**CITY OF UPLANDAGREEMENT FOR**
**THE OFFICE OF CITY MANAGER**

THIS AGREEMENT, made and entered into this 11th day of August, 2014 by and between the CITY OF UPLAND, State of California, a Municipal corporation, hereinafter referred to as "the City" and Rod B. Butler, hereinafter referred to as "Employee."

## RECITALS:

WHEREAS, the City desires to retain the services of Employee as City Manager of the City of Upland; and

WHEREAS, the City Council of the City of Upland desires to provide certain benefits, establish certain conditions of employment and to establish working conditions for Employee; and

WHEREAS, Employee desires to provide said services as City Manager to the City under the terms and conditions hereinafter set forth; and

WHEREAS, Employee represents that he is willing and qualified to provide such services to the City;

WHEREFORE, in consideration of the respective mutual covenants and promises hereinafter contained and made subject to all of the terms and conditions hereof, the parties hereto do hereby agree as follows:

## 1. DUTIES

(a) The City hereby agrees to retain the services of Employee as City Manager to perform the functions and duties specified in Chapter 2.04 of the Upland Municipal Code and to perform other legally permissible and proper duties and functions as designated by the City Council from time to time.

(b) Employee shall prepare and implement an annual budget and an annual plan of Organizational Goals and Objectives.

(c) Employee may exercise only those powers expressly granted to him as City Manager through the Upland Municipal Code, any Resolution, or any minute action of the Council.

(d) Employee will conscientiously and loyally perform all of the duties, expressed or implied, required of him by the terms of this Agreement, the Upland Municipal Code, and the duties that may be delegated to him by the Council. Employee understands and agrees that he shall:

(i) Devote his time, ability and attention to matters of City and the City Council of not less than the regular business hours of the City.

(ii) Perform his duties within the budget adopted by the Council.

(e) The City Manager will not, without the prior consent of the Council, do or agree to do, any of the following acts:

(i) Borrow any amount of money on behalf of the City;

(ii) Enter into any contract on behalf of the City in excess of the limits established by ordinance or resolution;

(iii) Expend any amount in excess of the amounts budgeted for expenditure by the Council;

(iv) Sell any assets of the City except in strict accordance with the City's adopted ordinance, resolution or policy on disposition of surplus property.

## 2. TERMS OF AGREEMENT

(a) Other than part-time employment subject to the prior approval of the City Council, Employee agrees to remain in the exclusive employment of the City and not to become otherwise employed while this Agreement is in effect. Employee agrees that any other employment engaged in by him shall not interfere with the performance of his duties under this Agreement.

(b) The term of this Agreement shall commence on September 29, 2014, and remain in effect for a term of three (3) years, ending on September 28, 2017. The term of the Agreement may be extended only upon the mutual written agreement of both parties. If either of the two parties desire to terminate Employee's employment on the termination date, they must notify the other party in writing of their proposal no later than twelve months (12) months prior to the Agreement's scheduled termination. If either party indicates in writing that it desires to terminate the Agreement on the initial termination date, the Agreement will expire on the initial termination date. If neither party notifies the other in writing at least twelve (12) months prior to the initial termination date of an intent to terminate the Agreement at the completion of the initial three year term, the term of the Agreement will automatically be extended for an additional two year term to September 28, 2019.

(c) This Agreement in its entirety may be renegotiated at any time so long as City and Employee desire and mutually agree to such terms in writing.

(d) The City Council shall conduct an annual performance evaluation of Employee in January of each year during the term of this Agreement, starting in January 2016. The annual performance evaluation shall include goals set forth by the City Council,

and the City Council and City Manager shall further establish a relative priority among those various goals and objectives, said goals to be reduced in writing. These objectives shall generally be attainable within the time limitations as specified and the annual operation and capital budgets and appropriations provided. The failure of City Council to define such goals and performance objectives, and/or to reduce them to writing shall not affect the parties' rights to terminate this Agreement. In the event the performance evaluation results warrant same, there shall be agendized for discussion as provided for by law any pay or benefit enhancements the City Council may feel is warranted. Any revisions to compensation, term or benefits shall be required to be considered and approved only at an open and public meeting, and shall include any extensions of this Agreement that the City Council may feel is warranted. Future annual performance evaluations shall be measured against Employee's achievement of the goals set forth in the previous year's annual performance evaluation. In addition to the required annual performance evaluations, the City Council may schedule performance evaluations of Employee as they may deem necessary.

## 3. TERMINATION

(a) This Agreement may be terminated by the City Council for cause or misconduct by Employee. After giving notice to Employee that this Agreement is terminated for cause or misconduct, the City shall have no obligation to continue the employment of Employee or to provide compensation or benefits. For purposes of termination, "cause" is defined as willful breach of duty by Employee in the course of employment or habitual neglect of duty by Employee in the course of employment or continued incapacity of Employee to perform the duties of employment as City Manager.

(b) This Agreement may be terminated by the City Council without cause at any time. If Employee is terminated by the City Council without cause, then Employee is entitled to severance pay and benefits as follows: full pay and benefits and CalPERS retirement service credit accrual for eight (8) months or through the end of the original term of the contract, whichever is shorter. However, for each full year of service as City Manager of City, the amount of severance pay and benefits shall be increased by one full month, capped at a maximum twelve (12) months. In no event shall Employee ever receive more severance pay and benefits than the number of months then remaining on Employee's Agreement term.

(c) In the event the Agreement is terminated by the City Council without cause, Employee may elect whether to receive severance pay in a lump sum or continue to be paid on the normal payroll schedule until all severance pay has been provided.

(d) Employee may voluntarily terminate this Agreement any time upon thirty (30) days written notice to the City Council and shall not be entitled to any severance pay or benefits upon such voluntary termination.

(e) Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of City Council to terminate the services of Employee at any time, at the sole discretion of City Council, in accordance with the Upland Municipal Code, as the same may be amended from time to time, and in accord with the provisions contained herein.

## 4. COMPENSATION

(a) Employee shall receive, as salary for his performance of the duties of City Manager, the sum of $189,629.00 per year.

## 5. EMPLOYEE BENEFITS

(a) Except as otherwise provided herein, Employee shall be granted the same package of benefits as is being provided to City's Executive Management employees on the effective date of this Agreement. All future changes to the package of benefits provided to City's Executive Management employees shall apply to the level of benefits for Employee unless the Parties so agree. All such benefits, and the benefits described hereunder shall be deemed "fringe benefits" herein. This includes the City's continued participation and contributions of City obligations to the Public Employees Retirement System (PERS), group health, dental and related insurance programs (family coverage) in accordance with the PERS contract with City. The Employee shall pay the employee portion of the contribution to PERS attributable to his employment with the City.

(b) City agrees to provide Employee with an automobile allowance in the amount of Three Hundred Fifty Dollars ($350.00) per month for business. Such allowance shall be paid together with customary monthly payroll practices.

(c) Employee shall be entitled to accrue, and have credited to his personal account, vacation, administrative leave and sick leave at the same rate as Executive Management employees of the City are being provided from February 11, 2013. Employee shall be credited with a sick leave bank of forty (40) hours upon commencement of employment. Any part of this leave bank amount which is not used during the first year of this Agreement shall expire and there shall be no cash out value for any such unused sick leave. Employee shall also be entitled to holidays, Leave Without Pay and Bereavement Leave on the same basis as Executive Management employees of City are receiving from February 11, 2013. Any future change to the holiday or leave benefits provided to City's Executive Management employees shall apply to the level of holiday or leave benefits for Employee unless the Parties so agree.

(d) Employee waives any right to Retiree Health Insurance Reimbursement and Retiree Health Savings Account benefits for which he would otherwise be eligible pursuant to Articles 7 and 8 of the City of Upland Executive

Management Employees Compensation and Benefit Plan last updated February 11, 2013.

(e) City shall bear the full cost of any fidelity or other bonds required of Employee relating to his service as City Manager under any law or ordinance.

## 6. MEMBERSHIP AND SUBSCRIPTIONS.

(a) City agrees to budget and pay professional dues and subscriptions on behalf of Employee which are reasonably necessary for Employee's continued participation in national, regional, state or local associations and organizations necessary and desirable for Employee's continued professional participation, growth, and advancement or for the good of City including the International City Management Association and League of California Cities. Furthermore, City shall budget and pay for the professional dues and subscriptions to such additional organizations as approved by the City Council.

(b) City agrees to budget and pay the travel and subsistence expenses of Employee for official travel, meetings, and occasions reasonably adequate to continue the professional development of Employee and reasonably pursued necessary official and other functions for City, including, but not limited to, the annual conference of the International City Management Association, the League of California Cities, and other such national, regional, state and local government groups and committees of which Employee serves as a member, as approved by City Council.

(c) City agrees to budget and pay for an annual training program to enhance Employee's development as City Manager.

(d) Employee shall be subject to the City's Travel and Meeting Reimbursement Policy.

## 7. INDEMNIFICATION

City shall defend, save harmless, and indemnify Employee against any claim for negligent tort or omissions, professional liability claim or demand, or other legal action, whether groundless or otherwise, arising out of an alleged negligent act or omission occurring in the performance of his duties as Employee in accordance with the provisions of California Government Code Section 825. Said indemnification shall extend beyond termination of employment to provide full and complete protection to Employee by City for any acts undertaken or committed in his capacity as Employee, regardless of whether the notice of filing of a lawsuit for such tort, claim, demand, or other legal action occurs during or following employment with City.

## 8. NOTICES

Any notices to be given hereunder by either party to the other shall be in writing and may

be transmitted by personal delivery or by mail, postage prepaid. Mailed notices shall be addressed to the parties as follows:

| If sent by Employee to City: | If sent to Employee by City: |
| --- | --- |
| City Clerk<br>City of Upland<br>460 N. Euclid Ave.<br>Upland, CA 91786 | Rod B. Butler |

Notices delivered personally shall be deemed communicated as of the date of actual receipt; mailed notices shall be deemed communicated as of the date of postmark.

## 9. ATTORNEYS' FEES

In the event any legal proceeding is instituted to enforce any term or provision of the Agreement, the prevailing party in said legal proceeding shall be entitled to recover reasonable attorneys' fees and costs from the opposing party in an amount determined by the Court to be reasonable not to exceed the Upland City Attorney's current hourly rate.

## 10. REIMBURSEMENT TO CITY REQUIRED

Notwithstanding the foregoing, the following provisions requiring reimbursement for certain compensation and/or indemnification provided to Employee by the City apply:

(a) Paid Leave:

Pursuant to Government Code section 53243, in the event that Employee is convicted of a crime involving the abuse of his office or position, as defined by Government Code section 53243.4, with the City, any paid leave salary provided by the City for the time period in which the Employee is under investigation for such crimes shall be fully reimbursed by Employee to the City.

(b) Legal Defense:

Pursuant to Government Code section 53243.1, in the event that Employee is convicted of a crime involving abuse of his office or position, as defined by Government Code section 53243.4, Employee shall fully reimburse the City for all the costs of his legal criminal defense if a defense has been provided at City expense.

(c) Severance:

Pursuant to Government Code section 53243.2, in the event that Employee is convicted of a crime involving abuse of his office or position, as defined by Government Code section 53243.4, Employee shall fully reimburse the City for

any cash settlement, including but not limited to severance pay, paid to Employee related to his termination under this Agreement.

## 11. ENTIRE AGREEMENT

This Agreement supersedes any and all other agreements whether oral or written, between the parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to said matter, and each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that any other agreement or modification of this Agreement shall be effective only if executed in writing and signed by both City and Employee.

## 12. VALIDITY

The validity in whole or in part of any provision of this Agreement shall not void or affect the validity of any of the other provisions of this Agreement.

## 13. AGREEMENT VOLUNTARY AND KNOWING

Employee agrees and acknowledges that he has had an opportunity to consult legal counsel in regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representation or promises other than those contained in this Agreement. Employee agrees that this Agreement should be interpreted as if mutually prepared and without the same being construed for or against any party.

## 14. GOVERNING LAW

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

## 15. EFFECT OF WAIVER

The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one

time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

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

**CITY OF UPLAND:**

RAY MUSSER, MAYOR

**EMPLOYEE:**

ROD B. BUTLER

**ATTEST:**

CITY CLERK, CITY OF UPLAND
A Municipal Corporation of the State of California

STEPHANIE MENDENHALL
CITY CLERK, CITY OF UPLAND

**APPROVED AS TO FORM:**

KIMBERLY HALL BARLOW
CITY ATTORNEY

AMENDMENT TO
AGREEMENT FOR THE OFFICE OF CITY MANAGER

THIS AMENDMENT TO THE AGREEMENT FOR THE OFFICE OF CITY MANAGER ("Amendment") is made as of this 8th day of September, 2014 by and between the CITY OF UPLAND, State of California, a Municipal Corporation, hereinafter referred to as "City", and ROD B. BUTLER, hereinafter referred to as "Employee".

RECITALS

WHEREAS, on or about August 11, 2014, City and Employee entered into City of Upland Agreement for The Office of City Manager ("Agreement") for the employment of Employee to perform the functions and duties of City Manager; and

WHEREAS, City and Employee wish to enter into this Amendment to revise the commencement date of the Agreement.

NOW THEREFORE, City and Employee agree as follows:

a) TERM OF AGREEMENT. Section 2 (b) of the Agreement is hereby amended to read as follows:

> The term of this Agreement shall commence on September 22, 2014, and remain in effect for a term of three (3) years, ending on September 21, 2017. The term of the Agreement may be extended only upon the mutual written agreement of both parties. If either of the two parties desire to terminate Employee's employment on the termination date, they must notify the other party in writing of their proposal no later than twelve months (12) months prior to the Agreement's scheduled termination. If either party indicates in writing that it desires to terminate the Agreement on the initial termination date, the Agreement will expire on the initial termination date. If neither party notifies the other in writing at least twelve (12) months prior to the initial termination date of an intent to terminate the Agreement at the completion of the initial three year term, the term of the Agreement will automatically be extended for an additional two year term to September 21, 2019.

b) REMAINING PROVISIONS OF AGREEMENT. All other terms, conditions, and provisions of the Agreement, to the extent not modified with this Amendment, shall remain in full force and effect.

[SIGNATURE ON NEXT PAGE]

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

**CITY OF UPLAND:**

RAY MUSSER, MAYOR

**EMPLOYEE:**

ROD B. BUTLER

**ATTEST:**

CITY CLERK, CITY OF UPLAND
A Municipal Corporation of the State of California

STEPHANIE MENDENHALL
CITY CLERK, CITY OF UPLAND

**APPROVED AS TO FORM:**

KIMBERLY HALL BARLOW
CITY ATTORNEY