



UPLAND CITY COUNCIL

AGENDA

**May 11, 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, CITY ATTORNEY**

*** * * * ***
6:00 PM - Closed Session

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

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

4. CLOSED SESSION

A. There are no Closed Session items.

*** * * * ***
7:00 PM

5. INVOCATION

Sohelia Azizi, Baha'i Faith of Upland

6. PLEDGE OF ALLEGIANCE

7. PRESENTATIONS

Proclamation declaring April 25, 2015 as Community Day of Service, accepted by the Upland Community Service Council

Proclamation declaring May 17 - 23, 2015, as Public Works Week, accepted by Public Works Director Rosemary Hoerning

Proclamation declaring May 2015 as Upland Pet Adoption Month, accepted by Animal Services Supervisor Jon Knowlton

Proclamation designating Upland as a Purple Heart City, accepted by Commander John Melendrez of Chapter 2929 Military Order of the Purple Heart

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 April 22, 2015 in the amount of \$1,725,503.97; April 30, 2015 in the amount of \$244,042.72 and Payroll Registers dated April 30, 2015 in the amount of \$654,729.63. (Staff Person: Stephanie Mendenhall)

C. APPROVAL OF MINUTES

Approve the Special and Regular Meeting Minutes of April 27, 2015. (Staff Person: Stephanie Mendenhall)

D. EMERGENCY REPLACEMENT OF PLANT NO. 4 SWITCHGEAR

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

E. APPROVAL OF FINAL TRACT MAP 18697 LOCATED AT THE NORTHEAST CORNER OF 8TH STREET AND SULTANA AVENUE

Approve Final Tract Map 18697; authorize the City Manager to execute the Subdivision Improvement Agreement with William Lyon Homes, Inc.; and accept the Faithful Performance Bond in the amount of \$2,841,000 and Labor and Materials Bond in the amount of \$1,421,000. (Staff Person: Rosemary Hoerning)

F. APPROVAL OF FINAL TRACT MAP 18951 LOCATED AT THE SOUTHEAST CORNER OF CENTRAL AVENUE AND 11TH STREET

Approve Final Tract Map 18951; authorize the City Manager to execute the Subdivision Improvement Agreement with Upland Central, LLC; and accept the Faithful Performance Bond in the amount of \$1,485,000 and Labor and Materials Bond in the amount of \$743,000. (Staff Person: Rosemary Hoerning)

G. ACTIVE TRANSPORTATION PROGRAM (ATP) GRANT PARTNERSHIP

Adopt a Resolution authorizing participation with the City of Ontario for Cycle 2 Active Participation Program funding to construct bicycle improvements on San Antonio Avenue; and authorize the City Manager to execute documents. (Staff Person: Rosemary Hoerning)

H. REVIEW OF THE POLICIES AND PROCEDURES RELATIVE TO ESTABLISH AND OPERATE COMMISSIONS, COMMITTEES, BOARDS AND AUTHORITIES

Adopt a Resolution amending the policies and procedures relative to the establishment and operation of commissions, committees, boards and authorities appointed to advise the City Council. (Staff Person: Richard L. Adams, II)

11. PUBLIC HEARINGS

A. FY 2015-19 CONSOLIDATED PLAN AND FY 2015-16 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ONE-YEAR ACTION PLAN

The City Council will consider the use of Community Development Block Grant funds in the City's five-year Consolidated Plan (2015-19), and a one year Action Plan FY 2015-16. (Staff Person: Liz Chavez)

Recommendation: a) Staff presentation
 b) Hold Public Hearing
 c) Close Public Hearing
 d) Adopt a Resolution approving the City of Upland Consolidated Plan for Fiscal Years 2015-19 and One-Year Action Plan for Fiscal Year 2015-16; and authorize the City Manager to execute any and all necessary and related documents to implement the FY 2015-16 Plan

B. VACATION OF 17-FOOT STRIP ALONG 8TH STREET (FROM NORTHEAST CORNER OF SULTANA AVENUE AND 8TH STREET TO APPROXIMATELY 643 FEET EASTERLY)

The City Council will consider Street Vacation SV-15-01 vacating a 17 foot strip along 8th street (from the northeast corner of Sultana Avenue and 8th Street to approximately 643 feet east). (Staff Person: Rosemary Hoerning)

Recommendation: a) Staff presentation
 b) Hold Public Hearing
 c) Close Public Hearing
 d) Adopt a Resolution declaring an order to vacate a 17 foot strip, along the entire width of the property frontage on 8th

Street (from northeast corner of 8th Street & Sultana Avenue to approximately 643 feet easterly)

12. COUNCIL COMMITTEE REPORTS

- A. FINANCE AND ECONOMIC DEVELOPMENT COMMITTEE MEETING, MAY 4, 2015

13. BUSINESS ITEMS

- A. MUNICIPAL CODE AMENDMENT TO CHAPTERS 1 AND 5 RELATED TO THE ABATEMENT OF NUISANCES AND RECOVERY OF FEES AND COSTS ASSOCIATED THEREWITH, DECLARATION AGAINST OPERATION OF ILLEGAL BUSINESSES AND THE ISSUANCE OF ADMINISTRATIVE CITATIONS

Introduce for first reading by title only and waive further reading of an Ordinance amending and revising Chapters 1 and 5 of the Upland Municipal Code related to the abatement of nuisances and recovery of fees and costs associated therewith, declaration against operation of illegal businesses, and the issuance of administrative citations. (Staff Person: Richard Adams)

- B. AMENDMENT NO. 1 TO THE MOU BETWEEN THE CITIES OF UPLAND AND MONTCLAIR FOR JOINT SHARING OF FIRE DEPARTMENT COMMAND STAFF AND EXPANSION OF AUTOMATIC AND MUTUAL AID THROUGH MUTUAL AGREEMENT TO VACATE SERVICE BOUNDARIES

Approve Amendment No. 1 to the Memorandum of Understanding between the cities of Upland and Montclair for joint sharing of Fire Department Command Staff and expansion of automatic and mutual aid through mutual agreement to vacate service boundaries. (Staff Person: Rick Mayhew)

- C. CONSIDER ADOPTION OF RESOLUTION IDENTIFYING THE TERMS AND CONDITIONS FOR FIRE DEPARTMENT RESPONSE AWAY FROM THEIR OFFICIAL DUTY STATION AND ASSIGNED TO AN EMERGENCY INCIDENT

Adopt a Resolution identifying the terms and conditions for Fire Department response away from their official duty station and assigned to an emergency incident. (Staff Person: Rick Mayhew)

14. CITY MANAGER

- A. UPDATE ON POLICE DEPARTMENT STAFFING ANALYSIS

15. COUNCIL COMMUNICATIONS

16. ADJOURNMENT

The next regularly scheduled City Council meeting is Tuesday, May 26, 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 May 7, 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).

**MINUTES OF A SPECIAL MEETING OF THE
UPLAND CITY COUNCIL
APRIL 27, 2015**

1. OPENING

The special meeting was called to order by Mayor Musser at 5:30 p.m. in the City Hall Council Chambers.

2. ROLL CALL

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

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

3. OATH OF OFFICE AND CEREMONIAL PRESENTATION OF POLICE CHIEF BRIAN JOHNSON

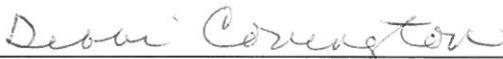
Administrative Services Director/City Clerk Mendenhall administered the Oath of Office to Police Chief Brian Johnson as the 11th Upland Police Chief. Police Chief Johnson then made comments.

4. ORAL COMMUNICATIONS None

5. ADJOURNMENT

Mayor Musser adjourned the meeting at 5:43 p.m. The next regularly scheduled City Council meeting is Monday, April 27, 2015 at 6:00 p.m.

SUBMITTED BY:



Debbi Covington, Deputy City Clerk

APPROVED:

May 11, 2015

**MINUTES OF THE REGULAR MEETING OF THE
UPLAND CITY COUNCIL
APRIL 27, 2015**

OPENING

The regular meeting of the Upland City Council was called to order by Mayor Ray Musser at 6:00 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, 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 6:01 p.m. Mayor Musser announced the City Council would recess to Closed Session pursuant to Government Code Section

A. 54957.6 - CONFERENCE WITH LABOR NEGOTIATORS

Agency designated representatives: Consultant Patrick Clark, Administrative Services Director Stephanie Mendenhall, Human Resources Manager Tanya Bragg, and Interim Finance Manager Scott Williams

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

B. 54956.9 - CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

(Paragraph (1) of Subdivision (d) of Section 54956.9)
Case Name: California Cannabis Coalition, et al v. City of Upland, et al (Case No. CIVDS1503985)

The City Council reconvened in open session at 7:03 p.m.

5. INVOCATION Jim Thomas, Church of Jesus Latter-day Saints

6. PLEDGE OF ALLEGIANCE Mayor Musser

7. PRESENTATIONS

A Proclamation was accepted by Staff Analyst Janki Naik for the County of San Bernardino Children's Network declaring April 2015 as Child Abuse Prevention Month.

A Proclamation was accepted by Dave Stevens and/or Councilmember Carol Timm declaring May 2015 as Historic Preservation Month.

A Proclamation accepted by Upland Interfaith Council President Jim Thomas and Vice President Mike Ingram declaring May 7, 2015 as National Day of Prayer.

A Proclamation accepted by President Dennis Binder of NALC Branch 2168 declaring May 9, 2015 as Letter Carriers Food Drive Day.

A Proclamation accepted by Cathy Musser and Bernice Hallowell declaring May 15 and 16, 2015 as World Hunger Relief Days.

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

13. BUSINESS ITEMS

A. MUNICIPAL CODE AMENDMENT TO CHAPTERS 1 AND 5 RELATED TO THE ABATEMENT OF NUISANCES AND RECOVERY OF FEES AND COSTS ASSOCIATED THEREWITH, DECLARATION AGAINST OPERATION OF ILLEGAL BUSINESSES AND THE ISSUANCE OF ADMINISTRATIVE CITATIONS

Motion by Mayor Musser to continue this item to the May 11, 2015 City Council meeting to allow for review by the new Police Chief, seconded by Councilmember Bozar, and carried unanimously.

8. CITY ATTORNEY

City Attorney Adams announced the City Council received reports and there was no reportable action during Closed Session.

9. ORAL COMMUNICATIONS

Keith Calvert, Upland, felt that privatization of the City's water is a fiscal disaster and should go for a vote before the citizens.

Dave Stevens, Upland, announced upcoming Cooper Museum events: May 9, 2015 Founder Day and open mike in the evening; May 16, 2015 Marines Toys for Classic Car Show and Toy Drive; and May 30th Revisiting the Roy Orbison Years.

Marilyn Mills, Upland, stated her disapproval of the Upland General Plan Update and the lack of community input as it changes the character and values of Upland.

Gino Romo, Upland, announced Upland Heritage's Founders Day on May 9, 2015 from 10:00 a.m. to 4:00 p.m. in downtown Upland.

Jim Richardson, Upland, stated his support for the medical marijuana initiative on the 2016 general election ballot, felt Upland does not need a dispensary, and suggested having open public forums to be prepared for regulation if necessary.

10. CONSENT CALENDAR

Motion by Councilmember Filippi to approve the remainder of the Consent Calendar, seconded by Councilmember Bozar, 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 April 8, 2015 in the amount of \$832,667.88; and Payroll Registers dated April 16, 2015 in the amounts of \$589,296.11 and \$3,176.23.

C. APPROVAL OF MINUTES

Approved the Regular Meeting Minutes of April 13, 2015.

D. EMERGENCY REPLACEMENT OF PLANT NO. 4 SWITCHGEAR

Received and filed status update.

E. DONATION OF FLAMMABLE LIQUID AND GAS TRAILER

Declared the Upland Fire Department Flammable Liquid & Gas Trailer as surplus equipment, as per UMC 2.48.150(D), and approved the donation of the Trailer to Mt. San Antonio College Fire Academy.

11. PUBLIC HEARINGS None

12. COUNCIL COMMITTEE REPORTS None

14. CITY MANAGER

A. FINANCIAL REPORT FOR THE MONTH ENDING MARCH 2015

Interim Finance Manager Williams presented the staff report, which is on file in the City Clerk's Office. The City Council was provided with the Statement of Revenues & Expenditures. There was discussion on the revenues, expenditures and transfers.

Motion by Councilmember Filippi to receive and file the Financial Report for the Month of March 2015 and approve the budget transfers of \$122,245 from the Sewer Fund and \$275,000 from the General Fund to the Self-Funded Insurance Fund.

B. DISCUSSION OF CITY COMMITTEES

The City Council was in consensus that City Manager Butler take the master goals list to the City Council Advisory Committee for their input for future discussions and then bring back to the City Council for review, along with any other topics they feel should be addressed by their committee.

The City Council was also in consensus that the Mayor's committee appointment would be the chairman to the City Council Advisory, Community Development Block Grant, Street Tree Advisory, and Traffic Safety Advisory Committees. City Attorney Adams will prepare a resolution to bring back to the City Council for their consideration.

C. PROVIDE DIRECTION REGARDING DATE AND FORMAT FOR THE NEXT CITY COUNCIL GOALS WORKSHOP

The City Council felt the previous Saturday format would work best for their next workshop to provide them with an update on the goals. City Manager Butler will contact them to set up the date for either June 6, 2015 or June 13, 2015 at 9:00 a.m.

In addition, Water Conservation Specialist Taylor provided a power point, which is on file in the City Clerk's office, on the current update from the Governor's office and what the city is doing to prepare the residents for the reduction in water. Suggestions were provided to make sure that the residents are more informed of the situation.

Finally, Development Services Director Zwack provided an update on the General Plan Update, where it stands currently with the Planning Commission, and their concern in making sure that the public is informed and able to provide their input. There was a suggestion to forego one of the City Council workshops in order to provide an additional well-announced public workshop.

15. COUNCIL COMMUNICATIONS

Councilmembers announced various activities throughout the community.

16. ADJOURNMENT

Mayor Musser adjourned the meeting at 9:04 p.m. The next regularly scheduled City Council meeting is Monday, May 11, 2015.

SUBMITTED BY



Debbi Covington, Deputy City Clerk

APPROVED

May 11, 2015



STAFF REPORT

ITEM NO. 10.D

DATE: MAY 11, 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. The City is required pursuant to the Public Contracts Code to review the work every 14 days until the emergency work is completed.

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.

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.

The contractor finalized the electrical panel assembly and began installing it on May 6, 2015. The work is approximately 85% complete. Staff estimates approximately one week for field assembly followed by system testing and troubleshooting.

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.

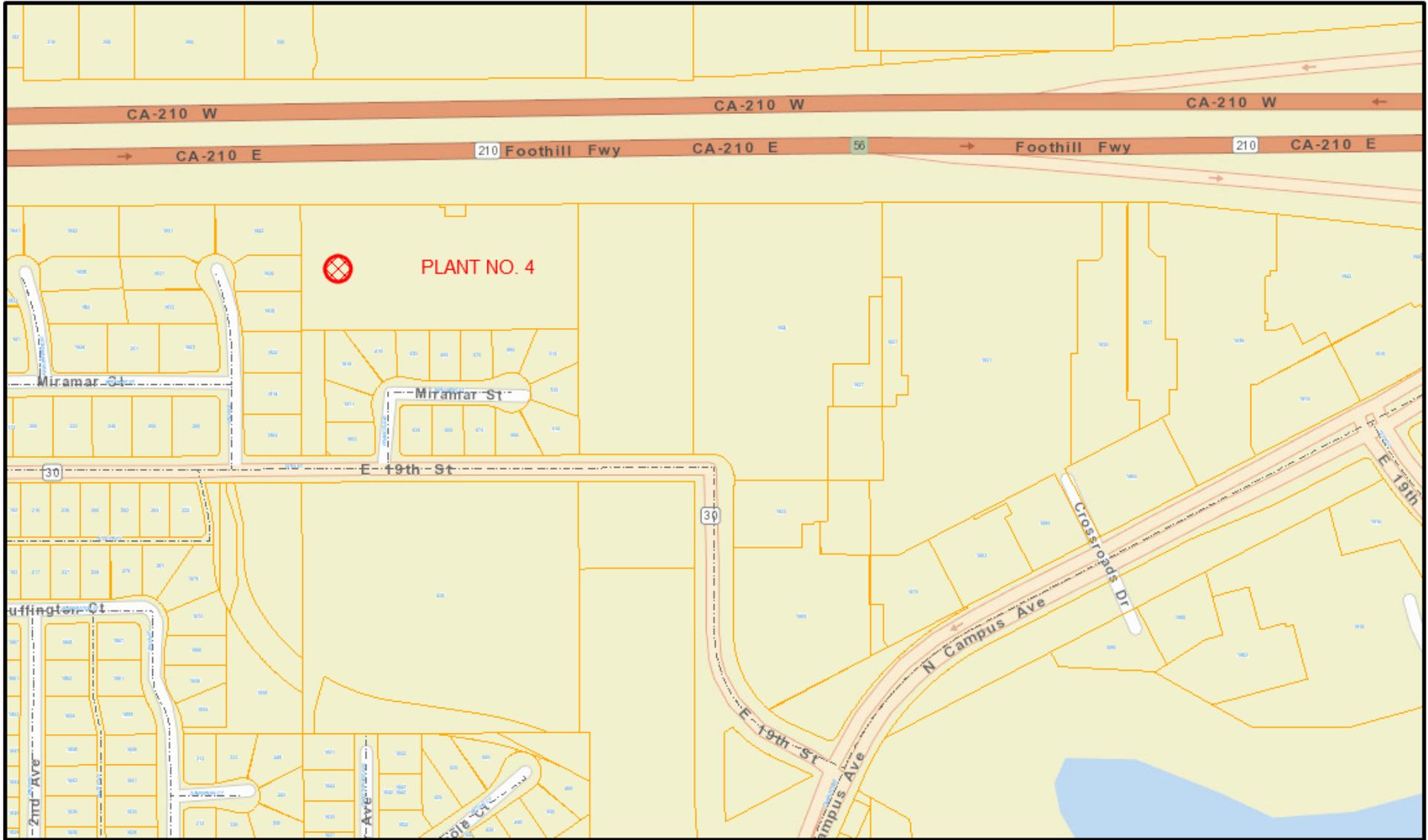
ALTERNATIVES

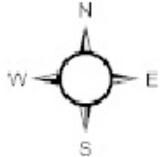
Provide alternative direction to staff.

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. 10.E

DATE: MAY 11, 2015
TO: MAYOR AND CITY COUNCIL
FROM: ROD BUTLER, CITY MANAGER
PREPARED BY: ROSEMARY HOERNING, PUBLIC WORKS DIRECTOR
PONCE YAMBOT, PRINCIPAL ENGINEER
SUBJECT: APPROVAL OF FINAL TRACT MAP 18697 LOCATED AT THE
NORTHEAST CORNER OF 8TH STREET AND SULTANA AVENUE

RECOMMENDED ACTION

It is recommended that the City Council approve Final Tract Map 18697, and authorize the City Manager to execute the Subdivision Improvement Agreement with William Lyon Homes, Inc. It is further recommended that the City Council accept the Faithful Performance Bond in the amount of \$2,841,000 and Labor and Materials Bond in the amount of \$1,421,000.

GOAL STATEMENT

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

BACKGROUND

On July 23, 2014, the Planning Commission approved Tentative Tract Map 18697, merging three parcels for the purpose of creating a total of 203 residential units which consist of attached row townhomes and condominiums. The development is generally located on the northeast corner of 8th Street and Sultana Avenue. As conditioned, the project is required to provide improvements in the public right-of-way, including, streets, sewer, water, storm drain, paving, curbs and gutters, curb ramps, sidewalks, and undergrounding utilities. Additionally, the project is required to provide on-site easement for public utilities. The applicant has since prepared and submitted the final map to the City, along with the Subdivision Improvement Agreement and surety bonds.

In accordance with the State's Subdivision Map Act and the Upland Municipal Code, the City has examined the final map as to sufficiency and correctness of information, and consequently endorsed its approval. The Subdivision Improvement Agreement documents, the terms and conditions of the required improvements and the bonds provide for assurances that the improvements will be satisfactorily constructed.

ISSUES/ANALYSIS

The final map has been reviewed and determined to be acceptable. The Subdivision Improvement Agreement and bonds are found to be acceptable to ensure completion of the required improvements. Pursuant to the Subdivision Map Act, the City Council can now approve the final

map, authorize the execution of the Subdivision Improvement Agreement, and accept the surety bonds.

FISCAL IMPACTS

There are no fiscal impacts related to the actions.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

[Subdivision Agreement](#)

[TM 18697 - Bonds](#)

[TM 18697 - Receipt](#)

[TM 18697 - Engineer's Cost Estimate](#)

SUBDIVISION AGREEMENT

Tract Map Number 18697

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

A. Recitals

- (i) The City approved a Tentative Tract Map pursuant to the California Subdivision Map Act as set forth in California Government Code Section 66410 et. seq. ("Map Act") identified as Tentative Tract Number 18697 in the City of Upland, State of California; and
- (ii) Subdivider seeks approval of a Final Map under the Map Act identified as Final Map Number 18697

B. Agreement

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

1. In consideration of the City's approval of and filing Tentative Subdivision Tract Map Number 18697 and Final Tract Number 18697, Subdivider undertakes and agrees that it will, at Subdivider's sole cost and expense, design, construct and install all the improvements in accordance with the plans, specifications on file with the City, incorporated herein and made a part hereof, and including all conditions of approval required by the Planning Commission and City Council of the City of Upland.
2. Subdivider also undertakes and agrees upon the same consideration to design, construct and install all improvements in accordance with the ordinances and regulations of the City, and to do all other and further acts required of it pursuant to this Agreement.
3. Subdivider agrees in connection therewith to pay or cause to be paid all amounts becoming due to contractors, subcontractors, and persons renting equipment or furnishing labor or materials to the foregoing Final Tract with respect to such improvements.
4. Subdivider agrees that all such improvements shall be constructed and completed in accordance with the city standards required by the City Engineer. In case of dispute, the good faith judgment of the City Engineer shall be final and binding upon the parties.
5. Subdivider undertakes and agrees that all of the work of improvement shall be completed within three hundred sixty five (365) days from the date of execution of this Agreement.
6. Should Subdivider fail to comply with any of the terms or provisions of this Agreement, Subdivider shall be liable to the City for the reasonable value of any work or improvements not completed or improperly done or performed. In the event of any such failure, the City shall give to Subdivider written notice thereof. Unless the work or improvements covered by said notice, including defective work and improvements, are commenced by Subdivider within fifteen (15) days of the date of said notice and diligently prosecuted to completion, the City may at its option:

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

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

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

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

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

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

(a) A bond in the amount of \$ 2,841,000.00 guaranteeing full performance of all the terms of this Agreement, see Performance Bond No. PB03010401782 ;

(b) A bond in the amount of \$ 1,421,000.00 securing payment to the contractor, his subcontractor and to persons renting equipment or furnishing labor or materials to them with respect to said public improvements, see Labor and Materials Bond No. PB03010401782 ;

(c) A cash deposit in the amount of \$ 5,600.00 securing the setting of monuments.

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

10. As a condition precedent to the acceptance of the improvements hereunder as being complete and prior to the release of any bonds required under paragraph 8, hereof, securing the faithful performance of Subdivider's obligations hereunder, Subdivider shall give a bond with a corporate bonding company or similar instrument, satisfactory to the City in the amount of \$ 284,100.00 as guarantee and warranty of the work for a one (1) year period following the completion and acceptance thereof against any defective work or labor done, or defective materials furnished.

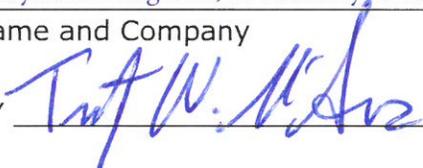
11. Except as to the sole and exclusive negligence of City, its elected officials, officers agents and employees, Subdivider hereby agrees to indemnify, defend and hold harmless, the City, its elected officials, officers, agents and employees from and against any and all claims, demands, suits, actions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

12. All notices to Subdivider may be sent to 1265 Corona Pointe Court, Suite 105, Corona, California, 92879 or at such other address of which the City shall actually receive notice in writing specifically calling attention to this Agreement.

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

BY  _____

Bryan A. Bergeron, William Lyon Homes, Inc.
Name and Company

BY  _____

Timothy W. McSunas, William Lyon Homes, Inc.
Name and Company

CITY OF UPLAND, a municipal Corporation

BY _____
Rod Butler, City Manager

BY _____
Stephanie Mendenhall, City Clerk



PHILADELPHIA INSURANCE COMPANIES

A Member of the Tokio Marine Group

Subdivision Bond
Faithful Performance

Bond No. PB03010401852
Premium \$14,205.00 / Annually

SUBDIVISION BOND

KNOW ALL MEN BY THESE PRESENTS: That William Lyon Homes, Inc. as Principal, and Philadelphia Indemnity Insurance Company, a corporation organized and existing under the laws of the State of Pennsylvania and authorized to transact surety business in the State of California, as Surety are held and firmly bound unto City of Upland in the sum of Two Million Eight Hundred Forty One Thousand and No/100 Dollars. (\$2,841,000.00), for the payment whereof, well and truly to be made, said Principal and Surety bind themselves, their heirs, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE OBLIGATION IS SUCH THAT:

WHEREAS the above Named Principal has entered into an agreement, dated 1/19, 2015, with the City of Upland to do and perform the following work, to wit:

Improvements for Orchards Tract 18697

NOW, THEREFORE, if the above-bounden Principal shall well and truly perform the work referred to in such agreement, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the seal and signature of said Principal is hereto affixed and the corporate seal and the name of the said Surety is hereto affixed and attested by its duly authorized Attorney in Fact at Irvine, California this 16th day of January, 2015.

William Lyon Homes, Inc.
(Principal) (Seal)

By: 

Bryan A. Bergeron
Project Manager
Philadelphia Indemnity Insurance Company
(Surety) (Seal)

By: 
_____ Michelle Haase, Attorney-In-Fact

ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

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

State of California }

County of Orange }

On JAN 16 2015 before me, M. Barreras,
(Here insert name and title of the officer)

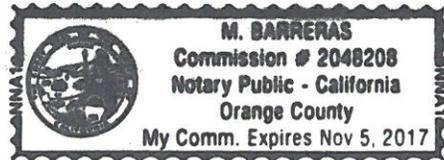
personally appeared Michelle Haase,
who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that
~~he~~/~~she~~/~~they~~ executed the same in ~~his~~/~~her~~/~~their~~ authorized capacity(~~ies~~) and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

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

M. Barreras
Notary Public Signature

(Notary Public Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
- Corporate Officer
- _____ (Title)
- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he~~/~~she~~/~~they~~ is /~~are~~) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
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 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA)
) SS.
COUNTY OF RIVERSIDE)

On January 19, 2015 before me, Marilyn Rainwater, Notary Public, personally appeared, Bryan A. Bergeron ----- who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official Seal.



Signature Marilyn Rainwater
Marilyn Rainwater, Notary Public

(Seal)

PHILADELPHIA INDEMNITY INSURANCE COMPANY

231 St. Asaph's Rd., Suite 100
Bala Cynwyd, PA 19004-0950

Power of Attorney

KNOW ALL PERSONS BY THESE PRESENTS: that PHILADELPHIA INDEMNITY INSURANCE COMPANY (the Company), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, does hereby constitute and appoint: JANINA MONROE, THOMAS G. MCCALL, TIMOTHY J. NOONAN AND MICHELLE HAASE OF LOCKTON COMPANIES, LLC

Its true and lawful Attorney(s) in fact with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business and to bind the Company thereby, in an amount not to exceed **\$25,000,000.00**

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of PHILADELPHIA INDEMNITY INSURANCE COMPANY at a meeting duly called the 1st day of July, 2011.

RESOLVED: That the Board of Directors hereby authorizes the President or any Vice President of the Company to: (1) Appoint Attorney(s) in Fact and authorize the Attorney(s) in Fact to execute on behalf of the Company bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof and to attach the seal of the Company thereto; and (2) to remove, at any time, any such Attorney-in-Fact and revoke the authority given. And, be it

FURTHER RESOLVED: That the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney or certificate relating thereto by facsimile, and any such Power of Attorney so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with the respect to any bond or undertaking to which it is attached.

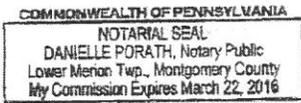
IN TESTIMONY WHEREOF, PHILADELPHIA INDEMNITY INSURANCE COMPANY HAS CAUSED THIS INSTRUMENT TO BE SIGNED AND ITS CORPORATE SEAL TO BE AFFIXED BY ITS AUTHORIZED OFFICE THIS 7TH DAY OF FEBRUARY 2013.



(Seal)

Robert D. O'Leary Jr., President & CEO
Philadelphia Indemnity Insurance Company

On this 7th day of February 2013, before me came the individual who executed the preceding instrument, to me personally known, and being by me duly sworn said that he is the therein described and authorized officer of the PHILADELPHIA INDEMNITY INSURANCE COMPANY; that the seal affixed to said instrument is the Corporate seal of said Company; that the said Corporate Seal and his signature were duly affixed.



Notary Public:

residing at: Bala Cynwyd, PA

(Notary Seal)

My commission expires: March 22, 2016

I, Craig P. Keller, Executive Vice President, Chief Financial Officer and Secretary of PHILADELPHIA INDEMNITY INSURANCE COMPANY, do hereby certify that the foregoing resolution of the Board of Directors and this Power of Attorney issued pursuant thereto are true and correct and are still in full force and effect. I do further certify that Robert D. O'Leary Jr., who executed the Power of Attorney as President, was on the date of execution of the attached Power of Attorney the duly elected President of PHILADELPHIA INDEMNITY INSURANCE COMPANY.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this JAN 16 2015 day of 20



Craig P. Keller, Executive Vice President, Chief Financial Officer & Secretary
PHILADELPHIA INDEMNITY INSURANCE COMPANY



Subdivision Bond
Labor & Material

Bond No. PB03010401852
Premium included in Performance Bond

SUBDIVISION BOND

KNOW ALL MEN BY THESE PRESENTS: That William Lyon Homes, Inc., as Principal, and Philadelphia Indemnity Insurance Company, a corporation organized and existing under the laws of the State of Pennsylvania and authorized to transact surety business in the State of California, as Surety are held and firmly bound unto City of Upland in the sum of One Million Four Hundred Twenty One Thousand and no 00/100 Dollars (\$1,421,000.00), for the payment whereof, well and truly to be made, said Principal and Surety bind themselves, their heirs, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that, whereas the above-bounden Principal has entered into a contract, dated 1/19, 2015, with the City of Upland to do and perform the following work, to wit:

Improvements for Orchards Tract 18697

NOW, THEREFORE, if the above-bounden Principal shall pay all contractors, subcontractors, laborers, materialmen and other persons employed in the performance of the aforesaid contract, then this obligation shall be void; otherwise to remain in full force and effect.

SIGNED, SEALED, DATED: January 16, 2015

William Lyon Homes, Inc.
(Principal) (Seal)

By: 
Bryan A. Bergeron
Project Manager

Philadelphia Indemnity Insurance Company
(Surety) (Seal)

By: 
Michelle Haase, Attorney-In-Fact

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State of California }

County of Orange }

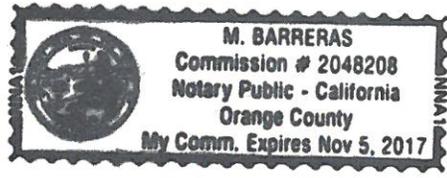
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(Here insert name and title of the officer)

personally appeared Michelle Haase
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M. Barreras
Notary Public Signature



(Notary Public Seal)

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Signature Marilyn Rainwater
Marilyn Rainwater, Notary Public

(Seal)

PHILADELPHIA INDEMNITY INSURANCE COMPANY

231 St. Asaph's Rd., Suite 100
Bala Cynwyd, PA 19004-0950

Power of Attorney

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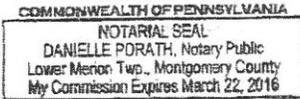
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(Seal)

Robert D. O'Leary Jr., President & CEO
Philadelphia Indemnity Insurance Company

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Notary Public:

residing at:

Bala Cynwyd, PA

(Notary Seal)

My commission expires:

March 22, 2016

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In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this JAN 16 2013 day of 20


Craig P. Keller, Executive Vice President, Chief Financial Officer & Secretary
PHILADELPHIA INDEMNITY INSURANCE COMPANY



CITY OF UPLAND
PUBLIC WORKS DEPARTMENT

Finance Stamp Here
PAID
JAN 21 2015
City of Upland
Finance Division

Receipt Number: 4812
Date: 1/21/15

Received From: UPLAND SULTANA OWNER, LLC

Project Location: SULTANA + 8th ST Project No: TM 18097

Table with 9 columns: Title, Fee, # Sht, Total, Title, Fee, # Sht, Total. Lists various project items like Map, Bond Agm't, Street Plan, Sewer Plan, Water Plan, etc.

Standards Plan Prints Copies Scanning Research

Total Above Plan Check Fees
PW Inspection Fee
Transportation Permits
Sewer Connection
Reimbursement Agm't
Sewer Facilities Expansion Fee
Water Connection Fee
Cash Deposits For Public Improvements
Surety MONUMENT
Water System (In-Lieu)
Undergrounding (In-Lieu)
Other:

Prepared by: [Signature] Grand Total \$ 5600.00
Signature Required

Applicant Cashier Receipt Book Dev Services File Other



**CITY OF UPLAND
PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION**

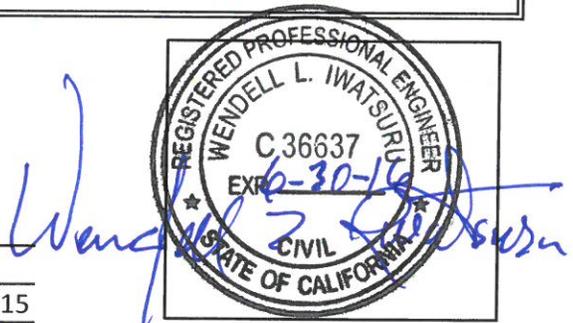
**COST ESTIMATE SUMMARY SHEET
Public Improvements**

BOND AMOUNT CALCULATION

Developer: William Lyon Homes
 Project: Orchards Tract 18697
 Location: N.E. Corner 8th & Sultana

Item Description	Estimated Cost
1 . Street Improvements	\$ 156,856.00
2 . Sewer Improvements	\$ 967,115.00
3 . Water Improvements	\$ 1,025,910.00
4 . Drainage Improvements	\$ 34,140.00
5 . Traffic Improvements	\$ -
6 . Miscellaneous	\$ 183,600.00
 Grand Total	 \$ 2,367,621.00
20% Contingency	\$ 473,524.20
Bond Amount	\$ 2,841,145.20
 Faithful Performance (100%)	 \$ 2,841,000.00
Labor and Materials (50%)	\$ 1,421,000.00
 Final Monuments (Cash Deposit required for monuments)	 \$ 5,600.00

Estimated By: Wendell Iwatsuru (RAM)
 RCE#: C36637
 Date: Jan-15



Place RCE stamp and signature

Bond amounts will be calculated by the Developer's Engineer and reviewed by the Public Works Department. Inspection fee deposits shall be paid prior to issuance of permit.

**Estimate of Cost for
Street Improvements**

Developer: William Lyon Homes

Project: Orchards Tract 18697

Location: N.E. Corner 8th & Sultana

Street Items	Quantity	Unit	Price	Amount
Roadway Excavation				\$ -
1. Projects with Grading Plan area X 0.50' (hinge point to hinge point) (_____ SF)		CY	\$ 15.00	\$ -
2. Projects without Grading Plan road area and side slopes to daylight. Cut (C) = Fill (f) =				\$ -
(a) Excavate & Fill		CY (c or f)	\$ 4.00	\$ -
(b) Excavate & Export		CY (c -f)	\$ 1.10	\$ -
PCC Curb and Gutter 6"		LF	\$ 14.00	\$ -
PCC Curb and Gutter 8"	400	LF	\$ 16.00	\$ 6,400.00
PCC Sidewalk	6820	SF	\$ 7.00	\$ 47,740.00
PCC Cross Gutter/Spandrel		SF	\$ 10.00	\$ -
PCC Curb Only 6"		LF	\$ 10.00	\$ -
PCC Curb Only 8"		LF	\$ 12.00	\$ -
Rolled Curb		LF	\$ 15.00	\$ -
PCC Pavement		SF	\$ 10.00	\$ -
Ribbon/Alley Gutter		LF	\$ 15.00	\$ -
Wheelchair Ramp (ADA Compliant)		EA	\$ 2,000.00	\$ -
Drive or Alley Approach	980	SF	\$ 10.00	\$ 9,800.00
Asphalt Concrete (144 lbs/ft ³)		TON	\$ 95.00	\$ -
AC Patch-Trench (Match Existing)	550	SF	\$ 5.00	\$ 2,750.00
Grind & AC Overlay @ 0.50 inch	8819	SF	\$ 4.00	\$ 35,276.00
Aggregate Base CL II		CY	\$ 55.00	\$ -
AC Berm		LF	\$ 14.00	\$ -
Street Lights Underground + Trench (Standard Marbelite)	5	EA	\$ 6,000.00	\$ 30,000.00
Street Lights Underground + Trench (Decorative)		EA	\$ 7,000.00	\$ -
Install Barricades		LF	\$ 110.00	\$ -
Remove Barricades		LF	\$ 10.00	\$ -
Remove AC Pavement		SF	\$ 2.00	\$ -
Remove PCC Curb	504	LF	\$ 10.00	\$ 5,040.00
Adjust Sewer Manhole to grade	1	EA	\$ 500.00	\$ 500.00
Adjust Water Valve to grade	3	EA	\$ 300.00	\$ 900.00
Sawcut	550	LF	\$ 2.00	\$ 1,100.00
Decorative Concrete		SF	\$ 12.00	\$ -
Underwalk Drain		EA	\$ 1,800.00	\$ -
Parkway Trees	21	EA	\$ 350.00	\$ 7,350.00
Parkway Landscape and Irrigation		SF	\$ 0.79	\$ -
Install Chain Link Fence		LF	\$ 16.00	\$ -
Irrigation Backflow Prevention Assembly (w/ enclosure)				\$ -
Relocate Power Pole	1	EA	\$ 10,000.00	\$ 10,000.00
Total for Street Improvements				\$ 156,856.00

By: RAM

Street Drawing Number(s): SI 14-07



STAFF REPORT

ITEM NO. 10.F

DATE: MAY 11, 2015
TO: MAYOR AND CITY COUNCIL
FROM: ROD BUTLER, CITY MANAGER
PREPARED BY: ROSEMARY HOERNING, PUBLIC WORKS DIRECTOR
PONCE YAMBOT, PRINCIPAL ENGINEER
SUBJECT: APPROVAL OF FINAL TRACT MAP 18951 LOCATED AT THE
SOUTHEAST CORNER OF CENTRAL AVENUE AND 11TH STREET

RECOMMENDED ACTION

It is recommended that the City Council approve Final Tract Map 18951, and authorize the City Manager to execute the Subdivision Improvement Agreement with Upland Central, LLC. It is further recommended that the City Council accept the Faithful Performance Bond in the amount of \$1,485,000 and Labor and Materials Bond in the amount of \$743,000.

GOAL STATEMENT

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

BACKGROUND

On June 25, 2014, the Planning Commission approved Tentative Tract Map 18951, creating a live-work development consisting of seventy-eight units. The development is generally located on the southeast corner of Central Avenue and 11th Street. As conditioned, the project is required to provide improvements in the public right-of-way, including streets, sewer, water, storm drain, paving, curbs and gutters, curb ramps, sidewalks, and undergrounding utilities. Additionally, the project is required to provide on-site easements for public utilities. The applicant has since prepared and submitted the final map to the City, along with the Subdivision Improvement Agreement and surety bonds.

In accordance with the State's Subdivision Map Act and the Upland Municipal Code, the City has examined the final map as to sufficiency and correctness of information, and consequently endorsed its approval. The Subdivision Improvement Agreement documents the terms and conditions of the required improvements and the bonds provide for assurances that the improvements will be satisfactorily constructed.

ISSUES/ANALYSIS

The final map has been reviewed and determined to be acceptable. The Subdivision Improvement Agreement and bonds are found to be acceptable to ensure completion of the required improvements. Pursuant to the Subdivision Map Act, the City Council can now approve the final

map, authorize the execution of the Subdivision Improvement Agreement, and accept the surety bonds.

FISCAL IMPACTS

There are no fiscal impacts related to the actions.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

[TM 18951 Subdivision Agreement](#)

[TM 18951 Faithful Performance Bond](#)

[TM 18951 Labor & Materials Bond](#)

[TM 18951 Monument Receipt](#)

[TM 18951 Engineer's Cost Estimate](#)

SUBDIVISION AGREEMENT

Tract Map Number 18951

THIS AGREEMENT is entered into as of this _____ day of _____ 20____ by and between Upland Central, LLC (hereinafter referred to as "Subdivider") and the CITY OF UPLAND, a municipal corporation (hereinafter referred to as the "City").

A. Recitals

- (i) The City approved a Tentative Tract Map pursuant to the California Subdivision Map Act as set forth in California Government Code Section 66410 et. seq. ("Map Act") identified as Tentative Tract Number 18951 in the City of Upland, State of California; and
- (ii) Subdivider seeks approval of a Final Map under the Map Act identified as Final Map Number 18951

B. Agreement

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

1. In consideration of the City's approval of and filing Tentative Subdivision Tract Map Number 18951 and Final Tract Number 18951, Subdivider undertakes and agrees that it will, at Subdivider's sole cost and expense, design, construct and install all the improvements in accordance with the plans, specifications on file with the City, incorporated herein and made a part hereof, and including all conditions of approval required by the Planning Commission and City Council of the City of Upland.
2. Subdivider also undertakes and agrees upon the same consideration to design, construct and install all improvements in accordance with the ordinances and regulations of the City, and to do all other and further acts required of it pursuant to this Agreement.
3. Subdivider agrees in connection therewith to pay or cause to be paid all amounts becoming due to contractors, subcontractors, and persons renting equipment or furnishing labor or materials to the foregoing Final Tract with respect to such improvements.
4. Subdivider agrees that all such improvements shall be constructed and completed in accordance with the city standards required by the City Engineer. In case of dispute, the good faith judgment of the City Engineer shall be final and binding upon the parties.
5. Subdivider undertakes and agrees that all of the work of improvement shall be completed within three hundred sixty five (365) days from the date of execution of this Agreement.
6. Should Subdivider fail to comply with any of the terms or provisions of this Agreement, Subdivider shall be liable to the City for the reasonable value of any work or improvements not completed or improperly done or performed. In the event of any such failure, the City shall give to Subdivider written notice thereof. Unless the work or improvements covered by said notice, including defective work and improvements, are commenced by Subdivider within fifteen (15) days of the date of said notice and diligently prosecuted to completion, the City may at its option:

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

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

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

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

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

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

(a) A bond in the amount of \$ 1,485,000.00 guaranteeing full performance of all the terms of this Agreement, see Performance Bond No. 0667681;

(b) A bond in the amount of \$ 743,000.00 securing payment to the contractor, his subcontractor and to persons renting equipment or furnishing labor or materials to them with respect to said public improvements, see Labor and Materials Bond No. 0667681;

(c) A cash deposit in the amount of \$ 5,000.00 securing the setting of monuments.

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

10. As a condition precedent to the acceptance of the improvements hereunder as being complete and prior to the release of any bonds required under paragraph 8, hereof, securing the faithful performance of Subdivider's obligations hereunder, Subdivider shall give a bond with a corporate bonding company or similar instrument, satisfactory to the City in the amount of \$ 148,500.00 as guarantee and warranty of the work for a one (1) year period following the completion and acceptance thereof against any defective work or labor done, or defective materials furnished.

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

12. All notices to Subdivider may be sent to Irvine, California, 92614 or at such other address of which the City shall actually receive notice in writing specifically calling attention to this Agreement.

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

Upland Central, LLC

BY  _____

Timothy A. Kane, President

Name and Company

BY _____

Name and Company

CITY OF UPLAND, a municipal Corporation

BY _____

City Manager

BY _____

City Clerk

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT
CIVIL CODE § 1189

State of California }
County of Orange }

On March 3, 2015 before me, Rose S. Gonzalez, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Timothy A. Kane
Name(s) of Signer(s)



Place Notary Seal Above

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.
Signature: Rose S. Gonzalez
Signature of Notary Public

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____

Signer Is Representing: _____

Signer Is Representing: _____



EXECUTED IN DUPLICATE

**SUBDIVISION IMPROVEMENTS
PERFORMANCE BOND**

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

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

THE CONDITION OF THE OBLIGATION IS SUCH THAT:

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

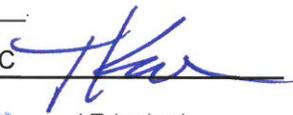
Whereas, said Principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

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

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

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

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

By: Upland Central, LLC 
Timothy Kane / Principal

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

ALL- PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

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

State of California }

County of Los Angeles }

On March 2, 2015 before me, Susan E. Morales, Notary Public
(Here insert name and title of the officer)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Susan E. Morales
 Notary Public Signature

(Notary Public Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Bond #0667681
(Title or description of attached document)

International Fidelity Insurance Company
(Title or description of attached document continued)

Number of Pages 1 Document Date 3/2/15

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
- Corporate Officer

(Title)
- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~ is /~~are~~) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

POWER OF ATTORNEY

INTERNATIONAL FIDELITY INSURANCE COMPANY ALLEGHENY CASUALTY COMPANY

ONE NEWARK CENTER, 20TH FLOOR NEWARK, NEW JERSEY 07102-5207

KNOW ALL MEN BY THESE PRESENTS: That **INTERNATIONAL FIDELITY INSURANCE COMPANY**, a corporation organized and existing under the laws of the State of New Jersey, and **ALLEGHENY CASUALTY COMPANY** a corporation organized and existing under the laws of the State of Pennsylvania, having their principal office in the City of Newark, New Jersey, do hereby constitute and appoint

SHANE WOLF, CATHY S. KENNEDY, BEATA A. SENSI, TODD M. ROHM

Orange, CA.

their true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by their regularly elected officers at their principal offices.

This Power of Attorney is executed, and may be revoked, pursuant to and by authority of the By-Laws of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY and is granted under and by authority of the following resolution adopted by the Board of Directors of INTERNATIONAL FIDELITY INSURANCE COMPANY at a meeting duly held on the 20th day of July, 2010 and by the Board of Directors of ALLEGHENY CASUALTY COMPANY at a meeting duly held on the 15th day of August, 2000:

"RESOLVED, that (1) the President, Vice President, Executive Vice President or Secretary of the Corporation shall have the power to appoint, and to revoke the appointments of, Attorneys-in-Fact or agents with power and authority as defined or limited in their respective powers of attorney, and to execute on behalf of the Corporation and affix the Corporation's seal thereto, bonds, undertakings, recognizances, contracts of indemnity and other written obligations in the nature thereof or related thereto; and (2) any such Officers of the Corporation may appoint and revoke the appointments of joint-control custodians, agents for acceptance of process, and Attorneys-in-fact with authority to execute waivers and consents on behalf of the Corporation; and (3) the signature of any such Officer of the Corporation and the Corporation's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seals when so used whether heretofore or hereafter, being hereby adopted by the Corporation as the original signature of such officer and the original seal of the Corporation, to be valid and binding upon the Corporation with the same force and effect as though manually affixed."

IN WITNESS WHEREOF, INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY have each executed and attested these presents on this 22nd day of July, 2014.



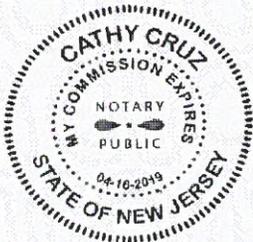
STATE OF NEW JERSEY
County of Essex

ROBERT W. MINSTER
Executive Vice President/Chief Operating Officer
(International Fidelity Insurance Company)
and President (Allegheny Casualty Company)



On this 22nd day of July 2014, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said he is the therein described and authorized officer of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY; that the seals affixed to said instrument are the Corporate Seals of said Companies; that the said Corporate Seals and his signature were duly affixed by order of the Boards of Directors of said Companies.

IN TESTIMONY WHEREOF, I have hereunto set my hand affixed my Official Seal, at the City of Newark, New Jersey the day and year first above written.



A NOTARY PUBLIC OF NEW JERSEY
My Commission Expires April 16, 2019

CERTIFICATION

I, the undersigned officer of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Sections of the By-Laws of said Companies as set forth in said Power of Attorney, with the originals on file in the home office of said companies, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand this **MAR - 2 2015** day of

MARIA BRANCO, Assistant Secretary

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT
CIVIL CODE § 1189

State of California }
County of Orange }

On March 2, 2015 before me, Rose S. Gonzalez, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Timothy Kane
Name(s) of Signer(s)

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



Place Notary Seal Above

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.
Signature: Rose S. Gonzalez
Signature of Notary Public

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

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

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____
 Corporate Officer — Title(s): _____ Corporate Officer — Title(s): _____
 Partner — Limited General Partner — Limited General
 Individual Attorney in Fact Individual Attorney in Fact
 Trustee Guardian or Conservator Trustee Guardian or Conservator
 Other: _____ Other: _____

Signer Is Representing: _____ Signer Is Representing: _____



EXECUTED IN DUPLICATE

INTERNATIONAL FIDELITY INSURANCE COMPANY
SUBDIVISION IMPROVEMENTS LABOR AND MATERIAL BOND

Bond No. 0667681
Premium included in Performance Bond

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

* & NO/100ths

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

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

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

***Three Thousand & No/100ths

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

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

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

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

Upland Central, LLC

By

[Signature of Timothy Karna]
Timothy Karna / Principal

INTERNATIONAL FIDELITY INSURANCE COMPANY

By

[Signature of Shane Wolf]
Shane Wolf / Attorney-in-Fact

ALL- PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

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

State of California }

County of Los Angeles }

On March 2, 2015 before me, Susan E. Morales, Notary Public
(Here insert name and title of the officer)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Susan E. Morales
 Notary Public Signature

(Notary Public Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Bond #0667681
(Title or description of attached document)

International Fidelity Insurance Company
(Title or description of attached document continued)

Number of Pages 1 Document Date 3/2/15

CAPACITY CLAIMED BY THE SIGNER

Individual (s)
 Corporate Officer

(Title)

Partner(s)
 Attorney-in-Fact
 Trustee(s)
 Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

POWER OF ATTORNEY

INTERNATIONAL FIDELITY INSURANCE COMPANY ALLEGHENY CASUALTY COMPANY

ONE NEWARK CENTER, 20TH FLOOR NEWARK, NEW JERSEY 07102-5207

KNOW ALL MEN BY THESE PRESENTS: That **INTERNATIONAL FIDELITY INSURANCE COMPANY**, a corporation organized and existing under the laws of the State of New Jersey, and **ALLEGHENY CASUALTY COMPANY** a corporation organized and existing under the laws of the State of Pennsylvania, having their principal office in the City of Newark, New Jersey, do hereby constitute and appoint

SHANE WOLF, CATHY S. KENNEDY, BEATA A. SENSI, TODD M. ROHM

Orange, CA.

their true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by their regularly elected officers at their principal offices.

This Power of Attorney is executed, and may be revoked, pursuant to and by authority of the By-Laws of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY and is granted under and by authority of the following resolution adopted by the Board of Directors of INTERNATIONAL FIDELITY INSURANCE COMPANY at a meeting duly held on the 20th day of July, 2010 and by the Board of Directors of ALLEGHENY CASUALTY COMPANY at a meeting duly held on the 15th day of August, 2000:

"RESOLVED, that (1) the President, Vice President, Executive Vice President or Secretary of the Corporation shall have the power to appoint, and to revoke the appointments of, Attorneys-in-Fact or agents with power and authority as defined or limited in their respective powers of attorney, and to execute on behalf of the Corporation and affix the Corporation's seal thereto, bonds, undertakings, recognizances, contracts of indemnity and other written obligations in the nature thereof or related thereto; and (2) any such Officers of the Corporation may appoint and revoke the appointments of joint-control custodians, agents for acceptance of process, and Attorneys-in-fact with authority to execute waivers and consents on behalf of the Corporation; and (3) the signature of any such Officer of the Corporation and the Corporation's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seals when so used whether heretofore or hereafter, being hereby adopted by the Corporation as the original signature of such officer and the original seal of the Corporation, to be valid and binding upon the Corporation with the same force and effect as though manually affixed."

IN WITNESS WHEREOF, INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY have each executed and attested these presents on this 22nd day of July, 2014.



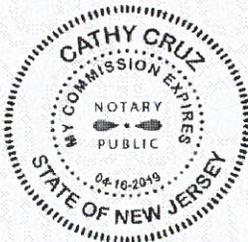
STATE OF NEW JERSEY
County of Essex

ROBERT W. MINSTER
Executive Vice President/Chief Operating Officer
(International Fidelity Insurance Company)
and President (Allegheny Casualty Company)



On this 22nd day of July 2014, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said he is the therein described and authorized officer of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY; that the seals affixed to said instrument are the Corporate Seals of said Companies; that the said Corporate Seals and his signature were duly affixed by order of the Boards of Directors of said Companies.

IN TESTIMONY WHEREOF, I have hereunto set my hand affixed my Official Seal, at the City of Newark, New Jersey the day and year first above written.



A NOTARY PUBLIC OF NEW JERSEY
My Commission Expires April 16, 2019

CERTIFICATION

I, the undersigned officer of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Sections of the By-Laws of said Companies as set forth in said Power of Attorney, with the originals on file in the home office of said companies, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand this **MAR - 2 2015** day of

MARIA BRANCO, Assistant Secretary

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT
CIVIL CODE § 1189

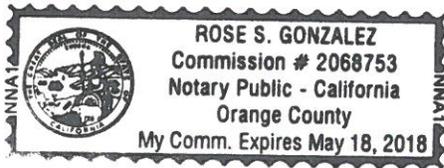
State of California
County of Orange



On March 2, 2015 before me, Rose S. Gonzalez, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Timothy Kane
Name(s) of Signer(s)

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



Place Notary Seal Above

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Rose S. Gonzalez
Signature of Notary Public

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Corporate Officer — Title(s): _____
- Partner — Limited General
- Individual Attorney in Fact
- Trustee Guardian or Conservator
- Other: _____

Signer's Name: _____

- Corporate Officer — Title(s): _____
- Partner — Limited General
- Individual Attorney in Fact
- Trustee Guardian or Conservator
- Other: _____

Signer Is Representing: _____

Signer Is Representing: _____



CITY OF UPLAND
DEVELOPMENT SERVICES DEPARTMENT

Finance Stamp Here
PAID
MAR 03 2015
City of Upland
Finance Division

Receipt Number: 4857

Date: March 3, 2015

Received From: MBK Builders, Inc.
4 Park Plaza, Suite 1000 Irvine, CA 92614

Project Location: Central Avenue/ 11th Street Project No TTM 18951

Table with 8 columns: Title, Fee, # Sht, Total, Title, Fee, # Sht, Total. Lists various project items like Map, Bond Agm't, Street Plan, etc.

Standards Plan Prints [] Copies Scanning Research

Total Above Plan Check Fees 101-300-0000-3646 (101646) \$

PW Inspection Fee 101-300-0000-3645 (101645) \$

Transportation Permits 101-300-0000-3205 (101205) \$

Sewer Connection (Cost Recovery) 645-300-0000-3867 (645687) \$

Reimbursement Agm't 645-231-0000-2345 (DSW345) \$

Sewer Facilities Expansion Fee

To City SSFEF 645-300-0000-3210 (645210) \$

To CBMWD CCRA 207-300-0000-3209 (207209) \$

Water Connection Fee 640-300-0000-3690 (640690) \$

Cash Deposits For Public Improvements

Surety Monuments 101-231-0000-2361 (DGF361) \$ 5,000.00

Water System (In-Lieu) 640-231-0000-2346 (DWT346) \$

Undergrounding (In-Lieu) 101-231-0000-2347 (DGF347) \$

Other: \$

Prepared by: [Signature] Grand Total \$ 5,000.00

Signature Required

[] Applicant [] Cashier [] Receipt Book [] Dev Services File [] Other



**CITY OF UPLAND
PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION**

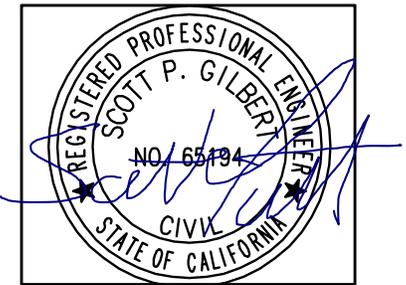
**COST ESTIMATE SUMMARY SHEET
Public Improvements**

BOND AMOUNT CALCULATION

Developer: MBK Homes
 Project: Tract No 18951
 Location: 652 N. Central Avenue (Corner of Central and 11th)

Item Description	Estimated Cost
1 . Street Improvements	\$ 135,356.25
2 . Sewer Improvements	\$ 272,138.75
3 . Water Improvements	\$ 378,645.00
4 . Drainage Improvements	\$ 181,958.75
5 . Traffic Improvements	\$ 42,790.00
6 . Miscellaneous	\$ 226,926.20
Grand Total	\$ 1,237,814.95
20% Contingency	\$ 247,562.99
Bond Amount	\$ 1,485,377.94
Faithful Performance (100%)	\$ 1,485,000.00
Labor and Materials (50%)	\$ 743,000.00
Final Monuments (Cash Deposit required for monuments)	\$ 5,000.00

Estimated By: Scott Gilbert
 RCE#: 65194
 Date: 2/25/2015



Place RCE stamp and signature

Bond amounts will be calculated by the Developer's Engineer and reviewed by the Public Works Department. Inspection fee deposits shall be paid prior to issuance of permit.

**Preliminary Estimate of Cost for
Street Improvements**

Developer: MBK Homes

Project: Tract No. 18951

Location: 652 N. Central Avenue (Corner of Central and 11th)

Street Items	Quantity	Unit	Price	Amount
Roadway Excavation				\$ -
1. Projects with Grading Plan area X 0.50' (hinge point to hinge point) (_____ SF)		CY	\$ 15.00	\$ -
2. Projects without Grading Plan road area and side slopes to daylight. Cut (C) = Fill (f) =				\$ -
(a) Excavate & Fill		CY (c or f)	\$ 4.00	\$ -
(b) Excavate & Export		CY (c -f)	\$ 1.10	\$ -
PCC Curb and Gutter 6"		LF	\$ 14.00	\$ -
PCC Curb and Gutter 8"	735	LF	\$ 16.00	\$ 11,760.00
PCC Sidewalk	3730	SF	\$ 7.00	\$ 26,110.00
PCC Cross Gutter/Spandrel	470	SF	\$ 10.00	\$ 4,700.00
PCC Curb Only 6"	64	LF	\$ 10.00	\$ 640.00
PCC Curb Only 8"	30	LF	\$ 12.00	\$ 360.00
Rolled Curb		LF	\$ 15.00	\$ -
PCC Pavement		SF	\$ 10.00	\$ -
Ribbon/Alley Gutter		LF	\$ 15.00	\$ -
Wheelchair Ramp (ADA Compliant)	5	EA	\$ 2,000.00	\$ 10,000.00
Drive or Alley Approach	1384	SF	\$ 10.00	\$ 13,840.00
Asphalt Concrete (144 lbs/ft ³)	21	TON	\$ 95.00	\$ 1,995.00
AC Patch-Trench (Match Existing)		SF	\$ 5.00	\$ -
Grind & AC Overlay @ 0.50 inch	4450	SF	\$ 4.00	\$ 17,800.00
Aggregate Base CL II	39	CY	\$ 55.00	\$ 2,145.00
AC Berm		LF	\$ 14.00	\$ -
Street Lights Underground + Trench (Standard Marbelite)	4	EA	\$ 6,000.00	\$ 24,000.00
Street Lights Underground + Trench (Decorative)		EA	\$ 7,000.00	\$ -
Install Barricades		LF	\$ 110.00	\$ -
Remove Barricades		LF	\$ 10.00	\$ -
Remove AC Pavement	2455	SF	\$ 2.00	\$ 4,910.00
Remove PCC Curb	860	LF	\$ 10.00	\$ 8,600.00
Adjust Sewer Manhole to grade		EA	\$ 500.00	\$ -
Adjust Water Valve to grade		EA	\$ 300.00	\$ -
Sawcut	860	LF	\$ 2.00	\$ 1,720.00
Decorative Concrete		SF	\$ 12.00	\$ -
Underwalk Drain		EA	\$ 1,800.00	\$ -
Parkway Trees	14	EA	\$ 350.00	\$ 4,900.00
Parkway Landscape and Irrigation	2375	SF	\$ 0.79	\$ 1,876.25
Install Chain Link Fence		LF	\$ 16.00	\$ -
Irrigation Backflow Prevention Assembly (w/ enclosure)				\$ -
Relocate Power Pole		EA	\$ 10,000.00	\$ -
Total for Street Improvements				\$ 135,356.25

By: Scott Gilbert and Adriana Griffith

Street Drawing Number(s): SI 14-06

**Preliminary Estimate of Cost for
Water Improvements**

Developer: MBK Homes

Project: Tract No. 18951

Location: 652 N. Central Avenue (Corner of Central and 11th)

Water Items	Quantity	Unit	Price	Amount
6-inch Water main		LF	\$ 65.00	\$ -
6-inch Valve		EA	\$ 1,300.00	\$ -
8-inch Water main	2,016	LF	\$ 80.00	\$ 161,280.00
8-inch Valve	12	EA	\$ 1,500.00	\$ 18,000.00
6-inch Fire Hydrant Assembly	6	EA	\$ 5,800.00	\$ 34,800.00
12-inch Valve		EA	\$ 3,700.00	\$ -
Upgrade 4-inch Fire Hydrant Assembly to 6-inch		EA	\$ 5,000.00	\$ -
Relocate 6-inch Fire Hydrant Assembly		EA	\$ 2,400.00	\$ -
2-inch Water Service		EA	\$ 3,000.00	\$ -
1 1/2-inch Water Service	1	EA	\$ 2,300.00	\$ 2,300.00
1-inch Water Service	79	EA	\$ 1,800.00	\$ 142,200.00
2-inch Air Vacuum Release Valve	1	EA	\$ 3,500.00	\$ 3,500.00
Blind Flange		EA	\$ 600.00	\$ -
Relocate Existing Water meter		EA	\$ 600.00	\$ -
6-inch Fire Service		LF	\$ 55.00	\$ -
Backflow Device	1	EA	\$ 2,800.00	\$ 2,800.00
8-inch Fire Service with Vault and Valve		EA	\$ 7,000.00	\$ -
6-inch Fire Service with Vault and Valve		EA	\$ 6,000.00	\$ -
4-inch Fire Service with Vault and Valve		EA	\$ 5,000.00	\$ -
4-inch Modified Blow-Off Assembly		EA	\$ 2,700.00	\$ -
Blow Off Assembly	1	EA	\$ 2,700.00	\$ 2,700.00
Recycled Water Line, Irrigation		LF		\$ -
Join Ex. 12" Main with 12"x12"x8" Reducing Tee FExFExFE	1	EA	\$ 3,000.00	\$ 3,000.00
Join Ex. 8" Main with 8"x8"x8" Tee FExFExFE	1	EA	\$ 2,000.00	\$ 2,000.00
Restore Ex. Pavement in Central Ave and 11th St	2	LS	\$ 1,000.00	\$ 2,000.00
Bends, Angle per Plan	5	EA	\$ 200.00	\$ 1,000.00
Transition Adaptor from 12"CML&C to FE	2	EA	\$ 200.00	\$ 400.00
8"x8"x8" Tee	5	EA	\$ 300.00	\$ 1,500.00
Construction in Central Ave.				\$ -
Sawcut and Remove Existing Pavement	110	SF	\$ 1.00	\$ 110.00
Excavate & Fill (110 SF x 5 Ft. AVG)	21	CY	\$ 35.00	\$ 735.00
Replace Ex. AC Pavement in kind	2	TON	\$ 60.00	\$ 120.00
Replace Ex. AB in kind	4	TON	\$ 50.00	\$ 200.00
				\$ -
				\$ -
				\$ -
Total for Water Improvements				\$ 378,645.00

By: Scott Gilbert and Adriana Griffith

Water Drawing Number(s): W 14-06

**Preliminary Estimate of Cost for
Drainage Improvements**

Developer: MBK Homes

Project: Tract No. 18951

Location: 652 N. Central Avenue (Corner of Central and 11th)

Storm Drain Items	Quantity	Unit	Price	Amount
18-inch RCP		LF	\$ 125.00	\$ -
24-inch RCP	669	LF	\$ 145.00	\$ 97,005.00
30-inch RCP		LF	\$ 155.00	\$ -
36-inch RCP		LF	\$ 190.00	\$ -
42-inch RCP		LF	\$ 215.00	\$ -
48-inch RCP		LF	\$ 240.00	\$ -
54-inch RCP		LF	\$ 275.00	\$ -
60-inch RCP		LF	\$ 320.00	\$ -
72-inch RCP		EA	\$ 375.00	\$ -
8-inch HDPE		LF	\$ 40.00	\$ -
12-inch HDPE		LF	\$ 45.00	\$ -
Standard Manhole		EA	\$ 4,500.00	\$ -
Junction Structure (with manhole)	2	EA	\$ 3,600.00	\$ 7,200.00
Junction Structure (without manhole)	1	LF	\$ 2,500.00	\$ 2,500.00
4' Wide Catch Basin and Local Depression		EA	\$ 5,000.00	\$ -
7' Wide Catch Basin and Local Depression		EA	\$ 6,000.00	\$ -
10' Wide Catch Basin and Local Depression		EA	\$ 7,000.00	\$ -
14' Wide Catch Basin and Local Depression		EA	\$ 8,500.00	\$ -
21' Wide Catch Basin and Local Depression		EA	\$ 9,500.00	\$ -
Concrete Collar		EA	\$ 1,500.00	\$ -
Clean Out		EA	\$ 1,500.00	\$ -
Curb Inlet/Outlet		EA	\$ 2,500.00	\$ -
Bio-Swale		LF	\$ 8.80	\$ -
12"x12" Box Inlet		EA	\$ 1,000.00	\$ -
18"x18" or 24"x24" Box Inlet		EA	\$ 1,500.00	\$ -
Trench Shoring & Safety (5' to 10' deep)	1	LS	\$ 5,000.00	\$ 5,000.00
Trench Shoring & Safety (10' to 15' deep)	1	LS	\$ 20,000.00	\$ 20,000.00
				\$ -
				\$ -
Construction in Central Ave.				\$ -
Sawcut and Remove Existing Pavement	3925	SF	\$ 0.75	\$ 2,943.75
Excavate & Fill (3925 SF x 7FT AVG)	1020	CY	\$ 35.00	\$ 35,700.00
Replace Ex. AC Pavement in kind	71	TON	\$ 60.00	\$ 4,260.00
Replace Ex. AB in kind	147	TON	\$ 50.00	\$ 7,350.00
				\$ -
				\$ -
				\$ -
				\$ -
Total for Drainage Improvements				\$ 181,958.75

By: Scott Gilbert and Adriana Griffith

Storm Drain Drawing Number(s): SD 14-06

**Preliminary Estimate of Cost for
Traffic Improvements**

Developer: MBK Homes

Project: Tract No. 18951

Location: 652 N. Central Avenue (Corner of Central and 11th)

Traffic Improvements	Quantity	Unit	Price	Amount
4" Painted Broken Stripes		LF	\$ 2.00	\$ -
4" Painted Double Solid Stripes		LF	\$ 0.50	\$ -
6" Painted Bike Lane Stripes		LF	\$ 0.70	\$ -
Painted One-Way, No Passing		LF	\$ 0.40	\$ -
Painted Two-Way, Left Turn Lane		LF	\$ 0.90	\$ -
Painted Pavement Markings		SF	\$ 3.00	\$ -
8" Thermoplastic Channelizing Line		LF	\$ 2.00	\$ -
12" Thermoplastic Crosswalk & Limit Line	30	LF	\$ 3.00	\$ 90.00
Thermoplastic Pavement Markings		SF	\$ 4.00	\$ -
Street Name Sign & Post	2	EA	\$ 300.00	\$ 600.00
Stop Sign & Post	2	EA	\$ 300.00	\$ 600.00
Road Sign on existing pole/post (One Post)		EA	\$ 200.00	\$ -
Road Sign on existing pole/post (Two Post)		EA	\$ 300.00	\$ -
Street Sign (Mast Arm Hanger Method)		EA	\$ 500.00	\$ -
Remove Painted Stripes & Pavement Markings		SF	\$ 3.00	\$ -
Remove Thermoplastic Stripes & Pavement Markings		SF	\$ 5.00	\$ -
Traffic Signal & Lighting - New Installation		LS	\$ 300,000.00	\$ -
Traffic Signal & Lighting - Modification		LS	\$ 200,000.00	\$ -
Type E - 6' Round Signal Loops		EA	\$ 600.00	\$ -
Type D - 6' Square Loops with bike detection zone		EA	\$ 800.00	\$ -
Install Pull Box (#5)		EA	\$ 500.00	\$ -
Install Pull Box (#6)		EA	\$ 700.00	\$ -
Install Pull Box (#6E)		EA	\$ 800.00	\$ -
2" Conduit		LF	\$ 25.00	\$ -
3" Conduit		LF	\$ 30.00	\$ -
3" PVC Conduit (for Fiber Optic Cable only)		LF	\$ 30.00	\$ -
24 Single Mode Fiber Optic Cable		LF	\$ 4.00	\$ -
12 Pair Interconnect Cable		LF	\$ 5.00	\$ -
Bike Loops		EA	\$ 300.00	\$ -
Traffic Control (during Street Improvements)	1	LS	\$ 20,000.00	\$ 20,000.00
Traffic Control (during Sewer Improvements)	1	LS	\$ 1,500.00	\$ 1,500.00
Traffic Control (during Water Improvements)	1	LS	\$ 5,000.00	\$ 5,000.00
Traffic Control (during Storm Drain Improvements)	1	LS	\$ 15,000.00	\$ 15,000.00
				\$ -
				\$ -
				\$ -
				\$ -
Total for Traffic Improvements				\$ 42,790.00

By: Scott Gilbert and Adriana Griffith

Drawing Number(s): 14-06



STAFF REPORT

ITEM NO. 10.G

DATE: MAY 11, 2015
TO: MAYOR AND CITY COUNCIL
FROM: ROD BUTLER, CITY MANAGER
PREPARED BY: ROSEMARY HOERNING, PUBLIC WORKS DIRECTOR
BOB CRITCHFIELD, PRINCIPAL ENGINEER
SUBJECT: ACTIVE TRANSPORTATION PROGRAM (ATP) GRANT PARTNERSHIP

RECOMMENDED ACTION

It is recommended that the City Council adopt a Resolution authorizing participation with the City of Ontario (Lead Agency) for Cycle 2 Active Participation Program (ATP) funding to construct bicycle improvements on San Antonio Avenue; and authorize the City Manager to execute documents.

GOAL STATEMENT

The proposed action supports the City's goal to maintain and improve the City's public bicycle facilities.

BACKGROUND

In September 2013, SB99 and AB101 were adopted creating the Active Transportation Program. The purpose of this program is to increase biking and walking trips, improve non-motorized safety and mobility for non-motorized users, advance the active transportation effort of regional agencies to achieve greenhouse gas (GHG) reduction goals, enhance public health objectives (including reducing childhood obesity), and to provide a broad spectrum of projects to benefit many types of active transportation users.

On March 26, 2015, the California Transportation Commission (CTC) approved a call-for-projects for the ATP.

ISSUES/ANALYSIS

The City of Ontario is proposing a joint project with the cities of Upland, Montclair, and Chino to construct bicycle improvements that interconnect these communities. It is anticipated the joint project proposal will improve the opportunity for funding in this competitive process. Upland's portion of the ATP project will consist of bicycle signing and striping improvements on San Antonio Avenue, from Foothill Boulevard to the southerly City limit.

If the joint project is selected for ATP funding, the proposed striping and signing improvements on San Antonio are anticipated to take place in calendar year 2017 and should take approximately 30 days to complete.

FISCAL IMPACTS

This project does not compete or interfere with Upland's planned grant application to improve pedestrian and traffic safety at local school zones.

All partnering cities will provide match funds in proportion to the bicycle improvements of the corridors that are within their jurisdictions. Upland's funding match for the project is \$2,740. The City's proposed Fiscal Year 2015-16 Capital Improvement Program (FY 15-16 CIP) contains sufficient funds for the project under the Gas Tax fund.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

[Resolution](#)

[ATP Proposed Bike Routes](#)

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL AUTHORIZING PARTICIPATION WITH THE CITY OF ONTARIO (LEAD AGENCY) FOR CYCLE 2 ACTIVE TRANSPORTATION PROGRAM (ATP) FUNDING TO CONSTRUCT BICYCLE IMPROVEMENTS ON SAN ANTONIO AVENUE.

Intent of the Parties and Findings

(i) On March 26, 2015, the California Transportation Commission issued a call-for-projects for Active Transportation Program; and

(ii) The City of Upland recognizes the need to construct non-motorized transportation infrastructure to provide alternative modes of travel; and

(iii) The City of Upland utilizes the San Bernardino County Non-Motorized Transportation Plan, which identifies the master planned bicycle routes and facilities; and

(iv) The City of Upland desires to participate with the City of Ontario in the construction of a portion of the master planned bicycle network on San Antonio Avenue as shown in Exhibit A.

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

Section 1. The construction of bicycle lanes on San Antonio Avenue is exempt from the California Environmental Quality Act pursuant to Section 15304(h) (Minor Alterations to Land).

Section 2. The City of Upland will provide matching funds in the amount of \$2,740, and the City Manager is hereby authorized to execute all required ATP funding agreements and other documents as needed to participate with the City of Ontario in administering the project.

Section 3. Certification. The City Clerk of the City of Upland shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED and ADOPTED this 11th day of May, 2015.

Ray M. Musser, Mayor

Resolution No.
Page

I, Stephanie A. 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 held on the 11th day of May, 2015, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAINED:

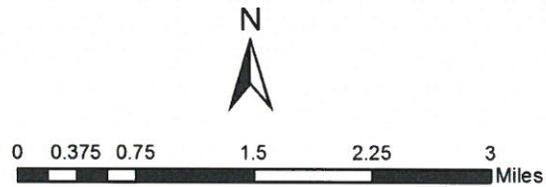
ATTEST: _____
Stephanie A. Mendenhall, City Clerk

EXHIBIT A CYCLE 2 ATP PROPOSED BIKE ROUTES



- | | |
|-------------------------------------------------------|-------------------------------------------------------|
| City | |
| █ City of Chino | █ City of Ontario |
| █ City of Montclair | █ City of Upland |

- Proposed Bike Facilities**
- Class II - Bike Lane
 - Sharrow/Bike Blvd.
 - Class III - Bike Route





STAFF REPORT

ITEM NO. 10.H

DATE: MAY 11, 2015
TO: MAYOR AND CITY COUNCIL
FROM: ROD BUTLER, CITY MANAGER
PREPARED BY: RICHARD L. ADAMS, II, CITY ATTORNEY
STEPHANIE MENDENHALL, ADMIN SERVICES DIRECTOR
SUBJECT: REVIEW OF THE POLICIES AND PROCEDURES RELATIVE TO
ESTABLISH AND OPERATE COMMISSIONS, COMMITTEES, BOARDS
AND AUTHORITIES

RECOMMENDED ACTION

It is recommended that the City Council adopt a Resolution amending the policies and procedures relative to the establishment and operation of commissions, committees, boards and authorities appointed to advise the City Council.

GOAL STATEMENT

The proposed action supports the City's goal to provide opportunities for the citizenry to participate in local government through service on various committees, commissions, boards and authorities.

BACKGROUND

In 1992 the City Council established policies and procedures for administering the various commissions, committees, boards and authorities appointed by the Mayor and City Council. In 2011, the policies and procedures were amended.

ISSUES/ANALYSIS

At their meeting on April 27, 2015, the City Council directed the City Attorney to prepare a resolution amending the policies and procedures related to the selection of the chairperson for these appointed bodies.

Specifically, the amended policy designates the Mayor's appointed member to any commission, committee, board and/or authority to serve as the Chairperson of that body. This policy has been the practice; however, it was never included in the policies and procedures.

The policy change does not affect the Planning Commission, Library Board or the Personnel Board of Review as these bodies are appointed by the Mayor.

FISCAL IMPACTS

There is no fiscal impacts associated with this action.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

[Resolution](#)

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UPLAND
AMENDING THE POLICIES AND PROCEDURES RELATIVE TO THE
ESTABLISHMENT AND OPERATION OF COMMISSIONS,
COMMITTEES, BOARDS AND AUTHORITIES APPOINTED TO
ADVISE THE CITY COUNCIL

Intent of the Parties and Findings

(i) The use of citizen Commissions, Committees, Boards and Authorities to advise the City Council on issues of public concern is an efficient and effective means of involving citizens in policy development; and

(ii) Chapter 2.16 and Section 2.20.030 of the Upland Municipal Code provide that the City Council shall by resolution, establish a process for the screening of individuals desiring to serve as City Commission, Committee, Boards or Authority members.

(iii) The effective use of these Commissions, Committees, Boards and Authorities is furthered by clear guidelines governing their creation and operation; and

(iv) The City Council adopted Resolution No. 4331 which established guidelines governing the creation and operation of established Commissions, Committees, Boards and Authorities; and

(v) From time to time there is a need to eliminate or amend the established rules governing the operation and creation of commissions, committees, boards, and authorities, which was the basis for the adoption of Resolutions No. 5786 and 6038; and

(vi) The City desires to provide a fair and equitable manner by which citizens are appointed to City Commissions, Committees, Boards, and Authorities, which is free of undue influence, but which advances the authority provided by Government Code Section 40605; and

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

Section 1. The City Council hereby amends the established guidelines for Authorities, Boards, Committees and Commissions of the City (as attached) including incorporating, by reference, all prior actions taken by the City Council to eliminate or modify Committees, to the extent they are not inconsistent with the attached guidelines.

Section 2. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

Section 3. Certification. The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED and ADOPTED this 11th day of May, 2015.

Ray M. Musser, Mayor

Resolution No.
Page 2

I, Stephanie A. 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 held on the 11th day of May 2015, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAINED:

ATTEST:

Stephanie A. Mendenhall, City Clerk

COMMISSIONS, COMMITTEES, BOARDS AND AUTHORITIES

SECTION 1. CREATION OF COMMISSIONS, COMMITTEES, BOARDS, AND AUTHORITIES

The Upland City Council shall have the power from time to time by resolution to create such Commissions, Committees, Boards, and Authorities which are necessary or deemed advisable by the Council to carry out the governmental functions of the City in the manner reflecting the best interest of its citizens. The number of members to each Commission, Committee, Board, and/or Authority shall unless otherwise required by law, correspond to the number of members of the appointing body as authorized by law. Each active member of the Upland City Council shall have an appointee on each Commission, Committee, Board and/or Authority. Each appointee shall be a citizen nominated by the Mayor or Councilmember, respectively, and approved by a majority vote of the City Council and appointed by the Mayor.

SECTION 2. DEFINITION

"Commission" shall be any group established pursuant to the Upland Municipal Code. "Committee" shall be any group of individuals which shall have any ongoing charge from the City Council and which are formed by resolution. "Committee" shall not include Committees composed solely of elected officials. "Board" shall be any group formed pursuant to State law providing for same. "Authority" shall be any group formed pursuant to State law providing for same.

SECTION 3. APPLICABILITY

The provisions of this resolution shall apply to all Commissions, Committees, Boards and Authorities hereafter created by resolution of the City Council and to existing Commissions, Committees, Boards, and Authorities as identified on the attachments hereto. The provisions of this resolution shall supersede any minute motion or resolution of any prior City Council of Upland which is in conflict with the provisions of this document. Insofar as possible, the provisions of this resolution shall govern the operation and creation of Commissions, Committees, Boards, and Authorities appointed by the City Council except in those instances where the provisions of this resolution conflict with provisions of State or Federal law.

SECTION 4. APPOINTMENT AND APPLICATION PROCESS

The City Clerk shall maintain a roster of individuals who expressed interest in serving on City Commissions, Committees, Boards, and Authorities, who may be nominated by a serving member of the City Council, and who have completed an application form in a manner established or approved by the City Council. Said application shall indicate among other things, the Commission, Committee, Board, or Authority on which said individual is interested in serving. Any application filed shall be valid for a period of three (3) years. Incumbent Commission, Committee, Board, or Authority members shall be deemed to be on said roster, unless City Clerk is in possession of a Resignation Letter from the incumbent member. Members of the City Council shall make appointments from this roster.

SECTION 5. SELECTION AND APPOINTMENT

Members of the City Council requiring representation on a particular Commission, Committee, Board, or Authority shall review the list of applicants and submit a nominee to the City Clerk. The City Clerk shall place nominations before the City Council for its review and approval as and when necessary.

For selections made by the Mayor and ratified by the City Council, the Mayor shall review the list of applicants and submit a nominee to the City Clerk. The City Clerk shall place the nominations before the City Council for its review and approval as and when necessary.

In appointing Planning Commissioners, the Mayor shall establish an interview panel composed of the Mayor (or another Councilmember appointed by the Mayor), the Mayor Pro Tem (or another Councilmember appointed by the Mayor Pro Tem), a member of the Planning Commission (selected by a vote of Planning Commission) and a Senior City Planner (advisory). All applicants will be interviewed and recommend to the Mayor at least one of those which a majority of the interview panel believe to be qualified. The Mayor shall appoint the Commissioners from those recommended for his/her consideration.

SECTION 6. TERMS OF COMMISSION, COMMITTEES, BOARDS, AND AUTHORITIES

For Council nominated appointments the term of each Commission, Committee, Board, and Authority member shall coincide with the holding of office by the nominating member of the City Council, unless otherwise prescribed by resolution creating the Commission, Committee, Board, or Authority.

For appointments made by the Mayor, the term shall be as outlined in the creation of the Commission, Committee, Board or Authority.

No Commission, Committee, Board, or Authority member shall serve for more than two (2) consecutive terms on any individual Committee, Commission, Board, or Authority without the prior approval of the Council, which approval requires a 4/5ths affirmative vote.

SECTION 7. REMOVAL FROM COMMISSION, COMMITTEES, BOARDS, AND AUTHORITIES

Any Committee, Commission Board, or Authority member may be removed from office during his/her unexpired term upon 4/5ths vote of the City Council, when in the sole discretion of the Council said removal is deemed appropriate. Notwithstanding the foregoing, if the appointee's nominating Councilmember is no longer a part of the Upland City Council or Mayor, that appointee shall be deemed to have automatically resigned the seat they hold upon the filling of the City Council vacancy.

SECTION 8. RESIDENCY OF COMMISSION, COMMITTEE, BOARD, AND AUTHORITY MEMBERS

In order to be appointed to a Commission, Committee, Board, or Authority, a prospective appointee must be a resident of the City of Upland and must remain in residence throughout the term of their appointment, unless a member is appointed by another entity. This provision may be waived upon an affirmative 4/5ths vote of the Council.

SECTION 9. CHAIRPERSON SELECTION

With the exception of the Planning Commission, the Library Board and the Personnel Board of Review, the member appointed by the Mayor to any Commission, Committee, Boards, and/or Authorities shall serve as the Chairperson of that body. With regard to the Planning Commission, the Library Board and the Personnel Board of Review, the members of said bodies shall select, nominate, and appoint by majority consensus, a sitting member of the Body to the position of Chairperson. The term of the Chairperson shall be for 2 years. No Chairperson shall serve for more than two (2) consecutive terms without the approval of the City Council by an affirmative 4/5ths vote.

SECTION 10. POSTING REQUIRED

The City Clerk shall, on or before December 31st of each year, develop a listing of all scheduled vacancies on City Commissions, Committees, Boards, and/or Authorities expected during the next twelve (12) months. In addition to the requirement of the Government Code, said list shall be posted at City buildings and other locations as may be designated from time to time by City Council resolution, for a period of thirty (30) days and announced at the first Council meeting in January. Said listing shall advise interested parties to obtain application forms and related materials at the City Clerk's office. In addition, the City Clerk shall publish said list in a newspaper of general circulation and the city newsletter seeking applications from interested parties and listing scheduled vacancies during the same thirty (30) day period. Unscheduled vacancies shall be advertised in accordance with the Government Code and posted at the same location as scheduled vacancies.

SECTION 11. DUTIES

The Commissions, Committees, Boards, and Authorities established by the Council shall perform such duties and have such powers as may be established from time to time by the Council.

SECTION 12. ATTENDANCE

In any case where a Commission, Committee, Board and/or Authority member has missed three (3) regularly scheduled meetings in a twelve (12) month period without notifying the Chair of said Commission, Committee, Board, and/or Authority in advance of said meeting, the City Clerk shall contact the Commission, Committee, Board, and/or Authority member with a request to provide the reasons therefore, which shall be forwarded to the City Council.

SECTION 13. OPEN MEETINGS

All Commission, Committee, Board and Authority meetings shall be conducted pursuant to the provisions of the Ralph M. Brown Act and the City Clerk shall maintain a copy of all agendas and minutes of all meetings.

BUILDING APPEALS BOARD

PURPOSE

To determine the suitability of alternate materials and methods of construction and to provide reasonable interpretations of the Uniform Building Code, Uniform Mechanical Code, Uniform Plumbing Code, the Uniform Housing Code, Uniform Code for the Abatement of Dangerous Buildings, national Electric Code, and the Seismic Hazards Reduction Ordinance.

MEMBERSHIP

5 Members Total

Selected from the following classifications:

- a. Architect or Engineer
- b. Attorney
- c. Contractor – Electrical, Mechanical, Plumbing or General

LENGTH OF TERM/FREQUENCY OF MEETINGS

4 Year Term / A minimum of one meeting per year and additional meetings called as appeals are received.

No member may serve more than two full consecutive terms, unless approved by a 4/5ths vote of the Council

SELECTION PROCESS

- The City Clerk causes a request for volunteers to be published in the local news media.
- Using the criteria for membership, the building official determines if applicants are qualified and passes all qualified candidates to the City Clerk.
- Each member of the City Council shall submit their nomination from the list of qualified candidates to the City Clerk for consideration at a Council meeting.

CODE REFERENCES

Resolution 4107
Resolution 2725
Ordinance 1028

(effective July 27, 1992)

CITY COUNCIL ADVISORY COMMITTEE

PURPOSE

Review of any matters which may be referred to the Committee from time to time. If so directed, the City Council Advisory Committee will be responsible for performing an analysis and present recommendations to the City Council. The Committee members serve as stand-by officers in the event of an emergency.

MEMBERSHIP

5 Members Total
Nominated by Councilmembers

LENGTH OF TERM/FREQUENCY OF MEETINGS

- 4 year terms to coincide with the terms of Mayor and Councilmember making nomination
- No applicant may serve more than two full consecutive terms, unless approved by a 4/5ths vote of the Council
- Meet on an as-needed basis, first Wednesday of each month

SELECTION PROCESS

Each member of the City Council shall submit their nomination to the City Clerk for consideration at a Council meeting.

CODE REFERENCE

Council Minutes 7/3/72
Ordinance 1416, Section 1, 12/21/87
Ordinance 1428, Section 2, 6/20/88
Ordinance 1563, Section 1, 10/26/72
Ordinance 1812, 10/8/2006

COMMUNITY DEVELOPMENT BLOCK GRANT COMMITTEE

PURPOSE

Annually review applications for Community Development Block Grant funds, conduct hearings to determine the most effective use of the grant funds and provide recommendations to the City Council.

MEMBERSHIP

5 Members Total
Nominated by Councilmembers

LENGTH OF TERM/FREQUENCY OF MEETINGS

- 4 year terms to coincide with the terms of Mayor and Councilmember making nomination
- No applicant may serve more than two full consecutive terms, unless approved by a 4/5ths vote of the Council
- Meetings held from January through April, with additional meetings on an as needed basis.

SELECTION PROCESS

Each member of the City Council shall submit their nomination to the City Clerk for consideration at a Council meeting.

CODE REFERENCE

- Council Minutes 3/14/89

LIBRARY BOARD

PURPOSE

The Upland Public Library serves the community by providing materials and staff assistance for meeting the informal and educational needs of the library users.

MEMBERSHIP

6 Members Total

Selected from:

- 1 Council Liaison
- 5 Citizens at Large
- 1 Friends of Library Liaison

LENGTH OF TERMS/FREQUENCY OF MEETINGS

- 3 Year Term
- Meetings held the second Wednesday of the month
- No applicant shall serve more than two full consecutive terms, unless approved by a 4/5ths vote of the Council

SELECTION PROCESS

Mayor shall appoint with Council ratification

CODE REFERENCES

California Library laws, Education Code 1990
UMC Section 2.28.010
Ordinance No. 99

PERSONNEL BOARD OF REVIEW

PURPOSE

The functions of the board shall be to hear appeals as provided by this part and by rule, except matters pertaining to the meet and confer process

MEMBERSHIP

3 Members Total

LENGTH OF TERM/FREQUENCY OF MEETINGS

- 4 Year Term
- No applicant shall serve more than two full consecutive terms, unless approved by a 4/5ths vote of the Council
- On call by Human Resources Director

SELECTION PROCESS

- Council appointment shall be made by the Mayor, with Council ratification
- 1 Employee Group submits name(s) and Council selects appointment
- 1 Agreed by Council and Employee Groups

CODE REFERENCE

Minute Action 5/31/1945
Ordinance 1494
UMC Section 2.36.160

PLANNING COMMISSION

PURPOSE

The powers and duties of the Planning Commission shall be to:

1. Prepare, periodically review, and revise, as necessary the General Plan
2. Annually review the Capital Improvement Program of the City and the local public works projects of other local agencies for their consistency with the General Plan
3. Perform other functions as the City Council provides
4. Perform such other land use-related functions pursuant to State laws pertaining to conservation, planning and zoning as the council may direct or provide
5. Serve as the Airport Land Use Committee, applying the procedures and findings set forth in the Municipal Code in regards to all processes relating to a request for an implementation/land use compatibility decision, preparation, adoption and amendment to the Comprehensive Airport Land Use Plan of the City of Upland conforming to requirements set forth in Public Utilities Section 21670.1.

MEMBERSHIP

7 Members Total
Nominated by Councilmembers

Airport Land Use Committee consists of:
7 Planning Commissioners
2 ALUC members (possess expertise in aviation)

LENGTH OF TERM/FREQUENCY OF MEETINGS

- 4 year terms
- No applicant may serve more than two full consecutive terms, unless approved by a 4/5ths vote of the Council
- Once a month, 4th Wednesday
- Commissioners receive \$100 compensation per meeting (not to exceed \$200 per month)

SELECTION PROCESS

- The City Clerk causes a request for volunteers to be published in the local news media
- Mayor (or Council designee), Mayor Pro Tem (or Council designee), Planning Commissioner (selected by Planning Commission), and City Planner shall serve as an interview panel and interview each applicant
- Interview panel shall recommend at least one candidate per opening to the Mayor for ratification by the Council
- Airport Land Use Commissioners - Mayor shall appoint with Council ratification

CODE REFERENCE

UMC Chapter 17.04
Ordinance 415
Ordinance 1202
Resolution 4697

STREET TREE ADVISORY COMMITTEE

PURPOSE

This committee shall study and review the proposed Urban Forestry Management Plan and make appropriate recommendation to Council and staff regarding the matters contained therein; to provide an avenue for citizens to appeal special circumstantial tree problems (i.e., tree removals, street tree designations, spraying for fruit insects); and to review tree removal and other policies.

MEMBERSHIP

5 Members Total
Selected from 5 Citizens at Large

LENTH OF TERM

4 year term expiring in November of even years
No member shall serve more than two full consecutive terms without the approval of Council by a 4/5th vote.

MEETINGS

2nd Thursday of the month on an "on-call" basis.

SELECTION PROCESS

Each member of the City Council shall submit their nomination to the City Clerk for consideration at a Council meeting.

CODE REFERENCE

Resolution 4462
Resolution 5201

TRAFFIC SAFETY ADVISORY COMMITTEE

PURPOSE

To advise Council and staff of community concerns regarding issues of traffic safety and to recommend solutions to those concerns.

MEMBERSHIP

12 Members Total
5 Citizens at Large
3 Upland Unified School District
 1 Board of Trustees Representative
 1 District Office Representative
 1 Administration Representative
1 Chamber of Commerce Representative
1 Auto Club Representative
1 Upland Police Department Liaison
1 Engineering Department Liaison

LENGTH OF TERM/FREQUENCY OF MEETINGS

4 Year Term (except Police and Engineering Liaisons)
No applicant shall serve more than two full consecutive terms, unless approved by a 4/5ths vote of the Council
First Wednesday of each month – 8:30 a.m. Police Department and on call

SELECTION PROCESS

Citizens at Large - Each member of the City Council shall submit their nomination to the City Clerk for consideration at a Council meeting.

CODE REFERENCE

Upland Council Minutes, 10/6/64
Upland Council Minutes, 11/6/78



STAFF REPORT

ITEM NO. 11.A

DATE: MAY 11, 2015
TO: MAYOR AND CITY COUNCIL
FROM: ROD B. BUTLER, CITY MANAGER
PREPARED BY: JEFF ZWACK, DEVELOPMENT SERVICES DIRECTOR
LIZ CHAVEZ, DEVELOPMENT SERVICES MANAGER
DEBORAH ALCORN, HOUSING COORDINATOR
SUBJECT: FY 2015-19 CONSOLIDATED PLAN AND FY 2015-16 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ONE-YEAR ACTION PLAN

RECOMMENDED ACTION

It is recommended that the City Council adopt a Resolution approving the City of Upland Consolidated Plan for Fiscal Years 2015-19 and One-Year Action Plan for Fiscal Year 2015-16; and authorize the City Manager to execute any and all necessary and related documents to implement the FY 2015-16 Plan.

GOAL STATEMENT

The proposed action supports the the City's goal of providing decent housing, a sustainable living environment and expanded economic opportunities principally for low and moderate income persons.

BACKGROUND

Consistent with applicable Community Development Block Grant (CDBG) regulations, the U.S. Department of Housing and Urban Development (HUD) requires grantees to prepare a Consolidated Plan every five years. In October 2013, via the request for qualification (RFQ) process, the consulting firm of LDM and Associates (LDM) was selected to prepare the Consolidated Plan for fiscal years 2015-19. The City receives (CDBG) funds from the U.S. Department of Housing and Urban Development (HUD) each year. HUD requires all entitlement communities receiving funds to prepare and submit a Consolidated Plan every five years to establish a unified, strategic vision for housing, community and economic development actions. HUD further requires the submission of One-Year Action plan each year during the planning period to outline the planned projects one-year goals and budgets for the CDBG to be implemented during the upcoming program year. Additionally, HUD required all entitlement communities to affirmatively further fair housing choice in the community. The draft documents submitted for consideration fulfill each of theses HUD requirements. The approved documents are due to HUD by May 15, 2015.

The Consolidated Plan 2015-19

The draft Consolidated Plan covering the period of July 1, 2015 to June 30, 2020 included an analysis of local community needs taking into account available demographic, housing and

economic data from 2007-2011 American Community Survey 5-Year estimates and other HUD-supplied data sources, as well as information gathered through consultation with local agencies and stakeholders, as well as a Consolidated Plan Community Survey for residents to express their views. The Consolidated Plan includes strategies and goals to use available resources such as CDBG funds to address local priority needs identified as part of the planning process and to meet HUD's national goals to provide decent housing, a suitable living environment and expand economic opportunity for low- and moderate-income families.

The draft Consolidated Plan includes 6 priority needs to be addressed through the implementation of projects in each of the One-Year Action Plans corresponding to 6 Strategic Plan goals over the next five years. The priority needs and goals are summarized in the table below and further described with the Executive Summary:

Priority needs	Strategic Plan goals
Business enhancement through façade rehabilitation	Façade Rehabilitation
Improve neighborhoods	Neighborhood Preservation
Improve public facilities and infrastructure	City of Upland public facilities improvements
Provide public services for low-income families	Public Services for low-income services
Prevent and eliminate homelessness	Homeless prevention services
Ensure equal access to housing opportunities	Fair housing services

One-Year Action Plan (2015-16)

HUD further mandates that all entitlement communities receiving CDBG funds prepare and submit an Action Plan outlining the planning projects, one-year goals and budgets for the CDBG programs to be implemented in an effort to address the priority needs and goals identified in the Consolidated Plan. The City will receive \$517,709 of CDBG funds for program year 2015-16. Additionally, \$28,831.16 of unallocated CDBG funds (closed FY 13-14 concrete) are included in the Action Plan.

The proposed CDBG projects are included in the draft Action Plan (see Table 1).

Citizen Participation in the Development of the draft Five-Year Consolidated Plan 2015-19, One-Year Action Plan 2015-16.

In compliance with the federal regulations and the current adopted Citizen Participation plan, the Notice of Public Hearing and notice of availability of the aforementioned draft documents were published in the Daily Bulletin in English and Spanish on April 8, 2015.

The draft documents were made available for public review and comment from April 10, 2015 through, and including May 11, 2015. Copies of the draft documents were available at the Development Services Department - the Housing Division office, Upland Public Library, Upland City Clerk office and the Gibson Senior Center. The Public Hearing scheduled May 11, 2015 at 7:00 p.m. provides another opportunity for public input. Any and all comments received during the process (at public meetings and/or in writing) with respect to a particular draft document will be incorporated into the final draft document, as applicable, prior to submission to HUD.

ISSUES/ANALYSIS

Development of the Consolidated Plan was coordinated and accomplished with publicly noticed community meetings, direct solicitation of CDBG funding applications from local public service providers and coordination through the Upland CDBG Committee. In that respect, the CDBG Committee has recommended that the City Council approve the Consolidated Plan and the Action Plan.

The Committee's recommendations are summarized on the attached Schedule of FY 2015-16 CDBG Allocations. Each program/project is described in narrative form within the Plan which has been on file with the City Clerk for a thirty (30) day period.

FISCAL IMPACTS

The City anticipates receiving \$517,709 from HUD for FY 2015-16. Additionally, \$28,831.16 of unallocated CDBG funds are included in the Action Plan, for a total of \$546,540.16. The Committee's funding recommendations are consistent with this limit and otherwise comply with applicable federal rules and regulations.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

[Resolution](#)

[Table 1 Exhibit](#)

[Executive Summary](#)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL APPROVING THE CITY
OF UPLAND CONSOLIDATED PLAN FOR FISCAL YEARS 2015-19
AND ONE-YEAR ACTION PLAN FOR FISCAL YEAR 2015-16

Intent of the Parties and Findings

(i) Findings to support, the City of Upland is an Entitlement community in the U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) program; and

(ii) Additional finding, this designation entitles Upland to an annual grant of funds under the CDBG Program; and

(iii) Additional finding, to be eligible for funding, the City of Upland must submit a Consolidated Plan which serves as a federally required planning document that guides community development efforts in Upland; and

(iv) Additional finding, the primary objective of the Consolidated Plan and CDBG Program is the development of viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low-income; and

(v) Additional finding, the City of Upland Consolidated Plan was developed as a collaborative process whereby Upland established a unified vision for community development actions by strengthening partnerships among all levels of government to provide decent housing, establish and maintain a suitable living environment, and expand economic opportunities principally for persons of low-income; and

(vi) Additional finding, Upland is a Community Development Block Grant entitlement jurisdiction; and

(vii) Additional finding, for FY 2015-16 the City of Upland expects to receive approximately \$517,709, plus unallocated funds of \$28,831.16 for a total of \$546,540.16 of CDBG funds; and

(viii) Additional finding, the CDBG Committee (the "Committee") has reviewed project proposals for FY 2015-16 and made recommendations to the City Council which are summarized in the FY 2015-16 Action Plan (the "Action Plan") contained in the Consolidated Plan; and

(ix) Additional finding, the availability of the Consolidated Plan for public review was duly noticed for a thirty (30) day period allowing the public an opportunity to provide any comments on the Consolidated Plan; and

(x) Additional finding, during its May 11, 2015 Public Hearing, the City Council heard and considered both oral and written comments with respect to both the Consolidated Plan and the Action Plan.

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

Section 1. The Consolidated Plan is necessary and desirable for the development of the community and is consistent with the housing objective of the General Plan.

Section 2. The Consolidated Plan is exempted by CEQA statute, Section 15262 – Planning Studies and therefore exempted from CEQA per the requirements of the California Environmental Quality Act of 1970 as amended, and the Guidelines promulgated and reflect the independent judgment of the City of Upland.

Section 3. The Upland City Council does hereby approve the Upland Consolidated Plan for fiscal years 2015-19.

Section 4. The Upland City Council does hereby approve the City of Upland One-Year Action Plan for fiscal year 2015-16.

Section 5. The City Council authorizes the City Manager to execute any and all necessary and related documents, including subrecipient agreements, in order to effectuate the implementation of the CDBG Program for fiscal year 2015-16.

Section 6. This Resolution shall take effect on the date of its adoption.

Section 7. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED this 11th day of May, 2015.

Ray M. Musser, Mayor

I, Stephanie A. Mendenhall, City Clerk of the City of Upland, do hereby certify that the foregoing Resolution was passed and adopted at a regular meeting of the City Council of the City of Upland held on the 23rd day of February, 2015, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAINED:

ATTEST: _____
Stephanie A. Mendenhall, City Clerk

Table 1 summarizes recommendations of the CDBG Committee on public service projects and on capital projects to the City Council of Upland for FY 2015-16.

Table 1: City of Upland CDBG Program for FY 2015-16	
Public Services	\$77,656
Upland Community Services – After School/Summer programs	9,716
Upland Community Services – Vic's Place	5,792
Upland Development Services– Graffiti Removal CDBG Areas	15,000
Foothill Family Shelter – Stepping Stone Program	14,025
Inland Valley Hope Partners – Food Security Program	5,000
St. Joseph's Church – His Hands Food Program	11,083
Inland Valley Drug & Alcohol Recovery – Van Driver for Transportation	7,183
Pacific Lifeline – Women's Programs	4,857
Family Service Association – More than a Meal (Seniors)	5,000
Capital Projects	336,512
Upland Development Services – Code Enforcement/CDBG	79,748
Upland Public Works – CDBG Concrete Improvement FY 2015-16	132,764*
Upland Development Services – Downtown Façade Enhancement Program	124,000
Planning and Administration	103,541
Administrative & Economic Development Costs	76,991
Inland Fair Housing and Mediation Board – Fair Housing	14,500
Inland Fair Housing and Mediation Board – Landlord/Tenant Mediation	12,050
Program Income (none)	0
Allocation for FY 2015-16:	\$ 517,709
Closed project: FY 13-14 Concrete \$28,831.16 all added to CDBG Concrete Improvement FY 2015-16	28,831.16
Total with unused funds	\$ 546,540.16

- \$28,831.16 unused funds
132,764.00 recommended to be used for CDBG Concrete Improvement Program for FY 2015-16
\$161,595.16

Executive Summary

ES-05 Executive Summary - 24 CFR 91.200(c), 91.220(b)

1. Introduction

The 2015-2019 Consolidated Plan is the City of Upland's Strategic Plan for the investment of annual allocations of Community Development Block Grant (CDBG) funds from the U.S. Department of Housing and Urban Development (HUD). These grant programs enhance the viability of the City for people to live, work and thrive by providing decent housing opportunities, maintaining a suitable living environment and expanding economic opportunities—particularly for low- and moderate-income people. This Consolidated Plan is a roadmap to guide the City's housing, community and economic development investments during the next five (5) years. As grant resources become increasingly scarce, it is important for the City to determine areas and population segments with the greatest level of need for a particular program or activity and to be able to invest federal, state and local resources in high leverage opportunities where data suggests that the City will be able to maximize the impact of every dollar.

The Consolidated Plan contains a Needs Assessment and Market Analysis that provide insight into the different levels of need in the community and the market in which grant-funded programs will be implemented. The Needs Assessment incorporates national data from the 2007-2011 American Community Survey (ACS) 5-Year Estimates and the 2007-2011 Comprehensive Housing Affordability Strategy (CHAS) data, in addition to specific local data.

Based on the Needs Assessment and Market Analysis, the Strategic Plan identifies the City's priority needs, including the rationale for establishing allocation priorities and specific measurable goals to be addressed during the five (5) year period through activities to be implemented as part of the five (5) Annual Action Plans using CDBG. The following paragraphs include a brief description of each grant.

CDBG

The Housing and Community Development Act of 1974 created the CDBG Program. The primary objective of the CDBG program is the development of viable urban communities by providing decent housing, a suitable living environment, and expanding economic opportunities, principally for persons of low- and moderate-income. The CDBG regulations require that each activity meet one (1) of the following national objectives:

- Benefit low- and moderate-income persons;
- Aid in the prevention or elimination of slums and blight; or
- Meet other community development needs having a particular urgency.

Each year, the City certifies with the submission of its Annual Action Plan that it has given maximum feasible priority to activities, which meet the first and second objectives above. Additionally, the City

certifies that no less than 70% of the CDBG funds received, over a three-year certification period, will be designed to benefit low- and moderate-income persons.

2015-2016 Program Year

In addition to the Consolidated Plan, this document includes the first year's Annual Action Plan. For the 2015-2016 program year, the City will receive \$517,709 of CDBG funds. When combined with available prior year resources (\$28,831) the 2015-2016 Action Plan allocates \$546,540 of CDBG funds to the following program activities to be implemented from July 1, 2015 to June 30, 2016.

2015-2016 CDBG Public Service Activities

City of Upland: Graffiti Removal	\$15,000
City of Upland: After School Program	\$9,716
City of Upland: Vic's Place	\$5,792
Foothill Family Shelter: Stepping Stone Program	\$14,025
St. Josephs: His Hands Ministry Food Pantry	\$11,083
Inland Valley Hope Partners: Food Security Program	\$5,000
Inland Valley Drug & Alcohol Recovery	\$7,183
Pacific Lifeline: Womans Program	\$4,857
Family Service Assoc.: More Than a Meal	\$5,000

2015-2016 CDBG Capital Activities

City of Upland: CDBG Concrete Improvements	\$161,595
City of Upland: Code Enforcement	\$79,748
City of Upland: Downtown Façade Enhancement Program	\$124,000

2015-2016 Program Administration Activities

CDBG Program Administration	\$76,991
Inland Fair Housing and Mediation Board: Fair Housing Program	\$14,500
Inland Fair Housing and Mediation Board: Tenant/Landlord Mediation	\$12,050

2. Summary of the objectives and outcomes identified in the Plan Needs Assessment Overview

HUD’s Community Planning and Development (CPD) Outcome Performance Measurement Framework classifies objectives in three (3) categories: decent housing, a suitable living environment, and economic opportunity. Based on the Needs Assessment and Market Analysis, the Strategic Plan identifies 6 high priority needs to be addressed through the implementation of activities aligned with 6 Strategic Plan goals.

The high priority needs include:

- Business enhancement through facade rehabilitation
- Improve neighborhoods
- Improve public facilities and infrastructure
- Provide public services for low-income residents
- Prevent and eliminate homelessness
- Ensure equal access to housing opportunities

The following goals are identified in the Strategic Plan:

	Goal Name	Category	Needs Addressed	Goal Outcome Indicator
1.	Facade Rehabilitation	Non-Housing Community Development	Business enhancement through facade rehabilitation	Facade business rehabilitation
2.	Neighborhood Preservation	Non-Housing Community Development	Improve neighborhoods	Public Service activity other than low/mod income housing benefit
3.	Public Facilities Improvements	Non-Housing Community Development	Improve public facilities and infrastructure	Public Facility or infrastructure
4.	Public Services for low-income families	Public Services	Provide public services to low-income residents	Public service
5.	Homelessness Prevention Services	Homeless	Prevent and eliminate homelessness	Public service
6.	Fair Housing Services	Affordable Housing	Ensure equal access to housing opportunities	Other: Persons Assisted

Table 1 - Strategic Plan Summary

3. Evaluation of past performance

The investment of HUD resources during the 2010-2014 program years was a catalyst for positive change in the community. Together with other federal, state and local investments, HUD resources allowed the City and its partners to accomplish the following goals by year four of the five year Consolidated Plan cycle (year five accomplishment not available as of the preparation of this document):

- Support services to aid transitional shelters assisting 103 persons
- Support services to aid food distribution programs assisting 2,620 persons
- Support services to aid drug/alcohol abuse recovery programs assisting 383 persons
- Assist in financing the rehabilitation of 32 single family housing units
- Provide emergency repairs to 79 single family & mobile homes for low income families
- Rehabilitate 49 single family and mobile home units with exterior paint
- Rehabilitate 1 historically significant homes within redevelopment project area
- Support tenant assistance programs aiding 2,771 households
- Provide loan assistance for 9 first time homebuyers
- Rehabilitate 32 single family/multi-family units
- Install solar electric in 5 low income households
- Conduct 11,576 code inspections and fund graffiti removal programs to eliminate 6,823 incidents
- Complete 29 infrastructure projects to include water/sewer improvements, street resurfacing, and street light installation
- Fund the improvements to 12 park and community facilities
- Support the city's youth through educational and recreational activities reaching 7,822 youths
- Support senior nutrition and wellness programs reaching 721 elderly
- Provide adult literacy to 251 persons
- Continue to improve economic development by funding programs such as economic strategy programs, visions plan, and upland economic development website along with administering RDA funded incentive programs
- Provide tenant/landlord counseling services to 2,410 persons
- Assist 239 low and moderate income renter households through fair housing services#

While the City and local partners were able to successfully implement the activities listed above during the last five (5) years, there were insufficient resources to fully address the level of need identified in the last Consolidated Plan. The State of California's June 2011 passage of AB1X2, and subsequent court decisions and clarifying legislation, to eliminate Redevelopment Agencies—a substantial funding source for housing, community and economic development programs in California—significantly curtailed the City's ability to implement activities that benefit low- and moderate-income residents.

4. Summary of citizen participation process and consultation process

Subsequent to the enactment of the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009, HUD revised the Consolidated Plan regulations at 24 CFR Part 91 to emphasize the importance of citizen participation and consultation in the development of the Consolidated Plan. HUD strengthened the consultation process with requirements for consultation with the CoC (Continuum of Care), Public Housing Authorities (PHA), business leaders, civic leaders, and public or private agencies that address housing, health, social service, victim services, employment, or education needs of low-income individuals and families, homeless individuals and families, youth and/or other persons with special needs. Together with the analytic capabilities of the eCon Plan Suite, HUD's online Consolidated Plan template, these requirements created the conditions necessary to implement a collaborative, data-driven and place-based planning process that includes a robust level of citizen participation and consultation.

The City adopted a new Citizen Participation Plan on October 13, 2014 that reflects regulatory changes and process improvements. In accordance with the City's adopted Citizen Participation Plan, the City facilitated citizen participation through surveys, community meetings and public hearings. Efforts were made to encourage participation by low- and moderate-income persons, particularly those living in slum and blighted areas and in areas where HUD funds are proposed to be used, and by residents of predominantly low- and moderate-income neighborhoods. The City also made efforts to encourage the participation of minorities and non-English speaking persons, as well as persons with disabilities. The consultation process included representatives of the CoC, PHA, and other specified groups who completed surveys, provided local data and assisted the City to ensure practical coordination of strategies to maximize impact and to avoid duplication of effort.

5. Summary of public comments

Two community meetings to discuss the housing and community development needs in the community were held on November 12th and November 22nd, 2014 at the Carnegie Library. A group of 5 residents, stakeholders, and interested persons attended the meetings and received a presentation on the importance of the Consolidated Plan and Action Plan. Questions that were asked were answered concerning each of the planning documents and participants commented on the extensive efforts made to reach out to the low- and moderate-income community through traditional methods such as newspaper advertisements and flyers distributed to affordable housing sites and other public places as well as new technology-based methods such as Twitter and the City's website.

A public meeting/hearing before the Community Development Block Grant Committee to receive comments on the housing and community development needs in the community was held on March 19, 2015 in the Historic Fire Museum conference room. Although the meeting was open to the public, only members of the Community Development Block Grant Committee and two staff members attended the meeting and asked questions and provided feedback on the proposed Consolidated Plan strategies.

A public hearing to receive comments on the draft 2015-2019 Consolidated Plan and the draft 2015-2016 Annual Action Plan was held before the City Council on May 11, 2015. The following comments were received and incorporated into the Consolidated Plan:

- [INSERT COMMENTS FROM PUBLIC REVIEW PERIOD AND CITY COUNCIL PUBLIC HEARING]

6. Summary of comments or views not accepted and the reasons for not accepting them

All comments and views received by the City in the development of the Consolidated Plan were accepted and taken into consideration in the development of the Consolidated Plan.

7. Summary

Examination of 2007-2011 American Community Survey (ACS) 5-Year Estimates and the 2007-2011 Comprehensive Housing Affordability Strategy (CHAS) data, in addition to local data, as well as consultation with citizens and stakeholders revealed eight high priority needs to be addressed through the investment of an anticipated \$2.6 million of CDBG funds over the five year period of the Consolidated Plan. The investment of CDBG funds in eligible activities shall be guided principally by the six goals of the Strategic Plan. Activities submitted for consideration in response to any solicitation or Notice of Funds Availability (NOFA) process must conform to one of the six Strategic Plan strategies and the associated action-oriented, measurable goals in order to receive consideration for CDBG funds.



STAFF REPORT

ITEM NO. 11.B

DATE: MAY 11, 2015
TO: MAYOR AND CITY COUNCIL
FROM: ROD BUTLER, CITY MANAGER
PREPARED BY: ROSEMARY HOERNING, PUBLIC WORKS DIRECTOR
PONCE YAMBOT, PRINCIPAL ENGINEER
SUBJECT: VACATION OF 17-FOOT STRIP ALONG 8TH STREET (FROM
NORTHEAST CORNER OF SULTANA AVENUE AND 8TH STREET TO
APPROXIMATELY 643 FEET EASTERLY)

RECOMMENDED ACTION

It is recommended that the City Council adopt a Resolution declaring an order to vacate a 17 foot strip, along the entire width of the property frontage on 8th street (from northeast corner of 8th Street and Sultana Avenue to approximately 643 feet easterly).

GOAL STATEMENT

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

BACKGROUND

On April 13, 2015, the City Council declared its intent to vacate a 17-foot strip portion of 8th Street right of way, and to set a public hearing for Monday, May 11, 2015, concerning the vacation. The 17-foot strip to be vacated is along the entire property frontage from the northeast corner of 8th Street and Sultana Avenue to approximately 643 feet easterly.

As part of future proposed street improvement, the vacation of this 17-foot strip is in conformance with the Upland General Plan and the Historic Downtown Upland Specific Plan. William Lyons Homes, Inc. presently owns the property frontage adjacent to the 17-foot strip area to be vacated. Exhibits "A" and "B" illustrate the detailed property boundaries of the proposed vacation.

ISSUES/ANALYSIS

The City is complying with the California Streets and Highways Code 8320 et seq containing specific proceedings in vacating public roadways as follows:

- City to declare its intention to vacate the street strip;
- City to set a public hearing by fixing the date, hour and place of the hearing;
- City to cause the publishing and posting of hearing notices; and,
- City Council to hold a public hearing and make its determination of the approval or disapproval of the vacation.

Following publication, posting of hearing notices onsite, and public hearing, the City Council may adopt a resolution ordering the vacation of the street right of way.

FISCAL IMPACTS

The street vacation may result in a minor reduction to annual street maintenance costs.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

[Resolution](#)

[Exhibits A & B](#)

[SV 15-01 Pre-Recordation](#)

[Public Hearing Notice](#)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL DECLARING AN ORDER TO VACATE A 17 FOOT STRIP, ALONG THE ENTIRE WIDTH OF THE PROPERTY FRONTAGE ON 8TH STREET (FROM NORTHEAST CORNER OF 8TH STREET & SULTANA AVENUE TO APPROXIMATELY 643 FEET EASTERLY)

Intent of the Parties and Findings

(i) William Lyon Homes, Inc, northeast corner of 8th Street and Sultana Avenue, Upland, CA 91786, filed an application for Street Vacation SV-15-01 to vacate a seventeen (17) foot strip along the entire width of the property frontage on 8th Street, as described in Exhibits "A and B", attached hereto; and

(ii) On the 13th day of April, 2015 the City Council of the City of Upland declared its intent to vacate and set a public hearing; and

(iii) The public hearing set the 11th day of May, 2015, at the hour of 7:00 p.m. as the time when, and the Council Chambers of the City Hall in the City of Upland as the place where any person interested in or objecting to the proposed vacation would be heard; and

(iv) The City Clerk of the City of Upland did, in accordance with the provisions of law, posted notices of intention to vacate in the City of Upland at least fifteen (15) days prior to the date of hearing. Such notices were posted not more than 300 feet apart, but at least three (3) such notices were posted on said property proposed to be vacated; and

(v) At said time and place, said City Council heard and considered both oral and written evidence pertaining to the vacation of 17 foot strip described above.

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

Section 1. That said right-of-way in the City of Upland should be and is hereby ordered to be vacated.

Section 2. Vacation will occur as it is appropriate to accommodate the future reconfiguration of 8th Street and proposed residential development; consistent with the circulation element of the Upland General Plan and the City's Master Plan of Streets; and in the interest of the public health, safety, and general welfare by eliminating unnecessary right-of-way, and by making the most efficient use of the land.

Section 3. The Development Services Director has determined that the proposed vacation does not constitute a project as defined by the California Environmental Quality Act (CEQA).

Section 4. The City Council hereby adopts this Resolution approving Street Vacation SV-15-01 subject to the conditions, as follows:

1. The vacation of the seventeen (17) foot strip previously described herein is subject to a reservation of an easement to the public and the servicing utility companies, for the operation and maintenance of various main lines, services, and storm drain within the vacated right-of-way. Said easement shall remain in effect until a utility is relocated or abandoned.

2. Prior to the recordation of the street vacation document, the legal description for the subject strip shall be submitted for review and approval, to the satisfaction of the Public Works Director through the plan check process.
3. The City of Upland does hereby reserve the right to construct, maintain, operate, replace, remove, and renew various utility main lines and appurtenant structures, together with any and all public utilities which the City may deem necessary or convenient to be placed in said property to be vacated as previously described herein, including access to protect such works and all hazards in, upon, and over the street or highway as previously described herein.
4. Future alterations or changes of use to the proposed vacated area shall require review and approval from the Administrative Committee and Planning Commission.

PASSED, ADOPTED and APPROVED this 11th day of May, 2015.

Ray Musser, Mayor

I, Stephanie A. 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 held on the 11th day of May, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

ATTEST:

Stephanie A. Mendenhall, City Clerk

EXHIBIT "A"
LEGAL DESCRIPTION
STREET VACATION
8TH STREET

THE FOLLOWING DESCRIBED REAL PROPERTY IS SITUATED IN THE CITY OF UPLAND, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, BEING ALL OF THE SEVENTEEN FEET (17') WIDE DEDICATION ALONG 8TH STREET TO SAID CITY FOR PUBLIC USE AS SHOWN ON PARCEL MAP No. 3741, AS PER MAP THEREOF FILED IN BOOK 37, PAGE 4, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF PARCEL 2 OF SAID PARCEL MAP;

THENCE, ALONG THE SOUTHERLY LINE OF SAID PARCEL 2 AND CONTINUING ALONG THE SOUTHERLY LINE OF PARCEL 3 OF SAID PARCEL MAP, NORTH 89°58'30" WEST 643.55 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 20.00 FEET;

THENCE, NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 89°59'22", AN ARC LENGTH OF 31.41 FEET TO A POINT OF CUSP ON THE EASTERLY RIGHT OF WAY LINE OF SULTANA AVENUE, SIXTY-SIX FEET (66') WIDE, AS SHOWN ON SAID PARCEL MAP, A RADIAL LINE TO SAID POINT OF CUSP BEARS SOUTH 89°59'08" EAST;

THENCE, ALONG SAID EASTERLY RIGHT OF WAY, SOUTH 00°00'52" WEST 37.00 FEET TO A POINT ON A LINE THAT IS PARALLEL TO AND 33.00 FEET NORTHERLY, MEASURED AT RIGHT ANGLES, FROM THE CENTERLINE OF 8TH STREET, THIRTY-THREE FEET (33') HALF WIDTH, AS SHOWN ON SAID PARCEL MAP;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 89°58'30" EAST 663.55 FEET TO A POINT OF INTERSECTION WITH THE SOUTHERLY PROLONGATION OF THE EASTERLY LINE OF SAID PARCEL 2;

THENCE, ALONG SAID SOUTHERLY PROLONGATION, NORTH 00°00'12" EAST 17.00 FEET TO THE **POINT OF BEGINNING**.

THE ABOVE DESCRIBED VACATION IS SHOWN ON THE MAP ATTACHED HERewith AND MADE A PART HEREOF, ENTITLED EXHIBIT "B" SHEET 2 OF 2.

SAID PARCEL OF LAND CONTAINING 11,366 SQUARE FEET MORE OR LESS

THE ABOVE DESCRIPTION WAS PREPARED UNDER MY DIRECTION.



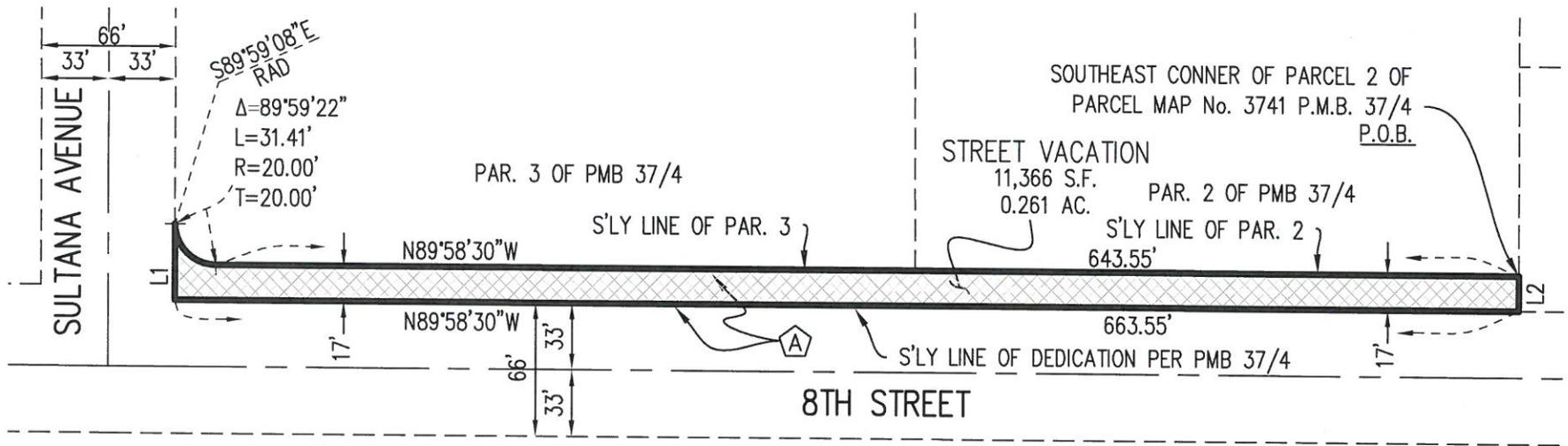
ANTHONY HARO
P.L.S. No. 7635
EXPIRATION DATE: 12/31/2016
JN: 142-2604



DATE



EXHIBIT "B"



LINE TABLE		
LINE	BEARING	LENGTH
L1	S00°00'52"W	37.00'
L2	N00°00'12"E	17.00'

SCALE: 1" = 80'

NOTE TABLE

⬡ DEDICATION TO THE CITY OF UPLAND FOR PUBLIC USE PER P.M. No. 3741 P.M.B. 37/4 TO BE VACATED.

SHEET 2 OF 2

Anthony Haro
 ANTHONY HARO P.L.S. 7635
 EXP. 12/31/2016.
 DATE 3/26/16



J.N.: 142-2604 DWG DATE: 12/18/2014

PREPARED BY:

MADOLE & ASSOCIATES, INC.
 Engineering Communities for Life

9302 PITTSBURGH AVE, SUITE 230
 RANCHO CUCAMONGA, CA. 91730
 PHONE: 909.481.6322
 FAX: 909.481.6320

<p>Recorded at the request of</p> <p>And when recorded mail to: City Of Upland City Clerk's Office P. O. Box 460 Upland, California 91786</p>	
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THIS SPACE FOR RECORDER'S USE

STREET VACATION 15-01
RESOLUTION NO. XXXX

Please see attached Resolution XXXX which vacates a certain portion of 8th Street (Exhibits A and B) in the City of Upland should be and are hereby ordered to be vacated.

This document is exempt from the payment of recordation fee pursuant to Government Code section 6103.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL DECLARING AN ORDER TO VACATE A 17 FOOT STRIP, ALONG THE ENTIRE WIDTH OF THE PROPERTY FRONTAGE ON 8TH STREET (FROM NORTHEAST CORNER OF 8TH STREET & SULTANA AVENUE TO APPROXIMATELY 643 FEET EASTERLY)

Intent of the Parties and Findings

(i) William Lyon Homes, Inc, northeast corner of 8th Street and Sultana Avenue, Upland, CA 91786, filed an application for Street Vacation SV-15-01 to vacate a seventeen (17) foot strip along the entire width of the property frontage on 8th Street, as described in Exhibits "A and B", attached hereto; and

(ii) On the 13th day of April, 2015 the City Council of the City of Upland declared its intent to vacate and set a public hearing; and

(iii) The public hearing set the 11th day of May, 2015, at the hour of 7:00 p.m. as the time when, and the Council Chambers of the City Hall in the City of Upland as the place where any person interested in or objecting to the proposed vacation would be heard; and

(iv) The City Clerk of the City of Upland did, in accordance with the provisions of law, posted notices of intention to vacate in the City of Upland at least fifteen (15) days prior to the date of hearing. Such notices were posted not more than 300 feet apart, but at least three (3) such notices were posted on said property proposed to be vacated; and

(v) At said time and place, said City Council heard and considered both oral and written evidence pertaining to the vacation of 17 foot strip described above.

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

Section 1. That said right-of-way in the City of Upland should be and is hereby ordered to be vacated.

Section 2. Vacation will occur as it is appropriate to accommodate the future reconfiguration of 8th Street and proposed residential development; consistent with the circulation element of the Upland General Plan and the City's Master Plan of Streets; and in the interest of the public health, safety, and general welfare by eliminating unnecessary right-of-way, and by making the most efficient use of the land.

Section 3. The Development Services Director has determined that the proposed vacation does not constitute a project as defined by the California Environmental Quality Act (CEQA).

Section 4. The City Council hereby adopts this Resolution approving Street Vacation SV-15-01 subject to the conditions, as follows:

1. The vacation of the seventeen (17) foot strip previously described herein is subject to a reservation of an easement to the public and the servicing utility companies, for the operation and maintenance of various main lines, services, and storm drain within the vacated right-of-way. Said easement shall remain in effect until a utility is relocated or abandoned.

2. Prior to the recordation of the street vacation document, the legal description for the subject strip shall be submitted for review and approval, to the satisfaction of the Public Works Director through the plan check process.
3. The City of Upland does hereby reserve the right to construct, maintain, operate, replace, remove, and renew various utility main lines and appurtenant structures, together with any and all public utilities which the City may deem necessary or convenient to be placed in said property to be vacated as previously described herein, including access to protect such works and all hazards in, upon, and over the street or highway as previously described herein.
4. Future alterations or changes of use to the proposed vacated area shall require review and approval from the Administrative Committee and Planning Commission.

PASSED, ADOPTED and APPROVED this 11th day of May, 2015.

Ray Musser, Mayor

I, Stephanie A. 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 held on the 11th day of May, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

ATTEST:

Stephanie A. Mendenhall, City Clerk

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THE ABOVE DESCRIPTION WAS PREPARED UNDER MY DIRECTION.

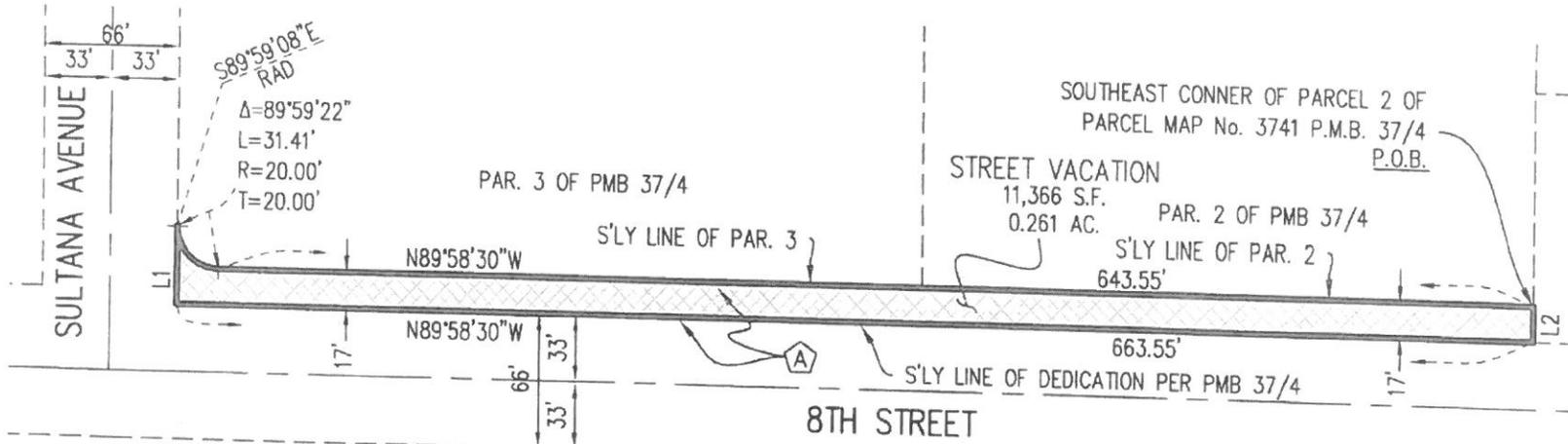


ANTHONY HARO
P.L.S. No. 7635
EXPIRATION DATE: 12/31/2016
JN: 142-2604

3/26/15
DATE



EXHIBIT "B"



LINE TABLE		
LINE	BEARING	LENGTH
L1	S00°00'52"W	37.00'
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NOTE TABLE

(A) DEDICATION TO THE CITY OF UPLAND FOR PUBLIC USE PER P.M. No. 3741 P.M.B. 37/4 TO BE VACATED.

SCALE: 1" = 80'



ANTHONY HARO P.L.S. 7635
 EXP. 12/31/2016.
 DATE 3/26/16

STREET VACATION

SCALE IN FEET

J.N.: 142-2604 DWG DATE: 12/18/2014

PREPARED BY:

MADOLE & ASSOCIATES, INC.
 Engineering Communities for Life

9302 PITTSBURGH AVE, SUITE 230
 RANCHO CUCAMONGA, CA. 91730
 PHONE: 909.481.6322
 FAX: 909.481.6320

SHEET 2 OF 2

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the City Council of the City of Upland will hold a public hearing on Monday, May 11, 2015, at 7:00 p.m., in the Council Chambers of the Upland City Hall, 460 North Euclid Avenue, Upland, CA 91786, to consider the item described herein:

STREET VACATION SV-15-01 to vacate a 17 foot strip along 8th Street (from the northeast corner of Sultana Avenue and 8th Street to approximately 643 feet east). The street vacation is an area of approximately 11,366 square feet.

ENVIRONMENTAL ASSESSMENT: The Development Services Director has determined that the proposed street vacation does not constitute a project as defined by the California Environmental Quality Act (CEQA).

Notice and conduct of public hearing will be in accordance with all pertinent provisions of Article IX (Planning and Zoning) of the Government Code of the State of California.

All maps, environmental information, and other data pertinent to this proposed project are filed in the Development Services Department and will be available for inspection during normal business hours prior to the public hearing. All interested persons are invited to attend this public hearing and express their opinions for or against the project proposed.

Comments on the proposal should be submitted in writing on or before May 11, 2015. All comments should be addressed to the Upland Public Works Department, Upland City Hall, 460 North Euclid Avenue, Upland, CA 91786.

If you challenge SV-15-01, 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.

Stephanie A. Mendenhall, CMC
Upland City Clerk

Publish: April 24, 2015 and May 1, 2015

**FINANCE AND ECONOMIC DEVELOPMENT
COMMITTEE MEETING
MAY 4, 2015

CONCLUSION/ACTION SUMMARY

In attendance: Committee Members Bozar and Morgan, City Manager Butler, Administrative Services Director Mendenhall, Interim Finance Manager Williams, Human Resources Manager Bragg, Kimberly Kinney of Keenan Associates, and Agnus Kennedy of Ringler Associates

- 1) **ORAL COMMUNICATIONS**, None
- 2) **PRESENTATION ON CALPERS ACTUARIAL BY BARTEL AND ASSOCIATES**, the Committee received the informational item, which will be presented at a future City Council meeting.
- 3) **WORKERS' COMPENSATION SETTLEMENT OPTIONS**, the Committee received the informational item.



Finance and Economic Dev. Comm. Meeting

May 4, 2015

5:00 pm

Pinky Alder Room

-
- 1) ORAL COMMUNICATIONS
 - 2) PRESENTATION ON CALPERS ACTUARIAL BY BARTEL AND ASSOCIATES
 - 3) WORKERS' COMPENSATION SETTLEMENT OPTIONS

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 April 30, 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).

Workers' Compensation Settlements

Presented by Kimberly Kinney, Claims Manager

Agenda

- Types of Settlements
- Settlement Payments
- Structured Settlements



Types of Settlements

- Stipulation
- Findings & Award
- Compromise and Release



Stipulations (Stips)

- A Stipulation is:
 - Agreed to by parties
 - Approved by Judge
 - Permanent Disability is established
 - Future Medical is determined
 - If future medical is awarded,
 - The benefits are for the life of the injured worker
 - ***City continues to carry liability***



Findings & Award (F&A)

- Parties are not able to agree
- The case facts are submitted to the Judge
- Judge makes final determination on all aspects of the claim:
 - Causation
 - Disability
 - Need for treatment; past, present and future
 - If the need for treatment is found to be for future medical care, it is for the life of the injured worker.
- ***City continues to carry liability***



Compromise and Release (C&R)

- Parties agree on a sum to bring the file to resolution.
- Approved by Judge.
- It's a buy out.
 - Resolves all liabilities, known / unknown.
- The City **no longer carries any liability.**



Settlement payments

- Pay me now
 - Compromise and Release



- Pay me now, later and forever
 - Stipulations
 - Findings and Award



Structured Settlements

- Tool used to reduce payout on claims and bring an end to future liabilities.



- Angus Kennedy
 - B.A., Communications, Point Loma Nazarene University, 1986
 - Accounting, University of Rhode Island, 1983



Ringler Associates

(866) 485-0015

Fax (760) 761-3670

Individually Designed Settlement for

<u>BENEFIT</u>	<u>COST</u>	<u>EXPECTED YIELD</u>
MSA Seed	\$5,280.00	\$5,280.00
 Male, Date of Birth: 07/03/53		
<u>Annual Contribution to Medicare Set-Aside Account per CMS approval</u> To Begin one year from funding date. \$1,971.00 per year payable 17 years, only if living.	\$23,816.10	\$33,507.00
TOTALS	\$29,096.10	\$38,787.00

Proposal illustrates cost to fund CMS approved MSA. It saves \$9,691.00 (25%) by structuring the MSA

Rate Series = RB150401 (4/1/2015)

Proposal Preparation Date: 4/23/2015

Proposal Purchase Date: 5/23/2015

This proposal is valid for 7 days from the proposal preparation date.

This proposal design is for illustration and planning purposes only, and is not valid or binding until verified with the appropriate life company quoting software.



Ringler Associates

(866) 485-0015

Fax (760) 761-3670

Individually Designed Settlement for

<u>BENEFIT</u>	<u>COST</u>	<u>EXPECTED YIELD</u>
MSA Seed	\$24,489.43	\$24,489.43
<u>Annual Contribution to Medicare Set-Aside Account</u> To Begin one year from funding date. \$11,302.81 per year payable 13 years, only if living.	\$106,020.70	\$146,936.53
TOTALS	\$130,510.13	\$171,425.96

Proposal illustrates cost to fund MSA prepared by Helios 4/13/15. It saves \$40,915.00 (24%) by structuring the MSA.

Rate Series = RB150401 (4/1/2015)

Proposal Preparation Date: 4/28/2015

Proposal Purchase Date: 5/28/2015

This proposal is valid for 7 days from the proposal preparation date.

This proposal design is for illustration and planning purposes only, and is not valid or binding until verified with the appropriate life company quoting software.



Ringler Associates

(866) 485-0015

Fax (760) 761-3670

Individually Designed Settlement for

<u>BENEFIT</u>	<u>COST</u>	<u>EXPECTED YIELD</u>
MSA Seed	\$81,514.00	\$81,514.00
Immediate Cash	\$22,451.27	\$22,451.27
Attorney Fees	\$48,300.00	\$48,300.00
<hr/>		
Male, Date of Birth: 03/30/51		
<u>Annual Contribution to Medicare Set-Aside Account</u>		
To Begin one year from funding date.	\$122,441.32	\$190,791.00
\$11,223.00 per year payable 17 years, only if living.		
<u>Monthly Lyrica Income</u>		
To Begin one month from funding date.	\$47,293.41	\$70,500.00
\$300.00 per month for Life.		
TOTALS	<hr/> \$322,000.00	<hr/> \$413,556.27

Rate Series = 550 (4/1/2015)

Proposal Preparation Date: 4/28/2015

Proposal Purchase Date: 5/20/2015

This proposal is valid for 7 days from the proposal preparation date.

This proposal design is for illustration and planning purposes only, and is not valid or binding until verified with the appropriate life company quoting software.



Ringler Associates

(866) 485-0015

Fax (760) 761-3670

Individually Designed Settlement for (EO)

<u>BENEFIT</u>	<u>COST</u>	<u>EXPECTED YIELD</u>
Immediate Cash	\$10,000.00	\$10,000.00
Attorney Fees	\$48,750.00	\$48,750.00
<u>Tax Free Monthly Income</u>		
To Begin one month from funding date.	\$204,200.00	\$232,763.40
\$1,293.13 per month guaranteed 15 years.		
<u>College Fund for Alejandro Valencia</u>		
\$10,000.00 per year guaranteed 4 years starting on 7/17/2025.	\$29,620.00	\$40,000.00
<u>College Fund for Monserrath Valencia</u>		
\$10,000.00 per year guaranteed 4 years starting on 10/25/2023.	\$32,430.00	\$40,000.00
TOTALS	\$325,000.00	\$371,513.40

Rate Series = NY73 (12/8/2014)

Proposal Preparation Date: 12/17/2014

Proposal Purchase Date: 1/18/2015

This proposal is valid for 7 days from the proposal preparation date.

This proposal design is for illustration and planning purposes only, and is not valid or binding until verified with the appropriate life company quoting software.



Ringler Associates

(866) 485-0015

Fax (760) 761-3670

Individually Designed Settlement for Luis Ibarra

Claimant: Luis Ibarra
Date of Birth: 10/21/74
Gender: Male

<u>BENEFIT</u>	<u>COST</u>	<u>EXPECTED YIELD</u>
<u>MSA Seed</u>		
MSA Seed	\$23,143.00	\$23,143.00
Immediate Cash	\$60,000.00	\$60,000.00
<u>MSA Allocation</u>		
Annual Contribution to Medicare Set-Aside Account To Begin one year from funding date. \$11,250.00 per year for Life.	\$226,373.00	\$416,250.00
Weekly "Indemnity" Income To Begin one month from funding date. \$679.78 per week for Life.	\$726,904.00	\$1,328,969.90
TOTALS	\$1,036,420.00	\$1,828,362.90

Rate Series = LL0189D (2/12/2015)

Proposal Preparation Date: 4/3/2015

Proposal Purchase Date: 5/3/2015

This proposal is valid for 7 days from the proposal preparation date.

This proposal design is for illustration and planning purposes only, and is not valid or binding until verified with the appropriate life company quoting software.



STAFF REPORT

ITEM NO. 13.A

DATE: MAY 11, 2015
TO: MAYOR AND CITY COUNCIL
FROM: ROD BUTLER, CITY MANAGER
PREPARED BY: RICHARD L. ADAMS, II, CITY ATTORNEY
G. ROSS TRINDLE, III, DEPUTY CITY ATTORNEY
SUBJECT: MUNICIPAL CODE AMENDMENT TO CHAPTERS 1 AND 5 RELATED TO THE ABATEMENT OF NUISANCES AND RECOVERY OF FEES AND COSTS ASSOCIATED THEREWITH, DECLARATION AGAINST OPERATION OF ILLEGAL BUSINESSES AND THE ISSUANCE OF ADMINISTRATIVE CITATIONS

RECOMMENDED ACTION

It is recommended that the City Council introduce for first reading by title only and waive further reading of an Ordinance amending and revising Chapters 1 and 5 of the Upland Municipal Code related to the abatement of nuisances and recovery of fees and costs associated therewith, declaration against operation of illegal businesses, and the issuance of administrative citations.

GOAL STATEMENT

The proposed action supports the City's goal to establish sound fiscal policy to recover costs related to code enforcement.

BACKGROUND

State law authorizes the City to identify public nuisances that are subject to abatement via administrative, criminal, and civil processes. The identification and abatement of public nuisances, including illegal businesses like marijuana dispensaries, can come with significant costs relating to staff time, enforcement costs, and legal fees. Depending upon the complexity of the condition subject to enforcement and abatement, the City may be forced to spend significant City resources in order to abate any specific nuisance, all in an effort to protect the health, safety, welfare, and quality of life of the community.

State law also authorizes the City to recover fees and costs--including reasonable attorneys' fees--associated with code enforcement efforts and abatement.

In response to the City Council's concern regarding the enforcement of the Upland Municipal Code, the City Attorney's office has drafted an ordinance that is being successfully used in other cities in the Inland Empire.

ISSUES/ANALYSIS

Have the ability to recover the City's actual enforcement costs incurred in abating nuisances--including reasonable attorneys' fees--promotes sound fiscal policy by having those who break the laws pay for the City's enforcement costs, in addition to other remedies provided for under the municipal code, state law, or both, rather than having the City and its residents bear the burden.

By providing for specific cost recovery of the City's actual costs incurred in abating public nuisance in the Upland Municipal Code, potential violators may be deterred from engaging in/allowing the operation of a public nuisance in the first place, thus protecting and improving the health, safety, welfare, and quality of life of the community.

The addition of cost recovery mechanisms via revision of the Upland Municipal Code allows the City's legal counsel flexibility, in conjunction with City staff, in bringing out compliance and nuisance abatement, by allowing for an election of enforcement mechanisms and remedies, including administrative, criminal, and civil, as well as recovery of actual fees and costs--including reasonable attorneys' fees--any possible statutory penalties, and treble damages in certain situations. This flexibility, in turn, allows for a balanced approach to enforcement and recovery to suit the needs of each individual enforcement action.

The proposed revisions have been implemented successfully in other cities in the region, with cost recovery helping to offset significant enforcement costs, and even helping to make enforcement cost neutral with aggressive application of available remedies at the direction of city staff and officials.

FISCAL IMPACTS

The City can expect a decrease in the overall net cost of code enforcement and compliance through administrative citations and cost recovery for abatement actions. The exact amount will vary depending upon the complexity of each enforcement situation, the violations at issue, and the involved parties. Other cities in the region have seen cost recovery as high as cost neutrality on a case-by-case basis with aggressive enforcement, and a net recovery over time above 90%. With the proposed revisions, the City will be able to audit the recovery obtained and provide an aggregate cost savings analysis at various levels of granularity and across different timeframes as the City may require. Between 2009 to 2014, the City has expended \$668,000 in enforcing the medical marijuana code restrictions

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

[Ordinance](#)

[Legal Billing - 2009 to 2014](#)

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UPLAND AMENDING AND REVISING CHAPTERS 1 AND 5 OF THE UPLAND MUNICIPAL CODE RELATED TO THE ABATEMENT OF NUISANCES AND RECOVERY OF FEES AND COSTS ASSOCIATED THEREWITH, DECLARATION AGAINST OPERATION OF ILLEGAL BUSINESSES, AND THE ISSUANCE OF ADMINISTRATIVE CITATIONS

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

Section 1. Findings.

A. The Upland Municipal Code, in accordance with and as authorized by Government Code section 38871 and the California Constitution, provides for the identification and abatement of public nuisances; and

B. Depending upon the complexity of the condition subject to abatement, and the application of various state laws authorizing the recovery of fees and costs (including reasonable attorneys' fees) associated with any given abatement, the City may be required to spend significant City resources in order to abate any specific nuisance in an effort to protect the health, safety, welfare, and quality of life of the community; and

C. Having the ability to recover the City's actual costs incurred in abating a nuisance (including reasonable attorneys' fees) promotes sound fiscal policy by having those who break the laws pay for the City's enforcement costs, in addition to other remedies provided for under the municipal code, state law, or both, rather than having the City bear the cost; and

D. By providing for the specific recovery of the City's actual costs incurred in abating a nuisance (including reasonable attorneys' fees), those who may seek to violate the City's laws may instead be deterred from doing so given the exposure to possible cost recovery, on top of other compliance mechanisms and remedies provided for under the municipal code, state law, or both; and

E. Assuring compliance with the City's municipal code and zoning laws promotes the health, safety, welfare, and quality of life of the community; and

F. Government Code section 38773.5(b) specifically authorizes a municipality to adopt an ordinance for the recovery of costs incurred in abating a nuisance, including reasonable attorneys' fees, in any action, including any administrative action; and

G. Government Code section 38773.7 authorizes the award of treble damages upon entry of a second or subsequent civil or criminal judgment within a two-year period following entry of judgment in abating a nuisance where the property owner is found to have been responsible for the nuisance; and

H. 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 2. The City Council further finds as follows:

A. Pursuant to Government Code section 38773.5(b), the City Council elects to provide for the recovery of attorneys' fees in any action, administrative proceeding, or special proceeding to abate a nuisance.

B. Pursuant to Government Code section 38773.7, the City Council elects to provide for an award of treble damages upon entry of a second or subsequent civil or criminal judgment within a two-year period following entry of judgment in abating a nuisance where the property owner is found to have been responsible for the nuisance.

Section 3. Ordinance amending Municipal Code

Section 1.10.020 of Chapter 1.10 of Title 1 of the Upland Municipal Code is hereby revised to include the following two additional definitions:

. . .

"Costs" shall have the meaning set forth in California Code of Civil Procedure Section 1033.5, including, without limitation, attorneys' fees. In addition to such items, all of the following shall be included within the definition of "costs":

1. Personnel costs of the city, as actually incurred by the city (for contractors and consultants) or based on established rates of employee costs as adopted by resolution of the city council from time to time. Such personnel costs shall include, but not be limited to, the costs incurred by the city to pay any contractor to abate a public nuisance.

2. Costs of administrative hearings, including, hearing officer costs and reporter costs.

3. Accrued interest at the maximum rate established by law.

"Day" means a calendar day.

Section 4. Section 1.10.030(B) to Chapter 1.10 of Title 1 of the Upland Municipal Code is hereby revised as follows:

B. Any peace officer, code enforcement officer, or any other person designated by the city manager may issue an administrative citation to a person to remedy any violation.

Section 5. Section 1.16.005 is added to Chapter 1.16 of Title 1 of the Upland Municipal Code as follows:

1.16.005 – General Penalty; Continuing Violations; Civil Penalty

Unless a different penalty is prescribed for violation of a specific provision of this code, every act prohibited or declared unlawful, and every failure to perform an act made mandatory, shall be a misdemeanor or an infraction, at the discretion of the city attorney or the district attorney.

As used in this chapter, the term "year" means any consecutive 12-month period.

As used in this chapter, the term "offense" includes any violation of the code which is cited or charged and which does not result an acquittal, a finding of "not guilty," or a dismissal of charges by the city or the court.

- A. *Civil penalty.* Every violation of a provision of this code which is specifically designated to carry a civil penalty, in addition to a criminal penalty, shall be punishable by a civil fine not exceeding \$1,000.00, unless otherwise specifically provided and authorized by state law. Nothing set forth herein shall limit the ability of the city to seek and obtain other remedies permitted by law.

Section 6. Section 1.16.190 is added to Chapter 1.16 of Title 1 of the Upland Municipal Code as follows:

1.16.190 – Recovery of Attorneys' Fees

Any violation of this Municipal Code is hereby determined to constitute a public nuisance. The prevailing party in any judicial action and/or administrative proceeding to abate a nuisance and/or to enforce any provision of this Municipal Code may elect to recover the incurred attorneys' fees. In no judicial action or administrative proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the city in the judicial action or administrative proceeding.

Section 7. Chapter 5.02 is added to Title 5 of the Upland Municipal Code as follows:

5.02 – Illegal Businesses Prohibited

Notwithstanding any provision of this title, no person shall transact, perform, engage in and carry on in the City of Upland any business, trade, profession, calling or occupation any business, operation or use that cannot be, or is not, conducted or carried out without being in violation of any federal, state, county or city law, ordinance or code.

Section 8. Section 5.04.095 is added to Chapter 5.04 of Title 5 of the Upland Municipal Code as follows:

5.04.095 – Penalty

Any person violating any of the provisions of the herein Title or knowingly or intentionally misrepresenting to any officer or employee of this city any material fact in procuring the license or permit provided for in this article shall be deemed guilty of an infraction, and, upon conviction thereof, shall be punished as provided in Section 1.16.005. All remedies prescribed herein shall be cumulative, and the use of one or more remedies by the city shall not bar the use of any other remedy for the purpose of enforcing the provisions of this code.

Section 9. Section 1.16.190 is added to Chapter 1.16 of Title 1 of the Upland Municipal Code as follows:

1.16.190 – Treble damages for second or subsequent judgment.

Upon entry of a second or subsequent civil or criminal judgment within a two-year period finding that an owner of property is responsible for a condition that may be abated in accordance with, the City shall be entitled to recover treble the costs of abatement, including reasonable attorneys' fees, for the second or subsequent judgments.

Section 10. 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 11. 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 12. 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 ____ day of _____, 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

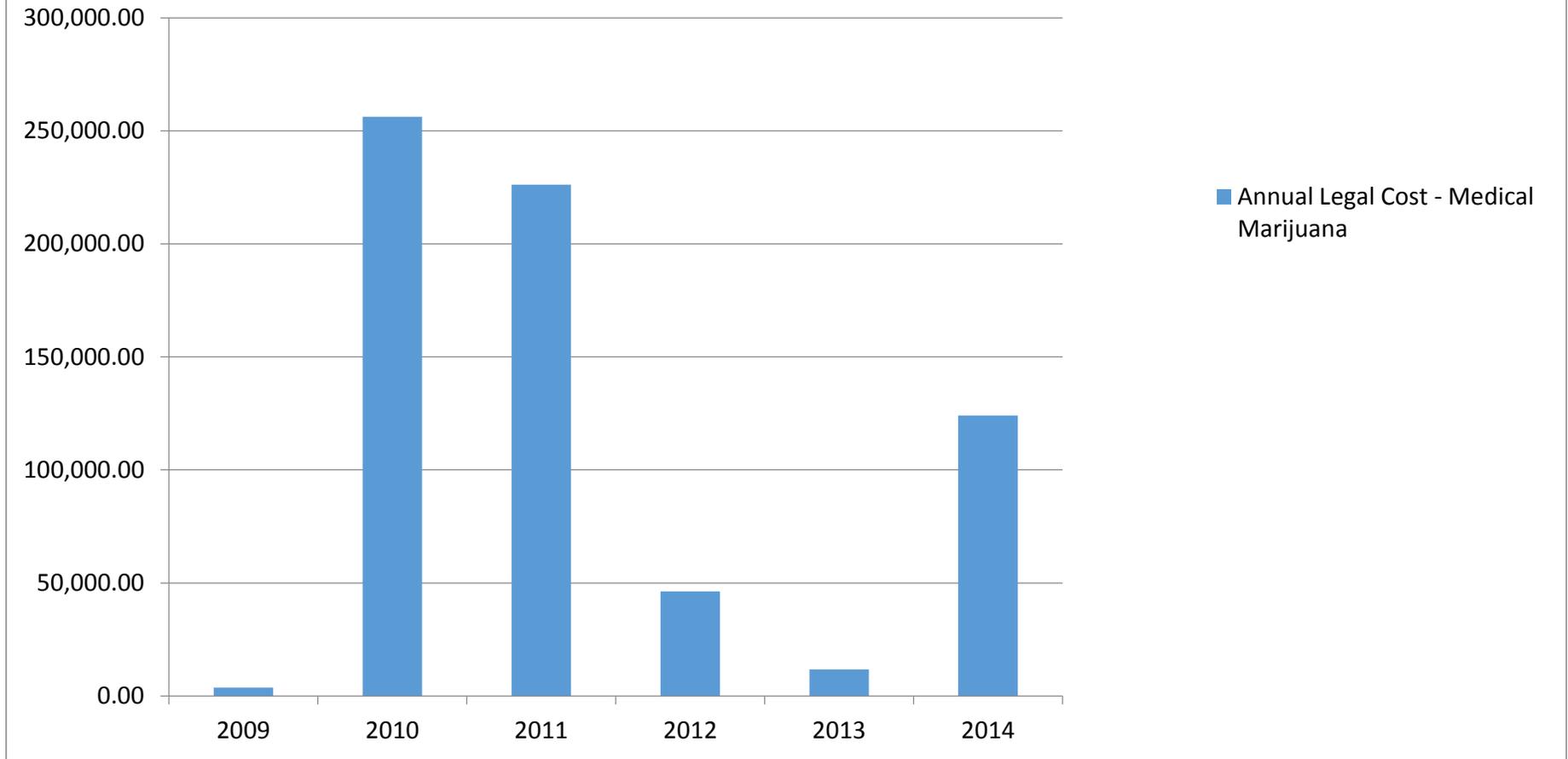
Ordinance No.
Page 5

Council of the City of Upland held on the ____ day of ____, 2015, and was adopted at a regular meeting of said City Council of the City of Upland on the ____ day of ____, 2015, by the following roll call vote:

AYES:
NOES:
ABSENT:
ABSTAINED:

ATTEST: _____
Stephanie A. Mendenhall, City Clerk

Annual Legal Cost - Medical Marijuana





STAFF REPORT

ITEM NO. 13.B

DATE: MAY 11, 2015
TO: MAYOR AND CITY COUNCIL
FROM: ROD BUTLER, CITY MANAGER
PREPARED BY: RICK MAYHEW, FIRE CHIEF
SUBJECT: AMENDMENT NO. 1 TO THE MOU BETWEEN THE CITIES OF UPLAND AND MONTCLAIR FOR JOINT SHARING OF FIRE DEPARTMENT COMMAND STAFF AND EXPANSION OF AUTOMATIC AND MUTUAL AID THROUGH MUTUAL AGREEMENT TO VACATE SERVICE BOUNDARIES

RECOMMENDED ACTION

It is recommended that the City Council approve Amendment No. 1 to the Memorandum of Understanding between the cities of Upland and Montclair for joint sharing of Fire Department Command Staff and expansion of automatic and mutual aid through mutual agreement to vacate service boundaries.

GOAL STATEMENT

The proposed action supports the City's goal to provide an equal or greater level of emergency service to the community for an equal or lesser cost.

BACKGROUND

On January 1, 2014 an MOU between the cities of Montclair and Upland for joint sharing of Fire Department Command Staff and expansion of automatic and mutual aid through mutual agreement to vacate service boundaries began. This Agreement set into action a two-year pilot program, during which time the effectiveness of the collaboration between the Upland and Montclair Fire Departments is being evaluated. The pilot-program is driven by a two-year strategic plan that outlines numerous objectives to be achieved within four phases.

During the first phase of the program, the Upland and Montclair Fire Departments began providing fire protection and emergency medical services under the direction of a unified command structure and preparing for the suspension of service boundaries.

During the second phase of the program, Consolidated Fire Agencies of San Bernardino County (CONFIRE) began providing joint dispatch services for both Fire Departments. This transition was pivotal because it provided access to Automatic Vehicle Location (AVL) software, which fully allowed the cities of Montclair and Upland to achieve reduced response times and enabled the closest-available fire unit, regardless of jurisdiction, to respond to a fire or medical emergency.

The use of AVL made it possible for the boundary drop concept to be fully implemented. The suspension of service boundaries has achieved equilateral sharing of resources and expanded the capacity of both departments to provide superior service.

At the current time, the program is in its third phase. This phase consists of the re-evaluation of the functional areas assigned to each Deputy Fire Chief. In addition and pursuant to the objectives set forth for this phase, staffs from Upland and Montclair have evaluated other non-safety administrative positions that may appropriately be subject to cost-sharing provisions. Lastly, Staff has re-evaluated the proportionate share of costs for the position of Fire Chief.

ISSUES/ANALYSIS

As part of the implementation process, Upland and Montclair staff have met and determined that two additional positions may become subject to the shared cost provisions of the Agreement. The two proposed positions are Emergency Service Coordinator/Administrative Services Officer and Senior Administrative Assistant.

The City of Montclair maintains one (1) Emergency Services Coordinator/Administrative Services Officer position. If, at the time the proposed Amendment is executed, the Emergency Services Coordinator/Administrative Services Officer position is vacant, Montclair shall conduct a promotional process to fill the vacant position. Montclair will be fully responsible for all labor-related costs associated with employing the Emergency Services Coordinator/Administrative Services Officer. Costs for this position will be based on wages and benefits provided by the City of Montclair, as approved by action of the Montclair City Council.

The Emergency Services Coordinator/Administrative Services Officer will remain an employee of Montclair, and Montclair employment rules and regulations shall govern. Montclair shall separately maintain an office for this position. A satellite office in the City of Upland may be established, for a minimal cost to the City of Upland, at the discretion of the Fire Chief. This position would be designated to serve as the Emergency Services Coordinator for Upland and Montclair, and the Administrative Services Officer for Montclair only. This position will coordinate the day-to-day activities of the Disaster Preparedness Programs for Upland and Montclair; and perform a variety of tasks in support of Montclair Fire Department administration, including supervision of the Department's clerical staff positions.

Upland maintains one (1) Senior Administrative Assistant position. If, at the time the proposed Amendment is executed, the Senior Administrative Assistant position is vacant, Upland shall conduct a promotional process to fill the vacant position. Upland will be fully responsible for all labor-related costs associated with employing the Senior Administrative Assistant. Costs for this position will be based on wages and benefits provided by the City of Upland, as approved by action of the Upland City Council. The Senior Administrative Assistant will remain an employee of Upland, and Upland employment rules and regulations shall govern. Upland shall separately maintain an office for this position. A satellite office in the City of Montclair may be established, for a minimal cost to the City of Montclair, at the discretion of the Fire Chief.

This position would be designated to serve as the Senior Administrative Assistant for Upland and Montclair. The Senior Administrative Assistant will report to the Administrative Services Officer in Montclair and to the Fire Chief in Upland. The position will perform traditional administrative support duties in Upland and Montclair, and supervise the part-time Clerk position in Upland.

Staff has evaluated the functional areas assigned to each Deputy Fire Chief, and has determined that these assignments require adjustment. Under the terms of Agreement, the Montclair Deputy Fire Chief was assigned to oversee operations for both agencies, and the Upland Deputy Fire Chief was assigned to oversee training for both agencies. After evaluating current operations of both Departments, it has been determined that these functional area assignments should be reversed. Amendment No. 1 to the Agreement proposes that the Montclair Deputy Fire Chief oversee training for both agencies, and the Upland Deputy Fire Chief oversee operations for both agencies.

FISCAL IMPACTS

The proposed Amendment will not alter the original terms and conditions of the MOU as stipulated in Section III.R.1, in relation to the proposed shared cost positions of Emergency Services Coordinator/Administrative Services Officer and Senior Administrative Assistant, which states that Montclair and Upland will proportionately share the costs of wages and benefits (exclusive of benefit costs identified in the MOU) for positions subject to cost sharing provisions: Upland's proportionate share of costs will be sixty-seven percent (67%), and Montclair's proportionate share of costs will be thirty-three percent (33%).

The proposed Amendment does, however, alter the original terms and conditions of the MOU as stipulated in Section III.R.1 in relation to the proportionate share of costs for the position of Fire Chief. Pursuant to the proposed Amendment, Montclair and Upland will proportionately share the costs of wages and benefits (exclusive of benefit costs identified in the Agreement) for the position of Fire Chief: Upland's proportional share of costs would be sixty percent (60%), and Montclair's proportionate share of costs would be forty percent (40%). This proposed adjustment was necessitated after a 12-month evaluation of time spent between the two agencies by the Fire Chief.

Amendment No. 1 to the MOU keeps with the original intent of the Agreement, which was to promote fiscal and operational efficiencies with the fire service. The annual revenue from Montclair with Amendment No. 1 to the MOU is calculated to be \$188,136, and the net increase to the City of Upland is calculated to be \$144,598 (see attached table).

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

[FIRST AMENDMENT TO AGREEMENT No. 13-100](#)

[AGREEMENT No. 13-100: MOU BETWEEN THE CITIES OF UPLAND AND MONTCLAIR FOR JOINT SHARING OF FIRE DEPARTMENT COMMAND STAFF AND EXPANSION OF AUTOMATIC AND MUTUAL AID THROUGH MUTUAL AGREEMENT TO VACATE SERVICE BOUNDARIES](#)

[MONTCLAIR/UPLAND CURRENT ORGANIZATIONAL CHART](#)

[MONTCLAIR/UPLAND PROPOSED ORGANIZATIONAL CHART](#)

[UPLAND-MONTCLAIR FIRE MERGER ANALYSIS](#)

AGREEMENT NO. 15-XXX
FIRST AMENDMENT
TO
MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITIES OF MONTCLAIR AND UPLAND
FOR JOINT SHARING OF FIRE DEPARTMENT COMMAND STAFF
AND EXPANSION OF AUTOMATIC AND MUTUAL AID THROUGH MUTUAL
AGREEMENT TO VACATE SERVICE BOUNDARIES

THIS AGREEMENT ("Amendment") amending Agreement No. 13-100 ("Agreement"), a Memorandum of Understanding Between the Cities of Montclair and Upland for Joint Sharing of Fire Department Command Staff and Expansion of Automatic and Mutual Aid Through Mutual Agreement to Vacate Service Boundaries, is entered into as of this _____ day of _____, 2015, by and between the CITY OF MONTCLAIR, a municipal corporation, hereinafter referred to as "Montclair," and the CITY OF UPLAND, a municipal corporation, hereinafter referred to as "Upland." Montclair and Upland may be referred to in this Agreement individually as "Montclair" or "Upland" and jointly as "Cities" or "Parties."

WITNESSETH:

WHEREAS, Montclair and Upland previously entered into a Joint Sharing of Fire Department Command Staff and Expansion of Automatic and Mutual Aid Through Mutual Agreement to Vacate Service Boundaries effective January 1, 2014, for the

provision of providing all-risk fire services, as stipulated in the Memorandum of Understanding Between the Cities of Montclair and Upland for Joint Sharing of Fire Department Command Staff and Expansion of Automatic and Mutual Aid Through Mutual Agreement to Vacate Service Boundaries dated in December of 2013 (the "Agreement"); and

WHEREAS, the Parties desire to amend certain terms of the Agreement as set forth in this Amendment.

NOW, THEREFORE, in consideration of the mutual covenants contained in Agreement No. 13-100, the Parties agree to the following revisions:

Section III. C. 1. Fire Chief Cost Distribution

The first paragraph of Section III. C. 1 of the Agreement is hereby replaced in its entirety with the following:

Fire Chief Cost Distribution. The Fire Chief is an employee of the City of Upland; accordingly, Upland's terms and conditions of employment for the Fire Chief will apply. Employment-related costs for wages and benefits shall be shared between Montclair and Upland, with sixty percent (60%) of employment costs assigned to Upland and forty (40%) of employment costs assigned to Montclair.

Upland will be responsible for administering all wages and benefits provided to

the Fire Chief, including the provision of any take home vehicle, fuel, and insurance. Montclair will reimburse Upland as specified in this Amendment for its share of costs related to employment of the Upland Fire Chief.

Section III. D. Deputy Fire Chief/Operations

Section III. D. of the Agreement is hereby replaced in its entirety with the following:

Deputy Fire Chief/Operations. Upland maintains or shall establish one (1) Deputy Fire Chief position. If, at the time this Agreement is executed, the Deputy Fire Chief /position is vacant, Upland shall conduct an in-house promotional process to fill the vacant position and reclassify the title to Deputy Fire Chief/Operations. Upland currently maintains three (3) Battalion Chief positions. Through an in-house promotional process, Upland shall promote one of three (3) Battalion Chiefs to the Deputy Fire Chief/Operations position prior to or concurrent with the effective date of this Agreement. In order to achieve the objectives of this Agreement, the vacated Battalion Chief position shall remain unfilled upon successful promotion of the incumbent to the position of Deputy Fire Chief/Operations. Upland will be fully responsible for all labor-related costs associated with employing the Deputy Fire Chief/Operations. Costs for the Upland Deputy Fire Chief will be based on wages and benefits

provided by the City of Upland, as approved by action of the Upland City Council. The Deputy Fire Chief will remain an employee of Upland, and Upland employment rules and regulations shall govern. Upland shall separately maintain an office and vehicle for the Upland Deputy Fire Chief. A satellite office in the City of Montclair may be established, for a minimal cost to the City of Montclair, at the discretion of the Montclair City Manager and Fire Chief.

Section III. F. Deputy Fire Chief/Training

Section III.F of the Agreement is hereby replaced in its entirety with the following:

Deputy Fire Chief/Training. Montclair maintains or shall establish one (1) Deputy Fire Chief position. If, at the time this Agreement is executed, the Deputy Fire Chief /position is vacant, Montclair shall conduct an in-house promotional process to fill the vacant position and reclassify the title to Deputy Fire Chief/Training. Montclair currently maintains three (3) Battalion Chief positions. Through an in-house promotional process, Montclair shall promote one of three (3) Battalion Chiefs to the Deputy Fire Chief/Training position prior to or concurrent with the effective date of this Agreement. In order to achieve the objectives of this Agreement, the vacated Battalion Chief position shall remain unfilled upon successful promotion of the incumbent to the position of

Deputy Fire Chief/Training. Montclair will be fully responsible for all labor-related costs associated with employing the Deputy Fire Chief/Training. Costs for the Montclair Deputy Fire Chief will be based on wages and benefits provided by the City of Montclair, as approved by action of the Montclair City Council. The Deputy Fire Chief will remain an employee of Montclair, and Montclair employment rules and regulations shall govern. Montclair shall separately maintain an office for the Montclair Deputy Fire Chief. A satellite office in the City of Upland may be established, for a minimal cost to the City of Upland, at the discretion of the Upland City Manager and Fire Chief.

Section III. G. Upland Battalion Chiefs.

Section III.G of the Agreement is hereby replaced in its entirety with the following:

Upland Battalion Chiefs. Upland currently maintains three (3) Battalion Chief positions. Unless the Upland Deputy Fire Chief/Operations and Fire Marshal positions are otherwise filled with incumbents, one of Upland's three (3) Battalion Chiefs shall be promoted to Deputy Fire Chief/Operations and one of Upland's three (3) Battalion Chiefs shall be promoted to Fire Marshal prior to or concurrent with implementation of this Agreement. In order to achieve the objectives of the Agreement for the Parties to mutually provide for three (3)

Battalion Chief positions, the two Upland Battalion Chief positions vacated by promotion to Deputy Fire Chief/Operations and Fire Marshal shall remain vacant, the remaining Upland Battalion Chief position shall remain occupied by an Upland Battalion Chief, and Montclair shall provide for the remaining two Battalion Chief positions.

Section III. H. Montclair Battalion Chiefs.

Section III. H. of the Agreement is hereby replaced in its entirety with the following:

Montclair Battalion Chiefs. Montclair currently maintains (3) Division Chief positions. Unless the Montclair Deputy Fire Chief/Training position is otherwise filled with an incumbent, one of Montclair's three (3) Division Chiefs shall be promoted to Deputy Fire Chief/Training. In order to achieve the objectives of this Agreement, the Montclair Division Chief position vacated by promotion to Deputy Fire Chief/Training shall remain vacant and the remaining two Montclair Division Chief positions shall remain occupied by employees of the Montclair Fire Department.

Section III. K. Non-Sworn Administrative Positions.

Section III. K of the Agreement is hereby replaced in its entirety with the following:

1. Emergency Services Coordinator/Administrative Services Officer. Montclair maintains one (1) Emergency Services Coordinator/Administrative Services Officer position. If, at the time this Amendment is executed, the Emergency Services Coordinator/Administrative Services Officer is vacant, Montclair shall conduct a promotional process to fill the vacant position. Employment-related costs for wages and benefits shall be shared between Montclair and Upland, with sixty-seven percent (67%) of employment costs assigned to Upland and thirty-three percent (33%) of employment costs assigned to Montclair as stipulated in Section III(R)(1) of this Agreement. Costs for the Montclair Emergency Services Coordinator/Administrative Services Officer will be based on wages and benefits provided by the City of Montclair, as approved by action of the Montclair City Council. The Emergency Services Coordinator/Administrative Services Officer will remain an employee of Montclair, and Montclair employment rules and regulations shall govern. Montclair shall separately maintain an office for the Montclair Emergency Services Coordinator/ Administrative Services Officer. A satellite office in the City of Upland may be established, for a minimal cost to the City of Upland, at the discretion of the Upland City Manager and Fire Chief.

2. Senior Administrative Assistant. Upland maintains one (1) Senior Administrative Assistant position. If, at the time this Amendment is executed, the Senior Administrative Assistant position is vacant, Upland shall conduct a promotional process to fill the vacant position. Employment-related costs for wages and benefits shall be shared between Montclair and Upland, with sixty-seven percent (67%) of employment costs assigned to Upland and thirty-three percent (33%) of employment costs assigned to Montclair as stipulated in Section III(R)(1) of this Agreement. Costs for the Upland Senior Administrative Assistant will be based on wages and benefits provided by the City of Upland, as approved by action of the Upland City Council. The Senior Administrative Assistant will remain an employee of Upland, and Upland employment rules and regulations shall govern. Upland shall separately maintain an office for the Upland Senior Administrative Assistant. A satellite office in the City of Montclair may be established, for a minimal cost to the City of Montclair, at the discretion of the Montclair City Manager and Fire Chief.

Section III. R. Shared Costs of Services.

Paragraph 1. of Section III. R. of the Agreement is hereby replaced in its entirety with the following:

1. Proportionate Formula for Shared Services. Montclair and Upland shall proportionately divide the mutually agreed upon shared costs for those employment positions defined and designated as shared and command positions, shared administrative positions, and other positions mutually agreed to be shared between Montclair and Upland, subject to the cost-sharing provisions contained herein. For purposes of this Agreement, and except as otherwise provided for in "Section III. C. Fire Chief. 1. Fire Chief Cost Distribution.", Upland's proportionate share of costs shall be sixty-seven percent (67%) for all shared costs, and Montclair's proportionate share of costs shall be thirty-three percent (33%) for all shared costs. Personnel-related cost-sharing shall be subject to the provisions of "Section III. R. 5." and "Section III. R. 6." of this Agreement.

PROVISIONS OF AGREEMENT. All other terms, conditions, and provisions of Agreement No. 13-100, to the extent not modified with this Amendment, shall remain in full force and effect.

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

CITY OF UPLAND

Dated: _____

By: _____
Mayor, City of Upland

Dated: _____

By: _____
City Clerk, City of Upland

Approved as to Form:

Dated: _____

By: _____
City Attorney, City of Upland

CITY OF MONTCLAIR

Dated: _____

By: _____

Mayor, City of Montclair

Dated: _____

By: _____

Deputy City Clerk, City of
Montclair

Approved as to Form:

Dated: _____

By: _____

City Attorney, City of Montclair

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITIES OF MONTCLAIR AND UPLAND
FOR JOINT SHARING OF FIRE DEPARTMENT COMMAND STAFF
AND EXPANSION OF AUTOMATIC AND MUTUAL AID THROUGH MUTUAL
AGREEMENT TO VACATE SERVICE BOUNDARIES**

THIS AGREEMENT is made and entered into this 1st day of January, 2014, by and between the CITY OF MONTCLAIR, a municipal corporation, hereinafter referred to as "Montclair," and the CITY OF UPLAND, a municipal corporation, hereinafter referred to as "Upland." Montclair and Upland may be referred to in this Agreement individually as "Montclair" or "Upland" and jointly as "Cities" or "Parties."

WITNESSETH:

WHEREAS, Montclair and Upland each maintain their own all-risk municipal fire departments; and

WHEREAS, Montclair and Upland have been discussing (1) the feasibility and practicality of combining their respective fire department command structures and designated administrative functions into a single shared command and administrative unit under direction of a jointly designated Fire Chief; (2) jointly integrating fire dispatch services under a third party centralized dispatch command center; and (3) vacating or dropping service boundaries in order to take advantage of fiscal and operational efficiencies, personnel and resource sharing, and service enrichment—while concurrently maintaining separate salary and benefit structures, conditions of employment, and memoranda of understanding with employee bargaining groups as they currently exist and/or are modified by and for each respective City; and

WHEREAS, Montclair and Upland elect to (1) initiate a two-year pilot program to combine their respective fire department command structures and designated administrative functions into a single and shared command and administrative unit; (2) explore the functional capabilities of consolidated fire dispatch services and, if practical, implement fire dispatch services under a jointly operated or other centralized dispatch command center; and (3) vacate service boundaries, hereafter referred to as "boundary dropping," for the purpose of delivering fire protection and emergency medical service response to each City through a mutually agreed expansion of automatic and mutual aid service; and

WHEREAS, the primary purpose of the pilot program is to evaluate the practicality, performance, and seamless functionality of such consolidation and boundary dropping for potential long-term implementation for the purpose of maintaining fiscal and operational efficiencies, conservation of resources, expansion of service capacity, and potential integration of Montclair and Upland fire departments into one regional fire department; and

WHEREAS, Montclair and Upland mutually agree to proportion the cost of command staff sharing on a pro-rata basis, as determined by the number of fire stations and designated fire apparatus staffed and operated by each respective City. This proportionate sharing of command staff costs is to be based on a 4:2 ratio—such ratio is based on the current status of apparatus for both Cities as follows: four (4) fire stations and four (4) engine and/or truck companies for Upland, and two (2) fire stations and two (2) engine and/or truck companies for Montclair; and

WHEREAS, Montclair and Upland may also agree to meet and confer regarding the potential to mutually operate, maintain and proportionately distribute the cost of operating and maintaining emergency medical service rescue squads for the exclusive

purpose of responding to calls for emergency medical services within both Cities— such cost-sharing is to be determined based on mutual agreement and in compliance with the terms and conditions of this Agreement, specifically Section III(R)(1); and

WHEREAS, during the two-year pilot program, the San Bernardino County Board of Supervisors, County of San Bernardino Fire Department, and San Bernardino County Department of Health may elect to provide ambulance services within existing exclusive operating areas, requiring municipal agencies to reexamine the provision of existing medical emergency services and transport services; therefore, Montclair and Upland agree to meet to discuss the impact of any decision by the County of San Bernardino Fire Department to provide ambulance transport services within each jurisdiction; and

WHEREAS, the number and types of calls for fire protection and emergency medical services for Montclair and Upland may vary significantly by City from year to year, impacting automatic aid response demand and operational costs throughout the boundary drop areas as defined herein; therefore, Montclair and Upland, at conclusion of the two-year pilot program, shall mutually examine the number and types of call responses for fire protection and emergency medical services within the jurisdictional boundaries of each City to determine if total calls for service within each City shall be a weighted component for determining future pro-rata distribution of cost-sharing components including command staff sharing, centralized dispatch services, and the delivery of fire protection and emergency medical services to each City; and

WHEREAS, exclusive of provisions contained in this Agreement related to proportionately distributing the cost of a shared command staff structure and designated administrative staff positions working in either safety or nonsafety capacity and other cost-sharing components that may be provided for in this Agreement or

provided for by separate agreement between the Cities, Montclair and Upland hereby agree to respectively and individually retain, administer, abide by, and negotiate terms and conditions of employment through separate memoranda of understanding with fire protection safety employees and miscellaneous employees hired and engaged by each respective City to provide fire protection-related services, including but not limited to emergency medical services (including paramedic and EMT-level services), disaster preparedness coordination, fire inspections, fire investigations, fire suppression, training, fire code administration, personnel administration, information technology services, and any other service deemed essential and inherent to the operational integrity of fire protection services. Furthermore, each City agrees to respectively manage, distribute, maintain, and account for all equipment, specialized equipment, materials and supplies (including fire suppression and emergency medical-related materials and supplies), facilities, real property, vehicles (including specialized service vehicles), fire suppression apparatus, and other essential requirements for operation and maintenance of fire stations within each City's jurisdictional boundaries; and

WHEREAS, exclusive of any agreement related to proportionately distributing the cost of a shared command staff structure and designated administrative staff working in either safety or nonsafety capacity and other cost-sharing components that may be provided for in this Agreement or provided for by separate agreement between the Cities, Montclair and Upland hereby agree to respectively provide for fiscal funding, budgeting, maintenance, and management of their respective fire protection safety employees and miscellaneous employees hired and engaged by each respective City to provide fire protection-related services, including but not limited to emergency medical services (including ALS paramedic and EMT-level services), disaster

preparedness coordination, fire inspections, fire investigations, fire suppression, training, fire code administration, personnel administration, information technology services, and any other service deemed essential and inherent to the operational integrity of the fire service; furthermore, each City agrees to separately acquire, purchase, and provide for all equipment, specialized equipment, materials and supplies (including fire suppression and emergency medical-related materials and supplies), capital outlay requirement for equipment and facilities, vehicles (including specialized service vehicles), fire suppression apparatus, and other essential budgetary requirements for operation and maintenance of fire stations within each City's jurisdictional boundaries; and

WHEREAS, Montclair and Upland, in conjunction with the implementation of a two-year pilot program to combine their respective fire department command structures and except as otherwise restricted or prohibited by separate agreement and/or policy, elect to vacate and drop existing service boundaries for fire protection and emergency medical services and cooperatively extend automatic and mutual aid agreements to fully recognize and achieve transparent service support between the Cities, to the extent possible, for the provision of fire protection and emergency medical services, training, duty command response and oversight, disaster preparedness, fire marshal services, fire investigation services, fire code administration, fire and emergency medical dispatch services, and any other services deemed subject to the joint sharing of command staff services and boundary dropping in order to effectively evaluate the feasibility of command staff sharing and boundary dropping as a long-term strategy that may lead to eventual integration of both departments into one regional fire department.

NOW, THEREFORE, Montclair and Upland agree as follows:

Section I. Term.

This Agreement shall be effective commencing on January 1, 2014, and shall expire on December 31, 2015, unless mutually extended or sooner terminated as provided herein.

A. Termination Without Cause. Either Party may terminate this Agreement without cause by providing not less than six (6) months' prior written notice of its intent to terminate.

B. Termination for Cause. Either City may terminate this Agreement for cause upon personally serving a written Notice to Cure Default, therein specifying the acts or omissions constituting the alleged default and demanding that the default be cured within thirty (30) days. If the default remains uncured or if there is no good faith attempt to cure the alleged default during said 30-day period, termination shall be effective at the end of the default cure period.

Termination for cause shall include any of the following:

1. Failure by either City to meet any of its obligations provided for in this Agreement following receipt of a Notice to Cure Default; or
2. Any act of gross negligence committed by a respective City employee, official, or agent during the course of delivering service under the terms of this Agreement. For purposes of the above-provided period for cure of this specified condition of default, cure as to any completed act of gross negligence can include appropriate investigation and/or discipline of the respective employee, official, or agent and/or appropriate policy changes to address or minimize the occurrence of similar occurrences in the future.

- C. **Temporary Suspension.** In the event of an unforeseeable financial shortfall occurring to either Party that prevents its full compliance with this Agreement, such occurrence shall be deemed to be a Force Majeure event, as defined under Section III(X)(4) of this Agreement. Should such an event occur, the City Managers of Montclair and Upland shall promptly meet and confer during which time both Parties shall be temporarily excused from having to pay shared costs as required by this Agreement provided, however, that any required payment shall be deferred, not excused, for the affected period of time. If such period shall extend beyond thirty (30) days, or such other period as agreed upon in writing, then either Party may terminate this Agreement provided, however, any and all amounts due and payable by either Party at the time of termination shall either be paid, or shall become a debt on a written contract owed to the other.
- D. **Extension of Pilot Program.** Montclair and Upland, by mutual agreement of their respective City Councils, may extend this Agreement to continue the original two-year pilot program for an additional period of time to be determined by both Parties not to exceed an additional two years. Notice of desire to exit the pilot program shall be issued in writing not less than six (6) months prior to the end of the fiscal year in which the Agreement is due to expire. Notice of desire to extend this Agreement shall be issued by the City Manager of either Montclair or Upland to the City Manager of the other City. The purpose of early notification prior to the end of the fiscal year in which the Agreement is due to expire is to provide each agency the opportunity to negotiate terms and conditions of extension and budget for any required changes to their respective appropriation budgets for fire protection services.

- E. Extension of Agreement.** At any time during the two-year pilot program, Montclair and Upland, by mutual agreement of their respective City Councils, may exit the pilot program and extend the terms of this Agreement for a three-year period with provision for successive two-year extensions thereafter. Montclair and Upland shall make every effort to reach any such decision regarding extension at least six months prior to the scheduled expiration date of this Agreement in order to give both Parties time and opportunity to plan and implement any required actions related to extension. Notice of desire to exit the pilot program and extend or modify the terms of this Agreement shall be issued, if possible, not less than six (6) months prior to the end of the fiscal year in which the Agreement is due to expire. Notice of desire to exit the pilot program and extend this Agreement shall be issued by the City Manager of either Montclair or Upland to the City Manager of the other City. The purpose of early notification prior to the end of the fiscal year in which the Agreement is due to expire is to provide each agency the opportunity to negotiate terms and conditions of extension and budget for any required changes to their respective appropriation budgets for fire protection services.
- F. Failure to Extend.** Failure to extend, alter, or otherwise modify the terms and conditions of this Agreement as required herein so that it continues beyond the two-year pilot program shall be evidence that both Montclair and Upland agree to terminate the pilot program, restore service boundaries, and eliminate jointly shared command staffing.

Section II. Implementation Timeline

To the extent possible, Cities desire to accomplish implementation of the shared command and administrative structures, consolidation of fire and emergency medical

dispatching, and boundary dropping no later than January 1, 2014. Cities will cooperatively work to achieve implementation by appointing transition teams from each City, with representation from the City Manager's office and public safety, and any other stakeholder groups with interest in ensuring an effective and seamless transition toward the objectives outlined herein.

Section III. Implementation Strategy

- A. Layoffs, Demotions, Reduction in Pay.** To the extent possible, Cities desire to accomplish the implementation of the shared command and administrative structures, consolidation of fire and emergency medical dispatching, and boundary dropping without any layoffs, demotions, or reduction in pay to affected employees of Montclair and Upland. However, in the event an employee is subject to layoff, demotion, or reduction in pay, Montclair and Upland will follow procedures as mandated in their respective and relevant memorandums of understanding and/or employment policies and practices.
- B. Positions Not Subject to Agreement.** In the event that certain command staff, dispatch, and/or administrative positions within either City's respective fire departments are not subject to, or compatible with, the intent of this Agreement to share in the function and cost of such positions, such positions will not be shared between the Cities. Montclair and Upland shall meet to determine which positions in each respective Fire Department shall not be subject to the intent of this Agreement. It is also recognized that certain designated command and/or administrative positions within either City's respective fire departments may be subject to cost-sharing provisions and may be currently occupied and that the cost of such positions may not be shared until a current incumbent leaves the position.

C. **Fire Chief.** Montclair and Upland mutually agree to retain and share one (1) Fire Chief to oversee, manage, and administer operations and functions of both fire departments and to ensure the delivery of quality fire and emergency medical services to both Cities. The Montclair Fire Chief position is currently vacant; and Montclair agrees to retain the position as vacant during the term of this Agreement, except that upon notification by either City that this Agreement will not be extended, for whatever reason, or is otherwise suspended or terminated, Montclair, at its discretion, may seek to employ a Fire Chief.

The Upland Fire Chief position is currently filled and it is agreed between the Cities that the incumbent will assume command of the Montclair and Upland fire departments upon the effective date of the Agreement. Costs for the Upland Fire Chief will be based on wages and benefits provided by the City of Upland as approved by action of the Upland City Council. Except as otherwise provided for herein, any increases to the wage and benefits structure provided to the Upland Fire Chief shall be mutually agreed upon between the Cities.

1. **Fire Chief Cost Distribution.** The Fire Chief is an employee of the City of Upland; accordingly, Upland's terms and conditions of employment for the Fire Chief will apply. Employment-related costs for wages and benefits shall be shared between Montclair and Upland, with sixty-seven percent (67%) of employment costs assigned to Upland and thirty-three percent (33%) of employment costs assigned to Montclair as stipulated in Section III(R)(1) of this Agreement. Upland will be responsible for administering all wages and benefits provided to the Fire Chief including the provision of any take-home vehicle, fuel, and insurance. Montclair

will reimburse Upland as specified in Section III(R)(4) of this Agreement for its share of costs related to employment of the Upland Fire Chief.

(a) **Reporting/Supervision.** In the City of Upland, the Fire Chief will report to the City Manager or designee; in the City of Montclair, the Fire Chief will report to the City Manager and/or Executive Director, Office of Public Safety. The City Managers of Upland and Montclair and/or their designees will meet at least once annually to review the performance of the Fire Chief.

(b) **Wage and Benefit Enhancements.** Wage and benefit enhancements for the Fire Chief will require approval of the City Councils of Upland and Montclair. If one City elects to improve wage and benefit enhancements for the Fire Chief and the other City does not, the City approving wage and benefit enhancements will be solely and fully responsible for increased costs including, but not limited to, employer and employee increases in California Public Employee Retirement System (CalPERS) costs relating to the enhancement. This Section III(C)(1)(b) shall not be controlling on mandated employer rate increases imposed by CalPERS, which shall be shared pursuant to the cost distribution formula in Section III(R)(1) of this Agreement.

(c) **Automobile.** Automobile acquisition, insurance, privileges, and fuel and maintenance requirements shall be provided and determined by Upland and shall be fully funded by Upland and not subject to the cost distribution formula in Section III(R)(1) of this Agreement.

(d) **Travel, Meetings, and Conference Attendance.** Travel, meetings, and conference attendance related exclusively to the employee's position as Fire Chief shall be provided for jointly between Montclair and Upland pursuant to the cost distribution formula in Section III(R)(1)" of this Agreement. The City Managers of Montclair and Upland will meet annually to consider and recommend for consideration and approval by the Upland City Council the travel, meetings, and conference budget for the Fire Chief for the succeeding fiscal year. Upland will be responsible for administering the travel, meetings, and conference budget for the Fire Chief. Montclair will reimburse Upland as specified in Section III(R)(4) of this Agreement for its share of costs related to employment of the Fire Chief.

(e) **Premium benefits and wages.** The provision of any premium benefits, stipends, wages, awards and other privileges that are not considered base wages and standard benefits, and are not covered under Section III(R)(5) of this Agreement shall not be components of this cost-sharing Agreement, and shall not be reimbursed or shared in cost by Montclair pursuant to Section III(R)(1) of this Agreement.

2. **Termination.** In the event the Fire Chief's employment terminates from the City of Upland, for whatever reason, the Cities shall consider naming an interim Fire Chief and jointly conduct a recruitment/selection process for the purpose of identifying and hiring a successor to the Fire Chief position. Upland shall hire the Fire Chief pursuant to its recruitment practices and employment rules and regulations. No successor to the

Fire Chief position shall be hired without recommendation of the City Managers of Montclair and Upland and submittal of any such recommendation to their respective City Councils for consideration and approval.

3. **Discipline.** In the event the Fire Chief is subject to discipline for performance or other work-related deficiencies, integrity issues, violations of terms and conditions of employment, or any actions that call into question the Fire Chief's fitness to continue serving as Fire Chief or otherwise warrant disciplinary action, City of Upland employment rules and regulations shall govern.
4. **Performance Evaluation.** The Fire Chief's performance shall be evaluated annually and jointly by the City Managers of Montclair and Upland. The City Manager of Upland shall prepare the performance evaluation and submit it for review by the Upland governing board subject to Upland's personnel rules and practices.
5. **Daily Work Location.** The Fire Chief shall maintain an executive office at an Upland Fire Station, to be determined by Upland. The Cities will jointly evaluate and determine any need for the Fire Chief to maintain a secondary office at a Montclair Fire station.
6. **Communications with City Officials.** The Fire Chief shall conduct regular staff meetings with fire management personnel from Montclair and Upland. The Fire Chief shall conduct periodic commander's call and/or reviews of line personnel in the Montclair and Upland Fire Departments. The Fire Chief shall report at least twice monthly to the City Managers of Upland and Montclair to review and discuss issues,

activities, deployment, services, and other matters related to the conduct and delivery of fire protections services.

7. **Representation.** The Fire Chief, Montclair Deputy Fire Chief, and/or City Managers of Montclair and Upland, or their designees, may represent Montclair and Upland on local, regional, and statewide bodies related to fire protection and fire service delivery.

8. **Attendance at City Council Meetings and Other Meetings.** The Fire Chief, or designee, shall attend each regular meeting of the Montclair and Upland City Councils, budget meetings, special workshops, and any other meetings required either jointly or separately by the City Managers of Montclair and Upland.

D. **Deputy Fire Chief/Training.** Upland maintains or shall establish one (1) Deputy Fire Chief position. If, at the time this Agreement is executed, the Deputy Fire Chief/position is vacant, Upland shall conduct an in-house promotional process to fill the vacant position and reclassify the title to Deputy Fire Chief/Training. Upland currently maintains three (3) Battalion Chief positions. Through an in-house promotional process, Upland shall promote one of three (3) Battalion Chiefs to the Deputy Fire Chief/Training position prior to or concurrent with the effective date of this Agreement. In order to achieve the objectives of this Agreement, the vacated Battalion Chief position shall remain unfilled upon successful promotion of the incumbent to the position of Deputy Fire Chief/Training. Upland will be fully responsible for all labor-related costs associated with employing the Deputy Fire Chief/Training. Costs for the Upland Deputy Fire Chief will be based on wages and benefits provided by the City of Upland, as approved by action of the

Upland City Council. The Deputy Fire Chief will remain an employee of Upland, and Upland employment rules and regulations shall govern. Upland shall separately maintain an office for the Upland Deputy Fire Chief.

- E. Fire Marshal.** Upland maintains or shall establish one (1) Fire Marshal position. If, at the time this Agreement is executed, the Fire Marshal position is vacant, Upland shall conduct an in-house promotional process among current Battalion Chief positions to fill the vacant Fire Marshal position. The Fire Marshal position shall be equivalent in wages and benefits to Upland's Deputy Fire Chief classification; however, upon promotion, retirement, or termination of the incumbent from the Fire Marshal position, the Fire Marshal classification shall be reclassified as a nonsafety position, with wages and benefits to be determined based upon a classification study conducted jointly between Montclair and Upland. Upland currently maintains three (3) Battalion Chief positions. Through an in-house promotional process, Upland shall promote one of three Battalion Chiefs to the Fire Marshal position prior to or concurrent with the effective date of this Agreement. In order to achieve the objectives of this Agreement, the vacated Battalion Chief position shall remain unfilled upon successful promotion of the incumbent to the position of Fire Marshal. Upland will be fully responsible for all labor-related costs associated with employing the Fire Marshal; provided, however, if it is determined and mutually agreed between the Parties that the Fire Marshal shall provide services to Upland and Montclair pursuant to the terms, conditions and objectives contained herein the position shall be subject to cost-sharing and provisions of Section III(R)(1) and other relevant provisions shall apply. Costs for the Fire Marshal will be based on wages and benefits provided by the City

of Upland, as approved by action of the Upland City Council. The Fire Marshal will remain an employee of Upland, and Upland employment rules and regulations shall govern. Upland shall separately maintain an office for the Fire Marshal.

F. Deputy Fire Chief/Operations. Montclair maintains or shall establish one (1) Deputy Fire Chief position. If, at the time this Agreement is executed, the Deputy Fire Chief position is vacant, Montclair shall conduct an in-house promotional process to fill the vacant position and reclassify the title to Deputy Fire Chief/Operations. Montclair currently maintains three (3) Division Chief positions. Through an in-house promotional process, Montclair shall promote one of three Division Chiefs to the Deputy Fire Chief/Operations position prior to or concurrent with the effective date of this Agreement. In order to achieve the objectives of this Agreement, the vacated Division Chief position shall remain unfilled upon successful promotion of the incumbent to the position of Deputy Fire Chief/Operations. Montclair will be fully responsible for all labor-related costs associated with employing the Deputy Fire Chief/Operations. Costs for the Montclair Deputy Fire Chief will be based on wages and benefits provided by the City of Montclair, as approved by action of the Montclair City Council. The Deputy Fire Chief will remain an employee of Montclair, and Montclair employment rules and regulations shall govern. Montclair shall separately maintain an office for the Montclair Deputy Fire Chief.

G. Upland Battalion Chiefs. Upland currently maintains three (3) Battalion Chief positions. Unless the Upland Deputy Fire Chief/Training and Fire Marshal positions are otherwise filled with incumbents, one of Upland's three (3)

Battalion Chiefs shall be promoted to Deputy Fire Chief/Training and one of Upland's three (3) Battalion Chiefs shall be promoted to Fire Marshal prior to or concurrent with implementation of this Agreement. In order to achieve the objectives of this Agreement for the Parties to mutually provide for three (3) Battalion Chief positions, the two Upland Battalion Chief positions vacated by promotion to Deputy Fire Chief/Training and Fire Marshal shall remain vacant, the remaining Upland Battalion Chief position shall remain occupied by an Upland Battalion Chief, and Montclair shall provide for the remaining two Battalion Chief positions. In keeping with the cost-sharing objectives of this Agreement, at any time on or after the effective date of this Agreement Upland and Montclair jointly agree that one of Montclair's two Battalion Chief positions shall be transitioned to a Shared-Cost position; however, Montclair shall have the right to reasonably determine when such transition to a shared-cost position shall occur. The objective of this Section III(G) and Section III(H), when taken together, is to encourage that Montclair and Upland each employ at least one Battalion Chief, with a third Battalion Chief transitioning to a cost-sharing position pursuant to the provisions of Section III(R)(1) of this Agreement and as stipulated in Section III(I) of this Agreement. Battalion Chief position(s) assigned to Upland will be maintained by Upland, and one hundred percent (100%) of wages and benefits accruing to and earned by the incumbent(s) shall be provided by Upland. Provisions of this Section III(G) shall be subject to provisions of Section III(D) of this Agreement.

- H. Montclair Battalion Chiefs.** Montclair currently maintains three (3) Division Chief positions. Unless the Montclair Deputy Fire Chief/Operations position is otherwise filled with an incumbent, one of Montclair's three (3) Division Chiefs

shall be promoted to Deputy Fire Chief/Operations. In order to achieve the objectives of this Agreement, the Montclair Division Chief position vacated by promotion to Deputy Fire Chief/Operations shall remain vacant; and the remaining two Montclair Division Chief positions shall remain occupied by employees of the Montclair Fire Department. If, at, or prior to the time this Agreement goes into effect one of the remaining two Montclair Division Chief positions is vacant, Montclair shall conduct a recruitment to fill the position; and Upland and Montclair will jointly determine when one of Montclair's two Division Chief positions shall become a Shared-Cost Battalion Chief position; however, Montclair shall have the right to reasonably determine when such transition to a shared-cost position shall occur. The objective of Section III(G) and this Section III(H), when taken together, is to encourage that Montclair and Upland each employ at least one Battalion Chief, with a third Battalion Chief transitioning to a cost-sharing position pursuant to the provisions of Section III(R)(1) of this Agreement and as stipulated in Section III(I) of this Agreement. Upon execution of this Agreement, Montclair's Division Chief classification shall be reclassified as Battalion Chief with no gain or loss of pay or benefits to incumbents. Battalion Chief positions assigned to Montclair will be maintained by Montclair, and one hundred percent (100%) of wages and benefits accruing to and earned by the two incumbents shall be provided by Montclair provided, however, that the City Managers of the two cities may determine whether and when wages and benefits accruing to and earned by the Montclair Battalion Chief incumbents shall be subject to the cost-sharing provisions of this Agreement as provided for in Section III(R)(1). Provisions of this subsection (H) shall be subject to the provisions of Section III(D) of this Agreement.

- I. **Montclair and Upland Shared Battalion Chief.** If, at the time this Agreement is executed, Montclair and Upland are each maintaining one filled Battalion Chief/ Division Chief position (the Montclair position to be reclassified as Battalion Chief) and one vacant Battalion Chief/Division Chief position, the City Managers of both Cities will meet to agree as to which City will promote a Fire Department employee to fill the vacant, third Battalion Chief position and administer the wages and benefits for the position; however, preference will go to Montclair in transitioning a current Montclair Division Chief to the third, Shared-Cost Battalion Chief position. This preference recognizes the promotion and positioning of two Upland Battalion Chiefs into Deputy Fire Chief-level classifications, including one Deputy Fire Chief/Training, and one Fire Marshal. Under provisions of this Section III(I), Cities will be jointly responsible for the cost of the third Battalion Chief position pursuant to provisions in Section III(R)(1) of this Agreement. In the event that either/or both Montclair and Upland has two or more Battalion Chief positions that are filled at the time this Agreement is executed, the City Managers of each City shall meet to discuss means to address and resolve any potential excess number of Battalion Chiefs employed between the two Cities. Each City will separately maintain an office and sleeping quarters for that City's assigned Battalion Chiefs.
- J. **Employment Status Not Altered.** Except as otherwise provided for in this Agreement, this Agreement shall not alter the employment status of those employees serving in the shared command structure, in that employees of Montclair shall remain solely employed by Montclair and shall not be deemed employees of Upland; and employees of Upland shall remain solely employed

by Upland, and shall not be deemed employees of Montclair. Thereafter, as future internal appointments are made to vacant positions, employees promoted into cost-sharing positions shall remain employees of the City in which they were employed immediately prior to their promotion; and employees newly hired into Montclair or Upland shall be employees of the City into which the employee is hired.

K. Nonsworn Administrative Positions. Montclair and Upland mutually agree that during the first six months of the trial period of this Agreement as defined in Section I – Term, the Parties shall fully evaluate which nonsworn administrative positions are subject to cost-sharing provisions of this Agreement, including Section III(R)(1). Cost-sharing provisions contained herein shall be implemented by mutual agreement and/or when any one position subject to the terms and conditions of this Agreement is actively and regularly providing services to the Party of which the position is not regularly employed. Provided, however, the Parties may agree that cost-sharing between designated nonsworn administrative positions shall not be implemented provided that Parties mutually agree that each Party proportionately enjoys and benefits from the mutual sharing of services of nonsworn administrative personnel based on proportional distribution of costs and services commensurate with agency size, and that each Party proportionately participates in the provision of nonsworn administrative positions to the other Party. For purposes of this Agreement, proportional participation and/or proportional distribution shall be based on percentage distributions as defined in Section III(R)(1) of this Agreement.

- L. Other Cost-Sharing Positions Permitted.** Nothing in this Agreement shall prohibit Montclair and Upland from agreeing to include other employment positions in each City's Fire Department into the cost-sharing provisions of this Agreement. Any failure by any Party to this Agreement to timely designate a position in the agency as a cost-sharing position funded by both Parties, subject to Section III(R)(1) and other relevant provisions of this Agreement, shall not deprive that agency of the privilege to so designate the position as a cost-sharing position. Parties recognize that any delay in designating a position as subject to the cost-sharing provisions of this Agreement may be based on the needs and requirements including, but not limited to, the economic needs, job-related needs, and/or agency-related needs, of one Party or the other to this Agreement.
- M. Vacancy in Cost-Sharing Positions.** In the event a cost-sharing position becomes vacant during the term of this Agreement, Montclair and Upland City Managers will jointly determine which City will conduct the recruitment process, including an in-house recruitment process from the existing pool of employees in Montclair and Upland, or by open recruitment of outside candidates. As a general rule, the City that employed the former incumbent of the vacated shared-cost position shall be the agency responsible for conducting the recruitment, employing the successful candidate, and applying its employment rules and wage and benefit schedule. Fire Department employees in Montclair and Upland meeting minimum qualifications for a vacant shared-cost position may be eligible to compete for promotional advancement to the position on an equal basis. An existing employee selected for a shared-cost position shall remain an employee of the agency conducting

the recruitment and in which the vacant position first occurred. Similarly, a new hire from an open recruitment shall become an employee of the agency conducting the recruitment. The Fire Chief, in consultation with the City Managers of both Cities, may be granted discretion to make appointments to vacant subordinate shared positions from those qualified through the agreed selection process.

N. Boundary Drop.

1. Definition of Terms:

- (a) Boundary Drop and Boundary Drop Area (BDA).** Boundary Drop refers to the procedure of dispatching the closest fire apparatus to an incident, regardless of the jurisdiction in which the incident occurs. Under the Boundary Drop Area (BDA) concept, the fire department of one administrative/political jurisdiction may respond to an emergency incident in another administrative/political jurisdiction and return back to its own (home) jurisdiction without participation or response from the fire department of the administrative political jurisdiction where the incident occurs. Effectively, under revised automatic aid agreements, Parties to the BDA acquire a geographical area of responsibility that incorporates territory outside the administrative/political jurisdiction to which the home fire department belongs.
- (b) Automatic Aid.** Under automatic aid protocols, assistance is rendered by the fire department of one jurisdiction to a separate jurisdiction by prior arrangement of the Parties involved; however, automatic aid protocols typically require the fire department of the

home jurisdiction (the City in which the incident occurs) to also be dispatched to the incident. Dispatch of designated emergency apparatus is automatically provided under an automatic aid agreement. When implemented effectively, the automatic aid agreement provides a methodology for standardization of operating procedures in designated response areas. Under the BDA concept, automatic aid protocols are revised to allow the fire departments from each City to dispatch apparatus to an incident within the administrative/political jurisdiction of the other City without required participation of apparatus and personnel from the home jurisdiction.

(c) **Mutual Aid.** Under mutual aid protocols, emergency assistance is rendered from one agency to another. The aid must be requested before assistance is dispatched. The home jurisdiction responds first and requests additional assistance, if required, after arrival.

2. **Boundary Drop Area (BDA).** Montclair and Upland share common boundaries. Together, both Cities seek to improve fire protection services and response time to incidents without adding additional personnel, stations, or apparatus and equipment. The objective of establishing a common BDA between the Cities is to ignore common administrative/political boundaries when assigning apparatus to respond to fire protection and emergency medical incidents. Agreement to drop service boundaries and respond with the closest apparatus without regard to administrative/political jurisdiction is deemed to benefit both agencies equally.

- (a) **Cities Agree to Drop Boundaries.** Montclair and Upland agree that for purposes of automatic and mutual aid response for delivering fire protection and emergency medical services, the Cities shall drop administrative/political boundaries to allow the effective operation of the Montclair and Upland Fire Departments under direction of a shared command staff unit including one (1) Fire Chief, two (2) Deputy Fire Chiefs, one (1) Fire Marshal, and three (3) Battalion Chiefs.
- (b) **Purpose of BDA.** Montclair and Upland agree that a successfully implemented BDA would achieve the following benefits for the public health, safety, and welfare:
- (1) Potential for reductions in response times;
 - (2) Provide for standardization of procedures and equipment thereby contributing to an enhanced capacity for automatic aid support;
 - (3) Reduce duplicative equipment/apparatus from inventory;
 - (4) Reduce operating costs;
 - (5) Promote operational efficiencies;
 - (6) Provide for enhanced resource response;
 - (7) Achieve improved insurance ratings and lower insurance rates;
 - (8) Establish compatible and standardized training and operating procedures/protocols to enhance automatic and mutual aid response;
 - (9) Establish compatibility between equipment and apparatus inventories;

- (10) Establish full compatibility between bands and frequencies of radio communication equipment; and
- (11) Provide for a review of dispatch services to achieve coordinated and cost-effective joint dispatch services.

(c) Emergency Response from Closest Appropriate Resources.

Under the BDA concept, automatic and mutual aid for emergency services shall be based on closest appropriate resources, as directed through a joint dispatch center. Automatic and mutual aid for emergency services shall also support nonproximate calls for emergency services when the closest, proximate fire apparatus is unable to respond.

(d) Coordination with Joint Dispatch Command Center. Policies related to implementation of boundary drop and automatic and mutual aid protocols shall be coordinated with dispatch protocols for the joint dispatch command center.

3. Request for Assistance. The Commanding Officer or Incident Commander at the scene of an emergency is authorized to request additional mutual aid assistance from the other agency when confronted with an emergency situation requiring additional resources in excess of what can be provided by the fire station in nearest proximity.

4. Response to Request. Upon receipt of a request for resources from the joint dispatch center dispatching the incident, the Chief or designated Duty Officer shall satisfy the request by dispatching available equipment and personnel from the fire station closest in proximity to the scene of the emergency. In the event requested equipment and/or personnel are

not immediately available from the closest proximate fire station, the Chief or designated Duty Officer shall immediately advise the dispatch center to dispatch equipment and personnel from the next closest fire station in proximity to the emergency.

5. **Minimum Response Standards.** Personnel and equipment responding to a fire request shall include at a minimum one paramedic engine company and/or truck company defined and accredited by the local emergency medical authority and generally staffed by one Fire Captain, one Fire/Equipment Engineer or Paramedic Engineer, and one Firefighter or Paramedic Firefighter. Paramedic personnel shall be fully licensed and/or accredited by the responding area's medical authority.

6. **Development of Boundary Drop Policy.** Prior to implementation of Boundary Dropping, Montclair and Upland agree to meet to develop a comprehensive Boundary Drop Policy that effectively addresses and resolves potential BDA implementation issues including command responsibility, communications, equipment (including hydrant, hose, and adaptor compatibility), and apparatus compatibility and standardization; equipment and apparatus acquisition standards and requirements; radio communications terminology; 911 technology and call routing; joint dispatch service; foreground strategies and procedures; tactical response; strike team response; joint training; jurisdictional restrictions; response times; insurance coverage; implementation of an automatic aid plan that incorporates provisions of the Boundary Drop Policy; and legal constraints. The Boundary Drop Policy shall be submitted to the governing bodies of Montclair and Upland for consideration and approval.

7. **Distance Study/Response Time.** Prior to implementation of Boundary Dropping, but no later than June 1, 2014, Montclair and Upland agree to conduct a distance study to determine potential response times to incidents from fire stations within the BDA. The objective of the Distance Study is to determine the closest apparatus to an incident without regard to administrative/political jurisdiction and to map out a workable standard for response times within the BDA. Montclair and Upland recognize that various studies identify "ideal" response times for emergency calls. However, objective standards including performance measurement methodologies, call volume frequency, and proximity of apparatus to incident call points must be considered in developing practical response time standards. Montclair and Upland agree to meet to arrive at a mutually recognized response time standard that will allow for the delivery of first (1st) advanced life support response (ALS) to critical medical patients within an acceptable response period ninety percent (90%) of the time.

The conduct of a distance study may demonstrate that sections of the BDA service area share overlapping coverage between fire stations.

8. **Dispatch Study.** Prior to implementation of boundary dropping, Montclair and Upland agree to evaluate current dispatch services to achieve seamless transition and implementation of the BDA concept. During the pilot period of this Agreement, Cities agree to consider and evaluate alternative approaches to providing dispatch services by considering and evaluating implementation of a jointly shared dispatch center or utilizing dispatch services provided through the County of San

Bernardino or other available dispatch agencies capable of satisfactorily meeting dispatch service requirements.

The conduct of a study to evaluate alternative dispatch services may demonstrate a need to migrate away from the current provider of dispatch services; therefore, Parties agree that Montclair and Upland City Managers shall meet to discuss any proposal to migrate to an alternative joint dispatch service and shall submit any such recommendation to their respective City Councils for consideration and action. It is unlikely that any decision to migrate to an alternative joint dispatch service would impact the cost distribution provisions of Section III(R)(1) of this Agreement or be in conflict with the provisions of Section III(A) of this Agreement. Nonetheless, the Parties mutually agree that the City Managers of Montclair and Upland shall meet to consider and recommend to their respective City Councils any changes to the cost distribution provisions contained in Section III(R)(1) of this Agreement because of joint dispatch services.

O. Governance.

1. **Governing Boards Retain Authority.** The Montclair and Upland City Councils will retain all policy-making authority for their respective Cities including approval of the annual budget for their fire departments.
2. **Fire Chief Reports to City Managers.** The Fire Chief shall report to a committee comprised of the Montclair and Upland City Managers, or designees, who shall communicate with each other and meet, as necessary, to provide direction to, and supervision and evaluation of, the Fire Chief.

3. **Fire Chief Directs Fire Departments.** The Fire Chief and shared command staff shall provide direction and supervision for the Montclair and Upland Fire Departments.
4. **Direction to Respective City Staff.** The shared command positions described in this Agreement shall provide direction and supervision of sworn and nonsworn staff in their particular area of responsibility for both the Montclair and Upland Fire Departments, subject to the implementation strategy and time line described in this Agreement.
5. **Fire Chief to Evaluate Performance of Subordinate Shared Positions.** The Fire Chief shall have sole authority for evaluating performance of all employees of the Upland Fire Department in subordinate shared positions under this Agreement. The Fire Chief, in consultation with the Montclair City Manager, or designee, shall have authority for evaluating the performance of command staff positions in the Montclair Fire Department, and shall cooperatively work with the Montclair Deputy Fire Chief to evaluate the performance of all other Montclair Fire Department subordinate shared positions under this Agreement.

P. Policies and Procedures.

1. **Retention of Personnel.** Montclair and Upland Fire Departments shall, to the extent possible, retain current personnel and operational policies and procedures contained in their respective Department policy manuals, Memoranda of Understanding (MOUs), and City personnel rules. Cities will cooperate in the consolidation of policies, where feasible.
2. **Discretion Over Deployment Retained by Cities, Rights Reserved.** Montclair and Upland fire departments, under general direction of the

Fire Chief, shall retain discretion over their station and company configurations and deployment strategies. However, both agencies shall, to the extent possible, work to achieve operational transparency and seamless integration in support of the terms and conditions of this Agreement. The Fire Chief may recommend operational modifications to each City. Montclair and Upland reserve the right to make respective budget, operational, and deployment decisions during the term of this Agreement. These decisions may include, but are not limited to, equipment replacement, deployment of personnel, and overtime. Montclair and Upland are, at all times, cognizant that implementation of certain decisions related to working conditions may require negotiations with respective employee bargaining groups.

3. **Current Dispatch Service Retained.** Montclair and Upland mutually agree to retain the current Dispatch provider (Ontario Communications Division) who shall continue to dispatch respective fire apparatus units using existing and/or modified policies and protocols that can best achieve an expansion of automatic and mutual aid services related to full implementation of boundary dropping to enhance service delivery between Montclair and Upland. However, nothing in this Agreement prohibits Cities from mutually exploring, selecting, and recommending to their respective City Councils the contracting with a different provider of Dispatch services to achieve economy of scale, greater efficiency, improved performance, and other qualifying reasons. In the event Montclair and Upland mutually agree to transition to an alternative dispatch service pursuant to the terms and conditions of this Agreement,

the Ontario Communications Division shall be provided a six-month advance notice of intent to terminate service.

4. **CAD to CAD Interface Essential.** Montclair and Upland agree to take the necessary actions to accelerate the installation of any CAD to CAD interface in order to increase the efficiency of communications between the two fire departments.
5. **Information Technology Services.** Montclair and Upland agree to integrate and maintain, to the extent possible, required information technology services in support of fire protection services. Information technology services may be maintained separately, or either City may provide information technology services to the other City based upon an agreed rate for service support. Each City will be responsible for the cost of hardware and software acquisition installed in their respective Cities. Costs for data line services, voice, internet, fax, video, and other commonly shared communication services necessary to achieve the intent and purpose of this Agreement shall be subject to cost-sharing provisions as defined in Section III(R)(1) of this Agreement.
6. **Policies and Procedures to be Complied With.** The Fire Chief and all shared command staff shall become familiar with, and comply with, all policies and procedures for both fire departments under their command.
7. **Joint Operational Patch.** The Fire Chief, command staff, and other personnel may be required to wear a new patch that contains the names of both fire departments as part of its design. The design of any new patch shall be subject to approval of the Montclair and Upland City Councils. Cities may also agree to incorporate identifying marking on

equipment and apparatus that demonstrates the intent, purpose, and objectives of this Agreement.

8. **Discipline.** The final authority for discipline of respective employees engaged in the shared services, including command staff, and other employee relation matters incident to the performance of such services, shall remain with the employing City.
9. **Property Remains in Possession of Each City.** Any and all property acquired under and pursuant to this Agreement by either City, whether by government grant funds or otherwise, shall be and at all times remain the property of that City without any division or distribution thereof upon termination of this Agreement, except as otherwise agreed upon in writing. However, in the event provisions of AB 678 apply, and Cities become eligible for Medi-Cal reimbursement funding administered and dispersed under provisions of the Affordable Health Care Act for America Act (H.R. 3962), the City Managers for Montclair and Upland shall meet to discuss the impact of such reimbursement and whether it shall be subject to the terms and conditions of this Agreement or shall be applied individually and separately by each City without consideration of the terms and conditions of this Agreement.
10. **Office Hours in Each City Staff Meetings.** To the extent practical, the Fire Chief and all other shared command staff shall establish and maintain office hours in both Cities sufficient to maintain an adequate presence and connection to both fire departments and agencies, as well as to maintain proper communication with, and supervision of, each City's sworn and nonsworn staff. The Fire Chief and shared command

staff, in pursuit of implementing and effectively maintaining the provisions of this Agreement, shall conduct regular staff meetings to ensure adherence to, and satisfactory implementation of, the provisions herein, each and every one.

11. **Fire Chief's Attendance at City Council Meetings.** The Fire Chief or his designee may be required to attend the City Council meetings of both Cities. In the event that the Montclair and Upland meeting dates conflict, the Fire Chief may be required to rotate his attendance between Cities, and shall assign a Chief Officer to provide representation at the City Council meeting he is not attending.
12. **Fire Chief Attendance at Other Meetings.** The Fire Chief or designee may be required to attend and participate in the regular staff meetings, and other management staff functions of both Cities. In the event of meeting conflicts, the Fire Chief may be required to rotate his attendance between Cities and shall assign a Chief Officer to attend any meeting he is not attending.
13. **Implementation Procedures for Operational Readiness.** The Fire Chief, in conjunction with the City Managers and designated staff of Montclair and Upland, shall meet to coordinate, provide for, and implement procedures related to separate or joint sharing of operational, emergency, and community services, including, but not limited to disaster preparedness, swift water rescue, enclosed space rescue, emergency medical services, hazardous materials response, training, dispatch services, fire investigations, fire code inspections, public relations, automatic and mutual aid to neighboring communities, strike

team response, mutual deployment coverage, and any and all services and programs related to the provision of fire protections services to the Montclair and Upland communities.

Q. Wages and Benefits.

1. **Different Wage and Benefit Structures Maintained.** Montclair and Upland recognize that the wages and benefits for the shared command positions differ between the two fire departments. Cities agree to retain sole discretion over the wage and benefit schedules for their respective employees during the term of this Agreement.
2. **Options to Ameliorate Differences Not Prohibited.** Nothing in this Agreement shall prohibit Montclair and Upland from considering options to address any differences in wage and benefit schedules in shared command positions. However, any action to address differences shall only occur in the event Montclair and Upland agree to extend this Agreement beyond the two-year pilot period, and shall only occur upon consideration and action of the employing agency to address any difference, and by action of the respective City Council to approve a recommendation to resolve any such difference.

R. Shared Costs of Services.

1. **Proportionate Formula for Shared Services.** Montclair and Upland shall proportionately divide the mutually agreed upon shared costs for those employment positions defined and designated as shared command positions, shared administrative positions, and other positions mutually agreed to be shared between Montclair and Upland, subject to the cost-sharing provisions contained herein. For the purpose of this Agreement,

Upland's proportionate share of costs shall be sixty-seven percent (67%) for all shared costs, and Montclair's proportionate share of costs shall be thirty-three percent (33%) for all shared costs. Personnel-related cost-sharing shall be subject to the provisions of Section III(R)(5) and Section III(R)(6) of this Agreement.

2. **Cities Responsible for Respective Employee Costs.** Montclair and Upland shall pay their respective employees in shared command positions through their respective and normal payroll process. Additionally, Montclair and Upland shall each provide benefits and training to their own employees in shared command positions and other positions through their respective and normal budgeting process.
3. **Shared Command and Administrative Positions Subject to Shared Costs.** Except as otherwise provided for by mutual agreement between Montclair and Upland, only those costs related to positions considered to be part of the shared command structure and designated administrative positions, as set forth in this Agreement shall be considered subject to cost-sharing under this Agreement. However, nothing in this Agreement shall prohibit Montclair and Upland from agreeing to share the cost of studies, joint training, shared equipment, dispatch services, and any other services, including professional services, related to successful implementation and performance of the terms and conditions of this Agreement and its successor agreements, and subject to the provisions of Section III(R)(1) of this Agreement.
4. **Quarterly Billing and Payment Cycle for Shared Costs.** Within 30 calendar days of March 31, June 30, September 30, and December 31

of each year this Agreement is in effect, Montclair and Upland shall each itemize its shared costs as defined herein and provide to the other City such itemization and invoice for the appropriate proportionate share of the shared costs of services. Each City shall provide payment of the invoiced amount within thirty (30) calendar days of receipt of the invoice.

5. **Components of Shared Costs for Services.** Shared costs of services shall include the following:
 - (a) **Wages.** Wage costs including straight time and overtime earned by employees in the shared command positions during the quarter.
 - (b) **CalPERS.** Payment to CalPERS for service time provided by employees in the shared command position during the quarter.
 - (c) **Insurance.** City contributions for medical insurance, dental insurance, vision insurance, long-term disability insurance, life insurance, and employee assistance coverage afforded to employees in the shared command positions during the quarter.
 - (d) **Training.** City costs for training of employees in the shared command positions.

6. **Exclusions from Shared Costs.** The shared costs of services shall exclude:
 - (a) **Leave.** Conversion of accrued compensatory time, vacation, holiday, and sick leave to cash.
 - (b) **Workers' Compensation.** Workers' Compensation payments.
 - (c) **4850 Leave.** Employees receiving state 4850 wage and leave benefits shall be excluded from shared costs.

- (d) **Deferred Compensation.** City contributions to deferred compensation plans.
- (e) **Health Savings Plans.** City contributions to retirement health savings plans and wellness programs.
- (f) **Severance.** Severance pay.
- (g) **Cash-Out Payments at Retirement.** Retirement-related cash-out payments including leave time conversions.
- (h) **Settlements.** Settlement payments related to any and all employee claims, awards, and arbitrator and court decisions.
- (i) **Industrial Disability.** Industrial Disability Retirement and Disability Retirement related pays.
- (j) **Long-Term Disability.** Long-term disability payments.
- (k) **Attorney Costs.** Attorney's fees, arbitrator costs, and any cost components related to employee claims, filings, lawsuits, and other legal and extra-legal actions against the employer.
- (l) **Investigations.** Costs related to hiring investigators.
- (m) **Education.** Payments made to employees to reimburse education or tuition expenses and education incentive pay.
- (n) **Longevity.** Longevity and service award pay.
- (o) **Vehicle Allowance.** Payments made to employees as monthly vehicle allowances and mileage reimbursement.
- (p) **Travel.** Costs related to travel, including mileage, hotels, meals, communications, vehicle rental, fuel, insurance, transportation, and miscellaneous.

- (q) **Uniform Allowances.** Payments made to employees as uniform allowances.
- (r) **Special/Premium Pays.** Any and all special and premium pays beyond base wages.
- (s) **City Vehicles.** Vehicle maintenance, insurance, registration, fuel, and operation costs for City-owned vehicles utilized by employees in the shared command positions.
- (t) **Grant Match.** Local match on grants.
- (u) **Other.** All other forms of compensation and payment for services not included in Section III(R)(5), above.

7. **Sharing of Reimbursed Costs.** If any shared costs of services are reimbursed from another source, such reimbursement shall be divided between Montclair and Upland based on the agreed proportionate shares set forth in Section III(R)(1) of this Agreement.

8. **Audit.** Either City may request a comprehensive year-end audit process that would serve to verify the validity of all billings for services to be shared by the Cities. The cost for the audit shall be shared equally between Montclair and Upland, with each City paying fifty percent (50%) of auditing costs.

S. Liability and Insurance Provisions.

1. **Workers' Compensation Insurance.** Each City shall obtain and maintain Workers' Compensation coverage for all employees who may provide any services to the other City for the duration of this Agreement. Such coverage shall encompass the entire scope of duties of each employee to be performed hereunder, including shared services to be performed by

any employee, as required by this Agreement. It is the intent of the Parties that both Cities be considered to have secured Workers' Compensation coverage pursuant to Labor Code Section 3602(d). Each City may self-insure to these limits of coverage. Notwithstanding the provisions of Section III(T)(1) and (2) of this Agreement, each Party shall indemnify, defend, and hold harmless the other Party regarding any claims or suits by employees of either Party for injuries arising from the performance of services under this Agreement.

2. **Apparatus/Equipment Insurance.** Each City shall obtain and maintain insurance coverage to replace or repair its own fire department equipment and facilities. Such insurance coverage shall be maintained in accordance with each City's own policies and procedures, and each City shall not be responsible for any property loss of the other City. Each City may self-insure to satisfy the requirements of this subsection.
3. **Liability Insurance/Additional Insured.** At all times during the term of this Agreement or any extension thereof, each City shall maintain automobile liability coverage and comprehensive general liability insurance, including employment practices coverage, in a mutually acceptable form covering all services provided pursuant to this Agreement with applicable single limits of at least \$20,000,000 per occurrence, which policy(ies) shall name the other City, its elected officials, officers, employees, and volunteers as additional insured.
4. **Proof of Coverage.** Upon request, each City shall provide the other with evidence of coverage to fulfill its insurance obligations under this Agreement, and shall promptly notify each other of any change of

coverage, terms, limits, or providers. Each City waives the right of subrogation against the other. Each City may self-insure to satisfy the requirement of this subsection.

T. Mutual Indemnification.

- 1. Montclair to Indemnify Upland.** To the maximum extent permitted by law, Montclair shall defend, indemnify, and hold harmless Upland, its elected officials, officers, agents, employees, and volunteers, with respect to any and all losses, liabilities, damages, including property damages and damages for bodily injury or death, costs and expenses, and payment of reasonable attorneys' and experts' fees and costs, actually or allegedly arising out of the acts or omissions of Montclair or those of any of its elected officials, officers, agents, employees, or volunteers, in performance of this Agreement. However, if an act or omission is actually or allegedly attributable to a Montclair employee in a shared command position or other shared position in the course of performing services for the Upland Fire Department, then Upland shall have the duty to defend, indemnify, and hold harmless Montclair, and its elected officials, officers, agents, employees, and volunteers. A Montclair employee in a shared command position or other shared position shall be deemed to have been in the course of performing services for the Upland Fire Department if, absent this Agreement, those services would have been performed by Upland Fire Department command staff or other shared position.
- 2. Upland to Indemnify Montclair.** To the maximum extent permitted by law, Upland shall defend, indemnify, and hold harmless Montclair, its

elected officials, officers, agents, employees, and volunteers with respect to any and all losses, liabilities, damages, including property damages and damages for bodily injury or death, costs and expenses, and payment of reasonable attorneys' and experts' fees and costs, actually or allegedly arising out of the acts or omissions of Upland or those of any of its elected officials, officers, employees, or volunteers, in performance of this Agreement. However, if an act or omission is actually or allegedly attributable to an Upland employee in a shared command position or other shared position in the course of performing services for the Montclair Fire Department, then Montclair shall have the duty to defend, indemnify, and hold harmless Upland, and its elected officials, officers, agents, employees, and volunteers. An Upland employee in a shared command position or other shared position shall be deemed to have been in the course of performing services for the Montclair Fire Department if, absent this Agreement, those services would have been performed by Montclair Fire Department command staff or other shared position.

3. **Party to Provide Defense.** In the event either party is required by this subsection to provide a defense, then the party to whom a defense is being provided shall be represented by legal counsel of its choice.
4. **Notification by Party Seeking Indemnification.** Each City shall promptly notify the other of any and all claims or actions for which it seeks indemnification, defense and/or liability insurance coverage pursuant to this Agreement. The provisions of this Section III(T)(1) and Section III(T)(2) of this Agreement shall survive the termination or expiration of this Agreement.

U. Dispute Resolution.

Any disputes concerning the interpretation or application of this Agreement and any claim arising out of this Agreement shall be resolved as follows:

1. **Administrative Remedies.** Disputes regarding the interpretation or application of this Agreement shall first be submitted to the City Manager of each City for investigation and resolution. The City Managers will make a good faith and reasonable effort to reach an agreeable resolution. Any disputes that cannot be resolved in that manner shall be submitted to nonbinding arbitration as set forth below.
2. **Formal Remedies.** In the event the administrative remedy does not resolve the dispute, the injured City may, but is not required to as a condition of pursuing any legal remedies, serve a demand for arbitration on the City claimed to be in default ("Defaulting City"). The Cities will continue to perform obligations under this Agreement so long as the Defaulting City diligently commences to cure the alleged default. In the event there is imminent danger to the public health, safety, or general welfare resulting from the default, the Defaulting City shall take immediate action to cure the immediate threat.
3. **Nonbinding Arbitration.** Within ten (10) business days of receipt of the demand and provided the default remains uncured, the matter shall be submitted to nonbinding arbitration. The Cities shall make reasonable efforts to jointly select an arbitrator using any reasonable method including selection by chance. The arbitration shall be conducted in accordance with the California Arbitration Act (Code of Civil Procedure Section 1280 *et seq.*). The arbitrator shall render a decision with written

findings. The costs of arbitration (excluding each City's own costs) shall be borne by the Cities equally. Either City that is not satisfied with the arbitrator's decision shall be entitled to pursue all remedies available in a court of law or equity.

V. Representatives' Authority; Notices.

1. **Representative for Administration of Agreement.** Each City's representative for purpose of administration of this Agreement, including provision of consent or approval where permitted or required, shall be each City's City Manager and/or designee thereof. The Cities recognize that to maximize the effectiveness of this pilot program, it may, from time to time, be necessary to amend the operational specifics set forth herein, or any other provision of this Agreement for the benefit of the Cities. The provisions of this Agreement may be amended in writing executed on behalf of both Cities by each of their City Councils. However, at the discretion of the City Councils of Montclair and Upland, authority to amend the operational specifics as set forth herein may be delegated to the respective City Managers of Montclair and Upland; provided, however, nothing in this Agreement shall authorize either City Manager to agree to any modification of this Agreement that would result in a change to the division of shared costs set forth in Section III(Q)(1) and R(1) without the approval of the City Council of each City.
2. **Notice to be Given.** Any notice required or permitted to be given or served pursuant to this Agreement shall be effected by personal delivery of the same as follows:

To Montclair:

City Manager
City of Montclair
5111 Benito Street
Montclair, CA 91763

To Upland:

City Manager
City of Upland
460 North Euclid Avenue
Upland, CA 91786

Service of the notice shall be effective immediately upon delivery during normal business hours. The foregoing addresses for notice may be modified by either City giving written notice of such modification to the other City and calling specific attention to this Agreement.

W. Independent Contractor.

No officer or employee of either City shall for any purpose be deemed to be an officer or employee of the other, and no officer or employee of either City shall be entitled to participate in any insurance, medical care, vacation, sick leave or other benefits provided to the other City's officers or employees. No officer or employee of either City shall have any power to incur any debt, obligation, or liability on behalf of the other City or otherwise act on behalf of the other City as an agent, except to the extent expressly provided herein. No officer or employee of either City shall, at any time or in any manner, represent that he or she is in any manner an agent or employee of the other City, except to the extent expressly provided herein.

X. General Provisions.

1. No Waiver. No delay or omission in exercising any right or remedy pursuant to this Agreement shall impair such right or remedy or be

construed as a waiver thereof. All rights and remedies pursuant to this Agreement shall be cumulative, except with respect to any right or remedy expressly stated to be exclusive.

2. **Compliance with All Laws.** Both Cities shall comply with all applicable local Ordinances, and state and federal statutes, laws, and regulations including, but not limited to, laws governing conflicts at all times during the performance of this Agreement.
3. **No Third Party Beneficiary.** It is each City's intent that nothing in this Agreement shall create any third-party beneficiary rights.
4. **Force Majeure.** Neither City shall be considered to be in default in the performance of any material obligation under this Agreement when a failure or performance shall be the result of a Force Majeure event. A Force Majeure event shall mean any cause beyond the reasonable control of the affected City and which by the exercise of due diligence such City could not reasonably have been expected to avoid and which it has been unable to overcome. Neither City shall be relieved of its obligation to perform if such failure is due to causes arising out of its own negligence or due to matters under its control which it fails to remedy within a reasonable time period. Either City rendered unable to fulfill any of its obligations under this Agreement by reason of a Force Majeure event shall give prompt written notice of such fact to the other City. During such period, both Cities shall cooperate to ensure that critical services are maintained, while the affected City shall diligently work to restore its services required by this Agreement.

5. **Severability.** In the event that any clause or provision of this Agreement or any part thereof becomes or shall be declared by a court of competent jurisdiction invalid, illegal, void, or unenforceable, this Agreement shall continue in full force and effect without said provisions, provided that no such severability shall be effective if it materially changes the benefits or obligations of either City hereunder.

6. **Integrated Agreement.** This Agreement, which includes the recitals and all exhibits and attachments, constitutes the entire understanding of both Cities with respect to the subject matter herein. No representation, express or implied, that is not set forth herein shall be binding or have any force or effect.

7. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be original, and all of which together shall constitute one and the same Agreement. A signature delivered by facsimile shall be deemed to be an original signature and shall be effective upon receipt thereof by the other Party.

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

CITY OF UPLAND

Dated: 12/23/2013

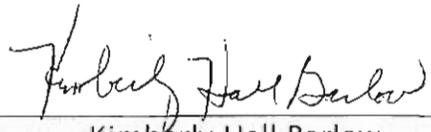
By: 
 Ray Musser
 Mayor

Attest:

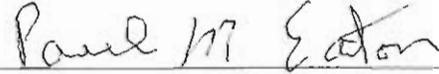
Dated: 12/30/13

By: 
 Stephanie A. Mendenhall
 City Clerk

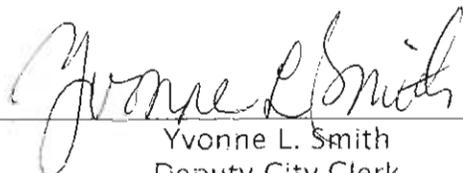
Approved as to Form:

Dated: 12/26/13 By: 
Kimberly Hall Barlow
City Attorney

CITY OF MONTCLAIR

Dated: 12.17.13 By: 
Paul M. Eaton
Mayor

Attest:

Dated: 12.17.13 By: 
Yvonne L. Smith
Deputy City Clerk

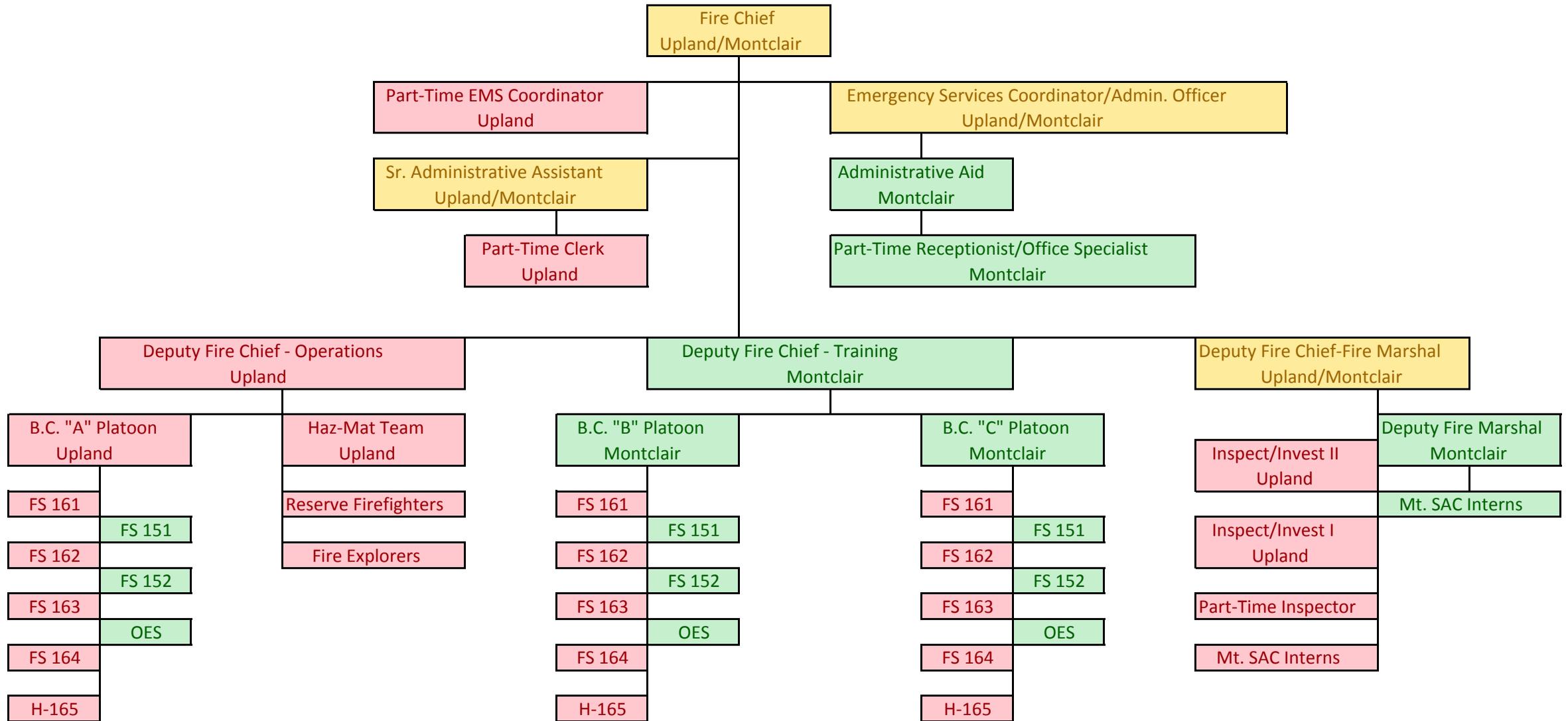
Approved as to Form:

Dated: 12.17.13 By: 
Diane E. Robbins
City Attorney

MONTCLAIR AND UPLAND FIRE DEPARTMENTS

ORGANIZATIONAL CHART

Proposed Structure



KEY: Yellow = Upland/Montclair Shared Cost Position; Red = Upland Personnel; Green = Montclair Personnel

Cities of Upland and Montclair Shared Fire Services Summary

<u>Position</u>	<u>Dollar Amount</u>	<u>2014</u>
Fire Chief	97,231.43	79,658.84
Deputy Fire Chief	72,957.06	69,332.39
Sr Admin Assist	17,947.61	-
Emergency Service Coordinator	(43,538.37)	-
	144,598	148,991

Impact of New Terms	(4,393)
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New Terms Full Impact Summary FY 2015-16	
Revenue from City of Montclair	\$ 188,136
EMS Coordinator Cost	(43,538)
Net	<u>144,598</u>
Previous Net Revenue to Upland	148,991
Difference Per Amendment (includes an additional FTE for EMS Coordinator)	<u><u>\$ (4,393)</u></u>



STAFF REPORT

ITEM NO. 13.C

DATE: MAY 11, 2015
TO: MAYOR AND CITY COUNCIL
FROM: ROD BUTLER, CITY MANAGER
PREPARED BY: RICK MAYHEW, FIRE CHIEF
SUBJECT: CONSIDER ADOPTION OF RESOLUTION IDENTIFYING THE TERMS AND CONDITIONS FOR FIRE DEPARTMENT RESPONSE AWAY FROM THEIR OFFICIAL DUTY STATION AND ASSIGNED TO AN EMERGENCY INCIDENT

RECOMMENDED ACTION

It is recommended that the City Council adopt a Resolution identifying the terms and conditions for Fire Department response away from their official duty station and assigned to an emergency incident.

GOAL STATEMENT

The proposed action supports the City's goal for fiscal responsibility.

BACKGROUND

The Fire Department responds to all-hazard events under the terms and conditions of the Agreement for Local Government Fire and Emergency Assistance, hereinafter referred to as the "California Fire Assistance Agreement" or "CFAA". The signatory agencies to the CFAA are United States Department of the Interior agencies (Bureau of Land Management, National Park Service, and Fish and Wildlife); State of California, Department of Forestry and Fire Protection (CAL FIRE); State of California Governor's Office of Emergency Services (Cal OES); and United States Forest Service.

At times of severe wildfire conditions and other emergencies, there is often a need for emergency apparatus and/or personnel to provide fire protection or perform other tasks to control the situation. Cal OES, CAL FIRE, and the Federal Fire Agencies will generally use the CFAA for engines, water tenders, and overhead to address an incident once local agreement resources are exhausted, or where a local agreement is not in place.

It is the intent of the signatories to the CFAA to compensate California Fire and Rescue Mutual Aid System Agencies for the cost of assisting the State of California and the Federal Fire Agencies. The rates, methodologies, and formulas in the CFAA are intended to provide for such costs. The compensation shall be consistent with the assisting agency's normal internal business practices and any existing governing body resolution, which supports those business practices.

ISSUES/ANALYSIS

Adoption of proposed Resolution would accomplish the following:

1. Acknowledge that personnel are compensated (portal to portal) beginning at the time of dispatch to the return to jurisdiction when equipment and personnel are in service and available for agency response.
2. Establish the rates at which the classifications of Deputy Fire Chief, Fire Battalion Chief, Fire Captain, Fire Engineer/Paramedic, Fire Engineer, Firefighter/Paramedic, and Firefighter will be compensated for overtime while in the course of their employment and away from their official duty station and while assigned to an emergency incident, in support of an emergency incident, or pre-positioned for emergency response.
3. Satisfy the requirements to submit a governing body resolution to Cal OES Fire and Rescue Division that demonstrates the City's normal internal business practices for compensating its employees while in the course of their employment and away from their official duty station and while assigned to an emergency incident, in support of an emergency incident, or pre-positioned for emergency response.

FISCAL IMPACTS

Historically, strike team responses have generated a considerable expenditure to the Fire Department's Overtime Budget; however, Fire Department staff has employed a strategy to reduce these expenditures by submitting Reimbursement Requests to Cal OES for expenses incurred by the City during strike team deployments.

Cal OES, CAL FIRE, and the Federal Fire Agencies use the CFAA as the fiscal authority for reimbursing local government agencies for the use of their resources when they are dispatched to incidents through the California Fire and Rescue Mutual Aid System. Reimbursement begins 12 hours after the initial dispatch and is retroactive to the time of the initial dispatch. If the duration of the assignment is less than 12 hours, there is no reimbursement.

In Fiscal Year 2013-14, the Fire Department responded on three strike teams that were deemed reimbursable from portal to portal. All associated reimbursements have been received. Total amount reimbursed was \$41,571.47.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

[Resolution](#)

[Reimbursement Policy and Procedure](#)

RESOLUTION NO. XXXX

A RESOLUTION OF THE CITY COUNCIL
IDENTIFYING THE TERMS AND CONDITIONS FOR
FIRE DEPARTMENT RESPONSE AWAY FROM THEIR
OFFICIAL DUTY STATION AND ASSIGNED TO AN
EMERGENCY INCIDENT

Intent of the Parties and Findings

- (i) The Upland Fire Department is a public agency located in the County of San Bernardino, State of California; and
- (ii) It is the City of Upland's desire to provide fair and legal payment to all its employees for time worked; and
- (iii) The City of Upland has in its employ, Fire Department response personnel including: Deputy Fire Chief, Fire Battalion Chief, Fire Captain, Fire Engineer/Paramedic, Fire Engineer, Firefighter/Paramedic, Firefighter; and
- (iv) The City of Upland will compensate its employees portal to portal while in the course of their employment and away from their official duty station and assigned to an emergency incident, in support of an emergency incident, or pre-positioned for emergency response; and
- (v) The City of Upland will compensate its employees overtime in accordance with the rates stated below while in the course of their employment and away from their official duty station and while assigned to an emergency incident, in support of an emergency incident, or pre-positioned for emergency response:
 - a) The rank of Deputy Fire Chief is considered an exempt employee and would not normally receive overtime compensation for hours worked in excess of 40 hours per week, however, when this rank is assigned to an emergency incident that is away from its official duty station, compensatory time shall be accrued at straight-time for any hours worked beyond the normal 40-hour shift schedule.
 - b) The rank of Fire Battalion Chief shall be paid at a straight-time rate.
 - c) The ranks of Fire Captain, Fire Engineer/Paramedic, Fire Engineer, Firefighter/Paramedic, and Firefighter shall be paid at a rate of time and one-half.

NOW, THEREFORE, BE IT RESOLVED The Upland City Council hereby finds, determines and resolves as follows: that the City Council of the City of Upland does hereby find and determine that the conditions set forth in this resolution, as stated above, take effect upon adoption.

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

Section 2. All of the findings contained in the above recitals, are incorporated herein by this reference.

Section 3. All of the compensation rates contained in the above recitals, take effect upon adoption.

Section 4. Certification. The City Clerk shall certify the adoption of this resolution.

APPROVED AND ADOPTED this 11th day of May, 2015.

Ray M. Musser, Mayor

I, Stephanie A. Mendenhall, City Clerk of the City of Upland, do hereby certify that the foregoing Resolution was passed and adopted at a regular meeting of the City Council of the City of Upland held on the 11th day of May, 2015, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAINED:

ATTEST:

Stephanie A. Mendenhall, City Clerk

Cal OES# 6051-4
CAL FIRE# 7CA02564
USFS# I5-FI-11052012-107
NPS# P14AC01610
BLM# BAA151002
FWS# FFF300008-15-002
BIA# A15ACPRO01

EXHIBIT "A"
REIMBURSEMENT POLICY AND PROCEDURES

GENERAL

- A-1. It is the intent of the signatories to the CFAA to compensate California Fire and Rescue Mutual Aid System Agencies for the cost of assisting the State of California and the Federal Fire Agencies. The rates, methodologies, and formulas in the Agreement are intended to provide for such costs. The compensation shall be consistent with the California Fire and Rescue Mutual Aid System Agency's normal internal business practices and any existing memorandum of understanding (MOU)/memorandum of Agreement (MOA), governing body resolution, or equivalent, which supports those business practices.
- A-2. The California Fire and Rescue Mutual Aid System Agencies shall use the following procedures to secure reimbursement for the provision of personnel and local government-owned emergency apparatus. Terms established in this section shall be made binding upon California Fire and Rescue Mutual Aid System Agencies by Cal OES and shall not be subject to interpretation or rejection by the jurisdiction providing assistance. See Clause A-36 for procedures that do not apply or are applicable to State Agency Fire Departments, Department of Defense Fire Departments, or Tribal Fire Departments.
- A-3. California Fire and Rescue Mutual Aid System Agencies that provide their personnel and equipment to the State of California or the Federal Fire Agencies through the California Fire and Rescue Mutual Aid System and this Agreement, do so on a voluntary basis, and accept the following provisions for reimbursement.
- A-4. It is understood and agreed that a California Fire and Rescue Mutual Aid System Agency providing personnel or California Fire and Rescue Mutual Aid System Agency-owned emergency apparatus shall obtain reimbursement for such response by billing the ordering entity (either the State of California or Federal Fire Agency) through the Cal OES invoicing process in accordance with this Exhibit.
- A-5. Reimbursement for personnel and emergency apparatus will begin after the 12th hour. There shall be no reimbursement for responses of 12 hours duration or less with the exception of the Department of Interior (DOI) fire agencies (BLM, NPS, FWS, and BIA). DOI will reimburse from time of dispatch. If the duration of the response exceeds 12 hours and local agencies have an existing MOU/MOA, governing body resolution, or equivalent that indicates compensation for all hours worked, reimbursement for personnel and emergency apparatus shall cover the

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entire time of commitment, beginning at the time of initial dispatch from home base, to the time of return to home base. If local agencies do not have an existing MOU/MOA, governing body resolution, or equivalent that indicates compensation for all hours worked, local agencies will be reimbursed for actual hours worked. Should personnel or emergency apparatus be requested for assignment to a Mobilization Center for standby duty, the reimbursement period shall begin with the time of initial dispatch of said personnel or emergency apparatus from its home base. Additionally, as the 12 hour period stated above is cumulative, responding personnel and/or emergency apparatus shall only be subject to one 12 hour period from the original time of dispatch, regardless of the number of re-assignments that may occur prior to returning to their home base.

- A-6. In some cases on a single incident, the State of California and the Federal Fire Agencies may need to convert resources that were ordered under Statewide Master Mutual Aid (MMA) to reimburse resources under the California Fire Assistance Agreement. In these cases, MMA resources will be released by the responsible agency and reordered by the State of California and/or the Federal Fire Agencies through the CFAA. For resources that have been on the same incident for more than 12-hours, reimbursement will begin at the time the order under the California Fire Assistance Agreement was initiated. Resources that have been on the same incident under MMA for 12-hours or less will have their time applied to the California Fire Assistance Agreement 12-hour minimum. After the 12-hours are completed, reimbursement will begin at the time the order under the California Fire Assistance Agreement was initiated. The 12-hour period shall be subject to annual review and monitoring by the California Fire Assistance Agreement Committee.
- A-7. An Administrative Rate will be added to the total of the personnel, fire engine, support equipment, and other approved reimbursements for local government. The Base Administrative Rate is set annually by the Committee per the rate letter published at the time of dispatch, unless the California Fire and Rescue Mutual Aid System Agency submits an agency-specific administrative rate in accordance with the Instructions for Completing Actual Administrative Rate Calculations. Cal OES will issue these instructions annually along with the salary survey instructions. California Fire and Rescue Mutual Aid System Agencies that develop an Actual Administrative Rate must review and update their rate by July 1 of each year.

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REIMBURSEMENT – PERSONNEL

- A-8. A committee will establish a standard reimbursement formula for local agency personnel with Base Rates applicable to all jurisdictions. The default reimbursement will be at the Base Rate for actual hours worked on the incident. Agencies can be reimbursed at a rate that is higher than the Base Rate, and/or for more than actual hours worked (up to 24 hours per day), as follows:
- A-8.1 Any agency seeking reimbursement for its personnel at a rate higher than the appropriate Base Rate, must complete the annual salary survey and file it with the Cal OES Fire and Rescue Division. The Chief Financial Officer will provide verification that the personnel wages exceed the Base Rate for each requested position.
- A-8.2 Any agency seeking reimbursement for personnel for more than actual hours worked on the incident (portal-to-portal) must file an MOU/MOA, governing body resolution, or equivalent with Cal OES Fire and Rescue Division. The MOU/MOA, governing body resolution, or equivalent shall indicate how personnel will be compensated.
- A-8.3 Any agency seeking reimbursement for its supplemental personnel will accept rates as outlined in **NWCG#004-2009, Attachment D**, which states that supplemental personnel will be reimbursed using General Schedule tables with locality pay applied for actual hours worked. Reimbursement shall be in accordance with Clause A-16.
- A-9. The above required documentation for rates and hours shall be based on actual costs to the responding agency, and not contingent upon reimbursement from the State of California or Federal Fire Agencies at a rate that exceeds what the agency will pay its personnel. Reimbursements will be based on the salary survey and any applicable MOU/MOA, governing body resolution, or equivalent that is on file at the time of the initial dispatch.
- Any MOU/MOA, governing body resolution, or equivalent is subject to review by the Committee. Local government will be formally notified of the determination.
- A-10. These formulas and rates of payment shall constitute full reimbursement for direct costs, including back fill to local jurisdictions relative to personnel provided. Liability for workers compensation claims and/or payment of unemployment benefits shall remain the responsibility of the responding local, state, federal, and tribal agencies that directly employ the personnel. All calculations shall be subject to audit by the State of California or the Federal Fire Agencies in accordance with Recital 29, Examination and Audit.