



**UPLAND CITY COUNCIL
AND SUCCESSOR AGENCY TO THE UPLAND
COMMUNITY REDEVELOPMENT AGENCY**

AGENDA

**March 23, 2015
City Council Chambers**

**RAY MUSSER, MAYOR
GLENN BOZAR, MAYOR PRO TEM
GINO L. FILIPPI, COUNCILMEMBER
DEBBIE STONE, COUNCILMEMBER
CAROL TIMM, COUNCILMEMBER**

**ROD BUTLER, CITY MANAGER
RICHARD L. ADAMS II, INTERIM CITY ATTORNEY**

*** * * * ***
5:30 PM - Closed Session

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

This is a time for any citizen to comment on item listed on the closed session agenda only. Anyone wishing to address the legislative body is requested to submit a speaker card to the City Clerk at or prior to speaking. The speakers are requested to keep their comments to no more than four (4) minutes. The use of visual aids will be included in the time limit.

4. CLOSED SESSION

- A. GOVERNMENT CODE SECTION 54957.6 - CONFERENCE WITH LABOR NEGOTIATORS

Agency designated representatives: City Manager Butler and Human Resources Manager Tanya Bragg

Employee organization: Upland Mid-Management Association, Upland General Employees Association, Upland Police

Officers Association, Upland Police Management Association, Upland Captains Association, Upland Fire Fighters Association, and Upland Fire Management Association

B. GOVERNMENT CODE SECTION 54956.9 - CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

(Paragraph (1) of Subdivision (d) of Section 54956.9)

Case Name: Jacob Katoa v. City of Upland, et al (Case No. ED CV13-01721 JAK (DTBx))

C. GOVERNMENT CODE SECTION 54956.9 - CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

(Paragraph (2) Subdivision (d) Section 54956.9)

Case Name: Ontario Airport TCE Plume, Regional Water Quality Control Board "Draft" Clean-up and Abatement

D. GOVERNMENT CODE SECTION 54956.9 - CONFERENCE WITH LEGAL COUNSEL - INITIATION OF LITIGATION

Pursuant to paragraph (4) of subdivision (d) of Government Code §54956.9: one potential case

* * * * *

7:00 PM

5. INVOCATION

Pastor James Pike, Grace Lutheran Church

6. PLEDGE OF ALLEGIANCE

7. PRESENTATIONS

Presentation by Fire Chief Mayhew to the 2014 Firefighter of the Year

Homeless Taskforce Update presented by Doug Story

Investment presentation for the City of Upland for the period ending January 31, 2015

8. CITY ATTORNEY

9. ORAL COMMUNICATIONS

This is a time for any citizen to comment on any item listed or 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 four (4) minutes. Speakers will be given five (5) minutes during public hearings. 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.

10. 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. WAIVE READING OF ORDINANCES AND RESOLUTIONS

Approve the reading of titles of all ordinances and resolutions and declare that said titles which appear on the public agenda shall be determined to have been read by title and further reading waived. Staff will prepare summaries of all ordinances considered by the City Council and publish the summaries at least five days prior to adoptions.

B. APPROVAL OF WARRANTS AND PAYROLL REGISTERS

Approve Warrant Registers dated March 11, 2015 in the amount of \$1,070,630.90; and Payroll Registers dated March 19, 2015 in the amounts of \$593,978.91 and \$3,469.21. (Staff Person: Stephanie Mendenhall)

C. APPROVAL OF MINUTES

Approve the Regular Meeting Minutes of March 9, 2015. (Staff Person: Stephanie Mendenhall)

D. 2015 4th OF JULY FIREWORKS SPECTACULAR

Direct the City Manager to execute an agreement with Pyro Spectaculars for pyrotechnic services for the annual 4th of July fireworks show. (Staff Person: Roberta Knighten)

E. BOARD OF DIRECTORS FOR WEST END CONSOLIDATED WATER COMPANY

Appoint Glenn Bozar as proxy to vote all shares at the annual stockholder's meeting of the West End Consolidated Water Company for the slate of directors. (Staff Person: Rosemary Hoerning)

F. EMERGENCY REPLACEMENT OF PLANT NO. 4 SWITCHGEAR

Receive and file status update. (Staff Person: Rosemary Hoerning)

11. PUBLIC HEARINGS

A. MUNICIPAL CODE AMENDMENT RELATIVE TO DELINQUENT TRASH COLLECTION FEES

The City Council will consider establishing fees in connection with trash collection services charges. (Staff Person: Christa Buhagiar)

Recommendation:

- 1) Staff presentation
- 2) Hold Public Hearing
- 3) Close Public Hearing
- 4) Hold first reading by number and title only and introduce an Ordinance electing to have delinquent trash collection fees collected on the tax roll and amending Chapter 13.34 and Section 13.28.170 of Chapter 13.28 of Title 13 of the Upland Municipal Code relating to liens imposed for unpaid trash collection services and waive further reading of the Ordinance
- 5) Adopt a Resolution establishing fees in connection with the unpaid trash collection service charges

12. COUNCIL COMMITTEE REPORTS

- A. SPECIAL FINANCE AND ECONOMIC DEVELOPMENT COMMITTEE MEETING, MARCH 12, 2015
 - 1) **Authorization to enter into a contract with Tyler Technologies, Inc. to furnish and deliver an Enterprise Resource Planning System**, the majority of the Committee recommends the City Council enter into a three-year contract with Tyler Technologies, Inc. to furnish and deliver software, hardware, and services for an Enterprise Resource Planning Software System in an amount not to exceed \$876,738.

13. BUSINESS ITEMS

- A. PROFESSIONAL SERVICE AGREEMENTS WITH HINDELITER DE LLAMAS AND ASSOCIATES AND HDL COREN & CONE FOR SALES TAX AND PROPERTY TAX AUDIT AND INFORMATION SERVICES

Approve the professional services agreement with Hinderliter de Llamas and Associates to provide the City with Sales Tax Audit and Information Services; and approve the professional services agreement with HdL Coren & Cone to provide the City with Property Tax Audit and Information Services. (Staff Person: Christa Buhagiar)

- B. ECONOMIC REFUNDING OF THE UPLAND COMMUNITY REDEVELOPMENT AGENCY UPLAND COMMUNITY REDEVELOPMENT PROJECT TAX ALLOCATION REFUNDED BOND ISSUE OF 2006 [PARTIAL REFUNDING]

Successor Agency Board adopt a Resolution authorizing the issuance and sale of Tax Allocation Refunding Bonds and approving the Form of an Indenture of Trust and authorizing certain other actions in connection therewith. (Staff Person: Christa Buhagiar)

- C. ECONOMIC REFUNDING OF THE CITY OF UPLAND COMMUNITY FACILITIES DISTRICT NO. 2003-2 (THE COLONIES AT SAN ANTONIO IMPROVEMENT AREA NO. 2) SPECIAL TAX BONDS, SERIES B OF 2004

Direct staff to take those actions necessary to refund the above referenced bonds. (Staff Person: Christa Buhagiar)

- D. CONSIDERATION OF COST REDUCTION OPTIONS AND REVENUE GENERATING IDEAS FOR THE UPLAND ANIMAL SERVICES PROGRAM

Direct staff to issue a formal Request for Proposal to provide animal shelter and animal control services; provide direction to staff on the level of services to be provided and the goals bidders will be evaluated on; and give guidance as to the criteria for evaluating the ability of proposers to meet the terms of the contract, such as whether a requirement that proposers have previous experience providing both animal shelter and animal control functions for a municipality. (Staff Person: Roberta Knighten)

- E. UPDATE ON UPLAND POLICE OFFICER HIRING AND RETENTION

14. CITY MANAGER

- A. FINANCIAL REPORT FOR THE MONTH ENDING FEBRUARY 2015

Receive and file the Financial Report for the Month of February 2015. (Staff Person: Christa Buhagiar)

15. COUNCIL COMMUNICATIONS

16. ADJOURNMENT

The next regularly scheduled City Council meeting is Monday, April 13, 2015.

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, 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 March 19, 2015 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).

City of Upland

Period Ending
January 31, 2015



SECTION 1

Economic Update

SECTION 2

Account Profile

SECTION 3

Supplemental Information



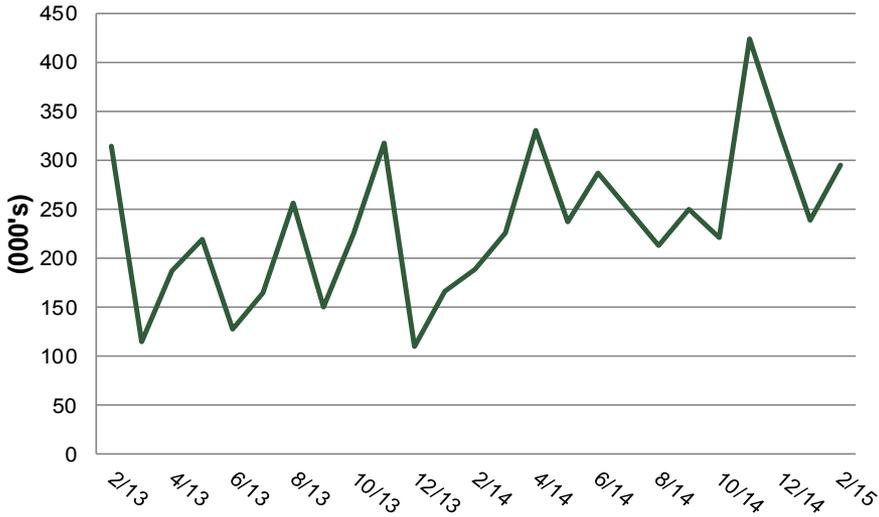
SECTION 1

Economic Update



Employment

Nonfarm Payroll (000's)



Unemployment Rate



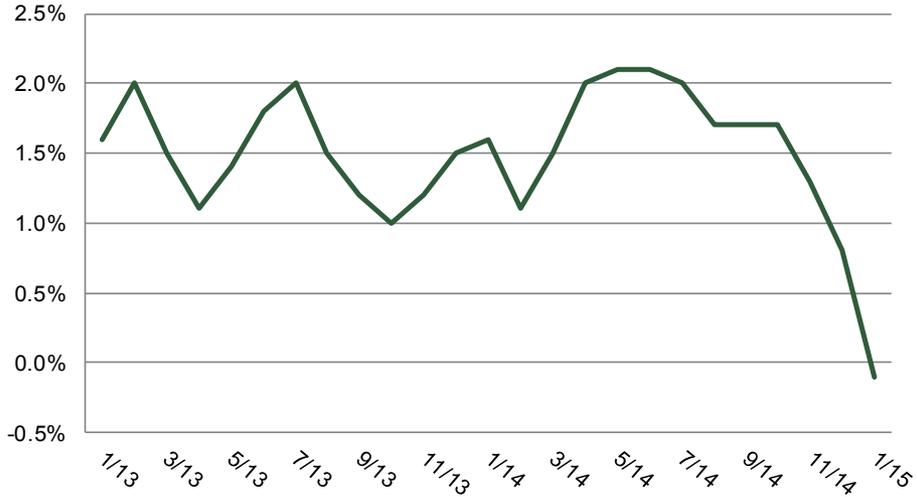
Source: U.S. Department of Labor

Nonfarm payrolls rose by 295,000 in February, exceeding the consensus forecast of 230,000. January and December payrolls were revised down a net 18,000. Private payrolls rose by 288,000 in February, while government jobs rose by 7,000. The unemployment rate declined to 5.5% from 5.7%. A broader measure of unemployment called the U-6, which includes those whom are marginally attached to the labor force and employed part time for economic reasons, declined to 11.0% from 11.3%. However, the labor participation rate remains low and edged down to 62.8% in February from 62.9%. Wages also inched up just 0.1% (below expectations), following a 0.5% increase in January.

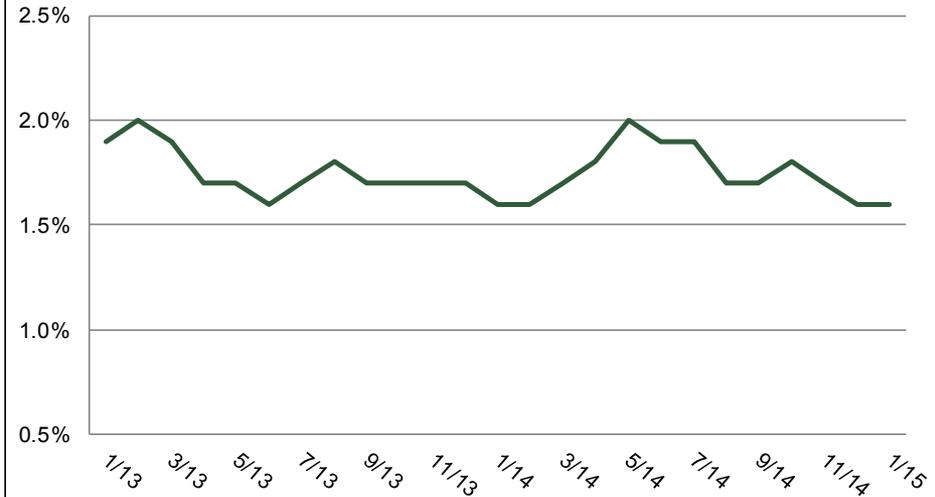


Inflation

CPI Y-O-Y % Change



Core CPI Y-O-Y % Change

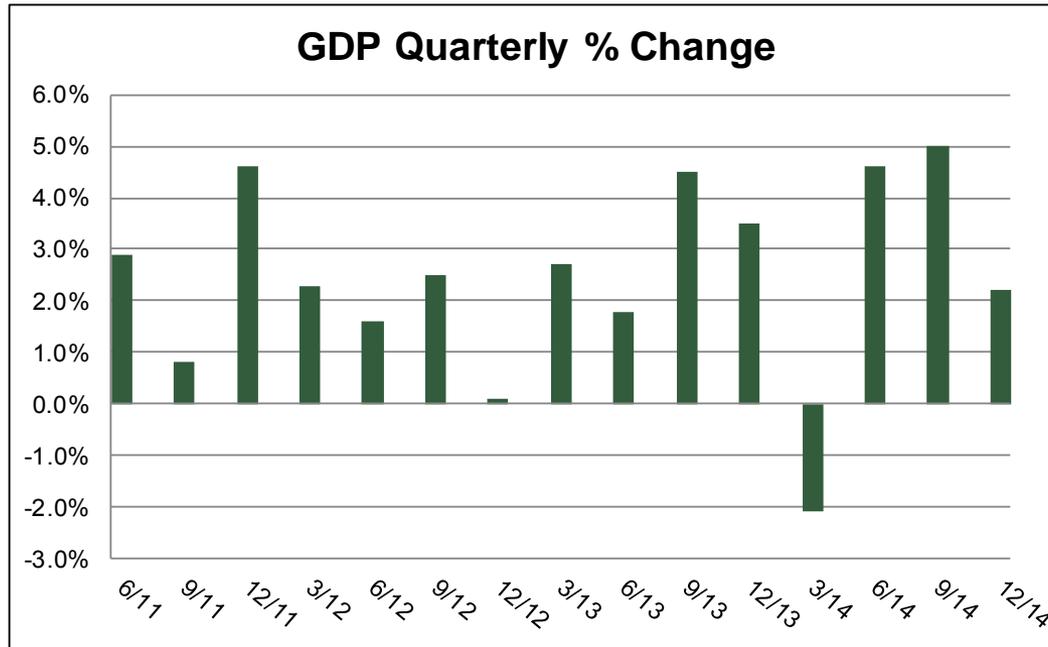


Source: US Department of Labor

In January, overall Consumer Price Index (CPI) inflation declined to -0.1% on a year-over-year basis from 0.7% in December. Headline inflation has fallen sharply over the past few months due to a precipitous decline in energy prices. The year-over-year Core CPI (CPI less food and energy) was unchanged at 1.6% in January.



Gross Domestic Product



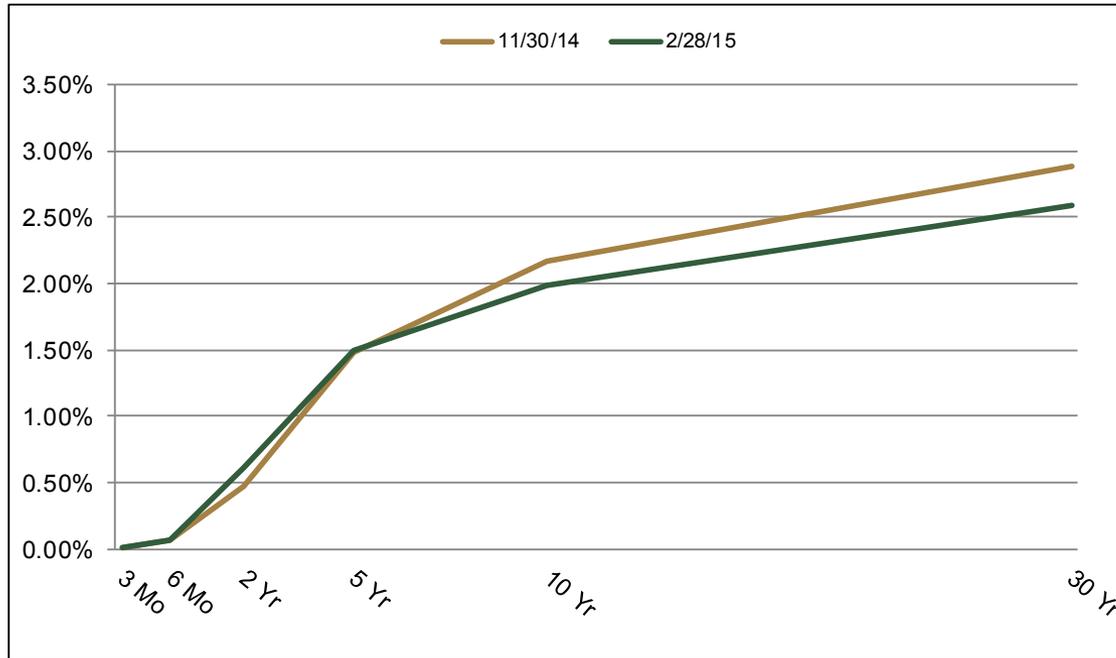
Source: U.S. Department of Commerce

Real annualized GDP growth for the fourth quarter of 2014 was revised down to 2.2% from the advance estimate of 2.6%, after rising 5.0% in the third quarter. The fourth quarter consensus estimate was 2.0%. The revision to fourth quarter growth was largely due to downward adjustments to inventory investment and net exports.



Yield Curves

November 30, 2014 and February 28, 2015



Source: Bloomberg

During the past three months, the yield curve flattened. Concerns about weak global economic growth kept downward pressure on longer US Treasury yields, even as the Fed signaled the possibility of a fed funds rate hike this year.



SECTION 2

Account Profile

Investment Objectives

The investment objectives of the City of Upland are first, to provide safety of principal to ensure the preservation of capital in the overall portfolio; second, to provide sufficient liquidity to meet all operating requirements; and third, to earn a commensurate rate of return consistent with the constraints imposed by the safety and liquidity objectives.

Chandler Asset Management Performance Objectives

The performance objective for the portfolio is to earn a total rate of return over a market cycle that equals or exceeds the market index, the Bank of America Merrill Lynch Index of 1-3 Year Treasury/Agency securities.

Strategy

In order to achieve this objective, the portfolio invests in high quality fixed income securities consistent with the investment policy and California Government Code.



Portfolio Characteristics

City of Upland

	01/31/2015		10/31/2014
	Benchmark*	Portfolio	Portfolio
Average Maturity (yrs)	1.82	1.67	1.58
Modified Duration	1.79	1.67	1.52
Average Purchase Yield	n/a	0.61 %	0.50 %
Average Market Yield	0.45 %	0.53 %	0.54 %
Average Quality**	AAA	AA/Aa1	AA/Aa1
Total Market Value		10,047,785	10,012,308

* 1-3 Yr Treasury Agency

** Benchmark is a blended rating of S&P, Moody's, and Fitch. Portfolio is S&P and Moody's respectively.

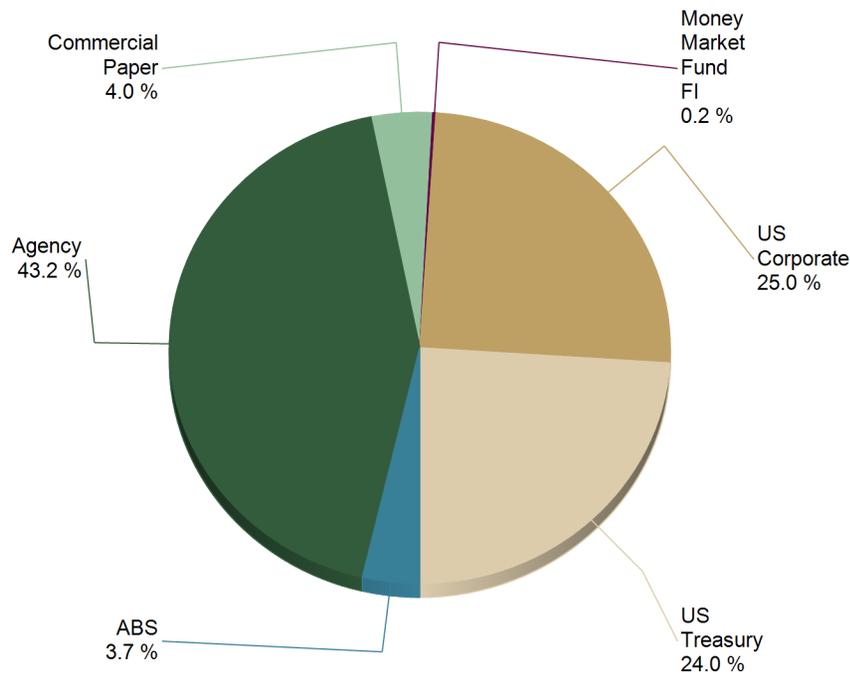
Multiple securities were purchased across the Treasury, Agency, and Asset Backed sector to keep the portfolio structure in line with Chandler objectives. The purchased securities ranged in maturity from September 2017 to April 2018. Three securities were sold and two matured to facilitate the additions to the portfolio.



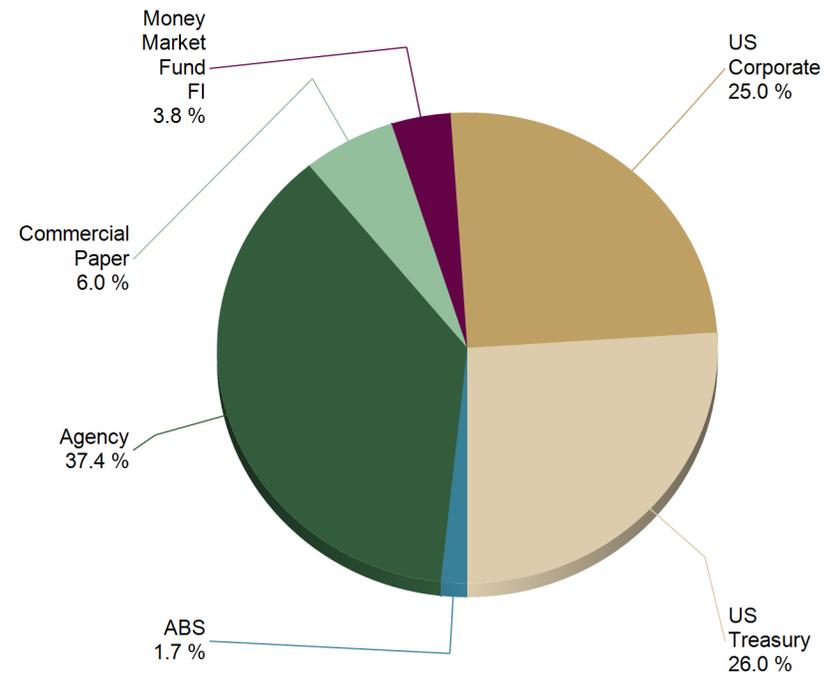
Sector Distribution

City of Upland

January 31, 2015



October 31, 2014



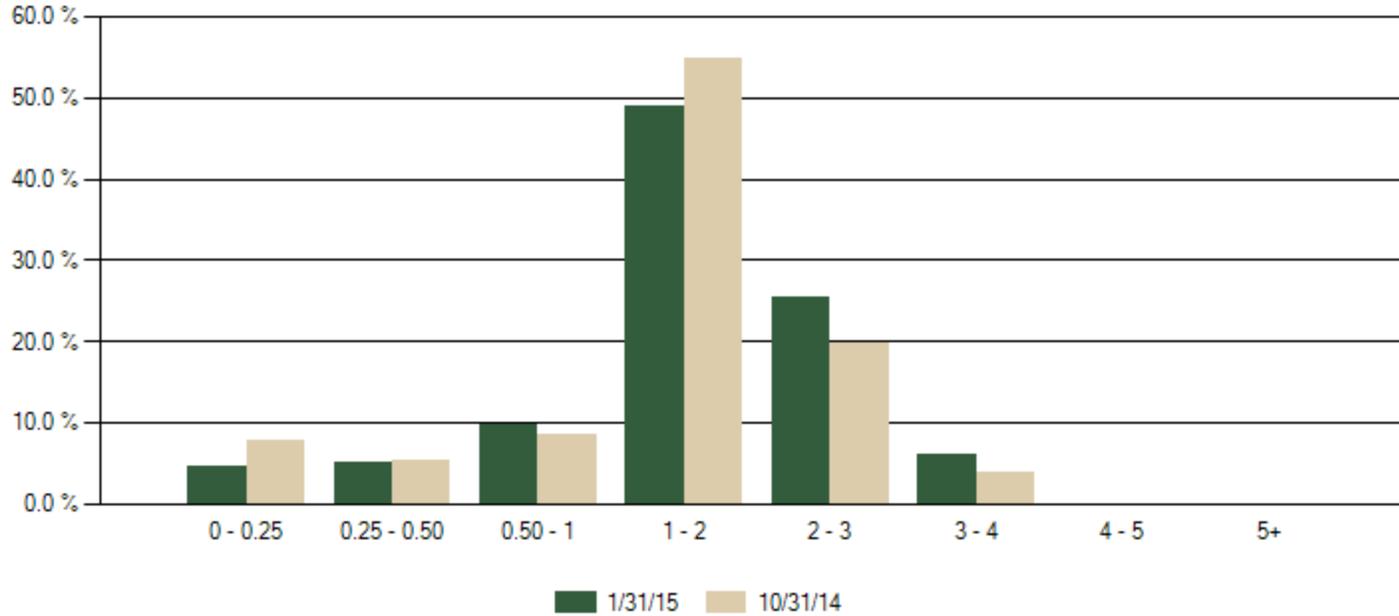
The sector allocation of the portfolio changed moderately during the reporting period. Notably the Agency and Asset Backed allocation each increased by 5.8% and 2.0%, respectively, offset by the 2.0% decrease in both the Treasury and Commercial Paper allocation.



Duration Distribution

City of Upland

January 31, 2015 vs. October 31, 2014



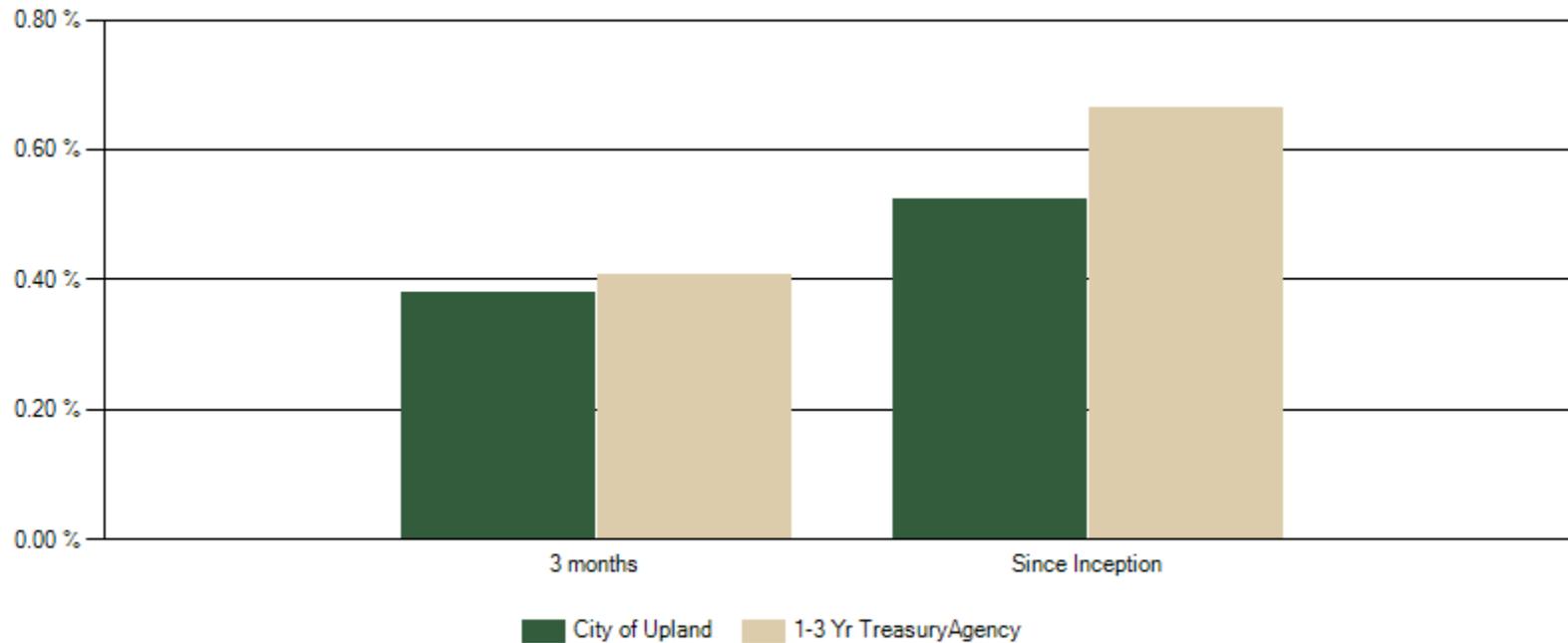
	0 - 0.25	0.25 - 0.50	0.50 - 1	1 - 2	2 - 3	3 - 4	4 - 5	5+
1/31/15	4.5 %	5.2 %	9.7 %	49.0 %	25.3 %	6.2 %	0.0 %	0.0 %
10/31/14	7.9 %	5.3 %	8.5 %	54.7 %	19.7 %	3.8 %	0.0 %	0.0 %

The duration of the portfolio extended to 1.67 versus 1.52 at the end of the prior reporting period. Interest rate volatility is likely to increase in 2015 as the Federal Reserve considers the first change to traditional monetary policy, likely towards the second half of 2015. We anticipate keeping the duration of the portfolio close to the benchmark in the coming quarter.



Investment Performance

City of Upland
Period Ending
January 31, 2015
 Total Rate of Return
 Since Inception
 May 31, 2014



	Latest 3 months	Since Inception
City of Upland	0.38 %	0.53 %
1-3 Yr TreasuryAgency	0.41 %	0.67 %

Total rate of return: A measure of a portfolio's performance over time. It is the internal rate of return, which equates the beginning value of the portfolio with the ending value; it includes interest earnings, realized and unrealized gains and losses in the portfolio.



SECTION 3

Supplemental Information



City of Upland

January 31, 2015

COMPLIANCE WITH INVESTMENT POLICY

Assets managed by Chandler Asset Management are in full compliance with State law and with the City's investment policy.

Category	Standard	Comment
Treasury Issues	10% max for zero coupon	Complies
Agency Issues	40% max per issuer; 50% max callables; FFCB, FHLB, FHLMC, FNMA, TVA, SBA	Complies
Municipal Issues	"A" rated; 5% max per issuer	Complies
Medium Term Notes	"A" rated; 30% max; 5% max per issuer	Complies
Banker's Acceptances	"A-1" rated; 40% max; 5% max per issuer; 180 days max maturity	Complies
Commercial Paper	"A-1" rated/ "A" rated issuer; 15% max; 5% max per issuer; 270 days max maturity	Complies
Certificates of Deposit (includes NCDs)	30% max; 5% max per issuer	Complies
Asset-Backed and Mortgage-Backed Securities (ABS/MBS/CMOs)	"AA" rated/ "A" rated issuer; 20% max; 5% max per non-agency or non-government issuer	Complies
Money Market Mutual Funds	"AAA" rated or SEC registered adviser; 20% max; 10% max per fund	Complies
LAIF	\$50 million limit	Complies
Concentration Limits	50% to mature in 3 years or less; 30% in 2 years or less; 20% in 1 year or less	Complies
Maximum Maturity	5 years	Complies

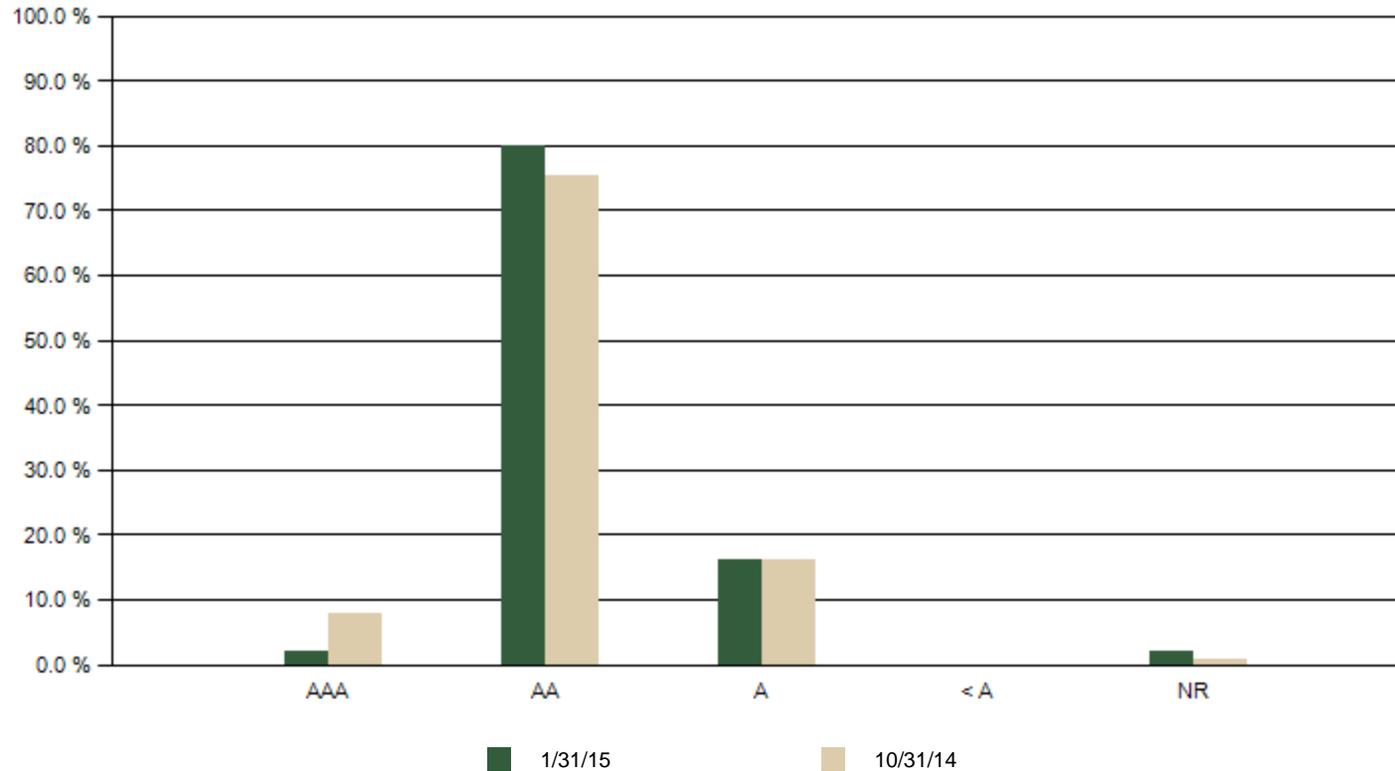
Issue Name	Investment Type	% Portfolio
Government of United States	US Treasury	23.97 %
Federal Farm Credit Bank	Agency	14.24 %
Federal Home Loan Mortgage Corp	Agency	11.99 %
Federal National Mortgage Association	Agency	8.97 %
Federal Home Loan Bank	Agency	7.98 %
Bank of New York	US Corporate	2.22 %
Bank of Tokyo-Mit UFJ	Commercial Paper	1.99 %
PNC Financial Services Group	Commercial Paper	1.99 %
Honda ABS	ABS	1.79 %
Caterpillar Inc	US Corporate	1.35 %
Apple Inc	US Corporate	1.29 %
General Electric Co	US Corporate	1.29 %
Deere & Company	US Corporate	1.28 %
Berkshire Hathaway	US Corporate	1.27 %
US Bancorp	US Corporate	1.27 %
Cisco Systems	US Corporate	1.26 %
Ebay	US Corporate	1.26 %
Pfizer Inc.	US Corporate	1.26 %
Honda Motor Corporation	US Corporate	1.26 %
Intel Corp	US Corporate	1.26 %
Oracle Corp	US Corporate	1.25 %
BlackRock Inc/New York	US Corporate	1.25 %
Charles Schwab Corp/The	US Corporate	1.25 %
Wells Fargo Corp	US Corporate	1.25 %
ChevronTexaco Corp	US Corporate	1.25 %
Walt Disney Company	US Corporate	1.25 %
Praxair	US Corporate	1.24 %
Toyota ABS	ABS	0.99 %
John Deere ABS	ABS	0.90 %
First American Govt Oblig Fund	Money Market Fund FI	0.20 %
Total		100.00 %



Quality Distribution

City of Upland

January 31, 2015 vs. October 31, 2014



	AAA	AA	A	<A	NR
1/31/15	2.0 %	80.0 %	16.1 %	0.0 %	1.9 %
10/31/14	7.7 %	75.2 %	16.1 %	0.0 %	0.9 %

Source: S&P Ratings



Holdings Report

As of 1/31/15

CUSIP	Security Description	Par Value/Units	Purchase Date Book Yield	Cost Value Book Value	Mkt Price Mkt YTM	Market Value Accrued Int.	% of Port. Gain/Loss	Moody/S&P Fitch	Maturity Duration
ABS									
43813JAC9	Honda Auto Receivables 2014-1 A3 0.67% Due 11/21/2017	100,000.00	01/22/2015 0.90 %	99,695.31 99,695.31	99.90 0.74 %	99,903.50 18.61	0.99 % 208.19	Aaa / NR AAA	2.81 1.47
89231MAC9	Toyota Auto Receivables Owner 2014-A 0.67% Due 12/15/2017	100,000.00	01/21/2015 0.90 %	99,792.97 99,792.97	99.85 0.79 %	99,849.20 29.78	0.99 % 56.23	Aaa / AAA NR	2.87 1.28
43814HAC2	Honda Auto Receivables 2014-3 A3 0.88% Due 6/15/2018	80,000.00	08/12/2014 0.83 %	79,984.57 79,984.57	100.04 0.86 %	80,029.68 31.29	0.80 % 45.11	Aaa / AAA AAA	3.37 1.66
477877AD6	John Deere Owner Trust 2014-B A3 1.07% Due 11/15/2018	90,000.00	08/26/2014 1.08 %	89,980.34 89,980.34	100.03 1.06 %	90,024.84 42.80	0.90 % 44.50	Aaa / NR AAA	3.79 1.88
Total ABS		370,000.00	0.93 %	369,453.19 369,453.19	0.86 %	369,807.22 122.48	3.68 % 354.03	Aaa / AAA Aaa	3.19 1.56
AGENCY									
3130A2EK8	FHLB Note 0.125% Due 6/16/2015	200,000.00	06/17/2014 0.16 %	199,924.00 199,924.00	99.99 0.16 %	199,970.80 31.25	1.99 % 46.80	Aaa / AA+ AAA	0.37 0.37
3133EDJP8	FFCB Note 0.22% Due 10/16/2015	200,000.00	06/09/2014 0.25 %	199,922.00 199,922.00	100.01 0.21 %	200,010.80 128.33	1.99 % 88.80	Aaa / AA+ AAA	0.71 0.71
3133ECBJ2	FFCB Note 0.43% Due 11/16/2015	200,000.00	06/09/2014 0.26 %	200,490.00 200,490.00	100.13 0.26 %	200,268.40 179.17	1.99 % (221.60)	Aaa / AA+ AAA	0.79 0.79
3133EDDH2	FFCB Note 0.4% Due 1/14/2016	200,000.00	06/09/2014 0.31 %	200,274.00 200,274.00	100.14 0.26 %	200,274.60 37.78	1.99 % 0.60	Aaa / AA+ AAA	0.95 0.95
3130A0SD3	FHLB Note 0.375% Due 2/19/2016	200,000.00	05/21/2014 0.28 %	200,320.00 200,320.00	100.10 0.28 %	200,205.20 337.50	2.00 % (114.80)	Aaa / AA+ AAA	1.05 1.05
3133EDMC3	FFCB Note 0.25% Due 2/26/2016	200,000.00	06/10/2014 0.38 %	199,558.00 199,558.00	100.05 0.21 %	200,093.80 215.28	1.99 % 535.80	Aaa / AA+ AAA	1.07 1.07
3134G4VH8	FHLMC Note 0.4% Due 3/15/2016	200,000.00	05/21/2014 0.33 %	200,262.00 200,262.00	100.10 0.31 %	200,202.00 302.22	2.00 % (60.00)	Aaa / AA+ AAA	1.12 1.12
3135G0VA8	FNMA Note 0.5% Due 3/30/2016	200,000.00	06/20/2014 0.42 %	200,292.00 200,292.00	100.28 0.26 %	200,557.40 336.11	2.00 % 265.40	Aaa / AA+ AAA	1.16 1.16
3137EADQ9	FHLMC Note 0.5% Due 5/13/2016	200,000.00	06/09/2014 0.43 %	200,258.00 200,258.00	100.24 0.32 %	200,472.60 216.67	2.00 % 214.60	Aaa / AA+ AAA	1.28 1.28
3133834R9	FHLB Note 0.375% Due 6/24/2016	200,000.00	05/29/2014 0.40 %	199,884.00 199,884.00	100.04 0.35 %	200,082.60 77.08	1.99 % 198.60	Aaa / AA+ AAA	1.40 1.39
3135G0XP3	FNMA Note 0.375% Due 7/5/2016	200,000.00	05/21/2014 0.45 %	199,684.00 199,684.00	100.02 0.36 %	200,038.00 54.17	1.99 % 354.00	Aaa / AA+ AAA	1.43 1.42
3133EDE57	FFCB Note 0.69% Due 9/23/2016	225,000.00	05/28/2014 0.55 %	225,706.50 225,706.50	100.14 0.60 %	225,322.20 552.00	2.25 % (384.30)	Aaa / AA+ AAA	1.65 1.63
3133EDKJ0	FFCB Note 0.7% Due 11/1/2016	200,000.00	05/21/2014 0.60 %	200,496.00 200,496.00	100.31 0.52 %	200,619.00 350.00	2.00 % 123.00	Aaa / AA+ AAA	1.75 1.74
3135G0ES8	FNMA Note 1.375% Due 11/15/2016	200,000.00	05/29/2014 0.56 %	203,953.20 203,953.20	101.57 0.49 %	203,134.20 580.56	2.03 % (819.00)	Aaa / AA+ AAA	1.79 1.76



Holdings Report

As of 1/31/15

CUSIP	Security Description	Par Value/Units	Purchase Date Book Yield	Cost Value Book Value	Mkt Price Mkt YTM	Market Value Accrued Int.	% of Port. Gain/Loss	Moody/S&P Fitch	Maturity Duration
AGENCY									
3137EADT3	FHLMC Note 0.875% Due 2/22/2017	200,000.00	05/29/2014 0.69 %	200,977.40 200,977.40	100.59 0.59 %	201,178.60 772.92	2.01 % 201.20	Aaa / AA+ AAA	2.06 2.03
3135G0ZB2	FNMA Note 0.75% Due 4/20/2017	200,000.00	06/09/2014 0.87 %	199,296.00 199,296.00	100.23 0.64 %	200,463.00 420.83	2.00 % 1,167.00	Aaa / AA+ AAA	2.22 2.19
313379VE6	FHLB Note 1.01% Due 6/19/2017	200,000.00	05/29/2014 0.82 %	201,124.00 201,124.00	100.52 0.79 %	201,048.40 235.67	2.00 % (75.60)	Aaa / AA+ AAA	2.38 2.35
3137EADL0	FHLMC Note 1% Due 9/29/2017	200,000.00	12/04/2014 0.96 %	200,205.80 200,205.80	100.67 0.75 %	201,339.60 677.78	2.01 % 1,133.80	Aaa / AA+ AAA	2.66 2.61
3133EDXA5	FFCB Note 1.15% Due 10/10/2017	200,000.00	12/24/2014 1.19 %	199,784.00 199,784.00	100.90 0.81 %	201,798.00 709.17	2.02 % 2,014.00	Aaa / AA+ AAA	2.69 2.64
3137EADN6	FHLMC Note 0.75% Due 1/12/2018	200,000.00	01/28/2015 0.91 %	199,094.00 199,094.00	99.57 0.90 %	199,146.80 79.17	1.98 % 52.80	Aaa / AA+ AAA	2.95 2.91
3135G0TG8	FNMA Note 0.875% Due 2/8/2018	95,000.00	12/10/2014 1.18 %	94,102.92 94,102.92	99.91 0.91 %	94,911.56 399.46	0.95 % 808.64	Aaa / AA+ AAA	3.02 2.96
3137EADP1	FHLMC Note 0.875% Due 3/7/2018	200,000.00	12/04/2014 1.16 %	198,183.40 198,183.40	99.89 0.91 %	199,785.60 700.00	2.00 % 1,602.20	Aaa / AA+ AAA	3.10 3.04
Total Agency		4,320,000.00	0.58 %	4,323,791.22 4,323,791.22	0.49 %	4,330,923.16 7,393.12	43.18 % 7,131.94	Aaa / AA+ Aaa	1.68 1.66
COMMERCIAL PAPER									
06538CPL9	Bank of Tokyo Mitsubishi NY Discount CP 0.21% Due 2/20/2015	200,000.00	10/20/2014 0.21 %	199,857.67 199,977.83	99.99 0.21 %	199,977.83 0.00	1.99 % 0.00	P-1 / A-1 F-1	0.05 0.05
69349KT59	PNC Bank Discount CP 0.28% Due 6/5/2015	200,000.00	09/10/2014 0.28 %	199,583.11 199,807.11	99.90 0.28 %	199,807.11 0.00	1.99 % 0.00	P-1 / A-1 F-1	0.34 0.34
Total Commercial Paper		400,000.00	0.25 %	399,440.78 399,784.94	0.25 %	399,784.94 0.00	3.98 % 0.00	P-1 / A-1 F-1	0.20 0.20
MONEY MARKET FUND FI									
31846V203	First American Govt Obligation Fund	20,237.70	Various 0.01 %	20,237.70 20,237.70	1.00 0.01 %	20,237.70 0.00	0.20 % 0.00	Aaa / AAA NR	0.00 0.00
Total Money Market Fund FI		20,237.70	0.01 %	20,237.70 20,237.70	0.01 %	20,237.70 0.00	0.20 % 0.00	Aaa / AAA NR	0.00 0.00
US CORPORATE									
06406HCC1	Bank of New York Callable Note Cont 1/20/15 1.2% Due 2/20/2015	100,000.00	06/24/2014 0.38 %	100,535.00 100,535.00	100.04 0.46 %	100,039.00 536.67	1.00 % (496.00)	A1 / A+ AA-	0.05 0.05
14912L5B3	Caterpillar Finance Serv Corp Note 1.05% Due 3/26/2015	135,000.00	09/29/2014 0.29 %	135,492.75 135,492.75	100.11 0.31 %	135,152.55 492.19	1.35 % (340.20)	A2 / A A	0.15 0.15



Holdings Report

As of 1/31/15

CUSIP	Security Description	Par Value/Units	Purchase Date Book Yield	Cost Value Book Value	Mkt Price Mkt YTM	Market Value Accrued Int.	% of Port. Gain/Loss	Moody/S&P Fitch	Maturity Duration
US CORPORATE									
09247XAK7	Blackrock Inc Note 1.375% Due 6/1/2015	125,000.00	05/21/2014 0.27 %	126,388.75 126,388.75	100.35 0.33 %	125,434.13 286.46	1.25 % (954.62)	A1 / AA- NR	0.33 0.33
278642AB9	Ebay Inc Note 1.625% Due 10/15/2015	125,000.00	05/23/2014 0.30 %	127,275.00 127,275.00	100.68 0.66 %	125,848.50 598.09	1.26 % (1,426.50)	A2 / A A-	0.70 0.70
25468PCU8	Walt Disney Company Note 0.45% Due 12/1/2015	125,000.00	06/17/2014 0.43 %	125,040.00 125,040.00	100.06 0.37 %	125,080.00 93.75	1.25 % 40.00	A2 / A A	0.83 0.83
808513AH8	Charles Schwab Corp Note 0.85% Due 12/4/2015	125,000.00	05/28/2014 0.49 %	125,683.75 125,683.75	100.30 0.49 %	125,379.38 168.23	1.25 % (304.37)	A2 / A A	0.84 0.84
06406HBS7	Bank of New York Note 2.5% Due 1/15/2016	120,000.00	05/21/2014 0.48 %	123,943.20 123,943.20	101.89 0.51 %	122,268.84 133.33	1.22 % (1,674.36)	A1 / A+ AA-	0.96 0.95
36962G5C4	General Electric Capital Corp Note 2.95% Due 5/9/2016	125,000.00	05/21/2014 0.60 %	130,693.75 130,693.75	102.98 0.60 %	128,724.38 839.93	1.29 % (1,969.37)	A1 / AA+ NR	1.27 1.25
24422ERF8	John Deere Capital Corp Note 1.85% Due 9/15/2016	125,000.00	05/27/2014 0.69 %	128,305.00 128,305.00	102.00 0.61 %	127,495.13 873.61	1.28 % (809.87)	A2 / A NR	1.62 1.59
02665WAB7	American Honda Finance Note 1.125% Due 10/7/2016	125,000.00	05/21/2014 0.69 %	126,271.25 126,271.25	100.69 0.71 %	125,861.75 445.31	1.26 % (409.50)	A1 / A+ NR	1.68 1.66
17275RAT9	Cisco Systems Note 1.1% Due 3/3/2017	125,000.00	05/23/2014 0.88 %	125,737.50 125,737.50	100.74 0.74 %	125,927.00 565.28	1.26 % 189.50	A1 / AA- NR	2.09 2.05
91159HHD5	US Bancorp Callable Note Cont 4/15/2017 1.65% Due 5/15/2017	125,000.00	05/20/2014 1.08 %	127,090.00 127,090.00	101.38 1.02 %	126,719.88 435.42	1.27 % (370.12)	A1 / A+ AA-	2.29 2.16
084664BS9	Berkshire Hathaway Note 1.6% Due 5/15/2017	125,000.00	05/21/2014 1.01 %	127,135.00 127,135.00	101.59 0.90 %	126,984.13 422.22	1.27 % (150.87)	Aa2 / AA A+	2.29 2.24
717081DJ9	Pfizer Inc. Note 1.1% Due 5/15/2017	125,000.00	05/23/2014 0.98 %	125,422.50 125,422.50	100.87 0.72 %	126,086.13 290.28	1.26 % 663.63	A1 / AA A+	2.29 2.25
68389XAN5	Oracle Corp Note 1.2% Due 10/15/2017	125,000.00	05/28/2014 1.17 %	125,106.25 125,106.25	100.45 1.03 %	125,563.13 441.67	1.25 % 456.88	A1 / A+ A+	2.71 2.65
74005PBC7	Praxair Note 1.05% Due 11/7/2017	125,000.00	05/23/2014 1.15 %	124,587.50 124,587.50	99.60 1.20 %	124,504.75 306.25	1.24 % (82.75)	A2 / A NR	2.77 2.71
166764AA8	Chevron Corp. Callable Note Cont 11/5/17 1.104% Due 12/5/2017	125,000.00	05/21/2014 1.17 %	124,725.00 124,725.00	99.98 1.11 %	124,978.38 214.67	1.25 % 253.38	Aa1 / AA NR	2.85 2.71
458140AL4	Intel Corp Note 1.35% Due 12/15/2017	125,000.00	05/21/2014 1.28 %	125,315.00 125,315.00	100.76 1.08 %	125,948.50 215.63	1.26 % 633.50	A1 / A+ A+	2.87 2.81
94974BFG0	Wells Fargo Corp Note 1.5% Due 1/16/2018	125,000.00	05/20/2014 1.45 %	125,216.25 125,216.25	100.29 1.40 %	125,368.25 78.13	1.25 % 152.00	A2 / A+ AA-	2.96 2.88
037833AJ9	Apple Inc Note 1% Due 5/3/2018	130,000.00	05/20/2014 1.42 %	127,892.70 127,892.70	99.59 1.13 %	129,471.94 317.78	1.29 % 1,579.24	Aa1 / AA+ NR	3.25 3.19
Total US Corporate		2,485,000.00	0.81 %	2,507,856.15 2,507,856.15	0.77 %	2,502,835.75 7,754.90	24.99 % (5,020.40)	A1 / A+ A+	1.75 1.71



Holdings Report

As of 1/31/15

CUSIP	Security Description	Par Value/Units	Purchase Date Book Yield	Cost Value Book Value	Mkt Price Mkt YTM	Market Value Accrued Int.	% of Port. Gain/Loss	Moody/S&P Fitch	Maturity Duration
US TREASURY									
912828TX8	US Treasury Note 0.375% Due 11/15/2015	200,000.00	05/22/2014 0.20 %	200,524.11 200,524.11	100.16 0.18 %	200,312.40 161.60	2.00 % (211.71)	Aaa / AA+ AAA	0.79 0.79
912828B82	US Treasury Note 0.25% Due 2/29/2016	200,000.00	05/20/2014 0.27 %	199,938.17 199,938.17	100.02 0.23 %	200,046.80 212.71	1.99 % 108.63	Aaa / AA+ AAA	1.08 1.07
912828C40	US Treasury Note 0.375% Due 3/31/2016	200,000.00	05/27/2014 0.31 %	200,227.23 200,227.23	100.13 0.26 %	200,265.60 255.49	2.00 % 38.37	Aaa / AA+ AAA	1.16 1.16
912828VC1	US Treasury Note 0.25% Due 5/15/2016	200,000.00	05/27/2014 0.36 %	199,563.17 199,563.17	99.95 0.29 %	199,906.20 107.73	1.99 % 343.03	Aaa / AA+ AAA	1.29 1.28
912828VG2	US Treasury Note 0.5% Due 6/15/2016	200,000.00	05/27/2014 0.39 %	200,430.36 200,430.36	100.28 0.29 %	200,562.40 131.87	2.00 % 132.04	Aaa / AA+ AAA	1.37 1.37
912828VL1	US Treasury Note 0.625% Due 7/15/2016	200,000.00	05/29/2014 0.40 %	200,938.17 200,938.17	100.44 0.32 %	200,875.00 58.70	2.00 % (63.17)	Aaa / AA+ AAA	1.45 1.45
912828VR8	US Treasury Note 0.625% Due 8/15/2016	200,000.00	05/29/2014 0.44 %	200,813.17 200,813.17	100.42 0.35 %	200,843.80 577.45	2.00 % 30.63	Aaa / AA+ AAA	1.54 1.53
912828VW7	US Treasury Note 0.875% Due 9/15/2016	200,000.00	05/29/2014 0.47 %	201,844.42 201,844.42	100.80 0.38 %	201,593.80 671.96	2.01 % (250.62)	Aaa / AA+ AAA	1.62 1.60
912828WA4	US Treasury Note 0.625% Due 10/15/2016	200,000.00	05/27/2014 0.54 %	200,391.30 200,391.30	100.37 0.41 %	200,734.40 374.31	2.00 % 343.10	Aaa / AA+ AAA	1.71 1.69
912828A59	US Treasury Note 0.625% Due 12/15/2016	200,000.00	05/27/2014 0.61 %	200,070.98 200,070.98	100.32 0.45 %	200,640.60 164.84	2.00 % 569.62	Aaa / AA+ AAA	1.87 1.86
912828C32	US Treasury Note 0.75% Due 3/15/2017	200,000.00	05/27/2014 0.71 %	200,211.61 200,211.61	100.49 0.52 %	200,984.40 575.97	2.01 % 772.79	Aaa / AA+ AAA	2.12 2.09
912828UZ1	US Treasury Note 0.625% Due 4/30/2018	200,000.00	01/28/2015 0.92 %	198,141.29 198,141.29	99.27 0.85 %	198,546.80 321.13	1.98 % 405.51	Aaa / AA+ AAA	3.25 3.20
Total US Treasury		2,400,000.00	0.47 %	2,403,093.98 2,403,093.98	0.38 %	2,405,312.20 3,613.76	23.97 % 2,218.22	Aaa / AA+ Aaa	1.60 1.59
TOTAL PORTFOLIO		9,995,237.70	0.61 %	10,023,873.02 10,024,217.18	0.53 %	10,028,900.97 18,884.26	100.00 % 4,683.79	Aa1 / AA Aaa	1.67 1.59
TOTAL MARKET VALUE PLUS ACCRUED						10,047,785.23			

**MINUTES OF THE REGULAR MEETING OF THE
UPLAND CITY COUNCIL
MARCH 9, 2015**

OPENING

The regular meeting of the Upland City Council was called to order by Mayor Ray Musser at 6:12 p.m. in the Council Chambers of the Upland City Hall.

1. ROLL CALL

Present: Mayor Ray Musser, Councilmembers Glenn Bozar, Gino Filippi, Debbie Stone, Carol Timm

Staff: City Manager Rod Butler, Interim City Attorney Richard L. Adams II, and City Clerk Stephanie A. Mendenhall

2. ADDITIONS/DELETIONS TO AGENDA None

3. ORAL COMMUNICATIONS None

4. CLOSED SESSION

At 6:13 p.m. Mayor Musser announced the City Council would recess to Closed Session pursuant to Government Code Section

A. 54956.9 - CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

(Paragraph (1) of subdivision (d) of Section 54956.9)

Case Name: Jonathan Osborne, et al v. City of Upland, et al (Case No. EDCV13-02150 JFW(AN))

B. 54957.6 - CONFERENCE WITH LABOR NEGOTIATORS

Agency designated representatives: City Manager Butler and Human Resources Manager Bragg

Employee organizations: Upland Mid-Management Association, Upland General Employees Association, Upland Police Officers Association, Upland Police Management Association, Upland Police Captains Association, Upland Fire Fighters Association, and Upland Fire Management Association

C. 54956.9 - CONFERENCE WITH LEGAL COUNSEL – INITIATION OF LITIGATION

Initiation of litigation pursuant to subdivision (d) (4) Section 54956.9: 1 case

The City Council reconvened in open session at 7:07 p.m.

5. INVOCATION Pastor Eldon Kratz, First Church of the Nazarene

6. PLEDGE OF ALLEGIANCE Citizen Dave Stevens

7. PRESENTATIONS None

8. CITY ATTORNEY

Interim City Attorney Adams announced that only Items 4A & 4C were discussed and there was no reportable action from Closed Session.

9. ORAL COMMUNICATIONS

Stephen Dunn, Upland, questioned the method used to calculate the permit fee and said not sending the initiative to an election may bring challenges by the proponents looking at other fees charged by the City.

Keith Calvert, Upland, felt Mayor Musser has failed the citizens miserably and should resign due to the loss of \$20 million in reserves.

Laura Smith, Upland, stated marijuana makes people hallucinate and do things they should not do and felt it would still be available through the black market.

Randy Welty, Upland, stated marijuana is a huge addition to the pharmaceutical drugs, the City Council is not qualified to make medical decisions, and people have the right to self-medicate.

Daniel Luevanos, Chino, invited the public to participate in the Run/Walk for Donate Life Legacy on April 25, 2015 at Cal State Fullerton.

Robert Nelson, Upland, hoped the City Council would reject the medical marijuana petition which would invite more crime, a front for drug deals, and not needed in Upland.

Nicole De La Rosa, Upland, felt the fee is reasonable and not a tax, referenced the New ERA CPA report which is in compliance with Prop. 215 and the Attorney General guidelines, and protested the placing of the city's ordinance at a special election unless the citizens-based initiative is included.

Eric Gavin, Upland, felt the City is moving from one crisis to another and the Police Department is the next crisis; hoped the State of City by the Mayor would have a vision for the city with proud leadership.

Todd D'Braustein, Upland, provided a report for the Traffic Safety Committee meeting held on March 4, 2015 and invited the public to attend the next meeting on April 4, 2015 at 8:30 a.m. in the Police Department training room.

David Wade, Upland, felt it did not make sense to spend money by putting an existing law banning medical marijuana dispensaries on the ballot and expressed the need to enact a responsible plan that is self enforcing.

Raymond Herrera, Claremont, called on the residents to get an initiative to get Mr. Welty and his strip joint out of the city; suggested passing an ordinance for medical marijuana dispensaries with a \$1,000 a day fine.

Robin Hvidston, Upland, stated that her and her family strongly oppose medical marijuana dispensaries in the city and felt that decadence and vice permeate at the Tropical Lei area and that the dispensaries will only increase that in our town.

Craig Beresh, President of Cannabis Coalition, reminded the City Council they got into politics for the citizens, their organization is not going to stop until the city is broke and will start looking to recall, if they cannot get them to follow what their organization wants.

Jim Richardson, Upland, provided suggestions for future regulations for medical marijuana dispensaries and hoped the city would take some time and get in front of it to be prepared.

Ari Borland, Upland, asked each person to donate \$8 toward their goal and that any monies collected above their goal would be donated for food to feed the homeless.

Jim Thomas, Upland, invited the public to attend the First Annual Comedy Night fundraiser by the Upland Host Lion's on March 21, 2015 at 7:00 p.m. to support the Veterans monument in the City Hall courtyard.

Christy McKinzie, Upland, felt the city has wasted billions of dollars in the fight against medical marijuana dispensaries and that it would be best to regulate it.

William Cioc, San Bernardino, stated his support for cannabis regulation and sensible policies.

Carmen Limon, Upland, addressed the serious problem with a marijuana shop in her neighborhood and the amount of traffic, drug exchanges between cars, and the strong drug scent.

Mayor Musser announced that the City Council would take items out of order at this time.

13. BUSINESS ITEMS

C. MEDICAL MARIJUANA INITIATIVE PETITION

It was noted that the City Clerk's Office received the New Era Certified Public Accountants documentation from the proponents on February 26, 2015 and provided it to the City Council February 28, 2015. Interim City Attorney Adams provided a summary of the three choices before the City Council, addressed the comments made by the speakers and the initial procedure; Administrative Services Director Mendenhall presented the staff report on the background of the initiative; and Deputy City Attorney Neumeyer provided additional information contained in the Agency Report, which are on file in the City Clerk's Office. The City Council received the Agency Report prepared pursuant to Election Code §9212.

There was discussion regarding whether the licensing and inspection fee of \$75,000 is a tax and the legalities of a lawsuit under state or federal regulation with regards to a special or general election and the costs for elections. Councilmember Stone felt it is the will of the people to put it on the ballot in June.

Motion by Councilmember Stone to order a special election, to be held pursuant to Election Code §9222, at which the proposed City Ordinance shall be submitted to a vote of the voters of the city, seconded by Councilmember Filippi.

Councilmember Filippi expressed his concern regarding when direction was given to staff to draft an ordinance enforcing the City's current ban and felt the Dare Program could be added to New Era's report to bring it up to \$75,000. Deputy City Attorney Neumeyer added that the report provided by New Era stated a licensing and inspection fee of \$56,000 and that staff did not review this report as it has a lot more than what cities are doing on average for regulation and enforcement. Councilmember Filippi felt the City Council should be mindful to avoid any actions denying the proponent this initiative.

A vote was taken and the motion failed with Mayor Musser and Councilmember Bozar and Timm voting no.

Motion by Mayor Musser to adopt Resolution No. 6267 giving notice and direction for the subsequent calling and ordering of a General Municipal Election to be held on November 8, 2016 for submission to the voters of the proposed ordinance, seconded by Councilmember Bozar, and carried with Councilmember Filippi and Stone voting no.

At 9:05 p.m. Mayor Musser recessed the meeting and the City Council re-convened at 9:15 p.m.

10. CONSENT CALENDAR

Mayor Musser removed Consent Calendar Item 10G for separate action. Motion by Councilmember Stone to approve the remainder of the Consent Calendar, seconded by Councilmember Timm, and carried unanimously.

A. WAIVE READING OF ORDINANCES AND RESOLUTIONS

Approved the reading by title of all ordinances and resolutions and declared that said titles which appear on the public agenda shall be determined to have been read by title and further reading waived. Staff will prepare summaries of all ordinances considered by the City Council and publish the summaries at least five days prior to adoption.

B. APPROVAL OF WARRANTS AND PAYROLL REGISTERS

Approved Warrant Registers dated February 11, 2015 in the amount of \$528,554.01; February 25, 2015 in the amount of \$854,134.44; February 28, 2015 in the amount of \$40.25 and Payroll Registers dated February 19, 2015 in the amount of \$572,581.53; March 5, 2015 in the amount of \$595,911.36.

C. APPROVAL OF MINUTES

Approved the Regular Meeting Minutes of February 23, 2015 and the Special Meeting Minutes of February 28, 2015.

D. 2ND READING OF ORDINANCE NO. 1890 PERTAINING TO AMENDMENT TO THE UPLAND MUNICIPAL CODE RELATIVE TO BUSINESS LICENSE REGULATIONS AND PEACE AND WELFARE SECTIONS

Held 2nd reading by number and title only and adopted Ordinance No. 1890 amending Subsection C of Section 5.04.210 and Section 5.04.170 of Chapter 5.04 of Title 5, and Section 9.16.030 of Chapter 9.16 and Section 9.24.010 of Chapter 9.24 of Title 9 of the Upland Municipal Code to update the Code to comply with current law and practice.

E. APPOINTMENT TO WATER FACILITIES AUTHORITY

Ratified the Mayor's appointment of Councilmember Bozar as the alternate to the Water Facilities Authority with term ending December 12, 2016.

F. EMERGENCY REPLACEMENT OF PLANT NO. 4 SWITCHGEAR

Received and filed status update.

H. ACCEPTANCE OF WORK FOR PROJECT NO. 7053, CITYWIDE STRIPING REPLACEMENT 2014-2015

Accepted the work; recorded the Notice of Completion; and reduced the Faithful Performance Bond to 10% for Project No. 7053, Citywide Striping Replacement 2014-2015.

I. PROXY FOR SAN ANTONIO WATER COMPANY

Appointed Glenn Bozar as proxy to vote all shares at the annual stockholder's meeting of the San Antonio Water Company for the slate of directors, including reappointment of Directors Sue Sundell, Will Elliott and John Gerardi..

ITEMS REMOVED FOR SEPARATE ACTION

G. 2014 HOMELAND SECURITY GRANT

Mayor Musser was assured by Acting Police Chief Bonson the City received the city discount from Dell for the computers.

Motion by Mayor Musser to accepted FY 2014 Homeland Security Grant funds in the amount of \$20,372, and authorize the appropriation of \$13,188 to purchase new flashlights for Upland police officers, and \$7,184 to purchase an additional server for data storage, seconded by Councilmember Stone, and carried unanimously.

11. PUBLIC HEARINGS None

12. COUNCIL COMMITTEE REPORTS

A. POLICE AND FIRE COMMITTEE MEETING, FEBRUARY 23, 2015

Councilmember Filippi 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.

- A. FINANCE AND ECONOMIC DEVELOPMENT COMMITTEE MEETING, MARCH 2, 2015

Councilmember Bozar 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.

13. BUSINESS ITEMS

- A. DECLARE MODERATE SHORTAGE STAGE - WATER CONSERVATION MEASURES

Public Works Director Hoerning presented the staff report, which is on file in the City Clerk's Office.

There was discussion on what residents can do to avoid a large bill from the city.

Motion by Councilmember Bozar to adopt Resolution No. 6266 declaring water conservation at the Moderate Shortage Stage, resulting in a change of policy from Year Round Conservation State to Moderate Storage Stage, and directed staff to notify the public accordingly, seconded by Councilmember Timm, and carried unanimously.

- B. CAL FIRE URBAN & COMMUNITY FORESTRY PROGRAM

Water Conservationist Specialist Taylor presented the staff report, which is on file in the City Clerk's Office.

There was discussion on the selection of the various trees that would be planted throughout the city. Councilmember Timm asked to have the tree placement list reviewed by the Street Tree Advisory Committee.

Motion by Councilmember Stone to accept the Cal Fire Urban & Community Forestry program grant in the amount of \$56,000 and authorized the appropriation of \$56,000 for tree replacement, seconded by Councilmember Filippi, and carried unanimously.

14. CITY MANAGER

- A. FINANCIAL REPORT FOR THE MONTH ENDING JANUARY 2015

Finance Manager Buhagiar provided the report, which is on file in the City Clerk's office.

- B. UPDATE ON CROSSING GUARDS

City Manager Butler stated there would be a Street Tree Advisory Committee meeting in April. All of the crossing guard locations are staffed and that the Memorandum of Understanding between the Upland Unified School District has been signed by Dr. Kelly through June 30, 2015 and that Acting Police Chief Bonson has scheduled several school presentations for the Pedestrian Education Program in March. The Police Department will now manage the crossing guards as of March 2, 2015.

In regards to the conclusion of the Business Item 13C Medical Marijuana Initiative Petition at the request of Administrative Services Director Mendenhall, Interim City Attorney stated the options of the City Council to prepare an initiative to allow regulation of medical marijuana, see if a State initiative comes up, or have an ordinance in place if the State initiative were to pass.

15. COUNCIL COMMUNICATIONS

Councilmembers announced various activities throughout the community.

Councilmember Filippi concurred with Councilmember Stone to discuss at the next meeting the serious shortage of police officers and to address the following questions: what does it cost the city to do background checks on officers; how much does it cost to train new officers and how long does it take; what are the overtime costs; how many kickins in the last six months; and how many applicants have applied for the Police officer position, gone through background and changed their mind.

Councilmember Filippi concurred with Councilmember Timm to have the City Council Advisory Committee discuss the parking issues in Historic Downtown.

Councilmember Stone concurred with Councilmember Filippi to discuss at the next meeting how the City Attorney received direction to produce the city's ordinance enforcing the current ban against medical marijuana dispensaries after reading the vague minutes.

16. ADJOURNMENT

Mayor Musser adjourned the meeting at 10:22 p.m. The next regularly scheduled City Council meeting is Monday, March 23, 2015.

SUBMITTED BY



Stephanie A. Mendenhall, City Clerk

APPROVED

March 23, 2015



STAFF REPORT

ITEM NO. 10.D

DATE: MARCH 23, 2015
TO: MAYOR AND CITY COUNCIL
FROM: ROD BUTLER, CITY MANAGER
PREPARED BY: ROBERTA KNIGHTEN, COMMUNITY SERVICES DIRECTOR
SUBJECT: 2015 4th OF JULY FIREWORKS SPECTACULAR

RECOMMENDED ACTION

It is recommended that the City Council direct the City Manager to execute an agreement with Pyro Spectaculars for pyrotechnic services for the annual 4th of July fireworks show.

GOAL STATEMENT

The proposed action supports the City's goal to offer quality, family friendly community events to its residents.

BACKGROUND

For the past 28 years, the City has sponsored a 4th of July fireworks spectacular. The event is funded in part by ticket sales, sponsorships, donations and concession sales.

ISSUES/ANALYSIS

The annual fireworks show hosted on the 4th of July has become a tradition for many Upland families. The cost of producing the event for the last four years is broken down in Exhibit A. Expenditures exceeded revenues by just over \$2,400 last year. Future payouts for employees who worked the event but will take time off at a later date were included in that figure. The largest expenditure category is for *Other Services* which include the pyrotechnics (\$25,000), stadium rental (\$2,046), sound engineering (\$2,870) and the stage rental (\$1,147).

The Kiwanis also host a snack bar during the 4th of July event, which is one of their major fundraisers. Proceeds are used to sponsor the Wednesday night movies and concerts series. Last year, the Kiwanis donated \$5,051 to cover the cost of bands and movie licensing for the Wednesday night series.

FISCAL IMPACTS

The shortfall for the 2015 event could be anywhere from \$2,500-\$3,500. Variables such as weather and the day of the week the 4th falls on, can impact ticket sales. This year the 4th is on a Saturday. We anticipate lower attendance due to people taking advantage of the three-day weekend and going out of town.

If the event is canceled, the Kiwanis may not have the resources to sponsor the movies and concerts series. The loss to that program is projected at \$5,100.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

[FY16 4th of July Budget](#)

[Pyro Contract](#)

EXHIBIT A

Program: 4th of July

EXPENDITURE SUMMARY		Projected				
<u>Acct #</u>	<u>Description</u>	FY 11/12 2011	FY 12/13 2012	FY 13/14 2013	FY 14/15 2014	FY 15/16 2015
4111	Permanent Employees				\$782.45	
4112	L.S.E.	\$1,187.21	\$1,418.64	\$1,380.40	\$1,034.14	\$1,300.00
4113	Overtime - PW		\$570.80	\$619.18	\$281.26	\$800.00
4116	Fringe - Permanent	\$17.18	\$249.54	\$122.85	\$263.06	\$275.00
4117	Retirement Contributions	\$57.48	\$95.58	\$159.88	\$234.65	\$250.00
4123	FD-Overtime		\$1,085.93	\$965.75	\$958.67	\$1,000.00
4126	FD-Fringe		\$103.48	\$92.47	\$105.02	\$110.00
4127	PERS Retirement		\$641.04	\$223.64	\$212.77	\$250.00
4133	PD-Overtime				\$1,201.16	\$1,300.00
4136	PD-Fringe				\$177.19	\$200.00
4137	PD - Retirement				\$353.12	\$400.00
4212	Advertising					
4213	Dues & Subscriptions					
4215	Conferences/Meetings					
4217	Outside Purchase		\$86.20	\$328.80	\$437.73	\$450.00
4252	Professional Services					
4253	Contract Personnel					
4258	Other Services	\$32,852.80	\$34,257.80	\$34,488.49	\$32,775.19	\$33,000.00
	Future Payouts				\$1,610.92	\$1,500.00
	TOTAL:	\$34,114.67	\$38,509.01	\$38,381.46	\$40,427.33	\$40,835.00

REVENUE SUMMARY						
	Ticket Sales:	\$23,306.00	\$26,656.00	\$27,416.80	\$25,434.15	\$25,000.00
	Vendor Fee:					
	Sponsors:	\$6,950.00	\$8,400.00	\$8,900.00	\$11,250.00	\$11,500.00
	Donations:		\$25.00	\$726.00	\$1,110.00	\$1,200.00
	Other:	\$543.00	\$293.86	\$224.25	\$183.00	\$250.00
	TOTAL:	\$30,799.00	\$35,374.86	\$37,267.05	\$37,977.15	\$37,950.00

TOTAL PROFIT						
	Revenue:	\$30,799.00	\$35,374.86	\$37,267.05	\$37,977.15	\$37,950.00
	Expenditures:	\$34,114.67	\$38,509.01	\$38,381.46	\$40,427.33	\$40,835.00
	Net Profit:	(\$3,315.67)	(\$3,134.15)	(\$1,114.41)	(\$2,450.18)	(\$2,885.00)

PROFESSIONAL SERVICE AGREEMENT

This Agreement is made and entered into this 23rd day of March, 2015, between the CITY OF UPLAND, a Municipal Corporation (hereinafter referred to as (“CITY”)) and PYRO SPECTACULARS, INC. (hereinafter referred to as (“PYRO”)).

A. Recitals.

i. CITY desires to provide a firework show in connection with its celebration of Independence Day, July 4, 2015.

ii. PYRO represents that it is qualified and willing to perform professional services necessary to the provision of a Fourth of July fireworks show, as hereinafter defined.

iii. CITY desires to retain PYRO to perform such professional services, all as set forth in Exhibit “A” hereto.

NOW, THEREFORE, it is agreed by and between CITY and PRYO as follows:

B. Agreement.

1. PYRO agrees as follows:

a. PYRO shall forthwith undertake to and shall provide a Fourth of July fireworks display in accordance with Exhibit “A” hereto (“The Display” sometimes hereinafter), in accordance with applicable Federal, State and City statutes, regulations, ordinances and guidelines, and to the reasonable satisfaction of CITY.

b. PYRO shall, at PYROS’s sole cost and expense, secure and hire such other persons as may, in the opinion of PYRO, be necessary to comply with the terms of this Agreement. In the event any such other persons are retained by PYRO, PYRO hereby warrants that such persons shall be fully qualified to perform services required hereunder. PYRO further

agrees that no subcontractor shall be retained by PYRO except under the prior written reasonable approval of CITY.

2. CITY agrees as follows:

a. To pay PYRO a maximum sum of TWENTY-FIVE Thousand Dollars (\$25,000.00) for the performance of the services required hereunder. This sum shall cover the cost of all staff time and all other direct and indirect costs or fees, including the work of employees, consultants and subcontractors to PYRO. Payment to PYRO, by CITY, shall be made in one lump sum on the date of the Display as set forth below.

b. CITY shall make payments to PYRO in accordance with a previously submitted invoice by PYRO in one lump sum following PYRO's provision of the Display. Such payment shall not be deemed an acceptance of the correctness of such prior invoice, nor a waiver of CITY's right to verify the invoiced amount or a final statement of account by PYRO.

3. Termination: CITY agrees to assume the risk of weather, and other causes beyond PYRO's control, which may prevent the Display from being safely discharged on the scheduled date, which may cause the cancellation or any event for which CITY has purchased the Display, or which may affect or damage such portion of the exhibits as must be placed and exposed a necessary time before the Display. It shall be within PYRO's sole discretion to determine whether or not the Display may be safely discharged on the scheduled date and at the scheduled time. If, for any reason beyond PYRO's control, including, without limitation, inclement weather, PYRO is unable to safely discharge the Display on the scheduled date or should any event for which CITY has purchased the Display be canceled, the parties shall negotiate a new Display date, which shall be within 60 days of the original Display date. In the event CITY terminates this Agreement without cause, CITY agrees to pay PYRO: (1) 25% of the

total contract price if cancellation occurs no less than three (3) days prior to the scheduled day of the Display, (2) 50% if cancellation occurs within two (2) days, (3) 100% if cancellation occurs on the date of the Display and in addition, CITY agrees to pay PYRO the value associated with any specific custom work performed by PYRO or its agents including custom sets, pieces and logo design and/or musical tape production costs if cancellation occurs prior to the date of the Display.

4. Notices and Designated Representatives: Any and all notices, demands, invoices, and written communications between the parties hereto shall be addressed as set forth in this paragraph 4. The below named individuals, furthermore, shall be those persons primarily responsible for the decisions relation to this Agreement.

CITY: CITY OF UPLAND
Rod Butler
P.O. Box 460
Upland, CA 91785

CONSULTANT: PYRO SPECTACULARS, INC.
Gary Brown
P.O. Box 2329
Rialto, CA 92377

Any such notices, demands, invoices and written communications, by mail, shall be deemed to have been received by the addressee three (3) business days after deposit thereof in the United States mail, postage prepaid and properly addressed as set forth above.

5. Insurance: PYRO shall not commence work under this contract until it has obtained all insurance required hereunder in a company or companies acceptable to CITY nor shall PYRO allow any subcontractor to commence work on its subcontract until all insurance required of the subcontractor has been obtained. PYRO shall take out and maintain at all times during the life of this contract the following policies of insurance:

a. Workers Compensation insurance: Before beginning work, PYRO shall furnish to the CITY a certificate of insurance as proof that it has taken out full workers compensation insurance for all persons whom PYRO may employ directly or through

subcontractors in carrying out the work specified herein, in accordance with the laws of the State of California. Such insurance shall be maintained in full force and effect during the period covered by this contract. Further, such policy of insurance shall provide that the insurer waives all rights of subrogation against CITY and its elected officials, officers, employees, and agents.

In accordance with the provisions of Section 3700 of the California Labor Code, PYRO shall secure the payment of compensation to his employees. PYRO, prior to commencing work, shall sign and file with the CITY a certification as follows:

“I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker’s compensation or to undertake self insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of work of this contract.”

b. For all operations of PYRO or any subcontractor in performing the work provided for herein, insurance with the following minimum limits and coverage:

1. Commercial General Liability (occurrence) – for bodily injury, death, and property damage for products/completed operations and any and all other activities undertaken by PYRO in the performance of this Agreement –or--:

2. (Alternative to Commercial General Liability) – Comprehensive, broad form General Public Liability (occurrence) – for bodily injury, death and property damage arising out of any activities undertaken by PYRO in the performance of this Agreement.

3. Comprehensive Automobile Liability (occurrence) – for bodily injury, death, and property damage insuring against all liability arising out of the use of any vehicle.

4. The policies of insurance required in this subsection b of this Section 5 shall have no less than the following limits of coverage:

i. \$2,000,000 (Two Million Dollars) bodily injury or death;

ii. \$2,000,000 (Two Million Dollars) for property damage;

iii. \$2,000,000 (Two Million Dollars) where a combined single limit is specified for (i) and (ii) above.

c. The policies of insurance required in paragraphs (1), (2), and (3) of subsection b of this Section 5, above, shall:

1. Be subject to no deductible amount in excess of \$5,000 per claim, unless otherwise provided, or approved in writing by CITY;

2. Be issued by an insurance company approved in writing by CITY, which is approved to do business in the State of California and which is rated A:VII or better according to the most recent A.M. Best Co. Rating Guide;

3. Name as additional insured the CITY, the UPLAND UNIFIED SCHOOL DISTRICT, and CITY's and said DISTRICT's elected officials, officers, employees, attorneys and agents, other sponsors and subcontractors;

4. Specify that it acts as primary insurance and that no insurance held or owned by the designated additional insured shall be called upon to cover a loss under said policy;

5. Specify that it applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability;

6. Specify that Pyro shall give written notice to CITY within 5 days of having received notice of cancellation from carrier.

7. Specify that any failure to comply with reporting or other provisions of the required policy, including breaches or warranty, shall not affect the coverage required to be provided;

8. Specify, if available, that the insurer waives all rights of subrogation against any of the named additional insured; and

9. Specify those any and all costs of adjusting and/or defending any claim against any insured, including court costs and attorneys' fees, shall be paid in addition to and shall not deplete any policy limits.

10. Otherwise be in form reasonably satisfactory to CITY.

d. Prior to commencing performance under this Agreement, PYRO shall furnish the CITY, Certificates of Insurance, and copies of each required policy, effecting and evidencing the insurance coverage required by this Agreement. The certificates shall be signed by a person authorized by the insurer(s) to bind coverage on its behalf. All endorsements or policies shall be received and approved by the CITY within five (5) business days of submission and before PYRO commences performance.

6. Indemnification: PYRO shall defend, indemnify and save harmless CITY, its elected and appointed officials, officers, agents and employees, as to all liability from loss, damage or injury, including consequential damages, to persons or property, including the payment by PYRO of any and all legal costs and attorneys' fees, in any manner arising out of or incidental to the performance of the Display by PYRO.

7. Assignment: No assignment of this Agreement or of any part or obligation of performance hereunder shall be made, either in whole or in part, by PYRO without the prior written consent of CITY.

8. Independent Consultant: The parties hereto agree that PYRO and its employees, officers and agents are independent contractors under this Agreement and shall not be construed for any purpose to be employees of the CITY.

9. Attorney's 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 attorneys' fees and costs from the opposing party in an amount determined by the court to be reasonable.

10. Governing Law: This agreement shall be governed by and construed in accordance with the laws of the State of California.

11. Entire Agreement: This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representation by any party, which is not embodied herein, nor any other agreement, statement, or promise not contained in this Agreement shall be valid and binding. Any modification of this Agreement shall be effective only if it is in writing signed by all parties. Further, the execution of this Agreement by the parties hereto constitutes an authorization for PYRO to proceed.

12. CITY, at its own expense, agrees to provide to PYRO:

a. A suitable Display site in which to stage the fireworks Display, including appropriate storage facilities, a firing and fallout zone reasonably acceptable to PYRO in which the fireworks and fireworks debris may be exhibited, rise and fall safely;

b. Adequate policing, guard protection, roping, fencing and/or other crowd control measures to prevent the access of the public or its property or any other people or property not authorized by PYRO into the Display site and related areas;

c. The services and cost of standby firemen and other safety or emergency personnel and any applicable permit fees as required by local statutes, ordinances or regulations; and

d. Access by PYRO, at all times, to the Display site to set up the Display. If following written notice by PYRO, CITY fails to fully comply with requirements (a), (b), (c), and/or (d) set forth above prior to the event, PYRO shall have no obligation to perform, and CITY agrees to pay to PYRO the entire contract price plus any additional expenses incurred because of said failure, unless such failure results from circumstances over which CITY has no control or influence and which circumstances render it impracticable to fully comply with requirements (a), (b), (c) and/or (d) set forth above, in which event CITY shall pay to PYRO the amounts set forth in paragraph 3, above, which amounts shall be based upon when PYRO is notified by CITY of the inability to comply.

13. If, in its sole discretion, CITY designates an area for members of the public to view the Display (“Spectator Area”) and/or an area for vehicular parking (“Parking Area”), PYRO shall have no responsibility to:

a. Ensure that the Spectator Area and Parking Area do not infringe on the Display site;

b. Ensure that the terrain of the Spectator Area and Parking Area and any structures or improvements thereon, including, but not limited to grandstands, bleachers, benches, roadways, walkways, lights, electrical services, barriers, curbs, fences, plantings and any and all other facilities, are safe for use by spectators;

c. Ensure that the Parking Area is safe for use; and

d. Police, monitor and appropriately control spectator access to the Spectator Area and the Parking Area and police, monitor and appropriately control the behavior

of persons in these areas at all times. It is expressly agreed that PYRO, (including its operators and helpers) shall not inspect, police, monitor or otherwise supervise or control access to any area of the site, except to ensure:

1. That any Spectator or Parking Areas are designated outside the Display site; and

2. After completion of the Display, that the Display site is cleared of any live fireworks debris originating from the program.

14. A finance charge at a periodic rate of 1.5% per month, 18% annual percentage rate, or the maximum rate permitted by law, whichever is less, will be charged on the unpaid balance after 10 days from the date on which the respective payment is due.

15. PYRO reserves its rights to the pyrotechnic images, which are a product of the pyrotechnic display to be performed herein. PYRO grants to CITY permission to use such pyrotechnic images for the limited purpose of, and only in connection with, reasonably publicizing and advertising its activities. Neither shall make any representation nor use any image in a way, which would imply the endorsement of that party by the other, except to state that this particular show was performed on this occasion by these parties.

16. In connection with the Display only, PYRO agrees to furnish certain insurance coverage as set forth herein. Notwithstanding anything to the contrary contained herein, such insurance afforded by PYRO shall not include claims made against CITY for bodily injury, property damage or other losses arising from (a) Failure of CITY, including through or by its employees, agents and/or independent contractors, to perform any of its obligations under this Agreement; or (b) Failure of the CITY, including through or by its employees, agents and/or independent contractors, to provide discretionary Spectator and/or Parking Areas are referred to in Paragraph 13 of this Agreement.

17. It is understood and agreed that PYRO is not responsible for any type of event risks or insurance other than as expressly provided in this Agreement. Except as set forth in the indemnity provisions of this Agreement, in the event PYRO breaches this Agreement, or is otherwise negligent in performing the fireworks display provided for herein, CITY shall be entitled to recover monetary damages from PYRO only up to the amount CITY has paid PYRO under this Agreement. CITY shall not, under any circumstances, be entitled to recover any exemplary or consequential damages from PYRO including, without limitation, loss of income, loss of business, or loss of profits. Such consequential damages are to be distinguished from damages, which might be due under the indemnity provisions herein, and nothing in this paragraph shall be construed as a modification, extension or limitation on the insurance coverage obligations and indemnity provisions set forth in this Agreement.

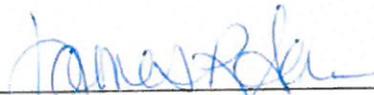
18. It is agreed that nothing in this Agreement or in PYRO's performance of the Display provided for herein shall be construed as forming a partnership or joint venture between CITY and PYRO. The parties hereto shall be severally responsible for their own separate debts and obligations and neither party shall be held responsible for any agreements or obligations not expressly provided herein.

19. This agreement shall become effective after it is executed and accepted by CITY and after it is executed by PYRO at PYRO's offices in Rialto, California. This Agreement may be executed in several counter parts, including faxed copies, each one of which shall be deemed an original against the party executing same. This entire Agreement shall be binding upon the parties hereto and upon their heirs, successors, executors, administrators and assigns. CITY recognizes that because of the nature of fireworks, an industry accepted level of 3% of the product used in any Display may not function as designed and this level of nonperformance is acceptable as full performance. Any inventory of pyrotechnic products by

CITY shall be accomplished safely and in ways acceptable to the Pyrotechnic Operator in Charge, and in such a manner as not to delay or interfere with the set up or removal of the Display. This shall not limit the right of the Fire Authority having Jurisdiction to perform their usual duty to inspect the products, equipment and manner of set up of the Display solely for the purpose of determining compliance with applicable laws, ordinances, regulations, and permit requirements.

IN WITNESS WHEREOF the parties hereto, by and through their duly authorized agents, have set their hands and seals as of the date first above written:

PYRO SPECTACULARS, INC.



James R. Souza, President



CITY

Rod Butler, City Manager

ATTEST:

Stephanie Mendenhall, City Clerk



STAFF REPORT

ITEM NO. 10.E

DATE: MARCH 23, 2015
TO: MAYOR AND CITY COUNCIL
FROM: ROD BUTLER, CITY MANAGER
PREPARED BY: ROSEMARY HOERNING, PUBLIC WORKS DIRECTOR
SUBJECT: BOARD OF DIRECTORS FOR WEST END CONSOLIDATED WATER COMPANY

RECOMMENDED ACTION

It is recommended that the City Council appoint Glenn Bozar as proxy to vote all shares at the annual stockholder's meeting of the West End Consolidated Water Company for the slate of directors.

GOAL STATEMENT

The proposed action supports the City's strategic efforts to maintain reasonable water rates by developing a long-term systematic strategy to develop facilities in need of improvement, and by implementing management and financial controls.

BACKGROUND

The City owns controlling interest (approximately 91% of all outstanding shares) in West End Consolidated Water Company (WECWC), a private mutual water company. Historically, the City Council has directed the person carrying the proxy to vote for the slate of directors for the West End Consolidated Water Company.

ISSUES/ANALYSIS

At the 2013 WECWC Board meeting, the Board adopted the provisions of Senate Bill 918 (SB918), which provides Directors an opportunity to serve a four year term.

WECWC will hold its annual meeting in April 2015 to conduct annual business of the company. At this meeting two seats for the Board will be considered. These seats are currently held by Directors Ken Willis and Tom Thomas. It is recommended two board members be reappointed to serve an additional four year term.

The Board composition is as follows:

Current and Proposed:

Mark Bertone

Glenn Bozar

Richard Mayo

Kenneth Willis, proposed

Tom Thomas, proposed

As the majority shareholder, the City must authorize a person to carry the City's proxy and to vote the City's shares at the annual meeting.

FISCAL IMPACTS

There is no fiscal impact associated with this action.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

[2015 WECW Proxy](#)

PROXY

WEST END CONSOLIDATED WATER COMPANY

The undersigned appoints(s) Glenn Bozar as the proxy of the undersigned, with full power of substitution, to attend and vote all shares of the undersigned in the Corporation at the Annual 2015 Meeting, and all adjournments thereof according to the number of votes the undersigned would be entitled to cast if personally present, for or against any proposal, including the election of members of the Board of Directors, and any and all other business that may come before the meeting, except as otherwise indicated below.

INSTRUCTION TO PROXY HOLDER(S)

Shareholders: Check the applicable box and complete this form if you desire to instruct the proxy holder regarding the voting of your shares with respect to the election of Members of the Board of Directors from the list of nominees set forth below:

Any shareholder completing this proxy who fails to check the boxes below will be deemed to have given the proxy holder(s) complete discretion in voting his, her, or its shares on any matter voted on at the meeting. If a box is checked, your shares shall be voted in accordance with your instructions.

ELECTION OF DIRECTORS

FOR ALL NOMINEES listed below (except as marked to the contrary).....

To withhold authority to vote for any individual nominee, strike along through the nominee's name in the list below:

WITHHOLD AUTHORITY to vote for ALL NOMINEES listed.....

Tom Thomas Ken Willis

Please sign exactly as your name(s) appears on your stock certificate. Joint owners should sign personally. If signed by attorney-in-fact, power of attorney should be attached.

Dated: _____

Signature(s)

460 N. Euclid Avenue
Address

Ray M. Musser
Name(s) Typed or Printed

Upland, CA 91784
City/State

Mayor
Title



STAFF REPORT

ITEM NO. 10.F

DATE: MARCH 23, 2015
TO: MAYOR AND CITY COUNCIL
FROM: ROD BUTLER, CITY MANAGER
PREPARED BY: ROSEMARY HOERNING, PUBLIC WORKS DIRECTOR
SUBJECT: EMERGENCY REPLACEMENT OF PLANT NO. 4 SWITCHGEAR

RECOMMENDED ACTION

It is recommended the City Council receive and file the status update.

GOAL STATEMENT

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

BACKGROUND

On February 9, 2015, the City Council adopted a Resolution declaring an emergency condition and approved the execution of a construction contract with KSM Electric, Inc. to replace the "switchgear" at City of Upland Plant No. 4.

Plant No. 4 is located east of Euclid Avenue and north of 19th Street. The switchgear is used to control four booster pumps which generally boost water from a lower water pressure zone into the upper zone reservoirs. These boosters convey water to City reservoirs located between Mountain Avenue and San Antonio Avenue north of 21st Street. The switchgear is the electrical control system that manages the power supply (440 Volts) to the boosters and well facility. It is extremely important to maintain boosted water supply operations to the upper reservoir system. These upper reservoirs serve to manage pressure and meet water supply demands to many customers.

It is essential that the replacement of the critical Plant No. 4 switchgear be addressed in advance of the peak summer water demand season.

Electrical equipment has been ordered to assemble the replacement switchgear. This work is in progress.

ISSUES/ANALYSIS

An inspection of the unit identified probable reliability concerns and also potential safety issues. Electrical equipment can be a long lead item. The switchgear at Plant No. 4 is in need of replacement prior to the summer season.

FISCAL IMPACTS

The City Council authorized up to \$75,000 for this replacement project. The budget for this particular project is located in 640-400-9118-4258.

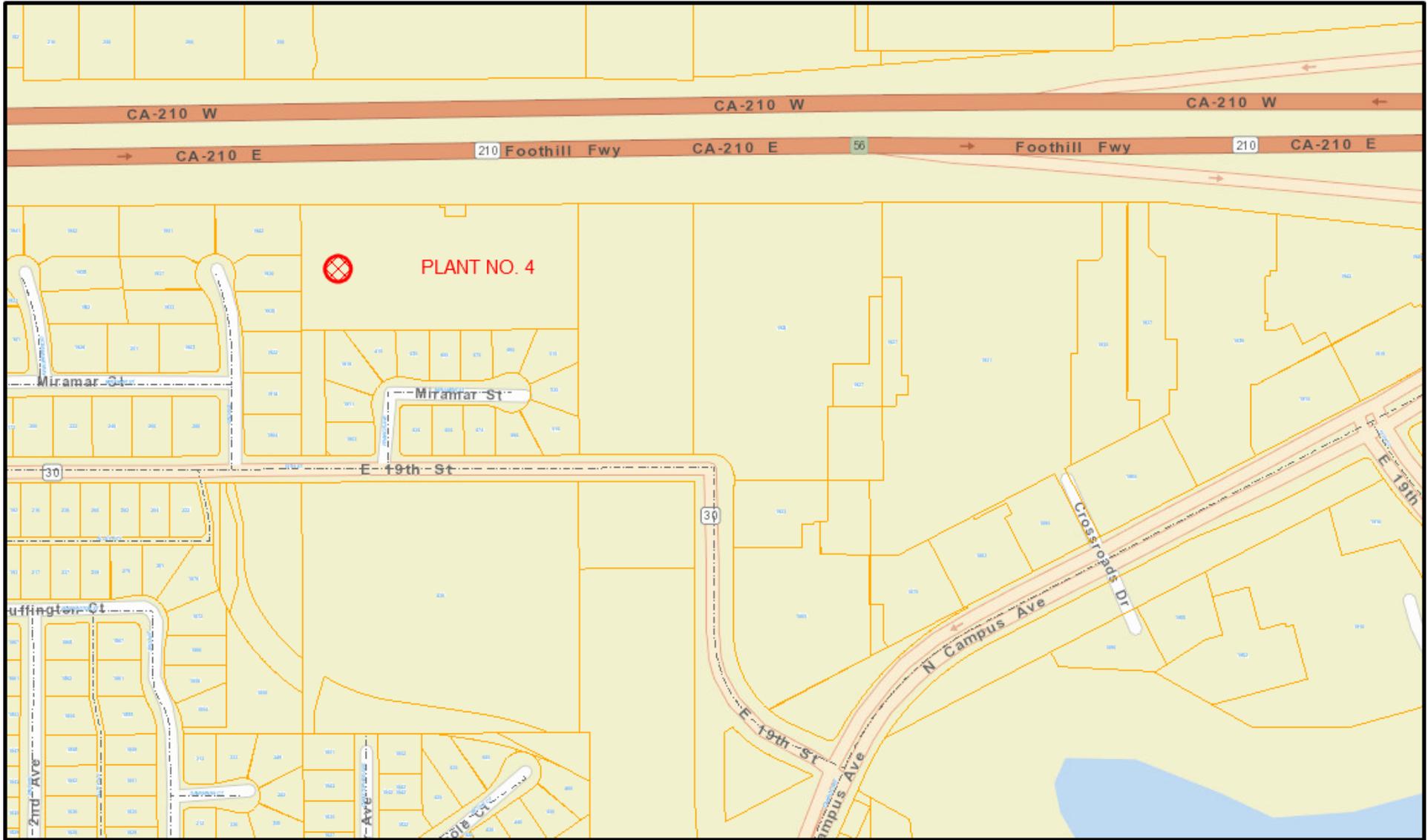
ALTERNATIVES

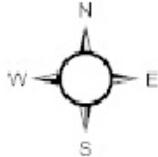
Provide alternative direction to staff.

ATTACHMENTS:

[Location Map for Plant No. 4](#)

EMERGENCY REPLACEMENT OF PLANT NO. 4 SWITCHGEAR



1" = 376 ft	Location Map	02/04/2015		
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This map represents a visual display of related geographic information. Data provided hereon is not a guarantee of actual field conditions. To be sure of complete accuracy, please contact Upland for the most up-to-date information.



STAFF REPORT

ITEM NO. 11.A

DATE: MARCH 23, 2015
TO: MAYOR AND CITY COUNCIL
FROM: ROD BUTLER, CITY MANAGER
PREPARED BY: CHRISTA BUHAGIAR, FINANCE MANAGER
SUBJECT: MUNICIPAL CODE AMENDMENT RELATIVE TO DELINQUENT TRASH COLLECTION FEES

RECOMMENDED ACTION

It is recommended that the City Council hold first reading by number and title only and introduce an Ordinance electing to have delinquent trash collection fees collected on the tax roll and amending Chapter 13.34 and Section 13.28.170 of Chapter 13.28 of Title 13 of the Upland Municipal Code relating to liens imposed for unpaid trash collection services and waive further reading of the Ordinance; and adopt a Resolution establishing fees in connection with the unpaid trash collection service charges.

GOAL STATEMENT

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

BACKGROUND

The City contracts with Burrtec Waste Industries, Inc. to provide solid waste collection, processing and disposal services within the City. When trash collection service accounts become delinquent, state law provides cities with several avenues by which the delinquent amount may be recovered even though the city is not directly providing the service because Public Resources Code Section 40059 authorizes the city to provide trash collection services by franchise agreement with a private company.

Health & Safety Code Sections 5470-5473.11 authorize the imposition of liens on properties with unpaid trash collection services if the City first elects to collect delinquent balances on the tax rolls. Upland Municipal Code Chapter 13.34 was recently amended to authorize the City to collect delinquent water and sewer fees on the tax rolls, and the same provisions of state law authorize delinquent trash collection service charges to be collected in a similar manner. The proposed ordinance merely amends Chapter 13.34 to include the collection of delinquent trash collection service charges within its scope.

ISSUES/ANALYSIS

Pursuant to the procedures set forth in Chapter 13.34, the City must first create and file with the City Clerk a report of all properties with unpaid trash collection service charges over 60 days old. The City Council then holds a hearing on the contents of the report where objections and protests

may be presented. If the Council adopts the report, it is filed with the County Assessor and delinquent amounts are then collected on the tax roll. The City may then file a certificate with the County Recorder to place a lien on the property with delinquent service charges. The City can then recover the unpaid balances when the delinquent properties are sold.

Additionally, Health & Safety Code Section 5471(a) authorizes the City to collect fees "in connection with its...sanitation... system" which includes "garbage and refuse collection" under Health & Safety Code Section 5470(f). Fees that cover the cost to the City to place liens on properties with delinquent accounts are in connection with its sanitation system, and thus are valid so long as these fees reasonably approximate the City's actual costs in doing so. The attached resolution establishes the fee to place a lien at \$53.14 based on the billable hourly rate of City employees engaging in these tasks, the associated postage and the amount charged by the San Bernardino County Auditor-Controller for processing the submitted assessment. The fee for releasing a lien shall be \$14 which is the pass-thru cost established by the San Bernardino County Recorder. A public hearing is needed to approve the fees.

FISCAL IMPACTS

For the prior year lien process, staff looked back three years and determined that the total amount of delinquent trash collection fees totaled \$41,389. A large portion of this could be recovered through the proposed lien process.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

[Ordinance](#)

[Resolution](#)

ORDINANCE NO. __

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UPLAND ELECTING TO HAVE DELINQUENT TRASH COLLECTION FEES COLLECTED ON THE TAX ROLL AND AMENDING CHAPTER 13.34 AND SECTION 13.28.170 OF CHAPTER 13.28 OF TITLE 13 OF THE UPLAND MUNICIPAL CODE RELATING TO LIENS IMPOSED FOR UNPAID TRASH COLLECTION SERVICES

WHEREAS, the City Council of the City of Upland has adopted Ordinance No. 1712 by a 5-0 vote of its members prescribing fees for trash collection service, and the municipal code sections were subsequently renumbered by Ordinance No. 1812; and

WHEREAS, the City contracts with Burrtec Waste Industries, Inc., to provide solid waste collection, processing and disposal services within the City pursuant to Public Resources Code Section 40059; and

WHEREAS, the City Council finds that there are a significant number of property owners with delinquent trash collection service charges; and

WHEREAS, Health and Safety Code Section 5470, *et seq.*, authorizes the City to secure a lien upon a property within the City that has delinquent trash service collection fees if, among other procedural requirements, the City elects to have such fees collected on the tax roll; and

WHEREAS, all legal prerequisites prior to the adoption of this ordinance have occurred.

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

Section 1. Pursuant to Health & Safety Code Sections, 5470(f), 5473 and 5473a, the City Council elects to have delinquent charges for trash collection services collected on the tax roll in the same manner, by the same persons, and at the same time as and together with its general taxes.

Section 2. Pursuant to Health & Safety Code Sections 5473 and 5473.11, the City Council directs City Staff to prepare a written report annually which contains the amount of all delinquent trash collection service accounts that have been unpaid for at least 60 days and a description of each parcel of real property with such an account. Staff is also directed to file this report with the City Clerk and publish notice in a newspaper of general circulation within the City of Upland that a hearing on the contents of the report and placement of a lien on the property will be conducted at a specified date, time, and place. Staff shall also mail written notice to each property owner with a delinquent trash collection service account, at least 10 days prior to the public hearing, or such other time as may be prescribed by state law.

Section 3. If, after the hearing on the contents of the report, the City Council adopts the report as written or as amended, the City Clerk shall file the report with the County Auditor along with a signed statement that the report was adopted by the City Council. The County Auditor shall enter the charges against each property contained in the report, after which time the City Clerk may secure a lien against each property contained in the report by filing a certificate with the County Recorder.

Section 4. Section 13.28.170 of Chapter 13.28 of Title 13 of the Upland Municipal Code is hereby repealed and replaced with the following:

13.28.170 Billing.

A. The billing and collection of the fees imposed by the collectors for solid waste and recyclables collection services shall be the responsibility of the collector and the city shall have no liability or responsibility therefor, although the city may assist in collection of unpaid accounts as authorized by state law and the provisions of this code.

B. Every commercial/industrial business owner and residential owner shall pay the collector the applicable fees for collection services rendered pursuant to this chapter.

C. Unpaid trash collection service charges may be collected pursuant to the provisions of Chapter 13.34.

Section 5. Chapter 13.34 to Title 13 of the Upland Municipal Code is hereby repealed and replaced as follows:

Chapter 13.34 Lien Procedure for Delinquent Water, Sewer and Trash Collection Service Charges

Section 13.34.010 Definitions.

As used in this chapter, the following terms shall have the following definitions:

- A. "City" shall mean the City of Upland.
- B. "City clerk" shall mean the City Clerk of the City of Upland.
- C. "City council" shall mean the City Council for the City of Upland.
- D. "County" shall mean the County of San Bernardino.
- E. "County auditor" shall mean the Auditor-Controller for the County of San Bernardino.
- F. "County recorder" shall mean the Recorder for the County of San Bernardino.

- G. "Current assessment roll" shall mean current assessment roll for the County of San Bernardino.
- H. "Delinquent service charges" shall mean service charges for water and/or sewer and/or trash collection services, including any associated penalties and fees, that remain unpaid for 60 days or more.
- I. "Hearing" shall mean a proceeding before the Upland City Council where protests and objections to the report may be heard and where the Council may adopt, revise, change, reduce or modify any charge or overrule any or all objections to the charges contained in the report.
- J. "Newspaper" shall refer to any newspaper of general circulation within the City of Upland.
- K. "Property owner" shall mean the person, persons, or entity that is listed on the San Bernardino County Current Equalized Assessment Roll as the owner or owners of the subject property.
- L. "Report" shall mean the report described in Section 13.34.020.

Section 13.34.020 Report of delinquent service charges.

The city may periodically cause to be created and filed with the city clerk a report describing properties with delinquent service charges and the amount of such charges.

Section 13.34.030 Notice of hearing to property owners.

The city council shall conduct a hearing where it will consider the contents of the report and any objections or protests from affected property owners. The city clerk shall publish notice of the date, time and location of the hearing in a newspaper of general circulation within the City of Upland, once a week for two consecutive weeks prior to the hearing as set forth in California Government Code section 6066. Notice containing the date, time and location of the hearing shall also be mailed to each property owner with delinquent service charges at least 10 days prior to the hearing.

Section 13.34.040 Hearing.

At the hearing, the city council shall hear any objections or protests from property owners with delinquent service charges. The city council may adopt, revise, change, reduce or modify any charge or overrule any or all objections to the charges contained in the report.

Section 13.34.050 Filing of report with county auditor.

If adopted by the city council, the city clerk shall file the report with the county auditor by August 10 of each year along with a signed statement that the report was adopted by the city council. The county auditor shall then enter the amount of a delinquent service charge against each property contained in the report as it appears on the current assessment roll.

Section 13.34.060 Filing of certificate with county recorder – placement of lien.

After filing the report and statement with the county auditor pursuant to Section 13.34.050, the amount of delinquent services charges may be secured at any time by filing for record in the office of the county recorder a certificate specifying the amount of delinquent service charges and the name and address of the person liable for those unpaid charges.

Section 13.34.070 Fees.

The city may charge fees in connection with the provisions of this chapter in an amount set by resolution of the city council and such fees and may be added onto the amount of any delinquency that is assessed on the tax roll or recorded against any property as a lien.

Section 6. Any provision of the Upland Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

Section 7. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Upland hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

Section 8. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard and this Ordinance shall take effect 30 days after its final passage.

PASSED, APPROVED AND ADOPTED this 6th day of April, 2015.

Ray M. Musser, Mayor

I, Stephanie A. Mendenhall, 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 23rd day of March, 2015, and was adopted at a regular meeting of said City Council of the City of Upland on the 6th day of April, 2015, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

ATTEST: _____
Stephanie A. Mendenhall, City Clerk

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
UPLAND ESTABLISHING FEES IN CONNECTION WITH
UNPAID TRASH COLLECTION SERVICE CHARGES.

A. Recitals.

(i) The City Council of the City of Upland has adopted Ordinance Nos. 1712 by a 5-0 vote prescribing fees for trash collection service, and the municipal code sections were subsequently renumbered by Ordinance No. 1812.

(ii) The City contracts with Burrtec Waste Industries, Inc., to provide solid waste collection, processing and disposal services within the City.

(iii) The City Council finds that there are a significant number of property owners with delinquent trash collection service bills.

(iv) Health and Safety Code Section 5470, *et seq.*, authorizes the City to secure a lien upon a property within the City that has delinquent trash collection service charges if the City elects to have such charges collected on the tax roll.

(v) Health and Safety Code 5471 authorizes the City to impose fees in connection with trash collection, and under its police power, the City may collect fees that bear a reasonable relationship to the cost incurred by the City to enforce its regulations. The City Council finds that the fees set forth below reasonably approximate the costs incurred by the City in placing and removing liens upon properties with delinquent charges for trash collection services.

B. Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF UPLAND, AS FOLLOWS:

1. All of the above recitals are true and correct and are incorporated herein by reference.

2. The fee for filing a lien upon a property with delinquent trash collection service fees pursuant to Chapter 13.34 of the Upland Municipal Code shall be \$53.14 per lien. This amount represents \$40.00 worth of hourly staff time devoted to preparing the required documents (.67 hours at an hourly rate of \$60.00), \$13.14 in certified postage costs, and the amount charged by the San Bernardino County Auditor-Controller for processing electronically submitted assessments and shall be added to the amount of the lien on the property.

3. The fee for releasing a lien imposed pursuant to Chapter 13.34 of the Upland Municipal Code shall be \$14, and the amount charged for recordation of the lien release which is established by the San Bernardino County Recorder.

4. Pursuant to Government Code 66017, the fees imposed by this resolution shall become effective 60 days after adoption.

5. The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 23rd day of March, 2015, by the following vote:

Ray M. Musser, Mayor

I, Stephanie Mendenhall, City Clerk of the City of Upland, do hereby certify that the foregoing resolution was adopted at a regular meeting of the City Council of the City of Upland held on the 23rd day of March, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

ATTEST:

Stephanie a. Mendenhall, City Clerk

**SPECIAL FINANCE & ECONOMIC DEVELOPMENT
COMMITTEE MEETING
MARCH 12, 2015**

CONCLUSION/ACTION SUMMARY

In attendance: Committee Members Bozar, Stone and Morgan, Councilmembers Timm and Filippi, City Manager Butler, Administrative Services Director Mendenhall, Acting Police Chief Bonson, Development Services Director Zwack, Finance Manager Butler, Accounting Supervisor Lugotoff, IT Manager Jeganathan, Detective Teague and Police Officer Kabayan

1) **ORAL COMMUNICATIONS**

Eric Gavin, Upland, spoke in favor of the software.

Bob Nelson, Upland, questioned the on-going costs of the system.

- 2) **Authorization to enter into a contract with Tyler Technologies, Inc. to furnish and deliver an Enterprise Resource Planning System**, Staff provided a presentation. The majority of the Committee recommends the City Council enter into a three-year contract with Tyler Technologies, Inc. to furnish and deliver software, hardware, and services for an Enterprise Resource Planning Software System in an amount not to exceed \$876,738. Committee Member Stone was not in support of this item.



Special Finance and Economic Dev. Comm. Meeting

March 12, 2015

5:00 pm

Pinky Alder Room

-
- 1) ORAL COMMUNICATIONS
 - 2) AUTHORIZATION TO ENTER INTO A CONTRACT WITH TYLER TECHNOLOGIES, INC. TO FURNISH AND DELIVER AN ENTERPRISE RESOURCE PLANNING SYSTEM

NOTE: All Agenda items and back-up materials are available for public review at the Upland Public Library, downstairs reference desk at 450 North Euclid Avenue, the City Clerk's Office at 460 North Euclid Avenue and the City website at www.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 at 909.931.4120. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.102-35.104 ADA Title II]

POSTING STATEMENT: On March 10, 2015 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).



STAFF REPORT

ITEM NO. 2

DATE: MARCH 12, 2015
TO: FINANCE AND ECONOMIC DEVELOPMENT COMMITTEE
FROM: ROD BUTLER, CITY MANAGER
PREPARED BY: JEFF ZWACK, DEVELOPMENT SERVICES DIRECTOR
CHRISTA BUHAGIAR, FINANCE MANAGER
RICHARD JEGANATHAN, IT MANAGER
SUBJECT: AUTHORIZATION TO ENTER INTO A CONTRACT WITH TYLER TECHNOLOGIES, INC. TO FURNISH AND DELIVER AN ENTERPRISE RESOURCE PLANNING SYSTEM

RECOMMENDED ACTION

It is recommended that the Finance and Economic Development Committee recommend that the City Council authorize the City Manager to enter into a three-year contract with Tyler Technologies, Inc. to furnish and deliver software, hardware, and services for an Enterprise Resource Planning Software System in an amount not to exceed \$876,738.

GOAL STATEMENT

The proposed action supports the City's goal to improve efficiency, software reliability and reporting.

BACKGROUND

The City has various software products throughout the organization that provide the basic functionality needed for each department, but they are not seamlessly integrated together and some are no longer supported by the manufacturer. In Fiscal Year 2007/08 the City began using Harris Data NOW for the financial and payroll software which is nearing the end of its life. In FY 2002/03 the City began using Permits Plus for the permit and inspection software, which is now at the end of its life.

A significant amount of manual effort is required to import, export, validate and reconcile data within Data NOW and between software being used by other departments. In many cases spreadsheets are used to gather, consolidate, manipulate and track data outside of the Data NOW system. This duplicate effort is labor intensive and limits time spent on higher level analysis of reliable data. Instead of just buying new software for finance and payroll, it was decided to buy integrated local government software which will serve all departments' software needs.

In addition, on February 20, 2014, the City Council's Blue Ribbon Committee recommended various actions to encourage businesses to locate in Upland by streamlining the development review process involving Building, Planning and Engineering Divisions, along with the Fire Department.

The highest priority from the Blue Ribbon Committee was to invest in new GIS-type software and upgrade the City's web-site so all departments and the public can be interconnected.

Staff began researching ERP software systems in July 2013 and hosted webinars and on-site demonstrations of three companies with numerous local government clients in California. A three-year contract with Tyler Technologies was brought to Council on December 8, 2014 at which time staff was directed to look at this item again and bring it back.

ISSUES/ANALYSIS

Since that time staff has continued to research the partnerships that Munis and New World have with other software vendors and conducted on-site demonstrations of enhanced Community Development software vendors. Staff was most impressed with EnerGov who partners with Munis. After continued contract negotiations Munis was able to offer us the enhanced Community Development software EnerGov for only \$8,731 more than the previously negotiated price.

Staff requested cost proposals from four companies. One was unresponsive, but we received the following three cost proposals:

Springbrook = \$519,785
New World Systems & CRW = \$927,200
Munis & EnerGov = \$876,738

Tyler's Munis product was selected by staff after extensive demos from each company. The goal from the beginning was to purchase a City-wide software solution for all departments. The software products not selected were ruled out because they did not meet the needs of all departments.

Munis currently has 43 clients in the State of California including cities such as Chino, Covina, Monrovia, and Victorville. As part of their due diligence, staff contacted three California cities utilizing Munis for their ERP system and received positive feedback from each city. Staff also attended a site visit at the City of Covina where staff were able to interact and ask questions about implementation and day-to-day operations. At the request of the Finance Committee staff conducted web based site visits with the City of Victorville and the City of Redondo Beach. Victorville and Redondo Beach staff walked front-line users through the process and answered any questions they had.

A new ERP software system will improve City operations by integrating the general ledger, accounts payable, human resources, budgeting, payroll, cashiering, procurement, invoicing, utility billing, inventory, project tracking, planning, permitting and inspections information into a single information repository to assist in producing complete data analysis at all levels. It will also improve the accuracy and timeliness of information by creating a system of checks and balances throughout the work flow process. In addition, it will help in streamlining procedural operations by eliminating redundant or duplicate tasks and reducing many cumbersome manual processes. This will provide greater accountability within the organization, as well as ensure a higher level of accuracy. In addition, new software will benefit Development Services, Fire and Public Works Departments by simplifying the permit and development review process and provide a more efficient use of limited staff during a time when project loads are increasing. This software will also save residents and developers time and money by allowing electronic submittal of plans and electronic payment of permits.

ERP software systems serve to empower City operations by providing the right type of analytical information to assist in making properly informed decisions at all levels. It can enable staff to become more efficient, productive, and responsive to the needs of one another and the constituency they serve by widespread sharing of data from a single information repository.

The tentative project schedule is outlined below:

Financials - 10 months
 Payroll & Human Resources - 10 months
 Work Orders - 7 months
 Permits - 13 months
 Utility Billing - 11 months

The implementation of the Financials module would start in July 2015 and we can decide to start another module sometime during the Financials phase. The Munis group already has a preliminary Statement of Work for the City of Upland and a team reserved assuming a July 2015 start. A more detailed project implementation plan and schedule will be developed as one of the first milestones.

Staff has met with various consultants that could assist with implementation. Another option we are considering is hiring additional help for IT so that the IT Manager would be more available to assist with the project. Staff is still researching the best course of action for all involved.

FISCAL IMPACTS

The proposed contract "not to exceed" amount is \$876,738. This covers the modules selected, data conversion, implementation and consulting. They added 49 days of implementation costs totaling \$57,575 to their original quote because staff was concerned about exceeding the proposal. This allowed them to offer the not-to-exceed guarantee. They strongly feel we will not use all of the days allotted and **will not** charge the City if the days are not used. The Tyler Munis ERP software system offers additional modules to meet other City needs which will be evaluated at a later date.

In the FY 2014/15 budget, \$1,000,000 of fund resources were reserved in the Information Technology Fund for the ERP Software System, the cost of servers and potential additional staffing needs. We kept the budget at this amount, because additional staffing may be necessary as the project gets underway. These costs will be evaluated and brought back to Council if necessary. The funding sources and amounts are as follows:

<u>Fund Description</u>		<u>Amount</u>
General Fund	\$	220,000
Housing		250,000
Water		230,000
Solid Waste		100,000
Sewer		<u>200,000</u>
Total	\$	1,000,000

The year 1 Tyler software maintenance fees of \$76,524 are being waived for the first year, but will be due on the 1 year anniversary of the installation date. These ongoing maintenance costs will also be split across the funds in accordance with their usage.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

[Presentation](#)

[Contract](#)

UPLAND

City-wide Software Solution



City Council Meeting
March 23, 2015

Overview

- What is ERP?
- Goals
- Challenges
- Selection Process
- Munis & EnerGov
- Evergreen Philosophy
- Citizen/Vendor Self Service
- Implementation Timeline
- One-Time Budgeted Funding
- Ongoing Maintenance Costs
- Department Discussion
- Council Recommendation



What is ERP?

- ◎ ERP = Enterprise Resource Planning
 - Seamless software integration
 - Widespread data sharing
 - Enhanced citizen and business access
 - Business transformation



Goals

Administrative Services Department

- Fully integrate finance, human resources, utility billing, and permitting
- Real time information reporting
- Content management



Goals

Administrative Services Department

- ⦿ Eliminate manual processes leading to improved efficiency
- ⦿ Eliminate paper based processes
- ⦿ Improved responsiveness to business and citizens



Transaction Volume

- ◎ Utility Billing Accounts – 18,000
- ◎ Animals Licenses sold – 13,872
- ◎ Cash Receipt Transactions – 69,276
- ◎ AP Checks Issued – 17,039
- ◎ Journal Entries – 3,330



Goals

Development Services, Public Works and Fire Departments

- ⦿ Streamline/ integrate development review process (Blue Ribbon Committee)
- ⦿ Improved responsiveness to residents and local businesses
- ⦿ Electronic plan submittals
 - (time = money)



Goals

Development Services, Public Works and Fire Departments

- On-line access for public/developers to track projects
- On-line access for parcel based information
- Provide real time updates for projects



Challenges

- ◉ Widespread manual processes
- ◉ Lack of integration leading to process duplication
- ◉ Limited staffing
- ◉ Current software products unsupported



Challenges

- ⦿ Less time available to focus on data analysis and research
- ⦿ Manual sending and tracking of approvals and tasks can take days or weeks
- ⦿ Reduced customer service/ satisfaction



Selection Process



- ◎ On-site demonstrations & cost proposals:
 - Springbrook = \$519,785
 - New World Systems & CRW = \$927,200
 - Munis & EnerGov = \$875,463

- ◎ Site visits:
 - Covina, Hesperia, Pomona, Fontana & Victorville

- ◎ References:
 - Covina, Monrovia, Victorville & Redondo Beach

Munis & EnerGov



- ◎ Munis & EnerGov best met the needs of all Departments

- ◎ Tyler Technologies, Inc.
 - Founded: 1966 (NYSE: TYL)
 - Provides software exclusively for the public sector
 - Over 2,500 employees
 - 11,000 Customers Worldwide
 - 50+ California cities using Tyler Munis ERP
 - *Customers include Beverly Hills, Victorville, Monrovia, Chino, Culver City, Santa Barbara and Redondo Beach*

Munis' Evergreen Philosophy = ROI

- ◎ Free upgrades



- ◎ One-time license investment

- ◎ Most current technology

Munis' Citizen Self-Service

- ◉ Gives residents web-based access to:
 - Real-time account balance of utility bills and invoices
 - Pay on-line with a credit card or bank account
 - Make Non-emergency requests of specific municipal departments
 - Plan check status/building permit status



Munis' Vendor Self-Service

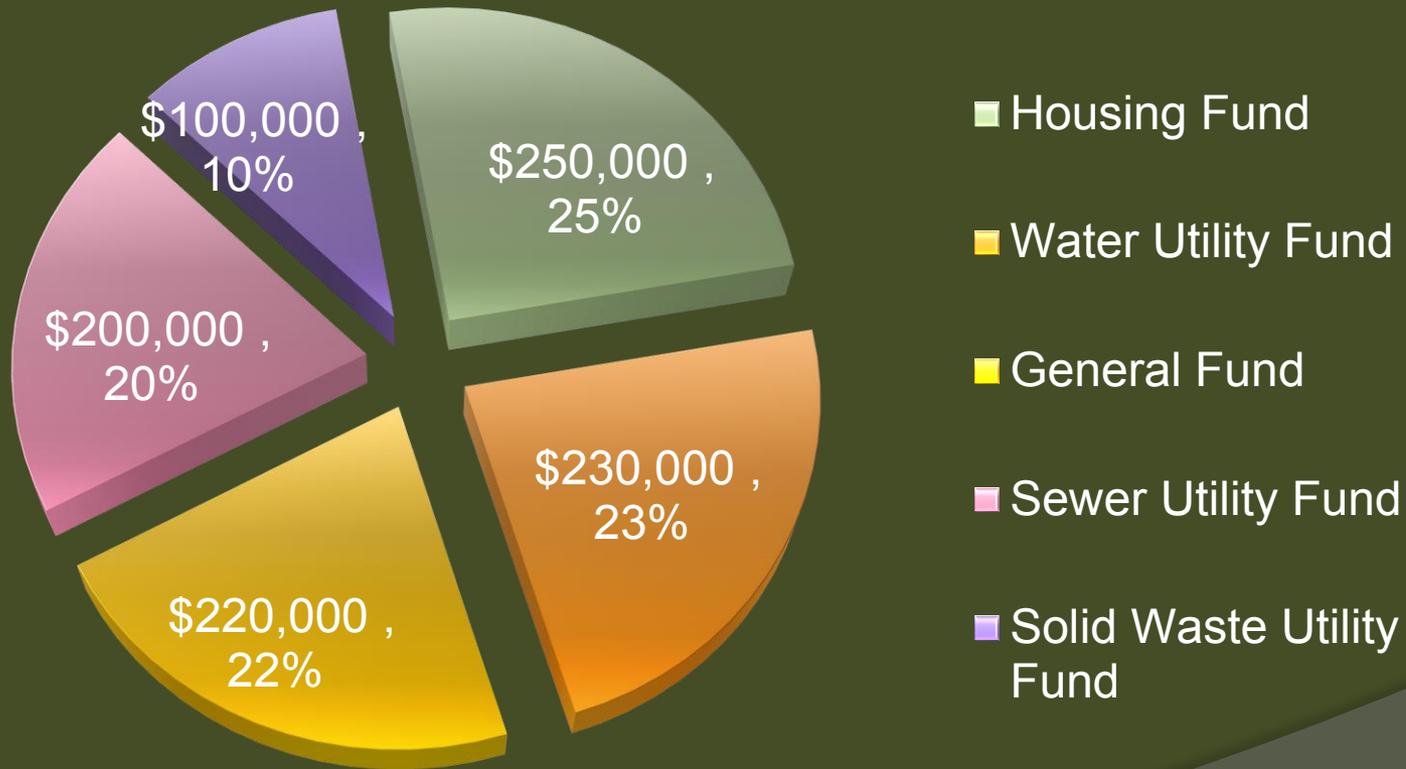
- ◎ Gives vendors web-based access to information and business records:
 - 1099
 - Accounts Payable
 - Bids
 - Purchase Orders
 - Checks
 - Invoices



Implementation Timeline

Project Schedule	FY 2016	FY 2017	FY 2018	FY 2019	Total
Financials	X				10 months
Payroll & HR	X	X			10 months
Permits & Code	X	X			13 months
Work Orders		X	X		7 months
Utility Billing			X	X	11 months

Budgeted One-Time Funding



Ongoing Maintenance Costs

- Finance/Payroll/Utility Billing (\$60,719/year)
- Human Resources (\$35,000/year)
- Development Services and Fire uses Permits Plus (\$30,000/year)
- Public Works uses Dossier (\$6,250/year)
 - Total expenditures per year = \$131,969
- Munis Maintenance costs start at \$100,438 with a 5% increase annually



Department Discussion

- Development Services
- Public Works
- Fire



Recommendation

Let's Do It!!



QUESTIONS?

AGREEMENT

This agreement ("Agreement") is made this _____ day of March 2015 ("Effective Date") by and between Tyler Technologies, Inc., a Delaware corporation with offices at One Tyler Drive, Yarmouth, Maine 04096 ("Tyler") and CITY OF UPLAND, a municipal corporation (hereinafter referred to as "City"), with offices at 460 N. Euclid Avenue, Upland, California 91786.

WHEREAS City awarded Tyler the contract for furnishing, delivering, installing, and implementing an Enterprise Resource Planning system;

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and promises set forth herein, Tyler and City agree that Tyler shall provide products and services, and City shall pay prices, as set forth in this Agreement.

SECTION A – SOFTWARE LICENSE AGREEMENT

1. License Grant.

- a) Upon the Effective Date, Tyler hereby grants to City a non-exclusive, non-transferable, royalty-free, revocable license to use the Tyler software products set forth in the investment summary attached hereto as Exhibit 1 ("Investment Summary") and related interfaces (collectively, the "Tyler Software Products") and Tyler user guides provided in or with the Tyler Software Products ("User Guides") for City's internal business purposes only and otherwise subject to the terms and conditions of this Agreement. This license is revocable by Tyler if City fails to comply with the terms and conditions of this Agreement, including without limitation, City's failure to timely pay the Software fees in full. Upon City's payment in full for the Tyler Software Products, this license will become irrevocable, subject to the restrictions on use and other terms set forth in this Agreement.
- b) Tyler shall retain ownership of, including all intellectual property rights in and to, the Tyler Software Products and User Guides.
- c) The Tyler Software Products are not licensed to perform functions or processing for subdivisions or entities that were not disclosed to Tyler prior to the Effective Date. As noted in Exhibit 1, the EnerGov modules are limited to a maximum of thirty (30) users.
- d) The right to transfer the Tyler Software Products to a replacement hardware system is included in this Agreement. City shall pay Tyler for the cost of new media or any required technical assistance to accommodate the transfer. City shall provide advance written notice to Tyler of any such transfer.
- e) City acknowledges and agrees that the Tyler Software Products and User Guides are proprietary to Tyler and have been developed as trade secrets at Tyler's expense. City shall use best efforts to keep the Tyler Software Products and User Guides confidential and to prevent any misuse, unauthorized use or unauthorized disclosure of the Tyler Software Products or User Guides by any party.
- f) The Tyler Software Products may not be modified by anyone other than Tyler. If City modifies the Tyler Software Products without Tyler's prior written consent, Tyler's obligations to provide maintenance services on, and the warranty for, the Tyler Software Products will be void. City shall not perform decompilation, disassembly, translation or other reverse engineering on the Tyler Software Products.
- g) City may make copies of the Tyler Software Products for archive purposes only. City shall repeat any and all proprietary notices on any copy of the Tyler Software Products. City may make copies of the Tyler User Guides for internal use only.
- h) Tyler maintains an escrow agreement with an escrow services company under which Tyler places the source code of each major release of the Tyler Software Products. At City's request, Tyler will add City as a beneficiary to such escrow agreement. City will pay the annual beneficiary fee (currently \$756) directly to the escrow services company and is solely responsible for maintaining its status as a beneficiary. Release of the source code will be according to the terms of that source code escrow agreement.

i) In the event City acquires from Tyler any edition of Tyler Content Manager software other than Enterprise Edition, the license for Content Manager is restricted to use with Tyler applications only. If City wishes to use Tyler Content Management software with non-Tyler applications, City must purchase or upgrade to Tyler Content Manager Enterprise Edition.

j) In the event City desires to use MyGovPay or VirtualPay functionality for online payment processing in connection with the EnerGov modules identified at Exhibit 1, the provisions of Exhibit 6 will apply. If City elects to use another credit card processing functionality, Tyler shall provide City with a quote itemizing the costs of the EnerGov credit card API and fees for related maintenance and professional services.

2. License Fees. City agrees to pay Tyler, and Tyler agrees to accept from City as payment in full for the license granted herein, the Software fees set forth in the Investment Summary.

3. Verification.

This Section A(3) applies to those in-scope Tyler Software Products that are also identified in the Verification Test exhibit provided at Exhibit 2. As to those Tyler Software Products, City shall select one (1) of the following two (2) options within thirty (30) days of their installation by providing written notice to Tyler in accordance with Section E (19):

a) Within sixty (60) days after the relevant Tyler Software Products have been installed on City's hardware, Tyler shall verify those Tyler Software Products by demonstrating to City that the subject Tyler Software Products perform all of the associated functions set forth in Exhibit 2 - Verification Test, which demonstration will constitute verification that the subject Tyler Software Products substantially conform to the then-current Tyler User Guides; or

b) Within sixty (60) days after the relevant Tyler Software Products have been installed on City's hardware, City shall use its own process to verify that the subject Tyler Software Products perform all of the associated functions set forth in Exhibit 2 - Verification Test, which will constitute verification that the subject Tyler Software Products substantially conform to the then-current Tyler User Guides.

c) Verification as described herein will be final and conclusive, as to the subject Tyler Software Products, except for latent defect, fraud, and a gross mistake that amounts to fraud. In the event verification is not final and conclusive, pursuant to this paragraph, Tyler will correct the cause thereof. In the event Tyler cannot correct the cause thereof, City may invoke its rights under Section A (4).

d) Tyler shall promptly correct any functions of the subject Tyler Software Products that failed verification.

4. Limited Warranty. For the purposes of this Agreement, a "Defect" is defined as a failure of the Tyler Software Products to substantially conform to the then-current Tyler User Guides. A Tyler Software Product is "Defective" if it contains a Defect. For as long as a current Maintenance Agreement is in place, Tyler warrants that the Tyler Software Products will not contain Defects. If the Tyler Software Products do not perform as warranted, Tyler will use reasonable efforts, consistent with industry standards, to cure the Defect in accordance with Tyler's then-current support call process (Tyler's current support call process is set forth in the document attached hereto as Exhibit 3). Should Tyler be unable to cure the Defect or provide a replacement product, City will be entitled to a refund of the Software fee paid for the Defective Tyler Software Product, as depreciated on a straight-line basis over a seven (7) year period commencing on the Effective Date, which will be City's sole remedy should Tyler be unable to cure the Defect or provide a replacement product.

5. Intellectual Property Infringement Indemnification.

a) Tyler's Obligations. Tyler shall defend and indemnify City against any claims or demands, including defense costs and expenses, by an unaffiliated third party of this Agreement that a Tyler Software Product, if used within the scope of this Agreement, infringes upon that party's registered United States patent, copyright or trademark issued and existing as of the Effective Date or as of the distribution date of a release to the Tyler Software Product, and will pay the amount of any resulting adverse final judgment issued by a court of competent jurisdiction or of any settlement made by Tyler in writing.

b) City's Obligations. Tyler obligations in this section are contingent on the City performing all of the following in connection with any claim as described herein:

- i. Promptly notifies Tyler in writing of any such claim;
- ii. Gives Tyler reasonable cooperation, information, and assistance in connection with the claim; and
- iii. Consents to Tyler's sole control and authority with respect to the defense, settlement or compromise of the claim.

c) Exceptions to Tyler's Obligations. Tyler will have no liability hereunder if the claim of infringement or an adverse final judgment rendered by a court of competent jurisdiction results from:

- i. City's unauthorized use of a previous version of a Tyler Software Product and the claim would have been avoided had City used the current version of the Tyler Software Product;
- ii. Use of a Tyler Software Product in operating environments or applications, or for business purposes or processes for which the Tyler Software Product was not designed or contemplated, and where use of the Tyler Software Product outside such operating environment, application, business purpose or process would not have given rise to the claim;
- iii. Corrections, modifications, alterations or enhancements that City made to the Tyler Software Product and such correction, modification, alteration or enhancement is determined by a court of competent jurisdiction to be a contributing cause of the infringement;
- iv. Use of the Tyler Software Product by any person or entity other than City or City's employees; or
- v. City's willful infringement, including City's continued use of the infringing Tyler Software Product after City becomes aware that such infringing Tyler Software Product is or will become the subject of a claim hereunder.

d) Remedy.

i. In the event a Tyler Software Product is, by a court of competent jurisdiction, finally determined to be infringing and its use by City is enjoined, Tyler will, at its election:

- (a) Procure for City the right to continue using the infringing Tyler Software Products;
- (b) Modify or replace the infringing Tyler Software Products so that it becomes non-infringing; or
- (c) Terminate City's license for the infringing Tyler Software Product and refund to City the Software fee paid for the infringing Tyler Software Product, as depreciated on a straight-line basis over a seven (7) year period commencing on the Effective Date.

ii. The foregoing states Tyler's entire liability and City's sole and exclusive remedy with respect to the subject matter hereof.

SECTION B – PROFESSIONAL SERVICES AGREEMENT

1. Services. Tyler shall provide the services set forth in the Investment Summary at City's election, including Consulting, Training, Conversion, and other miscellaneous Services.

2. Professional Services Fees.

a) Notwithstanding specific prices to the contrary set forth in the Investment Summary, all Consulting and Training services will be invoiced in half-day and full-day increments.

b) Verification in accordance with Section A (3) (a) will be billable to City at the rate for Training services set forth in the Investment Summary.

c) Expenses will be billed in accordance with the then-current Tyler Business Travel Policy, based on Tyler's usual and customary practices. Copies of receipts will be provided on an exception basis at no charge. Should all receipts for non per diem expenses be requested, an administrative fee will be incurred. Receipts for mileage and miscellaneous items less than five dollars (\$5) are not available.

3. Additional Services.

a) Training and/or consulting services utilized in excess of those set forth in the Investment Summary and additional related services not set forth in the Investment Summary will be billed at Tyler's then-current rates.

b) Programming and/or interface quotes are estimates based on Tyler's understanding of the specifications supplied by City. In the event City requires additional work performed above the specifications provided, Tyler will submit to City an amendment containing an estimate of the charges for the additional work. City will have thirty (30) calendar days from the date the estimate is provided to approve the amendment.

4. Cancellation. In the event City cancels services less than two (2) weeks in advance of their scheduled on-site services, City is liable to Tyler for (i) all non-refundable expenses incurred by Tyler on City's behalf; and (ii) daily fees associated with the canceled services if Tyler is unable to re-assign its personnel.

5. Services Warranty. Tyler warrants that it shall perform services in a professional, workmanlike manner, consistent with industry standards. In the event Tyler provides services that do not conform to this warranty, Tyler will re-perform the services at no additional cost to City.

SECTION C – MAINTENANCE AGREEMENT

1. Scope of Agreement. City agrees to purchase and Tyler agrees to provide maintenance services for the Tyler Software Products in accordance with the following terms and conditions.

2. Term of Agreement. This Maintenance Agreement is effective on installation of the Tyler Software Products and will remain in force for an initial one (1) year term, which will renew automatically for additional one (1) year terms at Tyler's then-current Maintenance fees unless terminated in writing by either party at least fifteen (15) days prior to the end of the then-current term. Notwithstanding the foregoing, Tyler agrees not to raise maintenance fees by more than five (5) percent year-over-year in years two (2) through five (5), by more than seven (7) percent year-over-year in years six (6) and seven (7), and by more than eight (8) percent year-over-year in years eight (8) through ten (10). Thereafter, Tyler shall not raise City's maintenance fees by more than the increase imposed on similarly situated Tyler customers.

3. Payment

a) Maintenance fees will be invoiced by Tyler annually in advance. Tyler shall provide City with not less than forty-five (45) days written notice of any change in annual Maintenance fees.

b) Additional Charges. Any maintenance services performed by Tyler for City which are not covered by this Maintenance Agreement, as set forth in Section C(5), including materials and expenses, will be billed to City at Tyler's then current rates.

c) Tyler reserves the right to suspend maintenance services if City fails to pay undisputed Maintenance fees within sixty (60) calendar days of the due date. Tyler shall reinstate maintenance services upon City's payment of all past due Maintenance fees, including all such fees for the periods during which services were suspended.

4. Maintenance Services Terms and Conditions. For as long as a current Maintenance Agreement is in place, Tyler shall:

a) In a professional, good and workmanlike manner, perform its obligations in accordance with Tyler's then-current support call processes (Tyler's current support call process is set forth in the document attached hereto as Exhibit 3-A for all Munis/non-EnerGov modules, and as Exhibit 3-B for all EnerGov modules) in order to conform the Tyler Software Products to the applicable warranty under this Agreement. If City modifies the Tyler Software Products without Tyler's prior written consent, Tyler's obligations to provide maintenance services on and warrant the Tyler Software Products will be void.

b) Provide telephone support on the Tyler Software Products. Tyler personnel shall accept telephone calls during the hours set forth in Exhibits 3-A and 3-B.

c) Continuously maintain a master set of the Tyler Software Products on appropriate media, a hardcopy printout of source code to the Tyler Software Products, and Tyler User Guides.

d) Maintain personnel that are appropriately trained to be familiar with the Tyler Software Products in order to provide maintenance services.

- e) Provide City with all releases Tyler makes to the Tyler Software Products that Tyler makes generally available without additional charge to customers possessing a current Tyler annual Maintenance Agreement. Third-party products and installation, consulting and training services related to the new releases will be provided to City at Tyler's then-current rates, unless City has purchased OSDBA services for the year in which the new release is provided, in which case these services will be provided at no charge beyond the OSDBA services fees. City acknowledges and agrees that a new release of the Tyler Software Products is for implementation in the Tyler Software Products as they exist without City customization or modification.
- f) Support prior releases of the Tyler Software Products in accordance with Tyler's then-current release life cycle policy.

5. **Limitations and Exclusions.** Except as set forth in Section C(4)(e), maintenance fees do not include installation or implementation of the Tyler Software Products, onsite support (unless Tyler cannot remotely correct a defect in a Tyler Software Product), application design, other consulting services, support of an operating system or hardware, and support outside Tyler's normal business hours.

6. **City Responsibilities.**

- a) City shall provide, at no charge to Tyler, full and free access to the Tyler Software Products; working space; adequate facilities within a reasonable distance from the equipment; and use of machines, attachments, features, or other equipment necessary to provide maintenance services set forth herein.
- b) Tyler currently utilizes "Go To Assist" as a secure commercial PC to PC remote connectivity tool to provide remote maintenance services. City shall maintain for the duration of the Agreement a high-speed Internet connection capable of connecting to City's PC's and server. Tyler strongly recommends that City also maintain a modem or VPN for backup connectivity purposes. Tyler, at its option, will use the connection to assist with problem diagnosis and resolution.

SECTION D – THIRD PARTY PRODUCT AGREEMENT

1. **Agreement to License or Sell Third Party Products.** For the prices set forth in the Investment Summary, Tyler agrees to sell and deliver to City, and City agrees to accept from Tyler the Hardware set forth in the Investment Summary. In addition, Tyler agrees to license the DocOrigin functionality (the "System Software") embedded in the Tyler Forms module. The Hardware and System Software are referred to collectively as the "Third Party Products".

2. **License of System Software.**

- a) Upon City's payment in full of the System Software fees, Tyler shall grant to City and City shall accept from Tyler a non-exclusive, nontransferable, non-assignable license to use the System Software and related documentation for City's internal business purposes, subject to the terms and conditions set forth herein and in the DocOrigin EULA set forth at Exhibit 5. Notwithstanding Section 7.2 of the DocOrigin EULA, Tyler represents and warrants that it is authorized by DocOrigin to agree that termination under that Section 7.2 will only be pursued in the event of City's material breach of the DocOrigin EULA. Material breach includes, for example, impermissible use, copying, and/or reverse engineering of the System Software, and/or infringement of DocOrigin's intellectual property rights. Tyler represents and warrants that it is further authorized to agree that City shall have thirty (30) days to cure the alleged material breach before any termination under Section 7.2 of the DocOrigin EULA shall be effective.
- b) DocOrigin shall retain ownership of the System Software.
- c) The right to transfer the System Software to a replacement hardware system is governed by DocOrigin. The cost for new media or any required technical assistance to accommodate the transfer would be billable charges to City. City shall provide advance written notice to Tyler of any such transfer.
- d) City acknowledges and agrees that the System Software and related documentation are proprietary to DocOrigin and have been developed as trade secrets at DocOrigin's expense. City shall use best efforts to keep the System Software and related documentation confidential and to prevent any misuse, unauthorized use, or

unauthorized disclosure of the System Software and related documentation by any party.

e) City shall not perform decompilation, disassembly, translation or other reverse engineering on the System Software.

f) City may make copies of the System Software for archive purposes only. City shall repeat any and all proprietary notices on any copy of the System Software. City may make copies of the documentation accompanying the System Software for internal use only.

3. **Delivery.** Unless otherwise indicated in the Investment Summary, the prices for Third Party Products include costs for shipment while in transit from DocOrigin or the Hardware supplier to City.

4. **Installation and Acceptance.** Unless otherwise noted in the Investment Summary, the Tyler Software Product installation fee includes installation of the Third Party Products. Upon completion of installation, City will obtain from Tyler a certification of completion, or similar document, which will constitute City's acceptance of the Third Party Products. Such acceptance will be final and conclusive except for latent defect, fraud, and a gross mistake as amount to fraud.

5. **Site Requirements.** City shall provide a suitable environment, location and space for the installation and operation of the Third Party Products; sufficient and adequate electrical circuits for the Third Party Products; and installation of all required cables.

6. **Warranties.**

a) Tyler is authorized by DocOrigin to grant licenses or sublicenses to the System Software.

b) Tyler warrants that each Third-Party Product will be new and unused, and if City fully and faithfully performs each and every obligation required of it under this Third Party Product Agreement, City's title or license to each Third-Party Product will be free and clear of all liens and encumbrances arising through Tyler.

c) City acknowledges and agrees that Tyler is not the manufacturer of the Third Party Products. As such, Tyler does not warrant or guarantee the condition or operating characteristics of the Third Party Products. Tyler hereby grants and passes through to City any warranty adjustments that Tyler may receive from DocOrigin or the Hardware supplier of the Third Party Products.

7. **Maintenance.**

a) In the event City elects not to purchase through Tyler maintenance services on the System Software, it will be the responsibility of City to repair and maintain the System Software and purchase enhancements as necessary after acceptance.

b) In the event City elects to purchase through Tyler maintenance services on the System Software, Tyler will facilitate resolution of a defect in a System Software product with DocOrigin.

c) In the event DocOrigin charges a fee for future System Software release(s), City will be required to pay such fee.

SECTION E – GENERAL TERMS AND CONDITIONS

1. **Taxes.** The fees set forth in the Investment Summary do not include any taxes, including, without limitation, sales, use or excise tax. All applicable taxes shall be paid by Tyler to the proper authorities and shall be reimbursed by City to Tyler. In the event City possesses a valid direct-pay permit, City will forward such permit to Tyler on the Effective Date, in accordance with Section E(19). In such event, City will be responsible for remitting all applicable taxes to the proper authorities. If tax-exempt, City will provide Tyler with City's tax-exempt certificate.

2. **Invoice Dispute.**

a) In the event City believes products or services do not conform to warranties in this Agreement, City will provide written notice to Tyler within thirty (30) calendar days of receipt of the applicable invoice. City is

allowed an additional fifteen (15) calendar days to provide written clarification and details. Tyler will provide a written response to City that will include either a justification of the invoice or an adjustment to the invoice. Tyler and City will develop a plan to outline the reasonable steps to be taken by Tyler and City to resolve any issues presented in City's notice to Tyler. City may only withhold payment of the amount actually in dispute until the dispute is resolved by the dispute resolution procedures contained herein. Notwithstanding the foregoing, if Tyler is unable to complete its actions outlined in the plan because City has not completed its action items outlined in the plan, City will remit full payment of the invoice.

b) Any invoice not disputed as described above will be deemed accepted by City. Tyler reserves the right to suspend delivery of all services in the event City fails to pay an invoice not disputed as described above within sixty (60) calendar days of receipt of invoice. Notwithstanding the foregoing, and without waiving its rights under this Agreement, Tyler agrees not to charge City a late fee if City fails to make timely payment without first warning City of its intent to do so because of City's failure to pay undisputed fees within sixty (60) days of invoicing.

3. Force Majeure; City Assistance. "Force Majeure" is defined as an event beyond the reasonable control of a party, including governmental action, war, riot or civil commotion, fire, natural disaster, labor disputes, restraints affecting shipping or credit, delay of carriers, inadequate supply of suitable materials or any other cause which could not with reasonable diligence be foreseen, controlled or prevented by the party. Neither party shall be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by Force Majeure.

Force Majeure will not be allowed unless:

a) Within ten (10) business days of the occurrence of Force Majeure, the party whose performance is delayed thereby provides the other party or parties with written notice explaining the cause and extent thereof, as well as a request for a time extension equal to the estimated duration of the Force Majeure events.

b) Within ten (10) business days after the cessation of the Force Majeure event, the party whose performance was delayed provides the other party written notice of the time at which Force Majeure ceased and a complete explanation of all pertinent events pertaining to the entire Force Majeure situation.

Either party will have the right to terminate this Agreement if Force Majeure suspends performance of scheduled tasks by one or more parties for a period of one hundred-twenty (120) or more days from the scheduled date of the task. This paragraph will not relieve City of its responsibility to pay for services and goods provided to City and expenses incurred on behalf of City prior to the effective date of termination.

In addition, City acknowledges that the implementation of the Tyler Software Products is a cooperative process requiring the time and resources of City personnel. City shall, and shall cause City personnel to, use all reasonable efforts to cooperate with and assist Tyler as may be reasonably required to meet the project deadlines and other milestones agreed to by the parties for implementation. Tyler shall not be liable for failure to meet such deadlines and milestones when such failure is due to Force Majeure (as defined above) or to the failure by City personnel to provide such cooperation and assistance (either through action or omission).

4. Indemnification and Limitation of Liability.

a) Tyler shall indemnify, defend, protect and hold harmless City, its agents, officials and employees from and against any and all demands, claims, losses, liabilities, damages, costs and expenses (including reasonable attorney's fees and costs) of any kind or nature which the City, its agents, officials and employees may sustain or incur, or which may be imposed upon them, for death or personal injury or property damage arising from Tyler's negligent acts or omissions or willful misconduct.

b) City shall indemnify, defend, protect and hold harmless Tyler, its agents, officials and employees from and against any and all demands, claims, losses, liabilities, damages, costs and expenses (including reasonable attorney's fees and costs) of any kind or nature which the City, its agents, officials and employees may sustain or incur, or which may be imposed upon them, for death or personal injury or property damage arising from City's negligent acts or omissions or willful misconduct.

c) **EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, TYLER'S**

LIABILITY FOR DAMAGES ARISING OUT OF THIS AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO THE LESSER OF (A) CITY'S ACTUAL DIRECT DAMAGES OR (B) THE AMOUNTS PAID BY CITY UNDER THIS AGREEMENT. THE PRICES SET FORTH IN THIS AGREEMENT ARE SET IN RELIANCE UPON THIS LIMITATION OF LIABILITY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS THAT ARE SUBJECT TO SECTIONS A(5) AND E(4)(a). TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL TYLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, EVEN IF TYLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

5. Disclaimer. THE RIGHTS, REMEDIES, AND WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER RIGHTS, REMEDIES, AND WARRANTIES EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND SYSTEM INTEGRATION, WHICH ARE HEREBY DISCLAIMED BY TYLER.

6. Dispute Resolution. City will notify Tyler in writing within thirty (30) days of becoming aware of a dispute. If Tyler and City cannot resolve such dispute within forty-five (45) calendar days of Tyler's receipt of written notice from City, the following procedure will apply:

- a) Each party shall appoint one (1) person to act as an impartial representative. The appointed individual will be of sufficient knowledge and experience to understand and deal with the dispute but will not be a person assigned to the project. The set of four (4) individuals consisting of Tyler's Project Manager for this project, City's Project Manager for this project, and the two (2) appointees is called a Dispute Resolution Group.
- b) The Dispute Resolution Group shall convene no later than twenty-one (21) calendar days after the expiration of the forty-five (45) calendar day period referenced above and shall meet for a maximum of four (4) four (4) hour sessions during the subsequent four (4) business days, unless otherwise mutually agreed. Any resolution will be in writing and signed by both parties. Such resolution will constitute a binding amendment to the Agreement.

In the event the Dispute Resolution Group fails to resolve the dispute as set forth above, the dispute will be referred to non-binding mediation. Thereafter, either party may assert its other rights and remedies under this Agreement within a court of competent jurisdiction within the municipal, superior, or federal district court with geographic jurisdiction over the City of Upland.

To the maximum extent permitted by and provided for under California Government Code Section 54950 *et seq.*, all meetings and discussions of the Dispute Resolution Group will be deemed confidential settlement discussions not subject to disclosure under Federal Rule of Evidence 408 or any similar applicable state rule. Nothing in this Article will prevent a party from applying to a federal or state court of competent jurisdiction, as defined in the paragraph above, to obtain injunctive relief pending resolution of the dispute through the dispute resolution procedures set forth herein.

7. No Intended Third Party Beneficiaries. This Agreement is entered into solely for the benefit of Tyler and City. No third party will be deemed a beneficiary of this Agreement, and no third party will have the right to make any claim or assert any right under this Agreement.

8. Governing Law. This Agreement will be governed by and construed in accordance with the laws of City's state of domicile.

9. Entire Agreement. This Agreement, including the attached exhibits, represents the entire agreement of City and Tyler with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and

representations, whether written, oral, expressed, implied, or statutory. City hereby acknowledges that in entering into this Agreement it did not rely on any information not explicitly set forth in this Agreement, including the attached exhibits.

10. Severability. If any term or provision of this Agreement or the application thereof, to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable will not be affected thereby, and each term and provision of this Agreement will be valid and enforced to the fullest extent permitted by law.

11. No Waiver. In the event that the terms and conditions of this Agreement are not strictly enforced by Tyler or City, such non-enforcement shall not act as or be deemed to act as a waiver or modification of this Agreement, nor shall such non-enforcement prevent Tyler or City from enforcing each and every term of this Agreement thereafter.

12. Multiple Originals and Signatures. This Agreement may be executed in multiple originals, any of which shall be independently treated as an original document. Any electronic, faxed, scanned, photocopied or similarly reproduced signature on this Agreement or any amendment hereto shall be deemed an original signature and shall be fully enforceable as if an original signature.

13. Amendment. This Agreement may only be modified by written amendment signed by authorized representatives of both parties.

14. Termination. City may terminate this Agreement for cause in the event Tyler does not cure a material breach of this Agreement within forty-five (45) days of receiving notice of such breach from City. Upon such termination, City shall pay Tyler for all services and expenses not in dispute and non-Defective Tyler Software Products which were delivered or incurred prior to the date Tyler received City's notice of termination. Payment for services and expenses in dispute will be determined in accordance with the dispute resolution process.

15. Non-appropriation. If City should not appropriate or otherwise make available funds sufficient to purchase, lease, operate or maintain the products set forth in this Agreement, or other means of performing the same functions of such products, City may unilaterally terminate this Agreement only upon thirty (30) days written notice to Tyler. Upon termination, City shall remit payment for all products and services delivered to City and all expenses incurred by Tyler prior to Tyler's receipt of the termination notice. City will not be entitled to a refund or offset of previously paid license and other fees.

16. Approval of Governing Body. City represents and warrants to Tyler that this Agreement has been approved by its governing body and is a binding obligation upon City.

17. No Assignment. City may not assign its rights and responsibilities under this Agreement without Tyler's prior written permission, not to be unreasonably withheld.

18. Successors and Assigns. This Agreement shall inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

19. Notices. All notices or communications required or permitted as a part of this Agreement will be in writing (unless another verifiable medium is expressly authorized) and will be deemed delivered when:

- 1) Actually received,
- 2) Upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the party,
- 3) Upon receipt by sender of proof of email delivery, or
- 4) If not actually received, ten (10) days after deposit with the United States Postal Service authorized mail

center with proper postage (certified mail, return receipt requested) affixed and addressed to the respective other party at the address set forth in this Agreement or such other address as the party may have designated by notice or Agreement amendment to the other party.

Consequences to be borne due to failure to receive a notice due to improper notification by the intended receiving party of a new address will be borne by the intended receiving party. The addresses of the parties to this Agreement are as follows:

Tyler Technologies, Inc. One Tyler Drive Yarmouth, ME 04096 Attention: Associate General Counsel	City of Upland 460 N. Euclid Ave Upland, CA 91786 Attention: City Manager
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20. Independent Contractor. This is not an agreement of partnership or employment of Tyler or any of Tyler's employees by City. Tyler is an independent contractor for all purposes under this Agreement.

21. Insurance.

a) Tyler shall maintain limits no less than:

(i) **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.

(ii) **Automobile Liability:** One million dollars (\$1,000,000) per accident for bodily injury and property damage.

(iii) **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.

b) Tyler shall be solely responsible for any deductibles or self-insured retentions.

c) The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(i) The City, its officers, officials, employees and volunteers are to be covered as additional insureds as respects Tyler's Commercial General Liability and Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

(ii) For any claims related to this project, Tyler's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of Tyler insurance and shall not contribute with it.

(iii) 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.

(iv) Prior to any insurance policy required by this clause being suspended, voided, canceled, or reduced in coverage or in limits except, Tyler shall provide the City thirty (30) days' prior written notice by certified mail, return receipt requested.

d) 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.

e) Tyler shall furnish the City with Certificates of Insurance evidencing coverage required by this clause. All certificates are to be received and approved by the City before work commences.

22. Confidentiality. Both parties recognize that their respective employees and agents, in the course of performance of this Agreement, may be exposed to confidential information and that disclosure of such information could violate rights to private individuals and entities. Each party agrees that it shall not disclose any confidential information of the other party and further agrees to take appropriate action to prevent such

disclosure by its employees or agents. The confidentiality covenants contained herein will survive the termination or cancellation of this Agreement for a period of two (2) years. This obligation of confidentiality will not apply to information that:

- a) At the time of the disclosure is in the public domain;
- b) After disclosure, becomes part of the public domain by publication or otherwise, except by breach of this Agreement by a party;
- c) A party can establish by reasonable proof was in that party's possession at the time of disclosure;
- d) A party receives from a third party who has a right to disclose it to that party; or
- e) Is subject to requests under the Freedom of Information Act or the California Public Records Act, only to the extent disclosure is based on the good faith written opinion of the receiving party's legal counsel that disclosure is required by law: provided, however, that that receiving party shall make best efforts to give notice of the service of process or other documentation that underlies such requirement so that the disclosing party may obtain a protective order or otherwise protect the confidentiality of such confidential information. The disclosing party reserves the right to obtain protective order or otherwise protect the confidentiality of its confidential information.

23. Nondiscrimination. Tyler shall not discriminate against any person employed or applying for employment concerning the performance of Tyler's responsibilities under this Agreement. This discrimination prohibition will apply to all matters of initial employment, tenure, and terms of employment, or otherwise with respect to any matter directly or indirectly relating to employment concerning race, color, religion, national origin, age, sex, sexual orientation, ancestry, disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight, marital status, or political affiliation.

24. Subcontractors. Tyler shall not subcontract any services under this Agreement without City's prior written permission, not to be unreasonably withheld.

25. Shipping. Delivery will be F.O.B. shipping point.

26. Business License. In the event a local business license is required for Tyler to perform services hereunder, City will notify Tyler prior to the Effective Date and will provide Tyler with the necessary paperwork and/or contact information.

27. Tyler Forms Processing. The Tyler Software Product "Tyler Forms Processing" must be used in conjunction with a Hewlett Packard printer supported by Tyler for printing checks.

28. Payment Terms.

- a) Tyler shall invoice City \$75,002.25 upon the Effective Date. Such amount equals 25% of the Tyler software license fees.
- b) Tyler shall invoice City \$150,004.50 when Tyler has made the Tyler Software Products available to City for downloading. Such sum equals 50% of the Tyler software license fees.
- c) Tyler shall invoice City the Hardware fees of \$15,702 upon delivery of such Hardware.
- d) Tyler shall invoice City \$19,131 upon installation of the Tyler Software Products. Such sum equals 100% of the year 1 OS/DBA Contract Services fee.
- e) Tyler shall invoice the Project Planning Services fee of \$6,000 upon delivery of the Implementation Planning document.
- f) Tyler shall invoice City \$75,002.25 upon verification of the Tyler Software Products in accordance with

Section A (3) (“Verification”). Such amount equals 25% of the Tyler software license fees. Unless City notifies Tyler in writing that the Tyler Software Products have failed Verification, Verification will be deemed to have occurred ninety (90) days from the date Tyler makes the Tyler Software Products available to City for downloading.

g) Tyler shall invoice City fees for Data Conversion services as follows:

50% upon initial delivery of converted data, by conversion option

50% upon City acceptance to load converted data into live environment (automatic, electronic notification), by conversion option

h) Except as otherwise set forth herein, Tyler shall invoice City fees for Services, plus expenses, if and as provided/incurred.

i) Tyler shall invoice a 50% deposit for any modifications upon delivery of specifications and 50% upon delivery of modification. Tyler will perform a modification upon receipt of written notice to proceed from City. City will have thirty (30) days from delivery of a modification to test such modification. In the event City does not report an issue with such modification to Tyler within such thirty (30) day period, the modification will be deemed in compliance with the specifications.

j) Prices do not include travel expenses incurred in accordance with Tyler’s then-current Business Travel Policy. A detailed summary of Tyler’s current Business Travel Policy is attached hereto as Exhibit 4. Notwithstanding any provision in the Business Travel Policy, Tyler agrees that it will not seek reimbursement from City for any “Entertainment” expenses, as described in paragraph 5 of that policy.

k) Payment is due within forty-five (45) days of the invoice date.

l) The year 1 Tyler software maintenance fees of \$76,524 for the one (1) year period commencing upon installation of the Tyler Software Products are hereby waived. Subsequent annual Maintenance fees will be due on the anniversary of the installation date of the Tyler Software Products.

29. Electronic Payment. Tyler prefers to receive payments electronically. Tyler’s electronic payment information is as follows:

Bank: Wells Fargo Bank, N.A.
420 Montgomery
San Francisco, CA 94104

ABA: 121000248

Account: 4124302472

Beneficiary: Tyler Technologies Inc. – Operating

30. Operating System/Database Administration. OS/DBA Contract Services will renew automatically for additional one (1) year terms at Tyler’s then-current OS/DBA fee unless terminated in writing by either party at least fifteen (15) days prior to the end of the then-current term.

31. Optional Items. Notwithstanding any statement to the contrary in the Investment Summary, pricing for optional products and services shall be valid for twenty-four (24) months from the Effective Date.

32. Tyler Products and Services. City may purchase additional Tyler products and services at then-current list

price, pursuant to the terms of this Agreement, by executing a mutually agreed addendum.

33. Use of City's Name. City must pre-approve Tyler's use of the City's name in City lists, marketing presentations, and promotional materials.

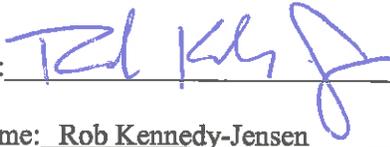
34. Contract Documents. This Agreement includes the following exhibits:

- Exhibit 1 – Investment Summary
- Exhibit 2 – Verification Test
- Exhibits 3-A and 3-B– Support Call Processes
- Exhibit 4 – Business Travel Policy
- Exhibit 5 – DocOrigin End User License Agreement
- Exhibit 6 – MyGovPay/Virtual Pay

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth below.

Tyler Technologies, Inc.
ERP and Schools Division

City of Upland

By:  _____

By: _____

Name: Rob Kennedy-Jensen

Name: _____

Title: Senior Corporate Attorney

Title: _____

Date: March 9, 2015

Date: _____

Exhibit 1

Investment Summary



Quoted By: Kyle Johnson
 Date: 3/5/2015
 Quote Expiration: 8/8/2015
 Quote Name: City of Upland-ERP-Munis
 Quote Number: 2015-11471
 Quote Description: Contract Investment Summary v.5 (EnerGov)

Sales Quotation For
 City of Upland
 460 N. Euclid Avenue
 Upland, California 91786
 Phone (909) 931-4150

Tyler Software and Related Services

Description	License	Impl. Days	Impl. Cost	Data Conversion	Module Total	Year One Maintenance
Financials:						
Accounting/GL/BG/AP	\$52,250.00	22 @ \$1,175.00	\$25,850.00	\$10,600.00	\$88,700.00	\$9,405.00
Work Orders, Fleet & Facilities Management	\$13,750.00	20 @ \$1,175.00	\$23,500.00	\$12,000.00	\$46,250.00	\$2,475.00
Purchasing	\$22,000.00	14 @ \$1,175.00	\$16,450.00	\$2,700.00	\$41,150.00	\$3,960.00
Inventory	\$11,000.00	7 @ \$1,175.00	\$8,225.00	\$4,700.00	\$23,925.00	\$1,980.00
Fixed Assets	\$12,000.00	6 @ \$1,175.00	\$7,050.00	\$4,800.00	\$23,850.00	\$2,160.00
Project & Grant Accounting	\$10,000.00	6 @ \$1,175.00	\$7,050.00	\$5,000.00	\$22,050.00	\$1,800.00
Cash Management	\$10,000.00	5 @ \$1,175.00	\$5,875.00	\$0.00	\$15,875.00	\$1,800.00
Contract Management	\$5,900.00	4 @ \$1,175.00	\$4,700.00	\$4,000.00	\$14,600.00	\$1,082.00
Payroll/HR:						
Payroll w/ESS	\$16,100.00	17 @ \$1,175.00	\$19,975.00	\$17,400.00	\$53,475.00	\$2,898.00
HR Management	\$7,700.00	5 @ \$1,175.00	\$5,875.00	\$0.00	\$13,575.00	\$1,386.00
Revenue:						
Utility Billing CIS	\$23,000.00	19 @ \$1,175.00	\$22,325.00	\$19,300.00	\$64,825.00	\$4,140.00
Tyler Cashiering	\$21,000.00	6 @ \$1,175.00	\$7,050.00	\$0.00	\$28,050.00	\$3,780.00

Tyler Software and Related Services

Description	License	Impl. Days	Impl. Cost	Data Conversion	Module Total	Year One Maintenance
Accounts Receivable	\$11,000.00	11 @ \$1,175.00	\$12,925.00	\$0.00	\$23,925.00	\$1,980.00
UB Interface	\$8,250.00	3 @ \$1,175.00	\$3,525.00	\$0.00	\$11,775.00	\$1,485.00
General Billing	\$5,000.00	5 @ \$1,175.00	\$5,875.00	\$0.00	\$10,875.00	\$900.00
Maplink GIS Integration	\$8,500.00	1 @ \$1,175.00	\$1,175.00	\$0.00	\$9,675.00	\$1,530.00
Central Property File	\$2,200.00	1 @ \$1,175.00	\$1,175.00	\$0.00	\$3,375.00	\$550.00
Other:						
EnerGov Permits & Inspections	\$16,500.00	17 @ \$1,175.00	\$19,975.00	\$10,800.00	\$47,275.00	\$4,125.00
EnerGov Intelligent Objects Automation	\$10,665.00	8 @ \$1,175.00	\$9,400.00	\$0.00	\$20,065.00	\$2,686.00
EnerGov e-Reviews	\$8,250.00	7 @ \$1,175.00	\$8,225.00	\$0.00	\$16,475.00	\$2,063.00
EnerGov ESRI Integration	\$10,000.00	1 @ \$1,175.00	\$1,175.00	\$0.00	\$11,175.00	\$2,500.00
EnerGov iG Workforce Mobile	\$8,250.00	2 @ \$1,175.00	\$2,350.00	\$0.00	\$10,600.00	\$2,063.00
EnerGov Citizen Access Portal	\$6,000.00	2 @ \$1,175.00	\$2,350.00	\$0.00	\$8,350.00	\$1,500.00
OSDBA Contract Services	\$0.00	0 @ \$1,175.00	\$0.00	\$0.00	\$0.00	\$19,131.00
Productivity:						
Munis Analytics & Reporting	\$45,200.00	11 @ \$1,175.00	\$12,925.00	\$0.00	\$58,125.00	\$8,136.00
Tyler Content Manager SE	\$20,000.00	4 @ \$1,175.00	\$4,700.00	\$0.00	\$24,700.00	\$3,800.00
Citizen Self Service	\$11,000.00	1 @ \$1,175.00	\$1,175.00	\$0.00	\$12,175.00	\$1,980.00
eProcurement	\$10,000.00	1 @ \$1,175.00	\$1,175.00	\$0.00	\$11,175.00	\$1,800.00
Tyler Forms Processing	\$9,500.00	0 @ \$1,175.00	\$0.00	\$0.00	\$9,500.00	\$1,900.00
Tyler Content Manager Auto Indexing and Redaction (SE)	\$5,000.00	2 @ \$1,175.00	\$2,350.00	\$0.00	\$7,350.00	\$900.00
	Sub-Total:		\$400,015.00	\$244,400.00	\$91,300.00	\$735,715.00
	<i>Less Discount:</i>		<i>\$100,006.00</i>	<i>\$0.00</i>	<i>\$0.00</i>	<i>\$100,006.00</i>
	TOTAL:	208	\$244,400.00	\$91,300.00	\$635,709.00	\$19,131.00

Other Services

Description	Quantity	Unit Price	Unit Discount	Extended Price
EnerGov Code Enforcement and Fire Forms (Two Additional)	1	\$1,275.00	\$0.00	\$1,275.00
EnerGov Permits & Code Forms Library (4 Forms)	1	\$2,400.00	\$0.00	\$2,400.00

Other Services

Description	Quantity	Unit Price	Unit Discount	Extended Price
Estimated Travel Expenses	1	\$110,696.00	\$0.00	\$110,696.00
Install Fee - New Server Install-WIN	1	\$6,000.00	\$0.00	\$6,000.00
Munis Admin & Security	2	\$1,175.00	\$0.00	\$2,350.00
Not-to-Exceed Consulting & Implementation Services	49	\$1,175.00	\$0.00	\$57,575.00
POS Cash Installation (Up to 3)	1	\$1,000.00	\$0.00	\$1,000.00
Project Planning Services	1	\$6,000.00	\$0.00	\$6,000.00
Tyler Forms Financial Library	1	\$1,800.00	\$0.00	\$1,800.00
Tyler Forms Library - General Billing	1	\$2,000.00	\$0.00	\$2,000.00
Tyler Forms Library - Payroll	1	\$1,200.00	\$0.00	\$1,200.00
Tyler Forms Library - Personnel Action	1	\$1,000.00	\$0.00	\$1,000.00
Tyler Forms Processing Configuration	1	\$2,000.00	\$0.00	\$2,000.00
Tyler Forms Library - Utility Billing	1	\$4,500.00	\$0.00	\$4,500.00
Tyler Forms Work Order/Pick Ticket Library - 4 Forms	1	\$2,400.00	\$0.00	\$2,400.00
Tyler Graphing Agent - Flat Fee	1	\$3,500.00	\$0.00	\$3,500.00
Tyler PO Distribution - Level 1	1	\$500.00	\$0.00	\$500.00
TOTAL:				\$206,196.00

3rd Party Hardware, Software and Services

Description	Quantity	Unit Price	Unit Discount	Total Price	Unit Maintenance	Unit Maintenance Discount	Total Unit Maintenance
Cash Drawer	6	\$230.00	\$0.00	\$1,380.00	\$0.00	\$0.00	\$0.00
Hand Held Scanner - Model 1900GSR	6	\$385.00	\$0.00	\$2,310.00	\$0.00	\$0.00	\$0.00
Hand Held Scanner Stand	6	\$25.00	\$0.00	\$150.00	\$0.00	\$0.00	\$0.00
ID Tech MiniMag USB Reader	6	\$82.00	\$0.00	\$372.00	\$0.00	\$0.00	\$0.00
Power Supply	6	\$40.00	\$0.00	\$240.00	\$0.00	\$0.00	\$0.00
Printer (TM-S9000)	6	\$1,600.00	\$0.00	\$9,600.00	\$0.00	\$0.00	\$0.00
Tyler Secure Signature System with 2 Keys	1	\$1,650.00	\$0.00	\$1,650.00	\$0.00	\$0.00	\$0.00
<i>3rd Party Hardware Sub-Total:</i>			<i>\$0.00</i>	<i>\$15,702.00</i>			<i>\$0.00</i>

3rd Party Hardware, Software and Services

Description	Quantity	Unit Price	Unit Discount	Total Price	Unit Maintenance	Unit Maintenance Discount	Total Year One Maintenance
TOTAL:				\$15,702.00			\$0.00

Summary	One Time Fees	Recurring Fees
Total Tyler Software	\$300,009.00	\$19,131.00
Total Tyler Services	\$541,896.00	\$0.00
Total 3rd Party Hardware, Software and Services	\$15,702.00	\$0.00
Summary Total	\$857,607.00	\$19,131.00
Contract Total	\$876,738.00	

Detailed Breakdown of Conversions (Included in Contract Total)

Description	Unit Price	Unit Discount	Extended Price
Accounting Opt 1 - Actuals	\$1,500.00	\$0.00	\$1,500.00
Accounting Opt 2 - Budgets	\$1,500.00	\$0.00	\$1,500.00
Accounting Standard COA	\$2,000.00	\$0.00	\$2,000.00
Accounts Payable Opt 1 - Checks	\$1,600.00	\$0.00	\$1,600.00
Accounts Payable Opt 2 - Invoice	\$2,400.00	\$0.00	\$2,400.00
Accounts Payable Standard Master	\$1,600.00	\$0.00	\$1,600.00
Contracts	\$4,000.00	\$0.00	\$4,000.00
EnerGov Permits & Inspections - Option 1 - Applications	\$3,600.00	\$0.00	\$3,600.00
EnerGov Permits & Inspections - Option 2 - Violations	\$2,400.00	\$0.00	\$2,400.00
EnerGov Permits & Inspections - Option 3 - Inspections	\$2,400.00	\$0.00	\$2,400.00
EnerGov Permits & Inspections - Standard - Master	\$2,400.00	\$0.00	\$2,400.00
Fixed Assets Opt 1 - History	\$1,800.00	\$0.00	\$1,800.00
Fixed Assets Std Master	\$3,000.00	\$0.00	\$3,000.00
Inventory Opt 1 - Commodity Codes	\$1,200.00	\$0.00	\$1,200.00
Inventory Std Master	\$3,500.00	\$0.00	\$3,500.00
Payroll - Option 10 Certifications	\$1,400.00	\$0.00	\$1,400.00
Payroll - Option 11 Education	\$1,400.00	\$0.00	\$1,400.00
Payroll - Option 1 Deductions	\$1,800.00	\$0.00	\$1,800.00
Payroll - Option 2 Accrual Balances	\$1,500.00	\$0.00	\$1,500.00
Payroll - Option 3 Accumulators	\$1,400.00	\$0.00	\$1,400.00
Payroll - Option 4 Check History	\$1,200.00	\$0.00	\$1,200.00
Payroll - Option 5 Earning/Deduction Hist	\$2,500.00	\$0.00	\$2,500.00
Payroll - Option 7 PM Action History	\$1,400.00	\$0.00	\$1,400.00
Payroll - Option 8 Position Control	\$1,400.00	\$0.00	\$1,400.00
Payroll - Option 9 State Retirement Tables	\$1,400.00	\$0.00	\$1,400.00
Payroll - Standard	\$2,000.00	\$0.00	\$2,000.00
Project Grant Accounting Opt 1 - Actuals	\$1,500.00	\$0.00	\$1,500.00

Detailed Breakdown of Conversions (Included in Contract Total)

Description	Unit Price	Unit Discount	Extended Price
Project Grant Accounting Opt 2 - Budgets	\$1,500.00	\$0.00	\$1,500.00
Project Grant Accounting Standard	\$2,000.00	\$0.00	\$2,000.00
Purchasing - Purchase Orders - Standard	\$2,700.00	\$0.00	\$2,700.00
Utility Billing - Option 1 Services	\$3,000.00	\$0.00	\$3,000.00
Utility Billing - Option 2 Assessments	\$1,800.00	\$0.00	\$1,800.00
Utility Billing - Option 3 Consumption History	\$3,000.00	\$0.00	\$3,000.00
Utility Billing - Option 4 Balance Forward AR	\$4,000.00	\$0.00	\$4,000.00
Utility Billing - Option 5 Service Orders	\$2,000.00	\$0.00	\$2,000.00
Utility Billing - Option 6 Backflow	\$2,000.00	\$0.00	\$2,000.00
Utility Billing - Standard	\$3,500.00	\$0.00	\$3,500.00
Work Order Opt 1 - Work Order Asset	\$3,000.00	\$0.00	\$3,000.00
Work Order Opt 2 - Closed Work Order History No Cost Data	\$4,500.00	\$0.00	\$4,500.00
Work Order Opt 3 - Work Order History With Cost Data	\$4,500.00	\$0.00	\$4,500.00
TOTAL:			\$91,300.00

Optional Tyler Software & Related Services

Description	License	Impl. Days	Impl. Cost	Data Conversion	Module Total	Year One Maintenance
Financials:						
Employee Expense Reimbursement	\$6,000.00	6 @ \$1,175.00	\$7,050.00	\$0.00	\$13,050.00	\$1,080.00
Bid Management	\$6,000.00	4 @ \$1,175.00	\$4,700.00	\$0.00	\$10,700.00	\$1,080.00
BMI Asset Track Interface	\$3,800.00	3 @ \$1,175.00	\$3,525.00	\$0.00	\$7,325.00	\$684.00
BMI CollectIT Interface	\$3,800.00	3 @ \$1,175.00	\$3,525.00	\$0.00	\$7,325.00	\$684.00
Payroll/HR:						
Professional Development	\$5,500.00	2 @ \$1,175.00	\$2,350.00	\$0.00	\$7,850.00	\$990.00
Revenue:						
Animal License	\$5,000.00	2 @ \$1,175.00	\$2,350.00	\$8,000.00	\$15,350.00	\$1,250.00
Other:						
CAFR Statement Builder	\$13,750.00	4 @ \$1,175.00	\$4,700.00	\$0.00	\$18,450.00	\$2,475.00
MUNIS Disaster Recovery Service	\$0.00	0 @ \$1,175.00	\$0.00	\$0.00	\$0.00	\$19,131.00
Productivity:						
Tyler Content Manager Self-Service (SE)	\$5,000.00	1 @ \$1,175.00	\$1,175.00	\$0.00	\$6,175.00	\$900.00
Tyler Content Manager eCommerce (SE)	\$2,500.00	1 @ \$1,175.00	\$1,175.00	\$0.00	\$3,675.00	\$450.00
TOTAL:	\$51,350.00	26	\$30,550.00	\$8,000.00	\$69,900.00	\$28,724.00

Optional Other Services

Description	Quantity	Unit Price	Discount	Extended Price
Additional Implementation Services	20	\$1,175.00	\$0.00	\$23,500.00
AP/PR Check Recon Import	1	\$1,000.00	\$0.00	\$1,000.00
AP Positive Pay Export Format	1	\$3,000.00	\$0.00	\$3,000.00
EnerGov Additional Forms (Two Optional Forms)	1	\$1,275.00	\$0.00	\$1,275.00
EnerGov Permits & Code Forms Library (4 Forms)	1	\$2,400.00	\$0.00	\$2,400.00
P-Card Import Format W/Encumbrances	1	\$15,000.00	\$0.00	\$15,000.00
P-Card Import Format W/O Encumbrances	1	\$7,500.00	\$0.00	\$7,500.00

Optional Other Services

Description	Quantity	Unit Price	Discount	Extended Price
PR Positive Pay Export Format	1	\$3,000.00	\$0.00	\$3,000.00
Source Code Escrow	1	\$756.00	\$0.00	\$756.00
TOTAL:				\$57,431.00

Optional Conversion Details (Prices Reflected Above)

Description	Unit Price	Unit Discount	Extended Price
Animal License Opt 1 - Bills	\$4,400.00	\$0.00	\$4,400.00
Animal License Std Master	\$3,600.00	\$0.00	\$3,600.00
TOTAL:			\$8,000.00

Optional 3rd Party Hardware, Software and Services

Description	Quantity	Unit Price	Unit Discount	Total Price	Unit Maintenance	Unit Maintenance Discount	Total Year One Maintenance
BMI AssetTrak Additional Barcode/RFID Data Terminal (MC3190Z)	1	\$3,895.00	\$0.00	\$3,895.00	\$0.00	\$0.00	\$0.00
BMI-ASSETTRACK-PPC for MUNIS (Incl Install Fee)	1	\$6,490.00	\$0.00	\$6,490.00	\$0.00	\$0.00	\$0.00
BMI CollectIT Additional Barcode Data Terminal (PA690)	1	\$2,975.00	\$0.00	\$2,975.00	\$0.00	\$0.00	\$0.00
BMI CollectIT Barcode PrinterKit	1	\$1,295.00	\$0.00	\$1,295.00	\$0.00	\$0.00	\$0.00
BMI CollectIT Inventory Bar Code Scanning System	1	\$6,490.00	\$0.00	\$6,490.00	\$0.00	\$0.00	\$0.00
<i>3rd Party Hardware Sub-Total:</i>				<i>\$21,145.00</i>			<i>\$0.00</i>
TOTAL:				\$21,145.00			\$0.00

Unless otherwise indicated in the contract or Amendment thereto, pricing for optional items will be held for Six (6) months from the Quote date or the Effective Date of the Contract, whichever is later.

Customer Approval: _____ Date: _____
 Print Name: _____ P.O. #: _____

All primary values quoted in US Dollars

MUNIS Discount Detail

Description	License	License Discount	License Net	Maintenance Basis	Year One Maint Discount	Year One Maint Net
Financials:						
Accounting/GL/BG/AP	\$52,250.00	\$13,063.00	\$39,187.00	\$9,405.00	\$9,405.00	\$0.00
Cash Management	\$10,000.00	\$2,500.00	\$7,500.00	\$1,800.00	\$1,800.00	\$0.00
Contract Management	\$5,900.00	\$1,475.00	\$4,425.00	\$1,062.00	\$1,062.00	\$0.00
Fixed Assets	\$12,000.00	\$3,000.00	\$9,000.00	\$2,160.00	\$2,160.00	\$0.00
Inventory	\$11,000.00	\$2,750.00	\$8,250.00	\$1,980.00	\$1,980.00	\$0.00
Project & Grant Accounting	\$10,000.00	\$2,500.00	\$7,500.00	\$1,800.00	\$1,800.00	\$0.00
Purchasing	\$22,000.00	\$5,500.00	\$16,500.00	\$3,960.00	\$3,960.00	\$0.00
Work Orders, Fleet & Facilities Management	\$13,750.00	\$3,438.00	\$10,312.00	\$2,475.00	\$2,475.00	\$0.00
Payroll/HR:						
HR Management	\$7,700.00	\$1,925.00	\$5,775.00	\$1,386.00	\$1,386.00	\$0.00
Payroll w/ESS	\$16,100.00	\$4,025.00	\$12,075.00	\$2,898.00	\$2,898.00	\$0.00
Revenue:						
Maplink GIS Integration	\$8,500.00	\$2,125.00	\$6,375.00	\$1,530.00	\$1,530.00	\$0.00
Accounts Receivable	\$11,000.00	\$2,750.00	\$8,250.00	\$1,980.00	\$1,980.00	\$0.00
Central Property File	\$2,200.00	\$550.00	\$1,650.00	\$550.00	\$550.00	\$0.00
General Billing	\$6,000.00	\$1,250.00	\$3,750.00	\$900.00	\$900.00	\$0.00
Tyler Cashiering	\$21,000.00	\$5,250.00	\$15,750.00	\$3,780.00	\$3,780.00	\$0.00
UB Interface	\$8,250.00	\$2,063.00	\$6,187.00	\$1,485.00	\$1,485.00	\$0.00
Utility Billing CIS	\$23,000.00	\$5,750.00	\$17,250.00	\$4,140.00	\$4,140.00	\$0.00
Productivity:						
Citizen Self Service	\$11,000.00	\$2,750.00	\$8,250.00	\$1,980.00	\$1,980.00	\$0.00
eProcurement	\$10,000.00	\$2,500.00	\$7,500.00	\$1,800.00	\$1,800.00	\$0.00
Munis Analytics & Reporting	\$45,200.00	\$11,300.00	\$33,900.00	\$8,136.00	\$8,136.00	\$0.00
Tyler Content Manager Auto Indexing and Redaction (SE)	\$5,000.00	\$1,250.00	\$3,750.00	\$900.00	\$900.00	\$0.00

MUNIS Discount Detail

Description	License	License Discount	License Net Maintenance Base	Year One Maint Discount	Year One Maint Net	
Tyler Content Manager SE	\$20,000.00	\$5,000.00	\$15,000.00	\$3,600.00	\$0.00	
Tyler Forms Processing	\$9,500.00	\$2,375.00	\$7,125.00	\$1,900.00	\$0.00	
Other:						
EnerGov Citizen Access Portal	\$6,000.00	\$1,500.00	\$4,500.00	\$1,500.00	\$0.00	
EnerGov e-Reviews	\$8,250.00	\$2,063.00	\$6,187.00	\$2,063.00	\$0.00	
EnerGov ESRI Integration	\$10,000.00	\$2,500.00	\$7,500.00	\$2,500.00	\$0.00	
EnerGov iG Workforce Mobile	\$8,250.00	\$2,063.00	\$6,187.00	\$2,063.00	\$0.00	
EnerGov Intelligent Objects Automation	\$10,665.00	\$2,666.00	\$7,999.00	\$2,666.00	\$0.00	
EnerGov Permits & Inspections	\$16,500.00	\$4,125.00	\$12,375.00	\$4,125.00	\$0.00	
OSDBA Contract Services	\$0.00	\$0.00	\$0.00	\$19,131.00	\$19,131.00	
TOTAL:	\$400,015.00	\$100,006.00	\$300,009.00	\$95,655.00	\$76,524.00	

Comments

Tyler's OSDBA Service is calculated at 25% of the MUNIS annual maintenance. There is a \$2,500 minimum annual fee and a \$30,000 maximum annual fee.

Tyler's Disaster Recovery Service is calculated at 25% of the MUNIS annual maintenance. There is a \$5,000 minimum annual fee and a \$30,000 maximum annual fee for Disaster Recovery service. The Disaster Recovery fees are applicable only to one Live MUNIS database and excludes all test and training databases.

Tyler recommends the use of a 128-bit SSL Security Certificate for any Internet Web Applications, such as the MUNIS Web Client and the MUNIS Self Service applications if hosted by the Client. This certificate is required to encrypt the highly sensitive payroll and financial information as it travels across the public internet. There are various vendors who sell SSL Certificates, with all ranges of prices.

Conversion prices are based on a single occurrence of the database. If additional databases need to be converted, these will need to be quoted.

Tyler's quote contains estimates of the amount of services needed, based on our preliminary understanding of the size and scope of your project. The actual amount of services depends on such factors as your level of involvement in the project and the speed of knowledge transfer.

Unless otherwise noted, prices submitted in the quote do not include travel expenses incurred in accordance with Tyler's then-current Business Travel Policy.

Tyler's prices do not include applicable local, city or federal sales, use excise, personal property or other similar taxes or duties, which you are responsible for determining and remitting.

In the event Client cancels services less than two (2) weeks in advance, Client is liable to Tyler for (i) all non-refundable expenses incurred by Tyler on Client's behalf; and (ii) daily fees associated with the cancelled services if Tyler is unable to re-assign its personnel.

Tyler provides onsite training for a maximum of 12 people per class. In the event that more than 12 users wish to participate in a training class or more than one occurrence of a class is needed, Tyler will either provide additional days at then-current rates for training or Tyler will utilize a Train-the-Trainer approach whereby the client designated attendees of the initial training can thereafter train the remaining users.

In the event Client acquires from Tyler any edition of Tyler Content Manager software other than Enterprise Edition, the license for Content Manager is restricted to use with Tyler applications only. If Client wishes to use Tyler Content Manager software with non-Tyler applications, Client must purchase or upgrade to Tyler Content Manager Enterprise Edition.

Tyler's form library prices are based on delivering the specific form quantities listed below. Additional formats of forms listed below are extra. Custom forms are extra. Please note that Tyler Forms requires the use of approved printers only. Contact Tyler support for the list of approved printers.

Financial library includes: 1 A/P check, 1 EFT/ACH, 1 Purchase order, 1 Contract, 1099M, 1099INT, 1099S, and 1099G.

General Billing library includes: 1 invoice, 1 statement, 1 general billing receipt and 1 miscellaneous receipt.

Utility billing library includes: 1 Utility bill, 1 assessment, 1 UB receipt, 1 Lien letter, 1 UB delinquent notice, 1 door hanger and 1 final utility bill.

Programming for check reconciliation import and positive pay export assumes one bank format each. Multiple bank formats are extra.

Includes digitizing two signatures. additional charges will apply for additional signatures.

Comments

Project Management includes project planning, kickoff meeting, status calls, task monitoring, verification and transition to support.

Tyler Forms Payroll Core library includes: 1 PR check, 1 direct deposit, 1 vendor from payroll check, 1 vendor from payroll direct deposit, W2, W2c, and 1099 R.

Personnel Actions Forms Library includes: 1 Personnel Action form - New and 1 Personnel Action Form - Change.

Work Order & Pick Ticket Library includes: 1 Work Order - Services, 1 Work Order - Inventory, 1 Pick Ticket and 1 Delivery Ticket.

Tyler's cost is based on all of the proposed products and services being obtained from Tyler. Should significant portions of the products or services be deleted, Tyler reserves the right to adjust prices accordingly.

Additional Scanner, MC3190Z, 48 key, SDIO with program settings, Integrated Laser & RFID reader, Battery, USB com-charging cradle w/ps, AssetTrak PPC & TrakSync PDT Users Licenses.

EnerGov Permits & Code Forms Library includes 1 Building Permit, 1 Trades Permit, 1 Zoning Permit and 1 Certificate of Completion OR Occupancy.

The MUNIS Accounts Payable module utilizes a label printer for batch-scanned document indexing. This printer is to be provided by the client and must support multi-page Adobe PDF files, such as the Brother QL-700.

e-Planning requires BlueBeam Revu or Adobe Acrobat Pro.

EnerGov utilizes Crystal Reports for creating custom reports and forms. SAP Business Objects - Crystal Reports Developer Edition (SAP Crystal Reports 2011 INTL WIN NUL License) is required to develop or modify Crystal Reports.

In the event a self-hosted customer opts to enroll as a beneficiary under Tyler's source code escrow agreement, Tyler will provide the paperwork required for enrollment. That self-hosted customer will be billed, on an annual basis, directly by Tyler's escrow agent, and all such fees must be paid directly to that escrow agent. Rates for subsequent years are subject to change at the discretion of Tyler's escrow agent.

EnerGov modules are limited to a maximum of 30 users.

The Tyler Software Product Tyler Forms Processing must be used in conjunction with a Hewlett Packard printer supported by Tyler for printing checks.

Exhibit 2

Verification Test

The verification test ("Test") detailed below will be conducted following installation, to the extent the module has been purchased by the City. The purpose of the Test is to ensure the Tyler Software Products perform as warranted, using the MUNIS Verification Database. The MUNIS Verification Database contains the types of information ordinarily used by the specified software and the Test utilizes said data to demonstrate the performance of the specified software's base line functions. As such, the Test is not intended to validate any site specific functionality and will only be conducted for those software products licensed by the City. City-specific functionality will be reviewed during the implementation phase when site-specific data will be applied against the desired functionality.

Many sections below contain three phases: table views, reports, and process. Each phase is intended to be completed in 4 hours or less. Please note that each phase listed below has a space where City will be asked to initial, indicating that the verification has been performed and accepted.

FINANCIALS:

Phase 1

- View general ledger master table
- View budget master table
- View vendor master table
- View general ledger account inquiry – perform drill down
- Find purchase orders/requisitions in purchase order inquiry
- View inventory master
- View fixed assets master
- View work order master

Phase 2

- Enter a requisition
- Approve the requisition
- Convert to a purchase order
- Post the purchase order
- Enter an invoice against the requisition
- Post the invoice
- Select items to be paid report
- Print checks (on blank paper without forms)
- Find journals in journal inquiry using date find

Phase 3

- Reports:
 - General ledger trial balance
 - Year to date budget report
 - Vendor invoice list
 - Purchase orders by general ledger account (select open purchase orders)
 - Inventory list by location
 - Fixed asset list by location

PAYROLL/HR:

Phase 1

- View deduction master
- View pay type master
- View employee master
- View employee detail history – perform drill down
- View position table
- View terminated employee table

Phase 2

- Add new employee
- Build job pay records
- Start a new payroll
- Generate employee records
- Enter exceptions
- Print final proof
- Update employee files
- Print checks (on blank paper without forms)

Phase 3

- Reports
 - Employee Detail
 - Employee Accrual
 - Detail Check History Report
 - Payroll Register

UTILITY BILLING:

Phase 1

- View charge code file with rate tables
- View account master – perform drill down
- View customer file
- View bill inquiry
- View account inquiry

Phase 2

- Add new account
- Create water service record
- Start a new bill run
 - View charges file maintenance
- Enter meter reading manually
- Run charges proof register
- Generate accounts receivable

- Print bills (on blank paper without forms)
- Make a payment to a bill

Phase 3

- Reports:
 - Consumption inquiry/report
 - Utility billing aging report
 - Charge/payment history
 - Detail receivables register

OTHER REVENUE (TAX/EXCISE/GENERAL BILLING):

Phase 1

- View customer file
- View parcel file
- View charge code file
- View tax year parameter
- View motor vehicle master file
- View bill inquiry
- View lien file
- View receipt inquiry
- View activity totals inquiry/report

Phase 2

- Create a new general billing customer
- Add a general billing invoice
- Make a payment against the general billing
- Make a payment against a tax/excise/personal property/etc. bill
- Print payments proof
- Post payments
- Use receipt inquiry to find the payment

Phase 3

- Reports
 - Summary receivables
 - Detail receivables
 - Posted payments report

PERMITS & CODE ENFORCEMENT:

Phase 1

- View permit type f/m
- View Project Type f/m
 - Find a Project type with the 4 “bottom buttons” checked which indicates there is data. If none, build some defaults at the bottom.
 - Drill down using the bottom buttons
- View Inspection Type f/m
 - Drill down into inspectors and checklist at bottom
- View violation code f/m
 - Drill down into enforcement steps
- View property master
 - Perform drill down using the side menu options

Phase 2

- Add a new property
 - Set up default restrictions, hazards, and violations at the bottom
- Add a new application
 - Use a project/act that has the four defaults set in project type f/m (one each)
 - Make sure the app automatically sets up the default permits, prerequisites, inspections, and dept/board reviews by choosing the options to view
 - Choose the collect side menu option. Make sure you can accept payments for the fees and the system links to the accounts receivable module properly

Phase 3

- Reports
 - Applications status report
 - Inspections history report
 - Violations report
 - Contractors report
 - Dept/board review report

PARKING TICKETS:

Phase 1

- View parking ticket parameter file
- View parking ticket charge codes
- View owner maintenance

Phase 2

- Parking ticket entry
- Parking ticket inquiry
- Review export/import of data
- Review late processing

Phase 3

- Issue by location report
- Violations by issue date report

- Issuer productivity report

BUSINESS LICENSES:

- View customer file
- View description codes
- View business license charge codes
- View business license master file
- View business license late payment process
- View bill inquiry
- View business master report
- View business location report

ANIMAL LICENSES:

- View animal type file
- View customer file
- View animal license master file
- View license detail report
- View license history report
- View tag report

PROJECT ACCOUNTING:

(Performed with General Ledger)

- View project master table
- View general ledger master with project code
- View project budget report

MUNIS OFFICE:

- Export from general ledger account inquiry into Excel
- Export from general ledger account inquiry into Word

SSRS:

- Verification Report for SSRS from the Knowledgebase will be used to display results from the MUNIS Verification database. No configuration needs to be done to run this report.

TYLER REPORTING SERVICES:

- Verification Report for Tyler Reporting Services from the Knowledgebase will be used to display results from the MUNIS Verification database. No configuration needs to be done to run this report.

CONTRACT MANAGEMENT:

- View contract master file
- Enter a requisition against a contract
- View contract master to highlight changes

CASH MANAGEMENT:

- View a recurring cash flow record for current fiscal year in recurring cash flow F/M
- Generate cash flow file maintenance
- Generate a journal entry on the cash flow file maintenance record created
- Go to general journal entry/proof, find journal that was generated and post it

MUNIS SELF SERVICE – EMPLOYEES:

Phase 1

- View and update the general administration settings
- Add a new user under users

Phase 2

- **View and update application administration under Employee Admin**
- **View and add a web link or document under Document Administration**

Exhibit 3-A

Munis (non-EnerGov) Support Call Process

Client Support

Tyler Technical Support Department for Munis®

Goal: To provide an effective support mechanism that will guarantee timely resolution to calls, resulting in high-level client satisfaction.

Contact Us

Call Tyler's toll free number (800-772-2260) or log a support request online through the Tyler Client Portal available at Tyler's Support Web site (www.tylertech.com).

Support Organization

Tyler's Technical Support Department for Munis is divided into multiple teams: Financials, Payroll/HR/Pension, Tax/Other Revenue and Collections, Utility Billing and Collections, OS/DBA (Operating System and Database Administration), and TylerForms and Reporting Services.

These "product-specific" teams allow support staff to focus on a group of products or services. A group of specialists assigned to each team handle calls quickly and accurately.

Each team consists of a Munis Support Product Manager, Support Analysts and Technical Support Specialists. The Support Product Manager is responsible for the day-to-day operations of the team and ensures we provide exceptional technical support to our clients. The Support Analysts are responsible for assisting the team with clients' issues, and provide on-going team training. Technical Support Specialists are responsible for diagnosing and resolving client issues in a timely and courteous manner.

Standard Support Hours

Applications	Hours
Financials	8:00am-9:00pm EST Monday-Friday
Payroll/HR/Pension	8:00am-9:00pm EST Monday-Friday
Tax/Other Revenue & Collections	8:00am-6:00pm EST Monday-Friday
Utility Billing & Collections	8:00am-8:00pm EST Monday-Friday
OS/DBA	8:00am-9:00pm EST Monday-Friday
TylerForms & Reporting Services	8:00am-9:00pm EST Monday-Friday

Focus on Incoming Rate

When you call Technical Support, your call is answered by a Support Technician, or is transferred into the Support voice mail. *Our goal is to capture 75% of our daily calls incoming*, which means you will often start working with a Support Specialist immediately upon calling Tyler.

Leaving Messages for Support

When leaving a message on the Support voice mail, ensure the following information is contained within the message:

- Your full name (first name, last name) and the site you are calling for/from
- A phone number where you can be reached
- The details of the issue or question you have (i.e.: program, • process, error message)
- The priority of the issue (1, 2, 3, or 4)
- When you will be available for a return call (often Support will call back within an hour of receiving your message)

Paging

All client questions are important to us. There may be times when you are experiencing a priority 1 critical issue and all technicians for the requested team are on the line assisting clients. In this circumstance, it is appropriate to press 0 to be redirected to the operator. The operator will page the team you need to contact. We ask that you reserve this function for those times when Munis is down, or a mission critical application is down and you are not able to reach a technician immediately.

Online Support

Some questions can be handled effectively by e-mail. Once registered as a user on Tyler's Support Web site at www.tylertech.com, you can ask questions or report issues to Support through "Customer Tools". Tyler's Client Portal (TCP) allows you to log an incident to Technical Support anytime from any Internet connection. All TCP account, incident and survey data is available in real-time.

Your existing contact information defaults when you add a new Support incident. You will be asked for required information including Incident Description, Priority, Product Group and Product Module. Unlimited work-note text is available for you to describe the question or problem in detail, plus you can attach files or screenshots that may be helpful to Support.

When a new incident is added, the incident number is presented on the screen, and you will receive an automated e-mail response that includes the incident number. The new incident is routed to the appropriate Technical Support Team queue for response. They will review your incident, research the item, and respond via e-mail according to the priority of the incident.

Customer Relationship Management System

Every call or e-mail from you is logged into our Customer Relationship Management System and given a unique call number. This system tracks the history of each incident, including the person calling, time of the call, priority of the call, description of the problem, support recommendations, client feedback and resolution. For registered users on Tyler's Support Web site (www.tylertech.com), a list of calls is available real-time under the Tyler Client Portal (TCP).

Call Numbers

Support’s goal is to return clients’ calls as soon as possible. If you are not available when we call back, we will leave a message with the open call number on your voice mail or with a person in your office. When you call back, you can reference this call number so you do not have to re-explain the issue.

An open call number is also given to you once an initial contact has been made with Support and it has been determined that the issue can’t be resolved during the initial call. The open call number lets you easily track and reference specific open issues with Support.

Call Response Goals

Open Call Priority	Maximum number of days a support call is open	Support managers and analysts review open calls
1	Less than a day	Daily
2	10 Days or less	Every other day
3	30 Days or less	Weekly
4	60 Days or less	Weekly

Call Priorities

A call escalation system is in place where, each day, Support Analysts and Product Support Managers, review open calls in their focus area to monitor progress.

Each call logged is given a priority (1, 2, 3, and 4) according to the client’s needs/deadlines. The goal of this structure is to clearly understand the importance of the issue and assign the priority for closure. The client is responsible for setting the priority of the call. Tyler Support for Munis tracks responsiveness to priority 1, 2 and 3 calls each week. This measurement allows us to better evaluate overall client satisfaction.

Priority 1 Call — issue is critical to the client, the Munis application or process is down.

Priority 2 Call — issue is severe, but there is a work around the client can use.

Priority 3 Call — issue is a non-severe support call from the client.

Priority 4 Call — issue is non-critical for the client and they would like to work with Support as time permits.

Following Up on Open Calls

Some issues will not be resolved during the initial call with a Support Technician. If the call remains open, the technician will give you an open call number to reference, and will confirm the priority of the incident.

If you want to follow up on an open call, simply call the appropriate Support Team and reference the call number to the Technician who answers or leave this information in your message. Referencing the open call number allows anyone in support to quickly follow up on the issue. You can also update the incident through TCP on Tyler’s Web site (www.tylertech.com) and add a note requesting follow-up.

Escalating a Support Call

If the situation to be addressed by your open call has changed and you need to have the call priority adjusted, please call the appropriate Support Team and ask to be connected to the assigned technician. If that technician is unavailable, another technician on the team may be able to assist you, or will transfer you to the Product Support Team Manager. If you feel

you are not receiving the service you need, please call the appropriate Product Manager and provide them with the open call number for which you need assistance. The Product Manager will follow up on your open issue and determine the necessary action to meet your needs.

Technical Support Product Managers:

Financials Team	Michelle Madore (michelle.madore@tylertech.com)	(X4483)
Payroll/HR/Pension Team	Sonja Johnson (sonja.johnson@tylertech.com)	(X4157)
Tax/Other Revenue/Utility Billing Team	Steven Jones (steven.jones@tylertech.com)	(X4255)
OS/DBA Team	Ben King (ben.king@tylertech.com)	(X5464)
TylerForms & Reporting Services	Michele Violette (michele.violette@tylertech.com)	(X4381)

If you are unable to reach the Product Manager, please call CJ McCarron, Vice President of Technical Support at 800-772-2260, ext. 4124 (cj.mccarron@tylertech.com).

Resources

A number of additional resources are available to you to provide a comprehensive and complete support experience.

Munis Internet Updater (MIU): Allows you to download and install critical and high priority fixes as soon as they become available.

Release Admin Console: Allows you to monitor and track the availability of all development activity for a particular release; right from inside Munis.

Knowledgebase: A fully searchable depository of thousands of documents related to Munis processing, procedures, release info, helpful hints, etc.

Remote Support Tool

Some Support calls may require further analysis of your database or setup to diagnose a problem or to assist you with a question. GoToAssist® shares your desktop via the Internet to provide you with virtual on-site support. The GoToAssist tool from Citrix (www.citrix.com) provides a highly secure connection with 128-bit, end-to-end AES encryption. Support is able to quickly connect to your desktop and view your site's setup, diagnose problems, or assist you with screen navigation.

At the end of each GoToAssist session, there is a quick survey you should complete so we have accurate and up-to-date feedback on your Support experiences. We review the survey data in order to continually improve our Support services.

E-mail Registration

Clients can go to our Web site and register for e-mail "groups" based on specific Munis applications. We use these groups to inform clients of issues, and to distribute helpful technical tips and updated technical documentation. The survey

information allows you to update your registration at any time, and you may unregister for one or more distribution lists at any time.

Tyler Web site

Once you have registered as a user on Tyler’s Support Web site (www.tylertech.com), you have access to “Customer Tools” and other information such as online documentation, user forums, group training schedule/sign-up, and annual user conference updates/registration.

Timely TCP Progress Updates

Our technicians are committed to providing you timely updates on the progress of your open support incidents via the Tyler Client Portal. The frequency of these updates is determined by issue priority.

Priority 1 Incidents — Daily updates (only if phone contact is not possible)

Priority 2 Incidents — Weekly Updates

Priority 3 Incidents — Bi-weekly Updates

Priority 4 Incidents — Bi-weekly Updates

Updates will also be provided for any issue, regardless of priority, when action items have been completed or when there is pertinent information to share.

Exhibit 3-B
EnerGov Support Call Process

1 STANDARD SUPPORT SERVICES

1.1 Support Services Introduction and Definitions

EnerGov dedicates considerable time and money ensuring that our customers have available the support services that meets or exceeds our customer's expectation. Customer Service and Customer Support excellence permeates to every department and every employee of EnerGov.

Customer Support is an EnerGov Support Services provides Fault and non-Fault support.

1. Fault Support

2. Non-Fault Support -

- a. Enhancement Support
- b. User Comfort Support

1.2 Fault Support

Fault Support is needed when you are unable to perform required tasks within the EnerGov system.

1.3 Non-Fault - Enhancement Support

Enhancement Support includes the periodic updating of the EnerGov applications with software updates or new version releases. Procedures for implementing new versions of software are when the new version is issued.

1.4 Non-Fault - User Comfort Support

User Comfort Support includes a wide variety of services included with your EnerGov Software Support Agreement.

User Comfort Support also includes certain fee-based support. For example, the development of completely new Crystal Reports to interact with and imbed in EnerGov, is available for a modest fee. Other examples of fee-based support include the providing of applications or services beyond the scope of the original agreement between your organization and EnerGov. In those cases, EnerGov is happy to quote the additional costs.

2 ENERGOV'S RESPONSIBILITIES TO YOU

EnerGov is committed to providing superior support for your EnerGov system. EnerGov Support Technicians are highly trained and intimately familiar with the EnerGov application. Because they work directly with government agencies throughout the U.S. and internationally, they are well versed on the type of work accomplished by customers like you.

2.1 EnerGov Help Desk

EnerGov maintains the Help Desk in Duluth, Georgia. EnerGov support is never handled by any "offshore" service provider. EnerGov's development team is located in the same facility as EnerGov's Help Desk. If an issue develops requiring the assistance of the development team, Help Desk technicians have unlimited access to those who develop and

maintain the software. All software EnerGov provides is developed “in-house.”

If, in the process of diagnosing a potential EnerGov support issue, it is discovered that a peripheral system is the cause of a fault, EnerGov will notify you so that you may contact the support agency for that peripheral system. EnerGov cannot support or maintain any hardware or third-party software.

2.2 Unlimited Phone Support

Unlimited Phone Support is available during our normal support hours (7 a.m. to 8 p.m. EST, Monday through Friday except certain holidays).

EnerGov phone support is available on the days and during the times that you are engaged in your daily work assignments. When you need it, it’s there. Phone support is available at 888.355.1093 then press “2” for a Customer Support Technician.

2.3 Unlimited Email Support

You may send EnerGov support questions or issues to energovsupport@tylertech.com. This account is continuously monitored during normal support hours. EnerGov’s response will be directed back to the senders email, unless a request for voice contact is made in the email and a proper phone number is provided.

2.4 Free Upgrades

EnerGov makes available minor and major releases of the EnerGov software at no additional cost to you if you have continuously paid for Software Support since the initial licensing of the EnerGov software. If there are gaps in your Software Support, you should contact EnerGov’s Help Desk for information about becoming eligible for free upgrades. EnerGov provides direct support for the two (2) most recent major versions of EnerGov software.

2.5 Remote Support

In the process of providing user’s support there may be times when it is desirable for the EnerGov Help Desk technician to access, through the Internet, a user’s PC and view the support needed directly from the user’s desktop. EnerGov uses third-party software such as Citrix Gotoassist or Bomgarto accomplish this. Permission is required from the user whose desktop is being accessed before EnerGov can, or will, access the PC and the user must agree to the installation of the small application that allows remote access. EnerGov cannot access and is, in fact, prevented from accessing the user’s PC without the user’s granting that access.

2.6 Response Time

EnerGov cannot guarantee a resolution time but EnerGov will work diligently to resolve all issues and concerns as quickly as possible

3 CUSTOMER RESPONSIBILITY

3.1 *Provide Named “Single Point” Contact Persons*

Business Contact: The Business Contact person liaises with EnerGov on issues dealing with business and/or contractual issues. This individual typically contacts EnerGov to make changes in the EnerGov contract, such as adding more licenses, expanding services to include new custom reports, etc. Email and phone information should be provided to EnerGov’s Help Desk during the software implementation. Additionally, a “backup” person should be assigned.

Technical Contact: The Technical Contact is responsible for the technical aspects of EnerGov Product. This person liaises directly with EnerGov for all technical issues. The Technical contact should have a minimum level of technical experience and training. (See Appendix B.) Email and phone information should be provided to EnerGov’s Help Desk during the software implementation. Additionally, a “backup” person should be assigned. Calls to EnerGov’s Help Desk are typically made by this individual or their backup person.

3.2 *VPN Access for EnerGov Support Personnel*

Resolution for certain support issues may require access to the EnerGov Server located within your agency, usually in a server room with other computers and communication equipment. The customer should provide VPN access through the existing firewall into the EnerGov Server. This allows the EnerGov Support Technician to make changes, install software updates and upgrades. Once granted access, EnerGov Support Technicians follow all security requirements you require from us.

3.3 *Hardware and Other Systems*

Customer will need to insure that the following items have been addressed. This is critical for EnerGov to provide the highest level of support:

- Hardware should be maintained for all CPUs executing EnerGov products
- Support contracts for all third-party software (for example, operating system, database management system, etc.) associated with EnerGov products should be maintained. EnerGov does not support these third-party products.
- Database backups should be scheduled on a daily basis and verified that they are successful.

4 STANDARD LEVEL CUSTOMER SUPPORT - HELP DESK SUPPORT PROCEDURES

4.1 *Fault Support*

When reporting a fault to the Help Desk, please have all the following information available:

- A business explanation of the issue’s severity. Application and revision of current version.
- Module or screen where fault occurred
- Description of the fault, including specific steps taken to initiate the fault
- Whether it is repeatable or random fault
- Other data or information useful in determining resolution
- Self assessment of the priority level that should be assigned to this fault (please see Priority Levels in Appendix A)

4.2 “Non-Fault” Support

Non-fault support typically has a low priority level and, depending on the request, can be handled at a mutual time agreeable to the user and the Support Technician. Many non-fault support questions are handled immediately. For example, “show me how to create a custom field.” In cases like these, the EnerGov Support Technician may “log into” the user’s system and provide “hands-on” instruction and direction. (Note: Requests dealing with changes in the EnerGov configuration must come through an authorized, predesignated individual who has authority to make decisions regarding the EnerGov configuration).

4.3 EnerGov Customer Resource Management system

All Help Desk Calls are logged into the EnerGov Customer Resource Management System (CRM). This system assists in tracking detail information about all issues encountered by EnerGov’s Help Desk. This includes your questions, issues, and problems. All issues are assigned a unique case number. Each incident contains information such as:

- Case Number
- Issue Type
- Customer Contact Information Account Manager
- Software/Hardware involved versions, revisions, etc.
- Affected Application/Transaction/Screen/Activity
- Error Codes
- Case Description
- Severity Explanation
- Priority
- Status and Completion Codes
- Actions (with narrative) taken
- Case Resolution
- Time and Date Stamping of all activity

EnerGov’s assures timely escalation and status feedback. This system allows us to identify recurring problems, report trends, and recommend system fixes or additional training and education, as appropriate. Effective use of issue history and configuration data enhances issue resolution and provides greater overall satisfaction with the EnerGov products.

4.4 Escalation

Fault reporting and other Help Desk requests are addressed in accordance with their associated priority levels (See Appendix A). EnerGov relies on you to fully explain the severity and impact on your business to properly set realistic priority levels on all issues.

EnerGov Help Desk Technicians are highly trained, both technically and operationally on the EnerGov applications. Most Help Desk calls are resolved effectively and efficiently. In the event a fault is reported that the Help Desk Technician is unfamiliar with or unaware of, he or she will immediately internally escalate to see if the reported fault is a known fault for which a fix is available or if it is a new fault reported for the first time.

New faults are immediately (logged and) escalated to EnerGov’s Professional Services or Research & Development Teams, which may provide assistance in finding a short-term “work-around” until a permanent fix can be determined and issued through a software update.

After a fault is reported and a priority assigned, you may feel that the priority is incorrect. Typical reasons for a priority escalation are:

- Problem has become more frequent or more severe since initial report
- Issue has been unresolved for an unexpected amount of time

Internal escalation is a regular feature of EnerGov’s Help Desk procedures. Team Supervisors and Managers are aware of and following high priority fault reporting. However, if you feel that your Help Desk Technician fails to appreciate your unique issues, please ask to be transferred to his or her supervisor.

4.5 Closure

EnerGov provides closure, which may include written documentation, a program fix, a procedural work-around, or some other solution or material. After we feel the issue has been fully responded to, we will request a confirmation from you to close the issue. If we don’t get conformation back within 48hr’s we will consider the issue resolved and close the case. Once a case is closed a confirmation email will be sent to the contact that is listed in the CRM.

5 SOFTWARE ENHANCEMENT REQUESTS

EnerGov accepts and logs all product enhancement requests and passes these requests to EnerGov’s Research & Development Department. These requests are assigned a priority based on their general ability to deliver benefits to our Customer base then logged into our tracking system and reviewed quarterly for inclusion into new product releases. These requested enhancements are evaluated with respect to internal development plans and are selected based upon several criteria, including: effort versus benefit, applicability to Customer base and prospects, consistency with best land management systems practices and with our technical and functional development strategic direction. Customers can request a status of any particular requested enhancement, and EnerGov will provide: 1) whether the feature has been evaluated as yet; 2) if it has been scheduled for a release, and if so the planned release date; 3) if it has been accepted as a good idea, but not yet selected for development; or 4) if it was rejected and why. Generally a request is rejected only if it is not generic enough to become part of a packaged product or if it is not consistent with our concept of best land management practices.

If a customer enhancement request cannot be delivered in time to meet a Customer’s critical business need and it meets our “best land management practices and generic tests, then a Customer or group of Customers may request EnerGov to deliver the enhancement outside of a standard product release. This will be done at the Customer’s cost on a “time and materials” basis. In most cases enhancements sponsored in this manner will be rolled into the standard product in one of the next releases.

6 GENERAL TERMS OF SOFTWARE SUPPORT

6.1 Software definition of the EnerGov System

The EnerGov system includes only the proprietary EnerGov software suite of products, interfaces and modifications, as identified in the EnerGov Investment Summary (the “EnerGov Products”).

The EnerGov system does not include components outside of the EnerGov Products (e.g., operational questions, network problems, database errors, phone lines, or configuration).

6.2 Coverage

EnerGov covers the diagnosis and repair of product faults in EnerGov Products. Faults are defined as processing which prevents the product from performing as designed. EnerGov reserves the right to assign a commercially reasonable classification to support incidents as faults, feature enhancements, or non-product related issues. Faults are covered in this agreement. Suggested product feature enhancements are taken as information to be considered in future version releases. *Non-product related issues* are often the root cause of apparent EnerGov Product faults. These are likely to be database errors, network problems, firewall issues, or operating system configuration errors. Support does not cover resolving nonEnerGov product problems, such as database, operating system, network or other related applications, which are directly affecting the performance and abilities of EnerGov products. EnerGov support will work with you to identify the source of these problems. When a non-product related issue is identified as the root cause based on EnerGov support’s commercially reasonable analysis, it is the customer’s responsibility to resolve the problem. If the Customer desires additional EnerGov assistance on a non-product related issue, “time and material” charges will apply, over and above the fees paid for EnerGov Support.

6.3 On-Site Support

As set forth in Section C(5) of the Agreement, annual maintenance and support fees do not include onsite support, unless the EnerGov support team is unable to resolve a Defect remotely after exhausting all efforts to do so. If onsite support is required to resolve a Priority 1 or 2 issue, as defined herein, EnerGov support personnel will provide onsite support. If it is ultimately determined that the reason the Defect could not be cured remotely was a reason within the customer’s control, EnerGov’s support services and travel expenses will be billable to the customer.

The fee for EnerGov Support does not cover the cost to assist in performing product upgrades on-site. In most cases, with qualified Customer personnel, phone and dial-in/internet (webinar) support for upgrades is sufficient. However, when releases involve database changes or any customization has been performed, and it is desired to minimize impact on the production environment, then it is often advisable to use EnerGov assistance in performing the upgrade. Time and travel expense will be charged at the then current rates.

6.4 Exceptions

Please reference Sections C(4)-(6) of the main Agreement.

6.5 Limitation on Back-Level Support

If Customer chooses not to install any Release, EnerGov will, at Customer's request, use its reasonable efforts to maintain versions of the Software prior to the Current Release (and the one Release immediately preceding the Current Release), subject to an additional charge, and subject to availability of EnerGov technical support staff.

7 APPENDIX A: CUSTOMER SUPPORT PRIORITY LEVELS – FAULT AND NON-FAULT LEVELS

Priority Level	Definition	EnerGov Response	Goal Resolution Time
1	Production/system is down and work cannot continue until problem is fixed. Or system is executing but not usable* output is generated.	All parties to work continuously until problem is resolved.	ASAP, with status reports daily if not fixed within 24 hours.
2	Inaccurate or loss of business data. The output is not being saved correctly or the defect prevents the nominal** solution from being generated. Problem is occurring in a business critical module, and there is no workaround.	Work should continue on a normal workday basis until a permanent solution is in place.	72 hours, with status reports every two days, if not fixed within 72 hours.
3	Issue is not critical to the business or there is a workaround to an otherwise priority 1 or 2 issue.	Resolution is worked into a planned project repair and development schedule.	Next Available Release
4	Non-Fault trivial, cosmetic, “ought-to-be” or ease of use issues	Resolution deferred or development efforts are scheduled in the involved program(s) or software module.	Future Release
5	Non-Fault Support: - New-report creation, outside the contracted scope of work from the initial implementation, is available for additional costs. Assistance with modifications to existing reports is accomplished as time permits. Other non-fault support requests are handled as time permits, usually immediately or, in some cases, after scheduling through the user.	If there is an urgent business need for a report modification, advise the Help Desk Technician.	(ask for a time quote)

* Not usable is defined as the customer cannot use the product in the live production environment to fulfill a critical business need, for which the product was intended.

** Nominal is defined as the output normally generated when no anomalies are occurring.

8 APPENDIX B: TECHNICAL CONTACTS – MINIMUM RECOMMENDED TRAINING

The following minimum recommended training is necessary for your Technical Contacts to perform basic system and database administration and to allow EnerGov to effectively provide the support outlined in this document. Please note that systems administration of the EnerGov product is not included within EnerGov's standard support and maintenance.

- **Basic application specific functions and utilities (provided as part of a typical EnerGov Install as System Administration training):**
 - Start-up Shut-down EnerGov Product
 - Insert, Update, and Delete basic setup data through EnerGov Product
 - Setup, add, modify, and delete, specific business data and fees
 - Troubleshoot basic EnerGov application
 - Add and Modify users, roles, and permissions

- **Intermediate application diagnostic and correction skills (provided by EnerGov as additional training):**
 - Be able to back-up and restore your database
 - Understand and know how to configure your ini files
 - Able to apply upgrades
 - Learn how to diagnose common errors
 - Attach, Detach, and backup of EnerGov database
 - Basic Crystal Report Writing training

Note: EnerGov provides technical support under EnerGov's standard support and maintenance program. If system or database administration support is requested and provided, and you have not timely paid for OS/DBA services, EnerGov will bill for the time required on an hourly basis at its then current, published rates.

Exhibit 4

Business Travel Policy Summary

1. Air Travel

A. Reservations & Tickets

Tyler's Travel Management Company (TMC) will provide an employee with a direct flight within two hours before or after the requested departure time, assuming that flight does not add more than three hours to the employee's total trip duration and the fare is within \$100 (each way) of the lowest logical fare. If a net savings of \$200 or more (each way) is possible through a connecting flight that is within two hours before or after the requested departure time and that does not add more than three hours to the employee's total trip duration, the connecting flight should be accepted.

Employees are encouraged to make reservations far enough in advance to take full advantage of discount opportunities. A seven day advance booking requirement is mandatory. When booking less than seven days in advance, management approval will be required.

Except in the case of international travel where a segment of continuous air travel is scheduled to exceed six hours, only economy or coach class seating is reimbursable.

B. Baggage Fees

Reimbursement of personal baggage charges are based on the trip duration as follows:

- Up to five days = one checked bag
- Six or more days = two checked bags

Baggage fees for sports equipment are not reimbursable.

2. Ground Transportation

A. Private Automobile

Mileage Allowance-Business use of an employee's private automobile will be reimbursed at the current IRS allowable rate, plus out of pocket costs for tolls and parking. Mileage will be calculated by using the employee's office as the starting and ending point, in compliance with IRS regulations. Employees who have been designated a home office should calculate miles from their home.

B. Rental Car

Employees are authorized to rent cars only in conjunction with air travel when cost, convenience and the specific situation require their use. When renting a car for Tyler business, employees should select a "mid-size" or "intermediate" car. "Full" size cars may be rented when three or more employees are traveling together. Tyler carries leased vehicle coverage for business car rentals; additional insurance on the rental agreement should be declined.

The reimbursement rates for individual meals are calculated as a percentage of the full day per diem as follows:

- Breakfast 15%
- Lunch 25%
- Dinner 60%

B. Same Day Travel

Employees traveling at least 100 miles to a site and returning in the same day are eligible to claim lunch on an expense report. Employees on same day travel status are eligible to claim dinner in the event they return home after 7:00* p.m.

*7:00 is defined as direct travel time and does not include time taken to stop for dinner

5. Entertainment

All entertainment expenses must have a business purpose; a business discussion must occur either before, after or during the event in order to qualify for reimbursement. The highest-ranking employee present at the meal must pay for and submit entertainment expenses. An employee who submits an entertainment expense for a meal or participates in a meal submitted by another employee cannot claim a per diem for that same meal.

6. Internet Access – Hotels and Airports

Employees who travel may need to access their e-mail at night. Many hotels provide free high speed internet access and Tyler employees are encouraged to use such hotels whenever possible. If an employee's hotel charges for internet access it is reimbursable up to \$10.00 per day. Charges for internet access at airports are not reimbursable.

Effective Date: April 1, 2012

Exhibit 5
DocOrigin End User License Agreement

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DocOrigin

SOFTWARE LICENSE

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 - B. Per-Document.** This is defined as a fee per document based on the total number of documents generated annually by merging data with a template created by the Software. The combined data and template produce documents of one or more pages. A document may contain 1 or more pages. For instance a batch of invoices for 250 customers may contain 1,000 pages, this will be counted as 250 documents which should correspond to 250 invoices.
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7. TERM AND TERMINATION

- 7.1 The term of this Agreement will begin on download of the Software and, in respect of an Evaluation License, shall continue for the Evaluation Period, and in respect of all other license types defined in Section 1, shall continue for as long as You use the Software, unless earlier terminated sooner under this section 7.
- 7.2 OF Software Ltd. may terminate this Agreement in the event of any breach by You if such breach has not been cured within five (5) days of notice to You. No termination of this Agreement will entitle You to a refund of any amounts paid by You to OF Software Ltd. or its applicable distributor or reseller or affect any obligations You may have to pay any outstanding amounts owing to OF Software Ltd. or its distributor.
- 7.3 Your rights to use the Software will immediately terminate upon termination or expiration of this Agreement. Within five (5) days of termination or expiration of this Agreement, You shall purge all Software and all copies thereof from all computer systems and storage devices on which it was stored, and certify such to OF Software Ltd.

8. GENERAL PROVISIONS

- 8.1 **No Waiver.** No delay or failure in exercising any right under this Agreement, or any partial or single exercise of any right, will constitute a waiver of that right or any other rights under this Agreement. No consent to a breach of any express or implied term set out in this Agreement constitutes consent to any subsequent breach, whether of the same or any other provision.
- 8.2 **Severability.** If any provision of this Agreement is, or becomes, unenforceable, it will be severed from this Agreement and the remainder of this Agreement will remain in full force and effect.
- 8.3 **Assignment.** You may not transfer or assign this Agreement (whether voluntarily, by operation of law, or otherwise) without OF Software Ltd.'s prior written consent. OF Software Ltd. may assign this Agreement at any time without notice. This Agreement is binding upon and will inure to the benefit of both parties, and their respective successors and permitted assigns.
- 8.4 **Governing Law and Venue.** This Agreement shall be governed by the laws of the Province of Ontario. No choice of laws rules of any jurisdiction shall apply to this Agreement. You consent and agree that the courts of the Province of Ontario shall have jurisdiction over any legal action or proceeding brought by You arising out of or relating to this Agreement, and You consent to the jurisdiction of such courts for any such action or proceeding.

8.5 Entire Agreement. This Agreement is the entire understanding and agreement between You and OF Software Ltd. with respect to the subject matter hereof, and it supersedes all prior negotiations, commitments and understandings, verbal or written, and purchase order issued by You. This Agreement may be amended or otherwise modified by OF Software Ltd. from time to time and the most recent version of the Agreement will be available on the OF Software website www.docorigin.com.

Last Updated: [July 18 2013]

Exhibit 6
MyGovPay/Virtual Pay

1. MyGovPay/VirtualPay Licensing. Access to MyGovPay and/or Virtual Pay is hereby granted if City elects to use MyGovPay or VirtualPay, products of Tyler Technologies (*Powered by BankCard Services Worldwide*), designed for Citizen Users to use for processing online payments.

(a) Special MyGovPay/VirtualPay Definitions:

“BCSW” means BankCard Services Worldwide, a Payment Card Industry (PCI) compliant processing agent through which the EnerGov Software passes credit card transactions.

“Merchant Agreement” means the agreement between City and BCSW that provides for the Merchant Fees.

“Merchant Fees” means direct costs levied by Visa/Mastercard/Discover or other payment card companies for Interchange Fees, Dues, Assessments and Occurrence Fees, over which Tyler Technologies has no authority.

“MyGovPay” means the Product of Tyler Technologies that allows members of the public to pay for City’s services with a credit or other payment card on the City’s citizen-facing web portal.

“Use Fees” means the Technology Fees, Authorization Fees and Program/Convenience Fees as listed in Use Fees Table in Section 2, titled *MyGovPay/VirtualPay* .

“VirtualPay” means the Product of Tyler Technologies that allows the City to accept and process citizen user’s credit or other payment card using the EnerGov Software.

(b) Conditions of Use. If City elects to use MyGovPay and/or VirtualPay the following terms apply:

- (1) City must apply for and agree to a Merchant Agreement with BCSW.
- (2) City agrees that Citizen Users will be subject to Use Fees as listed in Use Fees table in Section 2.
- (3) City agrees that Use Fees are separate from and independent of Merchant Fees.
- (4) City agrees that this Agreement does not represent any modification to City’s Merchant Agreement with BCSA.
- (5) City agrees that Use Fees are for use on the MyGovPay/VirtualPay online system and will not be deposited or owed to City in any way.
- (6) City agrees that MyGovPay’s and VirtualPay’s ability to assess Use Fees is dictated by the Card Associations whose rules may change at any time and for any reason. If MyGovPay and/or VirtualPay, for any reason, are unable to process payments using Use Fees, City agrees that MyGovPay/VirtualPay reserves the right to negotiate a new pricing model with City for the continued use of MyGovPay and/or VirtualPay.

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2. **MyGovPay/VirtualPay Fees.** City agrees that the Use Fees set forth on the following page will apply if City elects to use MyGovPay/VirtualPay.

Use Fees

EnerGov’s MyGovPay (Online / card-not-present payments)**

	MyGovPay (Online Payments)	MyGovPay (Online Payments)
	Percentage Based Fee	+ Transaction Fee
Option 1: Government Entity Paid	2.79%	\$0.20
Option 2: Patron Paid	3.29%	N/A

****ACH processing is available for a fee of \$20 per month and \$0.30 per transaction.**

EnerGov’s VirtualPay (retail card present)

	VirtualPay (Retail Payments)	Virtual Pay (Retail Payments)
	Percentage Based Fee	+ Transaction Fee
Option 1: Government Entity Paid	2.59%	\$0.15
Option 2: Patron Paid	2.99%	N/A

Patron Paid fees will be communicated as "Service Fees" to the cardholder, at the time of transaction. In the event that the average transaction amount is below \$30, we reserve the right to apply an additional \$0.20 service fee above the quoted rates above.

3. **Interactive Voice Response (“IVR”).** If IVR is selected by City and included in the pricing, the following additional terms and conditions shall apply of this Agreement:

- (a) **Network Security.** City acknowledges that a third-party is used by Tyler Technologies to process IVR data. City’s content will pass through and be stored on the third-party servers and will not be segregated or in a separate physical location from servers on which other customers’ content is or will be transmitted or stored.
- (b) **Content.** City is responsible for the creation, editorial content, control, and all other aspects of content to be used solely in conjunction with the EnerGov Software.
- (c) **Lawful Purposes.** City shall not use the IVR system for any unlawful purpose.
- (d) **Critical Application.** City will not use the IVR system for any life-support application or other critical application where failure or potential failure of the IVR system can cause injury, harm, death, or other grave problems, including, without limitation, loss of aircraft control, hospital life-support system, and delays in getting medicate care or other emergency services.
- (e) **No Harmful Code.** City represents and warrants that no content designed to delete, disable, deactivate, interfere with or otherwise harm any aspect of the IVR system now or in the future, shall be knowingly transmitted by City or Users.
- (f) **IVR WARRANTY.** Except as expressly set forth in this Agreement, TYLER TECHNOLOGIES MAKES NO REPRESENTATION AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE FOR IVR.



STAFF REPORT

ITEM NO. 13.A

DATE: MARCH 23, 2015
TO: MAYOR AND CITY COUNCIL
FROM: ROD BUTLER, CITY MANAGER
PREPARED BY: CHRISTA BUHAGIAR, FINANCE MANAGER
SUBJECT: PROFESSIONAL SERVICE AGREEMENTS WITH HINDELITER DE LLAMAS AND ASSOCIATES AND HDL COREN & CONE FOR SALES TAX AND PROPERTY TAX AUDIT AND INFORMATION SERVICES

RECOMMENDED ACTION

It is recommended that the City Council approve the professional services agreement with Hinderliter de Llamas and Associates to provide the City with Sales Tax Audit and Information Services; and approve the professional services agreement with HdL Coren & Cone to provide the City with Property Tax Audit and Information Services.

GOAL STATEMENT

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

BACKGROUND

Founded in 1983, HdL was established to maximize local government revenues by providing a variety of audits, analytical services and software products. Hinderliter de Llamas and Associates developed California's first computerized sales tax management program and was responsible for securing legislation that allowed independent verification of state allocations. In 1990, HdL Coren and Cone was established to provide property and documentary transfer tax services. HdL Software was formed in 1996 to provide software systems for other city revenues and to link to other HdL revenue tracking systems. HdL's revenue management and economic data analysis is currently being utilized by over 380 agencies in six states.

The City has contracted with Hinderliter de Llamas and Associates since 1988 to provide ongoing sales tax data analysis and staff expertise to support fiscal planning and economic development. They have identified and recovered sales and use tax allocation errors and reported deficiencies and prepared necessary case submittals to the Board of Equalization. From 1988 to 2013 Hinderliter de Llamas has identified and recovered \$2,825,731 for the City of Upland.

The City has contracted with HdL Coren & Cone since 2002 to provide property tax related services, including allocation audits and trend analysis in order to maximize the property tax revenues for the City. From 2002 to 2014 HdL Coren & Cone has identified and recovered \$138,450 for the City of Upland. The audits resulted in a total of \$1.3 million in revenue recovered since the audit findings.

ISSUES/ANALYSIS

The current contracts with HdL have no end date, but the City's standard contract has since been revised. Due to the complex nature of administering local property taxes and sales taxes, the misallocations of taxes among jurisdictions are common. These errors often result in cities receiving less tax revenues than they are entitled to. Therefore, it is in the City's best interest to continue the services of both Hinderliter de Llamas and Associates and HdL Coren & Cone to ensure continued sales and property tax revenue monitoring.

Based on their past customer service history providing the City with reporting, analytic and consultation services, staff recommends the selection of HdL. Staff is able to get requested information from them quickly and their budget estimates have been a valuable part of the budget process. We currently have an agreement with HdL Software LLC for business license compliance and operations management and consulting services that ends June 30, 2019. The proposed agreements have the same term as the business license agreement which will set them all up for RFP at the same time.

For the agreement with Hinderliter de Llamas and Associates, the City will pay an annual base fee of \$6,600 for a four year term beginning July 1, 2015 through June 30, 2019, with three (1) year additional terms. Additionally, the City will pay an audit fee of 15% of all new sales and use tax revenue received by the City as a result of audit and recovery work performed by the firm.

For the agreement with HdL Coren & Cone, the City will pay an annual base fee of \$16,800 for a four year term beginning July 1, 2015 through June 30, 2019, with three (1) year additional terms. Additionally, the City will pay an audit fee of 25% of property tax revenue or other funds recovered or reallocated which are directly or indirectly the result of an audit, analysis or consultation performed by HdL.

FISCAL IMPACTS

For both agreements, the base fees will be budgeted in the FY 2015/16 annual budget and subsequent years. Any fees for recovery of revenues will be offset by the revenues collected.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

[HdL Sales Tax Agreement](#)

[HdL Property Tax Agreement](#)

**AGREEMENT
FOR PROFESSIONAL CONSULTANT SERVICES
SALES TAX AUDIT AND INFORMATION SERVICES**

THIS AGREEMENT is made and effective as of March 23, 2015, between the City of Upland, a municipal corporation ("City") and Hinderliter, de Llamas and Associates ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM.** This Agreement shall commence on July 1, 2015, and shall remain and continue in effect until tasks described herein are completed, but in no event later than June 30, 2019, unless sooner terminated pursuant to the provisions of this Agreement. The City may, upon mutual agreement, extend the contract for three (1) year additional terms. If contract is extended beyond the original term, contract price shall be adjusted at the beginning of each calendar year in accordance with the changes in the Consumer Price Index for all Urban Consumers in the Los Angeles-Anaheim-Riverside Area published monthly by the United States Bureau of Labor Statistics (CPI).

2. **SERVICES.** Consultant shall perform the services and tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. **PERFORMANCE.** Consultant shall at all time faithfully, competently and to the best of his or her ability, experience, and talent, 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. **PAYMENT.**

a. The City agrees to pay Consultant quarterly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, 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. Any terms in Exhibit B other than the scope of work to be performed, payment rates and schedule of payment are null and void.

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.

c. Consultant will submit invoices quarterly 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.

5. 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 be paid the value of all tax analysis and reporting work performed less payments previously made by CITY. In ascertaining the value of the work performed up to the date of termination, consideration shall be given to amounts due for any unpaid invoices, and to businesses identified by Consultant which make tax payments after termination of this Agreement as a result of Consultant's work. After CITY receives said tax payments for such businesses, Consultant shall be paid the audit fees resulting from tax payments made by the business for back quarter reallocations and the first eight consecutive reporting quarters following completion of the audit by Consultant and confirmation of corrections by the State Board of Equalization. Compensation for any audit work previously authorized and satisfactorily performed shall be made at the times provided in the preceding section entitled "Payment"

6. 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.

7. 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.

8. 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.

9. 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: Two million (\$2,000,000) 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.

10. 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.

11. 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.

12. 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. Without limiting the foregoing confidentiality covenant in Subsection "a" herein, Consultant shall comply with the law regarding confidential taxpayer information contained in Exhibit "C" (Confidentiality and Proprietary Information).

c. 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.

13. 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: Hinderliter, de Llamas and Associates
1340 Valley Vista Drive, Suite 200
Diamond Bar, CA 91765
Attention: Andrew Nickerson

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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

Ray M. Musser, Mayor

Attest:

Stephanie A. Mendenhall, City Clerk

Approved As to Form:

Richard L. Adams, II, Interim City Attorney

CONSULTANT

Hinderliter, de Llamas and Associates
1340 Valley Vista Drive #200
Diamond Bar, CA 91765
909.861.4335

By: 

Name: Andrew Nickerson
Title: President

By: 

Name: Jeffrey A. Schmehr
Title: Chief Financial Officer

EXHIBIT A

TASKS TO BE PERFORMED

The scope of services provided by CONTRACTOR:

SALES AND USE TAX SYSTEM

1. Examine all sales and use tax records of the Board of Equalization pertaining to sales, use and transactions taxes collected by the Board on behalf of the City of Upland
2. Perform ongoing sales tax audits in order to identify and correct any distribution errors and thereby generate previously unrealized sales, use and transactions taxes income for the City.
3. Contact the appropriate management and accounting officials in companies that have businesses where a probability of error exists to verify whether current tax receipts accurately reflect the local sales activity. Such contacts will be conducted with the utmost courtesy and in a manner to encourage local business retention and expansion. Provide a report of all contacts and the results thereof.
4. Prepare and submit to the Board of Equalization all information necessary to correct any allocation errors that are identified and, if necessary, follow up with the individual businesses and the State Board of Equalization to ensure that all back quarterly payments due the City are recovered.
5. Provide quarterly analysis, customized newsletters, software, quarterly computer updates, and on-call assistance with sales tax projections for proposed projects. Work with the City's economic development staff to track economic performance of specified project areas, help identify voids and opportunities and provide data support and advice on alternate development strategies and business retention programs.
6. Provide quarterly invoices to the City of Upland which will include the business name, audit period start date, permit number, local allocation amount received by City and the amount due contractor. Provide applicable State Board of Equalization quarterly distribution report documents for the purpose of verifying and cross-referencing invoice amounts.

EXHIBIT B

COMPENSATION

Sales/Use Tax Audit CONTRACTOR shall receive fifteen percent (15%) of all new sales and use tax revenue received by the City as a result of audit and recovery work performed by the firm. This includes any reimbursement from the sales and use tax compensation fund as outlined in Section 97.68 of the Revenue and Taxation Code. This fee applies to State fund transfers received for back quarter reallocations. The fee also applies to monies received in the first eight consecutive reporting quarters following completion of the audit by CONTRACTOR. CONTRACTOR shall provide CITY with an itemized quarterly invoice showing all formula calculations and amounts due for audit fees. CONTRACTOR shall also provide hard copies of relevant portions of the State Board of Equalization monthly fund allocation cash receipts listing in order to verify correction amounts.

CONTRACTOR shall obtain City approval prior to beginning the work of correcting tax reporting methodology on "point of sale" for specific businesses where said payment of the percentage fee will be expected. Said approval shall be deemed given when the City's designated representative signs a Sales Tax Audit Authorization form identifying the specific tax accounts to be corrected. City shall pay audit fees upon CONTRACTOR's submittal of evidence of State Fund Transfers and payments to City from businesses identified in the audit and approved by the City.

In no case shall CONTRACTOR bill for audit revenues until City has actually received said monies. If during the billing cycle, a taxpayer receives a refund for overpayment of taxes generated during that cycle, CONTRACTOR shall credit back any proportionate share of the fee that may have been levied.

**Econ/Budget
Analysis, Software
& Staff Support**

CONTRACTOR shall establish the sales and transactions tax databases, shall provide the ongoing reports and analysis and shall make available the computer software program and databases referenced above for a fee of \$550.00 per month, commencing with the month of the Effective Date (hereafter referred to as "monthly fee"). The monthly fee shall be invoiced quarterly in arrears, and shall be payable no later than 30 days after invoice date. The fee for the initial term of this Contract shall be the annual fixed fee as noted. If contract is extended beyond the original term, contract price shall be adjusted at the beginning of each calendar year in accordance with the changes in the Consumer Price Index for all Urban Consumers in the Los Angeles-Anaheim-Riverside Area published monthly by the United States Bureau of Labor Statistics (CPI).

The sums described above shall constitute full reimbursement to CONTRACTOR for all direct and indirect expenses incurred by CONTRACTOR in performing audits including the salaries of CONTRACTOR's employees, and travel expenses connected with contacting local and out-of-state businesses and Board of Equalization representatives.

EXHIBIT C

CONFIDENTIALITY AND PROPRIETARY INFORMATION

1. Section 7056 of the State of California Revenue and Taxation code specifically limits the disclosure of confidential taxpayer information contained in the records of the State Board of Equalization. This section specifies the conditions under which a CITY may authorize persons other than CITY officers and employees to examine State Sales and Use Tax records.

The following conditions specified in Section 7056 (b), (1) of the State of California Revenue and Taxation Code are hereby made part of this agreement:

- A. CONTRACTOR is authorized by this Agreement to examine sales, use or transactions and use tax records of the Board of Equalization provided to CITY pursuant to contract under the Bradley-Burns Uniform Sales and Use Tax Law.
 - B. CONTRACTOR is required to disclose information contained in, or derived from, those sales, use or transactions and use tax records only to an officer or employee of the CITY who is authorized by resolution to examine the information.
 - C. CONTRACTOR is prohibited from performing consulting services for a retailer, as defined in California Revenue & Taxation Code Section 6015, during the term of this Agreement.
 - D. CONTRACTOR is prohibited from retaining the information contained in, or derived from those sales or transactions and use tax records, after this Agreement has expired. Information obtained by examination of Board of Equalization records shall be used only for purposes related to collection of local sales and use tax or for other governmental functions of the CITY as set forth by resolution adopted pursuant to Section 7056 (b) of the Revenue and Taxation Code. The resolution shall designate the CONTRACTOR as a person authorized to examine sales and use tax records and certify that this Agreement meets the requirements set forth above and in Section 7056 (b), (1) of the Revenue and Taxation Code.
2. In performing its duties under this agreement, CONTRACTOR will produce reports, technical information and other compilations of data for the City. These reports, technical information and compilations of data are derived by CONTRACTOR using methodologies, formulae, programs, techniques and other processes designed and developed by CONTRACTOR at a substantial expense and are therefore considered by Contractor to be proprietary information. CONTRACTOR'S Proprietary Information is not generally known by the entities with which CONTRACTOR competes.

CONTRACTOR desires to protect its Proprietary Information. Accordingly, City agrees that neither it nor any of its employees, agents, independent contractors or other persons or organizations over which it has control, will at any time during or after the term of the Agreement, directly or indirectly use any of CONTRACTOR'S Proprietary Information for any purpose not associated with CONTRACTOR'S activities. Further, City agrees that neither it nor any of its employees, agents, independent contractors or other persons or organizations over which it has control, will disseminate or disclose any of CONTRACTOR'S Proprietary Information to any person or organization not connected with CONTRACTOR, without the express written consent of CONTRACTOR. The City also agrees that it will undertake all necessary and appropriate steps to maintain the proprietary nature of CONTRACTOR'S Proprietary Information.

OWNERSHIP OF MATERIALS, CONFIDENTIALITY

- A. Software Use. CONTRACTOR hereby provides authorization to the CITY to access CONTRACTOR'S Sales Tax website if the CITY chooses to subscribe to the software and reports option. The website shall only be used by authorized CITY staff. No access will be granted to any 3rd party without explicit written authorization by CONTRACTOR. The CITY shall not sublet, duplicate, modify, decompile, reverse engineer, disassemble, or attempt to derive the source code of said software. The software use granted hereunder shall not imply ownership by CITY of said software, or any right of the CITY to sell said software or the use of same, or any right to use said software for the benefit of others. This software use authorization is not transferable. Upon termination of this agreement the software use authorization shall expire, and all CITY staff website logins shall be de-activated.
- B. Proprietary Information. As used herein, the term "proprietary information" means any information which relates to CONTRACTOR'S computer or data processing programs; data processing applications, routines, subroutines, techniques or systems; desktop or web-based software; or business processes. CITY shall hold in confidence and shall not disclose to any other party any CONTRACTOR proprietary information in connection with this Agreement, or otherwise learned or obtained by the CITY in connection with this Agreement. The obligations imposed by this Paragraph shall survive any expiration or termination of this Agreement. The terms of this section shall not apply to any information that is public information.

**AGREEMENT
FOR PROFESSIONAL CONSULTANT SERVICES
PROPERTY TAX AUDIT AND INFORMATION SERVICES**

THIS AGREEMENT is made and effective as of March 23, 2015, between the City of Upland, a municipal corporation ("City") and HdL Coren & Cone ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM.** This Agreement shall commence on July 1, 2015, and shall remain and continue in effect until tasks described herein are completed, but in no event later than June 30, 2019, unless sooner terminated pursuant to the provisions of this Agreement. The City may, upon mutual agreement, extend the contract for three one (1) year additional terms.

2. **SERVICES.** Consultant shall perform the services and tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. **PERFORMANCE.** Consultant shall at all time faithfully, competently and to the best of his or her ability, experience, and talent, 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. **PAYMENT.**

a. The City agrees to pay Consultant quarterly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, 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. Any terms in Exhibit B other than the scope of work to be performed, payment rates and schedule of payment are null and void.

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.

c. Consultant will submit invoices quarterly 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.

5. 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.

6. 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.

7. 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. City shall not retain ownership of the information contained in the HdLCC Property Tax web application. The contract allows only access to information stored on Consultant's servers. Access to the web application information and features will be revoked in the event of a termination of this contract.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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: HdL Coren & Cone
1340 Valley Vista Drive, Suite 200
Diamond Bar, California 91765
Attn: Nichole Cone
Phone : (909) 861-4335
Fax: (909) 861-7726

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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

Ray M. Musser, Mayor

Attest:

Stephanie A. Mendenhall, City Clerk

Approved As to Form:

Richard L. Adams, II, Interim City Attorney

CONSULTANT

By: Nichole E. Cone
Name: Nichole E. Cone
Title: Vice President/Secretary

By: Paula J. Cone
Name: PAULA J. CONE
Title: President

(Two Signatures of Corporate Officers Required For Corporations)

EXHIBIT A

TASKS TO BE PERFORMED

Services provided include property tax management service, secured and unsecured parcel audits, budget projections, and Successor Agency support.

Reports and Management Analyses (1)

The company will provide the following reports. Reports are also available from prior years if required.

- A five year history of the values within the city, successor agency and custom (city defined) geographic area;
- A listing of the largest value changes, positive and negative between tax years;
- A listing of the major property owners, including the assessed value of their property and property use code designation;
- A listing of the major property tax payers, including an estimate of the property taxes;
- A listing of property tax transfers which occurred since the lien date ordered by month;
- A multiple year comparison of growth by use code designation over a 10 year period;
- State Appropriation Limit calculations;
- Calculate an estimate of property tax revenue anticipated to be received for the fiscal year based upon the initial information provided by the County and subject to modification. This report is interactive for tax modeling. This estimate shall not be used to secure the indebtedness of the City.
- Foreclosure data and Bank Owned Property listings
- Property sales information, and Proposition 8 exposure and recapturing potential
- Analyses based on geo areas designated by the City to include assessed valuations and square footage computations for use in economic analysis and community development planning.

- (1) Reports area based upon property tax information obtained from your county and supplemented by additional information from third parties. Some reports are dependent upon the availability of county data in electronic format.

Successor Agency Services

Successor Agency Services including but not limited to:

- Tax increment projections
- Cash flows for the Successor Agency by Project Area
- Assistance with Redevelopment Obligation Payment Schedules
- Assistance in providing property tax information for the taxing agencies receiving property tax revenues from former Project Areas
- Estimates of property tax revenues to be received by the taxing entities from former Project Areas
- Provide property tax information to the Oversight Board at the direction of the Successor Agency
- Provide access to the Oversight Board to City and former redevelopment agency documents at the direction of the Successor Agency
- Monitor the County distribution of tax-sharing revenues to the taxing entities of the former redevelopment agency
- Coordinate with the Auditor-Controller the relationship between the tax-sharing, debt service and other obligations of former redevelopment agency
- Prepare as needed an assessment of resources available to the Successor Agency to meet the long term obligations of the former redevelopment agency

Quarterly Reports and System Updates

- A listing of property tax appeals filed on properties in the City where data is available for purchase from the Clerk of the Board.
- A listing of property transfers that have occurred since the last report will be available through the software provided and updated on a monthly basis.

Web-Based Software

- The HdLCC provides a web-based software application to clients as a user-friendly tool to access the City's property tax data. HdLCC provides updates to the data portion of the product on monthly basis to reflect changes in ownership, updated appeals filings, and deed recordings.
- As modifications and enhancements are made to the program, clients receive the enhanced version of the software at no additional cost. Training will be provided to city staff within the first two months after the execution of the agreement for property tax management and audit services and is available annually for new staff members or staff requiring a refresher course. If additional training sessions are required, the fees in the compensation section under hourly fees will be charged.

Identification and Correction of Errors

HdL Coren & Cone has the technology, methodology and trained staff to analyze all secured parcels within the City to identify costly errors resulting in the misallocation of property taxes.

The company audits the secured and unsecured property tax rolls to ensure that each is coded to the appropriate taxing entity. The company performs an analysis of the Assessor Rolls to identify all parcels on both the secured and unsecured tax rolls and verify that parcel assessed valuations and the resulting taxes are correctly allocated to the City. This analysis is accomplished through the use of specialized computer software, GIS maps, assessor maps, city maps, city records, other pertinent documents, and field investigations.

On-Going Consultation

During the term of the contract, we serve as the resource staff to the City on questions relating to property tax. This includes being "on-call" to assist with any property tax issues. On-going consultation would include, but not be limited to inquiries resolved through use of the City data base. All requests for information based upon the County's property tax data sets are provided without additional costs.

EXHIBIT B

PAYMENT RATES AND SCHEDULE

Fee for Services

CONTRACTOR shall provide the Base Services described in Section 2.0 above, for a fixed annual fee of \$16,800.00 (invoiced quarterly).

Base Contingent Fee Services

Base Services pursuant to the Identification and Correction of Errors portion of Scope are payable on a contingent basis. CONTRACTOR shall receive 25 percent of general fund or tax increment property tax revenue or other revenues attributable to SUCCESSOR AGENCY, CITY, districts, or funds recovered or reallocated which are directly or indirectly the result of an audit, analysis or consultation performed by CONTRACTOR (including but not limited to base year value audits; administration of tax sharing agreements; tax increment allocation reviews; county allocation reviews). CONTRACTOR shall separate and support said reallocation and provide CITY with an itemized invoice showing all amounts due as a result of revenue recovery or reallocation. CITY shall pay audit fees after Contractor's submittal of evidence that corrections have been made by the appropriate agency. Audit fees are charged one time per correction per year and are only paid once in the year of the correction. Payment to CONTRACTOR shall be made within thirty (30) days after CITY receives its first remittance advice during the fiscal year for which the correction applies.

Optional Services Fees

Special reports, additional research, or requests requiring additional computer programming may entail some additional costs. Attendance at City and/or Successor Agency meetings will be billed at our hourly rates.

Fees for Optional Services shall be billed at the following hourly rates:

Partner	\$225 per hour
Principal	\$195 per hour
Associate	\$150 per hour
Programmer	\$150 per hour
Senior Analyst	\$100 per hour
Analyst	\$ 65 per hour
Administrative	\$ 45 per hour

Hourly rates are exclusive of expenses and are subject to adjustment by CONTRACTOR annually. On July 1st of each year CONTRACTOR shall provide CITY with an updated schedule of hourly rates. The rates will not be increased by more than five percent (5%) per year. In addition, expenses for Optional Services shall be billed at 1.15 times actual incurred costs.



STAFF REPORT

ITEM NO. 13.B

DATE: MARCH 23, 2015
TO: AGENCY CHAIRMAN AND MEMBERS
FROM: ROD BUTLER, EXECUTIVE DIRECTOR
PREPARED BY: CHRISTA BUHAGIAR, FINANCE MANAGER
MARSHALL LINN, FINANCIAL ADVISOR
SUBJECT: ECONOMIC REFUNDING OF THE UPLAND COMMUNITY
REDEVELOPMENT AGENCY UPLAND COMMUNITY REDEVELOPMENT
PROJECT TAX ALLOCATION REFUNDED BOND ISSUE OF 2006
[PARTIAL REFUNDING]

RECOMMENDED ACTION

It is recommended that the Successor Agency Board adopt a Resolution authorizing the issuance and sale of Tax Allocation Refunding Bonds and approving the Form of an Indenture of Trust and authorizing certain other actions in connection therewith.

GOAL STATEMENT

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

BACKGROUND

In November 2006, the Upland Community Redevelopment Agency issued \$15,000,000 Upland Community Redevelopment Project (A Merged Project), Tax Allocation Refunding Bonds, Issue of 2006. Approximately 35% (\$5,100,000) of this financing was used for refinancing prior Redevelopment debt. The remaining 65% was used for Redevelopment Projects. Under current Tax Law, the 65% is advance refundable for debt service savings of about \$826,000 in total. The 35% left outstanding can be refinanced as of September 1, 2016 if market conditions warrant.

ISSUES/ANALYSIS

Successor Agency staff and its Financial Advisor have analyzed the economics of partial refunding (refinancing) of the outstanding tax allocation bond debt to provide debt service savings to not only the City but to all of the taxing agencies within the "old" redevelopment project area boundaries.

With rates at historic lows (at least for the near term), the Successor Agency has the opportunity to save as previously stated approximately \$826,000 (subject to market conditions) without extending the maturity date of the refunded bonds.

The source of repayment for the proposed 2015 refunding Bonds is limited to the increment revenue generated in the Project Areas, net of pass through payments. The 2015 Bonds would not be a debt of the City or its general fund. The dissolution of redevelopment agencies which

occurred in 2011 does not affect the Successor Agency's ability to refund the older Prior Agency debt, as AB 1484 allows for bond refundings to generate debt service savings (no new money allowed), and further states that the pledge of Successor Agency tax revenues will be identical to the pledge of tax increment that originally secured the older bonds.

Due to the terms of AB 1484 and the new revenue distribution procedures by the County, the debt service savings amount will be shared by all taxing entities, including the City's general fund, share of property tax revenues.

In order to issue the 2015 Bonds, the Successor Agency would also need the approval of its Oversight Board, and the State Department of Finance ("DOF"). Upon approval of the Successor Agency Board and the Oversight Board, preliminary financing documents will be sent to the State Department of Finance for their 60 day review period.

Upon the completion of their review and upon the receipt of a Standard & Poors Bond rating, the refunding Bonds will be priced, after the Oversight Board approves the final Official Statements. It is anticipated that the transaction will be completed in early June.

FISCAL IMPACTS

A partial refunding of the 2006 Bond will save all of the taxing entities within the "old" project area additional money through 2036 at which time the bond issue will be fully paid off. It is anticipated (subject to market conditions) that a savings of approximately \$826,000 will be achieved.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

[Resolution](#)

[Draft Indenture](#)

RESOLUTION NO. _____

A RESOLUTION OF THE BOARD OF THE SUCCESSOR AGENCY TO THE UPLAND COMMUNITY REDEVELOPMENT AGENCY AUTHORIZING THE ISSUANCE AND SALE OF TAX ALLOCATION REFUNDING BONDS, AND APPROVING THE FORM OF AN INDENTURE OF TRUST AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

Intent of the Parties and Findings

(i) The Upland Community Redevelopment Agency (the "Prior Agency") was a public body, corporate and politic, duly created, established and authorized to transact business and exercise its powers under and pursuant to the provisions of the Community Redevelopment Law (Part 1 of Division 24 (commencing with Section 33000) of the Health and Safety Code of the State of California) (the "Law"), and the powers of the Prior Agency included the power to issue bonds for any of its corporate purposes; and

(ii) A Redevelopment Plan for a redevelopment project known and designated as the "Upland Community Redevelopment Project (A Merged Project)" has been adopted and approved by Ordinance No. 1431 of the City of Upland on July 12, 1988 and amended on July 12, 1994 by Ordinance No. 1607 and further amended on May 28, 1996 by Ordinance No. 1630, and all requirements of law for and precedent to the adoption and approval of the Redevelopment Plan, as amended, have been duly complied with; and

(iii) The Prior Agency has previously issued \$15,000,000 aggregate principal amount of Upland Community Redevelopment Agency, Upland Community Redevelopment Project (A Merged Project), Tax Allocation Refunding Bonds, Issue of 2006 (the "Prior Obligations"); and

(iv) On June 28, 2011, the California Legislature adopted ABx1 26 (the "Dissolution Act") and ABx1 27 (the "Opt-in Bill"); and

(v) The California Supreme Court subsequently upheld the provisions of the Dissolution Act and invalidated the Opt-in Bill resulting in the Upland Community Redevelopment Agency being dissolved as of February 1, 2012; and

(vi) The powers, assets and obligations of the Prior Agency were transferred on February 1, 2012 to the Successor Agency of the Upland Community Redevelopment Agency (the "Successor Agency"); and

(vii) On or about June 27, 2012, AB1484 was adopted as a trailer bill in connection with the 2012-13 California Budget; and

(viii) AB1484 specifically authorizes the issuance of refunding bonds by the Successor Agency to refund the bonds or other indebtedness of the Prior Agency to provide savings to the Successor Agency, provided that (A) the total interest cost to

maturity on the refunding bonds plus the principal amount of the refunding bonds shall not exceed the total remaining interest cost to maturity on the bonds to be refunded plus the remaining principal of the bonds to be refunded, and (B) the principal amount of the refunding bonds shall not exceed the amount required to defease the refunded bonds, to establish customary debt service reserves, and to pay related costs of issuance; and

(ix) For the corporate purposes of the Successor Agency, the Successor Agency desires to issue at this time tax allocation refunding bonds in an aggregate principal amount sufficient to refund all or a portion of the Prior Obligations (the "2015 Bonds"), and to irrevocably set aside a portion of the proceeds of such 2015 Bonds in a separate segregated trust fund which will be used to refund the outstanding Prior Obligations being refunded, to pay costs in connection with the issuance of the 2015 Bonds and to make certain other deposits as required by the Indenture (as defined below); and

(x) The 2015 Bonds shall be secured by a pledge of property tax revenues authorized by California Health and Safety Code Section 34177.5(a) and (g), pursuant to the provisions of Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code (the "Bond Law"); and

(xi) The Successor Agency wishes at this time to approve matters relating to the issuance and sale of the 2015 Bonds;

NOW, THEREFORE, the Successor Agency to the Upland Community Redevelopment Agency hereby finds, determines and resolves as follows:

Section 1. Subject to the provisions of the Indenture referred to in Section 2 hereof, the issuance of the 2015 Bonds in the aggregate principal amount sufficient to refund all or a portion of the Prior Obligations for the purpose of achieving debt service savings in accordance with Health & Safety Code Section 34177.5(a)(1) and the pledge of property tax revenues to the 2015 Bonds pursuant to the Indenture approved by Section 2 of this Resolution (as authorized by California Health and Safety Code Section 34177.5(a) and (g)) is hereby approved on the terms and conditions set forth in, and subject to the limitations specified in, the Indenture. The 2015 Bonds will be dated, will bear interest at the rates, will mature on the dates, will be issued in the form, will be subject to redemption, and will be as otherwise provided in the Indenture, as the same will be completed as provided in this Resolution. The proceeds of the sale of the 2015 Bonds shall be applied as provided in the Indenture. The 2015 Bonds may be issued as a single issue, or from time to time, in separate series, as the Successor Agency shall determine. The approval of the issuance of the 2015 Bonds by the Successor Agency and the Oversight Board shall constitute the approval of each and every separate series of 2015 Bonds and the sale of the 2015 Bonds at a public or private sale, without the need for any further approval from the Oversight Board.

Section 2. The Indenture of Trust in substantially the form submitted at this meeting and made a part hereof as though set forth in full herein (the "Indenture"), is hereby approved. The Chairman and the Secretary of the

Successor Agency (or the designees of either) are hereby authorized and directed to execute and deliver the Indenture in the form presented at this meeting with such changes, insertions and omissions as may be requested by Bond Counsel and approved by the Chairman, said execution being conclusive evidence of such approval.

Section 3. The Chairman of the Successor Agency, the Executive Director of the Successor Agency, the Secretary of the Successor Agency, and any other proper officer of the Successor Agency, acting singly, be and each of them hereby is authorized and directed to execute and deliver any and all documents and instruments, relating to the 2015 Bonds, and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by this Resolution and the Indenture, including, as necessary, the preparation of a Bond Purchase Contract, a private placement memorandum, an Official Statement, a Continuing Disclosure Agreement, the Escrow Agreement for the Prior Obligations and any additional agreements as may be required to carry out the purposes hereof. The form of each of the documents shall be presented to the Successor Agency at a future meeting for approval.

Section 4. U.S. Bank National Association is hereby appointed as Trustee, Stradling Yocca Carlson & Rauth, a Professional Corporation, is hereby appointed as Bond Counsel, Urban Futures, Inc. is hereby appointed as financial advisor, Dissemination Agent and Fiscal Consultant to the Successor Agency, and Southwest Securities, Inc., or any successor thereto, is hereby appointed underwriter and/or placement agent for the 2015 Bonds. Furthermore, the Chairman of the Successor Agency, the Executive Director of the Successor Agency, the Secretary of the Successor Agency, and any other proper officer of the Successor Agency, acting singly, be and each of them hereby is authorized and directed to select a disclosure counsel to assist in the disclosure relating to and the marketing of the 2015 Bonds, and each such officer is authorized to execute a contract with such disclosure counsel for such purposes.

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

PASSED, ADOPTED and ADOPTED this 23rd day of March, 2015.

Ray M. Musser, Mayor (Chairman)

I, Stephanie A. Mendenhall, City Clerk of the City of Upland (Secretary of the Successor Agency), do hereby certify that the foregoing Resolution was adopted at a regular meeting of the City Council (Successor Agency) held on the 23rd day of March, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

ATTEST:

Stephanie A. Mendenhall, City Clerk
(Secretary)

INDENTURE OF TRUST

Dated as of _____, 2015

by and between the

SUCCESSOR AGENCY TO THE
UPLAND COMMUNITY REDEVELOPMENT AGENCY

and

U.S. BANK NATIONAL ASSOCIATION
as Trustee

Relating to

\$ _____
Successor Agency to the
Upland Community Redevelopment Agency
Upland Community Redevelopment Project (A Merged Project)
Tax Allocation Refunding Bonds, Issue of 2015

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INDENTURE OF TRUST

THIS INDENTURE OF TRUST (this “Indenture”) is dated as of _____ 1, 2015, by and between the SUCCESSOR AGENCY TO THE UPLAND COMMUNITY REDEVELOPMENT AGENCY, a public body corporate and politic, duly organized and existing under the laws of the State of California (the “Successor Agency”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as trustee (the “Trustee”);

WITNESSETH:

WHEREAS, the Upland Community Redevelopment Agency (the “Prior Agency”) was a public body, corporate and politic, duly created, established and authorized to transact business and exercise its powers under and pursuant to the provisions of the Community Redevelopment Law (Part 1 of Division 24 (commencing with Section 33000) of the Health and Safety Code of the State of California) (the “Law”), and the powers of the Prior Agency included the power to issue Bonds for any of its corporate purposes; and

WHEREAS, a Redevelopment Plan for a redevelopment project known and designated as the “Upland Community Redevelopment Project (A Merged Project)” has been adopted and approved by Ordinance No. 1431 of the City of Upland on July 12, 1988 as amended on July 12, 1994 by Ordinance No. 1607 and on May 28, 1996 by Ordinance No. 1630, and as further amended on July 10, 2006 by Ordinance No. 1801, and all requirements of law for and precedent to the adoption and approval of the Redevelopment Plan, as amended, have been duly complied with; and

WHEREAS, the Prior Agency has previously issued \$15,000,000 aggregate principal amount of Upland Community Redevelopment Agency, Upland Community Redevelopment Project (A Merged Project), Tax Allocation Refunding Bonds, Issue of 2006 (the “2006 Bonds”); and

WHEREAS, the Successor Agency has previously issued \$22,090,000 aggregate principal amount of Successor Agency to the Upland Community Redevelopment Agency, Upland Community Redevelopment Project (A Merged Project), Tax Allocation Refunding Bonds, Issue of 2013 (the “2013 Bonds”); and

WHEREAS, for the corporate purposes of the Successor Agency, the Successor Agency deems it necessary to issue at this time tax allocation refunding bonds in a principal amount of _____ Thousand Dollars (\$ _____) (the “Bonds”), and to irrevocably set aside a portion of the proceeds of such Bonds in a separate segregated trust fund which will be used to refund a portion of the outstanding 2006 Bonds of the Prior Agency, to pay costs in connection with the issuance of the Bonds and to make certain other deposits as required by this Indenture, including the funding of a Reserve Account; and

WHEREAS, on June 28, 2011, the California Legislature adopted ABx1 26 (the “Dissolution Act”) and ABx1 27 (the “Opt-in Bill”); and

WHEREAS, the California Supreme Court subsequently upheld the provisions of the Dissolution Act and invalidated the Opt-in Bill resulting in the Prior Agency being dissolved as of February 1, 2012; and

WHEREAS, the powers, assets and obligations of the Prior Agency were transferred on February 1, 2012 to the Successor Agency; and

WHEREAS, on or about June 27, 2012, AB1484 was adopted as a trailer bill in connection with the 2012-13 California Budget; and

WHEREAS, AB1484 specifically authorizes the issuance of refunding bonds by the Successor Agency to refund the bonds or other indebtedness of the Prior Agency to provide savings to the Successor Agency, provided that (A) the total interest cost to maturity on the refunding bonds plus the principal amount of the refunding bonds shall not exceed the total remaining interest cost to maturity on the bonds to be refunded plus the remaining principal of the bonds to be refunded, and (B) the principal amount of the refunding bonds shall not exceed the amount required to defease the refunded bonds, to establish customary debt service reserves, and to pay related costs of issuance; and

WHEREAS, in order to provide for the authentication and delivery of the Bonds, to establish and declare the terms and conditions upon which the Bonds are to be issued and secured and to secure the payment of the principal thereof and interest and redemption premium (if any) thereon, the Successor Agency and the Trustee have duly authorized the execution and delivery of this Indenture; and

WHEREAS, the Successor Agency hereby certifies that all acts and proceedings required by law necessary to make the Bonds, when executed by the Successor Agency, and authenticated and delivered by the Trustee, the valid, binding and legal special obligations of the Successor Agency, and to constitute this Indenture a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done or taken.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that in order to secure the payment of the principal of and the interest and redemption premium (if any) on all the Bonds issued and Outstanding under this Indenture, according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds are to be issued and received, and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the Owners thereof, and for other valuable considerations, the receipt of which is hereby acknowledged, the Successor Agency and the Trustee do hereby covenant and agree with one another, for the benefit of the respective Owners from time to time of the Bonds, as follows:

ARTICLE I

DETERMINATIONS; DEFINITIONS

Section 1.1 Findings and Determinations. The Successor Agency has reviewed all proceedings heretofore taken and has found, as a result of such review, and hereby finds and determines that all things, conditions and acts required by law to exist, happen or be performed precedent to and in connection with the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and the Successor Agency is now duly empowered, pursuant to each and every requirement of law, to issue the Bonds in the manner and form provided in this Indenture.

Section 1.2 Definitions. Unless the context otherwise requires, the terms defined in this Section 1.2 shall, for all purposes of this Indenture, of any Supplemental Indenture, and of any certificate, opinion or other document herein mentioned, have the meanings herein specified.

“Act” means Article 11 (commencing with Section 53580) of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code.

“Annual Debt Service” means, for any Bond Year, the principal and interest payable on the Outstanding Bonds in such Bond Year.

“Bond Counsel” means Stradling Yocca Carlson & Rauth, a Professional Corporation, an attorney or firm of attorneys acceptable to the Successor Agency of nationally recognized standing in matters pertaining to the federal tax exemption of interest on bonds issued by states and political subdivisions.

“Bond,” “Bonds” or “2015 Bonds” means the Successor Agency’s Upland Community Redevelopment Project (A Merged Project), Tax Allocation Refunding Bonds, Issue of 2015, authorized by and at any time Outstanding pursuant to this Indenture.

“Bond Year” means the twelve (12) month period commencing on September 2 of each year, provided that the first Bond Year shall extend from the Delivery Date to September 1, 2015.

“Bondowner” or “Owner”, or any similar term, means any person who shall be the registered owner or his duly authorized attorney, trustee or representative of any Outstanding Bond.

“Business Day” means any day other than (i) a Saturday or Sunday or legal holiday or a day on which banking institutions in the city in which the corporate trust office of the Trustee is located are authorized to close, or (ii) a day on which the New York Stock Exchange is closed.

“Certificate” or “Certificate of the Successor Agency” means a Written Certificate of the Successor Agency.

“Chairman” means the chairman of the Successor Agency or other duly appointed officer of the Successor Agency authorized by the Successor Agency by resolution or bylaw to perform the functions of the chairman in the event of the chairman’s absence or disqualification.

“City” means the City of Upland, State of California.

“Code” means the Internal Revenue Code of 1986, as amended, and any regulations, rulings, judicial decisions, and notices, announcements, and other releases of the United States Treasury Department or Internal Revenue Service interpreting and construing it.

“Computation Year” means, with respect to the Bonds, the period beginning on the Delivery Date and ending on September 1, 2015, and each 12-month period ending on September 1 thereafter until there are no longer any Bonds Outstanding.

“Continuing Disclosure Agreement” means that certain Continuing Disclosure Agreement between the Successor Agency and Urban Futures, Inc. dated the Delivery Date as originally executed and as it may be amended from time to time in accordance with the terms thereof.

“Corporate Trust Office” means the corporate trust office of the Trustee, currently at U.S. Bank National Association, except for exchange, surrender and payment of the Bonds, in which case “Trust Office” shall refer to the corporate trust office of U.S. Bank National Association in St. Paul, Minnesota, or such other or additional offices as may be specified to the Successor Agency by the Trustee in writing.

“Costs of Issuance” means the costs and expenses incurred in connection with the issuance and sale of the Bonds including the initial fees and expenses of the Trustee, rating agency fees, legal fees and expenses, costs of printing the Bonds and Official Statement, fees of financial consultants and other fees and expenses set forth in a Written Certificate of the Successor Agency.

“Costs of Issuance Fund” means the trust fund established in Section 3.3 of this Indenture.

“County” means the County of San Bernardino, California.

“Debt Service Fund” means that trust fund established in Section 4.2 of this Indenture.

“Defeasance Securities” means (1) cash, (2) non-callable direct obligations of the United States of America (“Treasuries”), (3) evidences of ownership of proportionate interests in future interest and principal payments on Treasuries held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying Treasuries are not available to any person claiming through the custodian or to whom the custodian may be obligated, (4) subject to the prior written consent of the Insurer, pre-refunded municipal obligations rated “AAA” and “Aaa” by S&P and Moody’s, respectively, or (5) subject to the prior written consent of the Insurer, securities eligible for “AAA” defeasance under then existing criteria of S & P or any combination, unless the Insurer otherwise approves.

“Delivery Date” means the date on which the Bonds are delivered to the initial purchaser thereof.

“Dissolution Act” means Parts 1.8 (commencing with Section 34161) and 1.85 (commencing with Section 34170) of Division 24 of the Health and Safety Code of the State of California.

“DOF” means the California Department of Finance.

“DTC” means The Depository Trust Company, New York, New York, and its successors and assigns.

“Fiscal Year” means any twelve (12) month period beginning on July 1st and ending on the next following June 30th.

“Fund or Account” means any of the funds or accounts referred to herein.

“Indenture” means that certain Indenture of Trust dated as of _____ 1, 2015, between the Successor Agency and U.S. Bank National Association, approved by Resolution No. _____, adopted by the Successor Agency on January __, 20__, and Resolution No. _____, adopted by the Oversight Board on January __, 20__, authorizing the issuance of the Bonds.

“Independent Financial Consultant” “Independent Engineer” “Independent Certified Public Accountant” or “Independent Redevelopment Consultant” means any individual or firm engaged in the profession involved, appointed by the Successor Agency, and who, or each of whom, has a favorable reputation in the field in which his/her opinion or certificate will be given, and:

- (1) is in fact independent and not under domination of the Successor Agency;
- (2) does not have any substantial interest, direct or indirect, with the Successor Agency, other than as original purchaser of the Bonds; and
- (3) is not connected with the Successor Agency as an officer or employee of the Successor Agency, but who may be regularly retained to make reports to the Successor Agency.

“Insurance Policy” means the insurance policy issued by the Insurer guaranteeing the scheduled payment of principal of and interest on the Bonds when due.

“Insurer” means [INSURER], or any successor thereto or assignee thereof.

“Interest Account” means the account by that name referenced in Section 4.3 of this Indenture.

“Interest Payment Date” means March 1 and September 1, commencing [September 1, 2015] so long as any of the Bonds remain Outstanding hereunder.

“Law” means the Community Redevelopment Law of the State of California as cited in the recitals hereof.

“Maximum Annual Debt Service” means the largest of the sums obtained for any Bond Year after the computation is made, by totaling the following for each such Bond Year:

- (1) The principal amount of all Bonds and Parity Bonds, if any, and the amount of any sinking account payments payable in such Bond Year; and
- (2) The interest which would be due during such Bond Year on the aggregate principal amount of Bonds and Parity Bonds which would be outstanding in such Bond Year if the Bonds and Parity Bonds outstanding on the date of such computation were to mature or be redeemed in accordance with the maturity schedules for the Bonds and Parity Bonds. At the time and for the purpose of making such computation, the amount of term Bonds and term Parity Bonds already retired in advance of the above-mentioned schedules shall be deducted pro rata from the remaining amounts thereon.

“Opinion of Counsel” means a written opinion of an attorney or firm of attorneys of favorable reputation in the field of municipal bond law. Any opinion of such counsel may be based upon, insofar as it is related to factual matters, information which is in the possession of the Successor Agency as shown by a certificate or opinion of, or representation by, an officer or officers of the Successor Agency, unless such counsel knows, or in the exercise of reasonable care should have known, that the certificate, opinion or representation with respect to the matters upon which his or her opinion may be based, as aforesaid, is erroneous.

“Outstanding” means, when used as of any particular time with reference to Bonds, subject to the provisions of this Indenture, all Bonds theretofore issued and authenticated under this Indenture except:

- (a) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation;
- (b) Bonds paid or deemed to have been paid; and
- (c) Bonds in lieu of or in substitution for which other Bonds shall have been authorized, executed, issued and authenticated pursuant to this Indenture.

“Oversight Board” means the oversight board duly constituted from time to time pursuant to Section 34179 of the Dissolution Act.

“Parity Bonds” means the unrefunded portion of the 2006 Bonds, the 2013 Bonds and any additional tax allocation bonds (including, without limitation, bonds, notes, interim certificates, debentures or other obligations) issued by the Successor Agency as permitted by Section 3.4 of this Indenture.

“Pass-Through Agreements” means the agreements entered into prior to the date hereof pursuant to Section 33401 of the Health and Safety Code with (1) the County of San Bernardino and the San Bernardino County Flood Control District, (2) the San Bernardino County Superintendent of Schools, (3) the Upland Unified School District, (4) the Inland Empire Utilities Agency (formerly the Chino Basin Municipal Water District), (5) the West End Resource Conservation District (as to Canyon Ridge Community Development Project Area), (6) the Chaffey Community College District (as to the Canyon Ridge Community Development Project Area) and (7) the City of Upland (as to the Canyon Ridge Community Development Project Area).

“Paying Agent” means any paying agent appointed by the Successor Agency pursuant to the Indenture.

“Permitted Investments” means:

- (a) For all purposes, including defeasance investments in refunding escrow accounts.
 - (1) Defeasance Securities
- (b) For all purposes other than defeasance investments in refunding escrow accounts.
 - (1) Obligations of any of the following federal agencies which obligations represent the full faith and credit of the United States of America, including:
 - Export-Import Bank
 - Rural Economic Community Development Administration
 - U.S. Maritime Administration
 - Small Business Administration
 - U.S. Department of Housing & Urban Development (PHAs)
 - Federal Housing Administration - Federal Financing Bank

- (2) Direct obligations of any of the following federal agencies which obligations are not fully guaranteed by the full faith and credit of the United States of America:
- Senior debt obligations issued by the Federal National Mortgage Association (FNMA) or Federal Home Loan Mortgage Corporation (FHLMC).
 - Obligations of the Resolution Funding Corporation (REFCORP)
 - Senior debt obligations of the Federal Home Loan Bank System
 - Senior debt obligations of other Government Sponsored Agencies
- (3) U.S. dollar denominated deposit accounts, federal funds and bankers' acceptances with domestic commercial banks, which may include the Trustee, its parent holding company, if any, and their affiliates, which have a rating on their short term certificates of deposit on the date of purchase of "P-1" by Moody's and "A-1" or "A-1+" by S&P and maturing not more than 360 calendar days after the date of purchase. (Ratings on holding companies are not considered as the rating of the bank);
- (4) Commercial paper which is rated at the time of purchase in the single highest classification, "P-1" by Moody's and "A-1+" by S&P and which matures not more than 270 calendar days after the date of purchase;
- (5) Investments in a money market fund, including those of an affiliate of the Trustee rated "AAAm" or "AAAm-G" or better by S&P;
- (6) Pre-refunded Municipal Obligations defined as follows: any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and
- (A) which are rated, based on an irrevocable escrow account or fund (the "escrow"), in the highest rating category of Moody's or S&P or any successors thereto; or
 - (B) (i) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in paragraph (2) of the definition of Defeasance Securities, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (ii) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity

date or dates specified in the irrevocable instructions referred to above, as appropriate.

- (7) Municipal Obligations rated “Aaa/AAA” or general obligations of States with a rating of “A2/A” or higher by both Moody’s and S&P.
 - (8) Investment Agreements with an entity rated “A” or higher by S&P; and;
 - (9) The Local Agency Investment Fund of the State or any state administered pooled investment fund in which the Successor Agency is statutorily permitted or required to invest will be deemed a permitted investment.
- (c) The value of the above investments shall be determined as follows:
- (1) For the purpose of determining the amount in any fund, all Permitted Investments credited to such fund shall be valued at fair market value. The Trustee shall determine the fair market value based on accepted industry standards and from accepted industry providers. Accepted industry providers shall include but are not limited to pricing services provided by Financial Times Interactive Data Corporation, and Bank of America Merrill Lynch.
 - (2) As to certificates of deposit and bankers’ acceptances: the face amount thereof, plus accrued interest thereon; and
 - (3) As to any investment not specified above: the value thereof established by prior agreement among the Successor Agency and the Trustee.

“Pledged Tax Revenues” means the portion of the monies deposited from time to time in the Redevelopment Property Tax Trust Fund established pursuant to subdivision (c) of Section 34172 of the Dissolution Act, as provided in paragraph (2) of subdivision (a) of Section 34183 of the Dissolution Act that are equal to that portion of taxes levied upon taxable property in the Project Area and received by the Agency on or after the date of issue of the Bonds, pursuant to Article 6 of Chapter 6 of the Prior Law and Section 16 of Article XVI of the Constitution of the State, less (i) all amounts required to be paid to other taxing entities pursuant to the Pass-Through Agreements, and (ii) all amounts required to be deposited into the Low and Moderate Income Housing Fund of the Agency pursuant to Section 33334.2 of the Prior Law. In accordance with the Dissolution Act, the Bonds and Parity Bonds shall be payable from and secured by, and Pledged Tax Revenues shall include, moneys deposited, from time to time, in the Real Property Tax Trust Fund established pursuant to subdivision (c) of Health & Safety Code Section 34172, as provided in paragraph (2) of subdivision (a) of Health & Safety Code Section 34183. If, and to the extent, that the provisions of Section 34172 or paragraph (2) of subdivision (a) of Section 34183 are invalidated by a final judicial decision, then Pledged Tax Revenues shall include all tax revenues allocated to the payment of indebtedness pursuant to Health & Safety Code Section 33670 or such other section as may be in effect at the time providing for the allocation of tax increment revenues in accordance with Article XVI, Section 16 of the California Constitution.

“Principal Account” means the account by that name referenced in Section 4.3 of this Indenture.

“Prior Law” means the Community Redevelopment Law of the State of California (commencing with Health and Safety Code Section 33000) as it existed on or before June 29, 2011.

“Rebate Regulations” means the final Treasury Regulations issued under Section 148(f) of the Code.

“Recognized Obligation Payment Schedule” means a Recognized Obligation Payment Schedule, each prepared and approved from time to time pursuant to subdivision (l) of Section 34177 of the Dissolution Act.

“Redevelopment Plan” means the Redevelopment Plan for the Upland Community Redevelopment Project (A Merged Project), approved and adopted by the City Council of the City by Ordinance No. 1431 on July 12, 1988, as amended by Ordinance No. 1607 on July 12, 1994, Ordinance No. 1630 on May 28, 1996 and Ordinance No. 1801 on July 10, 2006, and includes any amendment thereof, hereafter or heretofore made pursuant to the Law.

“Redevelopment Project Area,” “Redevelopment Project” or “Project Area” means the means the Project Area described in the Redevelopment Plan.

“Refunded Bonds” means the refunded portion of the Bonds.

“Registration Books” means the books maintained by the Trustee containing the registration and transfer information for the Bonds.

“Regular Record Date” means the fifteenth day of the month preceding any Interest Payment Date whether or not such day is a Business Day.

“Report” means a document in writing signed by an Independent Financial Consultant and including:

(a) A statement that the person or firm making or giving such Report has read the pertinent provisions of the Indenture to which such Report relates;

(b) A brief statement as to the nature and scope of the examination or investigation upon which the Report is based; and

(c) A statement that, in the opinion of such person or firm, sufficient examination or investigation was made as is necessary to enable said consultant to express an informed opinion with respect to the subject matter referred to in the Report.

“Reserve Account” means the account by that name referenced in Section 4.3 hereof.

“Reserve Requirement” means, as of the date of computation, an amount equal to the combined lesser of (i) Maximum Annual Debt Service on the Bonds and any Parity Bonds, (ii) 10% of the net proceeds of the Bonds and any Parity Bonds, or (iii) 125% of the average Annual Debt Service on all Bonds and Parity Bonds Outstanding.

“Redevelopment Obligation Retirement Fund” means the fund by that name established pursuant to Health & Safety Code Section 34170.5 (b) and administered by the Successor Agency.

“Real Property Tax Trust Fund” or “RPTTF” means the fund by that name established pursuant to Health & Safety Code Section 34170.5 (a) and administered by the County auditor-controller.

“State” means the State of California, United States of America.

“Supplemental Indenture” means any indenture then in full force and effect which has been duly adopted by the Successor Agency under the Dissolution Act, or any act supplementary thereto or amendatory thereof, at a meeting of the Successor Agency duly convened and held, of which a quorum was present and acted thereon, amendatory of or supplemental to this Indenture or any indebtedness entered into in connection with the issuance of Parity Bonds; but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

“Statutory Pass-Through Amounts” means amounts paid to affected taxing agencies, if any, pursuant to Sections 33607.5 and/or 33607.7 of the Law and Section 34183 of the Dissolution Act.

“Tax Certificate” means that certain Tax Certificate executed by the Successor Agency with respect to the Bonds.

“Trustee” means U.S. Bank National Association, a national banking association, its successors and assigns, and any other corporation or association which may at any time be substituted in its place, as provided in this Indenture.

“2006 Bonds” means the Prior Agency’s \$15,000,000 Upland Community Redevelopment Project (A Merged Project), Tax Allocation Refunding Bonds, Issue of 2006.

“2006 Bonds Escrow Bank” means U.S. Bank National Association, a national banking association, as escrow bank under the Escrow Agreement.

“2006 Bonds Escrow Fund” means the trust fund established under the 2006 Bonds Escrow Agreement.

“2006 Bonds Escrow Agreement” means the 2006 Bonds Escrow Agreement between the Successor Agency and the 2006 Bonds Escrow Bank effecting the refunding of the Refunded Bonds.

“2006 Indenture” means the Indenture of Trust dated as of November 1, 2006 providing for the issuance of the 2006 Bonds.

“2013 Bonds” means the Successor Agency’s \$22,090,000 Upland Community Redevelopment Project (A Merged Project), Tax Allocation Refunding Bonds, Issue of 2013.

“2013 Indenture” means the Indenture of Trust dated as of May 1, 2013 providing for the issuance of the 2013 Bonds.

“Upland Community Redevelopment Agency” or “Prior Agency” means the Upland Community Redevelopment Agency.

“Written Request of the Successor Agency” or “Written Certificate of the Successor Agency” means a request or certificate, in writing signed by the Executive Director, Secretary or Finance

Officer of the Successor Agency or by any other officer of the Successor Agency duly authorized by the Successor Agency for that purpose.

Section 1.3 Rules of Construction. All references herein to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture, and the words “herein”, “hereof,” “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

AUTHORIZATION AND TERMS

Section 2.1 Authorization of Bonds.

(a) Bonds in the aggregate principal amount of _____ Thousand Dollars (\$ _____) are hereby authorized to be issued by the Successor Agency under and subject to the terms of this Indenture and the Act. This Indenture constitutes a continuing agreement with the Trustee for the benefit of the Owners of all of the Bonds issued or to be issued hereunder and then Outstanding to secure the full and final payment of principal and redemption premiums (if any) and the interest on all Bonds which may from time to time be executed and delivered hereunder, subject to the covenants, agreements, provisions and conditions herein contained. The Bonds shall be designated the “Successor Agency to the Upland Community Redevelopment Agency, Upland Community Redevelopment Project (A Merged Project), Tax Allocation Refunding Bonds, Issue of 2015.”

(b) The Bonds shall be and are special obligations of the Successor Agency and are secured by an irrevocable pledge of, and are payable as to principal, interest and premium, if any, on a parity the Parity Bonds from Pledged Tax Revenues and other funds as hereinafter provided. The Bonds, interest and premium, if any, thereon are not a debt of the City, the State or any of its political subdivisions (except the Successor Agency), and none of the City, the State nor any of its political subdivisions (except the Successor Agency) is liable on them. In no event shall the Bonds, interest thereon and premium, if any, be payable out of any funds or properties other than those of the Successor Agency as set forth in this Indenture. The Bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. Neither the members of the Successor Agency nor any persons executing the Bonds are liable personally on the Bonds by reason of their issuance.

The Bonds shall be and are equally secured together with any Parity Bonds, by an irrevocable pledge of the Pledged Tax Revenues and other funds as hereinafter provided, without priority for number, maturity, date of sale, date of execution or date of delivery, except as expressly provided herein.

Nothing in this Indenture shall preclude: (a) the payment of the Bonds from the proceeds of refunding bonds issued pursuant to the Law, or (b) the payment of the Bonds from any legally available funds. Nothing in this Indenture shall prevent the Successor Agency from making advances of its own funds, however derived, to any of the uses and purposes mentioned in this Indenture.

The Successor Agency shall have the right to defease the Bonds and be discharged from the lien of this Indenture in accordance with the provision of Section 9.3 hereof. If the Successor Agency shall cause to be paid, or shall have made provision to pay upon maturity or upon redemption prior to maturity, to the Bondowners the principal of, premium, if any, and interest to become due on the Bonds, through setting aside trust funds or setting apart in a reserve fund or special trust account created pursuant to this Indenture or otherwise, or through the irrevocable segregation for that purpose in some sinking fund or other fund or trust account with a fiscal agent or otherwise, moneys sufficient therefor, including, but not limited to, interest earned or to be earned on the investment of such funds, then the lien of this Indenture, including, without limitation, the pledge of the Pledged Tax Revenues, and all other rights granted hereby, shall cease, terminate and become void and be discharged and satisfied, and the principal of, premium, if any, and interest on the Bonds shall no longer be deemed to be outstanding and unpaid; provided, however, that nothing in this Indenture shall require the deposit of more than such amount as may be sufficient, taking into account both the principal amount of such funds and the interest to become due on the investment thereof, to implement any refunding of the Bonds.

Section 2.2 Term of Bonds. The Bonds shall be issued in fully registered form without coupons in denominations of \$5,000 or any integral multiple thereof and the Bonds shall mature on September 1, in the years and in the amounts and shall bear interest at the rate per annum as follows:

<i>Maturity Date</i>	<i>Principal Amount</i>	<i>Interest Rate</i>
<i>September 1</i>	\$	%

Interest on the Bonds shall be payable on each Interest Payment Date to the person whose name appears on the Registration Books as the Owner thereof as of the Regular Record Date immediately preceding each such Interest Payment Date, such interest to be paid by check or draft of the Trustee mailed on the Interest Payment Date by first class mail to such Owner at the address of such Owner as it appears on the Registration Books; provided, however, that upon the written request of any Owner of at least \$1,000,000 in principal amount of Bonds received by the Trustee at least fifteen (15) days prior to such Regular Record Date, payment shall be made by wire transfer in immediately available funds to an account in the United States designated by such Owner. Principal of and redemption premium (if any) on any Bond shall be paid upon presentation and surrender thereof, at maturity or redemption, at the Trust Office of the Trustee. Both the principal of and interest and premium (if any) on the Bonds shall be payable in lawful money of the United States of America Interest shall be calculated based upon a 360-day year of twelve thirty-day months.

Each Bond shall be initially dated as of the Delivery Date and shall bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless (a) it is authenticated after a Regular Record Date and on or before the following Interest Payment Date, in which event it shall bear interest from such Interest Payment Date; or (b) a Bond is authenticated on or before [August 1, 2015], in which event it shall bear interest from the Delivery Date; provided, however, that if, as of the date of authentication of any Bond, interest thereon is in default, such Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

Section 2.3 Redemption of Bonds.

(a) Optional Redemption. The Bonds maturing on or before [September 1, 2025] are not subject to redemption prior to maturity. The Bonds maturing on and after [September 1, 2026] are subject to redemption prior to maturity in whole, or in part in the manner determined by the Successor Agency, on any date on or after [September 1, 2025], from any available source of funds, at a redemption price equal to the principal amount of the Bonds to be redeemed, together with accrued interest thereon to the redemption date, without premium.

(b) Purchase in Lieu of Redemption. In lieu of optional redemption of Bonds, amounts on deposit in the Redevelopment Obligation Retirement Fund (to the extent not required to be transferred to the Trustee during the current Bond Year) may also be used and withdrawn by the Successor Agency at any time for the purchase of the Bonds at public or private sale as and when and at such prices (including brokerage and other charges and including accrued interest) as the Successor Agency may in its discretion determine. The par amount of any of the Bonds so purchased by the Successor Agency and surrendered to the Trustee for cancellation in any twelve-month period ending on August 15, in any year will be credited towards and will reduce the principal amount of the Bonds otherwise required to be redeemed on the following September 1 pursuant to this Indenture.

(c) Notice of Redemption. The Successor Agency shall be required to give the Trustee written notice of its intention to redeem Bonds at least forty-five (45) days prior to the date fixed for such redemption, or such lesser number of days as permitted by the Trustee. The Trustee on behalf of and at the expense of the Agency will mail (by first class mail, postage prepaid) notice of any redemption at least 30 but not more than 60 days prior to the redemption date, to (i) the Owners of any Bonds designated for redemption at their respective addresses appearing on the Registration Books, and (ii) to the Municipal Securities Rulemaking Board via its Electronic Municipal Market Access system, or any successor thereto; but such mailing will not be a condition precedent to such redemption and neither failure to receive any such notice nor any defect therein will affect the validity of the proceedings for the redemption of such Bonds or the cessation of the accrual of interest thereon. Such notice will state the redemption date and the redemption price, will designate the CUSIP number of the Bonds to be redeemed, state the individual number of each Bond to be redeemed or state that all Bonds between two stated numbers (both inclusive) or all of the Bonds Outstanding (or all Bonds of a maturity) are to be redeemed, and will require that such Bonds be then surrendered at the Corporate Trust Office of the Trustee for redemption at the said redemption price, giving notice also that further interest on such Bonds will not accrue from and after the redemption date.

With respect to any notice of optional redemption of Bonds, such notice shall state that such redemption shall be conditional upon the receipt by the Trustee on or prior to the date fixed for such redemption of moneys sufficient to pay the principal of, premium, if any, and interest on such Bonds

to be redeemed and that, if such moneys shall not have been so received, said notice shall be of no force and effect and the Trustee shall not be required to redeem such Bonds. In the event that such notice of redemption contains such a condition and such moneys are not so received, the redemption shall not be made, and the Trustee shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received.

Section 2.4 Form of Bonds. The Bonds, the form of Trustee's certificate of authentication, and the form of assignment to appear thereon, shall be substantially in the form set forth in Exhibit A attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Indenture.

Section 2.5 Execution of Bonds. The Bonds shall be executed on behalf of the Successor Agency by the signature of its Executive Director and the signature of its Secretary who are in office on the date of execution and delivery of this Indenture or at any time thereafter. Either or both of such signatures may be made manually or may be affixed by facsimile thereof. If any officer whose signature appears on any Bond ceases to be such officer before delivery of the Bonds to the purchaser, such signature shall nevertheless be as effective as if the officer had remained in office until the delivery of the Bonds to the purchaser. Any Bond may be signed and attested on behalf of the Successor Agency by such persons as at the actual date of the execution of such Bond shall be the proper officers of the Successor Agency although on the date of such Bond any such person shall not have been such officer of the Successor Agency.

Only such of the Bonds as shall bear thereon a certificate of authentication in the form set forth in Exhibit A hereto, manually executed and dated by and in the name of the Trustee by the Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of the Trustee shall be conclusive evidence that such Bonds have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture. In the event temporary Bonds are issued pursuant to Section 2.9 hereof, the temporary Bonds shall bear thereon a certificate of authentication manually executed and dated by the Trustee, shall be initially registered by the Trustee, and, until so exchanged as provided under Section 2.9 hereof, the temporary Bonds shall be entitled to the same benefits pursuant to this Indenture as definitive Bonds authenticated and delivered hereunder.

Section 2.6 Transfer of Bonds. Any Bond may, in accordance with its terms, be transferred, upon the Registration Books, by the person in whose name it is registered, in person or by a duly authorized attorney of such person, upon surrender of such Bond to the Trustee at its Trust Office for cancellation, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, duly executed. Whenever any Bond or Bonds shall be surrendered for registration of transfer, the Successor Agency shall execute and the Trustee shall authenticate and deliver a new Bond or Bonds, of like series, interest rate, maturity and principal amount of authorized denominations. The Trustee shall collect any tax or other governmental charge on the transfer of any Bonds pursuant to this Section 2.6. The cost of printing any Bonds and any services rendered or any expenses incurred by the Trustee in connection with any exchange or transfer shall be paid by the Successor Agency.

The Trustee may refuse to transfer, under the provisions of this Section 2.6, either (a) any Bonds during the period established by the Trustee for the selection of Bonds for redemption, or (b) any Bonds selected by the Trustee for redemption pursuant to the provisions of Section 2.3.

Section 2.7 Exchange of Bonds. Bonds may be exchanged at the Trust Office of the Trustee for a like aggregate principal amount of Bonds of other authorized denominations of the same series, interest rate and maturity. The Trustee shall collect any tax or other governmental charge on the exchange of any Bonds pursuant to this Section 2.7. The cost of printing any Bonds and any services rendered or any expenses incurred by the Trustee in connection with any exchange or transfer shall be paid by the Successor Agency.

The Trustee may refuse to exchange, under the provisions of this Section 2.7, either (a) any Bonds during the period established by the Trustee for the selection of Bonds for redemption or (b) any Bonds selected by the Trustee for redemption pursuant to the provisions of Section 2.3.

Section 2.8 Registration Books. The Trustee will keep or cause to be kept, at its Trust Office, sufficient records for the registration and registration of transfer of the Bonds, which shall at all times during normal business hours be open to inspection by the Successor Agency with reasonable prior notice; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on the Registration Books, Bonds as hereinbefore provided.

Section 2.9 Temporary Bonds. The Bonds may be initially issued in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the Successor Agency, and may contain such reference to any of the provisions of this Indenture as may be appropriate. Every temporary Bond shall be executed by the Successor Agency upon the same conditions and in substantially the same manner as the definitive Bonds. If the Successor Agency issues temporary Bonds it will execute and furnish definitive Bonds without delay, and thereupon the temporary Bonds shall be surrendered, for cancellation, in exchange therefor at the Trust Office of the Trustee, and the Trustee shall deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations. Until so exchanged, the temporary Bonds shall be entitled to the same benefits pursuant to this Indenture as definitive Bonds authenticated and delivered hereunder.

Section 2.10 Bonds Mutilated, Lost, Destroyed or Stolen. If any Bond shall become mutilated, the Successor Agency, at the expense of the Owner of such Bond, shall execute, and the Trustee shall thereupon deliver, a new Bond of like amount and maturity in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. Every mutilated Bond so surrendered to the Trustee shall be canceled by it. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Successor Agency and the Trustee and, if such evidence is satisfactory to both and indemnity satisfactory to them shall be given, the Successor Agency, at the expense of the Owner, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like amount and maturity in lieu of and in substitution for the Bond so lost, destroyed or stolen. The Successor Agency may require payment of a sum not exceeding the actual cost of preparing each new Bond issued under this Section 2.10 and of the expenses which may be incurred by the Successor Agency and the Trustee in the premises. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the Successor Agency whether or not the Bond so alleged to be lost, destroyed or stolen shall be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Indenture with all other Bonds issued pursuant to this Indenture.

Section 2.11 Book-Entry Only System. It is intended that the Bonds, be registered so as to participate in a securities depository system with DTC (the “DTC System”), as set forth herein. The Bonds shall be initially issued in the form of a separate single fully registered Bond for each of the maturities of the Bonds in the name of Southwest Securities, Inc. and shall thereafter be assigned to and registered in the name of Cede & Co., as nominee of DTC. The Successor Agency and the Trustee are authorized to execute and deliver such letters to or agreements with DTC as shall be necessary to effectuate the DTC System, including a representation letter in the form required by DTC (the “Representation Letter”). In the event of any conflict between the terms of any such letter or agreement, including the Representation Letter, and the terms of this Indenture, the terms of this Indenture shall control. DTC may exercise the rights of a Bondholder only in accordance with the terms hereof applicable to the exercise of such rights.

With respect to the Bonds registered in the books of the Trustee in the name of Cede & Co., as nominee of DTC, the Successor Agency and the Trustee, shall have no responsibility or obligation to any broker-dealer, bank or other financial institution for which DTC holds Bonds from time to time as securities depository (each such broker-dealer, bank or other financial institution being referred to herein as a “DTC Participant”) or to any person on behalf of whom such a DTC Participant directly or indirectly holds an interest in the Bonds (each such person being herein referred to as an “Indirect Participant”). Without limiting the immediately preceding sentence, Successor Agency and the Trustee shall have no responsibility or obligation with respect to (a) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Bonds, (b) the delivery to any DTC Participant or any Indirect Participant or any other person, other than a Bondholder, as shown in the Register, of any notice with respect to the Bonds, including any notice of redemption, (c) the payment to any DTC Participant or Indirect Participant or any other Person, other than a Bondholder, as shown in the Register, of any amount with respect to principal of, premium, if any, or interest on, the Bonds or (d) any consent given by DTC as registered owner. So long as certificates for the Bonds are not issued pursuant to Section 2.12 and the Bonds are registered to DTC, the Successor Agency, and the Trustee shall treat DTC or any successor securities depository as, and deem DTC or any successor securities depository to be, the absolute owner of the Bonds for all purposes whatsoever, including without limitation (i) the payment of principal and interest on the Bonds, (ii) giving notice of redemption and other matters with respect to the Bonds, (iii) registering transfers with respect to the Bonds and (iv) the selection of Bonds for redemption. While in the DTC System, no person other than Cede & Co., or any successor thereto, as nominee for DTC, shall receive a Bond certificate with respect to any Bond. Notwithstanding any other provision of this Indenture to the contrary, so long as any of the Bonds are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Bonds and all notices with respect to such Bonds shall be made and given, respectively, in the manner provided in the Representation Letter.

Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Indenture with respect to interest checks being mailed to the registered owner at the close of business on the Record Date applicable to any Interest Payment Date, the name “Cede & Co.” in this Indenture shall refer to such new nominee of DTC.

Section 2.12 Successor Securities Depository; Transfers Outside Book-Entry Only System. DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving written notice to the Successor Agency and the Trustee and discharging its responsibilities with respect thereto under applicable law. The Successor Agency, without the consent of any other

person, but following written notice to the Successor Agency and the Trustee, may terminate the services of DTC with respect to the Bonds. Upon the discontinuance or termination of the services of DTC with respect to the Bonds pursuant to the foregoing provisions, unless a substitute securities depository is appointed to undertake the functions of DTC hereunder, the Successor Agency, at the expense of the Successor Agency, is obligated to deliver Bond certificates to the beneficial owners of the Bonds, as described in this Indenture, and the Bonds shall no longer be restricted to being registered in the books of the Trustee in the name of Cede & Co. as nominee of DTC, but may be registered in whatever name or name Bondowner transferring or exchanging Bonds shall designate to the Trustee in writing, in accordance with the provisions of this Indenture. The Successor Agency may determine that the Bonds shall be registered in the name of and deposited with a successor depository operating a securities depository system, qualified to act as such under Section 17(a) of the Securities Exchange Act of 1934, as amended, as may be acceptable to the Successor Agency, or such depository's agent or designee.

ARTICLE III

DEPOSIT AND APPLICATION OF PROCEEDS OF BONDS; PARITY DEBT

Section 3.1 Issuance of Bonds. Upon the execution and delivery of this Indenture and receipt by the Successor Agency of evidence satisfactory to it of satisfaction of the conditions precedent to issuance of the Bonds, the Successor Agency shall execute and deliver Bonds in the aggregate principal amount of _____ Thousand Dollars (\$ _____) to the Trustee and the Trustee shall authenticate and deliver the Bonds upon the Written Request of the Successor Agency.

Section 3.2 Application of Proceeds of Bonds. (a) On the Delivery Date the proceeds of sale of the Bonds shall be paid to the Trustee and said amount together with moneys transferred from the Funds and Accounts held in connection with the Refunded Bonds shall be applied as follows:

(i) The Trustee shall deposit the amount of \$ _____ into the Reserve Account of the Debt Service Fund;

(ii) The Trustee shall transfer the amount of \$ _____ to the 2006 Bonds Escrow Bank for deposit in the 2006 Bonds Escrow Fund pursuant to the 2006 Bonds Escrow Agreement; and

(iii) The Trustee shall deposit the amount of \$ _____ from Bond proceeds into the Costs of Issuance Fund.

The Trustee may establish a temporary fund or account in its records to facilitate and record such deposits and transfers.

Moneys deposited in the 2006 Bonds Escrow Fund pursuant to Section 3.2(a)(ii) hereof shall be held by the 2006 Bonds Escrow Bank and used to pay the principal of, interest on and redemption price of the Refunded Bonds in accordance with the provisions of the 2006 Bonds Escrow Agreement.

Section 3.3 Costs of Issuance Fund. There is hereby established a separate fund to be known as the "Costs of Issuance Fund," which shall be held by the Trustee in trust. The moneys in

the Costs of Issuance Fund shall be used and withdrawn by the Trustee from time to time to pay the Costs of Issuance upon submission of a Written Request of the Successor Agency stating the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said Fund. On the date which is three (3) months following the Delivery Date, or upon the earlier Written Request of the Successor Agency, all amounts (if any) remaining in the Costs of Issuance Fund shall be withdrawn therefrom by the Trustee and transferred to the Debt Service Fund and the Trustee shall close the Costs of Issuance Fund.

Section 3.4 Issuance of Parity Bonds. In addition to the Bonds, subject to the requirements of this Indenture, the 2006 Indenture and the 2013 Indenture, the Successor Agency may issue or incur Parity Bonds in such principal amount as shall be determined by the Successor Agency, pursuant to a separate or Supplemental Indenture adopted or entered into by the Successor Agency and Trustee and for such purposes as are permitted under the Dissolution Act, including without limitation Section 34177.5 thereof. The Successor Agency may issue or incur such Parity Bonds subject to the following specific conditions precedent:

(a) The Successor Agency will be in compliance with all covenants set forth in this Indenture, the 2006 Indenture and the 2013 Indenture;

(b) The Oversight Board shall have approved the issuance of Parity Bonds;

(c) The Parity Bonds will be on such terms and conditions as may be set forth in a separate or Supplemental Indenture, which will provide for (i) bonds substantially in accordance with this Indenture, the 2006 Indenture and the 2013 Indenture, and (ii) the deposit of moneys into the Reserve Account in an amount sufficient, together with the balance of the Reserve Account, to equal the Reserve Requirement on all Bonds and Parity Bonds expected to be outstanding;

(d) Receipt of a certificate or opinion of an Independent Financial Consultant stating:

(i) For the current and each future Bond Year the debt service for each such Bond Year with respect to all Bonds and Parity Bonds reasonably expected to be outstanding following the issuance of the Parity Bonds;

(ii) For the then current Fiscal Year, the Pledged Tax Revenues to be received by the Successor Agency based upon the most recently certified assessed valuation of taxable property in the Project Area provided by the appropriate officer of the County;

(iii) For each future Fiscal Year, the Pledged Tax Revenues referred to in item (ii) together with (a) the amount determined in accordance with Section 51(a) of the California Revenue and Taxation Code and (b) the amount of Pledged Tax Revenues to be payable with respect to construction completed but not yet on the tax rolls, and taking into account the expiration of the time to receive Pledged Tax Revenues with respect to any portion of the Project Area and any amounts to be paid pursuant to the Pass Through Agreements and the Statutory Pass-Through Amounts; and

(iv) That for the then current Fiscal Year, the Pledged Tax Revenues referred to in item (ii) and for each future Fiscal Year the Pledged Tax Revenues referred to in item

(iii) are at least equal to the sum of 125% of the Maximum Annual Debt Service with respect to amounts referred to in item (i) above (excluding debt service with respect to any portion of the Parity Bonds deposited in an escrowed proceeds account to the extent such debt service is paid from earnings on the investment of such funds), and, for the then current Fiscal Year, 100% of Annual Debt Service with respect to any subordinate debt and that the Successor Agency is entitled under the Dissolution Act, the Law and the Redevelopment Plan to receive taxes under Section 33670 of the Law in an amount sufficient to meet expected debt service with respect to all Bonds and Parity Bonds.

(e) Such Parity Bonds will mature on and interest will be payable on the same dates as the Bonds (except the first interest payment may be from the date of the Parity Bonds until the next succeeding March 1 or September 1) provided, however, nothing herein shall preclude the Successor Agency from issuing and selling Parity Bonds which do not pay current interest.

Section 3.5 Validity of Bonds. The validity of the authorization and issuance of the Bonds shall not be dependent upon the completion of the Redevelopment Project or upon the performance by any person of his obligation with respect to the Redevelopment Project.

ARTICLE IV

SECURITY OF BONDS; FLOW OF FUNDS

Section 4.1 Security of Bonds; Equal Security. Except as provided in Sections 4.2 and 6.6, the Bonds shall be equally secured by a pledge and lien on all of the Pledged Tax Revenues and on all of the moneys in the Redevelopment Obligation Retirement Fund and the Debt Service Fund (including the Interest Account, the Principal Account and the Reserve Account therein) on a parity with the first pledge of and lien thereon of the Parity Bonds without preference or priority for series, issue, number, dated date, sale date, date of execution or date of delivery. Except for the Pledged Tax Revenues and such moneys, no funds or properties of the Successor Agency shall be pledged to, or otherwise liable for, the payment of principal of or interest or redemption premium (if any) on the Bonds.

In consideration of the acceptance of the Bonds by those who shall own the same from time to time, this Indenture shall be deemed to be and shall constitute a contract between the Successor Agency and the Trustee for the benefit of the Owners from time to time of the Bonds, and the covenants and agreements herein set forth to be performed on behalf of the Successor Agency shall be for the equal and proportionate benefit, security and protection of all Owners of the Bonds without preference, priority or distinction as to security or otherwise of any of the Bonds over any of the others by reason of the number or date thereof or the time of sale, execution and delivery thereof, or otherwise for any cause whatsoever, except as expressly provided therein or herein.

Section 4.2 Redevelopment Obligation Retirement Fund, Debt Service Fund, Deposit of Pledged Tax Revenues. There has been established a special trust fund known as the "Redevelopment Obligation Retirement Fund," which shall be held by the Successor Agency pursuant to Section 34170.5(b) of the Dissolution Act. There is hereby continued a special trust fund known as the "Debt Service Fund" and the accounts therein referred to below which shall be held by the Trustee in accordance with the 2006 Indenture, the 2013 Indenture and this Indenture. The Successor Agency shall deposit all of the Pledged Tax Revenues received in any Bond Year from the RPTTF in accordance with the Dissolution Act in the Redevelopment Obligation Retirement Fund

promptly upon receipt thereof by the Successor Agency, and promptly thereafter shall transfer amounts therein to the Trustee for deposit in the Debt Service Fund established and held under the 2006 Indenture, the 2013 Indenture, and continued under this Indenture until such time that the aggregate amounts on deposit in such Debt Service Fund equal the aggregate amounts required to be deposited into the Interest Account, the Principal Account and the Reserve Account in such Bond Year pursuant to Section 4.3 of the 2006 Indenture, the 2013 Indenture and this Indenture and for deposit in such Bond Year in the funds and accounts established with respect to Parity Bonds, as provided in any Supplemental Indenture.

Section 4.3 Transfer of Amounts by the Trustee. There are hereby created accounts within the Debt Service Fund as set forth below, to be known respectively as the Bonds Interest Account, the Bonds Principal Account and the Bonds Reserve Account. At the same time as moneys are transferred pursuant to Section 4.3 of the 2006 Indenture and the 2013 Indenture for the payment of the 2006 Bonds and the 2013 Bonds, respectively, moneys in the Debt Service Fund will be transferred by the Trustee in the following amounts at the following times, for deposit in the following respective accounts within the Debt Service Fund, which are hereby established with the Trustee, in the following order of priority:

(a) Bonds Interest Account. On or before the 5th Business Day preceding each Interest Payment Date, the Trustee will withdraw from the Debt Service Fund and transfer to the Bonds Interest Account an amount which, when added to the amount contained in the Bonds Interest Account on that date, will be equal to the aggregate amount of the interest becoming due and payable on the Outstanding Bonds on such Interest Payment Date. No such transfer and deposit need be made to the Bonds Interest Account if the amount contained therein is at least equal to the interest to become due on the next succeeding Interest Payment Date upon all of the Outstanding Bonds. Subject to this Indenture, all moneys in the Interest Account will be used and withdrawn by the Trustee solely for the purpose of paying the interest on the Bonds as it becomes due and payable (including accrued interest on any Bonds redeemed prior to maturity pursuant to this Indenture).

(b) Bonds Principal Account. On or before the 5th Business Day preceding each September 1 in each calendar year beginning [September 1, 2015], the Trustee will withdraw from the Debt Service Fund and transfer to the Bonds Principal Account an amount equal to the principal payments becoming due and payable on Outstanding Bonds and Parity Bonds on such September 1, to the extent monies on deposit in the Redevelopment Obligation Retirement Fund are available therefor. No such transfer and deposit need be made to the Principal Account if the amount contained therein is at least equal to the principal payments to become due on such September 1 on all Outstanding Bonds. Subject to this Indenture, all moneys in the Principal Account will be used and withdrawn by the Trustee solely for the purpose of paying the principal payments of the Bonds as it becomes due and payable.

(c) Bonds Reserve Account. In the event the moneys on deposit in the Debt Service Fund five (5) Business Days before any Interest Payment Date are less than the full amount of the interest and principal payments required to be deposited, the Trustee will, five (5) Business Days before such Interest Payment Date, withdraw from the Bonds Reserve Account an amount equal to any such deficiency and will notify the Successor Agency of any such withdrawal. Promptly upon receipt of any such notice, the Successor Agency will withdraw from the Redevelopment Obligation Retirement Fund and transfer to the Trustee for deposit in the Reserve Account an amount when added to the amount on deposit in the Reserve Account for the 2006 Bonds and the 2013 Bonds will be sufficient to maintain the Reserve Requirement on deposit in the Reserve Account, the

2006 Bonds Reserve Account, the 2013 Bonds Reserve Account and the Reserve Account of any additional Parity Bonds. If there is not sufficient moneys in the Redevelopment Obligation Retirement Fund to transfer an amount when added to the amount on deposit in the Reserve Account will be sufficient to maintain the Reserve Requirement on deposit in the Reserve Account, the 2006 Bonds Reserve Account, the 2013 Bonds Reserve Account and the Reserve Account for any additional Parity Bonds, the Successor Agency will have an obligation to continue making transfers of Pledged Tax Revenues into the Debt Service Fund, as such revenues become available, and thereafter, as moneys become available in the Debt Service Fund, the Trustee will make transfers to the Reserve Account, the 2006 Bonds Reserve Account, the 2013 Bonds Reserve Account and the Reserve Account for any additional Parity Bonds until there is an amount sufficient to maintain the Reserve Requirement on deposit in the Reserve Account, the 2006 Bonds Reserve Account, the 2013 Bonds Reserve Account and the Reserve Account for any additional Parity Bonds. No such transfer and deposit need be made to the Reserve Account (or any subaccount therein) so long as there is on deposit therein a sum at least equal to the Reserve Requirement. Subject to this Indenture all money in the Reserve Account will be used and withdrawn by the Trustee solely for the purpose of making transfers to the Interest Account and the Principal Account, in such order of priority, in the event of any deficiency at any time in any of such accounts or for the retirement of all the Bonds then Outstanding, except that so long as the Successor Agency is not in default hereunder, any amount in the Reserve Account in excess of the Reserve Requirement will be withdrawn from the Reserve Account semiannually on or before the 5th Business Day preceding March 1 and September 1 by the Trustee and deposited in the Interest Account. All amounts in the Reserve Account on the 5th Business Day preceding the final Interest Payment Date will be withdrawn from the Reserve Account and will be transferred either (i) to the Interest Account and the Principal Account, in such order, to the extent required to make the deposits then required to be made or, (ii) if the Successor Agency shall have caused to be deposited with the Trustee an amount sufficient to make the deposits required by this Indenture, then at the Written Request of the Successor Agency such amount shall be transferred as directed by the Successor Agency. The prior written consent of the Insurer shall be a condition precedent to the deposit of any credit instrument provided in lieu of a cash deposit into the Reserve Account, if any. Notwithstanding anything to the contrary set forth in the Indenture, amounts on deposit in the Reserve Account shall be applied solely to the payment of debt service due on the Bonds.

At the time the Bonds mature, amounts on deposit in the Reserve Account shall be transferred to the Reserve Account for any Parity Bonds to the extent necessary to maintain the Reserve Requirement on the Parity Bonds then outstanding.

(d) Equal Rights. It is the intention of the Successor Agency that the Bonds and Parity Bonds shall be secured by and payable from all moneys deposited in the Redevelopment Obligation Payment Fund on an equal basis. To the extent that moneys deposited in the Redevelopment Obligation Payment Fund are insufficient to pay debt service on the Bonds and Parity Bonds as it becomes due, the Bonds and Parity Bonds shall be payable on a pro-rata basis from all available moneys deposited in the Redevelopment Obligation Payment Fund.

Section 4.4 Rebate Fund. The Trustee shall establish the Rebate Fund and the Successor Agency shall comply with the requirements below. All money at any time deposited in the Rebate Fund shall be held by the Trustee in trust, for payment to the United States Treasury. All amounts on deposit in the Rebate Fund shall be governed by this Section and the applicable Tax Certificate, unless the Successor Agency obtains an opinion of Bond Counsel that the exclusion from gross

income of interest on the Bonds will not be adversely affected for federal income tax purposes if such requirements are not satisfied.

(a) Excess Investment Earnings

(i) Computation. Within 55 days of the end of each fifth Computation Year with respect to the Bonds, the Successor Agency shall calculate or cause to be calculated the amount of rebatable arbitrage, in accordance with Section 148(f)(2) of the Code and Section 1.148-3 of the Rebate Regulations (taking into account any applicable exceptions with respect to the computation of the rebatable arbitrage, described, if applicable, in the Tax Certificate (e.g. the temporary investments exception of Section 148(f)(4)(B) and the construction expenditure exception of Section 148(f)(4)(C) of the Code), for this purpose treating the last day of the applicable Computation Year as a computation date, within the meaning of Section 1.148-1(b) of the Rebate Regulations (the “Rebatable Arbitrage”). The Successor Agency shall obtain expert advice as to the amount of the Rebatable Arbitrage to comply with this Section.

(ii) Transfer. Within 55 days of the end of each fifth Computation Year with respect to the Bonds, upon the written direction of an authorized officer, an amount shall be deposited to the Rebate Fund by the Trustee from any legally available funds, including the other funds and accounts established herein, so that the balance in the Rebate Fund shall equal the amount of Rebatable Arbitrage so calculated in accordance with clause (i) of this Section 4.4(a). In the event that immediately following the transfer required by the previous sentence, the amount then on deposit to the credit of the Rebate Fund exceeds the amount required to be on deposit therein, upon written instructions from the Finance Officer, the Trustee shall withdraw the excess from the Rebate Fund and then credit the excess to the Debt Service Fund.

(iii) Payment to the Treasury. The Successor Agency shall direct the Trustee in writing to pay to the United States Treasury, out of amounts in the Rebate Fund.

(X) Not later than 60 days after the end of (A) the fifth Computation Year with respect to the Bonds, and (B) each applicable fifth Computation Year thereafter, an amount equal to at least 90% of the Rebatable Arbitrage calculated as of the end of such Computation Year; and

(Y) Not later than 60 days after the payment of all the Bonds, an amount equal to 100% of the Rebatable Arbitrage calculated as of the end of such applicable Computation Year, and any income attributable to the Rebatable Arbitrage, computed in accordance with Section 148(f) of the Code.

In the event that, prior to the time of any payment required to be made from the Rebate Fund, the amount in the Rebate Fund is not sufficient to make such payment when such payment is due, the Successor Agency shall calculate or cause to be calculated the amount of such deficiency and deposit an amount received from any legally available source, including the other funds and accounts established herein, equal to such deficiency in the Rebate Fund prior to the time such payment is due. Each payment required to be made pursuant to this Subsection 4.4(a)(iii) shall be made to the Internal Revenue Service Center, Ogden, Utah 84201 on or before the date on which such payment is due, and shall be accompanied by Internal Revenue Service Form 8038-T prepared by the Successor Agency, or shall be made in such other manner as provided under the Code.

(b) Disposition of Unexpended Funds. Any funds remaining in the Rebate Fund after redemption and payment of the Bonds and the payments described in Section 4.4(a)(iii), shall be transferred by the Trustee to the Successor Agency at the written direction of the Successor Agency and utilized in any manner by the Successor Agency.

(c) Survival of Defeasance. Notwithstanding anything in this Section 4.4 or this Indenture to the contrary, the obligation to comply with the requirements of this Section shall survive the defeasance of the Bonds and any Parity Bonds.

(d) Trustee Responsible. The Trustee shall have no obligations or responsibilities under this Section other than to follow the written directions of the Successor Agency. The Trustee shall have no responsibility to make any calculations of rebate or to independently review or verify such calculations.

ARTICLE V

OTHER COVENANTS OF THE SUCCESSOR AGENCY

Section 5.1 Covenants of the Successor Agency. As long as the Bonds are outstanding and unpaid, the Successor Agency shall (through its proper members, officers, agents or employees) faithfully perform and abide by all of the covenants, undertakings and provisions contained in this Indenture or in any Bond issued hereunder, including the following covenants and agreements for the benefit of the Bondowners which are necessary, convenient and desirable to secure the Bonds and the Parity Bonds and will tend to make them more marketable; provided, however, that the covenants do not require the Successor Agency to expend any funds other than the Pledged Tax Revenues:

Covenant 1. Use of Proceeds; Management and Operation of Properties. The Successor Agency covenants and agrees that the proceeds of the sale of the Bonds will be deposited and used as provided in this Indenture and that it will manage and operate all properties owned by it comprising any part of the Project Area in a sound and businesslike manner.

Covenant 2. No Priority. The Successor Agency covenants and agrees that it will not issue any obligations payable, either as to principal or interest, from the Pledged Tax Revenues which have any lien upon the Pledged Tax Revenues prior or superior to the lien of the Bonds and the Parity Bonds. Except as permitted by Section 3.4 hereof, it will not issue any obligations, payable as to principal or interest, from the Pledged Tax Revenues, which have any lien upon the Pledged Tax Revenues on a parity with the Bonds authorized herein. Notwithstanding the foregoing, nothing in this Indenture shall prevent the Successor Agency (i) from issuing and selling pursuant to law, refunding obligations payable from and having any lawful lien upon the Pledged Tax Revenues, if such refunding obligations are issued for the purpose of, and are sufficient for the purpose of, refunding all of the Outstanding Bonds, (ii) from issuing and selling obligations which have, or purport to have, any lien upon the Pledged Tax Revenues which is junior to the Bonds or (iii) from issuing and selling bonds or other obligations which are payable in whole or in part from sources other than the Pledged Tax Revenues. As used herein "obligations" includes, without limitation, bonds, notes, interim certificates, debentures or other obligations.

Covenant 3. Punctual Payment. The Successor Agency covenants and agrees that it will duly and punctually pay or cause to be paid the principal of and interest on each of the Bonds and the Parity Bonds on the date, at the place and in the manner provided in the Bonds and the Parity Bonds.

Further, it will take all actions required under the Dissolution Act to include on the Recognized Obligation Payment Schedules for each six-month period all payments to the Trustee to satisfy the requirements of Section 4.2 of this Indenture, the 2006 Indenture and the 2013 Indenture, including any amounts required under the Indenture, the 2006 Indenture and the 2013 Indenture to replenish the Reserve Account of the Debt Service Fund to the full amount of the Reserve Requirement.

Covenant 4. Payment of Taxes and Other Charges. The Successor Agency covenants and agrees that it will from time to time pay and discharge, or cause to be paid and discharged, all payments in lieu of taxes, service charges, assessments or other governmental charges which may lawfully be imposed upon the Successor Agency or any of the properties then owned by it in the Project Area, or upon the revenues and income therefrom, and will pay all lawful claims for labor, materials and supplies which if unpaid might become a lien or charge upon any of the properties, revenues or income or which might impair the security of the Bonds or the use of Pledged Tax Revenues or other legally available funds to pay the principal of and interest on the Bonds, all to the end that the priority and security of the Bonds shall be preserved; provided, however, that nothing in this covenant shall require the Successor Agency to make any such payment so long as the Successor Agency in good faith shall contest the validity of the payment.

Covenant 5. Books and Accounts; Financial Statements. The Successor Agency covenants and agrees that it will at all times keep, or cause to be kept, proper and current books and accounts (separate from all other records and accounts) in which complete and accurate entries shall be made of all transactions relating to the Redevelopment Project and the Tax Revenues and other funds relating to the Redevelopment Project. The Successor Agency will prepare within one hundred eighty (180) days after the close of each of its Fiscal Years a complete financial statement or statements for such year, in reasonable detail covering the Tax Revenues and other funds, accompanied by an opinion of an Independent Certified Public Accountant appointed by the Successor Agency, and will furnish a copy of the statement or statements to the Trustee and any rating agency which maintains a rating on the Bonds and, upon written request, to any Bondowner. The Trustee shall have no duty to review the Successor Agency's financial statements. The Successor Agency's financial statements may be included as part of the City's Comprehensive Annual Financial Report.

Covenant 6. Eminent Domain Proceeds. The Successor Agency covenants and agrees that if all or any part of the Redevelopment Project Area should be taken from it without its consent, by eminent domain proceedings or other proceedings authorized by law, for any public or other use under which the property will be tax exempt, it shall take all steps necessary to adjust accordingly the base year property tax roll of the Project Area.

Covenant 7. Disposition of Property. The Successor Agency covenants and agrees that it will not dispose of more than ten percent (10%) of the land area in the Project Area (except property shown in the Redevelopment Plan in effect on the date this Indenture is adopted as planned for public use, or property to be used for public streets, public offstreet parking, sewage facilities, parks, easements or right-of-way for public utilities, or other similar uses) to public bodies or other persons or entities whose property is tax exempt, unless such disposition will not result in Pledged Tax Revenues to be less than the amount required for the issuance of Parity Bonds as provided in Section 3.4, based upon the certificate or opinion of an Independent Financial Consultant appointed by the Successor Agency.

Covenant 8. Protection of Security and Rights of Bondowners. The Successor Agency covenants and agrees to preserve and protect the security of the Bonds and the rights of the Bondowners and to contest by court action or otherwise (a) the assertion by any officer of any government unit or any other person whatsoever against the Successor Agency that (i) the Law is unconstitutional or (ii) that the Pledged Tax Revenues pledged under this Indenture cannot be paid to the Successor Agency for the debt service on the Bonds or (b) any other action affecting the validity of the Bonds or diluting the security therefor, including, with respect to the Pledged Tax Revenues, the senior lien position of the Bonds to the Pass-Through Agreements.

Covenant 9. Tax Covenants. The Successor Agency covenants and agrees to contest by court action or otherwise any assertion by the United States of America or any departments or agency thereof that the interest received by the Bondowners is includable in gross income of the recipient under federal income tax laws on the date of issuance of the Bonds. Notwithstanding any other provision of this Indenture, absent an opinion of Bond Counsel that the exclusion from gross income of interest with respect to the Bonds will not be adversely affected for federal income tax purposes, the Successor Agency covenants to comply with all applicable requirements of the Code necessary to preserve such exclusion from gross income and specifically covenants, without limiting the generality of the foregoing, as follows:

(1) Private Activity. The Successor Agency will take no action or refrain from taking any action or make any use of the proceeds of the Bonds or Parity Bonds or of any other monies or property which would cause the Bonds to be “private activity bonds” within the meaning of Section 141 of the Code;

(2) Arbitrage. The Successor Agency will make no use of the proceeds of the Bonds or of any other amounts or property, regardless of the source, or take any action or refrain from taking any action which will cause the Bonds or Parity Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code;

(3) Federal Guaranty. The Successor Agency will make no use of the proceeds of the Bonds or take or omit to take any action that would cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code;

(4) Information Reporting. The Successor Agency will take or cause to be taken all necessary action to comply with the informational reporting requirement of Section 149(e) of the Code;

(5) Hedge Bonds. The Successor Agency will make no use of the proceeds of the Bonds or any other amounts or property, regardless of the source, or take any action or refrain from taking any action that would cause either any Bonds to be considered “hedge bonds” within the meaning of Section 149(g) of the Code unless the Successor Agency takes all necessary action to assure compliance with the requirements of Section 149(g) of the Code to maintain the exclusion from gross income of interest on the Bonds for federal income tax purposes; and

(6) Miscellaneous. The Successor Agency will take no action or refrain from taking any action inconsistent with its expectations stated in that certain Tax Certificate executed by the Successor Agency in connection with each issuance of Bonds and will comply with the covenants and requirements stated therein and incorporated by reference herein.

Covenant 10. Compliance with Dissolution Act. The Successor Agency covenants that in addition to complying with the requirements of Covenant 3, it will comply with all other requirements of the Dissolution Act. Without limiting the generality of the foregoing, the Successor Agency covenants and agrees to file all required statements and hold all public hearings required under the Dissolution Act to assure compliance by the Successor Agency with its covenants hereunder. Further, it will take all actions required under the Dissolution Act to include scheduled debt service on the Bonds and on the Parity Bonds, as well as any amount required under this Indenture, the 2006 Indenture and the 2013 Indenture to replenish the Reserve Accounts of the Debt Service Funds, in Recognized Obligation Payment Schedules for each six-month period so as to enable the County Auditor-Controller to distribute from the Redevelopment Property Tax Trust Fund to the Agency's Redevelopment Obligation Retirement Fund on each January 2 and June 1 amounts required for the Successor Agency to pay principal of, and interest on, the Bonds and the Parity Bonds coming due in the respective six-month period. These actions will include, without limitation, placing on the periodic Recognized Obligation Payment Schedule for approval by the Oversight Board and State Department of Finance, to the extent necessary, the amounts to be held by the Successor Agency as a reserve until the next six-month period, as contemplated by paragraph (1)(A) of subdivision (d) of Section 34171 of the Dissolution Act, that are necessary to provide for the payment of principal and interest under this Indenture, the 2006 Indenture and the 2013 Indenture when the next property tax allocation is projected to be insufficient to pay all obligations due under this Indenture, the 2006 Indenture and the 2013 Indenture for the next payment due thereunder and hereunder in the following six-month period.

Covenant 11. Limitation on Indebtedness. The Successor Agency covenants and agrees that it has not and will not incur any loans, obligations or indebtedness repayable from Pledged Tax Revenues such that the total aggregate debt service on said loans, obligations or indebtedness incurred from and after the date of adoption of the Redevelopment Plan, when added to the total aggregate debt service on the Bonds, will exceed the maximum amount of Pledged Tax Revenues to be divided and allocated to the Successor Agency pursuant to the Redevelopment Plan. The Successor Agency shall file annually with the Trustee on or prior to August 1 of each year a Written Certificate of the Successor Agency certifying that Pledged Tax Revenues received by the Successor Agency through the date of the certificate combined with the amount remaining to be paid on all outstanding obligations of the Successor Agency will not exceed the Plan Limit. To the extent it does, all Pledged Tax Revenues will be deposited in an escrow account and applied to the payment of such outstanding obligations.

Covenant 12. Further Assurances. The Successor Agency covenants and agrees to adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture, and for the better assuring and confirming unto the Owners of the rights and benefits provided in this Indenture.

Covenant 13. Continuing Disclosure. The Successor Agency hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding any other provision of this Indenture, failure of the Successor Agency to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default; however, any participating underwriter, holder or beneficial owner of the Bonds may take such actions as may be necessary and appropriate to compel performance, including seeking mandate or specific performance by court order.

ARTICLE VI

THE TRUSTEE

Section 6.1 Duties, Immunities and Liabilities of Trustee.

(a) The Trustee shall, prior to the occurrence of an Event of Default, and after the curing or waiver of all Events of Default which may have occurred, perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants shall be read into this Indenture against the Trustee. The Trustee shall, during the existence of any Event of Default (which has not been cured or waived), exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) The Successor Agency may remove the Trustee at any time, unless an Event of Default shall have occurred and then be continuing, and shall remove the Trustee (i) if at any time requested to do so by an instrument or concurrent instruments in writing signed by the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding (or their attorneys duly authorized in writing) or (ii) if at any time the Successor Agency has knowledge that the Trustee has ceased to be eligible in accordance with subsection (e) of this Section, or has become incapable of acting, or has been adjudged as bankrupt or insolvent, or a receiver of the Trustee or its property has been appointed, or any public officer shall have taken control or charge of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation. In each case such removal shall be accomplished by the giving of written notice of such removal by the Successor Agency to the Trustee, whereupon the Successor Agency shall appoint a successor Trustee by an instrument in writing.

(c) The Trustee may at any time resign by giving prior written notice of such resignation to the Successor Agency, and by giving the Owners notice of such resignation by first class mail, postage prepaid, at their respective addresses shown on the Registration Books. Upon receiving such notice of resignation, the Successor Agency shall promptly appoint a successor Trustee by an instrument in writing.

(d) Any removal or resignation of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee. If no successor Trustee shall have been appointed and have accepted appointment within 45 days of giving notice of removal or notice of resignation as aforesaid, the resigning Trustee or any Owner (on behalf of such Owner and all other Owners) may petition any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under this Indenture shall signify its acceptance of such appointment by executing and delivering to the Successor Agency and to its predecessor Trustee a written acceptance thereof, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein; but, nevertheless at the Written Request of the Successor Agency or the request of the successor Trustee, such predecessor Trustee shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to any property held by it

under this Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Upon request of the successor Trustee, the Successor Agency shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in this subsection, the Successor Agency shall mail, with a copy to the Successor Trustee, a notice of the succession of such Trustee to the trusts hereunder to each rating agency which then has a current rating on the Bonds and to the Owners at their respective addresses shown on the Registration Books. If the Successor Agency fails to mail such notice within 15 days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be mailed at the expense of the Successor Agency. Notwithstanding any other provisions of this Indenture, no removal, resignation or termination of the Trustee shall take effect until a successor shall be appointed.

(e) Every successor Trustee appointed under the provisions of this Indenture shall be a trust company or bank in good standing authorized to exercise trust powers or having the powers of a trust company and duly authorized to exercise trust powers within the State having a combined capital and surplus of at least \$75,000,000, and subject to supervision or examination by federal or state authority. If such bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this subsection the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this subsection (e), the Trustee shall resign immediately in the manner and with the effect specified in this Section.

(f) The Trustee shall have no responsibility or liability with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of these Bonds.

(g) Before taking any action under Article VIII or this Section 6.1 at the request or direction of the Owners, the Trustee may require that an indemnity bond satisfactory to the Trustee be furnished by the Owners for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or its willful misconduct in connection with any action so taken.

Section 6.2 Merger or Consolidation. Any bank or trust company into which the Trustee may be merged or converted or with which either of them may be consolidated or any bank or trust company resulting from any merger, conversion or consolidation to which it shall be a party or any bank or trust company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such bank or trust company shall be eligible under subsection (e) of Section 6.1, shall be the successor to such Trustee without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

Section 6.3 Liability of Trustee.

(a) The recitals of facts herein and in the Bonds contained shall be taken as statements of the Successor Agency, and the Trustee shall not assume responsibility for the correctness of the same, nor make any representations as to the validity or sufficiency of this

Indenture or of the Bonds nor shall incur any responsibility in respect thereof, other than as expressly stated herein. The Trustee shall, however, be responsible for its representations contained in its certificate of authentication on the Bonds. The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful misconduct. The Trustee may become the Owner of any Bonds with the same rights it would have if they were not Trustee and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of the Owners, whether or not such committee shall represent the Owners of a majority in principal amount of the Bonds then Outstanding.

(b) The Trustee shall not be liable for any error of judgment made in good faith by a responsible officer, unless the Trustee shall have been negligent in ascertaining the pertinent facts.

(c) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture.

(d) The Trustee shall not be liable for any action taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture, except for actions arising from the negligence or willful misconduct of the Trustee. The permissive right of the Trustee to do things enumerated hereunder shall not be construed as a mandatory duty.

(e) The Trustee shall not be deemed to have knowledge of any Event of Default hereunder unless and until it shall have actual knowledge thereof, or shall have received written notice thereof at its Trust Office. Except as otherwise expressly provided herein, the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements herein or of any of the documents executed in connection with the Bonds, or as to the existence of an Event of Default thereunder. The Trustee shall not be responsible for the validity or effectiveness of any collateral given to or held by it. Without limiting the generality of the foregoing, the Trustee shall not be responsible for reviewing the contents of any financial statements furnished to the Trustee pursuant to Section 5.1 and may rely conclusively on the certificates accompanying such financial statements to establish the Successor Agency's compliance with its financial covenants hereunder, including, without limitation, its covenants regarding the deposit of Pledged Tax Revenues into the Redevelopment Obligation Retirement Fund and the investment and application of moneys on deposit in the Redevelopment Obligation Retirement Fund (other than its covenants to transfer such moneys to the Trustee when due hereunder).

(f) No provision in this Indenture shall require the Trustee to risk or expend its own funds or otherwise incur any financial liability hereunder.

(g) The Trustee may execute any of the trust or powers hereof and perform any of its duties through attorneys, agents and receivers and shall not be answerable for the conduct of the same if appointed by it with reasonable care.

(h) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty.

(i) The immunities extended to the Trustee also extend to its directors, officers, employees and agents.

Section 6.4 Right to Rely on Documents. The Trustee shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties, in the absence of negligence or willful misconduct by the Trustee. The Trustee may consult with counsel, including, without limitation, counsel of or to the Successor Agency, with regard to legal questions, and, in the absence of negligence or willful misconduct by the Trustee, the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Trustee hereunder in accordance therewith.

The Trustee shall not be bound to recognize any person as the Owner of a Bond unless and until such Bond is submitted for inspection, if required, and his title thereto is established to the satisfaction of the Trustee.

Whenever in the administration of the trusts imposed upon it by this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Written Certificate of the Successor Agency, which shall be full warrant to the Trustee for any action taken or suffered in good faith under the provisions of this Indenture in reliance upon such Written Certificate, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may deem reasonable. The Trustee may conclusively rely on any certificate of report of any Independent Accountant or Independent Redevelopment Consultant appointed by the Successor Agency.

Section 6.5 Preservation and Inspection of Documents. All documents received by the Trustee under the provisions of this Indenture shall be retained in its possession and shall be subject at all reasonable times during regular business hours upon reasonable notice to the inspection of the Successor Agency and any Owner, and their agents and representatives duly authorized in writing, at reasonable hours and under reasonable conditions.

Section 6.6 Compensation and Indemnification. The Successor Agency shall pay to the Trustee from time to time reasonable compensation for all services rendered under this Indenture and also all reasonable expenses, charges, legal and consulting fees and other disbursements and those of its attorneys, agents and employees, incurred in and about the performance of its powers and duties under this Indenture. Upon the occurrence of an Event of Default, the Trustee shall have a first lien on the Pledged Tax Revenues and all funds and accounts held by the Trustee hereunder to secure the payment to the Trustee of all fees, costs and expenses, including reasonable compensation to its experts, attorneys and counsel incurred in declaring such Event of Default and in exercising the rights and remedies set forth in Article VIII hereof.

The Successor Agency further covenants and agrees to indemnify and save the Trustee and its officers, directors, agents and employees, harmless against any loss, expense, and liabilities which it may incur arising out of or in the exercise and performance of its powers and duties hereunder,

including the costs and expenses and those of its attorneys and advisors of defending against any claim of liability, but excluding any and all losses, expenses and liabilities which are due to the negligence or willful misconduct of the Trustee, its officers, directors, agents or employees. The obligations of the Successor Agency under this section shall survive resignation or removal of the Trustee under this Indenture and payment of the Bonds and discharge of this Indenture.

Section 6.7 Investment of Moneys in Funds and Accounts. Subject to the provisions of Article V hereof, all moneys held by the Trustee in the Debt Service Fund, Costs of Issuance Fund or the Rebate Fund, shall, at the written direction of the Successor Agency, be invested only in Permitted Investments. If the Trustee receives no written directions from the Successor Agency as to the investment of moneys held in any Fund or Account, the Trustee shall request such written direction from the Successor Agency and, pending receipt of instructions, shall invest such moneys solely in Permitted Investments described in subsection (b) of the definition thereof.

(a) Moneys in the Redevelopment Obligation Retirement Fund shall be invested by the Successor Agency only in obligations permitted by the Law which will by their terms mature not later than the date the Successor Agency estimates the moneys represented by the particular investment will be needed for withdrawal from the Redevelopment Obligation Retirement Fund.

(b) Moneys in the Interest Account and the Principal Account of the Debt Service Fund shall be invested only in obligations which will by their terms mature on such dates as to ensure that before each interest and principal payment date, there will be in such account, from matured obligations and other moneys already in such account, cash equal to the interest and principal payable on such payment date.

(c) Moneys in the Reserve Account shall be invested in (i) obligations which will by their terms mature on or before the date of the final maturity of the Bonds or five (5) years from the date of investment, whichever is earlier or (ii) an investment agreement which permits withdrawals or deposits without penalty at such time as such moneys will be needed or in order to replenish the Reserve Account.

(d) Moneys in the Rebate Fund shall be invested in Defeasance Securities which mature on or before the date such amounts are required to be paid to the United States.

Obligations purchased as an investment of moneys in any of the Funds or Accounts shall be deemed at all times to be a part of such respective Fund or Account and the interest accruing thereon and any gain realized from an investment shall be credited to such Fund or Account and any loss resulting from any authorized investment shall be charged to such Fund or Account without liability to the Trustee. The Successor Agency or the Trustee, as the case may be, shall sell or present for redemption any obligation purchased whenever it shall be necessary to do so in order to provide moneys to meet any payment or transfer from such Fund or Account as required by this Indenture and shall incur no liability for any loss realized upon such a sale. All interest earnings received on any monies invested in the Interest Account, Principal Account or Reserve Account, to the extent they exceed the amount required to be in such Account, shall be transferred on each Interest Payment Date to the Debt Service Fund. All interest earnings on monies invested in the Rebate Fund shall be retained in such Fund and applied as set forth in Section 4.4. The Trustee may purchase or sell to itself or any affiliate, as principal or agent, investments authorized by this Section 6.7. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with Section 6.7 hereof. The Successor Agency acknowledges that to the

extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Successor Agency the right to receive brokerage confirmations of security transactions as they occur, the Successor Agency specifically waives receipt of such confirmations to the extent permitted by law. The Trustee will furnish the Successor Agency periodic cash transaction statements which shall include detail for all investment transactions made by the Trustee hereunder.

The Trustee or any of its affiliates may act as sponsor, advisor or manager in connection with any investments made by the Trustee hereunder.

The value of Permitted Investments shall be determined as follows: (i) as to investments the bid and asked prices of which are published on a regular basis in The Wall Street Journal (or, if not there, then in The New York Times): the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination; (ii) as to investments the bid and asked prices of which are not published on a regular basis in The Wall Street Journal or The New York Times: the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the Trustee in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service; (iii) as to certificates of deposit and bankers acceptances: the face amount thereof, plus accrued interest; and (iv) as to any investment not specified above: the value thereof established by prior agreement between the Successor Agency and the Trustee. If more than one provision of this definition of “value” shall apply at any time to any particular investment, the value thereof at such time shall be determined in accordance with the provision establishing the lowest value for such investment; provided, notwithstanding the foregoing, in making any valuations hereunder, the Trustee may utilize and conclusively rely upon such pricing services as may be regularly available to it, including, without limitation, those within its regular accounting system.

Section 6.8 Accounting Records and Financial Statements. The Trustee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with industry standards, in which complete and accurate entries shall be made of all transactions made by it relating to the proceeds of the Bonds and all funds and accounts held by it established pursuant to this Indenture. Such books of record and account shall be available for inspection by the Successor Agency at reasonable hours and under reasonable circumstances with reasonable prior notice. The Trustee shall furnish to the Successor Agency, at least quarterly, an accounting of all transactions made by the Trustee in the form of its regular account statements relating to the proceeds of the Bonds and all funds and accounts held by the Trustee pursuant to this Indenture.

Section 6.9 Appointment of Co-Trustee or Agent. It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the law of the State) denying or restricting the right of banking corporations or associations to transact business as Trustee in such jurisdiction. It is recognized that in the case of litigation under this Indenture, and in particular in case of the enforcement of the rights of the Trustee on default, or in the case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee or Successor Agency appoint an additional individual or institution as a separate co-trustee. The following provisions of this Section 6.9 are adopted to these ends.

In the event that the Trustee or Successor Agency appoint an additional individual or institution as a separate or co-trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate or co-trustee to exercise such powers, rights and remedies, and every covenant an obligation necessary to the exercise thereof by such separate or co-trustee shall run to and be enforceable by either of them.

Should any instrument in writing from the Successor Agency be required by the separate trustee or co-trustee so appointed by the Trustee or Successor Agency for more fully and certainly vesting in and confirming to it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Successor Agency. In case any separate trustee or co-trustee, or a successor to either, shall become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate trustee or co-trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a new trustee or successor to such separate trustee or co-trustee.

In addition to the appointment of a co-trustee hereunder, the Trustee may, at the expense and with the prior written consent of the Successor Agency, appoint any agent of the Trustee in St. Paul, Minnesota, for the purpose of administering the transfers or exchanges of Bonds or for the performance of any other responsibilities of the Trustee hereunder.

ARTICLE VII

MODIFICATION OR AMENDMENT OF THIS INDENTURE

Section 7.1 Amendment Without Consent of Owners. This Indenture and the rights and obligations of the Successor Agency and of the Owners may be modified or amended at any time by a Supplemental Indenture which shall become binding upon adoption, without consent of any Owners, to the extent permitted by law and any for any one or more of the following purposes:

(a) to add to the covenants and agreements of the Successor Agency in this Indenture contained, other covenants and agreements thereafter to be observed or to limit or surrender any rights or power herein reserved to or conferred upon the Successor Agency; or

(b) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this Indenture, or in any other respect whatsoever as the Successor Agency may deem necessary or desirable, provided under any circumstances that such modifications or amendments shall not materially adversely affect the interests of the Owners; or

(c) to provide for the issuance of Parity Bonds pursuant to Section 3.4, and to provide the terms and conditions under which such Parity Bonds may be issued, including but not limited to the establishment of Redevelopment Obligation Retirement Funds and accounts relating thereto and any other provisions relating solely thereto, subject to and in accordance with the provisions of Section 3.4; or

(d) to amend any provision hereof relating to the requirements of or compliance with the Code, to any extent whatsoever but only if and to the extent such amendment will not adversely affect the exclusion from gross income for purposes of federal income taxation of interest on any of the Bonds, in the opinion of nationally-recognized bond counsel.

Section 7.2 Amendment With Consent of Owners. Except as set forth in Section 7.1, this Indenture and the rights and obligations of the Successor Agency and of the Owners may be modified or amended at any time by a Supplemental Indenture which shall become binding when the written consent of the Owners of a majority in aggregate principal amount of the Bonds then Outstanding are filed with the Trustee. No such modification or amendment shall (a) extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the Successor Agency to pay the principal, interest or redemption premiums (if any) at the time and place and at the rate and in the currency provided therein of any Bond without the express written consent of the Owner of such Bond, (b) reduce the percentage of Bonds required for the written consent to any such amendment or modification, or (c) without its written consent thereto, modify any of the rights or obligations of the Trustee. Any amendment, supplement, modification to, or waiver of, the Indenture or any other transaction document, including any underlying security agreement (each a “Related Document”), that requires the consent of Bondowners or adversely affects the rights and interests of the Insurer shall be subject to the prior written consent of the Insurer.

Section 7.3 Effect of Supplemental Indenture. From and after the time any Supplemental Indenture becomes effective pursuant to this Article VII, this Indenture shall be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations of the parties hereto or thereto and all Owners, as the case may be, shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 7.4 Endorsement or Replacement of Bonds After Amendment. After the effective date of any amendment or modification hereof pursuant to this Article VII, the Successor Agency may determine that any or all of the Bonds shall bear a notation, by endorsement in form approved by the Successor Agency, as to such amendment or modification and in that case upon demand of the Successor Agency, the Owners of such Bonds shall present such Bonds for that purpose at the Trust Office of the Trustee, and thereupon a suitable notation as to such action shall be made on such Bonds. In lieu of such notation, the Successor Agency may determine that new Bonds shall be prepared and executed in exchange for any or all of the Bonds and, in that case upon demand of the Successor Agency, the Owners of the Bonds shall present such Bonds for exchange at the Trust Office of the Trustee, without cost to such Owners.

Section 7.5 Amendment by Mutual Consent. The provisions of this Article VII shall not prevent any Owner from accepting any amendment as to the particular Bond held by such Owner, provided that due notation thereof is made on such Bond.

Section 7.6 Opinion of Counsel. The Trustee shall be provided an opinion of counsel that any such Amendment or Supplemental Indenture entered into by the Successor Agency and the Trustee complies with the provisions of this Article VII and the Trustee may conclusively rely upon such opinion.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES OF OWNERS

Section 8.1 Events of Default and Acceleration of Maturities. The following events shall constitute Events of Default hereunder:

(a) if default shall be made in the due and punctual payment of the principal of or interest or redemption premium (if any) on any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by declaration or otherwise;

(b) if default shall be made by the Successor Agency in the observance of any of the covenants, agreements (including default by the obligor on any underlying agreement) or conditions on its part in this Indenture or in the Bonds contained, other than a default described in the preceding clause (a), and such default shall have continued for a period of 30 days following receipt by the Successor Agency of written notice from the Trustee or any Owner of the occurrence of such default; or

(c) if the Successor Agency shall commence a voluntary action under Title 11 of the United States Code or any substitute or successor statute.

If an Event of Default has occurred and is continuing, the Trustee may, or if requested in writing by the Owners of the majority in aggregate principal amount of the Bonds then Outstanding, the Trustee shall, by written notice to the Successor Agency, (a) declare the principal of the Bonds, together with the accrued interest thereon, to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable, and (b) upon receipt of indemnity to its satisfaction exercise any other remedies available to the Trustee and the Owners in law or at equity.

Immediately upon becoming aware of the occurrence of an Event of Default, the Trustee shall give notice of such Event of Default to the Successor Agency by telephone confirmed in writing. Such notice shall also state whether the principal of the Bonds shall have been declared to be or have immediately become due and payable. With respect to any Event of Default described in clauses (a) or (c) above the Trustee shall, and with respect to any Event of Default described in clause (b) above the Trustee in its sole discretion may, also give such notice to the Successor Agency, and the Owners in the same manner as provided herein for notices of redemption of the Bonds, which shall include the statement that interest on the Bonds shall cease to accrue from and after the date, if any, on which the Trustee shall have declared the Bonds to become due and payable pursuant to the preceding paragraph (but only to the extent that principal and any accrued, but unpaid interest on the Bonds is actually paid on such date.)

This provision, however, is subject to the condition that if, at any time after the principal of the Bonds shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the Successor Agency shall deposit with the Trustee a sum sufficient to pay all principal on the Bonds matured prior to such declaration and all matured installments of interest (if any) upon all the Bonds, with interest on such overdue installments of principal and interest (to the extent permitted by law) at the net effective rate then borne by the Outstanding Bonds, and the reasonable fees and expenses of the Trustee, including but not limited to attorneys fees, and any and all other defaults known to the Trustee (other than in the

payment of principal of and interest on the Bonds due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate shall have been made therefor, then, and in every such case, the Owners of at least a majority in aggregate principal amount of the Bonds then Outstanding, by written notice to the Successor Agency and to the Trustee, may, on behalf of the Owners of all of the Bonds, rescind and annul such declaration and its consequences. However, no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

Upon the occurrence of an event of default, the Trustee may, with the consent of a majority of the Holders, by written notice to the Successor Agency, declare the principal of the Bonds and Parity Bonds to be immediately due and payable, whereupon that portion of the principal of the Bonds thereby coming due and the interest thereon accrued to the date of payment shall, without further action, become and be immediately due and payable, anything in this Indenture or in the Bonds to the contrary notwithstanding. Notwithstanding the foregoing, the maturity of Bonds insured by the Insurer shall not be accelerated without the consent of the Insurer and in the event the maturity of the Bonds is accelerated, the Insurer may elect, in its sole discretion, to pay accelerated principal and interest accrued, on such principal to the date of acceleration (to the extent unpaid by the Successor Agency) and the Trustee shall be required to accept such amounts. Upon payment of such accelerated principal and interest accrued to the acceleration date as provided above, the Insurer's obligations under the Insurance Policy with respect to such Bonds shall be fully discharged.

Section 8.2 Application of Funds Upon Acceleration. All of the Pledged Tax Revenues and all sums in the funds and accounts established and held by the Trustee hereunder upon the date of the declaration of acceleration as provided in Section 8.1, and all sums thereafter received by the Trustee hereunder, shall be applied by the Trustee in the order following, upon presentation of the several Bonds, and the stamping thereon of the payment if only partially paid, or upon the surrender thereof if fully paid:

First, to the payment of the fees, costs and expenses of the Trustee in declaring such Event of Default and in exercising the rights and remedies set forth in this Article VIII, including reasonable compensation to its agents, attorneys and counsel including all sums owed the Trustee pursuant to Section 6.6 herein; and

Second, to the payment of the whole amount then owing and unpaid upon the Bonds for principal and interest, with interest on the overdue principal and installments of interest at the net effective rate then borne by the Outstanding Bonds and Parity Bonds (to the extent that such interest on overdue installments of principal and interest shall have been collected), and in case such moneys shall be insufficient to pay in full the whole amount so owing and unpaid upon the Bonds and Parity Bonds, then to the payment of such principal and interest without preference or priority of principal over interest, or interest over principal, or of any installment of interest over any other installment of interest, ratably to the aggregate of such principal and interest or any Bond or Parity Bonds over any other Bond or Parity Bonds.

Section 8.3 Power of Trustee to Control Proceedings. In the event that the Trustee, upon the happening of an Event of Default, shall have taken any action, by judicial proceedings or otherwise, pursuant to its duties hereunder, whether upon its own discretion or upon the request of the Owners of a majority in principal amount of the Bonds then Outstanding, it shall have full power, in the exercise of its discretion for the best interests of the Owners of the Bonds, with respect to the

continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action; provided, however, that the Trustee shall not, unless there no longer continues an Event of Default, discontinue, withdraw, compromise or settle, or otherwise dispose of any litigation pending at law or in equity, if at the time there has been filed with it a written request signed by the Owners of a majority in principal amount of the Outstanding Bonds hereunder opposing such discontinuance, withdrawal, compromise, settlement or other disposal of such litigation. The Insurer shall be deemed to be the sole holder of the Insured Bonds for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the holders of the Bonds insured by it are entitled to take pursuant to the Indenture pertaining to (i) defaults and remedies and (ii) the duties and obligations of the Trustee. The rights granted to the Insurer under the Indenture or any other Related Document to request, consent to or direct any action are rights granted to the Insurer in consideration of its issuance of the Insurance Policy. Any exercise by the Insurer of such rights is merely an exercise of the Insurer's contractual rights and shall not be construed or deemed to be taken for the benefit, or on behalf, of the Bondholders and such action does not evidence any position of the Insurer, affirmative or negative, as to whether the consent of the Bondowners or any other person is required in addition to the consent of the Insurer.

Section 8.4 Limitation on Owner's Right to Sue. No Owner of any Bond issued hereunder shall have the right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Indenture, unless (a) such Owner shall have previously given to the Trustee written notice of the occurrence of an Event of Default; (b) the Owners of a majority in aggregate principal amount of all the Bonds then Outstanding shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such action, suit or proceeding, including a writ of mandamus in its own name; (c) said Owners shall have tendered to the Trustee indemnity reasonably acceptable to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request; and (d) the Trustee shall have refused or omitted to comply with such request for a period of 60 days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of any remedy hereunder; it being understood and intended that no one or more Owners shall have any right in any manner whatever by his or their action to enforce any right under this Indenture, except in the manner herein provided, and that all proceedings at law or in equity to enforce any provisions of this Indenture shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Owners of the Outstanding Bonds.

The right of any Owner of any Bond to receive payment of the principal of (and premium, if any) and interest on such Bond as herein provided, shall not be impaired or affected without the written consent of such Owner, notwithstanding the foregoing provisions of this Section or any other provision of this Indenture.

Section 8.5 Non-waiver. Nothing in this Article VIII or in any other provision of this Indenture or in the Bonds, shall affect or impair the obligation of the Successor Agency, which is absolute and unconditional, to pay from the Pledged Tax Revenues and other amounts pledged hereunder, the principal of and interest and redemption premium (if any) on the Bonds to the respective Owners on the respective Interest Payment Dates, as herein provided, or affect or impair the right of action, which is also absolute and unconditional, of the Owners to institute suit to enforce such payment by virtue of the contract embodied in the Bonds.

A waiver of any default by any Owner shall not affect any subsequent default or impair any rights or remedies on the subsequent default. No delay or omission of any Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy conferred upon the Owners by the Dissolution Act or by this Article VIII may be enforced and exercised from time to time and as often as shall be deemed expedient by the Owners.

If a suit, action or proceeding to enforce any right or exercise any remedy shall be abandoned or determined adversely to the Owners, the Successor Agency and the Owners shall be restored to their former positions, rights and remedies as if such suit, action or proceeding had not been brought or taken.

Section 8.6 Actions by Trustee as Attorney-in-Fact. Any suit, action or proceeding which any Owner shall have the right to bring to enforce any right or remedy hereunder may be brought by the Trustee for the equal benefit and protection of all Owners similarly situated and the Trustee is hereby appointed (and the successive respective Owners by taking and holding the Bonds or Parity Bonds, as applicable, shall be conclusively deemed so to have appointed it) the true and lawful attorney-in-fact of the respective Owners for the purpose of bringing any such suit, action or proceeding and to do and perform any and all acts and things for and on behalf of the respective Owners as a class or classes, as may be necessary or advisable in the opinion of the Trustee as such attorney-in-fact, provided the Trustee shall have no duty or obligation to enforce any such right or remedy if it has not been indemnified to its satisfaction from loss, liability or any expense including, but not limited to reasonable fees and expenses of its attorneys.

Section 8.7 Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Owners is intended to be exclusive of any other remedy. Every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity by statute or otherwise, and may be exercised without exhausting and without regard to any other remedy conferred by the Law or any other law.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Benefits Limited to Parties. Nothing in this Indenture expressed or implied is intended or shall be construed to confer upon, or to give or grant to, any person or entity, other than the Successor Agency, the Trustee, and the registered Owners of the Bonds, any right, remedy or claim under or by reason of this Indenture or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Indenture contained by and on behalf of the Successor Agency shall be for the sole and exclusive benefit of the Successor Agency, the Trustee, and the registered Owners of the Bonds. Notwithstanding the foregoing, the Insurer shall be included as a third party beneficiary to the Indenture.

Section 9.2 Successor is Deemed Included in All References to Predecessor. Whenever in this Indenture or any Supplemental Indenture either the Successor Agency or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the Successor Agency or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 9.3 Discharge of Indenture. If the Successor Agency shall pay and discharge the entire indebtedness on all Bonds or any portion thereof in any one or more of the following ways:

(i) by well and truly paying or causing to be paid the principal of and interest and premium (if any) on all Outstanding Bonds, including all principal, interest and redemption premiums, (if any), or;

(ii) by irrevocably depositing with the Trustee, in trust, at or before maturity, money which, together with the available amounts then on deposit in the funds and accounts established pursuant to this Indenture, is fully sufficient to pay all Outstanding Bonds, including all principal, interest and redemption premiums (if any), or,

(iii) by irrevocably depositing with the Trustee, in trust, Defeasance Securities in such amount as an Independent Certified Public Accountant shall determine will, together with the interest to accrue thereon and available moneys then on deposit in the funds and accounts established pursuant to this Indenture, be fully sufficient to pay and discharge the indebtedness on all Bonds (including all principal, interest and redemption premiums, if any) at or before maturity and notwithstanding that any Bonds shall not have been surrendered for payment, the pledge of the Pledged Tax Revenues and other funds provided for in this Indenture and all other obligations of the Trustee and the Successor Agency under this Indenture with respect to all Outstanding Bonds shall cease and terminate, except only (a) the obligation of the Trustee to transfer and exchange Bonds hereunder and (b) the obligation of the Successor Agency to pay or cause to be paid to the Owners, from the amounts so deposited with the Trustee, all sums due thereon and to pay the Trustee all fees, expenses and costs of the Trustee. Notice of such election shall be filed with the Trustee. Any funds thereafter held by the Trustee, which are not required for said purpose, shall be paid over to the Successor Agency. To accomplish defeasance, the Successor Agency shall cause to be delivered (i) a report of an independent firm of nationally recognized certified public accountants or such other accountant as shall be acceptable to the Insurer (“Accountant”) verifying the sufficiency of the escrow established to pay the Bonds in full on the maturity or redemption date (“Verification”), (ii) an Escrow Deposit Agreement (which shall be acceptable in form and substance to the Insurer), (iii) an opinion of nationally recognized bond counsel to the effect that the Bonds are no longer “Outstanding” under the Indenture and (iv) a certificate of discharge of the Trustee with respect to the Bonds; each Verification and defeasance opinion shall be acceptable in form and substance, and addressed, to the Successor Agency, Trustee and Insurer. The Insurer shall be provided with final drafts of the above-referenced documentation not less than five business days prior to the funding of the escrow.

Bonds shall be deemed “Outstanding” under the Indenture unless and until they are in fact paid and retired or the above criteria are met.

Section 9.4 Execution of Documents and Proof of Ownership by Owners. Any request, declaration or other instrument which this Indenture may require or permit to be executed by any Owner may be in one or more instruments of similar tenor, and shall be executed by such Owner in person or by their attorneys appointed in writing.

Except as otherwise herein expressly provided, the fact and date of the execution by any Owner or his attorney of such request, declaration or other instrument, or of such writing appointing such attorney, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act, that the person

signing such request, declaration or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer.

The ownership of Bonds and the amount, maturity, number and date of ownership thereof shall be provided by the Registration Books.

Any request, declaration or other instrument or writing of the Owner of any Bond shall bind all future Owners of such Bond in respect of anything done or suffered to be done by the Successor Agency or the Trustee in good faith and in accordance therewith.

Section 9.5 Disqualified Bonds. In determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are owned or held by or for the account of the Successor Agency or the City (but excluding Bonds held in any employees' retirement fund) shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, provided, however, that for the purpose of determining whether the Trustee shall be protected in relying on any such demand, request, direction, consent or waiver, only Bonds which the Trustee knows to be so owned or held shall be disregarded.

Section 9.6 Waiver of Personal Liability. No member, office, agent or employee of the Successor Agency shall be individually or personally liable for the payment of the principal or interest or any premium on the Bonds; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law.

Section 9.7 Destruction of Canceled Bonds. Whenever in this Indenture provision is made for the surrender to the Trustee of any Bonds which have been paid or canceled pursuant to the provisions of this Indenture, the Trustee shall destroy such Bonds and upon written request of the Successor Agency, provide the Successor Agency a certificate of destruction. The Successor Agency shall be entitled to rely upon any statement of fact contained in any certificate with respect to the destruction of any such Bonds therein referred to.

Section 9.8 Notices. Any notice, request, demand, communication or other paper shall be sufficiently given and shall be deemed given when delivered or mailed by first class mail, postage prepaid, or sent by telegram or facsimile, addressed as follows:

If to the Successor Agency: Successor Agency to the Upland Community
Redevelopment Agency
460 N. Euclid Avenue
Upland, CA 91786
Attention: Executive Director

If to the Trustee: U.S. Bank National Association
633 W. Fifth Street, 24th Floor
Los Angeles, California 90071
Attention: Global Corporate Trust Services
Ref. Successor Agency to the Upland Community
Redevelopment Agency, Upland Community
Redevelopment Project (A Merged Project) Tax
Allocation Refunding Bonds, Issue of 2015

If to the Insurer: [TO COME]

Section 9.9 Partial Invalidity. If any section, paragraph, sentence, clause or phrase of this Indenture shall for any reason be held illegal, invalid or unenforceable, such holding shall not affect the validity of the remaining portions of this Indenture. The Successor Agency hereby declares that it would have adopted this Indenture and each and every other section, paragraph, sentence, clause or phrase hereof and authorized the issue of the Bonds pursuant thereto irrespective of the fact that any one or more sections, paragraphs, sentences, clauses, or phrases of this Indenture may be held illegal, invalid or unenforceable. If, by reason of the judgment of any court, the Trustee is rendered unable to perform its duties hereunder, all such duties and all of the rights and powers of the Trustee hereunder shall, pending appointment of a successor Trustee in accordance with the provisions of Section 6.1 hereof, be assumed by and vest in the Finance Officer of the Successor Agency in trust for the benefit of the Owners that the Finance Officer in such case shall be vested with all of the rights and powers of the Trustee hereunder, and shall assume all of the responsibilities and perform all of the duties of the Trustee hereunder, in trust for the benefit of the Bondowners, pending appointment of a successor Trustee in accordance with the provisions of Section 6.1 hereof.

Section 9.10 Unclaimed Moneys. Anything contained herein to the contrary notwithstanding, any money held by the Trustee in trust for the payment and discharge of the interest or premium (if any) on or principal of the Bonds which remains unclaimed for two (2) years after the date when the payments of such interest, premium (if any) and principal have become payable, if such money was held by the Trustee at such date, or for two (2) years after the date of deposit of such money if deposited with the Trustee after the date when the interest and premium (if any) on and principal of such Bonds have become payable, shall be repaid by the Trustee to the Successor Agency as its absolute property free from trust, and the Trustee shall thereupon be released and discharged with respect thereto and the Bond Owners shall look only to the Successor Agency for the payment of the principal of and interest and redemption premium (if any) on such Bonds.

Section 9.11 Execution in Counterparts. This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.12 Governing Law. This Indenture shall be construed and governed in accordance with the Laws of the State.

Section 9.13 Payments Due on Other Than a Business Day. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Indenture, is not a Business Day, such payment, with no interest accruing for the period from and after such nominal date, may be made or act performed or right exercised on the next succeeding

Business Day with the same force and effect as if done on the nominal date provided therefore in this Indenture.

ARTICLE X

MATTERS RELATED TO THE BOND INSURER

Section 10.1 Bonds Outstanding. Amounts paid by the Insurer under the Insurance Policy shall not be deemed paid for purposes of the Indenture and the Bonds relating to such payments shall remain Outstanding and continue to be due and owing until paid by the Successor Agency in accordance with the Indenture. The Indenture shall not be discharged unless all amounts due or to become due to the Insurer have been paid in full or duly provided for.

Section 10.2 Required Action. The Successor Agency or, at the direction of the Successor Agency, the Trustee, covenant and agree to take such action (including, as applicable, filing of UCC financing statements and continuations thereof) as is necessary from time to time to preserve the priority of the pledge of the trust estate under applicable law.

Section 10.3 Claims Upon the Insurance Policy and Payments by and to the Insurer.

(a) If, on the third Business Day prior to the related scheduled interest payment date or principal payment date (“Payment Date”) there is not on deposit with the Trustee, after making all transfers and deposits required under the Indenture, moneys sufficient to pay the principal of and interest on the Bonds due on such Payment Date, the Trustee shall give notice to the Insurer and to its designated agent (if any) (the “Insurer’s Fiscal Agent”) by telephone or telecopy of the amount of such deficiency by 12:00 noon, New York City time, on such Business Day. If, on the second Business Day prior to the related Payment Date, there continues to be a deficiency in the amount available to pay the principal of and interest on the Bonds due on such Payment Date, the Trustee shall make a claim under the Insurance Policy and give notice to the Insurer and the Insurer’s Fiscal Agent (if any) by telephone of the amount of such deficiency, and the allocation of such deficiency between the amount required to pay interest on the Bonds and the amount required to pay principal of the Bonds, confirmed in writing to the Insurer and the Insurer’s Fiscal Agent by 12:00 noon, New York City time, on such second Business Day by filling in the form of Notice of Claim and Certificate delivered with the Insurance Policy.

(b) The Trustee shall designate any portion of payment of principal on Bonds paid by the Insurer, whether by virtue of maturity or other advancement of maturity, on its books as a reduction in the principal amount of Bonds registered to the then current Bondholder, whether DTC or its nominee or otherwise, and shall issue a replacement Bond to the Insurer, registered in the name of [INSURER], in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided that the Trustee’s failure to so designate any payment or issue any replacement Bond shall have no effect on the amount of principal or interest payable by the Successor Agency on any Bond or the subrogation rights of the Insurer.

(c) The Trustee shall keep a complete and accurate record of all funds deposited by the Insurer into the Policy Payments Account (defined below) and the allocation of such funds to payment of interest on and principal of any Bond. The Insurer shall have the right to inspect such records at reasonable times upon reasonable notice to the Trustee.

(d) Upon payment of a claim under the Insurance Policy, the Trustee shall establish a separate special purpose trust account for the benefit of Bondholders referred to herein as the “Policy Payments Account” and over which the Trustee shall have exclusive control and sole right of withdrawal. The Trustee shall receive any amount paid under the Insurance Policy in trust on behalf of Bondholders and shall deposit any such amount in the Policy Payments Account and distribute such amount only for purposes of making the payments for which a claim was made. Such amounts shall be disbursed by the Trustee to Bondholders in the same manner as principal and interest payments are to be made with respect to the Bonds under the sections hereof regarding payment of Bonds. It shall not be necessary for such payments to be made by checks or wire transfers separate from the check or wire transfer used to pay debt service with other funds available to make such payments. Notwithstanding anything herein to the contrary, the Successor Agency agrees to pay to the Insurer (i) a sum equal to the total of all amounts paid by the Insurer under the Insurance Policy (the “Insurer Advances”); and (ii) interest on such Insurer Advances from the date paid by the Insurer until payment thereof in full, payable to the Insurer at the Late Payment Rate per annum (collectively, the “Insurer Reimbursement Amounts”). “Late Payment Rate” means the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank at its principal office in The City of New York, as its prime or base lending rate (any change in such rate of interest to be effective on the date such change is announced by JPMorgan Chase Bank) plus 3%, and (ii) the then applicable highest rate of interest on the Bonds and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. The Successor Agency hereby covenants and agrees that the Insurer Reimbursement Amounts are secured by a lien on and pledge of the trust estate and payable from such trust estate on a parity with debt service due on the Bonds.

(e) Funds held in the Policy Payments Account shall not be invested by the Trustee and may not be applied to satisfy any costs, expenses or liabilities of the Trustee. Any funds remaining in the Policy Payments Account following a Bond payment date shall promptly be remitted to the Insurer.

Section 10.4 Subrogation. The Insurer shall, to the extent it makes any payment of principal of or interest on the Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Insurance Policy. Each obligation of the Successor Agency to the Insurer under the Related Documents shall survive discharge or termination of such Related Documents.

Section 10.5 Reimbursement of Insurer. The Successor Agency shall pay or reimburse the Insurer any and all charges, fees, costs and expenses that the Insurer may reasonably pay or incur in connection with (i) the administration, enforcement, defense or preservation of any rights or security in any Related Document; (ii) the pursuit of any remedies under the Indenture or any other Related Document or otherwise afforded by law or equity, (iii) any amendment, waiver or other action with respect to, or related to, the Indenture or any other Related Document whether or not executed or completed, or (iv) any litigation or other dispute in connection with the Indenture or any other Related Document or the transactions contemplated thereby, other than costs resulting from the failure of the Insurer to honor its obligations under the Insurance Policy. The Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of the Indenture or any other Related Document.

Section 10.6 Application of Prepayment. After payment of reasonable expenses of the Trustee, the application of funds realized upon default shall be applied to the payment of expenses of the Successor Agency or rebate only after the payment of past due and current debt service on the Bonds and amounts required to restore the Reserve Account to the Reserve Requirement. The Insurer shall be entitled to pay principal or interest on the Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Successor Agency (as such terms are defined in the Insurance Policy) and any amounts due on the Bonds as a result of acceleration of the maturity thereof in accordance with the Indenture, whether or not the Insurer has received a Notice of Nonpayment (as such terms are defined in the Insurance Policy) or a claim upon the Insurance Policy.

Section 10.7 Information Provided to Insurer. The Insurer shall be provided with the following information by the Successor Agency or Trustee, as the case may be:

(a) Annual audited financial statements within 150 days after the end of the Successor Agency's fiscal year (together with a certification of the Successor Agency that it is not aware of any default or Event of Default under the Indenture), and the Successor Agency's annual budget within 30 days after the approval thereof together with such other information, data or reports as the Insurer shall reasonably request from time to time;

(b) Notice of any draw upon the Reserve Account within two Business Days after knowledge thereof other than (i) withdrawals of amounts in excess of the Reserve Requirement and (ii) withdrawals in connection with a refunding of Bonds;

(c) Notice of any default known to the Trustee or Successor Agency within five Business Days after knowledge thereof;

(d) Prior notice of the advance refunding or redemption of any of the Bonds, including the principal amount, maturities and CUSIP numbers thereof;

(e) Notice of the resignation or removal of the Trustee and Bond Registrar and the appointment of, and acceptance of duties by, any successor thereto;

(f) Notice of the commencement of any proceeding by or against the Successor Agency commenced under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an "Insolvency Proceeding");

(g) Notice of the making of any claim in connection with any Insolvency Proceeding seeking the avoidance as a preferential transfer of any payment of principal of, or interest on, the Bonds;

(h) A full original transcript of all proceedings relating to the execution of any amendment, supplement, or waiver to the Related Documents; and

(i) All reports, notices and correspondence to be delivered to Bondholders under the terms of the Related Documents.

In addition, to the extent that the Successor Agency has entered into a continuing disclosure agreement, covenant or undertaking with respect to the Bonds, all information furnished pursuant to

such agreements shall also be provided to the Insurer, simultaneously with the furnishing of such information.

The Insurer shall have the right to receive such additional information as it may reasonably request.

Section 10.8 Miscellaneous.

(a) The Successor Agency will permit the Insurer to discuss the affairs, finances and accounts of the Successor Agency or any information the Insurer may reasonably request regarding the security for the Bonds with appropriate officers of the Successor Agency and will permit the Insurer to have access to the facilities, books and records of the Successor Agency on any business day upon reasonable prior notice.

(b) The Trustee shall notify the Insurer of any failure of the Successor Agency to provide notices, certificates and other information under the transaction documents.

(c) Notwithstanding satisfaction of the other conditions to the issuance of Additional Bonds set forth in the Indenture, no such issuance may occur (1) if an Event of Default (or any event which, once all notice or grace periods have passed, would constitute an Event of Default) exists unless such default shall be cured upon such issuance and (2) unless the Reserve Account is fully funded at the Reserve Requirement (including the proposed issue) upon the issuance of such Additional Bonds, in either case unless otherwise permitted by the Insurer.

(d) In determining whether any amendment, consent, waiver or other action to be taken, or any failure to take action, under the Indenture would adversely affect the security for the Bonds or the rights of the Bondholders, the Trustee shall consider the effect of any such amendment, consent, waiver, action or inaction as if there were no Insurance Policy.

(e) No contract shall be entered into or any action taken by which the rights of the Insurer or security for or sources of payment of the Bonds may be impaired or prejudiced in any material respect except upon obtaining the prior written consent of the Insurer.

(f) If the Bonds are issued for refunding purposes, there shall be delivered an opinion of Bond Counsel addressed to the Insurer (or a reliance letter relating thereto), or a certificate of discharge of the trustee for the Refunded Bonds, to the effect that, upon the making of the required deposit to the escrow, the legal defeasance of the Refunded Bonds shall have occurred. If the Refunded Bonds are insured by [INSURER], at least three business days prior to the proposed date for delivery of the Policy with respect to the Refunding Bonds, the Insurer shall also receive (i) the verification letter, of which the Insurer shall be an addressee, by an independent firm of certified public accountants which is either nationally recognized or otherwise acceptable to the Insurer, of the adequacy of the escrow established to provide for the payment of the Refunded Bonds in accordance with the terms and provisions of the Escrow Deposit Agreement, and (ii) the form of an opinion of Bond Counsel addressed to the Insurer (or a reliance letter relating thereto) to the effect that the Escrow Deposit Agreement is a valid and binding obligation of the parties thereto, enforceable in accordance with its terms (such Escrow Deposit Agreement shall provide that no amendments are permitted without the prior written consent of the Insurer). An executed copy of each of such opinion and reliance letter, if applicable, or Trustee's discharge certificate, as the case may be, shall be forwarded to the Insurer prior to delivery of the Bonds.

(g) Any interest rate exchange agreement (“Swap Agreement”) entered into by the Successor Agency shall meet the following conditions: (i) the Swap Agreement must be entered into to manage interest costs related to, or a hedge against (a) assets then held, or (b) debt then outstanding, or (iii) debt reasonably expected to be issued within the next twelve (12) months, and (ii) the Swap Agreement shall not contain any leverage element or multiplier component greater than 1.0x unless there is a matching hedge arrangement which effectively off-sets the exposure from any such element or component. Unless otherwise consented to in writing by the Insurer, any uninsured net settlement, breakage or other termination amount then in effect shall be subordinate to debt service on the Bonds and on any debt on parity with the Bonds. The Successor Agency shall not terminate a Swap Agreement unless it demonstrates to the satisfaction of the Insurer prior to the payment of any such termination amount that such payment will not cause the Successor Agency to be in default under the Related Documents, including but not limited to, any monetary obligations thereunder. All counterparties or guarantors to any Swap Agreement must have a rating of at least “A-” and “A3” by Standard & Poor’s (“S&P”) and Moody’s Investors Service (“Moody’s”). If the counterparty or guarantor’s rating falls below “A-” or “A3” by either S&P or Moody’s, the counterparty or guarantor shall execute a credit support annex to the Swap Agreement, which credit support annex shall be acceptable to the Insurer. If the counterparty or the guarantor’s long term unsecured rating falls below “Baa1” or “BBB+” by either Moody’s or S&P, a replacement counterparty or guarantor, acceptable to the Insurer, shall be required.

IN WITNESS WHEREOF, the SUCCESSOR AGENCY TO THE UPLAND COMMUNITY REDEVELOPMENT AGENCY, has caused this Indenture to be signed in its name by its Chair and attested by its Secretary, and U.S. BANK NATIONAL ASSOCIATION, in token of its acceptance of the trusts created hereunder, has caused this Indenture to be signed in its corporate name by its officer hereunto duly authorized, all as of the day and year first above written.

SUCCESSOR AGENCY TO THE UPLAND
COMMUNITY REDEVELOPMENT AGENCY

By: _____
Its: Chair

ATTEST:

By: _____
Secretary

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Its: Authorized Officer

EXHIBIT A
(FORM OF BOND)

No. R-____ \$ _____

UNITED STATES OF AMERICA
STATE OF CALIFORNIA
(COUNTY OF LOS ANGELES)

SUCCESSOR AGENCY TO THE
UPLAND COMMUNITY REDEVELOPMENT AGENCY
UPLAND COMMUNITY REDEVELOPMENT PROJECT (A MERGED PROJECT)
TAX ALLOCATION REFUNDING BOND, ISSUE OF 2015

<i>Interest Rate</i>	<i>Maturity Date</i>	<i>Dated Date</i>	<i>CUSIP</i>
____%	September 1, 20__	_____, 2015	86460D ____

REGISTERED OWNER: CEDE & CO.

PRINCIPAL SUM: _____ DOLLARS

The SUCCESSOR AGENCY TO THE UPLAND COMMUNITY REDEVELOPMENT AGENCY, a public body, corporate and politic, duly organized and existing under and by virtue of the laws of the State of California (the "Successor Agency"), for value received hereby promises to pay to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above (subject to any right of prior redemption hereinafter provided for), the Principal Sum stated above, in lawful money of the United States of America, and to pay interest thereon in like lawful money from the interest payment date next preceding the date of authentication of this Bond, unless (i) this Bond is authenticated on an interest payment date, in which event it shall bear interest from such date of authentication, or (ii) this Bond is authenticated prior to an interest payment date and after the close of business on the fifteenth calendar day of the month preceding such interest payment date (a "Record Date"), in which event it shall bear interest from such interest payment date, or (iii) this Bond is authenticated on or before [August 15, 2015], in which event it shall bear interest from the Dated Date stated above; provided, however, that if at the time of authentication of this Bond, interest is in default on this Bond, this Bond shall bear interest from the interest payment date to which interest has previously been paid or made available for payment on this Bond, until payment of such Principal Sum in full, at the rate per annum stated above, payable semiannually on March 1 and September 1 in each year (each an "interest payment date"), commencing [September 1, 2015], calculated on the basis of a 360-day year composed of twelve 30-day months. Principal hereof and premium, if any, upon early redemption hereof are payable upon presentation and surrender of this Bond at the corporate trust office of U.S. Bank National Association, as trustee (the "Trustee"). Interest hereon (including the final interest payment upon maturity or earlier redemption) is payable by check of the Trustee mailed on the interest payment date by first class mail to the Registered Owner hereof at the Registered Owner's address as it appears on the registration books maintained by the Trustee at the close of business on the Record Date next preceding such interest payment date;

provided, however, that upon the written request of any Registered Owner of at least \$1,000,000 in principal amount of Bonds received by the Trustee at least fifteen (15) days prior to such Record Date, payment shall be made by wire transfer in immediately available funds to an account in the United States designated by such Owner.

This Bond is one of a duly authorized issue of Bonds of the Successor Agency designated as “Successor Agency to the Upland Community Redevelopment Agency Upland Community Redevelopment Project (A Merged Project) Tax Allocation Refunding Bonds, Issue of 2015” (the “Bonds”), in an aggregate principal amount of _____ Thousand Dollars (\$ _____), all of like tenor and date (except for such variation, if any, as may be required to designate varying series, numbers, maturities, interest rates or redemption and other provisions) and all issued pursuant to the provisions of the Refunding Bond Act, being Article II (commencing with Section 53580) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California (the “Act”), and pursuant to a resolution of the Successor Agency adopted _____, 2015, and a resolution adopted by the Oversight Board (as defined in the Indenture) on _____, 2015, and an Indenture of Trust, dated as of _____ 1, 2015, entered into by and between the Successor Agency and the Trustee (the “Indenture”), authorizing the issuance of the Bonds. Additional bonds, notes or other obligations may be issued on a parity with the Bonds, but only subject to the terms of the Indenture. Reference is hereby made to the Indenture (copies of which are on file at the office of the Successor Agency) and all indentures supplemental thereto and to the Law for a description of the terms on which the Bonds are issued, the provisions with regard to the nature and extent of the Pledged Tax Revenues, as that term is defined in the Indenture, and the rights thereunder of the registered owners of the Bonds and the rights, duties and immunities of the Trustee and the rights and obligations of the Successor Agency thereunder, to all of the provisions of which Indenture the Registered Owner of this Bond, by acceptance hereof, assents and agrees.

The Bonds have been issued by the Successor Agency to refund a portion of the Prior Agency’s (as defined in the Indenture) previously issued \$15,000,000 aggregate initial principal amount Upland Community Redevelopment Project (A Merged Project), Tax Allocation Refunding Bonds, Issue of 2006 (the “2006 Bonds”).

The Bonds are special obligations of the Successor Agency and are payable from, and are secured by a pledge of and lien on the Pledged Tax Revenues derived by the Successor Agency from the Project Area (as that term is defined in the Indenture), on a parity with the unrefunded portion of the 2006 Bonds and the Successor Agency’s \$22,090,000 Upland Community Redevelopment Project (A Merged Project), Tax Allocation Refunding Bonds, Issue of 2013.

There has been created and will be maintained by the Successor Agency the Redevelopment Obligation Retirement Fund (as defined in the Indenture) into which Pledged Tax Revenues shall be deposited and transferred to the Trustee for deposit into the Debt Service Fund (as defined in the Indenture) from which the Trustee shall pay the principal of and the interest and redemption premium, if any, on the Bonds when due. As and to the extent set forth in the Indenture, all such Pledged Tax Revenues are exclusively and irrevocably pledged to and constitute a trust fund for, in accordance with the terms hereof and the provisions of the Indenture and the Law, the security and payment or redemption of, including any premium upon early redemption, and for the security and payment of interest on, the Bonds, any additional bonds, notes or other obligations, authorized by the Indenture to be issued on a parity therewith. In addition, the Bonds (and, if the indenture authorizing any loans, advances or indebtedness issued on a parity with the Bonds shall so provide, any such loan, advance or indebtedness) shall be additionally secured at all times by a first and exclusive

pledge of and lien upon all of the moneys in the Debt Service Fund, the Interest Account, the Principal Account and the Reserve Account (as such terms are defined in the Indenture). Except for the Pledged Tax Revenues and such moneys, no funds or properties of the Successor Agency shall be pledged to, or otherwise liable for, the payment of principal of or interest or redemption premium, if any, on the Bonds.

The Bonds maturing on or before [September 1, 2025] are not subject to redemption prior to maturity. The Bonds maturing on and after [September 1, 2026] are subject to redemption prior to maturity in whole, or in part in the manner determined by the Successor Agency, on any date on or after [September 1, 2025], from any available source of funds, at a redemption price equal to the principal amount of the Bonds to be redeemed, together with accrued interest thereon to the redemption date, without premium.

As provided in the Indenture, notice of redemption shall be given by first class mail no less than thirty (30) nor more than sixty (60) days prior to the redemption date to the respective registered owners of any Bonds designated for redemption at their addresses appearing on the Bond registration books maintained by the Trustee, but neither failure to receive such notice nor any defect in the notice so mailed shall affect the sufficiency of the proceedings for redemption.

If this Bond is called for redemption and payment is duly provided therefor as specified in the Indenture, interest shall cease to accrue hereon from and after the date fixed for redemption.

If an Event of Default, as defined in the Indenture, shall occur, the principal of all Bonds may be declared due and payable upon the conditions, in the manner and with the effect provided in the Indenture, but such declaration and its consequences may be rescinded and annulled as further provided in the Indenture.

The Bonds are issuable as fully registered Bonds without coupons in denominations of \$5,000 each and any integral multiple thereof. Subject to the limitations and conditions and upon payment of the charges, if any, as provided in the Indenture, Bonds may be exchanged for a like aggregate principal amount of Bonds of other authorized denominations and of the same maturity.

This Bond is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at the corporate trust office of the Trustee, but only in the manner and subject to the limitations provided in the Indenture, and upon surrender and cancellation of this Bond. Upon registration of such transfer a new fully registered Bond or Bonds, of authorized denomination or denominations, for the same aggregate principal amount and of the same maturity will be issued to the transferee in exchange herefor.

The Successor Agency and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the Successor Agency and the Trustee shall not be affected by any notice to the contrary.

The rights and obligations of the Successor Agency and the registered owners of the Bonds may be modified or amended at any time in the manner, to the extent and upon the terms provided in the Indenture, but no such modification or amendment shall extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the Successor Agency to pay the principal, interest or redemption premiums (if any) at the time and place and at the rate and in the currency provided herein of any Bond without the express written consent of the registered owner of

such Bond, reduce the percentage of Bonds required for the written consent to any such amendment or modification or, without its written consent thereto, modify any of the rights or obligations of the Trustee.

This Bond is not a debt of the City of Upland, the State of California, or any of its political subdivisions (except the Successor Agency), and none of said City, said State, nor any of its political subdivisions (except the Successor Agency) is liable hereon, nor in any event shall this Bond be payable out of any funds or properties other than those of the Successor Agency as set forth in the Indenture. The Bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

It is hereby certified that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of this Bond do exist, have happened or have been performed in due and regular time and manner as required by the Law and the laws of the State of California, and that the amount of this Bond, together with all other indebtedness of the Successor Agency, does not exceed any limit prescribed by the Law or any laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until the Trustee's Certificate of Authentication hereon shall have been manually signed by the Trustee.

IN WITNESS WHEREOF, the Successor Agency to the Upland Community Redevelopment Agency has caused this Bond to be executed in its name and on its behalf with the facsimile signatures of its Executive Director and its Secretary, all as of the Dated Date.

SUCCESSOR AGENCY TO THE UPLAND
COMMUNITY REDEVELOPMENT AGENCY

By: _____
Executive Director

By: _____
Secretary

[FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION]

This is one of the Bonds described in the within-mentioned Indenture.

Authentication Date: _____, 2015

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Officer

LEGAL OPINION

The following is a true copy of the opinion rendered by Stradling Yocca Carlson & Rauth, a Professional Corporation, in connection with the issuance of, and dated as of the date of the original delivery of, the Bonds. A signed copy is on file in my office.

Secretary of the Successor Agency to the Upland
Community Redevelopment Agency

STATEMENT OF INSURANCE

[TO COME]

(FORM OF ASSIGNMENT)

For value received the undersigned hereby sells, assigns and transfers unto

(Name, Address and Tax Identification or Social Security Number of Assignee)

the within-registered Bond and hereby irrevocably constitute(s) and appoint(s) _____
_____ attorney, to transfer the same on the
bond register of the Trustee with full power of substitution in the premises.

Dated: _____

Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

Note: Signature(s) must be guaranteed by an "eligible guarantor institution."



STAFF REPORT

ITEM NO. 13.C

DATE: MARCH 23, 2015
TO: MAYOR AND CITY COUNCIL
FROM: ROD BUTLER, CITY MANAGER
PREPARED BY: CHRISTA BUHAGIAR, FINANCE MANAGER
MARSHALL LINN, FINANCIAL ADVISOR
SUBJECT: ECONOMIC REFUNDING OF THE CITY OF UPLAND COMMUNITY FACILITIES DISTRICT NO. 2003-2 (THE COLONIES AT SAN ANTONIO IMPROVEMENT AREA NO. 2) SPECIAL TAX BONDS, SERIES B OF 2004

RECOMMENDED ACTION

It is recommended that the City Council direct staff to take those actions necessary to refund the above referenced bonds.

GOAL STATEMENT

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

BACKGROUND

During the fall of 2004, the City of Upland issued two Series of Bonds to assist in the financing of infrastructure projects for the Colonies residential and the Colonies commercial Improvements Areas.

The Colonies Improvement Area No. 1 financed backbone improvements on approximately 92 gross acres, approximately 56 of which have been developed with single family homes.

Bonds in Improvement Area No.1 were refinanced in 2012 which resulted in a substantial "real" dollar savings for the residential property owners located within the boundaries of the District.

ISSUES/ANALYSIS

With interest rates at close to their two year lows, the City's Financing Team analyzed the Improvement Area No. 2 Special Tax Bonds, Series B of 2004.

Our financial analysis demonstrates that the Series B Bonds can be refunded which could result in a savings of approximately \$4,500,000 without extending the term of the 2004 Bonds.

FISCAL IMPACTS

As previously stated, the City 2004 Series A Bonds were previously refunded without extending their maturity schedule. We are now in an interest rate environment where the refunding of the 2004 Series B Bonds not only makes strong economic sense, but is fiscally prudent.

ALTERNATIVES

Provide alternative direction to staff.



STAFF REPORT

ITEM NO. 13.D

DATE: MARCH 23, 2015
TO: MAYOR AND CITY COUNCIL
FROM: ROD BUTLER, CITY MANAGER
PREPARED BY: ROBERTA KNIGHTEN, COMMUNITY SERVICES DIRECTOR
SUBJECT: CONSIDERATION OF COST REDUCTION OPTIONS AND REVENUE GENERATING IDEAS FOR THE UPLAND ANIMAL SERVICES PROGRAM

RECOMMENDED ACTION

It is recommended that the City Council direct staff to issue a formal Request for Proposal to provide animal shelter and animal control services; provide direction to staff on the level of services to be provided and the goals bidders will be evaluated on; and give guidance as to the criteria for evaluating the ability of proposers to meet the terms of the contract, such as whether a requirement that proposers have previous experience providing both animal shelter and animal control functions for a municipality.

GOAL STATEMENT

The proposed action supports the City's goal to be fiscally responsible and provide services to the citizens of Upland in the most effective and efficient manner.

BACKGROUND

In January 2014, the Fiscal Response Task Force recommended that staff look at the animal services budget and review all operations of the animal shelter. The cost of providing animal services has long been a source of concern for City leaders. While this is an essential service required by State law, the amount of city resources spent on providing these services has always been a concern.

In 2007 the City commissioned a study to look at shelter operations which included a cost benefit analysis of service alternatives. The recommendation was to contract with Inland Valley Humane Society to provide services from their Pomona facility at a net cost of approximately \$445,000 per year to the General Fund. Working with local animal rescue groups, the Council determined it was in the best interest of its residents to continue providing animal control and shelter services with City employees and voted to move forward with the construction of a new shelter. The old shelter was found to be structurally compromised and inappropriate for continuing operations making it necessary to construct a new shelter.

With the economic downturn and continued pressures on the General Fund, the City Council has taken a critical look at how to best provide services in the most efficient and economical way possible. The question of what it should reasonably cost to provide animal control and shelter services has been debated for the past 4 years. The City has sought informal bids within the last

eighteen months from both the County who declined to bid, and the Inland Valley Humane Society from who we are still waiting for a response. Within that time the City has also received an unsolicited bid from a local rescue, and was approached by another non-profit about providing services.

ISSUES/ANALYSIS

City staff has been tasked with developing a strategy to provide animal services in the most cost effective means possible. Table 1 shows a comparison of the cost to provide animal services in surrounding cities.

TABLE 1 - *SEE ATTACHMENT*

As Table 1 illustrates, there is no consistent methodology to determine a standard cost for providing animal services. Costs are city specific and are dependent on a number of variables. Size and location of the facility, hours of operation, staffing levels, dependence on volunteers, adoption policies, service standards and allocated costs are all contributing cost factors. In comparing what Upland spends compared to other municipalities, it is also difficult to determine if all associated staff costs are accurately reflected. In many cities animal control services are part of the police department budget, and the allocated costs for officers overseeing these programs may not have been factored into program costs.

TABLE 2 - *SEE ATTACHMENT*

Table 2 shows the actual net cost to the General Fund to provide animal services for the last six fiscal years and the budgeted amount for FY 14/15, with the breakdown of the revenues and expenditures for each year.

In FY 2012/13, Upland offered an amnesty and canvassing program, which increased licensing revenues by \$81,000 over the previous fiscal year. The City also received a large donation of \$100,726 helping cut overall costs to \$348,190 that year.

The City has been able to reduce expenditures by maximizing opportunities. Some of the measures utilized to reduce costs include:

- Partnership with Western University to provide veterinary services including spaying and neutering, estimated annual savings \$27,712
- Supply donations for food and kitty litter, estimated annual savings \$18,000
- Using volunteers and work release as kennel staff, estimated annual savings \$268,000
- Partnership with Friends of the Animal Shelter who host and staff adoption fairs and other fundraising events, estimated annual savings \$23,000.

The Friends, Kiwanis and a private donor also purchased a van with an estimated value of \$25,000 for use at adoption events. We are fortunate to have two big supporters who consistently contribute to our programs. Bill Landecena donates \$10,000 per year for Upland resident's free microchip program and senior cat adoption program. The Landecena Family Charitable Foundation also sponsors the Spring Pet Adoption Faire each year in the amount of \$5,000. Frank Robinson sponsors dog adoptions at a cost of approximately \$1,500 each year and sponsors the Spring Pet Adoption Faire in the amount of \$250 per year.

Fees for service were evaluated and increased where justified. The new fee schedule will go into effect April 9, 2015.

Service Level Expectations

To further reduce costs, the City would need to look at service level reductions and/or contracting with alternate service providers. Determining the minimum level of services Upland provides to its

residents requires establishing clearly defined goals and objectives.

The guiding principle has been to find a home for every adoptable pet. The mission is to provide fiscally responsible quality services necessary to promote the safety and welfare of people and animals in the community. The City strives to offer a comprehensive program continually improving the quality of responsible pet ownership and the humane treatment of domestic animals.

Services provided

Basic services (provided by most agencies):

- Public safety
 - Investigate and enforce potentially dangerous and vicious dog complaints
 - Rabies control
- Investigate animal abuse and neglect cases
- Pick-up and sheltering of stray animals
- Respond to service calls concerning animal welfare within 15 minutes (Time specific to U.A.S)
- Provide medical care to sick or injured animals
- Enforce municipal code ordinances
- Address neighbor complaints
- Provide adoption services for all animals housed at shelter
- Community outreach on responsible pet ownership
- Euthanasia for space as needed (rare in Upland. Euthanasia is used most often in cases where an animal is unadoptable.)

Expanded services offered at the Upland shelter:

- Wildlife relocation
- Dead animal collection within the same day reported (usually within 2 hours of report)
- Foster care program
- High standard of care for animals at the shelter
 - Dogs get a blanket and cats get a towel to lay down on
 - Dogs are walked by volunteers on a regular basis and cats are socialized
- Expansive volunteer program without the benefit of a volunteer coordinator
- Provide tours of the shelter, attend adoption fairs, community presentations
- Assistance to other city departments

Hours of Operation:

Monday	12 noon – 5:30 pm
Tuesday	12 noon – 5:30 pm
Wednesday	12 noon – 7:00 pm
Thursday	12 noon – 7:00 pm
Friday	12 noon – 5:30 pm
Saturday	10 am – 3:30 pm
Sunday	10 am – 3:30 pm

Kennels are cleaned and animals fed 365 days a year starting at 6:30 a.m. daily. Animal control officers are in the field responding to calls by 7:00 am, 7 days a week.

Staffing levels:

Animal Services Supervisor-1 Full Time Employee

Animal Control Officers-3 Full Time Employees

Animal Shelter Attendants-3 Full Time Employees, 2 Part-time Employees

Volunteers:

Under the supervision of Animal Shelter Attendants, Work Release participants from the San Bernardino County Sheriff’s Department maintain the kennels and do basic custodial services. Volunteers help with cleaning kennels, exercising animals, socializing animals for adoption and assist staff with greeting customers.

Veterinary services are provided by Western University (at no charge) and local veterinary clinics (at reduced rates).

Potential Revenue Sources/Cost Saving Measures

If Animal Services continues to be run with City staff, there are a few cost saving measures we can explore. All require several years of cultivating to pay a dividend.

Partnerships with Friends of the Upland Animal Shelter and other agencies and fundraising efforts to develop new revenue opportunities:

Thrift Store Annual Donation	\$60,000
Development/Volunteer Coordinator (contract paid by Friends)	\$40,000
Grants	\$10,000
Volunteers used as canvassers year round	\$36,000
Cooperative Agreement with other agencies	\$30,000
City Directed Fundraising Efforts (donations, bequests, etc)	\$50,000

There are other cost saving measures that could be implemented, but because of the negative response anticipated from residents staff would not recommend implementation of these measures:

No stray cat impounds	\$20,000 (estimated savings based on staff time, food, litter, and disinfectant costs)
Cat Licensing	\$7,000 (estimated revenue based on \$20 for 350 licenses per year)
Reduction in hours—closed Sunday & Monday (no public hours or field service)	\$39,000 (loss of .5 FTE Animal Control Officer)

Offering boarding services has been suggested as a means of generating additional revenue. Staff would not recommend this as an option. The design of the shelter presents challenges in leasing out space to another entity. Lack of a secondary entrance, the impact on available kennel space for strays, inability to keep dogs segregated to prevent possible exposure to disease and increased exposure to liability claims make this an unattractive alternative.

FISCAL IMPACTS

The annual net cost for the City to continue providing the current level of service utilizing City staff is projected at \$500,000-\$550,000 annually to the General Fund. There are opportunities for further reducing costs/increasing revenues. All require at least a short term commitment that animal service functions will not be contracted out. The uncertainty of whether animal services would still be handled by City staff has caused us to miss out on opportunities for additional revenue, such as offering our services to other cities. Our regular donors have also expressed a reluctance to work with other groups should they take over shelter operations.

ALTERNATIVES

1. Move forward with issuing a formal Request for Proposals incorporating Council approved service delivery goals and establishing the criteria for vetting successful bidders. Implementing a formal bid process will give us concrete numbers to use in evaluating the reasonable cost of providing animal services.
2. Continue to have animal control and sheltering services handled by City employees. After three years evaluate efforts of City staff to implement additional cost saving measures with the goal of reducing net costs to the general fund to \$400,000 annually, while improving services provided to the residents of the City.
3. Provide alternative direction to staff.

ATTACHMENTS:

[Tables](#)

[2007 Animal Services Report prepared by Harvey Rose Associates](#)

ATTACHMENT

TABLE 1 Cost Comparison of Animal Services in Local Cities

	San Bernardino County		IVHS			Municipal			FY 14/15
	Highland	Yucaipa	Ontario	Claremont	Montclair	Redlands	Rancho	Victorville	Upland
Population served	54,291	52,536	167,500	36,000	38,027	68,747	171,386	121,096	75,413
Annual budget	436,202	453,708	487,000 (1)	108,396	265,000	364,206 (2)	2,809,120	729,166 (3)	993,930
Annual revenue	contract	contract	contract	contract	contract	66,503	471,000	56,000	442,200
Net cost	436,202	453,708	487,000	108,396	265,000	297,703	2,229,000	673,166	551,730
Annual adoptions						1280	3061	724	x
Annual Eutahnized						816	713	2206	x
Animals Received						2015	4515	2967	x
Shelter In City	No	No	No	No	No	Yes	Yes	No	Yes

(1) plus annual price adjustment up to 5%. \$100,000 in facility improvements paid over 5 years.

(2) open 5 days a week, dispatch handled by PD.

(3) \$220,000 in contract services

TABLE 2 Annual Cost for Animal Services in Upland

Year	Revenue	Expenditures	Net Cost to General Fund
FY08/09	250,646	682,610	431,964
FY09/10	231,085	695,052	463,967
FY10/11	334,928	985,294	650,366
FY 11/12	438,750	996,517	557,767
FY 12/13	567,309 (1)	949,963	382,654
FY 13/14	384,677	883,120	498,443
FY 14/15	442,000	993,930 (2)	551,730 (2)

New shelter opened February 16, 2010

FY 14/15 reflects budgeted amounts, other years are actual numbers

(1)-Includes \$100,726 estate donation

(2)-Reflects additional \$64,528 in allocated costs above FY13/14

**Review of the
City of Upland Animal Services Department
and
Assessment of Service Alternatives**

**Prepared for the
City of Upland
Mayor, City Council and
City Manager**

By

**Harvey M. Rose Associates, LLC
1390 Market Street, Suite 1025
San Francisco, CA 94102
(415) 552-9292**

February 1, 2007



February 1, 2007

J.P. Pomierski, Mayor
Members of the City Council,
Robb Quincey, City Manager
City of Upland
460 N. Euclid Avenue
Upland, California 91786

Dear Mayor Pomierski, Members of the City Council and Mr. Quincey:

Harvey M. Rose Associates, LLC is pleased to present this *Review of the City of Upland Animal Services Department and Assessment of Service Alternatives*, performed for the Mayor, City Council and City Manager of the City of Upland. As the title suggests, this report was prepared to provide an independent assessment of the current operations of the Animal Services Department, and to explore alternatives to the current organization and delivery of animal care and shelter services within the City. The special study was conducted from October 2006 through January 2007, in accordance with Generally Accepted Auditing Standards.

Included in the report are recommendations to enhance current animal control and shelter services and the management of animal control and shelter operations in the City. Also included is an analysis of service alternatives available to the City, including the enhancement of existing in-house services or entering into an agreement with a local non-profit animal services organization, to provide the same levels of enhanced services. Depending on the alternative chosen by the City, these recommendations could cost as much as \$840,766 annually to directly provide animal services from a new shelter, at levels which would be consistent with prevailing practice in the region; or, \$485,780 per year, including \$445,000 in contract costs and \$40,780 in lost revenue, if services were contracted with the Inland Valley Humane Society.

This transmittal letter also serves as an executive summary for the report. Accordingly, descriptions of the Department and our major conclusions, recommendations and results of cost benefit analysis are provided, below.

J.P. Pomierski, Mayor
Members of the City Council,
Robb Quincey, City Manager
City of Upland
February 1, 2007
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Description of Current Animal Services Operations

The City of Upland Animal Services Department is an operating unit within the Upland Police Department's Administration Division. The Administration Division's animal control and shelter responsibilities include responding to service calls that concern all matters of animal welfare, including facilitating animal adoption and providing medical care to sick or injured animals; the enforcement of municipal code ordinances related to animals; and, the operations of a City-owned animal shelter. The approved budget for the Animal Services Department in FY 2006-07 is \$289,410, with approximately 68 percent of the budget appropriated for personnel costs. The City has consistently budgeted 3.0 FTE positions for the Animal Services Department over the past three years, with 1.0 FTE position for Animal Shelter Attendant II and 2.0 FTE position for Animal Control Officer. Upland Animal Control officers responded to 3,416 calls for service in 2005.

Analysis of Current Animal Care and Control Operations

At current budget levels, the Animal Services Department is unable to reliably staff the shelter during public service hours or provide animal control services without requiring full-time personnel to work overtime, relying on part-time workers, using volunteer services, or utilizing work release labor provided by the San Bernardino County Sheriff's Department. In addition, the City of Upland's animal shelter facility is structurally compromised and inappropriate for continuing operations.

Recent architectural studies suggest that the cost to construct a new facility that provides sufficient space for future expansion and more appropriate conditions for animals, ranges from \$2.2 million to \$2.9 million, excluding the value of land owned by the Redevelopment Agency. In addition, the analysis performed for this study indicates that the City would need to spend as much as \$608,620 in annual salary and benefit costs for personnel, or \$406,403 above current levels, to meet standards of service that are consistent with those provided in neighboring jurisdictions.

The City should update animal services performance measures, policies and procedures, as well as systems to ensure accountability and oversight. In addition, animal services fees have not been adjusted since 2003 and are generally 7.5 percent below other local jurisdictions. The City Council should authorize increased animal services fees, which could produce an additional \$11,075 in annual revenue.

If the Mayor, City Council and City Manager determine that animal services should continue to be provided directly by City staff from a local shelter, the Council should:

- 1.1 Increase Animal Services Department staffing levels by 7.15 FTE positions, as described in this report and displayed in Table 1.3;
- 1.2 Direct staff to move forward with the construction of the new \$2.2 million animal shelter facility, as determined appropriate through the City's capital project planning process;
- 1.3 Direct staff to determine the most cost effective method of paying for the proposed new shelter, either through the use of capital project reserves or by borrowing, using such financing alternatives as COPS.
- 1.4 Direct staff to develop cost estimates and funding alternatives for the acquisition of an additional animal control vehicle and industrial quality machines for washing animal food dishes, bedding, towels and other washables; and,
- 1.5 Increase animal services fees by approximately 7.5 percent, as shown in Table 1.4, so that such fees are more comparable with amounts charged in neighboring jurisdictions.

The City Manager should:

- 1.6 Direct staff to enhance and update animal services policies and procedures; and,
- ★ 1.7 Direct staff to develop meaningful performance measures for the Animal Services Department. These measures could include call response time, shelter cleanliness, minimum time to hold animals beyond legally required levels, and actual staffing levels compared to budget.

The total cost for the 10.25 FTE positions recommended in this report would amount to approximately \$608,620 per year, or \$406,620 more than the current authorized levels of 3.1 FTE positions. The annualized cost for the construction of a new \$2.18 million facility would amount to an additional \$132,146 per year, bringing the annual additional cost for animal services to approximately \$538,766 per year. These costs would be partially offset by increased revenues of up to \$11,075 per year.

Implementation of the recommendations would permit the Department to reliably staff animal control and shelter services, with less reliance on the San Bernardino County Sheriff's Department contribution of Work Release Program participant labor and volunteers. In addition, service levels would compare more favorably with the levels of service presently offered in other jurisdictions within the region. Further, the City would own a fully operational animal shelter

J.P. Pomierski, Mayor
Members of the City Council,
Robb Quincey, City Manager
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facility that is structurally sound, contains sufficient capacity for future growth, and provides a more suitable environment for animals and staff. Lastly, the Department will have established appropriate policies, procedures and performance measures, and be able to collect meaningful data on animal services operations.

Animal Control and Shelter Service Alternatives

The City has three basic alternatives for providing animal control and shelter services in the community: (1) Provide animal control and shelter services with City employees; (2) Provide animal control services with City employees, but contract with an external entity for shelter services; or, (3) Contract with an external entity for both animal control and shelter services.

As discussed elsewhere in this report, the City would have to spend as much as \$840,766 per year for staffing, shelter construction and shelter operations and support to operate in-house animal control and shelter services at levels that would be consistent with local prevailing practice. This amount is approximately 50 percent greater than current budgeted amounts, or \$406,403 in additional costs per year.

Alternatively, the Inland Valley Humane Society (IVHS) has proposed that it could provide animal control and shelter services from its existing facility for a total annual cost of \$445,000 per year. After adjusting for certain revenue credits specified in the proposed IVHS contract, the net savings from contracting would be about \$314,116 below the amount that would be required if the City were to provide enhanced services from a new shelter.

Although the proposed contract would require City residents to travel 10 miles to Pomona to surrender or redeem animals, this inconvenience would be substantially offset by the significant cost savings to Upland taxpayers as a whole. The Council should consider that in 2006, there were only 1,082 animal redemptions and adoptions, meaning that less than 1.5 percent of the City population conducted business at the shelter during the year. Other jurisdictions have chosen to substitute the convenience of a local shelter for the substantial taxpayer savings that can be achieved by regionally consolidating services under a single provider.

Although discussions have been held with other organizations to determine if there are more attractive contracting alternatives, such opportunities appear to be limited. Given the significant cost savings from contracting with IVHS and the relatively few residents who would benefit from a local shelter, the City Council should abandon shelter construction plans and direct the City Manager to negotiate with IVHS for comprehensive animal services.

Specifically, the City Council should:

- 2.1 Abandon plans to construct a new animal shelter within the City;
- 2.2 Direct the City Manager to enter into negotiations with the Inland Valley Humane Society to provide animal control and animal shelter services;
- 2.3 Direct the City Manager to develop and require explicit levels of performance as part of the IVHS contract terms, which at a minimum should include those discussed in this report; and,
- 2.4 Direct the City Manager to develop contract terms that would explicitly require IVHS to publicly report to the City Council on performance levels at regular, scheduled intervals.

If the City chooses to proceed with a contract on a pilot basis, the City Council should:

- 2.5 Direct the City Manager to negotiate a shorter contract term with IVHS, from the proposed 4.5 year term to a 3.0 year term.
- 2.6 Direct the City Manager to budget \$300,000 in annual savings from contracting with IVHS, and deposit the funds into an interest bearing animal services reserve account.

A contract with the Inland Valley Humane Society to provide animal services, would cost the City \$485,780 per year, including \$445,000 in contract costs and \$40,780 in lost revenue. This annual amount does not include a one-time buy-in cost of \$50,000 for IVHS equipment and supplies that would be required to initiate service. The estimated net cost of \$485,780 is approximately \$314,206 less than the net cost to the City if it were to provide animal services at enhanced levels, consistent with services provided in neighboring jurisdictions. When entering into the contract, the City would need to establish measures of performance and other provisions, which would enhance contractor accountability with a goal of improving services to the Upland community. Critical among these goals would be a need to achieve animal control response time targets identified by the City, lower euthanasia rates and increase adoption rates to levels comparable to those presently reported by the Animal Services Department.

Implementation of the recommendations would ensure that the Inland Valley Humane Society provides service at levels set and expected by the City Council. In addition, implementation of the recommendations will establish a means of meaningful contract oversight and public accountability. Further, Upland residents will have an opportunity to voice concerns, if concerns exist, regarding the level of services received, thus providing a level of accountability that would not otherwise exist.

J.P. Pomierski, Mayor
Members of the City Council,
Robb Quincey, City Manager
City of Upland
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If the City chooses to contract with IVHS on a pilot basis and deposit annual savings into a special reserve account, the City would save \$900,000 over the three year term of the contract. An additional \$87,660 in compounded interest would be earned at the City's current investment earnings rate for the commingled fund. At the end of the three year period, the City will have accumulated significant funds that could be used toward the construction of a new shelter and start-up costs for a renewed animal services program. If IVHS services are satisfactory, the City could renew the contract with IVHS and use the accumulated reserves for other purposes.

We would like to thank City Manager Robb Quincey, Assistant City Manager Rod Foster, Chief Steve Adams and Captain Jeff Mendenhall for sharing their perspectives, and for their cooperation and assistance throughout this study. In addition, we would like to thank the staff of the Animal Services Department, and the directors and staff of the Finance Department and Human Resources Department for their assistance providing needed information and data for this report. Lastly, we appreciate the involvement of members of the Upland community, who volunteered their time and perspectives on the City's animal control and shelter activities, to ensure that this report provides the information needed for the City to plan and implement an appropriate strategy for providing animal services to its residents.

Lastly, we would like to thank the Mayor and City Council for providing our company with the opportunity to provide these services for the City of Upland. Please contact us if you have any questions of if we can be of further assistance.

Sincerely,

A handwritten signature in black ink that reads "Stephen Foti". The signature is written in a cursive style with a large, stylized "F" and "i".

Stephen Foti
Principal/Project Manager

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Table 1
Calendar Year 2005
Animal Services Calls for the City of Upland

Service Calls	3,416	Dogs Euthanized	76
Stray Dogs Impounded	942	Cats Euthanized	409
Stray Cats Impounded	1,021	DOA Dogs	198
Dogs Adopted	406	DOA Cats	91
Cats Adopted	254	DOA Misc.	15

Source: Upland Animal Services Department

Table 2
Comparison of the City of Upland Animal Control Budget
For the Three Year Period FY 2004-05 through FY 2006-07

	FY 04-05 Actual	FY 05-06 Amended	FY 05-06 Projected	FY 06-07 Approved	Percent Change
Personnel	\$187,297	\$193,900	\$210,380	\$196,570	5.0%
Maintenance & Operations	\$87,952	\$98,760	\$91,760	\$92,840	5.6%
Capital Outlay	\$0	\$0	\$0	\$0	0%
Total Animal Control	\$275,249	\$292,660	\$302,140	\$289,410	5.1%

Source: City of Upland FY 2006-07 Budget

Other city departments provide support services to the Animal Services Department. For example, the Finance Department collects some animal licensing fees and provides general accounting services for the Animal Services Department, while other departments such as Human Resources provide other general business services. According to the Finance Director, the City of Upland apportioned \$24,749 to the Animal Services Department as indirect costs of operations in FY 2006-07.¹

Budgeted staffing for animal care and control has remained constant from FY 2003-04 to FY 2006-07 and includes 2.0 FTE Animal Control Officer positions and 1.0 FTE Animal Shelter Attendant II position. For ten months, 1.00 FTE Animal Control Officer position has been vacant, leaving a full-time operational force of only 2.0 FTE positions. These individuals have worked significant overtime during this period and have been assisted by the equivalent of 1.0 FTE position worked by two part-time individuals. In addition, the City has used work release labor assigned by the San Bernardino County Sheriff's Department to support shelter personnel.

Non-City Animal Organizations

Several non-city animal organizations operate in the City of Upland or in neighboring communities. Prominent among these groups are the Inland Valley Humane Society (IVHS), Foothills Humane Society and Society for the Prevention of Cruelty to Animals,² and Helping Out Pets Everyday (HOPE). IVHS contracts with the overwhelming majority of the neighboring jurisdictions to provide animal care and control services with a shelter based in Pomona. IVHS has provided the City of Upland with a contract proposal that is similar to those into which it has entered into in other jurisdictions.

HOPE provides support to the Animal Services Department by rescuing animals from the shelter prior to euthanasia, providing cat kennels to the shelter at no cost, organizing animal adoption fairs and vaccination clinics, and obtaining donations, such as animal food. This support provides several advantages to the City of Upland. For example, the Animal Services Department is able to forego some expenditures for materials and supplies that HOPE provides at no cost, and realizes additional adoption fee revenue as a result of the periodic adoption fairs that are sponsored by HOPE. However, neither the City nor HOPE maintains reliable data on the value received by the City as a result of HOPE's efforts.

¹ The elimination of animal services as a city-administered function likely would not eliminate these indirect costs, since the City derives these costs from general apportionment formulas and changes would not eliminate or measurably decrease FTE positions or costs for support.

² Founded by a local philanthropist, Bill Landecena, who has also established the Upland Animal Shelter Foundation. This foundation has been instrumental in raising funds to support the construction and operations of a new City shelter.

Acknowledgements

We would like to thank City Manager Robb Quincey, Assistant City Manager Rod Foster, Chief Steve Adams and Captain Jeff Mendenhall for sharing their perspectives, and for their cooperation and assistance throughout this study. In addition, we would like to thank the staff of the Animal Services Department, and the directors and staff of the Finance Department and Human Resources Department for their assistance providing needed information and data for this report. Lastly, we appreciate the involvement of members of the Upland community, who volunteered their time and perspectives on the City's animal control and shelter activities, to ensure that this report provides the information needed for the City to plan and implement an appropriate strategy for providing animal services to its residents.

1. Current Animal Control and Shelter Services

- At current budget levels, the Animal Services Department is unable to reliably staff the shelter during public service hours or provide animal control services without requiring full-time personnel to work overtime, relying on part-time workers, using volunteer services, or utilizing work release labor provided by the San Bernardino County Sheriff's Department. In addition, the City of Upland's animal shelter facility is structurally compromised and inappropriate for continuing operations.
- Recent architectural studies suggest that the cost to construct a new facility that provides sufficient space for future expansion and more appropriate conditions for animals, ranges from \$2.2 million to \$2.9 million, excluding the value of land owned by the Redevelopment Agency. In addition, the analysis performed for this study indicates that the City would need to spend as much as \$608,620 in annual salary and benefit costs for personnel, or \$406,403 above current levels, to meet standards of service that are consistent with those provided in neighboring jurisdictions.
- The City should update animal services performance measures, policies and procedures, as well as systems to ensure accountability and oversight. In addition, animal services fees have not been adjusted since 2003 and are generally 7.5 percent below other local jurisdictions. The City Council should authorize increased animal services fees, which could produce an additional \$11,075 in annual revenue.

The City of Upland is considering changes to the delivery of animal care and control services due to public concerns regarding the condition of the existing animal shelter and the appropriateness of service levels. Some Upland city officials have suggested that two primary actions should be taken by the City Council if services are to be provided directly by City personnel. First, the Council would need to increase animal services staffing levels to provide a higher level of services. Second, the Council would need to fund the replacement of the existing animal shelter.

Staffing Animal Control and Care Services

The Animal Services Department enforces State and local health and safety laws related to the control of animals, operates the City's animal shelter, and provides for the care of animals that it receives through the animal control enforcement process or from owners. As discussed in the *Introduction* to this report, these functions are organizationally located within the Police Department and employees report to the Captain in charge of Administrative Services.

As shown in Table 1.1 below, in FY 2006-07, the Animal Services department has been allocated three full-time benefited positions, two of which are Animal Control Officers. At the time of this study, one of the two Animal Control Officer positions was vacant and the other was filled. The third full-time benefited employee is a Shelter Attendant, who is assisted by two part-time, non-benefited Shelter Attendants, both of which are funded from a small budget appropriation and salary savings from the vacant full-time position.

Table 1.1
Upland Animal Services Department
Staffing October 2006 through January 2007

Employee Classification	Employment Status	Benefits
Animal Control Officer	Vacant	Benefited
Animal Control Officer	Full-time	Benefited
Animal Control Attendant I	Full-time	Benefited
Animal Control Attendant II	Part-time	Non-Benefited
Animal Control Attendant II	Part-time	Non-Benefited

Source: City of Upland, Human Resources Department

Note: Budgeted FTE for Animal Control Attendant is 1.00. The additional 1.00 FTE position of non-benefited Animal Control Attendant, worked by the two part-time employees, is presently being funded by a small budget appropriation and salary savings, so that the Department's expenditures are within the appropriation for the year.

Based on interviews and a review of service call activity, the one Animal Control Officer vacancy places a significant workload strain on the existing Animal Control Officer, affecting service response time in the City. The current Animal Control Officer reported that she has been working overtime in order to respond to calls for service. Further, according to several Animal Services Department staff, there is no consistent, stable backup for the existing Animal Control Officer when there is a need for multiple personnel to respond to a call, or to fill-in when the Animal Control Officer is sick or otherwise not available. Animal Services Department staff stated that the department has been granted permission to use a retired Animal Control Officer to fill-in during emergencies. However, this support reportedly is not consistently available.

Because of insufficient animal services staffing, Police Officers are reportedly called upon to provide routine backup when a service call involves a vicious or injured animal. Upland City officials note that while the Animal Services Department is a function of the Police Department, the use of a Police Officer to respond as backup for an Animal Control Officer is neither the most efficient nor most appropriate use of uniformed staff.

According to Police Department managers and Animal Services Department staff, Police Officers are not routinely trained in the safe handling of animals, nor are they consistently familiar with Animal Control protocol, procedures or practices. This can create difficult and potentially dangerous situations in the field. In addition, because of their training and skill level, Police Officers should remain free to respond to higher priority calls for service whenever possible. Because the rate of pay for a Police Officer is nearly 40 percent greater than the rate of pay for an Animal Control Officer, the City is over-paying for a response when a Police Officer provides back-up that could otherwise be provided by Animal Services Department personnel.

Staffing levels also impact the operations of the shelter, where some members of the public have the greatest contact with the City's Animal Services Department. During interviews, Animal Services Department staff stated that the hours of public operation for the shelter are limited, and that there are times when not enough staff are available to keep the shelter open during published hours. Current shelter operation hours, as shown in Table 1.2 on the next page, are from 10:00 a.m. every day of the week, ending at 3:30 p.m. on Friday, Saturday, Sunday and holidays, and closing at 5:30 p.m. on the remaining days of the week. These hours of operation officially include closure for lunch.

In total, the Upland Animal Shelter is open to the public for 42.5 hours per week. In comparison, the Inland Valley Humane Society (IVHS), which provides animal service to the majority of the surrounding communities,¹ is open for 46.5 hours per week despite having no public hours on Sunday. Further, current Upland Animal Shelter staffing levels do not allow personnel to perform other desired animal services functions. For example, no staff routinely perform follow-up inquiries with pet owners to ensure that spay/neuter procedures have been performed, conduct licensing canvassing functions, or investigate more minor public complaints regarding animals.

Similar to the way the Animal Services Department relies on Police Officers to provide back-up for field calls, Animal Shelter staff rely heavily on San Bernardino County Sheriff's Department Work Release Program labor to support the Animal Control Attendants in their duties. In calendar years 2005 and 2006, the average weekly labor hours provided by Work Release workers amounted to 144, based on 14,976 inmate labor hours reported during that time period. Therefore, in each of those two years, Work Release Program participants annually contributed the equivalent of approximately 3.6 FTE employees. Animal Services staff have stated that the quality of the help provided by Work Release Program participants is highly variant, and does not provide a reliable source of labor for daily operations. It is interesting to note that the Department uses Work Release Program labor to provide more than three times the Shelter's authorized staffing strength.

¹ Inland Valley Humane Society provides comprehensive animal services to the following jurisdictions: Chino, Chino Hills, Claremont, Diamond Bar, La Verne, Montclair, Ontario, Pomona, and San Dimas. IVHS also provides shelter services for the City of Glendora.

Table 1.2

**Comparison of Posted Hours of Operations
Upland and IVHS Animal Shelters – December 2006**

Upland		IVHS	
Days of Week	Hours Open to Public	Days of Week	Hours Open to Public
Monday - Thursday	10:00 am – 5:30 pm (Closed 1:00 pm – 1:30 pm)	Monday - Saturday	10:00 am – 5:30 pm
Friday	10:00 am – 3:30 pm	Wednesday	10:00 am – 7:00 pm
Saturday and Sunday	10:00 am – 3:30 pm (Closed 12:00 pm – 1:00 pm)	Sunday	Closed

Source: Publicly posted hours from the Upland and IVHS websites.

Community volunteers and local animal care organizations provide another source of support for the operations of the animal shelter. While the department does not compile information on the amount and type of support provided, Animal Services staff state that volunteers mostly exercise the animals. Local animal care organizations, primarily Helping Out Pets Everyday (HOPE), provide additional support by obtaining charitable contributions and sponsoring adoption and micro-chipping fairs.² According to HOPE documents, the organization spent approximately \$75,500 providing these services in the past year, including approximately \$39,000 for veterinary care and approximately \$8,000 for boarding. However, it is not clear what portion of these funds would have been expended by the City, if HOPE funding had not been available. Therefore, it is not clear what portion of HOPE expenditures represent a direct contribution to the City of Upland's legal and programmatic mission, versus funding that is provided to solely meet the non-profit organization's own core mission.

Increasing Upland Animal Services Department Staffing Levels

There are many ways to measure the appropriateness of the level of services provided by the Upland Animal Services Department. As discussed throughout this report, the current operations should principally be measured against staff's ability to accomplish its stated mission and priorities established by the City Council. Another method is to compare services provided in Upland to prevailing practice among other jurisdictions within the region. Therefore, because the Inland Valley Humane Society provides animal care and control services to the majority of nearby jurisdictions, IVHS operations can serve as a local benchmark.³

² The cost of micro-chipping animals during these fairs has been paid for by a single local philanthropist.

³ In Section 2 of this report, IVHS is evaluated as a potential alternative to providing animal services with City employees in Upland.

IVHS is a large organization providing services to multiple jurisdictions, and is generally able to provide a richer array of services than are presently available in Upland. For example, IVHS has animal behaviorist staff, public education staff and full-time veterinarians, none of which are available at comparable levels in the City of Upland. Therefore, for purposes of benchmarking in this report, it is necessary to consider the range of resources available through IVHS and scale them to the City of Upland, based on City population and other factors.

Based on information obtained from the IVHS Director, approximately 12 percent of that organization's resources would be devoted to the City of Upland if the City were to enter into a contract with IVHS for animal control and care services. Based on a consideration of the City's operational needs and IVHS information, Upland would therefore need to increase staffing levels to a total of 10.25 FTE positions, or 7.15 FTE more than number of full-time and part-time employees the City budgeted in FY 2006-07, to provide a level of service that would be comparable to levels received in neighboring jurisdictions. The financial impact from increasing staffing to these levels is presented in Table 1.3 and described in the discussion that follows.

Table 1.3
Staffing and Cost Increase to Provide
Levels of Service Comparable to Those Provided by IVHS

Position Title	S&B Cost Per Position	Budgeted FTE Positions	Budget Estimate	Proposed FTE Positions	Proposed Estimate	Over (Under) Current FTE	Over (Under) Current Cost
Attendants	54,637	1.00	54,637	3.25	177,571	2.25	122,934
Officers	66,672	2.00	133,344	3.00	200,016	1.00	66,672
Veterinarians	93,362	-	-	0.50	46,681	0.50	46,681
Vet-Techs	60,579	-	-	1.50	90,868	1.50	90,868
License Canvass	48,486	-	-	1.50	72,730	1.50	72,730
Public Education	41,508	-	-	0.50	20,754	0.50	20,754
Extra Help/OT	-	0.10	14,236	-	-	(0.10)	(14,236)
TOTAL		3.10	202,217	10.25	608,620	7.15	406,403

Source: HMR Analysis

Note: Salaries for Animal Control Attendants and Officers are calculated at the top step, so the Budget Estimate for current operations is \$5,647 more than the actual FY 2006-07 budget. Extra-Help and Overtime costs reflect actual budgeted amounts. Veterinarian, Vet-Tech, Licensing/Canvassing, and Public Education salaries are based on the IVHS salary schedule, since these classifications do not exist in the City. Estimates are therefore conservative since IVHS generally pays lower salaries than does the City. Upland currently purchases veterinarian services from two local veterinarian clinics and other services are generally provided by untrained staff or volunteers.

Currently, the City of Upland has two general classifications of employees for animal services: Animal Control Attendant and Animal Control Officer. To reflect the position classifications present at IVHS, Table 1.3 shows six classifications: Animal Control Attendant, Animal Control Officer, Veterinarian, Veterinarian-Technician, Licensing and Canvassing Worker, and Public Education Officer. Upland's veterinary services are presently performed by contract, while the license canvassing and public education functions are generally provided by volunteers. The rationale for the increased staffing levels are provided in the following discussion.

Animal Control Attendants - An increase in the number of Animal Control Attendants from 1.0 to 3.25 FTE positions would place the number of positions for Upland at approximately the same level that would be provided to the City through the proposed IVHS contract (2.6 scheduled FTE positions plus approximately 25 percent relief to backfill for vacation, sick and other leave time). By increasing the staffing to the proposed level, the City of Upland would be able to provide two shelter attendants six days per week, one shelter attendant one day per week, and sufficient part-time personnel to backfill for staff vacation, sick, and holiday leave time. The increase in FTE positions to 3.25 would provide the additional coverage needed to ensure more consistent public service at the shelter and reduce the Department's dependence on Work Release labor.

Animal Control Officers - An increase in the number of Animal Control Officers from 2.0 to 3.0 FTE positions would place the number of positions for Upland above the number that would be dedicated to the City through the proposed IVHS contract, but would allow the City to schedule between 1.5 FTE and 1.75 FTE Animal Control Officers each day of the week (one full-time and one part-time employee, plus approximately 25 percent relief to backfill for vacation, sick and other leave time). By increasing the number of positions to the recommended level, the City would be able to more suitably accomplish animal control workload and adjust staffing to peak call for service periods. Although staffing would be slightly higher than the level that would be offered by IVHS, this additional need would be required because there would not be the economies of scale that would be available through IVHS. For example, with animal control officers available in neighboring jurisdictions, IVHS would generally be able to provide back-up and support to assigned animal control personnel when needed without having to schedule a regular backup officer. This capability generally does not exist in Upland, but could be provided with the higher level of scheduled and relief staffing being recommended. In addition, the recommended level of staffing would minimize the need for Police Officers to routinely provide back-up for Animal Control Officers.

Veterinarians and Veterinarian-Technicians - An increase in the number of veterinarians and veterinarian-technicians from 0.0 to 0.5 FTE positions and 0.0 to 1.5 FTE positions, respectively, would place the number of FTE positions for Upland approximately 1.0 FTE position above the number that would be available to the City through the IVHS contract. Currently, Upland only provides emergency medical services for injured or sick animals under a contract with a local veterinarian. By increasing the number of positions to the recommended level, the City would be able to provide services that are more consistent with those provided at IVHS for neighboring jurisdictions. For example, IVHS has 2.0 FTE veterinarians assigned to its shelter, who assess the general health of animals brought to the facility, treat injured or sick animals and observe animals in medical isolation. These services are generally not available at the Upland shelter. While the City of Upland does not need a veterinarian present in the shelter at all times, the 0.5 FTE position increase in veterinarian resources would provide services that are more comparable to those available at IVHS, permit the Department to make behavioral assessments on the adoptability of animals and necessity for euthanasia, and ensure that the facility meets minimum conditions of sanitation and medical intervention for the animals housed in the shelter.

Licensing Canvassing Workers - An increase in the number of licensing/canvassing staff from 0.0 to 1.50 FTE positions is equivalent to the number of positions that would be available to the City under the proposed IVHS contract. Currently, the City of Upland does not employ staff to perform license canvassing drives. Instead, the City periodically relies on student volunteers who are not consistently available and are limited in the number of hours they can work. By employing staff to perform license canvassing services, the City would ensure greater citizen compliance with licensing laws and most likely increase the amount of revenue that is available to offset the costs of animal control and shelter services.

Public Education - An increase in the number of public education positions from 0.0 to 0.5 FTE positions would place the number of positions for Upland approximately 0.25 FTE above the number that would be available through the IVHS contract. By increasing the number of positions above that number, the City of Upland would be able to compensate for the loss of economies of scale otherwise available from IVHS. In addition, designated staff for this purpose would permit other employees to focus on other primary functions and decrease reliance on volunteers. For example, 0.50 FTE positions for Public Education would reduce the need for attendants to conduct trainings for pet owners, as well as coordinating and executing community outreach. Currently, the City of Upland relies on the volunteer services of outside groups, such as HOPE, to provide most of these services. In addition, by educating pet owners, it is possible that the increase in positions could have a positive impact on animal regulation compliance, the level of licensing and other fee/fine self-compliance, which would help offset animal services costs through increased revenues.

As shown in Table 1.3, the City of Upland currently budgets a total of 3.1 FTE positions at an annual salary and benefit cost of approximately \$202,217 per year.⁴ Under the proposal, Upland would need to increase the total to 10.25 FTE positions at a cost of \$608,620. This results in an incremental growth in employee strength of 7.15 FTE positions at an additional cost of \$406,403 per year. An increase in staffing to these levels would provide Upland residents with a level of service that is more comparable to those received by residents of neighboring cities and would reduce the City's dependence on Work Release Program workers and volunteers.

Shelter Facility Replacement

In the last several years, architectural and engineering consultants retained by the City have determined that the existing animal shelter facility is structurally compromised. According to a geologist report completed in January 2003, the building sits on top of a shifting landfill of an undetermined depth, estimated to be at least 30 feet deep. During site visits for this study, large depressions were observed in the parking lot and signs of stress were seen in the building.

⁴ The FY 2006-07 Budget includes \$196,570 for employee salaries and benefits, including part-time worker and overtime pay, and is based on actual amount paid to employee incumbents. The additional \$5,647 shown in this report represents the difference between the top step for full-time positions and current actual salaries.

In addition, while functional, the building is poorly designed and does not provide adequate space for some operational needs. For example, the shower required for bio-hazard washing is currently being used for storage; feral, sick and adoptable cats are often housed in the same area; and, based on observations and discussions with animal services staff, the current facility does not provide appropriate heating, ventilation, or air conditioning to ensure a consistently comfortable environment for staff or impounded animals.

Accordingly, the City has been considering animal services alternatives that would include constructing a new animal shelter. Initially, the City received a set of plans in 2005 for a new \$2.9 million, 10,581 square foot shelter facility, which would provide for significantly expanded capacity for animals. This facility would provide 58 dog kennels, adequate room for puppy and cat kennels, public interaction and retail space, as well as increased room for staff, visitor waiting, and storage.⁵ Recently, the City Manager solicited a second opinion on the design and construction cost for a new shelter (using value engineering methods). The second plan provides significantly greater capacity, with an approximate total facility size of 18,000 square feet. With this greater size, the second set of plans estimates that an even greater number of animals could be housed in 76 individual dog kennels, room for puppy and cat kennels, and similarly expanded space for staff, visitor waiting, storage and medical service functions. In addition, this facility design can be constructed for a significantly lower cost of approximately \$2.18 million, and provide flexibility for future expansion, if the City desires. The facility would be constructed on 1.5 acres of property owned by the Upland Redevelopment Agency (RDA), which we estimate is valued at approximately \$180,000 based on the purchase price for the larger 7.23 parcel in 2003. This amount does not include the cost of needed infrastructure improvements (i.e., road, sewer, electrical, water, communications and other utilities).

To pay for building the new shelter facility, the City must either use immediately available General Fund resources set aside in a capital projects reserve or finance the construction costs. This decision would have financial implications because the City would bear the additional cost of interest expense if it chooses to borrow. Alternatively, the City would lose the use of General Fund balances for investing or other City purposes if the City paid for construction from immediately available capital improvement reserves. Therefore, we chose to present the financial impact from constructing the \$2.18 million proposed shelter using a 20 year amortization schedule and net interest expense of 1.9 percent⁶ over the repayment period, since this presentation more closely approximates the annual cost to the City over the useful life of the facility. Using these assumptions, the annual financial impact from constructing the proposed facility would amount to approximately \$132,146 per year. Combined with the \$406,403 annual increase in personnel cost discussed above, total increased cost to the City of Upland would amount to approximately \$538,549 per year. This does not include the cost of the land owned by the Upland RDA.

⁵ The existing facility has 32 dog kennels (16 male and 16 female) and crowded space for cat cages in three rooms.

⁶ This net interest rate assumes that funds could be borrowed using Certificates Of Participation (COPS) at a rate of 6.0 percent, offset by interest earnings on unexpended capital reserves at a rate of 4.5 percent. By discounting the financing cost in this manner, the time-value of the City's capital fund reserve is fully recognized and a reasonable net cost of construction financing can be estimated on a fiscal year basis.

In addition to the construction costs, a larger facility would also increase the City's costs for operations and maintenance of the building. These increased costs would be required for cleaning supplies, utilities, and other similar expenses. However, the incremental costs for these types of expenses would be minimal, since the community currently donates substantial amounts of materials and supplies for shelter operations and the newer facility would likely be more energy efficient.

In addition to the facility, the City should invest in new equipment. For example, there is only one reliable animal control vehicle, which is growing in age and mileage. Accordingly, the City would need to purchase an additional vehicle so that the recommended additional Animal Control Officer staff can be used more effectively (i.e., an increase of from two to three trucks, leaving the oldest and least reliable vehicle in reserve). In addition, new control sticks preferred by the staff would increase safety, and shelter sanitation could be improved with the purchase of an industrial washing machine and dishwasher for the cleaning of towels, food bowls, and other washables. The current machines have small household capacities and are old and reportedly subject to breakdown.

Animal Care and Control Fees

Currently, the City of Upland generates an average of \$147,679 in animal services revenue annually, based on FY 2004 through FY 2007 receipts. Although the total revenue is substantial, Upland Animal Services Fees are generally lower than animal services fees charged by other neighboring jurisdictions. The last animal services fee increase occurred on July 31, 2003.

The City Council should increase current fees by an 7.5 percent so that they are more comparable to fees charged by neighboring jurisdictions and to finance a portion of the recommended increase in animal services costs. An increase of 7.5% in fees would result in approximately \$11,075 in additional revenue, bringing total revenue to an average of \$158,755 per year, assuming a steady revenue flow based on historical levels. The fee recommendations are included in Table 1.4 on the next page.

In addition to a fee increase, the City may increase revenues by ensuring that regular periodic reconciliations of the City's spay and neuter account are performed. The Finance Department is responsible for collecting licensing fees for the Animal Services department. As a part of this function, the Finance Department also collects a deposit from pet owners for the cost of spaying or neutering an adopted animal.

When a pet owner provides proof that they have altered their pet, the owner may obtain reimbursement of the deposit. Deposits that are not claimed within 60 days may be escheated to the City of Upland and used to support animal services expenditures. The City collected \$27,200 and \$26,200 in unclaimed spay and neuter deposits in FY 2004-05 and FY 2005-06, respectively.

Table 1.4

**FY 2006-07 City of Upland Animal Control Fees and
Increases Needed to Bring Fees to Levels in Neighboring Cities**

License Fees	Amount	7.5% Increase	Adoption Rates	Amount	7.5% Increase
Licenses			Dog		
<i>1 Year Unaltered</i>	\$25	\$27	<i>Adopt</i>	\$35	\$38
<i>1 Year Altered</i>	\$15	\$16	<i>Neuter</i>	\$57	\$61
<i>2 Year Unaltered</i>	\$50	\$54	Total	\$92	\$99
<i>2 Year Altered</i>	\$20	\$22	Dog, Senior Rate		
<i>3 Year Unaltered</i>	\$75	\$80	<i>Adopt</i>	\$30	\$32
<i>3 Year Altered</i>	\$25	\$27	<i>Neuter</i>	\$57	\$61
Senior Rate License			Total	\$87	\$94
<i>1 Year Altered</i>	\$10	\$11	Cat		
<i>2 Year Altered</i>	\$15	\$16	<i>Adopt</i>	\$25	\$27
<i>3 Year Altered</i>	\$20	\$22	<i>Neuter</i>	\$32	\$34
Other Fees			Total	\$57	\$61
<i>Late Fee</i>	\$30	\$32	Cat, Senior Rate		
<i>Lost Tag</i>	\$15	\$16	<i>Adopt</i>	\$20	\$22
<i>Vaccination</i>	\$10	\$11	<i>Neuter</i>	\$32	\$34
<i>Boarding</i>	\$4	\$4	Total	\$52	\$56
Impound Upland Fees					
<i>1st Impound</i>	\$30	\$32			
<i>2nd Impound</i>	\$40	\$43			
<i>3rd Impound</i>	\$60	\$65			

Source: City of Upland; Analysis of City of Upland Data

Policies, Procedures and Performance Measurement

The policies and procedures provided during this study were not dated, although various attachments and pages in the document have a range of dates from 1996 to 2000. Moreover, it appears at times that the policies and procedures do not reflect actual practice. For example, according to one document, the Upland Animal Shelter is to be open on Sunday by appointment only, and open on Monday, Thursday, and Friday from 5:00 p.m. until 9:30 p.m., by appointment. These schedules are not consistent with posted times or actual practice.

The Department needs performance measures to ensure that services are being provided at the levels considered appropriate by City management. Such performance measures should include, but not necessarily be limited to, call response time, shelter cleanliness, minimum time to hold animals beyond legally required levels, and actual staffing levels compared to budget.

Further, the Animal Services Department should establish systems and routinely collect data, which would allow a thorough assessment of the Department's performance against any measures that might be established. Recently, one Animal Services Department staff member took the initiative to begin compiling data on animal services activity, such as intakes, adoptions, and euthanasia. It is difficult to understand exactly what activity the Animal Services Department is undertaking, and how well the Department is performing.

Conclusions

At current budget levels, the Animal Services Department is unable to reliably staff the shelter during public service hours or provide animal control services without requiring full-time personnel to work overtime, relying on part-time workers, using volunteer services, or utilizing work release labor provided by the San Bernardino County Sheriff's Department. In addition, the City of Upland's animal shelter facility is structurally compromised and inappropriate for continuing operations.

Recent architectural studies suggest that the cost to construct a new facility that provides sufficient space for future expansion and more appropriate conditions for animals, ranges from \$2.2 million to \$2.9 million, excluding the value of land owned by the Redevelopment Agency. In addition, the analysis performed for this study indicates that the City would need to spend as much as \$608,620 in annual salary and benefit costs for personnel, or \$406,403 above current levels, to meet standards of service that are consistent with those provided in neighboring jurisdictions.

The City should update animal services performance measures, policies and procedures, as well as systems to ensure accountability and oversight. In addition, animal services fees have not been adjusted since 2003 and are an average of 7.5 percent below other local jurisdictions. The City Council should authorize increased animal services fees, which could produce an additional \$11,075 in annual revenue.

Recommendations

If the Mayor, City Council and City Manager determine that animal services should continue to be provided directly by City staff from a local shelter, the Council should:

- 1.1 Increase Animal Services Department staffing levels by 7.15 FTE positions, as described in this report and displayed in Table 1.3;
- 1.2 Direct staff to move forward with the construction of the new \$2.2 million animal shelter facility, as determined appropriate through the City's capital project planning process;
- 1.3 Direct staff to determine the most cost effective method of paying for the proposed new shelter, either through the use of capital project reserves or by borrowing, using such financing alternatives as COPS.
- 1.4 Direct staff to develop cost estimates and funding alternatives for the acquisition of an additional animal control vehicle and industrial quality machines for washing animal food dishes, bedding, towels and other washables; and,
- 1.5 Increase animal services fees by approximately 7.5 percent, as shown in Table 1.4, so that such fees are more comparable with amounts charged in neighboring jurisdictions.

The City Manager should:

- 1.6 Direct staff to enhance and update animal services policies and procedures; and,
- 1.7 Direct staff to develop meaningful performance measures for the Animal Services Department. These measures could include call response time, shelter cleanliness, minimum time to hold animals beyond legally required levels, and actual staffing levels compared to budget.

Costs and Benefits

The total cost for the 10.25 FTE positions recommended in this report would amount to approximately \$608,620 per year, or \$406,620 more than the current authorized levels of 3.1 FTE positions. The annualized cost for the construction of a new \$2.18 million facility would amount to an additional \$132,146 per year, bringing the annual additional cost for animal services to approximately \$538,766 per year. These costs would be partially offset by increased revenues of up to \$11,075 per year.

Implementation of the recommendations would permit the Department to reliably staff animal control and shelter services, with less reliance on the San Bernardino County Sheriff's Department contribution of Work Release Program participant labor and volunteers. In addition, service levels would compare more favorably with the levels of service presently offered in other jurisdictions within the region. Further, the City would own a fully operational animal shelter facility that is structurally sound, contains sufficient capacity for future growth, and provides a more suitable environment for animals and staff. Lastly, the Department will have established appropriate policies, procedures and performance measures, and be able to collect meaningful data on animal services operations.

2. Animal Control and Shelter Service Alternatives

- The City has three basic alternatives for providing animal control and shelter services in the community: (1) Provide animal control and shelter services with City employees; (2) Provide animal control services with City employees, but contract with an external entity for shelter services; or, (3) Contract with an external entity for both animal control and shelter services.
- As discussed elsewhere in this report, the City would have to spend as much as \$840,766 per year for staffing, shelter construction and shelter operations and support to operate in-house animal control and shelter services at levels that would be consistent with local prevailing practice. This amount is approximately 50 percent greater than current budgeted amounts, or \$406,403 in additional costs per year.
- Alternatively, the Inland Valley Humane Society (IVHS) has proposed that it could provide animal control and shelter services from its existing facility for a total annual cost of \$445,000 per year. After adjusting for certain revenue credits specified in the proposed IVHS contract, the net savings from contracting would be about \$314,116 below the amount that would be required if the City were to provide enhanced services from a new shelter.
- Although the proposed contract would require City residents to travel 10 miles to Pomona to surrender or redeem animals, this inconvenience would be substantially offset by the significant cost savings to Upland taxpayers as a whole. The Council should consider that in 2006, there were only 1,082 animal redemptions and adoptions, meaning that less than 1.5 percent of the City population conducted business at the shelter during the year. Other jurisdictions have chosen to substitute the convenience of a local shelter for the substantial taxpayer savings that can be achieved by regionally consolidating services under a single provider.
- Although discussions have been held with other organizations to determine if there are more attractive contracting alternatives, such opportunities appear to be limited. Given the significant cost savings from contracting with IVHS and the relatively few residents who would benefit from a local shelter, the City Council should abandon shelter construction plans and direct the City Manager to negotiate with IVHS for comprehensive animal services.

As part of this engagement, Harvey M. Rose Associates, LLC was requested to examine alternatives to the current organization and delivery of animal control and shelter services in the City of Upland. To assist HMR in this effort, City officials contacted the County of San Bernardino and two local humane organizations to test the potential for the City of Upland to obtain such services by contract.

Two proposals were received by the City. The first was prepared by the Inland Valley Humane Society (IVHS), which provides animal control and/or shelter services to ten cities and certain County unincorporated areas in the western part of the County.¹ A second informal proposal was submitted by the Foothills Humane Society and Society for the Prevention of Cruelty to Animals (Foothills), but the offer was only preliminary in nature and was withdrawn as this study progressed. The County of San Bernardino, which recently contracted with the Inland Valley Humane Society to obtain services in the western County unincorporated areas, was requested to prepare a proposal but declined to respond.

Although there have been suggestions that other service alternatives could potentially be developed (e.g., entering into a joint venture agreement with a neighboring city to construct a local shelter), none of the suggested alternatives were substantially advanced at the time of this study, nor would they necessarily improve public service or result in a more conveniently located shelter for Upland residents.² Accordingly, we did not consider such options as part of this study, but would encourage the City to do so if such alternatives are appealing to City officials.

This report considers three primary factors when evaluating the service alternatives that may be available to the City:

1. Level of Service – Would the level of service be consistent with prevailing practice in other surrounding jurisdictions? Would sufficient animal control and shelter staff be available to provide a reasonable level of service to persons requesting assistance or visiting the shelter?
2. Shelter Convenience – Would the animal shelter be conveniently located for City residents? Would staffing levels, operating hours and conditions permit convenient access by residents and other members of the public?
3. Operating Economies – Would the alternative be affordable for the City? How cost effective would the alternative be when compared to the cost of current services?

Each of these criteria are scored on a simple 5-point scale, with 1 being the lowest score (i.e., least fit) and 5 being the highest score (i.e., greatest fit). None of the criteria were weighted, although individual City officials may place greater value on one criteria over others (e.g., a higher value for Level of Service than for Shelter Convenience). Therefore, the total score presented for each alternative is meant to provide general comparative information and gross differences between each, and not to present absolute relative values.

Each of the proposed alternatives are presented on the following pages.

¹ The City of Glendora directly provides animal control services, but contracts with IVHS for shelter services.

² Individuals interviewed for this study suggested that joining with another jurisdiction, such as the City of Ontario, to construct a shelter might present a viable option for the City of Upland. Although various citizens have lobbied the Ontario City Council to build a local shelter, the public record does not suggest that there has been substantive movement on this proposal. In fact, Ontario currently contracts with IVHS for services. The City of Rancho Cucamonga already owns and operates its own shelter, approximately six miles from the Upland city center.

Option 1: Provide animal control and shelter services with City employees

As discussed in the previous section of this report, the current animal control and shelter services program operated by the Animal Services Department would require a significant increase in resources to operate effectively and at levels that would be consistent with prevailing practice in neighboring jurisdictions. Key points to consider in the analysis presented in Section 1 of this report are listed below.

- The City presently employs only one Animal Control Officer, requiring this individual to work significant amounts of overtime and to rely on police officers for back up when confronting difficult or dangerous situations in the field. There is not sufficient staffing to provide timely response to calls for service on some days.
- The City does not employ a sufficient number of personnel to operate the Upland Animal Shelter. As a result, shelter hours do not consistently conform to the published hours of operation and workers are reportedly unable to assist members of the public in all situations.
- Due to the lack of sufficient staffing at the shelter, the Department must rely heavily on the services of Work Release Program participants from the San Bernardino County Sheriff's Department and volunteers to perform basic customer service, animal care and shelter maintenance activities. In each of the last two years, Work Release Program participants contributed the equivalent of approximately 3.6 full time positions to the Department. Animal Services Department staff indicated during interviews that the level and quality of services received from these individuals vary.
- The Department does not have sufficient veterinarian, veterinarian-technician or animal behaviorist resources to maintain the health or determine the adoptability of animals entrusted to its care. Veterinarian services are generally provided by contract on an emergency basis, while behaviorist services are performed by untrained employees, if at all.
- The Department does not routinely perform licensing canvassing activities, reducing compliance with animal licensing regulations and resulting in a loss in revenue. When canvassing activities occur, they are performed by student volunteers.
- The existing animal shelter is structurally compromised and built on unstable ground. Recent engineering and architectural studies indicate that the City will need to spend \$2.2 million to \$2.8 million for a new facility, not including the estimated cost of land that would be contributed by the Redevelopment Agency. The annual amortized cost to construct the shelter would be approximately \$132,146 per year.
- If services are provided in-house, the City would need to spend approximately \$608,620 per year for staffing to provide animal services at the levels available in other local jurisdictions. After conservatively adding approximately \$100,000 per year to equip, maintain and supply the Department, and considering the amortized cost of construction for the new animal shelter, the City can expect to spend as much as \$840,766 per year to operate an in-house

Animal Services Department that includes a new shelter. This estimate is approximately \$550,000 more than was budgeted for the Animal Services Department in FY 2006-07.

This cost represents a significant increase in the amount of discretionary City resources that would be dedicated to animal control and shelter operations, but would be necessary to bring animal service levels up to community standards, reduce reliance on Work Release Program and volunteer labor, and effectively operate a new shelter.

Because of the condition of the existing shelter and the significant gap in services when compared with prevailing practice in the region, this report assumes that a status quo alternative would be unacceptable to the City Council. At a minimum, City officials have explained that a new shelter would need to be constructed if services are to be continued in-house due to the poor condition of the current facility and its deterioration, resulting from the unstable site on which it is located. During interviews, some City officials indicated that they would like to see animal services provided directly by City staff from a local facility. These officials stated that locating shelter services outside of the City boundaries would pose a major inconvenience for some residents and result in the loss of committed local volunteerism at the shelter.

While a new shelter within the City would certainly result in a convenience for some residents, most citizens would not be impacted by a choice of locating shelter services elsewhere. For example, in 2006 the Department reports that 1,082 animals were redeemed or adopted from the City. Although data were not available for this study, some of these adoptions took place at adoption fairs, which did not require the Department's customers to visit the shelter. Therefore, one can conservatively estimate that less than 1.5 percent of City residents were required to conduct business at the shelter in that year. Spending significant funds for the benefit of relatively few residents would need to be weighed closely by City officials if the decision is to proceed with this alternative.

Further, even if such a facility were to be constructed within the City, officials would still be faced with the question of whether it is appropriate to staff animal services operations with such a high use of Work Release and volunteer workers. It is our opinion that the City presently relies excessively on this free and volunteer workforce to provide services to its residents. Lastly, as discussed in Section 1 of this report, without an appropriately staffed, stable workforce to provide services from the shelter, hours of operation can be unreliable and customer service can be compromised. Relying on Work Release Program participants to provide basic animal care and maintain facility cleanliness sacrifices standards of care for animals, as expressed by City employees and interested citizens during this study, and would likely cause a more rapid deterioration of any new facility that the City may wish to build.

We therefore have prepared the following table that generally compares the current level of services with enhanced services that would be provided from a new facility, as recommended in Section 1 of this report.

Table 2.1

Comparison of In-House Animal Services Alternatives

Evaluative Criteria	City Operated Current Service	City Operated Enhanced Service
1. Level of Service	1	5
2. Shelter Convenience	3	5
3. Operating Economies	5	1
Average Score	9	11

As shown, level of service differences between the two alternatives are significant. The current level of service is very low when compared with prevailing practice in the region and the enhanced levels we have recommended to achieve that standard. Shelter convenience has been ranked at medium, despite the location of the shelter within City boundaries, due to the condition of the existing facility, the lack of public space, reported closings during posted public hours, and difficulties reported by Animal Services Attendants when attempting to assist customers during busy periods. While the Current Service is the most economical of the alternatives being presented in this report, the relatively inexpensive cost of operations is clearly offset by significant level of service considerations, the condition of the existing shelter, and other factors.

On the other hand, an enhanced City operated program in a new shelter would provide the highest level of service available to the City, in a new facility that is conveniently located for Upland residents. However, this is an expensive alternative that should be weighed carefully by the City Council as it considers other service priorities it has established for police, fire, planning and building, economic development, recreation and other major programs funded by the City. Despite the cost, of the two City-operated animal services program options presented for Upland, the enhanced level of service alternative would clearly provide the greatest benefit to residents.

Option 2: Provide animal control services with City employees, but contract with an external entity to provide shelter services

The second option would be for the City to directly provide some animal services functions in-house, while contracting with non-City organizations to provide others. Under this alternative, the City might also wish to consider reorganizing the functions that it chooses to retain so that those functions are more appropriately aligned with other related City services (for example, some jurisdictions assign dead animal pick-up services to street sanitation crews).

Animal services can be separated into three distinct categories, including animal control (State and municipal code enforcement); animal care (shelter operations); and, sanitation (principally, dead animal collection and disposal). Under the organization of services in some cities, the animal control function is assigned to the police department or a code enforcement unit; dead animal collection and disposal is assigned to a public works sanitation department; and, shelter operations are provided by a non-city contract organization. When shelter services are provided by contract, the shelter may be owned by the jurisdiction or by the service provider.

An alternative to obtaining shelter services by contract had not been presented to the City of Upland at the time of this study. IVHS presently provides shelter services for Glendora, while that City directly provides its own animal control and sanitation functions. Such an arrangement could potentially be negotiated between IVHS and Upland. However, while the cost of shelter operations would likely be less than that which might be provided directly by City staff, the shelter would not be located within the City and would seemingly be less desirable to the public and City officials, based on comments made to us during interviews for this study. Further, cost savings under this alternative would not be sufficient enough to justify the added inconvenience of a remote shelter facility for the City's residents.

Under the proposal submitted but withdrawn by the Foothills Humane Society and SPCA during the course of this study, the contractor would have provided shelter services from a new City financed shelter. This would have required the City to make a significant capital contribution to the contractor without any assurance of long-term contractor viability or contractual commitment to the City. Although not meant to be a criticism of the Foothills proposal, this type of alternative would need to be reviewed closely by the City before implementation. More importantly, while that contract proposal is not being considered as part of this analysis, our initial review raised management and legal questions concerning shelter ownership responsibilities, liability for damage or injuries to contractor employees or the public, and right to facility use. These and other questions would need to be thoroughly examined by the City Attorney before the Council would decide to proceed with future proposals for a contractor operated shelter.

The following table measures these two alternatives against the standard criteria presented previously. The discussion that follows explains our rationale for scoring each one.

Table 2.2
Comparison of Split City and Contractor Operations

Evaluative Criteria	Contractor Owned and Contract Operated Shelter with Enhanced Services	City Owned but Contract Operated Shelter with Enhanced Services
1. Level of Service	5	5
2. Shelter Convenience	3	5
3. Operating Economies	3	2
Average Score	11	12

As shown, this analysis assumes that the Level of Service offered under each alternative would be equal. Animal control staffing levels would equate to those outlined in Section 1 and the contractor would be obligated to provide services at the levels defined in that section for shelter operations. Therefore, one would expect that hours of operations and capacity to serve the public would remain at the enhanced levels for both alternatives.

The two alternatives differ more significantly when considering Shelter Convenience and Operating Economies. Presently, IVHS owns the only regional shelter with the capacity to provide services for the City of Upland.³ At approximately 10 miles from the Upland city center, Shelter Convenience has a lower ranking under the contractor-owned alternative than it would have if the City constructed its own facility and contracted for shelter operations.

The Operating Economies criteria is more difficult to assess, since the City has not been presented with any proposals for contractor provided shelter services. However, a general assessment can be made based on information received from IVHS. First, under either proposal, animal control and sanitation services would be provided at the enhanced levels by City staff. Shelter services would be provided by the contractor with assumed savings, based on relative differences in salary and benefit costs for City employees vs. non-profit organization employees.

For example, our analysis of the shelter service costs under the IVHS proposal suggests that an estimated \$60,000 in annual salary and benefit cost savings could conservatively be achieved by contracting with IVHS for shelter services. This savings is likely equivalent to amounts that could be achieved from other non-profit organizations, if such organizations were available to Upland. However, this estimated savings from contracting would be more than offset by the

³ While the City of Rancho Cucamonga operates a shelter approximately five miles from the center of Upland near the Ontario Mills Shopping Center, it is not clear that Rancho Cucamonga would be interested in or has the capacity to provide shelter space or services for Upland. Accordingly, this was not considered a viable alternative for purposes of this analysis.

estimated \$132,146 per year in debt service costs if the same services were to be purchased from a contractor but provided from a new City-owned facility, and a loss in economies of scale that IVHS currently achieves by consolidating services for multiple jurisdictions at a single site.

Given identical level of service expectations and small cost savings differences between these two alternatives, shelter convenience appears to be the defining factor in this comparison. Therefore, of these two alternatives, contracting for shelter services that would be provided from a new City-owned facility would appear to provide the greatest net benefit for City residents.

Option 3: Contract with an external entity for both animal control and shelter services

The third option for the City of Upland is to contract all of its animal services to a non-city organization. By doing so, the City would eliminate its staff cost and other expenditures attributable to animal services; and, the contractor would provide all services related to the three functions of animal services, including animal control, animal care and sanitation. Instead of staffing and other direct costs, the City would pay a set contract price for services and the use of a contractor owned shelter facility.

As discussed previously in this report, the IVHS appears to provide the only viable contracting option for the City of Upland at this time. Based on information received for this study, perhaps the greatest benefit from contracting with a non-city organization would come from the significant cost savings that would occur due to contractor economies of scale and other factors that result in lower contractor cost. Given the characteristics of the IVHS proposal submitted to the City in advance of this study and experience in other jurisdictions, such savings could amount to over \$300,000 annually. In exchange for this savings, Upland residents would likely need to travel outside of the City to conduct shelter business.

During interviews for this study, concerns were raised regarding the level of service that might be provided by IVHS if the City were to contract with that organization for animal services. Principally, some of the interviewees stated that response time to calls for service were high in some instances (e.g., the collection of dead animals) and that the euthanasia rates for animals were high. Accordingly, as part of this study we collected data from IVHS and the City to compare these two basic measures of performance for the two organizations. This comparison has been integrated with the analysis of the IVHS contract, below, and should be taken into consideration when weighing the contracting option or designing a contract with IVHS.

Inland Valley Humane Society Proposed Contract and Services

The Inland Valley Humane Society is a private 501(c)(3) corporation established in 1949, with a single shelter site located in Pomona. The site sits on two acres with 84 kennels, and IVHS employs 64 full time staff and five part time staff to provide services for multiple jurisdictions, including two veterinarians, four registered and licensed veterinarian technicians, one animal

behaviorist, one adoption coordinator, and one cruelty officer. In addition, IVHS receives support from over 100 regular volunteers. Along with animal shelter functions, IVHS provides animal control functions for all but one of the jurisdictions with which it currently contracts.⁴

The Upland contract cost proposed by IVHS for all animal services would be \$445,000 per year. In addition to this yearly cost, the contract proposal includes a \$50,000 on-time “buy-in” charge payable upon contract initiation. The contract stipulates that this buy-in cost is not re-occurring and, according to IVHS, is required for capital purchases immediately required to expand services into Upland (e.g., cat cages and other equipment). The proposed contract would be for a 4.5 year term. According to the proposed contract, annual charges to the City of Upland would increase by the actual amount of the Consumer Price Index (CPI) for the San Bernardino County area, capped at 5 percent per annum.

The application of the CPI to the initial and subsequent year of operations would allow IVHS to recover its cost of inflation for labor, kennel supplies, fuel and other similar expenses. Over the course of a ten year period, the total cost of the contract would increase to approximately \$687,054 assuming an annual increase at the 5 percent cap. However, since these increases would be tied to the CPI, the present value cost of services would not increase.

More significantly, included in the proposed IVHS contract is a provision that would allow IVHS to collect and retain all revenues currently collected by the City. Under the proposed arrangement, the City would receive all revenue generated from code enforcement activities, such as licensing fees and fines, as a credit against contract costs. However, IVHS would retain all adoption and spay/neuter fees without crediting the contract. Over the past three years, the average annual revenue that would be credited to the City under the terms of the contract was \$106,900. However, the maximum amount collected during this period was \$131,803 in FY 2004-05, all of which would have been credited to the City’s contract cost in that year.

Assuming the \$106,900 in average annual revenues would be available to directly offset the cost of IVHS service charges, the net cost to the City would be \$338,100 per year. However, IVHS would also collect and retain approximately \$40,780 in adoption and spay/neuter fees, but would not credit these revenues against the contract cost. Therefore, this revenue loss would represent an additional cost to the City. Accordingly, the net contract cost of \$338,100, described above, would need to be increased to a total of approximately \$378,880 to recognize this revenue loss. This compares to a net cost of \$693,086 if the City were to provide enhanced levels of services with City staff in a new shelter and retain 100 percent of animal services revenue. On a net cost basis, therefore, the proposed contract would save the City approximately \$314,206 per year. This analysis is presented in the table, below.

⁴ IVHS provides animal care services, only, to the City of Glendora.

Table 2.3

**Comparison of Net City Costs of Operations
In-House and IVHS Contract Animal Services**

Source of Services	Direct City Cost	Revenue Loss	Gross City Cost	Revenue Credit	Net City Cost
City Staff	840,766	-	840,766	(147,680)	693,086
IVHS Contract*	445,000	40,780	485,780	(106,900)	378,880
Difference	395,766	(40,780)	354,986	(40,780)	314,206

* Excludes \$50,000 one-time start-up cost.

Comparison of IVHS and City Performance

As previously noted, the level of service that can be obtained through a contract is a critical factor when deciding whether to contract animal services with a non-city organization. One necessary measure of performance would be the amount of time that elapses between a call for service and the responsible organization's response to that call. While IVHS uses suitable controls to ensure some data reliability in this area, the City does not maintain records or routinely produce data that is either reliable or easily measured for comparison with IVHS. Although attempts were made to analyze this data as part of this study, we determined that response times comparisons could not be reliably made. Therefore, no comparison of response times has been included in this report.

As discussed in Section 1, the City of Upland should require that the Animal Services Department begin to record and report performance information to the City Manager, if such services are to be provided in-house. Should the City decide to contract with IVHS or any other provider for services, specific performance measures should be incorporated into the contract and contractor performance should be evaluated against the measures. Although the IVHS proposal includes basic workload measures that would be reported to the City, standard measures of performance will ensure greater contractor accountability. For example, during interviews for this study, concerns were raised about long IVHS response times for dead animal pick-up. Based on data subsequently reviewed, IVHS shows an average response time for dead animal collection of 5 hours and 2 minutes, with significantly longer times reported. The City Council should direct the City Manager to consider whether that is an acceptable level of service when developing performance measures for the contractor and then specify the City's expectations in the contract (e.g., 90 percent of all dead animal calls will be resolved within five hours).

Another measure of program success may be measured by rates of animal euthanasia and adoption. One criticism made of IVHS during interviews for this study was that IVHS has a higher rate of euthanasia and a lower rate of adoption than does the Upland animal shelter. Data

collected for this analysis shows that this criticism may have some merit. For example, as shown in Table 2.5 below, euthanasia rates are lower and adoption rates are higher for the City relative to other similarly-populated jurisdictions served by IVHS.⁵

Table 2.4
2005 Euthanasia and Adoption Rates
Upland and Similar Jurisdictions Served by IVHS¹

	Upland	Chino	Chino Hills	Ontario	Pomona	San Dimas
Dog Euthanasia Rate	8%	46%	44%	48%	50%	39%
Dog Adoption Rate	43%	14%	23%	7%	8%	21%
Cat Euthanasia Rate	40%	63%	64%	62%	68%	66%
Cat Adoption Rate	25%	3%	15%	5%	2%	11%

¹ Data is self reported by Upland Animal Services Department and IVHS, which provides services to the reporting jurisdictions. Reported rates could not be validated as part of this study.

Assuming that a City goal is to minimize euthanasia and maximize the animal adoption, a contract with IVHS should include specific measure of performance for both the euthanasia rates and adoption rates of animals. If selected to provide contract services for the City, IVHS should work collaboratively with the City Manager to improve performance in these and other areas.

One common method of providing public accountability and transparency is to hold periodic scheduled public hearings on performance. Because IVHS is a private entity, such hearings are generally not conducted by its Board of Directors. Therefore, if IVHS is chosen to provide services, the City Council could hold periodic public hearings, allowing for public comment, to both formally review IVHS performance levels in accordance with the contractually-set standards, and to hear specific public thoughts on level of service and other matters.

Lastly, contracting animal services would not relieve the City of its responsibility for ensuring a high level of animal services to the public. In addition to tracking performance, the City would need to regularly analyze all available data as part of a robust contract management process. Such oversight would appropriately be assigned to the City Manager's Office. In our professional opinion, assigning the responsibility to the City Manager's Office is preferable since that office is better equipped to assess contractor performance and would normally be involved with the resolution of City Council and citizen inquiries regarding service quality and responsiveness concerns.

⁵ Upland data were provided by the Animal Services Department. Data for other cities were reported by IVHS.

The table below compares a full service contract with IVHS with the alternatives of (1) a City operated Animal Services Department with enhanced services; and, (2) enhanced services for an in-house animal control function, with a City-owned but contractor operated shelter. Following the table is a comparative assessment of each alternative based on these standard criteria and the analysis included throughout this report.

Table 2.5
Comparison of Animal Services
Organizational Alternatives Available to the City of Upland

Evaluative Criteria	City Operated with Enhanced Service	City Owned but Contract Operated Shelter with Enhanced Services	Full Service Contract with Enhanced Services
1. Level of Service	5	5	5
2. Shelter Convenience	5	5	3
3. Operating Economies	1	2	5
Average Score	11	12	13

As shown, each of these alternatives would provide enhanced levels of services to Upland citizens, if designed according to the analysis included in Section 1 of this report. However, contracting with IVHS would provide a lower level of shelter convenience compared with either of the other two alternatives, since both would involve the construction and operation of a local shelter. If operating a full service program in-house or contracting with an external entity to operate a City-owned shelter, operating economies would be low (thus relative costs would be high). Significant net savings of over \$300,000 annually would be achieved by contracting for full services with IVHS, although shelter services would be located outside City boundaries.

Based on the analysis performed for this report, we believe the preferred alternative for the City of Upland is to contract with IVHS for enhanced services. The alternative would offer services at levels that would be comparable to prevailing practice in the region, with a suitable shelter within ten miles of the Upland city center, at significantly lower cost than an in-house services operating from a new shelter.

In the event the City Council decides to contract with IVHS for animal services, the City could shorten the contract term to less than the proposed 4.5 years. By negotiating a shorter contract term, the City could, in effect, create a probationary term during which time it could determine whether IVHS provides services at desirable levels. During this probationary term, the City could place estimated \$300,000 of annual savings into a reserve that could be applied toward the construction of a new shelter and restoring in-house services levels, if IVHS does not provide a

desirable level of service. These reserved funds would provide for significant funding of potential future costs. For example, at the end of a three year term, the City could apply \$987,660 in reserved funds toward a new shelter and start-up costs for a renewed animal services program. Alternatively, if IVHS services are satisfactory, the City could renew the contract with IVHS and use the accumulated reserves for other purposes.⁶

Conclusions

The City has three basic alternatives for providing animal control and shelter services in the community: (1) Provide animal control and shelter services with City employees; (2) Provide animal control services with City employees, but contract with an external entity for shelter services; or, (3) Contract with an external entity for both animal control and shelter services.

As discussed elsewhere in this report, the City would have to spend as much as \$840,766 per year for staffing, shelter construction and shelter operations and support to operate in-house animal control and shelter services at levels that would be consistent with local prevailing practice. This amount is approximately 50 percent greater than current budgeted amounts, or \$406,403 in additional costs per year.

Alternatively, the Inland Valley Humane Society (IVHS) has proposed that it could provide animal control and shelter services from its existing facility for a total annual cost of \$445,000 per year. After adjusting for certain revenue credits specified in the proposed IVHS contract, the net savings from contracting would be about \$314,116 below the amount that would be required if the City were to provide enhanced services from a new shelter.

Although the proposed contract would require City residents to travel 10 miles to Pomona to surrender or redeem animals, this inconvenience would be substantially offset by the significant cost savings to Upland taxpayers as a whole. The Council should consider that in 2006, there were only 1,082 animal redemptions and adoptions, meaning that less than 1.5 percent of the City population conducted business at the shelter during the year. Other jurisdictions have chosen to substitute the convenience of a local shelter for the substantial taxpayer savings that can be achieved by regionally consolidating services under a single provider.

Although discussions have been held with other organizations to determine if there are more attractive contracting alternatives, such opportunities appear to be limited. Given the significant cost savings from contracting with IVHS and the relatively few residents who would benefit from a local shelter, the City Council should abandon shelter construction plans and direct the City Manager to negotiate with IVHS for comprehensive animal services.

⁶ Assumes \$300,000 contributed annually with compounded interest at 4.5%.

Recommendations

The City Council should:

- 2.1 Abandon plans to construct a new animal shelter within the City;
- 2.2 Direct the City Manager to enter into negotiations with the Inland Valley Humane Society to provide animal control and animal shelter services;
- 2.3 Direct the City Manager to develop and require explicit levels of performance as part of the IVHS contract terms, which at a minimum should include those discussed in this report; and,
- 2.4 Direct the City Manager to develop contract terms that would explicitly require IVHS to publicly report to the City Council on performance levels at regular, scheduled intervals.

If the City chooses to proceed with a contract on a pilot basis, the City Council should:

- 2.5 Direct the City Manager to negotiate a shorter contract term with IVHS, from the proposed 4.5 year term to a 3.0 year term.
- 2.6 Direct the City Manager to budget \$300,000 in annual savings from contracting with IVHS, and deposit the funds into an interest bearing animal services reserve account.

Costs and Benefits

A contract with the Inland Valley Humane Society to provide animal services, would cost the City \$485,780 per year, including \$445,000 in contract costs and \$40,780 in lost revenue. This annual amount does not include a one-time buy-in cost of \$50,000 for IVHS equipment and supplies that would be required to initiate service. The estimated net cost of \$485,780 is approximately \$314,206 less than the net cost to the City if it were to provide animal services at enhanced levels, consistent with services provided in neighboring jurisdictions. When entering into the contract, the City would need to establish measures of performance and other provisions, which would enhance contractor accountability with a goal of improving services to the Upland community. Critical among these goals would be a need to achieve animal control response time targets identified by the City, lower euthanasia rates and increase adoption rates to levels comparable to those presently reported by the Animal Services Department.

Implementation of the recommendations would ensure that the Inland Valley Humane Society provides service at levels set and expected by the City Council. In addition, implementation of the recommendations will establish a means of meaningful contract oversight and public accountability. Further, Upland residents will have an opportunity to voice concerns, if concerns exist, regarding the level of services received, thus providing a level of accountability that would not otherwise exist.

If the City chooses to contract with IVHS on a pilot basis and deposit annual savings into a special reserve account, the City would save \$900,000 over the three year term of the contract. An additional \$87,660 in compounded interest would be earned at the City's current investment earnings rate for the commingled fund. At the end of the three year period, the City will have accumulated significant funds that could be used toward the construction of a new shelter and start-up costs for a renewed animal services program. If IVHS services are satisfactory, the City could renew the contract with IVHS and use the accumulated reserves for other purposes.



STAFF REPORT

ITEM NO. 14.A

DATE: MARCH 23, 2015
TO: MAYOR AND CITY COUNCIL
FROM: ROD BUTLER, CITY MANAGER
PREPARED BY: CHRISTA BUHAGIAR, FINANCE MANAGER
SUBJECT: FINANCIAL REPORT FOR THE MONTH ENDING FEBRUARY 2015

RECOMMENDED ACTION

It is recommended that the City Council receive and file the Financial Report for the Month of February 2015.

GOAL STATEMENT

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

BACKGROUND

On June 30, 2014, the Finance Committee agreed to have the Financial Reports brought to the City Council on a monthly basis.

ISSUES/ANALYSIS

The current General Fund summary reflects the mid-year adjustments made and shows the effects of estimated and potential costs that may need to be covered by the 2nd settlement payment. Our largest General Fund source of revenue, property tax revenue, was distributed by the County in December. The City receipted \$4.3 million in the month of December and \$3.8 million in January. The next distribution will be made by the County in April 2015.

FISCAL IMPACTS

There are no fiscal impacts associated with this item.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

[February 2015 Financial Report](#)

City of Upland



Financial Report
February 28, 2015
Fiscal Year 2014-2015

2014-2015 SUMMARY OF CHANGES IN GENERAL FUND BALANCE

Estimated Beginning Fund Balance at 7/1/14		\$ 4,000,000
Revenues	\$ 23,999,768	
Expenditures	<u>(24,777,855)</u>	
Revenues over (under) expenditures	(778,087)	
AIG/ICRMA Settlement	4,113,756	
Settlement Transfer to Self-Insurance Fund	<u>(1,576,252)</u>	
Net Change in Fund Balances		1,759,417
Potential Transfers Out		(2,310,367)
Estimated Restatements		<u>(122,200)</u>
Fund Balance at 2/28/15		<u><u>\$ 3,326,850</u></u>

Estimated Restatement Explanations:

To write off NSF checks from prior fiscal years	\$ (122,200)
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Potential Transfer Out Explanations:

Transfer from General Fund to Animal Services Fund to close out the Animal Services Fund to the General Fund	(972,429)
Transfer from General Fund to Successor Agency Fund to cover deficit cash for continuing obligations	(1,337,938)

City of Upland
General Fund Expenditures by Department
For the Month Ended February 28, 2015

<u>Department Name</u>	<u>Annual Budget</u>	<u>YTD Expend.</u>	<u>YTD Encumb</u>	<u>Available Budget</u>	<u>Percent Utilized</u>
General Government	\$ 402,288	\$ 259,548	\$ 18,280	\$ 124,460	64.52%
Administrative Services	2,919,772	1,657,743	340,182	921,847	56.78%
Development Services	1,635,460	791,652	302,016	541,792	48.41%
Police	15,752,646	9,686,320	231,701	5,834,625	61.49%
Fire	10,530,295	6,475,828	183,036	3,871,431	61.50%
Community Services	3,543,597	2,158,204	595,204	790,189	60.90%
Public Works	5,353,572	2,892,152	504,185	1,957,235	54.02%
Transfers Out	1,043,212	856,408	-	186,804	82.09%
General Fund	\$ 41,180,842	\$ 24,777,855	\$ 2,174,604	\$ 14,228,383	60.17%
Settlement Transfer Out	\$ 1,576,252	\$ 1,576,252	\$ -	-	100.00%

City of Upland
General Fund Major Revenue Trends
For the Month Ended February 28, 2015

<u>Major Revenue Accounts</u>	<u>Year-To-Date Actuals</u>		<u>Adjusted Budget</u>	<u>Year-to-Date</u>	<u>Realized</u>
	<u>2012-13</u>	<u>2013-14</u>	<u>2014-15</u>	<u>2014-15</u>	
Property Tax	\$ 17,035,892	\$ 17,171,646	\$ 17,818,570	\$ 9,974,407	56.0% A
Sales & Use Tax	10,167,479	10,494,630	11,974,650	6,466,523	54.0%
Business License Tax	814,383	850,011	808,630	629,362	77.8%
Other Taxes	538,146	569,813	532,310	359,700	67.6%
Franchise Tax	1,236,293	1,104,931	1,261,020	408,140	32.4%
Licenses & Permits	586,813	770,058	714,708	496,122	69.4%
Revenue from Other Governments	1,072,115	1,453,364	1,347,091	1,385,843	102.9%
Charges for Services	3,637,898	4,251,288	4,142,769	2,428,692	58.6%
Fines & Forfeitures	500,389	530,954	477,552	333,523	69.8%
Use of Money & Property	487,818	553,367	508,991	351,169	69.0%
Other Revenue	1,919,493	1,584,074	1,585,626	1,166,287	73.6%
Transfers In	1,875,405	1,807,850	-	-	100.0%
Total General Fund Revenues	\$ 39,872,124	\$ 41,141,986	\$ 41,171,917	\$ 23,999,768	58.3%

AIG/ICRMA Settlement

1,576,256 \$ 4,113,756

A - The next large payments are usually received in April and May.

City of Upland
Statement of Revenues & Expenditures
For the Month Ended February 28, 2015

						% of Year	67%
Current Year Activity							
<u>Fund Title</u>	<u>Fund No.</u>	<u>Budgeted Revenue</u>	<u>YTD Revenues</u>	<u>% Realized</u>	<u>Budgeted Expenditures</u>	<u>YTD Expenditures</u>	<u>% Expended</u>
General Fund	101	\$ 41,171,917	\$ 28,113,524	68.3%	\$ 41,180,842	\$ 24,777,855	60.2%
Housing Fund	201	3,034,300	1,094,180	36.1%	5,060,264	962,862	19.0%
Public Safety Augmentation Fund	203	725,000	475,782	65.6%	725,000	488,068	67.3%
Gas Tax Fund	204	1,967,305	1,062,795	54.0%	3,980,663	121,743	3.1%
Measure I	205	1,001,000	612,124	61.2%	2,135,263	38,058	1.8%
Sanitary Sewer	207	-	539,779	0.0%	-	-	0.0%
HOME	208	775,000	366,581	47.3%	992,500	1,500	0.2%
Community Development Block Grant	209	663,224	139,304	21.0%	663,224	198,191	29.9%
Parking Improvement District Area	210	33,000	20,974	63.6%	48,982	43,228	88.3%
Air Quality Management District	211	92,000	23,534	25.6%	150,507	16,744	11.1%
Homeland Security Grants - PD	214	34,391	34,391	100.0%	-	-	0.0%
Proposition 30	215	75,920	110,550	145.6%	102,201	96,440	94.4%
COPS	216	119,000	74,589	62.7%	202,450	2,158	1.1%
Other Grants	217	3,500	3,507	100.2%	3,500	3,597	102.8%
Office of Traffic Safety Grants	218	135,825	49,993	36.8%	131,672	76,181	57.9%
JAG Grant	219	10,960	11,002	100.4%	10,960	6,314	57.6%
Asset Forfeiture	220	14,048	375	2.7%	20,766	14,095	67.9%
Homeland Security Grants - Fire	221	312,109	-	0.0%	312,109	13,716	4.4%
Cal HOME	222	1,000,000	177,976	17.8%	1,000,000	103,000	10.3%
Financing Authority	301	270,500	266,728	98.6%	270,500	266,750	98.6%
General Development	420	858,725	84,866	9.9%	733,532	102,111	13.9%
Park Acquisition & Development	421	503,000	364,969	72.6%	472,245	8,930	1.9%
Storm Drain Development	422	768,617	123,433	16.1%	451,748	-	0.0%
Street & Traffic Facility Development	423	667,000	66,975	10.0%	150,000	-	0.0%
Street & Alley Repairs - Burrtec	426	200,000	100,002	50.0%	-	-	0.0%
Water Utility	640	19,981,240	13,790,877	69.0%	26,087,936	11,580,312	44.4%
Solid Waste Utility	641	10,167,473	6,437,376	63.3%	10,343,435	5,328,703	51.5%
Sewer Utility	645	7,294,050	5,023,362	68.9%	9,099,418	2,959,203	32.5%
Animal Services	647	930,128	732,950	78.8%	993,930	626,882	63.1%
Self-Funded Liability	751	5,211,401	4,019,690	77.1%	3,635,149	2,620,025	72.1%
Fleet Management	752	683,894	475,068	69.5%	688,035	424,435	61.7%
Information Systems	753	2,026,815	770,869	38.0%	2,034,765	526,012	25.9%
Building Maint & Operations	754	608,461	406,915	66.9%	608,461	319,731	52.5%
Successor Agency	970	3,132,333	30,715	1.0%	1,826,423	853,888	46.8%
		\$ 104,472,136	\$ 65,605,755	62.80%	\$ 114,116,480	\$ 52,580,732	46.08%