DUE TO THE ONGOING EMERGENCY CONCERNING THE COVID-19 VIRUS, THIS CITY COUNCIL MEETING WILL BE CONDUCTED PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER N-29-20 WHICH SUSPENDS CERTAIN REQUIREMENTS OF THE RALPH M. BROWN ACT.

RESIDENTS MAY OBSERVE THE MEETING REMOTELY VIA LIVESTREAM ON THE CITY WEBSITE OR ON SPECTRUM CABLE TV CHANNEL 3 AND FRONTIER CABLE TV CHANNEL 26

FOR DETAILED INFORMATION ON HOW TO PARTICIPATE IN REMOTE PUBLIC COMMENT PLEASE VISIT OUR WEBSITE AT: www.uplandca.gov/city-council-agendasminutes OR CONTACT THE CITY CLERK'S OFFICE AT 909-931-4120

AGENDA ATTACHED

UPLAND CITY COUNCIL

AGENDA
May 26, 2020
City Council Chamber

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

ROSEMARY HOERNING, CITY MANAGER
STEVEN FLOWER, INTERIM CITY ATTORNEY

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.

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 None

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7:00 PM

5. INVOCATION

6. PLEDGE OF ALLEGIANCE

7. PRESENTATIONS

Update from Supervisor Curt Hagman on the Coronavirus (COVID-19) emergency

8. CITY ATTORNEY

9. ORAL COMMUNICATIONS

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

10. COUNCIL COMMUNICATIONS

11. CONSENT CALENDAR

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

A. APPROVAL OF MINUTES

Approve the Regular Meeting Minutes of May 11, 2020 and the Special Workshop Minutes of May 18, 2020. (Staff Person: Keri Johnson)

B. 2ND READING OF ORDINANCE 1940 APPROVING AN AMENDMENT TO DEVELOPMENT AGREEMENT NO. DA-1501 FOR THE ENCLAVE AT UPLAND SPECIFIC PLAN, EXTENDING THE AGREEMENT TO JULY 27, 2022 FOR THE PROPERTY GENERALLY LOCATED ON THE SOUTH SIDE OF FOOTHILL BOULEVARD AND BOUNDED BY DEWEY WAY, 11TH STREET, AND WEST OF CENTRAL AVENUE

Hold second reading by number and title only, waive further reading, and adopt Ordinance No. 1940 approving and adopting an Amendment (File No. DA 20-0002) to Development Agreement No. DA 15-01 for The Enclave at Upland Specific Plan Project, between the City of Upland and Lewis Land Developers, LLC, extending the term of the Development Agreement from July 27, 2020, to July 27, 2022, for a 19-acre site located at on the south side of Foothill Boulevard, the north side of 11th Street, with Central Avenue to the east, and adjacent on Dewey Avenue to the west (Assessor's Parcel Numbers 1007-051-02, 03, 04 and 1007-041-05, 06, 07). (Staff Person: Robert Dalquest)

C. 2ND READING OF ORDINANCE 1941 AMENDING CHAPTER 10.40 OF THE UPLAND MUNICIPAL CODE

Hold second reading by number and title only, waive further reading, and adopt Ordinance No. 1941 amending Chapter 10.40 (stopping, standing, or parking restricted or prohibited on certain streets, publicly owned or operated off-street parking facilities, and in specified areas of city parks) of the Upland Municipal Code to incorporate state law provisions for enforcement of designated electric vehicle parking stalls or spaces

exclusively for electric charging purposes. (Staff Person: Stephen Parker)

D. 2ND READING OF ORDINANCE 1942 ADDING CHAPTER 9.60 TO THE UPLAND MUNICIPAL CODE PROHIBITING SMOKING AND VAPING IN PUBLIC SPACES

Hold second reading by number and title only, waive further reading, and adopt Ordinance No. 1942 adding Chapter 9.60 (Smoking and Vaping Prohibited in Public Spaces) to the Upland Municipal Code. (Staff Person: Robert Dalquest)

E. GENERAL MUNICIPAL ELECTION - NOVEMBER 3, 2020

Adopt a Resolution calling and giving notice of holding a General Municipal Election on Tuesday, November 3, 2020, for the election of certain officers and requesting the Board of Supervisors of the County of San Bernardino consent to the consolidation of the General Municipal Election of the City of Upland with the Statewide General Election held pursuant to Elections Code Section 10403. It is further recommended that the City Council adopt a Resolution establishing regulations for candidates for elective office pertaining to candidates' statements submitted to the voters at an election to be held on Tuesday, November 3, 2020. (Staff Person: Keri Johnson)

F. CONSIDERATION OF THE SECOND AMENDMENT TO THE AGREEMENT FOR CONSULTANT SERVICES WITH INTERWEST CONSULTING GROUP, INC.

Approve the Second Amendment to the Agreement for consultant services to extend the contract one year with Interwest Consulting Group, Inc. and authorize the City Manager to execute the Second Amendment. (Staff Person: Robert Dalquest)

G. CONSIDERATION OF THE SECOND AMENDMENT TO THE AGREEMENT FOR CONSULTANT SERVICES WITH ANNEALTA GROUP

Approve the Second Amendment to the agreement for consultant services to extend the contract one year with Annealta Group, and authorize the City Manager to execute the Second Amendment. (Staff Person: Robert Dalquest)

H. ACCEPTANCE OF WORK FOR THE ENERGY EFFICIENCY AND SOLAR ENERGY PROJECT

Accept the work, authorize recordation of the Notice of Completion, and release the retention for the Energy Efficiency and Solar Energy Projects. (Staff Person: Robert Dalquest)

I. FOURTH AMENDMENT TO THE AGREEMENT WITH THE ZAPPIA LAW FIRM FOR LABOR AND EMPLOYMENT LAW SERVICES

Approve the fourth amendment to the original agreement with The Zappia Law Firm for labor and employment law services; and authorize the City Manager to execute the amendment. (Staff Person: Stephen Parker)

12. PUBLIC HEARINGS

13. COUNCIL COMMITTEE REPORTS

14. BUSINESS ITEMS

A. COOPERATIVE AGREEMENT FOR THE METROLINK STATION ACCESSIBILITY IMPROVEMENT PROJECT PHASE II

Approve a Cooperative Agreement with the San Bernardino County Transportation Authority, for the purpose of designing and constructing safe pedestrian/bicycle accessibility improvements within the sphere of influence of the Upland Metrolink Station; and authorize the City Manager

to execute the Agreement. (Staff Person: Steve Nix)

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, June 8, 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.

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 May 20, 2020 a true and correct copy of this agenda was posted at 450 N. Euclid Avenue (Upland Public Library) and 460 N. Euclid Avenue (Upland City Hall) and the City website at www.uplandca.gov.

MINUTES OF THE REGULAR MEETING OF THE
UPLAND CITY COUNCIL
MAY 11, 2020

OPENING The regular meeting of the Upland City Council was called to order by Mayor Debbie Stone at 6:04 p.m. in the Council Chamber of the Upland City Hall.

1. ROLL CALL

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

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

This City Council meeting was conducted pursuant to the Governor's Executive Order N-29-20 which suspended certain requirements of the Brown Act. The Mayor was present in the City Council Chamber and all other Council Members and staff were present via videoconference. The public was able to observe the meeting via live stream on the City's website or on the public access cable channels. Public comment was taken via telephone.

2. ADDITIONS/DELETIONS TO AGENDA None

3. ORAL COMMUNICATIONS None

4. CLOSED SESSION

At 6:05 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 (WORKER'S COMP CLAIMS)
(Paragraph (1) of subdivision (d) of California Government Code Section 54956.9)

Claimant: Donna Stephenson
Agency: City of Upland

B. CLOSED SESSION CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Paragraph (1) of subdivision (d) of California Government Code Section 54956.9)

Case Name: Yoakum v. City of Upland
San Bernardino County Superior Court of California Case No. CIV-DS-172-1778

C. CLOSED SESSION CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Paragraph (1) of subdivision (d) of California Government Code Section 54956.9)

Case Name: Yoakum v. City of Upland
San Bernardino County Superior Court of California Case No. CIV-DS-181-7026

D. CLOSED SESSION CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Paragraph (1) of subdivision (d) of California Government Code Section 54956.9)

Case Name: Simpson v. City of Upland
San Bernardino County Superior Court of California Case No. CIV-DS-180-9093

The City Council reconvened in open session at 7:02 p.m.

5. INVOCATION None

6. PLEDGE OF ALLEGIANCE Councilmember Felix

7. PRESENTATIONS None

8. CITY ATTORNEY

Interim City Attorney Flower announced there was nothing to report from Closed Session.

9. ORAL COMMUNICATIONS None

10. COUNCIL COMMUNICATIONS

Councilmembers announced various resources available to the community during the COVID-19 emergency and provided an update on the meetings they attended.

11. CONSENT CALENDAR

Motion by Councilmember Zuniga to approve the Consent Calendar, seconded by Councilmember Velto, and carried unanimously.

A. APPROVAL OF MINUTES

Approved the Regular Meeting Minutes of April 27, 2020.

B. APPROVAL OF APRIL WARRANT AND PAYROLL REGISTERS

Approved the April Warrant Registers (check numbers 29643-30117 and Direct Disbursements totaling $6,725,973.79 and Payroll Registers totaling $1,148,047.56 (check Numbers 161362-161378 and EFT's 20712-21210).

C. AMENDMENT OF THE POLICIES AND PROCEDURES RELATIVE TO THE ESTABLISHMENT AND OPERATION OF COMMISSIONS, COMMITTEES, BOARDS, AND AUTHORITIES APPOINTED TO ADVISE THE CITY COUNCIL

Adopted Resolution No. 6539 amending the policies and procedures relative to the establishment and operation of Commissions, Committees, Boards, and Authorities appointed to advise the City Council.

D. ACCEPTANCE OF AGREEMENTS FOR WATER QUALITY MANAGEMENT PLANS FOR VARIOUS PROJECT LOCATIONS

Approved the Covenant and Agreements Regarding Water Quality Management Plan and Storm Water Best Management Practices Transfer, Access, and Maintenance for Tract 20045 and Parcel Map 19562, accepted a $10,000 cash security for each agreement and authorized recordation of said agreements.

E. APPROVAL OF AN AMENDMENT OF THE PROFESSIONAL SERVICES AGREEMENT FOR BENEFIT BROKER SERVICES

Approved the amendment of the Professional Services Agreement for Benefit Broker services with Keenan and Associates; and authorized the City Manager to execute the agreement.

F. MODIFICATION TO EXISTING LIBRARY AGREEMENT

Received and filed information pertaining to modifications made to the existing library agreement due to its emergency closure as a result of the COVID-19 pandemic.

G. SALES TAX UPDATE

Received and filed sales tax projection information pertaining to the current fiscal year and FY 2020/21.

12. PUBLIC HEARINGS

A. FISCAL YEAR 2020-24 CONSOLIDATED PLAN AND FISCAL YEAR 2020-21 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ONE-YEAR ACTION PLAN

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

Community Development Block Grant Committee Chair Hydee Hall presented the recommendations of the Committee.

Mayor Stone opened the public hearing and hearing no testimony, closed the public hearing.

Motion by Councilmember Felix to adopt Resolution No. 6540 approving the City of Upland Consolidated Plan for Fiscal Years 2020-24 and the One-Year Action Plan for Fiscal Year 2020-21; and, authorize the City Manager to execute any and all necessary and related documents to implement the FY 2020-21 Plan, seconded by Councilmember Velto, and carried unanimously.

B. CONSIDERATION OF AN ORDINANCE APPROVING AN AMENDMENT TO DEVELOPMENT AGREEMENT NO. DA 15-01 FOR THE ENCLAVE AT UPLAND SPECIFIC PLAN, EXTENDING THE TERM OF THE DEVELOPMENT AGREEMENT FROM JULY 27, 2020 TO JULY 27, 2021 FOR THE PROPERTY GENERALLY LOCATED ON THE SOUTH SIDE OF FOOTHILL BOULEVARD AND BOUNDED BY DEWEY WAY, 11TH STREET, AND WEST OF CENTRAL AVENUE FURTHER

DESCRIBED AS ASSESSOR'S PARCEL NUMBERS 1007-051-02, 03, 04 AND 1007-041-05, 06, 07.

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

Adam Collier, Project Manager for the Lewis Group of Companies, provided an update on the progress of the Development Project.

Mayor Stone opened the public hearing and hearing no testimony, closed the public hearing.

There was the suggestion to extend the Development Agreement for a period of two years, until July 27, 2022.

Motion by Councilmember Elliott to hold first reading by title only, waive further reading, and introduce Ordinance No. 1940 of the City Council of the City of Upland approving and adopting an Amendment (File No. DA 20-0002) to Development Agreement No. DA 15-01 for The Enclave at Upland Specific Plan Project, between the City of Upland and Lewis Land Developers, LLC, extending the term of the Development Agreement from July 27, 2020, to July 27, 2021, for a 19-acre site located at on the south side of Foothill Boulevard, the north side of 11th Street, with Central Avenue to the east, and adjacent on Dewey Avenue to the west (Assessor's Parcel Numbers 1007-051-02, 03, 04 And 1007-041-05, 06, 07) with the following amendment; all references to July 27, 2021 are revised to July 27, 2022 and all references to a one (1) year extension are amended to a two (2) year extension. The motion was seconded by Councilmember Velto, and carried unanimously.

13. COUNCIL COMMITTEE REPORTS

A. FINANCE COMMITTEE MEETING, APRIL 22, 2020

Councilmember Elliott 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. CONSIDERATION OF AN ORDINANCE AMENDING CHAPTER 10.40 OF THE UPLAND MUNICIPAL CODE

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

Motion by Councilmember Elliott to hold first reading by title only, waive further reading, and introduce Ordinance No. 1941 of the City Council of the City of Upland amending Chapter 10.40 (stopping, standing, or parking restricted or prohibited on certain streets, publicly owned or operated off-street parking facilities, and in specified areas of city parks) of the Upland Municipal Code to incorporate state law provisions for enforcement of designated electric vehicle parking stalls or spaces exclusively for electric charging purposes, seconded by Councilmember Zuniga, and carried unanimously.

B. CONSIDERATION OF A RESOLUTION UPDATING THE PARKING CITATION BAIL SCHEDULE

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

Motion by Councilmember Felix to adopt Resolution No. 6541 amending the master fee schedule to update the parking citation bail schedule, seconded by Councilmember Velto, and carried unanimously.

C. CONSIDERATION OF A RESOLUTION UPDATING THE MASTER FEE SCHEDULE TO ESTABLISH ELECTRIC VEHICLE CHARGING STATION RATES

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

There was discussion on the charging rates and parking enforcement for users that are not charging the vehicle, but utilizing the spaces.

Motion by Councilmember Zuniga to adopt Resolution No. 6542 amending the master fee schedule to establish electric vehicle charging station rates, seconded by Councilmember Felix, and carried unanimously.

D. SOLID WASTE COLLECTION, PROCESSING AND DISPOSAL SERVICES

Interim Public Works Director Nix presented the staff report, which is on file in the City Clerk's Office.

Mike Arreguin of Burrtec provided an overview of the services that are provided under the contract.

There was discussion on the street sweeping services and additional costs the City would incur by initiating the wind down period.

Motion by Councilmember Elliott to extend the solid waste service contract with Burrtec Waste Industries, Inc. by not initiating the process to commence the wind down period, seconded by Councilmember Velto, and carried unanimously.

E. CONSIDERATION OF AN ORDINANCE ADDING CHAPTER 9.60 TO THE UPLAND MUNICIPAL CODE PROHIBITING SMOKING AND VAPING IN PUBLIC SPACES

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

Motion by Councilmember Elliott to postpone the item until Council meetings were open for public attendance, there being no second, the motion failed.

Motion by Councilmember Felix hold first reading by title only, waive further reading, and Ordinance No. 1942 adding Chapter 9.60 (Smoking and Vaping Prohibited in Public Spaces) to the Upland Municipal Code, seconded by Councilmember Zuniga, and carried unanimously.

15. ORAL COMMUNICATION (items not on the agenda)

Natasha Walton, spoke in opposition to an apartment project on Mesa Court and questioned when the item would come before the Council for review.

16. CITY MANAGER

Councilmember Felix announced that he would be resigning from the City Council effective May 31, 2020 as his family was provided an opportunity that would require them to relocate outside of the City.

17. ADJOURNMENT

Mayor Stone adjourned the meeting at 8:52 p.m. The next regularly scheduled City Council meeting is Tuesday, May 26, 2020.

SUBMITTED BY Keri Johnson, City Clerk

APPROVED May 26, 2020

MINUTES OF THE SPECIAL WORKSHOP OF THE
UPLAND CITY COUNCIL
May 18, 2020

OPENING The special workshop of the Upland City Council was called to order by Mayor Debbie Stone at 9:08 a.m. in the Council Chamber of the Upland City Hall.

1. ROLL CALL

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

Staff: City Manager Director Rosemary Hoerning and City Clerk Keri Johnson

2. ORAL COMMUNICATIONS

3. FISCAL YEAR 2020-21 BUDGET WORKSHOP

City Manager Hoerning provided a brief budget introduction.

Assistant City Manager Parker presented a detailed overview of the Fiscal Year 2020-21 budget along with a PowerPoint presentation which is on file in the City Clerk's office. Department heads then provided an overview of individual department budgets and answered questions posed by the Council.

There was discussion regarding the potential long term financial impacts from the COVID-19 emergency, the possible need for additional budget cuts in the future, and a budget review in October 2020 instead of waiting until the mid-year budget review.

The Council directed staff to explore an additional $1 million in budget reduction options for the Fiscal Year 2020-21 budget.

4. ADJOURNMENT

Mayor Stone adjourned the meeting at 11:23 a.m. The next regular meeting of the City Council is Tuesday, May 26, 2020.

SUBMITTED BY: _____
Keri Johnson, City Clerk

APPROVED: May 26, 2020

SECOND READING AND ADOPTION
Ord No. 1940 Date 5/20/20 Item No. 11B

STAFF REPORT

~~ITEM NO. 12.B~~.

DATE:	May 11, 2020
TO:	MAYOR AND CITY COUNCIL
FROM:	ROSEMARY HOERNING, CITY MANAGER
PREPARED BY:	ROBERT D. DALQUEST, DEVELOPMENT SERVICES DIRECTOR MIKE POLAND, CONTRACT PLANNING MANAGER
SUBJECT:	CONSIDERATION OF AN ORDINANCE APPROVING AN AMENDMENT TO DEVELOPMENT AGREEMENT NO. DA 15-01 FOR THE ENCLAVE AT UPLAND SPECIFIC PLAN, EXTENDING THE TERM OF THE DEVELOPMENT AGREEMENT FROM JULY 27, 2020 TO JULY 27, 2021 FOR THE PROPERTY GENERALLY LOCATED ON THE SOUTH SIDE OF FOOTHILL BOULEVARD AND BOUNDED BY DEWEY WAY, 11TH STREET, AND WEST OF CENTRAL AVENUE FURTHER DESCRIBED AS ASSESSOR'S PARCEL NUMBERS 1007-051-02, 03, 04 AND 1007-041-05, 06, 07.

RECOMMENDED ACTION

It is recommended that the City Council hold first reading by title only, waive further reading, and introduce an Ordinance of the City Council of the City of Upland approving and adopting an Amendment (File No. DA 20-0002) to Development Agreement No. DA 15-01 for The Enclave at Upland Specific Plan Project, between the City of Upland and Lewis Land Developers, LLC, extending the term of the Development Agreement from July 27, 2020, to July 27, 2021, for a 19-acre site located at on the south side of Foothill Boulevard, the north side of 11th Street, with Central Avenue to the east, and adjacent on Dewey Avenue to the west (Assessor's Parcel Numbers 1007-051-02, 03, 04 and 1007-041-05, 06, 07).

GOAL STATEMENT

The proposed action supports the City's goals to revitalize the College Heights Area of Upland and create a high-quality infill development that provides a variety of residential unit types and sizes, with supporting amenities and infrastructure improvements.

BACKGROUND

On July 27, 2015, the City Council adopted Ordinance No. 1894 (Exhibit H) thereby adopting Specific Plan No. 15-01 for "The Enclave at Upland Specific Plan". The Enclave at Upland Specific Plan" facilitates the development of up to 350 single family attached and/or detached homes and 0.83 acres of private recreational and park space. The Specific Plan provides residential development standards for a variety of attached and detached product types ranging from 12 to 20 dwelling units per acre, along with a variety of architectural styles and landscape guidelines.

The project site is approximately nineteen (19) acres in size and is located between Foothill Boulevard to the north and Eleventh Street to south, between Dewey Way on the west and Central Avenue to the east. The approved Harvest at Upland (Upland Crossing) Specific Plan is located just west of the subject property. A Monte Vista Water District facility adjoins a portion of the project site along its westerly boundary, with several commercial uses and a warehouse facility bordering the easterly boundary. A portion of the project site is currently used as a recreational vehicle dealership. The remaining land area is undeveloped. (Exhibits C & D).

In addition to approving the Specific Plan on July 27, 2015, the City Council adopted Ordinance No. 1896 (Exhibit I) thereby approving Development Agreement No. DA 15-01 for the Specific Plan. The Development Agreement is between the City of Upland and Lewis Land Developers, LLC. The Development Agreement addresses such items as the terms and duration of the agreement; transfers and assignments of the agreement; liability; development provisions; processing of entitlements, permits and approvals; and obligations of all parties for such items as development fees, phasing and installation of public improvements and benefits to be provided by the owner, developer and the City. The current Development Agreement is set to expire on July 27, 2020.

Per Section 3.5.2 of the existing Development Agreement (DA 15-01), the procedure for proposing and adopting an amendment to the Agreement shall be the same as the procedure required for entering into the Agreement in the first instance. The current Development Agreement was processed per Upland Municipal Code Section 17.50.030 (Review Authority) which requires that the City Council take action on all Development Agreement applications after considering the recommendation of the Planning Commission and Development Services Director.

The Planning Commission considered this matter at a regularly scheduled meeting on March 25, 2020. After hearing from staff, the Applicant, and members of the public, the Commission voted 7-0 to recommend that the City Council approve the proposed Amendment (File No. DA 20-0002) to The Enclave at Upland Specific Plan Development Agreement (DA 15-01). (See Exhibit E).

ISSUES/ANALYSIS

As mentioned above, the current Development Agreement is set to expire on July 27, 2020. More specifically, per Section 2.3 of the recorded Development Agreement, the current Development Agreement will expire at 11:59 p.m. on the fifth (5th) anniversary of the effective date, which is July 27, 2020, unless it is extended by the City Council. However, the term of Development Agreement would automatically be extended for five (5) additional years upon the Developer's recordation a final tract map for the project prior to expiration of the initial five (5) year term and then also be extended for an additional five (5) years if the Developer or a merchant builder has pulled building permits for a minimum of 50% of the residential units in the project prior to expiration of the tenth (10th) year of the term. The

total term of the Agreement does not exceed fifteen (15) years. To date, a final tract map has not been recorded nor has the Developer or merchant builder pulled any building permits.

Lewis Land Developers, LLC's reasoning for the extension request is that: 1) they have incurred significant delays in the State and Federal permitting for the adjacent Harvest at Upland project in which they were the Master Developer, and pushed back opening that community for over 2 years; 2) no builders were interested in The Enclave project until the Harvest at Upland project was substantially complete in Spring of this year as it would directly compete with the Enclave; and 3) they are currently working with a potential builder to move forward, but lack sufficient time to process the tentative tract map and record a final map due to items 1 and 2 above. Therefore, this extension is being requested by Lewis Land Developers, LLC.

In addition to Section 2.3 discussed above, Section 4.2.1 of the originally approved Development Agreement, read as follows:

> 4.2.1 Development Agreement Fee. Provided the Agreement has not been terminated under Sections 2.3 or 2.4, DEVELOPER agrees to pay to CITY, on or before December 16, 2017, the amount of $350,000 as a Development Agreement Fee. The CITY shall make every attempt to use the Development Agreement Fee within 12 months after payment by the DEVELOPER to purchase a new fire apparatus for the CITY. CITY agrees that payment of the Development Impact Fee shall be a full credit against and completely satisfy DEVELOPER's obligations for payment of the CITY's Fire Impact Fee for a maximum of 350 dwelling units in the Project (currently $432 per dwelling unit).
>
> On December 16, 2016 the City and the Developer agreed to enter into the First Operating memorandum (Exhibit G) in accordance with Section 3.5.4 of the Agreement to revise Section 4.2.1 as worded above to: (i) phase the payment of the Development Agreement Fee; and, (ii) to remove the requirement that the City make every attempt to use the Development Agreement Fee within 12 months after payment to purchase a new fire apparatus for the City Fire Department.
>
> Section 4.2.1 now reads as follows:
>
>> "4.2.1. Provided the Agreement has not been terminated under Sections 2.3 or 2.4, DEVELOPER agrees to pay CITY, the amount of $350,000 as a Development Agreement Fee as follows: (i) $175,000 on December 16, 2016, and (ii) $175,000 on June 30, 2017. The CITY may use the Development Agreement Fee for any public purpose at its discretion. CITY agrees that payment of the Development Impact Fee ("DIF") may be credited by DEVELOPER as a DIF Credit either (i) against the CITY's Fire Impact Fee to completely satisfy DEVELOPER's obligations for payment of the CITY's Fire Impact Fee for a maximum of 350 dwelling units in the Project (currently $432 per dwelling unit), or (ii) if the CITY ceases collection of the Fire Impact Fee by reason of the annexation to SBCFD, then against another DIF charged to the Project."

The two required payments of $175,000 referenced above have been paid to the City. These payments were placed in the City's General Fund and disbursed on the basis of need.

On January 15, 2020, Lewis Land Developers, LLC, submitted a Preliminary Review Application for the proposed development of 192 residential units comprised of 116, 2-story detached condominium units and 76, 3-story attached condominium units within The Enclave at Upland Specific Plan area. The proposal also includes a centralized recreation area comprised of a pool and spa, small recreation building, and open space play lot.

A Preliminary Review Application is the first step in the formal planning entitlement process. The Preliminary Review Application is submitted prior to submitting the formal planning

entitlement applications and includes a meeting with the project's representatives (e.g., sponsor, agent, and architect) and staff. The preliminary review will ensure that it meets the applicable requirements as well as development and design-related criteria. A Preliminary Review Application does not guarantee the approval of any formal planning entitlement applications, nor can staff assure approval.

The Preliminary Review Application provides a one-on-one opportunity for the staff to outline the specific zoning issues, permits and procedures (e.g., Design Review, Site Plan, and Tentative Tract Map) associated with the project. Staff will also provide and review the appropriate permit application packet, submittal checklist, timelines and fees. Preliminary Review Applications that are submitted early in the project stage can help ensure that the project meets necessary requirements and avoids costly delays.

It is most likely that the formal planning entitlements submittal and approval process will extend past the current deadline specified in Development Agreement No. 15-01 which is July 27, 2020. In discussion with Lewis Land Developers, LLC, as they pursue their planning entitlements, they will continue to allow the RV Spa business interim use of the property during the entitlement process, as they understand the sales tax benefit to the City of RV Spa's operation, and they will continue to work with the RV Spa business owner and the City on possible relocation of their business within the City of Upland.

Staff finds the following City interests that would be achieved with the approval of the proposed Amendment would:

- Continue to encourage development in the western portion of Upland, consistent with The Enclave at Upland Specific Plan, which will provide additional revenues to the City, and completion of key infrastructure.
- Extend the term of the Development Agreement for an additional year to allow the developer additional time to obtain City approvals and develop the property.
- Allow the continued interim use of the property by the RV Spa business during the entitlement process which is a sales tax benefit to the City from that business operation.
- Allow the City and Lewis Land Developers, LLC, additional time to work with the owner of the RV Spa business on possible relocation of their business within the City of Upland.

On this basis, the Planning Commission supported the proposed Amendment to the Development for The Enclave at Upland Specific Plan.

Required Findings

Pursuant to Upland Municipal Code Section 15.50.080 (Findings), the following findings are required to be made for the Development Agreement Amendment:

a. The Development Agreement will provide clear and substantial benefits to the City and its residents.

FACT: The applicant has previously paid to the City two payments of $175,000. These payments were placed in the City's General Fund and disbursed on the basis of need. In addition, as consideration for the City's approval and performance of its obligations set forth in this Agreement, the Developer is required to pay the City a development impact fee in the sum of $18,111.00 per residential dwelling unit as part of the Project. With potentially 192 residential units proposed this fee equals $3,477,312.00 (192 x $18,111.000/unit). The development impact fee is imposed by the City on a new or proposed development project to pay for all or a portion of the costs of providing public services to the new development.

In addition, a park area measuring 0.83 acres is provided in PA-5 and may include a tot-lot, picnic area, barbeque area, exercise stations, and a grassy open space.

b. The Development Agreement complies with applicable policies and regulations set forth in the Zoning Ordinance, other City ordinances, the General Plan and any other applicable community or specific plan.

FACT: The Enclave at Upland Specific Plan was approved in order to establish appropriate zoning to regulate land use and development of the Property consistent with the General Plan. The Specific Plan represents an expansion of the residential neighborhood approved and under construction just west of the project site (Harvest Specific Plan).

The Enclave at Upland Specific Plan allows up to 350 single family attached and/or detached homes. The standards, design guidelines, and development parameters unique to The Enclave at Upland are provided in the Specific Plan document, and it acts as the "zoning code" for the project.

c. The Development Agreement complies with the requirements of California Government Code Sections 65864 et seq.

FACT: The Development Agreement assists the Developer with reducing the economic costs of development by providing assurance to the Developer that they may proceed with projects consistent with existing land use policies, rules, and regulations, the California Legislature adopted California Government Code Sections 65864-65869.5 (the "Development Agreement Statute") authorizing cities and counties to enter into development agreements with persons or entities having a legal or equitable interest in real property located within their jurisdiction.

d. The Development Agreement will promote the public health, safety, and welfare, and will not be detrimental to or cause adverse effects to the residents, property, or improvements in the vicinity of the subject project.

FACT: On July 13, 2015, the City Council certified the project's Mitigated Negative Declaration for The Enclave at Upland Specific Plan. The Mitigated Negative Declaration was prepared for the project pursuant to the California Environmental Quality Act Guidelines. Based on the Initial Study/Mitigated Negative Declaration completed, it was determined that the project would not have a significant effect on the environment. The Mitigated Negative Declaration includes a Mitigation Monitoring Program, which will ensure the completion of required mitigation measures for the project.

e. The Development Agreement will be compatible with the uses allowed in, and the regulations that apply to, the zone in which the subject property is located.

FACT: The proposed uses, development standards and design guidelines contained in Chapters 2 and 3 of The Enclave at Upland Specific Plan are tailored to guide the development of the proposed uses on site, and ensure that new development implements the vision of The Enclave at Upland Specific Plan. Standards and guidelines address permitted uses; the placement; height and orientation of the buildings; parking; open space provisions; circulation and access; and architectural and landscape design.

f. The Development Agreement will not cause adverse effects to the orderly development of property or the preservation of property values in the City.

FACT: The orderly and measured build-out of the Project will allow for the absorption of the new development into the community and the integration of the Project into the community.

g. The Development Agreement will further important Citywide goals and policies that have been officially recognized by the City Council.

FACT: The development agreement is consistent with the General Plan, and its goals, objectives, policies and programs. Furthermore, The Enclave at Upland Specific Plan is consistent with and supportive of the goals and policies of the City of Upland General Plan in that multi-family residential projects should, through the application of state-of-the-art site planning techniques, provide an efficient, desirable residential environment for the inhabitants of the project and enrich the visual quality of the City.

h. The Development Agreement will provide the City with important, tangible benefits beyond those that may be required by the City through project conditions of approval.

FACT: In addition to providing Development Impact Fees of over $3,000,000 and associated plan check/permit fees for potentially 192 residential units, related fees to the City will also include plan check and permit fees for the construction of infrastructure. Also, the project will increase property tax revenue to the City by increasing the assessed value of the property upon completion of the project.

CEQA

The California Environmental Quality Act (CEQA) requires analysis of agency approvals of discretionary "Projects." A "Project," under CEQA, is defined as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." The proposed Project is a project under CEQA.

State CEQA Guidelines Section 15162 (Subsequent EIRs and Negative Declarations) provides that when an EIR has been certified or negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, that there are new significant environmental effects due to a change in the project or circumstances, or there is new information of substantial importance as identified in CEQA Guidelines Section 15162(a)(3). On July 13, 2015, the City Council approved Resolution No. 6287 thereby adopting the Mitigated Negative Declaration and Mitigation Monitoring Program for The Enclave at Upland Specific Plan project (SCH No. 2015061026). Potential environmental impacts of The Enclave at Upland Specific Plan project were analyzed as part of the MND. The proposed Amendment to the Development Agreement provides an extension to July 27, 2021, of the terms of the Development Agreement and there is no development proposal for the property at this time and its underlying zoning designation will remain unchanged. The amendment to the DA will not result in any new impacts, changes to the project nor has there been new information of substantial importance that was not known at the time the MND was adopted; therefore, no further environmental review is required pursuant to CEQA Guidelines Section 15162.

Notification

Pursuant to Title 17, Land Use Code, Section 17.46.020, Notice of Hearing, a public hearing notice has been mailed to all 40 property owners within 300 feet as listed on the San Bernardino County Real Property Tax Assessment rolls and has been published in the Daily Bulletin at least 10 days prior to the hearing. This agenda item has been provided to the applicant and its representative through posting of the agenda packet on the City's website.

FISCAL IMPACTS

There is no fiscal impact at this time but in the future, based on the Preliminary Review submitted, development of the Enclave Specific area will add additional development impact fees of approximately $3,477,312.00 if 192 dwelling units were constructed. In addition, the general fund would receive associated plan check/permit fees for 192 attached and/or detached single family residential units. Related fees to the City will also include plan check and permit fees for the construction of infrastructure. The project will increase property tax revenue to the City by increasing the assessed value of the property upon completion of the project.

ALTERNATIVES

1. The City Council may approve an extension of an additional 1 year for the term of the Development Agreement to allow for the processing of a tentative tract map and recordation of a final map.
2. The City Council could approve an extension for more than 1 year for the term of the Development Agreement to allow for the processing of a tentative tract map and recordation of a final map.
3. The City Council may deny the request for an extension of the Development Agreement for the Enclave at Upland Specific Plan.

ATTACHMENTS:

Exhibit A: Draft City Council Ordinance Amending Development Agreement No. 15-01
Exhibit B: Amendment to Development Agreement No. 15-01
~~**Exhibit C: Aerial Map of Site**~~
~~**Exhibit D: Enclave Land Use Plan**~~
~~**Exhibit E: Planning Commission Resolution**~~
~~**Exhibit F: 2015 Approved/Recorded Development Agreement No. 15-01**~~
~~**Exhibit G: First Operating Memorandum**~~
~~**Exhibit H: Ordinance No. 1894**~~
~~**Exhibit I: Ordinance No. 1896**~~

MEMORANDUM

TO: Mayor and City Council

FROM: Robert D. Dalquest, Development Services Director
Mike Poland, Contract Planning Manager

DATE: May 26, 2020

RE: Second Reading of an Ordinance of the City of Upland approving and adopting an Amendment (File No. DA 20-0002) to Development Agreement No. DA 15-01 for the Enclave at Upland Specific Plan, between the City of Upland and Lewis Land Developers, LLC, extending the term of the Development Agreement from July 27, 2020 to July 27, 2022, for the property generally located on the south side of Foothill Boulevard and bounded by Dewey Way, 11th Street, and west of Central Avenue further described as Assessor's Parcel Numbers 1007-051-02, 03, 04 and 1007-041-05, 06, 07.

On May 11, 2020 the City Council held first reading of the above referenced Ordinance and approved an Amendment to the Development Agreement. The approval included extending the expiration date of the Amendment to the Development Agreement from July 27, 2020 to July 27, 2022. The attached Ordinance and Amendment to the Development Agreement reflect this updated revision to the expiration date.

ORDINANCE NO. 1940

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UPLAND APPROVING AND ADOPTING AN AMENDMENT (FILE NO. DA 20-0002) TO DEVELOPMENT AGREEMENT NO. DA 15-01 FOR THE ENCLAVE AT UPLAND SPECIFIC PLAN, BETWEEN THE CITY OF UPLAND AND LEWIS LAND DEVELOPERS, LLC, EXTENDING THE TERM OF THE DEVELOPMENT AGREEMENT FROM JULY 27, 2020 TO JULY 27, 2022 FOR THE PROPERTY GENERALLY LOCATED ON THE SOUTH SIDE OF FOOTHILL BOULEVARD AND BOUNDED BY DEWEY WAY, 11TH STREET, AND WEST OF CENTRAL AVENUE FURTHER DESCRIBED AS ASSESSOR'S PARCEL NUMBERS 1007-051-02, 03, 04 AND 1007-041-05, 06, 07)

The City Council of the City of Upland Does hereby ordain as follows:

SECTION 1: RECITALS

1.1 Lewis Land Developers, LLC has requested approval of an amendment to the Development Agreement between the City and Lewis Land Developers, LLC for the Enclave At Upland Specific Plan, which Agreement was originally executed in 2015, by and between the City and Lewis Land Developers, LLC; and,

1.2 On July 27, 2015, the City Council approved Development Agreement No. 15-01 for the Enclave at Upland Specific Plan which will expire at 11:59 p.m. on the fifth (5th) anniversary of the effective date, which is July 27, 2020, if not extended by the City Council; and

1.3 Expiration of the Development Agreement shall occur subject to specific extensions, force majeure, revisions, and termination provisions of the Agreement. The term shall automatically extend for five (5) additional years upon the Developer's recordation a final tract map for the project prior to expiration of the initial five (5) year term and then extend for an additional five (5) years if the Developer or a merchant builder has pulled building permits for a minimum of 50% of the residential units in the project prior to expiration of the tenth (10th) year of the term. The total term of the Agreement shall not exceed fifteen (15) years; and

1.4 To date, a tentative tract map has not been approved nor has a final tract map been recorded nor has the Developer or a merchant builder pulled any building permits; and.

1.5 If approved, the proposed amendment to the Development Agreement would extend the term of the Development Agreement by two (2) years to July 27, 2022, and all other aspects of the Development Agreement would remain the same; and,

1.6 The potential environmental impacts of the proposed amendment have been previously addressed in full compliance with the provisions of the California Environmental Quality Act (CEQA) and its Guidelines, and no further environmental analysis is required prior to the approval of the proposed Development Agreement Amendment because:

a) The environmental impacts of the Enclave at Upland Specific Plan have been fully analyzed by the Enclave at Upland Specific Plan Initial Study and Mitigated Negative Declaration which was approved by the City Council in adopting Resolution No. 6287 on July 13, 2015; and

b) The proposed Development Agreement Amendment does not propose any change in the previously approved project or any change which could potentially result in either a direct or indirect physical change in the environment, the proposed Development Agreement Amendment will not result in new, potentially significant environmental effects; and

c) None of the conditions described in CEQA Guidelines Sections 15162 or 15164 which would call for the preparation of a Subsequent Mitigated Negative Declaration, would occur as a result of the proposed Development Agreement Amendment, therefore, no further environmental review is required pursuant to CEQA Guidelines Section 15162; and,

1.7 The City Council conducted a duly-noticed public hearing on May 11, 2020 pursuant to Government Code Section 65867 and Title 9, Land Use Code, title 17 to consider the proposed Development Agreement Second DA Amendment, and the City Council has considered all relevant public testimony; and,

1.8 The record of proceedings on which the City Council's decision is based is located at City Hall for the City of Upland, located at 460 North Euclid Avenue, Upland, California and the custodian of record of proceedings is the City Clerk.

SECTION 2. FINDINGS

2.1 Based upon substantial evidence presented to this City Council during the above referenced meeting on May 11, 2020, including written and

oral staff reports, and the record from the public hearing, this City Council hereby specifically finds as follows:

A. The Development Agreement will provide clear and substantial benefits to the City and its residents.

Fact: The applicant has previously paid to the City two payments of $175,000. These payments were placed in the City's General Fund and disbursed on the basis of need. In addition, as consideration for the City's approval and performance of its obligations set forth in this Agreement, the Developer is required to pay the City a development impact fee in the sum of $18,111.00 per residential dwelling unit as part of the Project. With potentially 192 residential units proposed this fee equals $3,477,312.00 (192 x $18,111.000/unit). The development impact fee is imposed by the City on a new or proposed development project to pay for all or a portion of the costs of providing public services to the new development.

In addition, a park area measuring 0.83 acres is provided in PA-5 and may include a tot-lot, picnic area, barbeque area, exercise stations, and a grassy open space.

B. The Development Agreement complies with applicable policies and regulations set forth in the Zoning Ordinance, other City ordinances, the General Plan and any other applicable community or specific plan.

Fact: The Enclave at Upland Specific Plan was approved in order to establish appropriate zoning to regulate land use and development of the Property consistent with the General Plan. The Specific Plan represents an expansion of the residential neighborhood approved and under construction just west of the project site (Harvest Specific Plan).

The Enclave at Upland Specific Plan allows up to 350 single family attached and/or detached homes. The standards, design guidelines, and development parameters unique to The Enclave at Upland are provided in the Specific Plan document, and it acts as the "zoning code" for the project.

C. The Development Agreement complies with the requirements of California Government Code Sections 65864 et seq.

Fact: The Development Agreement assists the Developer with reducing the economic costs of development by providing assurance to the Developer that they may proceed with projects consistent with existing land use policies, rules, and regulations, the California Legislature adopted California Government Code Sections 65864-65869.5 (the "Development Agreement Statute") authorizing cities and counties to enter into development agreements with persons or entities having a

legal or equitable interest in real property located within their jurisdiction.

D. The Development Agreement will promote the public health, safety, and welfare, and will not be detrimental to or cause adverse effects to the residents, property, or improvements in the vicinity of the subject project.

Fact: On July 13, 2015, the City Council certified the project's Mitigated Negative Declaration for The Enclave at Upland Specific Plan. The Mitigated Negative Declaration was prepared for the project pursuant to the California Environmental Quality Act Guidelines. Based on the Initial Study/Mitigated Negative Declaration completed, it was determined that the project would not have a significant effect on the environment. The Mitigated Negative Declaration includes a Mitigation Monitoring Program, which will ensure the completion of required mitigation measures for the project.

E. The Development Agreement will be compatible with the uses allowed in, and the regulations that apply to, the zone in which the subject property is located.

Fact: The proposed uses, development standards and design guidelines contained in Chapters 2 and 3 of The Enclave at Upland Specific Plan are tailored to guide the development of the proposed uses on site, and ensure that new development implements the vision of The Enclave at Upland Specific Plan. Standards and guidelines address permitted uses; the placement; height and orientation of the buildings; parking; open space provisions; circulation and access; and architectural and landscape design.

F. The Development Agreement will not cause adverse effects to the orderly development of property or the preservation of property values in the City.

Fact: The orderly and measured build-out of the Project will allow for the absorption of the new development into the community and the integration of the Project into the community.

G. The Development Agreement will further important Citywide goals and policies that have been officially recognized by the City Council.

Fact: The development agreement is consistent with the General Plan, and its goals, objectives, policies and programs. Furthermore, The Enclave at Upland Specific Plan is consistent with and supportive of the goals and policies of the City of Upland General Plan in that multi-family residential projects should, through the application of state-of-the-art site planning techniques, provide an efficient, desirable residential environment for the inhabitants of the project and enrich the visual quality of the City.

H. The Development Agreement will provide the City with important, tangible benefits beyond those that may be required by the City through project conditions of approval.

Fact: In addition to providing Development Impact Fees of over $3,000,000 and associated plan check/permit fees for potentially 192 residential units, related fees to the City will also include plan check and permit fees for the construction of infrastructure. Also, the project will increase property tax revenue to the City by increasing the assessed value of the property upon completion of the project.

SECTION 3. ADOPTION

Based on the foregoing recitals and findings, the City Council of the City of Upland, pursuant to Government Code Section 65868, hereby approve and adopt the Amendment to the Development Agreement for the Enclave at Upland Specific Plan Project by and between the City of Upland and Lewis Land Developers, LLC, which is attached as Exhibit A, and incorporated herein by reference. The Mayor is hereby authorized to execute said agreement on behalf of the City of Upland.

SECTION 4. EFFECTIVE DATE

This Ordinance shall take effect and be in force thirty (30) days after its passage.

SECTION 5. CITY CLERK'S CERTIFICATION

The City Clerk shall certify to the adoption of this Ordinance and shall cause it to be published in the manner required by law.

PASSED, APPROVED, AND ADOPTED this 26th day of May, 2020.

_____
Debbie Stone, Mayor

I, Keri Johnson, City Clerk of the City of Upland, California, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Upland held on the 11th day of May, 2020, and was adopted at a regular meeting of the City Council of the City of Upland on the 26th day of May, 2020, by the following roll call vote:

AYES:
NOES:
ABSENT:
ABSTAINED:

ATTEST: _____
Keri Johnson, City Clerk

RECORDING REQUESTED BY: City of Upland 460 North Euclid Avenue Upland, CA 91786 **WHEN RECORDED, MAIL TO:** Keri Johnson, City Clerk City of Upland 460 North Euclid Avenue Upland, CA 91786 Exempt from Recording Fees: Government Code §§27383, 6103 City of Upland	**This Space for Recorder's Use Only**

Amendment to Development Agreement for the Enclave at Upland Specific Plan Project, Between the City of Upland and Lewis Land Developers, LLC

AMENDMENT TO DEVELOPMENT AGREEMENT FOR THE ENCLAVE AT UPLAND SPECIFIC PLAN, BETWEEN THE CITY OF UPLAND AND LEWIS LAND DEVELOPERS, LLC

This Amendment to the Development Agreement for the Enclave at Upland Specific Plan (the "Amendment"), is entered into between the City of Upland, a municipal corporation ("City"), and Lewis Land Developers, LLC ("Owner"). City and Owner are referred to collectively within this Amendment as the "Parties."

RECITALS

A. Owners owns the real property with the City (the "Property") which is described and shown on Exhibit "A" to this Amendment. The Property represents 19-acre developable area located on the south side of Foothill Boulevard and bounded by Dewey Way, 11th Street, and Central Avenue (Assessor's Parcel Numbers 1007-051-02, 03, 04 AND 1007-041-05, 06, 07) known as the "Enclave at Upland Specific Plan" (the "Project").
B. In 2015, City and Owner, entered into a Development Agreement for the Project.
C. The parties have now agreed to an extension of the Term of the Development Agreement, pursuant to Section 2.3 thereof.
D. This extension was approved by the City Council by ordinance on _____, 2020.

AGREEMENT

The Parties agree as follows:

1. Pursuant to Section 2.3 of the Development Agreement, the term of the Development Agreement is extended for two years, to and including July 27, 2022.

Except as modified, all provisions of the development Agreement shall remain in full force and effect.

This Amendment has been signed as of _____, 2020, the effective date of the ordinance approving this Amendment.

[*Signatures on following page*]

SIGNATURE PAGE TO AMENDMENT TO DEVELOPMENT AGREEMENT FOR THE ENCLAVE AT UPLAND SPECIFIC PLAN PROJECT, BETWEEN THE CITY OF UPLAND AND LEWIS LAND DEVELOPERS, LLC

"City"

City of Upland
a municipal corporation

By _____
Mayor

Attest:

_____
Keri Johnson, City Clerk

Approve as to Form

_____
City Attorney

"Owner"

Lewis Land Developers, LLC

By _____
Name _____
Title _____

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 _____, 2020, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official.

Signature _____

(seal)

EXHIBIT A

Legal Description of the Proper

Real property in the City of Upland, County of San Bernardino described as follows:

HAFIF REVOCABLE TRUST PARCELS:

PARCEL 1:

THE NORTH ONE-HALF OF THE EAST 68 FEET OF LOT 12 OF COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 17, PAGES 77 AND 78 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THE NORTH 17 FEET THEREOF.

ALSO EXCEPTING THEREFROM THE WEST 20 FEET OF THE ABOVE DESCRIBED PARCEL OF LAND.

PARCEL 2:

LOT 23 OF COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 17, PAGES 77 AND 78 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 3:

LOTS 11 AND 22, COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 17, PAGES 77 AND 78 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT FROM SAID LOT 11, THE INTEREST IN THAT PORTION OF SAID LAND CONVEYED TO THE STATE OF CALIFORNIA FOR HIGHWAY PURPOSES BY DEED RECORDED JANUARY 17, 1929 IN BOOK 453, PAGE 297, OFFICIAL RECORDS.

CLAREMONT PROFESSIONAL BUILDING PARCELS:

PARCEL NO. 4:

THE WEST 68 FEET OF THE EAST 136 FEET OF LOT 12 OF COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 17 OF MAPS, PAGES 77 AND 78, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THE NORTH 17 FEET THEREOF.

ALSO EXCEPTING THE SOUTH 15 FEET THEREOF.

PARCEL NO. 5:

THE SOUTH ONE-HALF OF THE EAST 68 FEET OF LOT 12 OF THE COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 17 OF MAPS, PAGES 77 AND 78, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THE SOUTH 15 FEET THEREOF.

PARCEL NO. 6:

THE WEST 20 FEET OF THE NORTH ONE-HALF OF THE EAST 68 FEET OF LOT 12, OF COLLEGE
HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 17 OF MAPS, PAGES 77 AND 78, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THE NORTH 17 FEET THEREOF.

APN: 1007-041-05-0-000 (Affects: Parcel 2)
1007-041-06-0-000 (Affects: Lot 22 of Parcel 3)
1007-051-02-0-000 (Affects: Parcels 4, 5 and 6)
1007-051-03-0-000 (Affects: Parcel 1)
1007-051-04-0-000 (Affects: Lot 11 of Parcel 3)

SECOND READING AND ADOPTION
Ord No. 1941 Date 5/20/20 Item No. 11C

STAFF REPORT

~~ITEM NO. 14.A~~.

DATE:	May 11, 2020
TO:	MAYOR AND CITY COUNCIL
FROM:	ROSEMARY HOERNING, CITY MANAGER
PREPARED BY:	ROSEMARY HOERNING, CITY MANAGER STEPHEN PARKER, ASSISTANT CITY MANAGER
SUBJECT:	CONSIDERATION OF AN ORDINANCE AMENDING CHAPTER 10.40 OF THE UPLAND MUNICIPAL CODE

RECOMMENDED ACTION

It is recommended that the City Council hold first reading by title only, waive further reading, and introduce an Ordinance of the City Council of the City of Upland amending Chapter 10.40 (stopping, standing, or parking restricted or prohibited on certain streets, publicly owned or operated off-street parking facilities, and in specified areas of city parks) of the Upland Municipal Code to incorporate state law provisions for enforcement of designated electric vehicle parking stalls or spaces exclusively for electric charging purposes.

GOAL STATEMENT

The proposed action supports the City's goal to provide provisions to law enforcement to regulate alternative fuel electric vehicle stations location in public parking areas.

BACKGROUND

California Vehicle Code Section 22519 authorizes local authorities by ordinance or resolution to prohibit, restrict or regulate the parking, stopping or standing of vehicles on any off-street parking facility which it owns or operates, provides signs giving notice thereof have been erected. State law pursuant to AB 1452 now allows cities, by ordinance or resolution, to designate parking stalls in an off-street parking facility owned and operated by the local agency *for the exclusive purpose of charging in parking a vehicle that is connected for charging purposes*. This change is reflected in Vehicle Code Section 22511, which took effect on January 1, 2018.

The City Council approved the installation of several electric charging stations at the Civic Center parking lot. Additional electric vehicle parking stations may also be implemented in the City's Downtown subject to supplemental funding. These Civic Center electric charging stations include ChargePoint network service and a maintenance program. These charging stations were recently completed.

The attached draft Ordinance adds a new Section 10.40.180 to regulate parking of vehicles in stalls for electric charging purposes. Specifically, the proposed Section 10.40.180 would read as follows:

"10.40.180 Parking of vehicles in stalls for electric charging purposes

A . Pursuant to California Vehicle Code Section 22511, the City hereby designates certain stalls and spaces in City-owned off-street parking facilities to be for the exclusive purpose of parking and charging a vehicle that is connected for electric charging purposes.

B . The City Public Works Director is authorized to post signs in accordance with California Vehicle Code Section 22511 (d)(1) at certain stalls and spaces in City-owned off-street parking facilities that require vehicles parked in such stalls and spaces to be connected for electric charging purposes.

C . In accordance with California Vehicle Code Section 22511 (c)(1), the City may cause the removal and towing of a vehicle parked in a space or stall that is posted for electric charging purposes that is not connected for electric charging purposes.

D . This section does not interfere with other or existing laws allowing the City to regulate parking in City-owned off-street parking facilities within the City."

CEQA COMPLIANCE. In adopting this Ordinance, the City Council finds that the adoption of Municipal Code amendment was exempt from the California Environmental Quality Act ("CEQA") pursuant to Title 14 California Code of Regulations Section 15061(b)(3) and 15378, in that it can be seen with certainty, that the adoption of the Municipal Code amendment is not a project, and further, that it proposes no activity that may have a significant effect on the environment and will not cause direct physical change in the environment for a reasonably foreseeable indirect physical change in the environment.

ISSUES/ANALYSIS

In order to effectively lawfully regulate the use of these electric charging stations, an amendment to the City Municipal Code is required.

FISCAL IMPACTS

There is a minimal financial impact associated with posting appropriate signage. No additional appropriations are required at this time.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

Electric Vehicle Parking Ordinance

ORDINANCE NO. 1941

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UPLAND, CALIFORNIA AMENDING CHAPTER 10.40 (STOPPING, STANDING OR PARKING RESTRICTED OR PROHIBITED ON CERTAIN STREETS, PUBLICLY OWNED OR OPERATED OFF-STREET PARKING FACILITIES, AND IN SPECIFIED AREAS OF CITY PARKS) OF THE UPLAND MUNICIPAL CODE TO INCORPORATE STATE LAW PROVISIONS FOR ENFORCEMENT OF DESIGNATED ELECTRIC VEHICLE PARKING STALLS OR SPACES EXCLUSIVELY FOR ELECTRIC CHARGING PURPOSES

I. Recitals.

A. The City recently completed installation of electric vehicle parking stations at the Civic Center parking lot and intends to install additional electric vehicle parking in other publicly owned areas of the City; and

B. The City needs to enforce use of the designated spaces exclusively for electronic charging purposes; and

C. California Vehicle Code Section 22519 authorizes local authorizes local authorities by ordinance or resolution to prohibit, restrict or regulate in the parking, stopping or standing of vehicles on any off-street parking facility which it owns or operates, provided signs giving notice thereof have been erected; and

D. In addition, recent changes to state law permits a local authority, by ordinance or resolution, to designate parking stalls in an off-street parking facility owned or operated by the local authority for the exclusive purpose of charging and parking a vehicle that is connected for electric charging purposes; and

E. The current Chapter 10.40 (Stopping, standing, for parking restricted or prohibited on certain streets, publicly owned or operated off-street parking facilities, and in specified areas of city parks) of the Upland Municipal Code provides for the regulation of City-owned or operated parking facilities, including the enforcement of time, place and manner-related restrictions, and provisions for towing vehicles found to be in violation of said restrictions; and

F. The proposed modifications to Chapter 10.40 (Stopping, standing, for parking restricted or prohibited on certain streets, publicly owned or operated off-street parking facilities, and in specified areas of city parks) of the Upland Municipal Code are intended to incorporate the new state law changes to provide additional enforcement tools to the City; and

II. Ordinance.

The City Council of the City of Upland does ordain as follows:

Section 1: Recitals. The foregoing recitals are true and correct and incorporated herein as though set forth in full.

Section 2: Chapter 10.40 of the Upland Municipal Code is hereby amended to add new section 10.40.180 as follows:

"10.40.180 Parking of vehicles in stalls for electric charging purposes

A. Pursuant to California Vehicle Code Section 22511, the City hereby designates certain stalls and spaces in City-owned off-street parking facilities to be for the exclusive purpose of parking and charging a vehicle that is connected for electric charging purposes.

B. The City Public Works Director is authorized to post signs in accordance with California Vehicle Code Section 22511 (d)(1) at certain stalls and spaces in City-owned off-street parking facilities that require vehicles parked in such stalls and spaces to be connected for electric charging purposes.

C. In accordance with California Vehicle Code Section 22511 (c)(1), the City may cause the removal and towing of a vehicle parked in a space or stall that is posted for electric charging purposes that is not connected for electric charging purposes.

D. This section does not interfere with other or existing laws allowing the City to regulate parking in City-owned off-street parking facilities within the City."

Section 3: CEQA Determination. In adopting this Ordinance, the City Council finds that the adoption of Municipal Code amendment was exempt from the California Environmental Quality Act ("CEQA") pursuant to Title 14 California Code of Regulations Section 15061(b)(3) and 15378, in that it can see with certainty that the adoption of the Municipal Code amendment is not a project, and further, that it proposes no activity that may have a significant effect on the environment and will not cause direct physical change in the environment for a reasonably foreseeable indirect physical change in the environment.

Section 4: Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof,

irrespective of the fact that any one or more section, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared unconstitutional.

Section 5: Effective Date. This Ordinance shall become effective thirty (30) days after its passage and adoption.

Section 6: The City Clerk shall certify to the adoption of this Ordinance and shall cause it to be published in the manner required by law.

PASSED, APPROVED, AND ADOPTED this 26th day of May, 2020.

_____
Debbie Stone, Mayor

I, Keri Johnson, City Clerk of the City of Upland, California, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Upland held on the 11th day of May, 2020, and was adopted at a regular meeting of the City Council of the City of Upland on the 26th day of May, 2020, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAINED:

ATTEST: _____
Keri Johnson, City Clerk

SECOND READING AND ADOPTION
Ord No. 1942 Date 5/26/20 Item No. 11D

STAFF REPORT

~~ITEM NO. 14 E.~~

DATE:	May 11, 2020
TO:	MAYOR AND CITY COUNCIL
FROM:	ROSEMARY HOERNING, CITY MANAGER
PREPARED BY:	ROBERT D. DALQUEST, DEVELOPMENT SERVICES DIRECTOR
SUBJECT:	CONSIDERATION OF AN ORDINANCE ADDING CHAPTER 9.60 TO THE UPLAND MUNICIPAL CODE PROHIBITING SMOKING AND VAPING IN PUBLIC SPACES

RECOMMENDED ACTION

It is recommended that the City Council hold first reading by title only, waive further reading, and introduce an Ordinance adding Chapter 9.60 (Smoking and Vaping Prohibited in Public Spaces) to the Upland Municipal Code.

GOAL STATEMENT

The proposed action supports the City's overarching goal to protect the health, safety and welfare of the citizens by taking measures to enhance the quality of life within the City of Upland.

BACKGROUND

Currently, State law (California Labor Code Section 6404.5) prohibits smoking (including vaping) in all government and private enclosed workplaces, health care facilities, public schools, restaurants, bars, casinos/gaming establishments (except tribal establishments), retail stores (except certain retail/wholesale tobacco shops & smoking lounges), parks and playgrounds, cultural facilities and childcare facilities. E-cigarettes or vaping are included in the State's definition of "smoking"; Business & Professions Code, Section 22950.5.

The State Health & Safety Code, Section 104495 governs smoking within public parks and playgrounds and youth sports events. Under this statute, smoking and vaping is permitted within these venues if a minimum distance is maintained. For playgrounds and tot lot sandbox areas, a person cannot smoke or vape within 25 feet. For youth sports events, a person must be a minimum of 250 feet away while smoking or vaping. The prohibitions in this statute do not apply to a public sidewalk located within 25 feet of a playground or tot lot

sandbox area. Also, this statue does not preempt the authority of any city to establish regulations that are more restrictive than State law.

ISSUES/ANALYSIS

Presently, the City does not have specific regulations regarding smoking and vaping in public spaces and relies on current State statutes. The proposed new Chapter 9.60 (the "Ordinance") would be more restrictive than current State law by entirely prohibiting smoking and vaping within public spaces regardless of maintaining a minimum distance.

In the proposed Ordinance, "Public spaces" is defined as: "any property or building owned or operated by the City, inclusive of City owned or operated building or unenclosed area held open by the City for public use such as public parks and recreation areas, public plazas, and the Euclid Avenue median, but excluding City owned property or building the City has leased for private use." The exclusion in the Ordinance would include the 255 apartment units that are owned by the City, or the businesses/organizations that are tenants in City-owned nonresidential buildings and properties.

In terms of the City-owned apartment units, smoking and vaping has not been an issue as most tenants are non-smokers and the tenants that smoke or vape do so outside in private balconies or private open space areas. The Ordinance is not intended to restrict smoking and vaping in private use areas. In terms of City-owned, nonresidential buildings and property that are being leased, the following businesses or entities include:

- Eden Garden;
- Pacific Wine Merchants;
- Sweet Obsession;
- Hubcap Annie's;
- Statewide Promotions;
- YMCA;
- Chaffey Cultural Center - Copper Museum;
- Bank of America ATM; and,
- Dry Dock Depot.

The provisions of this Ordinance are intended to establish a comprehensive citywide ban on smoking and vaping in public places, with the limited exceptions set forth above. The proposed Ordinance is intended to supplement and be consistent with California Labor Code Section 6404.5 and California Health and Safety Code Sections 104495 and 118875, et seq., as amended, and in all cases of conflict between the proposed new Chapter 9.60 and any State law, the applicable State law provision prevails. In terms of the exclusion in the Ordinance regarding City owned property or building which the City has leased for private use, State laws regarding enclosed public or private workplaces and child care facilities, sufficiently regulate these types of uses/facilities and warrant their exclusion to avoid duplication in regulations.

Lastly, any violations of this Ordinance is punishable per existing Chapter 1.16 of the Upland Municipal Code which is the penalty provisions for any violations of the Municipal Code.

ENVIRONMENTAL DETERMINATION

The proposed Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to the CEQA Guidelines, Section 15061(b)(3), because it can be seen with certainty that there is no possibility that the Ordinance will have a significant impact on the environment. This finding is premised on the fact that this Ordinance does not include or impact proposed construction or any proposed alteration to the physical environment. Furthermore, the Ordinance will have no adverse environmental effects because it will reduce the public's exposure to the harmful effects of secondhand smoke.

FISCAL IMPACTS

There is no fiscal impact associated with approving the proposed Ordinance.

ALTERNATIVES

The City Council may provide staff with alternative direction.

ATTACHMENTS:

Exhibit 1: Draft Ordinance - Chapter 9.60 (Smoking and Vaping Prohibited in Public Spaces)

ORDINANCE NO. 1942

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UPLAND ADDING CHAPTER 9.60 (SMOKING AND VAPING PROHIBITED IN PUBLIC SPACES) AND AMENDING THE UPLAND MUNICIPAL CODE REGARDING THE SAME

A. Recitals.

1. Tobacco use, and the resultant exposure to secondhand smoke and other tobacco byproducts, cause death and disease and impose great social and economic costs.

2. The U.S. Food and Drug Administration (FDA) has preliminarily found that the use of electronic smoking devices can also harmfully affect human health, and that, because electronic smoking devices are often marketed in appealing flavors, the use of such devices can increase nicotine addiction among young people and may lead to their use of conventional tobacco products. Electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, electronic hookahs, vape pens, and similar electronic smoking devices are generally designed to look like or be used in the same manner as conventional tobacco products.

3. State law regulating tobacco and tobacco products do not with limited exceptions regarding smoking in the workplace, preempt or otherwise prohibit the adoption of local standards, or enforcement of local ordinances, that impose greater restrictions than the standards imposed therein. It is therefore the intent of the City Council to supplement applicable state and federal law and not to duplicate or contradict any such law and this Ordinance shall be construed consistently with that intent.

4. The City of Upland values the health, welfare, and safety of its citizens, and chooses to take proactive measures to enhance the quality of life within its jurisdiction. It is the intent of the City Council in enacting this Ordinance to provide for the public health, safety, and welfare by discouraging smoking and the use of electronic smoking devices around non-tobacco users in public spaces throughout the City, and by reducing the potential for young people to wrongly associate smoking, tobacco use, and electronic cigarettes with a healthy lifestyle, and by affirming and promoting a healthy environment in the City of Upland.

B. Ordinance.

THE CITY COUNCIL OF THE CITY OF UPLAND DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds the recitals set forth in Part A are correct.

SECTION 2. Chapter 9.60 (Smoking and Vaping Prohibited in Public Spaces) is hereby added to Title 9 (Public Peace and Welfare) of the City of Upland Municipal Code to read as follows:

9.60.010. Prohibition

Smoking; including but not limited to the use of any electronic smoking device, is prohibited in all public spaces in the City.

9.60.020. Definitions

The following definitions shall apply to this Chapter:

"Electronic smoking device" means: (1) an electronic and/or battery operated device that can be used to deliver an inhaled dose of nicotine or other substances; or (2) any product intended or sold for use with such a device. The term includes any product meeting this definition, whether it is manufactured, distributed, marketed, or sold as an electronic cigarette, e-cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, electronic vape, vaping device, vaporizer, or any other product name or descriptor. The term does not include any inhaler prescribed by a licensed doctor, or any other product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of diseases.

"Public Spaces" means any property or building owned or operated by the City, inclusive of City owned or operated building or unenclosed area held open by the City for public use such as public parks and recreation areas, public plazas, and the Euclid Avenue median, but excluding any City-owned property or building the City has leased for private use.

"Smoke" means the gaseous or vaporous byproducts and particles released into the air as a result of combustion, electrical ignition, or vaporization, when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts, except when those byproducts contain no tobacco or nicotine and the purpose of inhalation is solely olfactory, such as smoke from incense. The term "smoke" includes, but is not limited to, tobacco smoke or vapors emitted from an electronic smoking device.

"Smoking" means the act of generating or emitting smoke, including by possessing, carrying, or operating a lighted pipe, lighted cigar, lighted cigarette, etc.; operating, lighting, igniting, activating, or vaping an electronic smoking device; or lighting or igniting a pipe, cigar, cigarette, or hookah pipe of any kind including but not limited to, tobacco, chemicals, or other smoking or combustible material. "Smoking" also means inhaling, exhaling, burning, vaping, or vaporizing any lighted, heated, or ignited cigar, cigarette, cigarillo, etc. or other electronic smoking device or tobacco product in any manner or in any form.

"Tobacco product" means any product containing, made of, or derived from tobacco or nicotine, whether natural or synthetic, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, bidis, etc., or any other preparation of tobacco that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body via smoking. "Tobacco product" does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

SECTION 3. Any violation of this ordinance shall be punishable pursuant to Chapter 1.16 of Title 1 of the City of Upland's Municipal Code.

SECTION 4. The City Council hereby finds that this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to the CEQA Guidelines, Section 15061(b)(3), because it can be seen with certainty that there is no possibility that the Ordinance will have a significant impact on the environment. This finding is premised on the fact that this Ordinance does not include or impact proposed construction or any proposed alteration to the physical environment. Furthermore, the Ordinance will have no adverse environmental effects because it will reduce the public's exposure to the harmful effects of secondhand smoke. The City Council directs staff to prepare and file a Notice of Exemption with the County Clerk, pursuant to Section 15062 of the CEQA Guidelines, within five days of the date of this action.

SECTION 5. Should any provision of this Ordinance, or the application thereof to any persons or circumstances, be determined by a court of competent jurisdiction to be unlawful, unenforceable, or otherwise void, that determination shall have no effect on any other provision of this Ordinance, or the application of this Ordinance to any other persons or circumstances, and, to that end, the provisions hereof are severable. The City Council declares that it would have adopted all the provisions of this ordinance that remain valid if any provisions of this ordinance are declared invalid.

SECTION 6. This Ordinance shall become effective on the thirtieth day following the date of its adoption. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be published as required by law.

PASSED, APPROVED, AND ADOPTED this 26th day of May, 2020.

_____

Debbie Stone, Mayor

I, Keri Johnson, City Clerk of the City of Upland, California, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Upland held on the 11th day of May, 2020, and was adopted at a regular meeting of the City Council of the City of Upland on the 26th day of May, 2020, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAINED:

ATTEST: _____
Keri Johnson, City Clerk

STAFF REPORT

ITEM NO. 11.E.

DATE:	May 26, 2020
TO:	MAYOR AND CITY COUNCIL
FROM:	ROSEMARY HOERNING, CITY MANAGER
PREPARED BY:	STEPHEN PARKER, ASSISTANT CITY MANAGER KERI JOHNSON, CITY CLERK
SUBJECT:	GENERAL MUNICIPAL ELECTION - NOVEMBER 3, 2020

RECOMMENDED ACTION

It is recommended that the City Council adopt a Resolution calling and giving notice of holding a General Municipal Election on Tuesday, November 3, 2020, for the election of certain officers and requesting the Board of Supervisors of the County of San Bernardino consent to the consolidation of the General Municipal Election of the City of Upland with the Statewide General Election held pursuant to Elections Code Section 10403. It is further recommended that the City Council adopt a Resolution establishing regulations for candidates for elective office pertaining to candidates' statements submitted to the voters at an election to be held on Tuesday, November 3, 2020.

GOAL STATEMENT

The proposed action supports the City's goal to conduct municipal elections in an efficient and cost effective manner, complying with all state regulations pertaining to municipal elections.

BACKGROUND

The San Bernardino County Registrar of Voters has conducted the City’s General Municipal Elections since 1990. In order to request their services, the City Council must adopt resolutions calling and giving notice, requesting the County services and setting regulations for candidate statements. The Registrar obtains all polling places, poll workers, mails all election material to voters, and counts all ballots cast. In addition to the contract cost, the City’s election expenses are minimal.

ISSUES/ANALYSIS

The upcoming election will be held to elect one Mayor, one City Council Member representing District 1, and one City Treasurer, for four-year terms and for presenting any ballot measure or measures for consideration by the voters of the City. The nomination period for candidates is from July 13 to August 7, 2020.

Only candidates wishing to submit a candidate statement will be required to pay a deposit. Candidates running for Mayor or City Treasurer will be required to submit a deposit of $1,400 and Candidates running for City Council Member will be required to submit a deposit of $600, to cover the cost of printing the statement in the sample ballots.

FISCAL IMPACTS

The County has not yet responded to a request for a cost estimate; however, an estimate of $125,000 is based on previous general municipal elections. This expense is included in the Fiscal Year 2020-21 proposed operating budget. No additional appropriation is necessary at this time.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

Resolution, Calling Election, Requesting Consolidation
Resolution, Candidate Statement

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UPLAND, CALIFORNIA CALLING AND GIVING NOTICE OF THE HOLDING OF A GENERAL MUNICIPAL ELECTION ON TUESDAY, NOVEMBER 3, 2020, FOR THE ELECTION OF CERTAIN OFFICERS AND REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BERNARDINO CONSENT TO THE CONSOLIDATION OF THE GENERAL MUNICIPAL ELECTION OF THE CITY OF UPLAND WITH THE STATEWIDE GENERAL ELECTION TO BE HELD PURSUANT TO ELECTIONS CODE SECTION 10403

Intent of the Parties and Findings

(i) Under the provisions of the laws relating to general law cities in the State of California, including Government Code Section 36503 and Elections Code Section 1000(c), a General Municipal Election shall be held on November 3, 2020, for the election of municipal officers; and

(ii) It is desirable that the General Municipal Election be consolidated with the Statewide General election to be held on the same date and that within the City, the precincts, polling places and election officers of the two elections be the same, and that the county election department of the County of San Bernardino canvass the returns of the General Municipal Election and that the election be held in all respects as if there were only one election; and

(iii) Sections 10002 and 10403 of the Elections Code provide that the City Council may, by resolution, request the County of San Bernardino Board of Supervisors to permit the County Elections Official to render specified services relating to the conduct of the election on a reimbursable basis.

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

Section 1. Pursuant to the requirements of the laws of the State of California relating to General Law cities, there is called and ordered to be held in the City of Upland, California, on Tuesday, November 3, 2020, a General Municipal Election for the purpose of electing one (1) Mayor of the City of Upland, one (1) member of the Upland City Council representing District 1, and one (1) Treasurer of the City of Upland, each for full terms of four (4) years, and for presenting any ballot measure or measures for consideration by the voters of the City, to be held in the City of Upland, California on Tuesday, November 3, 2020.

Section 2. The ballots to be used at the election shall be in the form and content as required by law.

Section 3. 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 4. 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 Section 14401 of the Elections Code of the State of California, or as determined by the County Elections Official for the consolidated election.

Section 5. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

Section 6. That pursuant to the requirements of Section 10403 of the Elections Code, the Board of Supervisors of the County of San Bernardino is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Statewide General election on Tuesday, November 3, 2020, a General Municipal Election for the purpose of electing one (1) Mayor of the City of Upland, one (1) member of the Upland City Council representing District 1, and one (1) Treasurer of the City of Upland, each for full terms of four years, and for presenting any ballot measure or measures for consideration by the voters of the City.

Section 7. The County Registrar of Voters is authorized to canvass the returns of the General Municipal Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

Section 8. In the event of a tie vote (if any two or more person receive an equal and the highest number of votes for an office) as certified by the County of San Bernardino Registrar-Recorder/County Clerk, the City Council, in accordance with Elections Code Section 15651(a) shall set a date and time and place and summon the candidates who have received the tie votes to appear and will determine the tie by lot.

Section 9. The Board of Supervisors is requested to issue instructions to the County Registrar of Voters to take any and all steps necessary for the holding of the consolidated election.

Section 10. 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 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 and to file a certified copy of this Resolution 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. 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 26th day of May, 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 26th day of May, 2020, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAINED:

ATTEST: _____
Keri Johnson, City Clerk

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UPLAND, CALIFORNIA ADOPTING REGULATIONS FOR CANDIDATES FOR ELECTIVE OFFICE PERTAINING TO CANDIDATES STATEMENTS SUBMITTED TO THE VOTERS AT AN ELECTION TO BE HELD ON TUESDAY, NOVEMBER 3, 2020

Intent of the Parties and Findings

(i) §13307 of the Elections Code of the State of California provides that the governing body of any local agency adopt regulations pertaining to materials prepared by any candidate for a municipal election, including costs of the candidates statement.

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

Section 1. General Provisions. That pursuant to §13307 of the Elections Code of the State of California, each candidate for elective office to be voted for at an Election to be held in the City of Upland on November 3, 2020, may prepare a candidate's statement on an appropriate form provided by the City Clerk. The statement may include the name, age and occupation of the candidate and a brief description of no more than 200 words of the candidate's education and qualifications expressed by the candidate. The statement shall not include party affiliation of the candidate, nor membership or activity in partisan political organizations. The statement shall be filed, in typewritten form, in the Office of the City Clerk at the time the candidate's nomination papers are filed. The statement may be withdrawn, but not changed, during the period for filing nomination papers and until 5:00 p.m. of the next working day after the close of nomination period.

Section 2. Foreign Language Policy.

a. Pursuant to the Federal Voting Rights Act, as amended, and state law, candidate's statements will be translated into all languages required by the County of San Bernardino. The County is required to translate candidate statement into Spanish.

b. The County will print and mail voter information guides and candidates' statements to all voters in English and Spanish. The County will make the voter information guides and candidates' statements in the required languages available at all polling places, on the County's website, and in the Election Official's office.

Section 3. Payment.

a. The candidate shall be required to pay for the cost of printing the candidate statement in English.

b. The candidate shall be required to pay for the cost of translating the candidate statement into any foreign language as specific in Section 2 above pursuant to State and/or Federal law.

c. The candidate shall be required to pay for the cost of printing the candidate statement in a foreign language.

d. The City Clerk shall estimate the total cost of printing, handling, translating, and mailing the candidates statement filed, including costs incurred as a result of complying with the Voting Rights Act of 1965, as amended, and require each candidate filing a statement to pay in advance to the City his or her estimated pro rata share as a condition of having his or her statement included in the county voter information

guide or electronically distributed. In the event the estimated payment is required, the receipt for the payment shall include a written notice that the estimate is just an approximation of the actual cost that varies from one election to another election and may be significantly more or less than the estimate, depending on the actual number of candidates filing statements. Accordingly, the clerk is not bound by the estimate specified above and may, on a pro rata basis, bill the candidate for additional actual expense or refund any excess paid depending on the final actual cost. In the event of underpayment, the clerk may require the candidate to pay the balance of the cost incurred. In the event of any overpayment, the clerk shall prorate the excess amount among the candidates and refund the excess amount paid within 30 days of the election.

Section 4. Additional Materials. No candidate will be permitted to include additional materials in the voter information guide.

Section 5. The City Clerk shall provide each candidate or the candidate's representative a copy of this Resolution at the time nominating petitions are issued.

Section 6. All previous Resolutions establishing Council policy on payment for candidates' statements are repealed.

Section 7. This resolution shall apply only to the election to be held on Tuesday, November 3, 2020, and shall then be repealed.

Section 8. 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 26th day of May, 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 26th day of May, 2020, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAINED:

ATTEST: _____
Keri Johnson, City Clerk

STAFF REPORT

ITEM NO. 11.F.

DATE:	May 26, 2020
TO:	MAYOR AND CITY COUNCIL
FROM:	ROSEMARY HOERNING, CITY MANAGER
PREPARED BY:	ROBERT D. DALQUEST, DEVELOPMENT SERVICES DIRECTOR
SUBJECT:	CONSIDERATION OF THE SECOND AMENDMENT TO THE AGREEMENT FOR CONSULTANT SERVICES WITH INTERWEST CONSULTING GROUP, INC.

RECOMMENDED ACTION

It is recommended that the City Council approve the Second Amendment to the Agreement for consultant services to extend the contract one year with Interwest Consulting Group, Inc. ("Interwest") and authorize the City Manager to execute the Second Amendment.

GOAL STATEMENT

The proposed action supports the City's goal to provide timely customer service and ensure an expedited development review process.

BACKGROUND

The City and Interwest Consulting Group, Inc. (Interwest) previously entered into an Original Agreement for professional consultant services on July 1, 2017 (the "Original Agreement") for the period of July 1, 2017 through July 1, 2020 (the "Term"). The Agreement provided that the Term may be extended for two (2), one year additional terms.

During the term of the Original Agreement, Interwest has provided professional services in support of the Development Services Department primarily related to Building Official and Building Plan Check, but occasionally has provided building inspection services when employee vacations/sick leave and project workload necessitate temporary services, as defined within Exhibit "A" to the Original Agreement (See Exhibit 2).

On November 26, 2018, the City Council approved an Amendment (the "First Amendment") to the Original Agreement to clarify a discrepancy at the time the Original Agreement was approved. The staff report for the Original Agreement indicated that during its three-year

term Interwest's costs will not exceed $250,000 per fiscal year or a total of $750,000 over three years; however, the Original Agreement only included a $250,000 funding authorization. The First Amendment clarified the discrepancy and amended the "Payment" section in the Agreement.

Currently, Interwest provides professional services for one contractor who works thirty-six (36) hours per week and provides a combination of Building Official and Plan Check services in the Building & Safety Division.

ISSUES/ANALYSIS

To ensure the services that Interwest provides to the Development Services Department continues on an uninterrupted basis, staff is seeking City Council approval of the Second Amendment to extend the terms of the Original Agreement for one year beginning July 1, 2020 and ending July 1, 2021 in an amount not to exceed $194,000. This will enable staff to continue to utilize Interwest's services for Building Official and Building Plan Check. Interwest's assigned staff member is an experienced Building Official who provides excellent Building Official and Plan Check services and is a licensed Civil Engineer and certified Plans Examiner. He is well known in the Building & Safety industry and significantly contributes to the Department's ability to efficiently serve our customers. In addition, State Law requires that a Building Official that oversees the activities of a city building & safety department be either a Certified Building Official (CBO) or a contractor that is a licensed Civil Engineer (P.E.).

FISCAL IMPACTS

In order to continue staff and service delivery through contract services, it is necessary to amend the Original Agreement to authorize a one year extension of the contract from July 1, 2020 to July 1, 2021, and to fund the one year extension for one contract staff member at a "not to exceed" amount of $194,000. This is based on a cost for the Building Official/Plan Check Specialist at $194,000 ($115/hour for 36/hours a week). In staff's experience and based on a recent survey from other consulting firms, the hourly rate is superior as the Building Official position with other consulting firms generally ranges from a minimum of $125 per hour to $160 per hour.

The proposed contract amendment with Interwest will not exceed $194,000. Of this amount, 100% of the cost is off-set by plan check and building permit fees paid by Developers and the public. The building official and plans examiner staffing positions have been frozen and the applicable budget has been moved to the Development Services Department, Building & Safety Division's professional services account and is included in the proposed FY 2020-21 operating budget, so no additional appropriations are necessary.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

Second Amendment to Interwest Agreement
Original Agreement & First Amendment

SECOND AMENDMENT TO
AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES
BETWEEN THE CITY OF UPLAND
AND
INTERWEST CONSULANTING GROUP, INC.

THIS SECOND AMENDMENT TO AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES (the "First Amended Agreement") is made as of the 26th day of May 2018, by and between the City of Upland (the "City"), and Interwest Consulting Group, Inc., a Colorado corporation (the "Consultant"). Collectively, City and Consultant are referred to herein as the "Parties".

WITNESSETH THAT:

WHEREAS, City and Consultant previously entered into an original Agreement for Professional Consultant Services dated July 1, 2017 (the "Original Agreement") for the service delivery period of July 1, 2017 through July 1, 2020 (the "Term"); and

WHEREAS, pursuant to the Original Agreement, during the Term the Consultant is to provide a variety of professional services tasks in support of the City's Development Services Department primarily related to Building Official, Building Plan Check, Building Inspection and Permit Technician related activities, as defined within Exhibit "A" to the Original Agreement; and

WHEREAS, on August 13, 2018, the City Council approved an Amendment (the "First Amendment") to the Agreement to clarify a discrepancy that the Original Agreement that the Consultant's costs during its three-year term was not to exceed $250,000 per fiscal year or a total of $750,000 over three years; however, the Original Agreement only included a $250,000 funding authorization; and

WHEREAS, the Consultant's services and charges are provided on an as-needed basis in response to the demand for such services and may fluctuate from time to time; and

WHEREAS, to ensure that the Consultant's services continue on an uninterrupted basis, it is necessary to amend the Original Agreement to provide for a one year extension of the Agreement beginning from July 1, 2020 and ending on July 1, 2021, and to authorize up to $194,000 during the one-year extension of this Agreement, as further described herein and as depicted in Exhibit "A" Payment Rates and Schedule for Fiscal Year 2020-21; and

WHEREAS, the Consultant's assigned staff member continues to provide services to the Development Services Department in a thorough and professional manner and significantly contribute to the Department's ability to serve its customers; and

WHEREAS, Consultant's costs are included with City's FY 2020-21 budget; and

WHEREAS, it now becomes necessary to amend said Agreement and the Parties are desirous of such amendment.

NOW, THEREFORE**,** in consideration of the mutual undertakings herein, the Parties amend the Agreement as follows:

1. On page one (1), within the Section entitled "PAYMENT", Subsection (a) is amended to include a sentence at the end of said subsection as follows:

   "For Extended Year One beginning July 1, 2020 and ending July 1, 2021, the total amount payable to Consultant for its professional services tasks shall not exceed a total of $194,000, as set forth in Exhibit "A" of the Second Amendment, unless specifically authorized by the City Manager, or designee."

2. All remaining provisions of the Original Agreement shall remain the same.

(Signatures on Following Page)

IN WITNESS WHEREOF, the City and Consultant have approved this First Amended Agreement effective the day and year first above written.

CITY:

City of Upland

By: _____
Rosemary Hoerning,
City Manager

ATTEST:

By: _____
Keri Johnson,
City Clerk

APPROVED AS TO FORM:

By: _____
Steven Flower,
Interim City Attorney

CONSULTANT:

Interwest Consulting Group, Inc.

By: _____
Terry J. Rodriguez,
President

Exhibit "A"
FY 2020-2021

PAYMENT RATES AND SCHEDULE

PART I – BUILDING & SAFETY SERVICES BASED ON HOURLY FEE STRUCTURE

Certified Classification	Hourly Rate
Deputy Building Official	$ 98
Building Official	115
Permit Technician I	45
Permit Technician II	52
Permit Technician III	65
Plan Check Specialist I	77
Plan Check Specialist II	87
Plan Check Specialist III	98
Plan Check Engineer	110
Senior Plan Check Engineer	115
Structural Plan Check Engineer	130
Building Inspector I	75
Building Inspector II	80
Building Inspector III	85
CASp Specialist	105

Rates are typically reviewed *yearly on July 1 and may be subject to revision unless under specific contract obligations.* Mileage utilized while performing inspection services within the city will be charged at the current IRS Vehicle Mileage Rate.

PART II – BUILDING & SAFETY PLAN CHECK FEES BASED ON CITY FEES

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

- ✓ 65% for first time check and any required re-check.
- ✓ 95% for expedited plan check.
- ✓ There is no charge for courier or shipping services.

FIRST AMENDMENT TO
AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES
BETWEEN THE
THE CITY OF UPLAND
AND
INTERWEST CONSULANTING GROUP, INC.

THIS FIRST AMENDMENT TO AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES (the "First Amended Agreement") is made as of the 26th day of November 2018, by and between the City of Upland (the "City"), and Interwest Consulting Group, Inc., a Colorado corporation (the "Consultant"). Collectively, City and Consultant are referred to herein as the "Parties".

WITNESSETH THAT:

WHEREAS, City and Consultant previously entered into an original Agreement for Professional Consultant Services dated July 1, 2017 (the "Original Agreement") for the service delivery period of July 1, 2017 through July 1, 2020 (the "Term"); and

WHEREAS, pursuant to the Original Agreement, during the Term the Consultant is to provide a variety of professional services tasks in support of the City's Development Services Department primarily related to Building Official, Building Plan Check, Building Inspection and Permit Technician related activities, as defined within Exhibit "A" to the Original Agreement; and

WHEREAS, at the time the Original Agreement was approved, the staff report presenting the Original Agreement indicated that during its three-year term the Consultant's costs will not exceed $250,000 per fiscal year or a total of $750,000 over three years; however, the Original Agreement only included a $250,000 funding authorization (the "Initial Funding Authorization"); and

WHEREAS, the Consultant's services and charges are provided on an as-needed basis in response to the demand for such services and may fluctuate from time to time; and

WHEREAS, based on the current demand for the Consultant's services, it is anticipated that the Initial Funding Authorization will approximately cover the Consultant's charges for services during the first 18 months of the Original Agreement (i.e., through December 2018); and

WHEREAS, to ensure that the Consultant's services continue on an uninterrupted basis, it is necessary to amend the Original Agreement to authorize up to $750,000-worth of Consultant's services over the Original Agreement's three-year term consistent with the staff report presenting the Original Agreement; and

IN WITNESS WHEREOF, the City and Consultant have approved this First Amended Agreement effective the day and year first above written.

CITY:

City of Upland

By: _____
Jeannette Vagnozzi
Acting City Manager

CONSULTANT:

Interwest Consulting Group, Inc.

By: _____
Terry J. Rodrigue,
President

ATTEST:

By: _____
Keri Johnson
Deputy City Clerk

APPROVED AS TO FORM:

By: _____
James L. Markman
City Attorney

AGREEMENT
FOR PROFESSIONAL CONSULTANT SERVICES
INTERWEST CONSULTANT GROUP

THIS AGREEMENT is made and effective as of July 1st 2017, between the City of Upland, a municipal corporation ("City") and Interwest Consulting Group ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM.** This Agreement shall commence on July 1, 2017, and shall remain and continue in effect until tasks described herein are completed, but in no event later than July1, 2020, unless sooner terminated pursuant to the provisions of this Agreement. The City may, upon mutual agreement, extend the contract for two, one year additional terms, if contract is extended beyond the original term, contract price shall be adjusted at the beginning of each calendar year in accordance with the charges in the Consumer Price Index for all Urban Consumers in the Los Angeles-Anaheim-Riverside Area published monthly by the U. S. Bureau of Labor Statistics (CPI).

2. **SERVICES.** Consultant shall perform the services and tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. **PERFORMANCE.** Consultant shall at all time faithfully, competently and to the best of his or her ability, experience, and talent, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

PAYMENT.

a. The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, Payment Rates and Schedule, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. Any terms in Exhibit B other than the scope of work to be performed, payment rates and schedule of payment are null and void. This amount shall not exceed $250,000.00, for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

b. Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

The City Manager may approve additional work up to ten percent (10%) of the amount of the Agreement or fifty thousand dollars ($50,000.00).

c. Consultant will submit invoices monthly for actual services performed. Invoices shall be submitted between the first and fifteenth business day of each month, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of consultant's fees it shall give written

may be used, reused or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files containing data generated for the work, Consultant shall make available to the City, upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

9. INDEMNIFICATION.

a. The Consultant agrees to defend, indemnify, protect and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, including attorney fees and expert witness fees, or liability of any kind or nature which the City, its officers, agents and employees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of Consultant's negligent or wrongful acts or omissions arising out of or in any way related to the performance or non-performance of this Agreement, excepting only liability arising out of the negligence of the City.

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

10. INSURANCE REQUIREMENTS. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

a. Minimum Scope of Insurance. Coverage shall be at least as broad as:

(1) Insurance Services Office Commercial General Liability form No. CG 00 01 11 85 or 88.

(2) Insurance Services Office Business Auto Coverage form CA 00 01 06 92 covering Automobile Liability, code 1 (any auto). If the Consultant owns no automobiles, a non-owned auto endorsement to the General Liability policy described above is acceptable.

(3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. If the Consultant has no employees while performing under this Agreement, worker's compensation insurance is not required, but Consultant shall execute a declaration that it has no employees.

(4) Professional Liability Insurance shall be written on a policy form providing professional liability for the Consultant's profession.

b. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

(1) General Liability: One million dollars ($1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

f. Verification of Coverage. Consultant shall furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City before work commences. As an alternative to the City's forms, the Consultant's insurer may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

11. INDEPENDENT CONTRACTOR.

a. Consultant is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

b. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

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

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

12. LEGAL RESPONSIBILITIES. The Consultant shall keep itself informed of all local, State and Federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. Consultant is responsible for compliance with the Patient Protection and Affordable Care Act (2010), and City shall not be obligated to provide any health care coverage to Consultant. The Consultant shall at all times observe and comply with all such ordinances, laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this section.

13. RELEASE OF INFORMATION.

a. All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written

to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Upland. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

18. **PROHIBITED INTEREST.** No officer, or employee of the City of Upland shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, the Consultant, or Consultant's sub-contractors for this project, during his/her tenure or for one year thereafter. The Consultant hereby warrants and represents to the City that no officer or employee of the City of Upland has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the Consultant or Consultant's sub-contractors on this project. Consultant further agrees to notify the City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement.

19. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

20. **AUTHORITY TO EXECUTE THIS AGREEMENT.** The person or persons executing this Agreement on behalf of Consultant warrants and represents that he or she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

21. **SEVERABILITY**. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

22. **WAIVER**. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

23. **CONSTRUCTION**. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

24. **COSTS**. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

EXHIBIT A

TASKS TO BE PERFORMED

The specific elements (scope of work) of this service include:

SCOPE OF SERVICES

We understand the City desires to retain a qualified firm to provide a variety of building services to support new development projects and special programs in the City of Upland. Our proposal is being submitted to provide all of the services requested which include:

- Building Official
- Building Plan Check
- Building Inspection
- Permit Technician

Services will be provided as needed to support and supplement your existing staff. All services will maintain a high level of customer service to the community, support the efficiency within the department and provide quick plan check turn around times.

Interwest Consulting Group has a proven track record providing Building & Safety to jurisdictions throughout the State of California under the same arrangement. Interwest has the experience to and is proposing to provide all the services required. Interwest is prepared to continue serving the City of Upland by providing Building and Safety services. The proposed team is comprised of highly experienced, customer-service oriented professionals who have successfully served our client jurisdictions.

We view our role and mission is to provide the following:

- ✓ A team of professionals with high-level experience and skills in successful management of building department services, staff with a customer service focus and thorough knowledge of building department policies and procedures, and promoting cooperation and partnership with other City departments and outside agencies
- ✓ Qualified and seasoned Building Official
- ✓ Licensed Plan Review Engineers and/or ICC certified Plans Examiners for thorough and timely plan reviews to ensure compliance to all Building Laws of the City and State
- ✓ Certified Building Inspector(s) with broad experience in jurisdictional procedures and the highest commitment to customer service
- ✓ Customer service minded Permit Technician
- ✓ Attend any required meetings related to plan review or field inspection of projects
- ✓ Services in a cost-effective manner that remains within the City's budget constraints

BUILDING OFFICIAL SERVICES

We have reviewed and are very familiar with the specific services to be performed by the building official including, but not limited to the following:

- ✓ Serve as the City's Building Official, on-site, as needed

subject to review and approval by the Building Department.

Communicating Plan Check Results

Plan reviews will consist of written comments and redlined plans (1 copy). Comments and redlined plans or approval/denial letter and 1 set of plans will be returned to the City after each review is completed.

Specifically, plan reviews, when not immediately approved, will result in lists of comments referring to specific details and drawings, and referencing applicable code sections. Interwest Consulting Group will provide a clear, concise, and thorough document (i.e., comment list) from which clients, designers, contractors, and owners can work. Comment lists are delivered to our clients and other designated recipients (e.g., designers, contractors, owners) via email, FAX, and/or reliable overland carrier. If requested, Interwest Consulting Group will transmit plan review comments and coordinate re-checks directly to the applicant as required and competed plan review documents ready for approval will be returned to the City for final approval.

On-Site Consultant Services & Meeting Attendance

Interwest Consulting Group has a full-time staff of experienced plan reviewers and licensed architects, structural and civil engineers available to perform on-site plan review. We understand the City may require the services of an onsite plan reviewer from time to time. Also, many of our inspection personnel are cross-trained and skilled in performing both front counter and inspection duties as a potential added cost-savings to the City.

In addition, staff is available for pre-construction or pre-design meetings, field visits, contacts with the design team, and support for field inspection personnel as needed. With some reasonable limitations, pre-construction and pre-design meetings associated with projects that we plan review are considered part of the plan review service.

Electronic Plan Check Services

Interwest Consulting Group currently provides electronic plan review services for multiple jurisdictions throughout California and we are prepared to provide electronic plan check for the City of Upland.

More and more jurisdictions are seeing the benefits of electronic permit and plan check, especially for large, complex projects. Electronic plan check services delivers many benefits to cities, including substantially improved turnaround times; instantaneous comments to the developer, applicant or architect; secured accessibility to documents; and reduced paper storage. Our staff is experienced providing electronic plan review and can work closely with the City on any electronic plan check software program that is utilized. Our goal is always to collaborate with and support the building department by providing thorough, accurate and timely plan reviews.

We have found the jurisdictions with whom we work, including their respective customers, have a wide range of needs and goals regarding electronic plan review and permitting services. We have worked with some clients to develop electronic plan review systems utilizing several open market software applications and hosting sites available. For cities that do not utilize electronic plan check or perhaps have primarily light commercial and residential development, we have a simple-to-use and secure FTP site that allows the Applicant to upload digital content directly to our staff

Plan Check Tracking Method & Billing Process

Our staff has experience working with most project tracking databases utilized by building departments. Our staff will update electronic records and make project related database entries as directed by the City.

We will create and maintain a Jurisdiction File containing our research on any unique amendments or specifications required by your jurisdiction, billing arrangements, contact information and any special requests you would like us to keep in mind.

Interwest Consulting Group uses a custom-designed database to maintain and track all plans throughout the

BUILDING INSPECTION SERVICES

Interwest Consulting Group tailors inspection services to the particular needs of each client with special attention to providing competent, consistent service at all levels—at all times. We handpick our candidates and identify skill levels required to best match the City's inspection goals and philosophy. All Interwest Consulting Group inspectors are ICC certified.

Interwest staff has performed inspection services on a wide variety of construction projects including custom homes, large residential developments, and commercial, institutional and essential service buildings. We provide valuable experience gained through successful work with government clients throughout California. This clear understanding of the construction process enables our people to quickly identify and resolve problems both in the office and in the field.

Assigned staff will perform continuous or periodic construction inspections to verify that the work of construction is in conformance with the approved project plans as well as identifying issues of non-compliance with applicable building codes. Many of our inspector candidates can provide dual plan check and inspector services for our clients. When necessary for large or fast-track projects, multiple inspectors are available.

Staff assigned will contact the Building Official for interpretations, local ordinances, local preferences, alternate materials and exceptions/alternates to the model codes. They will report directly to the jurisdiction Building Official or other person designated for all project-related work. Items, if any, which cannot be resolved between the project inspectors and contractors, will be forwarded to the Building Official for final resolution.

Inspection personnel assigned will be able to read, understand and interpret construction plans, truss drawings and calculations, prepare and maintain accurate records and reports, communicate effectively orally and in writing and to work effectively with contractors, the public and general staff. Inspectors will posses knowledge of approved and modern methods, materials, tools and safety used in building inspection and the most current building standards.

Services include, but are not limited to:

- ✓ Perform all necessary building inspections in a timely and courteous manner.
- ✓ Resolve code interpretation issues in the field.
- ✓ Enforce compliance with the conditions of approval, provisions of your jurisdiction's ordinances and the code requirements set forth on the plans for which a permit was issued.
- ✓ Observe each project at the completion of the various stages of construction for compliance with the appropriate building code; state disabled access and energy regulations.
- ✓ Identify issues of non-compliance with applicable building codes.
- ✓ Ensure that adequate records are maintained for all building inspection activities.
- ✓ Administrative duties including but not limited to scheduling of inspections and record keeping.
- ✓ Coordinate with the Code Enforcement Officer on building code violations.
- ✓ Coordinate with Public Works Inspectors on matters involving public water, sewer, storm drainage and street improvements.

Integration with City Staff and Departments

As municipal consultants to many jurisdictions, Interwest staff is highly adaptive to all processes and procedures and quickly and seamlessly assimilates to your specialized requirements. All personnel are cross-

EXHIBIT B

PAYMENT RATES AND SCHEDULE

PART I – BUILDING & SAFETY SERVICES BASED ON HOURLY FEE STRUCTURE

Certified Classification	Hourly Rate
Deputy Building Official	$ 98
Building Official	115
Permit Technician I	45
Permit Technician II	52
Permit Technician III	60
Plan Check Specialist I	77
Plan Check Specialist II	87
Plan Check Specialist III	98
Plan Check Engineer	110
Senior Plan Check Engineer	115
Structural Plan Check Engineer	125
Building Inspector I	70
Building Inspector II	78
Building Inspector III	85
CASp Specialist	100

Rates are typically reviewed *yearly on July 1 and may be subject to revision unless under specific contract obligations.* Mileage utilized while performing inspection services within the city will be charged at the current IRS Vehicle Mileage Rate.

PART II – BUILDING & SAFETY PLAN CHECK FEES BASED ON CITY FEES

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

- ✓ 65% for first time check and any required re-check.
- ✓ 95% for expedited plan check.
- ✓ There is no charge for courier or shipping services.

STAFF REPORT

ITEM NO. 11.G.

DATE:	May 26, 2020
TO:	MAYOR AND CITY COUNCIL
FROM:	ROSEMARY HOERNING, CITY MANAGER
PREPARED BY:	ROBERT D. DALQUEST, DEVELOPMENT SERVICES DIRECTOR
SUBJECT:	CONSIDERATION OF THE SECOND AMENDMENT TO THE AGREEMENT FOR CONSULTANT SERVICES WITH ANNEALTA GROUP

RECOMMENDED ACTION

It is recommended that the City Council approve the Second Amendment to the agreement for consultant services to extend the contract one year with Annealta Group, and authorize the City Manager to execute the Second Amendment.

GOAL STATEMENT

The proposed action supports the City's goal to provide timely customer service and ensure an expedited development review process.

BACKGROUND

Since 2014, the Development Services Department has utilized professional consultant services to provide improved customer service and to provide flexible contract staffing in a fluctuating project workload environment. The professional services under the Agreement have helped to streamline the development review and entitlement process and the building permitting process. Developer deposits are collected to partially off-set general fund expenditures for the consultant services. The decision to utilize consultant services was based on a 2014 Blue Ribbon Committee's recommendation and Upland's staffing levels being typically lower than similar sized cities. Using contract employees allows the Development Services Department to better respond to changing demands for services from the development community, and do not increase the CalPERS liability.

The City and Annealta Group previously entered into an Agreement for professional consultant services on July 1, 2017 (the "Original Agreement") for the period of July 1, 2017 through July 1, 2020 (the "Term"). The Original Agreement provided that the term may be extended

for three (3), one year additional terms. Pursuant to the Original Agreement, the Annealta Group currently provides professional services for a contract Planning Manager in the Planning Division, and a contract Building Permit Technician in the Building & Safety Division. A Senior Planner position was also funded originally within the funding limits of the Original Agreement but was consolidated with the Planning Manager position in FY 2019-20 for cost efficiency and to enable funding to hire an Assistant Planner to assist in the day-to-day operations of the Division at a cost savings.

On August 13, 2018, the City Council approved an Amendment (the "First Amendment") to the Agreement to clarify the total funding plan over the three year term with a "not to exceed" total of $1,375,000, which consisted of $374,951 for FY 2017-18, $462,480 for FY 2018-19 and $537,569 for FY 2019-20. It was anticipated that the cost of the contract would be partially cost recoverable from developer deposits. In FY 2019-20 it is estimated that approximately 55% will be cost recoverable for the contract Planning Manager.

ISSUES/ANALYSIS

To ensure the services that Annealta provides to the Development Services Department continue on an uninterrupted basis, staff is seeking City Council approval of the Second Amendment to extend the Agreement for one year and continue to utilize a contract Planning Manager and a contract Building Permit Technician. Annealta's assigned staff members provide excellent services to the Development Services Department in a thorough and professional manner, and significantly contribute to the Department's ability to efficiently serve our customers. The Planning Manager is instrumental in overseeing the day-to-day activities of the Planning Division staff along with the Development Services Director, and is assigned the more complex planning cases through developer deposits. The Building Permit Technician handles a significant workload in processing plan check and building permits and is the main staff person who deals with the developers, contractors, and property owners over the phone and at the counter.

FISCAL IMPACTS

In order to continue the necessary staff and service delivery through contract services, it is necessary to amend the Original Agreement to authorize a one year extension of the contract from July 1, 2020 to July 1, 2021, and to fund the one year extension for the two contract staff members at a "not to exceed" amount of $336,640. This is based on a cost for the Planning Manager at $240,640 ($128/hour for 1,880 hours/year), and the Building Permit Technician at $96,000 ($51/hour for 1,880 hours/year). In staff's experience and based on a recent survey from other consulting firms, the hourly rate is superior as the Planning Manager position, for example, with other consulting firms generally ranges from a minimum of $150 per hour and up to $205 per hour.

The proposed Second amendment with Annealta for the one year extension will not exceed $336,640, and has been included in the Development Services Department Budget for FY 2020-21 under professional services in Planning and Building & Safety. It is estimated that 50% to 60% of the cost for the Planning Manager will be cost recoverable from developer deposits with the remaining from User Fees paid by applicants for land use applications, and 100% of the cost for the Building Permit Technician paid from General Fund revenues through plan check and building permit fees paid by developers and the public.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

Second Amendment to Annealta Agreement
Original Agreement & First Amendment

SECOND AMENDMENT TO
PROFESSIONAL CONSULTANT SERVICES AGREEMENT
BETWEEN THE
THE CITY OF UPLAND
AND
ANNEALTA GROUP, INC.

THIS SECOND AMENDMENT TO PROFESSIONAL CONSULTANT SERVICES AGREEMENT (the "Second Amended Agreement") is made as of the 26th day of May 2020, by and between the City of Upland (the "City"), and Annealta Group, Inc., a California corporation (the "Consultant"). Collectively, City and Consultant are referred to herein as the "Parties".

WITNESSETH THAT:

WHEREAS**,** City and Consultant previously entered into an original Professional Consultant Services Agreement (the "Original Agreement") dated July 1, 2017 (the "Commencement Date") for the service delivery period of July 1, 2017 through June 30, 2020 (the "Term"); and

WHEREAS, pursuant to the Original Agreement, during the Term the Consultant is to provide a variety of professional services tasks in support of the City's Development Services Department, as defined within Exhibit "A" to the Original Agreement; and

WHEREAS, as of the Commencement Date, the City obtained professional services in support of its Development Services Department from three (3) different consulting firms, of which the Consultant was one; and

WHEREAS, the City's projected combined three-year budget estimate for the cost of services from the three consulting firms was $1,500,000; and

WHEREAS, due to a variety of factors including, but not limited to, a need to adapt to changing demands for services to the public and to increase efficiencies of service delivery in terms of quality and cost, during FY 2017-18 the City consolidated its consulting services provided by three consulting firms into one, i.e., with the Consultant: and

WHEREAS, the skills sets of the Consultant's assigned staff members together with the billable rates applicable thereto are superior to the other two consulting firms that formerly provided professional services tasks in support of the City's Development Services Department; and

WHEREAS, on August 13, 2018, the City Council approved an Amendment (the "First Amendment") to the Agreement to clarify and increase the total funding plan over the three year term with a "not to exceed" total of $1,375,00, to offset the costs for Consultant's services to fulfill tasks formerly provided by other consulting firms and to confirm the Consultant's changes to its professional service rates during FY 2019-20 (the third year of the three-year Term); and

WHEREAS, Consultant confirms that it is able to continue to provide the professional services tasks, as defined in the Original Agreement; and

WHEREAS, the City and Consultant agree to extend the Original Agreement for One Year pursuant to Section 1 of the Original Agreement beginning July I, 2020 and ending July 1, 2021 at a one-year budget allocation of $336,640, as further described herein and as depicted in Exhibit "A" Payment Rates and Schedule for Fiscal Year 2020-21; and

WHEREAS, Consultant's costs are included with City's FY 2020-21 budget and are predominately funded from developer deposits and user fees; and

WHEREAS, it now becomes necessary to amend said Agreement and the Parties are desirous of such amendment.

NOW, THEREFORE**,** in consideration of the mutual undertakings herein, the Parties amend the Agreement as follows:

1. Section 5, PAYMENT, Subsection (a) is amended to include a sentence at the end of said subsection as follows:

> "For Extended Year One beginning July 1, 2020 and ending July 1, 2021, the total amount payable to Consultant for its professional services tasks shall not exceed a total of $336,640, as set forth in Exhibit "A" of the Second Amendment, unless specifically authorized by the City Manager, or designee."

2. All remaining provisions of the Original Agreement shall remain the same.

(Signatures on Following Page)

IN WITNESS WHEREOF, the City and Consultant have approved this Second Amendment to the Original Agreement effective the day and year first above written.

CITY:

City of Upland

By: _____
Rosemary Hoerning,
City Manager

ATTEST:

By: _____
Keri Johnson,
City Clerk

APPROVED AS TO FORM:

By: _____
Steven Flower,
Interim City Attorney

CONSULTANT:

Annealta Group, Inc.

By: _____
Tim D'Zmura,
President

Exhibit "A", Payment Rates and Schedule
ANNEALTA GROUP – HOURLY RATES FOR SERVICES

EXTENDED YEAR ONE - FISCAL YEAR 2020-2021

Title	Rate
Planning Manager	128
Senior Planner	116
Associate Planner	100
Assistant Planner	90
Planning Technician	75
Building Official	115
Deputy Building Official	100
Structural Plan Check Engineer	120
Senior Plan Checker	105
Plan Checker	95
Assistant Plan Checker	85
Permit Tech III	51
Permit Tech II	45
Permit Tech I	40
CASp Specialist	105
Building Inspector I	70
Building Inspector II	75
Building Inspector III	80

*Building Plan Checks – 65% of city fee collected

COPY

FIRST AMENDMENT TO PROFESSIONAL CONSULTANT SERVICES AGREEMENT BETWEEN THE THE CITY OF UPLAND AND ANNEALTA GROUP, INC.

THIS FIRST AMENDMENT TO PROFESSIONAL CONSULTANT SERVICES AGREEMENT (the "First Amended Agreement") is made as of the 13th day of August 2018, by and between the City of Upland (the "City"), and Annealta Group, Inc., a California corporation (the "Consultant"). Collectively, City and Consultant are referred to herein as the "Parties".

WITNESSETH THAT:

WHEREAS, City and Consultant previously entered into an original Professional Consultant Services Agreement (the "Original Agreement") dated July 1, 2017 (the "Commencement Date") for the service delivery period of July 1, 2017 through June 30, 2020 (the "Term"); and

WHEREAS, pursuant to the Original Agreement, during the Term the Consultant is to provide a variety of professional services tasks in support of the City's Development Services Department, as defined within Exhibit "A" to the Original Agreement; and

WHEREAS, as of the Commencement Date, the City obtained professional services in support of its Development Services Department from three (3) different consulting firms, of which the Consultant was one; and

WHEREAS, the City's projected combined three-year budget estimate for the cost of services from the three consulting firms was $1,500,000; and

WHEREAS, due to a variety of factors including, but not limited to, a need to adapt to changing demands for services to the public and to increase efficiencies of service delivery in terms of quality and cost, during FY 2017-18 the City consolidated its consulting services provided by three consulting firms into one, i.e., with the Consultant: and

WHEREAS, at the time the Original Agreement was approved, the staff report presenting the Original Agreement indicated that during the three-year the Consultant could be paid up to $250,000 per fiscal year for a total of $750,000; however, the Original Agreement only included funding for the first year; and

WHEREAS, the skills sets of the Consultant's assigned staff members together with the billable rates applicable thereto are superior to the other two consulting firms that formerly provided professional services tasks in support of the City's Development Services Department; and

WHEREAS, it is necessary to amend the Original Agreement to provide for a three-year funding program for Consultant's services and to increase funding levels to offset the costs for Consultant's services to fulfill tasks formerly provided by other consulting firms and to confirm the Consultant's changes to its professional service rates during FY 2019-20 (the third year of the three-year Term); and

WHEREAS, Consultant confirms that it is able to provide the professional services tasks, as defined in Exhibit "A" to the Original Agreement within City's combined service delivery paradigm as requested by City at a combined three-year budget allocation of $1,350,000, as further described herein; and

WHEREAS, Consultant's costs are included with City's FY 2018-19 budget and are predominately funded from user fees and salary savings offsets; and

WHEREAS, it now becomes necessary to amend said Agreement and the Parties are desirous of such amendment.

NOW, THEREFORE, in consideration of the mutual undertakings herein, the Parties amend the Agreement as follows:

1. Section 5, PAYMENT, Subsection a. is amended in its entirety as follows:

    a. The City agrees to pay Consultant monthly, in accordance with the payment rate and terms and the schedule of payment as set forth in the Amended Exhibit "B", Payment Rates and Schedule, attached hereto and incorporated herein by the reference as though fully set forth herein, based on actual time spent on the professional services tasks as defined in Exhibit "A" to the Original Agreement. Any terms in the amended Exhibit "B" other than the scope of work to be performed, payment rates and schedule of payment are null and void. The total amount payable to Consultant for its professional services tasks during the Term shall not exceed a total of $1,350,000 (the "Fiscal Limit") unless specifically authorized by the City Council. Further, it is estimated that the Fiscal Limit will be divided among the three fiscal years during the Term in the approximate amounts of: i) $374,951 for FY 2017-18; ii) $462,480 for FY 2018-19; and iii) $537, 569, unless specifically authorized by the City Manager, or designee.

2. All remaining provisions of the Original Agreement shall remain the same.

(Signatures on Following Page)

IN WITNESS WHEREOF, the City and Consultant have approved this First Amended Agreement effective the day and year first above written.

CITY:

City of Upland

By: Bill R. Manis
Bill R. Manis
City Manager

CONSULTANT:

Annealta Group, Inc.

By:
Tim D'Zmura,
President

ATTEST:

By:
Jeanette Vagnozzi
Assistant City Manager/City Clerk

APPROVED AS TO FORM:

By:
James L. Markman
City Attorney

Amended Exhibit "B", Payment Rates and Schedule

ANNEALTA GROUP – HOURLY RATES FOR SERVICES

HOURLY RATES FOR:
Fiscal Years 2017 - 2018 and 2018 – 2019

Title	Rate
Planning Manager	118
Senior Planner	108
Associate Planner	93
Assistant Planner	82
Planning Technician	72
Building Official	108
Deputy Building Official	93
Structural Plan Check Engineer	108
Senior Plan Checker	98
Plan Checker	87
Assistant Plan Checker	77
Permit Tech III	47
Permit Tech II	42
Permit Tech I	37
CASp Specialist	95
Building Inspector I	65
Building Inspector II	70
Building Inspector III	75

*Building Plan Checks – 65% of city fee collected

HOURLY RATES FOR:
Fiscal Year 2019 -2020

Title	Rate
Planning Manager	128
Senior Planner	116
Associate Planner	100
Assistant Planner	90
Planning Technician	75
Building Official	115
Deputy Building Official	100
Structural Plan Check Engineer	120
Senior Plan Checker	105
Plan Checker	95
Assistant Plan Checker	85
Permit Tech III	51
Permit Tech II	45
Permit Tech I	40
CASp Specialist	105
Building Inspector I	70
Building Inspector II	75
Building Inspector III	80

*Building Plan Checks – 65% of city fee collected

AGREEMENT
FOR PROFESSIONAL CONSULTANT SERVICES
ANNEALTA GROUP

THIS AGREEMENT is made and effective as of July 1, 2017, between the City of Upland, a municipal corporation ("City") and Annealta Group ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM.** This Agreement shall commence on July 1, 2017, and shall remain and continue in effect until tasks described herein are completed, but in no event later than July 1, 2020 unless sooner terminated pursuant to the provisions of this Agreement. The City may, upon mutual agreement, extend the contract for three (3) one (1) year additional terms.

2. **SERVICES.** Consultant shall perform the services and tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A. Services shall only be rendered at the request of the City when sufficient deposit funds have been submitted by an applicant/developer to pay for such services.

3. **PERFORMANCE.** Consultant shall at all times faithfully, competently and to the best of his or her ability, experiences, and talent, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. **PREVAILING WAGES.** Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City Council has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Contract from the Director of the Department of Industrial Relations. Copies may be obtained from the California Department of Industrial Relations' Internet web site at http://www.dir.ca.gov. Consultant shall provide a copy of prevailing wage rates to any staff or sub-contractor hired, and shall pay the adopted prevailing wage rates as a minimum. Consultant shall comply with the provisions of Sections 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. Pursuant to the provisions of 1775 of the Labor Code, Consultant shall forfeit to the City, as a penalty, the sum of $25.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this contract, by him or by any subcontractor under him, in violation of the provisions of the Contract.

5. **PAYMENT.**

a. The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, Payment Rates and Schedule, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. Any terms in Exhibit B other than the scope of work to be performed, payment rates and schedule of payment are null and void. This amount shall not exceed $250,000.00 for the term of the Agreement unless additional payment is approved as provided in this Agreement.

b. Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth

herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

The City Manager may approve additional work under the Agreement up to ten percent (10%) of the agreement amount or fifty thousand dollars ($50,000). Any additional work in excess of this amount shall be approved by the City Council.

c. Consultant will submit invoices monthly for actual services performed. Invoices shall be submitted between the first and fifteenth business day of each month, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of consultant's fees it shall give written notice to Consultant within 30 days of receipt of an invoice of any disputed fees set forth on the invoice.

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE.

a. The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the consultant at least ten (10) days' prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

b. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 4.

7. DEFAULT OF CONSULTANT.

a. The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

b. If the City Manager or his delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, it shall serve the Consultant with written notice of the default. The Consultant shall have (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. OWNERSHIP OF DOCUMENTS.

a. Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the

performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts there from as necessary, and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

b. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the work, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files containing data generated for the work, Consultant shall make available to the City, upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

9. INDEMNIFICATION.

a. The Consultant agrees to defend, indemnify, protect and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, including attorney fees and expert witness fees, or liability of any kind or nature which the City, its officers, agents and employees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of Consultant's negligent or wrongful acts or omissions arising out of or in any way related to the performance or non-performance of this Agreement, excepting only liability arising out of the negligence of the City.

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

10. INSURANCE REQUIREMENTS. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

a. Minimum Scope of Insurance. Coverage shall be at least as broad as:

(1) Insurance Services Office Commercial General Liability form No. CG 00 01 11 85 or 88.

(2) Insurance Services Office Business Auto Coverage form CA 00 01 06 92 covering Automobile Liability, code 1 (any auto). If the Consultant owns no automobiles, a non-owned auto endorsement to the General Liability policy described above is acceptable.

(3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. If the Consultant has no employees while performing under this Agreement, worker's

compensation insurance is not required, but Consultant shall execute a declaration that it has no employees.

(4) Professional Liability Insurance shall be written on a policy form providing professional liability for the Consultant's profession.

b. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

(1) General Liability: One million dollars ($1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

(2) Automobile Liability: One million dollars ($1,000,000) per accident for bodily injury and property damage.

(3) Worker's Compensation as required by the State of California; Employer's Liability: One million dollars ($1,000,000) per accident for bodily injury or disease.

(4) Professional Liability coverage: Two million ($2,000,000) per claim and in aggregate.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City Manager. At the option of the City Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

d. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(1) The City, its officers, officials, employees and volunteers are to be covered as insured's as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

(2) For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

(3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

(4) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(5) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

e. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VIII, and admitted and licensed to do business in the State of California, unless otherwise acceptable to the City. Self insurance shall not be considered to comply with these insurance requirements.

f. Verification of Coverage. Consultant shall furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City before work commences. As an alternative to the City's forms, the Consultant's insurer may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

11. INDEPENDENT CONTRACTOR.

a. Consultant is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

b. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

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

Notwithstanding any other agency, state or federal policy, rule, regulation, law or

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

12. LEGAL RESPONSIBILITIES. The Consultant shall keep itself informed of all local, State and Federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. Consultant is responsible for compliance with the Patient Protection and Affordable Care Act (2010), and City shall not be obligated to provide any health care coverage to Consultant. The Consultant shall at all times observe and comply with all such ordinances, laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this section.

13. RELEASE OF INFORMATION.

a. All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents or subcontractors, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

b. Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

14. NOTICES. Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To City: City of Upland
Mailing Address:
P.O. Box 460

Upland, California 91785
460 North Euclid Avenue
Upland, California 91785
Attention: City Manager

To Consultant: Tim D'Zmura, Principal
Annealta Group
4952 Warner Ave, Ste 227
Huntington Beach, CA 92649

15. ASSIGNMENT. The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Upon termination of this Agreement, Consultant's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Consultant.

16. LICENSES. At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

17. GOVERNING LAW. The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Upland. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

18. PROHIBITED INTEREST. No officer, or employee of the City of Upland shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, the Consultant, or Consultant's sub-contractors for this project, during his/her tenure or for one year thereafter. The Consultant hereby warrants and represents to the City that no officer or employee of the City of Upland has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the Consultant or Consultant's sub-contractors on this project. Consultant further agrees to notify the City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement.

19. ENTIRE AGREEMENT. This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

20. AUTHORITY TO EXECUTE THIS AGREEMENT. The person or persons executing this Agreement on behalf of Consultant warrants and represents that he or she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

21. **SEVERABILITY**. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

22. **WAIVER**. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

23. **CONSTRUCTION**. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

24. **COSTS**. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

25. **RESPONSIBILITY FOR ERRORS**. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

26. **ATTORNEYS' FEES**. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF UPLAND

Martin Thouvenell, Interim City Manager

Attest:

Jeannette Vagnozzi, Deputy City Manager/ City Clerk

Approved As to Form:

James L. Markman, City Attorney

CONSULTANT

Annealta Group

By:

Name: TIM D'ZMURA

Title: PRESIDENT

By:

Name: TIM D'ZMURA

Title: SECRETARY

EXHIBIT A

TASKS TO BE PERFORMED

We understand the City desires to retain a qualified firm to provide a variety of planning services to assist the City in the review of new development projects and special programs. Specifically, we will assist the City with the following tasks:

- Current planning as outlined in Title 17 of the municipal code including …
  - design review
  - site development review applications
  - sign regulation
  - variances
  - CUPs
  - historic preservation
  - coordination of CEQA/NEPA preparation
  - Planning Commission and City Council staff report preparation
  - attendance at Planning Commission meetings
- Other services as authorized in writing by the City

EXHIBIT B

PAYMENT RATES

ANNEALTA GROUP - HOURLY RATES FOR SERVICES

Title	Rate
Planning Manager	118
Senior Planner	108
Associate Planner	93
Assistant Planner	82
Planning Technician	72
Building Official	108
Deputy Building Official	93
Structural Plan Check Engineer	108
Senior Plan Checker	98
Plan Checker	87
Assistant Plan Checker	77
Permit Tech III	47
Permit Tech II	42
Permit Tech I	37
CASp Specialist	95
Building Inspector I	65
Building Inspector II	70
Building Inspector III	75

*Building Plan Checks – 65% of city fee collected

STAFF REPORT

ITEM NO. 11.H.

DATE:	May 26, 2020
TO:	MAYOR AND CITY COUNCIL
FROM:	ROSEMARY HOERNING, CITY MANAGER
PREPARED BY:	ROBERT D. DALQUEST, DEVELOPMENT SERVICES DIRECTOR JOSHUA WINTER, ASSOCIATE PLANNER
SUBJECT:	ACCEPTANCE OF WORK FOR THE ENERGY EFFICIENCY AND SOLAR ENERGY PROJECT

RECOMMENDED ACTION

It is recommended that the City Council accept the work, authorize recordation of the Notice of Completion, and release the retention for the Energy Efficiency and Solar Energy Projects.

GOAL STATEMENT

The proposed action supports the City's goal to be good stewards of our financial resources and support economically feasible environmental practices within our City facilities and operations.

BACKGROUND

On March 13, 2017, the City Council approved a Resolution authorizing the City Manager to sign an Agreement with Alliance Building Solutions, Inc (ABS), and financing agreement with Holman Capital for the implementation of certain energy related improvements; including facility lighting, heating/air conditioning (HVAC), heating/air controls, and solar photovoltaic (PV) energy, to City facilities and to make non-substantial changes as required.

Although the City Manager had been authorized to make non-substantial changes to the Agreement, staff elected to bring the agreement back to City Council as the changes were determined to be substantial in nature. Inclusive of the changes, the Installation Agreement was again approved on August 14, 2020 by the City Council. Shortly thereafter, work began on the project, beginning with the facility lighting, heating/air conditioning (HVAC), heating/air controls, then moving forward with the solar panels for the City Facilities.

ISSUES/ANALYSIS

The contractor has satisfactorily completed the required improvements detailed within the contract, including all change orders for the project. The City can now accept the work, file a Notice of Completion, and release the retention to the contractor.

FISCAL IMPACTS

Releasing the retention on the project will result in the final payment to the contractor for the project. The total cost of the project was $7,387,729.00 (10.83 million inclusive of the financing cost). The estimated utility and operational savings total approximately $13.8 million over the expected 25 year useful life of the equipment.

Moving Forward, ABS has entered into a Measurement and Verification (MV) Agreement in order to ensure performance of the equipment and guarantee the savings. The effective date of this performance agreement starts on the date of the final acceptance of the installation project. Under the MV Agreement, ABS will agree to furnish annual energy measurement and savings reports and a "savings guarantee" for up to 15 years. The first report will be provided in May or June of 2021. Subject to the terms of the MV Agreement, if an annual report shows that the City is not realizing the expected utility and operational savings, then ABS will perform system corrections and, if the corrections cannot be made within six months, ABS will pay the City for the energy savings shortfall (but in an amount not exceeding the City's payments under the financing leases).

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

Notice of Completion

Recording requested by and when recorded mail to: City of Upland, City Clerk's Office 460 N. Euclid Avenue Upland, CA 91786	

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

(Space above this line for Recorder's use)

Notice of Completion

Pursuant to Civil Code Section 3093, **NOTICE** is hereby given that:

The undersigned is the owner of the interest or estate stated below in the property hereinafter described. The full name and address of owner is City of Upland, 460 North Euclid Avenue, Upland, California 91786.

Assessor's Parcel Numbers 1046-381-12, 1046-411-47, 1046-121-01, 1046-183-01, 1045-031-03, 1006-391-01 and 1006-401-15.

The work was completed on that certain work known as **The Energy Efficiency and Solar Energy Project** for the undersigned City of Upland, a Municipal Corporation, on the **26th** day of **May, 2020.**

The City accepted the job on the **24th** day of **August, 2017.**

The Contractor on said job was **Alliance Building Solution Inc.** of **San Diego,** California.

The improvement(s) consisted of **energy related improvements, including facility lighting, heating/air conditioning, heating/air controls (HVAC), and solar photovoltaic (PV) energy to City facilities including the Animal Shelter, Carnegie Cultural Center, City Hall, Public Works, Gibson Senior Center, Historic Fire Station, Landecena Family Community Center, Police Department, Public Library, and Recreation/Community Services, in Upland, California.**

The surety was **Suretec Insurance Company.**

All communications relating to the contract should bear the number above mentioned.

I hereby certify under penalty of perjury that the foregoing is true and correct.

Executed this **10th** day of **February**, **2020** at Upland, California.

City of Upland, a Municipal Corporation

_____

Rosemary Hoerning, City Manager

STAFF REPORT

ITEM NO. 11.I.

DATE:	May 26, 2020
TO:	MAYOR AND CITY COUNCIL
FROM:	ROSEMARY HOERNING, CITY MANAGER
PREPARED BY:	STEPHEN PARKER, ASSISTANT CITY MANAGER THERESA DOYLE, HUMAN RESOURCES MANAGER
SUBJECT:	FOURTH AMENDMENT TO THE AGREEMENT WITH THE ZAPPIA LAW FIRM FOR LABOR AND EMPLOYMENT LAW SERVICES

RECOMMENDED ACTION

It is recommended that the City Council approve the fourth amendment to the original agreement with The Zappia Law Firm for labor and employment law services; and authorize the City Manager to execute the amendment.

GOAL STATEMENT

The proposed action supports the City's goal of retaining municipal legal services to ensure the City receives knowledgeable and experienced legal advice.

BACKGROUND

The original professional services agreement with The Zappia Law Firm dated May 25, 2017 was primarily for labor negotiation services with the Upland Firefighters Association. The agreement was amended on August 14, 2017 to include labor negotiation services for all of the other employee associations, as well as employment law services on an as needed basis through June 30, 2018. As labor negotiations continued, the agreement was amended a second time through June 30, 2019. The agreement was amended a third time on November 25, 2019 due to continued employment law services needed for litigation through June 30, 2020.

The Zappia Law Firm is currently assisting the City on labor related cases prompting the need for this additional amendment to the agreement.

ISSUES/ANALYSIS

As the City remains a litigant in multiple employment related suits, a fourth amendment is necessary. Staff believes it is beneficial for the City to continue using the Zappia Law Firm for these ongoing cases because of the firms experience and knowledge/history of the cases. This amendment will extend the agreement through June 30, 2021 with a not to exceed limit of $150,000.

FISCAL IMPACTS

The Fiscal Year 2020/21 operating budget includes budget for these legal services. No additional appropriations are necessary.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

Amendment No. 4 Zappia Law Firm
Amendment No. 3 Zappia Law Firm
Amendment No. 2 Zappia Law Firm
Amendment No. 1 Zappia Law Firm
Professional Services Agreement Zappia Law Firm

AMENDMENT NO. 4 TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF UPLAND AND THE ZAPPIA LAW FIRM

This Amendment hereby amends the Professional Services Agreement between the City of Upland and The Zappia Law Firm, APC ("Agreement") dated May 25, 2017, amended on August 24, 2017, October 8, 2018 and on November 25, 2019.

WHEREAS, the current term of the Agreement expired on June 30, 2020; and

WHEREAS, the Parties desire to continue their relationship subject to the terms and conditions as stated in the Agreement and Amendments dated August 24, 2017, October 8, 2018 and November 25, 2019.

NOW, THEREFORE, in consideration of the mutual covenants contained in the Agreement, the Parties agree as follows:

1. This Amendment to the Agreement shall expire on June 30, 2021.

2. The Zappia Law Firm will provide labor negotiations services with the City's employee associations, and the defense of pending and ongoing litigation against the City.

3. The Zappia Law Firm may provide labor and employment legal services as approved by the City Manager on an as needed basis at the hourly rate and terms as defined in the agreement.

4. Labor and employment legal services provided shall not exceed $150,000 during the term of this amendment.

In WITNESS HEREOF, the Parties, through their respective undersigned authorized officers, have duly executed this Amendment as of the 26th day of May 2020.

THE ZAPPIA LAW FIRM, APC

5/14/20

Ed Zappia, Principal

CITY OF UPLAND

Rosemary Hoerning, City Manager

Attest:

Keri Johnson, City Clerk

Approved as to form:

Steven Flower, Interim City Attorney

AMENDMENT NO. 3 TO THE PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF UPLAND AND THE ZAPPIA LAW FIRM

This Amendment hereby amends the Professional Services Agreement between the City of Upland and the Zappia Law Firm ("Agreement") dated May 25, 2017, as amended on August 204, 2017 and October 8, 2018.

WHEREAS, the current term of the Agreement, as previously amended, elapsed on June 30, 2019; and

WHEREAS, the Parties desire to continue their relationship subject to the terms and conditions as stated in the Agreement, as previously amended;

NOW THEREFORE, in considerations of the mutual covenants contained in the Agreement, the Parties agree as follows:

1. This Amendment to the Agreement shall be effective as of June 30, 2019 and shall expire on June 30, 2020 unless sooner terminated pursuant to the terms and conditions of the Agreement.

2. The Zappia Law Firm shall provide labor and employment legal services as approved by the City Manager on an as-needed basis at the hourly rate set forth in the Agreement, subject to all terms and conditions provided therein and provided further that the amount paid for services rendered during the term of this Amendment shall not exceed $350,000, without prior approval of the City Council of the City of Upland.

In WITNESS HEREOF, the Parties, through their respective undersigned authorized officers, have duly executed this Amended as of the 25th day of November, 2019.

THE ZAPPIA LAW FIRM, APC

Ed Zappia
Principal

CITY OF UPLAND

Rosemary Hoerning
Interim City Manager

Attest:

Keri Johnson
City Clerk

Approved as to form:

Steven L. Flower
Interim City Attorney

AMENDMENT NO. 2 TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF UPLAND AND THE ZAPPIA LAW FIRM

This Amendment hereby amends the Professional Services Agreement between the City of Upland and The Zappia Law Firm ("Agreement") dated May 25, 2017, and amended on August 14, 2017.

WHEREAS, the current term of the Agreement expired on June 30, 2018; and

WHEREAS, the Parties desire to continue their relationship subject to the terms and conditions as stated in the Agreement; and

WHEREAS, the Parties decide to amend certain terms of the Agreement as set forth in this Amendment; and

WHEREAS, the Parties continue to agree to extend the scope of services in Agreement to include labor negotiation services and employment legal services on an as needed basis at the hourly rate as set forth in the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in the Agreement, the Parties agree as follows:

1. The Amendment to the Agreement shall expire on June 30, 2019.

2. The Zappia Law Firm will provide labor negotiations services with the City's employee associations.

3. The Zappia Law Firm may provide labor and employment legal services as approved by the City Manager on an as needed basis at the hourly rate and terms as defined in the agreement.

In WITNESS HEREOF, the Parties, through their respective undersigned authorized officers, have duly executed this Amendment as of the 8th day of October 2018.

THE ZAPPIA LAW FIRM APC

Ed Zappia, Principal

CITY OF UPLAND

Bill R. Manis, City Manager

Attest:

Jeannette Vagnozzi, City Clerk

Approved as to form:

James L. Markman, City Attorney

AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF UPLAND AND THE ZAPPIA LAW FIRM

This Amendment hereby amends the Professional Services Agreement between the City of Upland and The Zappia Law Firm ("Agreement") dated May 25, 2017.

WHEREAS, the current term of the Agreement shall expire on May 30, 2018; and

WHEREAS, the Parties desire to continue their relationship subject to the terms and conditions as stated in the Agreement; and

WHEREAS, the Parties decide to amend certain terms of the Agreement as set forth in this Amendment; and

WHEREAS, the Parties agree to extend the scope of services in Agreement to include labor negotiation services and employment legal services on an as needed basis at the hourly rate as set forth in the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in the Agreement, the Parties agree as follows:

1. The Amendment to the Agreement shall expire on June 30, 2018.

2. The Zappia Law Firm will provide labor negotiations services with the City's employee associations.

3. The Zappia Law Firm may provide labor and employment legal services as approved by the City Manager on an as needed basis at the hourly rate and terms as defined in the agreement.

In WITNESS HEREOF, the Parties, through their respective undersigned authorized officers, have duly executed this Amendment as of the day and year first written above.

THE ZAPPIA LAW FIRM

8/24/17

Ed Zappia, Principal

CITY OF UPLAND

Martin Thouvenell, Interim City Manager

Attest:

Jeannette Vagnozzi, City Clerk

Approved as to form:

James L. Markman, City Attorney

AGREEMENT
FOR PROFESSIONAL CONSULTANT SERVICES
The Zappia Law Firm

THIS AGREEMENT is made and effective as of May 25, 2017, between the City of Upland, a municipal corporation ("City") and **The Zappia Law Firm, A Professional Corporation.** ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM. This Agreement shall commence effective May 25, 2017 and shall remain and continue in effect until tasks described herein are completed, but in no event later than May 30, 2018, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES. Consultant shall perform services related to labor and employment law including labor negotiations.

3. PERFORMANCE. Consultant Consultant represents that it has that degree of knowledge and experience and holds all necessary licenses to practice and perform the services herein contemplated and shall at all times faithfully, competently and to the complete satisfaction of the City, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. PREVAILING WAGES. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City Council has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Contract from the Director of the Department of Industrial Relations. Copies may be obtained from the California Department of Industrial Relations' Internet web site at http://www.dir.ca.gov. Consultant shall provide a copy of prevailing wage rates to any staff or sub-contractor hired, and shall pay the adopted prevailing wage rates as a minimum. Consultant shall comply with the provisions of Sections 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. Pursuant to the provisions of 1775 of the Labor Code, Consultant shall forfeit to the City, as a penalty, the sum of $25.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this contract, by him or by any subcontractor under him, in violation of the provisions of the Contract.

5. PAYMENT.

a. The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit A, Payment Rates and Schedule, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed $50,000 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

b. Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

The City Manager may approve additional work up to ten percent (10%) of the amount of the Agreement or fifty thousand dollars ($5,000.00). In no event shall the total sum of the agreement *(basic agreement amount and additional work)* exceed fifty thousand dollars ($5,000.00). Any additional work in excess of this amount shall be approved by the City Council.

c. Consultant will submit invoices monthly for actual services performed. Invoices shall be submitted between the first and fifteenth business day of each month, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of consultant's fees it shall give written notice to Consultant within 30 days of receipt of a invoice of any disputed fees set forth on the invoice.

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE.

a. The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the consultant at least ten (10) days' prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

b. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 4.

7. DEFAULT OF CONSULTANT.

a. The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

b. If the City Manager or his delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, it shall serve the Consultant with written notice of the default. The Consultant shall have (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. OWNERSHIP OF DOCUMENTS.

a. Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records, shall give City the right to examine and

audit said books and records, shall permit City to make transcripts there from as necessary, and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

b. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the work, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files containing data generated for the work, Consultant shall make available to the City, upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

c. With respect to the design of public improvements, the Consultant shall not be liable for any injuries or property damage resulting from the reuse of the design at a location other than that specified in Exhibit A without the written consent of the Consultant.

9. INDEMNIFICATION.

a. The Consultant agrees to defend, indemnify, protect and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, including attorney fees and expert witness fees, or liability of any kind or nature which the City, its officers, agents and employees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of Consultant's negligent or wrongful acts or omissions arising out of or in any way related to the performance or non-performance of this Agreement, excepting only liability arising out of the negligence of the City.

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

10. INSURANCE REQUIREMENTS. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

a. Minimum Scope of Insurance. Coverage shall be at least as broad as:

(1) Insurance Services Office Commercial General Liability form No. CG 00 01 11 85 or 88.

(2) Insurance Services Office Business Auto Coverage form CA 00 01 06 92 covering Automobile Liability, code 1 (any auto). If the Consultant owns no automobiles, a non-owned auto endorsement to the General Liability policy described above is acceptable.

(3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. If the Consultant has no employees while performing under this Agreement, worker's compensation insurance is not required, but Consultant shall execute a declaration that it has no employees.

(4) Professional Liability Insurance shall be written on a policy form providing professional liability for the Consultant's profession.

b. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

(1) General Liability: One million dollars ($1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

(2) Automobile Liability: One million dollars ($1,000,000) per accident for bodily injury and property damage.

(3) Worker's Compensation as required by the State of California; Employer's Liability: One million dollars ($1,000,000) per accident for bodily injury or disease.

(4) Professional Liability coverage: One million ($1,000,000) per claim and in aggregate.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City Manager. At the option of the City Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

d. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(1) The City, its officers, officials, employees and volunteers are to be covered as insured's as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

(2) For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

(3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

(4) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(5) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

(6) Additional Insured – All policies, except for Worker's Compensation and Professional Liability policies, shall contain endorsements naming the City of Upland and their officers, employees, agents, and volunteers as additional insured parties with respect to liabilities arising out to the performance of Work hereunder. The additional insured endorsements shall also be primary and non-contributory.

(7) Waiver of Subrogation Rights - CONSULTANT shall require the carriers of Commercial General Liability, Automobile Liability and Worker's Compensation to waive all rights of subrogation against the City of Upland, and its officers, employees, agents and volunteers. Such insurance coverage provided shall not prohibit CONSULTANT's employees or agents from waiving the right of subrogation prior to a loss or claim. CONSULTANT hereby waives all rights of subrogation against the City of Upland.

e. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VIII, and admitted and licensed to do business in the State of California, unless otherwise acceptable to the City. Self insurance shall not be considered to comply with these insurance requirements.

f. Verification of Coverage. Consultant shall furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City before work commences. As an alternative to the City's forms, the Consultant's insurer may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

11. INDEPENDENT CONTRACTOR.

a. Consultant is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

b. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

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

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

12. LEGAL RESPONSIBILITIES. The Consultant shall keep itself informed of all local, State and Federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. Consultant is responsible for compliance with the Patient Protection and Affordable Care Act (2010), and City shall not be obligated to provide any health care coverage to Consultant. The Consultant shall at all times observe and comply with all such ordinances, laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this section.

13. RELEASE OF INFORMATION.

a. All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents or subcontractors, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

b. Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

14. NOTICES. Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (I) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail,

certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To City:	City of Upland Mailing Address: P.O. Box 460 Upland, California 91785 460 North Euclid Avenue Upland, California 91785 Attention: City Manager
To Consultant:	The Zappia Law Firm, A Professional Corporation One Pacific Plaza 7777 Center Avenue, Suite 625 Huntington Beach, CA 9264

15. ASSIGNMENT. The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Upon termination of this Agreement, Consultant's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Consultant.

16. LICENSES. At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

17. GOVERNING LAW. The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Upland. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

18. PROHIBITED INTEREST. No officer, or employee of the City of Upland shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, the Consultant, or Consultant's sub-contractors for this project, during his/her tenure or for one year thereafter. The Consultant hereby warrants and represents to the City that no officer or employee of the City of Upland has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the Consultant or Consultant's sub-contractors on this project. Consultant further agrees to notify the City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement.

19. ENTIRE AGREEMENT. This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

20. **AUTHORITY TO EXECUTE THIS AGREEMENT.** The person or persons executing this Agreement on behalf of Consultant warrants and represents that he or she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

21. **SEVERABILITY**. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

22. **WAIVER**. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

23. **CONSTRUCTION**. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

24. **COSTS**. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

25. **RESPONSIBILITY FOR ERRORS**. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

26. **ATTORNEYS' FEES**. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF UPLAND

Martin Thouvenell, Interim City Manager

Attest:

Jeannette Vagnozzi, Deputy City Manager

Approved As to Form:

James Markman, City Attorney

CONSULTANT

The Zappia Law Firm
A Professional Corporation
One Pacific Plaza
7777 Center Avenue, Suite 625
Huntington Beach, CA 92647

By:
Name: Ed Zappia
Title: Principal

By:
Name:
Title:

EXHIBIT A

PAYMENT RATES AND SCHEDULE

Principals/Senior Counsel: $300 per hour

Associate Attorneys: $250 per hour

Law Clerks/Paralegals: $120 per hour

Reasonable and customary expenses for copies and mileage.

STAFF REPORT

ITEM NO. 14.A.

DATE:	May 26, 2020
TO:	MAYOR AND CITY COUNCIL
FROM:	ROSEMARY HOERNING, CITY MANAGER
PREPARED BY:	STEVEN NIX, INTERIM PUBLIC WORKS DIRECTOR BOB CRITCHFIELD, ENGINEERING MANAGER
SUBJECT:	COOPERATIVE AGREEMENT FOR THE METROLINK STATION ACCESSIBILITY IMPROVEMENT PROJECT PHASE II

RECOMMENDED ACTION

It is recommended that the City Council approve a Cooperative Agreement with the San Bernardino County Transportation Authority (SBCTA), for the purpose of designing and constructing safe pedestrian/bicycle accessibility improvements within the sphere of influence of the Upland Metrolink Station; and authorize the City Manager to execute the Agreement.

GOAL STATEMENT

The proposed action supports the City's objective to continue to maintain and improve the City's public facilities.

BACKGROUND

The Active Transportation Program (ATP) was created by Senate Bill 99 (Chapter 359, Statutes 2013) and Assembly Bill 101 (Chapter 354, Statutes 2013) to encourage increased use of active modes of transportation, such as biking and walking.

In June of 2016, SBCTA and the City executed Cooperative Agreement No. 15-1001128 under the ATP Cycle 2 Program for Phase I of the Metrolink Station Accessibility Improvement Project for the purpose of providing safe pedestrian/bicycle access, sidewalk, and crosswalk improvements in the vicinity of the Upland Metrolink Station, including a new signalized crossing on Euclid Avenue at the SP/PE Bicycle and Pedestrian Trail. This project was completed in March, 2019.

ISSUES/ANALYSIS

Similar to Phase 1, SBCTA and the City wish to execute Cooperative Agreement No. 20-1002315 under the ATP Cycle 4 Program to design and construct Phase II of the Metrolink Station Accessibility Improvement Project. Improvements associated with Phase II include a new signalized pedestrian/bicycle crossing at Campus Avenue and the SP/PE Bicycle and Pedestrian Trail; a pedestrian automated crossing safety gate at the railroad tracks located on Euclid Avenue, just south of "A" Street; and, additional enhanced crosswalks in the downtown area between "A" Street and Arrow Highway.

In order for these improvements to be designed and constructed in Upland, the City is required to execute a Cooperative Agreement with SBCTA that will define the roles and responsibilities of each agency. Similar to Phase I, SBCTA will serve as the lead agency for Project Management; Planning; Environmental; Plans; Specifications, and Estimates (PS&E); Right of Way; Permitting; and, Construction. The City will provide record drawings and utility agreements; review project submittals; provide encroachment permits; attend PDT meetings; and provide project support and review as necessary to ensure the project is delivered in an efficient and timely manner.

FISCAL IMPACTS

SBCTA was successful in securing ATP grant funds in the amount of $2,008,530 for the improvements. The City's local match requirement is $446,340, for a total project funding amount of $2,454,870. In addition, the City will be required to provide City permits and waive City fees required to construct the project.

The City's local match requirement has been included in the FY 2020-2021 CIP Budget under the Measure I Program.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

Coop Agreement 20-1002315

COOPERATIVE AGREEMENT NO. 20-1002315

BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY SBCTA

AND

THE CITY OF UPLAND

FOR

PLANNING AND ENVIRONMENTAL; PLANS, SPECIFICATIONS AND ESTIMATE (PS&E); RIGHT OF WAY (ROW); AND CONSTRUCTION FOR PHASE-II OF THE UPLAND METROLINK STATION ACCESSIBILITY IMPROVEMENT PROJECT

I. PARTIES AND TERM

A. THIS COOPERATIVE AGREEMENT ("AGREEMENT") is made and entered into by and between the San Bernardino County Transportation AuthoritySBCTA ("SBCTA") and the City of Upland ("CITY"). SBCTA and CITY may be referred to individually as a "PARTY" and collectively as "PARTIES".

B. On June 22, 2016, SBCTA and the City of Upland executed Cooperative Agreement 15-1001128 for Phase I of the Metrolinlk Station Accessibility Improvement Project. Construction for Phase I was completed in March 2019.

C. THIS AGREEMENT is for Phase II of the Metrolink Station Accessibility Improvements and shall terminate upon completion of SBCTA's management of the planning, environmental, PS&E, ROW and construction phases, or December 31, 2026, whichever is earlier in time, except that the indemnification provisions shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any claims arising out of this AGREEMENT be asserted against one of the PARTIES, the PARTIES agree to extend the fixed termination date of this AGREEMENT, until such time as the claims are settled, dismissed or paid.

II. RECITALS

A. WHEREAS, Phase I and Phase II improvements in the City of Upland are depicted in Attachment B."PHASE I" consists of the Active Transportation Program Cycle 1;"PHASE II" is the Active Transportation Program Cycle 4. "; and

B. WHEREAS, SBCTA has completed PHASE I and proposes to construct PHASE II, which includes location-specific improvements to various facilities within the City of Upland ("PROJECT"); and

C. WHEREAS, the PARTIES wish to enter into this AGREEMENT to delineate roles, responsibilities, and funding commitments relative to the Project Management, Planning, Environmental, PS&E, ROW and Construction activities of the PROJECT; and

D. WHEREAS, the CITY has requested the SBCTA to complete the implementation of the PROJECT, including project management, engineering design, construction, procurement and management of contractors, and coordination with other cities and agencies; and

E. WHEREAS, the SBCTA has requested the CITY to contribute funding to cover a portion of Phase II costs for project management and construction, as outlined in Attachment A; and

F. WHEREAS, the CITY is the PROJECT owner and this AGREEMENT does not transfer ownership; as such, the CITY retains all legal responsibilities associated with ownership, operation and maintenance of the existing and future improvements; and

G. WHEREAS, the SBCTA is the California Environmental Quality Act (CEQA) Lead Agency for the PROJECT and The State of California, Department of Transportation (Caltrans) is the National Environmental Policy Act (NEPA) Lead Agency for the PROJECT.

NOW, THEREFORE, the PARTIES agree to the following:

III. **SBCTA RESPONSIBILITIES**:

SBCTA agrees:

A. To be the lead agency for Project Management, Planning, Environmental, PS&E, ROW, and Construction work and to diligently undertake and complete, the Planning, Environmental, ROW, PS&E, and Construction work on the PROJECT, including the selection and retention of consultants and contractors. Performance of services under these consultant and/or contractor contracts shall be subject to the technical direction of the SBCTA's Director of Project Delivery, or his/her designee, with input and consultation from the CITY.

B. To contribute towards the Planning, Environmental, PS&E, ROW, and Construction phases of the PHASE II PROJECT, an estimated $6,131,664 for Phase II. The actual cost of a specific phase or improvements within a specific city may ultimately vary and cause the total project cost to change from the estimate provided in Attachment A. The total project costs remaining after contributions from the CITY and other participating cities, exclusive of the CITY-provided services specified in Part IV of this AGREEMENT, is to be borne solely by the SBCTA.

C. To execute appropriate agreements with other cities and agencies to facilitate and coordinate the completion of the PROJECT.

D. To invoice CITY within 45 days of execution of this agreement, for City's contribution to project as noted in the Funding Table, Attachment A.

E. To certify the California Environmental Quality Act Notice of Exemption (CEQA NOE) and coordinate with Caltrans to certify the National Environmental Policy Act Categorical Exclusion (NEPA CE).

F. To designate a Project Manager to represent the SBCTA through whom all communications between the PARTIES shall be channeled.

G. To provide the CITY with a proposed project schedule to complete the PROJECT.

H. To include the CITY in Project Development Team (PDT) meetings and related communications on PROJECT progress as well as to provide the CITY with copies of PDT meeting minutes and action items.

I. To perform the design and construction in accordance with State and Federal standards and practices.

J. To include the CITY in design decisions that could impact the CITY's general plans and aesthetic considerations.

K. To make all PROJECT work performed by the SBCTA available for review and comment by the CITY's Public Works Department. The CITY's Public Works Department shall transmit all review comments to the SBCTA within 20 working days after the submittal is received by the CITY. If comments are not provided by the 20th working day, the SBCTA will deem the submittals approved by the CITY and shall notify the CITY of its intention to move forward with PROJECT execution. The CITY agrees the submittals may be in the form of plans, specifications, estimates, reports, studies, environmental documents or other PROJECT-related submittals requiring the CITY to review and comment. The SBCTA and CITY shall review all comments received regarding the PROJECT and mutually agree upon comments which shall be incorporated into the PROJECT.

L. To apply for encroachment permits authorizing entry of the SBCTA and its consultants and contractors onto the CITY right of way to perform investigative activities, including surveying and geotechnical borings, and construction activities required by the PROJECT; and to receive encroachment permits from the CITY at no cost to the SBCTA.

M. To obtain, all necessary PROJECT permits, agreements and/or approvals from appropriate agencies; all necessary PROJECT permits, agreements, and/or approvals from the CITY shall be provided at no cost to the SBCTA. All mitigation, monitoring, and/or remedial actions required by said permits and/or agreements obtained from agencies other than the CITY shall constitute part of the PROJECT cost.

N. To identify the utilities within the PROJECT area and coordinate with the utility companies to determine their location, and if necessary, their relocation.

O. To provide written notice to the CITY upon the SBCTA's determination that the PROJECT is substantially completed in accordance with the plans and specifications. For the purposes of this AGREEMENT, "substantially completed" shall mean that the PROJECT can be reasonably used for its intended purposes, notwithstanding that certain nonmaterial work remains to be completed, it being understood that the SBCTA shall promptly pursue the completion of such nonmaterial work.

P. Upon completion of construction of the PROJECT, the SBCTA shall deliver to the CITY a complete set of redline "as-built" plans of the PROJECT.

IV. **CITY RESPONSIBILITIES**:

CITY agrees:

A. To designate a responsible staff member to serve as the CITY Project Manager for the PROJECT who will coordinate with SBCTA staff and consultants; who will be CITY's representative in

attending the PDT meetings, receiving day-to-day communication and reviewing the PROJECT documents; and who will coordinate with the SBCTA project delivery team for communication with the selected designer. All communication by the CITY Project Manager to the selected designer and contractor will be coordinated with and ultimately given through the SBCTA Project Manager.

B. To contribute, within 45 days of receiving SBCTA's invoice, towards the PS&E and Construction phase of the PROJECT, an estimated $446,340 for Phase II. The actual cost of a specific phase may ultimately vary and cause the total project cost to change from the estimate provided in Attachment A. The total project costs reminaing after contributions from CITY and other participating cities, exclusive of the CITY-provided services specified in Part IV of this AGREEMENT, is to be borne solely by SBCTA.

C. To distribute PROJECT submittals for review and comment by CITY.

D. To review and comment, at no cost to the PROJECT, on all PROJECT work performed by SBCTA. CITY shall transmit all review comments to SBCTA within 20 working days after the submittal is received by CITY. If comments are not provided by the 20th working day, SBCTA will deem the submittals approved by CITY and shall notify CITY of its intention to move forward with PROJECT execution. CITY agrees the submittals may be in the form of plans, specifications, estimates, reports, studies, environmental documents or other PROJECT-related submittals requiring CITY review and comment. SBCTA and CITY shall review all comments received regarding the PROJECT and mutually agree to which comments shall be incorporated into the PROJECT.

E. To provide encroachment permits authorizing entry of SBCTA and its consultants and contractors onto CITY right of way to perform investigative activities, including surveying and geotechnical borings, and construction activities required by the PROJECT at no cost to the PROJECT. If encroachment permits are necessary, the CITY agrees to facilitate coordination with adjacent properties, residences, and businesses impacted.

F. To provide all CITY permits and waive City fees required to construct the PROJECT. SBCTA or its contractor(s) shall obtain and pay the fees for all other non-CITY permits required for the construction of the PROJECT.

G. To prepare CITY staff reports for City Council consideration and the SBCTA agrees to provide supporting documentation for the staff reports.

H. The CITY agrees to exempt the SBCTA from plan check fees for submittal reviews.

I. The CITY agrees it will issue zero fee encroachment, traffic control, and street cut permits or other permits required by the CITY to perform investigative activities required by the PROJECT.

J. The CITY agrees to provide at no cost to the PROJECT existing improvement plans, and standard plans and specifications.

K. The CITY agrees to provide the SBCTA copies of the franchise/utility agreements for the utilities in the PROJECT area for the purposes of determining prior rights and estimating utility relocation costs.

L. The CITY agrees it will invoke its franchise/utility agreements and have its prior rights imposed on utilities if it is determined utilities are in conflict with the PROJECT and require relocation. The CITY will formally inform the utilities of the CITY's prior rights and request the relocation of utilities pursuant to the franchise/utility agreements.

M. To accept in writing the PROJECT within thirty (30) days of receipt of written notice from the SBCTA that the PROJECT is substantially completed as described by Paragraph "N" in Section III, which acceptance shall not be unreasonably withheld or delayed. Withholding or delaying acceptance because of nonmaterial work remaining to be completing shall be deemed unreasonable.

V. MUTUAL RESPONSIBILITIES:

A. The scope of the PROJECT is depicted in Attachment B "Conceptual Layout". The scope of Phase II improvements is an "estimate" of improvements and is subject to change. To adhere to available funding limits for Phase II, as shown in Attachment A, certain improvements in Phase II may be modified or eliminated.

B. The CITY agrees the SBCTA is completing project management, environmental, PS&E, ROW, construction management, procurement and oversight of a construction contractor to complete the PROJECT. The SBCTA will complete these tasks using SBCTA staff or contracted services.

C. SBCTA will lead and the CITY will participate in the process for selecting the PROJECT designer and contractor.

D. Neither the CITY nor any officer, director, employee or agent thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by the SBCTA under or in connection with any work, authority or jurisdiction delegated to the SBCTA under this AGREEMENT. It is understood and agreed that, pursuant to Government Code Section 895.4, the SBCTA shall fully defend, indemnify and save harmless the CITY, its officers, directors, employees or agents from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by the SBCTA under or in connection with any work, authority or jurisdiction delegated to the SBCTA under this AGREEMENT.

E. Neither the SBCTA nor any officer, director, employee or agent thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by the CITY under or in connection with any work, authority or jurisdiction

delegated to CITY under this AGREEMENT. It is understood and agreed that, pursuant to Government Code Section 895.4, the CITY shall fully defend, indemnify and save harmless the SBCTA, its officers, directors, employees or agents from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by the CITY under or in connection with any work, authority or jurisdiction delegated to the CITY under this AGREEMENT.

F. This AGREEMENT shall continue in full force and effect through completion and closeout of the PROJECT or on December 31, 2026 whichever is earlier in time. Should any claims arising out of the PROJECT be asserted against one of the PARTIES, the PARTIES agree to extend the fixed termination date of this AGREEMENT, until such time as the claims are settled, dismissed or paid.

G. The CITY is an authorized self-insured public entity for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation and warrants that through its program of self-insurance, it has adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this AGREEMENT.

H. The SBCTA is a public entity with Professional Liability, General Liability and Automobile Liability policies of $10,000,000 each and Workers' Compensation insurance coverage in the statutory limits, to protect against liabilities arising out of the performance of the terms, conditions or obligations of this AGREEMENT.

I. All PARTIES hereto warrant that they are duly authorized to execute this AGREEMENT on behalf of said PARTIES and that, by so executing this AGREEMENT, the PARTIES hereto are formally bound to this AGREEMENT.

J. Except on subjects preempted by Federal law, this AGREEMENT shall be governed and construed in accordance with the laws of the State of California. All PARTIES agree to follow all local, state, county and federal laws and ordinances with respect to performance under this AGREEMENT.

K. The PARTIES agree that each PARTY and any authorized representative, designated in writing to the PARTIES, and upon reasonable notice, shall have the right during normal business hours to examine all PARTIES' financial books and records with respect to this AGREEMENT. The PARTIES agree to retain their books and records for a period of five (5) years from the later of: (a) the date on which this AGREEMENT terminates; or (b) the date on which such book or record was created.

L. If any clause or provision of this AGREEMENT is illegal, invalid or unenforceable under applicable present or future laws, then it is the intention of the PARTIES that the remainder of this AGREEMENT shall not be affected but shall remain in full force and effect.

M. This AGREEMENT can be amended with a written amendment when agreed upon and duly authorized and executed by both PARTIES.

N. In the event of litigation arising from this AGREEMENT, each PARTY to this AGREEMENT shall bear its own costs, including attorney(s) fees. This paragraph shall not apply to the costs or attorney(s) fees relative to paragraphs C and D of this section.

O. This AGREEMENT may be signed in counterparts, each of which shall constitute an original.

P. Any notice required or authorized to be given hereunder or any other communications between the PARTIES provided for under the terms of this AGREEMENT shall be in writing, unless otherwise provided for herein, and shall be served personally or by reputable courier or by email addressed to the relevant PARTY at the address/fax number stated below.

Q. Notice given under or regarding this AGREEMENT shall be deemed given (a) upon actual delivery, if delivery is personally made; or (b) upon delivery into the United States Mail if delivery is by postage paid certified mail (return receipt requested), email or private courier including overnight delivery services. Notice shall be sent to the respective PARTY at the address indicated below or to any other address as a PARTY may designate from time to time by a notice given in accordance with this paragraph.

a. If to CITY:
City of Upland
460 N. Euclid Avenue
Upland, CA 91786
Attention: Bob Critchfield, PE
Engineering Manager
Email: bcritchfield@ci.upland.ca.us

b. If to SBCTA:
San Bernardino County Transportation Authority
1170 West 3rd Street, 2nd Floor
San Bernardino, CA 92410
Attention: Paula Beauchamp
Director of Project Delivery and Toll Operations
Email: pbeauchamp@gosbcta.com

R. The Recitals stated above are true and correct and are incorporated by this reference into the AGREEMENT.

S. Attachments A and B are attached to and incorporated into this AGREEMENT.

SIGNATURE PAGE TO
COOPERATIVE AGREEMENT NO. 20-1002315
BETWEEN
SAN BERNARDINO COUNTY TRANSPORTATION SBCTA
AND
CITY OF UPLAND

SAN BERNARDINO COUNTY TRANSPORTATION SBCTA

By: _____
Raymond W. Wolfe
Executive Director

Date:_____

APPROVED AS TO FORM AND PROCEDURE:

By:_____
Julianna K. Tillquist
General Counsel

CITY OF UPLAND

By:_____
Debbie Stone
Mayor

Date:_____

ATTEST:

By: _____

City Clerk

APPROVED AS TO FORM AND PROCEDURE:

By:_____

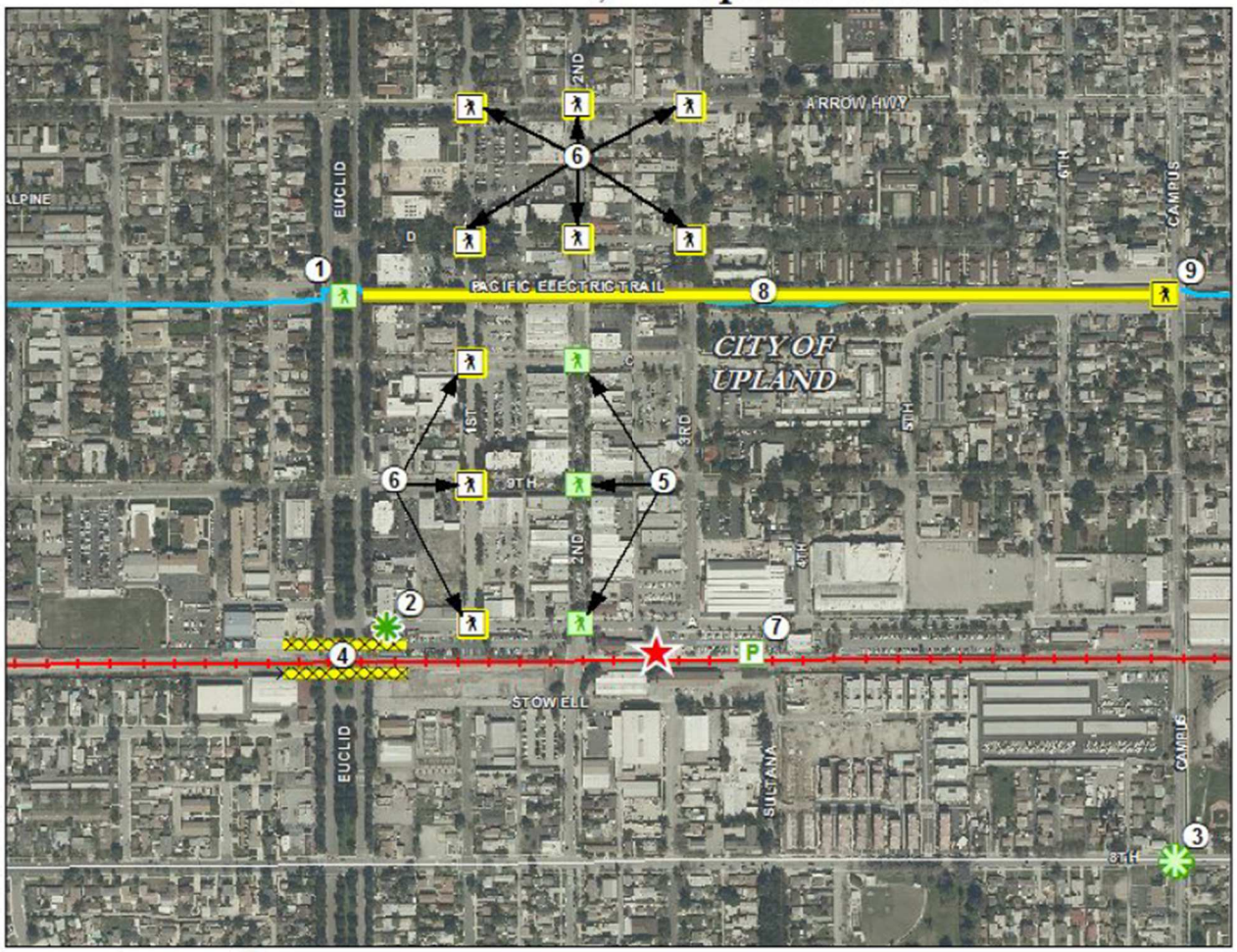
City Attorney

ATTACHMENT A
PROJECT FUNDING TABLE

Table 1. Phase II Costs for Upland Metrolink Station

Fund	Amount
City of Upland	
Local Match	*$223,170*
Project Management Cost (and other City incurred cost)	*$223,170*
Total City Contribution	**$446,340**
ATP Phase II Project Funding allocated to Upland	$2,008,530
Total Cost	$2,454,870

Metrolink Bike/Ped Access Project: **Upland Station**



ITEM	DESCRIPTION
1	PROVIDE MID-BLOCK PED/BIKE CROSSING WITH SIGNAL OR FLASHING OVERHEAD BEACON AT EUCLID AVENUE AND PACIFIC ELECTRIC TRAIL
2	PROVIDE WAYFINDING SIGNAGE AT EUCLID AVENUE AND "A" STREET
3	PROVIDE SHARED BIKE LANE MARKINGS ON CLASS III BIKE LANES AT 8TH STREET AND CAMPUS AVENUE
4	PROVIDE PEDESTRIAN AUTOMATED CROSSING GATES AT RAILROAD TRACKS AT EUCLID AVENUE AND "A" STREET
5	PROVIDE ENHANCED CROSSWALKS AT 3 INTERSECTIONS ALONG 2ND AVENUE
6	PROVIDE ENHANCED CROSSWALKS AT 9 INTERSECTIONS ALONG 1ST AVENUE, 2ND AVENUE, AND 3RD AVENUE
7	INSTALL SHORT AND LONG-TERM BIKE PARKING
8	PE TRAIL IMPROVEMENTS BETWEEN EUCLID AVE AND CAMPUS AVE
9	PEDESTRIAN/BICYCLE PRIORITY SIGNAL AT PE TRAIL AND CAMPUS AVE.

FUNDING SOURCE
Active Transportation Program (ATP) Cycle 1
Active Transportation Program (ATP) Cycle 4

TOTAL:
0.5 mi. of bike lane improvements

- Crosswalk (ATP Cycle 4)
- High Visibility Crosswalk (ATP Cycle 4)
- High Visibility Crosswalk (ATP Cycle 1)
- Bike Parking (ATP Cycle 1)
- Shared Bike Lane Markings (ATP Cycle 1)
- Wayfinding Sign (ATP Cycle 1)
- Bike Lane Improvements -Class I (ATP Cycle 4)
- Automatic Crossing Gate (ATP Cycle 4)
- Pacific Electric Trail - Class I (Existing)
- Metrolink Station
- Metrolink

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G. Koblasz (07/24/2018)