

## CITY MANAGER EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (“Agreement”) is made and entered into as of the 23rd day of March 2020, by and between the CITY OF UPLAND, a California Municipal Corporation (“City”), and ROSEMARY HOERNING (“Employee”), who may be referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

### RECITALS

- (a) The City requires the services of a City Manager.
- (b) Employee has the necessary education, experience, skills and expertise to serve as the City’s City Manager and has served as the City’s Acting/Interim City Manager since May 13, 2019.
- (c) The City Council of the City desires to employ Employee to serve as the City Manager of the City, and Employee desires to accept an at-will employment as the City Manager of the City.
- (d) The Parties mutually desire to establish the terms and conditions for Employee’s employment as City’s City Manager, including Employee’s compensation, benefits, and conditions of employment, as set forth in this Agreement.

### AGREEMENT

In consideration of the Recitals set forth above and the performance by the Parties of the promises, covenants, and conditions herein contained, the Parties agree as provided in this Agreement.

#### **1. Employment.**

- (a) This City hereby employs Employee as the City Manager, and Employee hereby accepts such employment.
- (b) During employment under this Agreement, Employee agrees to remain an exclusive employee of the City. Employee agrees not to accept, nor become employed by any other employer until her resignation or termination date.

#### **2. Term of Employment.**

- (a) **Initial Term** The Initial Term of this Agreement shall be deemed to have commenced on February 10, 2020 (“Effective Date”), which is when the City Council announced her appointment, subject to the joint execution of this Agreement, and it shall continue for a period of three (3) years, to end February 10, 2023 unless terminated at an earlier date as provided for in this Agreement and Chapter 2.04 of the Upland Municipal Code.
- (b) **Second Term** This Agreement shall automatically renew of a Second Term of three (3) years subject to the same terms and conditions unless City or Employee has given the other

party written notice to the contrary at least ninety (90) days before the end of the Initial Term.

**3. Duties.**

- (a) Employee shall perform all of the duties of the City Manager as set forth in the Upland Municipal Code (the “Municipal Code”), the California Government Code, and City policies and procedures approved by the City Council, as may be provided from time to time. Employee shall also perform other legally permissible and proper duties and functions as the City Council may assign from time to time.
- (b) Employee shall also serve as Executive Director of the City’s Redevelopment Successor Agency to perform the functions and duties of the City Manager and Executive Director as specified in City’s Municipal Code and to perform such other legally permissible and proper duties and functions as the City Council may from time to time assign to Employee. Employee agrees to devote Employee’s full time and effort to the performance of this Agreement and to remain in the exclusive employ of City and not to become otherwise employed while this Agreement is in effect.
- (c) The City Council may also designate Employee as the chief executive of other City-related legal entities. Such other legal entities could include financing authorities, and joint powers authorities.

**4. Hours of Work.**

Employee shall maintain a regular work schedule consistent with that approved by the City Council for other management employees of the City. Employee’s duties may involve expenditures of time in excess of ten (10) hours per day and/or forty (40) hours per week and may also include time outside normal office hours such as attendance at City Council meetings. Employee shall not be entitled to additional compensation for such time.

**5. Disability or Inability to Perform.**

In the event Employee becomes mentally or physically incapable of performing Employee’s functions and duties with reasonable accommodation and it reasonably appears such incapacity will last for more than six months, the City Council may terminate Employee. If the City Council does elect to terminate Employee due to incapacity, Employee shall receive severance benefits provided in Subsection 15(C) below.

**6. ICMA Code of Ethics.**

Employee shall comply with the International City/County Management Association (“ICMA”) Code of Ethics as set forth in Exhibit A to this Agreement, which is hereby incorporated by this reference as though set forth in full; provided that the guideline under Item 7 of the Code addressing Elections will only apply to City of Upland elections.

**5. Residency.**

Employee shall not be required to live in the City of Upland.

**6. Bonding.**

The City shall bear the full cost of any fidelity or other bonds required of Employee under any law or ordinance.

**7. Salary.**

City shall pay Employee for the performance of Employee's duties as City Manager a monthly base salary of \$19,166.67, which shall be paid at the same intervals and in the same manner as other City employees. Employee shall receive a 2% cost of living increase effective June 28, 2021. Whenever thereafter the City executive management employees or other employment unit receives a cost of living adjustment or other non-merit-based pay increase, the City Council shall consider making a similar adjustment to Employee's Base Salary. No amendment to this Agreement shall be required for such an adjustment provided it is approved by a resolution adopted by the City Council pursuant to the Municipal Code.

**8. Car Allowance.**

Employee shall have the use of a City vehicle for her use in performing her obligations established in this Agreement or receive a monthly car allowance consistent with the established car allowance for executive staff members.

**9. Benefits.**

To the extent benefits are not specifically addressed in the Agreement, the Employee shall be eligible to receive all benefits as they are normally provided to all City Executive Management Employees and referenced as "Executive Group Benefit Summary." In addition to executive group benefits, the City shall contribute an additional \$7,200 per year to Employee deferred compensation plan.

**10. Leave Accrual.**

The parties agree Employee may accumulate vacation, sick leave and holiday hours in an amount above the maximum allowable as established in the Executive Group Benefit Summary (maximum limit(s) shall not be imposed). Upon employment separation Employee shall be permitted to cash out all accrued balances.

**11. General Expenses and Business Equipment.**

City recognizes that certain expenses of a non-personal and job-related nature may be incurred by Employee. City agrees to reimburse Employee for reasonable expenses which are authorized by the City budget and which are supported by expense receipts, statements or personal affidavits, and audit thereof in like manner as other demands against the City.

## **12. Official and Professional Development Expenses.**

City shall pay reasonable sums for professional dues and subscriptions for Employee necessary in the judgment of the City Council for Employee's continued participation in associations and organizations, which memberships are necessary and desirable for the continued professional development of Employee and for the good of the City, such as the League of California Cities, International City/County Management Association, American Society for Public Administration, and California City Management Foundation. Notwithstanding the foregoing, the City Council shall have discretion to establish appropriate amounts in the annual City budget for official and professional development expenses and travel costs.

## **13. Indemnification.**

- (a) In accordance with and to the extent provided by California's Tort Claims Act (Government Code Section 825, *et seq.*) and Government Code Sections 995-996.5, the City shall defend and indemnify Employee against and for all losses sustained by Employee in direct consequences of the discharge of Employee's duties on the City's behalf for the period of Employee's employment.
- (b) In the event that Employee shall serve as the chief executive of other City-related legal entities as provided in this Agreement, then City's indemnification of Employee shall be equally applicable to each City-related legal entity as though set forth in an indemnity agreement between Employee and that legal entity. The City hereby guarantees the performance of this indemnity obligation by the City-related legal entity, and shall indemnify and hold Employee harmless against any failure or refusal by City-related legal entity to perform its obligations under this Section 13.
- (c) Without limiting the application of Subsection 13(b), nothing in this agreement shall expand the City's defense and indemnification obligations beyond those provided in the Government Code Tort Claims Act (Government Code Section 825, *et seq.*) and Government Code Sections 995-996.5. Further, in the event City provides funds for legal criminal defense pursuant to this sub-section and terms of the Government Code, Employee shall reimburse the City for such legal criminal defense funds if Employee is convicted of a crime involving an abuse of office or position, as provided by Government Code Sections 53243 – 53243.4.

## **14. Other Terms and Conditions of Employment.**

- (a) The City Council shall conduct an annual performance review of Employee during August of each year according to such criteria as the City Council may designate for that purpose; provided that nothing in this Agreement shall prevent the City Council from also conducting a performance review of Employee at any other time or manner as allowed by law.
- (b) The City Council may from time to time change other terms and conditions of employment relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provision of this Agreement, the Municipal Code, or other applicable law.

- (c) The provisions of the City's Personnel Rules and Regulations ("Rules") shall apply to Employee to the extent they explicitly apply to the position of City Manager, except that if the specific provisions of this Agreement conflict with the Rules, the terms of this Agreement shall prevail. Without limiting the generality of the exception noted in the previous sentence, however, no provision of the Rules or this Agreement shall confer upon Employee a property right in Employee's employment or a right to be discharged only upon cause during Employee's tenure as City Manager. Employee is an at-will employee serving at the pleasure of the City Council and may be dismissed at any time with or without cause, subject only to the provisions of this Agreement.

**15. Removal.**

- (a) Employee is an at-will employee serving at the pleasure of the City Council as provided in Government Code Section 36506 and the Municipal Code. The Parties agree it is in their mutual interest that Employee's removal be done in a businesslike manner.
- (b) Subject to the requirements of the Municipal Code, the City Council may remove Employee from office, with or without cause, by a majority vote of its members at any time except as provided in Subsections 15(d) and (e) below. This Agreement shall terminate upon the effective date of Employee's removal.
- (c) If the City Council removes Employee from office without cause, as defined in Subsection 15(e) below, City shall pay Employee a severance equal to Employee's six (6) months base salary plus benefits and all accrued leave.
- (d) The City Council shall not remove Employee from office without cause during or within a period of ninety (90) days before a City Council election or ninety (90) days after the date when any member of the City Council takes the oath required to commence any term of office. The purpose of this provision is to insure outgoing and incoming Councils do not alter the City Manager position and new City Council have an opportunity to observe the actions and abilities of Employee in the performance of the powers and duties of the office.
- (e) Employee may be removed for cause at any time for cause upon any of the following grounds:
  - 1. Incompetency such as failure to comply with the minimum standards for Employee's position for a significant period of time.
  - 2. Neglect of duty, such as failure to timely perform the duties required of Employee's position.
  - 3. Dishonesty involving employment.
  - 4. Being under the influence of alcohol or intoxicating drugs while on duty.
  - 5. Addiction to or habitual use of alcoholic beverages, narcotics or any habit-forming non-prescription drug which renders it more difficult for Employee to deliver public service.

6. Absence without leave.
7. Conviction of a crime or conduct constituting a violation of state law which renders it more difficult for Employee to deliver public service.
8. Improper or unauthorized use of City property.
9. Employee's failure to resolve a physical or mental infirmity(s) or defect(s) affecting job performance when it is within the capacity of the employee to do so.
10. Acceptance from any source of any emolument, reward, gift or other form of remuneration in addition to Employee's regular compensation, as a personal benefit to employee for actions performed in the normal course of Employee's assigned duties.
11. Falsification of any City report or record or of any report or record required to be, or filed, by Employee.
12. A breach of Employee's employment agreement.

- (f) In the event the City removes Employee from office for cause, Employee shall not be entitled to any severance benefits provided by Subsection 15(c) and shall be entitled to only the compensation accrued up to the date of removal and such other termination benefits and payments as may be required by law.

**16. Resignation or Retirement.**

Employee may resign at any time and agrees to give the City at least 30 days' advance written notice of the effective date of Employee's resignation, unless the Parties otherwise agree in writing. If Employee retires from full time public service with the City, Employee shall use her best efforts to provide City at least three months' advance notice. Employee's actual retirement date will be mutually established. This Agreement shall terminate upon the effective date of Employee's resignation or retirement.

**17. Miscellaneous.**

- (a) This Agreement constitutes the entire agreement between the parties. City and Employee hereby acknowledge that they have neither made nor accepted any other promise or obligation with respect to the subject matter of this Agreement. This Agreement may be amended only by a written amendment signed by Employee, approved by the City Council, and executed on behalf of the City.
- (b) If any provision of any portion of this Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of the Agreement shall be deemed severable and shall not be affected and shall remain in full force and effect.

- (c) Notice to City shall be given in writing, either by personal service or by registered or certified mail, postage prepaid, addressed to City as follows:

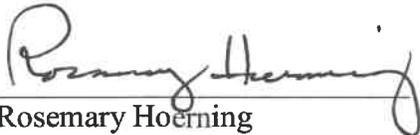
Mayor  
City of Upland  
460 N. Euclid Avenue  
Upland, CA. 91786

Notice to Employee shall be given in a like manner, and, if mailed, shall be addressed to Employee at the address then shown in City's personnel records. For the purpose of determining compliance with any time limit stated in this Agreement, a notice shall be deemed to have been duly given (a) on the date of delivery, if served personally on the party to whom notice is to be given, or (b) on the second (2nd) calendar day after mailing, if mailed in the manner provided in this section to the party to whom notice is to be given. Notwithstanding the foregoing, this Agreement shall automatically terminate on the death or permanent disability of Employee and Employee agrees to give City not less than 30 calendar days' written notice of her resignation. The City also agrees to provide Employee written notice of intent to terminate this Agreement not less than 30 calendar days of the effective date of her termination.

- (d) A waiver of any of the terms and conditions of this Agreement shall not be construed as a general waiver by the City and City shall be free to enforce any term or condition of this Agreement with or without notice to Employee notwithstanding any prior waiver of that term or condition.
- (e) This Agreement shall be construed in accordance with the laws of the State of California, and the Parties agree that venue shall be in San Bernardino County, California.

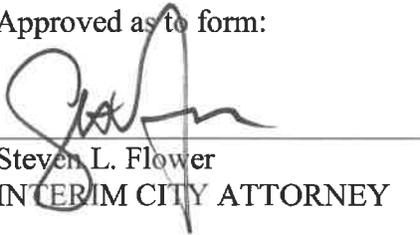
IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

**EMPLOYEE**



Rosemary Hoerning  
CITY MANAGER

Approved as to form:



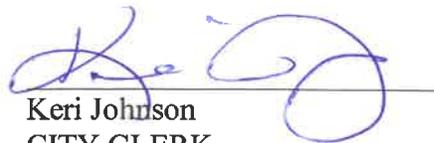
Steven L. Flower  
INTERIM CITY ATTORNEY

**CITY OF UPLAND**



Debbie Stone  
MAYOR

ATTEST:



Keri Johnson  
CITY CLERK

**Exhibit A  
To City Manager Employment Agreement**

# ICMA CODE OF ETHICS

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The mission of ICMA is to create excellence in local governance by developing and fostering professional local government management worldwide. To further this mission, certain principles, as enforced by the Rules of Procedure, shall govern the conduct of every member of ICMA, who shall:

1. We believe professional management is essential to efficient and democratic local government by elected officials.
2. Affirm the dignity and worth of local government services and maintain a deep sense of social responsibility as a trusted public servant.
3. Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the member may merit the respect and confidence of the elected officials, of other officials and employees, and of the public.
4. Serve the best interests of the people.
5. Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and implement local government policies adopted by elected officials.
6. Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with the members.
7. Refrain from all political activities which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body.
8. Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.
9. Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.
10. Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.
11. Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions pertaining to appointments, pay adjustments, promotions, and discipline.
12. Public office is a public trust. A member shall not leverage his or her position for personal gain or benefit.

*Adopted by the ICMA Executive Board in 1924, and most recently revised by the membership in October 2019.*