyer shall have the right to inspect and investigate all aspects of the Property, including obtaining an updated ALTA Survey (if desired) the review and approval of all existing reports or results of investigations performed by or at the direction of Seller and in the possession of the Seller; title and survey review and approval (and Buyer shall have the right to object to title issues raised by the Survey during the Inspection Period); all other matters deemed necessary in good faith by Buyer in satisfaction of its due diligence efforts. In the event that Buyer determines, in its sole discretion, that the Property is not suitable for Buyer's intended use thereof, then Buyer may terminate this Agreement by delivery of written notice thereof to Seller on or before the expiration of the Inspection Period. Thereupon the Deposit shall be returned to Buyer and the parties shall have no further rights or obligations hereunder.

Section 7. Representations and Warranties.

7.1 Representations. As of the Contract Date, Seller hereby represents and warrants to Buyer that the following statements are true:

7.1.1 No Litigation. Seller has no knowledge of receipt of written notice of any actual or pending litigation or proceeding, including any action in condemnation and/or eminent domain, by any organization, person, individual or governmental agency against Seller with respect to the Property or against the Property.

7.1.2 There are no service or other Vendor contracts to which Buyer will be made subject following the Close of Escrow.

7.1.3 Hazardous Materials.

(a) In accordance with its obligations under California Health & Safety Code Section 25359.7, Seller hereby gives notice that it has no knowledge of the release of any Hazardous Materials in, or under or about the Property.

(b) Seller is not in possession any material reports, studies or written analysis that relate to the physical condition of the Property, including the existence of Hazardous Materials, or the development potential of the Property.

(c) To Seller's knowledge, all operations or activities upon, or use or occupancy of the Property, or any portion thereof, by Seller, is and has been in all material respects in compliance with all Governmental Regulations governing or in any way relating to the generation, handling, manufacturing, treatment, storage, use, transportation, spillage, leakage, dumping, discharge or disposal (whether accidental or intentional) of Hazardous Materials, and Seller has not engaged in nor permitted any dumping, discharge, disposal, spillage or leakage (whether legal or illegal, accidental or intentional) of such Hazardous Materials, at, on, in or about the Property, or any portion thereof during the time in which Seller has owned the Property. Seller has received no notice of the existence of any proceeding or inquiry by any Authority with respect to the presence of Hazardous Materials on the Property or the migration thereof from or to other property and to Seller's knowledge, no such proceeding or inquiry is pending or threatened.

(d) As to any prior owner of the Property or any portion thereof, Seller has no knowledge as to the operations or activities upon, or use or occupancy of the Property, or any portion thereof, by any such prior owner of the Property, or any portion thereof, and Seller makes no affirmative representation in regard to the same as relating to the generation, handling, manufacturing, treatment, storage, use, transportation, spillage, leakage, dumping, discharge or disposal (whether accidental or intentional) of Hazardous Materials (whether legal or illegal, accidental or intentional) at, on, in or about the Property, or any portion thereof; provided Seller affirmatively represents having received no written notice of the existence of any proceeding or inquiry by any Authority with respect to the presence of Hazardous Materials on the Property or the migration thereof from or to other property as relates to any such prior owner.

(e) Neither Seller nor any of its affiliates, nor any of their respective partners, members, shareholders of other equity owners, and none of their respective employees, officers, directors, representatives, or agents is, nor will they become, a person or entity with whom the United States persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control (“OFAC”), Department of the Treasury or under any statute, executive order or other governmental action and Seller is not or will not engage in any dealings or transactions or be other associated with such persons or entities.

7.1.4 Non-Foreign Status. Seller is not a “foreign person” as that term is defined in the Internal Revenue Code of 1986, as amended and the Regulations promulgated pursuant thereto.

7.1.5 Authority of Signatories; No Breach of Other Agreements, etc. The execution, delivery of and performance under this Agreement subject to the Validation Action has been duly authorized by Seller. The consummation of the transaction herein contemplated and the compliance by Seller with the terms of this Agreement do not and will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any agreement, arrangements, understanding, accord, document or instrument by which Seller is bound.

7.1.6 Compliance with Existing Laws. Seller has no knowledge of any written notice to Seller from any governmental authority or otherwise alleging any uncured existing violation of any applicable building, zoning, subdivision, health, safety or other governmental laws, statutes, ordinances, rules, codes, regulations or orders or any restrictive covenants or deed restrictions of record affecting the Property.

7.1.7 Assessments/Condemnation/Zoning. Seller has no knowledge of any written notice to Seller of any existing, pending, contemplated or threatened (i) special tax assessments pending against the Property that are not of record or disclosed in the Title Commitment, (ii) condemnation actions affecting the Property, or (iii) change in the current zoning classification of the Land or Improvements except as may be contemplated by Buyer.

7.2 Reaffirmation. Subject to the provisions of Section 11.2, at Closing Seller shall be deemed to have reaffirmed that the representations and warranties of Seller in this Section 7.

## Section 8. Operations Pending Closing.

(a) Seller, at its expense, shall use reasonable efforts to maintain the Property until the Closing or until the termination of this Agreement, whichever is earlier,

substantially in its present condition, damage by fire or other casualty and condemnation excepted. After the Inspection Date, Seller will not, without Buyer's consent not unreasonably withheld, enter into any (i) contract for service to the Property unless it does not purport to bind Buyer or the Property, or (ii) any new lease or commission agreement or any modification, amendment, restatement, termination, or renewal of any Lease. Seller shall promptly deliver a copy of any item in (i) or (ii) of the preceding sentence entered into by Seller prior to the Inspection Date.

(b) The parties recognize that by authority of the Seller Buyer currently maintains a right to lease the subject property for parking purposes. In consideration of that right the Buyer currently pays to Seller the sum of \$10,000 per month. It is agreed by and between Seller and Buyer that from and after the Contract Date that said \$10,000 monthly payment will be suspended pending a closing of the within transaction after which the obligation shall cease entirely and the lease terminated. In the event a Closing hereunder does not take place, the Buyer agrees to pay to Seller all suspended payments to the date of such cancellation and the lease shall be re-instated as currently existing.

#### Section 9. Conditions to Closing.

9.1 Buyer's Conditions Precedent. Buyer's obligation to proceed to Closing under this Agreement is subject to the following conditions precedent:

(a) Seller shall have performed and satisfied each and all of Seller's obligations under this Agreement.

(b) Each and all of Seller's representations and warranties set forth in this Agreement shall be true and correct at the Contract Date and at the Closing Date in all material respects.

(c) Completion of the Judicial Validation Action by the City of Upland as set forth in Section 3.2 above.

(d) Seller shall have complied with CEQA with respect to the zoning change from current zoning to the OP Zone, and shall have filed/recorded a Notice of Determination in connection therewith.

(e) Change of the zoning for the Property to OP.

(f) Escrow Holder's commitment (as a title company) to issue the Title Policy to Buyer subject only to the Permitted Exceptions.

(g) Seller shall have prepared, executed and delivered to Escrow Holder for recording at the Close a "Certificate of Compliance" (duly acknowledged and in recordable form) evidencing the exemption from the Map Act (conveyance by a public entity) and confirming that the Property is a legal parcel.

In the event any of the foregoing conditions are not satisfied prior to or at the Closing, Buyer may terminate this Agreement by written notice to Seller and thereafter shall have no obligation to proceed with the Closing, the Earnest Money shall be returned and paid to Buyer, and neither party shall have any further obligation hereunder except those which expressly survive

the termination of this Agreement. Notwithstanding the foregoing, nothing contained herein shall waive or diminish any right or remedy Buyer may have for Seller's default or breach of this Agreement.

Section 10. Closing.

10.1 Time and Place. Provided that all of the conditions set forth in this Agreement are theretofore fully satisfied or performed, the Closing shall be held through the Escrow Agent on the Closing Date or such other date that is mutually agreeable to Buyer and Seller in writing, unless the Closing Date is postponed pursuant to the express terms of this Agreement.

10.2 Seller Deliveries. Seller shall obtain and deliver to Buyer at the Closing the following documents (all of which shall be duly executed, and notarized as necessary):

10.2.1 The Deed, and a Certificate of Acceptance for the Easement.

10.2.2 A Non-Foreign Certificate, substantially in the form attached as Exhibit "D" hereto.

10.2.3 A Closing Statement in form and substance mutually satisfactory to Buyer and Seller (the "Closing Statement").

10.2.4 An affidavit of title or other affidavit customarily and reasonably required of sellers by the Title Insurer to remove the standard exceptions from an owner's title insurance policy which are capable of being removed by such an affidavit.

10.2.5 Such further instructions, documents and information, including, but not limited to a Form 1099-S, as Buyer or Title Insurer may reasonably request as necessary to consummate the purchase and sale contemplated by this Agreement.

10.2.6 The Service Contracts, if any.

10.2.7 Possession of the Property, subject to the Permitted Title Exceptions.

10.3 Buyer Deliveries. Buyer shall deliver to Seller at closing the following:

10.3.1 The Purchase Price in immediately available funds less the Earnest Money, subject to the prorations provided for in this Agreement.

10.3.2 Counterpart original of the Easement, duly executed by Buyer and acknowledged.

10.3.3 Counterpart original duly executed by Buyer of the Closing Statement.

10.3.4 Such other documents or instruments that are reasonably necessary to consummate the Closing.

Buyer and Seller stipulate and agree that the Certificate of Compliance is to be recorded immediately after the Grant Deed, and the Easement is to be recorded immediately after the Certificate of Compliance.

Section 11. Default and Remedies.

11.1 Default by Buyer. IN THE EVENT THE CLOSING AND THE CONSUMMATION OF THE TRANSACTION HEREIN CONTEMPLATED DOES NOT OCCUR AS HEREIN PROVIDED BY REASON OF ANY DEFAULT OF BUYER, BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES WHICH SELLER MAY SUFFER. THEREFORE BUYER AND SELLER DO HEREBY AGREE THAT A REASONABLE ESTIMATE OF THE DAMAGES THAT SELLER WOULD SUFFER IN THE EVENT THAT BUYER DEFAULTS AND FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY IS AND SHALL BE, AS SELLER'S SOLE AND EXCLUSIVE REMEDY (WHETHER AT LAW OR IN EQUITY), AN AMOUNT EQUAL TO THE EARNEST MONEY AS REQUIRED OF BUYER BY THE TERMS HEREOF AS OF THE DATE OF OCCURRENCE OF SUCH DEFAULT. SAID AMOUNT SHALL BE THE FULL, AGREED AND LIQUIDATED DAMAGES FOR THE BREACH OF THIS AGREEMENT BY BUYER, ALL OTHER CLAIMS TO DAMAGES OR OTHER REMEDIES BEING HEREIN EXPRESSLY WAIVED BY SELLER. THE EARNEST MONEY SHALL CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1677. UPON DEFAULT BY BUYER, THIS AGREEMENT SHALL BE TERMINATED AND NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER, EACH TO THE OTHER EXCEPT FOR THE RIGHT OF SELLER TO COLLECT SUCH LIQUIDATED DAMAGES FROM BUYER OR (IF APPLICABLE) ESCROW HOLDER, AND, IF LEGAL ACTION IS REQUIRED TO COLLECT SUCH LIQUIDATED DAMAGES, TO RECOVER ITS ATTORNEYS' FEES AND COSTS PURSUANT TO PARAGRAPH 17.10. NOTWITHSTANDING THE FOREGOING, AND NOTWITHSTANDING THE TERMINATION OF THE AGREEMENT, EACH PARTY WILL STILL BE ENTITLED TO ANY INDEMNIFICATION PROVIDED IN THIS AGREEMENT.

BUYER'S INITIALS \_\_\_\_\_ SELLER'S INITIALS \_\_\_\_\_

Buyer shall be entitled to at least ten (10) business days' written notice and opportunity to cure any alleged defaults under this Agreement.

11.2 Seller's Default. In the event of a default by Seller under the terms of this Agreement which is not cured by Seller as provided hereunder, (except as the result of Seller's negligence and/or willful misconduct in which case damages may be sought) Buyer's sole and exclusive remedies hereunder shall be to either terminate this Agreement whereupon Buyer will receive a refund of the Earnest Money from Escrow Agent, or to seek specific performance of Seller's obligations under this Agreement.

Section 12. Condemnation or Destruction.

12.1 Condemnation. If, prior to the Closing, all or any material part of the Property is subject to a bona fide threat of condemnation by a body having the power of eminent domain, or is taken by eminent domain or condemnation, or sale in lieu thereof, then Buyer, by written notice to Seller, to be received within thirty (30) calendar days of Buyer's receiving Seller's written notice of such threat, condemnation or taking, or by the Closing Date, whichever is earlier, may elect to terminate this Agreement.

12.2 Damage or Destruction. If, prior to the Closing, all or any material part (which is deemed to be a restoration cost of \$75,000.00 or more) of the Property is damaged or destroyed by any cause, Seller agrees to give Buyer written notice of such occurrence and the nature and extent of such damage and destruction, and Buyer, by written notice to Seller, to be received within thirty (30) calendar days of Buyer's receipt of Seller's written notice of such damage or destruction, or by the Closing Date, whichever is earlier, may elect to terminate this Agreement.

12.3 Termination. If this Agreement is terminated as a result of the provisions of either Section 12.1 or Section 12.2 hereof, Buyer shall be entitled to receive a refund of the Earnest Money from Escrow Agent, whereupon the parties shall have no further rights or obligations hereunder, except for those which expressly survive any such termination.

12.4 Awards and Proceeds. If Buyer does not elect to terminate this Agreement following any notice of a threat of taking or taking by condemnation or notice of damage or destruction to the Property, as provided above, this Agreement shall remain in full force and effect and the conveyance of the Property contemplated herein, less any interest taken by eminent domain or condemnation, or sale in lieu thereof, shall be effected with no further adjustments. At the Closing, Seller shall assign, transfer and set over to Buyer all of Seller's right, title and interest in and to any awards, payments or insurance proceeds (excluding any deductible which is the responsibility of Seller) available to Seller for the actual value of the property lost or destroyed that have been or may thereafter be made for any such taking, sale in lieu thereof or damage or destruction, to the extent such awards, payments or proceeds shall not have theretofore been used for restoration of the Property.

Section 13. Assignment by Buyer. Buyer may assign its rights under this Agreement to an affiliated entity upon five (5) days' prior written notice to Seller accompanied by a copy of an executed assignment and assumption agreement and reasonable evidence that the assignee is such an affiliate, but without Seller's prior written consent hereunder; provided, however, no such assignment shall relieve Buyer of its obligations hereunder.

Section 14. Buyer's Representation and Warranty. Buyer does hereby represent and warrant to Seller as of the Contract Date and the Closing that it is a validly formed public benefit corporation; that is in good standing in the state of its organization; that it is not subject to any

involuntary proceeding for the dissolution or liquidation thereof; that it has all requisite authorizations to enter into this Agreement; and that the parties executing this Agreement on behalf of Buyer are duly authorized to so do.

Section 15. Brokers and Brokers' Commissions. None.

Section 16. Notices. Wherever any notice or other communication is required or permitted hereunder, such notice or other communication shall be in writing and shall be delivered by a nationally-recognized overnight express delivery service, or certified mail, return receipt requested, postage prepaid, to the addresses set out below or at such other addresses as are specified by written notice delivered in accordance herewith:

SELLER: City of Upland  
460 N. Euclid Avenue  
Upland, California 91786  
Attn: City Manager

BUYER: San Antonio Regional Hospital  
999 San Bernardino Road  
Upland, CA 91786  
Attn: Harris F. Koenig, President and CEO

WITH A COPY TO: Ervin Cohen & Jessup LLP  
9401 Wilshire Boulevard  
Suite 900  
Beverly Hills, CA 90212  
Attn: Alan M. Bergman, Esq.

Such notices shall be deemed received (a) on the date of delivery, if delivered by hand or overnight express delivery service; (b) on the date indicated on the return receipt if mailed.

Section 17. Miscellaneous.

17.1 Governing Law; Headings; Rules of Construction. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California, without reference to the conflicts of laws or choice of law provisions thereof. The titles of sections and subsections herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms or provisions herein. All references herein to the singular shall include the plural, and vice versa. The parties agree that this Agreement is the result of negotiation by the parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed against the maker thereof.

17.2 No Waiver. Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

17.3 Entire Agreement. Except for the terms and conditions set forth in the Lease Agreement, this Agreement contains the entire agreement of the parties hereto with respect to the Property and any other prior understandings or agreements are merged herein and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein or incorporated herein by reference shall be of any force or effect.

17.4 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

17.5 Amendments. No amendment to this Agreement shall be binding on any of the parties hereto unless such amendment is in writing and is executed by the party against whom enforcement of such amendment is sought.

17.6 Date For Performance. If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the Closing must be held, expires on a Saturday, Sunday or legal or bank holiday, then such time period shall be automatically extended through the close of business on the next regularly scheduled business day.

17.7 Counterparts. This Agreement may be executed in any number of counterparts (including via facsimile or telecopier transmission, either of which will be deemed an original signature or signatures), each of which shall be deemed to be an original, but all of which, when taken together, shall constitute but one and the same instrument.

17.8 Time of the Essence. Time shall be of the essence of this Agreement and each and every term and condition hereof.

17.9 Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any term or provision of this Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be held to be invalid or unenforceable, then such term or provision shall be ignored, and to the maximum extent possible, this Agreement shall continue in full force and effect, but without giving effect to such term or provision.

17.10 Attorneys' Fees. In the event that either party shall bring an action or legal proceeding for an alleged breach of any provision of this Agreement or any representation, warranty, covenant or agreement herein set forth, or to enforce, protect, determine or establish any term, covenant or provision of this Agreement or the rights hereunder of either party, the prevailing party shall be entitled to recover from the non-prevailing party, as a part of such action or proceedings, or in a separate action brought for that purpose, reasonable attorneys' fees and costs, expert witness fees and court costs as may be fixed by the court or jury.

17.11 Like-Kind Exchange. Each of the parties hereto agrees to cooperate with the other in effecting an I.R.C. § 1031 exchange, including Buyer’s free assignment and transfer of this Agreement for such exchange purposes, and also executing and delivering any and all documents required by the exchange trustee or intermediary; provided, however, that the cooperating party shall have no obligation to execute any document, enter any transaction or arrangement or take or omit any other action, if such party determines in its sole discretion that the same would result in any liability, cost, expense, increased risk, delay or other detriment to the cooperating party.

17.12 City Manager Authority. The City Manager of Seller shall have the authority to give all consents and approvals on behalf of Seller hereunder provided they are in writing, and to enter into non-substantial amendments of this Agreement provided they are in writing.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized signatory, effective as of the day and year first above written.

**“SELLER”:**

CITY OF UPLAND,  
a California municipal corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**“BUYER”:**

SAN ANTONIO REGIONAL HOSPITAL  
a California public benefit corporation

By: \_\_\_\_\_  
Harris F. Koenig  
President and CEO

**EXHIBIT "A"**

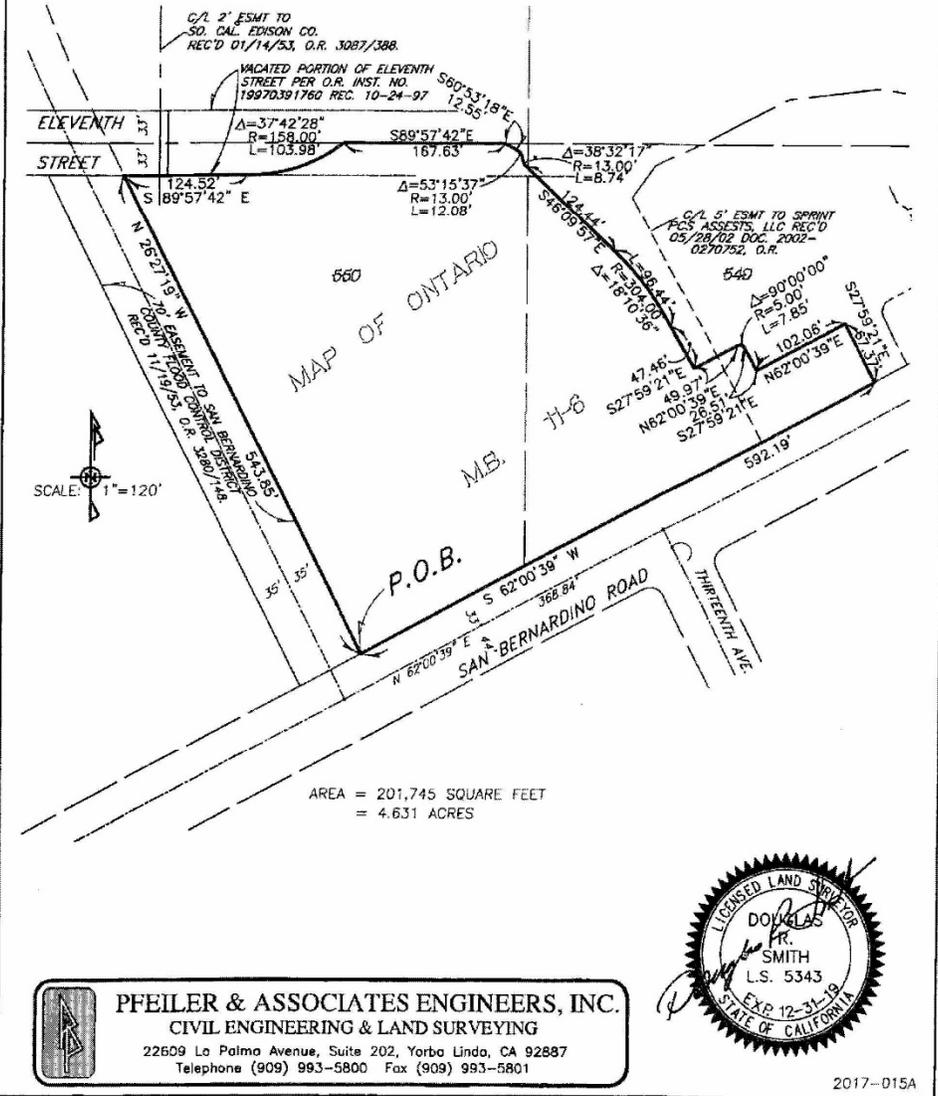
**DESCRIPTION OF LAND**

THOSE PORTIONS OF LOTS 549 AND 550 LYING NORTH OF THE NORTHWEST LINE OF SAN BERNARDINO ROAD, IN THE CITY OF UPLAND, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP OF ONTARIO PER PLAT RECORDED IN BOOK 11 PAGE 6, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAN BERNARDINO COUNTY BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHWEST LINE OF SAN BERNARDINO ROAD (77 FEET WIDE) AND THE EASTERLY LINE OF THAT CERTAIN 70 FOOT EASEMENT OF THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT PER BOOK 3280 PAGE 148 O.R., RECORDED NOVEMBER 19, 1953, RECORDS OF SAID COUNTY; THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID EASEMENT, NORTH 26°27'19" WEST, 543.85 FEET TO THE SOUTH LINE OF ELEVENTH STREET (66 FEET WIDE) AS SHOWN ON THE SAID MAP OF ONTARIO; THENCE EASTERLY ALONG THE SOUTHERLY LINE OF SAID ELEVENTH STREET AND ITS EASTERLY PROLONGATION, SOUTH 89°57'42" EAST, 124.52 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 158.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 37°42'28" AN ARC LENGTH OF 103.98 FEET TO THE EASTERLY PROLONGATION OF THE CENTERLINE OF ELEVENTH STREET; THENCE ALONG SAID CENTERLINE SOUTH 89°57'42" EAST, 167.63 FEET; THENCE LEAVING SAID CENTERLINE, SOUTH 60°53'18" EAST, 12.55 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 13.00 FEET; THENCE THROUGH A CENTRAL ANGLE OF 53°15'37" AN ARC LENGTH OF 12.08 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 13.00 FEET; THENCE THROUGH A CENTRAL ANGLE OF 38°32'17" AN ARC LENGTH OF 8.74 FEET; THENCE SOUTH 46°09'57" EAST, 124.44 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 304.00 FEET; THENCE THROUGH A CENTRAL ANGLE OF 18°10'36" AN ARC LENGTH OF 96.44 FEET; THENCE SOUTH 27°59'21" EAST, 47.46 FEET; THENCE NORTH 62°00'39" EAST, 49.97 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 5.00 FEET; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00" AN ARC LENGTH OF 7.85 FEET; THENCE SOUTH 27°59'21" EAST, 26.51 FEET; THENCE NORTH 62°00'39" EAST, 102.06 FEET; THENCE SOUTH 27°59'21" EAST, 67.37 FEET TO A POINT ON THE NORTH LINE OF SAN BERNARDINO ROAD (77 FEET WIDE); THENCE ALONG SAID STREET SOUTH 62°00'39" WEST, 592.19 FEET TO THE POINT OF BEGINNING.

DESCRIBED AREA = 201,745 SQUARE FEET = 4.631 ACRES.

SKETCH TO ACCOMPANY LEGAL DESCRIPTION  
EXHIBIT "A"



14286.39:8163042.3

16

**EXHIBIT "B"**

**FORM OF GRANT DEED**

RECORDING REQUESTED BY:

ERVIN COHEN & JESSUP LLP

AND WHEN RECORDED MAIL THIS DEED  
AND TAX STATEMENTS TO:

San Antonio Regional Hospital  
999 San Bernardino Road  
Upland, CA 91786  
Attn: Harris F. Koenig

---

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

**APN: Portion of** \_\_\_\_\_

The undersigned Grantor declares under penalty of perjury that the following is true and correct:

DOCUMENTARY TRANSFER TAX IS \$ \_\_\_\_\_

• unincorporated area • City of Upland

**GRANTOR:** CITY OF UPLAND

hereby grants to

**GRANTEE:**

SAN ANTONIO REGIONAL HOSPITAL, a California public benefit corporation, the following real property in the City of Upland, County of San Bernardino, State of California:

SEE EXHIBIT A ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE, subject to all matters of record and all matters which would be revealed by an ALTA/ACSM survey, and all matters visible upon inspection.

Executed as of the \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

\_\_\_\_\_

MAIL TAX STATEMENTS AS DIRECTED ABOVE

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, \_\_\_\_\_, a 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

**EXHIBIT "C"**

**FORM OF PUBLIC PARKING EASEMENT  
TO BE GRANTED BY BUYER TO SELLER  
AT CLOSING**

(Attached)

## PARKING EASEMENT AGREEMENT

This **PARKING EASEMENT AGREEMENT** (“Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2018, between **SAN ANTONIO REGIONAL HOSPITAL**, a California public benefit corporation, (“**SARH**”) and the **CITY OF UPLAND**, a California municipal corporation (the “**City**”). SARH and the City are collectively referred to as “Parties” or individually as a “Party”.

### RECITALS

A. SARH and the City have entered into an Agreement for Purchase and Sale and Joint Escrow Instructions dated \_\_\_\_\_, 2018 whereby SARH is purchasing from the City all of its right, title and interest in an approximate 5.5 acre parcel as more specifically described and set forth therein and shown on Exhibit A attached hereto and made a part hereof (the “**Property**”).

B. As a condition of the foregoing sale, SARH is required to grant to the City in the form of a Public Parking Permanent Easement, the right of public parking for automobiles upon the Property in accordance with the terms and conditions herein set forth.

**NOW, THEREFORE**, in consideration of the mutual covenants of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. **Grant of Easement.** Subject to the terms set forth in this Agreement, SARH agrees to design and construct within its plans for the development of the Property, at its cost and expense, not less than as currently provided, on a non-exclusive basis, parking spaces for public use upon the Property (the “**Public Spaces**”). The Public Spaces are hereby dedicated as an Easement for public use.

2. **Construction of Additional Spaces.** As part of its overall planned development for the Property, SARH shall design the Public Spaces, submit all necessary construction permit applications, construction bids and proceed to construct the Public Spaces at its sole cost and expense.

3. **Use of Property Prior to, During and Upon Completion of Project Construction.** Upon the acquisition of the Property by SARH and until new buildings or development is constructed on the Property by SARH, parking on the Property shall be provided in a surface parking lot on the Property for SARH use and shall remain available to the public for daily park use at no charge.

Upon completion of new buildings or the development on the Property for SARH's use, there shall be the same or greater number of Public Spaces made available to the public in a surface parking lot for daily park use at no charge.

If the construction of new buildings or development will temporarily disrupt the public parking SARH shall use reasonable efforts to diligently prosecute the new development to completion, subject to force majeure delays, to minimize the disruption.

If a multistory parking structure is part of any new development on the Property for SARH's use and the surface parking lot is removed, the Public Spaces made available to the public for daily park use, to the extent within the parking structure, shall be located on the first/ground floor.

If, at any time during the term of this Agreement, there is a conflict between SARH and the City in meeting the parking requirements for their respective uses, it is understood by the Parties that SARH shall retain the primary right to parking on the Property and its needs and requirements shall take priority over those of the City. However, in no event shall the parking available to the City for daily park use be less than 100 spaces. If such conflict shall arise SARH may, upon written notice to the City, initiate negotiation of a joint use agreement with the City to resolve this conflict in order to satisfy SARH's parking requirements. Should SARH and the City fail to resolve this conflict within 30 days of SARH's written notice, all claims and disputes arising under or relating to this Agreement shall be settled by binding arbitration in the State of California.

It is further understood and agreed that at all times during the existence of the within easement that SARH, at its sole cost and expense, shall maintain and keep in good order and repair all surface parking areas and, if applicable, the parking structure.

4. **Term.** The Easement shall remain on the Property in perpetuity provided the City's adjacent property remains as a public park. In the event of the cessation of such use or the sale of the City's adjacent park property for other than public park use, this Easement will terminate forthwith.

5. **Insurance.** Prior to the use by the public of the within easement the City shall obtain and maintain thereafter a policy of general liability insurance in an amount of no less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate, with such policy of insurance naming SARH, its affiliates, successors and assigns as an additional insured.

6. **Indemnity Obligation.** Each Party shall indemnify (the "**Indemnifying Party**"), defend and hold harmless every other Party (the "**Indemnified Parties**") for, from and against any and all losses, costs and expenses (including reasonable attorneys' fees and costs) to the extent caused during the term of this Agreement, by the acts, errors or omissions of the Indemnifying Party or its partners, members, shareholders, managers, officers, directors, agents, employees, contractors, sub-contractors, representatives, or delegates as the same are due to the exercise of the Indemnifying Party's rights or failure to fulfill its obligations under this Agreement, except to the extent of any such loss, cost or expense caused by one of the Indemnified Party's own negligence

or misconduct. The indemnity obligations set forth in this Section 6 shall survive a termination this Agreement.

7. **Attorneys' Fees.** If any of the Parties hereto shall initiate suit against any other Party as a result of any alleged breach or failure of the other to fulfill or perform any covenants or obligations to be performed by it under this Agreement, or for declaratory relief seeking any determination of such Parties' rights or obligations hereunder, then in such event, the prevailing Party in such action shall, in addition to any other relief granted or awarded by the Court, be entitled to judgment for reasonable attorneys' fees incurred by reason of such action and all costs of suit and (those incurred in preparation thereof, at both trial and appellate levels).

8. **Entire Agreement.** This Agreement, together with all Exhibits attached hereto, contains the entire agreement and understanding of SARH and the City and supersedes all prior agreements and understandings, as to the subject matter hereof. This Agreement shall not be modified, superseded or revoked, except by an agreement in writing duly executed and delivered by the Parties hereto (or their successors, as appropriate).

9. **Benefits and Burdens Running With the Land.** This Agreement shall run with and bind the title of the Property hereto and shall be binding upon and inure to the benefit of the successors and assigns of SARH as the owner of the Property from time to time. This Agreement shall be recorded in the official records of the Recorder for the County of San Bernardino, and all provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law.

10. **No Waiver.** The waiver by one Party of the performance or observance of any covenant or condition to be performed or observed by the other hereunder shall not invalidate this Agreement, nor constitute a waiver by such Party of any other covenant or condition to be performed or observed by another hereunder.

11. **Cooperation.** SARH and the City shall in good faith cooperate with each other in connection with their respective rights and obligations under this Agreement, including, but not limited to, performing any acts and executing any further documents and taking such further actions that may be reasonably necessary to effectuate the purposes of or rights conferred under this Agreement.

12. **Construction.** This Agreement shall be construed in accordance with the laws of the State of California

13. **Notices.** All notices and requests under this Agreement shall be in writing and shall be sent by personal delivery or facsimile (with hard copy to follow the next business day by overnight mail), by certified or registered mail, postage prepaid, return receipt requested, nationally recognized overnight mail carrier (e.g. FedEx, Airborne) or delivered in person to the following street addresses:

SARH: c/o Harris F. Koenig  
President and CEO  
San Antonio Regional Hospital  
999 San Bernardino Road  
Upland, CA 91786

With a copy to: Alan M. Bergman, Esq.  
Ervin Cohen & Jessup LLP  
9401 Wilshire Blvd., 9<sup>th</sup> Floor  
Beverly Hills, California 90212  
Facsimile: (310) 877-6844

City of Upland: City Manager  
City of Upland  
460 N. Euclid Avenue  
Upland, CA 91786

With a copy to: James L. Markman, Esq.  
Richards Watson & Gershon  
355 South Grand Avenue, 40<sup>th</sup> Floor  
Los Angeles, CA 90071  
Facsimile: (213) 626-0078

All notices shall be effective upon the earlier of personal delivery or receipt of facsimile confirmation statement, if sent by facsimile (provided the hard copy notice is provided by an alternative method of delivery as required above), or receipt of confirmation of delivery or rejection, if delivered by a nationally recognized overnight mail carrier or seventy-two (72) hours after deposit in the United States mail. Either party may change its address or designate a new street address for notices under this Agreement by notice complying with the terms of this Section.

14. **Counterpart Execution.** This Agreement may be executed and acknowledged in counterpart originals and all such counterparts shall constitute one (1) agreement. Signature pages may be detached from the counterpart originals and attached to a single copy of this Agreement to physically form one (1) document.

15. **Severability.** If any provision of this Agreement or the application of this Agreement to any party to this Agreement or any other person is held to be invalid, void, or illegal, the remaining provisions shall nonetheless remain in full force and effect and shall not be affected by such invalidity or illegality.

**IN WITNESS WHEREOF**, SARH and the City have executed this Agreement as of the date first set forth above.

DATED: \_\_\_\_\_

San Antonio Regional Hospital

\_\_\_\_\_  
Harris F. Koenig, President and CEO

DATED: \_\_\_\_\_

City of Upland

By: \_\_\_\_\_  
City Manager  
\_\_\_\_\_

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 Los Angeles )

On \_\_\_\_\_, before me, \_\_\_\_\_, a 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 \_\_\_\_\_

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 Los Angeles )

On \_\_\_\_\_, before me, \_\_\_\_\_, a 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.

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WITNESS my hand and official seal.

Signature \_\_\_\_\_

**EXHIBIT A**  
**DESCRIPTION OF THE PROPERTY**

[TO BE ATTACHED]

**EXHIBIT B**

**INTERIM PARKING LOCATIONS**

**PARKING EASEMENT AGREEMENT**

This **PARKING EASEMENT AGREEMENT** (“Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2018, between **SAN ANTONIO REGIONAL HOSPITAL**, a California public benefit corporation, (“**SARH**”) and the **CITY OF UPLAND**, a California municipal corporation (the “**City**”). SARH and the City are collectively referred to as “Parties” or individually as a “Party”.

**RE C I T A L S**

A. SARH and the City have entered into an Agreement for Purchase and Sale and Joint Escrow Instructions dated \_\_\_\_\_, 2018 whereby SARH is purchasing from the City all of its right, title and interest in an approximate 5.5 acre parcel as more specifically described and set forth therein and shown on Exhibit A attached hereto and made a part hereof (the “**Property**”).

B. As a condition of the foregoing sale, SARH is required to grant to the City in the form of a Public Parking Permanent Easement, the right of public parking for automobiles upon the Property in accordance with the terms and conditions herein set forth.

**NOW, THEREFORE**, in consideration of the mutual covenants of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

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2. **Construction of Additional Spaces.** As part of its overall planned development for the Property, SARH shall design the Public Spaces, submit all necessary construction permit applications, construction bids and proceed to construct the Public Spaces at its sole cost and expense.

3. **Use of Property Prior to, During and Upon Completion of Project Construction.** Upon the acquisition of the Property by SARH and until new buildings or development is constructed on the Property by SARH, parking on the Property shall be provided in a surface parking lot on the Property for SARH use and shall remain available to the public for daily park use at no charge.

Upon completion of new buildings or the development on the Property for SARH's use, there shall be the same or greater number of Public Spaces made available to the public in a surface parking lot for daily park use at no charge.

If the construction of new buildings or development will temporarily disrupt the public parking SARH shall use reasonable efforts to diligently prosecute the new development to completion, subject to force majeure delays, to minimize the disruption.

If a multistory parking structure is part of any new development on the Property for SARH's use and the surface parking lot is removed, the Public Spaces made available to the public for daily park use, to the extent within the parking structure, shall be located on the first/ground floor.

If, at any time during the term of this Agreement, there is a conflict between SARH and the City in meeting the parking requirements for their respective uses, it is understood by the Parties that SARH shall retain the primary right to parking on the Property and its needs and requirements shall take priority over those of the City. However, in no event shall the parking available to the City for daily park use be less than 100 spaces. If such conflict shall arise SARH may, upon written notice to the City, initiate negotiation of a joint use agreement with the City to resolve this conflict in order to satisfy SARH's parking requirements. Should SARH and the City fail to resolve this conflict within 30 days of SARH's written notice, all claims and disputes arising under or relating to this Agreement shall be settled by binding arbitration in the State of California.

It is further understood and agreed that at all times during the existence of the within easement that SARH, at its sole cost and expense, shall maintain and keep in good order and repair all surface parking areas and, if applicable, the parking structure.

4. **Term.** The Easement shall remain on the Property in perpetuity provided the City's adjacent property remains as a public park. In the event of the cessation of such use or the sale of the City's adjacent park property for other than public park use, this Easement will terminate forthwith.

5. **Insurance.** Prior to the use by the public of the within easement the City shall obtain and maintain thereafter a policy of general liability insurance in an amount of no less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate, with such policy of insurance naming SARH, its affiliates, successors and assigns as an additional insured.

6. **Indemnity Obligation.** Each Party shall indemnify (the "**Indemnifying Party**"), defend and hold harmless every other Party (the "**Indemnified Parties**") for, from and against any and all losses, costs and expenses (including reasonable attorneys' fees and costs) to the extent caused during the term of this Agreement, by the acts, errors or omissions of the Indemnifying Party or its partners, members, shareholders, managers, officers, directors, agents, employees, contractors, sub-contractors, representatives, or delegates as the same are due to the exercise of the Indemnifying Party's rights or failure to fulfill its obligations under this Agreement, except to the extent of any such loss, cost or expense caused by one of the Indemnified Party's own negligence

or misconduct. The indemnity obligations set forth in this Section 6 shall survive a termination this Agreement.

7. **Attorneys' Fees.** If any of the Parties hereto shall initiate suit against any other Party as a result of any alleged breach or failure of the other to fulfill or perform any covenants or obligations to be performed by it under this Agreement, or for declaratory relief seeking any determination of such Parties' rights or obligations hereunder, then in such event, the prevailing Party in such action shall, in addition to any other relief granted or awarded by the Court, be entitled to judgment for reasonable attorneys' fees incurred by reason of such action and all costs of suit and (those incurred in preparation thereof, at both trial and appellate levels).

8. **Entire Agreement.** This Agreement, together with all Exhibits attached hereto, contains the entire agreement and understanding of SARH and the City and supersedes all prior agreements and understandings, as to the subject matter hereof. This Agreement shall not be modified, superseded or revoked, except by an agreement in writing duly executed and delivered by the Parties hereto (or their successors, as appropriate).

9. **Benefits and Burdens Running With the Land.** This Agreement shall run with and bind the title of the Property hereto and shall be binding upon and inure to the benefit of the successors and assigns of SARH as the owner of the Property from time to time. This Agreement shall be recorded in the official records of the Recorder for the County of San Bernardino, and all provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law.

10. **No Waiver.** The waiver by one Party of the performance or observance of any covenant or condition to be performed or observed by the other hereunder shall not invalidate this Agreement, nor constitute a waiver by such Party of any other covenant or condition to be performed or observed by another hereunder.

11. **Cooperation.** SARH and the City shall in good faith cooperate with each other in connection with their respective rights and obligations under this Agreement, including, but not limited to, performing any acts and executing any further documents and taking such further actions that may be reasonably necessary to effectuate the purposes of or rights conferred under this Agreement.

12. **Construction.** This Agreement shall be construed in accordance with the laws of the State of California

13. **Notices.** All notices and requests under this Agreement shall be in writing and shall be sent by personal delivery or facsimile (with hard copy to follow the next business day by overnight mail), by certified or registered mail, postage prepaid, return receipt requested, nationally recognized overnight mail carrier (e.g. FedEx, Airborne) or delivered in person to the following street addresses:

SARH: c/o Harris F. Koenig  
President and CEO  
San Antonio Regional Hospital  
999 San Bernardino Road  
Upland, CA 91786

With a copy to: Alan M. Bergman, Esq.  
Ervin Cohen & Jessup LLP  
9401 Wilshire Blvd., 9<sup>th</sup> Floor  
Beverly Hills, California 90212  
Facsimile: (310) 877-6844

City of Upland: City Manager  
City of Upland  
460 N. Euclid Avenue  
Upland, CA 91786

With a copy to: James L. Markman, Esq.  
Richards Watson & Gershon  
355 South Grand Avenue, 40<sup>th</sup> Floor  
Los Angeles, CA 90071  
Facsimile: (213) 626-0078

All notices shall be effective upon the earlier of personal delivery or receipt of facsimile confirmation statement, if sent by facsimile (provided the hard copy notice is provided by an alternative method of delivery as required above), or receipt of confirmation of delivery or rejection, if delivered by a nationally recognized overnight mail carrier or seventy-two (72) hours after deposit in the United States mail. Either party may change its address or designate a new street address for notices under this Agreement by notice complying with the terms of this Section.

14. **Counterpart Execution.** This Agreement may be executed and acknowledged in counterpart originals and all such counterparts shall constitute one (1) agreement. Signature pages may be detached from the counterpart originals and attached to a single copy of this Agreement to physically form one (1) document.

15. **Severability.** If any provision of this Agreement or the application of this Agreement to any party to this Agreement or any other person is held to be invalid, void, or illegal, the remaining provisions shall nonetheless remain in full force and effect and shall not be affected by such invalidity or illegality.

**IN WITNESS WHEREOF**, SARH and the City have executed this Agreement as of the date first set forth above.

DATED: \_\_\_\_\_

San Antonio Regional Hospital

\_\_\_\_\_  
Harris F. Koenig, President and CEO

DATED: \_\_\_\_\_

City of Upland

By: \_\_\_\_\_  
City Manager

\_\_\_\_\_

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 Los Angeles )

On \_\_\_\_\_, before me, \_\_\_\_\_, a 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 \_\_\_\_\_

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 Los Angeles )

On \_\_\_\_\_, before me, \_\_\_\_\_, a 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 \_\_\_\_\_

**EXHIBIT A**  
**DESCRIPTION OF THE PROPERTY**

[TO BE ATTACHED]

**EXHIBIT "D"**

**FORM OF FIRPTA AFFIDAVIT**

Transferor's Certification of Non-Foreign Status

To inform \_\_\_\_\_, ("**Transferee**"), that withholding of tax under Section 1445 of the Internal Revenue Code of 1986, as amended (the "**Code**"), will not be required upon the transfer of certain real property to Transferee by \_\_\_\_\_ ("**Transferor**"), the undersigned hereby certifies the following on behalf of Transferor:

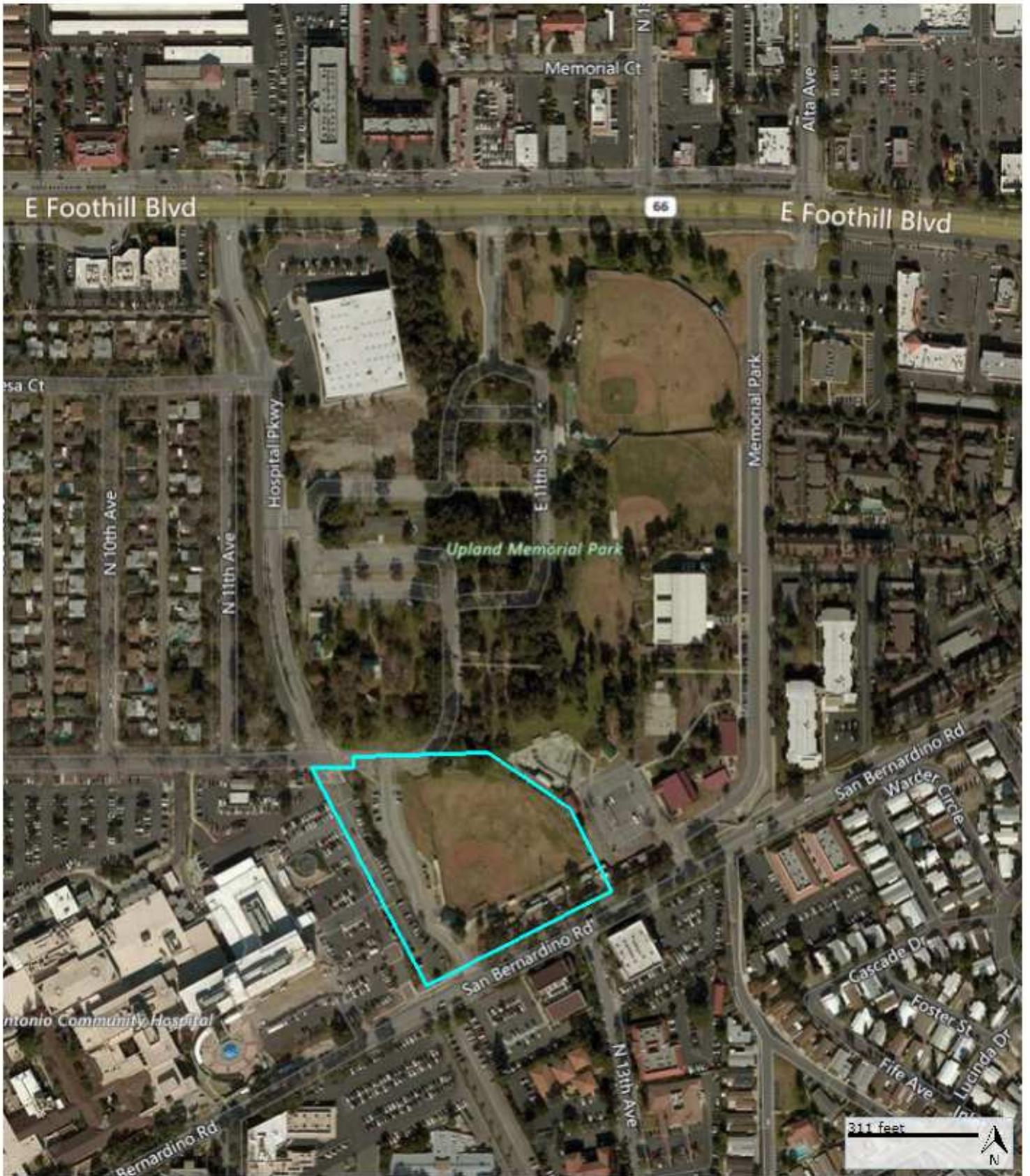
1. Transferor is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder);
2. Transferor's U.S. employer identification number is \_\_\_\_\_; and
3. Transferor's address is \_\_\_\_\_.

Transferor understands that this Certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

Dated as of: \_\_\_\_\_

\_\_\_\_\_



**MEMORIAL PARK**



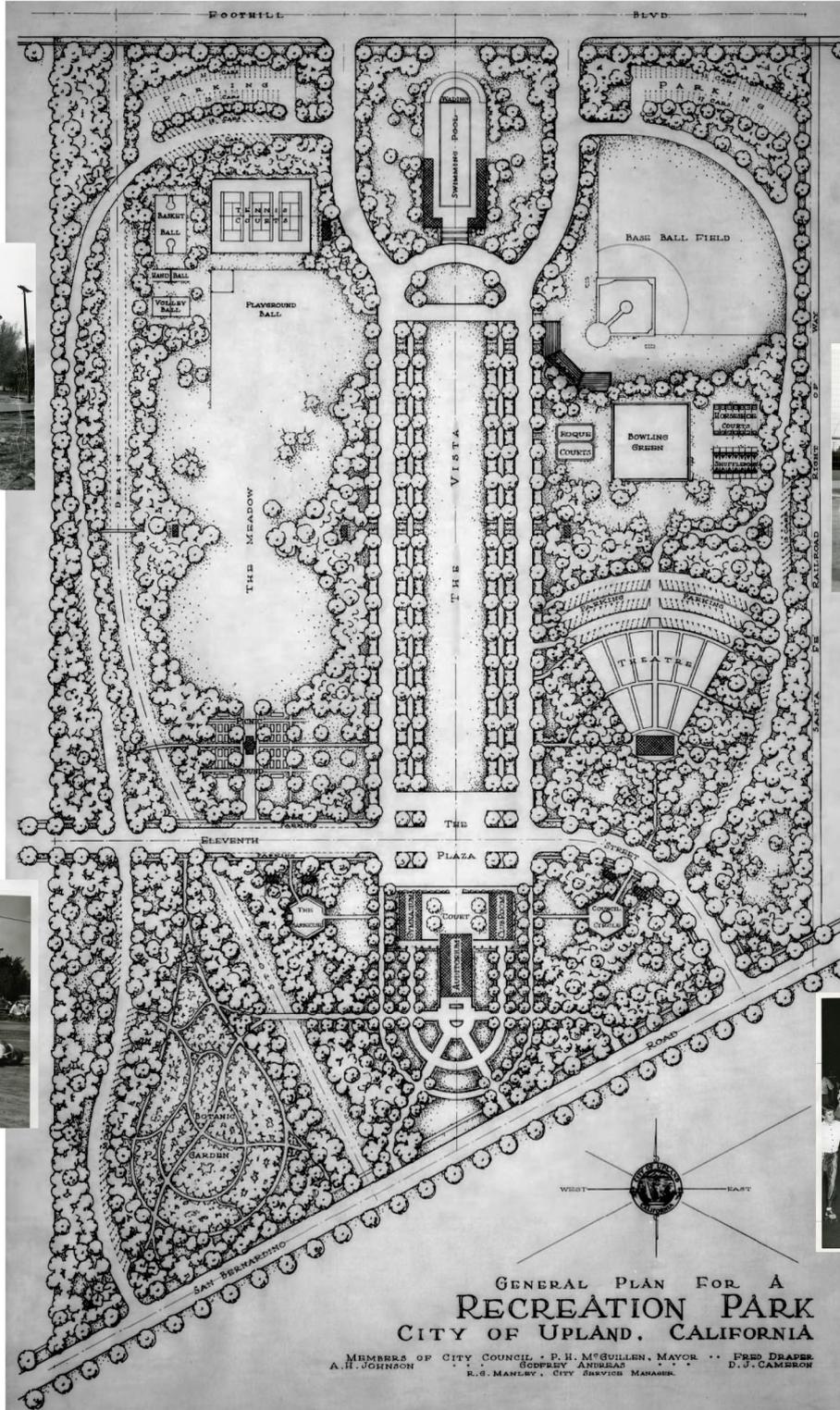
FOOT HILL

FOOTHILL BLVD

BOULEVARD



- LEG-END**
- 1 EXISTING ENTRY WITH CITRUS GROVES AT END SIDE
  - 2 HISTORIC OAK LINED PATHS WITH CONTROLLED VEHICLE ACCESS FOR SPECIAL FUNCTIONS AND EVENTS
  - 3 RESTORED FLAG COURT AND HISTORIC CANNON DISPLAY
  - 4 OFF LEASH FENCED DOG PARK WITH ZONED AREAS FOR LARGE AND SMALL DOGS
  - 5 GREENBELT PROMENADE WITH NEW AMPHITHEATER AND STAGE
  - 6 DECOMPOSED GRANITE EXERCISE PATHWAY WITH DISTANCE MARKERS
  - 7 OPEN TURF PLAY AREA
  - 8 NEW THEMED TOT LOT AND SHADED BENCH SEATING
  - 9 BASKETBALL COURTS (1 FULL 2 HALF COURT)
  - 10 NEW PARKING AREAS (955 AT PARK, 15 AT LANDECENA CENTER)
  - 11 CAPPED DRAINAGE CHANNEL WITH TRAIL AND HISTORIC INFO ON RAILROAD SPIRE AND AGRICULTURAL SIGNIFICANCE WITH INTERPRETIVE PANELS
  - 12 EXISTING SKATE PARK TO REMAIN WITH NEW ADJACENT PARKING AND TRAIL FOR PATROL ACCESS
  - 13 RESTORED ROSE/EDIBLE GARDEN WITH NEW LARGE GROUP PAVILION SHADE SHELTER
  - 14 EXISTING RESTROOM BUILDINGS TO REMAIN
  - 15 NEW PICNIC SHADE STRUCTURES
  - 16 EXISTING ATWOOD KITCHEN CONVERSION TO SNACK BAR
  - 17 LITTLE LEAGUE (SENIOR DIVISION) FIELD WITH FENCING, SCORE BOARD AND SPECTATOR BENCHES
  - 18 CONTROLLED VEHICLE ACCESS GATE (NORMALLY CLOSED)



FOOTHILL

BOULEVARD



LEG-END 1/4"

- 1. IMPROVE ENTRY AND CLEAR WALKWAY AT 800' SIGN
- 2. IMPROVE AND LANDSCAPE WITH CONTROLLING WALKWAY BOARDER FOR VISUAL, SECURITY AND EVENT
- 3. LANDSCAPE WITH CURB AND ARTIFICIAL LIGHTING WALKWAY
- 4. IMPROVE PARKING AND PARK WITH BOUNDARY FOR LANDSCAPE AND TRAIL
- 5. RECONSTRUCT WALKWAY WITH NEW IMPROVEMENTS AND TRAIL
- 6. RECONSTRUCT WALKWAY WALKWAY WALKWAY WITH NEW IMPROVEMENTS
- 7. IMPROVE PLAY AREA
- 8. IMPROVE PLAY LOT WITH PLAYING WALKWAY
- 9. RECONSTRUCT COURT (1 MILL & 1/2 COURT)
- 10. IMPROVE WALKWAY ONE OF PARK TO OF LANDSCAPE CENTER
- 11. IMPROVE WALKWAY WALKWAY WITH TRAIL AND WALKWAY AND OF PLAYING WALKWAY AND OF PLAYING WALKWAY AND OF PLAYING WALKWAY
- 12. IMPROVE WALKWAY WALKWAY WITH TRAIL AND WALKWAY AND OF PLAYING WALKWAY AND OF PLAYING WALKWAY
- 13. IMPROVE WALKWAY WALKWAY WITH TRAIL AND WALKWAY AND OF PLAYING WALKWAY AND OF PLAYING WALKWAY
- 14. IMPROVE WALKWAY WALKWAY WITH TRAIL AND WALKWAY AND OF PLAYING WALKWAY AND OF PLAYING WALKWAY
- 15. IMPROVE WALKWAY WALKWAY WITH TRAIL AND WALKWAY AND OF PLAYING WALKWAY AND OF PLAYING WALKWAY



**PUBLIC WORKS COMMITTEE MEETING  
JULY 14, 2020**

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**CONCLUSION/ACTION SUMMARY**

In attendance: Committee Chairperson Velto, Committee Member Elliott, City Manager Hoerning, Engineering Manager Critchfield, Development Services Director Dalquest, Development Services Manager Chavez, and Contract Rehabilitation Programs Coordinator Arellano

- 1) **ORAL COMMUNICATIONS, None**
- 2) **ACCEPTANCE OF RECOMMENDATION TO PROCEED WITH HISTORIC DOWNTOWN UPLAND STREETScape BEAUTIFICATION PROGRAM**, the Committee discussed funding sources and the procurement process for the program, securing benches to the sidewalk and location of parklets. The Public Works Committee recommends the City Council accept the Development Services Department's recommendation to proceed with the Historic Downtown Streetscape Beautification Program.



## Public Works Committee Meeting

July 14, 2020

5:00 PM

Pinky Alder Room - City Hall

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- 
1. ORAL COMMUNICATIONS
  2. ACCEPTANCE OF RECOMMENDATION TO PROCEED WITH HISTORIC DOWNTOWN UPLAND STREETScape BEAUTIFICATION PROGRAM

**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.uplandca.gov](http://www.uplandca.gov).

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 July 9, 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).



## STAFF REPORT

**ITEM NO. 2.**

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**DATE:** July 14, 2020  
**TO:** PUBLIC WORKS COMMITTEE  
**FROM:** ROSEMARY HOERNING, CITY MANAGER  
**PREPARED BY:** ROBERT D. DALQUEST, DEVELOPMENT SERVICES DIRECTOR  
LIZ CHAVEZ, DEVELOPMENT SERVICES MANAGER  
GIOVANNI ARELLANO, REHABILITATION PROGRAMS ADMINISTRATOR  
**SUBJECT:** ACCEPTANCE OF RECOMMENDATION TO PROCEED WITH HISTORIC DOWNTOWN UPLAND STREETSCAPE BEAUTIFICATION PROGRAM

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### **RECOMMENDED ACTION**

It is recommended that the Public Works Committee ("Committee") recommend the City Council accept the Development Services Department's ("Department") recommendation to proceed with the Historic Downtown Streetscape Beautification Program ("Program").

### **GOAL STATEMENT**

The proposed action supports the City of Upland's ("City") goal to eliminate blight and promote economic development activities in Historical Downtown Upland ("Downtown").

### **BACKGROUND**

As part of the Department's goal to foster economic development activities in Downtown, the need to improve its overall visual aesthetics is necessary. This was a recommendation by the Ad Hoc Committee on Downtown in their Final Report to the City Council. To address this need, the Department seeks to initiate a streetscape beautification program, where continuity in design, color and theme is supported to preserve and enhance the historical character of Downtown. With the recent rehabilitation of the Downtown Spire being so positively received by the community, the Department seeks to build on that momentum and continue to make other similar visual improvements in Downtown.

The current conditions in Downtown’s dilapidated and disparate streetscape, lend to unsightly and blighted conditions that hinder the City’s ability to foster private economic investment in the area and reduces civic pride. The Department seeks to better the image of Downtown by improving the streetscape environment through maintaining uniformity of appurtenances in the following public areas: street benches, trash receptacles, street signage, informational kiosks, parklets, bollards and the gateway arch signage. In consortium with the City’s existing Business Attraction and Assistance Program and Commercial Rehabilitation Program, the Historic Downtown Upland Streetscape Beautification Program will augment the public benefits already being realized in Downtown.

**ISSUES/ANALYSIS**

Under the Historic Downtown Upland Streetscape Beautification Program, Staff proposes to utilize City PBIA fund balance and CDBG-Cares Act (CV) funds to make the following repairs and/or improvements to Downtown’s streetscape (see attached report). The Program has been divided into smaller projects for logistical and feasibility reasons relative to project management and funding availability:

**HISTORIC DOWNTOWN UPLAND STREETScape BEAUTIFICATION PROGRAM**

Project NAME	FUNDING SOURCE	EST. FUNDING AMOUNT
Street Bench and Trash Receptacle Powdercoat and Rehabilitation	City’s PBIA Fund Balance	\$25,000.00
Decorative Historical Street Signs Installation	City’s PBIA Fund Balance	\$20,000.00
Historical Downtown Upland Kiosks Rehabilitation	HDU PBIA Fund	\$7,000.00
Historic Downtown Upland Parklets Installation	CDBG CARES ACT Funding	\$60,000.00
Historic Downtown Upland Bollards Installation	City’s PBIA Fund Balance	\$60,000.00
Historic Downtown Upland Arch Rehabilitation	HDU PBIA Fund	\$12,000.00
<b>TOTAL:</b>		<b>\$184,000.00</b>

In an effort to seek input from Downtown stakeholders, Staff has communicated with the Upland Chamber of Commerce, Upland Heritage (Historical Society) and Historic Downtown Upland (Merchant Group) relative to the Program. All organizations have indicated they are supportive and welcome the City’s efforts to make the recommended improvements that eliminate blight, facilitate commercial revitalization, preserve and beautify historical corridors and upgrade the City’s Downtown image.

**FISCAL IMPACTS**

The Program expenditures are estimated to total \$184,000.00 of which \$124,000.00 will come from City PBIA fund balance/HDU PBIA funds (210-7702-5258) and \$60,000.00 will come from CDBG-Cares Act (CV) funding (Fund 209).

There is no fiscal impact to the General Fund relative to financing of these projects.

**ALTERNATIVES**

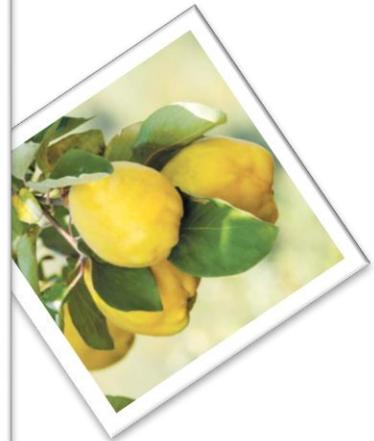
Provide alternative direction to staff.

**ATTACHMENTS:**

**Historic Downtown Upland Streetscape Beautification Program Report**



# HISTORIC DOWNTOWN UPLAND STREETScape BEAUTIFICATION PROGRAM (PROJECTS 1-7)



**PROGRAM GOAL:**

The overall objective of the Historic Downtown Upland Streetscape Beautification Program (“Program”) is to standardize Historic Downtown Upland’s streetscape environment by visually unifying and enhancing the appearance of public areas, street signage, amenity zones and landscape with the goal of eliminating blight and improving Downtown’s optical aesthetics. By maintaining a cohesive look throughout Downtown in the form of color use, styles and motifs, the City can enhance the character and branding ability of Historic Downtown Upland. These efforts will support private investment, spur economic activity and increase civic pride. Currently, the City funds the federally sponsored Commercial Rehabilitation Program and Business Attraction and Assistance Program to encourage private economic development activity in Downtown; by targeting additional resources to improve the Downtown’s dilapidated and/or disparate streetscape, additional positive change will occur.

Upon City Council program approval, staff will collaborate with Upland Public Works Department, Historic Downtown Upland and the Upland Chamber of Commerce (merchant groups) as well as Upland Heritage (historical society) seeking input relative to streetscape appurtenances and other project details.

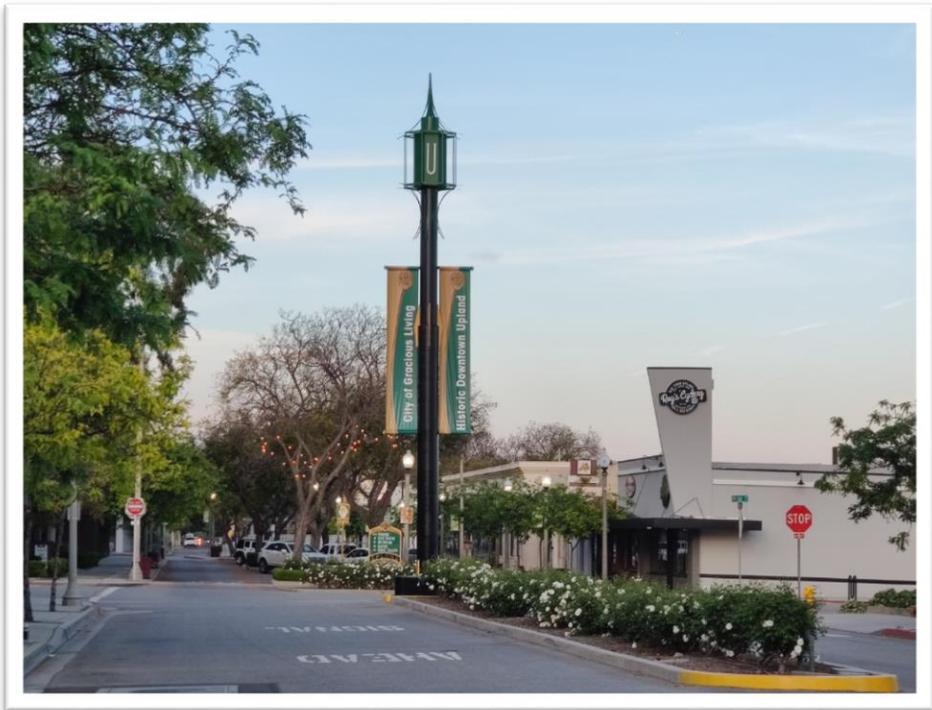
**PROJECT FUNDING:**

Streetscape improvements to be funded in-whole or in-part by City PBIA fund balance, HDU PBIA Funds and CDBG-CARES (CV) funding.

**STANDARD DOWNTOWN MOTIFS:**

- Colors
  - Green
  - Gold
  - Black
  - White
- Images
  - Citrus (Lemons and/or Oranges)
  - Upland Rose
  - City Seal
- Landscape
  - Jacaranda Trees (along 2<sup>nd</sup> Avenue and 9<sup>th</sup> Street)
  - African Sumac Trees (along 2<sup>nd</sup> Avenue)
  - Honey Locust Trees (along 9<sup>th</sup> Street)
  - Camphors Trees (along D Street)
  - Liquid Ambers (along C Street)
  - White Iceberg Roses
  - Japanese Boxwood
  - Creeping Jasmine

**PROJECT 1 (COMPLETED)**  
**DOWNTOWN SPIRE REHABILITATION BEFORE / AFTER**



*Actual Project Costs: \$12,960.00 (City PBIA Fund Balance)*

**PROJECT 2  
STREET BENCHES AND TRASH RECEPTACLES (POWDERCOAT AND REHABILITATION)**

Current Conditions: Dilapidated **MAROON** benches and trash receptacles.



Proposed Repairs: Repainting (**GREEN** powdercoated), repairs (re-weld loose parts and repair bent frames on benches and trash receptacles) and reinstalled. Develop a standardized placement map of benches and trash receptacles to ensure consistent and practical spacing throughout Downtown.



*Estimated Project Costs: \$25,000.00 (City PBIA Fund Balance)*

**PROJECT 3  
DECORATIVE HISTORICAL STREET SIGNS**

Current Conditions: Dilapidated and disparte sign shape, logo design, sign lettering.



Proposed Repairs: Install twenty (20) decorative street poles to create a sense of boundary for Historic Downtown Upland commercial district providing easily identifiable street signage.

- Options (1) No-Pole Scroll v (2) Scroll and Sign Blade (A) Arch v (B) No-Arch



City of Upland

HISTORIC DISTRICT  
BEAUTIFICATION  
Street Sign Poles  
Upland, California

May 20, 2020

Historic Downtown Upland  
Street sign black pole

Estimated Project Costs: \$20,000.00 ( City PBIA Fund Balance)

**PROJECT 4  
HISTORIC DOWNTOWN UPLAND KIOSKS**

Current Conditions: Missing globe finials, post caps, repaint, graffiti, stickers and etching.



**Proposed Repairs:**

1. Reinstall missing finials and caps and secure
2. Remove graffiti etching and repaint as needed
3. Repair broken/missing bricks

*Estimated Project Costs: \$7,000.00 (HDU PBIA funds)*

**PROJECT 5  
HISTORIC DOWNTOWN UPLAND PARKLETS**

Current Conditions: Limited public space and/or no active amenity zone in this area for residents and businesses to meet social distancing requirements, safely congregate in public and/or enjoy Downtown.

Proposed Repairs: Project to provide additional public open space via the installation of two custom parklets to encourage social distancing and pedestrian and bicycle traffic in Historic Downtown Upland. Additional open space will assist businesses meet social distancing requirements. Two parklets to be approx. 30'x10' along the westside of Second Avenue between D Street and C Street to incentive pedestrian and bicycle traffic to Downtown via the Class A bike trail (see green arrows). Additional parklets can be phased in along C Street, if project is successful (see yellow arrows). Parklet design and landscape to be determined later and compliment Downtown theme and color motifs.

(Conceptual Renderings Only)



**Site Map**



Estimated Project Costs: \$60,000 (CDBG-CARES ACT [CV])

## PROJECT 6 HISTORIC DOWNTOWN UPLAND STREET BOLLARDS INSTALLATION

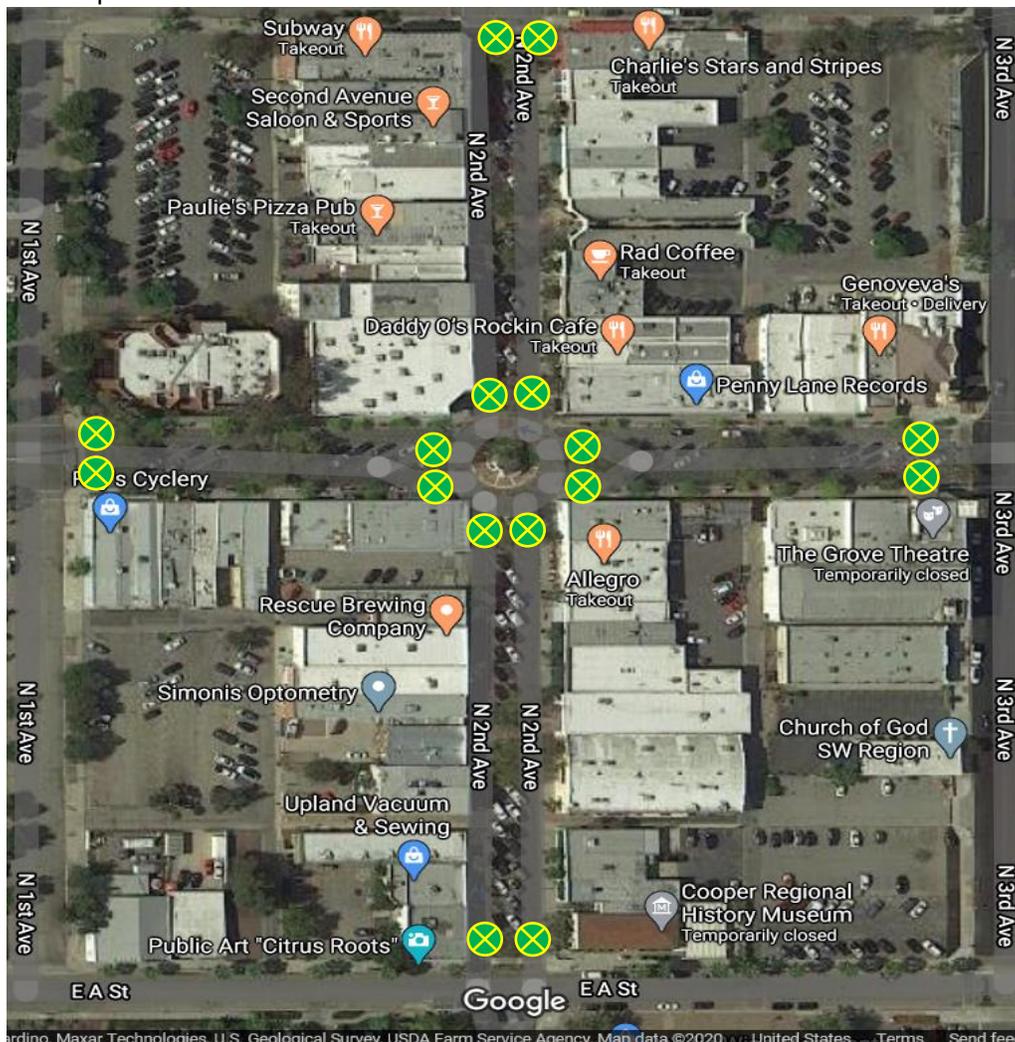
Current Conditions: No traffic bollards in Historic Downtown Upland commercial core.

Project will include the installation of thirty two inground hydraulic bollards at all eight intersections in Downtown's commercial core (2 bollards per traffic lane). Bollard's use will correspond to closing the streets to encourage an active walkable promenade in Downtown per the needs of various events.

(Conceptual Rendering Only)



### Site Map



Estimated Project Cost: \$60,000 (City PBI Fund Balance)

**PHASE-7  
HISTORIC DOWNTOWN UPLAND GATEWAY ARCH REHABILITATION**

Current Conditions: Faded paint and broken lighting



Proposed Repairs:

1. Repaint metal poles and arch (exclude signage)
2. Lighting improvements (replace faulty lighting to LED)
3. Install hanging rings/brackets to ensure tense linear banner display

*Estimated Project Costs: \$12,000.00 (HDU PBIA Funds)*

## PROJECT COST SHEET

- Project 1      \$12,960.00 (Spire Rehab) (Completed)
  - Project 2      \$25,000.00 (Street Benches/Trash Receptacles Rehab est.)
  - Project 3      \$20,000.00 (Decorative Street Signs est.)
  - Project 4      \$7,000.00 (Kiosk Rehab est.)
  - Project 5      \$60,000.00 (Parklets est.)
  - Project 6      \$60,000.00 (Bollards est.)
  - Project 7      \$12,000.00 (Gateway Arch Rehab est.)
- TOTAL:            \$196,960.00 (\$136,960 PBIA and \$60,000 CDBG)**



## STAFF REPORT

**ITEM NO. 14.A.**

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**DATE:** July 27, 2020  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, CITY MANAGER  
**PREPARED BY:** STEPHEN PARKER, ASSISTANT CITY MANAGER  
STEVEN FLOWER, INTERIM CITY ATTORNEY  
**SUBJECT:** LOCAL RECOVERY AND ESSENTIAL SERVICES SALES TAX  
MEASURE

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### RECOMMENDED ACTION

It is recommended that the City Council adopt a Resolution approving an ordinance enacting a 1-cent Local Recovery and Essential Services Tax Measure to be administered by the California Department of Tax and Fee Administration and Ordering the submittal of said ordinance to the voters at the November 3, 2020 Election.

### GOAL STATEMENT

The proposed action will support the City's goal of keeping our city safe, clean and well-maintained, promoting resident and business recovery, protecting local property values, and keeping Upland a special place to live.

### BACKGROUND

In July 2019 the City Council held its first strategic planning workshop. As part of this workshop, the City Council received public input and discussed the local services essential to ensure a high quality of life. During the workshop, the City Council expressed an interest in improving economic development and business strength, maintaining City infrastructure, such as, streets and roadways, sidewalks, trees, addressing deferred maintenance, improving government transparency, retaining a quality workforce, maintaining City services like crime prevention and public safety and identifying the revenue necessary to fund those priorities at a level desired by our residents. To ensure the community's priorities were centered in any strategic planning, the City Council requested the City staff conduct community and business outreach to assist the City Council in developing a vision tailored around the public's expressed essential services and key priorities.

The City Council held a second goal setting and strategic planning workshop on February 8, 2020 to re-cap the initial workshop, to review staff's progress, and provide additional feedback on the items touched upon in the first meeting. In response to Council's direction, a five-year strategic economic development plan is currently being developed. The community's input has been central to this planning. As part of the economic strategic planning effort and to further engage the public in the planning process, four public meetings (one in each district area) and a survey of Upland residents and businesses was conducted on the types of economic development desired by residents and businesses, inclusive of new business types. Additional statistical data was analyzed to inform the implementation plan. While in process, there have already been steps taken to further the City's economic development goals: IT staff began work on a transparency portal to allow the public access to the City record documents, the City was able to secure one-time grant money to assist in the development of economic development programs and projects, and staff has been preparing a short-term rental revenue program for City Council to consider. In order to center the community's priorities, two community surveys, using a reputable research firm were completed in February and June of 2020.

The community surveys underscored a number of service priorities, including basic community services that would protect local property values and quality of life in Upland, such as reducing crime and gang activity and providing quick responses to 911 emergencies, maintaining local streets and roads and repairing potholes, addressing homelessness, and improving the local economy and job market. After the pandemic began impacting our community, preparing for local emergencies like the COVID virus also rose to the top of the community's priorities. In both surveys, the community seemed interested in maintaining, not cutting, essential services.

The COVID-19 pandemic has negatively impacted community stability affecting residents, businesses, and local governmental finances, and the nature of the City's strategic planning and community outreach have been impacted as well. The City has been working to provide relief to businesses impacted by operational mandates. The City implemented emergency measures such as, a temporary business sign modification to improve visibility to the consumer, a temporary outdoor dining option was provided to improve restaurant service capacity volumes, a temporary outdoor merchandise display option for downtown retail businesses, implementing the Upland small business COVID-19 economic relief \$1,000 grant, and a small business information center was set up on the City website to centralize and advertise critical financial assistance programs and provide guidance related to COVID-19 operations. The City website also has a general COVID-19 information page and links for residents. City services remained operational throughout the COVID-19 crisis to make City staff available to meet residents and businesses calls for service.

## **ISSUES/ANALYSIS**

The COVID-19 stay at home orders and economy shutdown occurred in mid-March 2020 to prevent the spread of the virus. Reopening of the economy began in June 2020. In early July, business closures and additional restrictions were imposed by the Governor in many counties, including San Bernardino County to mitigate a spike in virus positivity and increased death rate.

As of early June, the Federal and State assistance funding that had been provided went to cities with populations of 500,000 or greater — leaving small communities like Upland to fend for ourselves.

Limited funding for PPE is available. However, currently no further help is expected from the State or Washington DC.

We must be self-reliant during this time of economic recovery, providing essential services to residents, helping our businesses recover, and keeping our property values high.

Our community survey's indicated 63% of respondents were satisfied with the job the City has been doing in providing services, and a majority are concerned about COVID19.

Throughout the community outreach process, the desire to maintain basic services including public safety services, basic upkeep to infrastructure, business support and emergency response have been constant. With the impacts of COVID19 on the local Upland budget, we cannot maintain those services as the level our residents have indicated they value.

Placing a local revenue measure on the November 2020 ballot would allow the community to decide its future. If approved by voters, the Local Recovery and Essential Services Measure would, until ended by voters, provide a source of locally controlled funding to prevent further cuts and support the local services residents value, using funding that the state legally cannot take.

To continue to center the community and promote strict accountability, the ordinance as written includes the formation of a citizen oversight committee to review local measure funds, and would require annual independent audits.

## **FISCAL IMPACTS**

The Local Recovery and Essential Services Measure is a 1% Sales Tax for General City Services and would generate approximately \$11 million per year. This sales tax is not a property tax, it is a transaction and use (sales) tax. Currently, the City receives one cent of the 7.75 cent sales tax per \$1. This measure if approved would generate one additional cent on each dollar spent for use in the City of Upland. If approved the sales tax would increase to 8.75%. Many cities in our area already have sales taxes that exceed 7.75%, including Montclair, Claremont, La Verne, Pomona, with Montclair announcing they will pursue and increase in their local sales tax. The California sales tax rate cap is 10.25%.

The City is currently at its core essential staffing and base program services and cannot cut more without impacting the level of services our residents have told us they value. Over the years, the City has implemented cost cutting measures through private-public partnerships, among other measures. This contracting out to private entities includes, Tree Trimming, Park and Landscape Grounds Maintenance, Street Sweeping, Traffic Signal Maintenance, Animal Shelter Services, Library Services, Recreation Instruction, Fire Services, Prisoner Transport operations, and staff augmentation activities. Because of these prudent past budget actions, there is simply no ability to reduce expenditures further without reducing the core services to the community.

COVID-19 severely impacted the City's financial resources, with millions of dollars in reductions in the initial budget submittal, including reductions to beneficial law enforcement programs and reductions to youth, adult, and senior services.

Based on the current revenue forecast, additional cuts to the Police, Public Works, Youth and Senior Services will be required due to the continued impacts of the pandemic unless an additional source of local funding is secured.

Throughout the survey process, Upland voters have indicated that they would be interested in a local funding measure to maintain local services, help the city recover and protect our quality of life. Staff recommends a measure be submitted to the voters for their consideration.

**ALTERNATIVES**

Provide alternative direction to staff.

**ATTACHMENTS:**

**Resolution**  
**Exhibit A - Ordinance**

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF UPLAND, CALIFORNIA APPROVING AN ORDINANCE ENACTING A 1.0% TRANSACTIONS AND USE (SALES) TAX TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION, AND ORDERING THE SUBMITTAL OF SAID ORDINANCE TO THE VOTERS AT THE NOVEMBER 3, 2020 ELECTION

WHEREAS, Keeping our City safe, clean and well- maintained will help protect local property values and keep Upland a special place to live; and

WHEREAS, Residents have indicated that they value essential City services, including services that reduce crime and gang activity, maintain local streets and roads, address homelessness, improve the local economy and job market, and prepare for public health emergencies like coronavirus, and wish to see them maintained; and

WHEREAS, Due to current budget constraints, made worse by COVID19, the City has already made significant reductions, and is considering additional deep cuts in all service areas, including police, 9-1-1 emergency response, the maintenance of streets, parks and public facilities, as well as programs for youth and seniors; and

WHEREAS, The City needs additional funding to keep up with basic repairs and maintenance to public facilities, storm drains, streets, and sidewalks, and that deferring this needed maintenance will cause them to deteriorate and become more expensive to repair in the future; and

WHEREAS, Providing a stable source of local funding during this period of economic recovery, this measure will ensure that the City can continue to provide essential services to residents and help our local businesses recover without relying on the State or Federal government to take care of our local needs; and

WHEREAS, This measure includes a clear system of accountability including citizen oversight and annual reports to the community to ensure that the money is spent properly, and all funds raised by the measure will be used to fund local essential services and facilities and cannot be taken by the State; and

Intent of the Parties and Findings

(i) The City of Upland - like many California cities - continues to face impending fiscal challenges, exacerbated by the impacts of COVID19. Upland is committed to securing local sources of future revenue to fund vital general City services and fiscal sustainability; and

(ii) If enacted, a local transaction and use tax of 1.00% would provide a protected, stable locally-controlled source estimated at about \$11,000,000 annually to fund the vital general City services the community relies on and help provide fiscal sustainability in the long-term; and

(iii) Section 7285.9 of the California Revenue and Taxation Code authorizes any city to levy, increase or extend a transactions and use tax for general purposes at a rate of 0.125 %, or a multiple thereof, subject to approval by a two-thirds vote of all of the members of the City Council and by a majority of the qualified voters of the City voting in an election on the issue; and

(iv) The City Council proposes to submit to the voters of the City an ordinance providing for the levy of a transaction and use tax at the next regular election.

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

Section 1. Intent of the Parties and Findings. The Intent of the Parties and Findings set forth in this Resolution are true and correct, and are supported by substantial evidence that has been presented to the City Council and the public during the May 26, 2020 City Council Meeting.

Section 2. Ordering Measure Submitted to Voters. The City Council has previously called a general municipal election to be held in the City on Tuesday, November 3, 2020, as established and implemented by the City Council in Resolution Number 6543 adopted on June 1, 2020. Pursuant to California Elections Code Sections 9222 and 10201, the City Council hereby orders that at the said election a transaction and use tax ordinance be submitted to the voters for approval. The full text of the Ordinance to be titled the "**Local Recovery & Essential City Services Measure**" is attached to this Resolution as Exhibit A and incorporated herein by this reference. The measure to be submitted to the voters shall appear and be printed on the ballot as follows:

<b>Local Recovery &amp; Essential City Services Measure</b>	
To maintain City of Upland’s essential services and help local residents and businesses recover, including 9-1-1 emergency capacity and response; street maintenance/pothole repair; police patrols, gang, drug, crime prevention; addressing homelessness; keeping parks and public areas safe and clean; shall an ordinance establishing a 1¢ sales tax be adopted, providing approximately \$11,000,000 annually for general city services until ended by voters, with citizen oversight, independent audits, all money controlled locally?	YES
	NO

Section 3. Approval of Ordinance: The City Council hereby approves the proposed Ordinance, attached to this Resolution as Exhibit A, to be submitted to the voters. The proposed measure is a new general tax, as defined in Article XIIC of the California Constitution, at a rate of 1.00% on transactions and uses in the City as

defined in the Ordinance, to be collected by the California Department of Tax and Fee Administration. It shall not take effect unless and until approved by a vote of at least a majority of the voters voting on the question at the election.

Section 4. Impartial Analysis: The City Attorney is hereby directed to prepare an impartial analysis of the measure pursuant to Elections Code Section 9280.

Section 5. That arguments for and against said measure may be filed in accordance with applicable provisions of the law. That the Council does not authorize the Council as a body or any individual member of the Council to file a written argument or any rebuttal argument for or against the measure. The City Clerk shall consider other arguments and rebuttal arguments filed by bona fide associations or individual residents who are eligible to vote in accordance with Elections Code Sections 9282 and 9285.

Section 6. Consolidation. Pursuant to Resolution Number 6543 adopted on June 1, 2020, the City Council has called a general municipal election to be held in the City on Tuesday, November 3, 2020, and requested pursuant to the requirements of §10403 of the Elections Code, that the Board of Supervisors of the County of San Bernardino consent and agree to the consolidation of a General Municipal Election with the Statewide General Election to be held on the same date. The consolidated election shall be held and conducted in the manner prescribed in §10418 of the Elections Code. Upon approval by the City Council of this Resolution, the City Clerk is hereby instructed to act in conformance with California Elections Code Section 10403 and to file a certified copy of this Resolution along with Resolution 6543 with the Board of Supervisors of San Bernardino County and to transmit a certified copy of the same to the San Bernardino County Elections Official.

Section 7. Certification. The City Clerk shall certify the adoption of this Resolution and enter it into the book of original resolutions.

PASSED, APPROVED and ADOPTED this 27th day of July, 2020.

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

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 27th day of July, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

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

Exhibit A

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF UPLAND, CALIFORNIA  
IMPOSING A ONE PERCENT TRANSACTIONS AND USE  
(SALES) TAX TO BE ADMINISTERED BY THE CALIFORNIA  
DEPARTMENT OF TAX AND FEE ADMINISTRATION

THE PEOPLE OF THE CITY OF UPLAND DO HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 3.52 is hereby added to the Upland Municipal Code to read as follows:

“3.52.010. TITLE. This ordinance shall be known as the City of Upland Local Recovery & Essential City Services Measure. The City of Upland hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

3.52.020. OPERATIVE DATE. "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance, the date of such adoption being as set forth below.

3.52.030. PURPOSE. This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the California Department of Tax and Fee Administration in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the California Department of Tax and Fee Administration in administering and collecting the California State Sales and Use Taxes.

D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

3.52.040. CONTRACT WITH STATE. Prior to the operative date, the City shall contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the City shall not have contracted with the California Department of Tax and Fee Administration prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

3.52.050. TRANSACTIONS TAX RATE. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of one-percent (1%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this ordinance.

3.52.060. PLACE OF SALE. For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the California Department of Tax and Fee Administration.

3.52.070. USE TAX RATE. An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the operative date of this ordinance for storage, use or other consumption in said territory at the rate of one-percent (1%) of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

3.52.080. ADOPTION OF PROVISIONS OF STATE LAW. Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

3.52.090. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES. In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. However, the substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Treasury, or the Constitution of the State of California;

2. The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the California Department of Tax and Fee Administration, in performing the functions incident to the administration or operation of this Ordinance.

3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;

b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

1. "A retailer engaged in business in the District" shall also include any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property in this state or for delivery in the State by the retailer and all persons related to the retailer that exceeds five hundred thousand dollars (\$500,000). For purposes of this section, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of Title 26 of the United States Code and the regulations thereunder.

3.52.100. PERMIT NOT REQUIRED. If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this ordinance.

3.52.110. EXEMPTIONS AND EXCLUSIONS.

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

b. With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this City of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.

2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under

a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

7. "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

3.52.120. AMENDMENTS. All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

3.52.130. ENJOINING COLLECTION FORBIDDEN. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.”

Section 2. OVERSIGHT COMMITTEE. Following adoption of this Ordinance, the Mayor shall appoint a five-member Citizen’s Advisory Committee with the consent of the City Council. The City Council shall, by resolution, adopt guidelines for the duties of the Citizen’s Advisory Panel which shall include, but not be limited to, receiving reports from staff not less than twice each fiscal year on revenues and expenditures from the tax imposed by this Ordinance and review of an annual spending plan. The Committee shall otherwise be subject to the provisions in Chapter 2.16 of the Upland Municipal Code.

Section 3. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 4. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately upon approval by the voters.

PASSED AND ADOPTED by the People of the City of Upland, State of California, at the General Municipal Election held on Tuesday, November 3, 2020.

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

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

Approved as to Form: \_\_\_\_\_  
Steven Flower, City Attorney