



## **UPLAND CITY COUNCIL**

### **AGENDA**

**July 22, 2019**

**City Council Chamber**

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

**ROSEMARY HOERNING, INTERIM CITY MANAGER  
JAMES L. MARKMAN, CITY ATTORNEY**

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#### **DISRUPTION OF MEETINGS**

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

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

**6:00 PM - Closed Session**

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

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

- 4. CLOSED SESSION**

A. GOVERNMENT CODE SECTION 54957.6 - CONFERENCE WITH LABOR NEGOTIATORS

Agency designated representatives: Legal Counsel Edward Zappia and Interim City Manager Rosemary Hoerning

Employee organizations: Upland Mid-Management Association, Upland City Employees Association, Upland Police Officers Association, and Upland Police Management Association

Unrepresented group: Executive Management

B. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

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

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

C. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

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

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

D. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

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

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

E. CLOSED SESSION CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant paragraph 2 of subdivision (d) of Section 54956.9: 1 Potential Case

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7:00 PM

5. INVOCATION

Reverend Cathleen "Catie" Coots, First United Methodist Church of Upland

6. PLEDGE OF ALLEGIANCE

7. PRESENTATIONS

Certificate of Recognition to Mitchell's Plumbing  
Southern California Edison Public Safety Power Shutoff Program presented by Jennifer Shaw, SCE Government Relations Manager

## **8. CITY ATTORNEY**

## **9. ORAL COMMUNICATIONS**

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

## **10. COUNCIL COMMUNICATIONS**

## **11. CONSENT CALENDAR**

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

### **A. APPROVAL OF WARRANT AND PAYROLL REGISTERS JUNE 2019**

Approve the June Warrant Registers and Direct Disbursements (check numbers 25650-25999) totaling \$5,901,864.55 and Payroll Registers totaling \$1,267,109.79 (check Numbers 160649-160762 and EFTs 15258-160760). (Staff Person: Londa Bock-Helms)

### **B. APPROVAL OF MINUTES**

Approve the Regular Meeting Minutes of July 8, 2019. (Staff Person: Keri Johnson)

### **C. DISPOSAL OF SURPLUS VEHICLES AND EQUIPMENT**

Declare the vehicles, equipment, and obsolete inventory on the attached list as surplus and authorize the Fleet Division of Public Works to initiate the disposal of the surplus items. (Staff Person: Rosemary Hoerning)

### **D. DESIGNATION OF VOTING DELEGATE FOR THE ANNUAL LEAGUE OF CALIFORNIA CITIES CONFERENCE**

Appoint Councilmember Ricky Felix as the voting delegate to represent the City of Upland at the League of California Cities General Assembly Meeting on October 18, 2019. (Staff Person: Keri Johnson)

### **E. TEMPORARY CONSTRUCTION EASEMENT, CITY PROPERTY LOCATED ON THE WEST SIDE OF CAMPUS AVENUE NORTH OF THE I-10 (APN 1047-221-48)**

Approve a subsequent Right of Way Contract with San Bernardino County Transportation Authority (SBCTA) for a temporary construction easement on City owned property to facilitate construction of the I-10 Freeway Improvements. It is further recommended that the City Council accept the offer of \$15,900 as just compensation, which excludes the additional incentive previously offered. (Staff Person: Rosemary Hoerning)

## **12. PUBLIC HEARINGS**

### **A. UPLAND CITY EMPLOYEES ASSOCIATION - CONSIDERATION OF IMPASSE**

The Council will consider results of the Factfinding Report and Recommendations, PERB Case No. LA-IM-276-M regarding Impasse for the Upland City Employees Association.

- Recommendation: 1) Staff Presentation  
2) Upland City Employees Association Presentation  
3) Hold Public Hearing  
4) Close Public Hearing  
5) Provide direction concerning consideration of Impasse for the Upland City Employees Association (UCEA) based on the Factfinding Report and Recommendations, PERB Case No. LA-IM-276-M.

B. UPLAND MID-MANAGEMENT EMPLOYEES ASSOCIATION – CONSIDERATION OF IMPASSE

The Council will consider the Factfinding Report and Recommendations, PERB Case No. LA-IM-273-M regarding the Impasse for the Mid-Management Employees Association.

- Recommendation: 1) Staff Presentation  
2) Upland Mid-Management Employees Association Presentation  
3) Hold Public Hearing  
4) Close Public Hearing  
5) Provide direction concerning consideration of Impasse for the Mid-Management Employees Association based on the Factfinding Report and Recommendations, PERB Case No. LA-IM-273-M.

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

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

- Recommendation: 1) Staff Presentation  
2) Hold Public Hearing  
3) Close Public Hearing  
4) Accept the report of delinquent water, sewer, and refuse service charges, and authorize the delinquent charges to be placed on the tax roll.

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

The City Council will consider the Fiscal Year 2019/20 assessment to be levied upon Assessment District LM-84-1 for providing street lights and street sweeping to Tract 12339 and street lights, landscape irrigation, and street sweeping adjacent to Tract 18376. (Staff Person: Londa Bock-Helms)

- Recommendation: 1) Staff Presentation  
2) Hold Public Hearing  
3) Close Public Hearing  
4) Accept the Finance Officer's report pertaining to Landscape Maintenance District LM-84-1 and adopt a Resolution declaring its intention to levy and collect assessments within Landscape Maintenance District LM-84-1 for Fiscal Year 2019-20.

**13. COUNCIL COMMITTEE REPORTS**

#### **14. BUSINESS ITEMS**

A. CONSIDERATION OF A RESOLUTION FOR SUBMISSION OF AN APPLICATION UNDER THE STATEWIDE PARK DEVELOPMENT AND COMMUNITY REVITALIZATION PROGRAM FOR MEMORIAL PARK

Adopt a Resolution approving the application for Statewide Park Development and Community Revitalization Program Grant funds. (Staff Person: Doug Story)

B. ELECTRIC CHARGING STATION GRANT & AGREEMENTS

Accept a \$160,000 Grant from the Southern California Incentive Project (SCIP) for the installation of DC Fast Charging Electric Vehicle Charging Units in the Civic Center Parking Lot. It is further recommended the City Council authorize the Interim City Manager to enter into agreements with ChargePoint for Master Services and Subscription Agreement; the terms and conditions for the electric vehicle supply equipment purchase through Sourcewell and installation/validation; and network services for a 5-Year Commercial Service Plan (ASSURE). (Staff Person: Rosemary Hoerning)

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

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

#### **15. ORAL COMMUNICATIONS**

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

#### **16. CITY MANAGER**

#### **17. ADJOURNMENT**

The next regularly scheduled City Council meeting is Monday, August 12, 2019.

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

All Agenda items and back-up materials are available for public review at the Upland Public

Library, downstairs reference desk at 450 North Euclid Avenue, the City Clerk's Office at 460 North Euclid Avenue and the City website at [www.ci.upland.ca.us](http://www.ci.upland.ca.us), subject to staff's ability to post the documents before the meeting.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office, 931-4120. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.102-35.104 ADA Title II]

**POSTING STATEMENT:** On July 17, 2019 a true and correct copy of this agenda was posted on the bulletin boards at 450 N. Euclid Avenue (Upland Public Library) and 460 N. Euclid Avenue (Upland City Hall).



**8. CITY ATTORNEY**

City Attorney Markman announced that Council acted on Item 4A during closed session instructing the City Attorney not to appeal the judgment in the matter of San Bernardino Superior Court Case No. CIVDS1812143, with Mayor Stone opposed and Councilmember Felix abstaining.

**9. ORAL COMMUNICATIONS**

Glenn Bozar, questioned the legal costs to the City involving the annexation of fire services and the proposed sale of land to San Antonio Regional Hospital.

**10. COUNCIL COMMUNICATIONS**

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

**11. CONSENT CALENDAR**

Motion by Councilmember Zuniga to approve the remainder of the Consent Calendar, seconded by Councilmember Felix, and carried unanimously.

**A. APPROVAL OF MINUTES**

Approved the Special Joint Workshop Minutes of June 17, 2019 and the Regular Meeting Minutes of June 24, 2019.

**B. TREASURER'S REPORT MAY 2019**

Received and filed the May 2019 Treasurer's Report.

**C. APPROVAL OF AN AGREEMENT WITH MCMURRAY STERN AND APPROPRIATION OF DESIGNATED FUNDS FOR HIGH DENSITY MOBILE STORAGE SYSTEM**

Approved an agreement with McMurray Stern for the purchase of a high density mobile storage system and authorized the City Manager to execute the agreement in the amount of \$77,940.20 and a 10% contingency for a total of \$85,000; and carry over budget from FY 2018-19 to FY 2019-20.

**12. PUBLIC HEARINGS** None

**13. COUNCIL COMMITTEE REPORTS** None

**14. BUSINESS ITEMS**

**A. DISCUSSION OF PLANNING COMMISSIONER APPOINTMENT PROCESS**

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

There was discussion on the application process, district representation, and the need to have diverse viewpoints represented on the Commission.

The Council directed staff to move forward with the current selection process.

**B. CONSIDERATION OF A RESOLUTION SUPPORTING BALANCED ENERGY SOLUTIONS AND LOCAL CHOICE**

Interim City Manager Hoerning presented the staff report, which is on file in the City Clerk's Office. She then introduced Kristine Scott of Southern California Gas Company who answered Council's questions regarding natural gas and renewable natural gas.

There was discussion on AB 3232 and consumer choice.

Motion by Councilmember Felix to adopt Resolution No. 6500 supporting balanced energy solutions and maintaining local control of energy solutions, seconded by Mayor Stone, and carried with Councilmember Elliott opposed.

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

Jill Shirley, Upland, spoke regarding issues she has had with trespassers breaking into a vacant home in her neighborhood.

Irmalinda Osuna, announced the formation of the group "People for Upland Parks" and stated concerns for the care and sustainability of open spaces.

Lois Sicking Dieter, requested clarification on the process for submitting proposed alternative plans for the Memorial Park grant application.

Natasha Walton, Upland, requested clarification regarding whether alternative plans for Memorial Park submitted by outside entities are endorsed by the City.

Karen May, Upland, stated that she was not opposed to San Antonio Regional Hospital expanding, but they needed to explore other options that would not affect park land.

Terri D. encouraged the public to attend the workshops for the Memorial Park Proposition 68 Grant application.

Marjorie Musser Mikels, stated that the community presentations for the Memorial Park Proposition 68 Grant are not workshops and it is misleading to sell park land during the process.

Glenn Bozar, commented on the Grand Jury report and felt mismanagement of the City has gone on for a long time.

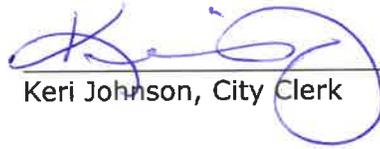
**16. CITY MANAGER**

Interim City Manager Hoerning announced the upcoming Memorial Park public workshops.

**17. ADJOURNMENT**

Mayor Stone adjourned the meeting at 8:19 p.m. The next regularly scheduled City Council meeting is Monday, July 22, 2019.

**SUBMITTED BY**

  
Keri Johnson, City Clerk

**APPROVED**

July 22, 2019



## STAFF REPORT

**ITEM NO. 11.C.**

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**DATE:** July 22, 2019  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
MIKE KITCHEN, SPECIAL FLEET CONSULTANT  
**SUBJECT:** DISPOSAL OF SURPLUS VEHICLES AND EQUIPMENT

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### **RECOMMENDED ACTION**

It is recommended that the City Council declare the vehicles, equipment, and obsolete inventory on the attached list as surplus and authorize the Fleet Division of Public Works to initiate the disposal of the surplus items.

### **GOAL STATEMENT**

The proposed action will support the City's goal to eliminate surplus vehicles, equipment, and parts inventory that have become obsolete, salvaged, or a safety hazard.

### **BACKGROUND**

The City is in need of a cost effective and viable way to dispose of its surplus vehicles and equipment. Most surplus vehicles and equipment are sold through public sales. Public sales can be conducted by either an outside contractor or by City staff.

Currently, public sales are conducted onsite, at auction yards, through internet auction websites, or any combination of the three. Performing an in-house sale and/or internet sale will require countless staff hours in prepping the vehicles and equipment for sale; which includes removing all City and Police decaling, washing, staging, photographing the vehicles inside and out for marketing and/or internet sales. In addition, staff time will be needed to perform a weekend onsite sales event or to upload vehicle photos and information onto an internet web site. City staff will also have to follow through with all of the DMV and smog check requirements and payment transactions. Performing and using City staff for the sale of surplus vehicles and equipment is not typically cost effective and efficient use of City staff time. Outsourcing this vehicle disposal typically has its own cost associated with it; which includes transporting cost from the City yard to the auction yard, vehicle prep (decal removal, washing and cleaning), DMV fees, smog check fees, and seller's premium fee (typically 3% to

5% of selling price).

## **ISSUES/ANALYSIS**

Staff will be using US Auctions to perform the disposal of the City's surplus vehicles and equipment. US Auctions will provide the following services at no cost to the City, transportation from the City yard to the auction location, advertising and marketing, internet advertising and sales, smog check and safety inspection, removal of City and Police decals from the vehicles, cleaning of the interior and exterior of the vehicles, all DMV paperwork including lost title replacement and release of liability forms, all compliance forms for the sale of diesel powered vehicles and equipment required by CARB (California Air Resources Board) and no sellers auction premium. US Auctions is an Upland local business and has been used by the City of Ontario, City of Riverside, and City of Chino. US Auctions has previously performed vehicle disposal services for the City of Upland in a satisfactory manner. Using this service helps to maximize the salvage value of the surplus vehicles and equipment, which is returned to the City's Fleet Replacement Fund.

## **FISCAL IMPACTS**

US Auctions will process and sell the City's surplus vehicles and equipment. Their cost is paid by the buyer and there is no additional cost to the City. This allows the City to achieve the maximum utilization of the residual value of the surplus vehicle to be reinvested in the purchasing and modernization of the City's fleet.

## **ALTERNATIVES**

Provide alternative direction to staff.

## **ATTACHMENTS:**

### **Surplus Vehicle and Equipment List**

## Surplus Vehicle and Equipment List

UNIT	YEAR	MAKE	MODEL	MILEAGE	VIN. NUMBER	LICENSE
207	2013	Dodge	Charger	111,002	2C3CDXAT8DH715097	1388616

**JUSTIFICATION:** Police / Patrol, Black and White Patrol Unit replaced due to high mileage and is no longer cost effective to maintain in the City's fleet. Replaced in 2018/19 budget

UNIT	YEAR	MAKE	MODEL	MILEAGE	VIN. NUMBER	LICENSE
212	2012	Dodge	Charger	110,836	2C3CDXAT9CH287815	1088784

**JUSTIFICATION:** Police / Patrol, Black and White Patrol Unit replaced due to high mileage and is no longer cost effective to maintain in the City's fleet. Replaced in 2018/19 budget

UNIT	YEAR	MAKE	MODEL	MILEAGE	VIN. NUMBER	LICENSE
215	2012	Dodge	Charger	115,278	2C3CDXAT1CH153154	1371819

**JUSTIFICATION:** Police / Patrol, Black and White Patrol Unit replaced due to high mileage and is no longer cost effective to maintain in the City's fleet. Replaced in 2018/19 budget

UNIT	YEAR	MAKE	MODEL	MILEAGE	VIN. NUMBER	LICENSE
217	2012	Dodge	Charger	118,020	2C3CDXAT4CH287818	1088788

**JUSTIFICATION:** Police / Patrol, Black and White Patrol Unit replaced due to high mileage and is no longer cost effective to maintain in the City's fleet. Replaced in 2018/19 budget

UNIT	YEAR	MAKE	MODEL	MILEAGE	VIN. NUMBER	LICENSE
221	2012	Dodge	Charger	110,679	2C3CDXAT5CH287827	1088785

**JUSTIFICATION:** Police / Patrol, Black and White Patrol Unit replaced due to high mileage and is no longer cost effective to maintain in the City's fleet. Replaced in 2018/19 budget

UNIT	YEAR	MAKE	MODEL	MILEAGE	VIN. NUMBER	LICENSE
257	2007	Ford	Escape	85,137	1FMYU49H57KB43298	1241897

**JUSTIFICATION:** Police / Admiration, Unit replaced due to the unit age, condition and mileage of the unit. This unit is reaching its cost effective lifecycle to maintain in the City's fleet. Replaced in 2018/19 budget.

## Surplus Vehicle and Equipment List

UNIT	YEAR	MAKE	MODEL	MILEAGE	VIN. NUMBER	LICENSE
59	2003	Ford	F-150	49,719	2FTRF17243CA82461	1170539

**JUSTIFICATION:** Public Works / Building Maintenance , Unit replaced due to the unit age, engine condition and mileage of the unit. This unit is reaching its cost effective lifecycle to maintain in the City's fleet. Replaced in 2018/19 budget.

UNIT	YEAR	MAKE	MODEL	MILEAGE	VIN. NUMBER	LICENSE
78	2003	Chevrolet	C1500 Pick-Up	138,107	1GCEC19X03Z220323	1159174

**JUSTIFICATION:** Public Works / Building Maintenance, Unit replaced due to the unit age, condition and mileage of the unit. This unit has reached its cost effective lifecycle to maintain in the City's fleet. Replaced in 2018/19 budget.

UNIT	YEAR	MAKE	MODEL	MILEAGE	VIN. NUMBER	LICENSE
48	2006	Chevrolet	C1500 Pick-Up	92,451	1GCEC19T46Z212744	1159917

**JUSTIFICATION:** Public Works / Street Maintenance, Unit replaced due to the unit age, condition and mileage of the unit. This unit has reached its cost effective lifecycle to maintain in the City's fleet. Replaced in 2018/19 budget.

UNIT	YEAR	MAKE	MODEL	MILEAGE	VIN. NUMBER	LICENSE
97	2003	Chevrolet	C1500 Pick-Up	90,654	2GCEC19X031345024	1169564

**JUSTIFICATION:** Public Works / Street Maintenance, Unit replaced due to the unit age, condition and mileage of the unit. This unit has reached its cost effective lifecycle to maintain in the City's fleet. Replaced in 2018/19 budget.

UNIT	YEAR	MAKE	MODEL	HOURS	VIN. NUMBER	LICENSE
322	1998	Case	580L Backhoe	5,817	JJG0243663	N/A

**JUSTIFICATION:** Public Works / Sewer Distribution, Unit replaced due to the unit age, condition and hours on the unit. This unit is no longer cost effective to maintain in the City's fleet. Replaced in 2017/18 budget.

UNIT	YEAR	MAKE	MODEL	MILEAGE	VIN. NUMBER	LICENSE
72	2008	Ford	F-350	124,267	1FDWX30528EB86492	1282194

**JUSTIFICATION:** Public Works/ Water Production, Unit replaced due to the unit age, condition and mileage of the unit. This unit is reaching its cost effective lifecycle to maintain in the City's fleet. Replaced in 2018/19 budget.

## Surplus Vehicle and Equipment List

UNIT	YEAR	MAKE	MODEL	MILEAGE	VIN. NUMBER	LICENSE
73	2008	Ford	F-350	165,566	1FDWX30548EB86493	1282192

**JUSTIFICATION:** Public Works / Water Production, Unit replaced due to the unit age, condition and mileage of the unit. This unit is reaching its cost effective lifecycle to maintain in the City's fleet. Replaced in 2018/19 budget.

UNIT	YEAR	MAKE	MODEL	MILEAGE	VIN. NUMBER	LICENSE
232	2006	Honda	ST1300PA	56,000	JH2SC51746M400077	86K48

**JUSTIFICATION:** Police / Traffic Division, Unit replaced due to high mileage and repair cost. Unit is no longer cost effective to maintain in the City's fleet. Replaced in 2017/18 budget

UNIT	YEAR	MAKE	MODEL	MILEAGE	VIN. NUMBER	LICENSE
236	2012	Honda	ST1300PA	62,511	JH2SC5151CK000029	3003030

**JUSTIFICATION:** Police / Traffic Division, Unit replaced due to high mileage and repair cost. Unit is no longer cost effective to maintain in the City's fleet. Replaced in 2017/18 budget

UNIT	YEAR	MAKE	MODEL	MILEAGE	VIN. NUMBER	LICENSE
88	2003	Chevrolet	C1500 Pick-Up	51,128	1GCEC19XX3Z297961	1169562

**JUSTIFICATION:** Police / Code Division, Unit was removed from service due to accident damage. The unit is no longer cost effective to maintain in the City's fleet due to the unit age and accident damage. Unit is recommended for replacement in the 2019/20 budget.

UNIT	YEAR	MAKE	MODEL	MILEAGE	VIN. NUMBER	LICENSE
213	2008	Dodge	Charger	93,188	2B3KA43H08H134465	6EES374

**JUSTIFICATION:** Police / Detective Division, Unit was removed from service due to accident damage. The unit is no longer cost effective to maintain in the City's fleet due to the unit age, mileage, and accident damage. Unit is recommended for replacement in the 2019/20 budget.

UNIT	YEAR	MAKE	MODEL	MILEAGE	VIN. NUMBER	LICENSE
531	1985	SDI	100D14-5K	N/A	936	E187363

**JUSTIFICATION:** Public works / Weed Abatement, Unit was removed from service by using department due to unit age, not cost effective to repair, and no longer meeting the department needs.

## Surplus Vehicle and Equipment List

UNIT	YEAR	MAKE	MODEL	MILEAGE	VIN. NUMBER	LICENSE
15-675	1989	Honda	EG5000X Generator		EA7-4018501	

**JUSTIFICATION:** Public Works/Water Division, Unit replaced due to the unit age and no longer fitting the needs of the department.

UNIT	YEAR	MAKE	MODEL	MILEAGE	VIN. NUMBER	LICENSE
15-675	1989	Honda	EG5000X Generator		EA7-4016902	

**JUSTIFICATION:** Public Works/Water Division, Unit replaced due to the unit age and no longer fitting the needs of the department.

UNIT	YEAR	MAKE	MODEL	MILEAGE	VIN. NUMBER	LICENSE
15-952	2002	Honda	WT20X Trash Pump		GC02-7723530	

**JUSTIFICATION:** Public Works/Water Division, Unit replaced due to the unit age and no longer fitting the needs of the department.

UNIT	YEAR	MAKE	MODEL	MILEAGE	VIN. NUMBER	LICENSE
		John Bean	R5B 2 Piston Pump		J92080	

**JUSTIFICATION:** Public Works/Streets Division, Unit replaced due to the unit age and no longer fitting the needs of the department.

UNIT	YEAR	MAKE	MODEL	MILEAGE	VIN. NUMBER	LICENSE

**JUSTIFICATION:** Public Works, Miscellaneous equipment (pressure washers, file cabinets, light bars, truck lumber rack, and miscellaneous storage racks)

UNIT	YEAR	MAKE	MODEL	MILEAGE	VIN. NUMBER	LICENSE
		Dodge	5.7 Charger Engine			

**JUSTIFICATION:** Public Works/Fleet Division, Donation of a non-operating surplus engine to Chaffey College Automotive Class for education training.



## STAFF REPORT

**ITEM NO. 11.D.**

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**DATE:** July 22, 2019  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** KERI JOHNSON, CITY CLERK  
**SUBJECT:** DESIGNATION OF VOTING DELEGATE FOR THE ANNUAL LEAGUE OF CALIFORNIA CITIES CONFERENCE

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### **RECOMMENDED ACTION**

It is recommended that the City Council appoint Councilmember Ricky Felix as the voting delegate to represent the City of Upland at the League of California Cities General Assembly Meeting on October 18, 2019.

### **GOAL STATEMENT**

The proposed action supports the City's goal to participate in activities in developing policies for California cities.

### **BACKGROUND**

The City of Upland, by membership in the League of California Cities, has one vote on matters pertaining to League policy. The League bylaws state a city's voting delegate must be designated by the City Council in order to be eligible to vote.

### **ISSUES/ANALYSIS**

The City's vote will be cast at the League of California Cities General Assembly Meeting on October 18, 2019. The membership considers and takes action on resolutions that establish League policy. Councilmember Felix is attending the conference.

### **FISCAL IMPACTS**

There is no fiscal impact associated with this action.

**ALTERNATIVES**

Provide alternative direction to staff.

**ATTACHMENTS:**

**League Letter**

**Council Action Advised by August 30, 2019**

June 10, 2019

**TO: Mayors, City Managers and City Clerks**

**RE: DESIGNATION OF VOTING DELEGATES AND ALTERNATES  
League of California Cities Annual Conference – October 16 - 18, Long Beach**

The League's 2019 Annual Conference is scheduled for October 16 – 18 in Long Beach. An important part of the Annual Conference is the Annual Business Meeting (during General Assembly), scheduled for 12:30 p.m. on Friday, October 18, at the Long Beach Convention Center. At this meeting, the League membership considers and takes action on resolutions that establish League policy.

In order to vote at the Annual Business Meeting, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote in the event that the designated voting delegate is unable to serve in that capacity.

**Please complete the attached Voting Delegate form and return it to the League's office no later than Friday, October 4. This will allow us time to establish voting delegate/alternate records prior to the conference.**

Please note the following procedures are intended to ensure the integrity of the voting process at the Annual Business Meeting.

- **Action by Council Required.** Consistent with League bylaws, a city's voting delegate and up to two alternates must be designated by the city council. When completing the attached Voting Delegate form, please attach either a copy of the council resolution that reflects the council action taken, or have your city clerk or mayor sign the form affirming that the names provided are those selected by the city council. Please note that designating the voting delegate and alternates must be done by city council action and cannot be accomplished by individual action of the mayor or city manager alone.
- **Conference Registration Required.** The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. To register for the conference, please go to our website: [www.cacities.org](http://www.cacities.org). In order to cast a vote, at least one voter must be present at the

Business Meeting and in possession of the voting delegate card. Voting delegates and alternates need to pick up their conference badges before signing in and picking up the voting delegate card at the Voting Delegate Desk. This will enable them to receive the special sticker on their name badges that will admit them into the voting area during the Business Meeting.

- **Transferring Voting Card to Non-Designated Individuals Not Allowed.** The voting delegate card may be transferred freely between the voting delegate and alternates, but *only* between the voting delegate and alternates. If the voting delegate and alternates find themselves unable to attend the Business Meeting, they may *not* transfer the voting card to another city official.
- **Seating Protocol during General Assembly.** At the Business Meeting, individuals with the voting card will sit in a separate area. Admission to this area will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate. If the voting delegate and alternates wish to sit together, they must sign in at the Voting Delegate Desk and obtain the special sticker on their badges.

The Voting Delegate Desk, located in the conference registration area of the Sacramento Convention Center, will be open at the following times: Wednesday, October 16, 8:00 a.m. – 6:00 p.m.; Thursday, October 17, 7:00 a.m. – 4:00 p.m.; and Friday, October 18, 7:30 a.m.–11:30 a.m.. The Voting Delegate Desk will also be open at the Business Meeting on Friday, but will be closed during roll calls and voting.

The voting procedures that will be used at the conference are attached to this memo. Please share these procedures and this memo with your council and especially with the individuals that your council designates as your city's voting delegate and alternates.

Once again, thank you for completing the voting delegate and alternate form and returning it to the League's office by Friday, October 4. If you have questions, please call Darla Yacub at (916) 658-8254.

Attachments:

- Annual Conference Voting Procedures
- Voting Delegate/Alternate Form



## STAFF REPORT

**ITEM NO. 11.E.**

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**DATE:** July 22, 2019  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
BOB CRITCHFIELD, ENGINEERING MANAGER  
**SUBJECT:** TEMPORARY CONSTRUCTION EASEMENT, CITY PROPERTY  
LOCATED ON THE WEST SIDE OF CAMPUS AVENUE NORTH OF  
THE I-10 (APN 1047-221-48)

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### RECOMMENDED ACTION

It is recommended that the City Council approve a subsequent Right of Way Contract with San Bernardino County Transportation Authority (SBCTA) for a temporary construction easement on City owned property to facilitate construction of the I-10 Freeway Improvements. It is further recommended that the City Council accept the offer of \$15,900 as just compensation, which excludes the additional incentive previously offered.

### GOAL STATEMENT

The proposed action supports the City's goal of receiving just compensation for the use of City owned property and working with San Bernardino County Transportation Authority on the regional transportation improvements.

### BACKGROUND

On March 25, 2019, The City Council approved the original temporary construction easement to facilitate the construction of the I-10 corridor widening improvements. The prior approval included a provision to provide an incentive of 20% to parties involved in right of way needs for the freeway project.

In June 2019, the SBCTA Board took action to remove the 20% incentive for the agencies that are members of the SBCTA. Paying an incentive to agencies which are part of the county transportation program would reduce funds available for these regional transportation

improvements. Therefore, the Board determined this additional compensation would not be appropriate and sets a precedence.

**ISSUES/ANALYSIS**

The SBCTA Boards decision to eliminate the 20% incentive is a substantive change to the original Temporary Construction Easement compensation approval. This requires City Council consideration and approval of the revised escrow instructions and agreement.

**FISCAL IMPACTS**

The removal of the 20% incentive is a \$3,180 reduction in compensation to the City. This action makes these funds available to SBCTA for other freeway project related costs.

**ALTERNATIVES**

Provide alternative direction to staff.

**ATTACHMENTS:**

**SBCTA - Item & Minutes**

**Location Map**

**TCE Deed**

## ***Minute Action***

AGENDA ITEM: 19

***Date:*** June 5, 2019

***Subject:***

Interstate 10 Corridor Contract 1 Project Incentive Program

***Recommendation:***

That the Board, acting as the San Bernardino County Transportation Authority:

Provide direction regarding member jurisdiction agency participation in the Right-of-Way Acquisition Incentive Payment Program (Attachment A).

***Background:***

As a standard practice, San Bernardino County Transportation Authority (SBCTA) makes offers of Just Compensation to all property owners for property rights needed by our projects. However, to encourage expeditious settlement for property rights needed on the Interstate 10 (I-10) Corridor Contract 1 Project (Project), on July 12, 2017, the SBCTA Board of Directors (Board) authorized the use of an incentive program which applied to all property owners. The Incentive Payment Program is intended to help maintain a project's delivery schedule, and reduce legal and administrative costs associated with trying to reach settlements. While this program was approved by the California Department of Transportation (Caltrans) in 2014, after being instituted by the Federal Highway Administration (FHWA), its use is relatively new. Both FHWA and Caltrans require that the Incentive Payment Program be applied to all parcels in the project regardless of the type, size, appraisal amount, or ownership including public agencies.

Likewise, the Board approved Incentive Payment Program for the Project, as currently written is available for all property owners including public and member jurisdiction agencies. In application, the program provides a 20 percent incentive payment for property owners based on the value of the appraisal, with a minimum payment of \$1,000 and a maximum payment of \$100,000 for each acquisition, provided that the owner execute a contract within 60 days of the first written offer.

During the property acquisition phase of the project, staff recognized that use of the incentive when acquiring property rights from member jurisdiction agencies may be considered inequitable since member jurisdictions on other freeway, grade separation, and interchange projects were only paid or reimbursed the Just Compensation for needed property rights without incentives. The purpose of this agenda item is to allow Board members an opportunity to consider whether member jurisdiction agencies should receive incentive payments on projects with Board approved incentive programs or whether acquisition payments should be equitably afforded to all member jurisdiction agencies without an incentive payment.

The Project crosses through several member jurisdictions. In some cases, these jurisdictions own property rights that are needed for the project. These same agencies are receiving benefits from the project beyond the additional capacity of the mainline I-10 facility, such as improvements to local street connections, intersection improvements, and other traffic and safety enhancements. The Project is partially funded by Measure I as well as other tax proceeds provided by the State.

*Entity: San Bernardino County Transportation Authority*

Receipt of incentive payments by member jurisdiction agencies will increase costs on this and future projects which have Board approved Incentive Programs.

Staff seeks direction from the Board regarding the application of incentive payments to member jurisdiction agencies.

**Financial Impact:**

This item is consistent with the SBCTA Fiscal Year 2018/2019 adopted budget under Task No. 0820 Freeway Projects, Sub-Task No. 0823 I-10 Corridor Phase 1.

**Reviewed By:**

This item has not received prior policy committee or technical advisory committee review. SBCTA General Counsel has reviewed this item.

**Responsible Staff:**

Paula Beauchamp, Director of Project Delivery and Toll Operations

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<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	John Dutrey, City of Montclair
<b>SECONDER:</b>	Larry McCallon, City of Highland
<b>AYES:</b>	Bishop, McIntyre, Jahn, Ulloa, Marquez, Navarro, Warren, McNaboe, McCallon, Rigsby, Dutrey, Wapner, Michael, Momberger, Robertson, Valdivia, Klink, Stone, Denison, Lovingood, Rowe, Hagman, Gonzales, Swanson (Alt.), Jones (Alt)
<b>ABSENT:</b>	Reyes, Paget, Avila, Rutherford

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Approved  
Board of Directors  
Date: June 5, 2019

Witnessed By:

  
Marleana Roman, Deputy Clerk of the Board 6/5/2019

## Attachment A

### SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY INTERSTATE 10 CONTRACT 1 ACQUISITION – INCENTIVE PAYMENT PROGRAM

The San Bernardino County Transportation Authority (SBCTA) Acquisition – Incentive Payment Program (Payment Program) encourages the expeditious acquisition of needed real property and is consistent with the intent of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act). The Federal Highway Administration (FHWA), Office of Real Estate Services, has determined that the FHWA may participate in right-of-way acquisition incentive payments made under the FHWA-approved plan or program. Acquisition incentive payments are payments that are over and above the just compensation offer provided by the Uniform Act.

The authority for the FHWA to participate in incentive payments is found in 23 CFR 710.203(b)(2)(ii) which allows federal participation in relocation assistance and payments provided under the law of the State that may exceed the requirements of 49 CFR Part 24. The FHWA has the general authority to participate in the costs of construction that includes costs of right-of-way acquisition (See 23 U.S.C. §101(a)(3)). The use of incentive programs for right-of-way acquisition is analogous to the use of incentive / disincentive provisions for early completion in contracts for construction of federal aid projects (See 23 CFR 635.127(d)).

On June 12, 2014, the California Department of Transportation (Caltrans) adopted an Acquisition – Incentive Payment Program.

Based on the authority granted by the SBCTA Board of Directors and the concurrence of FHWA and Caltrans, SBCTA shall implement the I-10 Contract 1 Payment Program as follows:

Written offers to owners for the purchase of their property shall be based on the fair market value of the property (just compensation). The I-10 Contract 1 Payment Program payment (Payment) amounts will be based on the appraised value. The use of the Payment does not preclude the use of administrative and legal settlements, and each administrative and legal settlement will require independent support.

The procedures on the Payment shall incorporate the same level of safeguard against coercive negotiation practices as do standard SBCTA's Real Estate Policies and Procedures and Caltrans' Right-of-Way Procedures. Per federal regulation, SBCTA is required to allow at least 30 days for property owners to consider an offer prior to initiating the condemnation process (See 49 CFR 24.102(f) and Appendix A). Parcels acquired using acquisition incentive offers will be subject to the same quality control and quality assurance processes that are used for SBCTA's right-of-way activities.

The Payment will be offered for both permanent and temporary acquisitions.

For all offers, the Payment for a permanent or temporary acquisition will be based on a lump sum payment of 20 percent of the appraised value of all parcels under the same ownership with a minimum payment of \$1,000, and a maximum payment of \$100,000.

The Payment amount will be calculated on the final appraised value and will then be rounded separately from the final appraised value based on the rounding rules found in Section 7.02.11 of the Caltrans' Right-of-Way Manual.

The Payment is a standing offer for 60 days. The 60 days starts with the Initiation of Negotiations (ION) as day one. The 60 days includes weekends and holidays. For mailed offers, it starts on the date the offer was received by certified mail.

If the 60<sup>th</sup> day falls on a weekend or holiday and the SBCTA acquisition agent working with the grantor will not be available to conduct business with the grantor, the agent may end the incentive period on the first working day after the 60-day period is complete. Personal leave of the SBCTA acquisition agent working with the grantor will not be cause to extend the incentive period. An alternate SBCTA acquisition agent should be identified to address the issue.

The Payment offer will end at the execution of the right-of-way contract or at 5:00 p.m. on the 60<sup>th</sup> day if a right-of-way contract has not been signed by grantor. The 60 days will restart with a new offer based on an approved appraisal revision if one is deemed necessary by SBCTA. An appraisal revision may result in a change in the Payment amount.

The Payment is a standing offer for 60 days regardless of SBCTA initiating eminent domain proceedings. Additionally, this time period will be sufficient to allow the property owner the opportunity to obtain their own appraisal where SBCTA pays the reasonable cost of the appraisal up to \$5,000, as provided by California Code of Civil Procedure section 1263.025.

The following clause will be used in right-of-way contracts pertaining to the Payment Program for the I-10 Corridor Contract 1 Project (Project):

“In addition to the Fair Market Value, it is agreed by and between the parties hereto that the amount in clause XX above includes the sum of \$ \_\_\_\_\_ as an incentive to the grantor for the timely signing of this Right of Way Contract. This incentive payment offer expires sixty (60) days from the Initiation of Negotiations (DATE).”

The I-10 Contract 1 Payment Program will be applied to all parcels in the Project, including public agencies, regardless of type, size, appraisal, amount, or ownership.

**I-10 Contract 1 Acquisition – Incentive Payment Program Examples:**

Acquisition Type	Incentive Amount	Minimum Payment	Maximum Payment
Temporary or Permanent	20% of Appraisal	\$1,000	\$100,000

Example 1 (Minimum Payment)

Appraised Value	\$4,500
Calculated at 20%	\$900
Minimum Payment	\$1,000
Incentive Payment for Acquisition	\$1,000
<b>Total Amount of Incentive Offer</b>	<b>\$5,500</b>

Example 2 (20% Payment)

Appraised Value	\$50,000
Calculated at 20%	\$10,000
Incentive Payment for Acquisition	\$10,000
<b>Total Amount of Incentive Offer</b>	<b>\$60,000</b>

Example 3 (Maximum Payment)

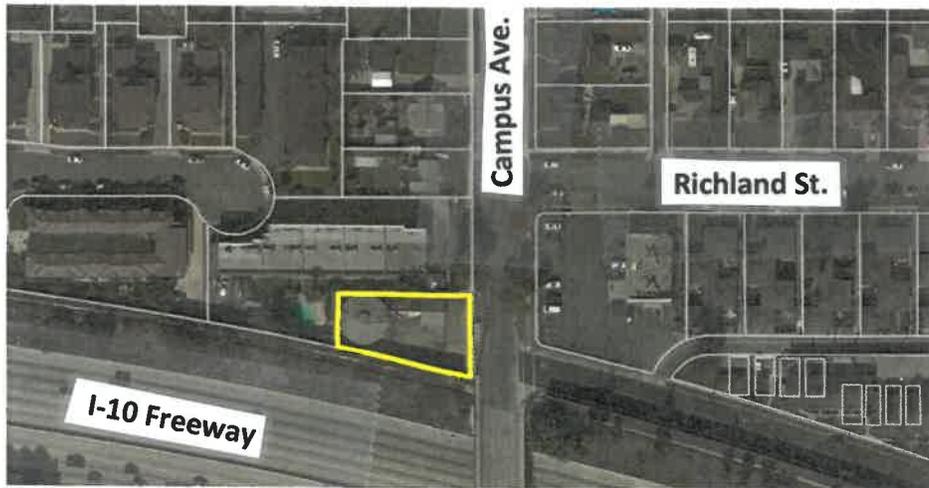
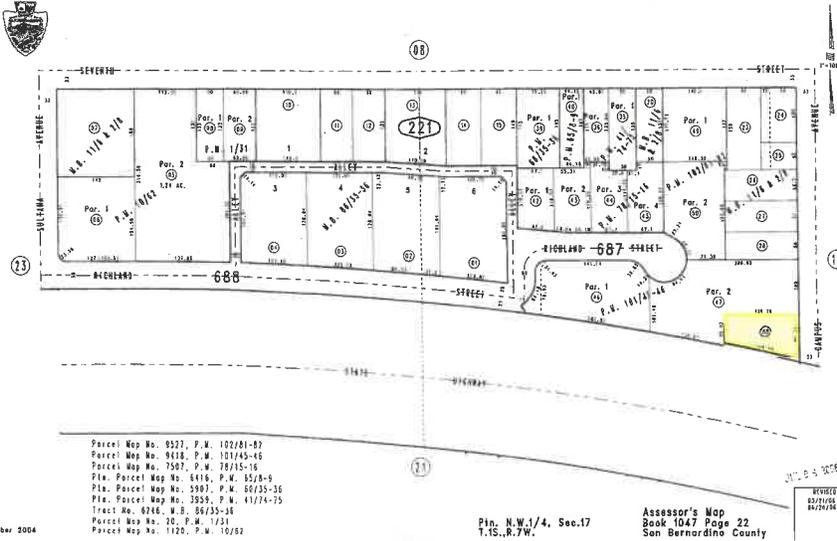
Appraised Value	\$1,000,000
Calculated at 20%	\$ 200,000
Maximum Payment	\$ 100,000
Incentive Payment for Acquisition	\$ 100,000
<b>Total Amount of Incentive Offer</b>	<b>\$1,100,000</b>

APN: 1047-221-48

THIS MAP IS FOR THE PURPOSE  
OF AD VALOREM TAXATION ONLY.

Pin. Ontario Colony Lands  
M.B. 11/6-2/8

City of Upland 1047-22  
Tax Rate Area  
8061



## LOCATION MAP

**RECORDING REQUESTED BY  
AND  
WHEN RECORDED MAIL TO:**  
 San Bernardino County Transportation  
 Authority (SBCTA)  
 1170 West Third Street, 2<sup>nd</sup> Floor  
 San Bernardino, CA, 92410-1715  
 APN: 1047-221-48

I-10 Corridor Contract 1 Project  
 FREE RECORDING:  
 This instrument is for the benefit of SBCTA  
 and is entitled to be recorded without fee or  
 tax. (Govt. Code 6103 and Rev. & Tax Code  
 11922)

Space above this line for Recorder's Use

**TEMPORARY  
CONSTRUCTION  
EASEMENT DEED**

District	County	Route	Postmile	Assessor Parcel Number
08	SBd	10	3.979	1047-221-48

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

CITY OF UPLAND, A MUNICIPAL CORPORATION OF CALIFORNIA as the owner of certain real property, hereinafter called GRANTOR, hereby grants to the San Bernardino County Transportation Authority, its employees, agents, representatives, contractors, successors and assigns (collectively "SBCTA"), a non-exclusive temporary easement for construction purposes in, on, upon, over, under and across that real property in the City of Upland, County of San Bernardino, State of California, described and depicted as follows:

**SEE EXHIBITS "A" and "B" ATTACHED HERETO AND MADE A PART HEREOF.**

The term of the easement described herein will commence on the date of the deposit of funds into escrow and expire sixty (60) months thereafter. The actual physical construction activities within the temporary construction easement area shall be limited to a period of six (6) consecutive months within the sixty (60) month period (the "Construction Period").

**CITY OF UPLAND, A MUNICIPAL CORPORATION OF CALIFORNIA**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in the TEMPORARY CONSTRUCTION EASEMENT DEED conveyed by the within instrument to the San Bernardino County Transportation Authority is hereby accepted by the undersigned officer/agent on behalf of the Board of Directors.

SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY

By: \_\_\_\_\_  
Paula Beauchamp  
Director of Project Delivery

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

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA            )

COUNTY OF \_\_\_\_\_)

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

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**EXHIBIT 'A'**  
**LEGAL DESCRIPTION**

**Parcel No. 104722148-1**

**Temporary Construction Easement**

APN 1047-221-48

The easterly 15.00 feet of that portion of Lot 687 of the Map of Ontario, in the City of Upland, County of San Bernardino, State of California, as shown on the map recorded in Book 11, Page 6, of Maps in the office of County Recorder of said County as described in the Deed recorded on January 16, 1929 in Book 459, Page 140 of Official Records in the office of the County Recorder of said County.

**Excepting therefrom**, that portion lying southerly of the northerly line of the land described in Grant Deed recorded June 15, 1951 in Book 2780, Page 164 of Official Records in the office of the County Recorder of said County.

Containing 1,291 square feet.

See Exhibit 'B' attached hereto and made a part hereof.

The distances described herein are grid distances and are based on California Coordinate System of 1983, Zone 5, 2007.00 epoch. Ground distances may be obtained by dividing grid distances by the combination factor of 0.999948643.

Prepared under the direction of



Peter J. Fitzpatrick, PLS 6777

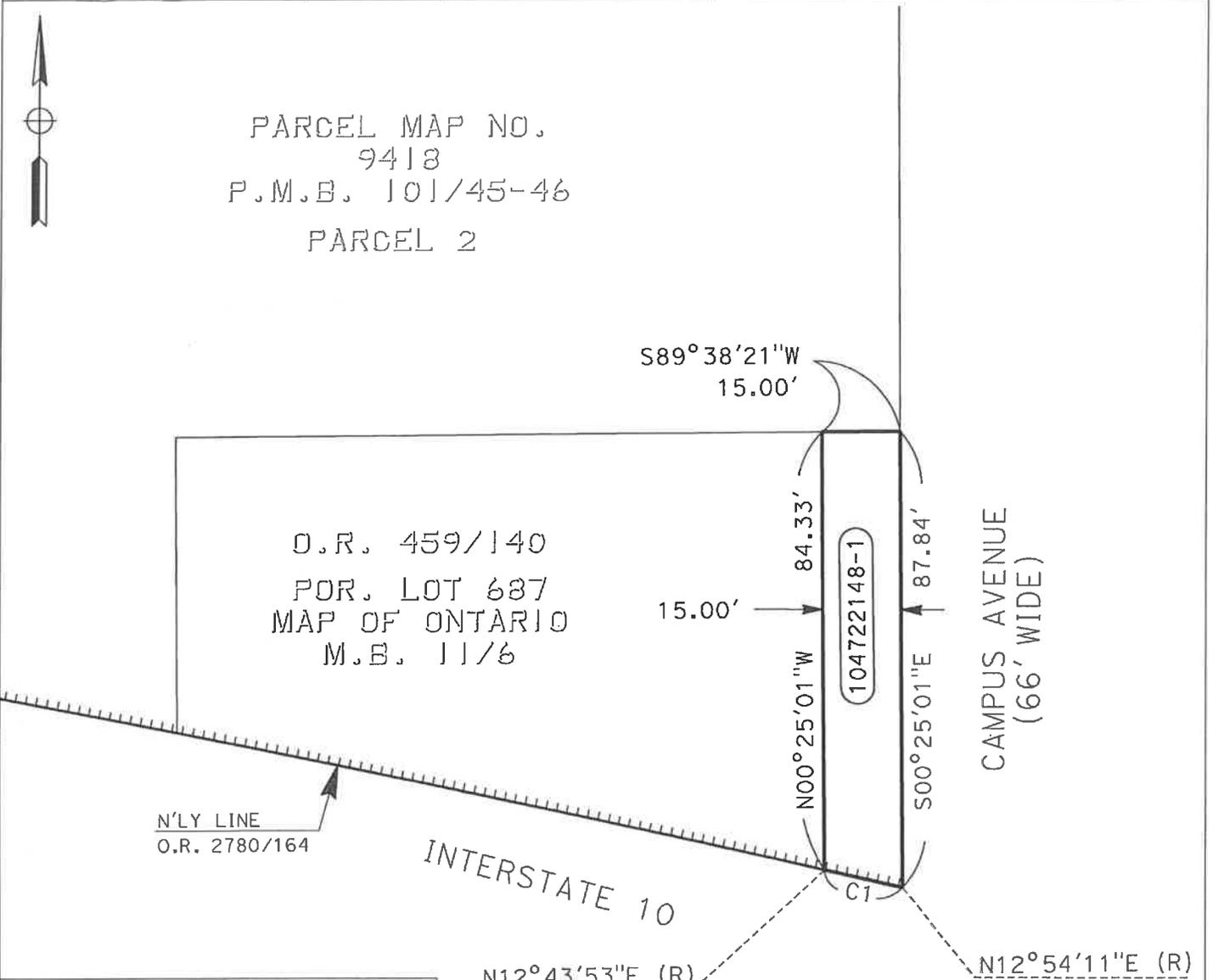


Date



# EXHIBIT B

PARCEL#	TITLE	AREA	APN
104722148-1	TCE	1291 SF	1047-221-48



LEGEND
(RAD) Indicates Radial Bearing
POB Point of Beginning
TPOB True Point of Beginning
<span style="border: 1px solid black; border-radius: 50%; padding: 2px;">104722148-1</span> Parcel Number
Old Right of Way(Superseded)
Exist Right of Way
Proposed Right of Way
Access Prohibited

CURVE TABLE			
	DELTA	RADIUS	LENGTH
C1	00°10'18"	5142.00'	15.41'

**NOTES**

The distances shown herein are grid distances. Ground distances may be obtained by dividing grid distances by the combination factor of 0.999948643.

104722148-1  
 TEMPORARY CONSTRUCTION EASEMENT

FEET 0 15 30 60 90

DATE: 07-17-18		REV.:	EA:	FA#:	
DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
8	S.B.	10	3.979	1	1



## STAFF REPORT

**ITEM NO. 12.A.**

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**DATE:** July 22, 2019  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
LONDA BOCK-HELMS, ACTING ADMINISTRATIVE SERVICES DIRECTOR  
**SUBJECT:** UPLAND CITY EMPLOYEES ASSOCIATION - CONSIDERATION OF IMPASSE

---

### **RECOMMENDED ACTION**

It is recommended that the City Council hold a public hearing and provide direction concerning consideration of Impasse for the Upland City Employees Association (UCEA) based on the Factfinding Report and Recommendations, PERB Case No. LA-IM-276-M.

### **GOAL STATEMENT**

The proposed action will support the City's goal of exercising responsible financial management and providing salary and benefits to its employees.

### **BACKGROUND**

In approximately July 2017, the City made an initial proposal to the Upland City Employees Association (UCEA) for a five-year term. Since that time, bargaining has occurred intermittently, until the City made a Last, Best and Final Offer to the Association in July 2018.

On December 11, 2018, the City notified UCEA by email of its declaration of Impasse. In response, UCEA filed a factfinding request. A hearing was held on April 15, 2019 at Upland City Hall, where all parties were afforded an opportunity to present evidence, testimony, and argument as to their respective positions.

Subsequent to the close of the hearing, a post hearing process was undertaken, which concluded with a Factfinding Report and Recommendation dated May 15, 2019, attached.

The Factfinding settlement recommendation was:

Implement the City's Last, Best and Final Offer to the UCEA, for a three year term, with three suggested modifications: First, the City should reduce its current operating reserve fund balance by 1%, to 16.5% and apply that applicable dollar amount towards retroactivity. By doing so the employees derive a benefit, and since it is one time only money, the City is not restricted on a go forward basis to any significant roll-up costs. Second, the City establish a joint union/management Committee to review issues (other jurisdictions to be compared, the benchmark classifications to be used and precisely other elements to be used in a class/comp comparison) by December 2019. Lastly, the request for a "me too" clause during this term should be honored.

### **ISSUES/ANALYSIS**

At this time, UCEA Factfinder results have been published and the written notice of public hearing provided to the representative for the UCEA bargaining group. Final testimony from both parties regarding the settlement of this may be provided during the public hearing for City Council's consideration. Upon closure of the public hearing, staff is requesting direction from the City Council regarding the final settlement package with UCEA.

### **FISCAL IMPACTS**

The City's Last, Best and Final Offer to the UCEA is for a three year term from 7/1/17 through 7/1/2020 and includes the following:

- 4% wage increase, effective immediately going forward (not retroactive);
- Decrease monthly cafeteria/health care contribution benefit from \$1,184.50 per month to \$1,100.00 per month;
- No cash back on any unused portion of the cafeteria/health care contribution benefit, with the exception of up to \$300.00 per month through 12/31/2019; and

Per the Fact Finder recommendation a suggested additional option for Council's consideration would be the following:

- One-time only lump sum payment of 1% of base pay retroactive to 7/1/17, for current employees. To clarify, this lump sum amount would be determined for only current employees who were employed on 7/1/18 and/or who were employed on 7/1/19.

Staff has reviewed the cost implications of the Last, Best and Final Offer. The suggested optional additional one-time lump sum payment recommended for consideration would increase the general fund payment.

A set aside was allocated to provide for the City salary and benefits settlement adjustment. It is anticipated, upon the closure of the FY 2018-19 Budget year there will be personnel savings associated with vacancies, which can be used to address the gap between the set aside and the obligation inclusive of the additional recommended one-time lump sum amount.

In addition, the City's Last, Best Final Offer reduces the employee cafeteria allowance. The adopted budget includes the current funding for the existing cafeteria/benefit allowance. If the employee cafeteria/benefit allowance reduction is implemented it would reduce City expense accordingly.

In the event, the end of the year salary savings are not realized as anticipated, adjustments can be implemented at FY 2019-20 Mid-Year Budget review or the money could be taken from the reserve as suggested in the Factfinder recommendations.

**ALTERNATIVES**

Provide alternative direction to staff.

**ATTACHMENTS:**

**Written Notice of Public Hearing UCEA Consideration of Impasse  
UCEA PERB Case No. LA-IM-276-M**

# THE ZAPPIA LAW FIRM, A Professional Corporation

— Labor & Employment Law —  
Defending Employers' Rights

One Pacific Plaza  
7777 Center Avenue, Suite 625  
Huntington Beach, California 92647  
Telephone: (213) 814-5550  
Facsimile: (213) 814-5560  
www.zappialegal.com

*Author's Direct Dial:*  
Edward P. Zappia  
Direct Dial: (213) 814-5555  
ezappia@zappialegal.com

July 1, 2019

**SENT VIA EMAIL ONLY:**

Vicky Barker ([vbarker@cityemployees.net](mailto:vbarker@cityemployees.net))  
Upland City Employees Association ("UCEA")

Re: *City of Upland /Upland City Employees Association Negotiations and Factfinding*  
**AMENDED WRITTEN NOTICE - PUBLIC HEARING ON  
CONSIDERATION OF IMPASSE**

Dear Vicky,

As you know, the Memorandum of Understanding ("MOU") between the City of Upland ("City") and the Upland City Employees Association ("UCEA") expired on June 30, 2017. The parties began negotiating for a successor MOU in late 2017 and on or about November 8, 2018, the City presented UCEA with a last, best, and final offer. After the last, best and final offer was rejected, the City declared impasse on December 11, 2018 and UCEA demanded factfinding under the Meyer Milius Brown Act ("MMBA") on January 4, 2019. A factfinding hearing was held on April 15, 2019. On or about June 27, 2019, factfinding panel chairman Tony Butka issued a Factfinding Report and Recommendations. Both the City's panel member and UCEA's panel member issued concurring/dissenting opinions as to the panel chairman's Report and Recommendation.

This letter provides you and UCEA advance written notice that this matter will be presented to the City of Upland City Council ("City Council") on **July 22, 2019** at approximately 7:00 pm, in open session for final resolution/City Council action. In accordance with Government Code section 3505.7, the City Council will consider the impasse between the City and the Factfinding Report and Recommendation.

It is my understanding that UCEA will have an opportunity to be heard and address the City Council during the July 22, 2019 open City Council meeting. We anticipate that both a City

representative and a UCEA representative will be afforded approximately 15 minutes each to make their respective presentations in a public hearing before the City Council.

Please don't hesitate to contact me if you have any further questions or comments.

Sincerely,

THE ZAPPIA LAW FIRM  
A Professional Corporation

  
Edward P. Zappia

cc: Public posting

# **Upland City Employees Association and City of Upland PERB Case No. LA-IM-276-M**

## **Factfinding Report and Recommendations**

### **Procedural Background**

The parties have a long standing bargaining relationship, with the prior agreement between the parties expiring June 30, 2017. Starting back in July 2017, the City of Upland made an initial proposal for a successor agreement with the Upland City Employees Association, for a term of 5 years. Thereafter, bargaining proceeded intermittently, until the City provided the Association a final draft of their Last, Best and Final offer in July 2018 (see City Exhibit 8).

After a back and forth, on November 8, 2018, the City provided the Association with a five page summary of their modified Last Best and Final offer, together with actual contract language for the successor MOU (see City Exhibit 13). By email, the City then served the Association with a declaration of impasse on December 11, 2018. In response, the Association filed a factfinding request with PERB on January 4, 2019

PERB, by letter of January 7, 2019, indicated that the parties had selected Tony Butka as Chair of the Factfinding Panel, and assigned a Case Number. The City designated Bart Miesfeld as the Management Panel member, and the Association designated Shereen Hamed/ as the Association Panel member.

A hearing was held on April 15, 2019 at Upland City Hall, where all parties were represented by counsel and afforded an opportunity to introduce evidence, testimony, and argument as to their respective positions. A number of stipulations were agreed to at hearing, and post-hearing briefs were submitted by both panel members.

Subsequent to the close of hearing the Chair established a Post-hearing process with briefs first due to the Chair, then a Draft by the Chair to Panel members for comments, and finally a Report and Recommendations from the Chair to the parties. Thereafter, the two other Panel members are free to agree with the Report, disagree with the Report, or take no action.

### **CRITERIA FOR FACT-FINDING UNDER THE MMBA**

Prior to 2012, the only impasse resolution under the Meyers-Milias-Brown Act (the State law governing cities, counties, and special districts) was for voluntary mediation. However, in 2012 the State of California enacted **AB 646** (now Government Code Sections 3505.4 – 3505.7) which establishes a fact finding process and lays out a set of 8 criteria to be used by the fact finding panel. Those criteria are listed in Section 3505.4(d) and provide as follows:

“(d) In arriving at their findings and recommendations, the fact finders shall consider, weigh, and be guided by all the following Criteria:

- (1) State and federal laws that are applicable to the employer.
- (2) Local rules, regulations, or ordinances.
- (3) Stipulations of the parties.
- (4) The interests and welfare of the public and the financial ability of the public agency.
- (5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.
- (6) The consumer price index for goods and services, commonly known as the cost of living.
- (7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

## **Background**

The backdrop to this impasse goes all the way back to the 2008 Financial meltdown, in which the City of Upland was suffered a severe adverse impact. In fact, over the next decade, the City came close to the brink of insolvency, with the General Fund balance running at less than \$1 million dollars.

In 2016, the City Manager conducted a full analysis of the City’s financial position, and began the development of a fiscal stability plan.

Indicative of the City’s difficult financial position was their 2017 decision to annex the Upland City Fire Department into the San Bernardino County Fire Department., basically as a cost savings measure. While this and other cost cutting measures have allowed the City to turn the corner and remain solvent, the future is far from guaranteed. There are still many infrastructure needs which have gone unmet.

City Manager Jeannette Vagnozzi, who has been in a management position since 2015, testified that from about 2008 thru 2017, the City was simply unable to provide any salary increases for employees. As well, infrastructure needs have gone largely unmet,

and the City, which is self-insured, once had a negative equity of over \$10 million dollars, which is being paid down over time. This does not include unfunded liabilities for retirement benefits.

As a result, the City has argued their inability to pay for increases as well as maintaining that their last, best, and final offer is consistent with the 8 MMBA criteria to be used in factfinding.

The fundamental quandary is that employees have gone for a decade without any pay raises, as well as a shrinking work force to perform the mandatory services the City must provide.

### **Respective Positions**

The City's Last, Best and Final Offer contained eight basic items;

- (1) A three year agreement, with a term from July 1, 2017 to June 30, 2020
- (2) Wage increases of 4% upon ratification;
- (3) Fringe Benefits of \$1100/month, with employees currently enrolled in cash in lieu receiving cash up to \$300/month until 12/31/19. Thereafter the benefit will cease;
- (4) Retiree Health Savings Account for current employees only until Medicare eligible age. Post retirement medical/dental/vision will be paid by the retiree., and the City will make no contributions for employees hired after the effective date of the agreement.;
- (5) Deferred compensation will not be used for the cafeteria plan;
- (6) Uniform allowance where warranted will be increased from \$200/yr to \$300/yr;
- (7) For eligible employees in the Water Division, Certification pay will apply.

At hearing, the Association characterized the dispute as fundamentally over the following items (see Association Exhibit.4);

- (1) Term
- (2) Compensation
- (3) Medical contributions, including 'cash in lieu'
- (4) Deferred compensation
- (5) A 'Me Too' clause

Specifically, the Association proposes

- (1) a 5 year agreement based on their proposal of April 3, 2019, from July 1, 2017 - June 30, 2022.
- (2) a 2% wage increase retroactive to 1/1/2018, a 2% wage increase retroactive to July 1, 2018, 2% 7/1/19, 2% effective 1/1/20, and 2% 7/1/21.
- (3) \$300/month to a deferred compensation account
- (4) Increase the contributions to the cafeteria plan to \$1300/month
- (5) Effective 1/1/20, eliminate all cash-in-lieu opt out payments
- (6) A Me-Too clause, essentially guaranteeing that should any other unit receive any benefit greater than in the UCEA agreement, the increased benefit shall be provided for this bargaining unit.

### **The City's Salary Survey and Reclassification/Wage Adjustments**

After reading the City's class/comp exhibits & looking at the testimony, I believe that it is beyond the scope of this factfinding to draw solid inferences from them. It is really no one's fault, just a reality that looking at the composition of the bargaining unit over the last four or five years, there have been so many changes at the individual employee level, including retirement, separation, and hiring, that any empirical analysis is very difficult.

With respect to the 2018 City Comparison Survey for classes covered by the Association's bargaining unit, there are a number of significant difficulties in relying on its results. First, the Association had no opportunity to meaningfully challenge any of the information, since it was across some 14 municipalities, done sometime in 2018, and the certified bargaining agent did not see the document until shortly before the factfinding hearing. Therefor there was no mutual agreement, and the UCEA disputes much of the data.

It light of this, it is perilous for any factfinder to objectively determine what the appropriate benchmark positions are within each job family, and to match the external data with what is comparable to Upland's classification structure. As the City itself pointed out, back at the end of 2016, the City conducted a reclassification of jobs, and also made individual movement for employees on the modified salary ranges. In this process, many employees changed classifications, and/or received step movements.

Unsurprisingly, there was also no agreement as to recent compensation movement for the comparable jurisdictions reviewed by the City (see Association Exhibit 5). There is no indication that anyone was not acting in good faith; I am convinced that there was simply not enough time for the City to conduct the class/comp changes, notify the certified bargaining agent, and allow for an back and forth process to determine the areas of agreement and disagreement.

### **Analysis**

There are few real discrepancies over the financial numbers used by the City of Upland in their 2017-18 and 2018-19 Budget documents. The crux of the dispute is that the City is tightly budgeting with a goal of improving their reserves to cover unanticipated events.

And at the same time, management is very concerned about the current economic circumstances, and a real possibility of a recession in the future. In light of the City's recent history, this seems a legitimate concern.

On the other hand, there are very understandable reasons why dedicated employees who have toughed it out with the City, would feel that 10 years with no salary increase is unbearable. At the same time, the gap between the Associations 8% increases over three years, with retroactivity going back to January 2018, is significantly more than double the City's Last, Best and Final offer.

Under normal circumstances, there is enough agreement on the classifications and data driven criteria under the MMBA to determine a reasonable factual background for recommendations. Here, however, there are simply too many difficulties in determining class/comp information for benchmarking and position placement, as witnessed by the serious gap between the parties. This proceeding is simply not going to be able to produce an objective data driven basis for agreement

In terms of the eight criteria under the statute which are to be considered, the City made specific reference to all of them. The Association keyed in on ability to pay, CPI, and wage comparisons. And they made a reasoned case that the City in fact has an ability to pay beyond their LBFO, albeit for what period of time remains an issue.

The gap, of course, is unbridgeable. Without making a specific finding on ability to pay, there is ample evidence that the City has improved its financial situation, particularly after negotiating an agreement for the City Fire Department to be integrated into the San Bernardino County Fire Department. There are, however, residual costs to the City of this action where the exact liability is not known.

### **Recommendations**

With respect to Term, the marginal state of Upland's budget together with economic uncertainty down the road, argues that the framework of a traditional 3 year term is preferable to an extended 5 year period where the City's ability to control bargaining unit costs would be largely limited to layoffs.

Therefore, I find that the City's position is a reasonable one under all of the circumstances. with three suggested modifications from the Chair.

The fundamental reason for the recommendation has to do with balancing the City's Reserve Policy with reasonable expectations of the Associations members. Over time that policy/reality has gone from a very low 12%, up to a 15% minimum, and currently 17.5%. Within these parameters, there is some slack.

Remember, the City's LBFO provides for a 4% raise *as of the date of ratification of a successor agreement*. In the real world, that would be sometime around July of 2019, whereas the term of the agreement would go from July 1, 2017 through June 30 2020,, leaving a gap of about two years where the agreement provides no increases at all.

It is in the City's best interest to do as best they can for their employees, and I believe that diverting 1% from the 17.5% current reserves would not place the City in peril, and at the same time would demonstrate their commitment to their workforce.

Therefore, I recommend the following settlement (in italics):

*The City's Last, Best and Final Offer to the Association, with three modifications.*

*First, that the City take 1% of reserves, and apply that percentage towards retroactivity. By doing so the employees derive a benefit, and since it is one time only money, the City is not restricted on a go forward basis to any significant roll-up costs.*

*Second, since the term of the agreement will expire June 30, 2020, there is time to seriously look at both the other jurisdictions to be compared, the benchmark classifications to be used, and precisely what elements should be utilized in class/comp comparisons.*

*Since there is no time to do that now, I am recommending that the parties establish a joint union/management Committee to review these issues by December 2019. This provides a reasonable amount of time to have (hopefully mutual) agreement on these issues as the parties head back into negotiations for a successor contract.*

*Finally, since this is a very limited term going forward, and the recommended settlement is modest, it seems to me that the Associations request for a "Me-Too" clause to provide reassurance that their members will not be disadvantaged by any other bargaining agreements between now and the expiration of the agreement, should be honored.*

Submitted:



Tony Butka, Factfinding Chair

Date: 6/26/2019

Attached:

Shereen Hamed, Union Panel Member  
Bart Miesfeld, City Panel Member

Concurring and Dissenting Opinion  
Concurring and Dissenting Opinion

Shereen Hamed  
City Employees Associates  
100 Oceangate, Suite 1200  
Long Beach, CA 90802

**FACT FINDING HEARING**

<b>In the Matter of Fact Finding</b>	)	
<b>Between</b>	)	<b>OPINION</b>
	)	<b>CONCURRING IN PART,</b>
<b>UPLAND CITY EMPLOYEES</b>	)	
	)	<b>DISSENTING IN PART</b>
<b>ASSOCIATION</b>	)	
	)	
<b>and</b>	)	<b>JUNE 21, 2019</b>
	)	
<b>THE CITY OF UPLAND</b>	)	
	)	
	)	

Serving as a Fact Finding Panelist at the request of the UPLAND CITY EMPLOYEES ASSOCIATION, I hereby submit my opinion, concurring in part and dissenting in part, to the recommendations of neutral Panelist Tony Butka.

ANALYSIS

I concur with Mr. Butka’s recommendation that the Association be granted their request for a “Me-Too” clause to provide reassurance that the membership will not be disadvantaged by subsequently negotiated bargaining agreements between now and the agreement’s expiration.

I further concur with Mr. Butka’s recommendation that the Association receive all of the items upon which the parties reached a tentative agreement, as reflected in the City’s last best and final offer.

Finally, I concur in part and dissent in part with Mr. Butka’s recommendation that the parties establish a joint union/management committee to review compensation issues prior to the

expiration of the contract. I concur with the recommendation for the parties to meet to address compensation issues, but not by December 2019 as Mr. Butka has recommended. Since I recommend a 5-year contract, the parties should meet prior to the end of that contract to discuss these issues and develop objective data before they head back into negotiations.

Notwithstanding the above, I dissent with Mr. Butka's opinion that the City's position is a reasonable one under the circumstances. The Association demands a 10% pay increase as follows:

- 2% retroactive to January 1, 2018
- 2% retroactive to July 1, 2018
- 2% effective July 1, 2019
- 2% effective January 1, 2020
- 2% July 1, 2021

This salary increase over a 5-year term is appropriate and long overdue, especially in light of the fact that they have gone so many years without any raises. The City has seen a steady increase in reserves in recent years, and it is not unreasonable for the Association to seek a realistic compensation package.

The presented evidence shows the City reached 17.5% operating reserves in its FY 2018-2018 Budget Message. Sales tax revenue went up 2.9 % in FY 2018-2019 and is expected to continue. Aside from reserves, the City has available \$2,760,111.33 in "unreserved, undesignated" funds, separate from earmarked items, which it can use to pay its employees a livable wage. The availability of funds, coupled with an 18.09% increase in CPI since 2010, clearly show that the City's LBFO is shortchanging employees and does not offer a compensation package that adequately makes up for years of stagnant wages.

Based on the above, the City has an ability to pay not only for the 4% pay increase outlined in the City's LBFO, but clearly also can afford the 10% pay increase over 5 years, the

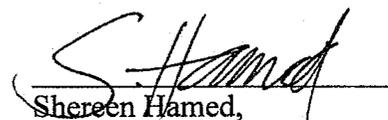
increase in the cafeteria plan to \$1,300 per month and the increase in deferred compensation to \$300 per month that Association seeks. The medical contribution rate of \$1,100/ month in the City's LBFO continues to fall below the median amount enjoyed by employees at comparison cities. The same is true for medical cash in lieu. While employees at comparison cities shall continue to enjoy this benefit, Association members will lose it altogether beginning in 2020. As such, the Association's proposal for increases to the cafeteria plan and to deferred comp are appropriate and well within the City's ability to pay.

#### RECOMMENDATION

Given the City's financial rebound and the severe overall loss of the employees' purchasing power since 2010, in addition to the "Me-Too" clause and items previously agreed upon, I recommend the City grant the employees the 10% pay increase over a 5-year agreement. I also recommend granting the \$300/month to a deferred compensation account and increasing the contributions to the cafeteria plan to \$1,300/month. This is fair in light of the fact that UCEA has agreed to give up entirely all cash-in-lieu opt out payments effective January 1, 2020.

Dated: June 21, 2019

City Employees Associates

  
Shereen Hamed,  
Labor Representative

**CITY OF UPLAND/UPLAND MID-MANAGEMENT EMPLOYEES ASSOCIATION,  
PERB LA-IM-276-M FACTFINDING**

**PANEL MEMBER BART MIESFELD'S CONCURRENCE IN PART, AND DISSENT IN  
PART TO PANEL CHAIR'S RECOMMENDATION**

**I. INTRODUCTION**

The Panel Chairman's Report and Recommendation is that the parties enter into a three (3) year agreement consistent with the City's LBFO with the following modifications:

- (1) Diversion of 1% from the City's current reserves to apply towards retroactivity and paid to UCEA employees;
- (2) Review both other jurisdictions with which City of Upland employees are being compared, the benchmarks to be used, and precisely what elements should be utilized in class/comp comparisons;
- (3) Establishment of a joint union/management committee to review the issue referenced in (2) by December 2019; and
- (4) Implementation of a "Me Too" clause.

For reasons more fully set forth below, I concur with recommendations (1)-(3) but disagree with and, therefore, dissent as to recommendation (4).

**II. CONCURRENCE WITH PAY INCREASE RECOMMENDATION**

The City of Upland is finally coming out of a dire financial situation that was so bad, it was required to sell its Fire Department and lay off 46 employees. Because of the sale of its Fire Department and other shrewd financial moves, the City's financial picture is finally improving and the City has increased its reserves to over \$8,000,000, 17.5% of the City's General Fund Operating Revenues. Despite the City's improved financial position, the City still faces significant financial obstacles and expenditures. Those include expenses to repair/improve crumbling infrastructure such as buildings, roads and trees. The City also faces increased pension liabilities, increased other postemployment benefits, increasing health care plan prices and increasing CalPERS rates. Thus, although improved, the City remains in a precarious financial position and still has a ways to go to achieve its goal of having a 25% reserve.

Nevertheless and as a result of the City's current financial situation, the City's LBFO to UCEA offers 4% raises upon reaching agreement. The cost of those raises, including the roll-up costs associated therewith, is approximately \$319,000 per year. Thus, the City's offer is extremely reasonable.

UCEA, however, argues that because it has not received raises in a long time, UCEA members should be receiving substantially higher raises up to 10%. UCEA's argument is disingenuous as although its members have not received "cost of living increases," its members have received substantial pay increases through step increases, reclassifications and salary adjustments. (Exhs. 31-33.) Indeed, the annual salaries of the two UCEA representatives who testified at the hearing increased by over 40% or \$20,000 from 2011 to 2018, an average of increase of \$2,857.14 per year. (Exhs. 34-35.)

Many other UCEA positions were also reclassified resulting in higher salaries. Those positions include but aren't limited to Administrative Assistants I (\$3,421 per month) and Administrative Assistant II (\$3,779 per month) to Administrative Assistant (\$3,890 per month); Administrative Assistant III (\$4,175 per month) to Sr. Administrative Assistant (\$4,624 per month); Animal Control Officer (\$4,476 per month) to Animal Services Officer (\$4,511 per month); Animal Shelter Attendant I (\$3,321 per month) and Animal Shelter Attendant II (\$3,668 per month) to Animal Shelter Attendant (\$3,702 per month); Equipment Mechanic I (\$4,259 per month) and Equipment Mechanic II (\$4,704 per month) to Equipment Mechanic (\$4,739 per month); Maintenance Worker II (\$4,012 per month) to Utility System Worker (Sewer) (\$4,739 per month); Maintenance Worker I (\$3,456 per month) to Maintenance Worker (\$4,087 per month); and Public Works Inspector I (\$4,994 per month) and Public Works Inspector II (\$5,516 per month) to Public Works Inspector (\$5,633 per month). (Exhs. 22, 31-33.)

And if they were not reclassified, other UCEA positions were adjusted to a higher salary including but not limited to Accountants (from \$5,740 per month to \$5,774 per month), Accounting Technicians (from \$4,799 to \$4,858 per month), Building Inspector II (from \$5,516 per month to \$5,633 per month); Code Enforcement Officer (from \$5,196 per month to \$5,231 per month); Custodian (from \$3,456 per month to \$3,524 per month); Customer Service Specialist II (from \$4,133 per month to \$4,189 per month); Deputy City Clerk (from \$4,847 per month to \$4,858 per month); Facilities Specialist (from \$4,895 per month to \$4,979 per month); Forensic Specialist (from \$5,196 per month to \$5,231 per month); GIS/CAD Technician (from \$5,301 per month to \$5,362 per month); Plans Examiner (from \$6,404 per month to \$6,533 per month); Police Dispatcher II (from \$4,751 per month to \$4,858 per month); and Police Records Specialist II (from \$3,779 per month to \$3,795 per month). For UCEA members to claim that they have had no "raises" for the last ten years is an intentional misrepresentation. (Exhs. 22, 31.) Moreover, UCEA members are paid fairly and comparably with their peers in neighboring jurisdictions. Thus, to argue that UCEA members should now receive 10% increase on top of the 40% increases they've received in the past eight years is irresponsible, would deplete the City's increasing and recommended General Fund Reserve and could potentially lead the City right back into the financial ruin it found itself in just several years ago.

The Panel Chairman's Report and Recommendation provides that, "[t]here are few real discrepancies over the financial numbers used by the City of Upland in their 2017-18 and 2018-19 Budget documents." He also acknowledges that the City has legitimate concerns about its current economic circumstances and a real possibility of a recession in the future. As a result, he recognizes that UCEA's proposed 8% increases over three years is unreasonable.

Nevertheless, the Panel Chairman recommends that the City use 1% of its reserves and pay that money to UCEA members in a one-time payment. The cost of that one-time payment to the City is approximately \$87,000. The Panel Chairman states that such a payment, in addition to the raises being offered in the LBFO, "would demonstrate [the City's] commitment to [its] workforce."

I concur with this recommendation. While I think the City's offer of 4% raises is reasonable considering it would cost the City over \$319,000 per year, a one-time payment of 1% from the City's recently increased reserves would not be too much of a burden, is not unreasonable and would demonstrate the City's continuing commitment to its employees.

I also concur that the City and the UCEA should establish a joint union/management committee to review compensation of surrounding jurisdictions and benchmarks to be used in making those comparisons, so there can be no disputes in comparing the compensation of City employees to the employees in those surrounding jurisdictions.

### **III. DISSENT TO RECOMMENDATION OF "ME TOO" CLAUSE**

I disagree, however, with the Panel Chairman's recommendation that a "Me Too" clause be incorporated. A "Me Too" clause would result in providing UCEA any benefits/increases any of the City's other three unions (Police Officers Association (POA), Police Management Association (PMA), Mid-Managers Employees Association (UMMEA)) receive, regardless of the reason or rationale for those increases, the number of employees those affected and the effect of the increases.

Bargaining units negotiate separately for a reason. What applies to POA may not apply to UCEA and vice versa. The units have separate needs, separate priorities and separate budgetary impacts. Indeed, that was never made clearer than in recent years regarding the City's Fire Department, which had become too expensive for the City to operate given the City's financial condition and as a result, the City had no choice but to sell it. Indeed, the City's layoffs of its firefighters likely resulted in not having to lay off employees from other units. The bargaining units also have a different number of members with the UCEA being the most numerous. That leads to different costs associated with each unit. For example, a pay increase of the same percentage to UCEA and UMMEA is almost three times as costly to the City for UCEA members as it would be for UMMEA members because UCEA members outnumber UMMEA members by over a 3:1 margin. Moreover, the City's potential liability among units is different including the POA for currently alleged overtime violations. Further, over 50% of the City's budget is devoted to its police department.

Additionally, there are standards and incentives applicable to some units not applicable to others. Again for example, if the City provides a 2% allowance to PMA for Peace Officer Standards and Training ("POST") training, is it required to provide a comparable allowance to UCEA or UMMEA, even though POST training is inapplicable to those units? There are simply too many unintended consequences of a "Me Too" clause and as the Panel Chairman already notes, the City has legitimate concerns regarding its budget, a future recession and its ability to pay. Taken that into account, the City has analyzed each unit separately, the cost of providing raises to each unit and based on that analysis, has attempted to provide reasonable and fair offers based upon the current compensation of each unit and how they compare to surrounding entities. There simply is no legitimate basis to include a "Me Too" clause in any agreement with UCEA or any other bargaining unit. For these reasons, I dissent as to the Panel Chairman's recommendation to include such a clause.

### **IV. CONCLUSION**

Considering the mandatory factors implicated here, the City's LBFO was reasonable with its proposed 4% salary increases over the next two years while UCEA's LBFO of 10% increases and/or increases in the cafeteria plan contribution and deferred compensation amounts is unreasonable. I therefore concur with the Panel Chairman's recommendation that the 4% increases be implemented and also concur with the Panel Chairman's recommendation that the

City apply 1% of its current reserve to a one-time payment to UCEA employees. Such a payment demonstrates the City's ongoing commitment to its employees and is not too high a burden for the City. I disagree, however, with the inclusion of a "Me Too" clause as there is simply no basis to include one as all of the four City bargaining units have separate needs, costs, number of members, liabilities, standards and/or incentives. Such a clause is likely to have unintended and adverse consequences. I, therefore, dissent as to that recommendation.



## STAFF REPORT

**ITEM NO. 12.B.**

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**DATE:** July 22, 2019  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
LONDA HELMS, INTERIM ADMINISTRATIVE SERVICES  
DIRECTOR  
**SUBJECT:** UPLAND MID-MANAGEMENT EMPLOYEES ASSOCIATION -  
CONSIDERATION OF IMPASSE

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### RECOMMENDED ACTION

It is recommended that the City Council hold a public hearing and provide direction concerning consideration of Impasse for the Mid-Management Employees Association based on the Factfinding Report and Recommendations, PERB Case No. LA-IM-273-M.

### GOAL STATEMENT

The proposed action supports the City's goal of exercising responsible financial management and providing salary and benefits to its employees.

### BACKGROUND

In approximately March 2017, the City made an initial proposal to the Upland Mid-Management Employees Association (UMMA) for a five-year term. Since that time, bargaining has occurred intermittently, until the City made a Last, Best and Final Offer to the Association on November 6, 2018.

On December 4, 2018, the UMMA notified the City by letter of its declaration of Impasse. A hearing was held on February 28, 2019 at Upland City Hall, where all parties were afforded and opportunity to present evidence, testimony, and argument as to their respective positions.

Subsequent to the close of the hearing, a post hearing process was undertaken, which concluded with a Factfinding Report and Recommendation dated May 15, 2019, attached.

The Factfinding settlement recommendation was:

Implement the City's Last, Best and Final Offer to the UMMA, with the modification that the City reduce its operating reserve by 1% to 16.5% and apply that applicable amount towards retroactivity. By doing so the employees derive a benefit, and since it is one time only money, the City is not restricted on a go forward basis to any significant roll-up costs.

### **ISSUES/ANALYSIS**

At this time, the UMMA Factfinder results have been published and the written notice of public hearing provided to the representative for the UMMA bargaining group. Final testimony from both parties regarding the settlement of this may be provided during the public hearing for City Council's consideration. Upon closure of the public hearing, staff is requesting direction from the City Council regarding the final settlement package with UMMA.

### **FISCAL IMPACTS**

The City's Last, Best and Final Offer to the UMMA is for a three year term from 7/1/17 through 7/1/2020 and includes the following:

- 4% wage increase, effective immediately going forward (not retroactive);
- Decrease monthly cafeteria/health care contribution benefit from \$1,112.50 per month to \$1,100.00 per month;
- No cash back on any unused portion of the cafeteria/health care contribution benefit, with the exception of up to \$300.00 per month through 12/31/2019; and

Per the Fact Finder recommendation an additional option for Council's consideration would be the following:

- One-time only lump sum payment of 1% of base pay retroactive to 7/1/2017, for current employees. To clarify, this lump sum amount would be determined for only current employees who were employed on 7/1/2018 and who were employed on 7/1/2019.

The City has reviewed the cost implications of the Last, Best and Final Offer. The suggested optional additional one-time lump sum payment recommended for consideration would increase the general fund payment.

A set aside was allocated to provide for the City salary and benefits settlement adjustment. It is anticipated, upon the closure of the FY 2018-19 Budget year there will be personnel savings associated with vacancies, which can be used to address the gap between the set aside and the obligation inclusive of the additional recommended one-time lump sum amount.

In addition, the City Last, Best Final Offer reduces the employee cafeteria allowance. The adopted budget includes the current funding for the existing cafeteria/benefit allowance. If the employee cafeteria/benefit allowance reduction is implemented it would reduce the City's expense accordingly.

In the event, the salary savings are not realized as anticipated, adjustments can be implemented during the FY 2019-20 Mid-Year Budget review.

### **ALTERNATIVES**

Provide alternative direction to staff.

**ATTACHMENTS:**

**Written Notice of Public Hearing UMMA Consideration of Impasse  
UMMA PERB Case No. LA-IM-273-M**

# THE ZAPPIA LAW FIRM, A Professional Corporation

— *Labor & Employment Law* —  
*Defending Employers' Rights*

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ezappia@zappialegal.com

July 1, 2019

**SENT VIA EMAIL ONLY:**

Mary LaPlante  
Upland Mid-Management Employees Association (“UMMEA”)  
mlaplante@cityemployees.net

Re: *City of Upland /Upland Mid-Management Employees Association Negotiations  
and Factfinding*  
**AMENDED WRITTEN NOTICE - PUBLIC HEARING ON  
CONSIDERATION OF IMPASSE**

Dear Mary,

As you know, the Memorandum of Understanding (“MOU”) between the City of Upland (“City”) and the Upland Mid-Management Employees Association (“UMMEA”) expired on June 30, 2017. The parties began negotiating for a successor MOU in late 2017 and on or about November 8, 2018, the City presented UMMEA with a last, best, and final offer. After the last, best and final offer was rejected, both parties declared impasse and UMMEA demanded factfinding under the Meyer Miliias Brown Act (“MMBA”). A factfinding hearing was held on February 28, 2019. On or about May 15, 2019, factfinding panel chairman Tony Butka issued a Factfinding Report and Recommendations.

As we have discussed, this letter provides you and UMMEA advance written notice that this matter will be presented to the City of Upland City Council (“City Council”) on **July 22, 2019** at approximately 7:00 pm, in open session for final resolution/City Council action. In accordance with Government Code section 3505.7, the City Council will consider the impasse between the City and the Factfinding Report and Recommendation.

It is my understanding that UMMEA will have an opportunity to be heard and address the City Council during the July 22, 2019 open City Council meeting. We anticipate that both a City representative and a UMMEA representative will be afforded approximately 15 minutes each to make their respective presentations in a public hearing before the City Council.

Please don't hesitate to contact me if you have any further questions or comments.

Sincerely,

THE ZAPPIA LAW FIRM  
A Professional Corporation



Edward P. Zappia

cc: Public posting

**Upland Mid-Management Employees Association and City of  
Upland**

**PERB Case No. LA-IM-273-M**

**Factfinding Report and Recommendations**

**Procedural Background**

Starting back in March, 2017, the City of Upland made an initial proposal for a successor agreement with the Upland Mid-Management Employees Association, for a term of 5 years. Thereafter, bargaining proceeded intermittently, until the City made a Last, Best and Final offer to the Association on November 6, 2018.

The Association countered with a Last, Best and Final offer of their own, and after a joint meeting on November 14, the Association formally declared Impasse by letter dated December 4, 2018.

PERB, by letter of January 7, 2019, indicated that the parties had selected Tony Butka as Chair of the Factfinding Panel, and assigned a Case Number. The City designated Bart Miesfeld as the Management Panel member, and the Association designated Joan Heithoff as the Association Panel member.

A hearing was held on February 28, 2019 at Upland City Hall, where all parties were represented by counsel and afforded an opportunity to introduce evidence, testimony, and argument as to their respective positions. A number of stipulations were agreed to at hearing, and post-hearing briefs were submitted by both panel members.

Subsequent to the close of hearing the Chair established a Post-hearing process with briefs first due to the Chair, then a Draft by the Chair to Panel members for comments, and finally a Report and Recommendations from the Chair to the parties. Thereafter, the two other Panel members are free to agree with the Report, disagree with the Report, or take no action. It would, Of course, be lovely to have a unanimous Report, but not necessary.

**CRITERIA FOR FACT-FINDING UNDER THE MMBA**

Prior to 2012, the only impasse resolution under the Meyers-Milias-Brown Act (the State law governing cities, counties, and special districts) was for voluntary mediation.

However, in 2012 the State of California enacted AB 646 (now Government Code Sections 3505.4 – 3505.7) which establishes a fact finding process and lays out a set of 8 criteria to be used by the fact finding panel. Those criteria are listed in Section 3505.4(d) and provide as follows:

**"(d) In arriving at their findings and recommendations, the fact finders shall consider, weigh, and be guided by all the following Criteria:**

- (1) State and federal laws that are applicable to the employer.**
- (2) Local rules, regulations, or ordinances.**
- (3) Stipulations of the parties.**
- (4) The interests and welfare of the public and the financial ability of the public agency.**
- (5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.**
- (6) The consumer price index for goods and services, commonly known as the cost of living.**
- (7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.**
- (8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations."**

### **The Issues**

**The backdrop to this impasse goes all the way back to the 2008 Financial meltdown, where the City of Upland was severely impacted. Over the next decade, the City came close to the brink of insolvency, with the General Fund balance running at less than \$1 million dollars.**

**In 2016, the City Manager conducted a full analysis of the City's financial position, and began the development of a fiscal stability plan.**

**Indicative of the City's difficult financial position was their 2017 decision to annex the Upland City Fire Department into the San Bernardino County Fire Department, basically as a cost savings measure. While this and other cost cutting measures have allowed the City to turn the corner and remain solvent, the future is far from guaranteed. There are still many infrastructure needs which have gone unmet.**

**City Manager Jeannette Vagnozzi, who has been in a management position since 2015, testified that from about 2008 thru 2017, the City was simply unable to provide any salary increases for employees. Even at that infrastructure needs have gone largely unmet, and the City, which is self-insured, had a negative equity of over \$10 million**

dollars, which are being paid down over time. This does not include unfunded liabilities for retirement benefits.

As a result, the City has argued their inability to pay for increases as well as maintaining that their last, best, and final offer is consistent with the 8 MMBA criteria to be used in factfinding.

The fundamental quandary is that employees have gone for a decade without any pay raises, as well as a shrinking work force to perform the mandatory services the City must provide.

### **Respective Positions**

The City's Last, Best and Final Offer (City Exhibit 11) contained eight basic items:

- (1) Term from July 1, 2017 to June 30, 2020
- (2) Wage increases of 4% upon ratification;
- (3) Fringe Benefits of \$1100/month, with employees currently enrolled in cash in lieu receiving cash up to \$300/month until 12/31/19. Thereafter the benefit will cease;
- (4) Retiree Health Savings Account for current employees only until Medicare eligible age. Post retirement medical/dental/vision will be paid by the retiree., and the City will make no contributions for employees hired after the effective date of the agreement.;
- (5) Deferred compensation will not be used for the cafeteria plan;
- (6) Uniform allowance where warranted will be increased from \$200/yr to \$300/yr;
- (7) For eligible employees in the Water Division, Certification pay will apply.

Regarding the Association's Last, Best and Final Offer (Association Exhibit D).

- (1) 3 year term, expiring 6/30/20;
- (2) 5% across the board wage increase effective 7/1/18, and 5% increase 7/1/19;
- (3) Increased medical contribution to \$1200/month effective 7/1/18;
- (4) No change to current cash out in lieu of medical contributions agreement.

### **Analysis**

There are few real discrepancies over the numbers used by the City of Upland in their 2017-18 and 2018-19 Budget documents. The crux of the dispute is that the City is tightly budgeting with a goal of improving their reserves to cover unanticipated events.

There are very understandable reasons why dedicated employees who have toughed it out with the City would feel that 10 years with no salary increases is unbearable. At the same time, the gap between the Associations 10% increases over two years, with retroactivity, is significantly more than double the City's Last, Best and Final offer.

In terms of the eight criteria under the statute which are to be considered, the City made specific reference to all of them. The Association essentially argued for equity rather than going through the criteria one by one.

The gap, of course, is unbridgeable. Without making a specific finding on ability to pay, there is ample evidence that the City has improved its financial situation, particularly after negotiating an agreement for the City Fire Department to be integrated into the San Bernardino County Fire Department. There are, however, residual costs to the City of this action where the exact liability is not known.

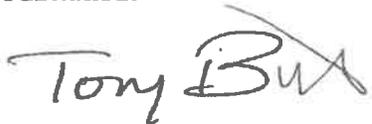
Therefore, I find that the City's position is a reasonable one under all of the circumstances. However, there is one area where I believe some improvement to their offer could be made without jeopardizing their long term goals. That area has to do with the City's Reserve Policy. Over time that policy/reality has gone from a very low 12%, up to a 15% minimum, and currently 17.5%.

It is in the City's best interest to do as best they can for their employees, and I believe that 1% from the 17.5% reserves would not place the City in peril, and at the same time would demonstrate their commitment to their workforce.

Therefore, I recommend the following settlement:

The City's Last, Best and Final Offer to the Association, with the modification that the City take 1% in addition, and apply that percentage towards retroactivity. By doing so the employees derive a benefit, and since it is one time only money, the City is not restricted on a go forward basis to any significant roll-up costs.

Submitted:

A handwritten signature in black ink that reads "Tony Butka". The signature is written in a cursive, slightly slanted style.

Tony Butka, Factfinding Chair

Bart Miesfeld, City Panelist, Concurring  
Shereen Hamed, Union Panelist, Dissenting

Date: May 15, 2019



## STAFF REPORT

**ITEM NO. 12.C.**

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**DATE:** July 22, 2019  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** LONDA BOCK-HELMS, CPA, ACTING ADMINISTRATIVE SERVICES DIRECTOR  
TRACY SENDLDORFER, UTILITY BILLING SUPERVISOR  
**SUBJECT:** DELINQUENT WATER, SEWER, AND REFUSE SERVICE CHARGES TO BE COLLECTED ON THE TAX ROLL

---

### **RECOMMENDED ACTION**

It is recommended that the City Council conduct a public hearing, accept the report of delinquent water, sewer, and refuse service charges, and authorize the delinquent charges to be placed on the tax roll.

### **GOAL STATEMENT**

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

### **BACKGROUND**

On June 9, 2014, pursuant to Health & Safety Code Sections 5473 and 5473a, the City Council elected to have delinquent charges for water and sewer service collected on the tax roll. On April 13, 2015, pursuant to Health & Safety Code Sections 5473 and 5473a, the City Council elected to have delinquent refuse service collected on the tax roll. Pursuant to Health & Safety Code Sections 5473 and 5473.11, the City Council directed City staff to prepare a written report which contains the amount of all delinquent water, sewer and refuse service accounts that have been unpaid for a least 60 days and a description of each parcel of real property with such an account.

### **ISSUES/ANALYSIS**

The City writes off approximately 150-200 accounts with delinquent water, sewer and refuse service charges on an annual basis. The City utilizes a collection agency to attempt to

recover this revenue but these efforts have been largely unsuccessful. Placing these delinquent charges on the tax roll will allow the City to recoup this revenue for services already provided.

Notification of the public hearing and the City's intent to place delinquent accounts on the tax roll was sent by mail to 53 property owners on June 24, 2019. This provided the property owners with the opportunity to pay the delinquent charges or provide proof that the delinquent account balance was incurred before acquiring the property. Since notification, 22 accounts have been brought current and only 31 accounts remain on the lien list.

### **FISCAL IMPACTS**

As of the publication date of this report, staff is presenting 31 accounts with delinquent amounts outstanding for water, sewer, refuse and/or fees totaling \$9,412.98. The charges had been outstanding for more than 60 days. An administrative fee of \$53.14, as established by resolution No. 6227, will be added to the amount of the assessment on the property to offset the City's cost, as well as the County fee for processing submitted assessments.

### **ALTERNATIVES**

Provide alternative direction to staff.

### **ATTACHMENTS:**

**Finance Officer's Lien Report**

Account #	Parcel #	Water	Fees	Refuse	Sewer	Account Total
315-0225.19	1007-611-14-0000	\$ 233.34	\$ 15.75	\$ 77.72	\$ 46.64	\$ 373.45
315-5561.61	1008-093-22-0000	\$ 154.96	\$ -	\$ -	\$ 135.79	\$ 290.75
315-5563.57	1008-093-22-0000	\$ 87.69	\$ -	\$ -	\$ 135.79	\$ 223.48
333-0116.12	1046-041-03-0000	\$ 369.19	\$ -	\$ 42.13	\$ 55.08	\$ 466.40
361-3324.65	1006-181-09-0000	\$ 190.42	\$ -	\$ 125.43	\$ 105.41	\$ 421.26
361-5824.31	1045-282-21-0000	\$ 264.71	\$ 99.50	\$ 65.37	\$ 89.07	\$ 518.65
365-1485.36	1006-421-11-0000	\$ 133.14	\$ 9.02	\$ 55.93	\$ 76.20	\$ 274.29
383-2071.28	1045-042-03-0000	\$ 134.11	\$ -	\$ 33.41	\$ 43.69	\$ 211.21
383-7551.02	1006-083-11-0000	\$ 598.69	\$ 71.50	\$ 95.30	\$ 107.25	\$ 872.74
395-4563.12	1004-301-62-0000	\$ -	\$ -	\$ 42.13	\$ 12.29	\$ 54.42
395-5168.04	1004-061-29-0000	\$ 199.06	\$ -	\$ 35.81	\$ 60.33	\$ 295.20
541-6153.67	1005-355-21-0000	\$ 79.25	\$ -	\$ 45.76	\$ 59.83	\$ 184.84
591-1838.04	1007-741-88-0000	\$ 73.45	\$ 55.75	\$ 131.30	\$ 48.36	\$ 308.86
602-0151.42	1047-061-05-0000	\$ 61.56	\$ -	\$ 40.67	\$ 53.18	\$ 155.41
608-0491.22	1046-592-14-0000	\$ 51.06	\$ -	\$ -	\$ 23.05	\$ 74.11
634-0661.93	1045-462-32-0000	\$ 138.23	\$ -	\$ 40.67	\$ 53.18	\$ 232.08
638-1067.06	1044-611-13-0000	\$ -	\$ -	\$ 33.22	\$ 37.41	\$ 70.63
638-1104.10	1044-631-02-0000	\$ 123.72	\$ 15.75	\$ 79.90	\$ 108.44	\$ 327.81
646-0366.27	1045-201-34-0000	\$ 50.42	\$ -	\$ 59.89	\$ 52.45	\$ 162.76
648-0476.18	1045-163-09-0000	\$ 46.90	\$ 55.75	\$ 44.31	\$ 60.37	\$ 207.33
660-0114.09	1044-711-11-0000	\$ 93.80	\$ 55.75	\$ 62.81	\$ 89.35	\$ 301.71
660-0178.18	1044-721-13-0000	\$ 90.12	\$ 15.75	\$ 127.65	\$ 85.11	\$ 318.63
660-1051.07	1044-731-35-0000	\$ -	\$ -	\$ 25.42	\$ 6.68	\$ 32.10
660-2390.03	1044-761-04-0000	\$ -	\$ -	\$ 107.76	\$ -	\$ 107.76
676-9945.04	1003-081-14-0000	-	\$ 189.00	-	\$ 346.18	\$ 535.18
676-9969.03	1003-031-18-0000	-	\$ 47.25	-	\$ 138.96	\$ 186.21
902-0078.01	1007-363-06-0000	\$ -	\$ -	\$ 43.58	\$ 45.98	\$ 89.56
902-1126.02	1007-731-13-0000	\$ -	\$ 78.75	\$ 157.38	\$ 137.94	\$ 374.07
902-1180.01	1003-041-09-0000	\$ -	\$ 330.75	\$ -	\$ 413.26	\$ 744.01
902-1231.06	1007-362-04-0000	\$ -	\$ 330.75	\$ 314.76	\$ 275.88	\$ 921.39
902-2004.04	0202-014-05-0000	\$ -	\$ -	\$ 76.68	\$ -	\$ 76.68
<b>TOTALS:</b>		<b>\$ 3,173.82</b>	<b>\$ 1,371.02</b>	<b>\$ 1,964.99</b>	<b>\$ 2,903.15</b>	<b>\$ 9,412.98</b>



# STAFF REPORT

**ITEM NO. 12.D.**

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**DATE:** July 22, 2019  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** LONDA BOCK-HELMS, CPA, ACTING ADMINISTRATIVE SERVICES DIRECTOR  
**SUBJECT:** LANDSCAPE MAINTENANCE DISTRICT LM-84-1: INTENT TO LEVY AND COLLECT ASSESSMENTS

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## **RECOMMENDED ACTION**

It is recommended that the City Council accept the Finance Officer's report pertaining to Landscape Maintenance District LM-84-1 and adopt a Resolution declaring its intention to levy and collect assessments within Landscape Maintenance District LM-84-1 for Fiscal Year 2019-20.

## **GOAL STATEMENT**

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

## **BACKGROUND**

In June 1984, upon petition of the developer, the City formed a Landscape Maintenance Assessment District for Tract 12339, generally located on the south side of 8th Street, east of Mountain Avenue. This is a private development consisting of 21 four-plexes. The City provides street sweeping and street lighting for this tract.

In November 2005, upon petition of the developer, the City annexed Tract 18376 into Landscape Maintenance District LM-84-1. Tract 18376 is generally located north of Eureka Street, west of Benson Avenue and consists of 9 single family residences. The City provides street sweeping, street lighting, and landscaping irrigation for this tract.

## **ISSUES/ANALYSIS**

In order to continue providing street lighting, street sweeping and landscape irrigation

services within Landscape Maintenance District LM-84-1 and recover the costs borne by the City to provide such services, the City must declare its intention to levy and collect the assessments with the District and set a public hearing date. The public hearing is proposed to be held on July 22, 2019.

Costs associated with the assessment district are calculated from actual costs incurred by the City in providing street lighting, street sweeping and landscape irrigation services. The cost per parcel for Tract 12339 for Fiscal Year 2019/20 is \$48.45. This is a decrease of \$6.84 per parcel from last year. The cost per parcel for Tract 18376, for Fiscal Year 2019/20 is \$201.97 a decrease of \$90.92 per parcel from last year.

In the past, there has not been opposition to the assessment. The Finance Officer's Report presents the assessment district diagram (Exhibit C) and shows the calculation that consists of utilities (water and electricity), street sweeping services, advertising and administrative costs (Exhibit E). It also lists addresses of homeowners (Exhibit D), and a copy of the public notice (Exhibit F).

### **FISCAL IMPACTS**

The total assessment for Landscape Maintenance District LM-84-1 for Fiscal Year 2019/20 is \$2,835. The City will recover its costs through the assessment.

### **ALTERNATIVES**

Provide alternative direction to staff.

### **ATTACHMENTS:**

**Resolution LMD 84-1**

**Finance Officer's Report**

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UPLAND DECLARING ITS INTENTION TO LEVY AND COLLECT ASSESSMENTS WITHIN LANDSCAPE MAINTENANCE DISTRICT LM-84-1 FOR THE 2019/20 FISCAL YEAR

Intent of the Parties and Findings

(i) The Street and Highways Code of the State of California authorized the City Council to levy and collect annual assessments within duly formulated assessment districts for the purpose of providing street sweeping and street lights; and

(ii) Landscape Maintenance Assessment District LM-84-1 was formed by the Upland City Council on June 4, 1984, by Resolution No. 3440 and amended on November 14, 2005, by Resolution No. 5737; and

(iii) Landscape Maintenance Assessment District LM-84-1 is Tract 12339, generally located on the South side of 8th Street, East of Mountain Avenue and Tract 18376, generally located North of Eureka Street and West of Benson Avenue; and

(iv) Existing improvements for Tract 12339 include five (5) street lights, approximately 740 linear feet of street pavement, and 1,680 linear feet of curbing and existing improvements for Tract 18376 include one (1) street light, approximately 150 feet of street pavement, and 360 linear feet of curbing; and

(v) The Finance Officer has filed a report with the City Clerk of Upland which sets forth a full and detailed description of the improvements, the boundaries of the landscape maintenance assessment district, and the proposed assessments upon assessable lots and parcel of land within and is appended hereto as Exhibits A-F.

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

Section 1. The City Council of the City of Upland hereby accepts the report of the Finance Officer and declares its intention to levy and collect assessments within Landscape Maintenance Assessment District LM-84-1 for the 2019/20 fiscal year; and

Section 2. The City Council of the City of Upland will conduct a public hearing on the levy of the proposed assessment on July 22<sup>rd</sup>, 2019, at 7:00 p.m. in the City Council Chambers of the City of Upland, 460 N. Euclid Avenue, at which time any interested person may, prior to the conclusion of the hearing, file a written protest with the City Clerk or, having previously filed a protest, may file a written withdrawal of that protest. A written protest shall state all grounds of objection. A protest by a property owner shall contain a description sufficient to identify the property owned.

Section 3. All interested persons are hereby afforded the opportunity to hear and be heard.

Resolution No.

Page 2

Section 4. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED 22<sup>rd</sup> day of July, 2019.

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

I, Keri Johnson, City Clerk of the City of Upland, do hereby certify that the foregoing Resolution was adopted at a regular meeting of the City Council held on the 22<sup>rd</sup> day of July, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

ATTEST:

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

**FINANCE OFFICER'S REPORT**  
**LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT**  
**LM-84-1**  
**(TRACTS 12339 & 18376)**

Fiscal Year 2019-20

**EXHIBITS A-F**

**EXHIBIT A**

**LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT  
LM-84-1**

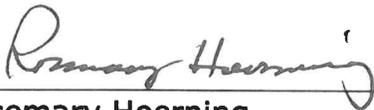
Located on the South side of 8<sup>th</sup> Street,  
East of Mountain Avenue

and

Located North of Eureka Street, West of Benson Avenue

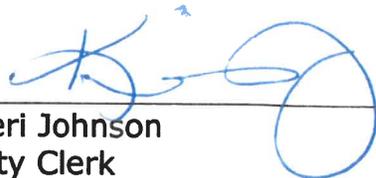
Filed in the Office of the City Clerk  
Of this City of Upland, California  
This 22<sup>nd</sup> day of July, 2019.

Prepared for Fiscal Year 2019/2020



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Rosemary Hoerning  
Interim City Manager



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Keri Johnson  
City Clerk

## EXHIBIT B

### LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT LM-84-1

#### ASSESSMENT OF THE COSTS OF IMPROVEMENT FOR FISCAL YEAR 2019/2020

Net amount to be assessed upon assessable lands within Landscape Maintenance Assessment District LM-84-1 equals \$1,018 for Tract 12339 and \$1,818 for Tract 18376. For a description of each parcel, please see County Assessor's rolls.

<b>Lot No. in Tract 12339, Book 167 of Maps Pages 27 &amp; 28</b>	<b>Assessment</b>	<b>Tax Assessor's Parcel Number</b>	<b>Property Address</b>
1	\$48.45	1008-111-17-0000	204 Grayson Way
2	48.45	1008-111-18-0000	218 Grayson Way
3	48.45	1008-111-19-0000	234 Grayson Way
4	48.45	1008-111-20-0000	242 Grayson Way
5	48.45	1008-111-21-0000	1061 Bennington
6	48.45	1008-111-22-0000	1039 Bennington
7	48.45	1008-111-23-0000	1015 Bennington
8	48.45	1008-111-24-0000	1007 Bennington
9	48.45	1008-111-25-0000	1008 Bennington
10	48.45	1008-111-26-0000	1016 Bennington
11	48.45	1008-111-27-0000	1034 Bennington
12	48.45	1008-111-28-0000	1042 Bennington
13	48.45	1008-111-29-0000	1056 Bennington
14	48.45	1008-111-30-0000	1070 Bennington
15	48.45	1008-111-31-0000	291 Grayson Way
16	48.45	1008-111-32-0000	275 Grayson Way
17	48.45	1008-111-33-0000	267 Grayson Way
18	48.45	1008-111-34-0000	249 Grayson Way
19	48.45	1008-111-35-0000	237 Grayson Way
20	48.45	1008-111-36-0000	221 Grayson Way
21	48.45	1008-111-37-0000	209 Grayson Way

<b>Lot No. in Tract 18376, Book 1005 of Maps Page 22</b>	<b>Assessment</b>	<b>Tax Assessor's Parcel Number</b>	<b>Property Address</b>
1	\$201.97	1005-221-11-0000	1852 Millsweet Drive
2	201.97	1005-221-12-0000	1856 Millsweet Drive
3	201.97	1005-221-13-0000	1860 Millsweet Drive
4	201.97	1005-221-14-0000	1864 Millsweet Drive
5	201.97	1005-221-15-0000	1861 Millsweet Drive
6	201.97	1005-221-16-0000	1859 Millsweet Drive
7	201.97	1005-221-17-0000	1857 Millsweet Drive
8	201.97	1005-221-18-0000	1851 Millsweet Drive
9	201.97	1005-221-19-0000	1855 Millsweet Drive

## **EXHIBIT C**

### **LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT LM-84-1**

#### **PLANS AND SPECIFICATIONS FOR FISCAL YEAR 2019/2020**

The area to be maintained by Landscape Maintenance Assessment District LM-84-1 is shown on the attached assessment diagrams.

This landscape maintenance assessment district was formed for the following purposes:

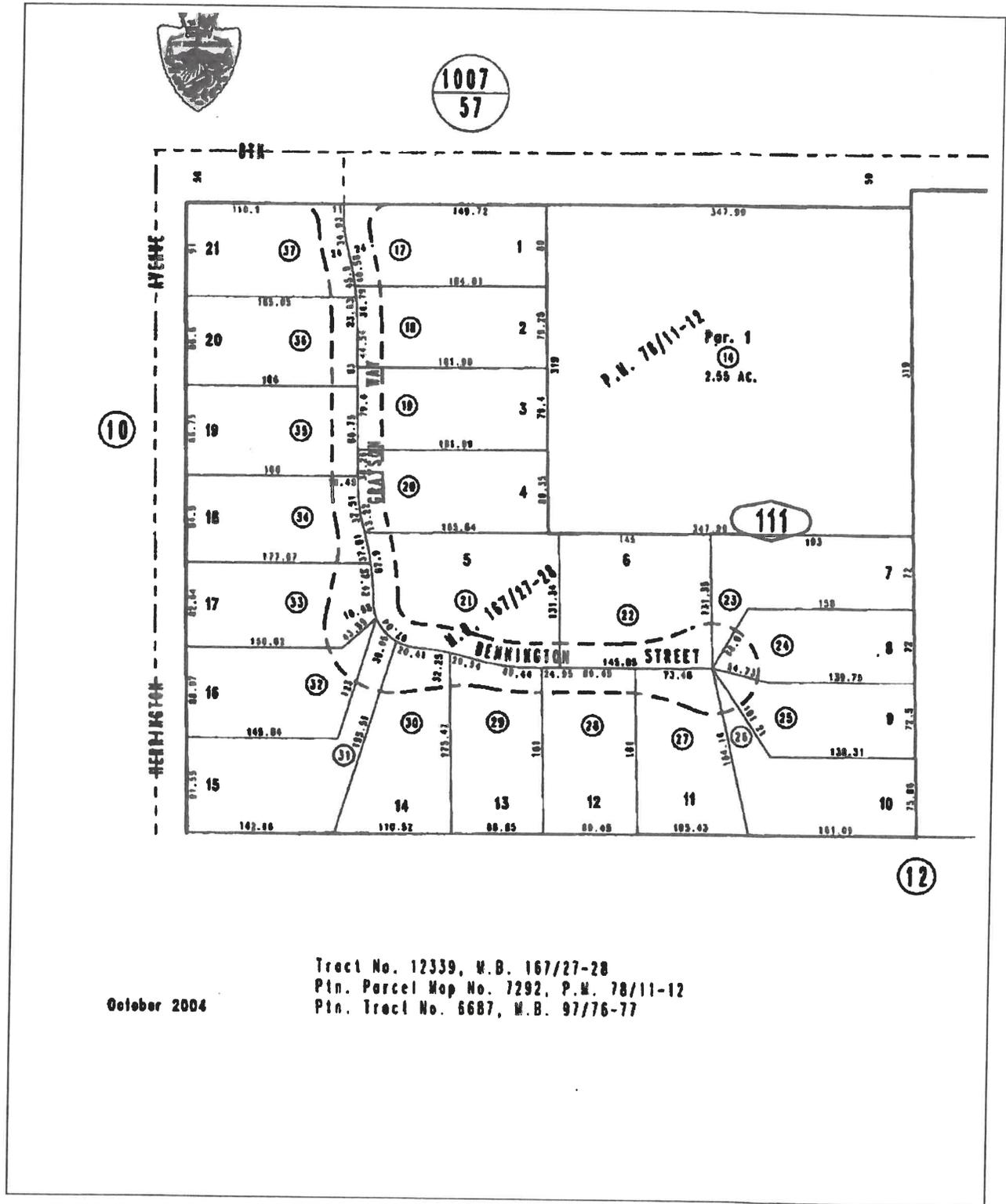
Providing of street sweeping and street lighting adjacent to Tract 12339, as recorded in Book 167 of Maps, Pages 27 and 28 in the records of the San Bernardino County, State of California.

There are five (5) street lights, approximately 740 linear feet of pavement and 1,680 linear feet of curbing.

Providing of street sweeping, landscape irrigation and street lighting adjacent to Tract 18376, as recorded in Book 1005 of Maps, Page 22 in the records of San Bernardino County, State of California.

There is one (1) street light, approximately 150 linear feet of pavement and 360 linear feet of curbing.

# EXHIBIT C (ATTACHMENT)



October 2004

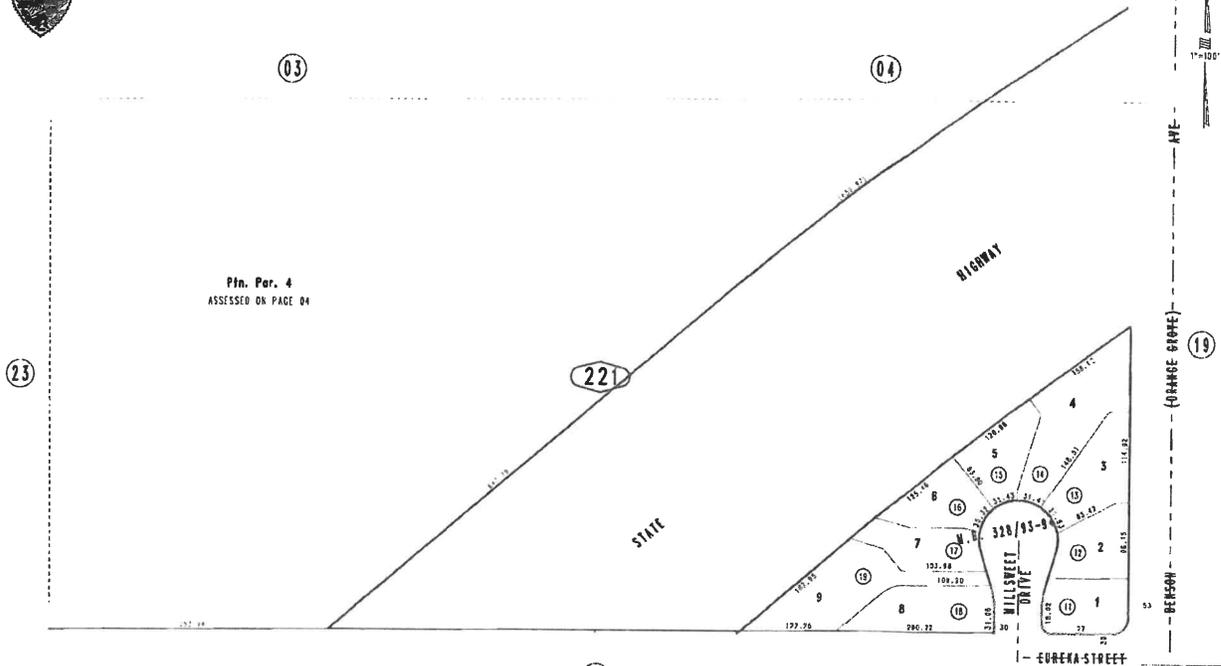
Trect No. 12339, M.B. 167/27-28  
 Ptn. Parcel Map No. 7292, P.M. 78/11-12  
 Ptn. Trect No. 6687, M.B. 97/76-77

THIS MAP IS FOR THE PURPOSE  
OF AD VALOREM TAXATION ONLY.

Pfn. Parcel Map No. 9295, P.M. 103/46-48

City of Upland  
Tax Rate Area  
8009

1005 - 22



August 2004

recl No. 18376, U.B. 328/51-94

Pfn. N.E.1/4, Sec.35  
T.1N.,R.8W.

Assessor's Map  
Book 1005 Page 22  
San Bernardino County

REVISED  
01/23/06 GR  
08/07/07 RW

**EXHIBIT D  
LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT  
LM-84-1  
FOR FISCAL YEAR 2019/2020  
Tract 12339**

<b>Tax Assessor's Parcel Number</b>	<b>Property Address</b>	<b>Owner/Address</b>
1008-111-17-0000	204 Grayson Way	Noel N. Singh 204 Grayson Way #A Upland, CA 91786-6359
1008-111-18-0000	218 Grayson Way	Brandsma Family Trust 13322 Branding Iron Place Chino, CA 91710-4705
1008-111-19-0000	234 Grayson Way	Ben N. Minamide Trust 5885 Paseo De La Cumbre Yorba Linda, CA 92687
1008-111-20-0000	242 Grayson Way	Sainath Shankarlingam Trust 1 Hillsborough Newport Beach, CA 92660
1008-111-21-0000	1061 Bennington	Hun Min Kwang 20825 Missionary Ridge Street Diamond Bar, CA 91789
1008-111-22-0000	1039 Bennington	Elzagitha L. Suhendra 1076 Regal Canyon Dr. Walnut, CA 91789
1008-111-23-0000	1015 Bennington	Jason Muck 1156 N. Euclid Avenue Upland, CA 91786-2429
1008-111-24-0000	1007 Bennington	Esteve Family Trust 2309 Madrugada Drive Chino Hills, CA 91709
1008-111-25-0000	1008 Bennington	Sainath Shankarlingam 1 Hillsborough Newport Beach, CA 92660
1008-111-26-0000	1016 Bennington	Macias Antonio and Sara Living Trust 1632 Danbrook Place Upland, CA 91784-9204
1008-111-27-0000	1034 Bennington	William E. Dyke, Jr. 1433 Via Zurita Street Claremont, CA 91711

<b>Tax Assessor's Parcel Number</b>	<b>Property Address</b>	<b>Owner/Address</b>
1008-111-28-0000	1042 Bennington	Quetsch Family Trust 30 Villa Milano Lake Elsinore, CA 92532
1008-111-29-0000	1056 Bennington	Chen Yu LLC 2415 Fallen Dr. Rowland Heights, CA 91748
1008-111-30-0000	1070 Bennington	YJ Trust 15402 Los Molinos St. Hacienda Heights, CA 91745-5913
1008-111-31-0000	291 Grayson Way	Cun Family Trust 5826 Primrose Ave. Temple City, CA 91780-2110
1008-111-32-0000	275 Grayson Way	Brandsma Family Trust 13322 Branding Iron Place Chino, CA 91710-4705
1008-111-33-0000	267 Grayson Way	Robert R. Cardoza Trust 27742 Paseo Barona San Juan Capistrano, CA 92675
1008-111-34-0000	249 Grayson Way	David J. Legters Trust 565 E. Holt Avenue Pomona, CA 91767
1008-111-35-0000	237 Grayson Way	Hai-Chi Koo Lee Chang Koo 3656 Martz Street Simi Valley, CA 93063
1008-111-36-0000	221 Grayson Way	Tao Zheng 9661 Ancourt Street Arcadia, CA 91007
1008-111-37-0000	209 Grayson Way	Dominic J. Etchaberria Suzanne M. Etchaberria 2044 Winston Court Upland, CA 91784

## EXHIBIT D

### LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT LM-84-1 FOR FISCAL YEAR 2019/2020 Tract 18376

<b>Tax Assessor's Parcel Number</b>	<b>Property Address</b>	<b>Owner/Address</b>
1005-221-11-0000	1852 Millsweet Dr	Deann Hsu & Yu-sin Lai 1331 W Maitland Street Ontario, CA 91762
1005-221-12-0000	1856 Millsweet Dr	Dale & Gina Linek Family Trust 1856 Millsweet Drive Upland, CA 91784
1005-221-13-0000	1860 Millsweet Dr	Thomas Rice 1860 Millsweet Drive Upland, CA 91784
1005-221-14-0000	1864 Millsweet Dr	Lee R Trust 1864 Millsweet Drive Upland, CA 91784
1005-221-15-0000	1861 Millsweet Dr	Magnum Property Investment LLC PO Box 517 Agoura Hills, CA 91376
1005-221-16-0000	1859 Millsweet Dr	Mark J. Yarter 1859 N. Millsweet Drive Upland, CA 91784-7460
1005-221-17-0000	1857 Millsweet Dr	Ryan Hinson 1857 Millsweet Drive Upland, CA 91784
1005-221-18-0000	1851 Millsweet Dr	Vayuvequla Bharati Swatantra 1851 Millsweet Drive Upland, CA 91784
1005-221-19-0000	1855 Millsweet Dr	See-Prats Rosalina Living Trust 6854 Tourmaline Drive Eastvale, CA 92880

**EXHIBIT E**

**LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT  
LM-84-1  
Tract 12339  
FOR FISCAL YEAR 2019/2020**

	Actual 2016/17	Actual 2017/18	Estimated 2018/19	Actual 2018/19	Estimated 2019/20
Advertising	118	132	132	118	118
Utilities (Electric)	292	292	298	237	242
Labor: - Street Sweeping	202	202	202	202	202
Administration	400	530	530	530	530
<b>Totals</b>	<b>1,012</b>	<b>1,156</b>	<b>1,161</b>	<b>1,087</b>	<b>1,092</b>

**ANNUAL ASSESSMENT**

<b>1</b>	<b>Total Annual Assessment Paid for 2018/19</b>	<b>\$1,161</b>
<b>2</b>	<b>Total Expenditures for 2018/19</b>	<b>\$1,087</b>
<b>3</b>	<b>(Surplus)/Deficit from 2018/19</b>	<b>(\$74)</b>
<b>4</b>	<b>Estimated Costs for 2019/20</b>	<b>\$1,092</b>
<b>5</b>	<b>Contributions from Other Sources</b>	<b>0</b>
<b>6</b>	<b>Assessment of Estimated Costs (Sum of items 3, 4 &amp; 5)</b>	<b>\$1,018</b>
<b>7</b>	<b>Cost per Parcel for 2019/20 (Item 6 divided by 21 parcels)</b>	<b>\$48.45</b>

## EXHIBIT E

### LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT LM-84-1 Tract 18376 FOR FISCAL YEAR 2019/20

	Actual 2016/17	Actual 2017/18	Estimated 2018/19	Actual 2018/19	Estimated 2019/20
Advertising	118	132	132	118	118
Utilities (Water)	1,091	1,615	1,937	1,458	1,626
Labor: - Street Sweeping	43	43	43	43	43
Administration	394	523	524	524	524
Totals	1,646	2,313	2,636	2,143	2,311

### ANNUAL ASSESSMENT

<b>1</b>	Total Annual Assessment Paid for 2018/19	\$2,636
<b>2</b>	Total Expenditures for 2018/19	\$2,143
<b>3</b>	(Surplus)/Deficit from 2018/19	(\$493)
<b>4</b>	Estimated Costs for 2019/20	\$2,311
<b>5</b>	Contributions from Other Sources	0
<b>6</b>	Assessment of Estimated Costs (Sum of items 3, 4 & 5)	\$1,818
<b>7</b>	<b>Cost per Parcel for 2019/20 (Item 6 divided by 9 parcels)</b>	<b>\$201.97</b>

**EXHIBIT F  
PUBLIC NOTICE**

**NOTICE OF  
PUBLIC HEARING**

NOTICE IS HEREBY GIVEN that the City Council of the City of Upland will hold a public hearing on July 22, 2019, at 7:00 p.m. in the Council Chambers of the Upland City Hall, 460 N. Euclid Avenue, Upland, California 91786, to consider the 2019/20 Fiscal Year assessment to be levied upon the following Assessment District:

**LM-84-1:**

**South side of 8<sup>th</sup> Street, East side of Mountain Avenue and Millsweet Drive, North of Eureka Street, West of Benson Avenue.**

This district was formed for the purpose of providing street lights and street sweeping adjacent to Tract Number 12339 and street lights, landscape irrigation and street sweeping adjacent to Tract 18376.

The cost per parcel for Tract 12339 for Fiscal Year 2019/20 is \$48.45. The cost per parcel for Tract 18376, for Fiscal Year 2019/20 is \$201.97. A full report describing existing improvements and the proposed assessments upon assessable lots within the district is on file in the Office of the City Clerk. For further information, please contact Saleha Kazmi at 909-931-4360.

All interested persons are invited to attend this public hearing and will be afforded the opportunity to present both oral and written statements, arguments and beliefs relevant to this proposal. All pertinent data may be inspected at the Office of the City Clerk, Upland City Hall, 460 N. Euclid Avenue, Upland, California 91786 prior to the public hearing.

Keri Johnson  
Upland City Clerk

**Publish: July 11, 2019**



## STAFF REPORT

**ITEM NO. 14.A.**

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**DATE:** July 22, 2019  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** DOUG STORY, RECREATION SERVICES MANAGER  
**SUBJECT:** CONSIDERATION OF A RESOLUTION FOR SUBMISSION OF AN APPLICATION UNDER THE STATEWIDE PARK DEVELOPMENT AND COMMUNITY REVITALIZATION PROGRAM FOR MEMORIAL PARK

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### **RECOMMENDED ACTION**

It is recommended that the City Council adopt a Resolution approving the application for Statewide Park Development and Community Revitalization Program Grant funds.

### **GOAL STATEMENT**

The proposed action supports the City's goal of improving public park and recreation facilities for the community and securing grant funding to assist in the implementation of park upgrades.

### **BACKGROUND**

Proposition 68 was passed by voters in June 2018 and it authorized \$4 billion of general obligation bonds to fund the creation and development of state and local parks, environmental protection projects, water infrastructure projects, and flood protection projects. Of that, \$650,275,000 was allocated to the Statewide Park Program (SPP), a competitive grants program that aims to create new parks and new recreation opportunities in critically underserved communities across California. The previous two rounds of SPP were funded through Proposition 84 (2006 Bond Act). Over one hundred new parks were created and twenty existing parks were improved throughout California.

For SPP Round 3, a project must involve either development or a combination of acquisition and development to: 1) create a new park, 2) expand an existing park, or 3) renovate an existing park. The program specifically focuses on low-income communities or communities with a critical lack of park space. Therefore, a project is only eligible if it is located within a

community with less than 3 acres of park space per 1,000 residents or the median household income is less than \$51,026.

The City is interested in submitting an application to fund renovations and development at Memorial Park. Developed in the late 1920s by the famous Los Angeles architect Ralph Cornell, Memorial Park has provided significant cultural and recreational benefits to the community. The City plans to revitalize the park with renovations that enhance its functionality, create/expand accessibility, increase walkability, and create new recreational activities. The improved park will provide a vital green space to residents for significant cultural and community gatherings that will strengthen community life.

### **ISSUES/ANALYSIS**

The final grant guidelines for SPP Round 3 were released in January 2019. The City's grant writing consultant, Avant-Garde, in coordination with City staff is currently drafting an application for the SPP. As part of the application requirements, a resolution must be approved by the local jurisdiction's governing body authorizing submission of a grant application.

Community involvement is central to the grant program, and City staff have conducted numerous opportunities to receive resident input in regards to the use, the programs, and the design of Memorial Park. Through the use of an electronic and hand written survey, in both English and Spanish, the City has received over 325 surveys with community input in regards to Memorial Park. This data is being collected and City Staff along with design consultants are preparing a Master Plan Concept Design that will be included in the grant application.

The application will describe the improvements and amenities that are allowable through the grant and will include narrative descriptions of the current needs for the improvements. The deadline for application submission is August 5, 2019.

### **FISCAL IMPACTS**

There is no fiscal impact at this stage.

### **ALTERNATIVES**

Provide alternative direction to staff.

### **ATTACHMENTS:**

#### **Resolution for Grant Funds**

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UPLAND  
APPROVING THE APPLICATION FOR STATEWIDE PARK  
DEVELOPMENT AND COMMUNITY REVITALIZATION PROGRAM  
GRANT FUNDS

Intent of the Parties and Findings

(i) The State Department of Parks and Recreation has been delegated the responsibility by the Legislature of the State of California for the administration of the Statewide Park Development and Community Revitalization Grant Program, setting up necessary procedures governing the application; and

(ii) Said procedures established by the State Department of Parks and Recreation require the Applicant to certify by resolution the approval of the application before submission of said application to the State; and

(iii) Successful Applicants will enter into a contract with the State of California to complete the Grant Scope project;

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

Section 1. The City Council approves the filing of an application for the Memorial Park Project.

Section 2. Certifies that said Applicant has or will have available, prior to commencement of any work on the project included in this application, the sufficient funds to complete the project.

Section 3. Certifies that if the project is awarded, the Applicant has or will have sufficient funds to operate and maintain the project.

Section 4. Certifies that the Applicant has reviewed, understands, and agrees to the General Provisions contained in the contract shown in the Grant Administration Guide.

Section 5. Delegates the authority to the City Manager to conduct all negotiations, sign and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the Grant Scope.

Section 6. Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations, and guidelines.

Section 7. Will consider promoting inclusion per Public Resources Code §80001(b)(8 A-G).

Resolution No.

Page 2

Section 8. Certification. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED and ADOPTED THIS 22nd day of July, 2019.

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

I, Keri Johnson, City Clerk of the City of Upland, do hereby certify that the foregoing Resolution was adopted at a regular meeting of the City Council held on the 22nd day of July, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

ATTEST:

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



## STAFF REPORT

**ITEM NO. 14.B.**

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**DATE:** July 22, 2019  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**SUBJECT:** ELECTRIC CHARGING STATION GRANT & AGREEMENTS

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### RECOMMENDED ACTION

It is recommended that the City Council accept a \$160,000 Grant from the Southern California Incentive Project (SCIP) for the installation of DC Fast Charging Electric Vehicle Charging Units in the Civic Center Parking Lot. It is further recommended the City Council authorize the Interim City Manager to enter into agreements with ChargePoint for Master Services and Subscription Agreement; the terms and conditions for the electric vehicle supply equipment purchase through Sourcewell including installation/validation; and network services for a 5-Year Commercial Service Plan (ASSURE).

### GOAL STATEMENT

The proposed action will support the City's goal to secure supplemental funding through grants to leverage City funds for community improvements and to support green programs.

### BACKGROUND

On December 5, 2018, the City received notification from the California Energy Commission, Center for Sustainable Energy, Southern California Incentive Project (SCIP) that it was successful in receiving \$160,000 of the \$2,000,000 of grants available through SCIP for San Bernardino County. The SCIP promotes easy access to zero-emission vehicle infrastructure by offering rebates for the purchase and installation of eligible public electric vehicle (EV) chargers in Southern California.

While measurable progress has been made in reducing vehicle emission, the South Coast region still fails to meet federally mandated air quality standards. These standards for smog-forming pollutants will become even stricter by the year 2023. According to the South Coast AQMD, air pollution emissions must be reduced by an additional 75% in order to meet the 2023 federal ozone standard.

The 2016 Air Quality Management Plan (AQMP) is a regional blueprint for achieving the federal air quality standards for healthful air. The 2016 AQMP recognizes the critical importance of working together with other agencies to develop funding and incentives that encourage the accelerated transition to cleaner vehicles and mobility strategies.

ChargePoint is the largest EVSC manufacturer and service provider in the world, with more than 41,000 charging stations worldwide. In Orange County, there are over 1,500 ChargePoint charging stations. In San Bernardino ChargePoint has approximately 200 Charging stations. There are currently ChargePoint charging stations located in Ontario on the South West corner of Vineyard Avenue and Holt Boulevard and in Rancho Cucamonga on the South West corner of Carnelian Avenue and 19<sup>th</sup> Street.

The ChargePoint Commercial Service Plan includes Cloud Plan, which is a mobile-device based application that allows customers to access ChargePoint facilities and conduct credit card-based transactions. In addition, the Cloud Plan maintains a comprehensive mapping and information system identifying the location, hours of operation, and status of charging facilities. The ChargePoint Cloud Plan allows the network operator to set and adjust rate structure and provides comprehensive analytics summarizing important trends for planning and system management.

Staff has researched ChargePoint by consulting with a number of cities to include Chino, Corona, Yorba Linda, and Long Beach. All of these agencies provided positive feedback on the ChargePoint equipment and services.

## **ISSUES/ANALYSIS**

The SCIP program provides a grant up to \$80,000 per DC fast Charger and allows for the installation of a Level 2 Charger. This work needs to be completed within 365 days from the date of notification. The charging station equipment requires approximately 90 days procurement and delivery lead time. The foundation conduits and equipment pedestals for the Electric Charging Stations are being installed in connection with the Library electrical system upgrade and solar system connection work.

ChargePoint is an approved vendor for charging station equipment under the SCIP program. ChargePoint is the vendor being used by the cities of Chino, Corona, Coachella, Yorba Linda, and Long Beach for the purchase and installation of charging station equipment. They are a large reputable vendor providing and supporting electric vehicle stations. Staff has been consulting with them on the outfitting and station requirements. ChargePoint has also provided information regarding the electric vehicle user pricing for the stations in order to recover the cost and ensure the facilities are priced competitively.

The California Energy Commission, Center for Sustainable Energy, Southern California Incentive Project (SCIP) set aside \$160,000 for the installation of the two DC Fast Charging stations. The SCIP program requires a minimum 20% (\$32,000) local match. It is anticipated the City's local match will be approximately \$50,000. The adopted budget includes a project with sufficient funds to cover the project match requirements. This is a reimbursement grant and all of the work must be completed within a year from the date of the reservation of December 5, 2018 or by December 5, 2019.

Staff is recommending the ChargePoint equipment be purchased through Sourcewell (formerly NJPA, National Joint Powers Alliance) contract. The charge station equipment takes approximately 3-months in lead time and will be pre-purchased to meet the scheduling requirements. Sourcewell is a public agency and a political subdivision of the State of Minnesota. Cooperative purchasing contracts are awarded at the conclusion of a procurement process following Minnesota's municipal contracting law. This procurement process meets the State of California's cooperative purchasing code 6500 & 6502. The City of Upland is a

member of Sourcewell. The Sourcewell procurement will provide discounts from 5-25% as outlined in the Quotation for the equipment.

The stations to be installed under this project will be two (2) ChargePoint Express 250 Dual Charging Stations and one (1) CT-4000 Dual Level 2 Charging Station serving the Civic Center complex public parking lot.

Staff will be evaluating the usage pricing and will make modifications to the Upland Municipal Code to provide for proper parking enforcement regulations.

#### Charging Station Use Fees

In order to optimize the use of the charging stations and allow multiple electric vehicles to use the charging equipment during a typical day, the City is encouraged to develop a pricing plan designed to cover energy costs, transaction fees, and regular equipment maintenance. The suggestion provided by ChargePoint is to set a charging rate between \$1.00 and \$1.50 per hour for the use of the charger. Rates can be calculated based on duration of stay, energy consumed (kWh), or a combination of the two. ChargePoint also encourages participating communities to establish "graduated pricing based on the duration of stay" where the use fees are raised after the charge to encourage turnover of the parking space.

Staff is evaluating the electric vehicle charging station usage pricing and terms. The station user fees and any required modifications to the Upland Municipal Code for adequate parking enforcement will be brought back to the City Council for consideration at a future time.

#### **FISCAL IMPACTS**

Budgeted revenues will increase by \$160,000 as a result of the accepted grant from the Southern California Incentive Project program and appropriate funds to capital improvement project number 7901 to fund the facility improvements. This is a reimbursement grant. The grant will fund 80% of the eligible project related costs.

#### **ALTERNATIVES**

Provide alternative direction to staff.

#### **ATTACHMENTS:**

**SCIP Grant Reservation**

**ChargePoint Quotation**

**ChargePoint Master Services and Subscription Agreement**

**ChargePoint Purchase & Installation Agreement**

**ChargePoint ASSURE 5-Yr Service Plan**

Rosemary Hoerning

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**From:** Southern California Incentive Project - CALeVIP <southerncalifornia-calevip@energycenter.org>  
**Sent:** Wednesday, December 05, 2018 10:16 AM  
**To:** Rosemary Hoerning  
**Subject:** Funds Reserved - Southern California Incentive Project A-00291  
**Attachments:** SCIP Application Form.pdf



Dear Rosemary Hoerning,

Thank you for your application to the Southern California Incentive Project (SCIP). We are pleased to inform you that we have reserved a rebate amount of \$160,000.00 for your application.

**You can now move forward with the purchase and installation of your EV charging station(s)!**

Your rebate payment can occur in one or two payments.

CSE will process a Milestone Payment for your application 240 calendar days after 12/5/2018. At a minimum, a copy of the signed application, permit, and a design/engineering invoice must be submitted for a Milestone Payment; other supporting documents covering other eligible costs may also be submitted and considered for the Milestone Payment. The Milestone Payment is calculated based on all project costs submitted within the 240-day period. Any eligible costs incurred that are not uploaded prior to the Milestone Payment will be included in the final payment. You have 365 calendar days from 12/5/2018 to complete your project and submit all of your supporting documents online at <https://calevip.org/user/login>.

If your project is completed and operational any time prior to 240 days from 12/5/2018, you can submit all documents to obtain final payment. By doing this, you will bypass the Milestone Payment and receive one check for the final rebate payment.

**IMPORTANT:** We have reserved the maximum rebate amount you are eligible to receive based on the number and type of chargers you selected on your application, but the final rebate amount you receive will be based on the total eligible project costs.

CSE reviews all required documentation to calculate total eligible project costs to determine your final rebate amount. **You will receive 75% of actual eligible costs or the maximum reserved amount, whichever is less, for a site that is not in a Disadvantaged Community; or 80% of actual eligible costs or the maximum reserved amount, whichever is less, for a site that is in a Disadvantaged Community.** Any remaining reserved funds will be released back to SCIP. You will receive notification of your final rebate amount within 7 days after your supporting documents have been submitted and verified.

Your SCIP Application Number is A-00291. Please reference this number when contacting our team about your application.

### Next Steps

1. **Sign your application form and submit all supporting documents:**
  - o **A signed copy of your SCIP Application Form.**  
Your form is attached to this email.



# Quotation

Driving a Better Way™  
chargepoint.com

**Sales Representative:** Rylan Bridges  
**E-Mail:** seth.rylan.bridges@chargepoint.com  
**Telephone:**

**Quote Number:** Q-38030-1  
**Date:** 7/11/2019  
**Expires On:** 7/24/2019

**Primary Contact:** Rosemary Hoerning

### Bill To Address

City of Upland  
460 N Euclid Avenue  
Upland California 91786  
United States

### Ship To Address

City of Upland  
460 N Euclid Avenue  
Upland California 91786  
United States

Product Name	Product Description	Qty	List Price	Disc%	Unit Price	Total Price
CPE250C-CCS1-CHD	CP Express 250 Station (50 kW) - includes Express 250 Station, 2x Power Modules, 1x CCS1 cable, 1x CHAdeMO cable, North America Modem/SIM, cUL and UL listed, requires CPE250-CMT-IMPERIAL in US, CPE250-CMT-METRIC in Canada. CPE250-CMT-IMPERIAL/METRIC not included.	2	USD 35,800	5	USD 34,010	USD 68,020
CPE250C-625-ENABLE	Enable upgrade of CPE250 from 50 kW to 62.5 kW	2	USD 5,000	5	USD 4,750	USD 9,500
CPCLD-COMMERCIAL-DC-5	5yr Prepaid, DC, Commercial Cloud Plan. Includes Secure Network Connection, On-going Station Software updates, Station Inventory, 24x7 Driver Support, Host Support, Session Data and Analytics, Fleet Vehicle Management and Integration, Fleet Access Control, Valet Dashboard, Power Management (Circuit, Panel, Site Sharing), Scheduled Charging, Driver Access Control, Pricing and Automatic Funds Collection, Waitlist, Videos (on supported hardware).	2	USD 2,210	0	USD 2,210	USD 4,420
EXPRESS-ASSURE5	5yr prepaid Assure Plan priced per power module	4	USD 7,750	0	USD 7,750	USD 31,000

Product Name	Product Description	Qty	List Price	Disc%	Unit Price	Total Price
CPE250-INSTALLVALID	Customer works with their own contractor to perform the all construction to the point where the stations can be bolted down and connected. ChargePoint will engage one of their O&M Partners to install the station on the prepared site and validation of electrical capacity, transformers, panels, breakers, wiring, cellular coverage and that station installation meets all ChargePoint published requirements and local codes. A successful Site Validation is a prerequisite to purchase ChargePoint Assure. CPE250-INSTALLVALID is priced per CPE250 station (Not applicable for Express Plus installations).	2	USD 3,500	0	USD 3,500	USD 7,000
CT4021-GW1	Dual Output Gateway Option USA, Bollard Unit - 208/240V @30A with Cord Management	1	USD 7,210	20	USD 5,768	USD 5,768
CT4001-CCM	CT4000 Bollard Concrete Mounting Kit. Bolts: 5/8 - 11 x 9" F1554 Grade 55 hot-dipped galvanized threaded bolts - 3 ea. Nuts: 5/8 - Heavy Galvanized Hex Nuts (DH Rated) - 12 ea. Washers: Galvanized Washers (ASTM F436) - 9 ea. Plastic Template - 1 ea	1	USD 95	20	USD 76	USD 76
CPCLD-COMMERCIAL-5	5yr Prepaid Commercial Cloud Plan. Includes Secure Network Connection, On-going Station Software updates, Station Inventory, 24x7 Driver Support, Host Support, Session Data and Analytics, Fleet Vehicle Management and Integration, Fleet Access Control, Valet Dashboard, Power Management (Circuit, Panel, Site Sharing), Scheduled Charging, Driver Access Control, Pricing and Automatic Funds Collection, Waitlist, Videos (on supported hardware).	2	USD 1,105	0	USD 1,105	USD 2,210
CT4000-ASSURE5	5 prepaid years of ChargePoint Assure.	1	USD 2,495	0	USD 2,495	USD 2,495



Product Name	Product Description	Qty	List Price	Disc%	Unit Price	Total Price
CT4000-INSTALLVALID	Customer works with their own contractor to perform the all construction to the point where the stations can be bolted down and connected. ChargePoint will engage one of their O&M Partners to install the station on the prepared site and validation of electrical capacity, transformers, panels, breakers, wiring, cellular coverage and that station installation meets all ChargePoint published requirements and local codes. CT4000-INSTALLVALID is priced per CT4000 station. A successful Site Validation is a prerequisite to purchase ChargePoint Assure.	1	USD 1,200	25	USD 900	USD 900

**Quote Total:** USD 131,389.00  
**Estimated Tax:** USD 5,724.46  
**Shipping and Handling:** USD 620.00  
**Grand Total:** USD 137,733.46

**Quote Acceptance**

The terms and conditions of the above referenced quote are governed by the agreements previously executed between the parties.

**Signature :** \_\_\_\_\_ **Title :** City Manager  
**Name (Print) :** Rosemary Hoerning **Date :** \_\_\_\_\_  
**Company Name :** City of Upland  
**Requested Ship Date :** ASAP  
**AP Contact Name :** \_\_\_\_\_  
**AP Contact E-Mail :** \_\_\_\_\_

## TERMS AND CONDITIONS OF PURCHASE

### 1. Placement of Orders.

A. Purchase of Charging Stations. The terms of these Terms and Conditions of Purchase (“Terms”) govern the Company’s purchase of Charging Stations from ChargePoint. Company’s purchase of Charging Stations (including, without limitation, any purchase of an extended Assure Warranty) made by Company shall be made by binding, written purchase order specifying the number and model of Charging Station(s) desired to be purchased, requested delivery schedule (which, absent agreement between the parties, shall be a date that is no less than sixty (60) days after the date of the purchase order), any extended Assure Warranty being purchased and that Company’s purchase of Charging Stations is subject to all of the terms and conditions contained in these Terms. Any additional printed terms and conditions in Company’s purchase order conflicting with, varying or adding to the terms and conditions of these Terms, shall be of no force and effect, unless the parties hereto agree in writing, in advance, to accept such terms and conditions.

B. Acceptance of Purchase Orders. All purchase orders and modifications to purchase orders are subject to acceptance or rejection by ChargePoint in its sole discretion. No purchase order shall be binding upon ChargePoint unless and until so accepted in writing by ChargePoint. ChargePoint agrees to use commercially reasonable efforts to notify Company of its acceptance or rejection of Company’s order within ten (10) business days after receipt thereof. Any purchase order accepted by ChargePoint is referred to in these Terms as, an “Accepted Order.” Accepted Orders are non-cancelable, non-returnable and non-refundable.

C. Refusal of Purchase Orders. ChargePoint may withhold shipments to Company if Company has exceeded its applicable credit limit, if any, and not provided for prepayment, is in violation of its payment obligations or otherwise is in material breach of these Terms.

D. Stations Require Subscription to SaaS Offerings. The Charging Stations are designed to work with ChargePoint’s cloud-based application services (“SaaS Offerings”). Access to SaaS Offerings requires Company to enter into a Master Services and Subscription Agreement with ChargePoint.

E. Indemnification and Insurance. The indemnification and insurance provisions set forth in the Master Services and Subscription Agreement between ChargePoint and Company shall apply to these terms and conditions.

### 2. Delivery

A. Shipping Costs; Terms. All shipping, unless otherwise agreed to by the Parties in writing, shall be FOB City of Upland. Company shall be responsible for all costs of shipping, transportation, insurance, warehousing, and other charges and costs associated with shipment of the Charging Stations to Company. All shipping dates are approximate and are based upon prompt receipt of all necessary information from Company. In no event shall ChargePoint be liable for any costs related to delay in delivery of the Charging Stations. Company’s sole remedy for any material delay in delivery of the Charging Stations shall be cancellation of the order.

B. Transfer of Title. Delivery of the Charging Stations to Company shall be completed upon delivery of the Charging Stations to Company’s designated delivery location. Risk of loss and damage to the Charging Stations shall pass to Company upon the delivery of such Charging Stations to such location. ChargePoint shall use commercially reasonable efforts to deliver Charging Stations ordered by Company on the scheduled delivery date. All claims for non-conforming shipments must be made in writing to ChargePoint within thirty (30) days of the passing of risk of loss and damage, as described above. Any claims not made within such period shall be deemed waived and released. Notwithstanding the foregoing, the preceding time limit for non-conforming shipments shall not affect a warranty claim by Company for defective Charging Stations.

C. Substitutions. ChargePoint shall have the right to make substitutions and modifications to Charging Stations and in the specifications of Charging Stations to be delivered under the terms of any applicable purchase order, provided that such substitutions or modifications will not materially affect overall Charging Station form, fit, function or safety specifications. However, without Company’s prior, written consent, nothing herein shall authorize the substitution of equipment that would result in the alternative equipment having a different installation “footprint” or different dimensions for points of attachment to an installation pad or foundation, than the original equipment.

### 3. Invoicing and Payment

A. Invoicing. Unless otherwise agreed in writing by the Parties, ChargePoint shall issue an invoice to Company on or after the date it ships the ordered Charging Stations; provided that, ChargePoint may condition its acceptance of a purchase order on such credit and/or prepayment terms as ChargePoint, in its reasonable discretion, determines appropriate due to, among other things, Company’s prior payment history and/or the size of the order. In the case of any change to the applicable credit and/or prepayment terms, no purchase order or acceptance thereof will be effective unless and until Company has consented in writing thereto. If Company causes a delay in delivery, ChargePoint may issue its invoice at any time on or after the scheduled delivery date. If Company has purchased an extended Assure Warranty and has chosen the annual payment option, ChargePoint will invoice each annual payment on the anniversary date of the Assure Warranty.

B. Payment Terms. ChargePoint will invoice Company at time of shipment of the Charging Stations. All invoices shall be paid within thirty (30) days of Company's receipt thereof. Nothing herein shall require Company to pay for delivered equipment unless and until determined to be fully functional. Company shall have not less than fifteen (15) days to make such determination and notify ChargePoint thereof. Fees for Cloud Services subscriptions shall be invoiced at shipment of the Charging Stations to which such Cloud Services subscriptions relate, and on each anniversary date thereof. All invoices for Cloud Services subscriptions shall be paid within thirty (30) days of Company's commencement of beneficial use thereof. Invoices not paid when due are subject to interest at the rate of one and one-half percent (1.5%) per month or, if less, the highest rate allowed under applicable law. All non-credit shipments, or shipments in excess of Company's available credit line, if any, shall be prepaid prior to shipment.

C. No Right of Set-Off; No Right of Return. Invoiced amounts are not subject to reduction by set-off or otherwise without the express written permission of ChargePoint. All sales are final and Company shall have no right of return, provided, that, ChargePoint shall comply with its obligations under the Warranty (as defined below).

D. Taxes, Duties, Etc. All amounts due to ChargePoint under these Terms and/or any applicable purchase order are net of any duties, any sales, use, excise, value-added, withholding, or similar tax of any kind and any and all other fees and charges of any nature (collectively, "Taxes") imposed by the United States or any foreign, state or local governmental entity or instrumentality thereof on the purchase, shipment, use or sale of the Charging Stations by or to Company, other than taxes measured by ChargePoint's income, corporate franchise, or personal property ownership. Where applicable, ChargePoint shall bill Company for the full amount of such taxes and shall include such amount as a separate line item on the invoice(s) sent to the Company; provided that, ChargePoint's failure to so bill the Company shall not relieve Company from the obligation to pay any Tax described in this Section 3.D.

E. Payment in Dollars. All amount payable under these Terms shall be paid in United States dollars. If Company is located outside of the United States, Company agrees to take all necessary actions required, including registration of these Terms and application for permission to make payments to ChargePoint hereunder, with the appropriate government authorities in the Company's jurisdiction, or such other institution or official, and to take such other measures as may be necessary to comply with any government currency controls in effect in Company's jurisdiction, as soon as reasonably practicable after execution of these Terms. Company shall remit payment to ChargePoint, at Company's option (i) via wire or ACH transfer to an account designated by ChargePoint in writing from time to time or (ii) by check, made out to ChargePoint, Inc.

F. All Orders Subject to Credit Approval. All orders are subject to credit approval by ChargePoint. The amount of credit or terms of payment may be changed or credit withdrawn by ChargePoint in its reasonable discretion following not less than ten (10) business days' prior, written notice to Company. ChargePoint may, in its discretion, withhold further manufacture, performance or shipment; require immediate cash payments for past and future shipments or performance; or require other security satisfactory to ChargePoint before further manufacture, performance or shipment is made; and may, if shipment has been made, recover the goods from the carrier pending receipt of such assurances.

G. Provisions Relating to Shipments in Lots. If these terms require or authorize delivery of goods in separate lots, shipments or milestones to be separately accepted by Company, Company may only refuse such portion of a lot, shipment or milestone that fails to comply with the requirements of these terms. Company may not refuse to receive any lot or portion thereof for failure of any other lot or portion or a lot to be delivered or to comply with these terms, unless such right of refusal is expressly provided for on the face hereof, or where damage to any equipment is plainly visible. Company shall pay for each lot in accordance with the terms hereof. Products held for Company are at Company's sole risk and expense.

H. Prices do not include Freight, Etc. Except to the extent expressly stated in these terms, ChargePoint's prices do not include any freight, storage, insurance, taxes, excises, fees, duties or other government charges related to the goods, and Company shall pay such amounts or reimburse ChargePoint for any amounts ChargePoint pays. If Company claims a tax or other exemption or direct payment permit, it shall provide ChargePoint with a valid exemption certificate or permit and indemnify, defend and hold ChargePoint harmless from any taxes, costs and penalties arising out of same. ChargePoint's prices include the costs of its standard domestic packing, only. Any deviation from this standard packing (domestic or export), including U.S. Government sealed packing, shall result in extra charges. To determine such extra charges, Company should consult with ChargePoint's sales offices. Any and all increases, changes, adjustments or surcharges (including, without limitation, fuel surcharges) which may be in connection with the freight charges, rates or classification included as part of these terms, shall be for Company's account.

I. Disputes. In the event Company disputes any portion or all of an invoice, it shall notify ChargePoint in writing of the amount in dispute and the reason for its disagreement within twenty-one (21) days of receipt of the invoice. The undisputed portion shall be paid when due, and finance charges on any unpaid portion shall accrue, from the date due until the date of payment, to the extent that such amounts are finally determined to be payable to ChargePoint. No finance charge shall accrue on any disputed amount unless Company's dispute lacks any reasonable basis.

J. Remedies upon Payment Default. Upon Company's default of these terms, and provided ChargePoint is not then in breach, ChargePoint may, in addition to any other rights or remedies it may have at law or otherwise, subject to any cure rights of Company, declare

the entire balance of Company's account immediately due and payable or foreclose any security interest in the goods delivered. If any unpaid balance is referred for collection, Company agrees to pay ChargePoint, to the extent permitted by law, reasonable attorneys' fees in addition to all damages otherwise available, whether or not litigation is commenced or prosecuted to final judgment, pay any court costs or expenses incurred by ChargePoint, and any finance charges accrued on any unpaid balance owed by Company, unless Company's non-payment is due to any breach of this Agreement by ChargePoint.

K. Suspended Shipments. ChargePoint reserves the right to suspend further shipments of goods if Company is over thirty (30) days late in payment of an undisputed invoice. ChargePoint reserves the right to terminate the order if Company is over sixty (60) days late in payment of an undisputed invoice

#### 4. **Installation**

Company shall be responsible for arranging for the installation and provisioning of the Charging Stations and for the costs thereof. At Company's request, ChargePoint may provide the names and contact information of one or more installers of Charging Stations; provided that, in providing such information ChargePoint makes no representation or warranty of any kind, nor does it undertake any liability, with respect to or regarding the quality of any installation or other services performed by any such installer. Notwithstanding the foregoing, CPI will engage one of its O&M Partners to install the Charging Stations on the prepared site and validation of electrical capacity, transformers, panels, breakers, wiring, cellular coverage and that station installation meets all CPI published requirements and local codes. EXCEPT AS SPECIFICALLY AGREED TO IN WRITING, CHARGEPOINT IS NOT RESPONSIBLE FOR AND WILL NOT BE LIABLE FOR, THE QUALITY OF ANY INSTALLATION SERVICES, NOT PERFORMED BY CPI OR ANY SUBCONTACTOR OF CPI, OR ANY CLAIM IN ANY WAY RELATING TO OR RESULTING FROM SUCH SERVICES.

#### 5. **Warranties/Limitation of Liability**

A. Warranty. The Charging Station is covered by the terms of ChargePoint's standard parts only product Warranty (the "Warranty"), which will expire on one year from the date of installation. All applicable warranties with respect to the Charging Station are set forth in the Warranty, and are hereby incorporated by reference into these Terms.

B. Post-Warranty Maintenance. Company acknowledges and agrees that in order to obtain warranty and/or other maintenance services for the Charging Stations after expiration of the Warranty, Company must purchase extended warranties and/or maintenance agreements directly from ChargePoint.

C. Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 5, CHARGEPOINT MAKES NO WARRANTY WITH RESPECT TO THE PERFORMANCE OF THE CHARGING STATIONS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. CHARGEPOINT EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS BY THE CHARGING STATIONS, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CHARGEPOINT DOES NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF CHARGING STATIONS.

D. Limitation of Liability.

i. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THESE TERMS, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF THESE TERMS OR THE TRANSACTIONS CONTEMPLATED HEREUNDER, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY OR ITS AGENTS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, THE ABOVE LIMITATIONS OF LIABILITY DO NOT APPLY TO THE PARTIES' INDEMNIFICATION OBLIGATIONS, IF ANY, MISAPPROPRIATION OR INFRINGEMENT OF INTELLECTUAL PROPERTY, OR BREACH OF CONFIDENTIALITY.

ii. COMPANY'S SOLE REMEDY FOR ANY BREACH BY CHARGEPOINT OF ITS WARRANTIES UNDER THESE TERMS SHALL BE LIMITED TO, AT CHARGEPOINT'S OPTION, REPAIR OR REPLACEMENT OF THOSE CHARGING STATIONS TO WHICH SUCH BREACH IS APPLICABLE OR REFUND BY CHARGEPOINT OF ALL OF THE PURCHASE PRICE OF ANY NON-CONFORMING CHARGING STATIONS.

E. Warranty Exclusions. The Warranty set forth in these Terms is subject to certain exclusions as more fully set forth in the Warranty. COMPANY HAS BEEN INFORMED AND UNDERSTANDS THAT, IN THE EVENT ANY SUCH EXCLUSION BECOMES APPLICABLE, ALL REPRESENTATIONS AND WARRANTIES CONTAINED IN THESE TERMS SHALL IMMEDIATELY BECOME NULL AND VOID.

F. Exclusive Remedies. THE REMEDIES CONTAINED IN SECTION 5 ARE COMPANY'S SOLE AND EXCLUSIVE REMEDIES AND ARE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES COMPANY MAY HAVE AGAINST CHARGEPOINT WITH RESPECT TO NONCONFORMANCE OF THE CHARGING STATIONS.

## 6. Intellectual Property

A. Restrictions on Use Company shall not: (i) create derivative works based on the Charging Stations, (ii) copy, frame or mirror any part or content of the Charging Stations, (iii) reverse engineer any Charging Station, or (iv) access the Charging Stations for any improper purpose whatsoever, including, without limitation, in order to (A) build a competitive product or service, or (B) copy any features, functions, interface, graphics or “look and feel” of the Charging Stations.

B. Ownership of Intellectual Property All right, title and interest in and to any intellectual property related in any way to the Charging Stations is, and shall remain, the exclusive property of ChargePoint. For these purposes, the term “intellectual property” shall mean, all of a party’s patents, patent applications, patent rights, copyrights, moral rights, algorithms, devices, application programming interfaces, databases, data collections, diagrams, inventions, methods and processes (whether or not patentable), know-how, trade secrets, trademarks, service marks and other brand identifiers, network configurations and architectures, proprietary information, protocols, schematics, specifications, software (in any form, including source code and executable code), techniques, interfaces, URLs, web sites, works of authorship, and all other forms of technology, in each case whether or not registered with a governmental entity or embodied in any tangible form and all rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world in any way arising prior to or during the term of these Terms.

C. ChargePoint warrants and represents that it has secured all necessary licenses, legal authority, consents or approvals to lawfully sell and provide any and all Charging Stations and all other equipment to Company pursuant this Agreement. ChargePoint shall defend including payment of attorneys’ fees, indemnify and hold Company, and its elected officials, officers, employees, servants, attorneys, designated volunteers, and agents serving as independent contractors in the role of Company officials, harmless from any loss, claim or liability in any way related to a claim that Company’s use of any of the Charging Stations or other equipment provided by ChargePoint is violating federal, state or local laws, or any intellectual property or proprietary rights relating to trade names, licenses, franchises, patents or other means of protecting intellectual property rights and/or interests in products or inventions. In the event any use by Company of any Charging Stations and/or any other equipment provided by ChargePoint is held to constitute an infringement and Company’s use thereof is enjoined, ChargePoint, at its expense, shall: (a) secure for Company the right to continue using the Charging Stations and all other equipment by suspension of any injunction or by procuring a license or licenses for Company; (b) modify the Charging Stations and/or all other equipment so that it becomes non-infringing; or (c) refund all sums paid by Company for the Charging Stations and/or other affected equipment. This covenant shall survive the termination of this Agreement.

## 7. General

A. Attorneys’ Fees. If any action at law or in equity is necessary to enforce the terms of these Terms, the prevailing party shall be entitled to reasonable attorneys’ fees, costs and expenses in addition to any other relief to which the prevailing party is otherwise entitled.

B. Force Majeure. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder on account strikes, shortages, riots, insurrection, fires, flood, storm, explosion, acts of God, war, governmental action, labor conditions, earthquakes, or any other cause which is beyond the reasonable control of such party.

C. Waiver. The failure of either party to require performance by the other party of any provision hereof shall not affect such party’s full right to require such performance at any time thereafter, nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

D. Severability. In the event that any provision of these Terms shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render these Terms unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted as to best accomplish the objectives of such provisions within the limits of applicable law or applicable court decisions.

E. Assignment. The rights and liabilities of the parties hereto shall bind and inure to the benefit of their successors, executors or administrators, provided, however, that neither ChargePoint nor Company may assign or delegate these Terms or any of its licenses, rights or duties under these Terms, whether by operation of law or otherwise, without the prior written consent of the other party in its reasonable discretion; provided, however, that Company and ChargePoint shall each be entitled to assign these Terms to an affiliate or to its successor in interest by way of merger, acquisition of substantially all of the assets of assignor or any similar event (collectively, “Acquisition Transactions”); and provided further, however, that notwithstanding any Acquisition Transaction, Company shall not assign these Terms to any competitor of ChargePoint without ChargePoint’s prior written consent, in its sole discretion. ChargePoint shall not be relieved of its obligations hereunder following any assignment, unless and until the assignee agrees in writing to be bound by the terms of this Agreement. Any attempted assignment in violation of this provision shall be void.

F. Notices. Any notice, request, demand or other communication by the terms hereof required or permitted to be given by one part to the other shall be given in writing by email with confirmation of receipt, certified or registered mail, return receipt requested, fax or courier addressed to such other party or delivered to the address for each party set forth below their respective signatures, or at such other fax, email address or office address as may be given from time to time by either of the parties.

G. Controlling Law. These Terms shall be governed in all respects by the laws of the State of California, exclusive of conflicts of law principles.

H. Venue. The State and Federal courts located in, or having jurisdiction over, San Bernardino County, California shall have exclusive jurisdiction and venue over any dispute arising out of or relating to these Terms. Each of the Parties submits to the jurisdiction and venue of these courts.

I. Entire Agreement. These Terms and the attachments hereto constitute the entire agreement between the parties regarding its subject matter. It supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. These Terms shall not be modified unless done so in a writing signed by an authorized representative of each party.

Name: Rosemary Hoerning

Name: Rex S. Jackson

Title: Interim City Manager

Title: Chief Financial Officer

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

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

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

Address:  
254 E. Hacienda Ave  
Campbell, CA. 95008

**Approved As to Form:**

**James L. Markman, City Attorney**

**CHARGEPOINT®**  
**MASTER SERVICES AND SUBSCRIPTION AGREEMENT**

**IMPORTANT: THIS MASTER SERVICES AND SUBSCRIPTION AGREEMENT IS A LEGAL AGREEMENT BETWEEN YOU OR THE CORPORATION, PARTNERSHIP OR OTHER LEGAL ENTITY YOU REPRESENT (“SUBSCRIBER”) AND CHARGEPOINT, INC., A DELAWARE CORPORATION (“CPI”). PLEASE READ IT CAREFULLY. BY USING ANY OF THE CHARGEPOINT SERVICES, YOU INDICATE YOUR ACCEPTANCE OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH ANY OF THESE TERMS AND CONDITIONS, DO NOT USE ANY CHARGEPOINT SERVICES.**

**IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A CORPORATION, PARTNERSHIP OR OTHER LEGAL ENTITY, THAT ENTITY REPRESENTS THAT YOU HAVE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS. IF YOU DO NOT HAVE SUCH AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, YOU MAY NOT ENTER INTO THIS AGREEMENT AND SUCH ENTITY MAY NOT USE THE CHARGEPOINT SERVICES.**

**1. AGREEMENT.**

**1.1 SCOPE OF AGREEMENT.** This Agreement governs the following activities:

- (a) Provisioning of Subscriber’s Charging Station(s), if any, on ChargePoint;
- (b) Activation and use of the ChargePoint Services on Subscriber’s Charging Station(s), if any;
- (c) Subscriber’s use of the APIs as part of the ChargePoint Services;
- (d) Each grant of Rights by Subscriber; and
- (e) Each grant of Rights by a third party to Subscriber.

**1.2 EXHIBITS AND PRIVACY POLICY.** This Agreement includes the CPI [Privacy Policy](#), as amended from time to time, and the following Exhibits, which are made a part of, and are hereby incorporated into, this Agreement by reference.

- Exhibit 1: Flex Billing Terms
- Exhibit 2: API Terms
- Exhibit 3: Terms Regarding Granting and Receipt of Rights

In the event of any conflict between the terms of this Agreement on the one hand, and the Privacy Policy or any Exhibit on the other hand, this Agreement shall govern. Capitalized terms not otherwise defined in any Exhibit or the Privacy Policy shall have the same meaning as in this Agreement.

**2. DEFINITIONS.** The following terms shall have the definitions set forth below when used in this Agreement:

**2.1 *“Affiliate”*** means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control”, for purposes of this definition, means direct or indirect ownership or control of fifty percent (50%) or more of the voting interests of the subject entity.

**2.2 *“APIs”*** means, individually or collectively, the application programming interfaces which are made available to Subscriber from time to time, as and when updated by CPI.

**2.3 *“ChargePoint Connections”*** shall have the meaning ascribed to it in the applicable data sheet. The term ChargePoint Connections shall also mean any successor service provided by CPI.

**2.4** **“ChargePoint®”** means the open-platform network of electric vehicle charging stations and the vehicle charging applications the network delivers, that is operated and maintained by CPI (as defined below) in order to provide various services to, among others, Subscriber and its employees.

**2.5** **“ChargePoint Services”** means, collectively, the various cloud services offerings (including, without limitation, APIs and application service plans) made available for subscription by CPI.

**2.6** **“ChargePoint Application”** means any of the applications established and maintained by CPI which will allow Subscriber to access ChargePoint Services.

**2.7** **“Charging Station”** means the electric vehicle charging station(s) purchased by Subscriber, whether manufactured by CPI or by a CPI authorized entity, which are registered and activated on ChargePoint.

**2.8** **“Content”** means all data collected, made available to, or maintained by CPI in connection with the operation of ChargePoint.

**2.9** **“CPI Marks”** means the various trademarks, service marks, trade names, logos, domain names, and other distinctive brand features and designations used in connection with ChargePoint and/or CPI manufactured Charging Stations, including without limitation, ChargePoint.

**2.10** **“CPI Property”** means (i) ChargePoint, (ii) the ChargePoint Services (including all User and other Content), (iii) all data generated or collected by CPI in connection with the operation of ChargePoint and ChargePoint Services, (iv) the CPI Marks, (v) the ChargePoint Cards, and (vi) all other CPI-supplied material developed or provided by CPI for Subscriber use in connection with the ChargePoint Services.

**2.11** **“Documentation”** means written information (whether contained in user or technical manuals, product materials, specifications or otherwise) pertaining to ChargePoint Services and/or ChargePoint and made available from time to time by CPI to Subscriber in any manner (including on-line).

**2.12** **“Effective Date”** means the earlier of (a) the date that Subscriber electronically accepts this Agreement, or (b) the date of Subscriber’s first use of the ChargePoint Services.

**2.13** **“Intellectual Property Rights”** means all intellectual property rights, including, without limitation, patents, patent applications, patent rights, trademarks, trademark applications, trade names, service marks, service mark applications, copyrights, copyright applications, franchises, licenses, inventories, know-how, trade secrets, Subscriber lists, proprietary processes and formulae, all source and object code, algorithms, architecture, structure, display screens, layouts, inventions, development tools and all documentation and media constituting, describing or relating to the above, including, without limitation, manuals, memoranda and records.

**2.14** **“Malicious Code”** means viruses, worms, time bombs, Trojan horses and all other forms of malicious code, including without limitation, malware, spyware, files, scripts, agents or programs.

**2.15** **“Party”** means each of CPI and Subscriber.

**2.16** **“PII”** means personally identifiable information regarding Subscriber or a User (e.g., name, address, email address, phone number or credit card number) that can be used to uniquely identify, contact or locate Subscriber or such User.

**2.17** **“Provisioning”** means activating Charging Stations, warranties and Service Plans on ChargePoint

**2.18** **“Rights”** means the rights, authorizations, privileges, actions, information and settings within the ChargePoint Services which a Rights Grantor grants to an Rights Grantee, to enable such Rights Grantee to access, obtain and use certain portions of the ChargePoint Services and certain information available therein in the course of providing services to or on behalf of such Rights Grantor in connection

with one or more of the Rights Grantor's Charging Stations. A Rights Grantor shall be deemed to have granted Rights to the entity that will be responsible for creating Subscriber's account and Provisioning Subscriber's Charging Stations. Such deemed grant may be terminated by Subscriber at any time.

**2.19** *"Service Plan(s)"* means subscription plans to the ChargePoint Services which are offered and sold by CPI from time to time, which vary according to their features, privileges and pricing.

**2.20** *"Subscriber"* means the City of Upland, a California municipal corporation.

**2.21** *"Subscriber Content and Services"* means any content and/or services that a Subscriber provides or makes available to Users and/or the general public in connection with the ChargePoint Services, other than Content, ChargePoint Services and CPI Property.

**2.22** *"Subscriber Marks"* means the various trademarks, service marks, trade names, logos, domain names, and other distinctive brand features and designations used by Subscriber in connection with its business and/or Charging Stations.

**2.23** *"Subscription Fees"* means the fees payable by Subscriber for subscribing to any ChargePoint Services.

**2.24** *"Taxes"* shall mean all present and future taxes, imposts, levies, assessments, duties or charges of whatsoever nature including without limitation any withholding taxes, sales taxes, use taxes, service taxes, value added or similar taxes at the rate applicable for the time being imposed by any national or local government, taxing authority, regulatory agency or other entity together with any penalty payable in connection with any failure to pay or any delay in paying any of the same and any interest thereon.

**2.25** *"Token(s)"* means the serialized proof of purchase of a Service Plan that is used by CPI in connection with enabling Services and/or provisioning Charging Stations.

**2.26** *"User"* means any person using a Charging Station.

**3. AVAILABLE CHARGEPOINT SERVICES & SERVICE PLANS.** A description of the various ChargePoint Services and Service Plans currently available for subscription is located on the CPI website. CPI may make other ChargePoint Services and/or Service Plans available from time to time, and may amend the features or benefits offered with respect to any ChargePoint Service or Service Plan at any time and from time to time. Subscription Fees are based on Subscriber's choice of Service Plan and not on actual usage of the Subscription.

**4. CPI'S RESPONSIBILITIES AND AGREEMENTS.**

**4.1 OPERATION OF CHARGEPOINT.** CPI agrees to provide and shall be solely responsible for: (i) provisioning and operating, maintaining, administering and supporting ChargePoint and related infrastructure (other than Subscriber's Charging Stations and infrastructure for transmitting data from Charging Stations to any ChargePoint operations center); (ii) provisioning and operating, maintaining, administering and supporting the ChargePoint Applications; and (iii) operating ChargePoint in compliance with all applicable laws. CPI will protect the confidentiality and security of PII in accordance with all applicable laws and regulations and the CPI Privacy Policy and acknowledges that it is responsible for the security of "cardholder data" (as that term is defined for purposes of the Payment Card Industry – Data Security Standards), if any, that CPI possesses, otherwise stores, processes or transmits on behalf of Subscriber or for any impact, if any, on the security of Subscriber's cardholder data environment.

**4.2 PROTECTION OF USER CONTENT.** Without limiting CPI's obligation of confidentiality as further described herein, CPI shall be responsible for establishing and maintaining a data privacy and

information security program, including physical, technical, administrative, and organizational safeguards, that is designed to meet industry standard data protection protocols.

At all times, CPI shall comply with the requirements of the California Information Practices Act of 1977, California Civil Code Section 1798, et seq., including California Civil Code Section 1798.82 which, among other actions, requires all businesses possessing or controlling specified personal information to notify those persons whose unencrypted personal information has been accessed without authorization. Additionally, CPI shall comply with all requirements of applicable privacy laws, including, to the extent applicable, the EU General Data Protection Regulation. In the event of any act, error or omission, negligence, misconduct, or breach that compromises the security, confidentiality, or integrity of Content relating to any User (“User Content”), including any cardholder data, or the physical, technical, administrative, or organizational safeguards put in place by CPI that relate to the protection of the security, confidentiality, or integrity of User Content, and/or that results in the identity theft and resulting financial loss suffered by any User, CPI shall, as applicable: (a) notify Subscriber as soon as practicable but no later than seventy-two (72) hours of becoming aware of such occurrence where unencrypted data was breached; (b) cooperate with Subscriber in investigating the occurrence, including making available reasonable records, logs, files, data reporting, and other materials required to comply with applicable law including, but not limited to, California Civil Code Section 1798.82; (c) in the case of PII in CPI’s reasonable business judgment, notify the affected Users to whom the unencrypted PII relates, as soon as practicable but no later than is required to comply with applicable law (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; and (f) indemnify, defend, and hold harmless Subscriber, for any and all liabilities arising out of CPI’s failure to comply with this Section 4.2. provided that the obligation to indemnify Subscriber shall not occur should the security or data breach occur as a result of Subscriber’s own actions. CPI’s liability under the foregoing indemnity shall not exceed the limits of the cyber liability policy required by this Agreement to be maintained by CPI.

**4.3 SUBSCRIBER CONTENT.** In addition to protecting User Content, as set forth in Section 4.2, above, CPI shall maintain and treat all Subscriber Content as confidential, except as otherwise expressly provided in this Agreement pursuant to the terms of the Privacy Policy. To the extent CPI makes any material change to the Privacy Policy, such notice shall electronically be provided to Subscriber. CPI shall provide no less than the same level of protection for Subscriber Content as it does for User Content. CPI is granted a limited license to use Subscriber Content only to the extent necessary to provide the services required or authorized to be provided to Subscriber and Users and/or Rights Grantees by this Agreement as provided in the Privacy Policy. Subscriber Content shall not include Content. ChargePoint is authorized to utilize Subscriber Content as Anonymized Data, provided that all such use shall be in accordance with the all applicable Laws, including Data Privacy Laws. “Anonymized Data” means aggregated, anonymized statistical data: (a) does not contain any PII; (b) does not contain any data, information or traits (i) from which the identity of Subscriber, any of its Affiliates or any of their respective personnel, or Users may be ascertained, or (ii) that may identify Subscriber, any of its Affiliates, any of their respective personnel, as the source of any of any portion of such data, and (c) shall in no event reveal the identity of Subscriber, any of its Affiliates, or any other individual. For clarity, any use by CPI of PII or other User information or data collected by CPI or generated by CPI in connection with the performance of the ChargePoint Services (collectively, “User Data”) shall be subject to the CPI Terms of Service entered into directly between CPI and the Users and shall be in accordance with the Privacy Policy. Notwithstanding anything to the contrary in the Agreement, CPI acknowledges and agrees that Subscriber: (A) disclaims all liability and responsibility for the content, accuracy, timeliness, completeness, availability or CPI’s or any third party’s use of the Anonymized Data, User Data, or any data used to generate the Anonymized Data; (B) makes no warranty, express or implied,

concerning the Feedback or the Anonymized Data, User Data, or data used to generate the Anonymized Data; and (C) CPI uses Anonymized Data and User Data at its own risk.

**4.4 LIMITATIONS ON RESPONSIBILITY.** CPI shall not be responsible for, and makes no representation or warranty with respect to the following: (i) specific location(s) or number of Charging Stations now, or in the future, owned, operated and/or installed by persons other than Subscriber, or the total number of Charging Stations that comprise ChargePoint; (ii) continuous availability of electrical service to any of Subscriber's Charging Stations; (iii) continuous availability of any wireless or cellular communications network or Internet service provider network necessary for the continued operation by CPI of ChargePoint; (iv) availability of or interruption of the ChargePoint Network attributable to unauthorized intrusions; and/or (v) charging stations that are not registered with and activated on the ChargePoint Network.

**4.5 SERVICE LEVELS AND CREDITS.** ChargePoint will provide a minimum of 98% uptime (the "Uptime Guarantee") for all the hosted network components and functionality of ChargePoint and the ChargePoint Services as measured on an annual basis, except for:

(i) CPI Planned downtime, for which CPI does during low impact hours as to not interfere with Subscriber's utilization of the Cloud Services;

(ii) Required repairs, for which CPI will provide Subscriber with written notice as soon as practicable and complete as quickly as commercially practicable;

(iii) Any unavailability caused by a Force Majeure Event, in which case CPI will follow the requirements identified in this Agreement; and

(iv) Any downtime caused by network connectivity issues outside the control of CPI.

Subscriber may terminate this agreement for material breach if CPI does not meet the Uptime Guarantee for (i) any three consecutive month periods or (ii) for any five months within a twelve month period.

**4.6 RECORDS.** The books, records, and documents of CPI, insofar as they relate to work performed or money received under this Agreement, shall be maintained for a period of four (4) years from the date of final payment and will be subject to audit. The records shall be maintained in accordance with generally accepted accounting principles. Such audit shall occur no more frequently than once a calendar year and is subject to reasonable notice to CPI.

## **5. SUBSCRIBER'S RESPONSIBILITIES AND AGREEMENTS.**

### **5.1 GENERAL.**

(a) All use of ChargePoint and ChargePoint Services by Subscriber, its employees and agents and its grantees of Rights shall comply with this Agreement and all of the rules, limitations and policies of CPI set forth in the Documentation. All ChargePoint Services account details, passwords, keys, etc. are granted to Subscriber solely for Subscriber's own use (and the use of its grantees of Rights), and Subscriber shall keep all such items secure and confidential. Subscriber shall prevent, and shall be fully liable to CPI for, any unauthorized access to or use of ChargePoint or ChargePoint Services via Subscriber's Charging Stations, ChargePoint Services account(s) or other equipment. Subscriber shall immediately notify CPI upon becoming aware of any such unauthorized use.

(b) Subscriber shall be solely responsible for: (i) Provisioning of its Charging Stations, if any; (ii) keeping Subscriber's contact information, email address for the receipt of notices hereunder, and billing address for invoices both accurate and up to date; (iii) updating on the applicable ChargePoint

Application, within five (5) business days, the location to which any of Subscriber's Charging Stations are moved; (iv) the maintenance, service, repair and/or replacement of Subscriber's Charging Stations as needed, including informing CPI of the existence of any Charging Stations that are non-operational and not intended to be replaced or repaired by Subscriber; and (v) compliance with all applicable laws.

(c) Subscriber shall deliver in full all benefits promised to Users by Subscriber in exchange for such Users connecting with Subscriber using ChargePoint Connections.

**5.2 REPRESENTATIONS AND WARRANTIES OF SUBSCRIBER.** Subscriber represents and warrants to CPI that: (i) it has the power and authority to enter into and be bound by this Agreement and shall have the power and authority to install the Charging Stations and any other electrical vehicle charging products which are registered and activated on the ChargePoint Network); (ii) the electrical usage to be consumed by Subscriber's Charging Stations will not violate or otherwise conflict with the terms and conditions of any applicable electrical purchase or other agreement including, without limitation, any lease, to which Subscriber is a party; and (iii) it has not installed or attached and will not install or attach Charging Stations on or to infrastructure not owned by Subscriber without proper authority, or in a manner that will block any easement or right of way without having lawful authority to do so.

**5.3 CHARGEPOINT CARDS.** Subscriber may be permitted by CPI, in CPI's sole discretion, to obtain CPI-provisioned radio-frequency identification cards ("ChargePoint Cards") which enable the individual card recipients to access and use ChargePoint. Subscriber may distribute such ChargePoint Cards to individuals, and each individual ChargePoint Card recipient is responsible for activating his or her ChargePoint Card on ChargePoint directly with CPI on the CPI web site. In no event will Subscriber create any separate ChargePoint accounts for any ChargePoint Card recipients or other third parties, nor will Subscriber create anonymous ChargePoint accounts associated with any ChargePoint Card.

**5.4 USE RESTRICTIONS AND LIMITATIONS.** Subscriber shall not:

(a) sell, resell, license, rent, lease or otherwise transfer the ChargePoint Services or any Content therein to any third party;

(b) interfere with or disrupt the ChargePoint Services, servers, or networks connected to the ChargePoint Services, or disobey any requirements, procedures, policies, or regulations of networks connected to the ChargePoint Services;

(c) restrict or inhibit any other user from using and enjoying the ChargePoint Services or any other CPI services;

(d) attempt to gain unauthorized access to the ChargePoint Network or the ChargePoint Services or related systems or networks or any data contained therein, or access or use ChargePoint or ChargePoint Services through any technology or means other than those provided or expressly authorized by CPI;

(e) create any ChargePoint Services user account by automated means or under false or fraudulent pretenses, or impersonate another person or entity on ChargePoint, or obtain or attempt to obtain multiple keys for the same URL;

(f) reverse engineer, decompile or otherwise attempt to extract the source code of the ChargePoint Services or any part thereof, or any Charging Station, except to the extent expressly permitted or required by applicable law;

(g) create derivative works based on any CPI Property;

(h) remove, conceal or cover the CPI Marks or any other markings, labels, legends, trademarks, or trade names installed or placed on the Charging Stations or any peripheral equipment for use in connection with Subscriber's Charging Stations;

(i) except as otherwise expressly permitted by this Agreement or in any applicable data sheet relating to a ChargePoint Service, copy, frame or mirror any part of the ChargePoint Services or ChargePoint Content, other than copying or framing on Subscriber's own intranets or otherwise solely for Subscriber's own internal business use and purposes;

(j) access ChargePoint, any ChargePoint Application or the ChargePoint Services for the purpose of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purpose, or for any improper purpose whatsoever, including, without limitation, in order to build a competitive product or service or copy any features, functions, interface, graphics or "look and feel;"

(k) use any robot, spider, site search/retrieval application, or other device to retrieve or index any portion of the ChargePoint Services or Content or collect information about ChargePoint users for any unauthorized purpose;

(l) upload, transmit or introduce any Malicious Code to ChargePoint or ChargePoint Services;

(m) use any of the ChargePoint Services if Subscriber is a person barred from such use under the laws of the United States or of any other jurisdiction; or

(n) use the ChargePoint Services to upload, post, display, transmit or otherwise make available (A) any inappropriate, defamatory, obscene, or unlawful content; (B) any content that infringes any patent, trademark, copyright, trade secret or other proprietary right of any party; (C) any messages, communication or other content that promotes pyramid schemes, chain letters, constitutes disruptive commercial messages or advertisements, or is prohibited by applicable law, the Agreement or the Documentation.

## **5.5 CONTENT.**

(a) ChargePoint Content (including but not limited to Charging Station data and status) is provided for planning purposes only. Subscriber may find that various events may mean actual Charging Station conditions (such as availability or pricing) differ from what is set forth in the Content. In addition, certain Charging Station-related Content, including Charging Station name and use restrictions, is set by the Charging Station owner and is not verified by CPI. Subscriber should exercise judgment in Subscriber's use of the Content.

(b) Certain Content may be provided under license from third parties and is subject to copyright and other intellectual property rights of such third parties. Subscriber may be held liable for any unauthorized copying or disclosure of such third party-supplied Content. Subscriber's use of such Content may be subject to additional restrictions set forth in the Documentation.

(c) Subscriber shall not copy, modify, alter, translate, amend, or publicly display any of the Content except as expressly permitted by the Documentation. Subscriber shall not present any portion of the Content in any manner, that would (i) make such Content false, inaccurate or misleading, (ii) falsify or delete any author attributions or labels of the origin or source of Content, or (iii) indicate or suggest that the Charging Station locations provided as part of the Content are anything other than ChargePoint® Network Charging Stations.

(d) Subscriber shall not remove, obscure, or alter in any manner any proprietary rights notices (including copyright and trademark notices), warnings, links or other notifications that appear in the ChargePoint Service.

## **6. SUBSCRIPTION FEES AND PAYMENT TERMS.**

**6.1 SUBSCRIPTION FEES.** Subscriber shall pay all Subscription Fees within forty-five (45) days of its receipt of CPI's invoice. All payments shall be made in U.S. Dollars by check, wire transfer, ACH payment system or other means approved by CPI. Provided CPI is not then in breach of this Agreement, Customer may not offset any amounts due to CPI hereunder against amounts due to Customer under this Agreement or any other agreement. Fees payable to CPI do not include any Taxes, and Subscriber is responsible for any and all such Taxes. All payment obligations under this Agreement are non-cancelable and non-refundable provided CPI is not then in breach of this Agreement and further provided Subscriber and/or Users are not enjoined from using any of the services paid for by Subscriber as a result of any claim of infringement of any intellectual or proprietary property right.

**6.2 LATE PAYMENTS.** Late payments shall be subject to a charge equal to the lesser of (i) one and one-half percent (1.5%) per month or (ii) the maximum rate permitted by law. Subscriber will reimburse CPI for attorneys' fees and other expenses reasonably incurred by CPI in the collection of any late payments. If any amount owing by Subscriber under this Agreement is more than forty-five (45) days overdue, CPI may, without otherwise limiting CPI's rights or remedies, (a) terminate this Agreement, (b) suspend the use by Subscriber of the ChargePoint Services until such amounts are paid in full, and/or (c) condition future ChargePoint Service renewals and other Subscriber purchases on payment terms other than those set forth herein; provided that CPI shall not exercise any such rights if Subscriber has reasonably disputed such charges and is cooperating diligently in good faith to resolve the dispute.

## **7. INTELLECTUAL PROPERTY RIGHTS AND LICENSES.**

**7.1 CPI PROPERTY.** As between CPI and Subscriber, CPI retains and reserves all right, title and interest (including all related Intellectual Property Rights) in and to the CPI Property and any improvements thereto. No rights are granted to Subscriber in the CPI Property hereunder except as expressly set forth in this Agreement.

**7.2 SUBSCRIBER PROPERTY.** As between CPI and Subscriber, Subscriber retains and reserves all right, title and interest (including all related Intellectual Property Rights) in and to (i) all Subscriber Marks and (ii) all Subscriber Content and Services (collectively, the "Subscriber Property"). No rights are granted to CPI in the Subscriber Property hereunder except as expressly set forth in this Agreement.

**7.3 LIMITED LICENSE TO SUBSCRIBER.** CPI hereby grants to Subscriber a royalty-free, non-assignable, non-transferable, and non-exclusive license to use the CPI Property solely in accordance with the terms of this Agreement (including without limitation all limitations and restrictions on such use) to the extent necessary for Subscriber to access, use and receive the ChargePoint Services as permitted herein.

**7.4 LIMITED LICENSE TO CPI.** Subscriber hereby grants to CPI a non-assignable, non-transferable, and non-exclusive license to use the Subscriber Property solely in accordance with the terms of this Agreement (including without limitation all limitations and restrictions on such use) to the extent necessary for CPI to provide the ChargePoint Services. Subject to Subscriber's prior, written approval, CPI may utilize the Subscriber Marks to advertise that Subscriber is using the ChargePoint Services. The foregoing license includes, for the duration of this Agreement, the right of CPI to reproduce, adapt, modify, translate, publicly perform, publicly display and distribute all Subscriber Content and Services

submitted, posted or displayed by Subscriber in the ChargePoint Services, solely for the purpose of enabling CPI to operate, market and promote the ChargePoint Services, and to index and serve such Subscriber Content and Services as search results through ChargePoint Services. CPI shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable perpetual license to use or incorporate in the ChargePoint Services any suggestions, enhancement requests, recommendations or other feedback provided by Subscriber or Subscriber Rights Grantees relating to the ChargePoint Services.

#### **7.5 ADDITIONAL TERMS REGARDING CPI MARKS.**

**(a) USE LIMITATIONS.** Subscriber shall display the CPI Marks in connection with Subscriber Charging Stations as required in this Agreement during the term of Subscriber's Service Plan. Subscriber shall not use any of the CPI Marks for or with any products other than its Charging Stations. From time to time, CPI may provide updated CPI Mark usage guidelines on the ChargePoint Application or elsewhere in the Documentation, and Subscriber shall thereafter comply with such updated guidelines. For any use of the CPI Mark not authorized by such guidelines, or if no such guidelines are provided, then for each initial use of the CPI Mark, Subscriber must obtain CPI's prior written consent, which shall not be unreasonably withheld or delayed, and after such consent is obtained, Subscriber may use the CPI Mark in the approved manner. All use by Subscriber of CPI's Marks (including any goodwill associated therewith) will inure to the benefit of CPI.

**(b) PROHIBITIONS.** Subscriber shall not use or display any CPI Mark (or any likeness of a CPI Mark):

(i) as a part of the name under which Subscriber's business is conducted or in connection with the name of a business of Subscriber or its Affiliates;

(ii) in any manner that (x) implies a relationship or affiliation with CPI other than as described under the Agreement, (y) implies any sponsorship or endorsement by CPI, or (z) can be reasonably interpreted to suggest that any Subscriber Content and Services has been authored by, or represents the views or opinions of CPI or CPI personnel;

(iii) in any manner intended to disparage CPI, ChargePoint, or the ChargePoint Services, or in a manner that is misleading, defamatory, infringing, libelous, disparaging, obscene or otherwise objectionable to CPI;

(iv) in any manner that violates any law or regulation; or

(v) that is distorted or altered in any way (including squeezing, stretching, inverting, discoloring, etc.) from the original form provided by CPI.

**(c) NO REGISTRATION OF CPI MARKS.** Subscriber shall not, directly or indirectly, register or apply for, or cause to be registered or applied for, any CPI Marks or any patent, trademark, service mark, copyright, trade name, domain name or registered design that is substantially or confusingly similar to a CPI Mark, patent, trademark, service mark, copyright, trade name, domain name or registered design of CPI, or that is licensed to, connected with or derived from confidential, material or proprietary information imparted to or licensed to Subscriber by CPI. At no time will Subscriber challenge or assist others to challenge the CPI Marks (except to the extent such restriction is prohibited by law) or the registration thereof by CPI.

**(d) TERMINATION AND CESSATION OF USE OF CPI AND SUBSCRIBER MARKS.** Upon termination of this Agreement, the Parties will immediately discontinue all use and display of all of the other Party's Marks.

#### **8. LIMITATIONS OF LIABILITY.**

**8.1 DISCLAIMER OF WARRANTIES.** CHARGEPOINT AND THE CHARGEPOINT SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE” FOR SUBSCRIBER’S USE, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT. WITHOUT LIMITING THE FOREGOING, CPI DOES NOT WARRANT THAT (A) SUBSCRIBER’S USE OF THE CHARGEPOINT SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, FREE FROM ERROR, OR MEET SUBSCRIBER’S REQUIREMENTS; (B) ALL CONTENT AND OTHER INFORMATION OBTAINED BY SUBSCRIBER FROM OR IN CONNECTION WITH THE CHARGEPOINT SERVICES WILL BE ACCURATE AND RELIABLE; (C) ALL DEFECTS IN THE OPERATION OR FUNCTIONALITY OF THE CHARGEPOINT SERVICES WILL BE CORRECTED. ALL CONTENT OBTAINED THROUGH THE CHARGEPOINT SERVICES IS OBTAINED AT SUBSCRIBER’S OWN DISCRETION AND RISK, AND SUBSCRIBER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO SUBSCRIBER’S COMPUTER SYSTEM OR OTHER DEVICE, LOSS OF DATA, OR ANY OTHER DAMAGE OR INJURY THAT RESULTS FROM THE DOWNLOAD OR USE OF ANY SUCH CONTENT.

**8.2 EXCLUSION OF CONSEQUENTIAL AND RELATED DAMAGES.** REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL CPI BE LIABLE FOR ANY LOST REVENUE OR PROFIT, LOST OR DAMAGED DATA, BUSINESS INTERRUPTION, LOSS OF CAPITAL, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY OR WHETHER ARISING OUT OF THE USE OF OR INABILITY TO USE THE CHARGEPOINT NETWORK, ANY CHARGEPOINT SERVICES, THIS AGREEMENT, A GRANT OR RECEIPT OF RIGHTS OR OTHERWISE OR BASED ON ANY EXPRESSED, IMPLIED OR CLAIMED WARRANTIES BY SUBSCRIBER NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT. THIS SECTION SHALL NOT APPLY TO CLAIMS AND LIABILITIES FOR BODILY INJURY, DEATH, OR PROPERTY DAMAGE TO THE EXTENT CAUSED BY CPI’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

**8.3 ELECTRICAL, CELLULAR AND INTERNET SERVICE INTERRUPTIONS.** Neither CPI nor Subscriber shall have any liability whatsoever to the other with respect to damages caused by: (i) electrical outages, power surges, brown-outs, utility load management or any other similar electrical service interruptions, whatever the cause; (ii) interruptions in wireless or cellular service linking Charging Stations to ChargePoint; (iii) interruptions attributable to unauthorized ChargePoint Network intrusions; (iv) interruptions in services provided by any Internet service provider not affiliated with CPI; or (v) the inability of a Charging Station to access ChargePoint as a result of any change in product offerings (including, without limitation, the any network upgrade or introduction of any “next generation” services) by any wireless or cellular carrier. This includes the loss of data resulting from such electrical, wireless, cellular or Internet service interruptions.

**8.4 LIMITATION OF LIABILITY.** Each Party’s aggregate liability to the other under this Agreement shall not exceed the greater of (i) \$50,000 or (ii) aggregate Subscription Fees paid by Subscriber to CPI in the twelve (12) calendar months prior to the event giving rise to the liability. Notwithstanding the foregoing, this Section 8.4 shall not apply to (i) a Party’s indemnification obligations, (ii) breach of confidentiality, or (iii) misappropriation or infringement of intellectual property.

**8.5 CELLULAR CARRIER LIABILITY.** IN ORDER TO DELIVER THE CHARGEPOINT SERVICES, CPI HAS ENTERED INTO CONTRACTS WITH ONE OR MORE UNDERLYING WIRELESS SERVICE CARRIERS (THE “UNDERLYING CARRIER”). SUBSCRIBER HAS NO CONTRACTUAL RELATIONSHIP WITH THE UNDERLYING CARRIER AND SUBSCRIBER IS NOT A THIRD PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN CPI AND THE UNDERLYING CARRIER. SUBSCRIBER UNDERSTANDS AND AGREES THAT THE UNDERLYING CARRIER HAS NO LIABILITY OF ANY KIND TO SUBSCRIBER, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE. SUBSCRIBER HAS NO PROPERTY RIGHT IN ANY NUMBER ASSIGNED TO IT, AND UNDERSTANDS THAT ANY SUCH NUMBER CAN BE CHANGED. SUBSCRIBER UNDERSTANDS THAT CPI AND THE UNDERLYING CARRIER CANNOT GUARANTEE THE SECURITY OF

WIRELESS TRANSMISSIONS, AND WILL NOT BE LIABLE FOR ANY LACK OF SECURITY RELATING TO THE USE OF THE CHARGEPOINT SERVICES EXCEPT AS PROVIDED HEREIN.

**8.6 ADDITIONAL RIGHTS.** BECAUSE SOME STATES OR JURISDICITONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES AND/OR THE DISCLAIMER OF IMPLIED WARRANTIES AS SET FORTH IN THIS SECTION 8, ONE OR MORE OF THE ABOVE LIMITATIONS MAY NOT APPLY; PROVIDED THAT, IN SUCH INSTANCES, CPI'S LIABILTY AND/OR IMPLIED WARRANTIES GRANTED IN SUCH CASES SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

**8.7** Nothing in this Section 8 shall in any way be deemed to limit any obligation of indemnification by CPI as set forth in Section 4.2.

**8.8 INSURANCE COVERAGE.** CPI will maintain adequate insurance as required by law to cover CPI's obligations under the Agreement. Coverages will be placed with insurers who have an AM Best rating of AVIII or better. CPI's insurance will include a waiver of the insurer's subrogation rights against Subscriber. CPI will maintain the following *minimum coverages*:

Nothing in this section shall in any way alter, amend, or limit the CPI's duty to defend, indemnify, and hold harmless to the fullest extent of law. CPI shall obtain and maintain the policies of insurance or equivalent program of self-insurance and limits as shown below for the duration of this Agreement. The insurance coverages and limits of liability shown are the minimum insurance requirements in this Agreement.

1. Commercial General Liability, using a standard ISO CG 00 01 occurrence form, including premises, operations, products and completed operations and contractual liability with limits not less than \$1,000,000 per occurrence, \$2,000,000 General Aggregate and \$1,000,000 Products-Completed Operations Aggregate for bodily injury, personal injury, and property damage.

a. The Commercial General Liability Coverage shall include the following endorsements:

(i) Subscriber, its Board, officers, agents and employees shall be included as Additional Insureds either by specific endorsement naming these parties or a blanket additional insured endorsement applicable "when required by written contract or contract"; (iii) A Primary, Non-contributory endorsement in favor of Subscriber, its Board, officers, agents and employees or a blanket primary, non-contributory endorsement applicable "when required by written contract or contract".

b. The Commercial General Liability Coverage shall not include the following endorsements: (i) Amendment of Contractual Liability (ii) Total Pollution Exclusion (iii) Cross Suits Liability Exclusion

2. Automobile Liability, using a standard ISO Business Auto CA 00 01 form with limits not less than \$1,000,000 per accident for bodily injury and property damage for all owned, hired and non-owned automobiles. Coverage shall include Contractual Liability. a. The Business Auto coverage shall include the following endorsements:

(i) Broadened Pollution Coverage Endorsement; (ii) Subscriber, its Board, officers, agents and employees shall be included as Designated Insureds or a blanket additional insured endorsement applicable "when required by written contract or contract"; (iv) A Primary, Non-contributory endorsement in favor of Subscriber, its Board, officers, agents and employees or a blanket primary, non-contributory endorsement applicable "when required by written contract or contract".

3. Workers' Compensation including statutory coverage as required by the State of California and including Employer's Liability with limits not less than \$1,000,000 each accident; \$1,000,000 policy limit bodily injury by disease; \$1,000,000 each employee bodily injury by accident.

4. Umbrella or Excess Liability coverage with limits not less than \$3,000,000 excess over the Commercial General Liability, Automobile Liability and Employer's Liability.

a. The Umbrella or Excess Liability coverage shall include the following endorsements:

(i) All endorsements required under Section 8.8. Paragraphs 1. (a), 1. (b), 2. (i) above;

5. Cyber Liability Insurance with limits of not less than \$1,000,000 for each occurrence or event with an annual aggregate of \$1,000,000 as further described below is required. Also, Professional Liability insurance with limits not less than \$1,000,000 per claim or occurrence and in the Aggregate. If possible, given the nature of this contract, Subscriber prefers that both lines of coverage under one policy with separate limits with one carrier. Nonetheless, and regardless of whether CPI meets such requirement lines of coverage separate or together, the following minimum requirements are in effect:

a. Cyber Liability Insurance with limits not less than \$1,000,000 for each occurrence or event with an annual aggregate of \$1,000,000 covering claims including but not limited to invasion of privacy violations, breach of data, disruption of networks, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, introduction or intrusion of a virus, malware, notification, credit monitoring, breach response costs, regulatory fines and penalties, extortion and network security, and also infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, up to the policy limits. As an additional requirement, the policy should specifically contain 1st party and 3rd party protections: • 1st Party covers notifying CPI's clients, credit monitoring, public relations, loss of business income or interruption, amounts to pay a cyber extortionist of the vendor. • 3rd Party would cover failing to anticipate or prevent the transfer of a virus to a 3rd party, 3rd party notification, misuse, disclosure or theft of confidential info, and failure to secure confidential info.

6. If coverage written on a claims made and reported form, such coverage shall contain an Extended Reporting Period for 3 years following the termination date of this contract.

7. All coverage shall have a pending and prior litigation date, and/or inception date, where applicable, that pre-dates the inception of this Agreement.

8. The insurance required by Section 8.8 Paragraphs 5. and 6. may be satisfied by an IT (or 'Technology') Professional Liability policy that combines the coverage attributes as described in those same paragraphs with limits not less than \$2,000,000 per occurrence and in the Aggregate.

9. Should any of the insurance policies contain either a deductible or self-insured retention, the CPI shall be responsible to pay that deductible or self-insured retention and Subscriber shall not be responsible to pay these costs. Notwithstanding the above, and this shall in no way alleviate CPI's responsibility to pay such deductible or retention, nor limit, alter or amend the requirements that CPI shall to the fullest allowable by law, indemnify, defend and hold harmless Subscriber, CPI shall ensure that all policies shall recognize the erosion of the retention or deductible from other sources.

10. Subscriber reserves all rights, including the right to require a lower retention than presented by Subscriber. If such lower retention cannot be obtained in the market, than the Subscriber reserves the rights to inspect any and all financial statements of CPI and require further financial guarantees or assurances if any information calls into question the CPI's ability to pay.

11. Should any required insurance policies be cancelled, non-renewed or if CPI fails to renew, CPI shall provide notice of such cancellation, non-renewal or failure to renew immediately to Subscriber within 20 days, except in the event of non-payment where such notice shall be provided with 10 days.

12. All insurance policies as required in this section shall be written through insurance companies that are either admitted in the State of California or on the California Department of Insurance approved list of non-admitted insurers. All insurance companies shall have and maintain a minimum A. M. Best rating of A VII.

14. If separately requested to [cplegal@chargepoint.com](mailto:cplegal@chargepoint.com), Certificates of Insurance Coverage shall be filed by CPI with Subscriber evidencing all of the insurance coverages required in this section at the time this Agreement is executed. The certificates must have all required endorsements attached or the Certificate will be rejected as non-compliant. The failure to furnish such evidence may be considered default by CPI. Subscriber reserves the right to require complete, certified copies of all required insurance policies, at any time.

15. Acceptance or failure to reject any certificates or endorsements shall in no way alter, amend, or limit CPI's duty to defend, indemnify, and hold harmless to the fullest extent of law.

## **9. TERM AND TERMINATION.**

**9.1 TERM OF AGREEMENT.** This Agreement shall become effective on the Effective Date and shall continue until the expiration of all of Subscriber's Service Plans.

**9.2 SERVICE PLAN TERM.** Each Service Plan acquired by Subscriber shall commence as follows: Each Service Plan acquired for use with a new Charging Station will commence on the earlier to occur of (i) the date of Provisioning such new Charging Station, or (ii) one year from the date the Token(s) necessary for Provisioning such new Charging Station is made available to Subscriber or its installer. Renewals of Service Plans will commence on the date of the expiration of the Subscription being renewed. Each Subscriber Service Plan shall continue for the applicable duration thereof, unless this Agreement is terminated earlier in accordance with its terms.

### **9.3 TERMINATION BY CPI.**

(a) This Agreement may be immediately terminated by CPI: (i) if Subscriber is in material breach of any of its obligations under this Agreement, and has not cured such breach within thirty (30) days (or within five (5) days in the case of any payment default) of Subscriber's receipt of written notice thereof; (ii) Subscriber becomes the subject of a petition in bankruptcy or any other proceeding related to insolvency, receivership, liquidation or an assignment for the benefit of creditors; (iii) upon the determination by any regulatory body that the subject matter of this Agreement is subject to any governmental regulatory authorization or review that imposes additional costs of doing business upon CPI; or (iv) as otherwise explicitly provided in this Agreement. Regardless of whether Subscriber is then in breach, CPI may, in its reasonable discretion, determine that it will not accept any renewal by Subscriber of its subscription to ChargePoint Services. In such case, this Agreement shall terminate upon the later of the expiration of all of Subscriber's subscriptions to ChargePoint Services.

(b) CPI may in its discretion suspend Subscriber's continuing access to the ChargePoint Services or any portion thereof if (A) Subscriber has breached any provision of this Agreement, or has acted in manner that indicates that Subscriber does not intend to, or is unable to, comply with any provision of this Agreement; (B) such suspension is required by law (for example, due to a change to the law governing the provision of the ChargePoint Services); or (c) providing the ChargePoint Services to Subscriber could create a security risk or material technical burden as reasonably determined by CPI. CPI shall promptly provide written notice to Subscriber in the event CPI suspends the Services.

#### **9.4 TERMINATION BY SUBSCRIBER.**

This Agreement may be immediately terminated by Subscriber without prejudice to any other remedy of Subscriber at law or equity: (i) if CPI is in material breach of any of its obligations under this Agreement, and has not cured such breach within thirty (30) days of the date of its receipt of written notice thereof, or (ii) CPI becomes the subject of a petition in bankruptcy or any other proceeding related to insolvency, receivership, liquidation or an assignment for the benefit of creditors; or (iii) when determined by Subscriber to be in the public's best interest, following not less than thirty (30) days prior, written notice to CPI .

**9.5 REFUND OR PAYMENT UPON TERMINATION.** Upon any termination of this Agreement for cause by Subscriber pursuant to Section 9.4(i), 10.1, or 10.10, or by CPI pursuant to Section 9.3(a)(iii), CPI shall refund to Subscriber a pro-rata portion of any pre-paid Subscription Fees based upon the remaining Service Plan term. Upon any termination for any other reason, Subscriber shall not be entitled to any refund of any Subscription Fees as a result of such termination. In no event shall any termination relieve Subscriber of any unpaid Subscription Fees due CPI for the Service Plan term in which the termination occurs or any prior Service Plan term, unless Subscriber terminates for an uncured breach by CPI.

**9.6 SURVIVAL.** Those provisions dealing with the Intellectual Property Rights of CPI, limitations of liability and disclaimers, restrictions of warranty, Applicable Law and those other provisions which by their nature or terms are intended to survive the termination of this Agreement will remain in full force and effect as between the Parties hereto regardless of the termination of this Agreement.

**10. INDEMNIFICATION.** Subscriber hereby agrees to indemnify, defend and hold CPI, its officers, directors, agents, affiliates, distribution partners, licensors and suppliers harmless from and against any and all claims, actions, proceedings, costs, liabilities, losses and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Claims") suffered or incurred by such indemnified parties resulting from or arising out of Subscriber's negligence or willful misconduct in its actual or alleged use (directly, or through a grantee of Rights by Subscriber) of the ChargePoint Services, ChargePoint or Subscriber Content and Services. Subscriber will cooperate as fully as reasonably required in the defense of any claim. Subscriber reserves the right, at its own expense, to assume the exclusive defense and control of any matter subject to indemnification by Subscriber. Notwithstanding the foregoing, Subscriber shall not indemnify for claims to the extent caused by CPI's own negligence or willful misconduct.

CPI hereby agrees to indemnify, defend and hold Subscriber, its elected officials, officers, employees, agents, and volunteers harmless from and against any and all claims, actions, proceedings, costs, liabilities, losses and expenses (including, but not limited to, payment of reasonable attorneys' fees) ("Claims") to the extent resulting from or arising out of CPI's negligence or willful misconduct for Claims for (i) personal

injury, death, and/or property damage caused or contributed to, by CPI or any of CPI's owners, officers, employees, contractors, or agents while physically present on property owned by or under the control of Subscriber and in the performance of maintenance or other services required by this Agreement; or (ii) any and all claims alleging infringement of any proprietary or intellectual property right as a result of Subscriber's use of ChargePoint, the ChargePoint Application, any ChargePoint Station, or any of the ChargePoint Services. CPI will cooperate as fully as reasonably required in the defense of any claim. CPI reserves the right, at its own expense, to assume the exclusive defense and control of any matter subject to indemnification by CPI. Should any claim of infringement prevent Subscriber's use of any of the ChargePoint Services or any ChargePoint Station, CPI will provide alternate, non-infringing services providing substantially similar functionality and compatibility with Subscriber's Charging Stations. Notwithstanding the foregoing, CPI shall have no duty to indemnify for any Claims to the extent caused by Subscriber's own negligence or willful misconduct. Notwithstanding the foregoing, CPI shall not indemnify for claims to the extent caused by Subscriber's own negligence or willful misconduct.

## **11. GENERAL.**

**11.1 AMENDMENT OR MODIFICATION.** CPI reserves the right to modify this Agreement from time to time. CPI will provide notice of each such modification to Subscriber. Subscriber's continued use of the ChargePoint Services following such notice will constitute an acceptance of the modified Agreement. Should Subscriber not agree to the modification, Subscriber may terminate upon thirty (30) days prior, written notice to CPI and CPI will provide a pro-rata refund of Subscriber's fees.

**11.2 WAIVER.** The failure of either Party at any time to enforce any provision of this Agreement shall not be construed to be a waiver of the right of such Party to thereafter enforce that provision or any other provision or right.

**11.3 FORCE MAJEURE.** Except with respect to payment obligations, neither CPI nor Subscriber will be liable for failure to perform any of its obligations hereunder due to causes beyond such party's reasonable control and occurring without its fault or negligence, including but not limited to fire, flood, earthquake or other natural disaster (irrespective of such Party's condition of any preparedness therefore); war, embargo; riot; strike; labor action; any lawful order, decree, or other directive of any government authority that prohibits a Party from performing its obligations under this Agreement; material shortages; shortage of transport; and failures of suppliers to deliver material or components in accordance with the terms of their contracts.

**11.4 ARBITRATION.** This Agreement is to be construed according to the laws of the State of California, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any conflict of law provisions that would require application of another choice of law. Except with respect to any matter relating to Subscriber's violation of the intellectual property rights of CPI, and upon written agreement of the Parties, any dispute arising from or relating to this Agreement shall be arbitrated in the County of San Bernardino, California. The arbitration shall be administered by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, and judgment on any award may be entered in any court of competent jurisdiction. If the Parties agree, a mediator may be consulted prior to arbitration. All claims shall be brought in the parties' individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding. With respect to any matter relating to the intellectual property rights of CPI, such claim may be litigated in a court of competent jurisdiction in the County of San Bernardino. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs.

**GOVERNING LAW AND VENUE.** The provisions of this Agreement shall be governed by the laws of the State of California. Venue for any legal action arising out of this Agreement shall be the San Bernardino County Superior Court, or the United States District Court, Central District, State of California.

**11.5 NOTICES.** Other than the notices required in Sections 11.5 and 11.6, any notice required or permitted by this Agreement shall be sent (a) if by CPI, via electronic mail to the address indicated by Subscriber in Subscriber's ChargePoint Services account, with a copy sent by U.S. mail to the City of Upland City Clerk; or (b) if by Subscriber, via electronic mail to [mssa@chargepoint.com](mailto:mssa@chargepoint.com).

**11.6 INJUNCTIVE RELIEF.** Subscriber acknowledges that damages for improper use of the ChargePoint Services may be irreparable; therefore, CPI is entitled to seek equitable relief, including but not limited to preliminary injunction and injunction, in addition to all other remedies.

**11.7 SEVERABILITY.** Except as otherwise specifically provided herein, if any term or condition of this Agreement or the application thereof to either Party will to any extent be determined jointly by the Parties or by any judicial, governmental or similar authority, to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to this Agreement, the Parties or circumstances other than those as to which it is determined to be invalid or unenforceable, will not be affected thereby.

**11.8 ASSIGNMENT AND SUBCONTRACTING.** Neither Party may subcontract, and Subscriber may not assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other (not to be unreasonably withheld). In the event of any purported assignment in breach of this Section, CPI shall be entitled, at its sole discretion, to terminate this Agreement upon written notice given to Subscriber. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. CPI may assign its rights and obligations under this Agreement following not less than thirty (30) days' prior written notice to Subscriber.

**11.9 NO AGENCY OR PARTNERSHIP.** CPI, in the performance of this Agreement, is an independent contractor. In performing its obligations under this Agreement, CPI shall maintain complete control over its employees, its subcontractors and its operations. No partnership, joint venture or agency relationship is intended by CPI and Subscriber to be created by this Agreement. Neither Party has any right or authority to assume or create any obligations of any kind or to make any representation or warranty on behalf of the other Party, whether express or implied, or to bind the other Party in any respect whatsoever.

**11.10 ENTIRE AGREEMENT.** This Agreement (including the attached Exhibits) contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes and cancels all previous and contemporaneous agreements, negotiations, commitments, understandings, representations and writings. All purchase orders issued by Subscriber shall state that such purchase orders are subject to all of the terms and conditions of this Agreement, and contain no other term other than the type of Service Plan, the number of Charging Stations for which such Service Plan is ordered, the term of such Service Plans and applicable Subscription Fees. To the extent of any conflict or inconsistency between the terms and conditions of this Agreement and any purchase order, Service Plan or Exhibit, the Agreement shall prevail. Except as expressly provided for herein, no terms or conditions stated in any other documentation shall be incorporated into or form any part of this Agreement, and all such purported terms and conditions shall be null and void.

**11.11 COPYRIGHT POLICIES.** It is CPI's policy to respond to notices of alleged copyright infringement that comply with applicable international intellectual property law (including, in the United States, the Digital Millennium Copyright Act) and to terminate the accounts of repeat infringers.

**11.12 THIRD PARTY RESOURCES.** The ChargePoint Services may include hyperlinks to other websites or resources. CPI has no control over any web sites or resources that are provided by companies or persons other than CPI. Subscriber acknowledges and agrees that CPI is not responsible for the availability of any such web sites or resources, CPI does not endorse any advertising, products or other materials on or available from such web sites or resources, and CPI is not liable for any loss or damage that may be incurred by Subscriber as a result of any reliance placed by Subscriber on the completeness, accuracy or existence of any advertising, products, or other materials on, or available from, such websites or resources.

**11.13 COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute but one and the same document.

**11.14 ENGLISH LANGUAGE AGREEMENT GOVERNS.** Where CPI has provided Subscriber with a translation of the English language version of this Agreement, Subscriber agrees that the translation is provided for Subscriber's convenience only and that the English language version of this Agreement governs Subscriber's relationship with CPI. If there is any conflict between the English language version of this Agreement and such translation, the English language version will prevail.

Subscriber:

ChargePoint, Inc.

Name: Rosemary Hoerning

Name: Jonathan Kaplan

Title: Interim City Manager

Title: General Counsel

Date:

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

Address:

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

Address:

254 E. Hacienda Ave  
Campbell, CA. 95008

**Approved As to Form:**

**James L. Markman, City Attorney**

**EXHIBIT 1**  
**FLEX BILLING TERMS**

**This Exhibit sets forth certain additional terms and conditions (“Flex Billing Terms”) pursuant to which Subscriber may charge Users fees for the use of Subscriber’s Charging Stations. In order to charge such fees, Subscriber must subscribe to a Service Plan that includes CPI’s management, collection and/or processing services related to such fees (“Flex Billing”).**

**1. DEFINITIONS.** The following additional defined terms shall apply to these Flex Billing Terms:

**1.1 “CPI Fees”** means a fee, currently equal to ten percent (10%) of Session Fees, charged for a particular Session. CPI Fees are charged by CPI in exchange for its collection and processing of Session Fees on behalf of Subscriber. CPI will provide Subscriber with thirty (30) days prior written notice (which may include, without limitation, notice provided by CPI through its regular newsletter to Subscriber) of any increase in CPI Fees which increase shall not exceed five percent (5%) per year.

**1.2 “Net Session Fees”** means the total amount of Session Fees collected on behalf of the Subscriber by CPI, less CPI Fees and Taxes, if any, required by law to be collected by CPI from Users in connection with the use of Charging Stations. Except as required by law, Subscriber shall be responsible for the payment of all Taxes incurred in connection with use of Subscriber’s Charging Stations.

**1.3 “Session” or “Charging Session”** means the period of time during which a User uses Subscriber’s Charging Station to charge his or her electric vehicle for a continuous period of time not less than two (2) minutes commencing when a User has accessed such Charging Station and ending when such User has terminated such access.

**1.4** *“Session Fees”* means the fees set by the Subscriber for a Charging Session, inclusive of any applicable Taxes.

## **2. FLEX-BILLING SERVICE FOR CHARGING STATIONS.**

**2.1. SESSION FEES.** Subscriber shall have sole authority to determine and set in real-time Session Fees. Subscriber shall be solely responsible for determining and charging Session Fees in compliance with all applicable laws and regulations (including without limitation any restriction on Subscriber’s use of per-kWh pricing). Subscriber acknowledges that CPI is not responsible for informing Subscriber of applicable laws or changes thereto, and CPI will not be liable to Subscriber or any third party for any alleged or actual failure of Subscriber to comply with such applicable laws and regulations.

**2.2 DEDUCTIONS FROM SESSION FEES.** In exchange for CPI collecting Session Fees on behalf of the Subscriber, the Subscriber hereby authorizes CPI to deduct from all Session Fees collected: (i) CPI Fees and (ii) to the extent required by Section 3, applicable Taxes.

**2.3 PAYMENT TO SUBSCRIBER OF NET SESSION FEES.** CPI shall remit Net Session Fees to Subscriber not more than thirty (30) days after the end of each calendar month as directed by Subscriber from time to time through the applicable ChargePoint Services. Notwithstanding the foregoing, no such payment will be required if at the end of any calendar month the amount due to Subscriber hereunder is less than fifty U.S. Dollars (\$50), except in connection with the expiration or termination of this Agreement. In no event shall CPI remit amounts due to Subscriber, regardless of the amount then due, later than thirty (30) days following the end of each calendar quarter.

**3. TAXES.** Subscriber is responsible for the payment of all Taxes incurred in connection with Session Fees; provided that CPI is solely responsible for all Taxes assessable based on CPI’s income, property and employees. Where CPI is required by law to collect and/or remit the Taxes for which Subscriber is responsible, the appropriate amount shall be invoiced to Subscriber and deducted by CPI from Session Fees, unless Subscriber has otherwise provided CPI with a valid tax or regulatory exemption certificate or authorization from the appropriate taxing or regulatory authority.

**EXHIBIT 2**  
**API TERMS**

This Exhibit sets forth certain additional terms and conditions (“API Terms”) governing Subscriber’s use of the APIs in connection with Subscriber’s use of the ChargePoint Services. The API Terms are part of the Agreement, and all such use of the APIs remains subject to the Agreement terms.

1. **ADDITIONAL DEFINITIONS.** The following additional definitions shall apply to the API Terms.

1.1 **“API Implementation”** means a Subscriber software application or website that uses any of the APIs to obtain and display Content in conjunction with Subscriber Content and Services.

1.2 **“API Documentation”** means all Documentation containing instructions, restrictions or guidelines regarding the APIs or the use thereof, as amended and/or supplemented by CPI from time to time.

1.3 **“CPI Site Terms”** means the Terms and Conditions displayed on CPI’s website, governing use of CPI’s website and the ChargePoint Services by visitors who are not Service Plan subscribers.

2. **API USE.** Subscriber may use the APIs as and to the extent permitted by Subscriber’s Service Plan and the API Documentation, subject to the terms and conditions of the Agreement.

2.1 **AVAILABLE APIs AND FUNCTION CALLS.** The APIs give Subscriber access to information through a set of function calls. The particular APIs and API function calls made available by CPI from time to time (and the Content available through such APIs and function calls) will be limited by Subscriber’s Service Plan, and Subscriber’s particular Service Plan may not include all APIs and function calls then available from CPI.

2.2 **USE AND DISPLAY OF CONTENT.** Subscriber is permitted to access, use and publicly display the Content with Subscriber Content and Services in Subscriber’s API Implementation, subject to the following requirements and limitations.

(a) All Charging Station locations provided to Subscriber as part of the Content shall be clearly identified by Subscriber in Subscriber’s API Implementation as ChargePoint® Network Charging Stations and shall contain the Brand Identifiers required by the API Documentation. In no event shall Subscriber’s API Implementation identify or imply that any Charging Station is a part of any network of charging stations other than ChargePoint. Notwithstanding the foregoing, and except to identify itself, CPI shall not display any advertisements or other commercial messages on any Charging Station without Subscriber’s prior, written consent.

(b) Subscriber shall keep the Content used by Subscriber’s API Implementation current with Content obtained with the APIs to within every forty eight (48) hours.

(c) Content provided to Subscriber through the APIs may contain the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of CPI’s business partners and/or other third party rights holders of Content indexed by CPI, which may not be deleted or altered in any manner.

(d) Subscriber shall not:

(i) pre-fetch, cache, or store any Content, except that Subscriber may store limited amounts of Content for the purpose of improving the performance of Subscriber's API Implementation if Subscriber does so temporarily, securely, and in a manner that does not permit use of the Content outside of the ChargePoint Service;

(ii) hide or mask from CPI the identity of Subscriber's service utilizing the APIs, including by failing to follow the identification conventions listed in the API Documentation; or

(iii) defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others.

**2.3 REQUIRED INFORMATION.** Subscriber must:

(a) display to all viewers and users of Subscriber's API Implementation the link to the CPI Site Terms and Conditions as presented through the ChargePoint Services or described in the Documentation provided that nothing herein shall be deemed to supersede any provision of Subscriber's external link policy governing use of its website;

(b) explicitly state in the use terms governing Subscriber's API Implementation that, by using Subscriber's API Implementation, such viewers and users are agreeing to be bound by the CPI Site Terms; and

(c) include in Subscriber's API Implementation, and abide by, a privacy policy complying with all applicable laws; and

(d) comply with all applicable laws designed to protect the privacy and legal rights of users of Subscriber's API Implementation.

**2.4 REPORTING.** Subscriber must implement reporting mechanisms, if any, that CPI requires in the API Documentation provided no local ordinance or policy, or State or federal laws or regulations, would be violated.

**3. CPI BRANDING REQUIREMENTS AND RESTRICTIONS.**

**3.1 MANDATORY CPI BRANDING.** Subject to Section 3.2 below and the restrictions on use of CPI Marks set forth in the Agreement, Subscriber agrees that each page comprising Subscriber's API Implementation will include a ChargePoint logo and will state that Subscriber's application or website is provided, in part, through the ChargePoint Services.

**3.2 RESTRICTIONS.** Subscriber shall not:

(a) display any CPI Mark as the most prominent element on any page in Subscriber's API Implementation or Subscriber's website (except as used in connection with the display of Charging Stations); or

(b) display any CPI Mark anywhere in Subscriber's API Implementation or on Subscriber's website if such display in Subscriber's API Implementation or website is prohibited by Subscriber's external link or other website policy, or if any of the same contains or displays adult content or promotes

illegal activities, gambling, or the sale of tobacco or alcohol to persons under twenty-one (21) years of age.

**EXHIBIT 3**  
**TERMS REGARDING GRANTING OF RIGHTS**

This Exhibit sets forth certain additional terms and conditions applicable to Rights Grantors and Rights Grantees regarding the granting of Rights (“Rights Terms”). The Parties agree that Subscriber shall not use the Rights Granting functionality of the subscription without further negotiating the terms of this Exhibit 3. The Rights Terms are part of the Agreement, and all use of the ChargePoint Services permitted pursuant to the Rights Terms remains subject to the Agreement.

1. **ADDITIONAL DEFINITIONS.** The following additional definitions shall apply.

1.1 ***“Rights Grantor”*** means Subscriber.

1.2 ***“Rights Grantee”*** means a any person to whom Subscriber has granted Rights. For purposes of this Agreement, a Subscriber shall be deemed to have granted Rights to the entity assisting Subscriber with creating its account and initiating Subscriber’s access to Services.

2. **TERMS.** This Section governs Subscriber’s granting of Rights as a Rights Grantor.

2.1 **LIMITED RIGHTS.** A Rights Grantee’s right to access and use the ChargePoint Services for and on behalf of a Rights Grantor is limited to the specific Rights granted by such Rights Grantor to such Rights Grantee. Such Rights may be limited according to the Service Plan(s) subscribed to by Subscriber. Subscriber may revoke Rights, or any portion thereof, it has granted to a Rights Grantee at will and such Rights will thereafter be terminated with respect to such Rights Grantee. In no event may Subscriber grant Rights in excess of those provided to it through the Service Plan(s) to which it has subscribed.

2.2 **RESPONSIBILITY FOR AUTHORIZED USER.** All use of the ChargePoint Services by a Rights Grantee exercising Rights granted by Subscriber shall be subject to the terms and conditions of the Agreement (including without limitation Subscriber’s indemnification obligation pursuant to Section 10 thereof). Subscriber shall be responsible for the actions, omissions, or performance of such Rights Grantee while exercising any such Rights, as if such action, omission or performance had been committed by Subscriber directly.

2.3 **NO AGREEMENT.** Subscriber acknowledges and agrees that the ChargePoint Services merely enable a Rights Grantor to extend Rights to Rights Grantees. The mere extension of such Rights by a Rights Grantor to a Rights Grantee does not constitute an agreement between Rights Grantor and the Rights Grantee with respect to the granted Rights or the exercise of such Rights by the Rights Grantee. CPI does not, either through the terms of the Agreement or the provision of ChargePoint Services undertake to provide any such agreement. It is the responsibility of the Rights Grantor and the Rights Grantee to enter into such an agreement on terms mutually acceptable to each. CPI expressly undertakes no liability with respect to such an agreement and Rights Grantor fully and unconditionally releases CPI from any liability arising out of such an agreement. Further Rights Grantor agrees to indemnify and hold CPI, its officers, directors, agents, affiliates, distribution partners, licensors and suppliers harmless from and against any and all claims, actions, proceedings, costs, liabilities, losses and expenses (including, but not limited to, reasonable attorneys’ fees) (collectively, “Claims”) suffered or incurred by such indemnified parties resulting from or arising out of such agreement.

## TERMS AND CONDITIONS OF PURCHASE

### 1. Placement of Orders.

A. Purchase of Charging Stations. The terms of these Terms and Conditions of Purchase (“Terms”) govern the Company’s purchase of Charging Stations from ChargePoint. Company’s purchase of Charging Stations (including, without limitation, any purchase of an extended Assure Warranty) made by Company shall be made by binding, written purchase order specifying the number and model of Charging Station(s) desired to be purchased, requested delivery schedule (which, absent agreement between the parties, shall be a date that is no less than sixty (60) days after the date of the purchase order), any extended Assure Warranty being purchased and that Company’s purchase of Charging Stations is subject to all of the terms and conditions contained in these Terms. Any additional printed terms and conditions in Company’s purchase order conflicting with, varying or adding to the terms and conditions of these Terms, shall be of no force and effect, unless the parties hereto agree in writing, in advance, to accept such terms and conditions.

B. Acceptance of Purchase Orders. All purchase orders and modifications to purchase orders are subject to acceptance or rejection by ChargePoint in its sole discretion. No purchase order shall be binding upon ChargePoint unless and until so accepted in writing by ChargePoint. ChargePoint agrees to use commercially reasonable efforts to notify Company of its acceptance or rejection of Company’s order within ten (10) business days after receipt thereof. Any purchase order accepted by ChargePoint is referred to in these Terms as, an “Accepted Order.” Accepted Orders are non-cancelable, non-returnable and non-refundable.

C. Refusal of Purchase Orders. ChargePoint may withhold shipments to Company if Company has exceeded its applicable credit limit, if any, and not provided for prepayment, is in violation of its payment obligations or otherwise is in material breach of these Terms.

D. Stations Require Subscription to SaaS Offerings. The Charging Stations are designed to work with ChargePoint’s cloud-based application services (“SaaS Offerings”). Access to SaaS Offerings requires Company to enter into a Master Services and Subscription Agreement with ChargePoint.

E. Indemnification and Insurance. The indemnification and insurance provisions set forth in the Master Services and Subscription Agreement between ChargePoint and Company shall apply to these terms and conditions.

### 2. Delivery

A. Shipping Costs; Terms. All shipping, unless otherwise agreed to by the Parties in writing, shall be FOB City of Upland. Company shall be responsible for all costs of shipping, transportation, insurance, warehousing, and other charges and costs associated with shipment of the Charging Stations to Company. All shipping dates are approximate and are based upon prompt receipt of all necessary information from Company. In no event shall ChargePoint be liable for any costs related to delay in delivery of the Charging Stations. Company’s sole remedy for any material delay in delivery of the Charging Stations shall be cancellation of the order.

B. Transfer of Title. Delivery of the Charging Stations to Company shall be completed upon delivery of the Charging Stations to Company’s designated delivery location. Risk of loss and damage to the Charging Stations shall pass to Company upon the delivery of such Charging Stations to such location. ChargePoint shall use commercially reasonable efforts to deliver Charging Stations ordered by Company on the scheduled delivery date. All claims for non-conforming shipments must be made in writing to ChargePoint within thirty (30) days of the passing of risk of loss and damage, as described above. Any claims not made within such period shall be deemed waived and released. Notwithstanding the foregoing, the preceding time limit for non-conforming shipments shall not affect a warranty claim by Company for defective Charging Stations.

C. Substitutions. ChargePoint shall have the right to make substitutions and modifications to Charging Stations and in the specifications of Charging Stations to be delivered under the terms of any applicable purchase order, provided that such substitutions or modifications will not materially affect overall Charging Station form, fit, function or safety specifications. However, without Company’s prior, written consent, nothing herein shall authorize the substitution of equipment that would result in the alternative equipment having a different installation “footprint” or different dimensions for points of attachment to an installation pad or foundation, than the original equipment.

### 3. Invoicing and Payment

A. Invoicing. Unless otherwise agreed in writing by the Parties, ChargePoint shall issue an invoice to Company on or after the date it ships the ordered Charging Stations; provided that, ChargePoint may condition its acceptance of a purchase order on such credit and/or prepayment terms as ChargePoint, in its reasonable discretion, determines appropriate due to, among other things, Company’s prior payment history and/or the size of the order. In the case of any change to the applicable credit and/or prepayment terms, no purchase order or acceptance thereof will be effective unless and until Company has consented in writing thereto. If Company causes a delay in delivery, ChargePoint may issue its invoice at any time on or after the scheduled delivery date. If Company has purchased an extended Assure Warranty and has chosen the annual payment option, ChargePoint will invoice each annual payment on the anniversary date of the Assure Warranty.

B. Payment Terms. ChargePoint will invoice Company at time of shipment of the Charging Stations. All invoices shall be paid within thirty (30) days of Company's receipt thereof. Nothing herein shall require Company to pay for delivered equipment unless and until determined to be fully functional. Company shall have not less than fifteen (15) days to make such determination and notify ChargePoint thereof. Fees for Cloud Services subscriptions shall be invoiced at shipment of the Charging Stations to which such Cloud Services subscriptions relate, and on each anniversary date thereof. All invoices for Cloud Services subscriptions shall be paid within thirty (30) days of Company's commencement of beneficial use thereof. Invoices not paid when due are subject to interest at the rate of one and one-half percent (1.5%) per month or, if less, the highest rate allowed under applicable law. All non-credit shipments, or shipments in excess of Company's available credit line, if any, shall be prepaid prior to shipment.

C. No Right of Set-Off; No Right of Return. Invoiced amounts are not subject to reduction by set-off or otherwise without the express written permission of ChargePoint. All sales are final and Company shall have no right of return, provided, that, ChargePoint shall comply with its obligations under the Warranty (as defined below).

D. Taxes, Duties, Etc. All amounts due to ChargePoint under these Terms and/or any applicable purchase order are net of any duties, any sales, use, excise, value-added, withholding, or similar tax of any kind and any and all other fees and charges of any nature (collectively, "Taxes") imposed by the United States or any foreign, state or local governmental entity or instrumentality thereof on the purchase, shipment, use or sale of the Charging Stations by or to Company, other than taxes measured by ChargePoint's income, corporate franchise, or personal property ownership. Where applicable, ChargePoint shall bill Company for the full amount of such taxes and shall include such amount as a separate line item on the invoice(s) sent to the Company; provided that, ChargePoint's failure to so bill the Company shall not relieve Company from the obligation to pay any Tax described in this Section 3.D.

E. Payment in Dollars. All amount payable under these Terms shall be paid in United States dollars. If Company is located outside of the United States, Company agrees to take all necessary actions required, including registration of these Terms and application for permission to make payments to ChargePoint hereunder, with the appropriate government authorities in the Company's jurisdiction, or such other institution or official, and to take such other measures as may be necessary to comply with any government currency controls in effect in Company's jurisdiction, as soon as reasonably practicable after execution of these Terms. Company shall remit payment to ChargePoint, at Company's option (i) via wire or ACH transfer to an account designated by ChargePoint in writing from time to time or (ii) by check, made out to ChargePoint, Inc.

F. All Orders Subject to Credit Approval. All orders are subject to credit approval by ChargePoint. The amount of credit or terms of payment may be changed or credit withdrawn by ChargePoint in its reasonable discretion following not less than ten (10) business days' prior, written notice to Company. ChargePoint may, in its discretion, withhold further manufacture, performance or shipment; require immediate cash payments for past and future shipments or performance; or require other security satisfactory to ChargePoint before further manufacture, performance or shipment is made; and may, if shipment has been made, recover the goods from the carrier pending receipt of such assurances.

G. Provisions Relating to Shipments in Lots. If these terms require or authorize delivery of goods in separate lots, shipments or milestones to be separately accepted by Company, Company may only refuse such portion of a lot, shipment or milestone that fails to comply with the requirements of these terms. Company may not refuse to receive any lot or portion thereof for failure of any other lot or portion or a lot to be delivered or to comply with these terms, unless such right of refusal is expressly provided for on the face hereof, or where damage to any equipment is plainly visible. Company shall pay for each lot in accordance with the terms hereof. Products held for Company are at Company's sole risk and expense.

H. Prices do not include Freight, Etc. Except to the extent expressly stated in these terms, ChargePoint's prices do not include any freight, storage, insurance, taxes, excises, fees, duties or other government charges related to the goods, and Company shall pay such amounts or reimburse ChargePoint for any amounts ChargePoint pays. If Company claims a tax or other exemption or direct payment permit, it shall provide ChargePoint with a valid exemption certificate or permit and indemnify, defend and hold ChargePoint harmless from any taxes, costs and penalties arising out of same. ChargePoint's prices include the costs of its standard domestic packing, only. Any deviation from this standard packing (domestic or export), including U.S. Government sealed packing, shall result in extra charges. To determine such extra charges, Company should consult with ChargePoint's sales offices. Any and all increases, changes, adjustments or surcharges (including, without limitation, fuel surcharges) which may be in connection with the freight charges, rates or classification included as part of these terms, shall be for Company's account.

I. Disputes. In the event Company disputes any portion or all of an invoice, it shall notify ChargePoint in writing of the amount in dispute and the reason for its disagreement within twenty-one (21) days of receipt of the invoice. The undisputed portion shall be paid when due, and finance charges on any unpaid portion shall accrue, from the date due until the date of payment, to the extent that such amounts are finally determined to be payable to ChargePoint. No finance charge shall accrue on any disputed amount unless Company's dispute lacks any reasonable basis.

J. Remedies upon Payment Default. Upon Company's default of these terms, and provided ChargePoint is not then in breach, ChargePoint may, in addition to any other rights or remedies it may have at law or otherwise, subject to any cure rights of Company, declare

the entire balance of Company's account immediately due and payable or foreclose any security interest in the goods delivered. If any unpaid balance is referred for collection, Company agrees to pay ChargePoint, to the extent permitted by law, reasonable attorneys' fees in addition to all damages otherwise available, whether or not litigation is commenced or prosecuted to final judgment, pay any court costs or expenses incurred by ChargePoint, and any finance charges accrued on any unpaid balance owed by Company, unless Company's non-payment is due to any breach of this Agreement by ChargePoint.

K. Suspended Shipments. ChargePoint reserves the right to suspend further shipments of goods if Company is over thirty (30) days late in payment of an undisputed invoice. ChargePoint reserves the right to terminate the order if Company is over sixty (60) days late in payment of an undisputed invoice

#### 4. **Installation**

Company shall be responsible for arranging for the installation and provisioning of the Charging Stations and for the costs thereof. At Company's request, ChargePoint may provide the names and contact information of one or more installers of Charging Stations; provided that, in providing such information ChargePoint makes no representation or warranty of any kind, nor does it undertake any liability, with respect to or regarding the quality of any installation or other services performed by any such installer. Notwithstanding the foregoing, CPI will engage one of its O&M Partners to install the Charging Stations on the prepared site and for validation of electrical capacity, transformers, panels, breakers, wiring, cellular coverage and that station installation meets all CPI published requirements and local codes. Such O&M Partner, subject to Company's requirements, shall (1) be duly licensed, (2) obtain an encroachment permit, and (3) provide applicable insurance. EXCEPT AS SPECIFICALLY AGREED TO IN WRITING, CHARGEPOINT IS NOT RESPONSIBLE FOR AND WILL NOT BE LIABLE FOR, THE QUALITY OF ANY INSTALLATION SERVICES, NOT PERFORMED BY CPI OR ANY SUBCONTACTOR OF CPI, OR ANY CLAIM IN ANY WAY RELATING TO OR RESULTING FROM SUCH SERVICES.

#### 5. **Warranties/Limitation of Liability**

A. Warranty. The Charging Station is covered by the terms of ChargePoint's standard parts only product Warranty (the "Warranty"), which will expire on one year from the date of installation. All applicable warranties with respect to the Charging Station are set forth in the Warranty, and are hereby incorporated by reference into these Terms.

B. Post-Warranty Maintenance. Company acknowledges and agrees that in order to obtain warranty and/or other maintenance services for the Charging Stations after expiration of the Warranty, Company must purchase extended warranties and/or maintenance agreements directly from ChargePoint.

C. Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 5, CHARGEPOINT MAKES NO WARRANTY WITH RESPECT TO THE PERFORMANCE OF THE CHARGING STATIONS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. CHARGEPOINT EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS BY THE CHARGING STATIONS, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CHARGEPOINT DOES NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF CHARGING STATIONS.

#### D. Limitation of Liability.

i. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THESE TERMS, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF THESE TERMS OR THE TRANSACTIONS CONTEMPLATED HEREUNDER, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY OR ITS AGENTS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, THE ABOVE LIMITATIONS OF LIABILITY DO NOT APPLY TO THE PARTIES' INDEMNIFICATION OBLIGATIONS, IF ANY, MISAPPROPRIATION OR INFRINGEMENT OF INTELLECTUAL PROPERTY, OR BREACH OF CONFIDENTIALITY.

ii. COMPANY'S SOLE REMEDY FOR ANY BREACH BY CHARGEPOINT OF ITS WARRANTIES UNDER THESE TERMS SHALL BE LIMITED TO, AT CHARGEPOINT'S OPTION, REPAIR OR REPLACEMENT OF THOSE CHARGING STATIONS TO WHICH SUCH BREACH IS APPLICABLE OR REFUND BY CHARGEPOINT OF ALL OF THE PURCHASE PRICE OF ANY NON-CONFORMING CHARGING STATIONS.

E. Warranty Exclusions. The Warranty set forth in these Terms is subject to certain exclusions as more fully set forth in the Warranty. COMPANY HAS BEEN INFORMED AND UNDERSTANDS THAT, IN THE EVENT ANY SUCH EXCLUSION BECOMES APPLICABLE, ALL REPRESENTATIONS AND WARRANTIES CONTAINED IN THESE TERMS SHALL IMMEDIATELY BECOME NULL AND VOID.

F. Exclusive Remedies. THE REMEDIES CONTAINED IN SECTION 5 ARE COMPANY'S SOLE AND EXCLUSIVE REMEDIES AND ARE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES COMPANY MAY HAVE AGAINST CHARGEPOINT WITH RESPECT TO NONCONFORMANCE OF THE CHARGING STATIONS.

## 6. Intellectual Property

A. Restrictions on Use Company shall not: (i) create derivative works based on the Charging Stations, (ii) copy, frame or mirror any part or content of the Charging Stations, (iii) reverse engineer any Charging Station, or (iv) access the Charging Stations for any improper purpose whatsoever, including, without limitation, in order to (A) build a competitive product or service, or (B) copy any features, functions, interface, graphics or “look and feel” of the Charging Stations.

B. Ownership of Intellectual Property All right, title and interest in and to any intellectual property related in any way to the Charging Stations is, and shall remain, the exclusive property of ChargePoint. For these purposes, the term “intellectual property” shall mean, all of a party’s patents, patent applications, patent rights, copyrights, moral rights, algorithms, devices, application programming interfaces, databases, data collections, diagrams, inventions, methods and processes (whether or not patentable), know-how, trade secrets, trademarks, service marks and other brand identifiers, network configurations and architectures, proprietary information, protocols, schematics, specifications, software (in any form, including source code and executable code), techniques, interfaces, URLs, web sites, works of authorship, and all other forms of technology, in each case whether or not registered with a governmental entity or embodied in any tangible form and all rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world in any way arising prior to or during the term of these Terms.

C. ChargePoint warrants and represents that it has secured all necessary licenses, legal authority, consents or approvals to lawfully sell and provide any and all Charging Stations and all other equipment to Company pursuant this Agreement. ChargePoint shall defend including payment of attorneys’ fees, indemnify and hold Company, and its elected officials, officers, employees, servants, attorneys, designated volunteers, and agents serving as independent contractors in the role of Company officials, harmless from any loss, claim or liability in any way related to a claim that Company’s use of any of the Charging Stations or other equipment provided by ChargePoint is violating federal, state or local laws, or any intellectual property or proprietary rights relating to trade names, licenses, franchises, patents or other means of protecting intellectual property rights and/or interests in products or inventions. In the event any use by Company of any Charging Stations and/or any other equipment provided by ChargePoint is held to constitute an infringement and Company’s use thereof is enjoined, ChargePoint, at its expense, shall: (a) secure for Company the right to continue using the Charging Stations and all other equipment by suspension of any injunction or by procuring a license or licenses for Company; (b) modify the Charging Stations and/or all other equipment so that it becomes non-infringing; or (c) refund all sums paid by Company for the Charging Stations and/or other affected equipment. This covenant shall survive the termination of this Agreement.

## 7. General

A. Attorneys’ Fees. If any action at law or in equity is necessary to enforce the terms of these Terms, the prevailing party shall be entitled to reasonable attorneys’ fees, costs and expenses in addition to any other relief to which the prevailing party is otherwise entitled.

B. Force Majeure. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder on account strikes, shortages, riots, insurrection, fires, flood, storm, explosion, acts of God, war, governmental action, labor conditions, earthquakes, or any other cause which is beyond the reasonable control of such party.

C. Waiver. The failure of either party to require performance by the other party of any provision hereof shall not affect such party’s full right to require such performance at any time thereafter, nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

D. Severability. In the event that any provision of these Terms shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render these Terms unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted as to best accomplish the objectives of such provisions within the limits of applicable law or applicable court decisions.

E. Assignment. The rights and liabilities of the parties hereto shall bind and inure to the benefit of their successors, executors or administrators, provided, however, that neither ChargePoint nor Company may assign or delegate these Terms or any of its licenses, rights or duties under these Terms, whether by operation of law or otherwise, without the prior written consent of the other party in its reasonable discretion; provided, however, that Company and ChargePoint shall each be entitled to assign these Terms to an affiliate or to its successor in interest by way of merger, acquisition of substantially all of the assets of assignor or any similar event (collectively, “Acquisition Transactions”); and provided further, however, that notwithstanding any Acquisition Transaction, Company shall not assign these Terms to any competitor of ChargePoint without ChargePoint’s prior written consent, in its sole discretion. ChargePoint shall not be relieved of its obligations hereunder following any assignment, unless and until the assignee agrees in writing to be bound by the terms of this Agreement. Any attempted assignment in violation of this provision shall be void.

F. Notices. Any notice, request, demand or other communication by the terms hereof required or permitted to be given by one part to the other shall be given in writing by email with confirmation of receipt, certified or registered mail, return receipt requested, fax or courier

addressed to such other party or delivered to the address for each party set forth below their respective signatures, or at such other fax, email address or office address as may be given from time to time by either of the parties.

G. Controlling Law. These Terms shall be governed in all respects by the laws of the State of California, exclusive of conflicts of law principles.

H. Venue. The State and Federal courts located in, or having jurisdiction over, San Bernardino County, California shall have exclusive jurisdiction and venue over any dispute arising out of or relating to these Terms. Each of the Parties submits to the jurisdiction and venue of these courts.

I. Entire Agreement. These Terms and the attachments hereto constitute the entire agreement between the parties regarding its subject matter. It supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. These Terms shall not be modified unless done so in a writing signed by an authorized representative of each party.

Name: Rosemary Hoerning

Name: Rex S. Jackson

Title: Interim City Manager

Title: Chief Financial Officer

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

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

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

Address:  
254 E. Hacienda Ave  
Campbell, CA. 95008

**Approved As to Form:**

**James L. Markman, City Attorney**

## CHARGEPOINT ASSURE

### TERMS AND CONDITIONS OF SERVICE

Welcome to ChargePoint Assure. ChargePoint Assure is a full service maintenance and support program designed specifically for ChargePoint customers. This Agreement for Maintenance and Support is entered into by and between ChargePoint, a Delaware corporation (“ChargePoint”), and the City of Upland, a municipal corporation (“Customer”, “you”, or “your”).

1. **WHAT IS COVERED:** ChargePoint agrees to do each of the following:
  - a. Ensure that all parts are provided and labor is performed, on-site if necessary, to correct any defect in the materials or workmanship of electric vehicle charging stations purchased from ChargePoint, Inc., or its representatives (“Charging Stations”) in a prompt and professional manner.
  - b. Provide remote, automated monitoring of your Charging Stations.
  - c. Perform triage with respect to any Charging Station that may be defective.
  - d. Coordinate all repairs necessary to have your Charging Station back up and running.
  - e. Ensure that you are provided response no later than one business day from the date ChargePoint becomes aware of an issue.
  - f. Begin onsite repairs within one business day from the delivery of any parts required to fix your Charging Station.
  - g. ChargePoint will provide software moves, adds and changes at no additional cost
  - h. ChargePoint guarantees a 98% annual station uptime with a prorated refund of up to the annual station Assure maintenance fee for outages caused by station hardware or software failures in excess of 2% annually
  - i. ChargePoint will provide Customer with standard monthly summary and quarterly detailed station usage and performance metrics.
  - j. ChargePoint will cover the labor portion of non-cosmetic station repairs caused by vandalism, auto accidents or excessive wear and tear.
2. **WHAT IS NOT COVERED:** ChargePoint undertakes no responsibility with respect to repairing, replacing, monitoring or servicing anything other than your Charging Stations. This means, for example, that ChargePoint is not responsible for the physical mounting and electrical wiring of your Charging Stations or for the performance of any cellular or Wi-Fi repeaters or other devices installed in connection with your Charging Stations.
3. **CUSTOMER RESPONSIBILITIES:** In order to perform its obligations under ChargePoint Assure, ChargePoint needs your cooperation. Specifically, you agree to:
  - a. Provide reasonable access to ChargePoint or its designee as necessary for the performance of ChargePoint’s obligations.
  - b. Permit ChargePoint to access the Charging Stations remotely by maintaining a separately purchased Cloud Services subscription necessary for remote access.
  - c. Maintain your premises in accordance with all applicable laws, rules and regulations.
  - d. Keep the areas in which Charging Stations are located in a clean, safe and orderly condition, to at least the same standard as you customarily use to maintain the remainder of your premises.
  - e. Promptly notify ChargePoint of any suspected defect with a Charging Station.
4. **WHO IS ELIGIBLE FOR CHARGEPOINT ASSURE?:** ChargePoint Assure is only available to purchasers of Charging Stations who purchase ChargePoint Assure and either: 1) use a ChargePoint Operations and Maintenance Partner (“O&M Partner”) to install their Charging Stations or 2) successfully complete a site validation as described

below.

- a. **ChargePoint O&M Partner Installation.** For information on how to contact a ChargePoint O&M Partner, please contact your ChargePoint sales representative or authorized ChargePoint reseller for more details.
  - b. **Site Validation:** If you do not use an O&M Partner to install your Charging Station, you still will be eligible for ChargePoint Assure after your installation has been validated by ChargePoint or an authorized third party. The purpose of the site validation is to ensure that your Charging Stations were installed correctly, in accordance with ChargePoint's recommended specifications and operational requirements. Site validations require the payment of ChargePoint's then current fee, charged on a "per site" basis. For these purposes, a "site" is defined as any group of Charging Stations whose circuits are terminated at the same power panel.
5. **EXCLUSIONS FROM COVERAGE:** ChargePoint's obligations under ChargePoint Assure shall not apply to defects or service repairs resulting from the following:
- a. Cosmetic damage such as scratches and dents.
  - b. Normal aging.
  - c. Except as provided in 1(j) above, abuse, vandalism, damage or other problems caused by accidents or negligence (including but not limited to physical damage from being struck by a vehicle), or use of the Charging Station in a way other than as specified in the applicable Charge Point documentation.
  - d. Installation, alteration, modification or relocation of the Charging Station that was not approved in writing by ChargePoint, performed by an O&M Partner or validated in the manner described above.
  - e. Use of the Charging Station with software, interfacing, parts or supplies not supplied by ChargePoint.
  - f. Damage as a result of extreme power surge, extreme electromagnetic field or any other acts of nature.
- In addition ChargePoint's obligations under ChargePoint Assure shall not apply to any Charging Station that was not installed by a ChargePoint O&M Partner or a ChargePoint certified installer pursuant to the provisions of Section 4 of these Terms and Conditions.
6. **CONTACT INFORMATION:** If at any time during the term of your coverage of ChargePoint Assure you believe you have a defective Charging Station, contact Customer Service at 1-877-850-4562 or [support@chargepoint.com](mailto:support@chargepoint.com). Upon ChargePoint's receipt of such information from Customer, ChargePoint shall commence services to repair or replace such Charging Station as required in Section 1 of this Agreement.
7. **SERVICE TERM:** If you comply with the installation requirements described in Section 4, and purchase ChargePoint Assure, you will receive, ChargePoint Assure coverage that will replace your standard ChargePoint Warranty and will last for the remainder of the standard Warranty period, if any. You may purchase extensions to your ChargePoint Assure coverage. The extension period will begin on the date your standard Exchange Warranty expires or, if applicable, the date that any extensions to ChargePoint Assure coverage that you have previously purchased expire. Please contact your ChargePoint sales representative or authorized ChargePoint reseller for more details. Customer may terminate this Agreement at any time by providing ChargePoint not less than thirty (30) days' prior, written notice of termination. If Customer terminates this Agreement for a material breach by ChargePoint, then Customer shall be refunded any sums prepaid by Customer, prorated for the period of time services were actually rendered by ChargePoint.
8. **PAYMENTS:** ChargePoint will send you an invoice for the ChargePoint Assure coverage that you order. Payment is due within thirty (30) days of the invoice date. If you have purchased extended ChargePoint Assure coverage and have chosen the annual payment option, ChargePoint will invoice each annual payment on the anniversary date of your Assure coverage. All payments shall be made in U.S. Dollars and may be made by check, wire transfer, ACH payment system or other means approved by ChargePoint. Customer may not offset any amounts due to ChargePoint hereunder against amounts due to Customer under this Agreement or any other agreement. Fees payable to ChargePoint do not include any Taxes, and Subscriber is responsible for any and all such Taxes. All payment obligations under this Agreement are non-cancelable and non-refundable. Late payments shall be

70-001012-01-3

ChargePoint, Inc. | 254 East Hacienda Ave | Campbell, CA 95008-6901 USA  
408.841.4500 or toll-free 877.370.3802 | [info@chargepoint.com](mailto:info@chargepoint.com) | [www.chargepoint.com](http://www.chargepoint.com)

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subject to a charge equal to the lesser of (i) one and one-half percent (1.5%) per month or (ii) the maximum rate permitted by law. Provided ChargePoint is not then in breach and Customer has been provided a written notice of default, Customer will reimburse ChargePoint for attorneys' fees and other expenses reasonably incurred by ChargePoint in the collection of any late payments. If any amount owing by you under this Agreement is more than thirty (30) days overdue and a written notice of default has been provided to Customer, ChargePoint may, without otherwise limiting ChargePoint's rights or remedies, (a) terminate this Agreement and (b) refuse to provide ChargePoint Assure coverage until ChargePoint has received payment in full.

9. **TRANSFERS:** Your ChargePoint Assure coverage applies only to the Charging Stations and installation site for which it was purchased. If you sell or otherwise transfer your Charging Stations, your ChargePoint Assure coverage may not be transferred without ChargePoint's prior written consent.
10. **REPLACEMENT PARTS AND STATIONS:** Replacement parts or charging stations provided by ChargePoint under ChargePoint Assure may be remanufactured or reconditioned parts or Charging Stations or, if the exact Charging Station is no longer manufactured by ChargePoint, a Charging Station with substantially similar functionality. All replaced parts and Charging Stations, whether under warranty or not, become the property of ChargePoint. Any replacement parts or Charging Stations so furnished will be covered by ChargePoint Assure for the remainder of your ChargePoint Assure coverage or ninety (90) days from the date of delivery of such replacement parts or Charging Stations, whichever is later.
11. **INDEMNIFICATION AND INSURANCE.** Services under this Agreement are subject to the insurance and indemnification provisions as set forth in the Master Services and Subscription Agreement.
12. **LIMITS ON LIABILITY:** This section limits ChargePoint's liability under ChargePoint Assure. Please read it carefully.
  - a. CHARGEPOINT IS NOT LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, LOST BUSINESS, LOST DATA, LOSS OF USE, OR COST OF COVER INCURRED BY YOU ARISING OUT OF OR RELATED TO YOUR PURCHASE OR USE OF, OR INABILITY TO USE, THE CHARGING STATION, UNDER ANY THEORY OF LIABILITY, WHETHER IN AN ACTION IN CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR OTHER LEGAL OR EQUITABLE THEORY, EVEN IF CHARGEPOINT KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE CUMULATIVE LIABILITY OF CHARGEPOINT FOR ALL CLAIMS WHATSOEVER RELATED TO PERFORMANCE BY CHARGEPOINT OF ITS OBLIGATIONS UNDER CHARGEPOINT ASSURE WILL NOT EXCEED THE PRICE YOU PAID FOR CHARGEPOINT ASSURE. THE LIMITATIONS SET FORTH HEREIN ARE INTENDED TO LIMIT THE LIABILITY OF CHARGEPOINT AND SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE DISCLAIMERS AND LIMITATIONS ON LIABILITY SET FORTH IN THIS SECTION 12 SHALL NOT APPLY TO CHARGEPOINT'S OBLIGATIONS UNDER SECTION 11 OF THIS AGREEMENT.
  - b. Some states or jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.
13. **ARBITRATION:** These ChargePoint Assure Terms and Conditions of Service are to be construed according to the laws of the State of California, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any conflict of law provisions that would require application of another choice of law. Any dispute arising from or relating to these ChargePoint Assure Terms and Conditions of Service may, upon agreement of the Parties, be arbitrated in San Bernardino County, California. The arbitration shall be administered by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, and judgment on any award may be entered in any court of competent jurisdiction. If the parties agree, a mediator may be consulted prior to arbitration. All claims shall be brought in the parties' individual capacities, and not as a plaintiff or class member in

any purported class or representative proceeding. Venue for any other action arising out of this Agreement shall be the Superior Court of the County of San Bernardino, or the United States District Court, Central District, State of California.

14. **AMENDMENT OR MODIFICATION:** These ChargePoint Assure Terms and Conditions of Service may not be amended or modified except pursuant to a writing executed by each of the parties.
15. **WAIVER:** The failure of either Party at any time to enforce any provision of this Agreement shall not be construed to be a waiver of the right of such Party to thereafter enforce that provision or any other provision or right.
16. **FORCE MAJEURE:** ChargePoint will not be liable for failure to perform any of its obligations hereunder due to causes beyond its reasonable control and occurring without its fault or negligence, including but not limited to fire, flood, earthquake or other natural disaster (irrespective of ChargePoint's condition of any preparedness therefore); war, embargo; riot; strike; labor action; any lawful order, decree, or other directive of any government authority that prohibits ChargePoint from performing its obligations under this Agreement; material shortages; shortage of transport; and failures of suppliers to deliver material or components in accordance with the terms of their contracts.
17. **SEVERABILITY.** Except as otherwise specifically provided herein, if any term or condition of this Agreement or the application thereof to either Party will to any extent be determined jointly by the Parties or by any judicial, governmental or similar authority, to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to this Agreement, the Parties or circumstances other than those as to which it is determined to be invalid or unenforceable, will not be affected thereby.
18. **ASSIGNMENT.** You may not assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of ChargePoint. In the event of any purported assignment in breach of this Section 17, ChargePoint shall be entitled, at its sole discretion, to terminate these ChargePoint Assure Terms and Conditions of Service by providing written notice to you. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. ChargePoint may assign its rights and obligations under this Agreement.
19. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes and cancels all previous and contemporaneous agreements, negotiations, commitments, understandings, representations and writings. To the extent of any conflict or inconsistency between these ChargePoint Assure Terms and Conditions of Service and any purchase order, the Agreement shall prevail.
20. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute but one and the same document.
21. CPI shall perform the Services with due care in accordance with the standards and practices which are generally accepted in the industry and exercised by other persons engaged in performing similar services in the local area and in accordance with applicable laws.

[SIGNATURE PAGE TO FOLLOW]

Name: Rosemary Hoerning

Title: Interim City Manager

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

Address:

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

Name: Rex S. Jackson

Title: Chief Financial Officer

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

Address:

254 E. Hacienda Ave  
Campbell, CA. 95008

**Approved As to Form:**

**James L. Markman, City Attorney**





## STAFF REPORT

**ITEM NO. 14.C.**

---

**DATE:** July 22, 2019  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** DARREN GOODMAN, POLICE CHIEF  
DONALD DODT, POLICE LIEUTENANT  
**SUBJECT:** CONSIDERATION OF A RESOLUTION APPROVING THE  
ASSESSMENT REPORT, ASSESSING ADMINISTRATIVE FINES,  
AND ESTABLISHING SPECIAL ASSESSMENT LIENS RELATING TO  
UNPAID ADMINISTRATIVE FINES

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### **RECOMMENDED ACTION**

It is recommended that the City Council adopt a Resolution approving the assessment report, assessing administrative fines, and establishing special assessment liens against parcels of real property in the City of Upland relating to unpaid administrative fines pursuant to Section 1.10.090 of the Upland Municipal Code.

### **GOAL STATEMENT**

The proposed action supports the City's goal to conduct a comprehensive fine and cost recovery program for all nuisance abatement actions.

### **BACKGROUND**

Police Department staff in conjunction with the City Prosecutor have identified numerous properties in the City that have been subject to administrative fines for violations of the Upland Municipal Code and have, to date, failed to pay the administrative fines. The parcels of real property that have outstanding administrative fines ("Subject Properties") are listed in Exhibit A of the attached Resolution and are presented to the City Council for approval.

### **ISSUES/ANALYSIS**

Government Code Section 53069.4 authorizes the legislative body of a local agency to establish by ordinance, procedures for the imposition, enforcement, collection, and

administrative review of administrative fines or penalties. Pursuant to Government Code section 53069.4, the City enacted Upland Municipal Code (UMC) Sections 1.10.010 through 1.10.090, which established the procedures for the imposition, enforcement, collection, and administrative review of administrative fines and penalties. UMC Section 1.10.090 authorizes the recovery of all administrative fines pursuant to any option available to the City by law or in equity. UMC Section 1.10.090(C) authorizes the special assessment of all unpaid administrative fines upon the parcel that contained the nuisance conditions or UMC violations.

In each case involving the Subject Properties listed in Exhibit A, City inspectors identified at least one violation of the UMC and issued an administrative citation with an administrative fine to the owner of each of the Subject Properties ("Cited Owners"). Cited Owners were provided an opportunity to request a hearing to contest the administrative citation and fine. In each case, either Cited Owners failed to request a hearing to contest the administrative citation and fine or a hearing was requested and the administrative citation and fine were upheld. The City conducted a thorough review of the records of all outstanding administrative fines and issued to each Cited Owner and all interested parties of the Subject Properties, a Notice of Lien and Special Assessment as well as a letter explaining the Notice of Lien and Special Assessment and the need to pay the outstanding administrative fines or a special assessment would be levied against the property. Each Cited Owner and interested party of the Subject Properties was afforded time to either pay the outstanding administrative fines or contact the City to provide a reason why they were not liable for the outstanding administrative fines.

After issuing the letters and Notices of Lien and Special Assessment, some of the outstanding administrative fines were paid or were dismissed due to prior payment or for other justification. The Subject Properties listed in Exhibit A are all the properties that have thus far failed to pay the outstanding administrative fines and have failed to contest liability for said fines. The City has recorded the Notices of Lien and Special Assessment against all the Subject Properties and seeks authorization from the City Council to levy the special assessments against the Subject Properties to recover the outstanding administrative fines pursuant to UMC section 1.10.090(C).

### **FISCAL IMPACTS**

Approval of the assessment of liens against parcels of real property may result in the collection of approximately \$9,200.

### **ALTERNATIVES**

Provide alternative direction to staff.

### **ATTACHMENTS:**

**Resolution assessing administrative fines  
Exhibit A**

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UPLAND, CALIFORNIA, APPROVING THE ASSESSMENT REPORT, ASSESSING ADMINISTRATIVE FINES, AND ESTABLISHING SPECIAL ASSESSMENT LIENS AGAINST PARCELS OF REAL PROPERTY IN THE CITY OF UPLAND RELATING TO UNPAID ADMINISTRATIVE FINES PURSUANT TO SECTION 1.10.090 OF THE UPLAND MUNICIPAL CODE.

Intent of the Parties and Findings

(i) California Constitution, article XI, section 7 grants cities the authority to make and enforce local ordinances pursuant to their police power; and

(ii) Government Code section 53069.4 authorizes the legislative body of a local agency to establish by ordinance a procedure for the imposition, enforcement, collection, and administrative review of administrative fines or penalties; and

(iii) pursuant to Government Code section 53069.4, the City of Upland ("City") enacted Upland Municipal Code ("UMC") sections 1.10.010 through 1.10.090, which establish procedures for the imposition, enforcement, collection, and administrative review of administrative fines and penalties; and

(iv) UMC section 1.10.090 authorizes the recovery all administrative fines pursuant to any option available to the City by law or in equity; and

(v) UMC section 1.10.090(C) authorizes the special assessment of all unpaid administrative fines upon the parcel that contained the nuisances.

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

Section 1. The City Council hereby finds and determines that the foregoing Recitals of this Resolution are true and correct and hereby incorporated into this Resolution as though fully set forth herein.

Section 2. Nuisance conditions and UMC violations have been determined to exist on each of the parcels of real property attached hereto as Exhibit A ("Nuisance Properties").

Section 3. Administrative, civil, or criminal nuisance abatement proceedings were initiated and adjudicated against all Nuisance Properties based on the nuisance conditions and UMC violations found thereon.

Section 4. In accordance with UMC section 1.10.090(C), the City served a Notice of Lien and Special Assessment on each owner of the Nuisance Properties and upon all parties with a recorded interest in the Nuisance Properties identifying the amount of outstanding administrative fines and penalties, the timeframe within which full payment for all Nuisance Costs must be completed, and the timeframe within which each property owner and party with a recorded interest may contest liability for the unpaid administrative fines or penalties.

Section 5. For all Nuisance Properties, the timeframe to contest the administrative citations and pay the full amount of unpaid administrative fines or penalties has expired.

Section 6. For all Nuisance Properties, either the full or a partial amount of administrative fines is unpaid as of the date of this Resolution.

Section 7. The City served all owners of the Nuisance Properties, and all parties with a recorded interest in the Nuisance Properties, by certified mail prior to recording, with the notice required by State law specifying that the property may be sold after three years by the tax collector for the unpaid delinquent assessments.

Section 8. The City has satisfied any and all necessary procedural requirements to recover the unpaid administrative fines and penalties under the UMC and all other applicable laws to levy special assessments against all Nuisance Properties and is hereby entitled to recover the unpaid administrative fines and penalties by special assessments against the Nuisance Properties. The levying of a special assessment upon each of the Nuisance Properties is authorized without regard to the valuation of the Nuisance Properties.

Section 9. Accordingly, the Special Assessment Amounts identified in Exhibit A are approved for special assessment against the corresponding Nuisance Properties.

Section 10. In accordance with UMC section 1.10.090(C), the City shall provide the County tax collector with a copy of this Resolution authorizing the levying of special assessments against the Nuisance Properties.

Section 11. Certification. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED and ADOPTED this 22nd day of July, 2019.

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Debbie Stone, Mayor

I, Keri Johnson, City Clerk of the City of Upland, do hereby certify that the foregoing Resolution was adopted at a regular meeting of the City Council held on the 22nd day of July, 2019, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAINED:

ATTEST:

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Keri Johnson, City Clerk



CITY OF UPLAND  
POLICE DEPARTMENT



"Proud to Serve"  
DARREN I. GOODMAN | CHIEF OF POLICE

**EXHIBIT A**

To: Upland City Council  
From: Darren Goodman, Chief of Police  
Date: July 17, 2019

**Subject: Special Assessment of Unpaid Administrative Fines**

Property Address	APN	Administrative Citation Number(s)	Special Assessment Amount
2006 W. Foothill Boulevard Upland, Ca 91786	1007-051-07-0000`	UPL1366	\$4050.00
557 N. Campus Ave Upland, Ca 91786	1046-224-13-0000	UPL1368	\$4050.00
273 East 9 <sup>th</sup> Street Upland, Ca 91786	1046-403-21-0000	UPL1369	\$1050.00
1434 W. Winn Drive Upland, Ca 91786	1007-243-07-0000	UPL1377	\$50.00