



## **UPLAND CITY COUNCIL**

### **AGENDA**

**November 25, 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  
STEVEN FLOWER, INTERIM CITY ATTORNEY**

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#### **DISRUPTION OF MEETINGS**

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

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

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

- 4. CLOSED SESSION None**

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**7:00 PM**

**5. INVOCATION**

Mike Ingram, Christian Science Faith

**6. PLEDGE OF ALLEGIANCE**

**7. PRESENTATIONS**

Introduction of Homeless Services Coordinator Ashley Esquivel by Police Chief Goodman

**8. CITY ATTORNEY**

**9. ORAL COMMUNICATIONS**

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

**10. COUNCIL COMMUNICATIONS**

**11. CONSENT CALENDAR**

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

**A. APPROVAL OF MINUTES**

Approve the Regular Meeting Minutes of November 11, 2019. (Staff Person: Keri Johnson)

**B. 2ND READING OF AN ORDINANCE OF THE CITY OF UPLAND ADDING A NEW CHAPTER 5.76 TO THE UPLAND MUNICIPAL CODE TO CREATE A SIDEWALK VENDING PROGRAM, AMENDING RELATED PROVISIONS OF THE UPLAND MUNICIPAL CODE, AND CONSIDERATION OF A RESOLUTION AMENDING THE MASTER FEE SCHEDULE TO ESTABLISH FEES FOR SIDEWALK VENDING PERMITS**

Hold second reading by number and title only, waive further reading, and adopt Ordinance No. 1934 adding a new Chapter 5.76 to the Upland Municipal Code to create a sidewalk vending program, amending related provisions of the Upland Municipal Code, and making a determination of exemption under CEQA. (Staff Person: Robert Dalquest)

**C. ACCEPTANCE OF PUBLIC IMPROVEMENTS BY MBK HOMES AND REDUCTION OF BONDS**

Accept the public improvements constructed by MBK Homes (MBK), generally located on the southeast corner of Central Avenue and 11th Street; and approve the reduction of the faithful performance bond to twenty five percent (25%). (Staff Person: Rosemary Hoerning)

**D. BOND REDUCTION REQUEST FOR TRACT 18274 BY LENNAR HOMES**

Approve a bond reduction of the Public Performance Bond to fifty percent (50%) for Tract 18274 developed by Lennar Homes of California, Inc. (Staff Person: Rosemary Hoerning)

- E. RESOLUTION APPROVING AS TO FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF A CONSTRUCTION FINANCING AGREEMENT FOR THE CONSTRUCTION COSTS OF A REPLACEMENT 7.5 MG WATER RESERVOIR

Adopt a resolution approving as to form and authorizing the execution and delivery of a construction financing agreement for the construction of a replacement 7.5 MG water reservoir. (Staff Person: Rosemary Hoerning)

- F. THIRD AMENDMENT TO THE AGREEMENT WITH THE ZAPPIA LAW FIRM FOR LABOR AND EMPLOYMENT LAW SERVICES

Authorize the City Manager to execute the third amendment to the original agreement with The Zappia Law Firm for labor and employment law services. (Staff Person: Rosemary Hoerning)

## **12. PUBLIC HEARINGS**

## **13. COUNCIL COMMITTEE REPORTS**

## **14. BUSINESS ITEMS**

- A. APPROVAL OF LABOR AGREEMENT WITH UPLAND POLICE OFFICERS' ASSOCIATION

Adopt a Resolution approving a Memorandum of Understanding with the Upland Police Officers' Association. (Staff Person: Rosemary Hoerning)

- B. CONSIDERATION OF AN ORDINANCE TO ADOPT, BY REFERENCE, THE 2019 CALIFORNIA BUILDING CODE STANDARDS

Hold first reading by number and title only, introduce an Ordinance adopting by reference the 2019 California Administrative, Building, Fire, Green Building Standards, Mechanical, Residential, Plumbing, Electrical, Energy, Existing Building, Historical Building, and Referenced Standards Codes, as set forth in Title 24, California Code of Regulations, Parts 1, 2, 2.5, 3, 4, 5, 6, 8, 9, 10, 11, and 12, and as published as part of the California Building Standards Code; the 1997 Uniform Housing Code, and 1997 Uniform Code for the Abatement of Dangerous Buildings; including certain appendices and penalties; and set a public hearing for December 9, 2019. (Staff Person: Robert Dalquest)

- C. CONSIDERATION OF A RESOLUTION AMENDING THE MASTER FEE SCHEDULE TO UPDATE WATER SERVICE CONNECTION FEES FOR LOW INCOME HOUSEHOLDS IN ACCORDANCE WITH SB998

Adopt a Resolution amending the master fee schedule to update the water service reconnection fee for low income households in accordance with Senate Bill 998. (Staff Person: Londa Bock-Helms)

- D. SAN ANTONIO WATER COMPANY - PROPOSED NEW CENTRALIZED HEADQUARTERS

Provide the City Manager with direction on this item. (Staff Person: Rosemary Hoerning)

## **15. ORAL COMMUNICATIONS**

This is a time for any citizen to comment on any item not listed on the agenda. Anyone wishing to address the legislative body is requested to submit a speaker card to the City Clerk at or prior to speaking. The speakers are requested to keep their comments to no more than three (3) minutes. The use of visual aids will be included in the time limit. Public comments and questions for the purpose of hearing current matters of concern in our community and to provide

citizens a method for the public to hear those concerns in an open venue is encouraged. However, under the provisions of the Brown Act, the City Council is prohibited from discussion of items not listed on the agenda, and therefore, the City Council, City Manager, or City Attorney will take communications under advisement for consideration and appropriate response or discussion at a later time.

**16. CITY MANAGER**

**17. ADJOURNMENT**

The next regularly scheduled City Council meeting is Monday, December 9, 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 November 20, 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).

**MINUTES OF THE REGULAR MEETING OF THE  
UPLAND CITY COUNCIL  
NOVEMBER 11, 2019**

**OPENING**

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

**1. ROLL CALL**

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

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

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

**3. ORAL COMMUNICATIONS** None

**4. CLOSED SESSION**

At 6:01 p.m. Mayor Stone announced the City Council would recess to Closed Session pursuant to Government Code Section

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

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

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

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

The City Council reconvened in open session at 7:01 p.m.

**5. INVOCATION** none

**6. PLEDGE OF ALLEGIANCE** Cub Scout Pack 6

**7. PRESENTATIONS**

Certificates of Recognition were presented to Upland residents serving in the Military.

Constituent Services Representative, Danny Milla, presented information on Congressman Pete Aguilar's Annual Veterans Resource Fair.

Mike Arreguin and Steven Bradshaw of Burrtec Waste Industries, Inc. presented an update on Upland's Recycling Program.

Public Works Operations Manager Richard Smiderle presented information on the Cool Parks Grant Project.

**8. CITY ATTORNEY**

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

**9. ORAL COMMUNICATIONS**

Steve Bierbaum, Upland, stated he was opposed to the approval of a third amendment with the Zappia law firm and also questioned why the City Treasurer's signature was not on the Treasury Report.

**10. COUNCIL COMMUNICATIONS**

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

**11. CONSENT CALENDAR**

Councilmember Zuniga removed Consent Calendar Items 11D and 11G for separate action. Motion by Councilmember Elliott to approve the remainder of the Consent Calendar, seconded by Councilmember Zuniga, and carried unanimously.

**A. APPROVAL OF MINUTES**

Approved the Regular Meeting Minutes of October 28, 2019.

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

Approved the October Warrant Registers and Direct Disbursements (check numbers 27279-27736) totaling \$5,857,569.92 and Payroll Registers totaling \$1,467,342.14 (check Numbers 160871-161052 and EFTs 17452-17945).

**C. TREASURY REPORT SEPTEMBER 2019**

Received and filed the September 2019 Treasury Report.

**E. EMERGENCY OPERATIONS PLAN - CITY OF UPLAND**

Adopted the Emergency Operations Plan for the City of Upland.

**F. APPROVAL OF A QUITCLAIM DEED TO RUGS LIMITED, LLC BY THE CITY OF UPLAND FOR A PORTION OF 'A' STREET**

Approved a quitclaim deed to Rugs Limited, LLC for a portion of "A" Street next to vacant lot APN 1046-532-01 (102 13th Avenue) and authorize the Interim City Manager to sign the quitclaim deed; and accept Rugs Limited LLC's offer to pay the appraised value in the amount of thirty one thousand two hundred and eighteen dollars (\$31,218).

ITEMS REMOVED FOR SEPARATE ACTION

D. THIRD AMENDMENT TO THE AGREEMENT WITH THE ZAPPIA LAW FIRM FOR LABOR AND EMPLOYMENT LAW SERVICES

There was discussion regarding the previous amendments to the contract, the expenditures to date, and the potential increased costs to the City if ongoing cases were transferred to a new attorney.

Motion by Councilmember Velto to table the item until the November 25, 2019 City Council meeting, seconded by Councilmember Zuniga, and carried unanimously.

G. NOTICE OF COMPLETION FOR SC BALDY VIEW DEVELOPMENT COMPANY, LLC REGARDING HARVEST AT UPLAND SPECIFIC PLAN

There was discussion regarding the bonds related to this project.

Motion by Councilmember Zuniga to accept the Notice of Completion and authorize the Interim City Manager to execute the Notice of Completion in compliance with the Acquisition Agreement by and among City of Upland, SC Baldy View Development Company, LLC, and Lewis Management Corporation dated May 1, 2016, seconded by Councilmember Velto, and carried unanimously.

**12. PUBLIC HEARINGS**

A. CONSIDERATION OF AN ORDINANCE OF THE CITY OF UPLAND ADDING A NEW CHAPTER 5.76 TO THE UPLAND MUNICIPAL CODE TO CREATE A SIDEWALK VENDING PROGRAM, AMENDING RELATED PROVISIONS OF THE UPLAND MUNICIPAL CODE, AND CONSIDERATION OF A RESOLUTION AMENDING THE MASTER FEE SCHEDULE TO ESTABLISH FEES FOR SIDEWALK VENDING PERMITS.

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

There was discussion on the State's requirements to allow sidewalk vending in the City, potential food health and safety issues, and regulation of vendors.

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

Motion by Councilmember Elliott to hold first reading by title only, waive further reading, and introduce an Ordinance adding a new Chapter 5.76 to the Upland Municipal Code to create a sidewalk vending program, amending related provisions of the Upland Municipal Code, and making a determination of exemption under CEQA, seconded by Councilmember Velto, and carried unanimously.

Motion by Councilmember Zuniga to adopt Resolution No 6516 amending the Master Fee Schedule to establish fees for sidewalk vending permits, seconded by Councilmember Felix, and carried unanimously.

**13. COUNCIL COMMITTEE REPORTS**

A. FINANCE COMMITTEE MEETING, OCTOBER 23, 2019

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

**14. BUSINESS ITEMS**

A. ELIGIBILITY CONFIRMATION OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) EMERGENCY REPAIRS PROGRAM PARTICIPANTS AND GRANT FUNDING AWARD

Development Services Director Dalquest introduced Contract Rehabilitation Programs Administrator Arellano who then presented the staff report, which is on file in the City Clerk's Office.

There was discussion on the federal guidelines for grants and the use of licensed contractors to perform the repairs.

The Council requested that staff amend the guidelines for the emergency repair program and bring the item back to Council for approval.

Motion by Councilmember Felix to confirm eligibility and grant funding for two Emergency Repairs Program projects, seconded by Councilmember Elliott, and carried unanimously.

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

Mark Walters, Upland, requested the Council reconsider the information they provide during Council Communications and to focus on issues in the City.

Daniel Luevanos, One Legacy Ambassador, spoke regarding the importance of organ donations and invited the Council to assist with the Tournament of Roses Float decorating.

David Wade questioned why the Planning Commission vacancies had not yet been filled and stated opposition to the proposed Bridge Development project.

Cindy Phillips, Upland, stated opposition of the proposed Bridge Development project.

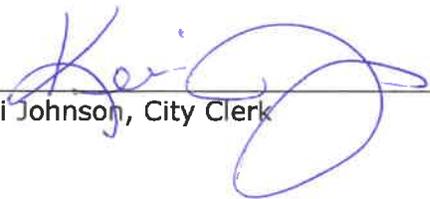
James Breitling, Upland, spoke about proper recycling methods and the need to educate the public on recycling methods.

**16. CITY MANAGER** none

**17. ADJOURNMENT**

Mayor Stone adjourned the meeting at 9:48 p.m. The next regularly scheduled City Council meeting is Monday, November 25, 2019.

**SUBMITTED BY**

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

**APPROVED**

\_\_\_\_\_  
November 25, 2019



SECOND READING AND ADOPTION  
Ord No. 1934 Date 11/29/19 Item No. 11B

## STAFF REPORT

ITEM NO 11.B.

~~ITEM NO. 12.A.~~

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**DATE:** November 11, 2019  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** ROBERT D. DALQUEST, DEVELOPMENT SERVICES DIRECTOR  
JOSHUA WINTER, ASSOCIATE PLANNER  
**SUBJECT:** CONSIDERATION OF AN ORDINANCE OF THE CITY OF UPLAND  
ADDING A NEW CHAPTER 5.76 TO THE UPLAND MUNICIPAL CODE  
TO CREATE A SIDEWALK VENDING PROGRAM, AMENDING  
RELATED PROVISIONS OF THE UPLAND MUNICIPAL CODE, AND  
CONSIDERATION OF A RESOLUTION AMENDING THE MASTER  
FEE SCHEDULE TO ESTABLISH FEES FOR SIDEWALK VENDING  
PERMITS.

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### RECOMMENDED ACTION

It is recommended that the City Council hold first reading by title only, waive further reading, and introduce an Ordinance adding a new Chapter 5.76 to the Upland Municipal Code to create a sidewalk vending program, amending related provisions of the Upland Municipal Code, and making a determination of exemption under CEQA; and adopt a Resolution amending the Master Fee Schedule to establish fees for sidewalk vending permits.

### GOAL STATEMENT

The proposed action supports the City's overarching goal of protecting health, safety and welfare by establishing regulations for Sidewalk Vendors to the greatest extent permissible under State law.

### BACKGROUND

On September 17, 2018, Senate Bill 946 (SB 946) was signed by Governor Brown and chaptered in Government Code Sections 51036-51039. These sections became effective on January 1, 2019 and require cities to allow sidewalk vending. Under this law, the State mandates local jurisdictions to support and facilitate sidewalk vendors. The stated intent of the legislation is to:

- Create entrepreneurial and economic development opportunities for immigrant and low-income communities;
- Increase access to desired goods, such as culturally significant food and merchandise;
- Contribute to a safe and dynamic public space;
- Promote the safety and welfare of the public by encouraging local authorities to support and properly regulate sidewalk vending; and
- Decriminalize sidewalk vending.

Sidewalk vending is defined in Government Code No. 51036 as a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path. The law defines sidewalk vendors as stationary, a person who vends from a fixed location, or roaming, a vendor who moves from place to place stopping only to complete a transaction.

Government Code No. 51038 allows a local authority to adopt a program to regulate sidewalk vending when in compliance with the standards established, including:

- Sidewalk vendors cannot be required to operate in designated areas and any limitations must be directly related to objective health, safety, or welfare concerns;
- Stationary vendors may be restricted in residential areas, but roaming vendors must be permitted to operate safely;
- The number of vendors may not be restricted;
- Limitations on hours must not be unduly restrictive;
- Locations near certified farmers markets, swap meets, or locations of a Temporary Use Permit may be restricted;
- Regulations may not be based on perceived community animus or economic competition;
- Sidewalk vendors may not be prohibited from operating in parks owned and operated by the City, except:
  - Stationary vendors may be prohibited in parks when an exclusive concessionaire agreement is in place;
  - For requirements directly related to health, safety and welfare concerns;
  - When necessary to ensure the public's use and enjoyment of natural resources; and
  - To prevent undue interference with the scenic or natural character of the park.

The penalties associated with sidewalk vending are also addressed in Government Code 51039, eliminating criminal prosecution and allowing a modified structure for administrative penalties. The law allows a local agency to adopt a higher penalty for those vendors operating without a permit, but requires the penalty to be reduced when an operator obtains the required permit. The local authority must also provide an ability to pay determination, accepting 20 percent of the administrative penalty when the person meets the criteria of Government Code 68632. This includes any person receiving public benefits, food assistance, Medi-Cal, Supplemental Security Income (SSI), and other government assistance.

## **ISSUES/ANALYSIS**

The proposed Ordinance (Attachment 1) establishes Upland Municipal Code 5.76 Sidewalk Vending. The recommended Ordinance is consistent with State law in that it facilitates the entrepreneurial spirit of small business activities by removing the prohibition of selling food or goods in public places, including the right-of-way. While allowing the activity, the City equally recognizes the importance of regulation to ensure the activities promote the health, safety, and welfare of the public.

The proposed program includes regulations that are necessary to:

- Provide reasonable standards for obtaining a Sidewalk Vending Permit;
- Ensure no interference with the free movement of pedestrians or vehicles and maintains clear visibility for drivers;
- Sets operating standards including permitted times, signs, cart size, and litter management; and
- Protects the recreational use and enjoyment of the natural resources of City parks.

#### Permit requirements

Consistent with Government Code 51038, the proposed program would require a valid permit to engage in sidewalk vending activities. The permit process enables the City to effectively regulate individuals who are engaging in sidewalk vending activities and ensure sidewalk vendors are equally complying with the rules and regulations set forth.

The Public Works Department will issue a permit to a sidewalk vendor when the application requirements are satisfied. Permit administration costs will be recovered with a reasonable permit fee which is consistent with the current fee for a Public Works "Miscellaneous Permit" (drive approach, sewer lateral, etc.). Miscellaneous permits are generally taken in for review by city staff to ensure the application meets required standards, and is typically approved within approximately 2 weeks. Since Sidewalk Vendors are applying to operate within the Public Right-of-Way, and a standard application will be reviewed similar to that of a Miscellaneous Permit, it is anticipated that the processing time and materials to approve an application for a Sidewalk Vending Permit will be approximately the same as other Miscellaneous Permits. Therefore, the application fee is proposed to be the same as the current Miscellaneous Permit fee of \$190.00. The fee will apply to both new permit applications, and annual renewals. These fees will be effective 30 days after the adoption of the Resolution (Attachment 2 – Resolution).

Application information will include identification, a description of the merchandise, image of the vending cart, routes and locations, Upland business license, California Seller's Permit, and required approvals from San Bernardino County Department of Public Health for the sale of food. The applicant is also required to provide, for the business owner and any employees, two passport size photographs, be fingerprinted by the Upland Police Department, and authorize a criminal record check to be conducted. Please note that the City Attorney has recommended caution with this requirement as Government Code 51038 is specifically meant to stop the use of local Police power to enforce immigration laws. This requirement may be viewed as an attempt to enforce immigration law by immigration advocates, leaving it susceptible to challenge. With that said, staff contends that this requirement is important to protect the health, safety, and welfare of the community.

A permit may be denied for various reasons, including but not limited to:

- Falsification of information or incomplete application;
- Convictions within the last 10 years of fraud, theft, dishonesty, sales of prohibited substances, or any requirement to register pursuant to Penal Code 290; and
- Prior revocation of permit, failure to pay administrative fines, or failing to demonstrate the ability to conform to the operating standards.

Any person who has a permit denied or revoked shall be entitled to appeal the decision with the Hearing Officer to ensure due process.

#### Operating Requirements

The local authority is prohibited from requiring a vendor to operate in specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety,

and welfare concerns. Restrictions in parks are additionally allowed to preserve the public's use and enjoyment of natural resources and recreational opportunities, or to prevent unreasonable interference with the scenic and natural character of a park.

The proposed operating requirements include:

- Prohibiting locations within 25 feet of intersections, 10 feet of fire hydrants, 10 feet of any driveway, within 500 feet of any farmers market, swap meet or location of an approved Temporary Use Permit, etc.;
- No obstruction of any sidewalk or pedestrian path which does not leave a minimum of 48" of clearance to ensure free passage in compliance with ADA;
- No operations within a roadway, parking area, nor interacting with persons in vehicles in the roadway;
- On the Pacific Electric Trail, Euclid Ave or the Euclid Ave Bridle Path, and within the non-residential districts of the Historic Downtown Upland Specific Plan;
- Hours are limited to 8:00 a.m. to 10:00 p.m. in general and roaming vendors are limited to 8:00 a.m. to 8:00 p.m. in residential areas;
- Stationary vendors shall not operate in residential areas and roaming vendors shall not stop for periods longer than 10 minutes;
- Signs shall be limited to 8 square feet, vending carts to 4' in width and length, and shade structures to 60 square feet;
- Operators are required to maintain sanitary conditions, provide trash receptacles, and remove any trash at the end of operations;
- Vendors offering food products shall be required to possess the required Health Permit and display the decal sticker on the carts;
- Vendors shall not offer items which are not listed on the permit, are unlawful to possess, or any items which are strictly regulated, such as cigarettes, cannabis, or alcohol; and
- Within City parks, additional requirements include:
  - Operations are only permitted during normal hours of operation (parks are closed one-half hour before sunset until one-half hour after sunrise the following morning);
  - Restricted areas include any location within 50 feet of any playground, athletic court, cycling trail, or any structure available for reservation to avoid any conflicts between vendors and dynamic recreation or those who have reserved spaces;
  - Sidewalk vending shall not be permitted in any park when there is an exclusive concession agreement;
  - The City Council may additionally limit sidewalk vending by resolution in any location for reasons of health, safety, and welfare.

#### Enforcement, Penalties and Appeals

Government Code Section 51039 outlines the limitations for enforcement, stating violations shall only be punished by Administrative Citation. The procedures for citation and appeal are contained in Upland Municipal Code Chapter 1.12 Penalties, Administrative and Civil Remedies, and General Provisions. Violations of sidewalk vending regulations will be enforced in compliance with this section which also provides an appeals process to ensure due process.

#### CEQA

Staff has found that there is no possibility that the adoption of this Ordinance will have a significant effect on the environment because the establishment of the ordinance only sets up regulatory requirements for sidewalk vendors. Accordingly, this Ordinance is not subject to the requirements of the California Environmental Quality Act (CEQA) pursuant to Sections 15061(b) (3) of the CEQA Guidelines.

**FISCAL IMPACTS**

Costs associated with the application, investigation, and issuance of a Sidewalk Vending Permits are proposed to be recovered with the fees established in the Resolution. There will be indirect costs associated with additional enforcement which cannot be determined at this time.

**ALTERNATIVES**

Provide alternative direction to staff.

**ATTACHMENTS:**

**Attachment 1 - Sidewalk Vending Ordinance - UMC 5.76**

**Attachment 2 - ~~Resolution - Amendment to Master Fee Schedule to create fees for Sidewalk Vendors~~**

ORDINANCE NO. 1934

AN ORDINANCE OF THE CITY OF UPLAND ADDING A NEW CHAPTER 5.76 TO THE UPLAND MUNICIPAL CODE TO CREATE A SIDEWALK VENDING PROGRAM, AMENDING RELATED PROVISIONS OF THE UPLAND MUNICIPAL CODE, AND MAKING A DETERMINATION OF EXEMPTION UNDER CEQA

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

A. Senate Bill ("SB") 946 was signed into law on September 17, 2018, and became effective January 1, 2019; and

B. SB 946 limits the authority of cities and counties to regulate sidewalk vendors, except in accordance with California Government Code Sections 51038 and 51039; and

C. The City Council finds that the establishment of a sidewalk vending program will benefit the City as a whole by facilitating entrepreneurship and providing economic opportunity for people to support themselves and their families, and by contributing to a diversity of food options and lively streets; and

D. The City Council finds that the act of vending on sidewalks and other areas of the public right-of-way also creates the potential for increased safety hazards, such as, but not limited to: inhibiting the ability of disabled individuals and other pedestrians to follow a safe path of travel; interfering with the performance of police, firefighter, and emergency medical personnel services; encouraging pedestrians to cross mid-block or stand in roadways to purchase food; and creating obstacles and contributing to congestion for pedestrian, vehicle, and bicycle traffic; and

E. The City Council finds that regulations for sidewalk vending are needed to accommodate vendors and their equipment, while also safe-guarding the flow of pedestrian movement on sidewalks and in the public right-of-way, and ensuring no interference with the performance of police, firefighter, and emergency medical personnel services; and

F. The City Council finds that the regulation of vendors engaged in the sale of food and food products will help to ensure that sidewalk vendors obtain all necessary permits and comply with applicable sanitation, food preparation, and food handling laws, and thereby will protect the public health and safety against health problems such as food contamination, poor hygienic practices, and the threat of food poisoning; and

G. The City Council finds that regulations related to the collection and disposal of trash or other debris generated by sidewalk vending are necessary to ensure that such trash or debris is not left, thrown, discarded, or deposited on City streets, sidewalks, pathways, gutters, or storm drains, or upon public or private lots, so that the same might be or become a pollutant; and

H. The City Council finds that regulation of sidewalk vending in public parks is necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities, and to prevent an undue concentration of commercial activity that would unreasonably interfere with the scenic and natural character of these parks; and

I. The City Council finds that regulation of sidewalk vending in residential areas is necessary to ensure that such areas are protected from excessive noise and traffic impacts while allowing economic opportunities for sidewalk vendors; and

J. The City Council finds that, because sidewalk vending is typically transient in nature, the City, law enforcement, and other health and safety regulators, are less able to hold sidewalk vending businesses accountable for health and safety violations than other businesses operating from fixed locations. Therefore, the City Council finds that it is necessary to establish regulations for the identification of applicants and restricting permits from those persons with records of certain criminal conduct that pose a threat to public safety; and

K. The City Council finds that regulation of sidewalk vending is necessary as vendors have regular and routine access to children, often in secluded or unmonitored areas, so ensuring that no one is being authorized to operate in parks and residential neighborhoods that is a threat to the health, safety, or welfare of the public or children is of paramount importance; and

L. The City Council finds young people in the community are susceptible to distraction while at school, be drawn away from school or to cross busy streets, thereby obstructing traffic and causing vehicular collisions with pedestrians or to fraudulent business conduct. To promote the health, safety and welfare of children while they are near schools, it is necessary to regulate commercial activity near locations which have high concentrations of unsupervised youth, such as in the vicinity of schools before and after class hours; and

M. The City Council finds that there are unique geographic and historical characteristics of the City that prevent sidewalk vendors from operating in certain sidewalks and pedestrian pathways without detrimentally affecting the public health, safety, and welfare. Among these are sidewalks and pathways located in certain older portions of the City where the nature of the underlying use as a high pedestrian traffic area and/or access to designated historical buildings and/or structures are incapable of supporting both pedestrian traffic and sidewalk vendors as sidewalk vendors can inhibit the ability of disabled individuals, block building ingress/egress within these areas, particularly in the non-residential areas of the Historic Downtown Upland Specific Plan. Vending along the Pacific Electric Trail would cause obstructions to bicyclists and pedestrians as people would stop along the trail to conduct transactions, resulting in the trail being blocked, and substantially increasing risk for pedestrian/cyclist conflict. Vending along Euclid Avenue and the Euclid Avenue Bridle Path results in substantial potential for litter and damage caused by sidewalk vendors and their patrons, detrimental to the welfare of the community as the use and enjoyment of the most significant historical resource within the City of Upland will be

degraded. Furthermore, Euclid Avenue is a Scenic Corridor in the City of Upland, and therefore needs special consideration and protection from commercial uses; and

N. The City Council adopts this Ordinance under the authority provided in SB 946, and finds that the time, place, and manner regulations and requirements provided herein are directly related to the City's purpose of protecting the health, safety, and welfare of its residents, businesses, and visitors.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UPLAND DOES ORDAIN AS FOLLOWS:

Section 1. The Upland Municipal Code is hereby amended to add a new Chapter 5.76, which shall read as follows:

**5.76.010 Definitions.**

**5.76.020 Permit Required.**

**5.76.040 Criteria for Approval or Denial of Permit.**

**5.76.050 Permit Expiration and Renewal.**

**5.76.060 Permit Rescission.**

**5.76.070 Appeals.**

**5.76.080 Permits Nontransferable.**

**5.76.090 Operating Requirements.**

**5.76.100 Administrative Citations.**

**Chapter 5.76 Sidewalk Vending**

**5.76.010 Definitions.** The following words and phrases, whenever used in this chapter, shall mean as follows:

"Certified farmers' market" means a location operated in accordance with Chapter 10.5 of Division 17 of the Food and Agricultural Code and any regulations adopted pursuant to that chapter.

"Director" means the Director of Public Works of the City of Upland.

"Hearing Officer" means the City Manager or their designee.

"Person" shall mean one or more natural persons, groups, businesses, business trusts, companies, corporations, joint ventures, joint stock companies, partnership, entities, associations, clubs, or organizations composed of two or more individuals (or the manager, lessee, agent, servant, officer, or employee of any of them), whether engaged in business, nonprofit, or any other activity.

"Roaming sidewalk vendor" means a sidewalk vendor who moves from place to place and stops only to complete a transaction.

"Sidewalk" means a public sidewalk or paved pedestrian path or walkway specifically designed for pedestrian travel.

“Sidewalk vendor” means a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one’s person, upon a public sidewalk or other paved pedestrian path or other paved public right-of-way. This is inclusive of both a “roaming sidewalk vendor” and a “stationary sidewalk vendor.”

“Stationary sidewalk vendor” means a sidewalk vendor who vends from a fixed location.

“Swap meet” means a location operated in accordance with Article 6 of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that article.

“Temporary use permit” means a permit issued by the City for the temporary use of, or encroachment on, the sidewalk, public right-of-way, or any other public area, including, but not limited to, an encroachment, film, temporary, seasonal, or special event permit for purposes including, but not limited to, city or privately sponsored filming, parades, outdoor events, seasonal sales, or other outdoor events.

“Vend” or “vending” means to sell, offer for sale, display for sale, or solicit offers to purchase, food, food products, beverages, goods, or merchandise.

“Vending cart” means a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance used for vending, that is not a vehicle as defined in the California Vehicle Code.

**5.76.020 Permit Required.** No person, either for themselves or any other person, shall conduct or engage in sidewalk vending within the City without first obtaining a sidewalk vending permit pursuant to this chapter.

**5.76.030 Permit Application.** To apply for a sidewalk vending permit, a person must file an application with the Director, accompanied by a nonrefundable processing fee in an amount established by resolution of the City Council. The application shall be in a form prescribed by the Director and shall contain, at a minimum, the following:

- A. The legal name and current address and telephone number of the applicant;
- B. If the applicant is an agent of an individual, company, partnership, corporation, or other entity, the name and business address of the principal;
- C. A description of the food or merchandise offered for sale;
- D. A description of the area(s) the applicant intends to operate;
- E. Whether the applicant intends to operate as a stationary sidewalk vendor or a roaming sidewalk vendor;
- F. The type of vending cart the applicant intends to use;

- G. An image of the proposed vending cart;
- H. A copy of a valid business license issued pursuant to Chapter 5.04 of the Upland Municipal Code;
- I. A California seller's permit number pursuant to Section 6067 of the Revenue and Taxation Code;
- J. Certification by the applicant that the information contained in the application is true to his or her knowledge and belief;
- K. An completed executed agreement indemnifying and holding the City and its employees, officers, and agents harmless from any damages or other liability arising from use of the permit;
- L. If a vendor of food or food products, certification to completion of a food handler course and proof of all required approvals from the San Bernardino County Department of Public Health;
- M. The applicant shall provide, for the business owner and any employees, two passport size photographs, be fingerprinted by the Upland Police Department, and authorize a criminal record check to be conducted with all applicable fees paid by the applicant; and
- N. Any other reasonable information regarding the time, place, and manner of the proposed vending in order for the City to assess the potential impact on the health, safety, and welfare of the public.

**5.76.040 Criteria for Approval or Denial of Permit.** The Director, or his or her designee, shall approve the issuance of a permit unless he or she determines that:

- A. Information contained in the application, or supplemental information requested from the applicant, is false or misleading in any material detail;
- B. The applicant failed to provide a complete application, after having been notified of the requirement to produce additional information or documents;
- C. Conviction of a misdemeanor or felony involving fraud, theft, dishonesty, sales of prohibited substances, or injury to any person within the previous ten (10) years, or any misdemeanor or felony for which the applicant is required to register pursuant to Penal Code section 290;
- D. The applicant has previously held a sidewalk vending permit which was revoked by the City prior to the permit's expiration date;
- E. The applicant has failed to pay any previous administrative fines, complete any community service, and/or complete any other alternative disposition associated with a previous violation of this Chapter; or

If the permit is denied, written notice of such denial and the reasons therefor shall be provided to the applicant.

**5.76.050 Permit Expiration and Renewal.** A sidewalk vending permit shall be valid for twelve (12) months from the date of issuance, and shall expire and become null and void on the anniversary of its issuance. A person may apply for a permit renewal on a form provided by the City prior to the expiration of that person's active sidewalk vending permit.

**5.76.060 Permit Rescission.** The Director may rescind a permit issued to a sidewalk vendor for a fourth violation or subsequent violation of this Chapter. A sidewalk vendor whose permit is rescinded may apply for a new sidewalk vending permit upon the expiration of the term of the rescinded permit.

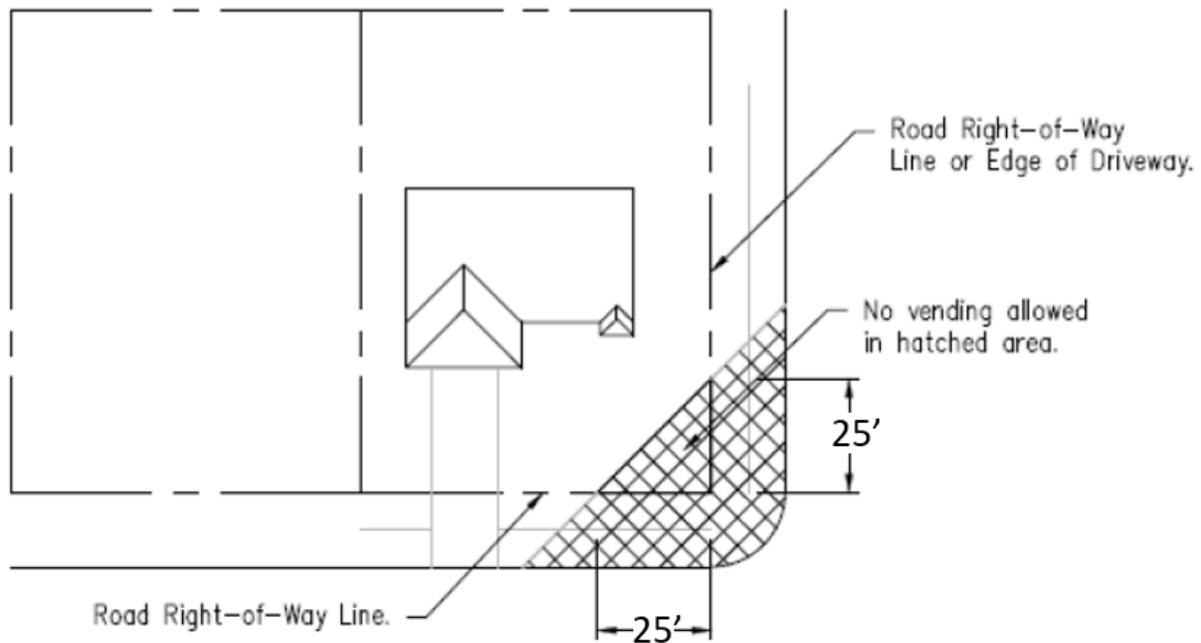
**5.76.070 Appeals.** Any person aggrieved by the decision of the Director to issue, deny issuance, or rescind a sidewalk vending permit may appeal the decision to the Hearing Officer. The appeal shall be filed with the City Clerk within ten (10) days following the date of the Director's decision.

**5.76.080 Permits Nontransferable.** No permit granted pursuant to this chapter shall be transferable.

**5.76.090 Operating Requirements.** Sidewalk vendors shall comply with the following:

- A. No sidewalk vendor shall vend in the following locations. Roaming vendors may traverse these areas, but cannot stop to conduct transactions until clear of these areas:
  - 1. Within twenty-five (25) feet of any street intersection, measured from the curb return location, away from the intersection, as shown below in Figure 1.

Figure 1



2. Within fifteen (15) feet of any driveway or driveway apron.
3. Upon or within any roadway, median strip, or dividing section.
4. Within 500 feet of a permitted certified farmers' market, a swap meet, or an area designated for a special event permit. This prohibition shall be limited to the operating hours of the farmers' market or swap meet, or the limited duration of the special event permit.
5. Along Euclid Avenue or within the Euclid Avenue Bridle Path.
6. Within the boundaries of the non-residential districts of the Historic Downtown Upland Specific Plan.
7. Along the Pacific Electric Trail.
8. In any City parking lot.
9. On private property without the consent of the property owner.
10. Within required parking stalls or drive isles on private property.
11. Within twenty-five (25) feet of any entrance or exit to a building, structure or facility.
12. On any designated emergency vehicle access way.

13. On any public property that does not meet the definition of a public sidewalk or pedestrian path including without limitation any alley, street, roadway, or parking lot.
  14. Within fifty (50) feet of another sidewalk vendor.
  15. Within twenty-five (25) feet of a:
    - a. Fire hydrant, fire call box, or other emergency facility.
    - b. Curb which has been designated as a red zone or a bus zone.
    - c. Trash or recycling receptacles, bike racks, benches, bus stops or similar public use items.
- B. No sidewalk vendor shall vend in a manner that blocks or obstructs the free movement of pedestrians or vehicles. Sidewalk vendors must at all times provide a clearance of not less than four (4) feet on all sidewalks or pedestrian areas so as to enable persons to freely pass while walking, running, or using mobility assistance devices.
- C. Sidewalk vendors shall not vend, sell, or interact with customers in vehicles which are operating or located within a designated roadway or thoroughfare.
- D. Sidewalk vending is permitted between the hours of 8:00 a.m. and 10:00 p.m., daily, except as follows:
1. In residential areas, roaming sidewalk vending shall be permitted between the hours of 8:00 a.m. and 8:00 p.m.
  2. In nonresidential areas, the limit on hours of operation shall not be more restrictive than the hours of operation of other businesses or uses on the same street.
  3. Within 500 feet of a public or private school site during school hours and not within one hour before or one hour after school drop off and pick up operations.
- E. Stationary sidewalk vendors shall not vend in areas that are zoned exclusively residential or in exclusively residential use.
- F. Sidewalk vendors shall provide a trash receptacle for customers and ensure proper disposal of customer trash. Prior to leaving any vending location, the sidewalk vendor shall pick up, remove, and dispose of all trash generated by the vending operations or the vendor's customers within a twenty-five (25) foot radius of the vending location, or if the trash's origin is clearly from the sidewalk vendor.

- G. Roaming sidewalk vendors shall stop only to complete transactions and shall not remain stationary for a period exceeding 10 minutes, thereafter moving a minimum of fifty (50) feet from the original location before commencing additional sales.
- H. Vendors of food or food products shall possess and display in plain view on the vending cart a valid health permit from San Bernardino County Department of Public Health and decal sticker from San Bernardino County Department of Public Health, and all employees handling food shall possess a current San Bernardino County food handler card.
- I. Sidewalk vendors shall possess at all times while vending a valid permit issued pursuant to this chapter, as well as any other permit or license required by the City and any other appropriate governmental agency.
- J. Sidewalk vendors shall comply with all applicable State and local laws, including without limitation: State food preparation, handling, and labeling requirements; fire codes and regulations; noise standards; and the Americans with Disabilities Act of 1990 and other disability access standards (both State and federal).
- K. Vending carts, signs, merchandise, or other property shall not touch, lean against, or be chained, fastened, or affixed at any time to any building or structure, including, but not limited to lampposts, parking meters, traffic signals, fire hydrants, benches, bus shelters, trash cans, street signs, trees, or other objects within the public right-of-way.
- L. Any power used in a Vending Cart shall be contained wholly within the Cart. No cords, hoses, pipes, bottles, canisters, or other conductors or containers of power or fuel shall extend from any source external to or detached from the Vending Cart while the Vending Cart is in operation upon a public sidewalk or pedestrian path.
- M. Sidewalk vendors shall display not more than one sign containing two display faces and that sign shall not be in excess of eight (8) square feet nor exceed four (4) feet in height measured from the ground.
- N. Vending carts shall not exceed a length of four (4) feet, a width of four (4) feet, or a height of eight (8) feet, excluding any attached litter receptacle.
- O. Any device or structure used to produce shade shall be less than sixty (60) square feet in area, not to exceed eight (8) feet in height when measured from the ground, and must be freestanding, carried by the vendor or affixed only to the cart or equipment of the vendor. Such devices shall not be utilized or shall be removed immediately when weather or other factors would cause such devices to become hazardous.
- P. Sidewalk vendors shall not sell, attempt to sell, display, or otherwise offer any goods or services which are not stated on the sidewalk vending permit.

- Q. Sidewalk vendors shall not sell, attempt to sell, display or otherwise offer lottery tickets, alcohol, cannabis, adult oriented material, tobacco or electronic cigarette products, or illegal or counterfeit merchandise.
- R. No vending cart shall become a permanent fixture on the vending site or be considered an improvement to real property.
- S. Vending carts or merchandise shall not be left unattended.
- T. A vending cart shall not remain in a designated location overnight.
- U. Within City parks, sidewalk vendors shall additionally comply with the following:
  - 1. In public parks and park areas, sidewalk vending shall be permitted only during normal hours of park operation.
  - 2. Sidewalk vendors shall operate only on paved pedestrian pathways.
  - 3. Sidewalk vendors shall not utilize any noise or light producing device which would unreasonably interfere with the enjoyment of the park by others.
  - 4. Stationary sidewalk vendors shall not establish a location for operation and roaming sidewalk vendors shall not commence any sale within fifty (50) feet of any playground, athletic court, athletic field, recreational equipment, water feature, cycling trail, picnic table, restroom facility, or permanent structure subject to reservation by the public.
  - 5. Vehicles used to deliver goods, merchandise, food, or personnel, or in any other way support sidewalk vending, shall be maneuvered and parked only in areas accessible to the general public for driving and parking. Vehicles in the park in support of sidewalk vending shall not be maneuvered on or across pathways, sidewalks, turf areas, planters, or maintenance roads or in any manner detrimental to park infrastructure or the safety of the public.
  - 6. Sidewalk vendors shall not vend at any park where the City has signed an agreement for concessions that exclusively permits the sale of food or merchandise by a concessionaire.
- V. Sidewalk vendors shall comply with the following noise standards:
  - 1. It is unlawful for any sidewalk vendor to shout, make any outcry, blow a horn, ring a bell, or use any sound device, including any loud speaking radio or sound amplifying system, while vending where such sound exceeds the City's noise standards as set forth in Chapter 9.
  - 2. No sidewalk vendor shall operate, or permit the operation of, any sound amplification system to advertise, to draw attention to the presence of the

sidewalk vendor, or to communicate commercial information to the general public, except to request emergency assistance or warn of a hazardous situation.

- W. Sidewalk vendors shall not approach persons to sell food or merchandise and shall not interfere in any way with anyone engaged in an activity to sell food or merchandise.
- X. Sidewalk vendors shall not vend to or otherwise conduct transactions with persons in moving vehicles or vehicles illegally parked or stopped.
- Y. Sidewalk vendors shall immediately clean up any food, grease, or other fluid or item related to sidewalk vending activities that falls on public property.
- Z. Sidewalk vendors shall not operate in any area closed to sidewalk vending designated in a resolution of the City Council where the closure is directly related to objective health, safety, or welfare concerns.

**5.76.100 Administrative Citations.**

- A. A violation of this chapter by a sidewalk vendor who has a valid sidewalk vending permit from the City is punishable only by an administrative citation pursuant to Chapter 1.10, in amounts not to exceed the following:
  - 1. One hundred dollars (\$100) for a first violation.
  - 2. Two hundred dollars (\$200) for a second violation within one year of the first violation.
  - 3. Five hundred dollars (\$500) for each additional violation within one year of the first violation.
- B. A person engaged in sidewalk vending without a valid City sidewalk vending permit is punishable by an administrative citation pursuant to Chapter 1.10 in amounts not to exceed the following, in lieu of the amounts set forth in paragraph A:
  - 1. Two hundred fifty dollars (\$250) for a first violation.
  - 2. Five hundred dollars (\$500) for a second violation within one year of the first violation.
  - 3. One thousand dollars (\$1,000) for each additional violation within one year of the first violation.
  - 4. Upon proof of a valid sidewalk vending permit issued by the City, the administrative citations set forth in this paragraph shall be reduced to amounts set forth in paragraph A.

- C. A violation of this chapter shall not be punishable as an infraction or misdemeanor. No person alleged to have violated the provisions herein shall be subject to arrest except when otherwise permitted by law.
- D. Failure to pay an administrative citation issued pursuant to this section shall not be punishable as an infraction or misdemeanor, and additional fines, fees, assessments, or any other financial conditions beyond those authorized herein shall not be assessed.
- E. When assessing administrative citations pursuant to this section, the hearing officer shall take into consideration the person's ability to pay the fine. The City shall provide the person with notice of his or her right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination. The person may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.
- F. If the person meets the criteria described in Subdivision (a) or (b) of Government Code section 68632, the City shall accept, in full satisfaction, twenty (20) percent of an administrative citation imposed pursuant to this chapter.
- G. The hearing officer may allow a person to complete community service in lieu of paying the total administrative citation, may waive the administrative citation, or may offer an alternative disposition.

Section 2. Section 5.04.080 (Definitions) of the Upland Municipal Code is hereby amended to clarify that the definitions of the terms "Solicitors, canvassers and peddlers" do not include sidewalk vendors, with all other definitions in Section 5.04.080 to remain unchanged:

"Solicitors, canvassers and peddlers" as used herein and for the purposes of this title, are defined to be and to include any person not having a fixed place of business in the city, who for him or herself, or as agent, or representative for or of another, goes from place to place, and from house to house, in the city offering to sell intangibles, such as bonds or stocks, or oil or mining shares or units, or articles, goods, wares or merchandise, or soliciting orders for future delivery, or taking orders, or subscriptions, or selling or disposing of any such articles or services inclusive of newspapers, magazines, periodicals, books and all other publications, and whether collecting advance payments or not, and inclusive of all persons who thus go from place to place, and from house to house within the city, in any like or analogous activities, including those who solicit funds or articles for charitable purposes, and inclusive of any and all such persons who may or may not engage in any actual or purported interstate commerce. The terms solicitors, canvassers or peddlers shall not apply to sidewalk vendors operating in compliance with Chapter 5.76, or to commercial salesmen, agents and the like who sell or take orders for goods at wholesale.

Section 3. Section 9.04.090 (Closing hours for Upland municipal parks) of the Upland Municipal Code is hereby amended to clarify that sidewalk vendors are subject to their own citation provisions as set forth in Chapter 5.76, to read as follows:

All municipal parks in the city will be closed beginning one-half hour before sunset until one-half hour after sunrise the following morning. Sunrise and sunset shall be determined by use of the National Oceanic and Atmospheric Administration web page. Any person that remains in a municipal park during closing hours shall be guilty of a misdemeanor, provided however, that sidewalk vendors operating with a valid permit pursuant to Chapter 5.76 shall only be subject to the citation provisions set forth in Section 5.76.100. Persons other than sidewalk vendors operating with a valid permit pursuant to Chapter 5.76 charged with a violation of this section shall be cited in the manner prescribed for citation for misdemeanors as set forth in the California State Penal Code. This section shall not apply to attendance at city-authorized community activities in the park.

Section 4. Section 12.16.010 (Sidewalk or street -- Use for display of goods prohibited) of the Upland Municipal Code is hereby amended to provide that sidewalk vendors may vend goods, wares, and merchandise in accordance with Chapter 5.76, to read as follows:

Other than sidewalk vendors operating in compliance with Chapter 5.76, no person shall use any portion of any sidewalk or part of any public street within the City for the deposit, exhibition, or sale of goods or for any like or comparable purpose; and no person shall permit any goods, wares, merchandise, fixtures, or other property owned, consigned to, or controlled by that person to be or remain upon any portion of any sidewalk or part of any public street in the City, save temporarily as set forth in Section 12.16.020, unless expressly permitted by other ordinance or regulation of the City.

Section 5. Section 12.16.030 (Exemptions continued) of the Upland Municipal Code is hereby amended to clarify that sidewalk vendors are subject to their own regulations pursuant to Chapter 5.76, to read as follows:

Nothing herein contained is intended to apply to the use of the public streets by any motor or other vehicle in the display of goods; nor for the sale of goods, when the same is otherwise permitted or licensed by the city, save that no person may use the streets of the city for the display or exhibit of goods, or any other like or comparable purpose, without first having secured a permit so to do from the chief of police, which permit is only to be granted under such conditions or regulations as may be proper and reasonable, having regard to the nature of the display or exhibit, the extent of street use required, and particularly having regard to traffic regulations, and generally the safety and convenience of the public. Subject to such restrictions or conditions, the chief of police is authorized and empowered to issue such permits in all

proper cases, to cancel the same upon any plain violation or disregard of the same, or to refuse any such permit when it is apparent the use of the street sought for is not within the spirit or letter of this provision. The provisions of this section are not intended to apply to any merely casual or occasional use of the streets for display or exhibition purposes for merely a brief time, or merely in passing through the city. Nor are the provisions meant to apply to sidewalk vendors, which are subject to regulations pursuant to Upland Municipal Code Chapter 5.76.

Section 6. CEQA. The City Council finds and determines that there is no possibility that the adoption of this Ordinance will have a significant effect on the environment. Accordingly, this Ordinance is not subject to the requirements of the California Environmental Quality Act (CEQA) pursuant to Sections 15061(b)(3) of the CEQA Guidelines.

Section 7. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

Section 8. Effective Date. This Ordinance shall take affect thirty (30) days after its adoption. The City Clerk is directed to certify to the enactment of this Ordinance and to cause this ordinance to be published and/or posted as required by law.

PASSED, APPROVED, AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2019.

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

I, Keri Johnson, City Clerk of the City of Upland, California, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Upland held on the \_\_\_\_ day of \_\_\_\_\_, 2019, and was adopted at a regular meeting of the City Council of the City of Upland on the \_\_\_\_ day of \_\_\_\_\_, 2019, by the following vote:

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

ATTEST: \_\_\_\_\_

Keri Johnson, City Clerk



# STAFF REPORT

**ITEM NO. 11.C.**

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**DATE:** November 25, 2019  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
PONCE YAMBOT, PRINCIPAL ENGINEER  
**SUBJECT:** ACCEPTANCE OF PUBLIC IMPROVEMENTS BY MBK HOMES AND  
REDUCTION OF BONDS

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## **RECOMMENDED ACTION**

It is recommended that the City Council accept the public improvements constructed by MBK Homes (MBK), generally located on the southeast corner of Central Avenue and 11th Street; and approve the reduction of the faithful performance bond to twenty five percent (25%).

## **GOAL STATEMENT**

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

## **BACKGROUND**

On May 11, 2015, the City Council approved the Tract Map 18951 for MBK Homes, authorized the City Manager to execute the subdivision agreement, and accepted securities to ensure construction of the required improvements.

The development is generally located on the southeast corner of Central Avenue and 11th Street. As conditioned, MBK constructed improvements in the public right-of-way, including streets, sewer, water, storm drain, paving, curbs and gutters, curb ramps, and sidewalks.

## **ISSUES/ANALYSIS**

MBK Homes has completed construction of both the private and public improvements required for the development. The City has inspected the completed improvements and found them to

be in compliance with the approved plans.

The City can now accept the improvements and reduce the Faithful Performance Bond to 25%. The remaining 25% will serve as a guarantee and warranty of the work for one year. The Faithful Performance Bond will be released thereafter, should there be no material defects.

Similarly, the Labor and Materials Bond will be released six months after this action is approved, if there are no claims (e.g. by vendors, subcontractors, etc.) filed against the project.

#### **FISCAL IMPACTS**

There is no fiscal impact associated with this action.

#### **ALTERNATIVES**

Provide alternative direction to staff.

#### **ATTACHMENTS:**

**Location Map**

**Performance Bond and Labor & Materials Bond**





EXECUTED IN DUPLICATE
SUBDIVISION IMPROVEMENTS
PERFORMANCE BOND

Bond No. 0667681
Initial Premium \$ 20,790.00/2 yrs.
Subject to Renewal

KNOW ALL MEN BY THESE PRESENTS: That we, Upland Central, LLC as Principal, and INTERNATIONAL FIDELITY INSURANCE COMPANY, a corporation duly authorized under the laws of the State of New Jersey to become surety on bonds and undertakings, as Surety, are held and firmly bound unto City of Upland as Oblige in the full and just sum of One Million Four Hundred Eighty-Five Thousand & N0/100ths Dollars, (\$ 1,485,000.00 ) lawful money of the United States of America, to be paid to the said Oblige, successors or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, successors, administrators and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE OBLIGATION IS SUCH THAT:

Whereas, the Principal and Oblige have entered into an agreement whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated March 2, 2015 and identified as project Tract 18951 \* is hereby referred to and made a part hereof; and

\*Street, Sewer, Water, Drainage, Traffic & miscellaneous improvements at corner of Central & 11th.

Whereas, said Principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

Now, Therefore, the condition of this obligation is such that if the above bounded Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the Oblige, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by Oblige in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

IN WITNESS WHEREOF, the seal and signature of said Principal is hereto affixed and the corporate seal and the name of the Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact at Orange, this 2nd day of March, 20 15

Upland Central, LLC
By: Timothy Kane / Principal

INTERNATIONAL FIDELITY INSURANCE COMPANY
By: Shane Wolf / Attorney-in-Fact



EXECUTED IN DUPLICATE

**INTERNATIONAL FIDELITY INSURANCE COMPANY**  
**SUBDIVISION IMPROVEMENTS LABOR AND MATERIAL BOND**

Bond No. 0667681  
Premium included in Performance Bond

KNOW ALL MEN BY THESE PRESENTS: That we, Upland Central, LLC as Principal, and **INTERNATIONAL FIDELITY INSURANCE COMPANY**, duly authorized under the laws of the State of New Jersey to become surety on bonds and undertakings, as Surety, are held and firmly bound unto City of Upland as Oblige in the full and just sum of Seven Hundred Forty-Three Thousand\* Dollars, (\$743,000.00) lawful money of the United States of America, for the payment whereof, said Principal and Surety bind themselves, their heirs, executors, successors, administrators and assigns, jointly and severally, firmly by these presents.

\* & NO/100ths

**THE CONDITION OF THE OBLIGATION IS SUCH THAT**, Whereas, the Principal and Oblige have entered into an agreement whereby the Principal agrees to install and complete certain designated public improvements, which agreement, dated March 2, 2015, and identified as project Tract 18951 \*\*, is hereby referred to and made a part hereof; and **\*\*Street, Sewer, Water, Drainage, Traffic & miscellaneous improvements at corner of Central & 11th.**

Whereas, under the terms of the agreement, the Principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the Oblige to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California.

Now, therefore, the Principal and the undersigned as corporate Surety, are held firmly bound unto the Oblige and all contractors, subcontractors, laborers, materialmen, and other persons employed in the performance of the agreement and referred to in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code in the sum of Seven Hundred Forty\*\*\* Dollars (\$743,000.00), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney' s fees, incurred by county (or city) in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

\*\*\*Three Thousand & No/100ths

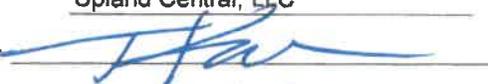
It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

Sealed with our seals and dated this 2nd day of March, 2015.

Upland Central, LLC

By   
Timothy Kar / Principal

**INTERNATIONAL FIDELITY INSURANCE COMPANY**

By   
Shane Wolf / Attorney-in-Fact



## STAFF REPORT

**ITEM NO. 11.D.**

---

**DATE:** November 25, 2019  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
PONCE YAMBOT, PRINCIPAL ENGINEER  
JESUS SANCHEZ, ASSISTANT ENGINEER  
**SUBJECT:** BOND REDUCTION REQUEST FOR TRACT 18274 BY LENNAR HOMES

---

### RECOMMENDED ACTION

It is recommended that the City Council approve a bond reduction of the Public Performance Bond to fifty percent (50%) for Tract 18274 developed by Lennar Homes of California, Inc.

### GOAL STATEMENT

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

### BACKGROUND

TM 18274 is a subdivision of land composed of 173 single family lots. It is part of the Harvest Specific Plan (Harvest) by Lewis Homes generally bounded by Foothill Boulevard on the north, Dewey Avenue on the east, 11th Street on the south and the San Antonio Channel on the west. Harvest Specific Plan is composed of two tracts, TM 18249 located on the west side of the San Antonio Channel adjacent to Monte Vista Avenue that was conveyed to KB Home, and TM 18274 located east of the San Antonio Channel which was conveyed to Lennar Homes (Lennar).

On November 26, 2018, Lennar Homes posted a Public Performance Bond in the amount of Two Million Three Hundred Sixty Thousand Dollars (\$2,360,000) and a Labor and Materials bond in the amount of One Million One Hundred Eighty Thousand Dollars (\$1,180,000) to ensure completion of the proposed public improvements.

## **ISSUES/ANALYSIS**

Lennar has constructed a majority of the required improvements and construction is currently progressing. The developer is now requesting for Fifty Percent (50 %) reduction of Public Performance Bond.

## **FISCAL IMPACTS**

There is no fiscal impact associated with this action.

## **ALTERNATIVES**

Provide alternative direction to staff.

## **ATTACHMENTS:**

**Location Map**

**Subdivision Agreement for Public Improvements**

**Performance Bond - Public**

**Labor and Materials Bond - Public**

**Tract 18274  
Lennar Homes**



**LOCATION MAP**



**SUBDIVISION AGREEMENT**

Public Improvements

Tract Map Number 18274

THIS AGREEMENT is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ by and between Lennar Homes of California, Inc. (hereinafter referred to as "Subdivider") and the CITY OF UPLAND, a municipal corporation (hereinafter referred to as the "City").

**A. Recitals**

- (i) The City approved a Tentative Tract Map pursuant to the California Subdivision Map Act as set forth in California Government Code Section 66410 et. seq. ("Map Act") identified as Tentative Tract Number 18274 in the City of Upland, State of California; and
- (ii) Subdivider seeks approval of a Final Map under the Map Act identified as Final Map Number 18274

**B. Agreement**

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

1. In consideration of the City's approval of and filing Tentative Subdivision Tract Map Number 18274 and Final Tract Number 18274, Subdivider undertakes and agrees that it will, at Subdivider's sole cost and expense, design, construct and install all the improvements in accordance with the plans, specifications on file with the City, incorporated herein and made a part hereof, and including all conditions of approval required by the Planning Commission and City Council of the City of Upland.

2. Subdivider also undertakes and agrees upon the same consideration to design, construct and install all improvements in accordance with the ordinances and regulations of the City, and to do all other and further acts required of it pursuant to this Agreement.

3. Subdivider agrees in connection therewith to pay or cause to be paid all amounts becoming due to contractors, subcontractors, and persons renting equipment or furnishing labor or materials to the foregoing Final Tract with respect to such improvements.

4. Subdivider agrees that all such improvements shall be constructed and completed in accordance with the city standards required by the City Engineer. In case of dispute, the good faith judgment of the City Engineer shall be final and binding upon the parties.

5. Subdivider undertakes and agrees that all of the work of improvement shall be completed within three hundred sixty five (365) days from the date of execution of this Agreement.

6. Should Subdivider fail to comply with any of the terms or provisions of this Agreement, Subdivider shall be liable to the City for the reasonable value of any work or improvements not completed or improperly done or performed. In the event of any such failure, the City shall give to Subdivider written notice thereof. Unless the work or improvements covered by said notice, including defective work and improvements, are commenced by Subdivider within fifteen (15) days of the date of said notice and diligently prosecuted to completion, the City may at its option:

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

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

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

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

7. All slope banks over three (3) feet in vertical height within said Tract Map shall be landscaped with landscaping approved by the City Engineer. Sprinklers shall be installed on all slopes over three (3) feet in vertical height along arterial streets and shall be of a type and according to a sprinkler plan approved by the City Engineer, with sprinkler turn-ons at the tops of the slopes, and connected with the remainder of the water systems of the lots of which such slopes are a part.

8. Subdivider shall, at its sole cost and expense, secure and furnish to the City, bonds in a form approved by the City, executed by a corporation authorized to transact surety business within the State of California, for the following amounts and purposes:

(a) A bond in the amount of \$ 2,360,000.00 guaranteeing full performance of all the terms of this Agreement, see Performance Bond No. \_\_\_\_\_;

(b) A bond in the amount of \$ 1,180,000.00 securing payment to the contractor, his subcontractor and to persons renting equipment or furnishing labor or materials to them with respect to said public improvements, see Labor and Materials Bond No. \_\_\_\_\_;

(c) A cash deposit in the amount of \$ \_\_\_\_\_ securing the setting of monuments.

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

10. As a condition precedent to the acceptance of the improvements hereunder as being complete and prior to the release of any bonds required under paragraph 8, hereof, securing the faithful performance of Subdivider's obligations hereunder, Subdivider shall give a bond with a corporate bonding company or similar instrument, satisfactory to the City in the amount of \$ \_\_\_\_\_ as guarantee and warranty of the work for a one (1) year period following the completion and acceptance thereof against any defective work or labor done, or defective materials furnished.

11. Except as to the sole and exclusive negligence of City, its elected officials, officers agents and employees, Subdivider hereby agrees to indemnify, defend and hold harmless, the City, its elected officials, officers, agents and employees from and against any and all claims, demands, suits, actions or proceedings of any kind or nature, including, but not by way of limitation, all civil claims, workers' compensation claims, costs, expenses or damages to property or injuries to or death of any person or persons, including attorneys fees and all other claims, whether groundless or not, arising out of or related to the acts, errors or omissions of Subdivider, its officers, agents, employees, consultants, subcontractors or other persons, companies or other entities using roadways/streets of the subdivision, performing labor, transporting and/or supplying material, designing, constructing or installing the improvements contemplated in this Subdivision Agreement. Where the Subdivider divides the project in phases and or allows construction vehicles or construction traffic use the same roadways/streets used by residents of the subdivision causing accidents, the Subdivider shall indemnify the City, its officers, its employees and its agents from any and all liability, claims, damages, or injuries to any person or property arising from the Subdivider's actions or actions of his employees, agents, and contractors.

12. All notices to Subdivider may be sent to \_\_\_\_\_, California, \_\_\_\_\_ or at such other address of which the City shall actually receive notice in writing specifically calling attention to this Agreement.

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

BY   
\_\_\_\_\_  
Geoffrey Smith, Vice President Lennar Homes  
Name and Company of California, INC

BY \_\_\_\_\_  
\_\_\_\_\_  
Name and Company

CITY OF UPLAND, a municipal Corporation

BY \_\_\_\_\_  
City Manager

BY \_\_\_\_\_  
City Clerk

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

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 Riverside }  
On May 2, 2018 before me, Jodie Atha, Notary Public  
Date Here Insert Name and Title of the Officer  
personally appeared Gregory Smith  
Name(s) of Signer(s)

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 Jodie Atha  
Signature of Notary Public

Place Notary Seal and/or Stamp Above

**OPTIONAL**

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_  
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_  
Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_ Signer's Name: \_\_\_\_\_  
 Corporate Officer – Title(s): \_\_\_\_\_  Corporate Officer – Title(s): \_\_\_\_\_  
 Partner –  Limited  General  Partner –  Limited  General  
 Individual  Attorney in Fact  Individual  Attorney in Fact  
 Trustee  Guardian of Conservator  Trustee  Guardian of Conservator  
 Other: \_\_\_\_\_  Other: \_\_\_\_\_  
Signer is Representing: \_\_\_\_\_ Signer is Representing: \_\_\_\_\_

BOND NO. SU1150590  
Premium = \$7,080.00

**SUBDIVISION PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS, That we, Lennar Homes of California, Inc., as Principal, and Arch Insurance Company, a corporation organized and existing under the laws of the State of NJ and authorized to transact surety business in the State of California, as Surety, are held and firmly bound unto City of Upland, as Obligee, in the sum of Two Million Three Hundred Sixty Thousand and 00/100 Dollars (\$2,360,000.00) lawful money of the United States, for the payment whereof, well and truly to be made, said Principal and Surety bind themselves, their heirs, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, That, Whereas, said Principal has entered into a Subdivision Agreement or has applied for a certain Permit with the Obligee, dated \_\_\_\_\_, in which said Principal agrees to perform or to construct a certain designated public improvements, as follows:

City of Upland / T18274 Lofts at Harvest & Liberty at Harvest – public improvement (P&P)

NOW, THEREFORE, if the said Principal shall well and truly perform the work in the manner specified therein and comply with the terms or conditions of the permit/agreement, then this obligation shall be null and void; otherwise to remain in full force and effect.

No party other than the Obligee shall have any rights hereunder as against the Surety. The aggregate liability of the Surety on this bond obligation shall not exceed the penal sum set forth above for any reason whatsoever.

Signed, sealed and dated on May 3, 2018.

Lennar Homes of California, Inc., a California corporation

By:   
Geoffrey Smith, Vice President

Arch Insurance Company

By:   
Cynthia L. Choren, Attorney-in-Fact

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

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 Riverside }  
On May 4<sup>th</sup>, 2018 before me, Jodie Atha, Notary Public,  
Date Here Inse Name and Title of the Officer  
personally appeared Gregory Smith  
Name(s) of Signer(s)

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.



Place Notary Seal and/or Stamp Above

Signature Jodie Atha  
Signature of Notary Public

**OPTIONAL**

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

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

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
 Corporate Officer – Title(s): \_\_\_\_\_  
 Partner –  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian of Conservator  
 Other: \_\_\_\_\_  
Signer is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
 Corporate Officer – Title(s): \_\_\_\_\_  
 Partner –  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian of Conservator  
 Other: \_\_\_\_\_  
Signer is Representing: \_\_\_\_\_

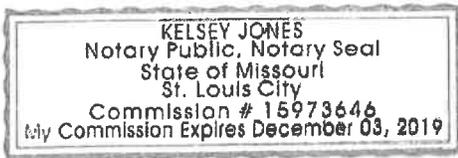
**All-Purpose  
Certificate of Acknowledgment**

State of Missouri  
City of St. Louis }

On May 3, 2018 before me, Kelsey Jones,  
DATE NAME OF NOTARY PUBLIC

personally appeared Cynthia L. Choren  
NAME(S) OF SIGNER(S)

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



Witness my hand and official seal.

*Kelsey Jones*  
SIGNATURE OF NOTARY PUBLIC

Though the data below is not required by law, it may prove valuable to persons relying on the document and prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT(S)
<input type="checkbox"/> Individual(s) <input type="checkbox"/> Corporate Officer: <input type="checkbox"/> Title(s) <input type="checkbox"/> Partner(s) <input checked="" type="checkbox"/> Attorney-in-Fact <input type="checkbox"/> Trustee(s) <input type="checkbox"/> Subscribing Witness <input type="checkbox"/> Guardian/Conservator <input type="checkbox"/> Other:	Type of Document  <b>Subdivision Performance</b> Number of Pages  <b>One</b> Date of Document  <b>May 3, 2018</b> Signer(s) Other Than Named Above

**SIGNER IS REPRESENTING:**  
NAME OF PERSON(S) OR ENTITY(IES)  
Arch Insurance Company

**THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON BLUE BACKGROUND.**

*This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated. Not valid for Note, Loan, Letter of Credit, Currency Rate, Interest Rate or Residential Value Guarantees.*

**POWER OF ATTORNEY**

Know All Persons By These Presents:

That the Arch Insurance Company, a corporation organized and existing under the laws of the State of Missouri, having its principal administrative office in Jersey City, New Jersey (hereinafter referred to as the "Company") does hereby appoint:

Brittany B. Clavin, Cynthia L. Choren, Debra C. Schneider, Heidi A. Notheisen, JoAnn R. Frank, Karen L. Roider, Leah J. Juenger, Pamela A. Basimila and Sandra L. Ham of St. Louis, MO (EACH)

its true and lawful Attorney(s) in-Fact, to make, execute, seal, and deliver from the date of issuance of this power for and on its behalf as surety, and as its act and deed:

Any and all bonds, undertakings, recognizances and other surety obligations in the penal sum not exceeding Ninety Million Dollars (\$90,000,000.00).

This authority does not permit the same obligation to be split into two or more bonds in order to bring each such bond within the dollar limit of authority as set forth herein.

The execution of such bonds, undertakings, recognizances and other surety obligations in pursuance of these presents shall be as binding upon the said Company as fully and amply to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal administrative office in Jersey City, New Jersey.

This Power of Attorney is executed by authority of resolutions adopted by unanimous consent of the Board of Directors of the Company on September 15, 2011, true and accurate copies of which are hereinafter set forth and are hereby certified to by the undersigned Secretary as being in full force and effect:

VOTED That the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, or the Secretary shall have the power and authority to appoint agents and attorneys-in-fact, and to authorize them subject to the limitations set forth in their respective powers of attorney, to execute on behalf of the Company, and attach the seal of the Company thereto, bonds, undertakings, recognizances and other surety obligations obligatory in the nature thereof, and any such officers of the Company may appoint agents for acceptance of bonds.

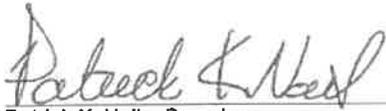
This Power of Attorney is signed, sealed and certified by facsimile under and by authority of the following resolution adopted by the unanimous consent of the Board of Directors of the Company on September 15, 2011:

VOTED, That the signature of the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, and the signature of the Secretary, the seal of the Company, and certifications by the Secretary, may be affixed by facsimile on any power of attorney or bond executed pursuant to the resolution adopted by the Board of Directors on September 15, 2011, and any such power so executed, sealed and certified with respect to any bond or undertaking to which it is attached, shall continue to be valid and binding upon the Company.

In Testimony Whereof, the Company has caused this instrument to be signed and its corporate seal to be affixed by their authorized officers, this 18<sup>th</sup> day of January, 2018.

Attested and Certified

Arch Insurance Company

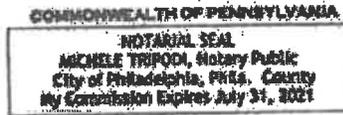
  
Patrick K. Nails, Secretary

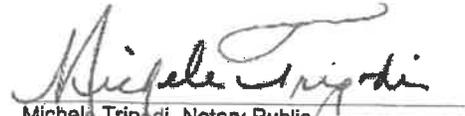


  
David M. Finkelstein, Executive Vice President

STATE OF PENNSYLVANIA SS  
COUNTY OF PHILADELPHIA SS

I, Michele Tripodi, a Notary Public, do hereby certify that Patrick K. Nails and David M. Finkelstein personally known to me to be the same persons whose names are respectively as Secretary and Executive Vice President of the Arch Insurance Company, a Corporation organized and existing under the laws of the State of Missouri, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they being thereunto duly authorized signed, sealed with the corporate seal and delivered the said instrument as the free and voluntary act of said corporation and as their own free and voluntary acts for the uses and purposes therein set forth.



  
Michele Tripodi, Notary Public  
My commission expires 07/31/2021

CERTIFICATION

I, Patrick K. Nails, Secretary of the Arch Insurance Company, do hereby certify that the attached Power of Attorney dated January 18, 2018 on behalf of the person(s) as listed above is a true and correct copy and that the same has been in full force and effect since the date thereof and is in full force and effect on the date of this certificate; and I do further certify that the said David M. Finkelstein, who executed the Power of Attorney as Executive Vice President, was on the date of execution of the attached Power of Attorney the duly elected Executive Vice President of the Arch Insurance Company.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the Arch Insurance Company on this 3rd day of May, 2018.

  
Patrick K. Nails, Secretary

This Power of Attorney limits the acts of those named therein to the bonds and undertakings specifically named therein and they have no authority to bind the Company except in the manner and to the extent herein stated.

PLEASE SEND ALL CLAIM INQUIRIES RELATING TO THIS BOND TO THE FOLLOWING ADDRESS:

Arch Insurance – Surety Division  
3 Parkway, Suite 1500  
Philadelphia, PA 19102



**SUBDIVISION LABOR & MATERIAL/PAYMENT BOND**

Bond No: SU1150590  
Premium: included in Perf. Bond

KNOW ALL MEN BY THESE PRESENTS: That Lennar Homes of California, Inc., as Principal, and Arch Insurance Company, a corporation organized and existing under the laws of the State of NJ and authorized to transact surety business in the State of CA, as Surety, are held and firmly bound City of Upland, as Obligee, in the sum of One Million One Hundred Eighty Thousand DOLLARS (\$1,180,000.00), for which the payment whereof, well and truly to be made, said Principal and Surety bind themselves, their heirs, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, That, Whereas, said Principal has entered into a Subdivision Agreement or has applied for a certain Permit with the Obligee, dated \_\_\_\_\_, in which said Principal agrees to perform or to construct a certain designated public improvements, as follows:

City of Upland / T18274 Lofts at Harvest & Liberty at Harvest – public improvement (P&P)

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

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

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

SIGNED, SEALED, DATED on May 3, 2018

Lennar Homes of California, Inc., a California corporation Arch Insurance Company  
Principal Surety

By: 

By: 

Geoffrey Smith, Vice President  
(type or print Name and Title)

Cynthia L. Choren, Attorney-in-Fact  
(type or print Name and Title)

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

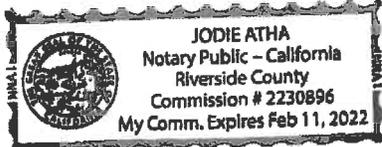
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }  
County of Riverside }

On May 4th, 2018 before me, Jodie Atha, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Geoffrey Smith  
Name(s) of Signer(s)

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 Jodie Atha  
Signature of Notary Public

Place Notary Seal and/or Stamp Above

**OPTIONAL**

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

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

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

Corporate Officer – Title(s): \_\_\_\_\_

Partner –  Limited  General

Individual  Attorney in Fact

Trustee  Guardian of Conservator

Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

Corporate Officer – Title(s): \_\_\_\_\_

Partner –  Limited  General

Individual  Attorney in Fact

Trustee  Guardian of Conservator

Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

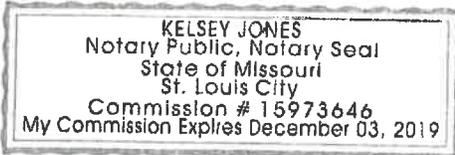
**All-Purpose  
Certificate of Acknowledgment**

State of Missouri  
City of St. Louis }

On May 3, 2018 before me, Kelsey Jones,  
DATE NAME OF NOTARY PUBLIC

personally appeared Cynthia L. Choren  
NAME(S) OF SIGNER(S)

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



Witness my hand and official seal.

*Kelsey Jones*  
SIGNATURE OF NOTARY PUBLIC

Though the data below is not required by law, it may prove valuable to persons relying on the document and prevent fraudulent reattachment of this form.

- CAPACITY CLAIMED BY SIGNER**
- Individual(s)
  - Corporate Officer:
  - Title(s)
  - Partner(s)
  - Attorney-in-Fact
  - Trustee(s)
  - Subscribing Witness
  - Guardian/Conservator
  - Other:

**DESCRIPTION OF ATTACHED DOCUMENT(S)**

Type of Document  
Subdivision Payment  
Number of Pages  
One  
Date of Document  
May 3, 2018  
Signer(s) Other Than Named Above

**SIGNER IS REPRESENTING:**  
NAME OF PERSON(S) OR ENTITY(IES)  
Arch Insurance Company

**THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON BLUE BACKGROUND.**

*This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated. Not valid for Note, Loan, Letter of Credit, Currency Rate, Interest Rate or Residential Value Guarantees.*

**POWER OF ATTORNEY**

Know All Persons by These Presents:

That the Arch Insurance Company, a corporation organized and existing under the laws of the State of Missouri, having its principal administrative office in Jersey City, New Jersey (hereinafter referred to as the "Company") does hereby appoint:

Brittany D. Clavin, Cynthia L. Choren, Debra S. Schneider, Heidi A. Notheisen, JoAnn R. Frank, Karen L. Roider, Leah L. Juenger, Pamela A. Brennan and Sandra L. Ham of St. Louis, MO (EACH)

its true and lawful Attorney(s) in-Fact, to make, execute, seal, and deliver from the date of issuance of this power for and on its behalf as surety, and as its act and deed:

Any and all bonds, undertakings, recognizances and other surety obligations in the penal sum not exceeding Ninety Million Dollars (\$90,000,000.00).

This authority does not permit the same obligation to be split into two or more bonds in order to bring each such bond within the dollar limit of authority as set forth herein.

The execution of such bonds, undertakings, recognizances and other surety obligations in pursuance of these presents shall be as binding upon the said Company as fully and amply to all intents and purposes, as if the same had been fully executed and acknowledged by its regularly elected officers at its principal administrative office in Jersey City, New Jersey.

This Power of Attorney is executed by authority of resolutions adopted by unanimous consent of the Board of Directors of the Company on September 15, 2011, true and accurate copies of which are hereinafter set forth and are hereby certified to by the undersigned Secretary as being in full force and effect:

**VOTED** That the Chairman of the Board, the President, or the Executive Vice President or any Senior Vice President of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, or the Secretary shall have the power and authority to appoint agents and attorneys-in-fact, and to authorize them subject to the limitations set forth in their respective powers of attorney, to execute on behalf of the Company, and attach the seal of the Company thereto, bonds, undertakings, recognizances and other surety obligations obligatory in the nature thereof, and any such officers of the Company may appoint agents for acceptance of bonds.

This Power of Attorney is signed, sealed and certified by facsimile under and by authority of the following resolution adopted by the unanimous consent of the Board of Directors of the Company on September 15, 2011:

**VOTED**, That the signature of the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, and the signature of the Secretary, the seal of the Company, and certifications by the Secretary, may be affixed by facsimile on any power of attorney or bond executed pursuant to the resolution adopted by the Board of Directors on September 15, 2011, and any such power so executed, sealed and certified with respect to any bond or undertaking to which it is attached, shall continue to be valid and binding upon the Company.

In Testimony Whereof, the Company has caused this instrument to be signed and its corporate seal to be affixed by their authorized officers, this 18<sup>th</sup> day of January, 2018.

Attested and Certified

Arch Insurance Company

  
Patrick K. Nails, Secretary

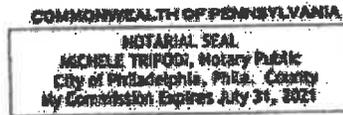


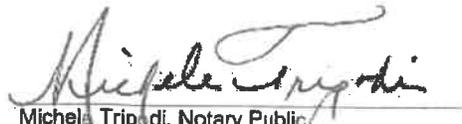
  
David M. Finkelstein, Executive Vice President

STATE OF PENNSYLVANIA SS

COUNTY OF PHILADELPHIA SS

I, Michele Tripodi, a Notary Public, do hereby certify that Patrick K. Nails and David M. Finkelstein personally known to me to be the same persons whose names are respectively as Secretary and Executive Vice President of the Arch Insurance Company, a Corporation organized and existing under the laws of the State of Missouri, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they being thereunto duly authorized signed, sealed with the corporate seal and delivered the said instrument as the free and voluntary act of said corporation and as their own free and voluntary acts for the uses and purposes therein set forth.

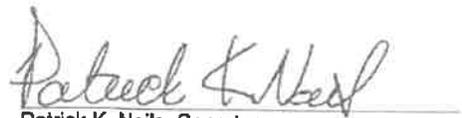


  
Michele Tripodi, Notary Public  
My commission expires 07/31/2021

CERTIFICATION

I, Patrick K. Nails, Secretary of the Arch Insurance Company, do hereby certify that the attached Power of Attorney dated January 18, 2018 on behalf of the person(s) as listed above is a true and correct copy and that the same has been in full force and effect since the date thereof and is in full force and effect on the date of this certificate; and I do further certify that the said David M. Finkelstein, who executed the Power of Attorney as Executive Vice President, was on the date of execution of the attached Power of Attorney the duly elected Executive Vice President of the Arch Insurance Company.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the Arch Insurance Company on this 3rd day of May, 2018.

  
Patrick K. Nails, Secretary

This Power of Attorney limits the acts of those named therein to the bonds and undertakings specifically named therein and they have no authority to bind the Company except in the manner and to the extent herein stated.

PLEASE SEND ALL CLAIM INQUIRIES RELATING TO THIS BOND TO THE FOLLOWING ADDRESS:

Arch Insurance – Surety Division  
3 Parkway, Suite 1500  
Philadelphia, PA 19102





## STAFF REPORT

**ITEM NO. 11.E.**

---

**DATE:** November 25, 2019  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**SUBJECT:** RESOLUTION APPROVING AS TO FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF A CONSTRUCTION FINANCING AGREEMENT FOR THE CONSTRUCTION COSTS OF A REPLACEMENT 7.5 MG WATER RESERVOIR

---

### RECOMMENDED ACTION

It is recommended that the City Council adopt a resolution approving as to form and authorizing the execution and delivery of a construction financing agreement for the construction of a replacement 7.5 MG water reservoir.

### GOAL STATEMENT

The proposed action supports the City's goal to maintain water facilities in good, operable condition, in order to provide safe reliable water service to the community.

### BACKGROUND

On October 10, 2016, the City Council adopted its Resolution No. 6366 declaring an emergency condition and approving the Emergency Work Plan Phase 1, which included, among other emergency actions, the procurement of professional appraisal services and environmental and engineering design services to acquire a portion of the SAW Co. property, and the preparation of construction documents to replace the Reservoir 15 facility. This facility receives imported water from the Water Facilities Authority and other groundwater facilities. On August 14, 2017, the City Council additionally approved an increase in the Emergency Work Plan Phase 1 budget to authorize the design and construction of temporary improvements at Reservoir 15 to enhance the facility structure, pursuant to California Public Contract Code Sections 20168 and 22050. Progress reports were continually provided to the City Council regarding all aspects of the Emergency Work Plan Phase 1.

On August 13, 2018, the City Council adopted its Resolutions Nos. 6463, 6464, and 6465 authorizing certain actions relating to the 7.5 MG Replacement Reservoir at 17th Street and Benson Avenue, including (i) application for, and execution of, a financial assistance agreement from the California State Water Resources Control Board to finance the City's planning, design, and construction costs of the Replacement Reservoir in a maximum principal amount not to exceed \$16,500,000, and (ii) the pledge of net water revenues of the City's Water System and its water enterprise fund for repaying the State under the financial assistance agreement.

On March 11, 2019, the City Manager and the Public Works Director notified City Council that the City had completed all of the actions comprising the Emergency Work Plan Phase 1, and pursuant to Section 4 of Resolution No. 6366 and Public Contract Code Section 22050(c)(2), the completion of all of the Emergency Work Plan Phase 1 actions constituted a termination of the emergency action.

As noted above, certain of the actions completed in Emergency Work Plan Phase 1 related to the construction of a new reservoir facility to replace the Reservoir 15 facility. At this time, the remaining work involves the construction of the Replacement Reservoir at the north west corner of 17th Street and Benson Avenue (i.e., Phase 2). Because all of the Emergency Work Plan Phase 1 actions have been completed, the Phase 2 work will proceed in regular order and is not subject to California Public Contract Code Sections 20168 and 22050.

In July 2019, the State informed the City of a new requirement imposed by the State upon recipient agencies of funding under the DWSRF Program for a "closing resolution" to supplement prior resolutions and approve the final construction financing agreement. The City's executed closing resolution shall be submitted to the State prior to the State's execution of the construction financing agreement.

Pursuant to Resolution No. 6482, adopted by the City Council on March 11, 2019, the City and SAW Co. entered into a Purchase and Sale Agreement and Escrow Instructions, dated as of March 31, 2019, relating to the proposed sale of property by SAW Co. to the City for the replacement reservoir project at a purchase price of \$1,720,000, payable in five annual installments with interest on unpaid principal at a rate of 1.88% per annum. On September 23, 2019, the City Council approved a closing condition waiver and the acquisition of the property prior to the State issuance of a final construction financing agreement. On September 27, 2019 the property was transferred to Upland by grant deed instrument number 2019-0347417 recorded in the official records of the San Bernardino County Records Office.

## **ISSUES/ANALYSIS**

The State informed the City that the final construction financing agreement is now ready for approval. At this time, the City needs to approve the closing resolution and sign the documents as a prerequisite requirement for the State to execute the financing agreement. On November 6, 2019, the City received final instructions and documents from the State which are required in order to complete the Drinking Water Revolving Fund (DWSRF) program loan. These City executed documents are due to the State by December 6, 2019. The financing agreement and related documents have been reviewed and approved by the City Attorney's office.

In 2011, the Upland Public Financing Authority assisted the City by issuing bonds to refinance, for debt service savings, bonds previously issued to finance capital improvements to the City's Water System. \$7,200,000 in principal amount of the 2011 Bonds presently remains outstanding, with principal amortizing annually through final maturity of October 1, 2033. The 2011 Bonds are secured by, and payable from, a pledge of net water revenues of the City's Water System. Summarized generally, the 2011 Bond documents allow the City to enter into the attached State construction financing agreement if the City can demonstrate, as

confirmed by an independent certified public accountant, 125% coverage of net water revenues for the most recently ended fiscal year over annual payments on the 2011 Bonds and the State construction financing agreement. City staff has confirmed compliance with this requirement based on the Preliminary Payment Schedule provided by the State and attached to this report. The Preliminary Payment Schedule represents estimated payments, assuming construction costs for the Replacement Reservoir are equal to the maximum amount of \$16,500,000 authorized under the State financing agreement.

Pursuant to the financing agreement, the State will loan the City up to \$16.5 million (at 1.9% interest for a 30 year term) to fund eligible work to facilitate the construction of the replacement reservoir. The City will make "progress" fund payment requests to the State to reimburse the City for payments of eligible expenses. The State loan is limited to the actual eligible project costs. After the construction is completed, the Project loan schedule will be adjusted to reflect the actual project expenditures. Thereafter, the City shall make principal and interest payments in accordance with the revised payment schedule. The estimated construction period is 12 to 18 months.

Project costs are subject to State audit.

### **FISCAL IMPACTS**

FY 2019-20 water project funding in the CIP budget is sufficient to provide for the property payments, construction cash flow requirements, and the loan payments identified in the loan schedule. The CIP and operating budgets will be adjusted to meet the construction and debt service funding needs each fiscal year as part of the budget process.

### **ALTERNATIVES**

Provide alternative direction to staff.

### **ATTACHMENTS:**

**Resolution**  
**Financing Agreement**  
**Preliminary Payment Schedule**

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UPLAND APPROVING AS TO FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF A CONSTRUCTION FINANCING AGREEMENT FOR THE CONSTRUCTION COSTS OF A REPLACEMENT 7.5 MG WATER RESERVOIR

Intent of the Parties and Findings

(i) The City of Upland (the "City") owns and operates a water system (such system, including all additions, improvements and extensions thereto, is referred to herein as the "Water System"); and

(ii) The City has determined that an essential existing 7.5 million gallon water reservoir (the "Existing Reservoir"), a part of the Water System, is structurally deficient and in need of replacement; and

(iii) On August 13, 2018, the City Council of the City (the "City Council") adopted its Resolutions Nos. 6463, 6464, and 6465 authorizing certain actions relating to the planning, design, financing, and construction of a replacement 7.5 MG reservoir and appurtenances (collectively, the "Replacement Reservoir") at 17th Street and Benson Avenue, including but not limited to application for, and execution of, a financial assistance agreement from the California State Water Resources Control Board (the "State Water Board") to reimburse the City for such planning and design costs and to finance such construction costs in a maximum principal amount not to exceed \$16,500,000, and the pledge of net water revenues of the Water System and the City's water enterprise fund to payment of such financing from the State Water Board; and

(iv) City staff has completed the entitlement, environmental, preparation of final plans and specifications for the construction of the Replacement Reservoir; and

(v) Pursuant to (a) Resolutions Nos. 6482 and 6487, adopted by the City Council on March 11, 2019 and May 13, 2019, respectively; (b) a Purchase and Sale Agreement and Escrow Instructions, as heretofore amended (the "Purchase Agreement"), by and between the City and the San Antonio Water Company; (c) a waiver letter approved by the City Council on September 23, 2019 with respect to the Buyer's Condition set forth in Section 12(i) of the Purchase Agreement, and (d) a Grant Deed, dated as of September 24, 2019 and recorded on September 27, 2019 in the Official Records of the Recorder of the County of San Bernardino as document number 2019-0347417, the City has acquired from the water company certain property (the "Property") suitable for construction of the Replacement Reservoir; and

(vi) The City's acquisition of the Property is a condition to the State Water Board's disbursement of construction funds to the City under the construction financing agreement; and

(vii) Following a delay experienced by the State Water Board in its issuance of financing agreements under the State Revolving Fund program for all applicants under the program due to complications arising from the State Water Board's accounting system transition, the State Water Board now has provided to the City

the proposed execution form of the financing agreement, titled "Construction Installment Sale Agreement" (the "Construction Financing Agreement"), for the City's construction costs of the Replacement Reservoir project; and

(viii) The State Water Board has advised the City that, in addition to Resolutions Nos. 6463, 6464, and 6465, the State Water Board now requires an additional resolution adopted by the City Council to approve the Construction Financing Agreement in substantially final form; and

(ix) The City Council desires to approve the form of, and authorize the execution and delivery of, the Construction Financing Agreement, the form of which is on file with the City Clerk;

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

Section 1. Recitals. The above recitals, and each of them, are true and correct.

Section 2. Construction Financing Agreement. The Construction Financing Agreement proposed to be entered into by the City and the State Water Board, in substantially the form submitted to this meeting and on file in the office of the City Clerk and made a part hereof as though set forth in full herein, is hereby approved. The Mayor (or in the absence of the Mayor, the Mayor Pro Tem) and the Interim City Manager (collectively with the Mayor and the Mayor Pro Tem, the "Authorized Officers") are, and each of them is, hereby authorized and directed, for and in the name of the City, to execute and deliver the Construction Financing Agreement in substantially the form hereby approved, with such additions thereto and changes therein as the Authorized Officer executing the same may require or approve in consultation with the City Attorney, such requirement or approval to be conclusively evidenced by the execution of the Construction Financing Agreement by such Authorized Officer, provided that the maximum principal amount authorized under the Construction Financing Agreement shall not exceed \$16,500,000.

Section 3. Additional Actions. Each of the Authorized Officers, the Public Works Director, the Acting Administrative Services Director, the Finance Officer, the City Clerk, and the other officers and staff of the City are each hereby authorized and directed to take any actions, to execute and deliver any and all documents and instruments, and to do and cause to be done any and all acts and things necessary or proper to accomplish the transactions contemplated by the Construction Financing Agreement, comply with the Construction Financing Agreement and effectuate the purpose and intent of this Resolution, including, but not limited to, the execution and delivery of any documents required by the State Water Board in order to complete the transactions contemplated by the Construction Financing Agreement. Any document authorized herein to be signed by the City Clerk may be signed by a duly appointed deputy clerk.

Section 4. Ratification of Prior Actions. All actions heretofore taken by the Mayor, the Mayor Pro Tem, the Interim City Manager, the Public Works Director, the Acting Administrative Services Director, the Finance Officer, and other officers and

agents of the City with respect to the Construction Financing Agreement, or in connection with or related to any of the agreements or documents referenced herein, are hereby approved, confirmed, and ratified.

Section 5. Effectiveness. This Resolution shall take effect immediately upon adoption.

Section 6. Certification. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED and ADOPTED this 25th day of November, 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 25th day of November, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

ATTEST:

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



---

## State Water Resources Control Board

November 6, 2019

City of Upland  
Attn: Rosemary Hoerning – Interim City Manager  
P.O. Box 460  
Upland, CA 91785

Agreement Number: SWRCB0000000000D190200800  
Project Number: 3610050-001C

Enclosed is your Agreement for your approval and signature. This Agreement cannot be considered binding by either party until executed by the State Water Resources Control Board (State Water Board).

If you are in agreement with all terms and conditions of the Agreement, please sign and date **two (2) signature** pages; return only the two (2) signature pages – it is not necessary to send the entire Agreement - **no later than thirty (30) calendar days from the date of this letter to:**

**Overnight Mail**

Noel Carolipio Jr.  
State Water Resources Control Board  
Division of Financial Assistance  
1001 I Street, 16<sup>th</sup> Floor  
Sacramento, CA 95814

**US Mail**

Noel Carolipio Jr.  
State Water Resources Control Board  
Division of Financial Assistance  
P. O. Box 944212  
Sacramento, CA 94244-2120

In order for the Funding Agreement to be executed by the State Water Board, the following items must also be returned with the signed signature pages:

1. Opinion of General Counsel.

Be aware that all projects receiving funding must comply with all applicable implementing guidelines and regulations adopted by California Department of Industrial Relations (DIR), regarding state prevailing wage requirements. You must contact DIR for guidance on how to comply. Information can be found at: <http://www.dir.ca.gov/lcp.asp>.

**Davis Bacon Compliance:**

[https://www.waterboards.ca.gov/water\\_issues/programs/grants\\_loans/srf/davisbacon.shtml](https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/davisbacon.shtml)

**Disadvantaged Business Enterprise (DBE)**

[https://www.waterboards.ca.gov/water\\_issues/programs/grants\\_loans/srf/docs/policy0513/dbe\\_compliance\\_guidelines\\_instructions.pdf](https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/policy0513/dbe_compliance_guidelines_instructions.pdf)

Mr. Carolipio may be contacted at (916) 449-5694 or [Noel.Carolipio@waterboards.ca.gov](mailto:Noel.Carolipio@waterboards.ca.gov)

Once the Agreement is signed by both parties, we will forward an executed copy to you for your records.

Enclosures

---

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | [www.waterboards.ca.gov](http://www.waterboards.ca.gov)



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## DRINKING WATER

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CITY OF UPLAND

AND

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD



### CONSTRUCTION INSTALLMENT SALE AGREEMENT

REPLACEMENT OF 7.5 MG RESERVOIR AT 17<sup>TH</sup> STREET AND BENSON AVENUE  
PROJECT No. 3610050-001C

AGREEMENT No. SWRCB0000000000D190200800

PROJECT FUNDING AMOUNT: \$16,500,000.00

ELIGIBLE WORK START DATE: OCTOBER 1, 2016  
ELIGIBLE CONSTRUCTION START DATE: DECEMBER 11, 2018  
CONSTRUCTION COMPLETION DATE: APRIL 1, 2022  
FINAL DISBURSEMENT REQUEST DATE: OCTOBER 1, 2022  
FINAL PAYMENT DATE: APRIL 1, 2052  
RECORDS RETENTION END DATE: APRIL 1, 2058

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## AGREEMENT

### 1. AUTHORITY.

- (a) The State Water Resources Control Board (State Water Board) is authorized, and implements its authority, to provide financial assistance under this Agreement pursuant to Section 116760 et seq. of the Health and Safety Code, and Resolution Nos. 2019-0032 and 2019-0006.
- (b) The Recipient is authorized to enter into this Installment Sale Agreement (Agreement) pursuant to Resolution No. 6463.

### 2. INTENTION.

- (a) The Recipient desires to receive financial assistance for and undertake work required for the drinking water construction project (Project) set forth on the Cover Page and described in Exhibit A of this Agreement from the State Water Board according to the terms and conditions set forth in this Agreement.
- (b) The State Water Board proposes to assist in providing financial assistance for eligible costs of the Project in the amount set forth in Exhibit B, according to the terms and conditions set forth in this Agreement, with the expectation that the Recipient shall repay all of the financial assistance to the State Water Board.
- (c) The Recipient intends to evidence its obligation to submit Payments to the State Water Board and secure its obligation with Net Revenues of its water enterprise, as set forth in Exhibit B, according to the terms and conditions set forth in this Agreement.
- (d) The Recipient intends to certify and evidence its compliance with the Tax Covenants set forth in Exhibit F.

### 3. AGREEMENT, TERM, DOCUMENTS INCORPORATED BY REFERENCE.

In consideration of the mutual representations, covenants and agreements herein set forth, the State Water Board and the Recipient, each binding itself, its successors and assigns, do mutually promise, covenant, and agree to the terms, provisions, and conditions of this Agreement.

- (a) The Recipient hereby sells to the State Water Board and the State Water Board hereby purchases from the Recipient the Project. Simultaneously therewith, the Recipient hereby purchases from the State Water Board, and the State Water Board hereby sells to the Recipient, the Project in accordance with the provisions of this Agreement. All right, title, and interest in the Project shall immediately vest in the Recipient on the date of execution and delivery of this Agreement by both parties without further action on the part of the Recipient or the State Water Board.
- (b) Subject to the satisfaction of any condition precedent to this Agreement, this Agreement shall become effective upon the signature of both the Recipient and the State Water Board. Conditions precedent are not limited to the following:

- i. The Recipient must deliver an opinion of bond counsel and general counsel satisfactory to the State Water Board's counsel dated on or after the date that the Recipient signs this Agreement.
- ii. The Recipient must deliver to the Division a resolution authorizing this Agreement.

(c) Upon execution, the term of the Agreement shall begin on the Eligible Work Start Date and extend through the Final Payment Date.

(d) This Agreement includes the following exhibits and attachments thereto:

- i. EXHIBIT A – SCOPE OF WORK
- ii. EXHIBIT B – FUNDING TERMS
- iii. EXHIBIT C – GENERAL & PROGRAMMATIC TERMS & CONDITIONS
- iv. EXHIBIT D – SPECIAL CONDITIONS
- v. EXHIBIT E – PAYMENT SCHEDULE
- vi. EXHIBIT F – TAX CERTIFICATE

(e) This Agreement includes the following documents incorporated by reference:

- i. the Final Plans & Specifications, dated May 23, 2017, which are the basis for the construction contract to be awarded by the Recipient;
- ii. the Drinking Water System Permit No. CA 3610050;
- iii. the Recipient’s Reimbursement Resolution No. 6464 dated August 13, 2018;
- iv. the Recipient’s Tax Questionnaire dated August 2, 2018.
- v. the Davis-Bacon requirements found at:  
[https://www.waterboards.ca.gov/water\\_issues/programs/grants\\_loans/srf/docs/davisbac/on/davis-bacon\\_requirements\\_2018\\_dwsrf-governmental\\_entities\\_public\).pdf](https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/davisbac/on/davis-bacon_requirements_2018_dwsrf-governmental_entities_public).pdf);

4. PARTY CONTACTS

State Water Board		City of Upland	
Section:	Division of Financial Assistance		
Name:	Marques Tamanaha	Name:	Rosemary Hoerning – Interim City Manager
Address:	1001 I Street, 16 <sup>th</sup> Floor	Address:	P.O. Box 460
City, State, Zip:	Sacramento, CA 95814	City, State, Zip:	Upland, CA 91785
Phone:	(916) 449-5645	Phone:	(909) 291-2931
Fax:		Fax:	
Email:	<a href="mailto:Marques.Tamanaha@waterboards.ca.gov">Marques.Tamanaha@waterboards.ca.gov</a>	Email:	<a href="mailto:rhoerning@ci.upland.ca.us">rhoerning@ci.upland.ca.us</a>

The Recipient may change its contact upon written notice to the Division, which notice shall be accompanied by authorization from the Recipient’s Authorized Representative. The State Water Board will notify the Project Director of any changes to its contact.

While the foregoing are contacts for day-to-day communications regarding Project work, the Recipient shall provide official communications and events of Notice as set forth in Exhibit C to the Division’s Deputy Director.

5. DEFINITIONS.

Unless otherwise specified, each capitalized term used in this Agreement has the following meaning:

“Additional Payments” means the reasonable extraordinary fees and expenses of the State Water Board, and of any assignee of the State Water Board’s right, title, and interest in and to this Agreement, in

connection with this Agreement, including all expenses and fees of accountants, trustees, staff, contractors, consultants, costs, insurance premiums and all other extraordinary costs reasonably incurred by the State Water Board or assignee of the State Water Board."

"Allowance" means an amount based on a percentage of the accepted bid for an eligible project to help defray the planning, design, and construction engineering and administration costs of the Project.

"Agreement" means this agreement, including all exhibits and attachments hereto.

"Authorized Representative" means the duly appointed representative of the Recipient as set forth in the certified original of the Recipient's authorizing resolution that designates the authorized representative by title.

"Bank" means the California Infrastructure and Economic Development Bank.

"Bond Funded Portion of the Project Funds" means any portion of the Project Funds which was or will be funded with Bond Proceeds.

"Bond Proceeds" means original proceeds, investment proceeds, and replacement proceeds of Bonds.

"Bonds" means any series of bonds issued by the Bank, the interest on which is excluded from gross income for federal tax purposes, all or a portion of the proceeds of which have been, are, or will be applied by the State Water Board to fund all or any portion of the Project Costs or that are secured in whole or in part by Payments paid hereunder.

"Charge In Lieu of Interest" means any fee or charge in lieu of some or all of, but not to exceed, the interest that would otherwise be owed under this Agreement, as set forth in Exhibit E.

"Code" as used in Exhibit F of this Agreement means the Internal Revenue Code of 1986, as amended, and any successor provisions and the regulations of the U.S. Department of the Treasury promulgated thereunder.

"Completion of Construction" means the date, as determined by the Division after consultation with the Recipient, that the work of building and erection of the Project is substantially complete, and is identified in Exhibit A of this Agreement.

"Cover Page" means the front page of this Agreement.

"Days" means calendar days unless otherwise expressly indicated.

"Debt Service" means, as of any date, with respect to outstanding System Obligations and, in the case of the additional debt tests in Exhibit B of this Agreement, any System Obligations that are proposed to be outstanding, the aggregate amount of principal and interest scheduled to become due (either at maturity or by mandatory redemption), together with any Charge In Lieu of Interest on this Obligation or other System Obligations to the State Water Board, calculated with the following assumptions:

- a. Principal payments (unless a different subdivision of this definition applies for purposes of determining principal maturities or amortization) are made in accordance with any amortization schedule published for such principal, including any minimum sinking fund payments;
- b. Interest on a variable rate System Obligation that is not subject to a swap agreement and that is issued or will be issued as a tax-exempt obligation under federal law, is the average of the SIFMA Municipal Swap Index, or its successor index, during the 24 months preceding the date of such calculation;

- c. Interest on a variable rate System Obligation that is not subject to a swap agreement and that is issued or will be issued as a taxable obligation under federal law, is the average of LIBOR, or its successor index, during the 24 months preceding the date of such calculation;
- d. Interest on a variable rate System Obligation that is subject to a swap agreement is the fixed swap rate or cap strike rate, as appropriate, if the variable rate has been swapped to a fixed rate or capped pursuant to an interest rate cap agreement or similar agreement;
- e. Interest on a fixed rate System Obligation that is subject to a swap agreement such that all or a portion of the interest has been swapped to a variable rate shall be treated as variable rate debt under subdivisions (b) or (c) of this definition of Debt Service;
- f. Payments of principal and interest on a System Obligation are excluded from the calculation of Debt Service to the extent such payments are to be paid from amounts then currently on deposit with a trustee or other fiduciary and restricted for the defeasance of such System Obligations;
- g. If 25% or more of the principal of a System Obligation is not due until its final stated maturity, then principal and interest on that System Obligation may be projected to amortize over the lesser of 30 years or the Useful Life of the financed asset, and interest may be calculated according to subdivisions (b)-(e) of this definition of Debt Service, as appropriate.

“Deputy Director” means the Deputy Director of the Division.

“District Office” means District Office of the Division of Drinking Water of the State Water Board.

“Division” means the Division of Financial Assistance of the State Water Board or any other segment of the State Water Board authorized to administer this Agreement.

“Division of Drinking Water” means the Division of Drinking Water of the State Water Board.

“Eligible Construction Start Date” means the date set forth on the Cover Page of this Agreement, establishing the date on or after which construction costs may be incurred and eligible for reimbursement hereunder.

“Eligible Work Start Date” means the date set forth on the Cover Page of this Agreement, establishing the date on or after which any non-construction costs may be incurred and eligible for reimbursement hereunder.

“Enterprise Fund” means the enterprise fund of the Recipient in which Revenues are deposited.

“Event of Default” means the occurrence of any of the following events:

- a) Failure by the Recipient to make any payment required to be paid pursuant to this Agreement, including Payments;
- b) A representation or warranty made by or on behalf of the Recipient in this Agreement or in any document furnished by or on behalf of the Recipient to the State Water Board pursuant to this Agreement shall prove to have been inaccurate, misleading or incomplete in any material respect;
- c) A material adverse change in the condition of the Recipient, the Revenues, or the System, which the Division reasonably determines would materially impair the Recipient’s ability to satisfy its obligations under this Agreement.
- d) Failure by the Recipient to comply with the additional debt test or reserve fund requirement, if any, in Exhibit B or Exhibit D of this Agreement;
- e) Failure to operate the System or the Project without the Division’s approval;

- f) Failure by the Recipient to observe and perform any covenant, condition, or provision in this Agreement, which failure shall continue for a period of time, to be determined by the Division;
- g) The occurrence of a material breach or event of default under any System Obligation that results in the acceleration of principal or interest or otherwise requires immediate prepayment, repurchase or redemption;
- h) Initiation of proceedings seeking arrangement, reorganization, or any other relief under any applicable bankruptcy, insolvency, or other similar law; the appointment of or taking possession of the Recipient's property by a receiver, liquidator, assignee, trustee, custodian, conservator, or similar official; the Recipient's entering into a general assignment for the benefit of creditors; the initiation of resolutions or proceedings to terminate the Recipient's existence, or any action in furtherance of any of the foregoing;
- i) A determination pursuant to Gov. Code section 11137 that the Recipient has violated any provision in Article 9.5 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code;
- j) Loss of the Recipient's rights, licenses, permits, or privileges necessary for the operation of the System or the Project, or the occurrence of any material restraint on the Recipient's enterprise by a government agency or court order.

"Final Budget Approval (FBA)" means the Division-approved final budget for the Project, as set forth in Exhibit B.

"Final Disbursement Request Date" means the date set forth as such on the Cover Page of this Agreement, after which date, no further Project Funds disbursements may be requested.

"Final Payment Date" is the date by which all principal and accrued interest due under this Agreement is to be paid in full to the State Water Board and is specified on the Cover Page of this Agreement.

"Fiscal Year" means the period of twelve (12) months terminating on June 30 of any year, or any other annual period selected and designated by the Recipient as its Fiscal Year in accordance with applicable law.

"Force Account" means the use of the Recipient's own employees, equipment, or resources for the Project.

"GAAP" means generally accepted accounting principles, the uniform accounting and reporting procedures set forth in publications of the American Institute of Certified Public Accountants or its successor, or by any other generally accepted authority on such procedures, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor, or the Uniform System of Accounts, as adopted by the California Public Utilities Commission for water utilities.

"Initiation of Construction" means the date that notice to proceed with work is issued for the Project, or, if notice to proceed is not required, the date of commencement of building and erection of the Project.

"Listed Event" means, so long as the Recipient has outstanding any System Obligation subject to Rule 15c2-12, any of the events required to be reported pursuant to Rule 15c2-12(b)(5).

"Maximum Annual Debt Service" means the maximum amount of Debt Service due on System Obligations in any Fiscal Year during the period commencing with the Fiscal Year for which such calculation is made and terminating with the last Fiscal Year in which Debt Service for any System Obligations will become due.

"Net Revenues" means, for any Fiscal Year, all Revenues received by the Recipient less the Operations and Maintenance Costs for such Fiscal Year.

"Obligation" means the obligation of the Recipient to make Payments (including Additional Payments) as provided herein, as evidenced by the execution of this Agreement, proceeds of such obligations being used to fund the Project as specified in the Project Description in Exhibit A and Exhibit B and in the documents thereby incorporated by reference.

"Operations and Maintenance Costs" means the reasonable and necessary costs paid or incurred by the Recipient for maintaining and operating the System, determined in accordance with GAAP, including all reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and working order, and including all reasonable and necessary administrative costs of the Recipient that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, overhead, taxes (if any), the cost of permits, licenses, and charges to operate the System and insurance premiums; but excluding, in all cases depreciation, replacement, and obsolescence charges or reserves therefor and amortization of intangibles.

"Material Obligation" means an obligation of the Recipient that is material to this transaction other than a System Obligation.

"Parity Obligation" means the Installment Sale Agreement executed December 1, 2011 by and between the Upland Public Financing Authority and the City of Upland.

"Payment" means any payment due to the State Water Board from the Recipient pursuant to this Agreement.

"Policy" means the State Water Board's "Policy for Implementing the Drinking Water State Revolving Fund," as amended from time to time, including the Intended Use Plan in effect as of the execution date of this Agreement.

"Project" means the Project financed by this Agreement as described in Exhibits A and B and in the documents incorporated by reference herein.

"Project Completion" means the date, as determined by the Division after consultation with the Recipient, that operation of the Project is initiated or is capable of being initiated, whichever comes first.

"Project Costs" means the incurred costs of the Recipient which are eligible for financial assistance under this Agreement, which are allowable costs as defined under the Policy, and which are reasonable, necessary and allocable by the Recipient to the Project under GAAP, and may include capitalized interest.

"Project Funds" means all moneys disbursed to the Recipient by the State Water Board for eligible Project Costs pursuant to this Agreement.

"Recipient" means City of Upland.

"Records Retention End Date" means the last date that the Recipient is obligated to maintain records and is set forth on the Cover Page of this Agreement.

"Regional Water Quality Control Board" or "Regional Water Board" means the appropriate Regional Water Quality Control Board.

"Reimbursement Resolution" means the Recipient's reimbursement resolution identified and incorporated by reference in this Agreement.

"Reserve Fund" means the reserve fund required pursuant to Exhibit B of this Agreement.

"Revenues" means, for each Fiscal Year, all gross income and revenue received or receivable by the Recipient from the ownership or operation of the System, determined in accordance with GAAP, including all rates, fees, and charges (including connection fees and charges) as received by the Recipient for the services of the System, and all other income and revenue howsoever derived by the Recipient from the ownership or operation of the System or arising from the System, including all income from the deposit or investment of any money in the Enterprise Fund or any rate stabilization fund of the Recipient or held on the Recipient's behalf, and any refundable deposits made to establish credit, and advances or contributions in aid of construction.

"Rule 15c2-12(b)(5)" means Rule 15c2-12(b)(5) promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended.

"Senior Obligation" means a debt obligation payable senior to this Obligation. There are no Senior Obligations.

"SRF" means the Drinking Water State Revolving Fund.

"State" means State of California.

"State Water Board" means the State Water Resources Control Board.

"Subordinate Obligation" means the Purchase and Sale Agreement executed March 31, 2019 and amended May 21, 2019 by and between the San Antonio Water Company and the City of Upland.

"System" means all drinking water collection, transport, treatment, storage, and delivery facilities, including land and easements thereof, owned by the Recipient, including the Project, and all other properties, structures, or works hereafter acquired and constructed by the Recipient and determined to be a part of the System, together with all additions, betterments, extensions, or improvements to such facilities, properties, structures, or works, or any part thereof hereafter acquired and constructed.

"System Obligation" means any obligation of the Recipient payable from the Revenues, including but not limited to this Obligation, any Parity Obligation, any Subordinate Obligation, and such additional obligations as may hereafter be issued in accordance with the provisions of such obligations and this Agreement.

"Useful Life" means the economically useful life of the Project beginning at Completion of Construction and is set forth in Exhibit A.

"Year" means calendar year unless otherwise expressly indicated.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CITY OF UPLAND:

By: \_\_\_\_\_  
Name: Rosemary Hoerning  
Title: Interim City Manager

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

STATE WATER RESOURCES CONTROL BOARD:

By: \_\_\_\_\_  
Name: Leslie Laudon  
Title: Deputy Director  
Division of Financial Assistance

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

## EXHIBIT A – SCOPE OF WORK

### A.1. PROJECT DESCRIPTION, USEFUL LIFE, AND SCOPE OF WORK.

- (a) The Project is the project set forth on the Cover Page of this Agreement.
- (b) The Useful Life of this Project is at least 75 years.
- (c) Scope of Work.

The Recipient will construct a new 7.5 million gallon prestressed concrete reservoir adjacent to their existing Reservoir 15.

### A.2. STANDARD PROJECT REQUIREMENTS.

#### A.2.1 Acknowledgments.

The Recipient shall include the following acknowledgment in any document, written report, or brochure prepared in whole or in part pursuant to this Agreement:

“Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board. California’s Drinking Water State Revolving Fund is capitalized through a variety of funding sources, including grants from the United States Environmental Protection Agency and state bond proceeds. The contents of this document do not necessarily reflect the views and policies of the foregoing, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.”

#### A.2.2 Reports

##### A.2.2.1 Progress Reports.

- (a) The Recipient must provide a progress report to the Division each quarter, beginning no later than 90 days after execution of this Agreement.
- (b) The Recipient must provide a progress report with each disbursement request. Failure to provide a complete and accurate progress report may result in the withholding of Project Funds, as set forth in Exhibit B.
- (c) A progress report must contain the following information:
  - i. A summary of progress to date including a description of progress since the last report, percent construction complete, percent contractor invoiced, and percent schedule elapsed;
  - ii. A description of compliance with environmental requirements;
  - iii. A listing of change orders including amount, description of work, and change in contract amount and schedule; and
  - iv. Any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.

#### A.2.2.2 Project Completion Report.

(a) The Recipient must submit a Project Completion Report to the Division with a copy to the appropriate District Office on or before the due date established by the Division and the Recipient at the time of final project inspection. The Project Completion Report must include the following:

- i. Description of the Project,
- ii. Description of the water reliability problem the Project sought to address,
- iii. Discussion of the Project's likelihood of successfully addressing that water reliability problem in the future, and
- iv. Summary of compliance with applicable environmental conditions.

(b) If the Recipient fails to submit a timely Project Completion Report, the State Water Board may stop processing pending or future applications for new financial assistance, withhold disbursements under this Agreement or other agreements, and begin administrative proceedings.

#### A.2.2.3 As Needed Reports.

The Recipient must provide expeditiously, during the term of this Agreement, any reports, data, and information reasonably required by the Division, including but not limited to material necessary or appropriate for evaluation of the funding program or to fulfill any reporting requirements of the state or federal government.

#### A.2.2.4 DBE Reports for SRF Projects.

The Recipient must report DBE utilization to the Division on the DBE Utilization Report, State Water Board Form DBE UR334. The Recipient must submit such reports to the Division annually within ten (10) calendar days following October 1 until such time as the "Notice of Completion" is issued. The Recipient must comply with 40 CFR § 33.301 and require its contractors and subcontractors on the Project to comply.

#### A.2.3 Signage.

The Recipient shall place a sign at least four feet tall by eight feet wide made of ¾ inch thick exterior grade plywood or other approved material in a prominent location on the Project site and shall maintain the sign in good condition for the duration of the construction period. The sign must include the following disclosure statement and color logos (available from the Division):



a. "Funding for this \$16,500,000.00 Replacement of 7.5 MG Reservoir at 17<sup>th</sup> Street and Benson Avenue project has been provided in full or in part by the Drinking Water State Revolving Fund through an agreement with the State Water Resources Control Board. California's Drinking Water State Revolving Fund is capitalized through a variety of funding sources, including grants from the United States Environmental Protection Agency and state bond proceeds."

b. The Project sign may include another agency's required promotional information so long as the above logos and disclosure statement are equally prominent on the sign. The sign shall be prepared in a professional manner.

#### A.2.4 Commencement of Operations.

Upon Completion of Construction of the Project, the Recipient must expeditiously initiate Project operations.

#### A.3 DATES & DELIVERABLES.

(a) Time is of the essence.

(b) The Recipient must expeditiously proceed with and complete construction of the Project.

(c) The following dates are established as on the Cover Page of this Agreement:

- i. Eligible Work Start Date
- ii. Eligible Construction Start Date
- iii. Completion of Construction Date
- iv. Final Disbursement Request Date
- v. Records Retention End Date
- vi. Final Payment Date

(d) The Recipient must award the prime construction contract timely.

(e) The Recipient agrees to start construction no later than June 1, 2020.

(f) The Recipient must deliver any request for extension of the Completion of Construction date no less than 90 days prior to the Completion of Construction date.

(g) The undisbursed balance of this Agreement will be deobligated if the Recipient does not provide its final Disbursement Request to the Division on or before the Final Disbursement Request Date, unless prior approval has been granted by the Division.

**EXHIBIT B – FUNDING TERMS**

**B.1. FUNDING AMOUNTS AND DISBURSEMENTS**

**B.1.1 Funding Contingency and Other Sources.**

(a) If this Agreement’s funding for any fiscal year expires due to reversion or is reduced, substantially delayed, or deleted by the Budget Act, by Executive Order, or by order or action of the Department of Finance, the State Water Board has the option to either cancel this Agreement with no liability accruing to the State Water Board, or offer an amendment to the Recipient to reflect the reduced amount.

(b) If funding for Project Costs is made available to the Recipient from sources other than this Agreement, the Recipient must notify the Division. The Recipient may retain such funding up to an amount which equals the Recipient’s share of Project Costs. To the extent allowed by requirements of other funding sources, excess funding must be remitted to the State Water Board to be applied to Payments due hereunder, if any.

**B.1.2 Estimated Reasonable Cost.**

The estimated reasonable cost of the total Project, including associated planning and design costs is sixteen million, five hundred thousand dollars and no cents (\$16,500,000.00).

**B.1.3 Project Funding Amount;**

Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds not to exceed the amount of the Project Funding Amount set forth on the Cover Page of this Agreement.

**B.1.4 Reserved**

**B.1.5 Budget Costs**

Budget costs are contained in the Project Cost Table below:

TASK	DESCRIPTION	TOTAL COSTS
1	Components/Facilities Construction Cost:	\$10,700,000
2	Change Order Contingency:	\$2,072,000
	Subtotal:	\$12,772,000
	Allowances (Soft Cost):	
3	Facilities Planning and Design	\$800,000
4	Construction Management:	\$1,200,000
5	Pre-purchased Materials:	\$0
5	Administration:	\$0

6	Land/Right-of-Way:	\$1,728,000
7	Other Costs (explain below):	\$0
	Allowance Sub Total:	\$3,728,000
Approved Eligible DWSRF Project Total:		\$16,500,000

Final Budget Approval to be inserted upon amendment.

**B.1.6 Contingent Disbursement.**

(a) The State Water Board's disbursement of funds hereunder is contingent on the Recipient's compliance with the terms and conditions of this Agreement.

(b) The State Water Board's obligation to disburse Project Funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not available for any reason, including but not limited to failure of the federal or State government to appropriate funds necessary for disbursement of Project Funds, the State Water Board shall not be obligated to make any disbursements to the Recipient under this Agreement. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other agency. If any disbursements due the Recipient under this Agreement are deferred because sufficient funds are unavailable, it is the intention of the State Water Board that such disbursement will be made to the Recipient when sufficient funds do become available, but this intention is not binding.

(c) Construction costs and disbursements are not available until after this Agreement has been amended to incorporate FBA.

(d) No costs incurred prior to the Eligible Work Start Date are eligible for reimbursement.

Construction costs incurred prior to the Eligible Construction Start Date are not eligible for reimbursement.

(e) Failure to proceed according to the timelines set forth in this Agreement may require the Recipient to repay to the State Water Board all disbursed Project Funds.

(f) The Recipient agrees to ensure that its final Disbursement Request is received by the Division no later than the Final Disbursement Request Date, unless prior approval has been granted by the Division. If the Final Disbursement Request is not received timely, the undisbursed balance of this Agreement will be deobligated.

(g) The Recipient is not entitled to interest earned on undisbursed funds

**B.1.7 Disbursement Procedure.**

Except as may be otherwise provided in this Agreement, disbursement of Project Funds will be made as follows:

1. Upon execution and delivery of this Agreement by both parties, the Recipient may request immediate disbursement of any eligible incurred planning and design allowance costs as specified below from the Project Funds through submission to the State Water

Board of the Disbursement Request Form 260 and Form 261, or any amendment thereto, duly completed and executed.

2. The Recipient must submit a disbursement request for costs incurred prior to the date this Agreement is executed by the State Water Board no later than ninety (90) days after this Agreement is executed by the State Water Board. Late disbursement requests may not be honored.
3. The Recipient may request disbursement of eligible construction and equipment costs consistent with budget amounts referenced below and in B.1.5. (Note that this Agreement will be amended to incorporate FBA after final budget approval.)
4. Additional Project Funds will be promptly disbursed to the Recipient upon receipt of Disbursement Request Form 260 and Form 261, or any amendment thereto, duly completed and executed by the Recipient for incurred costs consistent with this Agreement, along with receipt of progress reports due under Exhibit A.
5. The Recipient must not request disbursement for any Project Cost until such cost has been incurred and is currently due and payable by the Recipient, although the actual payment of such cost by the Recipient is not required as a condition of disbursement request. Supporting documentation (e.g., receipts) must be submitted with each Disbursement Request. The amount requested for administration costs must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = total amount claimed). Disbursement of Project Funds will be made only after receipt of a complete, adequately supported, properly documented, and accurately addressed Disbursement Request.
6. The Recipient must spend Project Funds within 30 days of receipt. If the Recipient earns interest earned on Project Funds, it must report that interest immediately to the State Water Board. The State Water Board may deduct earned interest from future disbursements.
7. The Recipient shall not request a disbursement unless that Project Cost is allowable, reasonable, and allocable.
8. Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, policies, or regulations.
9. No work or travel outside the State of California is permitted under this Agreement unless the Division provides prior written authorization. Failure to comply with this restriction may result in termination this Agreement, pursuant to Exhibit C. Any reimbursement for necessary travel and per diem shall be at rates not to exceed those set by the California Department of Human Resources at <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>. as of the date costs are incurred by the Recipient.

#### B.1.8 Withholding of Disbursements.

Notwithstanding any other provision of this Agreement, the State Water Board may withhold all or any portion of the Project Funds upon the occurrence of any of the following events:

- (a) The Recipient's failure to maintain reasonable progress on the Project as determined by the Division;

- (b) Placement on the ballot or passage of an initiative or referendum to repeal or reduce the Recipient's taxes, assessments, fees, or charges levied for operation of the System or payment of debt service on System Obligations;
- (c) Commencement of litigation or a judicial or administrative proceeding related to the Project, System, or Revenues that the State Water Board determines may impair the timely satisfaction of Recipient's obligations under this Agreement;
- (d) Any investigation by the District Attorney, California State Auditor, Bureau of State Audits, United States Environmental Protection Agency's Office of Inspector General, the Internal Revenue Service, Securities and Exchange Commission, a grand jury, or any other state or federal agency, relating to the Recipient's financial management, accounting procedures, or internal fiscal controls;
- (e) A material adverse change in the condition of the Recipient, the Revenues, or the System, that the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement, or any other event that the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement;
- (f) The Recipient's material violation of, or threat to materially violate, any term of this Agreement;
- (g) Suspicion of fraud, forgery, embezzlement, theft, or any other misuse of public funds by the Recipient or its employees, or by its contractors or agents regarding the Project or the System;
- (h) An event requiring Notice as set forth in Exhibit C;
- (i) An Event of Default or an event that the Division determines may become an Event of Default.

#### B.1.9 Fraud and Misuse of Public Funds.

All requests for disbursement submitted must be accurate and signed by the Recipient's Authorized Representative under penalty of perjury. All costs submitted pursuant to this Agreement must only be for the work or tasks set forth in this Agreement. The Recipient must not submit any invoice containing costs that are ineligible or have been reimbursed from other funding sources unless required and specifically noted as such (i.e., match costs). Any eligible costs for which the Recipient is seeking reimbursement shall not be reimbursed from any other source. Double or multiple billing for time, services, or any other eligible cost is improper and will not be compensated. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in suspension of disbursements and, notwithstanding any other section in this Agreement, the termination of this Agreement requiring the repayment of all Project Funds disbursed hereunder. Additionally, the Deputy Director of the Division may request an audit and refer the matter to the Attorney General's Office or the appropriate district attorney's office for criminal prosecution or the imposition of civil liability.

#### B.2 RECIPIENT'S PAYMENT OBLIGATION, PLEDGE, AND RESERVE

##### B.2.1 Project Costs.

The Recipient must pay any and all costs connected with the Project including, without limitation, any and all Project Costs and Additional Payments. If the Project Funds are not sufficient to pay the Project Costs in full, the Recipient must nonetheless complete the Project and pay that portion of the Project Costs in excess of available Project Funds, and shall not be entitled to any reimbursement therefor from the State Water Board.

##### B.2.2 Estimated Principal Payment Due.

The estimated amount of principal that will be due to the State Water Board from the Recipient under this Agreement is sixteen million, five hundred thousand dollars and no cents (\$16,500,000.00).

B.2.3 Interest Rate and In-Lieu of Interest Charges.

(a) The Recipient agrees to make all Payments according to the schedule in Exhibit E, and as otherwise set forth herein, at an interest rate of one point nine % (1.9%) per annum.

(b) Interest will accrue beginning with each disbursement.

(c) In lieu of, and not to exceed, interest otherwise due under this Agreement, the Recipient agrees to pay the following charge(s), as further set forth in Exhibit E:

- an Administrative Service Charge
- a Drinking Water Small Community Emergency Grant Fund Charge

B.2.4 Reserved.

B.2.5 Obligation Absolute.

The obligation of the Recipient to make the Payments and other payments required to be made by it under this Agreement, from the Net Revenues and/or other amounts legally available to the Recipient therefor, is absolute and unconditional, and until such time as the Payments and Additional Payments have been paid in full, the Recipient must not discontinue or suspend any Payments or other payments required to be made by it hereunder when due, whether or not the Project, or any related part thereof is operating or operable or has been completed, or its use is suspended, interfered with, reduced or curtailed or terminated in whole or in part, and such Payments and other payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.

B.2.6 Payment Timing.

(a) The Recipient must pay interest annually until one year after Completion of Construction. Beginning no later than one year after Completion of Construction, the Recipient must submit annual Payment of the principal of the Project Funds, together with all interest accruing annually. The Recipient must make Payments fully amortizing the total principal of the Project by the Final Payment Date. Payments are based on a standard fully amortized assistance amount with equal annual payments.

(b) The remaining balance is the previous balance, plus the disbursements, plus the accrued interest on both, plus any Charge In Lieu of Interest, less the Payment. Payment calculations will be made beginning one (1) year after Completion of Construction. Exhibit E is a payment schedule based on the provisions of this Exhibit and an estimated disbursement schedule. Actual payments will be based on actual disbursements.

(c) Upon Completion of Construction and submission of necessary reports by the Recipient, the Division will prepare an appropriate payment schedule and supply the same to the Recipient. The Division may amend this schedule as necessary to accurately reflect amounts due under this Agreement. The Division will prepare any necessary amendments to the payment schedule and send them to the Recipient. The Recipient must make each Payment on or before the due date therefor. A ten (10) day grace period will be allowed, after which time a penalty in the amount of costs incurred by the State Water Board will be assessed for late payment. These costs may include, but are not limited to, lost interest earnings, staff time, bond debt service default penalties, if any, and other related costs. For purposes of penalty assessment, payment will be deemed to have been made if payment is deposited in the U.S. Mail within the grace period with postage prepaid and properly addressed. Any penalties assessed will not be added

to the assistance amount balance, but will be treated as a separate account and obligation of the Recipient. The interest penalty will be assessed from the payment due date.

(d) The Recipient is obligated to make all payments required by this Agreement to the State Water Board, notwithstanding any individual default by its constituents or others in the payment to the Recipient of fees, charges, taxes, assessments, tolls or other charges ("Charges") levied or imposed by the Recipient. The Recipient must provide for the punctual payment to the State Water Board of all amounts which become due under this Agreement and which are received from constituents or others in the payment to the Recipient. In the event of failure, neglect or refusal of any officer of the Recipient to levy or cause to be levied any Charge to provide payment by the Recipient under this Agreement, to enforce or to collect such Charge, or to pay over to the State Water Board any money collected on account of such Charge necessary to satisfy any amount due under this Agreement, the State Water Board may take such action in a court of competent jurisdiction as it deems necessary to compel the performance of all duties relating to the imposition or levying and collection of any of such Charges and the payment of the money collected therefrom to the State Water Board. Action taken pursuant hereto shall not deprive the State Water Board of, or limit the application of, any other remedy provided by law or by this Agreement.

(e) Each Payment must be paid in lawful money of the United States of America by check or other acceptable form of payment set forth at [www.waterboards.ca.gov/make\\_a\\_payment](http://www.waterboards.ca.gov/make_a_payment). The Recipient must pay Payments and Additional Payments from Net Revenues and/or other amounts legally available to the Recipient therefor.

#### B.2.7 Pledged Revenues.

##### B.2.7.1 Establishment of Enterprise Fund and Reserve Fund.

In order to carry out its System Obligations, the Recipient covenants that it shall establish and maintain or shall have established and maintained the Enterprise Fund. All Revenues received shall be deposited when and as received in trust in the Enterprise Fund. As required in this Exhibit, the Recipient must establish and maintain a Reserve Fund.

##### B.2.7.2 Pledge of Net Revenues, Enterprise Fund, and Reserve Fund.

The Obligation hereunder shall be secured by a lien on and pledge of the Enterprise Fund, Net Revenues, and any Reserve Fund on parity with the Parity Obligations and subordinate to the Senior Obligations. The Recipient hereby pledges and grants such lien on and pledge of the Enterprise Fund, Net Revenues, and any Reserve Fund to secure the Obligation, including payment of Payments and Additional Payments hereunder. The Net Revenues in the Enterprise Fund, shall be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Recipient.

##### B.2.7.3 Application and Purpose of the Enterprise Fund.

Subject to the provisions of any outstanding System Obligation, money on deposit in the Enterprise Fund shall be applied and used first, to pay Operations and Maintenance Costs, and thereafter, all amounts due and payable with respect to the System Obligations. After making all payments hereinabove required to be made in each Fiscal Year, the Recipient may expend in such Fiscal Year any remaining money in the Enterprise Fund for any lawful purpose of the Recipient, including payment of subordinate debt.

#### B.2.8 No Prepayment.

The Recipient may not prepay any portion of the principal and interest due under this Agreement without the written consent of the Deputy Director of the Division.

#### B.2.9 Reserve Fund.

Prior to Completion of Construction, the Recipient must establish a restricted Reserve Fund, held in its Enterprise Fund, equal to one year's Debt Service on this Obligation. The Recipient must maintain the Reserve Fund throughout the term of this Agreement. The Reserve Fund is subject to lien and pledged as security for this Obligation, and its use is restricted to payment of this Obligation during the term of this Agreement.

#### B.3 RATES, FEES AND CHARGES.

(a) The Recipient must, to the extent permitted by law, fix, prescribe and collect rates, fees and charges for the System during each Fiscal Year which are reasonable, fair, and nondiscriminatory and which will be sufficient to generate Revenues in the amounts necessary to cover Operations and Maintenance Costs, and must ensure that Net Revenues are equal to at least 125% of the Maximum Annual Debt Service with respect to all outstanding System Obligations, so long as System Obligations other than this Obligation are outstanding. Upon defeasance of all System Obligations other than this Obligation, this ratio must be at least 110%, except where System Obligations are defeased pursuant to refunding obligations.

(b) The Recipient may make adjustments from time to time in such fees and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates, fees and charges then in effect unless the Net Revenues from such reduced rates, fees, and charges will at all times be sufficient to meet the requirements of this section.

(c) Upon consideration of a voter initiative to reduce Revenues, the Recipient must make a finding regarding the effect of such a reduction on the Recipient's ability to satisfy the rate covenant set forth in this Section. The Recipient must make its findings available to the public and must request, if necessary, the authorization of the Recipient's decision-maker or decision-making body to file litigation to challenge any such initiative that it finds will render it unable to satisfy the rate covenant set forth in this Agreement and its obligation to operate and maintain the Project for its Useful Life. The Recipient must diligently pursue and bear any and all costs related to such challenge. The Recipient must notify and regularly update the State Water Board regarding the status of any such challenge.

#### B.4 ADDITIONAL DEBT.

(a) The Recipient's future debt that is secured by Revenues pledged herein may not be senior to this Obligation, except where the new senior obligation refunds or refinances a senior obligation with the same lien position as the existing senior obligation, the new senior obligation has the same or earlier repayment term as the refunded senior debt, the new senior debt service is the same or lower than the existing debt service, and the new senior debt will not diminish the Recipient's ability to satisfy its SRF obligation(s).

(b) The Recipient may issue additional parity or subordinate debt only if all of the following conditions are met:

- i. Net Revenues in the most recent Fiscal Year, excluding transfers from a rate stabilization fund, if any, meet the ratio for rate covenants set forth in this Exhibit and with respect to any outstanding and proposed additional obligations;
- ii. The Recipient is in compliance with any reserve fund requirement of this Obligation.
- iii. The Recipient's non-subordinate debt is rated "A," or higher, by at least two of the nationally recognized rating agencies.

B.5 NO LIENS.

The Recipient must not make any pledge of or place any lien on the Project, System, or Revenues except as otherwise provided or permitted by this Agreement.

## EXHIBIT C – GENERAL & PROGRAMMATIC TERMS & CONDITIONS

### C.1 REPRESENTATIONS & WARRANTIES.

The Recipient represents, warrants, and commits to the following as of the Eligible Work Start Date and continuing thereafter for the term of this Agreement:

#### C.1.1 Application and General Recipient Commitments.

The Recipient has not made any untrue statement of a material fact in its application for this financial assistance, or omitted to state in its application a material fact that makes the statements in its application not misleading.

The Recipient agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents.

The Recipient agrees to fulfill all assurances, declarations, representations, and commitments in its application, accompanying documents, and communications filed in support of its request for funding under this Agreement.

#### C.1.2 Authorization and Validity.

The execution and delivery of this Agreement, including all incorporated documents, has been duly authorized by the Recipient. Upon execution by both parties, this Agreement constitutes a valid and binding obligation of the Recipient, enforceable in accordance with its terms, except as such enforcement may be limited by law.

#### C.1.3 No Violations.

The execution, delivery, and performance by Recipient of this Agreement, including all incorporated documents, do not violate any provision of any law or regulation in effect as of the date set forth on the first page hereof, or result in any breach or default under any contract, obligation, indenture, or other instrument to which Recipient is a party or by which Recipient is bound as of the date set forth on the Cover Page.

#### C.1.4 No Litigation.

There are no actions, claims, investigations, suits, or proceedings before any governmental authority, court, or administrative agency pending and notice of which has been served upon and received by Recipient or, to Recipient's knowledge, threatened which materially affect the financial condition or operations of the Recipient, the System, the Revenues, and/or the Project.

There are no proceedings, actions, or offers by a public entity to acquire by purchase or the power of eminent domain the System or any of the real or personal property related to or necessary for the Project.

#### C.1.5 Property Rights.

The Recipient owns or has sufficient property rights in the Project property for the longer of the Useful Life or the term of this Agreement, either in fee simple or for a term of years that is not subject to third-party revocation during the Useful Life of the Project.

#### C.1.6 Solvency and Insurance.

None of the transactions contemplated by this Agreement will be or have been made with an actual intent to hinder, delay, or defraud any present or future creditors of Recipient. The Recipient is solvent and will not be rendered insolvent by the transactions contemplated by this Agreement. The Recipient is able to pay its debts as they become due. The Recipient maintains sufficient insurance coverage considering the scope of this Agreement, including, for example but not necessarily limited to, general liability, automobile liability, workers compensation and employer liability, professional liability.

#### C.1.7 Legal Status and Eligibility.

The Recipient is duly organized and existing and in good standing under the laws of the State of California. Recipient must at all times maintain its current legal existence and preserve and keep in full force and effect its legal rights and authority. The Recipient acknowledges that changes to its legal or financial status may affect its eligibility for funding under this Agreement and commits to maintaining its eligibility. Within the preceding ten years, the Recipient has not failed to demonstrate compliance with state or federal audit disallowances.

#### C.1.8 Financial Statements and Continuing Disclosure.

The financial statements of Recipient previously delivered to the State Water Board as of the date(s) set forth in such financial statements: (a) are materially complete and correct; (b) present fairly the financial condition of the Recipient; and (c) have been prepared in accordance with GAAP. Since the date(s) of such financial statements, there has been no material adverse change in the financial condition of the Recipient, nor have any assets or properties reflected on such financial statements been sold, transferred, assigned, mortgaged, pledged or encumbered, except as previously disclosed in writing by Recipient and approved in writing by the State Water Board.

The Recipient is current in its continuing disclosure obligations associated with its material debt, if any.

#### C.1.9 System Obligations

The Recipient has no System Obligations other than those defined in this Agreement.

#### C.1.10 No Other Material Debt.

The Recipient has no Material Obligations other than System Obligations.

### C.2 DEFAULTS AND REMEDIES

In addition to any other remedy set forth in this Agreement, the following remedies are available under this Agreement.

#### C.2.1 Return of Funds; Acceleration; and Additional Payments.

Notwithstanding any other provision of this Agreement, if the Division determines that an Event of Default has occurred, the Recipient may be required, upon demand, immediately to do each of the following, in each instance payable solely from the Revenues or other legally available amounts:

- i. return to the State Water Board any grant or principal forgiveness amounts received pursuant to this Agreement;
- ii. accelerate the payment of any principal owed under this Agreement, all of which shall be immediately due and payable;
- iii. pay interest at the highest legal rate on all of the foregoing; and

- iv. pay any Additional Payments.

#### C.2.3 Judicial remedies.

Whenever the State Water Board determines that an Event of Default shall have occurred, the State Water Board may enforce its rights under this Agreement by any judicial proceeding, whether at law or in equity. Without limiting the generality of the foregoing, the State Water Board may:

- i. by suit in equity, require the Recipient to account for amounts relating to this Agreement as if the Recipient were the trustee of an express trust;
- ii. by mandamus or other proceeding, compel the performance by the Recipient and any of its officers, agents, and employees of any duty under the law or of any obligation or covenant under this Agreement, including but not limited to the imposition and collection of rates for the services of the System sufficient to meet all requirements of this Agreement; and
- iii. take whatever action at law or in equity as may appear necessary or desirable to the State Water Board to collect the Payments then due or thereafter to become due, or to enforce performance of any obligation or covenant of the Recipient under this Agreement.

Upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the State Water Board under this Agreement, the State Water Board may make application for the appointment of a receiver or custodian of the Revenues, pending such proceeding, with such power as the court making such appointment may confer.

#### C.2.4 Termination.

Upon an Event of Default, the State Water Board may terminate this Agreement. Interest shall accrue on all amounts due at the highest legal rate of interest from the date that the State Water Board delivers notice of termination to the Recipient.

#### C.2.5 Damages for Breach of Tax-Exempt Status.

In the event that any breach of any of the provisions of this Agreement by the Recipient results in the loss of tax-exempt status for any bonds of the State or any subdivision or agency thereof, or if such breach results in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government by reason of any arbitrage profits, the Recipient must immediately reimburse the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach.

#### C.2.6 Damages for Breach of Federal Conditions.

In the event that any breach of any of the provisions of this Agreement by the Recipient results in the failure of Project Funds to be used pursuant to the provisions of this Agreement, or if such breach results in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government, the Recipient must immediately reimburse the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach.

#### C.2.7 Remedies and Limitations.

None of the remedies available to the State Water Board shall be exclusive of any other remedy, and each such remedy shall be cumulative and in addition to every other remedy given hereunder or now or

hereafter existing at law or in equity. The State Water Board may exercise any remedy, now or hereafter existing, without exhausting and without regard to any other remedy.

Any claim of the Recipient is limited to the rights, remedies, and claims procedures provided to the Recipient under this Agreement.

#### C.2.8 Non-Waiver.

Nothing in this Agreement shall affect or impair the Recipient's Obligation to pay Payments as provided herein or shall affect or impair the right of the State Water Board to bring suit to enforce such payment. No delay or omission of the State Water Board in the exercise of any right arising upon an Event of Default shall impair any such right or be construed to be a waiver of any such Event of Default. The State Water Board may exercise from time to time and as often as shall be deemed expedient by the State Water Board, any remedy or right provided by law or pursuant to this Agreement.

#### C.2.9 Status Quo.

If any action to enforce any right or exercise any remedy shall be brought and either discontinued or determined adversely to the State Water Board, then the State Water Board shall be restored to its former position, rights and remedies as if no such action had been brought.

### C.3 STANDARD CONDITIONS

#### C.3.1 Access, Inspection, and Public Records.

The Recipient must ensure that the State Water Board, the Governor of the State, the United States Environmental Protection Agency, the Office of Inspector General, any member of Congress, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times during Project construction and thereafter for the term of the Agreement. The Recipient acknowledges that, except for a subset of information regarding archaeological records, the Project records and locations are public records, including but not limited to all of the submissions accompanying the application, all of the documents incorporated into this Agreement by reference, and all reports, disbursement requests, and supporting documentation submitted hereunder.

#### C.3.2 Accounting and Auditing Standards; Financial Management Systems; Records Retention.

(a) The Recipient must maintain project accounts according to GAAP as issued by the Governmental Accounting Standards Board (GASB) or its successor. The Recipient must maintain GAAP-compliant project accounts, including GAAP requirements relating to the reporting of infrastructure assets.

(b) The Recipient must comply with federal standards for financial management systems. The Recipient agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit preparation of reports required by the federal government and tracking of Project funds to a level of expenditure adequate to establish that such funds have not been used in violation of federal or state law or the terms of this Agreement. To the extent applicable, the Recipient is bound by, and must comply with, the provisions and requirements of the federal Single Audit Act of 1984, Office of Management and Budget (OMB) Circular No. A-133 and 2 CFR Part 200, subpart F, and updates or revisions, thereto.

(c) Without limitation of the requirement to maintain Project accounts in accordance with GAAP, the Recipient must:

- i. Establish an official file for the Project which adequately documents all significant actions relative to the Project;

- ii. Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all assistance funds received under this Agreement;
- iii. Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to assistance funds disbursed under this Agreement;
- iv. Establish an accounting system which will accurately depict final total costs of the Project, including both direct and Indirect Costs;
- v. Establish such accounts and maintain such records as may be necessary for the State to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and
- vi. If Force Account is used by the Recipient for any phase of the Project, other than for planning, design, and construction engineering and administration provided for by allowance, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee.

(d) The Recipient must maintain separate books, records and other material relative to the Project. The Recipient must also retain such books, records, and other material for itself and for each contractor or subcontractor who performed or performs work on this project for a minimum of thirty-six (36) years after Completion of Construction. The Recipient must require that such books, records, and other material are subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the State Water Board, the California State Auditor, the Bureau of State Audits, the United States Environmental Protection Agency (USEPA), the Office of Inspector General, the Internal Revenue Service, the Governor, or any authorized representatives of the aforementioned. The Recipient must allow and must require its contractors to allow interviews during normal business hours of any employees who might reasonably have information related to such records. The Recipient agrees to include a similar duty regarding audit, interviews, and records retention in any contract or subcontract related to the performance of this Agreement. The provisions of this section survive the term of this Agreement.

#### C.3.3 Amendment.

No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by both the Recipient and the Deputy Director or designee.

Requests for amendments must be in writing and directed to the contact listed in Section 4 and to the Division's Chief of Loans and Grants Administration Section.

#### C.3.4 Assignability.

This Agreement is not assignable by the Recipient, either in whole or in part, without the consent of the State Water Board in the form of a formal written amendment to this Agreement.

#### C.3.5 Audit.

(a) The Division may call for an audit of financial information relative to the Project if the Division determines that an audit is desirable to assure program integrity or if an audit becomes necessary because of state or federal requirements. If an audit is called for, the audit must be performed by a certified public accountant independent of the Recipient and at the cost of the Recipient. The audit must be in the form required by the Division.

(b) Audit disallowances must be returned to the State Water Board.

### C.3.6 Bonding.

Where contractors are used, the Recipient must not authorize construction to begin until each contractor has furnished a performance bond in favor of the Recipient in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$25,000.00.

### C.3.7 Competitive Bidding

Recipient must adhere to any applicable state law or local ordinance for competitive bidding and applicable labor laws.

If Recipient is a private entity, any construction contracts related in any way to the Project must be let by competitive bid procedures which assure award of such contracts to the lowest responsible bidders. Recipient must not award a construction contract until a summary of bids and identification of the selected lowest responsible bidder is submitted to and approved in writing by the Division. Recipient must provide a full explanation if Recipient is proposing to award a construction contract to anyone other than the lowest responsible bidder.

### C.3.8 Compliance with Applicable Laws, Rules, and Requirements.

The Recipient must, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and state laws, rules, guidelines, regulations, and requirements. Without limitation of the foregoing, to the extent applicable, the Recipient must:

- (a) Comply with the provisions of the adopted environmental mitigation plan, if any, for the term of this Agreement;
- (b) Comply with the Policy; and
- (c) Comply with and require compliance with the state and federal requirements set forth elsewhere in this Agreement.

### C.3.9 Computer Software.

The Recipient certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

### C.3.10 Conflict of Interest.

The Recipient certifies that its owners, officers, directors, agents, representatives, and employees are in compliance with applicable state and federal conflict of interest laws.

### C.3.11 Continuous Use of Project; No Lease, Sale, Transfer of Ownership, or Disposal of Project.

The Recipient agrees that, except as provided in this Agreement, it will not abandon, substantially discontinue use of, lease, sell, transfer ownership of, or dispose of all or a significant part or portion of the Project during the Useful Life of the Project without prior written approval of the Division. Such approval may be conditioned as determined to be appropriate by the Division, including a condition requiring repayment of all disbursed Project Funds or all or any portion of all remaining funds covered by this Agreement together with accrued interest and any penalty assessments that may be due.

### C.3.12 Data Management.

The Recipient will undertake appropriate data management activities so that Project data can be incorporated into statewide data systems.

### C.3.13 Disputes.

(a) The Recipient may appeal a staff decision within 30 days to the Deputy Director of the Division or designee, for a final Division decision. The Recipient may appeal a final Division decision to the State Water Board within 30 days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine not to review the final Division decision, this decision will represent a final agency action on the dispute.

(b) This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law.

(c) Recipient must continue with the responsibilities under this Agreement during any dispute.

(d) This section relating to disputes does not establish an exclusive procedure for resolving claims within the meaning of Government Code sections 930 and 930.4.

### C.3.14 Environmental Clearance.

(a) Notwithstanding any other provision, the State Water Board has no binding obligation to provide funding under this Agreement except for activities excluded from, not subject to, or exempt under the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA). No work that is subject to CEQA or NEPA may proceed under this Agreement until the State Water Board has provided approval to proceed. Upon receipt and review of the Recipient's environmental documents, the State Water Board shall make the appropriate environmental findings before determining whether to approve construction or implementation funding for the Project under this Agreement. Providing approval for such construction or implementation funding is fully discretionary. The State Water Board may require changes in the scope of work or additional mitigation as a condition to providing construction or implementation funding under this Agreement. Recipient shall not perform any work subject to CEQA and/or NEPA before the State Water Board completes its environmental review and specifies any changes in scope or additional mitigation that may be required. Proceeding with work subject to CEQA and/or NEPA without approval by the State Water Board shall constitute a breach of a material provision of this Agreement.

(b) If this Project includes modification of a river or stream channel, the Recipient must fully mitigate environmental impacts resulting from the modification. The Recipient must provide documentation that the environmental impacts resulting from such modification will be fully mitigated considering all of the impacts of the modification and any mitigation, environmental enhancement, and environmental benefit resulting from the Project, and whether, on balance, any environmental enhancement or benefit equals or exceeds any negative environmental impacts of the Project.

### C.3.15 Governing Law.

This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

### C.3.16 Income Restrictions.

The Recipient agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Recipient under this Agreement must be paid by the Recipient to the State Water Board, to the extent that they are properly allocable to costs for which the Recipient has been reimbursed by the State Water Board under this Agreement.

### C.3.17 Indemnification and State Reviews.

The parties agree that review or approval of Project plans and specifications by the State Water Board is for administrative purposes only, including conformity with application and eligibility criteria, and expressly not for the purposes of design defect review or construction feasibility, and does not relieve the Recipient of its responsibility to properly plan, design, construct, operate, and maintain the Project. To the extent permitted by law, the Recipient agrees to indemnify, defend, and hold harmless the State Water Board, the Bank, and any trustee, and their officers, employees, and agents for the Bonds, if any (collectively, "Indemnified Persons"), against any loss or liability arising out of any claim or action brought against any Indemnified Persons from and against any and all losses, claims, damages, liabilities, or expenses, of every conceivable kind, character, and nature whatsoever arising out of, resulting from, or in any way connected with (1) the System or the Project or the conditions, occupancy, use, possession, conduct, or management of, work done in or about, or the planning, design, acquisition, installation, or construction, of the System or the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Safe Drinking Water Act, the California Hazardous Waste Control Law, and California Water Code Section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the System or the Project; or (4) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the Recipient for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement, except those arising from the gross negligence or willful misconduct of the Indemnified Persons. The Recipient must also provide for the defense and indemnification of the Indemnified Parties in any contractual provision extending indemnity to the Recipient in any contract let for the performance of any work under this Agreement, and must cause the Indemnified Parties to be included within the scope of any provision for the indemnification and defense of the Recipient in any contract or subcontract. To the fullest extent permitted by law, the Recipient agrees to pay and discharge any judgment or award entered or made against Indemnified Persons with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The provisions of this section survive the term of this Agreement.

### C.3.18 Independent Actor.

The Recipient, and its agents and employees, if any, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State Water Board.

### C.3.19 Integration.

This Agreement constitutes the complete and final agreement between the parties. No oral or written understanding or agreement not incorporated in this Agreement shall be binding on either party.

C.3.20 Leveraging Covenants.

- (a) Notwithstanding any other provision hereof, the Recipient covenants and agrees that it will comply with the Tax Covenants set forth in Exhibit F of this Agreement.
- (b) The Recipient covenants to furnish such financial, operating and other data pertaining to the Recipient as may be requested by the State Water Board to: (i) enable the State Water Board to cause the issuance of Bonds and provide for security therefor; or (ii) enable any underwriter of Bonds issued for the benefit of the State Water Board to comply with Rule 15c2-12(b)(5). The Recipient further covenants to provide the State Water Board with copies of all continuing disclosure documents or reports that are disclosed pursuant to (i) the Recipient's continuing disclosure undertaking or undertakings made in connection with any outstanding System Obligation, (ii) the terms of any outstanding System Obligation, or (iii) a voluntary disclosure of information related to an outstanding System Obligation. The Recipient must disclose such documents or reports to the State Water Board at the same time such documents or reports are submitted to any dissemination agent, trustee, nationally recognized municipal securities information repository, the Municipal Securities Rulemaking Board's Electronic Municipal Market Access (EMMA) website or other person or entity.

C.3.21 No Discrimination.

- (a) The Recipient must comply with Government Code section 11135 and the implementing regulations (Cal. Code Regs, tit. 2, § 11140 et seq.), including, but not limited to, ensuring that no person is unlawfully denied full and equal access to the benefits of, or unlawfully subjected to discrimination in the operation of, the Project or System on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation as such terms are defined under California law, for as long as the Recipient retains ownership or possession of the Project.
- (b) If Project Funds are used to acquire or improve real property, the Recipient must include a covenant of nondiscrimination running with the land in the instrument effecting or recording the transfer of such real property.
- (c) The Recipient must comply with the federal American with Disabilities Act of 1990 and implementing regulations as required by Government Code section 11135(b).
- (d) The Recipient's obligations under this section shall survive the term of this Agreement.
- (e) During the performance of this Agreement, Recipient and its contractors and subcontractors must not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family care leave, or genetic information, gender, gender identity, gender expression, or military and veteran status.
- (f) The Recipient, its contractors, and subcontractors must ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- (g) The Recipient, its contractors, and subcontractors must comply with the provisions of the Fair Employment and Housing Act and the applicable regulations promulgated thereunder. (Gov. Code, §12990, subds. (a)-(f) et seq.; Cal. Code Regs., tit. 2, § 7285 et seq.) Such regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- (h) The Recipient, its contractors, and subcontractors must give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

(i) The Recipient must include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

#### C.3.22 No Third Party Rights.

The parties to this Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or of any duty, covenant, obligation, or undertaking established herein.

#### C.3.23 No Obligation of the State.

Any obligation of the State Water Board herein contained shall not be an obligation, debt, or liability of the State and any such obligation shall be payable solely out of the moneys encumbered pursuant to this Agreement.

#### C.3.24 Notice.

Upon the occurrence of any of the following events, the Recipient must provide notice as set forth below.

- (a) Within 24 hours of the following, the Recipient must notify the Division by phone at (916) 327-9978 and by email to [Marques.Tamanaha@waterboards.ca.gov](mailto:Marques.Tamanaha@waterboards.ca.gov); [Uyen.Trinh-Le@waterboards.ca.gov](mailto:Uyen.Trinh-Le@waterboards.ca.gov) and [DrinkingWaterSRF@waterboards.ca.gov](mailto:DrinkingWaterSRF@waterboards.ca.gov):
- i. The seizure of, or levy on, any Revenues securing this Agreement;
  - ii. Any discovery of any potential tribal cultural resource and/or archaeological or historical resource. Should a potential tribal cultural resource and/or archaeological or historical resource be discovered during construction, the Recipient must ensure that all work in the area of the find will cease until a qualified archaeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Recipient must implement appropriate actions as directed by the Division.
- (b) Within five (5) business days, the Recipient must notify the Division by phone at (916) 327-9978; by email to [Lance.Reese@waterboards.ca.gov](mailto:Lance.Reese@waterboards.ca.gov); [Marques.Tamanaha@waterboards.ca.gov](mailto:Marques.Tamanaha@waterboards.ca.gov); [Uyen.Trinh-Le@waterboards.ca.gov](mailto:Uyen.Trinh-Le@waterboards.ca.gov) and [DrinkingWaterSRF@waterboards.ca.gov](mailto:DrinkingWaterSRF@waterboards.ca.gov); and by mail to the contact address set forth in Section 4 of this Agreement of the occurrence of any of the following events:
- i. Bankruptcy, insolvency, receivership or similar event of the Recipient, or actions taken in anticipation of any of the foregoing;
  - ii. Change of ownership of the Project or the System or change of management or service contracts, if any, for operation of the System;
  - iii. Loss, theft, damage, or impairment to Project, the Revenues or the System;
  - iv. Failure to meet any debt service coverage test in Exhibit B of this agreement;
  - v. Draws on the Reserve Fund;
  - vi. Listed Events or Events of Default, except as otherwise set forth in this section;
  - vii. Failure to observe or perform any covenant or comply with any condition in this Agreement.
  - viii. An offer from a public entity to purchase the Project or the System or any portion thereof, or any of the real or personal property related to or necessary for the Project; or
  - ix. A proceeding or action by a public entity to acquire the Project or the System by power of eminent domain.

- x. Incurrence of a System Obligation or Material Obligation by the Recipient; or
  - xi. A default, event of acceleration, termination event, modification of terms, or other similar event under the terms of a System Obligation or Material Obligation of the Recipient, any of which reflect financial difficulties.
- (c) Within ten (10) business days, the Recipient must notify the Division by phone at (916) 327-9978, by email to [Marques.Tamanaha@waterboards.ca.gov](mailto:Marques.Tamanaha@waterboards.ca.gov); [Uyen.Trinh-Le@waterboards.ca.gov](mailto:Uyen.Trinh-Le@waterboards.ca.gov) and [DrinkingWaterSRF@waterboards.ca.gov](mailto:DrinkingWaterSRF@waterboards.ca.gov), and by mail to the contact address set forth in Section 4 of this Agreement of the following events:
- i. Material defaults on System Obligations, other than this Obligation;
  - ii. Unscheduled draws on debt service reserves held for System Obligations, other than this Obligation, if any, reflecting financial difficulties;
  - iii. Unscheduled draws on credit enhancements on System Obligations, if any, reflecting financial difficulties;
  - iv. Substitution of credit or liquidity providers, if any, or their failure to perform;
  - v. Any litigation pending or threatened with respect to the Project or the Recipient's technical, managerial or financial capacity to operate the System or the Recipient's continued existence,
  - vi. Circulation of a petition to repeal, reduce, or otherwise challenge the Recipient's rates for services of the System,
  - vii. Consideration of dissolution, or disincorporation, or any other event that could materially impair the Revenues;
  - viii. Adverse tax opinions, the issuance by the Internal Revenue Service or proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices of determinations with respect to the tax status of any tax-exempt bonds;
  - ix. Rating changes on outstanding System Obligations, if any;
  - x. Issuance of additional Parity Obligations; or
  - xi. Enforcement actions by or brought on behalf of the State Water Board or Regional Water Board;
- (d) The Recipient must notify the Division promptly by phone at (916) 327-9978, by email to [Marques.Tamanaha@waterboards.ca.gov](mailto:Marques.Tamanaha@waterboards.ca.gov); [Uyen.Trinh-Le@waterboards.ca.gov](mailto:Uyen.Trinh-Le@waterboards.ca.gov) and [DrinkingWaterSRF@waterboards.ca.gov](mailto:DrinkingWaterSRF@waterboards.ca.gov), and by mail to the contact address set forth in Section 4 of this Agreement of any of the following events:
- i. The discovery of a false statement of fact or representation made in this Agreement or in the application to the Division for this financial assistance, or in any certification, report, or request for disbursement made pursuant to this Agreement, by the Recipient, its employees, agents, or contractors;
  - ii. Any substantial change in scope of the Project. The Recipient must undertake no substantial change in the scope of the Project until prompt written notice of the proposed change has been provided to the Division and the Division has given written approval for the change;
  - iii. Cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
  - iv. Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Construction for a period of ninety (90) days or more;
  - v. Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during construction of the Project, the Recipient

- agrees to promptly notify the Division. This notification is in addition to the Recipient's obligations under the federal Endangered Species Act;
- vi. Any Project monitoring, demonstration, or other implementation activities required in Exhibit A or Exhibit D of this Agreement, if any;
  - vii. Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state representatives with at least ten (10) working days' notice to the Division;
  - viii. Any allegation of research misconduct involving research activities that are supported in whole or in part with EPA funds under this Project, as required by Exhibit C.4.3(xxvi).
  - ix. Any events requiring notice to the Division pursuant to the provisions of this Agreement;
  - x. Completion of Construction of the Project, and actual Project Completion;
  - xi. The award of the prime construction contract for the Project;
  - xii. Initiation of construction of the Project.

#### C.3.25 Operation and Maintenance; Insurance.

The Recipient agrees to sufficiently and properly staff, operate and maintain all portions of the System during the Useful Life of the Project in accordance with all applicable state and federal laws, rules, and regulations.

The Recipient will procure and maintain or cause to be maintained insurance on the System with responsible insurers, or as part of a reasonable system of self-insurance, in such amounts and against such risks (including damage to or destruction of the System) as are usually covered in connection with systems similar to the System. Such insurance may be maintained by a self-insurance plan so long as such plan provides for (i) the establishment by the Recipient of a separate segregated self-insurance fund in an amount determined (initially and on at least an annual basis) by an independent insurance consultant experienced in the field of risk management employing accepted actuarial techniques and (ii) the establishment and maintenance of a claims processing and risk management program.

In the event of any damage to or destruction of the System caused by the perils covered by such insurance, the net proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the System. The Recipient must begin such reconstruction, repair or replacement as expeditiously as possible, and must pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same must be completed and the System must be free and clear of all claims and liens. If such net proceeds are insufficient to reconstruct, repair, or restore the System to the extent necessary to enable the Recipient to pay all remaining unpaid principal portions of the Payments, if any, in accordance with the terms of this Agreement, the Recipient must provide additional funds to restore or replace the damaged portions of the System.

Recipient agrees that for any policy of insurance concerning or covering the construction of the Project, it will cause, and will require its contractors and subcontractors to cause, a certificate of insurance to be issued showing the State Water Board, its officers, agents, employees, and servants as additional insured; and must provide the Division with a copy of all such certificates prior to the commencement of construction of the Project.

#### C.3.26 Permits, Subcontracting, and Remedies.

Recipient must procure all permits, licenses and other authorizations necessary to accomplish the work contemplated in this Agreement, pay all charges and fees, and give all notices necessary and incidental

to the due and lawful prosecution of the work. Signed copies of any such permits or licenses must be submitted to the Division before any construction begins.

The Recipient must not contract or allow subcontracting with excluded parties. The Recipient must not contract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which this funding is authorized. For any work related to this Agreement, the Recipient must not contract with any individual or organization on the State Water Board's List of Disqualified Businesses and Persons that is identified as debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which funding under this Agreement is authorized. The State Water Board's List of Disqualified Businesses and Persons is located at

[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/fwa/dbp.shtml](http://www.waterboards.ca.gov/water_issues/programs/enforcement/fwa/dbp.shtml)

#### C.3.27 Professionals.

The Recipient agrees that only licensed professionals will be used to perform services under this Agreement where such services are called for. All technical reports required pursuant to this Agreement that involve planning, investigation, evaluation, design, or other work requiring interpretation and proper application of engineering, architectural, or geologic sciences, shall be prepared by or under the direction of persons registered to practice in California pursuant to Business and Professions Code, sections 5536.1, 6735, 7835, and 7835.1. To demonstrate compliance with California Code of Regulations, title 16, sections 415 and 3065, all technical reports must contain a statement of the qualifications of the responsible registered professional(s). As required by these laws, completed technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.

#### C.3.28 Prevailing Wages.

The Recipient agrees to be bound by all applicable provisions of State Labor Code regarding prevailing wages. The Recipient must monitor all agreements subject to reimbursement from this Agreement to ensure that the prevailing wage provisions of the State Labor Code are being met.

In addition, the Recipient agrees to comply with the Davis-Bacon provisions incorporated by reference in Section 3 of this Agreement.

#### C.3.29 Public Funding.

This Project is publicly funded. Any service provider or contractor with which the Recipient contracts must not have any role or relationship with the Recipient, that, in effect, substantially limits the Recipient's ability to exercise its rights, including cancellation rights, under the contract, based on all the facts and circumstances.

#### C.3.30 Recipient's Responsibility for Work.

The Recipient shall be responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Recipient shall be responsible for responding to any and all disputes arising out of its contracts for work on the Project. The State Water Board will not mediate disputes between the Recipient and any other entity concerning responsibility for performance of work.

#### C.3.31 Related Litigation.

Under no circumstances may the Recipient use funds from any disbursement under this Agreement to pay costs associated with any litigation the Recipient pursues against the State Water Board or any Regional Water Quality Control Board. Regardless of the outcome of any such litigation, and notwithstanding any conflicting language in this Agreement, the Recipient agrees to repay all of the disbursed funds plus interest in the event that Recipient does not complete the project.

#### C.3.32 Rights in Data.

The Recipient agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement are subject to the rights of the State as set forth in this section. The State shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Recipient may copyright the same, except that, as to any work which is copyrighted by the Recipient, the State reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so, and to receive electronic copies from the Recipient upon request.

#### C.3.33 State Water Board Action; Costs and Attorney Fees.

Any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to the State Water Board as a result of breach of this Agreement by the Recipient, whether such breach occurs before or after completion of the Project, and exercise of any remedy provided by this Agreement by the State Water Board shall not preclude the State Water Board from pursuing any legal remedy or right which would otherwise be available. In the event of litigation between the parties hereto arising from this Agreement, it is agreed that each party shall bear its own costs and attorney fees.

#### C.3.34 Timeliness.

Time is of the essence in this Agreement.

#### C.3.35 Unenforceable Provision.

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

#### C.3.36 Venue.

Any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California.

#### C.3.37 Waiver and Rights of the State Water Board.

Any waiver of rights by the State Water Board with respect to a default or other matter arising under this Agreement at any time shall not be considered a waiver of rights with respect to any other default or matter. Any rights and remedies of the State Water Board provided for in this Agreement are in addition to any other rights and remedies provided by law.

### C.4 MISCELLANEOUS STATE AND FEDERAL REQUIREMENTS

#### C.4.1 Reserved

#### C.4.2 State Cross-Cutters.

Recipient represents that, as applicable, it complies and covenants to maintain compliance with the following for the term of the Agreement:

- i. The California Environmental Quality Act (CEQA), as set forth in Public Resources Code 21000 et seq. and in the CEQA Guidelines at Title 14, Division 6, Chapter 3, Section 15000 et seq.
- ii. Water Conservation requirements, including regulations in Division 3 of Title 23 of the California Code of Regulations.
- iii. Monthly Water Diversion Reporting requirements, including requirements set forth in Water Code section 5103.
- iv. Public Works Contractor Registration with Department of Industrial Relations requirements, including requirements set forth in Sections 1725.5 and 1771.1 of the Labor Code.
- v. Volumetric Pricing & Water Meters requirements, including the requirements of Water Code sections 526 and 527.
- vi. Urban Water Management Plan requirements, including the Urban Water Management Planning Act (Water Code, § 10610 et seq.).
- vii. Urban Water Demand Management requirements, including the requirements of Section 10608.56 of the Water Code.
- viii. Delta Plan Consistency Findings requirements, including the requirements of Water Code section 85225 and California Code of Regulations, title 23, section 5002.
- ix. Agricultural Water Management Plan Consistency requirements, including the requirements of Water Code section 10852.
- x. Charter City Project Labor Requirements, including the requirements of Labor Code section 1782 and Public Contract Code section 2503.

#### C.4.3 Federal Requirements and Cross-Cutters for SRF Funding.

The Recipient acknowledges, warrants compliance with, and covenants to continuing compliance with the following federal terms and conditions for the Useful Life of the Project:

- i. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient shall not purchase "iron and steel products" produced outside of the United States on this Project. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient hereby certifies that all "iron and steel products" used in the Project were or will be produced in the United States. For purposes of this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. "Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

- ii. The Recipient must include in full the Wage Rate Requirements (Davis-Bacon) language incorporated by reference in Section 3 of this Agreement in all construction contracts and subcontracts.
- iii. The Recipient must comply with the signage requirements set forth in Exhibit A.
- iv. The Recipient shall notify the State Water Board and the USEPA contact of public or media events publicizing the accomplishment of significant events related to this Project and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.
- v. The Recipient shall comply with applicable EPA general terms and conditions found at <http://www.epa.gov/ogd>, including but not limited to the following:
- vi. No Recipient may receive funding under this Agreement unless it has provided its DUNS number to the State Water Board.
- vii. The Recipient represents and warrants that it and its principals are not excluded or disqualified from participating in this transaction as such terms are defined in Parts 180 and 1532 of Title 2 of the Code of Federal Regulations (2 CFR). If the Recipient is excluded after execution of this Agreement, the Recipient shall notify the Division within ten (10) days and shall inform the Division of the Recipient's exclusion in any request for amendment of this Agreement. The Recipient shall comply with Subpart C of Part 180 of 2 CFR, as supplemented by Subpart C of Part 1532 of 2 CFR. Such compliance is a condition precedent to the State Water Board's performance of its obligations under this Agreement. When entering into a covered transaction as defined in Parts 180 and 1532 of 2 CFR, the Recipient shall require the other party to the covered transaction to comply with Subpart C of Part 180 of 2 CFR, as supplemented by Subpart C of Part 1532 of 2 CFR.
- viii. To the extent applicable, the Recipient shall disclose to the State Water Board any potential conflict of interest consistent with USEPA's Final Financial Assistance Conflict of Interest Policy at <https://www.epa.gov/grants/epas-final-financial-assistance-conflict-interest-policy>. A conflict of interest may result in disallowance of costs.
- ix. USEPA and the State Water Board have the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement.
- x. Where an invention is made with Project Funds, USEPA and the State Water Board retain the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the Recipient. The Recipient must utilize the Interagency Edison extramural invention reporting system at <http://iEdison.gov> and shall notify the Division when an invention report, patent report, or utilization report is filed.
- xi. The Recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this Agreement shall contain the Disclosure statement set forth in Exhibit A.
- xii. The Recipient acknowledges that it is encouraged to follow guidelines established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194, with respect to enabling individuals with disabilities to participate in its programs supported by this Project.
- xiii. The Recipient, its employees, contractors and subcontractors and their employees warrants that it will not engage in severe forms of trafficking in persons, procure a commercial sex act during

the term of this Agreement, or use forced labor in the performance of this Agreement. The Recipient must include this provision in its contracts and subcontracts under this Agreement. The Recipient must inform the State Water Board immediately of any information regarding a violation of the foregoing. The Recipient understands that failure to comply with this provision may subject the State Water Board to loss of federal funds. The Recipient agrees to compensate the State Water Board for any such funds lost due to its failure to comply with this condition, or the failure of its contractors or subcontractors to comply with this condition. The State Water Board may unilaterally terminate this Agreement if the Recipient that is a private entity is determined to have violated the foregoing.

- xiv. The Recipient certifies to the best of its knowledge and belief that:
- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Agreement, the Recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and notify the State Water Board.

The Recipient shall require this certification from all parties to any contract or agreement that the Recipient enters into and under which the Recipient incurs costs for which it seeks disbursements under this Agreement.

- xv. The Recipient must comply with the following federal non-discrimination requirements:
- a. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
  - b. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.
  - c. The Age Discrimination Act of 1975, which prohibits age discrimination.
  - d. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
  - e. 40 CFR Part 7, as it relates to the foregoing.
- xvi. If the Project relates to construction of a publicly owned treatment works, where the Recipient contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services, the Recipient shall ensure that any such contract is negotiated in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code, or an equivalent State qualifications-based requirement as determined by the State Water Board.
- xvii. If the Project relates to construction of a publicly owned treatment works, the Recipient certifies that it has developed and is implementing a fiscal sustainability plan for the Project that includes an inventory of critical assets that are a part of the Project, an evaluation of the condition and performance of inventoried assets or asset groupings, a certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan, and a plan for maintaining, repairing, and, as necessary, replacing the Project and a plan for funding such activities.

- xviii. Executive Order No. 11246. The Recipient shall include in its contracts and subcontracts related to the Project the following provisions:

*"During the performance of this contract, the contractor agrees as follows:"(a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.*

*"(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.*

*"(c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.*

*"(d) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.*

*"(e) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.*

*"(f) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.*

*"(g) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."*

- xix. The Recipient agrees to comply with the requirements of USEPA's Program for Utilization of Small, Minority and Women's Business Enterprises as set forth in Exhibit A.
- xx. Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans; 42 USC § 7606; 33 USC § 1368. Except where the purpose of this Agreement is to remedy the cause of the violation, the Recipient may not procure goods, services, or materials from suppliers excluded under the federal System for Award Management: <http://www.sam.gov/>.
- xxi. Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended; 42 USC §§4601-4655. The Recipient must comply with the Act's implementing regulations at 49 CFR 24.101 through 24.105.
- xxii. The Recipient agrees that if its network or information system is connected to USEPA networks to transfer data using systems other than the Environmental Information Exchange Network or USEPA's Central Data Exchange, it will ensure that any connections are secure.
- xxiii. All geospatial data created pursuant to this Agreement that is submitted to the State Water Board for use by USEPA or that is submitted directly to USEPA must be consistent with Federal Geographic Data Committee endorsed standards. Information on these standards may be found at [www.fgdc.gov](http://www.fgdc.gov).
- xxiv. If the Recipient is a water system that serves 500 or fewer persons, the Recipient represents that it has considered publicly-owned wells as an alternative drinking water supply.
- xxv. The Recipient represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and it is not a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.
- xxvi. The Recipient agrees to immediately notify the Project Manager in writing about any allegation of research misconduct involving research activities that are supported in whole or in part with EPA funds under this Project, including fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, or ordering, advising, or suggesting that subordinates engage in research misconduct.
- xxvii. The Recipient agrees to comply with, and require all contractors and subcontractors to comply with, EPA's Scientific Integrity Policy, available at <https://www.epa.gov/osa/policy-epa-scientific-integrity>, when conducting, supervising, and communicating science and when using or applying the results of science. For purposes of this condition scientific activities include, but are not limited to, computer modelling, economic analysis, field sampling, laboratory experimentation, demonstrating new technology, statistical analysis, and writing a review article on a scientific issue.

The Recipient shall not suppress, alter, or otherwise impede the timely release of scientific findings or conclusions; intimidate or coerce scientists to alter scientific data, findings, or professional opinions or exert non-scientific influence on scientific advisory boards; knowingly misrepresent, exaggerate, or downplay areas of scientific uncertainty; or otherwise violate the EPA's Scientific Integrity Policy. The Recipient must refrain from acts of research misconduct, including publication or reporting, as described in EPA's Policy and Procedures for Addressing Research Misconduct, Section 9.C, and must ensure scientific findings are generated and

disseminated in a timely and transparent manner, including scientific research performed by contractors and subcontractors.

- xxviii. The Recipient agrees to comply with the Animal Welfare Act of 1966 (7 USC 2131-2156). Recipient also agrees to abide by the "U.S. Government Principles for the Utilization and Care of Vertebrate Animals used in Testing, Research, and Training," available at <http://grants.nih.gov/grants/olaw/references/phspol.htm#USGovPrinciples>.



EXHIBIT D – SPECIAL CONDITIONS

Technical:

1. The Recipient shall submit proof of land ownership for the Project facilities. The Division will not amend the Agreement to include the Final Budget Approval or process construction disbursements without receipt of documentation demonstrating land ownership.

Environmental:

1. The Recipient shall implement the mitigation measures BIO-1, CUL-1 through CUL-4, and HYD-1, as identified in the New 7.5 MG Reservoir and Related Water System Improvements Project, Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan (SCH #2017111003).

EXHIBIT E – PAYMENT SCHEDULE

See the attached preliminary Payment Schedule dated [Date]. The final Payment Schedule will be forwarded to the Recipient after all disbursements have been paid and construction of the Project has been completed.

EXHIBIT F – TAX CERTIFICATE

F.1 Purpose.

The purpose of this Exhibit F is to establish the reasonable expectations of the Recipient regarding the Project and the Project Funds, and is intended to be and may be relied upon for purposes of Sections 103, 141 and 148 of the Code and as a certification described in Section 1.148-2(b)(2) of the Treasury Regulations. This Exhibit F sets forth certain facts, estimates and circumstances which form the basis for the Recipient's expectation that neither the Project nor the Bond Funded Portion of the Project Funds is to be used in a manner that would cause the Obligation to be classified as "arbitrage bonds" under Section 148 of the Code or "private activity bonds" under Section 141 of the Code.

F.2 Tax Covenant.

The Recipient agrees that it will not take or authorize any action or permit any action within its reasonable control to be taken, or fail to take any action within its reasonable control, with respect to the Project which would result in the loss of the exclusion of interest on the Bonds from gross income for federal income tax purposes under Section 103 of the Code.

F.3 Governmental Unit.

The Recipient is a state or local governmental unit as defined in Section 1.103-1 of the Treasury Regulations or an instrumentality thereof (a "Governmental Unit") and is not the federal government or any agency or instrumentality thereof.

F.4 Financing of a Capital Project.

The Recipient will use the Project Funds to finance costs it has incurred or will incur for the construction, reconstruction, installation or acquisition of the Project. Such costs shall not have previously been financed with the proceeds of any other issue of tax-exempt obligations.

F.5 Ownership and Operation of Project.

The Recipient exclusively owns and, except as provided in Section F.12 hereof, operates the Project.

F.6 Temporary Period.

The Recipient reasonably expects that at least eighty-five percent (85%) of the Bond Funded Portion of the Project Funds will be allocated to expenditures for the Project within three (3) years of the earlier of the effective date of this Agreement or the date the Bonds are issued ("Applicable Date"). The Recipient has incurred, or reasonably expects that it will incur within six (6) months of the Applicable Date, a substantial binding obligation (i.e., not subject to contingencies within the control of the Recipient or a related party) to a third party to expend at least five percent (5%) of the Bond Funded Portion of the Project Funds on Project Costs. The completion of acquisition, construction, improvement and equipping of the Project and the allocation of the Bond Funded Portion of the Project Funds to Project Costs will proceed with due diligence.

F.7 Working Capital.

No operational expenditures of the Recipient or any related entity are being, have been or will be financed or refinanced with Project Funds.

F.8 Expenditure of Proceeds.

The Bond Funded Portion of the Project Funds shall be used exclusively for the following purposes: (i) Reimbursement Expenditures (as defined in Section F.20 below), (ii) Preliminary Expenditures (as defined in Section F.20 below) in an aggregate amount not exceeding twenty percent (20%) of the Bond Funded Portion of the Project Funds, (iii) capital expenditures relating to the Project originally paid by the Recipient on or after the date hereof, (iv) interest on the Obligation through the later of three (3) years after the Applicable Date or one (1) year after the Project is placed in service, and (v) initial operating expenses directly associated with the Project in the aggregate amount not more than five percent (5%) of the Bond Funded Portion of the Project Funds.

F.9 Private Use and Private Payments.

No portion of the Project Funds or the Project is being, has been or will be used in the aggregate for any activities that constitute a Private Use (as defined below). No portion of the principal of or interest with respect to the Payments will be secured by any interest in property (whether or not the Project) used for a Private Use or in payments in respect of property used for a Private Use, or will be derived from payments in respect of property used for a Private Use. "Private Use" means any activity that constitutes a trade or business that is carried on by persons or entities, other than a Governmental Unit. The leasing of the Project or the access by or the use of the Project by a person or entity other than a Governmental Unit on a basis other than as a member of the general public shall constitute a Private Use. Use by or on behalf of the State of California or any of its agencies, instrumentalities or subdivisions or by any local Governmental Unit and use as a member of the general public will be disregarded in determining whether a Private Use exists. Use under an arrangement that conveys priority rights or other preferential benefits is generally not use on the same basis as the general public. Arrangements providing for use that is available to the general public at no charge or on the basis of rates that are generally applicable and uniformly applied do not convey priority rights or other preferential benefits. For this purpose, rates may be treated as generally applicable and uniformly applied even if (i) different rates apply to different classes of users, such as volume purchasers, if the differences in rates are customary and reasonable; or (ii) a specially negotiated rate arrangement is entered into, but only if the user is prohibited by federal law from paying the generally applicable rates, and the rates established are as comparable as reasonably possible to the generally applicable rates. An arrangement that does not otherwise convey priority rights or other preferential benefits is not treated, nevertheless, as general public use if the term of the use under the arrangement, including all renewal options, is greater than 200 days. For this purpose, a right of first refusal to renew use under the arrangement is not treated as a renewal option if (i) the compensation for the use under the arrangement is redetermined at generally applicable, fair market value rates that are in effect at the time of renewal; and (ii) the use of the financed property under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business.

F.10 No Sale, Lease or Private Operation of the Project.

The Project (or any portion thereof) will not be sold or otherwise disposed of, in whole or in part, to any person who is not a Governmental Unit prior to the final maturity date of the Obligation. The Project will not be leased to any person or entity that is not a Governmental Unit prior to the final maturity date of the Obligation. Except as permitted under Section F.12 hereof, the Recipient will not enter any contract or arrangement or cause or permit any contract or arrangement to be entered with persons or entities that are not Governmental Units if that contract or arrangement would confer on such persons or entities any right to use the Project on a basis different from the right of members of the general public. The contracts or arrangements contemplated by the preceding sentence include but are not limited to management contracts, take or pay contracts or put or pay contracts, and capacity guarantee contracts.

F.11 No Disproportionate or Unrelated Use.

No portion of the Project Funds or the Project is being, has been, or will be used for a Private Use that is unrelated or disproportionate to the governmental use of the Project Funds.

F.12 Management and Service Contracts.

The Recipient represents that, as of the date hereof, it is not a party to any contract, agreement or other arrangement with any persons or entities engaged in a trade or business (other than Governmental Units) that involve the management or operation of property or the provision of services at or with respect to the Project that does not comply with the standards of the Treasury Regulations, Revenue Procedure 97-13, as modified by Revenue Procedure 2001-39 and IRS Notice 2014-67, or Revenue Procedure 2017-13, as applicable. The Recipient represents that it will not be party to any such contract, agreement or arrangement with any person or entity that is not a Governmental Unit for the management of property or the provision of services at or with respect to the Project, while the Obligation (including any obligation or series thereof issued to refund the Obligation, as the case may be) is outstanding, except: (a) with respect to any contract, agreement or arrangement that does not constitute "private business use" of the Project under Code §141(b), or (b) with respect to any contract, agreement or arrangement that complies with (i) Revenue Procedure 97-13, 1997-1 C.B. 632, as amended by Revenue Procedure 2001-39, 2001-2 C.B. 38, and as amplified by Notice 2014-67, with respect to contracts entered into before August 18, 2017 and not materially modified or extended after August 18, 2017, or (ii) Revenue Procedure 2017-13, with respect to contracts entered into or materially modified or extended on or after August 18, 2017, or (c) with respect to any contract, agreement or arrangement that does not give rise to use of the Bond Funded Portion of the Project Funds or the Project by a non-Governmental Unit of more than the amount of such non-qualified use permitted by the Code, or (d) in the event that the Recipient receives an opinion of counsel, satisfactory to the State Water Board and the Bank and expert in the issuance of state and local government bonds the interest on which is excluded from gross income under Section 103 of the Code ("Nationally-Recognized Bond Counsel"), that such contract, agreement or arrangement will not adversely affect the exclusion of the interest on the Obligation from gross income for federal income taxation purposes.

F.13 No Disposition of Financed Property.

As of the date hereof, the Recipient does not expect to sell or otherwise dispose of any portion of the Project, in whole or in part, prior to the final maturity date of the Obligation.

F.14 Useful Life of Project.

As of the date hereof, the Recipient reasonably expects that the economic useful life of the Project, commencing at Project Completion, will be at least equal to the term of this Agreement, as set forth in Exhibit A hereto.

F.15 Payments.

Payments generally are expected to be derived from assessments, taxes, fees, charges or other current Revenues of the Recipient in each year, and such current Revenues are expected to equal or exceed the Payments during each payment period. Any amounts accumulated in a sinking fund or bona fide debt service fund to pay Payments (whether or not deposited to a fund or account established by the Recipient) will be disbursed to pay Payments within thirteen months of the initial date of accumulation or deposit. Any such fund used for the payment of Payments will be depleted once a year except for a reasonable carryover amount not exceeding the greater of earnings on such fund or one-twelfth of the Payments in either case for the immediately preceding year.

F.16 No Other Replacement Proceeds.

The Recipient will not use any of the Bond Funded Portion of the Project Funds to replace or substitute other funds of the Recipient that were otherwise to be used to finance the Project or which are or will be used to acquire securities, obligations or other investment property reasonably expected to produce a yield that is materially higher than the yield on the Bonds.

F.17 No Sinking or Pledged Fund.

Except as set forth in Section F.18 below, the Recipient will not create or establish any sinking fund or pledged fund which will be used to pay Payments on the Obligation within the meaning of Section 1.148-1(c) of the

Treasury Regulations. If any sinking fund or pledged fund comes into being with respect to the Obligation before the Obligation has been fully retired which may be used to pay the Payments, the Recipient will invest such sinking fund and pledged fund moneys at a yield that does not exceed the yield on the Bonds.

F.18 Reserve Amount.

The State Water Board requires that the Recipient maintain and fund a separate account in an amount equal to one (1) year of debt service with respect to the Obligation (the "Reserve Amount") as set forth in Exhibit B. The Recipient represents that the Reserve Amount is and will be available to pay debt service with respect to the Obligation, if and when needed. The Reserve Amount consists solely of revenues of the Recipient and does not include any proceeds of any obligations the interest on which is excluded from gross income for federal income tax purposes or investment earnings thereon. The aggregate of the Reserve Amount, up to an amount not exceeding the lesser of (i) ten percent of the aggregate principal amount of the Obligation, (ii) the maximum annual debt service with respect to the Obligation, or (iii) 125 percent of the average annual debt service with respect to the Obligation, will be treated as a reasonably required reserve fund.

F.19 Reimbursement Resolution.

The "reimbursement resolution" adopted by the Recipient is incorporated herein by reference.

F.20 Reimbursement Expenditures.

Reimbursements are disallowed, except as specifically authorized in Exhibit B or Exhibit D of this Agreement. To the extent so authorized, a portion of the Bond Funded Portion of the Project Funds may be applied to reimburse the Recipient for Project Costs paid before the date hereof, so long as the Project Cost was (i) not paid prior to sixty (60) days before the Recipient's adoption of a declaration of official intent to finance the Project, (ii) not paid more than eighteen (18) months prior to the date hereof or the date the Project was placed-in-service, whichever is later, and (iii) not paid more than three (3) years prior to the date hereof (collectively, "Reimbursement Expenditures"), unless such cost is attributable to a "preliminary expenditure." Preliminary expenditure for this purpose means architectural, engineering, surveying, soil testing and similar costs incurred prior to the commencement of construction or rehabilitation of the Project, but does not include land acquisition, site preparation and similar costs incident to the commencement of acquisition, construction or rehabilitation of the Project. Preliminary expenditures may not exceed 20% of the Bond Funded Portion of the Project Funds.

F.21 Change in Use of the Project.

The Recipient reasonably expects to use all of the Bond Funded Portion of the Project Funds and the Project for the entire stated term to maturity of the Obligation. Absent an opinion of Nationally-Recognized Bond Counsel to the effect that such use of the Bond Funded Portion of the Project Funds will not adversely affect the exclusion from federal gross income of interest on the Bonds pursuant to Section 103 of the Code, the Recipient will use the Bond Funded Portion of the Project Funds and the Project solely as set forth in this Agreement.

F.22 Rebate Obligations.

If the Recipient satisfies the requirements of one of the spending exceptions to rebate specified in Section 1.148-7 of the Treasury Regulations, amounts earned from investments, if any, acquired with the Bond Funded Portion of the Project Funds will not be subject to the rebate requirements imposed under Section 148(f) of the Code. If the Recipient fails to satisfy such requirements for any period, it will notify the State Water Board and the Bank immediately and will comply with the provisions of the Code and the Treasury Regulations at such time, including the payment of any rebate amount calculated by the State Water Board or the Bank.

F.23 No Federal Guarantee.

The Recipient will not directly or indirectly use any of the Bond Funded Portion of the Project Funds in any manner that would cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code, taking into account various exceptions including any guarantee related to investments during an initial

temporary period until needed for the governmental purpose of the Bonds, investments as part of a bona fide debt service fund, investments of a reasonably required reserve or replacement fund, investments in bonds issued by the United States Treasury, investments in refunding escrow funds or certain other investments permitted under the Treasury Regulations.

F.24 No Notices or Inquiries from IRS.

Within the last 10 years, the Recipient has not received any notice of a final action of the Internal Revenue Service that determines that interest paid or payable on any debt obligation of the Recipient is or was includable in the gross income of an owner or beneficial owner thereof for federal income tax purposes under the Code.

F.25 Amendments.

The provisions in this Exhibit may be amended, modified or supplemented at any time to reflect changes in the Code upon obtaining written approval of the State Water Board and the Bank and an opinion of Nationally-Recognized Bond Counsel to the effect that such amendment, modification or supplement will not adversely affect the exclusion from federal gross income of interest on the Bonds pursuant to Section 103 of the Code.

F.26 Reasonable Expectations.

The Recipient warrants that, to the best of its knowledge, information and belief, and based on the facts and estimates as set forth in the tax covenants in this Exhibit, the expectations of the Recipient as set forth in this Exhibit are reasonable. The Recipient is not aware of any facts or circumstances that would cause it to question the accuracy or reasonableness of any representation made in the provisions in this Exhibit.

F.27 Assignment.

The Recipient consents to any pledge, sale, or assignment to the Bank or a trustee for the benefit of the owners of the Bonds, if any, at any time of any portion of the State Water Board's estate, right, title, and interest and claim in, to and under this Agreement and the right to make all related waivers and agreements in the name and on behalf of the State Water Board, as agent and attorney-in-fact, and to perform all other related acts which are necessary and appropriate under this Agreement, if any, and the State Water Board's estate, right, title, and interest and claim in, to and under this Agreement to Payments (but excluding the State Water Board's rights to Additional Payments and to notices, opinions and indemnification under each Obligation).

**California DWSRF Payment Schedule**

Principal is paid over: **30 Years**

Project No. 3610050-001C - Upland, City of  
 Agreement: - based on Actual + Projected Disbursements

Interest rate: **1.90000%**

Replacement of 7.5 MG Reservoir at 17th Street and Benson Avenue

Ref Num	Due Date	Date Received	Principal Payment	Interest Rate%	Interest Payment	Total P and I Payment	Total Payment	Ending Balance	CPI Interest
1	4/1/2020		0.00	1.900	70,950.76	70,950.76	70,950.76	9,646,154.00	0.00
2	4/1/2021		0.00	1.900	232,510.65	232,510.65	232,510.65	14,316,925.00	0.00
3	4/1/2022		0.00	1.900	301,222.98	301,222.98	301,222.98	16,500,000.00	0.00
4	4/1/2023		413,132.36	1.900	313,500.00	726,632.36	726,632.36	16,086,867.64	0.00
5	4/1/2024		420,981.87	1.900	305,650.49	726,632.36	726,632.36	15,665,885.77	0.00
6	4/1/2025		428,980.53	1.900	297,651.83	726,632.36	726,632.36	15,236,905.24	0.00
7	4/1/2026		437,131.16	1.900	289,501.20	726,632.36	726,632.36	14,799,774.08	0.00
8	4/1/2027		445,436.65	1.900	281,195.71	726,632.36	726,632.36	14,354,337.43	0.00
9	4/1/2028		453,899.95	1.900	272,732.41	726,632.36	726,632.36	13,900,437.48	0.00
10	4/1/2029		462,524.05	1.900	264,108.31	726,632.36	726,632.36	13,437,913.43	0.00
11	4/1/2030		471,312.00	1.900	255,320.36	726,632.36	726,632.36	12,966,601.43	0.00
12	4/1/2031		480,266.93	1.900	246,365.43	726,632.36	726,632.36	12,486,334.50	0.00
13	4/1/2032		489,392.00	1.900	237,240.36	726,632.36	726,632.36	11,996,942.50	0.00
14	4/1/2033		498,690.45	1.900	227,941.91	726,632.36	726,632.36	11,498,252.05	0.00
15	4/1/2034		508,165.57	1.900	218,466.79	726,632.36	726,632.36	10,990,086.48	0.00
16	4/1/2035		517,820.72	1.900	208,811.64	726,632.36	726,632.36	10,472,265.76	0.00
17	4/1/2036		527,659.31	1.900	198,973.05	726,632.36	726,632.36	9,944,606.45	0.00
18	4/1/2037		537,684.84	1.900	188,947.52	726,632.36	726,632.36	9,406,921.61	0.00
19	4/1/2038		547,900.85	1.900	178,731.51	726,632.36	726,632.36	8,859,020.76	0.00
20	4/1/2039		558,310.97	1.900	168,321.39	726,632.36	726,632.36	8,300,709.79	0.00
21	4/1/2040		568,918.87	1.900	157,713.49	726,632.36	726,632.36	7,731,790.92	0.00
22	4/1/2041		579,728.33	1.900	146,904.03	726,632.36	726,632.36	7,152,062.59	0.00
23	4/1/2042		590,743.17	1.900	135,889.19	726,632.36	726,632.36	6,561,319.42	0.00
24	4/1/2043		601,967.29	1.900	124,665.07	726,632.36	726,632.36	5,959,352.13	0.00
25	4/1/2044		613,404.67	1.900	113,227.69	726,632.36	726,632.36	5,345,947.46	0.00
26	4/1/2045		625,059.36	1.900	101,573.00	726,632.36	726,632.36	4,720,888.10	0.00
27	4/1/2046		636,935.49	1.900	89,696.87	726,632.36	726,632.36	4,083,952.61	0.00
28	4/1/2047		649,037.26	1.900	77,595.10	726,632.36	726,632.36	3,434,915.35	0.00
29	4/1/2048		661,368.97	1.900	65,263.39	726,632.36	726,632.36	2,773,546.38	0.00
30	4/1/2049		673,934.98	1.900	52,697.38	726,632.36	726,632.36	2,099,611.40	0.00
31	4/1/2050		686,739.74	1.900	39,892.62	726,632.36	726,632.36	1,412,871.66	0.00
32	4/1/2051		699,787.80	1.900	26,844.56	726,632.36	726,632.36	713,083.86	0.00
33	4/1/2052		713,083.86	1.900	13,548.59	726,632.45	726,632.45	0.00	0.00
			<b>16,500,000.00</b>		<b>5,903,655.28</b>	<b>22,403,655.28</b>	<b>22,403,655.28</b>		<b>0.00</b>



## STAFF REPORT

**ITEM NO. 11.F.**

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**DATE:** November 25, 2019  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** LONDA BOCK-HELMS, ACTING ADMINISTRATIVE SERVICES DIRECTOR  
MORGAN FILLION, HUMAN RESOURCES MANAGER  
**SUBJECT:** THIRD AMENDMENT TO THE AGREEMENT WITH THE ZAPPIA LAW FIRM FOR LABOR AND EMPLOYMENT LAW SERVICES

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### RECOMMENDED ACTION

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

### GOAL STATEMENT

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

### BACKGROUND

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

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

At their regular meeting on November 11, 2019 the City Council directed the City Manager to bring the item back to Council for consideration at the next regularly scheduled City Council meeting on November 25, 2019.

## **ISSUES/ANALYSIS**

As labor negotiations have continued beyond June 30, 2019, and the City remains a litigant in multiple employment related suits, a third amendment is necessary. Staff believes it is beneficial for the City to continue using the Zappia Law Firm for these ongoing cases because of the firms experience and knowledge/history of the cases. This amendment will extend the agreement through June 30, 2020 with a not to exceed limit of \$350,000.

## **FISCAL IMPACTS**

The Fiscal Year 2019/20 operating budget includes budget for these legal services. No additional appropriations are necessary.

## **ALTERNATIVES**

Provide alternative direction to staff.

## **ATTACHMENTS:**

**Amendment No. 3 Zappia Law Firm**

**Amendment No. 2 Zappia Law Firm**

**Amendment No. 1 Zappia Law Firm**

**Professional Services Agreement Zappia Law Firm**

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

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

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

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

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

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

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

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

THE ZAPPIA LAW FIRM

CITY OF UPLAND

\_\_\_\_\_  
Ed Zappia  
Principal

\_\_\_\_\_  
Rosemary Hoerning  
Interim City Manager

Attest:

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

Approved as to form:

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

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

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

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

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

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

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

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

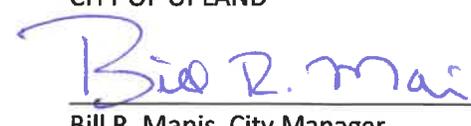
1. The Amendment to the Agreement shall expire on June 30, 2019.
2. The Zappia Law Firm will provide labor negotiations services with the City's employee associations.
3. The Zappia Law Firm may provide labor and employment legal services as approved by the City Manager on an as needed basis at the hourly rate and terms as defined in the agreement.

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

THE ZAPPIA LAW FIRM

 APC  
\_\_\_\_\_  
Ed Zappia, Principal

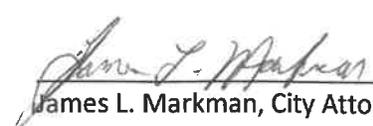
CITY OF UPLAND

  
\_\_\_\_\_  
Bill R. Manis, City Manager

Attest:

  
\_\_\_\_\_  
Jeannette Vagnozzi, City Clerk

Approved as to form:

  
\_\_\_\_\_  
James L. Markman, City Attorney

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

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

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

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

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

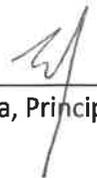
WHEREAS, the Parties agree to extend the scope of services in Agreement to include labor negotiation services and employment legal services on an as needed basis at the hourly rate as set forth in the Agreement.

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

1. The Amendment to the Agreement shall expire on June 30, 2018.
2. The Zappia Law Firm will provide labor negotiations services with the City's employee associations.
3. The Zappia Law Firm may provide labor and employment legal services as approved by the City Manager on an as needed basis at the hourly rate and terms as defined in the agreement.

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

THE ZAPPIA LAW FIRM

  
8/24/17  
\_\_\_\_\_  
Ed Zappia, Principal

CITY OF UPLAND

  
\_\_\_\_\_  
Martin Thouvenell, Interim City Manager

Attest:

  
\_\_\_\_\_  
Jeannette Vagnozzi, City Clerk

Approved as to form:

  
\_\_\_\_\_  
James L. Markman, City Attorney

**AGREEMENT  
FOR PROFESSIONAL CONSULTANT SERVICES  
The Zappia Law Firm**

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

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

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

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

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

5. **PAYMENT.**

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

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

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

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

**6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE.**

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

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

**7. DEFAULT OF CONSULTANT.**

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

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

**8. OWNERSHIP OF DOCUMENTS.**

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

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

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

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

#### **9. INDEMNIFICATION.**

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

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

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

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

- (1) Insurance Services Office Commercial General Liability form No. CG 00 01 11 85 or 88.
- (2) Insurance Services Office Business Auto Coverage form CA 00 01 06 92 covering Automobile Liability, code 1 (any auto). If the Consultant owns no automobiles, a non-owned auto endorsement to the General Liability policy described above is acceptable.
- (3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. If the Consultant has no employees while performing under this Agreement, worker's compensation insurance is not required, but Consultant shall execute a declaration that it has no employees.

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

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

- (1) General Liability: One million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- (2) Automobile Liability: One million dollars (\$1,000,000) per accident for bodily injury and property damage.
- (3) Worker's Compensation as required by the State of California; Employer's Liability: One million dollars (\$1,000,000) per accident for bodily injury or disease.
- (4) Professional Liability coverage: One million (\$1,000,000) per claim and in aggregate.

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

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

- (1) The City, its officers, officials, employees and volunteers are to be covered as insured's as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.
- (2) For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- (3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees or volunteers.



- (4) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (5) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
- (6) Additional Insured – All policies, except for Worker's Compensation and Professional Liability policies, shall contain endorsements naming the City of Upland and their officers, employees, agents, and volunteers as additional insured parties with respect to liabilities arising out to the performance of Work hereunder. The additional insured endorsements shall also be primary and non-contributory.
- (7) Waiver of Subrogation Rights - CONSULTANT shall require the carriers of Commercial General Liability, Automobile Liability and Worker's Compensation to waive all rights of subrogation against the City of Upland, and its officers, employees, agents and volunteers. Such insurance coverage provided shall not prohibit CONSULTANT's employees or agents from waiving the right of subrogation prior to a loss or claim. CONSULTANT hereby waives all rights of subrogation against the City of Upland.

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

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

## 11. INDEPENDENT CONTRACTOR.

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

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

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

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

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

**13. RELEASE OF INFORMATION.**

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

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

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

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

To City: City of Upland  
Mailing Address:  
P.O. Box 460  
Upland, California 91785  
460 North Euclid Avenue  
Upland, California 91785  
Attention: City Manager

To Consultant: The Zappia Law Firm, A Professional Corporation  
One Pacific Plaza  
7777 Center Avenue, Suite 625  
Huntington Beach, CA 9264

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

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

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

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

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



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

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

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

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

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

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

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



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

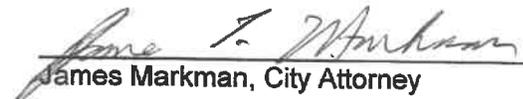
**CITY OF UPLAND**

  
Martin Thouvenell, Interim City Manager

Attest:

  
Jeannette Vagnozzi, Deputy City Manager

Approved As to Form:

  
James Markman, City Attorney

**CONSULTANT**

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

By:   
Name: Ed Zappia  
Title: Principal

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



EXHIBIT A

PAYMENT RATES AND SCHEDULE

Principals/Senior Counsel: \$300 per hour

Associate Attorneys: \$250 per hour

Law Clerks/Paralegals: \$120 per hour

Reasonable and customary expenses for copies and mileage.





## STAFF REPORT

**ITEM NO. 14.A.**

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**DATE:** November 25, 2019  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**SUBJECT:** APPROVAL OF LABOR AGREEMENT WITH UPLAND POLICE OFFICERS' ASSOCIATION

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### **RECOMMENDED ACTION**

It is recommended that the City Council adopt a Resolution approving a Memorandum of Understanding with the Upland Police Officers' Association.

### **GOAL STATEMENT**

The proposed action supports the City's goal to provide Upland employees with a fair compensation and benefit package, which will assist in the effort to recruit and retain the best employees and foster and maintain harmonious labor relations with all City of Upland employee groups.

### **BACKGROUND**

In July 2017, the City made an initial proposal to the Upland Police Officers' Association (UPOA) for a five-year term. Since that time, bargaining has occurred intermittently.

In December 2018, the City notified UPOA of its declaration of Impasse. UPOA did not file a factfinding request and on July 1, 2019 the City imposed the Last Best Final Offer (LBFO).

### **ISSUES/ANALYSIS**

Pending Council action, the City will have reached agreement with UPOA. This agreement is consistent with direction received from the City Council prior to and during the negotiation process. The agreement has been ratified by the membership of the UPOA.

The following items represent the major changes to the memorandum of understanding:

- The term of the contract is for a period ending June 30, 2022.
- A one-time lump sum distribution for each employee currently working for the City and also employed by the City on July 1, 2017 of 1% (one percent) of their annual base salary as of July 1, 2017. The parties agree that the one-time distribution shall not be credible for CalPERS retirement.
- A one-time lump sum distribution for each employee currently working for the City and also employed by the City on July 1, 2018 of 1% (one percent) of their annual base salary as of July 1, 2018. The parties agree that the one-time distribution shall not be credible for CalPERS retirement.
- Effective July 1, 2019, all employees in this unit received a 4% COLA increase in base salary.
- Effective June 28, 2020, all employees in this unit shall receive a 2% COLA increase in base salary.
- Effective June 27, 2021, all employees in this unit shall receive a 2% COLA increase in base salary.
- Effective January 1, 2020, the City will contribute a maximum of \$1,300 per month towards benefits. Unused amounts will be forfeited.
- Effective September 1, 2019 the City agrees to pay an additional \$100.00 per month in deferred compensation on behalf of each unit member.
- Beginning FY 2019-2020, employees in the unit may be reimbursed up to \$180 annually for the purchase of items or participation considered acceptable as defined in the City's Preventative Health Benefits policy.

In addition, there were several changes to the language in the MOU that were added to reflect changes in the law or for clarification. These changes resulted in no additional cost to the City.

### **FISCAL IMPACTS**

The fiscal impact associated with the LFBO, which was imposed on UPOA in July 2019 is \$291,780.00. The fiscal impact of this agreement for Fiscal Year 2019-20 is estimated to be an additional \$144,468.00 for the additional items negotiated. The total fiscal impact associated with the UPOA agreement is \$436,248.00. No additional appropriations are needed at this time. It is expected that a substantial budget surplus resulting from the official close of Fiscal Year 2018-19 will be more than enough to offset the additional costs resulting from approval of all of the various new MOUs. Potential additional appropriations will be addressed at mid year.

### **ALTERNATIVES**

Provide alternative direction to staff.

### **ATTACHMENTS:**

**Resolution adopting MOU with UPOA**  
**Memorandum of Understanding - Redline**  
**Memorandum of Understanding - Clean Version**

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL APPROVING A  
MEMORANDUM OF UNDERSTANDING WITH THE UPLAND  
POLICE OFFICERS ASSOCIATION

Intent of the Parties and Findings

(i) It is the policy of the City of Upland to compensate its employees in a fair and equitable manner for their efficient and faithful service; and

(ii) The City opened negotiations with the duly authorized representatives of the Upland Police Officers Association and have reached Agreement to amend the current Memoranda of Understanding through June 30, 2022.

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

Section 1. The recitals above are found to be true and adopted as findings.

Section 2. The City Council hereby approves the Memorandum of Understanding between the City of Upland the Upland Police Officers Association, attached hereto and incorporated herein by reference, and authorizes the Mayor to execute the Memorandum of Understanding.

Section 3. 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 25th day of November, 2019.

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

I, Keri Johnson, City Clerk of the City of Upland, do hereby certify that the foregoing Resolution was passed and adopted at a regular meeting of the City Council of the City of Upland held on the 25th day of November, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

ATTEST:

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



**MEMORANDUM OF UNDERSTANDING (M.O.U.)**

**BETWEEN**

**THE CITY OF UPLAND**

**AND**

**THE UPLAND POLICE  
OFFICERS' ASSOCIATION (UPOA)**

*July 1, ~~2015~~2017 to June 30, ~~2017~~2022*

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**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE CITY OF UPLAND  
AND  
THE UPLAND POLICE OFFICERS' ASSOCIATION  
JULY 1, ~~2015-2017~~ – JUNE 30, ~~2017~~2022**

**ARTICLE 1 - TERM OF AGREEMENT**

Except where expressly stated otherwise herein, the City and Association agree that the provisions of this Memorandum of Understanding (M.O.U.) shall be effective July 1, ~~2015~~2017, and shall expire on June 30, ~~2017~~2022.

**ARTICLE 2 – PREAMBLE**

It is the intent and purpose of this M.O.U. to set forth the understanding of the parties reached as a result of meeting and conferring in good faith regarding, but not limited to, matters relating to the wages, hours, and terms and conditions of employment between the City of Upland (hereinafter referred to as “City”) and the Upland Police Officers’ Association (hereinafter referred to “Association”).

**ARTICLE 3 – ~~RECOGNITION MAINTENANCE OF MEMBERSHIP~~**

**The Association is the recognized employee organization for the personnel employed in the Police Department occupying the classifications of Police Officer and Police Detective.**

The City agrees to deduct association dues from the wages of all UPOA members who have filed a written authorization with the association. The City will begin dues deductions at the beginning of the pay period after notice is provided by the Association and will transmit these funds to the Association in a manner which is mutually agreed to.

The employee's earnings must be sufficient after other legal and required deductions are made to cover the amount of the dues. When an employee is in a non-pay status for an entire pay period, no deduction will be made to cover the pay period. In the case of an employee who is in a non-pay status during part of the pay period, and the salary is not sufficient to cover the full withholding, no deduction shall be made. In this circumstance, all other legal and required deductions (including health care deductions) have priority over Association dues.

UPOA agrees to enforce this provision and to indemnify and hold harmless the City, its officers and employees, from all liabilities and/or damages arising from the operation of this section.

**ARTICLE 4 - MANAGEMENT RIGHTS**

The authority of the City includes the exclusive right to determine the mission of its constituent departments, commissions and boards; set standards of service; determine the procedures and standards of selection for employment and promotion; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of work; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; exercise complete control and discretion over its organization and the technology of performing its work, provided, however, that the exercise and retention of such rights does not preclude employees or their representatives from meeting and conferring over the practical consequences that decisions on these matters may have on wages, hours and other terms and conditions of employment.

**ARTICLE 5 – SALARIES**

A. Effective the first full pay period following MOU ratification by UPOA and approval by the City Council, the City shall issue:

- a. a one-time lump sum distribution for each employee currently working for the City and also employed by the City on July 1, 2017 of 1% (one percent) of the employees annual salary as of July 1, 2017. The parties agree that the one-time distribution shall not be credible for CalPERS retirement.
- b. a one-time lump sum distribution for each employee currently working for the City and also employed by the City on July 1, 2018 of 1% (one percent) of the employees annual salary as of July 1, 2018. The parties agree that the one-time distribution shall not be credible for CalPERS retirement.

B. Effective the pay period beginning June 30, 2019, following MOU ratification by UPOA and City Council approval, all employees in this unit shall receive a 4% COLA increase in base salary.

C. Effective June 28, 2020, all employees in this unit shall receive a 2% COLA increase in base salary.

D. Effective June 27, 2021, all employees in this unit shall receive a 2% COLA increase in base salary.

~~a. Effective the first full pay period following MOU ratification by the UPOA and City Council approval, each unit employee shall receive a one time distribution of \$500.00.~~

~~b. Effective January 1, 2016, all employees in this unit will receive a 1.5% increase in base salary.~~

~~c. Effective the first full pay period following July 1, 2016, all employees in this unit will receive a 1.5% increase in base salary.~~

~~d.E.~~ The parties to this MOU agree for future reference that the survey cities remain as the following cities: Rialto, Ontario, West Covina, Chino, Glendora, and Fontana.

**ARTICLE 6 – RETIREMENT**

Classic Employees:

Retirement Tier 1 – Safety Members hired before January 1, 2013, shall receive the 3% @ 55 retirement formula, highest twelve (12) month average final compensation period, the Third Level of the 1959 Survivor's Benefit, which employees agree to pay \$2.00 per month, Unused Sick Leave Option, and a two percent (2%) retirement Cost of Living Adjustment (COLA). These Safety Members shall pay the entire twelve percent (12%) of the CalPERS employee contribution on a pre-tax basis.

The agreement between the City and CalPERS allows for the buy-back of time served by the employee in the Military as defined under PERS Regulation, Section 21024.

The City, at the Police Chiefs discretion, and in accordance with the law, will allow police officers who voluntarily retire from City service and who are at least 50 years of age at the time of retirement to be rehired as a contract service worker (CSW-Retiree) in his/her previous position for a period not to exceed 960 hours in the fiscal year of retirement and for an additional 960 hours in the fiscal year following retirement. The CSW-Retiree will be paid at the hourly rate earned and hold the same rank as on the last full day of employment. CSW-Retirees will receive one-third of the Cafeteria amount provided full-time officers and the same uniform allowance as received by full-time officers. CSW-Retirees are employed on an at-will basis and shall not be eligible for any layoff benefits. All applicable PERS regulations and statutes regarding the employment of retirees shall apply.

Pension Reform Act of 2013:

Retirement Tier 2 – New Safety Members, as defined by CalPERS, hired on or after to January 1, 2013, shall receive the 2.7% @ 57 retirement formula, highest thirty-six (36) month average final compensation period, the Fourth Level of the 1959 Survivor's Benefit, which employees agree to pay \$2.00 per month, Unused Sick Leave Option, and a two percent (2%) retirement Cost of Living Adjustment (COLA). These Safety Members shall pay half the total normal cost of the retirement plan as determined annually by CalPERS on a pre-tax basis.

Classic Employees:

~~1) — The City of Upland provides its Police Officers and Detectives with membership in the California Public Employees' Retirement System (CalPERS), 3% @ 55 retirement formula.~~

~~Effective January 1, 2016, "Classic" employees defined by the Pension Reform Act of 2013 will pay the nine percent (9%) CalPERS employee/member contribution and an additional one and one-half percent (1.5%) "cost sharing" pension contribution; total employee/member contribution to be ten and one-half percent (10.5%). This cost sharing pension contribution shall be implemented outside of a CalPERS contract amendment as authorized by Government Code Section 20516(f), and shall extend beyond the expiration of this MOU.~~

~~Effective the first full pay period following July 1, 2016, "Classic" employees defined by the Pension Reform Act of 2013 will pay the nine percent (9%) CalPERS employee/member contribution and an additional three percent (3%) "cost sharing" pension contribution; total employee/member contribution to be twelve percent (12%). This cost sharing pension contribution shall be implemented outside of a CalPERS contract amendment as authorized by Government Code Section 20516(f), and shall extend beyond the expiration of this MOU.~~

~~2.) The parties acknowledge that CalPERS mandates an election of unit members, separate from ratification of this MOU, to provide for this cost sharing pursuant to Government Code Section~~

~~20516. As soon as practicable after the effective date of this MOU, the City will initiate the contract amendment process. Upon approval and agreement from the bargaining unit and completion of the City's amendment to the CalPERS contract, employee "cost sharing" contributions will be made pursuant to Government Code Section 20516, Employee Cost Sharing of Additional Benefits.~~

~~The City contracts with CalPERS for the Single Highest Year Option for all employees who are not defined as "new members" pursuant to the Pension Reform Act of 2013 and the 1959 Survivor Benefit, 3<sup>rd</sup> level for all members of the bargaining unit. There is an employee cost of \$2.00 per month for the 1959 Survivor Benefit.~~

~~The agreement between the City and CalPERS allows for the buy back of time served by the employee in the Military as defined under PERS Regulation, Section 21024.~~

~~The City, at the Police Chief's discretion, and in accordance with the law, will allow police officers who voluntarily retire from City service and who are at least 50 years of age at the time of retirement to be rehired as a contract service worker (CSW Retiree) in his/her previous position for a period not to exceed 960 hours in the fiscal year of retirement and for an additional 960 hours in the fiscal year following retirement. The CSW Retiree will be paid at the hourly rate earned and hold the same rank as on the last full day of employment. CSW Retirees will receive one-third of the Cafeteria amount provided full-time officers and the same uniform allowance as received by full-time officers. CSW Retirees are employed on an at-will basis and shall not be eligible for any layoff benefits. All applicable PERS regulations and statutes regarding the employment of retirees shall apply.~~

Pension Reform Act of 2013:

- ~~1) The parties agree that the provisions of AB 340 (The California Pension Reform Act of 2013; hereinafter "the Act") went into effect on January 1, 2013. In addition, if there is any other clean up or other retirement legislation which goes into effect during this MOU and if there are provisions of that legislation which by law automatically go into effect, it shall do so notwithstanding the terms otherwise of this MOU. Either party may request to negotiate over the impact of such subsequent legislation.~~
- ~~2) Two Tier Retirement: Pursuant to the Act, for "new members" (as defined by the Act) who are employees hired after January 1, 2013, they will be hired pursuant to the 2.7% @ 57 retirement formula.~~
- ~~3) For "new members" (as defined by the Act) who are employees hired after January 1, 2013, final compensation will be based on the highest annual average compensation earnable during the three consecutive years of employment immediately preceding the effective date of his or her retirement.~~
- ~~4) For employees defined as "new members" by the Act hired after January 1, 2013, they shall pay the higher of the classic member contribution or one half of the~~

~~total normal cost rate as defined by the Act as their employee retirement contribution.~~

### **ARTICLE 7 - DEFERRED COMPENSATION**

Effective September 1, 2019, the City will contribute \$100 per month in deferred compensation on behalf of each employee in the unit. Employees may add additional contributions voluntarily.

The City will contribute an additional two hundred and fifty dollars (\$250) per month on behalf of Police Detectives ~~toward~~into their ~~ICMA-D~~deferred ~~C~~compensation account.

The City will contribute an additional two hundred dollars (\$200) per month on behalf of Police Officers with a minimum of 15 years of continuous service with the City of Upland ~~toward~~ their ~~ICMA-D~~deferred ~~C~~compensation account.

### **ARTICLE 8 – HEALTH INSURANCE – CAFETERIA PLAN**

~~The City shall make a monthly contribution as set forth below to each eligible member of the unit to be used toward the Section 125 Cafeteria Plan. These funds shall only be used for qualified benefits as provided for in IRC Section 125.~~

~~For those members CURRENTLY enrolled in Cash In Lieu/or utilizing leftover cafeteria contributions into their 457 plan, the City will continue to provide this benefit, up to a maximum of \$300/month. This benefit will expire on December 31, 2019. At that time, if there is a flex benefit contribution balance remaining after deduction for elected benefits for any employee, all remaining flexible benefit contribution amounts shall be forfeited.~~

~~The City will not provide cash in lieu of benefits to those employees who have outside health insurance coverage.~~

In accordance with "The City of Upland Cafeteria Plan", the City provides a 125 Flexible Benefit Plan ("the Plan"). The regular and intended effect of the Plan, under current law, is to enable employees to receive benefits which may not be subject to either State or Federal income tax.

The details of Plan eligibility and operational requirements are set forth in the Plan documents. Once enrolled in a cafeteria distribution plan, employees will only be permitted to modify the plan on the same basis as changes are permitted in health insurance plans, that is, during open enrollment periods and when the employee's dependent status changes.

1) The City shall make a monthly contribution as set forth below to each eligible member of the unit to be used toward the Section 125 Cafeteria Plan. These funds shall only be used for qualified benefits as provided for in IRC Section 125.

- 2) All employees must enroll in one of the health program plans unless they submit to the City proof of comparable health coverage. The City may require additional proof of alternative coverage at any time.
- 3) Employees who fail to complete this requirement will be enrolled in the lowest cost health insurance plan the City offers.
- 4) Employees who meet the requirement shall be allowed to utilize their Section 125 Flexible Benefit Plan contributions for any of the other qualified benefits as provided for in IRC Section 125.

### **BENEFITS CONTRIBUTION**

The City will contribute \$1,300 per month to the plan. The employee must pay the difference between the city's contribution and the actual premium of the plan selected, if any.

The city reserves the right to change medical carriers. In the event of a change, the city agrees to meet and confer over the impact of the decision.

In accordance with "The City of Upland Cafeteria Plan", the city provides a Section 125 Flexible Benefit Plan ("the Plan"). The regular and intended effect of the Plan, under current law, is to enable employees to choose between (a) the receipt of benefits which may not be subject to either State or Federal income tax or (b) a cash benefit which is subject to tax, but is not included in the employee's hourly rate.

The details of Plan eligibility and operational requirements are set forth in the Plan documents. Once enrolled in a cafeteria distribution plan, employees will only be permitted to modify the plan on the same basis as changes are permitted in health insurance plans, that is, during open enrollment periods and when the employee's dependent status changes.

1. The city shall make a monthly contribution as set forth below to each eligible member of the unit to be used toward the Section 125 Cafeteria Plan. These funds shall only be used for qualified benefits as provided for in IRC Section 125. Excess benefit dollars shall be added to each employee's taxable earnings.
2. All employees must enroll in one of the CalPERS health program plans unless they submit to the city proof of comparable health coverage.
  - A. Employees who fail to complete this requirement will be enrolled in the lowest cost health insurance plan the city offers through CalPERS.
  - B. Employees who meet the requirement shall be allowed to utilize their Section 125 Flexible Benefit Plan contributions for any of the other qualified benefits as provided for in IRC Section 125.

~~CITY SECTION 125-BENEFIT CONTRIBUTION AND CASH IN LIEU~~

~~The city will make available to each covered employee a monthly amount for benefits, as specified in this MOU. If the employee has outside health coverage, such as through a spouse, domestic partner, or other acceptable alternate health coverage, the employee can take the unused portion of the amount allocated for the benefit as cash in lieu of receiving any or all of the actual benefit.~~

- ~~• Employees hired prior to January 1, 2016 – The maximum amount of cash in lieu that an employee may receive is \$1015.00.~~
- ~~• Employees hired on or after January 1, 2016 – The maximum amount of cash in lieu that an employee may receive is the dollar amount equal to 100% of the premium amount for the lowest medical plan for employee-only category.~~

The City will make available to each covered employee a monthly amount for benefits, as specified in this MOU.

1) Employees hired prior to March 1, 2016 will receive the maximum benefits contribution allocation:

- a. Effective January 1, 2017 - \$1,267.00
- b. Effective January 1, 2020 - \$1,300.00

2) For employees hired on or after March 1, 2016, the City will contribute the following to the plan to a maximum of \$1,267.00 effective January 1, 2017, upon ratification by UPOA and City Council approval, \$1,300.00 effective January 1, 2020 and thereafter:

<u>a. Employee Only</u>	<u>100% of lowest cost plans for health, dental and vision</u>
<u>b. Employee plus one</u>	<u>100% of lowest cost plans for health, dental and vision</u>
<u>c. Family</u>	<u>100% of lowest cost plans for health, dental and vision</u>

The employee must pay the difference between the City's contribution and the actual premium of the plan selected, if any. The City reserves the right to change medical carriers. In the event of a change, the City agrees to meet and confer prior to any change.

**ARTICLE 9 – RETIREE HEALTH INSURANCE REIMBURSEMENT**

- a. ~~FOR RETIREES IN CALPERS MEDICAL:~~ The City shall contribute monthly on behalf of each retiree the amount set forth in the table below. ~~To the extent that the amount~~

~~reflected in the table below exceeds the PERS statutory minimum, the City shall reimburse such excess amount directly to the retiree.~~

- b. An additional \$45 per month allowance is provided for spouse if the spouse is covered under the retiree’s insurance.
- c. To be eligible for the retiree medical payments herein, an employee must retire from the City and purchase retiree medical insurance

10 - 14 years of service	PERS statutory minimum
15 - 19 years of service	PERS statutory minimum
20 - 24 years of service	PERS statutory minimum
25 + years of service	\$145.14 per month

The provisions of this article above shall only apply to bargaining unit members hired on or before December 31, 2015.

~~For bargaining unit members hired after January 1, 2016, the City’s retiree health contribution will be limited to the CalPERS statutory minimum as provided each year in the Public Employees’ Medical and Hospital Care Act (PEMHCA) for those retirees in enrolled in PEMHCA, only.~~

**ARTICLE 10 – RETIREE HEALTH SAVINGS ACCOUNTS**

Effective January 1, 2007, Retirement Health Savings (RHS) accounts will be established through ICMA which will be payable to the employee only upon service or disability retirement with the City of Upland. City contributions to the RHS accounts will be based upon years of service in accordance with the following schedule:

<b>Years of Service</b>	<b>Monthly City Contribution</b>	<b>Yearly City Contribution</b>
5 to 9.99	\$12.50	\$150.00
10 to 14.99	\$25.00	\$300.00
15 to 19.99	\$50.00	\$600.00
20 to 24.99	\$75.00	\$900.00
25 +	\$100.00	\$1,200.00

Upon retirement, all UPOA members shall convert 50% of accrued sick leave, 100% of accrued vacation and 100% of compensatory time to cash and deposit into their Retiree Health Savings Account on a tax deferred basis (in accordance with IRS guidelines). Therefore, the current options of cashing out half of accrued sick leave or using Personal Leave (1/2 of accrued sick leave) at retirement will no longer be allowable.

Retirees are eligible to continue their medical, dental, and vision coverage with the City of Upland until they reach Medicare Eligible Age, at which time they will be required to enroll in a non-City

sponsored Medicare plan. The retiree may choose to remain on the City's Dental and Vision plan. All post-retirement Medical, Dental, and Vision benefits will be paid by the retiree.

If the retiree should become deceased while an eligible surviving spouse is enrolled in coverage, the surviving spouse may continue their Medical, Dental, and/or Vision coverage with the City at their own expense. The Surviving Spouse will not be eligible for the Retiree Health Insurance Reimbursement allowance.

This Article does not apply to unit members hired after the effective date of this agreement. The City will not make any contributions for new hires under this Article.

The City shall have the ability to change providers through the RFP process.

### **ARTICLE 11 – LIFE INSURANCE**

Effective July 1, 2019, the City shall provide all active members employees, a monthly life insurance and accidental death and dismemberment with group life insurance providing \$150,000 in basic life insurance benefits and \$150,000 in accidental death and dismemberment insurance benefits for each employee.

~~The City provides Association members with group life insurance in an amount equal to one times (1x) their annual salary.~~

### **ARTICLE 12 – BILINGUAL PAY**

The City will provide compensation in the amount of 2.5% of base salary for employees in the unit who successfully complete a fluency examination.

### **ARTICLE 13 – COURT STANDBY AND CALL OUT PAY**

~~Police Officers and Detectives in such on-call status will be paid 2.5 hours at the overtime rate in which there is any on-call time.~~ of one and one-half (1.5) their regular pay.

Court standby compensation is intended for staff who are off-duty, and shall not apply to Officers responding to court within one hour before a regularly scheduled work shift (i.e. as discussed by the parties for example, this includes Officers who are called to court at 8:00 a.m. on a day they are already regularly scheduled to report to work at 9:00 a.m.)

### **ARTICLE 14 – COURT CALL OUT**

~~Employees in the unit who were not placed on court standby but have been called to court from during their off-duty time will receive a minimum of three hours compensation at time and one half (1.5½) their regular rate of pay. However, Officers who were not placed on court standby~~

but are called to court on a regularly scheduled work day before their shift begins (i.e., Officers who are called to court at 8:00 a.m. on a day they are already scheduled to report to work at 9:00 a.m.) are only entitled to one hour of court call back pay. Employees in the unit who have been called to court from their off-duty time will receive a minimum of three hours compensation at time and one half (1.5)-

If employees who have been called to court from their off duty time are required to return to court in the afternoon after the lunch break, the employee may be reimbursed for lunch up to \$10.00, if a receipt for lunch is provided.

**ARTICLE 154 – EDUCATION INCENTIVE AND POST CERTIFICATE PAY**

All employees in this unit will receive Education Incentive Pay in the following amounts, effective January 1, 2006:

2.5% of base salary for an Associate's Degree (or equiv. college units)

**OR**

5% of base salary for a Bachelor's Degree (or equiv. college units).

All employees in this unit will receive POST Certificate Pay in the following amounts, effective January 1, 2006:

2.5% of base salary for an Intermediate POST Certificate

**OR**

5% of base salary for an Advanced POST Certificate.

Eligible employees may only receive one payment amount within each category of Incentive Pay, to a maximum allowable of ten percent (10%) of base salary.

Educational Incentive and POST Certificate Pay will take effect when employees in the unit reach Step ~~4D~~ in the salary schedule.

Those employees who were receiving educational incentive and POST certificate pay prior to June 30, 1985 will continue to receive the same compensation and will not be affected by this change.

**ARTICLE 165 – DETECTIVE STANDBY PAY**

Detectives shall be paid \$400 per week for each week of call-out assignment, regardless of whether the employee is actually called to work or not.

Detective Standby pay will be paid in accordance with the Detectives Standby Pay Policy, dated December 10, 2001. (Attachment A)

**ARTICLE 176 – HOLIDAY PAY**

All employees serving in classifications covered by this MOU shall be compensated in cash for City designated holidays at the rate of 4.61 hours pay per pay period.

**ARTICLE ~~187~~ - LONGEVITY PAY**

Employees in the unit with ten (10) years or more of continuous City service will receive a two and one half percent (2.5%) increase ~~in~~of base salary, effective January 1, 2016.

Employees in the unit with twenty (20) years or more of continuous City service will receive an additional two and one half percent (2.5%) increase ~~in~~of base salary, for a total of five percent (5%) longevity pay.

The longevity pay will be given through the merit system as a step advancement at ten (10) and twenty (20) years.

**ARTICLE ~~198~~ - MERITORIOUS PAY**

It is recognized that certain employees will put forth the extraordinary efforts and produce outstanding results for the City. It is desired to reward these individuals. An incentive pay method has been established to encourage all employees to utilize fully their capabilities on behalf of the City. Employees recommended by their department heads and approved by the City Manager may be granted a five percent (5%) increase in salary for a period of three months, six months, or one year. Department head recommendations will be submitted annually on May 1st. Payment of meritorious pay will be made in a lump sum annually on the first payday in June. Recommendations will contain the information required in Exhibit F of the Compensation Plan.

Any Police Officer or Detective who uses 24 hours or less sick time in the period from December 1st through November 30th, and has at some time during that period accrued 1000 hours of sick leave, and has between 952 and 1000 hours of accrued sick leave as of December 1st will receive \$200. Computations will be made and payment will be in the form of a lump sum payable on the first payday in December of each year. Such payment will only be made to persons actually in the employ of the City on the date of payment.

**ARTICLE ~~20-19~~ - OVERTIME PAY**

Unit employees shall receive overtime at the rate of one and one-half (1 ½) times their regular rate of pay for time worked in excess of 40 hours in a 7 day work period. Paid vacation and sick leave during a work period is counted as hours worked for overtime purposes.

**ARTICLE ~~21-20~~ – COMPENSATORY TIME OFF**

Effective January 1, 2010, employees in the unit may not accrue more than two hundred forty (240) hours of compensatory time off.

An Officer who requests to use Compensatory Time Off (CTO) will be permitted to do so pursuant to the following:

1. All requests to use CTO must be made in writing on the Request for Time Off Form. Request may not be placed in the in-box , e-mailed, or given in any other manner.
2. All requests to use CTO must be made at least three (3) days in advance of the date the officer wishes to use CTO. The Chief of Police or his designee have the authority to approve or deny any CTO request made within the three (3) day minimum requirement.
3. Officers who request to use CTO must find a replacement officer willing to work his/her shift if the request will take the shift below minimum staffing as outlined in the Police Department Policy. The Watch Commander shall also be notified of such as part of the written request to use CTO.
4. An officer requesting to use CTO who is unable to do so because he/she cannot find a replacement for a period of one year, after the request is made , will be cashed out of the CTO he/she requested. Although the parties do not expect this will ever happen, this provision is included in the agreement to comply with the requirements of the FLSA.
5. Notwithstanding paragraphs 2 and 3 above, if an officer requests to use CTO on New Year's Eve, Easter, Halloween, Christmas Eve and on any official City Holiday as designated by the City Council the officer must find and identify the replacement officer to work his/her shift if he/she wants to use CTO even if the shift is above minimum staffing.
6. Notwithstanding all of the foregoing, the association and the City acknowledge that there may be times when during the shift an employee may request to use comp time for the remainder of the shift. Such requests will be approved at the discretion of the Chief of Police or his/her designee providing staffing levels are appropriate and the employee's CTO does not result in an undue disruption to the department's operation.
7. The Fair Labor Standards Act (FLSA) and its regulations provide that request to use CTO shall be granted if made with reasonable notice to the employer and if not "unduly disruptive" to the agency's operations. If the association believes that it has become a practice of the Department to deny CTO to avoid payment of overtime it has the right to require that the Department meet and confer to discuss the practice.

**ARTICLE 22-21 - SPECIAL ASSIGNMENT PAY**

~~Effective, January 1, 2008,~~ Police Officers will receive Special Assignment Pay in the amount of five percent (5%) of base salary when assigned to the following special details: Impact Officers, Canine Officers, Motorcycle Officers, Narcotics Officers, School Resource Officers, and Detective Lead. Field Training Officers (FTO's) will receive Special Assignment Pay in the amount of five percent (5%) of base salary when assigned as an FTO and only while serving in that capacity.

~~Effective January 1, 2009, the method of payment for Field Training Officers (FTO's) will change. Instead of providing a five percent (5%) increase in base salary only when Officers are assigned to be an FTO,~~ The City may designate up to 10 FTO's to receive a 5% increase ~~in~~of base salary on an on-going basis. Employees will be assigned to be FTO's as determined by the Chief of Police to ensure optimal departmental operations and an FTO on each shift.

All special assignments are subject to shift and regularly scheduled days of being adjusted/changed based on operational necessity due to any critical incident, special event, natural/man-made disaster, protest, crime pattern or any other incident deemed necessary to protect public safety and the health and welfare of the City.

**ARTICLE 232 - UNIFORM ALLOWANCE**

Employees in the unit receive a uniform allowance in the amount of \$884 per year for the purchase, maintenance and cleaning of uniforms after completion of 12 months of employment. Uniforms will be provided at the time of appointment. This allowance will be paid twice a year (½ in June and ½ in December).

~~In recognition of the City's financial difficulties in fiscal year 2009/2010, unit members agree to reduce the June 2010 uniform allowance payment by \$299.~~

**ARTICLE 243 - SICK LEAVE**

Employees in the unit earn sick leave at the rate of 8 hours per month, up to a maximum accrual of 1250 hours. No sick leave may be granted during the first thirty days of employment with the City.

Bargaining unit members who use less than 40 hours of sick leave between November 1 and October 31 of each year (this, of course, covers two calendar years) may request to cash out twenty (20) hours of sick leave each year. Such request needs to be made in writing to the Human Resources Department during the month of November. If such a request is made, the payment will be made in the first pay period of December of every year. ~~Employees in the unit who used~~

~~less than 40 hours of sick leave between November 1, 2011 and October 31, 2012 are eligible to make the request for this cash out assuming that they do so by January 31, 2013.~~

**ARTICLE 2~~5~~4 - VACATION**

Vacation shall accrue for employees in the unit based on the following schedule:

01 – 02 Years of service	96 Hours per year
03 – 05 Years of service	120 Hours per year
06 – 10 Years of service	152 Hours per year
11 – 13 Years of service	160 Hours per year
14 – 16 Years of service	168 Hours per year
17 + Years of service	One additional day (8 hours) per year, up to a maximum of 176 hours per year

All employees may accrue vacation up to a maximum of three (3) years of entitlement.

In the month November of each calendar year, employees who have used at least 40 hours of accrued vacation between the preceding November 1 and October 31 may cash out (by making a written request) up to 40 hours of their accrued vacation. Such request must be received by November 30 in Human Resources. If such a request is made, the payment will be made in the first pay period of December of every year. ~~For calendar year 2013 only, employees may cash out up to 40 hours of accrued vacation both in January 2013 as well as in November 2013.~~

**ARTICLE 2~~6~~5 - BEREAVEMENT LEAVE**

~~Employees may take up to 30 hours annually (January 1 through December 31) with pay in the event of a death of the following: mother, father, grandfather, grandmother, brother, sister, spouse, domestic partner, child, grandchild, and employee spouse's or domestic partner's father, mother, grandfather, grandmother, brother, sister and any relative who has resided with the employee for at least one year. Adoptive relatives and step relatives shall count the same as relatives by birth. Notification of need for such leave must comply with the City's Administrative Policy on Sick Leave.~~

~~Members may also take up to four hours per year to attend funeral services in the City of Upland for situations other than the above with Department Head approval.~~

~~Association members may use up to 5 consecutive days of accrued sick leave for the death of a spouse or blood relation up to 2 generations removed, including spouse's parents. Bereavement~~

~~leave (5 days of accrued sick leave) may also be taken for the death of a dependent not related by blood who has lived within the employee's household for the preceding six months.~~

~~The City will consider a request for bereavement leave for the death of a member's aunt and uncle on a case by case basis.~~

~~Members may also take up to four hours per year to attend funeral services in the City of Upland for situations other than the above with Department Head approval.~~

**ARTICLE 27-26 – BREAK AND MEAL PERIODS**

Patrol Division will receive one 45 minute meal break and two 15 minute breaks (workload permitting) during their full shift. Although officers are subject to calls during the entire break, every effort will be made not to interfere with their meal break.

Emergency calls will be handled immediately by any unit available. If no unit is available, the officer will be called away from their break to respond.

**ARTICLE 28-27 - NO STRIKE PROVISION**

The Association agrees that it shall not authorize, instigate, aid, condone, or engage in any strike which will interrupt or interfere with the operation of the City. The City places the Association on notice of its intention and right to terminate any employee who instigates or engages in any strike or work stoppage which interrupts or interferes with the operation of the City.

**ARTICLE 29-28 – DISCIPLINE AND PERSONNEL FILES**

Discipline:

The disciplinary appeal process shall culminate in an arbitration, using a mutually selected arbitrator from the State Mediation and Conciliations Service experienced in police disciplinary cases. The arbitrator's decision in suspension, demotion and termination cases shall be final and binding.

Personnel File:

Pursuant to the side letter agreement dated July 30, 2001, where the officer has not repeated similar misconduct, unit members shall have removed from his/her personnel file any internally generated and citizen generated disciplinary action at the (5) five year anniversary of the discipline.

Documents, pertaining to an "Internal Investigation" not sustained and Traffic Accidents contained in the official personnel file may be removed after four (4) years.

The request to remove documentation for repeated similar misconduct shall be in writing, shall state the basis for the request, and be determine by the Police Chief's discretion to remove the

documentation. A decision not to remove a document which is more than five years old is not subject to the grievance procedures and is not subject to challenge by an employee.

Employees in the unit wishing to inspect his/her personnel file may do so by contacting the Human Resources Department.

**ARTICLE 30-29 – WORK SCHEDULE**

Effective January 21, 2001, the parties agree to convert the 4/10 work schedule to a combination of a 4/10 and 3/12.5 work schedule. The new work schedule will include the following elements:

- A. There are six shifts to select from. The 4/10 shift will have a day shift/swing shift and night shift. The 3/12.5 shift will have a day shift/night shift and a cover shift. Exhibit A attached hereto shows each of the shifts. Bargaining unit members working the 3/12.5 shift shall be required to work the following work shift: during a 28-day work period (which is permissible pursuant to Section 207(k) of the Fair Labor Standards Act), bargaining unit members would work twelve 12.5 hour shifts and one 10 hour shift for a total of 160 hours. The twelve 12.5 hour shifts shall be worked three consecutive days per seven day period and the 10 hour shift shall be worked on the day either before or after the three consecutive days. As such, in the workweek when the 10 hour day is worked, the bargaining unit member will work four days in a row.
- B. The 10 hour shift would be scheduled at the discretion of the shift's Watch Commander (ultimately at the discretion of the Chief of Police) as follows: when bargaining unit members sign up for their 3/12.5 shift for six months in advance, the Watch Commander shall choose a particular day (e.g., the third Monday or second Friday) which will be the 10 hour workday for the entire six month period. The Watch Commander shall note the particular day he has selected for the 10 hour workday on the sign up sheet in advance of it being circulated.
- C. A 28 day work period (pursuant to Section 7(k) of the FLSA) will be in effect for all sworn police employees of the City. However, notwithstanding the FLSA work period, all sworn personnel shall have wages computed each pay period. Payment of regular wages and overtime (i.e., for work in excess of the regularly assigned shift) shall be made to sworn personnel on each bi-weekly payday. Sworn police personnel shall be compensated with overtime for all hours worked in excess of their regularly assigned shift. Hours worked shall include all time when an employee is necessarily required to be on the employer's premises on duty or at a prescribed work place. Even though paid leave does not count as hours worked pursuant to the FLSA, paid vacation, sick leave and compensatory time off shall count as hours worked for overtime purposes to this Agreement.
- D. All bargaining unit members working a 3/12.5 work schedule shall work a 12 ½ hour shift.

- E. All bargaining unit members working the 3/12.5 or 4/10 work schedules shall be allowed a paid 45 minute lunch break.
  
- F. Bargaining unit members shall sign up by seniority, unrestricted; 2) bargaining unit members assigned to special assignments, i.e., Detective Bureau, Special Services, Administration and Training assignments, shall generally work from 7:00 a.m. to 5:00 p.m. Monday through Thursday or Tuesday through Friday. Actual shifts to be determined by Chief subject to operational need.
  
- G. Notwithstanding the foregoing, if the Chief of Police determines that a need exists to move a bargaining unit member from one plan to another (from 3/12.5 shift to a 4/10 shift or vice versa) or from one shift to another (e.g., day shift to swing shift) to meet minimum staffing and/or emergency needs, he will do the following: 1) He will first post 10 days prior to the need to modify a unit member's work plan or shift a volunteer sign-up sheet asking for individuals who wish to volunteer to have their work plan or shift modified from their current plan or shift to the opposite work plan or another shift; 2) if he does not receive a volunteer(s), he will modify the work plan or shift of the least senior unit member who is working the work plan or shift from which the Chief needs to move a unit member(s) by moving that individual(s) to the opposite work plan or another shift to meet department needs (i.e., moving the unit member's work plan from a 3/12.5 to a 4/10 or vice versa or moving the unit member's work shift to another work shift).

**ARTICLE ~~31-30~~ - PREVAILING BENEFITS**

Except as provided herein, all wages, hours and other terms and conditions of employment presently enjoyed by employees in the unit shall remain in full force and effect during the term of this M.O.U., unless mutually agreed to by both parties.

**ARTICLE ~~32-31~~ - SAVINGS CLAUSE**

Should any provision of this agreement or the application of such provision be rendered or declared invalid by any court action or by reason of any existing or subsequently enacted legislation, the City and Association shall meet and confer immediately upon what constitutes an equivalent benefit to that which was determined to be unlawful. Such equivalent benefit will be implemented retroactive to the date the old benefit ceased. The remaining parts or portions of the Agreement shall remain in full force and effect.

**ACTICLE ~~33-32~~ – “ME TOO” CLAUSE PREVENTATIVE HEALTH**

~~In the event the Upland Police Management Association receives an increase or additional benefit during current negotiations, the Upland Police Officers Association will receive a similar benefit or increase.~~

Effective July 1, 2019, employees in the unit may be reimbursed up to \$180 annually for the purchase of items, classes, memberships, or programs which contribute to physical fitness. This reimbursement shall be made in June of each year. Items which will be considered acceptable for reimbursement are defined in the City's policy on Preventative Health Benefits.

**CITY OF UPLAND**

~~Red Butler~~ Rosemary Hoerning, City Manager \_\_\_\_\_

Date

Interim City Manager

~~Londa Helms~~ Morgan Fillion \_\_\_\_\_

Date

Acting Administrative Services Director ~~Human Resources Manager~~

**UPLAND POLICE OFFICERS ASSOCIATION**

~~Maurice Duran~~ John Bonhus ~~Nick Peelman, -President~~ President \_\_\_\_\_

Date

Date

John Bonhus, Board Member ~~Nick Peelman~~ \_\_\_\_\_

Date

Date



**MEMORANDUM OF UNDERSTANDING (M.O.U.)**

**BETWEEN**

**THE CITY OF UPLAND**

**AND**

**THE UPLAND POLICE  
OFFICERS' ASSOCIATION (UPOA)**

*July 1, 2017 to June 30, 2022*

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**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE CITY OF UPLAND  
AND  
THE UPLAND POLICE OFFICERS' ASSOCIATION  
JULY 1, 2017 – JUNE 30, 2022**

**ARTICLE 1 - TERM OF AGREEMENT**

Except where expressly stated otherwise herein, the City and Association agree that the provisions of this Memorandum of Understanding (M.O.U.) shall be effective July 1, 2017, and shall expire on June 30, 2022.

**ARTICLE 2 – PREAMBLE**

It is the intent and purpose of this M.O.U. to set forth the understanding of the parties reached as a result of meeting and conferring in good faith regarding, but not limited to, matters relating to the wages, hours, and terms and conditions of employment between the City of Upland (hereinafter referred to as “City”) and the Upland Police Officers’ Association (hereinafter referred to “Association”).

**ARTICLE 3 – MAINTENANCE OF MEMBERSHIP**

**The Association is the recognized employee organization for the personnel employed in the Police Department occupying the classifications of Police Officer and Police Detective.**

The City agrees to deduct association dues from the wages of all UPOA members who have filed a written authorization with the association. The City will begin dues deductions at the beginning of the pay period after notice is provided by the Association and will transmit these funds to the Association in a manner which is mutually agreed to.

The employee's earnings must be sufficient after other legal and required deductions are made to cover the amount of the dues. When an employee is in a non-pay status for an entire pay period, no deduction will be made to cover the pay period. In the case of an employee who is in a non-pay status during part of the pay period, and the salary is not sufficient to cover the full withholding, no deduction shall be made. In this circumstance, all other legal and required deductions (including health care deductions) have priority over Association dues.

**UPOA agrees to enforce this provision and to indemnify and hold harmless the City, its officers and employees, from all liabilities and/or damages arising from the operation of this section.**

**ARTICLE 4 - MANAGEMENT RIGHTS**

The authority of the City includes the exclusive right to determine the mission of its constituent departments, commissions and boards; set standards of service; determine the procedures and standards of selection for employment and promotion; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of work; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; exercise complete control and discretion over its organization and the technology of performing its work, provided, however, that the exercise and retention of such rights does not preclude employees or their representatives from meeting and conferring over the practical consequences that decisions on these matters may have on wages, hours and other terms and conditions of employment.

**ARTICLE 5 – SALARIES**

- A. Effective the first full pay period following MOU ratification by UPOA and approval by the City Council, the City shall issue:
  - a. a one-time lump sum distribution for each employee currently working for the City and also employed by the City on July 1, 2017 of 1% (one percent) of the employees annual salary as of July 1, 2017. The parties agree that the one-time distribution shall not be credible for CalPERS retirement.
  - b. a one-time lump sum distribution for each employee currently working for the City and also employed by the City on July 1, 2018 of 1% (one percent) of the employees annual salary as of July 1, 2018. The parties agree that the one-time distribution shall not be credible for CalPERS retirement.
- B. Effective the pay period beginning June 30, 2019, following MOU ratification by UPOA and City Council approval, all employees in this unit shall receive a 4% COLA increase in base salary.
- C. Effective June 28, 2020, all employees in this unit shall receive a 2% COLA increase in base salary.
- D. Effective June 27, 2021, all employees in this unit shall receive a 2% COLA increase in base salary.
- E. The parties to this MOU agree for future reference that the survey cities remain as the following cities: Rialto, Ontario, West Covina, Chino, Glendora, and Fontana.

**ARTICLE 6 – RETIREMENT**

Classic Employees:

Retirement Tier 1 – Safety Members hired before January 1, 2013, shall receive the 3% @ 55 retirement formula, highest twelve (12) month average final compensation period, the Third Level of the 1959 Survivor’s Benefit, which employees agree to pay \$2.00 per month, Unused Sick Leave Option, and a two percent (2%) retirement Cost of Living Adjustment (COLA). These Safety Members shall pay the entire twelve percent (12%) of the CalPERS employee contribution on a pre-tax basis.

The agreement between the City and CalPERS allows for the buy-back of time served by the employee in the Military as defined under PERS Regulation, Section 21024.

The City, at the Police Chiefs discretion, and in accordance with the law, will allow police officers who voluntarily retire from City service and who are at least 50 years of age at the time of retirement to be rehired as a contract service worker (CSW-Retiree) in his/her previous position for a period not to exceed 960 hours in the fiscal year of retirement and for an additional 960 hours in the fiscal year following retirement. The CSW-Retiree will be paid at the hourly rate earned and hold the same rank as on the last full day of employment. CSW-Retirees will receive one-third of the Cafeteria amount provided full-time officers and the same uniform allowance as received by full-time officers. CSW-Retirees are employed on an at-will basis and shall not be eligible for any layoff benefits. All applicable PERS regulations and statutes regarding the employment of retirees shall apply.

Pension Reform Act of 2013:

Retirement Tier 2 – New Safety Members, as defined by CalPERS, hired on or after to January 1, 2013, shall receive the 2.7% @ 57 retirement formula, highest thirty-six (36) month average final compensation period, the Fourth Level of the 1959 Survivor’s Benefit, which employees agree to pay \$2.00 per month, Unused Sick Leave Option, and a two percent (2%) retirement Cost of Living Adjustment (COLA). These Safety Members shall pay half the total normal cost of the retirement plan as determined annually by CalPERS on a pre-tax basis.

**ARTICLE 7 - DEFERRED COMPENSATION**

Effective September 1, 2019, the City will contribute \$100 per month in deferred compensation on behalf of each employee in the unit. Employees may add additional contributions voluntarily.

The City will contribute an additional two hundred and fifty dollars (\$250) per month on behalf of Police Detectives into their deferred compensation account.

The City will contribute an additional two hundred dollars (\$200) per month on behalf of Police Officers with a minimum of 15 years of continuous service with the City of Upland to their deferred compensation account.

**ARTICLE 8 – HEALTH INSURANCE – CAFETERIA PLAN**

In accordance with "The City of Upland Cafeteria Plan", the City provides a 125 Flexible Benefit Plan ("the Plan"). The regular and intended effect of the Plan, under current law, is to enable employees to receive benefits which may not be subject to either State or Federal income tax.

The details of Plan eligibility and operational requirements are set forth in the Plan documents. Once enrolled in a cafeteria distribution plan, employees will only be permitted to modify the plan on the same basis as changes are permitted in health insurance plans, that is, during open enrollment periods and when the employee's dependent status changes.

- 1) The City shall make a monthly contribution as set forth below to each eligible member of the unit to be used toward the Section 125 Cafeteria Plan. These funds shall only be used for qualified benefits as provided for in IRC Section 125.
- 2) All employees must enroll in one of the health program plans unless they submit to the City proof of comparable health coverage. The City may require additional proof of alternative coverage at any time.
- 3) Employees who fail to complete this requirement will be enrolled in the lowest cost health insurance plan the City offers.
- 4) Employees who meet the requirement shall be allowed to utilize their Section 125 Flexible Benefit Plan contributions for any of the other qualified benefits as provided for in IRC Section 125.

**BENEFITS CONTRIBUTION**

The City will make available to each covered employee a monthly amount for benefits, as specified in this MOU.

- 1) Employees hired prior to March 1, 2016 will receive the maximum benefits contribution allocation:
  - a. Effective January 1, 2017 - \$1,267.00
  - b. Effective January 1, 2020 - \$1,300.00
- 2) For employees hired on or after March 1, 2016, the City will contribute the following to the plan to a maximum of \$1,267.00 effective January 1, 2017, upon ratification by UPOA and City Council approval, \$1,300.00 effective January 1, 2020 and thereafter:

- a. Employee Only 100% of lowest cost plans for health, dental and vision
- b. Employee plus one 100% of lowest cost plans for health, dental and vision
- c. Family 100% of lowest cost plans for health, dental and vision

The employee must pay the difference between the City's contribution and the actual premium of the plan selected, if any. The City reserves the right to change medical carriers. In the event of a change, the City agrees to meet and confer prior to any change.

**ARTICLE 9 – RETIREE HEALTH INSURANCE REIMBURSEMENT**

- a. The City shall contribute monthly on behalf of each retiree the amount set forth in the table below.
- b. An additional \$45 per month allowance is provided for spouse if the spouse is covered under the retiree's insurance.
- c. To be eligible for the retiree medical payments herein, an employee must retire from the City and purchase retiree medical insurance

10 - 14 years of service	PERS statutory minimum
15 - 19 years of service	PERS statutory minimum
20 - 24 years of service	PERS statutory minimum
25 + years of service	\$145.14 per month

The provisions of this article above shall only apply to bargaining unit members hired on or before December 31, 2015.

**ARTICLE 10 – RETIREE HEALTH SAVINGS ACCOUNTS**

Effective January 1, 2007, Retirement Health Savings (RHS) accounts will be established through ICMA which will be payable to the employee only upon service or disability retirement with the City of Upland. City contributions to the RHS accounts will be based upon years of service in accordance with the following schedule:

<b>Years of Service</b>	<b>Monthly City Contribution</b>	<b>Yearly City Contribution</b>
5 to 9.99	\$12.50	\$150.00
10 to 14.99	\$25.00	\$300.00
15 to 19.99	\$50.00	\$600.00
20 to 24.99	\$75.00	\$900.00
25 +	\$100.00	\$1,200.00

Upon retirement, all UPOA members shall convert 50% of accrued sick leave, 100% of accrued vacation and 100% of compensatory time to cash and deposit into their Retiree Health Savings Account on a tax deferred basis (in accordance with IRS guidelines). Therefore, the current options of cashing out half of accrued sick leave or using Personal Leave (1/2 of accrued sick leave) at retirement will no longer be allowable.

Retirees are eligible to continue their medical, dental, and vision coverage with the City of Upland until they reach Medicare Eligible Age, at which time they will be required to enroll in a non-City sponsored Medicare plan. The retiree may choose to remain on the City's Dental and Vision plan. All post-retirement Medical, Dental, and Vision benefits will be paid by the retiree.

If the retiree should become deceased while an eligible surviving spouse is enrolled in coverage, the surviving spouse may continue their Medical, Dental, and/or Vision coverage with the City at their own expense. The Surviving Spouse will not be eligible for the Retiree Health Insurance Reimbursement allowance.

This Article does not apply to unit members hired after the effective date of this agreement. The City will not make any contributions for new hires under this Article.

The City shall have the ability to change providers through the RFP process.

**ARTICLE 11 – LIFE INSURANCE**

Effective July 1, 2019, the City shall provide all active members employees, a monthly life insurance and accidental death and dismemberment with group life insurance providing \$150,000 in basic life insurance benefits and \$150,000 in accidental death and dismemberment insurance benefits for each employee.

**ARTICLE 12 – BILINGUAL PAY**

The City will provide compensation in the amount of 2.5% of base salary for employees in the unit who successfully complete a fluency examination.

**ARTICLE 13 – COURT STANDBY AND CALL OUT PAY**

Police Officers and Detectives in such on-call status will be paid 2.5 hours at the rate of one and one-half (1.5) their regular pay.

Court standby compensation is intended for staff who are off-duty, and shall not apply to Officers responding to court within one hour before a regularly scheduled work shift (i.e. as discussed by the parties for example, this includes Officers who are called to court at 8:00 a.m. on a day they are already regularly scheduled to report to work at 9:00 a.m.)

Employees who were not placed on court standby but have been called to court during their off-duty time will receive a minimum of three hours compensation at time and one half (1.5) their regular rate of pay. However, Officers who were not placed on court standby but are called to court on a regularly scheduled work day before their shift begins (i.e., Officers who are called to court at 8:00 a.m. on a day they are already scheduled to report to work at 9:00 a.m.) are only entitled to one hour of court call back pay. Employees in the unit who have been called to court from their off-duty time will receive a minimum of three hours compensation at time and one half (1.5)

If employees who have been called to court from their off duty time are required to return to court in the afternoon after the lunch break, the employee may be reimbursed for lunch up to \$10.00, if a receipt for lunch is provided.

**ARTICLE 14 – EDUCATION INCENTIVE AND POST CERTIFICATE PAY**

All employees in this unit will receive Education Incentive Pay in the following amounts, effective January 1, 2006:

- 2.5% of base salary for an Associate's Degree (or equiv. college units)
- OR
- 5% of base salary for a Bachelor's Degree (or equiv. college units).

All employees in this unit will receive POST Certificate Pay in the following amounts, effective January 1, 2006:

- 2.5% of base salary for an Intermediate POST Certificate
- OR
- 5% of base salary for an Advanced POST Certificate.

Eligible employees may only receive one payment amount within each category of Incentive Pay, to a maximum allowable of ten percent (10%) of base salary.

Educational Incentive and POST Certificate Pay will take effect when employees in the unit reach Step 4 in the salary schedule.

Those employees who were receiving educational incentive and POST certificate pay prior to June 30, 1985 will continue to receive the same compensation and will not be affected by this change.

**ARTICLE 15 – DETECTIVE STANDBY PAY**

Detectives shall be paid \$400 per week for each week of call-out assignment, regardless of whether the employee is actually called to work or not.

Detective Standby pay will be paid in accordance with the Detectives Standby Pay Policy, dated December 10, 2001. (Attachment A)

**ARTICLE 16 – HOLIDAY PAY**

All employees serving in classifications covered by this MOU shall be compensated in cash for City designated holidays at the rate of 4.61 hours pay per pay period.

**ARTICLE 17 - LONGEVITY PAY**

Employees in the unit with ten (10) years or more of continuous City service will receive a two and one half percent (2.5%) increase of base salary, effective January 1, 2016.

Employees in the unit with twenty (20) years or more of continuous City service will receive an additional two and one half percent (2.5%) increase of base salary, for a total of five percent (5%) longevity pay.

The longevity pay will be given through the merit system as a step advancement at ten (10) and twenty (20) years.

**ARTICLE 18 - MERITORIOUS PAY**

It is recognized that certain employees will put forth the extraordinary efforts and produce outstanding results for the City. It is desired to reward these individuals. An incentive pay method has been established to encourage all employees to utilize fully their capabilities on behalf of the City. Employees recommended by their department heads and approved by the City Manager may be granted a five percent (5%) increase in salary for a period of three months, six months, or one year. Department head recommendations will be submitted annually on May 1st. Payment of meritorious pay will be made in a lump sum annually on the first payday in June. Recommendations will contain the information required in Exhibit F of the Compensation Plan.

Any Police Officer or Detective who uses 24 hours or less sick time in the period from December 1st through November 30th, and has at some time during that period accrued 1000 hours of sick leave, and has between 952 and 1000 hours of accrued sick leave as of December 1st will receive \$200. Computations will be made and payment will be in the form of a lump sum payable on the

first payday in December of each year. Such payment will only be made to persons actually in the employ of the City on the date of payment.

**ARTICLE 19 - OVERTIME PAY**

Unit employees shall receive overtime at the rate of one and one-half (1 ½) times their regular rate of pay for time worked in excess of 40 hours in a 7 day work period. Paid vacation and sick leave during a work period is counted as hours worked for overtime purposes.

**ARTICLE 20 – COMPENSATORY TIME OFF**

Effective January 1, 2010, employees in the unit may not accrue more than two hundred forty (240) hours of compensatory time off.

An Officer who requests to use Compensatory Time Off (CTO) will be permitted to do so pursuant to the following:

1. All requests to use CTO must be made in writing on the Request for Time Off Form. Request may not be placed in the in-box , e-mailed, or given in any other manner.
2. All requests to use CTO must be made at least three (3) days in advance of the date the officer wishes to use CTO. The Chief of Police or his designee have the authority to approve or deny any CTO request made within the three (3) day minimum requirement.
3. Officers who request to use CTO must find a replacement officer willing to work his/her shift if the request will take the shift below minimum staffing as outlined in the Police Department Policy. The Watch Commander shall also be notified of such as part of the written request to use CTO.
4. An officer requesting to use CTO who is unable to do so because he/she cannot find a replacement for a period of one year, after the request is made , will be cashed out of the CTO he/she requested. Although the parties do not expect this will ever happen, this provision is included in the agreement to comply with the requirements of the FLSA.
5. Notwithstanding paragraphs 2 and 3 above, if an officer requests to use CTO on New Year's Eve, Easter, Halloween, Christmas Eve and on any official City Holiday as designated by the City Council the officer must find and identify the replacement officer to work his/her shift if he/she wants to use CTO even if the shift is above minimum staffing.

6. Notwithstanding all of the foregoing, the association and the City acknowledge that there may be times when during the shift an employee may request to use comp time for the remainder of the shift. Such requests will be approved at the discretion of the Chief of Police or his/her designee providing staffing levels are appropriate and the employee's CTO does not result in an undue disruption to the department's operation.
  
7. The Fair Labor Standards Act (FLSA) and its regulations provide that request to use CTO shall be granted if made with reasonable notice to the employer and if not "unduly disruptive" to the agency's operations. If the association believes that it has become a practice of the Department to deny CTO to avoid payment of overtime it has the right to require that the Department meet and confer to discuss the practice.

### **ARTICLE 21 - SPECIAL ASSIGNMENT PAY**

Police Officers will receive Special Assignment Pay in the amount of five percent (5%) of base salary when assigned to the following special details: Impact Officers, Canine Officers, Motorcycle Officers, Narcotics Officers, School Resource Officers, and Detective Lead. Field Training Officers (FTO's) will receive Special Assignment Pay in the amount of five percent (5%) of base salary when assigned as an FTO and only while serving in that capacity.

The City may designate up to 10 FTO's to receive a 5% increase of base salary on an on-going basis. Employees will be assigned to be FTO's as determined by the Chief of Police to ensure optimal departmental operations and an FTO on each shift.

All special assignments are subject to shift and regularly scheduled days of being adjusted/changed based on operational necessity due to any critical incident, special event, natural/man-made disaster, protest, crime pattern or any other incident deemed necessary to protect public safety and the health and welfare of the City.

### **ARTICLE 22 - UNIFORM ALLOWANCE**

Employees in the unit receive a uniform allowance in the amount of \$884 per year for the purchase, maintenance and cleaning of uniforms after completion of 12 months of employment. Uniforms will be provided at the time of appointment. This allowance will be paid twice a year (½ in June and ½ in December).

### **ARTICLE 23 - SICK LEAVE**

Employees in the unit earn sick leave at the rate of 8 hours per month, up to a maximum accrual of 1250 hours. No sick leave may be granted during the first thirty days of employment with the City.

Bargaining unit members who use less than 40 hours of sick leave between November 1 and October 31 of each year (this, of course, covers two calendar years) may request to cash out twenty (20) hours of sick leave each year. Such request needs to be made in writing to the Human Resources Department during the month of November. If such a request is made, the payment will be made in the first pay period of December of every year.

**ARTICLE 24 - VACATION**

Vacation shall accrue for employees in the unit based on the following schedule:

01 – 02 Years of service	96 Hours per year
03 – 05 Years of service	120 Hours per year
06 – 10 Years of service	152 Hours per year
11 – 13 Years of service	160 Hours per year
14 – 16 Years of service	168 Hours per year
17 + Years of service	One additional day (8 hours) per year, up to a maximum of 176 hours per year

All employees may accrue vacation up to a maximum of three (3) years of entitlement.

In the month November of each calendar year, employees who have used at least 40 hours of accrued vacation between the preceding November 1 and October 31 may cash out (by making a written request) up to 40 hours of their accrued vacation. Such request must be received by November 30 in Human Resources. If such a request is made, the payment will be made in the first pay period of December of every year.

**ARTICLE 25 - BEREAVEMENT LEAVE**

Employees may take up to 30 hours annually (January 1 through December 31) with pay in the event of a death of the following: mother, father, grandfather, grandmother, brother, sister, spouse, domestic partner, child, grandchild, and employee spouse's or domestic partner's father, mother, grandfather, grandmother, brother, sister and any relative who has resided with the employee for at least one year. Adoptive relatives and step relatives shall count the same as relatives by birth. Notification of need for such leave must comply with the City's Administrative Policy on Sick Leave.

Members may also take up to four hours per year to attend funeral services in the City of Upland for situations other than the above with Department Head approval.

**ARTICLE 26 – BREAK AND MEAL PERIODS**

Patrol Division will receive one 45 minute meal break and two 15 minute breaks (workload permitting) during their full shift. Although officers are subject to calls during the entire break, every effort will be made not to interfere with their meal break.

Emergency calls will be handled immediately by any unit available. If no unit is available, the officer will be called away from their break to respond.

**ARTICLE 27 - NO STRIKE PROVISION**

The Association agrees that it shall not authorize, instigate, aid, condone, or engage in any strike which will interrupt or interfere with the operation of the City. The City places the Association on notice of its intention and right to terminate any employee who instigates or engages in any strike or work stoppage which interrupts or interferes with the operation of the City.

**ARTICLE 28 – DISCIPLINE AND PERSONNEL FILES**

Discipline:

The disciplinary appeal process shall culminate in an arbitration, using a mutually selected arbitrator from the State Mediation and Conciliations Service experienced in police disciplinary cases. The arbitrator's decision in suspension, demotion and termination cases shall be final and binding.

Personnel File:

Pursuant to the side letter agreement dated July 30, 2001, where the officer has not repeated similar misconduct, unit members shall have removed from his/her personnel file any internally generated and citizen generated disciplinary action at the (5) five year anniversary of the discipline.

Documents, pertaining to an "Internal Investigation" not sustained and Traffic Accidents contained in the official personnel file may be removed after four (4) years.

The request to remove documentation for repeated similar misconduct shall be in writing, shall state the basis for the request, and be determine by the Police Chief's discretion to remove the documentation. A decision not to remove a document which is more than five years old is not subject to the grievance procedures and is not subject to challenge by an employee.

Employees in the unit wishing to inspect his/her personnel file may do so by contacting the Human Resources Department.

**ARTICLE 29 – WORK SCHEDULE**

Effective January 21, 2001, the parties agree to convert the 4/10 work schedule to a combination of a 4/10 and 3/12.5 work schedule. The new work schedule will include the following elements:

- A. There are six shifts to select from. The 4/10 shift will have a day shift/swing shift and night shift. The 3/12.5 shift will have a day shift/night shift and a cover shift. Exhibit A attached hereto shows each of the shifts. Bargaining unit members working the 3/12.5 shift shall be required to work the following work shift: during a 28-day work period (which is permissible pursuant to Section 207(k) of the Fair Labor Standards Act), bargaining unit members would work twelve 12.5 hour shifts and one 10 hour shift for a total of 160 hours. The twelve 12.5 hour shifts shall be worked three consecutive days per seven day period and the 10 hour shift shall be worked on the day either before or after the three consecutive days. As such, in the workweek when the 10 hour day is worked, the bargaining unit member will work four days in a row.
- B. The 10 hour shift would be scheduled at the discretion of the shift's Watch Commander (ultimately at the discretion of the Chief of Police) as follows: when bargaining unit members sign up for their 3/12.5 shift for six months in advance, the Watch Commander shall choose a particular day (e.g., the third Monday or second Friday) which will be the 10 hour workday for the entire six month period. The Watch Commander shall note the particular day he has selected for the 10 hour workday on the sign up sheet in advance of it being circulated.
- C. A 28 day work period (pursuant to Section 7(k) of the FLSA) will be in effect for all sworn police employees of the City. However, notwithstanding the FLSA work period, all sworn personnel shall have wages computed each pay period. Payment of regular wages and overtime (i.e., for work in excess of the regularly assigned shift) shall be made to sworn personnel on each bi-weekly payday. Sworn police personnel shall be compensated with overtime for all hours worked in excess of their regularly assigned shift. Hours worked shall include all time when an employee is necessarily required to be on the employer's premises on duty or at a prescribed work place. Even though paid leave does not count as hours worked pursuant to the FLSA, paid vacation, sick leave and compensatory time off shall count as hours worked for overtime purposes to this Agreement.
- D. All bargaining unit members working a 3/12.5 work schedule shall work a 12 ½ hour shift.
- E. All bargaining unit members working the 3/12.5 or 4/10 work schedules shall be allowed a paid 45 minute lunch break.
- F. Bargaining unit members shall sign up by seniority, unrestricted; 2) bargaining unit members assigned to special assignments, i.e., Detective Bureau, Special Services, Administration and Training assignments, shall generally work from 7:00 a.m. to

5:00 p.m. Monday through Thursday or Tuesday through Friday. Actual shifts to be determined by Chief subject to operational need.

- G. Notwithstanding the foregoing, if the Chief of Police determines that a need exists to move a bargaining unit member from one plan to another (from 3/12.5 shift to a 4/10 shift or vice versa) or from one shift to another (e.g., day shift to swing shift) to meet minimum staffing and/or emergency needs, he will do the following: 1) He will first post 10 days prior to the need to modify a unit member's work plan or shift a volunteer sign-up sheet asking for individuals who wish to volunteer to have their work plan or shift modified from their current plan or shift to the opposite work plan or another shift; 2) if he does not receive a volunteer(s), he will modify the work plan or shift of the least senior unit member who is working the work plan or shift from which the Chief needs to move a unit member(s) by moving that individual(s) to the opposite work plan or another shift to meet department needs (i.e., moving the unit member's work plan from a 3/12.5 to a 4/10 or vice versa or moving the unit member's work shift to another work shift).

### **ARTICLE 30 - PREVAILING BENEFITS**

Except as provided herein, all wages, hours and other terms and conditions of employment presently enjoyed by employees in the unit shall remain in full force and effect during the term of this M.O.U., unless mutually agreed to by both parties.

### **ARTICLE 31 - SAVINGS CLAUSE**

Should any provision of this agreement or the application of such provision be rendered or declared invalid by any court action or by reason of any existing or subsequently enacted legislation, the City and Association shall meet and confer immediately upon what constitutes an equivalent benefit to that which was determined to be unlawful. Such equivalent benefit will be implemented retroactive to the date the old benefit ceased. The remaining parts or portions of the Agreement shall remain in full force and effect.

### **ARTICLE 32 – PREVENTATIVE HEALTH**

Effective July 1, 2019, employees in the unit may be reimbursed up to \$180 annually for the purchase of items, classes, memberships, or programs which contribute to physical fitness. This reimbursement shall be made in June of each year. Items which will be considered acceptable for reimbursement are defined in the City's policy on Preventative Health Benefits.

**CITY OF UPLAND**

\_\_\_\_\_  
Rosemary Hoerning  
Interim City Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Londa Bock-Helms  
Acting Administrative Services Director

\_\_\_\_\_  
Date

**UPLAND POLICE OFFICERS ASSOCIATION**

\_\_\_\_\_  
Nick Peelman, President

\_\_\_\_\_  
Date

\_\_\_\_\_  
John Bonhus, Board Member

\_\_\_\_\_  
Date



## STAFF REPORT

**ITEM NO. 14.B.**

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**DATE:** November 25, 2019  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** ROBERT D. DALQUEST, DEVELOPMENT SERVICES DIRECTOR  
TOM CAMPBELL, P.E., CONTRACT BUILDING OFFICIAL AND  
PLANS EXAMINER  
**SUBJECT:** CONSIDERATION OF AN ORDINANCE TO ADOPT, BY REFERENCE,  
THE 2019 CALIFORNIA BUILDING CODE STANDARDS

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### RECOMMENDED ACTION

It is recommended that the City Council hold first reading by number and title only, introduce an Ordinance adopting by reference the 2019 California Administrative, Building, Fire, Green Building Standards, Mechanical, Residential, Plumbing, Electrical, Energy, Existing Building, Historical Building, and Referenced Standards Codes, as set forth in Title 24, California Code of Regulations, Parts 1, 2, 2.5, 3, 4, 5, 6, 8, 9, 10, 11, and 12, and as published as part of the California Building Standards Code; the 1997 Uniform Housing Code, and 1997 Uniform Code for the Abatement of Dangerous Buildings; including certain appendices and penalties; and set a public hearing for December 9, 2019.

### GOAL STATEMENT

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

### BACKGROUND

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

However, the City could elect to amend any of those Codes at a later date.

At the time of adopting the State building standards, or anytime thereafter, the City may amend any of those standards, provided the City formally adopts express findings that each of such modifications is "reasonably necessary because of local climatic, geological or topographical conditions." The modifications cannot be less stringent than the State-mandated building standards. The modifications, along with the specific findings supporting each amendment, must be filed with the California Building Standards Commission in order to become legally binding.

## **ISSUES/ANALYSIS**

The State's Health and Safety Code (Section 17958) mandates that the California Building Standards Commission adopt and publish the California Building Standards Code (Title 24 California Code of Regulations) every three (3) years. The 2019 Edition of the California Code of Regulations Title 24, which incorporates the below-listed model codes, becomes effective statewide on January 1, 2020. Significant changes to the 2019 California Building Standards Code are referenced in Exhibit A. If approved, the Ordinance would amend certain sections of Chapter 15 of the Upland Municipal Code by amending prior editions of the Construction Codes.

The list below identifies the codes and model codes which are adopted, amended and published as the 2019 California Building Standards Code:

PART 1 – CALIFORNIA ADMINISTRATIVE CODE  
PART 2 – CALIFORNIA BUILDING CODE  
PART 2.5 – CALIFORNIA RESIDENTIAL CODE  
PART 3 – CALIFORNIA ELECTRICAL CODE  
PART 4 – CALIFORNIA MECHANICAL CODE  
PART 5 – CALIFORNIA PLUMBING CODE  
PART 6 – CALIFORNIA ENERGY CODE  
PART 8 – CALIFORNIA HISTORICAL BUILDING CODE  
PART 9 – CALIFORNIA FIRE CODE  
PART 10 – CALIFORNIA EXISTING BUILDING CODE  
PART 11 – CALIFORNIA GREEN BUILDING STANDARDS CODE  
PART 12 – CALIFORNIA REFERENCE STANDARDS CODE

## **RELATIONSHIP OF CHAPTER 15.15, UPLAND MUNICIPAL CODE FIRE CONSTRUCTION STANDARDS AND THE CALIFORNIA FIRE CODE AS AMENDED AND ADOPTED BY THE SAN BERNARDINO COUNTY FIRE DEPARTMENT**

California Fire Code, Part 9, incorporates fire and smoke protection features (Chapter 7), interior finish, decorative materials and furnishings (Chapter 8), fire protection and life safety systems (Chapter 9) and means of egress provisions (Chapter 10) that parallel the same chapters, sections and code requirements cited in the California Building Code, Part 2. It is the intent that these two construction standards provide equal enforcement by both the building and fire code enforcement departments for the fire- and life-safety requirements cited in these four chapters.

Presently, ALL fire prevention and suppression services within the City of Upland are provided and maintained by the San Bernardino County Fire Department. In order to reconcile any discrepancies between Chapter 15.15, Upland Fire Construction Standards and the California Fire Code as amended and adopted by the San Bernardino County Fire Department, Section 1.1.7.3 of the Upland Fire Construction Standards shall apply:

**1.1.7.3 Conflicts.**

*Where the requirements of this code conflict with the requirements of any other part of the California Building Standards Code, Title 24, the most restrictive requirements shall prevail.*

Therefore, any discrepancies between the City of Upland Fire Construction Standards and the California Fire Code as amended and adopted by the San Bernardino County Fire Department will be resolved by using the most restrictive code requirement.

**FISCAL IMPACTS**

The cost for enforcing the updated codes and providing subsequent staff training has been included in the adopted budget. No additional appropriations are required at this time.

**ALTERNATIVES**

Provide alternative direction to staff.

**ATTACHMENTS:**

**Exhibit A: Significant Changes to 2019 California Building Standards Code**

**Exhibit B: 2019 Building Standards Code Adoption Draft Ordinance**

## **2019 CALIFORNIA BUILDING STANDARDS CODE CHANGES - SUMMARY**

Changes in the 2019 California Building Standards Codes (Parts 1, 2, 2.5, 3, 4, 5, 6, 8, 9, 10, 11 and 12, California Code of Regulations, Title 24) provide the enforcement and design communities enhanced clarity and consistency in application of the Model Codes contained within Title 24. The basis for the majority of these changes resulted from California amendments to the 2018 Model Codes.

Part 1, California Administrative Code, became effective January 8, 2019.

Parts 2, 2.5, 3, 4, 5, 6, 8, 9, 10, 11 and 12 become effective January 1, 2020.

**Some of the most SIGNIFICANT changes to the Title 24 model codes include the following:**

### **PART 1 – CALIFORNIA ADMINISTRATIVE CODE:**

1. Clarifies when an addition is required to have a dedicated egress system.

### **PART 2 – CALIFORNIA BUILDING CODE:**

1. Aligns engineering requirements in the building code with major revisions to national standards for structural steel and masonry construction, minor revisions to standards for wood construction, and support and anchorage requirements of solar panels in accordance with industry standards.
2. Clarifies requirements for testing and special inspection of selected building materials during construction.
3. Recognizes and clarifies design requirements for buildings within tsunami inundation zones.

### **PART 4 – CALIFORNIA MECHANICAL CODE:**

1. Increases MERV (Minimum Efficiency Reporting Value) for air filters from 8 to 13.

### **PART 11 – CALIFORNIA GREEN BUILDING STANDARDS CODE:**

1. Requires electric vehicle charging infrastructure for new parking areas and additions to existing parking.
2. Sets minimum requirements for use of shade trees to provide shade to surface parking areas as well as landscape and hardscape areas.

**SUBSTANTIAL changes reflected in the 2019 California Building Standards Code Title 24 as are as follows:**

### **PART 1 – CALIFORNIA ADMINISTRATIVE CODE (CBC, EFFECTIVE JANUARY 2019)**

Section 4-306 - Clarifies when an addition is required to have a dedicated egress system for the occupants of that addition, independent of the existing building to which it is attached.

## **PART 2 – CALIFORNIA BUILDING CODE (CBC, EFFECTIVE JANUARY 2020)**

Section 106.1.1 - Revises existing DSA amendment to clarify posting requirements for design snow loads at floor levels and roofs.

Section 202 - Definitions were removed from Chapters 16, 16A – 26 and relocated into Chapter 2.

Section 302.1 - Occupancy classification for Occupied Roofs has been revised and includes detailed requirements.

Section 503.1 - Changes to Fire Wall Criteria to clarify their use for height and area adjustments.

Table 705.2 - Changes to roof projections adjacent to property lines.

Section 713.8.1 - Membrane penetrations are now allowed in shafts.

Chapters 11A & 11B Numerous major and minor changes to the Accessibility requirements for both residential and commercial sites, buildings and facilities.

Chapter 10 - Common Path of Egress Travel has been clarified to include travel distance from a room or area.

Section 1502 - 2018 IBC relocated roof drainage provisions into Section 1502.

Section 1510.7.2.1 - Provides additional information regarding seismic and wind design requirements for roof top solar panels and references new sections added to ASCE 7 to ensure compliance of solar panel attachments after recent solar panel attachment failures.

Section 1617.7.1 - Revises amendment language to clarify the drift limit of single-story open “structures” (currently “buildings” in 2016 CBC), applies only where the structure is used for larger occupancies or emergency purposes (Seismic Risk Category III or IV).

Section 1617.9.4 - Adds amendment to note that ballasted PV systems must comply with ASCE 7 Section 13.6.12 (new provisions for Rooftop Solar Panels).

Section 1617.11.15 - Distinguishes between moveable and mobile equipment; mobile equipment anchorage not required when stored in a storage room, subject to specified conditions.

Section 2618 - Adopts new 2018 IBC adopted provisions for attachment of insulated exterior finishes to wood framing; similar to provisions previously adopted for steel framing.

## **PART 4 – CALIFORNIA MECHANICAL CODE (EFFECTIVE JANUARY 2020)**

Section 401.2 - Adopts the increase to the minimum efficiency reporting value (MERV) rating requirements for HVAC filters from 8 to 13 to align with the 2019 Energy Efficiency Standards found in Part 6 *California Energy Code* promulgated by the California Energy

Table 1701.2 - This Table is new to the 2018 Uniform Mechanical Code and lists additional referenced standards, publications, practices and guides not referenced in other sections of the code, but are permitted to be referenced for the purpose of providing alternative materials and methods of

construction.

**PART 5 – CALIFORNIA PLUMBING CODE (EFFECTIVE JANUARY 2020)**

Table 1701.2 - This Table is new to the 2018 Uniform Plumbing Code and lists additional referenced standards, publications, practices and guides not referenced in other sections of the code, but are permitted to be referenced for the purpose of providing alternative materials and methods of construction.

**PART 10 – CALIFORNIA EXISTING BUILDING CODE (CEBC, EFFECTIVE JANUARY 2020)**

Adopts selected sections of 2018 IEBC and carries forward existing amendments from the 2016 CEBC with updates to corresponding section references in the 2019 California Building Code.

Adopts a new non-structural performance level N-D to align with ASCE 41-17 which is the updated version adopted into the 2018 IEBC. Clarifies the non-structural N-D performance level need not exceed that for new construction.

Relocates 2016 CEBC Chapter 4: Prescriptive Compliance method into Chapter 5 to align with the 2018 IEBC. The 2018 IEBC moved this chapter and created a new Chapter 4: Repairs.

**PART 11 – CALIFORNIA GREEN BUILDING STANDARDS CODE (CALGREEN, EFFECTIVE JAN. 2020)**

Section 5.106.5.3 - Requires electric vehicle charging infrastructure for new parking areas and additions to existing parking.

Section 5.106.12 - Requires shade trees to provide shade to 50% of new surface parking areas and additions to surface parking areas within 15 years, and shade to 20% of landscape areas and hardscape areas within 15 years.

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UPLAND ADOPTING, BY REFERENCE, THE 2019 CALIFORNIA ADMINISTRATIVE, BUILDING, FIRE, GREEN BUILDING STANDARDS, MECHANICAL, RESIDENTIAL, PLUMBING, ELECTRICAL, ENERGY, EXISTING BUILDING, HISTORICAL BUILDING, AND REFERENCED STANDARDS CODES (TITLE 24, CALIFORNIA CODE OF REGULATIONS, PARTS 1, 2, 2.5, 3, 4, 5, 6, 8, 9, 10, 11, AND 12); THE 1997 UNIFORM HOUSING CODE; THE 1997 UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS; INCLUDING CERTAIN APPENDICES AND PENALTIES

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

Section 1. Findings.

- A. WHEREAS, international construction codes and standards are developed, updated, and published periodically via a transparent public hearing process, by professional organizations consisting of architects, engineers, designers, code officials, specialized municipal inspectors, private industry experts, and State licensed contractors; and
- B. WHEREAS, these codes and standards are adopted, amended, and published by the State of California in Title 24 of the California Code of Regulations as the California Building Standards Code. Codes comprising the California Building Standards Code same may be adopted and amended by local communities; and
- C. WHEREAS, the City of Upland has the authority to establish appropriate administrative building permit process amendments for the purposes of enforcing the State Building Standards Code.
- D. THEREFORE, it is the purpose and intent of this Ordinance to adopt by reference Codes comprising the majority of the 2019 California Building Standards Code, together with certain appendices and penalties.

Section 2. Ordinance. Adoption of California Codes by Reference.

Chapter 15 of the Upland Municipal Code is hereby amended and the following Codes and certain appendices referenced therein are adopted, as set forth herein, regardless of the California Matrix Adoption Tables. The Codes adopted herein shall be known as the City of Upland Building Codes.

**Chapter 15.04**  
**CALIFORNIA ADMINISTRATIVE CODE**

Section 15.04.010 of Chapter 15.04 of Title 15 of the City of Upland Municipal Code is hereby amended to read as follows:

### **15.04.010 California Administrative Code**

The 2019 California Administrative Code is adopted by reference, in its entirety, as the City of Upland Building Regulation Administrative Standards.”

### **Chapter 15.08 CALIFORNIA BUILDING CODE**

Sections 15.08.030, 15.08.030.1 through 15.08.030.19, 15.08.040, 15.08.050, 15.08.060, 15.08.070 and 15.08.080 of Chapter 15.08 of Title 15 of the City of Upland Municipal Code are hereby deleted.

Section 15.08.010 of Chapter 15.08 of Title 15 of the City of Upland Municipal Code is hereby amended to read as follows:

### **15.08.010 California Building Code**

The 2019 California Building Code is adopted by reference, in its entirety, together with Appendix B Board of Appeals, Appendix H Signs, Appendix I Patio Covers, Appendix J Grading, and Appendix O Emergency Housing, as the City of Upland Building Construction Standards.”

### **Chapter 15.10 CALIFORNIA GREEN BUILDING STANDARDS CODE**

Section 15.10.010 of Chapter 15.10 of Title 15 of the City of Upland Municipal Code is hereby amended to read as follows:

### **15.10.010 California Green Building Standards Code**

The 2019 California Green Building Standards Code is adopted by reference, in its entirety, as the City of Upland Green Building Construction Standards.

### **Chapter 15.12 CALIFORNIA MECHANICAL CODE**

Section 15.12.010 of Chapter 15.12 of Title 15 of the City of Upland Municipal Code is hereby amended to read as follows:

### **15.12.010 California Mechanical Code**

The 2019 California Mechanical Code is adopted by reference, in its entirety, as the City of Upland Mechanical Construction Standards.

### **Chapter 15.14 CALIFORNIA RESIDENTIAL CODE**

Section 15.14.010.1 of Chapter 15.14 of Title 15 of the City of Upland Municipal Code is hereby deleted.

Section 15.14.010 of Chapter 15.14 of Title 15 of the City of Upland Municipal Code is hereby amended to read as follows:

**15.14.010 California Residential Code**

The 2019 California Residential Code is adopted by reference, in its entirety, together with Appendix H Patio Covers, Appendix T Solar-ready Provisions – Detached One- and Two-family Dwellings and Townhouses, Appendix V Swimming Pool Safety Act and Appendix X Emergency Housing, as the City of Upland Residential Construction Standards.

**Chapter 15.15 (New Chapter)  
CALIFORNIA FIRE CODE**

A new Chapter 15.15 is hereby added to Title 15 of the City of Upland Municipal Code to read as follows:

**Chapter 15.15 CALIFORNIA FIRE CODE**

**15.15.010 California Fire Code**

The 2019 California Fire Code is adopted by reference, in its entirety, as the City of Upland Fire Construction Standards.

**Chapter 15.16  
UNIFORM HOUSING CODE**

Section 15.16.10 of Chapter 15.16 of Title 15 of the City of Upland Municipal Code is hereby amended to read as follows:

**15.16.010 Uniform Housing Code**

The 1997 Edition of the Uniform Housing Code as published by the International Conference of Building Officials is adopted by reference, in its entirety, as the City of Upland Uniform Housing Code Standards.

**Chapter 15.20  
UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS**

Section 15.20.10 of Chapter 15.20 of Title 15 of the City of Upland Municipal Code is hereby amended to read as follows:

**15.16.010 Uniform Code for the Abatement of Dangerous Buildings**

The 1997 Uniform Code for the Abatement of Dangerous Buildings as published by

the International Conference of Building Officials is adopted by reference, in its entirety as the City of Upland Abatement of Dangerous Buildings Code Standards.

**Chapter 15.24**  
**CALIFORNIA PLUMBING CODE**

Section 15.24.010 of Chapter 15.24 of Title 15 of the City of Upland Municipal Code is hereby amended to read as follows:

**15.24.010 California Plumbing Code**

The 2019 California Plumbing Code is adopted by reference, in its entirety, as the City of Upland Plumbing Construction Standards.

**Chapter 15.28**  
**CALIFORNIA ELECTRICAL CODE**

Section 15.28.020 of Chapter 15.28 of Title 15 of the City of Upland Municipal Code is hereby deleted.

Section 15.28.010 of Chapter 15.28 of Title 15 of the City of Upland Municipal Code is hereby amended to read as follows:

**15.28.010 California Electrical Code**

The 2019 California Electrical Code is adopted by reference, in its entirety, as the City of Upland Electrical Construction Standards.

**Chapter 15.30**  
**CALIFORNIA ENERGY CODE**

Section 15.30.010 of Chapter 15.30 of Title 15 of the City of Upland Municipal Code is hereby amended to read as follows:

**15.30.010 California Energy Code**

The 2019 California Energy Code is adopted by reference, in its entirety, as the City of Upland Energy Construction Standards.

**Chapter 15.32**  
**CALIFORNIA EXISTING BUILDING CODE**  
**AND CALIFORNIA HISTORICAL BUILDING CODE**

Sections 15.32.010 and 15.32.020 of Chapter 15.32 of Title 15 of the City of Upland Municipal Code are hereby amended to read as follows:

**15.32.010 California Existing Building Code**

The 2019 California Existing Building Code is adopted by reference, in its entirety, as the City of Upland Existing Building Code Standards.

### **15.32.020 California Historical Building Code**

The 2019 California Historical Building Code is adopted by reference, in its entirety, as the City of Upland Historical Building Code Standards.

## **Chapter 15.33 (New Chapter) CALIFORNIA REFERENCED STANDARDS CODE**

A new Chapter 15.33 is hereby added to Title 15 of the City of Upland Municipal Code to read as follows:

### **Chapter 15.33 CALIFORNIA REFERENCED STANDARDS CODE**

#### **15.33.010 California Reference Standards Code**

The 2019 California Reference Standards Code is adopted by reference, in its entirety, as the City of Upland California Reference Standards Code Standards.

Section 3. Penalties. Subject to the provisions of Chapter 1.16 of Title 1 of this Code, violation of any of this Ordinance or any Code adopted herein shall be a misdemeanor unless otherwise specified to be an infraction. Violations shall be punishable as provided in Chapter 1.10 and/or Chapter 1.16.

Section 4. Compliance with California Environmental Quality Act. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Further, if the activity is deemed a project this City Council finds that this Ordinance is exempt pursuant to Section 15061(b)(3) of the State CEQA Guidelines.

Section 5. Severability. If any provision of this Ordinance or any Code adopted herein, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance or such Codes which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance and such Codes are severable. The City Council hereby declares that it would have adopted this Ordinance and the Codes herein irrespective of the invalidity of any particular portion thereof.

Section 6. Effective Date. This Ordinance shall become effective thirty (30) days from its adoption, but no sooner than January 1, 2020.

Section 7. Publication. The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published in a newspaper of general

Ordinance No.

Page 6

circulation printed and published within the City of Upland, pursuant to all legal requirements.

PASSED, APPROVED, AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2019.

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

I, Keri Johnson, City Clerk of the City of Upland, California, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Upland held on the \_\_\_\_ day of \_\_\_\_\_, 2019, and was adopted at a regular meeting of the City Council of the City of Upland on the \_\_\_\_ day of \_\_\_\_\_, 2019, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

ATTEST:

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



## STAFF REPORT

**ITEM NO. 14.C.**

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**DATE:** November 25, 2019  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**PREPARED BY:** LONDA BOCK-HELMS, CPA, ACTING ADMINISTRATIVE SERVICES DIRECTOR  
**SUBJECT:** CONSIDERATION OF A RESOLUTION AMENDING THE MASTER FEE SCHEDULE TO UPDATE WATER SERVICE CONNECTION FEES FOR LOW INCOME HOUSEHOLDS IN ACCORDANCE WITH SB998

---

### RECOMMENDED ACTION

It is recommended that the City Council adopt a Resolution amending the master fee schedule to update the water service reconnection fee for low income households in accordance with Senate Bill 998.

### GOAL STATEMENT

The proposed action supports the City's goal of providing safe, clean, affordable and accessible water to the citizens of Upland.

### BACKGROUND

Senate Bill 998 was approved by the Governor on September 28, 2018 and becomes effective for the City of Upland February 1, 2020. In short, the bill requires a public water system (provider) to have a written policy on discontinuation of water service (to certain types of residences) for nonpayment and must be available in prescribed languages. The legislation requires the providers policy to include certain components, such as, having the policy available on the provider's internet web site and providing the policy to the customers in writing upon request.

The legislation prohibits the water provider from discontinuing residential service under specified circumstances, such as, nonpayment until the customer has been delinquent for at least 60 days and until the provider has contacted the customer (named on the account) and provided him/her the provider's policy (on discontinuation of residential service for

nonpayment) no less than 7 business days before discontinuation of residential service.

For delinquent residential customers who demonstrate the household income is below 200 percent of the federal poverty line, the provider shall do both of the following:

1. Set a reduced reconnection of service fee for reconnection during normal business hours at \$50.00 and during non operational hours at \$150.00; and
2. Waive interest charges on delinquent bills once every 12 months. (The provider doesn't currently charge interest on delinquent bills).

### **ISSUES/ANALYSIS**

All specifics of SB998 will be incorporated into the City's existing written water services policy and will be in place before the legislation's required implementation date of February 1, 2020.

The rates for reconnection of service on delinquent accounts exist in the current master fee schedule adopted November 27, 2017. The reduced fees are required to be added to the fee schedule to differentiate the allowed fees for households whose income is below 200 percent of the federal poverty line (low income households). The low income household fee for reconnection during non operational hours of \$150.00 is the same as the water providers existing after hours connection fee.

### **FISCAL IMPACTS**

There will be a negative fiscal impact as a result of the addition of the low income household reconnection of service fee during normal business hours as the SB998 mandated \$50.00 fee is less than the provider's actual cost of service. We have a history of the number households that are disconnected from water service due to non payment annually; however, we do not have history of how many of those households would qualify as low income.

### **ALTERNATIVES**

Provide alternative direction to staff.

### **ATTACHMENTS:**

**Resolution Amend Water Fee Schedule  
Exhibit A**

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UPLAND AMENDING THE MASTER FEE SCHEDULE TO UPDATE THE WATER RECONNECTION SERVICE FEE FOR LOW INCOME HOUSEHOLDS IN ACCORDANCE WITH SENATE BILL 998

Intent of the Parties and Findings

(i) The Upland Municipal Code permits the City Council to establish the fees and charges provided herein by resolution; and

(ii) Senate Bill 998 (SB998) requires the City to limit the reconnection of water service fee during business hours for low income households to actual cost not to exceed \$50.00; and

(iii) Limits the fee for water reconnection for low income households during non- business hours to actual cost not to exceed \$150.00; and

(iv) All legal prerequisites to the adoption of this resolution have occurred; and

(v) Resolution No. 6423 adopted November 27, 2017, set the previous rate schedule for the City.

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

Section 1. The attached amended portion of the Master Schedule of Fees, as provided in Exhibit A, is herewith approved and adopted.

Section 2. The attached amended portion of the Master Fee Schedule as provided in Exhibit A is herewith approved and adopted.

Section 3. This resolution shall prevail over any existing resolution in the event of a conflict.

Section 4. The fees adopted by this resolution shall be effective February 1, 2020 in accordance with Senate Bill 998.

Section 5. 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 25th day of November, 2019.

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Debbie Stone, Mayor

Resolution No.  
Page

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 25th day of November, 2019, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAINED:

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

**EXHIBIT A**



**CITY OF UPLAND  
PUBLIC WORKS DEPARTMENT**

**Water Department:**

Customer Service Fees:

For residential customers who demonstrate to provider that household income is below 200% of the federal poverty line:

Turn-On Water:

8:00 a.m. - 4:30 p.m.	\$50.00
After 4:30 p.m.	\$150.00



## STAFF REPORT

**ITEM NO. 14.D.**

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**DATE:** November 25, 2019  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** ROSEMARY HOERNING INTERIM CITY MANAGER  
**PREPARED BY:** ROSEMARY HOERNING, INTERIM CITY MANAGER  
**SUBJECT:** SAN ANTONIO WATER COMPANY - PROPOSED NEW CENTRALIZED HEADQUARTERS

---

### **RECOMMENDED ACTION**

It is recommended that the City Council provide the City Manager with direction on this item.

### **GOAL STATEMENT**

The proposed action supports the City's goal of prudent management and cost effective water services to the community.

### **BACKGROUND**

The San Antonio Water Company (SAW Co.) is interested in planning, designing, and constructing a new centralized office headquarters. This facility would replace their office on Euclid Avenue and property that serves as their field operations yard. SAW Co. has been considering a site at 17th and Benson Avenue, north of the future City of Upland 7.5MG Replacement Reservoir, for the new centralized headquarters would consist of an approximately 8,000 square foot office building and maintenance building, parking and operations yard. The estimated cost of this project is approximately \$4.0 million.

In early July 2019, the City sent a letter of concern regarding the construction of the new centralized office headquarter building. On August 27, 2019, the SAW Co. General Manager provided a response letter, which is attached.

On August 22, 2019, a Statement of Qualifications (SOQ's) for architectural services for these new facilities was due to SAW Co. These SOQ's were presented to an Ad Hoc Committee and subsequent SAW Co. Board for consideration. The General Manager recommended the Board award a contract to Claremont Environmental Group (CEDG) for a not to exceed amount of

\$290,000, the cost for these architectural services. The Board took no action and referred this item to the Ad Hoc Committee.

On November 19, 2019, the Interim Upland City Manager expressed concerns about the expense of the proposed new headquarter facility. The SAW Co. Board authorized the General Manager to execute a time and materials contract with CEDG in an amount of \$40,000 to review and quantify the Company's square footage needs, in detail, for both interior and exterior spaces and review the options to meet the needs.

## **ISSUES/ANALYSIS**

Initial estimates for the project were approximately \$4.0 million. SAW Co. has received comments from other shareholders and is revisiting of the project scope and investigating options to meet their needs. It would be important, as a shareholder, to provide SAW Co. input regarding the proposed project.

## **FISCAL IMPACTS**

Upland is a major shareholder in SAW Co. SAW Co. is responsible for providing water to its shareholders, operating, maintaining and implementing capital improvements to provide safe and reliable water to its shareholders. The Shareholders fund these operations.

## **ALTERNATIVES**

Provide alternative direction to staff.

## **ATTACHMENTS:**

**City Letter to SAW Co dated 7-9-19**  
**SAW Co Response Letter dated 8-27-19**  
**Scope - Exploratory Review**  
**SOQ due 8-29-19**  
**Project Summary Sheet**



**City Manager's Office**  
**Telephone (909) 931-4106**  
**Facsimile (909) 931-4301**

July 9, 2019

Brian Lee, General Manager  
San Antonio Water Company  
139 N. Euclid Avenue  
Upland, CA. 91786

**Subject: Proposed Implementation of a New Centralized Office Headquarter Building Facility**

Dear Brian:

As discussed, the City has concerns about the construction of the new Centralized Office Headquarter Building given the existing maturity of the service area and limited growth of the San Antonio Heights Community. Upland is concerned a new Office Headquarter facility may be perceived by the public as not an essential facility in comparison to other physical plant structures, which are needed for the delivery of water to your various customers. This perception may be further heightened, given the recent significant rate adjustments that were implemented last year. I believe the implementation of this new facility could present strong and critical responses within the Upland community.

Sufficient public outreach and project marketing should be undertaken to understand the climate and project acceptance by the community. The City has expressed verbally our concerns regarding the subject project and understand the funding used will be one-time money and not rate revenue. However, the concerns do include the recent significant increase to water rates, which contributed to the City need to increase its customer rates to insure there is adequate revenue to meet operational and capital investment requirements.

I believe it is essential to demonstrate the need for the investment of these funds in a new office versus applying the money to needed capital improvements to reduce the need for future rate adjustments. At this time, I believe most of the discussion has occurred internally and with the Board on office design elements and project costs. I am not sure how much public outreach has been undertaken to determine whether there will be potentially negative public concerns over the proposal?

I believe it is important to insure the company's capital improvements and facility rehabilitations are well documented and appropriately addressed. Finally, I think SAW Co should develop a business case demonstrating that this is the best use of funds on behalf of the shareholders versus investing in other needed company assets.

Should you like to discuss this, please contact me at (909) 931-4102.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rosemary Hoerning", is written over a horizontal line.

Rosemary Hoerning, PE, PLS, MPA  
Interim City Manager

cc: Tom Thomas, SAW Co. President  
Debbie Stone, Mayor



# San Antonio Water Company

Incorporated October 25, 1882

Serving the original Ontario Colony lands

August 27, 2019

Rosemary Hoerning  
Interim City Manager  
City of Upland  
460 North Euclid Avenue  
Upland, CA 91786

**RECEIVED**

**SEP 03 2019**

**CITY MANAGER'S OFFICE**

Subject: Proposed Replacement of Company's Administration and Operations Capital Facilities

Dear Rosemary,

Thank you for the letter expressing City concerns regarding the Company's plans to replace two century-old capital facilities. I have shared the City's concerns with our Office Feasibility Study Ad-Hoc Committee and the full Board. The Company takes your concerns seriously and will work to ensure the Company's continued positive impact to the City is clearly projected to the community.

As you know, the Company is currently working out of facilities that are over one hundred years old and significantly 'out of code'. Seismic, electrical and mechanical deficiencies, as well as space and parking constraints, must be addressed. In short, each building has reached the end of its service life.

As we progress, the Company will be working with an architect and public relations firm to ensure all our customers remain well informed. A large component of public outreach will involve listening. We intend to communicate needs to our shareholders, listen to shareholder concerns and then adapt to address those concerns.

The Company is excited to show in our upcoming Master Plan that current rates cover a steady and consistent Capital replacement program that will provide for the Company's needs for years to come.

The San Antonio Water Company wants to assure our shareholders that, just like the last 140 years, this company intends to continue being a fiscally prudent, well-run organization for the next 140 years. I look forward to our continued discussions.

Sincerely,

Brian Lee  
General Manager  
San Antonio Water Company

Item Title: Office and Operation Yard Facilities Budgetary Exploratory Review

Purpose:

Discussion and Possible Action to Award a Contract for Architectural Services related to Office and Operation Yard Facilities Project

Issue:

Hiring an architectural firm to assist in the budgetary review of a new office and operation yard facility.

Manager's Recommendation:

Authorize the General Manager to execute a time-and-material contract with Claremont Environmental Design Group (CEDG) with a not-to-exceed amount of \$40,000.

Background:

Earlier this year the Company and City of Upland entered into escrow for the sale of the southern ½ of the Company's Benson Avenue property. Entering escrow provided the catalyst to renew moving forward with plans to explore the feasibility of consolidating administration and operation services onto a single campus. In 2016 the Company began exploring options regarding the administration building and the operations building & yard. Both facilities are aged and in need of upgrading. Code compliance issues include ADA, seismic, electrical and mechanical issues. Quality of service issues include a lack of adequate parking, storage, insulation/HVAC, and workspace.

It is anticipated that funding for the project would come from the sale of surplus property; the City of Upland's purchase of the southern ½ of the Benson Avenue property, sale of the Administration Building on Euclid Avenue, and sale of the current operations facility and yard on 1<sup>st</sup> Avenue.

Recent discussions with the Board and public have shown that there is a desire to review the situation at a higher level. To that end staff prepared the attached scope for review and consideration. The ad hoc committee, along with architectural firm CEDG, provided input at a meeting on November 5<sup>th</sup>, 2019.

Impact on the Budget:

A time-and-material architectural contract with a not-to-exceed cap of \$40,000.

Previous Actions:

Formation of the Office and Yard Relocation Ad Hoc Committee in 2016

Prior contract with CEDG in 2016.



# San Antonio Water Company

Incorporated October 25, 1882  
Serving the original Ontario Colony lands

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## SCOPE OF SERVICES

TO PROVIDE ARCHITECTURAL CONSULTING SERVICES TO THE SAN ANTONIO WATER COMPANY

**PROJECT TITLE:**

**OFFICE AND OPERATION YARD FACILITIES BUDGETARY EXPLORATORY REVIEW**

**November 12, 2019**

## Scope

The Company is studying the concept of relocating our administration and maintenance facilities onto a single parcel, including a single building or possibly two buildings and an associated facility and storage yard.

Working in coordination with the Ad Hoc Committee, consultant shall develop a budgetary opinion of probable construction cost and preferred alternative analysis.

Consultant shall:

- Obtain current real estate appraisals of three existing Company properties; APNs 104662208 (Administration), 104660206 & 104660205 (Operations) and 104409122 (Reservoir 1).
- Catalogue and quantify the Company's square footage needs for office and site elements, including those identified below, in detail, for both interior and exterior spaces.
- Conduct a review of currently owned and abutting parcels to determine if there is adequate space available for Company needs.
- Review available building and land stock in City of Upland and surrounding area for possible suitable parcels. Identify no less than four parcels/buildings that most closely meet Company needs.
- Review Company owned parcel at Benson Avenue and 17<sup>th</sup> Street.
- For each parcel/building identified above, provide budgetary opinion of probable construction cost to modify each parcel for Company needs.
- Catalogue positives and negatives of proposed efforts for each parcel identified above.
- Assist Ad Hoc Committee in ranking each site for best value to Company.
- Assist Ad Hoc Committee in creating a schedule for development of highest ranked site that includes project costs and sources of revenue. Schedule shall identify those revenues that are derived from sources other than water rates and charges.

## Expectations for Company Facility

The Company desires to explore the concept of an office and yard facility that provides modern conveniences while remaining flexible for future needs.

Office elements should include:

- A flexible 60-person Board Room that can also be used for other events or meetings,
- Lobby and front counter for customer service,
- 4 to 5 offices, two sized to include meeting tables,
- 5 to 6 cubicles for office staff,
- A 'quiet room' that allows for individual privacy when needed (e.g. nursing mothers),
- Elements typical of a business environment (record storage, computer server and associated space for printers and IT support, janitorial storage),
- A kitchen and break area,

- Appropriate number of bathrooms,
- Maintenance office (three desks located in a common area)
- Shower/locker area for field staff,
- Small parts storage and motor repair space.

Site elements include:

- Covered parking for staff,
- Secure parking for Company vehicles,
- Parking for visitors/customers,
- Storage of large material commonly used in the water industry,
- Landscaping that reflects the local history and environment, including the use of California local native plants as well as recognition of the contribution citrus groves provided to the local economy. Xeriscaping is desired.
- Passive solar and solar power generation options. Solar options shall include appropriate cost-benefit analyses allowing the Company to determine if solar elements should be included in design.



# San Antonio Water Company

Incorporated October 25, 1882  
Serving the original Ontario Colony lands

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## A REQUEST FOR QUALIFICATIONS

TO PROVIDE ARCHITECTURAL AND LANDSCAPE ARCHITECTURAL CONSULTING SERVICES TO  
THE SAN ANTONIO WATER COMPANY

PROJECT TITLE:

**NEW OFFICE AND OPERATION YARD FACILITIES**

RESPONSE DUE BEFORE 3:00 PM

ON **AUGUST 29, 2019**

## Introduction

The San Antonio Water Company invites professional architects to submit a Statement of Qualifications (SOQ) to develop a Company owned property of approximately 120,000 Square feet located at 1723 North Benson Avenue, Upland California. Property development will include  $\pm$  8,000 Square Foot (SF) office and maintenance building (possibly split into two separate buildings) and an associated facility and storage yard, public-employee parking and site improvements/landscaping.

Services to be provided include:

- Initial high-level scoping and needs study intended to validate space requirements,
- Conceptual schematic plans and renderings,
- Work with Office Feasibility Study Ad Hoc Committee to develop approved schematic plans,
- Development of plans and documents to be used in bidding and constructing the project,
- Assistance with selection of furniture, fixtures and equipment,
- Participation in the review of bids and selection of construction company,
- Oversight and inspection during construction,
- Coordinating zoning approvals and permitting processes.

The Company's Office Feasibility Study Ad Hoc Committee is looking for an architectural firm to coordinate and guide the Company during development and construction of the new facilities at the Benson Street property.

## Expectations for New Facility

The Company desires to construct a new office and yard facility that reflects over one hundred years of heritage and local history while providing modern conveniences and remaining flexible for future needs. The building façades should reflect a Spanish/Mediterranean style with rock, wood and glass as the primary elements. The Company desires to utilize local material for façade, but not necessarily for structural elements. The attached photos represent concepts that appeal to the Office Feasibility Study Ad Hoc Committee. The photos are intended only as a starting point.

Office elements include:

- A flexible 60-person Board Room (with dais) that can be used for other events or meetings,
- Lobby and front counter for customer service,
- 4 to 5 offices, two sized to include meeting tables,
- 5 to 6 cubicles for office staff,
- A 'quiet room' that allows for individual privacy when needed (e.g. nursing mothers),
- Elements typical of a business environment (record storage, computer server and associated space for printers and IT support, janitorial storage),

- A kitchen and break area,
- Appropriate number of bathrooms,
- Maintenance office (three desks located in a common area)
- Shower/locker area for field staff,
- Small parts storage and motor repair space.

Site elements include:

- Covered parking for staff,
- Secure parking for Company vehicles,
- Parking for visitors/customers,
- Storage of large material commonly used in the water industry,
- Landscaping that reflects the local history and environment, including recognition of the contribution citrus groves provided to the local economy. Xeriscaping is desired.

The Company desires to be environmentally conscience but LEED certification will not be sought. Green technology will be considered on a case-by-case basis. Ideally, a seven-year break-even is desired on any premium costs associated with alternative green material or element.

## Budget

The preliminary budget for the project is \$4 million dollars.

## Schedule

The anticipated duration of this agreement will be four years.

- Development and design are expected to take two years.
- Construction is anticipated to start in 2021.
- Occupancy is anticipated in 2023.

## Property Inspection

All interested parties should contact Brian Lee, General Manager, SAWCo at (909) 982-4107 to schedule a time to view the property.

## General Information

In 1882 Canadians George and William Chaffey purchased 8,000-acres of the Cucamonga Rancho, including the water rights, and established an irrigation colony which they named Ontario, in honor of their homeland. On October 25, 1882 they also established the San Antonio Water Company under the General Corporation Laws of the United States. Ranchero water rights established way back in the 1700's were transferred to the Company to support the newly established irrigation colony. The brother's vision was to develop a Mutual Water Company whose members shared equally in the locally available water supply.

The brothers sold irrigation colony land in 10-acre blocks, primarily intended for the booming citrus industry. Along with the land, the brothers sold shares in the Company, one share for each purchased acre. Each shareholder was entitled to a portion of available local water, distributed equally by the company amongst all the shareholders. The Company was responsible for distributing water on a non-profit basis to the shareholders.

Since 1882 the San Antonio Water Company has consistently provided water service to its shareholders. Although the local citrus industry has largely disappeared, the Company maintains delivery to current shareholders utilizing the same successful 'per share' distribution plan established over 135 years ago.

The Company does not import any water. Instead we are dependent on our local San Antonio Canyon and Cucamonga Canyon watersheds and downstream groundwater basins.

Currently, our shareholders include most residents of the unincorporated area of San Antonio Heights, the Cities of Upland and Ontario, the Monte Vista Water District, the US Forest Service, the San Bernardino County Flood Control District, local quarries and the proud heritage of remaining grove irrigators.

The Company currently employs eleven staff divided between office (6) and field (5).

## SOQ Requirements

The Statement of Qualifications shall not exceed the number of pages identified below excluding resumes, cover letter, dividers, front and back covers. No other documents will be reviewed. Please do not submit additional material. Responses to this RFQ shall be in the following order and shall include:

### Executive Summary (2 pages maximum)

Summarize the contents of your firm's SOQ in a clear and concise manner.

### Firm Background and Experience (4 pages maximum)

Brief description of the firm and subconsultants, if any, including the size of the organization, location of offices and relevant capabilities and resources in relation to the project. This section should include:

- I. Name and location of firm and offices. Specify principal place of business
- II. Brief history of firm and range of services offered
- III. Experience in developing office buildings and utility yards
- IV. Firm's local experience
- V. Procedures and/or policies associated with or related to work quality and cost control
- VI. Management and organizational capabilities

### Experience of the Project Team (4 pages maximum, not including resumes)

Proposing firm shall identify the team to be assigned to the project, by name, including at a minimum the principal, project manager, key staff and any subconsultants. Proposing firm shall describe the project team's qualifications and experience related to this specific project:

- I. Describe proposed project organization, including identification and responsibilities of key personnel, including sub-consultants. Include only one- page resumes.
- II. Describe the experience of the Project Manager and the experience that the proposed personnel have working on past projects as a team.
- III. Describe project management approach to the work effort, locations where work will be done, responsibilities for coordination with the Company, and lines of communication necessary to maintain project on schedule.

### Project Understanding and Approach (8 pages maximum)

Firm shall submit a Management Plan that demonstrates a preliminary understanding of the project by providing a clear and concise description of the project and major issues, based on the information provided in this RFQ. Management Plan shall detail:

- How the firm intends to manage their responsibilities and provide value engineering for cost control, risk identification and risk mitigation.
- Proposed project schedule showing critical dates and other information in sufficient detail to determine feasibility
- Firm's ability to work with groups and collaborate on decisions
- Firm's ability to advance innovative ideas
- Firm's technical capabilities and ability to perform timely
- Identify methods for:
  - Comprehensive architectural services for the project
  - Deliverables and Company approval
  - Construction administration
  - Analysis and consultation with Company to make key decisions

### Past Projects (9 pages maximum)

Proposer shall provide project descriptions of up to three similar projects. Include the following information:

- I. Owner contact name and phone number
- II. Project team members
- III. Project size and description
- IV. Illustrative drawings / renderings / photographs of completed projects

### Financial Proposal (3 pages)

Firm shall propose a financial arrangement regarding the architectural and engineering costs and fees for the professional services to be provided. Provide a statement of anticipated hourly effort, broken down by proposed tasks. Company anticipates a 'time and material' contract.

Including hourly rates for every staff and subconsultant expected to provide billable effort toward this project.

#### Other Pertinent Information (2 pages)

Consultant shall confirm professional liability insurance coverage of not less than \$1,000,000.

List and describe any litigation, arbitration or other alternative dispute resolution proceedings Architect has been involved in with an owner for any work performed within the past five years.

List and describe any action taken by any regulatory agency against Architect or its agents or employees with respect to any work performed within the past five years.

#### Exceptions to this RFQ (1 page, if needed)

The Consultant shall certify that it takes no exceptions to this RFQ including, but not limited to, the Consultant Services Agreement (attached).

#### Evaluation Criteria

The evaluation criteria and the respective weights that will be given to each criterion are as follows:

- a) 30% Understanding and approach to the work to be done
- b) 10% Experience of firm with similar kinds of work
- c) 30% Experience of staff for work to be done
- d) 20% Overall clarity and presentation of SOQ
- e) 10% Firm's Local Experience

#### Selection Process and Schedule

The Company will enter into negotiations with the top ranked firm. At this time, the Company contemplates the use of a Time and Material Not to Exceed contract for the services requested. Negotiations will cover scope of work, contract terms and conditions and attendance requirements.

After negotiating a proposed agreement that is fair and reasonable the General Manager will present the contract to the Company's Board for authorization to execute a contract with the most responsive firm.

#### Related Documents (attached)

- Company standard Professional Service Agreement (PSA)
- Concept Photos (1 page)

## Submittal Requirements

One (1) executed original marked "ORIGINAL" in red ink and 6 copies of the SOQ shall be submitted. Emailed SOQs will not be accepted. Submit one electronic copy of the SOQ in PDF format. The Response shall be signed by an individual, partner, officer or officers authorized to execute legal documents on behalf of the Firm.

The Response SOQ must be received no later than **3:00 p.m.** local time, on or before **August 29th, 2019** at the office of:

**PROPOSAL – NEW OFFICE AND OPERATION YARD FACILITIES**

**San Antonio Canyon Water Company**

**139 North Euclid Avenue**

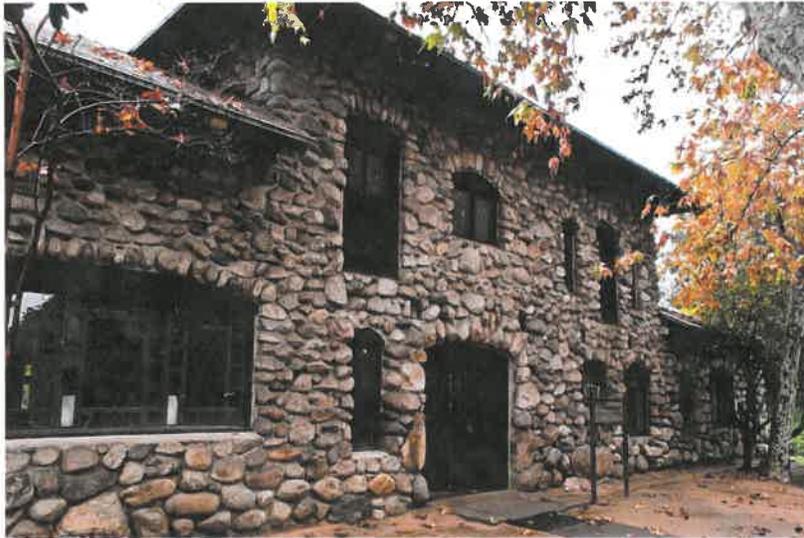
**Upland, CA 91786**

**Attn: Brian Lee**

Failure to comply with the requirements of this RFQ may result in disqualification. Questions regarding this RFQ shall be submitted in writing to [blee@sawaterco.com](mailto:blee@sawaterco.com).



Representative Visual Concepts:



PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
SAN ANTONIO WATER COMPANY  
AND  
**CONSULTANT**

THIS AGREEMENT ("Agreement") is made this Xth day of Y, 2019, by and between San Antonio Water Company, a California Corporation, located in Upland, California, hereafter referred to as ("Client") and **CONSULTANT**, a California Corporation, located in Z, California, hereafter referred to as ("Consultant"). This Agreement consists of the following terms and conditions, all exhibits and attachments, and any written and approved modifications hereto.

**RECITALS**

Whereas, Client requires professional engineering construction management services during construction of the Holly Drive Tank Site, Phase I in the San Antonio Heights, and

Whereas, Client and Consultant desire to enter into a contract for the provision of professional engineering construction management services subject to the terms and conditions of this Agreement.

Now therefore, in consideration of the promises and covenants hereinafter set forth, the parties hereto mutually agree as follows:

**1. Scope of Services:**

The scope of services to be provided by Consultant is as described in and attached hereto as Attachment "A" and entitled "Scope of Services." The scope of services defines the specific work to be performed and the resulting work product(s) to be delivered. The corresponding schedule for performance of the work will be presented at the initial "kick off" meeting.

During the term of this Agreement, Client may request subsequent and related engineering services at its discretion. Such services to be performed by Consultant shall be stated in a separate "Letter of Authorization" setting forth the specific work to be performed, the resulting work product(s) to be delivered, the corresponding schedule for performance of the work, the compensation terms for the work to be performed, and signed by Client and Consultant. The provisions of this Agreement shall be incorporated into the Letter of Authorization by specific reference.

**2. Professional Services Charges:**

Client agrees to pay for services provided by Consultant each month, as charges accrue and applicable invoices are received, in accordance with the Consultant's current schedule of hourly rates, as defined in and attached hereto as Attachment "B." Charges shall not exceed \$0 for the services and deliverables referenced in Attachment "A" or any subsequent and related Letter of Authorization without prior written approval by the Client and written concurrence by the Consultant. For other services, which may be requested by Client, compensation to Consultant shall be as mutually negotiated in writing between both parties and set forth in a Letter of Authorization. The Consultant's current schedule of hourly rates would be the basis for negotiating such compensation. Any changes to the Consultant's schedule of hourly rates must be submitted to Client in written form prior to

any negotiation for services to be billed at rate(s) other than those shown on Attachment "B".

**3. Independent Contractor Status:**

In performing its services under this Agreement, Consultant is an independent contractor to the Client. No other relationship exists between Consultant and Client. Consultant and Client also agree that Client has no contractual relationship with any Sub-Consultants who are engaged solely by Consultant to perform supporting services and who shall be in all respects the responsibility of Consultant.

**4. Standard of Care:**

Consultant's services shall be conducted, within the limits prescribed by this Agreement, in a manner consistent with that level of care and skill ordinarily exercised by members of the same professions currently practicing under similar conditions within the surrounding regional area of the State. No other guarantee, warranty, or representation, either express or implied, is included or intended herein or in proposals, contracts or reports. Client agrees to provide Consultant prompt written notice of any defect or suspected defect in its services.

**5. Delays:**

Neither the Client nor Consultant shall be liable for delays in or failures to perform services caused by circumstances beyond their reasonable control, including, but not limited to, acts of God, acts and/or omissions by federal, state and local government authorities and regulatory agencies, strikes, riots, civil unrest, war, lockouts, and accidents. For delays in providing services hereunder, resulting from actions or in actions of Client or third parties, Consultant may be given an appropriate time extension and may be compensated for those delay related costs of labor, equipment and other direct costs incurred by Consultant and clearly caused by circumstances beyond Consultant's control.

Client acknowledges that delays related to processing of properly and fully completed permit applications, the subsequent approval of permits or required reviews by governmental agencies are beyond the direct control of Consultant. However, Consultant agrees to diligently pursue any such required reviews and approvals for any item(s) of work within Consultant's scope of services, but makes no warranties and Client waives any claims against Consultant relating to the timeliness or the success of approvals of permit applications or required agency reviews which are properly and fully prepared and pursued under this Agreement.

**6. Breach of Agreement:**

If the Consultant defaults in the performance of any of the terms or conditions of this Agreement, It shall have ten (10) calendar days after receipt of written notice of such default in which to cure the default by rendering a satisfactory performance. If Consultant fails to cure the default within the specified time, the Client shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled.

**7. Termination/Suspension of Services:**

Either party may terminate or suspend this Agreement at any time upon fifteen- (15) calendar day's written notice. Upon termination or suspension, the Client shall compensate Consultant for all authorized services performed up to the date of termination or suspension. Said compensation shall include payment for completed tasks and

payment of applicable hourly rates as indicated in Attachment "B" for all uncompleted tasks. Payment will be made within thirty calendar days of receipt of an invoice for all authorized services performed and all expenses directly attributable thereto, including, but not limited to, any previously acknowledged cancellation charges by Sub-Consultants and/or contractors, if any. In the event that the period of Client initiated suspension exceeds one hundred and eighty-two calendar days; the Consultant's fee shall be equitably adjusted by mutual agreement prior to the resumption of services.

**8. Notice:**

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing same in any United States Post Office, registered or certified, postage prepaid, addressed to:

San Antonio Water Company  
139 No. Euclid Avenue  
Upland, CA. 91786  
(909) 982-4107 // Fax (909) 920-3047

Consultant  
Consultant's Address  
Consultant's City, State and Zip  
Consultant's Phone Number

**9. Ownership of Documents:**

Unless expressly agreed otherwise, Client is the owner of all final documents, including, but not limited to, reports, investigations, written analysis, plans and specifications and opinions of cost generated by Consultant within the scope of services. Consultant is the owner of all other documents, including, but not limited to, all proposals, draft documents and other written communications generated within the scope of services. Consultant may retain copies of all final documents owned by Client. However, any reuse of the final documents by the Client for other than their specific intended purpose shall be at the sole risk of the Client and without liability or legal exposure to the Consultant.

Except as provided in Section 10, "Confidentiality", Consultant agrees that all project documents shall not be made available to any individual or organization, private or public, without the prior written consent of the Client.

**10. Confidentiality:**

Consultant and Client shall hold confidential all business or technical information obtained from the other or its affiliates under this Agreement and shall not disclose such information without the other's written consent except to the extent required for (1) performance of services under this Agreement; (2) compliance with professional standards of conduct for preservation of the public safety, health and welfare; (3) compliance with any court order or other legitimate governmental directive; and/or (4) protection of the disclosing party against claims or liabilities arising from performance of services under this Agreement. The parties' obligations hereunder shall not apply to information in the public domain or information lawfully acquired on a non-confidential basis from others.

**11. Insurance:**

Consultant agrees to maintain Comprehensive General Liability, Automobile Liability plus Errors and Omissions policies against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by the Consultant, its officers, employees, agents, invitees and subcontractors. An insurer admitted to conduct business in the State with an A.M. Best & Co. rating of at least B+7 must issue these policies. Insurance endorsements shall be furnished to the Client within seven (7) days following the execution of this Agreement by both parties.

Notwithstanding any inconsistent statement in the policy or any subsequent endorsement attached thereto, the protection offered by the Liability policy shall name the Client, its officers, directors, employees, and agents as additionally insured.

The Consultant shall maintain the following limits of liability:

- General Liability: \$1,000,000 per occurrence for bodily injury, personal injury, and property damage.
- Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- Errors and Omissions: \$ 1,000,000 in the aggregate.

The Client, its officers, directors, employees and agents shall not be responsible for any claims in law or equity occasioned by failure of the Consultant to comply with Section 3700 of the State Labor Code. By execution of this Agreement, the Consultant certifies to the following:

“I am aware of and will comply with Section 3700 of the State Labor Code which requires every qualifying employer to be insured against liability of Workers’ Compensation or to undertake self-insurance before commencing any services hereunder.”

For any claims related to this Agreement, the Consultant’s insurance coverage, as evidenced by an endorsement to its policy, shall be primary insurance as respects the Client, its officers, directors, employees, and agents. Any insurance or self-insurance maintained by the Client, its officers, directors, employees, and agents shall be excess of the Consultant’s insurance.

All such insurance shall bear an endorsement or shall have attached a rider whereby it is provided that, in the event of expiration or proposed cancellation of such policy, the Client shall be notified by registered mail, postage prepaid, return receipt requested, not less than thirty (30) calendar days before expiration or cancellation is to become effective.

**12. Limitation of Liability:**

- A. Neither the Client nor Consultant shall be liable for indirect or consequential damages, incurred by either or by their subsidiaries or successors except as stated in Section 13A, applicable to Consultant.
- B. In addition to the limitations provided in Section 12A and notwithstanding any other provision herein, Consultant’s liability shall be limited to bodily injury/death, property damage and economic loss (hereinafter collectively referred to as “Loss”) caused by the negligence of Consultant, its officers, employees, agents, invitees, and subcontractors hereunder.

**13. Indemnity:**

- A. Consultant agrees to indemnify, and hold harmless Client, its officers, directors, employees and agents, to the fullest extent permitted by law from and against any and all actual or alleged loss, cost, damage, expense and liability (including reasonable attorneys’ fees and other costs of defense and/or settlement), for bodily injury/death, property damage and economic loss arising from the negligent acts, errors or omissions or the willful misconduct of Consultant, its officers, employees, agents, invitees or subcontractors in the performance of services rendered under this Agreement.

B. Client agrees to indemnify and hold harmless Consultant, its officers, employees, agents, invitees, and subcontractors to the fullest extent permitted by law from and against any and all actual or alleged loss, cost, damage, expense and liability (including reasonable attorneys' fees and other costs of defense and/or settlement), for bodily injury/death, property damage and economic loss arising from the negligent acts, errors or omissions or the willful misconduct of Client, its officers, directors, employees, and agents, contractors or subcontractors in matters relative to this Agreement.

**14. Right of Entry and Property Responsibility:**

Client shall grant, or cause to be granted at Client's expense, free access to any property upon which services are to be performed. The Client shall notify the owners and possessors of such property, whether they are lawfully or unlawfully in possession, that Client has granted Consultant free access to such property. Client shall secure permission and any permits necessary to allow Consultant free access to such property at no charge to Consultant unless otherwise specifically agreed to in writing.

Consultant shall be responsible for its own activities at the property including the safety of its employees, subcontractors, agents and invitees, but shall not assume control of or responsibility for the property.

**15. Severability:**

Any provisions of this Agreement held in violation of any law or ordinance shall be deemed stricken and all remaining provisions shall continue valid and binding upon the parties. Client and Consultant shall attempt, in good faith, to replace any invalid or unenforceable provisions of this Agreement with provisions which are valid and enforceable, and which come as close as possible to expressing the intention of the original provisions.

**16. Assignments and Third-Party Beneficiaries:**

This Agreement and all of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns; provided, however, that no assignment of this Agreement shall be made without written consent of the parties to this Agreement. Any attempt by Consultant to assign or otherwise transfer any interest in this Agreement without the prior written consent of the Client shall be void.

This Agreement shall not create any rights or benefits in any person or entity other than Client and Consultant, nor is it intended to create any third-party beneficiaries to it.

**17. Governing Law and Remedies:**

Unless otherwise provided, this Agreement shall be performed and construed under the laws of the State of California without regard to that State's conflict of laws provision. In the event of any claim, dispute or other matter in question between the parties, Client and Consultant agree to submit the matter to binding arbitration in accordance with the then-existing rules of the American Arbitration Association. Arbitration shall be held in westerly San Bernardino County, California unless otherwise agreed to by the parties hereto. Before the invocation of such arbitration, or promptly after the invocation of such arbitration, if such invocation is reasonably needed to protect either party against the running of a statute of limitations or similar defense, the parties shall meet to discuss, in good faith, the possible resolution of the matter without formal proceeding. Either party may ask for the use of non-binding mediation with a third party or other alternative dispute

resolution procedures, which shall be pursued in good faith until either party determines them to be unlikely to produce a resolution.

**18. Attorneys' Fees:**

In the event of mediation, arbitration or litigation between Client and Consultant arising out of the Agreement, each party shall be entitled to all reasonable costs and attorneys' fees to the extent that party prevails.

The signatories to this Agreement represent that they have the authority to execute this Agreement on behalf of the parties first named above.

**San Antonio Water Company:**

**Consultant:**

\_\_\_\_\_  
Brian C. Lee  
General Manager/CEO

\_\_\_\_\_  
Consultant's Authorized Executive  
Executive's Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Total Budget: **\$4,000,000**

Engineering/Project Management: \$400,000

Construction: \$3,600,000

Fiscal Year 2016 Invoiced: \$32,000

Fiscal Year 2019 Budget: **\$100,000**

Out Year's Budget: \$3,868,000

Schedule:

Design Project: 2018

Bid Project: Winter 2019

Award Bid: Spring 2019

Construction: Spring/Summer 2019

**Project Description**

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Location: Benson Ave just south of 18<sup>th</sup> Street



Justification: The Company's main office on Euclid Ave. has served as the company headquarters for almost one hundred years. When initially constructed, the main office provided a local presence for agricultural shareholders to conduct company business. Changing demographics of the surrounding area has shifted the company's retail customer base almost exclusively into the San Antonio Heights.

Current Company facilities are old and showing their age. Issues include needed modern seismic construction, energy efficiency and security. Additionally, space constraints are evident. Parking space is inadequate. Office space is at a premium. There is no additional room for desks, much less the work space necessary for productivity. Field crew and office crew are separated on two parcels. Records storage is at a premium. Office computer servers are housed in a closet. Company SCADA hardware is located on a corner desktop in the meeting room. Due to a lack of adequate public meeting space, the Company currently utilizes the City of Upland Council chambers for its Board Meetings.

The Company has an opportunity to consolidate onto property located at Benson Avenue and 18<sup>th</sup> Street. Relocating to the Benson Property will allow the Company to build a presence closer to our retail customers while modernizing our facilities.

**Status:**

- 
- 06/15/2016 – Needs Assessment contract and Authorization-to-Proceed issued to Claremont Environmental Design Group.
  - 12/18/18 – BL – Board approved 2019 budget, which includes conceptual/design services for this project.
  - 03/11/19 – BL – City of Upland Council approved purchase of south portion of Benson Property.
  - 4/5/19 – BL – Title report received from City
  - 4/22/19 – BL – City notified Company that State is taking longer than expected on project funding. City requested escrow time extension
  - 4/23/19 – BL – AFC appoints Director Cable to Ad hoc committee and Director Sanchez as alternate.
  - 5/13/19 – BL – City Council approves escrow time extension
  - 5/21/19 – BL – Escrow time extension on Board Agenda for review.
  - 6/12/19 – BL – Reconvened Ad Hoc Committee
  - 7/10/19 – BL – Ad Hoc Committee met to review draft RFP for architectural service.
  - 7/30/19 – BL – Request for Qualifications released and posted on website.
  - 8/30/19 – BL – Statement of Qualifications due

<b>Contacts</b>	<b>Name</b>	<b>Phone / email</b>
CEDG	Erik Peterson	909.973.7282 <a href="mailto:info@cedg-design.com">info@cedg-design.com</a>

Project Title: **Office Relocation**  
 Construction Order: **1507**  
 Approved Budget: \$ **100,000**

	Estimated	Actual
Design Start Date:	2016	2016
Design Completion Date:	6/1/19	
Construction Start Date:	10/1/19	
Constuction Completion Date:	6/1/22	
Project Close Out Date:	8/1/22	

Budget	Firm	Contract/Budget	Invoiced/Spent to Date	Remaining
Staff	SAWCo		\$ -	\$ -
Permitting/CEQA			\$ -	\$ -
Architect	CEDG	\$ 40,060.00	\$ 32,000.00	\$ 8,060.00
Engineering			\$ -	\$ -
Geotechnical			\$ -	\$ -
Surveyor			\$ -	\$ -
Environmental			\$ -	\$ -
Prime Contractor		\$ -	\$ -	\$ -
<b>TOTAL</b>		<b>\$ 40,060.00</b>	<b>\$ 32,000.00</b>	<b>\$ 8,060.00</b>

Total Budget: **\$30,000**

Engineering/Project Management: \$30,000

Fiscal Year 2019 Budget: **\$30,000**

Schedule:

Bid Project: Summer 2019

Award Bid: Autumn 2019

Construction: Winter/Spring 2020

**Project Description**

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Justification: The intent of the new GIS database is to:

- Aggregate pertinent information of Company facilities into a database that can be readily queried. (location, size, material, year constructed, as-builts, photos, etc.)
- Aggregate known Company easements into a geospatial database.
- Incorporate appropriate external geospatial information including photogrammetry imagery and County parcel information.
- Create a facility records database with a graphic front-end that is readily accessible in the field (tablet enabled 'system map').
- Develop a facility records database that is flexible and easily updated.
- Include meters with appropriate information including GPS location, size, identifying number and customer account records.
- Link the new GIS database to Company finance and billing database to provide the ability to query billing records and present results in a graphical environment (e.g. monthly consumption by parcel, color-coded by amount consumed). This feature does not necessarily have to be in 'real-time'. But the links need to be established for at least monthly updates.
- Link the new GIS database elements to Company asset management records/ depreciating assets database.
- The data should be compatible with modeling software for future Company needs.

**Status:**

07/23/19 – BL - PROC reviewed proposed Request for Proposals

07/30/19 – BL – RFP released and posted on Company website

08/29/19 – BL – Proposals due

<b>Contacts</b>	<b>Name</b>	<b>Phone / email</b>
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