CITY OF UPLAND
EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is made and entered into by and between the City of Upland, California Municipal Corporation, "City", and Richard K. Mayhew II, "Employee". The terms and conditions agreed upon by the parties are expressed as follows:

RECITALS

A. City desires to hire Employee to act and serve in the capacity of Fire Chief for the City of Upland under the terms and conditions of employment set forth in the Agreement.

B. Employee desires to become employed by the City of Upland as its Fire Chief under the terms and conditions of employment set forth in the Agreement.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the foregoing recitals, the terms and conditions set forth herein, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. **Employment.** Employee agrees to enter the services of the City as of the effective date herewith and City agrees to pay Employee for services.

2. **Term of Employment**:

(a) **Initial Term** The initial term of employment for Employee under this Agreement shall commence on the Effective Date reflected by joint execution on February 3, 2013 and continue for a period of three (3) years to end, February 3, 2016 unless terminated at an earlier date as provided in this Agreement.

(b) **Second Term** Unless City or Employee has given the other party written notice at least ninety (90) days before the end of the Initial Term that this Agreement shall be renewed for a Second Term, the Term and other provisions of this Agreement shall be automatically extended for a period of three (3) years.

(c) **At-Will Status** Notwithstanding any term of this employment agreement to the contrary, it is expressly understood and agreed by Employee, that Employee is employed at the pleasure of the City Manager and that this Agreement may be terminated at any time during the Initial Term or Second Term as provided in Exhibit 1 attached to and incorporated in this agreement.

3. **Responsibilities**. Employee agrees during the term of such employment:

(a) To devote Employee's full business time, attention, best efforts, skill and ability exclusively to the business of City and to perform such services as may be from time to time assigned to Employee by City: except as provided in paragraph 11 below;

(b) To comply with all rules, policies and orders which City may from time to time give or adopt; and

(c) To do his or her utmost to further enhance and promote the business and welfare of City.

4. **Notice of Termination**. In the event Employee terminates his/her employment with the City, he/she shall give the City a minimum of thirty (30) days written prior notice thereof, unless the parties otherwise agree.

5. **Compensation**. Employee's compensation shall be in accordance with the compensation plan of City applicable to Employee, as more fully described in Exhibit "1" and any attachment thereto, attached hereto and incorporated herein by reference. Additionally, the Employee will receive a Uniform Replacement, Maintenance and Cleaning Allowance of $250 annually.

6. **Modification of Position**. City reserves the right to substitute, change, amend or modify the Employee's position from time to time in its sole discretion.

7. **Benefits**. During the term of this Agreement, Employee shall be eligible to receive all benefits as they are normally provided to all City Executive Management Employees and referenced as "Executive Group Benefit Summary."

8. **Additional Terms.** City, in consultation with Employee, may set forth any such other terms and conditions of employment as they may determine from time to time, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, any regulations, rules, policies or procedures of City, or other applicable law.

The City agrees to provide Employee, upon initial hire date of employment, with 40 hours of sick leave and 40 hours of vacation leave.

9. **Repealer**. All provisions of resolutions of City in conflict with this Agreement are hereby superseded to the extent of such conflict.

10. **Severability**. If any provision of this Agreement is for any reason deemed by a court of competent jurisdiction to be unconstitutional, illegal, invalid, void,

or otherwise unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

11. **Entire Agreement**. The foregoing contains the entire agreement of the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to the employment of Employee by City and contains all of the covenants and agreements between the parties with respect to that employment. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by either party, or anyone acting on behalf of either party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding on either party.

12. **Modifications**. Any modifications to the Agreement shall be effective only if in writing and signed by both parties hereto.

13. **Governing Law.** This Agreement shall be construed and governed in accordance with the laws of the State of California.

14. **Attorney's Fees**. If any legal action or other proceeding is brought for the enforcement of this Agreement, or to interpret any of the provisions hereof, or of any alleged dispute, breach, default, or misrepresentation in connection with any of the provisions hereof, the successful or prevailing party shall be entitled to recover reasonable attorney's fees and other costs incurred in said action or preceding, whether or not said action or preceding goes to final judgment, in addition to any other relief as may be entitled.

15. **Effective Date.** This Agreement shall only become effective, operative, and binding as against the parties on the date upon which both parties have signed the Agreement.

IN WITNESS WHEREOF, the City has caused this Agreement to be signed and duly executed on its behalf by its City Manager. Employee has accepted the terms and conditions set forth in the Agreement effective as of the date of his signature below.

CITY OF UPLAND

DATE: 1-17-2013 BY: _____
CITY MANAGER

EMPLOYEE

DATE: 01/14/2013 BY: _____
Richard K. Mayhew II

EXHIBIT "1"

COMPENSATION

Base Salary:

Employee shall receive, for services rendered pursuant to this Agreement, an annual base salary of $161,196 payable in twenty six (26) biweekly installments, subject to standard withholdings for taxes and the like, at the same time as other Employee's of the City are paid "Base Salary", without otherwise effecting its right to terminate employee and pay severance compensation as provided below.

Performance Award:

Employee shall, annually, be eligible to receive an annual lump sum performance award, at the discretion of the City Manager of 0 – 10% of Employee's then current Base Salary.

Severance Compensation:

In the event Employee is otherwise willing and able to perform his/her duties hereunder, and the Employee is terminated by the City, a lump sum payment shall be paid, less any deductions required by law, as severance in an amount equal to the aggregate of three (3) months of Employee's (i) then current Compensation, (ii) compensable Benefits, (iii) compensable Leave which, as defined herein, does not and will not include sick time, and (iv) such accrued compensable Leave as the Employee may have accumulated.

Termination for Cause:

In the event the employee is terminated for cause, that person shall not be entitled to any additional contribution as set forth above in Severance Compensation of this Exhibit except for such base salary and benefits accrued and unpaid prior to termination. Termination for cause shall consist of conviction of a felony, or a misdemeanor involving moral turpitude, a violation of city policy or substantive failure to follow a directive from the City Manager; however this shall not be deemed to create, establish or impose any "for cause" or due process grievance or appeal procedures.