



NOTICE IS HEREBY GIVEN, that the undersigned Mayor Debbie Stone of the City of Upland, pursuant to legal requirements, does hereby call a special meeting of the Upland City Council.

Monday, August 24, 2020

7:30 a.m.

City Council Chamber

A handwritten signature in cursive script that reads "Debbie Stone". The signature is written in black ink and is positioned above a horizontal line.

Debbie Stone, Mayor

AGENDA ATTACHED



Special Meeting

August 24, 2020

7:30 AM

City Council Chamber

CITY COUNCIL

-
1. CALL TO ORDER AND ROLL CALL
 2. ORAL COMMUNICATIONS

Pursuant to Government Code Section 54954.2, any member of the public may address any item listed on the agenda. Anyone wishing to address the legislative body should submit a speaker card to the City Clerk at or prior to speaking. Speakers shall keep their comments to no more than three (3) minutes.

3. ORDINANCE AMENDING THE BALLOT LABEL FOR CITY OF UPLAND PARK MEASURE

Consider adopting an ordinance amending the ballot label for the City of Upland Park Measure, which the City Council previously placed on the ballot for the November 3, 2020 election and has since been designated as Measure Q. (Staff Person: Steven Flower)

4. ADJOURNMENT - The next regularly scheduled City Council meeting is Monday, September 14, 2020 at 7 p.m.

NOTE: All Agenda items and back-up materials are available for public review at the Upland Public Library, downstairs reference desk at 450 North Euclid Avenue, the City Clerk's Office at 460 North Euclid Avenue and the City website at www.uplandca.gov.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at 909.931.4120. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.102-35.104 ADA Title II]

POSTING STATEMENT: On August 21, 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



STAFF REPORT

ITEM NO. 3.

DATE: August 24, 2020
TO: MAYOR AND CITY COUNCIL MEMBERS
FROM: ROSEMARY HOERNING, CITY MANAGER
PREPARED BY: ROSEMARY HOERNING, CITY MANAGER
STEVEN L. FLOWER, INTERIM CITY ATTORNEY
SUBJECT: ORDINANCE AMENDING THE BALLOT LABEL FOR CITY OF UPLAND PARK MEASURE

RECOMMENDED ACTION

It is recommended that the City Council consider adopting an ordinance amending the ballot label for the City of Upland Park Measure, which the City Council previously placed on the ballot for the November 3, 2020 election and has since been designated as Measure Q.

GOAL STATEMENT

The proposed action would promote community engagement by putting to the voters the question of discontinuing use of a portion of Memorial Park so that it may be sold to San Antonio Regional Hospital.

BACKGROUND

On July 27, 2020, the City Council adopted Ordinance No. 1943 to submit to the City electors the question of abandonment and discontinuance of use as a public park an approximately 4.63-acre portion of Memorial Park (the "Park Parcel"). The measure is entitled the "City of Upland Park Measure" and has since been designated as Measure Q for the November 3 ballot.

ISSUES/ANALYSIS

If approved by the voters, Measure Q would permit the sale of the Park Parcel to the San Antonio Regional Hospital ("SARH") pursuant to an agreement previously made with the City. Under the agreement, the San Antonio Regional Hospital would purchase the Park Parcel from the City for no less than \$4,300,000 and grant the City an easement for public parking on the Park Parcel. The agreement would also require the City to use the sales proceeds solely for public improvements to Memorial Park. SARH has also agreed, pursuant to a different

agreement with the City, to cover all of the City's costs related to the election and to indemnify the City for any challenges related to the election.

On August 18, 2020, the City was served with a petition for writ of mandate and injunctive relief in the matter of *Marjorie Benesh v. City of Upland et al.*, San Bernardino Sup. Ct. Case No. CIV DS 2016635 (the "Lawsuit"). Petitioner alleges, among things, certain defects in the language of the ballot label for Measure Q in Ordinance 1943. The Court has set a hearing on the matter for Tuesday, August 25 to resolve the question before ballots must be printed.

Ordinance No. 1943 states the ballot label for Measure Q as follows:

In order to secure at least \$4,300,000 for the City of Upland to use solely for public improvements to Memorial Park, which may include a new baseball field, additional public parking and other new public amenities, landscaping, structures, and walking trails, shall the City discontinue using approximately 4.63 acres of Memorial Park so it may be sold to San Antonio Regional Hospital to add new facilities and increase capacity for critically-needed medical services?	Yes
	No

The City Attorney continues to believe that the existing ballot label is impartial and fairly describes the nature of the measure. However, to avoid any potential uncertainty and in an abundance of caution, SARH is requesting the City Council to consider amending the ballot label to ensure the voters have an opportunity to decide this question of public importance.

The proposed change to the ballot label for Measure Q is as follows:

Shall the measure allowing the City of Upland to abandon and discontinue using for park purposes approximately 4.63 acres of Memorial Park so it can be sold to San Antonio Regional Hospital, in order to add facilities and increase capacity for medical services, for a price not less than \$4,300,000 that would be used solely for public improvements to Memorial Park, which may include a new baseball field, additional public parking, landscaping, walking trails, and other new public amenities, be adopted?	Yes
	No

Amending the ballot label likely would moot this aspect of Petitioner's legal challenge and help ensure that Measure Q is considered and voted upon by the electorate at the November 3, 2020 election. It is therefore recommended that the City Council consider adopting the proposed draft ordinance, which would amend the question in the ballot label for Measure Q.

FISCAL IMPACTS

None. SARH will continue bear all costs related to the election pursuant to the terms of its reimbursement agreement with the City.

ALTERNATIVES

Leave the ballot label for Measure Q as-is or provide alternative direction..

ATTACHMENTS:

**Staff Report re Ordinance 1943
Ordinance Amending Park Ballot Question**



STAFF REPORT

ITEM NO. 12.E.

DATE: July 27, 2020
TO: MAYOR AND CITY COUNCIL
FROM: ROSEMARY HOERNING, CITY MANAGER
PREPARED BY: ROSEMARY HOERNING, CITY MANAGER
STEVEN L. FLOWER, INTERIM CITY ATTORNEY
SUBJECT: ORDINANCE CALLING A SPECIAL ELECTION ON THE
ABANDONMENT AND DISCONTINUANCE OF USE OF AN
APPROXIMATELY 4.63 ACRE PORTION OF MEMORIAL PARK
MEMORIAL PARK, 1299 SAN BERNARDINO ROAD (A PORTION OF
ASSESSORS PARCEL NUMBER 1046-183-01)

RECOMMENDED ACTION

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

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

GOAL STATEMENT

The proposed action would promote community engagement by putting to the voters the question of discontinuing use of a portion of Memorial Park so it may be sold to SARH.

BACKGROUND

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

Pursuant to the Purchase Agreement, the City filed a validation action to confirm that an election is not required. A validation action is a legal proceeding that public entities may initiate to confirm the legal validity of certain actions. In this case; however, the court dismissed the City's case on the grounds that the contract was not subject to the validation statutes. The court never settled the question of whether an election is required.

Even though the court never decided that an election is required, SARH has concluded for its own reasons that an election is the best way forward, and is requesting that the City put a measure on the ballot at the November 3, 2020 election. SARH has also agreed to reimburse the City for the cost of the election through a separate reimbursement agreement.

On June 22, 2020, the City Council took the first step toward holding an election when it adopted Resolution No. 6551, which declared the City Council's intent to call a special election and setting a public hearing for July 27, 2020 to consider any public protests.

Pursuant to further City Council direction, the City also obtained a new appraisal of the property based on the proposed Office Professional (OP) zoning designation. The appraisal determined that, if zoned for OP use, the fair market value of the property would be \$4,300,000, which is \$100,000 more than the original purchase price set forth in the Purchase Agreement. In a preceding item on this agenda, the City Council will consider an amendment to the Purchase Agreement with SARH that would, among other things, amend the purchase price so that it is not less than the new appraisal amount. In the event the Council does not approve that amendment but wishes to proceed with the election nonetheless, the proposed ordinance would need to be revised to reflect the original purchase price of \$4,200,000.

ISSUES/ANALYSIS

Election Process

Government Code Sections 38440 through 38462 establish a two-step process the City can use to call an election on whether to discontinue use of City parks so that such property can be sold or otherwise disposed.

The first step is adoption of a resolution that declares that the public interest or convenience requires discontinuing use of the land as a public park and that the City Council intends to call a special election on the issue; and sets a public hearing to consider public protests before calling the election. The City Council took this step on June 22, 2020.

The second step is this public hearing to consider any public protests to the discontinuance of the property for park purposes. Under Government Code Section 38450, "Protests are sustained unless overruled by two-thirds vote of the legislative body," which means in this case that at least three affirmative votes from Council Members are required to overrule any protests and call the election.

Future Development

Even if the voters ultimately approve discontinuing use of the property as a park, SARH would need to complete two critical steps before closing on the sale and developing the property. Under the Purchase Agreement, SARH must also comply with the California Environmental Quality Act ("CEQA") and obtain the City Council's approval for a change in the property's zoning designation before closing. Nothing in the Purchase Agreement, reimbursement agreement, or the steps required to call the election require the City to approve the zone change or reach any particular CEQA decision. The City Council has retained its full authority over these questions and therefore still has the final say on whether the sale ultimately goes through.

FISCAL IMPACTS

None. SARH will bear all costs related to their request.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:**Ordinance**

City Council Staff Report, Item 14C., June 22, 2020

City Council Staff Report, Item 14A., March 26, 2018

AN ORDINANCE OF THE CITY OF UPLAND CALLING A SPECIAL ELECTION ON NOVEMBER 3, 2020 TO SUBMIT TO THE CITY ELECTORS THE QUESTION OF ABANDONMENT AND DISCONTINUANCE OF USE AS A PUBLIC PARK AN APPROXIMATELY 4.63-ACRE PORTION OF MEMORIAL PARK; AND OVERRULING ALL PUBLIC PROTESTS REGARDING THE SAME

A. RECITALS.

(i) Memorial Park is an approximately 38.5-acre parcel owned by the City and operated as the City's largest public park. The City's acquisition of the park was not funded by any special assessment, bond, or any federal or state grant, nor was the land acquired via dedication pursuant to the Subdivision Map Act.

(ii) In 2017, San Antonio Regional Hospital ("SARH") approached the City about the possibility of selling approximately 4.63 acres in the southwest corner of Memorial Park, consisting of a baseball field, bleachers, scoreboard, lights, parking lot, vacant land and a snack bar/restrooms, more particularly described in the legal description found Exhibit A to this Ordinance (the "Park Parcel"). Since that time, SARH has completed a new 4-story patient tower, emergency room, and 60,000 square foot medical office building, all of which have created a demand for additional land for parking and future expansion opportunities. SARH intends to purchase the Park Parcel for no less than \$4,300,000.00, to add new facilities and increase capacity for critically-needed medical services.

(iii) If the City were to sell the Park Parcel, SARH would grant the City an easement for public parking on the Park Parcel, and the City would use the sale proceeds solely for making public improvements to the other parts of Memorial Park, which improvements may include a new baseball field, additional public parking and other new public amenities, landscaping, structures, and walking trails.

(iv) SARH has requested that the City Council submit the question of discontinuing use of the Park Parcel to the City's electors at the November 3, 2020 general election pursuant to Government Code Section 38440 *et seq.*, which establishes a procedure for the City Council to submit the question to the City's electors following notice and an opportunity for public protest and hearing.

(v) On June 22, 2020, the City Council adopted Resolution No. 6551, declaring that public interest or convenience requires the discontinuance of the use of the Park Parcel as a public park and the City Council's intention to call a special election to submit the question of discontinuance to the city electors so the Park Parcel may be sold to SARH, and setting a public hearing to hear and consider any protests from the public or persons particularly interested in the matter for July 27, 2020.

(vi) On July 27, 2020, the City Council held a duly noticed public hearing to hear and pass upon all written protests and to hear all persons wishing to speak on the matter.

(vii) The City Council has received all protests against the proposed abandonment and discontinuance of the Park Parcel or to the extent thereof provided to the City before adoption of this Ordinance.

(viii) All legal prerequisites to the adoption of this Ordinance have occurred.

B. ORDINANCE.

THE CITY COUNCIL OF THE CITY OF UPLAND ORDAINS AS FOLLOWS:

Section 1. Recitals. All facts set forth in the recitals above are correct.

Section 2. Protests Overruled. The City Council hereby overrules all protests presented to the City before and during the public hearing held on July 27, 2020.

Section 3. Election. The City Council has previously called a general municipal election to be held in the City on Tuesday, November 3, 2020, as established and implemented by the City Council in Resolution Number 6543, adopted on June 1, 2020. Pursuant to California Government Code Section 38450 and California Elections Code Section 9222, the City Council hereby orders that at the said election, an ordinance entitled "City of Upland Memorial Park Measure" be submitted to the voters for approval. The full text of the City of Upland Memorial Park Measure, which is attached to this Ordinance as Exhibit A and hereby incorporated by this reference, shall be printed in the voter pamphlet. The measure to be submitted to the voters shall appear and be printed on the ballot as follows:

In order to secure at least \$4,300,000 for the City of Upland to use solely for public improvements to Memorial Park, which may include a new baseball field, additional public parking and other new public amenities, landscaping, structures, and walking trails, shall the City discontinue using approximately 4.63 acres of Memorial Park so it may be sold to San Antonio Regional Hospital to add new facilities and increase capacity for critically-needed medical services?	Yes
	No

Section 4. Effect of Voter Approval. Pursuant to California Government Code Sections 38451 through 38460, if a majority of the City electors voting on the measure are in favor of it, the City Council shall adopt an ordinance declaring that use of the Park Parcel is discontinued and abandoned, and the land will be deemed held by the City in fee and may be sold or otherwise disposed of in the same manner as other property no longer required for municipal purposes. If less than a majority of City electors vote for the measure, the City Council shall not initiate proceedings for discontinuance of the use of the Park Parcel for park purposes for one year after the election.

Section 5. Ballots. The ballots to be used at the election shall be in the form and content as required by law. The City Clerk is authorized, instructed and directed to coordinate with the County of San Bernardino Registrar of Voters to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

Section 6. Impartial Analysis: The City Attorney is hereby directed to prepare an impartial analysis of the measure pursuant to Elections Code Section 9280.

Section 7. Ballot Arguments: That arguments for and against said measure may be filed in accordance with applicable provisions of the law. That the Council does not authorize the Council as a body or any individual member of the Council to file a written argument or any rebuttal argument for or against the measure. The City Clerk shall consider other arguments and rebuttal arguments filed by bona fide associations or individual residents who are eligible to vote in accordance with Elections Code Sections 9282 and 9285.

Section 8. Consolidation. Pursuant to Resolution No. 6543, adopted on June 1, 2020, the City Council previously called a general municipal election to be held in the City on Tuesday, November 3, 2020, and requested pursuant to the requirements of California Elections Code Section 10403, that the Board of Supervisors of the County of San Bernardino consent and agree to the consolidation of a General Municipal Election with the Statewide General Election to be held on the same date. Accordingly, the consolidated election shall be held and conducted in the manner prescribed in California Elections Code Section 10418.

Section 9. Conduct of the Election. The polls for the election shall be open at seven o'clock a.m. the day of the election and shall remain open continuously from that time until eight o'clock p.m. of the same day when the polls shall be closed, except as provided in California Elections Code Section 14401, or as determined by the County Elections Official for the consolidated election. In all particulars not recited in this Ordinance, the election shall be held and conducted as provided by law for holding consolidated municipal elections.

Section 10. Cost of Election. The City of Upland recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any costs, in accordance with the County's normal charges for such services, upon presentation of valid invoices from the County for the same.

Section 11. Notice of Election. Notice of the time and place of holding the election is given and the City Clerk is authorized, instructed, and directed to give further or additional notice of the election, in time, form, and manner as required by law. Notwithstanding the generality of the foregoing, the City Clerk is hereby instructed to act in conformance with Elections Code Section 10403 along with Resolution No. 6543, and to file a certified copy of this Ordinance with the Board of Supervisors of San Bernardino County, and to transmit a certified copy of the same to the San Bernardino County Elections Official.

Section 12. Effective Date. This Ordinance shall become effective immediately upon adoption pursuant to California Government Code Section 36937(a).

Section 13. Certification. The City Clerk shall certify the adoption of this Ordinance and cause it to be published in the manner required by law.

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

Debbie Stone, Mayor

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

AYES:
NOES:
ABSENT:
ABSTAINED:

ATTEST: _____
Keri Johnson, City Clerk

Exhibit A
Full Text of Measure

City of Upland Memorial Park Measure

The People of the City of Upland do ordain as follows:

The City of Upland shall abandon and discontinue using for park purposes an approximately 4.63-acre portion of Memorial Park as further defined below, to allow the land to be sold to San Antonio Regional Hospital for a price not less than \$4,300,000 so that the City may use the proceeds solely for public improvements to Memorial Park, which may include a new baseball field, additional public parking and other new public amenities, landscaping, structures, and walking trails, and so that San Antonio Regional Hospital may add new facilities and increase capacity for critically-needed medical services. The legal description of the 4.63-acre property in the southwest corner of the parcel commonly referred to as Memorial Park is as follows:

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

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

BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 304.00 FEET; THENCE THROUGH A CENTRAL ANGLE OF 18°10'36" AN ARC LENGTH OF 96.44 FEET; THENCE SOUTH 27°59'21" EAST, 47.46 FEET; THENCE NORTH 62°00'39" EAST, 49.97 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 5.00 FEET; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00" AN ARC LENGTH OF 7.85 FEET; THENCE SOUTH 27°59'21" EAST, 26.51 FEET; THENCE NORTH 62°00'39" EAST, 102.06 FEET; THENCE SOUTH 27°59'21" EAST, 67.37 FEET TO A POINT ON THE NORTH LINE OF SAN BERNARDINO ROAD (77 FEET WIDE); THENCE ALONG SAID STREET SOUTH 62°00'39" WEST, 592.19 FEET TO THE POINT OF BEGINNING.

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



STAFF REPORT

ITEM NO. 14.C.

DATE: June 22, 2020
TO: MAYOR AND CITY COUNCIL
FROM: ROSEMARY HOERNING, CITY MANAGER
PREPARED BY: ROSEMARY HOERNING, CITY MANAGER
STEVEN L. FLOWER, INTERIM CITY ATTORNEY
SUBJECT: RESOLUTION REGARDING SUBMITTING THE QUESTION OF DISCONTINUING USE OF 4.63 ACRES OF MEMORIAL PARK TO CITY VOTERS AT A SPECIAL ELECTION TO BE HELD NOVEMBER 3, 2020; APPROVAL OF A REIMBURSEMENT AGREEMENT WITH THE SAN ANTONIO REGIONAL HOSPITAL REGARDING ELECTION COSTS

RECOMMENDED ACTION

It is recommended that the City Council consider a request from the San Antonio Regional Hospital ("SARH") to submit the question of whether to discontinue use of a 4.63-acre portion of Memorial Park so that it may be sold at a price of \$4,200,000.00 to SARH for the expansion of healthcare services.

If the City Council wishes to call the election, it is recommended that the City Council approve the proposed reimbursement agreement with SARH to cover any costs to the City in holding the election and adopt the draft Resolution declaring the City's intent to discontinue use of that portion of Memorial Park and set a hearing to consider any protests.

GOAL STATEMENT

The proposed action would promote community engagement by putting to the voters the question of discontinuing use of a portion of Memorial Park so it may be sold to SARH.

BACKGROUND

On March 26, 2018, the SARH entered into a purchase and sale agreement to acquire 4.63 acres of Memorial Park. (Staff report and related documents are attached for reference.)

Since that time, some members of the public have requested that the City's voters be given the opportunity to decide whether the City should go through with the sale. SARH has now submitted a request that the City submit the question to the voters at a special election on November 3, 2020.

SARH has also agreed to reimburse the City for the cost of calling and holding such an election pursuant to an agreement prepared by the Interim City Attorney.

ISSUES/ANALYSIS

Election Process

Government Code Sections 38440 through 38462 establish a two-step process the City can use to call an election on whether to discontinue use of City parks so it can be sold or otherwise disposed.

The first step is adoption of a resolution that:

1. Declares that the public interest or convenience requires discontinuing use of the land as a public park;
2. Declares that the City Council intends to call a special election on the issue; and
3. Sets a public hearing to consider public protests before calling the election.

Adoption of the draft resolution attached to this report would meet these requirements.

The second step would be a public hearing to consider any public protests to the discontinuance of the property for park purposes. The hearing requires at least 20-days' notice to the public and must take place no less than 30 and no more than 60 days after the first step. In the event of any protests, the Council may call the election by adopting an ordinance by a two-thirds vote of the City Council.

Based on a proposed special election date of November, the last regular City Council meeting at which the hearing could occur would on July 27. This means that June 22 is the last regular City Council meeting at which the City Council could adopt the resolution of intent to call the election.

Reimbursement Agreement

In recognition that an election would impose costs on the City, SARH has agreed to reimburse the City for the cost of the election pursuant to the proposed reimbursement agreement. If approved by the City Council, the attached agreement would require SARH to deposit at least \$100,000 from which the City could deduct all costs, fees and expenses connected to the election. This would include, but not be limited to, direct costs, staff time, legal costs, and any consultants. If the deposit balance drops below \$50,000, SARH would have to replenish the deposit to the full amount. SARH would also be required to indemnify and defend the City in the event of any legal challenge to the election.

Future Development

Even if the voters ultimately approve discontinuing use of the property as a park, SARH would need to complete two critical steps before it's closing of the sale and developing the property. Under the purchase agreement, SARH must also comply with the California Environmental Quality Act ("CEQA") and obtain the City Council's approval for a change in the property's zoning designation before closing. Nothing in the purchase agreement, reimbursement agreement, or the steps required to call the election require the City to approve the zone change or reach any particular CEQA decision. The City Council has retained its full authority over these questions and therefore still has the final say on whether the sale ultimately goes

through.

FISCAL IMPACTS

None. SARH will bear all costs related to their request.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

Resolution of Intent

Submittal letter from San Antonio Regional Hospital

Reimbursement Agreement

City Council Staff Report, March 26, 2018, Item 14A

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UPLAND, CALIFORNIA DECLARING THAT THE PUBLIC INTEREST OR CONVENIENCE REQUIRES THE DISCONTINUANCE USE OF APPROXIMATELY 4.63-ACRE PORTION OF MEMORIAL PARK AS A PUBLIC PARK; DECLARING THE CITY COUNCIL'S INTENT TO CALL A SPECIAL ELECTION TO SUBMIT THE QUESTION OF DISCONTINUANCE TO THE CITY'S ELECTORS

Intent of the Parties and Purpose

(i) Memorial Park is an approximately 38.5-acre parcel owned by the City and operated as the City's largest public park. The City's acquisition of the park was not funded by any special assessment, bond, or any federal or state grant, nor was the land acquired via dedication pursuant to the Subdivision Map Act.

(ii) In 2017, San Antonio Regional Hospital ("SARH") approached the City about the possibility of selling approximately 4.63 acres in the southwest corner of Memorial Park, consisting of a baseball field, bleachers, scoreboard, lights, parking lot, vacant land and a snack bar/restrooms, more particularly described in Exhibit A to this Resolution, (the "Park Parcel"). Since that time, SARH has completed a new 4-story patient tower, emergency room, and 60,000 square foot medical office building, all of which have created a demand for additional land for parking and future expansion opportunities. SARH intends to purchase the Park Parcel for \$4,200,000.00, to add new facilities and increase capacity for critically-needed medical services.

(iii) If the City were to sell the Park Parcel, SARH would grant the City an easement for public parking on the Park Parcel, and the City would use the sale proceeds solely for making public improvements to the other parts of Memorial Park, which improvements may include a new baseball field, additional public parking and other new public amenities, landscaping, structures, and walking trails.

(iv) SARH has requested that the City Council submit the question of discontinuing use of the Park Parcel to the City's electors at the November 3, 2020 general election.

(v) State law (Government Code § 38440 *et seq.*) establishes a procedure, by which the City Council submit the question to the City's electors following notice and an opportunity for public protest and hearing.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UPLAND DOES HEREBY RESOLVE, DECLARE, AND ORDER AS FOLLOWS:

Section 1. Recitals. The recitals stated above are correct.

Section 2. Declaration. Based upon the above-stated Recitals, the City Council hereby declares that the public interest or convenience requires the discontinuance of the Park Parcel for public park use and that the City Council intends

to call a special election to submit the question of discontinuance to the City's electors.

Section 3. Hearing. The City Council shall hold a public hearing to hear and consider any protests from the public or persons particularly interested on July 27, 2020 in the Council Chambers at the Upland City Hall, 460 N. Euclid Avenue, Upland, California 7:00 p.m. or as soon thereafter as the matter may be heard; provided that such hearing may be held by teleconference consistent with the Governor's Executive Order N-29-20 if necessary due to the ongoing emergency concerning the COVID-19 virus. All notices and published or posted for the hearing shall include information regarding how the public may participate telephonically or otherwise electronically in the even the hearing is held telephonically.

Section 4. Certification; Publication. The City Clerk shall certify to the adoption of this Resolution and cause a true and correct copy of the same to be published in the manner required by Section 38445 of the Government Code.

Section 5 Posting. The City Manager shall cause notice of the adoption of this Resolution in the manner required by Sections 38446 and 38447 of the Government Code.

PASSED, APPROVED, and ADOPTED this 22nd day of June, 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 of the City of Upland held on the 22nd day of June, 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

Keri Johnson, City Clerk

EXHIBIT A

LEGAL DESCRIPTION OF 4.63-ACRE PORTION IN THE
SOUTHWEST CORNER OF PARCEL COMMONLY REFERRED
TO AS MEMORIAL PARK

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

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

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



June 15, 2020

To: Upland City Council

From: John T. Chapman, President and CEO – San Antonio Regional Hospital

Madam Mayor and Esteemed City Council Members,

As the President and Chief Executive Officer of San Antonio Regional Hospital, I am formally requesting the City put before the people of Upland the attached resolution to sell an underutilized portion of Upland Memorial Park to San Antonio Regional Hospital to expand its facilities and healthcare capacity.

We fully support having the community vote on this question by a ballot initiative on the November 3, 2020 general election. The Hospital shall absorb the costs to bring the ballot initiative to the citizens of Upland, and has signed a Reimbursement Agreement with the City to that effect.

As you know San Antonio Regional Hospital is a nonprofit hospital based and founded in Upland over 100 years ago. Over this time, the Hospital has grown to serve the changing healthcare needs of Upland residents. Most recently, we partnered with the City of Hope to develop a Cancer Center; we plan to accomplish the same strategy in the next few years for Cardiac Care, Orthopedics, and Neurosurgery. To meet the community's increasing demand for healthcare, the Hospital needs to expand its facilities efficiently and deliver critical services effectively.

Accordingly, the Hospital desires to purchase a portion of Upland Memorial Park directly adjacent to our emergency room entrance and main hospital entrance. Currently this area is heavily congested, and during a time of crisis it is crucial that the Hospital's entrances are easily accessible and provide staging areas for vital patient care. The additional land would allow the Hospital to bring enhanced services to the Upland Community, and construction of a new medical office building would provide hundreds of additional jobs to the community and benefit the local economy.

Also, the Hospital is mandated to comply with 2030 seismic standards and will be required to make substantial structural changes throughout our facilities. In order to accomplish the construction and maintain a quality level of service we will need additional land to stage the construction and temporarily deliver services.

Moreover, the proceeds of the sale, \$4.2 million, would be utilized solely for Memorial Park improvements and upgrades. The Hospital intends to partner with the City to renovate Upland Memorial Park and make it a place to be enjoyed by our patients, staff, and visitors, as well as the entire community. A revitalized park would be a



**SAN ANTONIO
REGIONAL HOSPITAL**

beautiful and engaging place and a beloved outdoor destination of choice for all Upland citizens and their families.

For these reasons, we humbly request the City Council adopt a resolution allowing the community to determine, by a vote in November, this is a winning strategy for our community, our Hospital, and our Upland Memorial Park.

Respectfully,

John T. Chapman
President & CEO
San Antonio Regional Hospital

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

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

RECITALS

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

AGREEMENT

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

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

2. Reservation of Authority. City reserves all legislative and governmental authority, and Hospital acknowledges and agrees that the decision whether to call the Election or change the Zoning of the Property shall remain solely within the discretion of the Upland City Council, and that nothing in this Reimbursement Agreement or the Purchase Agreement shall be construed as requiring the City to call the Election or to take any other action to approve the Zone Change. Hospital further acknowledges and agrees City shall have sole discretion to select which of its employees and contractors are assigned to work on the Election, to determine what work is necessary for the Election; to direct the work and evaluate the performance of the employees and contractors assigned to work on the Election, to terminate or replace at any time any such person, and to determine the amount of compensation paid to employees or contractors assigned to work on the Election. City, not Hospital, shall pay employees and contractors assigned to work on the Election from a City account.

3. Reimbursement of Election Costs. Hospital agrees to reimburse City in full for all costs, fees and expenses incurred in connection with calling the Election; including but not necessarily limited to City staff costs, City's costs for attorneys' fees to review, evaluate, process, and perform research in connection with the Election and preparation or review of this Reimbursement Agreement, fees and costs for any consultants retained by the City in connection with the Election, and any fees and costs incurred by such consultants in connection with the Election. Hospital acknowledges and agrees that Hospital's duty to reimburse City is not contingent upon voters' approval in the Election of the proposed discontinuance of the use of the Property or the statements during the Election of any individual in support or opposition to the proposed transfer of the Property.
 - A. Deposit. Upon execution of this Agreement, Hospital shall deposit with City the sum of \$100,000 ("Initial Deposit"), which deposit represents City's preliminary estimate of Hospital's ultimate obligation hereunder. The Initial Deposit may be commingled with other funds of the City for the purposes of investment and safekeeping, but the City shall at all times maintain records as to the expenditure of the deposit. City shall deduct from such deposit, until the deposit is exhausted, all reimbursable costs.

 - B. Monthly Accounting. City shall monthly send to Hospital an accounting of amounts used over the preceding month. Hospital shall replenish the Initial Deposit when a minimum balance of \$50,000 is reached. In the event City subsequently determines that the Initial Deposit is insufficient to cover anticipated billings for any reimbursable costs, Hospital shall provide an additional deposit in the amount specified by the City ("Supplemental Deposit") within ten (10) days of receipt of City's written request. Any request for a Supplemental Deposit shall include a description of the work completed to date and the anticipated work remaining to be performed. Hospital agrees that the City's work on the Election shall be immediately suspended if at any time Hospital fails to make a Supplemental Deposit as directed by the City Manager.

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

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

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

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

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

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

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

CITY OF UPLAND

SAN ANTONIO REGIONAL HOSPITAL

By: _____
Debbie Stone
Mayor

By: John Chapman
Name John Chapman
Title President & CEO

ATTEST:

By: _____
Name _____
Title _____

Keri Johnson
City Clerk

APPROVED AS TO FORM:

Steven L. Flower
Interim City Attorney



STAFF REPORT

ITEM NO. 14.A.

DATE: March 26, 2018
TO: MAYOR AND CITY COUNCIL
FROM: BILL R. MANIS, CITY MANAGER
PREPARED BY: JEFF ZWACK, DEVELOPMENT SERVICES DIRECTOR
SUBJECT: AN AGREEMENT FOR PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS BETWEEN THE CITY OF UPLAND AND SAN ANTONIO REGIONAL HOSPITAL TO SELL APPROXIMATELY 4.631 ACRES OF REAL PROPERTY ADDRESSED AS 1299 SAN BERNARDINO ROAD (A PORTION OF ASSESSORS PARCEL NUMBER 1046-183-01).

RECOMMENDED ACTION

It is recommended that the City Council approve the Purchase and Sale Agreement and Joint Escrow Instructions between the City of Upland and San Antonio Regional Hospital to sell approximately 4.631 acres of real property addressed as 1299 San Bernardino Road (portion of APN 1046-183-01), approving certain related actions and authorizing the City Manager to execute all necessary documents.

GOAL STATEMENT

The proposed action supports the City's goal of providing a community where members have access to a full range of health care as well as providing park lands that are fiscally sustainable while meeting the needs of residents.

BACKGROUND

Memorial Park is Upland's largest Park with 38.5 acres. The land was acquired by the City in the 1930's and designed by Ralph Cornell, a famous Landscape Architect. Cornell's plan for a Recreational Park included a Baseball Field, Amphitheater, Swimming Pool, Tennis Courts, Basketball Courts, Bowling Green, Picnic Areas and a Botanic Garden. The central axis of the Park included a central open space with two parallel trails lined in three rows of Oak trees. Not all the recommended improvements of the Recreational Park were built such as the Swimming Pool, Botanic Garden and the Amphitheater. The Baseball Field in the north east

corner and most of the central axis of the Park, along with the majority of Oak Tree rows, remain true to the 1930 design, with the addition of a community Rose Garden. Over time, new developments including the Scheu Family YMCA and the Aquatic Center were constructed in the north west corner of the park. The City's Animal Shelter was constructed south of a second Baseball Field on the east side of the Park and the Loren and Kay Sanchez Childcare facility, the Landecena Building and Skate Park were all constructed in the south eastern portion of the Park. The third Baseball Field is located in the south west corner of the Park, on the site proposed to be sold to SARH.

More recently, Memorial Park became an under utilized public space due to an increase in illegal activities . It was more common to find a homeless person with a makeshift shelter and a shopping cart full of their belongings, than a group of Elementary School Children, or a local family, using the playground equipment. Calls for Police Department services were increasing as illegal activities such as drug use became more prevalent. The quality of the roads and conditions of the public buildings began to degrade. Lack of City funding hampered the Police Department and Public Works efforts to reduce illegal activities and improve the overall condition of the Park. During the past few years, strong partnerships with the Scheu Family YMCA and Upland National League, in addition to Upland Unified School District, have resulted in improvements to the Park. The Scheu Family YMCA has invested millions of dollars making their facilities one of the best in Southern California, complete with indoor weight training, Soccer, and a new Aquatic Center. Upland National League has invested resources to their Baseball Field including a new Snack Bar/ Restrooms and Equipment building. Public Works in partnership with Upland Unified School District replaced the wooden fence and made improvements to the Baseball field in the north eastern corner of the Park. The Police Department has coordinated efforts of many organizations to assist the local Homeless population obtain shelter and needed services. The results of this concerted effort has reduced illegal and criminal activities in Memorial Park and increased improvements to some of the Park facilities so that a greater number of area residents and families will use the Park, once again.

In 2017, San Antonio Regional Hospital ("SARH"), approached City staff to discuss the possibility of selling approximately 4.63 acres of Memorial Park. The "Property" under consideration is in the south west corner of the park and generally consists of a Baseball field, Bleachers, Scoreboard, Lights. Parking and a Snack Bar/Restrooms.

SARH is a 363 bed, regional acute care Hospital. Over the past 111 years. SARH has grown to become Upland's largest employer, experiencing 20% employee growth in 2017 alone. Recently, SARH completed and has fully occupied a 4-story Patient Tower and new Emergency Room. Under construction is a 60,000 square foot Medical Office Building that will be occupied in part by the City of Hope to expand diagnostic and cancer treatment for the region. SARH is also a training facility for Healthcare Professionals starting with the local public schools to raise interest and promoting this field.

It is because of the current expansion, creation of jobs and addition of employees and the increase in the attraction of area residents, that SARH is in need of land for parking and future expansion opportunities.

In order to facilitate a potential land sale, City and SARH staff along with their respective Attorneys have developed the attached Purchase and Sale Agreement and Joint Escrow Instructions (the "Agreement"), for City Council's consideration. If approved, this Agreement will allow the sale and transfer of approximately 4.63 acres of land in the south west corner of Memorial Park, to SARH. Proceeds from the land sale will be reinvested to implement the Memorial Park Master Plan.

ISSUES/ANALYSIS

The major terms of the Agreement are as follows:

1. Closing of Escrow no later than December 1, 2018;
2. Prior to sale, the Courts shall render a Judicial Validation Action to allow the sale of Park Land to SARH;
3. Conduct CEQA analysis for land sale and Memorial Park Master Plan implementation;
4. Approval of General Plan Amendment and Zone Change for area subject to land sale changing zoning to Office Professional;
5. Approval of a permanent public parking easement from SARH for subject property to allow public use of parking for Park purposes.
6. Land sale price of \$4,200,000 (\$60,000 above appraised fair market value), to be 100% reinvested to implement portions of the Memorial Park Master Plan.

In order to identify needed park improvements and potential costs, staff contracted with Architerra Design Group, to work with staff and various Stakeholders to develop a phased plan to implement improvements to the Park. City staff from the Police Department, Public Works and Development Services, along with representatives from the YMCA, Upland National League, members from the Rose Garden Committee and area residents, met over the course of 12 months, to develop a plan to rehabilitate Memorial Park.

Key features of the Park rehabilitation include:

1. Developing a new Baseball Field south of the YMCA, along with additional public parking;
2. Restoring the central park axis design based on the original 1930's Plan;
3. Increase open space by removing the smaller Baseball Field, immediately north of the Animal Shelter.
4. Add additional public amenities, structures and walking trails, and reduce the amount of paved roadways and automobile traffic in the center of the park. By reinvesting all of the proceeds of the land sale back into Memorial Park improvements (\$4,200,000.00), Phase 1 improvements can be completed inclusive of adding the new Senior Division Baseball Field south of the YMCA (inclusive of reusing the lighting, bleachers and scoreboard from the existing Ball Field); retrofitting Atwood Kitchen to add a Snack Bar; adding additional parking and lighting south of the proposed Ball Field, along 11th St.; adding new sidewalks and walking trails around the Ball Field; and, replace the irrigation systems with water efficient system and new trees and landscaping in the new parking lot and around the new Ball Field. In addition, Phase 1 will include removal of the small Ball Field north of the Animal Shelter and constructing a new 85 stall, landscaped and lighted Parking lot. In addition, 10- 24" box Oak Trees will be planted in the Parking Lot.

Additional funding of approximately \$4 million, will be needed to complete additional parking and landscaping by the northerly entrance of the Park and to complete the Central Greenbelt area. Staff is already considering applicable Grants to cover the additional costs, in the event the City Council approves the Agreement with SARH.

FISCAL IMPACTS

Staff, utilizing a third party prepared appraisal, determined the value of the Site is \$4,140,000. SARH has agreed to pay \$4,200,000 or approximately \$60,000.00 above market value for the land. All the proceeds from this land sale, if approved, will be reinvested in the improvement plans for Memorial Park. In order to pay for the approximate \$4 million dollar budget short fall, staff will be submitting grant applications so that no General Fund dollars are expended to implement the Park Master Plan.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

Purchase and Sale Agreement and Joint Escrow Instructions

Aerial Plan of Property

Proposed Park Master Plan

1930's Park Plan

Memorial Park Phasing Plan

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

THIS AGREEMENT FOR PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS is made and entered into as of the ___ day of _____, 20___ (the “Contract Date”), by and between the CITY OF UPLAND, a California municipal corporation (hereinafter referred to as “Seller”), and SAN ANTONIO REGIONAL HOSPITAL, a California public benefit corporation, or its permitted assignee (hereinafter referred to as “Buyer”).

WITNESSETH THAT:

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

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

Section 1. Definitions and Exhibits.

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

Agreement. This Agreement for Purchase and Sale.

Broker. None.

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

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

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

Closing Statement. As defined in Section 10.2.5.

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

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

Earnest Money. \$75,000.00.

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

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

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

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

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

Inspection Period. Defined in Section 6.1 below.

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

Lease. The cell site lease described in Section 2.

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

Personal Property. None.

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

Purchase Price. \$4,200,000.

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

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

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

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

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

Vendor or Vendors. None.

Zoning. Appropriate zoning designation for the Foreseeable Project.

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

Exhibit "A" - Description of Land

Exhibit "B" - Form of Grant Deed

Exhibit "C" - Form of Public Parking Easement

Exhibit "D" - Non-Foreign Certificate

Section 2. Purchase and Sale.

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

Section 3. Earnest Money.

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

3.2 INTENTIONALLY OMITTED.

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

Section 4. Purchase Price; Commitment to Park.

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

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

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

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

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

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

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

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

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

Section 6. Buyer's Inspection.

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

Section 7. Representations and Warranties.

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

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

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

7.1.3 Hazardous Materials.

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

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

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

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

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

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

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

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

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

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

Section 8. Operations Pending Closing.

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

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

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

Section 9. Conditions to Closing.

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

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

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

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

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

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

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

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

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

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

Section 10. Closing.

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

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

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

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

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

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

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

10.2.6 The Service Contracts, if any.

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

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

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

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

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

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

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

Section 11. Default and Remedies.

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

BUYER'S INITIALS _____ SELLER'S INITIALS _____

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

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

Section 12. Condemnation or Destruction.

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

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

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

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

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

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

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

Section 15. Brokers and Brokers' Commissions. None.

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

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

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

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

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

Section 17. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

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

“SELLER”:

CITY OF UPLAND,
a California municipal corporation

By: _____

Print Name: _____

Title: _____

“BUYER”:

SAN ANTONIO REGIONAL HOSPITAL
a California public benefit corporation

By: _____

Harris F. Koenig
President and CEO

EXHIBIT "A"

DESCRIPTION OF LAND

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

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

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

**SKETCH TO ACCOMPANY LEGAL DESCRIPTION
EXHIBIT "A"**

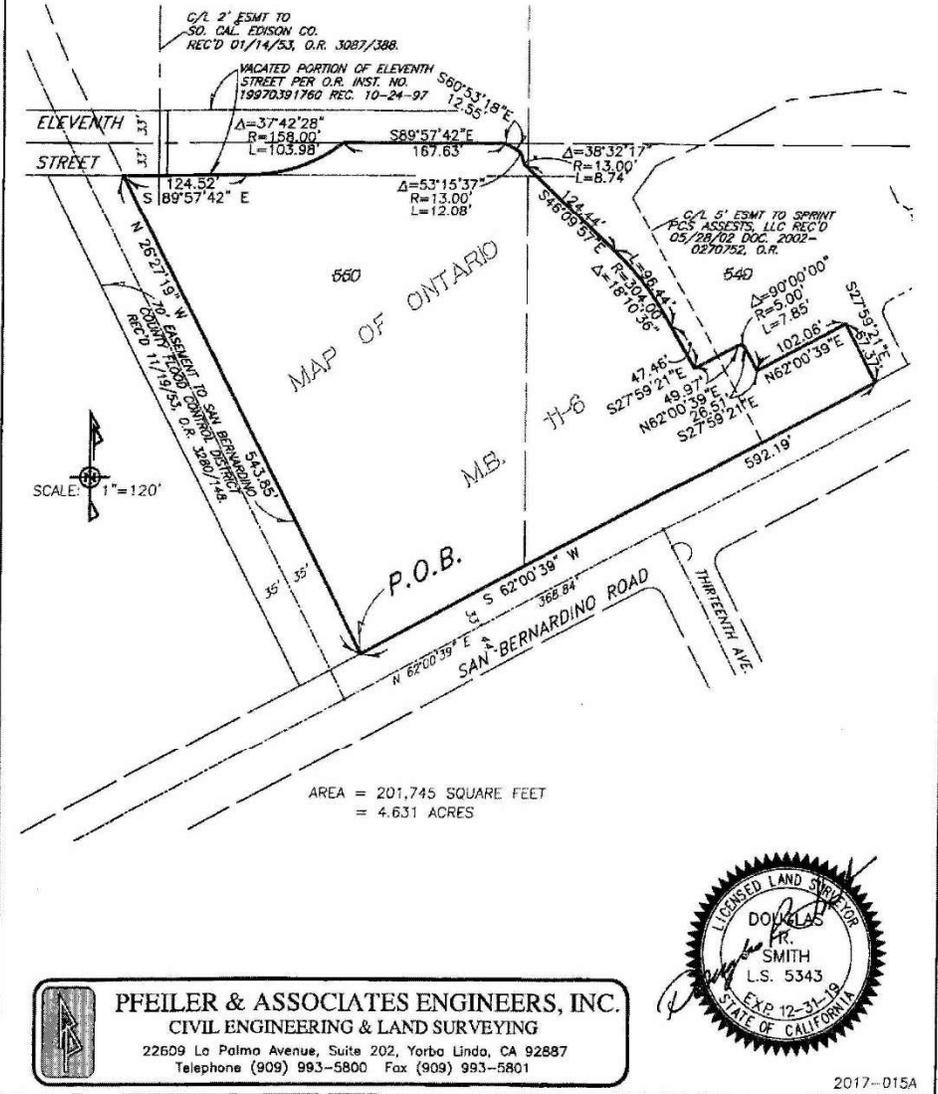


EXHIBIT "B"

FORM OF GRANT DEED

RECORDING REQUESTED BY:

ERVIN COHEN & JESSUP LLP

AND WHEN RECORDED MAIL THIS DEED
AND TAX STATEMENTS TO:

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

APN: Portion of _____

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

DOCUMENTARY TRANSFER TAX IS \$ _____

• unincorporated area • City of Upland

GRANTOR: CITY OF UPLAND

hereby grants to

GRANTEE:

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

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

Executed as of the ____ day of _____ 20 ____.

MAIL TAX STATEMENTS AS DIRECTED ABOVE

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature

EXHIBIT "C"

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

(Attached)

PARKING EASEMENT AGREEMENT

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

RECITALS

A. SARH and the City have entered into an Agreement for Purchase and Sale and Joint Escrow Instructions dated _____, 2018 whereby SARH is purchasing from the City all of its right, title and interest in an approximate 5.5 acre parcel as more specifically described and set forth therein and shown on Exhibit A attached hereto and made a part hereof (the “**Property**”).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED: _____

San Antonio Regional Hospital

Harris F. Koenig, President and CEO

DATED: _____

City of Upland

By: _____
City Manager

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

State of California)
County of Los Angeles)

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

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

WITNESS my hand and official seal.

Signature _____

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State of California)
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WITNESS my hand and official seal.

Signature _____

EXHIBIT A
DESCRIPTION OF THE PROPERTY

[TO BE ATTACHED]

EXHIBIT B

INTERIM PARKING LOCATIONS

PARKING EASEMENT AGREEMENT

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

RE C I T A L S

A. SARH and the City have entered into an Agreement for Purchase and Sale and Joint Escrow Instructions dated _____, 2018 whereby SARH is purchasing from the City all of its right, title and interest in an approximate 5.5 acre parcel as more specifically described and set forth therein and shown on Exhibit A attached hereto and made a part hereof (the “**Property**”).

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

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

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

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

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

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

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

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

DATED: _____

San Antonio Regional Hospital

Harris F. Koenig, President and CEO

DATED: _____

City of Upland

By: _____
City Manager

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

State of California)
County of Los Angeles)

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

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

WITNESS my hand and official seal.

Signature _____

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State of California)
County of Los Angeles)

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

WITNESS my hand and official seal.

Signature _____

EXHIBIT A
DESCRIPTION OF THE PROPERTY

[TO BE ATTACHED]

EXHIBIT "D"

FORM OF FIRPTA AFFIDAVIT

Transferor's Certification of Non-Foreign Status

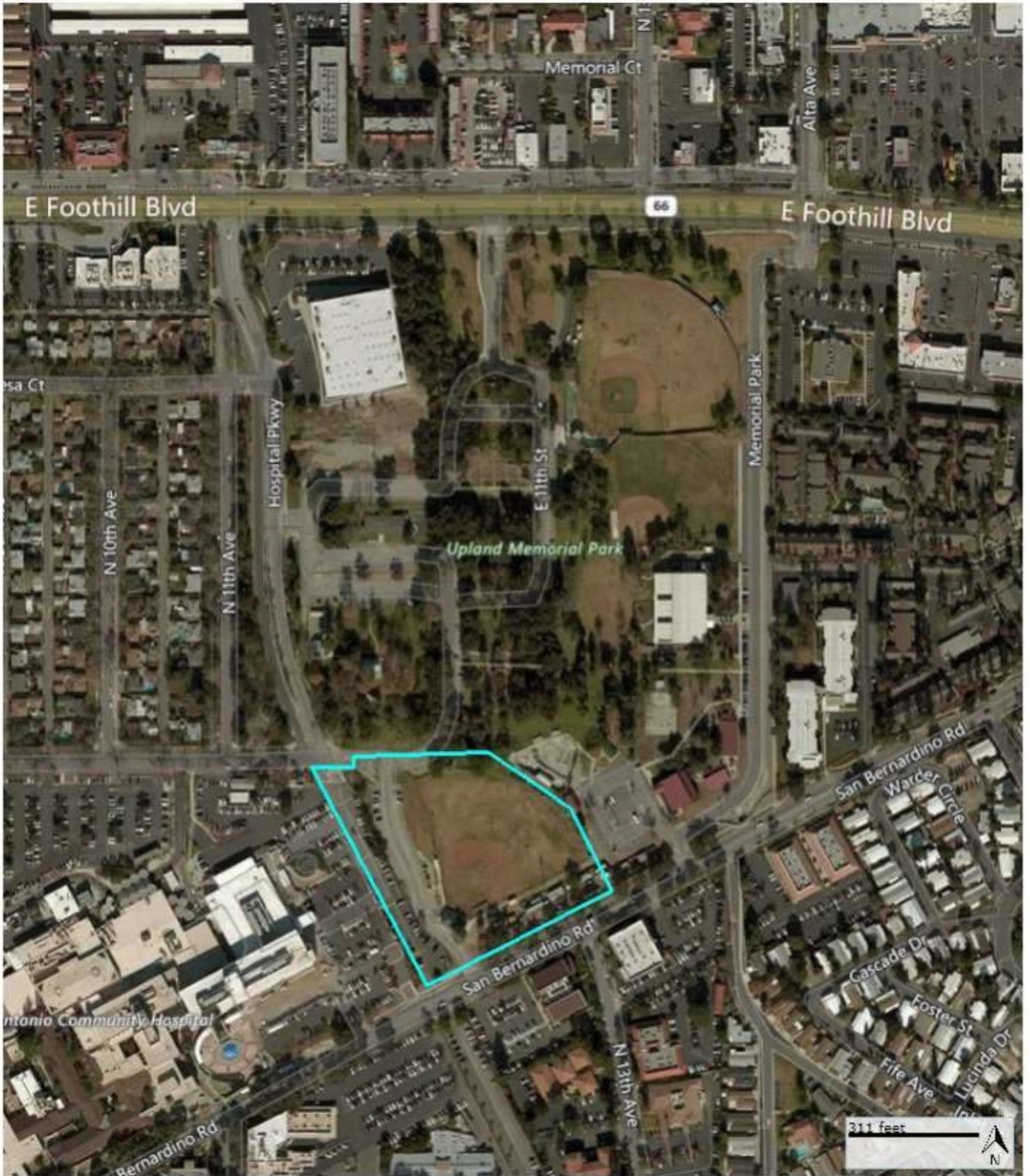
To inform _____, ("**Transferee**"), that withholding of tax under Section 1445 of the Internal Revenue Code of 1986, as amended (the "**Code**"), will not be required upon the transfer of certain real property to Transferee by _____ ("**Transferor**"), the undersigned hereby certifies the following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

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

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

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

Dated as of: _____



MEMORIAL PARK



FOOTHILL

BOULEVARD

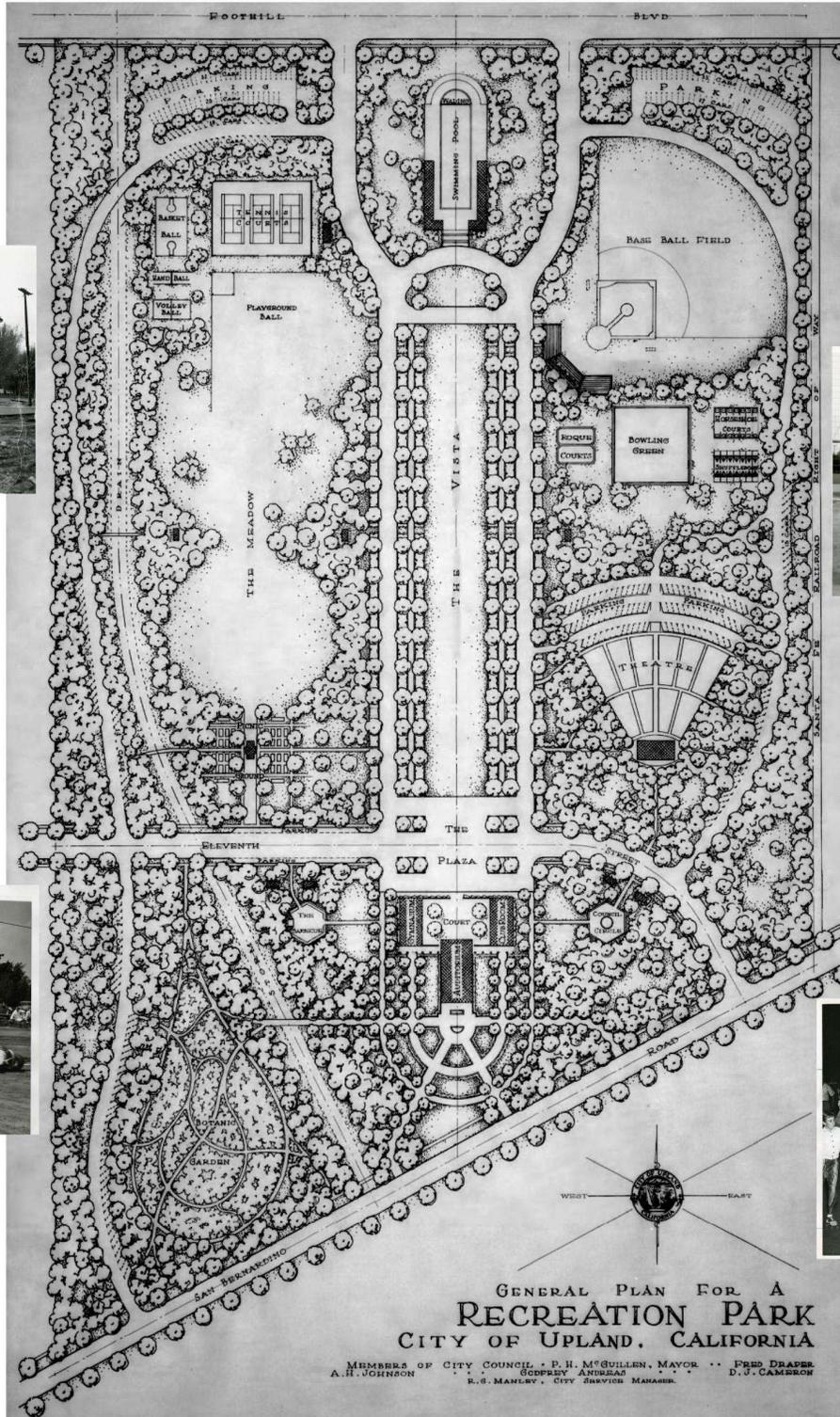


LEG-END

11" = 1'

- 1 EXISTING ENTRY WITH CITRUS GROVES AT END SIDE
- 2 HISTORIC ONE LINED PATHS WITH CONTROLLED VEHICLE ACCESS FOR SPECIAL FUNCTIONS AND EVENTS
- 3 RESTORED FLAG COURT AND HISTORIC CANNON DISPLAY
- 4 OFF LEASH FENCED DOG PARK WITH ZONED AREAS FOR LARGE AND SMALL DOGS
- 5 GREENBELT PROMENADE WITH NEW AMPHITHEATER AND STAGE
- 6 RECOMPOSED GRANITE EXERCISE PATHWAY WITH DISTANCE MARKERS
- 7 OPEN TURF PLAY AREA
- 8 NEW THEMED TOT LOT AND SHADED BENCH SEATING
- 9 BASKETBALL COURTS (1 FULL & 2 HALF COURT)
- 10 NEW PARKING AREAS (MS AT PARK, MS AT LANDECENA CENTER)
- 11 CAPPED DRAINAGE CHANNEL WITH TRAIL AND HISTORIC INFO ON RAILROAD SPIRE AND AGRICULTURAL SIGNIFICANCE WITH INTERPRETIVE PANELS
- 12 EXISTING SEATE PARK TO REMAIN WITH NEW ADJACENT PARKING AND TRAIL FOR PATROL ACCESS
- 13 RESTORED ROSE/EDIBLE GARDEN WITH NEW LARGE GROUP PAVILION SHADE SHELTER
- 14 EXISTING RESTROOM BUILDING-S TO REMAIN
- 15 NEW PICNIC SHADE STRUCTURES
- 16 EXISTING ATWOOD KITCHEN CONVERSION TO SNACK BAR
- 17 LITTLE LEAGUE (SENIOR DIVISION) FIELD WITH FENCING, SCORE BOARD AND SPECTATOR BLEACHERS
- 18 CONTROLLED VEHICLE ACCESS G-ATE (NORMALLY CLOSED)







LEG-END

- 1 IMPROVE EXISTING ASPHALT DRIVEWAY AT 800' R/W
- 2 IMPROVE EXISTING ASPHALT DRIVEWAY WITH CONTROLLER HEAVY METALS AND PAINTS, PROTECTIVE AND EVENTS
- 3 IMPROVE EXISTING ASPHALT DRIVEWAY WITH CONTROLLER HEAVY METALS AND PAINTS, PROTECTIVE AND EVENTS
- 4 IMPROVE EXISTING ASPHALT DRIVEWAY WITH CONTROLLER HEAVY METALS AND PAINTS, PROTECTIVE AND EVENTS
- 5 IMPROVE EXISTING ASPHALT DRIVEWAY WITH CONTROLLER HEAVY METALS AND PAINTS, PROTECTIVE AND EVENTS
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- 15 IMPROVE EXISTING ASPHALT DRIVEWAY WITH CONTROLLER HEAVY METALS AND PAINTS, PROTECTIVE AND EVENTS
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- 18 IMPROVE EXISTING ASPHALT DRIVEWAY WITH CONTROLLER HEAVY METALS AND PAINTS, PROTECTIVE AND EVENTS
- 19 IMPROVE EXISTING ASPHALT DRIVEWAY WITH CONTROLLER HEAVY METALS AND PAINTS, PROTECTIVE AND EVENTS
- 20 IMPROVE EXISTING ASPHALT DRIVEWAY WITH CONTROLLER HEAVY METALS AND PAINTS, PROTECTIVE AND EVENTS



AN ORDINANCE OF THE CITY OF UPLAND AMENDING THE
BALLOT LABEL FOR THE CITY OF UPLAND PARK MEASURE
ON THE NOVEMBER 3, 2020 ELECTION BALLOT

A. RECITALS.

(i) San Antonio Regional Hospital ("SARH") previously requested that the City Council submit the question of discontinuing use as a public park an approximately 4.63 acre portion of Memorial Park (the "Park Parcel") to the City's electors at the November 3, 2020 general election pursuant to Government Code Section 38440 *et seq.* Pursuant to an agreement between the City and SARH, SARH, has agreed to purchase the Park Parcel for no less than \$4,300,000.00 and grant the City an easement for public parking on the Park Parcel, and the City would use the sale proceeds solely for making public improvements to the other parts of Memorial Park, which improvements may include a new baseball field, additional public parking and other new public amenities, landscaping, structures, and walking trails.

(ii) On July 27, 2020, the City Council adopted Ordinance No. 1943 calling a special election on November 3, 2020 to submit to the City electors the question of abandoning and discontinuing use of the Park Parcel as a public park as "City of Upland Park Measure."

(iii) On August 18, 2020, the City was served with a petition for writ of mandate and injunctive relief in the matter of *Marjorie Benesh v. City of Upland et al.*, San Bernardino Sup. Ct. Case No. CIV DS 2016635 (the "Lawsuit"), in which the petitioner alleges, among things, certain defects in the language of the ballot label for the City of Upland Park Measure as specified in Ordinance 1943.

(iv) Although the City and SARH maintain that the allegations in the Lawsuit of any defect in the language of ballot label for the City of Upland Park Measure are without merit, SARH has requested that the City Council consider amending the ballot label out of an abundance of caution and to ensure that the voters of the City have an opportunity to decide this question of public importance.

(v) All legal prerequisites to the adoption of this Ordinance have occurred.

B. ORDINANCE.

THE CITY COUNCIL OF THE CITY OF UPLAND ORDAINS AS FOLLOWS:

Section 1. Recitals. All facts set forth in the recitals above are correct.

Section 2. Amended Ballot Label. The ballot label for the City of Upland Park Measure to be submitted to the voters set forth in Section 3 of Ordinance 1943 is hereby amended in its entirety to read as follows:

<p>Shall the measure allowing the City of Upland to abandon and discontinue using for park purposes approximately 4.63 acres of Memorial Park so it can be sold to San Antonio Regional Hospital, in order to add facilities and increase capacity for medical services, for a price not less than \$4,300,000 that would be used solely for public improvements to Memorial Park, which may include a new baseball field, additional public parking, landscaping, walking trails, and other new public amenities, be adopted?</p>	Yes
	No

The full text of the City of Upland Memorial Park Measure, which appears as Exhibit A to Ordinance No. 1976 shall remain unchanged.

Section 3. Effective Date. This Ordinance shall become effective immediately upon adoption pursuant to California Government Code Section 36937(a).

Section 4. Certification & Election Coordination. The City Clerk shall certify the adoption of this Ordinance and cause it to be published in the manner required by law. The City Clerk is further authorized, instructed and directed to take such actions as are necessary or appropriate to ensure that the amendment to the ballot label amendment set forth in Section 2 of this Ordinance is incorporated into all official ballots and in any other manner necessary in order to properly and lawfully conduct the election.

PASSED, APPROVED and ADOPTED this 24th day of August, 2020.

Debbie Stone
Mayor

I, Keri Johnson, City Clerk of the City of Upland, do hereby certify that the foregoing Ordinance was introduced and adopted at a meeting of the City Council held on the 24th day of August, 2020, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAINED:

ATTEST:

Keri Johnson
City Clerk