UPLAND CITY COUNCIL
AND SUCCESSOR AGENCY TO THE UPLAND COMMUNITY REDEVELOPMENT AGENCY
AGENDA
December 11, 2017
City Council Chamber

DEBBIE STONE, MAYOR
GINO L. FILIPPI, MAYOR PRO TEM
CAROL TIMM, COUNCILMEMBER
JANICE ELLIOTT, COUNCILMEMBER
SID ROBINSON, COUNCILMEMBER

MARTIN THOUVENELL, INTERIM CITY MANAGER
JAMES L. MARKMAN, CITY ATTORNEY

DISRUPTION OF MEETINGS
Individuals who demonstrate disruptive conduct during City Council meetings that prevent the City Council from conducting its meeting in an orderly manner are guilty of a misdemeanor as stated in PC403, disrupting a public meeting, and are subject to removal from the chamber or arrest.

**************
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 three (3) minutes. The use of visual aids will be included in the time limit.
4. CLOSED SESSION
   A. GOVERNMENT CODE SECTION 54956.8 - CONFERENCE WITH REAL PROPERTY NEGOTIATORS
      Property: Property located along 20th Street and Laurel Avenue at Euclid Avenue. APN 1044-061-20
      City Negotiators: Interim City Manager Martin Thouvenell, Development Services Director Jeff Zwack, Development Services Manager Liz Chavez, and City Attorney James L. Markman
      Negotiating Party: Armando L. Compean and Dolores Debra Compean, Trustees of the Compean Family Trust of 2014
      Under Negotiation: Price and Terms of Purchase

5. INVOCATION
   Pastor Pike, Grace Lutheran Church

6. PLEDGE OF ALLEGIANCE

7. PRESENTATIONS
   Certificate of Recognition Presented to Sharon Christensen
   Certificate of Recognition to Martinez Towing
   City Plaque recognizing Mike Tolle
   Presentation of a Certificate of Recognition from the Inland Empire Economic Partnership for the City of Upland’s Participation in the BAAP program
   Presentation of Badges by Chief Douglas P. Millmore
   Recognition of Martin Thouvenell for his Service as Interim City Manager August 2016 through December 2017

8. CITY ATTORNEY
   A. APPROVAL OF A CITY MANAGER EMPLOYMENT AGREEMENT WITH BILL. R. MANIS
      Approve City Manager Employment Agreement with Bill R. Manis. (Staff person: James L. Markman)
   B. APPROVAL OF A CONSULTATION AGREEMENT WITH MARTIN E. THOUVENELL
      Approve a management consulting agreement with Martin E. Thouvenell. (Staff Person: James L. Markman)

9. ORAL COMMUNICATIONS
   This is a time for any citizen to comment on any item listed on the 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 three (3) minutes. Speakers will be given five (5) minutes during public hearings. The use of visual aids will be included in the time limit.

10. COUNCIL COMMUNICATIONS

11. 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. APPROVAL OF WARRANT AND PAYROLL REGISTERS

Approve the November Warrant Registers (check numbers 17890-18371) totaling $3,996,314.86 and Payroll Registers totaling $1,006,008.44 (check numbers 159702-159724 and EFTs 5460-5917. (Staff Person: Londa Bock-Helms)

B. APPROVAL OF MINUTES

Approve the Regular Meeting Minutes of November 27, 2017 and the Special Meeting Minutes of December 4, 2017. (Staff Person: Jeannette Vagnozzi)

C. 2ND READING OF ORDINANCE 1929 AMENDING UPLAND MUNICIPAL CODE SUBSECTION 6.04.140(A) TO CREATE AND IMPLEMENT AN EFFECTIVE PROCEDURE FOR REPORTING AND PROSECUTING SITUATIONS INVOLVING HABITUAL ANIMAL NOISES, SECTION 5.04.095 REGARDING PENALTIES FOR VIOLATIONS OF BUSINESS LICENSE REGULATIONS, AND SECTION 1.16.180 REGARDING CODE ENFORCEMENT OFFICERS’ AUTHORITY TO ENFORCE THE UPLAND MUNICIPAL CODE AND ARREST VIOLATORS

Hold second reading by number and title only, waive further reading, and adopt Ordinance No. 1929 amending Upland Municipal Code Subsection 6.04.140(A) to create and implement an effective procedure for reporting and prosecuting situations involving habitual animal noises, Section 5.04.095 regarding penalties for violations of business license regulations, and Section 1.16.180 regarding code enforcement officers' authority to enforce the Upland Municipal Code and arrest violators. (Staff Person: Jeannette Vagnozzi)

D. APPOINTMENT OF MAYOR PRO TEM FOR 2018

Ratify the appointment of Councilmember Carol Timm as Mayor Pro Tem, term to expire in December 2018. (Staff Person: Jeannette Vagnozzi)

E. MAYORAL APPOINTMENTS FOR 2018

Ratify the Mayoral Appointments for calendar year 2018, appointing Council Members and City Representatives to City Council committees and various City and regional committees. (Staff Person: Jeannette Vagnozzi)

F. SCHEDULED VACANCIES FOR COMMISSIONS, COMMITTEES, AND BOARDS FOR CALENDAR YEAR 2018

Accept and file the Local Appointments List for all City commissions, committees, and boards for calendar year 2018, and direct the City Clerk to post the list. (Staff Person: Jeannette Vagnozzi)
G. EMERGENCY PURCHASE AND INSTALLATION OF EQUIPMENT AND PROFESSIONAL SERVICES FOR WATER SYSTEM IMPROVEMENTS

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

H. PROFESSIONAL SERVICE AGREEMENT WITH TKE ENGINEERING INC. FOR ENGINEERING AND MAPPING

Approve a professional services agreement for development plan, map review services, and staff augmentation with TKE Engineering, Inc. in the amount of $100,000. (Staff Person: Rosemary Hoerning)

12. PUBLIC HEARINGS

13. COUNCIL COMMITTEE REPORTS

A. POLICE AND FIRE COMMITTEE MEETING, NOVEMBER 27, 2017

B. ECONOMIC DEVELOPMENT COMMITTEE MEETING, DECEMBER 4, 2017

14. BUSINESS ITEMS

A. WELL 15 MAINTENANCE/REHABILITATION WORK

Approve an agreement with TriCounty Pump Company for Well 15 Maintenance/Rehabilitation Work for $158,475 and authorize contingency $16,525 for a not to exceed amount of $175,000. (Staff Person: Rosemary Hoerning)

B. PROFESSIONAL SERVICES AGREEMENT WITH J. G. BAUTISTA CONSULTING FOR ENGINEERING CONSULTING SERVICES

Authorize the City Manager to execute a Professional Services Agreement with J. G. Bautista Consulting, in an amount not to exceed $75,000. (Staff Person: Rosemary Hoerning)

C. ADOPTION OF A RESOLUTION AMENDING THE COMPENSATION AND BENEFIT PLAN FOR EXECUTIVE EMPLOYEES

Adopt a Resolution amending the compensation and benefit plan for Executive Management employees. (Staff Person: Kelly Gonzales)

15. ORAL COMMUNICATIONS

This is a time for any citizen to comment on any item 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 three (3) minutes. 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.

16. CITY MANAGER

17. ADJOURNMENT

The regular City Council meeting scheduled for December 25, 2017 will be cancelled. The next regularly scheduled City Council meeting is Monday, January 8, 2018.
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 December 7, 2017 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).
RECOMMENDED ACTION

It is recommended that the City Council approve City Manager Employment Agreement with Bill R. Manis.

GOAL STATEMENT

The proposed action supports the City's goal to ensure continuity in the leadership of the City and proper oversight of the City’s functions and employees.

BACKGROUND

The City Council entered into agreement with Martin Thouvenell to serve as Interim City Manager beginning August 8, 2016 with the amended contract ending December 31, 2017. In addition to providing leadership and overseeing the day to day operations of the City in his capacity as Interim City Manager, Mr. Thouvenell was also required to complete the recruitment for City Manager. After a lengthy search and interviews with the City Council, an offer of employment has been extended to Bill R. Manis.

ISSUES/ANALYSIS

Bill Manis has been serving as the City Manager of Rosemead since April of 2016. He has over 30 years of experience in local government. Prior to being appointed as City Manager in Rosemead, Bill was the Deputy City Manager for the City of San Bernardino. He has also worked in the cities of Banning, Cypress, Corona, Santa Ana, and Cerritos.
Bill earned his Bachelors of Science Degree in City and Regional Planning from California State Polytechnic University, Pomona. He also received his Certified Downtown Professional Certificate from California State University San Bernardino and the California Downtown Association.

**FISCAL IMPACTS**

A total of $275,529 was budgeted for the City Manager's salary and benefits for the 2017-2018 Fiscal Year. It is projected that $76,500 will be expended through December 31, 2017 for the Interim City Manager's contract. The annual salary listed in the agreement is $238,500 plus benefits. The projected salary and benefits for the remaining half of the fiscal year is $163,503. The total expense for the fiscal year is $35,527 under budget; therefore, no additional appropriation is necessary at this time.

**ALTERNATIVES**

Provide alternative direction to staff.

**ATTACHMENTS:**

City Manager Agreement
CITY MANAGER EMPLOYMENT AGREEMENT BETWEEN
THE CITY OF UPLAND AND BILL R. MANIS

This Employment Agreement (the "Agreement") is made and entered into effective January 1, 2018 by and between the City of Upland, California, a municipal corporation (the "City") and Bill R. Manis, an individual (the "City Manager"). The City and the City Manager are sometimes individually referred to as a "Party" and collectively as "Parties."

1. RECITALS

(a) The City requires the services of a City Manager.
(b) The City Manager has the necessary education, experience, skills and expertise to serve as the City’s City Manager.
(c) The City Council of the City desires to employ the City Manager to serve as the City Manager of City.
(d) The City Council of the City desires to provide certain benefits, establish certain conditions of employment and to set working conditions of City Manager.
(e) The City Manager desires to accept at-will employment as City Manager of City.
(f) In consideration of these Recitals and the performance by the Parties of the promises, covenants, and conditions herein contained, the parties agree as provided in this Agreement.

2. EMPLOYMENT

The City hereby employs the City Manager as its City Manager, and the City Manager hereby accepts such employment.

(a) Period of Employment

Employee shall, following the assumption of the office of City Manager on January 1, 2018, remain as an exclusive employee of the City for an indefinite term subject to the provisions contained in this Agreement and Chapter 2.04 of the Upland Municipal Code. Employee agrees not to accept, nor to become employed by any other employer until his resignation or termination date.

(b) Medical Exam/Fitness For Duty

Prior to assuming the office of City Manager on January 1, 2018, the City Manager shall successfully complete a medical/fitness for duty exam, the cost of which will be paid for by the City.
3. **COMPENSATION**

The City agrees to provide the following compensation to the City Manager during the term of the Agreement.

(a) **Compensation**

(i) **Base Salary**

1) The annual salary for the position of City Manager shall initially be $238,500.00.

2) The City Manager shall be paid at the same intervals and in the same manner as other regular City employees.

3) Whenever a cost of living adjustment or other nonmerit based pay increase is provided to any other City executive management employee or employees there shall be a similar adjustment or increase to City Manager’s Base Salary.

(ii) **Performance Evaluation**

The City Council will review and evaluate the performance of the City Manager on an annual basis or more frequently if the Council so desires. Failure of the City Council to provide a performance evaluation shall not limit the City’s ability to terminate this Agreement pursuant to the terms set forth herein. Review and evaluation shall be in accordance with such criteria as the parties may jointly agree upon, but which the parties contemplate will include mutually agreed upon performance goals for the City Manager and City Council goals, priorities, activities and programs for the City.

(b) **Bonding**

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

(c) **Benefits**

To the extent benefits are not specifically addressed in the Agreement, the City Manager shall receive the benefits afforded to any executive management employee or employees, including but not limited to an annual contribution to his deferred compensation plan, now established at the amount of $9,000.00.

(d) **Car Allowance**

City Manager shall be provided the use of a City vehicle for his use in performing his obligations established in this Agreement.
(e) **Vacation and Sick Leave Accrual**

(i) City Manager shall commence employment with a bank of 80 hours of vacation and thereafter accrue vacation at a rate of 160 hours per year or 6.15 hours per pay period.

(ii) City Manager shall commence employment with a one-time bank of 80 hours of sick leave.

(f) **Professional Activities and Conferences**

The City Council desires the City Manager to be reasonably active in professional organizations that will contribute to the City Manager’s professional development and standing and that will contribute to the advancement of the City’s interests and standing. To that end the City Council will pay for his membership in and attendance of conferences for ICMA, ICSC, CALED, CMMF and the California League of Cities. City Manager may request additional memberships and attendance subject to approval by the City Council.

(g) **Reimbursement**

The City shall reimburse the City Manager for reasonable and necessary travel costs, subsistence and other business expenses incurred by the City Manager in the performance of his duties including attendance at conferences.

(h) **Resignation/Retirement**

The City Manager may resign at any time and agrees to give the City at least 45 days advance written notice of the effective date of the City Manager’s resignation, unless the Parties otherwise agree in writing.

(i) **Termination and Removal**

(i) The City Manager is an at-will employee and serves at the pleasure of the City Council. Nothing in this Agreement shall prevent the City Council from terminating this Agreement and the services of the City Manager at its sole discretion without cause, except during those periods of time delineated in Subsection 3(i)(iii) below.

(ii) Except as is provided in Section 3(i)(iii) below, the City Council may remove the City Manager at any time, without cause, by a majority vote of its members. Notice of termination shall be provided to the City Manager in writing.

(iii) The City Manager shall not be removed from office during or within a period of ninety (90) days next succeeding the date when any member of the City Council takes the oath required to commence any term of office. The purpose of this provision is to allow any newly seated member of the
City Council or a reorganized City Council to observe the actions and ability of the City Manager in the performance of the powers and duties of his office.

(iv) Given the at-will nature of the position of City Manager, an important element of the employment agreement pertains to termination. It is in both the City’s interest and that of the City Manager that any separation of the City Manager is done in a businesslike manner.

(j) **Severance Pay**

(i) In the event the City Manager is terminated by the City Council during such time that the City Manager is willing and able to perform the City Manager’s duties under this Agreement, then in that event the City agrees to continue to compensate the City Manager at his then current rate of pay, as severance pay, for a total of six months, including all benefits and accrued leaves.

(ii) In exchange for the Severance Pay, the City Manager hereby expressly waives any right he may have under any applicable law, City policy, or otherwise to appeal or grieve his termination and the terms of the Agreement.

(iii) The above severance provisions are intended to comply with the provisions of Government Code section 53260 et seq. Any severance payment under this Agreement is also subject to the forfeiture or repayment provision of Government Code section 53243 et seq.

(k) **Payment for Unused Leave Balances**

(i) On separation from City employment, the City Manager shall be paid for all unused accrued leave allowances in accordance with City policy or as required by law. This includes all unused leave balances for vacation, sick leave, administrative and floating holidays.

(ii) In the event the City Manager dies while employed by the City under this Agreement, the City Manager’s beneficiaries or those entitled to the City Manager’s estate shall be entitled to the City Manager’s earned salary and any in-lieu payments for accrued benefits, including compensation for the value of all accrued leave balances in accordance with city policy or as required by law.

4. **DUTIES AND RESPONSIBILITIES**

(a) **Duties and Authority**

(i) The City Manager shall be the chief executive officer of the City and be responsible to the City Council for the proper administration of all affairs
of the City. The City Manager shall also serve as the chief executive officer of the Successor Agency to the Upland Redevelopment Agency and any and all other Agencies as to which the City Council is the board of directors. City Manager agrees that the salary and benefits provided pursuant to this Agreement represents the full compensation to be paid to City Manager for performance of all duties as the City’s City Manager, as well as for performance of all duties required of the chief executive officer of the above identified entities.

(ii) The City Manager shall perform all of the duties of the City Manager as set forth in Chapter 2.04 of the Upland Municipal Code and as may be modified from time to time, the California Government Code, and City policies and procedures approved by the City Council, as may be provided from time to time.

(b) ICMA Code of Ethics

(i) The Parties acknowledge that the City Manager is a member of the International City Management Association ("ICMA"). The Parties mutually desire that the City Manager be subject to and comply with the ICMA Code of Ethics (Exhibit A).

(ii) The City Manager commits to comply with the ICMA Code of Ethics.

5. MISCELLANEOUS PROVISIONS

(a) Amendments

This Agreement may be amended at any time by mutual agreement of the City and the City Manager. Any amendments are to be negotiated, put in writing, and adopted by the City Council.

(b) Conflict of Interest

(i) The City Manager shall not engage in any business or transaction or shall have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal as distinguished from financial interest includes an interest arising from blood or marriage relationships or close business, personal, or political associations. This section shall not serve to prohibit independent acts or other forms of enterprise during those hours not covered by active City employment, providing such acts do not constitute a conflict of interest as defined herein.

(ii) The City Manager shall also be subject to the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to the City Manager’s City employment.
(iii) The City Manager is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements at the time of appointment, annually thereafter, and at the time of separation from the position.

(c) Proprietary Information

"Proprietary Information" is all information and any idea pertaining in any manner to the business of City (or any City affiliate), its employees, clients, consultants, or business associates, which was produced by any employee of City in the course of his or her employment or otherwise produced or acquired by or on behalf of City. Proprietary Information shall include, without limitation, trade secrets, product ideas, inventions, processes, formulae, data, know-how, software and other computer programs, copyrightable material, marketing plans, strategies, sales, financial reports, forecasts, and customer lists. All Proprietary Information not generally known outside of City’s organization, and all Proprietary Information so known only through improper means, shall be deemed "Confidential Information." During his employment by City, City Manager shall use Proprietary Information, and shall disclose Confidential Information, only for the benefit of City and as is or may be necessary to perform his job responsibilities under this Agreement. Following termination, City Manager shall not use any Proprietary Information and shall not disclose any Confidential Information, except with express written consent of City. City Manager’s obligations under this Section shall survive the termination of his employment and the expiration of this Agreement.

(d) Indemnification

Subject to, in accordance with, and to the extent provided by the California Tort Claims Act [Government Code Section 810 et seq.], the City will indemnify, defend, and hold the City Manager harmless from and against any action, demand, suit, monetary judgment or other legal or administrative proceeding, and any liability, injury, loss or other damages, arising out of any act or omission occurring during City Manager’s tenure as City Manager.

(e) Severability

If any clause, sentence, part, section, or portion of this Agreement is found by a court of competent jurisdiction or arbitrator to be invalid, illegal, void or unenforceable, such clause, sentence, part, section, or portion so found shall be regarded as though it were not part of this Agreement and the remaining parts of this Agreement shall be fully binding and enforceable by the Parties hereto.

(f) Laws Affecting Title

In addition to those laws affecting a City Manager, the City Manager shall have the same powers, rights and responsibilities as a Chief Executive Officer, City Administrative Officer, Administrator, and/or City Administrator as those terms are used in local, state or federal laws.
(g) **Jurisdiction and Venue**

This Agreement shall be governed by and construed in accordance with the laws of the State of California, and the Parties agree that venue shall be proper only in San Bernardino County, State of California.

(h) **Integration**

This Agreement is intended to be the final, complete, and exclusive statement of the terms of the City Manager’s employment by City. This agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the employment of City Manager, and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. This Agreement represents the entire agreement of the Parties, and no representations have been made or relied upon except as set forth herein.

(i) **Notice**

All notices, requests, demands and other communications under this Agreement shall be in writing and shall be effective upon delivery by hand or three (3) business days after deposit in the United States mail, postage prepaid, certified or registered, and addressed to City at the address below, and or at the last known address maintained in the City Manager’s personnel file. City Manager agrees to notify City in writing of any change in his address during his employment with City. Notice of change of address shall be effective only when accomplished in accordance with this Section.

If to the City:  
City of Upland  
460 N. Euclid Avenue  
Upland, California 91786  
Attention: City Clerk

If to the City Manager:  
Bill R. Manis  
[Address on File at City Hall]

(j) **Assignment**

City Manager shall not assign any rights or obligations under this Agreement. City may, upon prior written notice to City Manager, assign its rights and obligations hereunder.
(k) **Attorney’s Fees**

In any legal action, arbitration, or other proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys’ fees and costs.

(l) **Interpretation**

This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any Party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit nor against the party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the City Council and City Manager and by no other means. Each Party waives their future right to claim, contest or assert that this Agreement was modified, cancelled, superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

(m) **Acknowledgment**

City Manager acknowledges that he has had the opportunity to consult legal counsel in regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representations or promises other than those contained in this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement, as of the date first indicated above.

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<th>City</th>
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<td>City of Upland</td>
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<td>A Municipal Corporation</td>
<td>An Individual</td>
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<td>By:</td>
<td>Bill R. Manis</td>
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<td>Debbie Stone, Mayor</td>
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APPROVED AS TO FORM:

By:                   
James L. Markman, City Attorney
STAFF REPORT

ITEM NO. 8.B.

DATE: December 11, 2017
TO: MAYOR AND CITY COUNCIL
FROM: JAMES. L. MARKMAN, CITY ATTORNEY
PREPARED BY: JAMES. L. MARKMAN, CITY ATTORNEY
SUBJECT: APPROVAL OF A CONSULTATION AGREEMENT WITH MARTIN E. THOUVENELL

RECOMMENDED ACTION

It is recommended that the City Council approve a management consulting agreement with Martin E. Thouvenell.

GOAL STATEMENT

The proposed action supports the City's goal to ensure continuity in the management of certain City projects.

BACKGROUND

On August 8, 2016, Martin Thouvenell began serving as Interim City Manager. During his tenure he was tasked with oversight of specific projects as well as leading the recruitment for City Manager. His current agreement as Interim City Manager will end December 31, 2017 with the new City Manager in place on January 1, 2018. Members of the City Council requested that I prepare a management consulting agreement with Martin Thouvenell that would allow him to continue to serve the City on a consultation basis.

 ISSUES/ANALYSIS

The proposed management consulting agreement with Martin Thouvenell was drafted to allow Mr. Thouvenell to continue to provide assistance on significant projects currently in progress as well as general advisement. The scope of work includes recommendations to the City Manager and City Council from time to time, adoption of such measures related to organizational structure and development, economic development, development related
issues, management coaching, and general advisement to City Manager/City Council on all matters mutually agreed upon.

The term of the agreement is for one year concluding in December 2018; however, there are provisions to terminate the agreement by either party with thirty days advance notice.

**FISCAL IMPACTS**

The proposed agreement includes compensation in the amount of $9,000 per month plus reimbursement of actual expenses. The fiscal impact for the current fiscal year is $54,000 plus expenses if any. Staff recommends that savings in the City Manager’s personnel budget of $35,000 be applied to this contract and requests an additional appropriation of $20,000, the source of which would be fund balance. This use of fund balance would not reduce the fund balance reserve below council’s desired 15% of budgeted expenditures.

**ALTERNATIVES**

Provide alternative direction to staff.

**ATTACHMENTS:**

Management Consulting Agreement - M. Thouvenell
MANAGEMENT CONSULTANT AGREEMENT

Between the

CITY OF UPLAND

And

MARTIN E. THOUVENELL

Dated

January 1, 2018
MANAGEMENT CONSULTING AGREEMENT

Between the
City of Upland
and
Martin E. Thouvenell

1. PARTIES AND DATE

This Agreement is entered into as of the 1st day of January, 2018 by and between the City of Upland, California, a municipal corporation ("City") and Martin E. Thouvenell, an individual ("Consultant"). City and Consultant are sometimes individually referred to as a "Party" and collectively as "Parties".

A. City desires to engage Consultant to render such services for consulting in administrative and City proceedings as requested by the City (hereinafter referred to as the "Project") and as more fully set forth in Section 3 of this Agreement.

B. Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that he is experienced in providing those services that are more fully set forth in Section 3 herein below and is familiar with the plans and direction of the City.

C. In consideration of these Recitals and the performance by the Parties of the promises, covenants, and conditions herein contained, the Parties agree as provides in this Agreement.

2. ENGAGEMENT

City hereby engages Consultant to provide the services specified herein and consultant hereby accepts such tasks.

3. COMMITMENTS AND UNDERSTANDINGS

A. The Consultant’s Commitments

1. Duties & Authority

   a. City and Consultant hereby agree that they are entering into this agreement so that Consultant shall provide to City all appropriate consulting services (the "Services") pertaining to the general administration of the City (hereinafter also referred to as "the Project").
b. To accomplish this, Consultant shall be required to:

i. Attend meetings of the City Council at the specified request of the Mayor or City Manager.

ii. Recommend to the City Manager and City Council from time to time, adoption of such measures related to organizational structure and development, economic development, development related issues, management coaching, and general advisement to City Manager/City Council on all matters mutually agreed upon.

2. Hours of Work

a. Consultant is expected to engage in those hours of work that are necessary to fulfill the obligations delineated in this Agreement. Consultant does not have set hours of work. Consultant is expected to be reasonably available at all times.

b. It is recognized that Consultant may be required to devote substantial time to the business of City outside of City’s customary office hours, and to that end Consultant’s schedule of work each day and week shall vary in accordance with the work required to be performed.

B. City Commitments

1. City shall provide Consultant with the compensation specified elsewhere in this Agreement.

2. City shall pay for or provide Consultant reimbursement for all actual business expenses, which shall be submitted in the form of a monthly expense report to be approved and signed by the City Manager or his designee.

3. City agrees to pay the travel and subsistence expenses of Consultant to pursue official and other functions for City as directed by the City Manager or City Council.

4. COMPENSATION

City agrees to provide the following compensation to Consultant during the term of the Agreement:
A. Employee’s compensation shall be paid on a monthly basis at a monthly rate of $9,000 per month. Said monthly fee shall be prorated in the event Consultant commences its services for any period of time less than a whole month.

B. Consultant shall provide an invoice for payment for his services and reimbursable business expenses incurred monthly and City shall provide payment of any such invoice within thirty (30) days of City’s receipt of the invoice.

C. City and Consultant agree that Consultant is, and will act as, an independent contractor in the performance of its duties under this Agreement. As such, Consultant will not be paid for or provided any benefits provided by City to its employees, including, but not limited to, retirement plan, health insurance, or other such benefits provided to City's employees. Nothing contained herein shall create the relationship of employer and employee between the parties, or their respective agents and employees. City shall not make any deductions or withholdings for any taxes normally made by an employer for its employees. Accordingly, Consultant shall be responsible for payment of all taxes including federal, state and local taxes arising out of Consultant's and its employees' and agents' activities in accordance with this Agreement, including by way of illustration but not limitation, federal and state income taxes, social security taxes, unemployment insurance taxes and any other taxes or business license fees as required. Consultant and its employees and agents have no authority to act as an agent of City or to bind City for any agreement or undertaking whatsoever and Consultant agrees not to make any representations which would imply anything to the contrary.

5. SEPARATION

A. Resignation/Retirement

Consultant may resign at any time and agrees to give City at least thirty (30) day’s advance written notice of the effective date of Consultant’s resignation, unless the Parties otherwise agree in writing.

B. Termination & Removal

1. The City Council may remove Consultant at any time, with or without cause, by a majority vote of its members. Notice of termination shall be provided to Consultant in writing.

2. Given the at-will nature of the position of Consultant, an important element of the Consulting Agreement pertains to termination. It is in both City’s interest and that of Consultant that any separation of Consultant is done in a businesslike manner.
3. Upon any termination of this Agreement by the City, Consultant will be promptly paid for all hours worked and expenses incurred through the effective date and time of termination. No further compensation shall be due or payable to Consultant.

6. MISCELLANEOUS PROVISIONS

A. Term

The term of this Agreement shall be for a period of approximately one year commencing on January 1, 2018 and continuing through December 31, 2018 (the Termination Date), unless terminated earlier as provided herein or extended by mutual agreement of the Parties.

B. Amendments

This Agreement may be amended at any time by mutual agreement of City and Consultant. Any amendments are to be negotiated, put in writing, and adopted by the City Council.

C. Severability

If any clause, sentence, part, section, or portion of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, such clause, sentence, part, section, or portion so found shall be regarded as though it were not part of this Agreement and the remaining parts of this Agreement shall be fully binding and enforceable by the Parties hereto.

D. Jurisdiction and Venue

This Agreement shall be construed in accordance with the laws of the state of California, and the Parties agree that venue shall be in San Bernardino County, California.

E. Entire Agreement

This Agreement represents the entire agreement of the Parties, and no representations have been made or relied upon except as set forth herein. This Agreement may be amended or modified only by a written, fully executed agreement of the Parties.

F. Notice

Any notice, amendments, or additions to this Agreement, including change of address of either Party during the term of this Agreement, which Consultant or City shall be required, or may desire, to make shall be in writing and shall be sent by prepaid first class mail or hand-delivered to the respective Parties as follows:
7. EXECUTION

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

“City”  “Consultant”

CITY OF UPLAND  MARTIN E. THOUVENELL
a Municipal Corporation

By: ______________________________  By: ______________________________

Debbie Stone, Mayor  Martin E. Thouvenell

ATTEST:

By: ______________________________

Jeannette Vagnozzi, City Clerk

APPROVED AS TO FORM:

By: ______________________________

James L. Markman, City Attorney
MINUTES OF THE REGULAR MEETING OF THE
UPLAND CITY COUNCIL
NOVEMBER 27, 2017

OPENING

The regular meeting of the Upland City Council was called to
order by Mayor Debbie Stone at 6:00 p.m. in the Council
Chamber of the Upland City Hall.

1. ROLL CALL

Present: Mayor Debbie Stone, Council Members Gino Filippi, Carol Timm,
Janice Elliott, and Sid Robinson

Staff: Interim City Manager Martin Thouvenell, City Attorney James L.
Markman, and Deputy City Manager/City Clerk Jeannette
Vagnozzi

2. ADDITIONS/DELETIONS TO AGENDA None

3. ORAL COMMUNICATIONS None

4. CLOSED SESSION

At 6:01p.m. Mayor Stone announced the City Council would recess to Closed Session
pursuant to Government Code Section

A. GOVERNMENT CODE SECTION 54957 (b) (1) - PUBLIC EMPLOYMENT
Title: City Manager/Executive Director Recruitment

The City Council reconvened in open session at 7:00 p.m.

5. INVOCATION Pastor Randy Gardner, Purpose Church

6. PLEDGE OF ALLEGIANCE Dave Powers

7. PRESENTATIONS

Interim Police Chief Millmore presented badges to Detectives Jacob Kirk and Kyle
O’Brien.

8. CITY ATTORNEY

City Attorney Markman announced there was nothing to report from Closed Session.

9. ORAL COMMUNICATIONS

Dede Ramella, Upland, questioned the number of billboards in the City, size of the
new display signs, and whether the electronic display signs would have hours of
operation.

Robert Scudder, Upland, stated he was opposed to the electronic signs and the City
should get rid of all billboards.

Eric Gavin, Upland, congratulated Jake Kirk on his promotion to Detective.
10. COUNCIL COMMUNICATIONS

Councilmembers announced various activities throughout the community.

11. CONSENT CALENDAR

Councilmember Timm removed Consent Calendar Item 11D, Councilmember Elliott removed Consent Calendar Item 11B, and Councilmember Robinson removed Consent Calendar Item 11F for separate action. Motion by Councilmember Filippi to approve the remainder of the Consent Calendar, seconded by Councilmember Robinson, and carried unanimously.

A. APPROVAL OF MINUTES

Approved the Regular Meeting Minutes of November 13, 2017.

C. 2ND READING OF ORDINANCE 1928 REAUTHORIZING AND READOPTING THE CITY'S PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ACCESS SUPPORT FEE

Held second reading by number and title only, waive further reading, and adopted Ordinance No. 1928 reauthorizing and readopting the City's public, educational, and governmental access support fee.

E. TREASURER'S REPORT OCTOBER 2017

Received and filed the October 2017 Treasurer's Report.

G. EMERGENCY PURCHASE AND INSTALLATION OF EQUIPMENT AND PROFESSIONAL SERVICES FOR WATER SYSTEM IMPROVEMENTS

Received and filed the status update.

H. DISPOSAL OF SURPLUS EQUIPMENT

Declared the items included on the attached list as surplus, and authorized the Deputy City Manager to initiate disposal of the surplus equipment.

ITEMS REMOVED FOR SEPARATE ACTION

B. 2ND READING OF ORDINANCE 1927 PERTAINING TO OFF-PREMISE ADVERTISING DISPLAY SIGNS

Development Services Director Zwack answered questions from the Council regarding the number of signs currently in the City and the reduction in the total number of signs as billboards are replaced with electronic display signs.

Motion by Councilmember Filippi to hold second reading by number and title only and adopted Ordinance No. 1927 approving Zoning Text Amendment No. 17-01 to repeal and replace Chapter 17.15 - Signs, of Part 7, Title 17 of the Upland Municipal Code regulating Off-Premise Advertising Display Signs. Ordinance applies Citywide, seconded by Councilmember Elliott, and carried unanimously.
D. MILLS ACT CONTRACTS FOR THREE HISTORIC HOMES 2017

Development Services Director Zwack presented the staff report, which is on file in the City Clerk’s office. There was discussion regarding the terms of the contracts, the types of improvements to the properties, and the number of homes in Upland currently under Mills contracts.

Motion by Councilmember Timm to approve the Mills Act contracts for three (3) historic homes and authorize the City Manager to execute the documents, subject to review and approval of the Mills Act contracts by the City Attorney, seconded by Councilmember Filippi, and carried unanimously.

F. ACCEPTANCE OF WORK FOR 16TH STREET REHABILITATION

Councilmembers stated they had received positive feedback from residents in the project area.

Motion by Councilmember Robinson, to accept the work; record the Notice of Completion; and, reduce the Faithful Performance Bond to 10% for the 16th Street Rehabilitation, seconded by Councilmember Timm, and carried unanimously.

12. PUBLIC HEARINGS

A. CONTINUED PUBLIC HEARING OF THE FIRST AMENDMENT TO THE RESTATED OWNER PARTICIPATION AGREEMENT BETWEEN THE CITY OF UPLAND AND PARK PLACE FORD, LLC, A CALIFORNIA CORPORATION FOR FORD OF UPLAND DEALERSHIP

Report given by Development Services Director Zwack, which is on file in the City Clerk’s Office.

Mayor Stone opened the public hearing and hearing no testimony, closed the public hearing.

There was discussion on the terms of the agreement, the extension of time to complete the project, the number of amendments previously approved by the Council, and additional taxes that will be generated by the new dealership.

Motion by Councilmember Robinson to approve the First Amendment to the Restated and Amended Owner Participation Agreement between the City of Upland and Park Place Ford, LLC, doing business as Ford of Upland, seconded by Councilmember Filippi, and carried unanimously.

B. A PROPOSED AMENDED OWNER PARTICIPATION AGREEMENT BETWEEN THE CITY OF UPLAND AND CNC MOTORS INC. LOCATED AT 1018 EAST 20TH STREET.

Report given by Development Services Director Zwack, which is on file in the City Clerk’s Office.

Mayor Stone opened the public hearing.
Jason Annigian, Legal Counsel for Ford of Upland and CNC motors, stated that they do not anticipate any further need to amend the agreement and thanked Council for their consideration of the proposed amendment.

There being no other speakers, Mayor Stone closed the public hearing.

Motion by Councilmember Filippi to approve the amended Owner Participation Agreement between the City of Upland and CNC Motors Inc., seconded by Councilmember Robinson, and carried unanimously.

C. ORDINANCE AMENDING UPLAND MUNICIPAL CODE SUBSECTION 6.04.140(A) TO CREATE AND IMPLEMENT AN EFFECTIVE PROCEDURE FOR REPORTING AND PROSECUTING SITUATIONS INVOLVING HABITUAL ANIMAL NOISES, SECTION 5.04.095 REGARDING PENALTIES FOR VIOLATIONS OF BUSINESS LICENSE REGULATIONS, AND SECTION 1.16.180 REGARDING CODE ENFORCEMENT OFFICERS’ AUTHORITY TO ENFORCE THE UPLAND MUNICIPAL CODE AND ARREST VIOLATORS

Report given by Lieutenant Blanco, which is on file in the City Clerk's Office. There was discussion on the changes to the Ordinance regarding reporting requirements and the citation process.

Mayor Stone opened the public hearing and hearing no testimony, closed the public hearing.

Motion by Councilmember Timm to hold first reading by title only, waive further reading, and introduce Ordinance No. 1929 amending Upland Municipal Code Subsection 6.04.140(A) to create and implement an effective procedure for reporting and prosecuting situations involving habitual animal noises, Section 5.04.095 regarding penalties for violations of business license regulations, and Section 1.16.180 regarding code enforcement officers' authority to enforce the Upland Municipal Code and arrest violators, seconded by Councilmember Elliott, and carried unanimously.

D. CONSIDERATION OF ADOPTING THE MASTER FEE SCHEDULE THAT INCLUDES AMENDMENTS TO CITYWIDE FEES FOR THE COST OF SERVICE.

Report given by Finance Officer Bock-Helms, which is on file in the City Clerk's Office.

Mayor Stone opened the public hearing.

Carlos Rodriguez, CEO of the Building Industry Association (BIA) Baldy View Chapter, requested the Council continue the item to a later date to allow the BIA more time to review the fee schedule and also requested a workshop with Councilmembers and the BIA. Mr. Rodriguez further stated that proper noticing requirements were not met.

City Attorney Markman clarified that all noticing requirements per Government Code Section 66016 were met and proper notice was given to BIA and all requesting parties.

Gordon Nichols, Senior Director of Government Affairs for the BIA Baldy View Chapter, stated that the BIA had met with staff regarding the fee schedule
and while the meeting was productive more time was required to review the fee schedule and get outstanding questions answered. Mr. Nichols requested the item be continued to December.

Cary Leach, Upland, stated concern over the potential impact to residents, youth groups, and civic groups if the fees for park and facility rentals are increased.

There was discussion on the formula for calculating indirect costs and the date the new fee schedule would go into effect.

Motion by Councilmember Elliott to approve Resolution No. 6423 adopting the Master Fee Schedule and amending citywide fees for the cost of services, seconded by Councilmember Filippi, and carried unanimously.

13. COUNCIL COMMITTEE REPORTS

A. SPECIAL INVESTMENTS COMMITTEE MEETING, NOVEMBER 15, 2017

The City Treasurer was not present to provide a committee report; therefore, Councilmembers Timm and Robinson provided a recap of the meeting, which is on file in the City Clerk's Office. This was for information only and no action was required.

14. BUSINESS ITEMS

A. APPROVAL TO ISSUE CERTIFICATES OF PARTICIPATION (COPs) FOR SAN ANTONIO REGIONAL HOSPITAL

Report was given by Lina Thoreson, Bond Counsel for San Antonio Regional Hospital.

Harrison Koenig, President and CEO of San Antonio Regional Hospital, provided some history on the hospital expansion and information on future projects to be funded through the proposed conduit financing.

Motion by Councilmember Filippi to adopt Resolution No. 6424 authorizing the undertaking of an installment sale financing for the benefit of San Antonio Regional Hospital, set a public hearing for December 4, 2017, and ratify staff actions taken for the notice of public hearing, seconded by Councilmember Robinson, and carried unanimously.

B. APPROVAL OF PROFESSIONAL SERVICES AGREEMENT FOR LEMON FESTIVAL MANAGEMENT

Deputy City Manager Vagnozzi presented the staff report, which is on file in the City Clerk's Office.

Motion by Mayor Stone to approve the agreement with The Learning Center at the Fairplex to continue producing and managing the Lemon Festival and authorize the City Manager to sign the agreement, seconded by Councilmember Filippi, and carried unanimously.
C. APPROVAL OF SETTLEMENT AGREEMENT WITH WALDON R. WELTY

Deputy City Manager Vagnozzi presented the staff report, which is on file in the City Clerk’s Office.

Motion by Councilmember Timm to approve the settlement agreement with Waldon R. Welty and authorize the City Manager to sign the agreement, seconded by Councilmember Robinson, and carried unanimously.

15. ORAL COMMUNICATION (items not on the agenda)

Cary Leach, Upland, thanked the City Council and staff for their support in maintaining the Veterans’ Monument and for assistance with the Veterans’ Day ceremony.

April McCormick, Upland, felt that efforts to reduce homeless in the City were not successful and requested that the Council consider not renewing the contract for homeless services. She further stated that individuals working on this issue should not be paid.

Eric Gavin, Upland, announced the 2018 Point in Time Count and invited the community to participate.

16. CITY MANAGER

17. ADJOURNMENT

Mayor Stone adjourned the meeting at 9:29 p.m. The next regularly scheduled City Council meeting is Monday, December 11, 2017.

SUBMITTED BY

Jeannette Vagnozzi, City Clerk

APPROVED

December 11, 2017
MINUTES OF A SPECIAL MEETING OF THE
UPLAND CITY COUNCIL
DECEMBER 4, 2017

OPENING
The special meeting of the Upland City Council was called to order by Mayor Stone at 11:00 a.m. in the City Council Chambers.

1. ROLL CALL
   Present: Mayor Debbie Stone, Council Members Gino Filippi, Janice Elliott, Sid Robinson, and Carol Timm
   Staff: Interim City Manager Martin Thouvenell and Deputy City Manager/City Clerk Jeannette Vagnozzi

2. PUBLIC HEARING FOR APPROVAL TO ISSUE CERTIFICATES OF PARTICIPATION (COPs) FOR SAN ANTONIO REGIONAL HOSPITAL

   Report given by Finance Officer Bock-Helms, which is on file in the City Clerk’s office.

   Mayor Stone opened the public hearing and hearing no testimony, closed the public hearing.

   Motion by Councilmember Timm to adopt Resolution No. 6425 approving the execution and delivery of Certificates of Participation for purposes of financing and refinancing the acquisition, construction, renovation, expansion, improvement and equipping of certain health care and related facilities, including land, owned and operated by San Antonio Regional Hospital for purposes of Section 147(f) of the Internal Revenue Code, seconded by Councilmember Elliott, and carried unanimously.

3. ADJOURNMENT

   Mayor Stone adjourned the meeting at 11:02 a.m. The next regular meeting of the City Council is Monday, December 11, 2017.

SUBMITTED BY: Jeannette Vagnozzi

APPROVED: December 11, 2017
STAFF REPORT

DATE: November 27, 2017
TO: MAYOR AND CITY COUNCIL
FROM: MARTIN THOUVENELL, INTERIM CITY MANAGER
PREPARED BY: JEANNETTE VAGNOZZI, DEPUTY CITY MANAGER
MARCELO BLANCO, POLICE LIEUTENANT
SUBJECT: ORDINANCE AMENDING UPLAND MUNICIPAL CODE SUBSECTION 6.04.140(A) TO CREATE AND IMPLEMENT AN EFFECTIVE PROCEDURE FOR REPORTING AND PROSECUTING SITUATIONS INVOLVING HABITUAL ANIMAL NOISES, SECTION 5.04.095 REGARDING PENALTIES FOR VIOLATIONS OF BUSINESS LICENSE REGULATIONS, AND SECTION 1.16.180 REGARDING CODE ENFORCEMENT OFFICERS’ AUTHORITY TO ENFORCE THE UPLAND MUNICIPAL CODE AND ARREST VIOLATORS

RECOMMENDED ACTION

It is recommended that the City Council hold first reading by title only, waive further reading, and introduce an Ordinance amending Upland Municipal Code Subsection 6.04.140(A) to create and implement an effective procedure for reporting and prosecuting situations involving habitual animal noises, Section 5.04.095 regarding penalties for violations of business license regulations, and Section 1.16.180 regarding code enforcement officers’ authority to enforce the Upland Municipal Code and arrest violators.

GOAL STATEMENT

The proposed action supports the City’s goal of protecting the public’s health, safety, and welfare.

BACKGROUND

The proposed Ordinance would amend Upland Municipal Code (UMC), makes three specific and distinct amendments. The amendment to UMC Section 6.04.140(A) shall create and
implement an effective procedure for reporting and prosecuting situations involving habitual animal noises in order to help protect the health and safety of City residents. The second amendment to UMC Section 5.04.095 will also help improve compliance with the City's business license regulations by increasing the penalty for violations of these regulations. Finally, the amendment to UMC Section 1.16.180 will address the fact that the City's Code Enforcement Department has been brought under the umbrella of the City's Police Department by specifying the authority of Code Enforcement Officers to enforce the UMC and arrest violators.

ISSUES/ANALYSIS

There are three specific amendments to the Upland Municipal Code contained in this Ordinance. The first amendment is to UMC Section 6.04.140. This section pertains to habitual animal noises. The current UMC section refers to the disturbance of "any considerable number of persons." A previous City Prosecutor defined this to be three persons. The proposed language provides greater clarity and requires that complaints be confirmed by either a neighbor other than the initial complainant or an Animal Services Officer. The amendment also provides for the issuance of administrative citations, fines, and cost recovery.

The second proposed amendment contained in the Ordinance is to UMC Section 5.04.095 and is intended to improve compliance with the City's business license regulations by increasing the penalty for violations of these regulations from an infraction to a misdemeanor.

The final proposed amendment contained in the ordinance is to UMC Section 1.16.180 which specifies the authority of Code Enforcement Officers to enforce the UMC and arrest violators. It also addresses the fact that code enforcement has been reassigned to the Police Department.

FISCAL IMPACTS

Administrative fines and other cost recovery mechanisms and penalties for violations of the Ordinance are proposed to offset the potential costs of enforcement incurred by the City. No additional budget allocation is requested at this time.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

Ordinance - Red line
Ordinance - Clean Copy
ORDINANCE NO. 1929

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UPLAND, AMENDING UPLAND MUNICIPAL CODE SUBSECTION 6.04.140(A) TO CREATE AND IMPLEMENT AN EFFECTIVE PROCEDURE FOR REPORTING AND PROSECUTING SITUATIONS INVOLVING HABITUAL ANIMAL NOISES, SECTION 5.04.095 REGARDING PENALTIES FOR VIOLATIONS OF BUSINESS LICENSE REGULATIONS, AND SECTION 1.16.180 REGARDING CODE ENFORCEMENT OFFICERS’ AUTHORITY TO ENFORCE THE UPLAND MUNICIPAL CODE AND ARREST VIOLATORS

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

SECTION 1. Findings.

A. The City of Upland (“City”) has seen a proliferation of public nuisances caused by animals and animal owners, including, but not limited to, habitual animal noises, such as dog barking.

B. The City desires to amend UMC section 6.04.140(A) to create and implement an effective procedure for reporting and prosecuting situations involving habitual animal noises in order to help protect the health and safety of City residents.

C. The City also wishes to amend UMC section 5.04.095 to make violations of the City’s business license regulations a misdemeanor in order to increase compliance with these regulations.

D. The City also desires to amend UMC section 1.16.180 in order to specify the City’s Code enforcement officers’ authority to enforce the UMC and arrest violators after changes in internal department structures.

SECTION 2. UMC subsection 6.04.140(A) is hereby amended, and is to read in its entirety as follows:

6.04.140 Keeping Dogs And Animals Which Disturb The Peace Prohibited.

A. The keeping or harboring of any dog, cat or other animal or fowl, whether licensed or not, which by habitual howling, yelping, barking or other noise disturbs or annoys the use and enjoyment of neighboring parcels is unlawful, and is declared to be a public nuisance and each day shall constitute a separate offense. Evidence of a violation of this Subsection may be verified by an Animal Services Officer or law enforcement officer or based upon complaints (“Complaint”) from: (1) at least two neighboring inhabitants; or (2) at least one neighboring inhabitant, as verified by at least one Animal Services Officer or law enforcement officer. The procedure for reporting and prosecuting
violations of this Subsection shall conform with the following requirements:

1. Each initial Complaint shall be signed under penalty of perjury by a neighboring inhabitant. Each initial Complaint shall be kept confidential, unless disclosure of the initial Complaint is required to satisfy due process requirements.

2. The Animal Services Department shall respond to each initial Complaint by providing a courtesy notice to the violating animal owner or person responsible for the animal creating the disturbing noise ("Owner").

3. Any persisting violation of this Subsection, after courtesy notice is given, must be verified by either an Animal Services Officer or a neighbor other than the initial complainant under penalty of perjury. Each second or subsequent Complaint shall be kept confidential, unless disclosure of any second or subsequent Complaint is required to satisfy due process requirements.

4. After verifying that a violation of this Subsection persists despite the issuance of courtesy notice, any Animal Services Officer shall be authorized to issue an administrative citation to the Owner that assesses administrative fines of $100 per day that the violation repeats within six months of issuance.

5. If more than three additional violations of this Subsection occur within six months of issuance of an administrative citation, as verified by the Animal Services Department or two neighboring inhabitants under penalty of perjury, the Owner shall be subject to administrative fines of up to $1,000 per day the violation exists, and shall be guilty of a misdemeanor punishable in accordance with Section 1.16.010 of this Code.

6. The City is expressly entitled and authorized to recover any and all costs incurred by the City to investigate and prosecute violations of this Subsection, including, but not limited to, animal services costs, law enforcement costs, investigation costs, administrative costs, attorneys’ fees and costs, prosecution fees and costs, and court costs.

7. The procedure provided in this Subsection is in addition to all other enforcement options, remedies, and cost recovery options available to the City by law or in equity, including, but not limited to, those provided in Chapter 1.20 of this Code.
SECTION 3.  UMC section 5.04.095 is hereby amended, and is to read in its entirety 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 chapter shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished as provided in Section 1.16.010. 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 4.  UMC section 1.16.180 is hereby amended, and is to read in its entirety as follows:

1.16.180 Code Enforcement Officers—Authority to arrest

It is the duty of City Code Enforcement Officers to enforce the provisions of this code and any Code Enforcement Officer is authorized to arrest any person without a warrant whenever the Code Enforcement Officer has a reasonable cause to believe that the person arrested has committed a misdemeanor or infraction in the Code Enforcement Officer’s presence which is a violation of this code.

SECTION 5.  Compliance with California Environmental Quality Act. The Upland City Council (“City Council”) finds that this Ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to California Code of Regulations, title 14, chapter 3 (“CEQA Guidelines”) sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) because it has no potential for resulting in physical change to the environment, directly or indirectly. Further, if the activity is deemed a project, the City Council finds that this Ordinance is exempt pursuant to CEQA Guidelines section 15061(b)(3).

SECTION 6.  Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 7.  Effective Date. This Ordinance shall become effective 30 days from its adoption.

SECTION 8.  Publication. The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published in a newspaper of general circulation printed and published within the City, pursuant to all legal requirements.
PASSED, APPROVED, and ADOPTED this 11th day of December, 2017.

Debbie Stone, Mayor

I, Jeannette Vagnozzi, City Clerk of the City of Upland, California, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Upland held on the 27th day of November, 2017, and was adopted at a regular meeting of the City Council of the City of Upland on the 11th day of December, 2017, by the following roll call vote:

AYES:
NOES:
ABSENT:
ABSTAINED:

ATTEST: ______________________________
Jeannette Vagnozzi, City Clerk
RECOMMENDED ACTION

It is recommended that the City Council ratify the appointment of Councilmember Carol Timm as Mayor Pro Tem, term to expire in December 2018.

GOAL STATEMENT

The proposed action supports the City's goal to provide inclusive leadership opportunities for all Councilmembers.

BACKGROUND

Historically, the Mayor Pro Tem has been appointed by the Mayor. Mayor Stone requested consideration be given to a rotation of Mayor Pro Tem at the time her term of office began.

In December 2016 the City Council adopted Resolution No. 6376 establishing procedures for selecting a Mayor Pro Tem pursuant to the provisions of the California Government Code Section 36801. Section 3 (B) of the Resolution states that in December 2017, the Council shall select the holder of Office No. 2 for a one-year term as Mayor Pro Tem. Section 2 of the Resolution designates Councilmember Carol Timm to Office No. 2.

ISSUES/ANALYSIS

In keeping with the action taken at the December 12, 2016 meeting, Councilmember Filippi’s appointment as Mayor Pro Tem will end in December 2017 and Councilmember Timm will be appointed as Mayor Pro Tem with a term ending in December 2018.
**FISCAL IMPACTS**

There is no fiscal impact related to this action.

**ALTERNATIVES**

Provide alternative direction to staff.

**ATTACHMENTS:**

Resolution 6376
RESOLUTION NO. 6376

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UPLAND
ESTABLISHING PROCEDURES FOR SELECTING A MAYOR PRO
TEM PURSUANT TO THE PROVISIONS OF CALIFORNIA
GOVERNMENT CODE SECTION 36801

Intent of the Parties and Findings

(i) Government Code Section 36801 provides that the City Council shall meet at the
meeting at which the declaration of election results is made pursuant to Sections 10262 and
10263 of the Elections Code and, following the declaration of the election results and the
installation of elected officials, choose one of its members to serve as Mayor Pro tem; and

(ii) The City Council is desirous of selecting a Mayor Pro Tem to serve a one-year
term, beginning in December of each year;

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

Section 1. That the City Council shall reorganize by selecting one of its members
for one year as Mayor Pro Tem in December of each year.

Section 2. The City Council shall make its annual selection based upon the
following rotation plan, so that each Council Member willing and able to serve will be given
the opportunity serve as Mayor Pro Tem during his or her four-year term of office. For
purposes of selection of Mayor Pro Tem only, the Council offices held by incumbents on this
date are hereby assigned the following designations:

Office No. 1 – Gino Filippi
Office No. 2 – Carol Timm
Office No. 3 – Janice Elliott
Office No. 4 – Vacant

In the event one of the current incumbents is no longer on the Council at the time of
reorganization, the successor shall be assigned the office number designation of the former
incumbent, subject to the provisions of Section 4 hereof. In the event that two or more
incumbents are no longer on the Council at the time of reorganization, the council shall
determine the office numbers of the new Council Members.

Section 3. (A) In December 2016, the Council shall select the holder of Office No.
1 for a one-year term as Mayor Pro Tem
(B) In December 2017, the Council shall select the holder of Office No.
2 for a one-year term as Mayor Pro Tem
(C) In December 2018, the Council shall select the holder of Office No.
3 for a one-year term as Mayor Pro Tem
(D) In December 2019, the Council shall select the holder of Office No.
4 for a one-year term as Mayor Pro Tem
(E) In December of each succeeding year, the Council shall follow the
rotation plan established by this Resolution.

Section 4. In the event that any current incumbent is not the holder of the office
as established by this Resolution, at the time of reorganization, the Council may select his
or her successor as Mayor Pro Tem or reassign the office numbers so that a new Council
Member is not selected early in his or her term.
Section 5. Certification. 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 12th day of December 2016.

Debbie Stone, Mayor

I, Jeannette Vagnozzi, 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 12th day of December, 2016, by the following vote:

AYES: Mayor Stone, Councilmembers Elliott, Filippi, Timm
NOES: None
ABSENT: None
ABSTAINED: None

Jeannette Vagnozzi, City Clerk
**STAFF REPORT**

**ITEM NO. 11.E.**

<table>
<thead>
<tr>
<th>DATE:</th>
<th>December 11, 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>TO:</td>
<td>MAYOR AND CITY COUNCIL</td>
</tr>
<tr>
<td>FROM:</td>
<td>MARTIN THOUVENELL, INTERIM CITY MANAGER</td>
</tr>
<tr>
<td>PREPARED BY:</td>
<td>JEANNETTE VAGNOZZI, DEPUTY CITY MANAGER</td>
</tr>
<tr>
<td></td>
<td>KERI JOHNSON, DEPUTY CITY CLERK</td>
</tr>
<tr>
<td>SUBJECT:</td>
<td>MAYORAL APPOINTMENTS FOR 2018</td>
</tr>
</tbody>
</table>

**RECOMMENDED ACTION**

It is recommended that the City Council ratify the Mayoral Appointments for calendar year 2018, appointing Council Members and City Representatives to City Council committees and various City and regional committees.

**GOAL STATEMENT**

The proposed action supports the City's goal to provide representation on City and regional boards and committees.

**BACKGROUND**

Pursuant to Government Code Section 40605, the Mayor, with the approval of the City Council, shall make all appointments to boards, commissions, and committees.

**ISSUES/ANALYSIS**

The City has four standing committees with two members of the City Council serving on each committee. In addition to the standing committees, members of the City Council and other City Representatives also represent the City of Upland by serving on various City and regional committees. Pursuant to the previously referenced code, the Mayor makes appointments to these committees; several of which have terms expiring in December 2017. These new appointments must be ratified by the City Council. The list of appointments is attached.
FISCAL IMPACTS

There is no fiscal impact related to this action.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

Mayoral appointments 2018
## CITY OF UPLAND
### MAYORAL APPOINTMENTS
### APPOINTMENTS FOR 2018

(Effective December 11, 2017 - December 10, 2018)
(Supersedes Appointments ending December 11, 2017)

<table>
<thead>
<tr>
<th>Position</th>
<th>Council Committees</th>
<th>Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mayor Pro Tem</td>
<td>Carol Timm Dec-18</td>
<td></td>
</tr>
<tr>
<td><strong>Council Committees</strong></td>
<td>Gino L. Filippi Dec-18</td>
<td></td>
</tr>
<tr>
<td>Economic Development Committee</td>
<td>Chairman</td>
<td>Carol Timm Dec-18</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sid Robinson Dec-18</td>
</tr>
<tr>
<td>Investments Committee</td>
<td>Carol Timm Dec-18</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sid Robinson Dec-18</td>
<td></td>
</tr>
<tr>
<td>Police &amp; Fire Committee</td>
<td>Chairman</td>
<td>Gino L. Filippi Dec-18</td>
</tr>
<tr>
<td></td>
<td>Sid Robinson Dec-18</td>
<td></td>
</tr>
<tr>
<td>Public Works Committee</td>
<td>Chairman</td>
<td>Carol Timm Dec-18</td>
</tr>
<tr>
<td></td>
<td>Sid Robinson Dec-18</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>City Committees</th>
<th>Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>Library Board</td>
<td>Gino L. Filippi Dec-18</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Sister City</td>
<td>Carol Timm Dec-18</td>
</tr>
<tr>
<td></td>
<td>Debbie Stone Dec-18</td>
</tr>
<tr>
<td>Upland Community Housing, Inc.</td>
<td>Gino L. Filippi Dec-18</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Water Facility Authority</td>
<td>Debbie Stone Dec-18</td>
</tr>
<tr>
<td></td>
<td>Gino Filippi Dec-18</td>
</tr>
<tr>
<td>Technical Advisory Committee</td>
<td>Rosemary Hoerning Dec-18</td>
</tr>
<tr>
<td></td>
<td>Nat Pendergraft Dec-18</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Regional Committees</th>
<th>Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>County Solid Waste Task Force</td>
<td>Gino L. Filippi Dec-18</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Foothill Freeway &amp; I-10 Fwy Corridor Design Authority</td>
<td>Gino L. Filippi Dec-18</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Debbie Stone Dec-18</td>
</tr>
<tr>
<td></td>
<td>Jeff Zwack Dec-18</td>
</tr>
</tbody>
</table>
### CITY OF UPLAND

#### MAYORAL APPOINTMENTS

**APPOINTMENTS FOR 2018**

<table>
<thead>
<tr>
<th>Organization</th>
<th>Committee/Role</th>
<th>Name</th>
<th>Term Expires</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inland Empire Utility Agency</td>
<td>Policy Committee</td>
<td>Debbie Stone</td>
<td>Dec-18</td>
</tr>
<tr>
<td></td>
<td>Alternate</td>
<td>Gino L. Filippi</td>
<td>Dec-18</td>
</tr>
<tr>
<td></td>
<td>Technical Committee</td>
<td>Rosemary Hoerning</td>
<td>Dec-18</td>
</tr>
<tr>
<td></td>
<td>Alternate</td>
<td>Debbie Stone</td>
<td>Dec-18</td>
</tr>
<tr>
<td>League of California Cities</td>
<td>Legislative Task Force</td>
<td>Gino L. Filippi</td>
<td>Dec-18</td>
</tr>
<tr>
<td></td>
<td>Staff Member - Legislative Affairs</td>
<td>Staff Person</td>
<td></td>
</tr>
<tr>
<td>OMNITRANS Board</td>
<td>Plans and Programs Committee</td>
<td>Debbie Stone</td>
<td>Dec-18</td>
</tr>
<tr>
<td></td>
<td>Alternate</td>
<td>Gino L. Filippi</td>
<td>Dec-18</td>
</tr>
<tr>
<td>Oversight Board</td>
<td>Executive Director</td>
<td>Martin Thouvenell</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Alternate Executive Director</td>
<td>Jeff Zwack</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Citizen at Large</td>
<td>Craig Scheu</td>
<td></td>
</tr>
<tr>
<td>Pomona Valley Protective Association</td>
<td></td>
<td>Rosemary Hoerning</td>
<td>Nov-18</td>
</tr>
<tr>
<td>San Antonio Water Company</td>
<td></td>
<td>Sue Sundell</td>
<td>Apr-19</td>
</tr>
<tr>
<td>(City provides a slate of candidates and designates a proxy to carry out vote)</td>
<td>Will Elliott</td>
<td>Apr-19</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>John Gerardi</td>
<td>Apr-19</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Gino L. Filippi</td>
<td>Apr-21</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Jose Sanchez</td>
<td>Apr-21</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Tom Thomas</td>
<td>Apr-21</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bob Cable</td>
<td>Apr-21</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Janice Elliott</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Mark Bertone</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>Richard Mayo</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ken Willis</td>
<td>Apr-19</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Tom Thomas</td>
<td>Apr-19</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Janice Elliott</td>
<td>Apr-21</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Mark Bertone</td>
<td>Apr-21</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Richard Mayo</td>
<td>Apr-21</td>
</tr>
<tr>
<td>SANBAG - Southern California Association of Governments</td>
<td>Alternate</td>
<td>Debbie Stone</td>
<td>Dec-18</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Gino L. Filippi</td>
<td>Dec-18</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Gino L. Filippi</td>
<td>Dec-18</td>
</tr>
<tr>
<td>SCAG - Southern California Association of Governments</td>
<td>Alternate</td>
<td>Debbie Stone</td>
<td>Dec-18</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Gino L. Filippi</td>
<td>Dec-18</td>
</tr>
<tr>
<td>West End Consolidated Water Company</td>
<td></td>
<td>Ken Willis</td>
<td>Apr-19</td>
</tr>
<tr>
<td>(City provides a slate of candidates and designates a proxy to carry out vote)</td>
<td>Tom Thomas</td>
<td>Apr-19</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Janice Elliott</td>
<td>Apr-21</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Mark Bertone</td>
<td>Apr-21</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Richard Mayo</td>
<td>Apr-21</td>
</tr>
<tr>
<td>ONT-IAC (Ontario International Airport-Inter Agency Collaborative (medication board))</td>
<td>Gino L. Filippi</td>
<td>Dec-18</td>
<td></td>
</tr>
<tr>
<td>West Valley Mosquito and Vector Control District</td>
<td>Board Member</td>
<td>Carol Timm</td>
<td>Dec-18</td>
</tr>
<tr>
<td>San Bernardino County Interagency Council on Homelessness</td>
<td></td>
<td>Eric Gavin</td>
<td>Dec-18</td>
</tr>
</tbody>
</table>
DATE:  December 11, 2017

TO:  MAYOR AND CITY COUNCIL

FROM:  MARTIN THOUVENELL, INTERIM CITY MANAGER

PREPARED BY:  JEANNETTE VAGNOZZI, DEPUTY CITY MANAGER
               KERI JOHNSON, DEPUTY CITY CLERK

SUBJECT:  SCHEDULED VACANCIES FOR COMMISSIONS, COMMITTEES, AND BOARDS FOR CALENDAR YEAR 2018

RECOMMENDED ACTION

It is recommended that the City Council accept and file the Local Appointments List for all City commissions, committees, and boards for calendar year 2018, and direct the City Clerk to post the list.

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, and boards.

BACKGROUND

Pursuant to the Maddy Act and Resolution No. 6397, the City Clerk is required to announce all scheduled vacancies for commissions, committees, and boards expected during the next calendar year. This action must be taken prior to December 31st of each year.

ISSUES/ANALYSIS

There is a total of 18 positions on commissions, committees, and boards that have terms expiring during 2018. The Local Appointments List has been prepared and must posted prior to December 31, 2017 at the following locations:

City Hall Bulletin Board (Exterior)
Upland Library

**FISCAL IMPACTS**

There are no fiscal impacts related to this item.

**ALTERNATIVES**

Provide alternative direction to staff.

**ATTACHMENTS:**

Local Appointments List
Pursuant to Government Code Section 54972, the following terms will expire during the 2018 calendar year. Upland has boards, committees, and commissions, which advise and assist the Council in dealing with specific issues. Appointments are made by the Mayor after consultation with, and approval by the full Council. Each Councilmember may nominate an individual to the Building Board of Appeals, City Council Advisory Committee, Community Development Block Grant Committee, Street Tree Advisory Committee, and the Traffic Safety Advisory Committee.

Qualifications for service are Upland residency, a strong interest in the community, and the ability to give of one's time when serving. Terms of office are for up to four years. The following list shows current members, the date appointed and the date each term expires. Applications may be obtained from the City Clerk or by calling (909) 931-4120 or on the City website: www.ci.upland.ca.us

<table>
<thead>
<tr>
<th>Date of Appointment</th>
<th>Term Expires</th>
</tr>
</thead>
<tbody>
<tr>
<td>BUILDING BOARD OF APPEALS</td>
<td></td>
</tr>
<tr>
<td>Vacancy</td>
<td>12/2018</td>
</tr>
<tr>
<td>Vacancy</td>
<td>12/2018</td>
</tr>
<tr>
<td>Vacancy</td>
<td>12/2018</td>
</tr>
<tr>
<td>CITY COUNCIL ADVISORY COMMITTEE</td>
<td></td>
</tr>
<tr>
<td>Linden Brouse</td>
<td>12/08/2014</td>
</tr>
<tr>
<td>Dave Stevens</td>
<td>12/08/2014</td>
</tr>
<tr>
<td>W. Michael Bryant</td>
<td>01/23/2017</td>
</tr>
<tr>
<td>COMMUNITY DEVELOPMENT BLOCK GRANT COMMITTEE</td>
<td></td>
</tr>
<tr>
<td>Carolyn Anderson</td>
<td>12/08/2014</td>
</tr>
<tr>
<td>Jim Richardson</td>
<td>12/08/2014</td>
</tr>
<tr>
<td>Lorraine Kindred</td>
<td>01/23/2017</td>
</tr>
<tr>
<td>LIBRARY BOARD</td>
<td></td>
</tr>
<tr>
<td>Loren Sanchez</td>
<td>06/08/2015</td>
</tr>
<tr>
<td>PLANNING COMMISSION</td>
<td></td>
</tr>
<tr>
<td>Carolyn Anderson</td>
<td>06/23/2014</td>
</tr>
<tr>
<td>Robin Aspinall</td>
<td>02/13/2017</td>
</tr>
<tr>
<td>STREET TREE ADVISORY COMMITTEE</td>
<td></td>
</tr>
<tr>
<td>Mark Bertone</td>
<td>12/08/2014</td>
</tr>
<tr>
<td>Fred Carlson</td>
<td>09/11/2017</td>
</tr>
<tr>
<td>Paul Bird</td>
<td>01/23/2017</td>
</tr>
<tr>
<td>TRAFFIC SAFETY ADVISORY COMMITTEE</td>
<td></td>
</tr>
<tr>
<td>Eric Gavin</td>
<td>12/08/2014</td>
</tr>
<tr>
<td>Jackie Nutting</td>
<td>12/08/2014</td>
</tr>
<tr>
<td>Kevin O'Hara</td>
<td>01/23/2017</td>
</tr>
</tbody>
</table>

Following is a list of all boards, commissions, and committees whose members serve at the pleasure of the legislative body, and the necessary qualifications for each position in addition to a requirement that applicants be residents of the City of Upland.

**Additional Qualifications**

- Building Board of Appeals: Licensed Architect, engineer, attorney or contractor
- City Council Advisory Committee
- Community Development Block Grant Committee
- Library Board
- Personnel Review Board
- Planning Commission
- Airport Land Use Committee: Possess a pilot’s license
- Street Tree Advisory Committee
- Traffic Safety Committee

Jeannette Vagnozzi
City Clerk
DATE: December 11, 2017
TO: MAYOR AND CITY COUNCIL
FROM: MARTIN THOUVENELL, INTERIM CITY MANAGER
PREPARED BY: ROSEMARY HOERNING, PUBLIC WORKS DIRECTOR
KEVIN WATSON, UTILITIES OPERATION MANAGER
SUBJECT: EMERGENCY PURCHASE AND INSTALLATION OF EQUIPMENT AND PROFESSIONAL SERVICES FOR WATER SYSTEM IMPROVEMENTS

RECOMMENDED ACTION

It is recommended that 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 in order to provide safe reliable service to the community.

BACKGROUND

On October 10, 2016, the City Council adopted a Resolution declaring an emergency condition and approved the Emergency Work Plan Phase 1, which included the execution of contract(s) with Medora Corporation for purchase and installation of equipment at Reservoir 4 for the removal of Tetrachloroethylene (PCE) from Well 7A; KSM Electric, Inc. for the purchase and install of electrical equipment at Reservoir 4/Well 7A; and General Pump Company for the rehabilitation of City Well 20 and the procurement of professional property acquisition, environmental and engineering design services for a replacement reservoir at 17th Street.

ISSUES/ANALYSIS

Reservoir 4 & Well 7A Work:
All work is completed. Well 7A is producing approximately 1,100 gallons per minute.

Well 20 Work:
All work is completed. Well 20 is producing approximately 300 gallons per minute.
Reservoir at 17th and Benson Work:
Development Services has performed an initial review of the project and additional information is being provided as required. A 100% submittal was provided by the consultant to address the City review comments. The project environmental document public review period ended December 4, 2017. Two inquiry minor letters were received and are being reviewed.

On June 1, 2017, staff submitted the Financial Assistance Draft Application for a $16.5 million Drinking Water State Revolving Loan (DWDRF). The State has assigned a Project Manager and the General and Technical documents are being distributed to the State support team for review. The environmental documentation for the project is the next submission to the DWDRF followed by the financial analysis. Carollo Engineers is currently evaluating the City's water rate structure and will be preparing the financial application to the DWDRF. Upon completion of all of the required application materials, the Project will be evaluated by DWDRF for funding. It is anticipated the DWDRF review and construction period will be approximately 2.5 years.

The concept design for the Reservoir 15 facility temporary enhancements is complete and final design is underway. A purchase order is in progress to support continued development of the project design and includes the ordering of long lead materials in order to maintain positive progress. It is anticipated construction of the temporary improvements will begin January 8, 2018.

FISCAL IMPACTS

Sufficient funds are available in the FY2017-18 budget to perform the Phase I emergency work program and no additional appropriation is required.

On August 14, 2017, the City Council approved additional funding for the construction of temporary improvements to the existing Reservoir 15 facility. Additional one-time revenue from the lease of stored water (inter-agency water sales) was approved by Chino Basin Watermaster. The Finance Department has issued invoices accordingly and expected revenue was received.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

No Attachments Available
RECOMMENDED ACTION

It is recommended that the City Council approve a professional services agreement for development plan, map review services, and staff augmentation with TKE Engineering, Inc. (TKE) in the amount of $100,000.

GOAL STATEMENT

The proposed action supports the City Council’s objective to provide reliable, timely and efficient engineering, mapping, and development related services by the City.

BACKGROUND

Pursuant to the City of Upland’s goal in promoting orderly development, the City needs a timely and comprehensive review of proposed development maps and plans that conform to the City's development standard requirements.

ISSUES/ANALYSIS

In order to accomplish part of this task, the City must engage services of a professional consulting firm to augment existing staff resources. These professional services are necessary to provide the timely review of development related improvement plans, development maps, and other related documents. TKE is staffed with veteran professionals that can also assist in staff augmentation as necessary.
TKE has satisfactorily and cost effectively provided these essential services to the City for many years. TKE is familiar with the City requirements and provides a high degree of professionalism, competence in each line of service (map checking, traffic engineering, geotechnical engineering, and general civil engineering) and has demonstrated flexibility in working with developers’ schedules. They possess the required State licenses for each line of service. Staff considers TKE's cost for these professional services to be reasonable as compared with other companies.

**FISCAL IMPACTS**

Developers pay map, plan check, and other development related fees for these services. There is no net fiscal impact to the City.

**ALTERNATIVES**

Provide alternative direction to staff.

**ATTACHMENTS:**

Professional Services Agreement - TKE
AGREEMENT
FOR PROFESSIONAL CONSULTANT SERVICES
DEVELOPMENT PLANS AND MAPS REVIEW

THIS AGREEMENT is made and effective as of September 14, 2017, between the City of Upland, a municipal corporation ("City") and TKE Engineering, Inc. ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM. This Agreement shall commence on September 14, 2017 and shall remain and continue in effect until tasks described herein are completed, but in no event later than September 13, 2018, unless sooner terminated pursuant to the provisions of this Agreement. In addition, this Agreement may be extended for two additional option periods of one year apiece subject to mutual agreement.

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

3. PERFORMANCE. Consultant represents that it has that degree of knowledge and experience and holds all necessary licenses to practice and perform the services herein contemplated and shall at all times faithfully, competently and to the complete satisfaction of the City, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. PREVAILING WAGES. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City Council has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Contract from the Director of the Department of Industrial Relations. Copies may be obtained from the California Department of Industrial Relations’ Internet web site at http://www.dir.ca.gov. Consultant shall provide a copy of prevailing wage rates to any staff or sub-contractor hired, and shall pay the adopted prevailing wage rates as a minimum. Consultant shall comply with the provisions of Sections 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. Pursuant to the provisions of 1775 of the Labor Code, Consultant shall forfeit to the City, as a penalty, the sum of $25.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this contract, by him or by any subcontractor under him, in violation of the provisions of the Contract.

5. PAYMENT.

a. The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, Payment Rates and Schedule, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed One Hundred Thousand Dollars ($100,000.00) for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

b. Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services.
The City Manager may approve additional work up to ten percent (10%) of the amount of the Agreement or fifty thousand dollars ($50,000.00). In no event shall the total sum of the agreement (basic agreement amount and additional work) exceed fifty thousand dollars ($50,000.00). Any additional work in excess of this amount shall be approved by the City Council.

c. Consultant will submit invoices monthly for actual services performed. Invoices shall be submitted between the first and fifteenth business day of each month, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of consultant's fees it shall give written notice to Consultant within 30 days of receipt of a invoice of any disputed fees set forth on the invoice.

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE.

a. The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the consultant at least ten (10) days’ prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

b. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 4.

7. DEFAULT OF CONSULTANT.

a. The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

b. If the City Manager or his delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, it shall serve the Consultant with written notice of the default. The Consultant shall have (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. OWNERSHIP OF DOCUMENTS.

a. Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its
designees at reasonable times to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts there from as necessary, and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

b. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the work, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files containing data generated for the work, Consultant shall make available to the City, upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

c. With respect to the design of public improvements, the Consultant shall not be liable for any injuries or property damage resulting from the reuse of the design at a location other than that specified in Exhibit A without the written consent of the Consultant.

9. INDEMNIFICATION.

a. The Consultant agrees to defend, indemnify, protect and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, including attorney fees and expert witness fees, or liability of any kind or nature which the City, its officers, agents and employees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of Consultant's negligent or wrongful acts or omissions arising out of or in any way related to the performance or non-performance of this Agreement, excepting only liability arising out of the negligence of the City.

b. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

10. INSURANCE REQUIREMENTS. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

a. Minimum Scope of Insurance. Coverage shall be at least as broad as:

   (1) Insurance Services Office Commercial General Liability form No. CG 00 01 11 85 or 88.

   (2) Insurance Services Office Business Auto Coverage form CA 00 01 06 92 covering Automobile Liability, code 1 (any auto). If the Consultant owns no automobiles, a non-owned auto endorsement to the General Liability policy described above is acceptable.

   (3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. If the Consultant has no employees while performing under this Agreement, worker's compensation insurance is not required, but Consultant shall execute a declaration that it has no employees.
(4) Professional Liability Insurance shall be written on a policy form providing professional liability for the Consultant's profession.

b. **Minimum Limits of Insurance.** Consultant shall maintain limits no less than:

1. **General Liability:** One million dollars ($1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

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

3. **Worker's Compensation as required by the State of California; Employer's Liability:** One million dollars ($1,000,000) per accident for bodily injury or disease.

4. **Professional Liability coverage:** Two million ($2,000,000) per claim and in aggregate.

c. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City Manager. At the option of the City Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

d. **Other Insurance Provisions.** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees and volunteers are to be covered as insured's as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

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

3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees or volunteers.
(4) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(5) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

(6) **Additional Insured** – All policies, except for Worker's Compensation and Professional Liability policies, shall contain endorsements naming the City of Upland and their officers, employees, agents, and volunteers as additional insured parties with respect to liabilities arising out of the performance of Work hereunder. The additional insured endorsements shall also be primary and non-contributory.

(7) **Waiver of Subrogation Rights** - CONSULTANT shall require the carriers of Commercial General Liability, Automobile Liability and Worker's Compensation to waive all rights of subrogation against the City of Upland, and its officers, employees, agents and volunteers. Such insurance coverage provided shall not prohibit CONSULTANT’s employees or agents from waiving the right of subrogation prior to a loss or claim. CONSULTANT hereby waives all rights of subrogation against the City of Upland.

e. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VIII, and admitted and licensed to do business in the State of California, unless otherwise acceptable to the City. Self insurance shall not be considered to comply with these insurance requirements.

f. **Verification of Coverage.** Consultant shall furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City before work commences. As an alternative to the City's forms, the Consultant's insurer may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

11. **INDEPENDENT CONTRACTOR.**

a. Consultant is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

b. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.
c. **PERS Eligibility Indemnification:** In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

12. **LEGAL RESPONSIBILITIES.** The Consultant shall keep itself informed of all local, State and Federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. Consultant is responsible for compliance with the Patient Protection and Affordable Care Act (2010), and City shall not be obligated to provide any health care coverage to Consultant. The Consultant shall at all times observe and comply with all such ordinances, laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this section.

13. **RELEASE OF INFORMATION.**

a. All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City’s prior written authorization. Consultant, its officers, employees, agents or subcontractors, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered “voluntary” provided Consultant gives City notice of such court order or subpoena.

b. Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

14. **NOTICES.** Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (I) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as
set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To City:  
City of Upland  
Mailing Address:  
P.O. Box 460  
Upland, California 91785  
460 North Euclid Avenue  
Upland, California 91785  
Attention:  City Manager

To Consultant:  
TKE Engineering, Inc.  
2305 Chicago Avenue  
Riverside, CA 92507  
Phone: 951.680.0440  
Attention: Michael Thornton, P.E. P.L.S.

15. ASSIGNMENT. The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Upon termination of this Agreement, Consultant's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Consultant.

16. LICENSES. At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

17. GOVERNING LAW. The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Upland. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

18. PROHIBITED INTEREST. No officer, or employee of the City of Upland shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, the Consultant, or Consultant's sub-contractors for this project, during his/her tenure or for one year thereafter. The Consultant hereby warrants and represents to the City that no officer or employee of the City of Upland has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the Consultant or Consultant's sub-contractors on this project. Consultant further agrees to notify the City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement.

19. ENTIRE AGREEMENT. This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.
20. **AUTHORITY TO EXECUTE THIS AGREEMENT.** The person or persons executing this Agreement on behalf of Consultant warrants and represents that he or she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

21. **SEVERABILITY.** If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

22. **WAIVER.** The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

23. **CONSTRUCTION.** The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

24. **COSTS.** Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

25. **RESPONSIBILITY FOR ERRORS.** Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City’s representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

26. **ATTORNEYS’ FEES.** In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys’ fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

**IN WITNESS WHEREOF,** the parties hereto have caused this Agreement to be executed the day and year first above written.
CITY OF UPLAND

Debbie Stone, City Mayor

Attest:

______________________________
Jeannette Vagnozzi, City Clerk

Approved As to Form:

______________________________
James Markman, City Attorney

CONSULTANT
TKE Engineering, Inc.
2305 Chicago Avenue
Riverside, CA 92507

By: ____________________________
Name: __________________________
Title: __________________________

By: ____________________________
Name: __________________________
Title: __________________________
EXHIBIT A

TASKS TO BE PERFORMED

A. CITY SURVEYOR
Review of tentative and final tract or parcel maps submitted by developers in compliance to conditions of approval. Consultant will act as CITY SURVEYOR and will be signatory to all approved maps. Review will include review of closure calculations of all lots formed by land subdivisions, review of title reports, review and coordination of all easements and dedications to the City or utility companies; review of lot mergers, reversions, vacations, lot line adjustments, setting monuments for private and public improvements.

B. DEVELOPMENT PLANS REVIEW
Review engineering plans submitted by private engineering firms involving public and private improvement for land development projects. Plans, calculations and reports include street improvement plans, sewer improvement plans, storm drain plans, mass grading plans, rough grading plans, precise grading plans, landscaping plans, irrigation plans, street light plans and miscellaneous public improvements including bridges, retaining walls, flood control channels. In addition, Consultant will also review erosion control plans, Water Quality Management Plans (WQMP) and Storm Water Pollution Prevention Plans (SWPPP) This scope includes review of geotechnical reports, hydrology and hydraulic calculations and other engineering documents in support of proposed improvements; review for conformance to standards, acceptable engineering practice and conformance to conditions of approval and all applicable local, state and federal laws;

C. TRAFFIC ENGINEERING PLANS
Review of traffic signal plans, signing and striping plans and supporting documents such as traffic impact analysis, traffic signal timing and coordination, traffic control plans, road closure plans and variety of traffic related plan review.

D. STAFF AUGMENTATION
Assign consultant staff to assist the City for various City duties including but not limited to, counter reviews, permit review and preparation, plan check acceptance, logging, routing and return, coordination between City departments for plan check comments, development processing, development invoicing, project management, construction management, and field inspections.

E. OTHER RELATED WORK
As deemed fit and per sole discretion by the City, Consultant may be asked to perform other professional engineering and surveying tasks.
### EXHIBIT B

<table>
<thead>
<tr>
<th>Description</th>
<th>Hourly Rate</th>
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<tbody>
<tr>
<td>Principal in Charge</td>
<td>$150.00</td>
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<tr>
<td>Project Manager/Construction Manager/Licensed Surveyor</td>
<td>$140.00</td>
</tr>
<tr>
<td>Senior Engineer/Project Engineer (PE)/Senior Plan Checker*</td>
<td>$115.00</td>
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<tr>
<td>Associate Engineer</td>
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<tr>
<td>Assistant Engineer/Plan Checker/City Staff Augmentation*</td>
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<td>AutoCAD Technician</td>
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<td>Engineering Technician</td>
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<td>Clerical</td>
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<td>Forensic Engineering</td>
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<td>Expert Witness Testimony</td>
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*Expedited Plan Check Services Will Be Billed At 1 ½ Times The Normal Rate

### SURVEYING SERVICES

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<td>Construction Inspector (Prevailing Wage)</td>
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### REIMBURSABLE COSTS

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<tbody>
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<tr>
<td>Printing and Materials</td>
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<tr>
<td>Express Mail/Courier/Next Day Service</td>
<td>Cost + 10%</td>
</tr>
<tr>
<td>Special Subconsultant Services</td>
<td>Cost + 10%</td>
</tr>
</tbody>
</table>
CONCLUSION/ACTION SUMMARY

In attendance: Committee Chairperson Filippi, Committee Member Robinson, Councilmember Timm, Councilmember Elliott, Interim Police Chief Millmore, Captain Mathews, Deputy City Manager Vagnozzi, San Bernardino County Division Fire Chief Birchfield, and Emergency Services Coordinator Ramirez.

1) **ORAL COMMUNICATIONS**

   Janice Elliott stated that CERT should be involved in the discussions regarding the Emergency Management Program.

2) **EMERGENCY MANAGEMENT PROGRAM**, the Committee received a verbal presentation and discussed the City’s Emergency Management Program.
Police and Fire Committee Meeting

November 27, 2017

5:00 PM

Pinky Alder Room - City Hall

***************

1. ORAL COMMUNICATIONS

2. EMERGENCY MANAGEMENT PROGRAM

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 November 22, 2017 a true and correct copy of this agenda was posted on the bulletin boards at 450 N. Euclid Avenue (Upland Public Library) and 460 N. Euclid Avenue (Upland City Hall).
STAFF REPORT

ITEM NO. 2.

DATE: November 27, 2017
TO: POLICE AND FIRE COMMITTEE
FROM: MARTIN THOUVENELL, INTERIM CITY MANAGER
PREPARED BY: JEANNETTE VAGNOZZI, DEPUTY CITY MANAGER
SUBJECT: EMERGENCY MANAGEMENT PROGRAM

RECOMMENDED ACTION

It is recommended that the committee receive and file the implementation plan for the Emergency Management Program in the City of Upland.

GOAL STATEMENT

The proposed action supports the City Council's goal to provide emergency management services for the City of Upland.

BACKGROUND

Historically, emergency management operations were included under the responsibilities of the Upland Fire Department. Due to financial constraints and staffing reductions, much of the emergency planning had not been as high of priority as the day to day operations. Staffing for emergency management was included during the planning process for the annexation to the San Bernardino County Fire Protection District (County Fire). A dedicated staff member from the San Bernardino County Office of Emergency Services now serves the City of Upland to coordinate all emergency management planning efforts. This staff report details the two year work plan established for the emergency management planning and preparedness efforts for the City of Upland.

ISSUES/ANALYSIS

The attached action plan identifies specific areas of emergency management that will be implemented in the next two years. These areas include updating two planning documents,
developing training programs and incident management exercises, enhancing public outreach and communication, and reviewing current equipment/facilities and future needs. The tasks for each of these areas are listed below.

**Update Planning Documents**

The City's Emergency Operations Plan is overdue to be updated. This plan outlines the responsibilities and duties of each department in the event of an emergency. It should also include any new procedures that may be necessary as a result of the annexation to the San Bernardino County Fire District.

The Hazard Mitigation Plan is required by the Federal Emergency Management Association (FEMA) and is developed to identify risks and vulnerabilities associated with natural disasters, and develop long-term strategies for protecting people and property from future hazard events. It is required to be updated every five years. A FEMA-approved hazard mitigation plan is a condition for receiving certain types of non-emergency disaster assistance, including funding for mitigation projects. Prior to the annexation to County Fire, the plan was in the process of being updated, but not yet completed.

**Training/Exercises**

There are several reasons why emergency management training is necessary for the City. First, there has been significant employee turnover and changes to the organization with the annexation to County Fire. Additionally, in order to receive financial assistance from FEMA in the event of an emergency or natural disaster, employees must have completed certain training to meet the National Incident Management System (NIMS) requirements. We have planned training for employees and developed systems for new hires to be trained. Once the first round of training is complete, simulation exercises will be scheduled. This is a critical component in the City's preparation so that we have internal and external coordination and can adequately serve the community in the event of a disaster.

**Public Education**

There are several community outreach tools that will be implemented. The first is "Ready Upland." This initiative focuses on providing educational materials geared toward emergency preparedness. There are other educational courses that will be offered for both residents and local businesses. In addition to workshops and training courses, public education will also include social media and web site outreach.

**Equipment/Facilities Evaluation**

This project area includes the evaluation of the Emergency Operations Center (EOC) facilities and work stations, mass care trailer, and potential shelter sites. This ensures that once we are trained, we have the facilities and tools needed to conduct emergency management operations.

**FISCAL IMPACTS**

The cost of providing the staff to coordinate these efforts was included in the plan for service with the annexation to the San Bernardino County Fire Protection District. If additional resources are needed, staff will first explore grant opportunities or plan for additional resources in the next budget cycle. No allocation is being requested at this time.
ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

Emergency Management Action Plan
## City of Upland
### Emergency Management Program
#### Action Plan

### PLANS

#### PROJECT: Emergency Operations Plan (EOP)

<table>
<thead>
<tr>
<th>TASK</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
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<tbody>
<tr>
<td>Review Current Plan</td>
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<td>Meet w/Dept Heads</td>
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<td>Revise Plan</td>
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<td>Plan Review (incl Dept. Heads)</td>
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<td>Revise Plan</td>
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<tr>
<td>Plan Approval</td>
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#### PROJECT: Hazard Mitigation Plan (HMP)

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<thead>
<tr>
<th>TASK</th>
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<td>Revise Plan</td>
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<td>Finalize Plan</td>
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<td>Submit to FEMA</td>
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<td>Revise Plan (if needed)</td>
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<td>Submit to FEMA</td>
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</table>
## TRAINING/EXERCISE

### PROJECT: Great California ShakeOut

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<tr>
<th>TASK</th>
<th>2017</th>
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<tbody>
<tr>
<td>Conduct IPC</td>
<td>EM/DCM</td>
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<tr>
<td>Conduct FPC</td>
<td>EM/DCM/DH</td>
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<tr>
<td>Conduct DCHO Drill</td>
<td>EM/DH</td>
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<tr>
<td>Conduct Life Safety Evacuation Drill</td>
<td>EM/DH</td>
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<tr>
<td>Report City Activities via WebEOC</td>
<td>EM</td>
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<tr>
<td>Produce AAR/IP</td>
<td>EM</td>
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### PROJECT: Develop New Employee Orientation/NIMS

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<tr>
<th>TASK</th>
<th>2017</th>
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<tbody>
<tr>
<td>Change policy to require the NIMS series.</td>
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<tr>
<td>IS700/IS100, SEMS Online Training</td>
<td>EMP</td>
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<tr>
<td>Develop Training PPT</td>
<td>EM</td>
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<tr>
<td>In Person Orientation to DSW Program</td>
<td>EM/EMP</td>
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### PROJECT: Elected Official Training

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<thead>
<tr>
<th>TASK</th>
<th>2017</th>
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<tbody>
<tr>
<td>Create Elected Officials Training</td>
<td>EM</td>
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<tr>
<td>Review to CM/DCM</td>
<td>DCM</td>
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<tr>
<td>Conduct Elected Officials Training</td>
<td>EM</td>
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### PROJECT: Introduction to Incident Management

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<th>TASK</th>
<th>2017</th>
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<tbody>
<tr>
<td>Identify City Staff – EOC Responders</td>
<td>DCM/EM</td>
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<tr>
<td>Schedule Training</td>
<td>DCM/EM</td>
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<tr>
<td>Conduct Training</td>
<td>EM</td>
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<tr>
<td>Implement Appropriate Recommendations IP</td>
<td>EM</td>
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09/18/2017
### Project: WebEOC Training

<table>
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<tr>
<th>Task</th>
<th>2017</th>
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<tr>
<td>TASK ASSIGNED</td>
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<tr>
<td>Identify City Staff – EOC Responders</td>
<td>DCM/EM</td>
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<td>Schedule Training</td>
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<td>Conduct Training</td>
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<tr>
<td>Implement Appropriate Recommendations IP</td>
<td>EM</td>
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### Project: Section Specific Training

<table>
<thead>
<tr>
<th>Task</th>
<th>2017</th>
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<tr>
<td>TASK ASSIGNED</td>
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<tr>
<td>Identify City Staff – EOC Responders</td>
<td>DCM/EM</td>
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<td>Schedule Training</td>
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<tr>
<td>Conduct Training</td>
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<tr>
<td>Implement Appropriate Recommendations IP</td>
<td>EM</td>
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### Project: EOC Response Drill

<table>
<thead>
<tr>
<th>Task</th>
<th>2017</th>
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<tr>
<td>TASK ASSIGNED</td>
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<tr>
<td>Identify City Staff – EOC Responders</td>
<td>DCM/EM</td>
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<tr>
<td>Schedule EX</td>
<td>DCM/EM</td>
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<tr>
<td>Conduct IPC</td>
<td>DCM/EM</td>
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<tr>
<td>Conduct MPC</td>
<td>DCM/EM</td>
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<tr>
<td>Conduct FPC</td>
<td>DCM/EM/DH</td>
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<td>Conduct EX</td>
<td>EM/EMP</td>
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<tr>
<td>AAR/IP</td>
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### Project: EOC Exercise (SOP Workshop/Tabletop)

<table>
<thead>
<tr>
<th>Task</th>
<th>2017</th>
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<tr>
<td>TASK ASSIGNED</td>
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<tr>
<td>Identify City Staff – EOC Responders</td>
<td>DCM/EM</td>
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<td>Schedule EX</td>
<td>DCM/EM</td>
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<tr>
<td>Conduct IPC</td>
<td>DCM/EM</td>
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<td>Conduct MPC</td>
<td>DCM/EM</td>
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<td>Conduct FPC</td>
<td>DCM/EM/DH</td>
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<td>Conduct EX</td>
<td>EM/EMP</td>
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<tr>
<td>AAR/IP</td>
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</table>
## PUBLIC EDUCATION

### PROJECT: Ready Upland

<table>
<thead>
<tr>
<th>TASK</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
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<tbody>
<tr>
<td>Create Ready Upland</td>
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<tr>
<td>Flyer/Fact Sheet</td>
<td></td>
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<tr>
<td>Restore City Web Page</td>
<td>DSCM/EM</td>
<td></td>
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<tr>
<td>Launch Twitter</td>
<td>EM</td>
<td></td>
<td></td>
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<tr>
<td>Launch Facebook</td>
<td>EM</td>
<td></td>
<td></td>
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<tr>
<td>Create Flyer</td>
<td>EM/DCM</td>
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### PROJECT: Until Help Arrives Course

<table>
<thead>
<tr>
<th>TASK</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
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<tbody>
<tr>
<td>Create Flyer/Registration Page</td>
<td>EM</td>
<td></td>
<td></td>
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<tr>
<td>Publicize</td>
<td>EM</td>
<td></td>
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<tr>
<td>Conduct Training</td>
<td>EM</td>
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### PROJECT: NPM Event

<table>
<thead>
<tr>
<th>TASK</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
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<tbody>
<tr>
<td>Conduct IPC</td>
<td>EM/DCM</td>
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<tr>
<td>Set Date/Secure Location</td>
<td>EM/DCM</td>
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<tr>
<td>Conduct MPC</td>
<td>EM/DCM/Partners</td>
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<tr>
<td>Publicize</td>
<td>EM/DCM</td>
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<tr>
<td>Conduct FPC</td>
<td>EM/DCM</td>
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<tr>
<td>Event</td>
<td>EM/EMP/Partners</td>
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<tr>
<td>AAR/IP</td>
<td>EM</td>
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</table>
### EQUIPMENT/FACILITIES

#### PROJECT: EOC Update

<table>
<thead>
<tr>
<th>TASK</th>
<th>ASSIGNED</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
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<tbody>
<tr>
<td>Identify Current EOC</td>
<td>EM</td>
<td>Sep</td>
<td>Oct</td>
<td>Nov</td>
</tr>
<tr>
<td>Evaluate EOC</td>
<td>OES</td>
<td>Dec</td>
<td>Jan</td>
<td>Feb</td>
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<tr>
<td>Make Recommendations</td>
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<tr>
<td>Implement Recommendations</td>
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<tr>
<td>Evaluate New Site</td>
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#### PROJECT: Mass Care Trailer

<table>
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<tr>
<th>TASK</th>
<th>ASSIGNED</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
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<tbody>
<tr>
<td>Relocate Trailer to STA 164</td>
<td>EM</td>
<td>Sep</td>
<td>Oct</td>
<td>Nov</td>
</tr>
<tr>
<td>Inventory Trailer</td>
<td></td>
<td>Dec</td>
<td>Jan</td>
<td>Feb</td>
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#### PROJECT: DPH/POD Trailer

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<tr>
<th>TASK</th>
<th>ASSIGNED</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
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<tbody>
<tr>
<td>Present Program to DCM</td>
<td>EM</td>
<td>Sep</td>
<td>Oct</td>
<td>Nov</td>
</tr>
<tr>
<td>Request from DPH</td>
<td>EM</td>
<td>Dec</td>
<td>Jan</td>
<td>Feb</td>
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<tr>
<td>Obtain CC Approval</td>
<td>DCM/EM</td>
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<tr>
<td>Place Trailer</td>
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#### PROJECT: Shelter Sites

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<tr>
<th>TASK</th>
<th>ASSIGNED</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
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<tbody>
<tr>
<td>Request Current Locations f/ARC</td>
<td>EM</td>
<td>Sep</td>
<td>Oct</td>
<td>Nov</td>
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09/18/2017
ECONOMIC DEVELOPMENT COMMITTEE MEETING
DECEMBER 4, 2017

**********

CONCLUSION/ACTION SUMMARY

In attendance: Committee Chair Timm, Committee Member Robinson, Development Services Director Zwack, and Associate Planner Picazo

1) **ORAL COMMUNICATIONS**, None.

2) **Economic Development Update by JLL**, consultants Erik Westedt and Blake Kaplan presented an update on various projects in the City including the Bongiovanni property on Foothill Boulevard, Kimble Site, and progress on lease negotiations for the Upland Village and Sycamore Hills sites. The Committee also provided additional comments and feedback on the draft marketing brochure.
Economic Development Committee Meeting

December 4, 2017

5:00 PM

Pinky Alder Room - City Hall

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 November 30, 2017 a true and correct copy of this agenda was posted on the bulletin boards at 450 N. Euclid Avenue (Upland Public Library) and 460 N. Euclid Avenue (Upland City Hall).
STAFF REPORT

ITEM NO. 14.A.

DATE: December 11, 2017
TO: MAYOR AND CITY COUNCIL
FROM: MARTIN THOUVENELL, INTERIM CITY MANAGER
PREPARED BY: ROSEMARY HOERNING, PUBLIC WORKS DIRECTOR
KEVIN WATSON, UTILITIES OPERATIONS MANAGER
SUBJECT: WELL 15 MAINTENANCE/REHABILITATION WORK

RECOMMENDED ACTION

It is recommended that the City Council approve an agreement with TriCounty Pump Company for Well 15 Maintenance/Rehabilitation Work for $158,475 and authorize contingency $16,525 for a not to exceed amount of $175,000.

GOAL STATEMENT

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

BACKGROUND

The City of Upland Well 15 is located north of 20th Street and Campus Avenue on the Holliday Rock property. This well is not in service and requires maintenance/rehabilitation work for proper operation. In general, this well produces high quality water from the Cucamonga groundwater basin, an important local water supply source to the City of Upland.

ISSUES/ANALYSIS

Well 15 was taken out of service during the month of August 2017 due to vibration and a decrease in production. Staff made the decision to take it out of service to prevent further damage to the pump or motor until repairs could be made. It is important to perform the maintenance and bring the facility back in operation to provide operational flexibility.
FISCAL IMPACTS

Staff solicited bid proposals from three qualified Well contractors for the maintenance/rehabilitation work at Well 15. TriCounty Pump Company submitted the lowest bid proposal. TriCounty Pump Company has performed similar work for the City previously in a satisfactory manner.

Sufficient funds are available in the adopted FY2017-18 budget (640-9088).

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

Agreement
Location Map
AGREEMENT

KNOW ALL MEN BY THESE PRESENTS: The following Agreement is made and entered into, in duplicate, as of the date executed by the City Manager, by and between TriCounty Pump Company hereinafter referred to as the "CONTRACTOR" and the CITY OF UPLAND, hereinafter referred to as "CITY."

A. Recitals.

CITY has authorized the City Manager to enter into a written contract with CONTRACTOR for furnishing labor, equipment, and material for the Well 15 Maintenance/Rehabilitation Work, ("the project" hereinafter).

B. Terms.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed:

1. GENERAL SCOPE OF WORK: CONTRACTOR shall furnish all necessary labor, tools, materials, appliances, and equipment for the Well 15 Maintenance/Rehabilitation Work ("Project"). The project shall be performed by Contractor in accordance with Proposal for the Project, Specifications, General Provisions, Special Provisions, Plans, Permits, and Bidder’s Response. Contractor shall complete the tasks according to the schedule of performance which is set forth in the contract documents. The following shall be included in the SCOPE of WORK:
   - Furnish tools, equipment, and labor to:
     - Pull pump from well.
     - Disassemble and inspect pump to determine what repairs are needed.
     - Perform video log of Well.
     - Prepare report with recommended repairs and costs.
     - Clean, assemble and prep pump equipment for install.
     - Provide necessary materials as needed not to exceed cost per proposal dated September 15, 2017.
     - Brush and bail Well 15
     - Dual swab and airlift
     - Sonar jet
     - Disinfect well and put back into service

2. INCORPORATED DOCUMENTS TO BE CONSIDERED COMPLEMENTARY: Proposal for the Project, Specifications, General Provisions, Special Provisions, Plans, Permits, and Bidder’s Response are incorporated herein by reference thereto and made a part thereof with like force and effect as if all of said documents were set forth in full herein. Said documents, attached hereto, together with this written Agreement, shall constitute the contract between the parties. This contract is intended to require a complete and finished piece of work and anything necessary to complete the work properly and in accordance with the law and lawful governmental regulations shall be performed by the CONTRACTOR whether set out specifically in the contract or not. Should it be ascertained that any inconsistency exists between the aforesaid documents and this written Agreement, the provisions of this written Agreement shall control.

3. TERMS OF CONTRACT:
a. The CONTRACTOR agrees to execute the contract within ten (10) calendar days from the date of notice of award of the contract and to complete his portion of the project within sixty (60) calendar days from the execution of the first contract. CONTRACTOR agrees further to the assessment of liquidated damages in the amount of $250.00 dollars for each calendar day the project remains incomplete beyond the expiration of the completion date. CITY may deduct the amount thereof from any moneys due or that may become due to the CONTRACTOR under this Agreement. Progress payments made after the scheduled date of completion shall not constitute a waiver of liquidated damages.

4. INSURANCE: The CONTRACTOR shall not commence work under this contract until he has obtained all insurance required hereunder in a company or companies acceptable to CITY nor shall the CONTRACTOR allow any subcontractor to commence work on his subcontract until all insurance required of the subcontractor has been obtained. The CONTRACTOR shall take out and maintain at all times during the life of this contract the following policies of insurance:

a. Compensation Insurance: Before beginning work, the CONTRACTOR shall furnish to the Engineer a policy of insurance or proper endorsement as proof that he has taken out full compensation insurance for all persons whom he may employ directly or through subcontractors in carrying out the work specified herein, in accordance with the laws of the State of California. Such insurance shall be maintained in full force and effect during the period covered by this contract.

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

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

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

(1) Public Liability - Bodily Injury (not auto) $1,000,000 each person; $2,000,000 each accident.

(2) Public Liability - Property Damage (not auto) $500,000 each accident; $1,000,000 aggregate.

(3) Contractor's Protective - Bodily Injury $1,000,000 each person; $2,000,000 each accident.

(4) Contractor's Protective - Property Damage $500,000 each accident; $1,000,000 aggregate.

(5) Automobile - Bodily Injury $1,000,000 each person; $1,000,000 each accident.

(6) Automobile - Property Damage $500,000 each accident.
c. The policy of insurance provided for in subparagraph a. shall contain an endorsement which:

(1) Waives all right of subrogation against all persons and entities specified in subparagraph 4.d.(2) hereof to be listed as additional insured in the policy of insurance provided for in paragraph b. by reason of any claim arising out of or connected with the operations of CONTRACTOR or any subcontractor in performing the work provided for herein;

(2) Provides it shall not be canceled or altered without thirty (30) days' written notice thereof given to CITY by registered mail.

d. Each such policy of insurance provided for in paragraph b. shall:

(1) Be issued by an insurance company approved in writing by CITY, which is admitted and licensed to do business in the State of California and which is rated "A" or better according to the most recent A.M. Best Company Rating Guide;

(2) Name as additional insured the CITY, its officers, agents and employees, and any other parties specified in the bid documents to be so included;

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

(4) Contain a clause substantially in the following words:

"It is hereby understood and agreed that this policy may not be canceled nor the amount of the coverage thereof reduced until thirty (30) days after receipt by CITY of a written notice of such cancellation or reduction of coverage as evidenced by receipt of a registered letter."

(5) Otherwise be in form satisfactory to CITY.

e. The CONTRACTOR shall at the time of the execution of the contract present the original policies of Insurance required in paragraphs a. and b., hereof, or present an endorsement of the insurance company, showing the issuance of such insurance, and the additional insured and other provisions required herein.

5. PREVAILING WAGE: Notice is hereby given that in accordance with the provisions of California Labor Code, Division 2, Part 7, Chapter 1, Articles 1 and 2, the CONTRACTOR is required to pay not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work. In that regard, the Director of the Department of Industrial Relations of the State of California is required and has determined such general prevailing rates of
per diem wages. Copies may be obtained from the California Department of Industrial Relations' Internet web site at http://www.dir.ca.gov. CONTRACTOR shall provide a copy of prevailing wage rates to any staff or sub-contractor hired, and shall pay the adopted prevailing wage rates as a minimum. CONTRACTOR also shall cause a copy of such determinations to be posted at the job site.

CONTRACTOR shall forfeit, as penalty to CITY, not more than the amount prescribed by California Labor Code Section 1775 for each laborer, workman, or mechanic employed for each calendar day or portion thereof, if such laborer, workman, or mechanic is paid less than the general prevailing rate of wages hereinbefore stipulated for any work done under the attached contract, by him or by any subcontractor under him, in violation of the provisions of said Labor Code and Davis-Bacon Act.

6. APPRENTICESHIP EMPLOYMENT: In accordance with the provisions of § 1777.5 of the Labor Code, as amended, and in accordance with the regulations of the California Apprenticeship Council, properly indentured apprentices may be employed in the prosecution of the work.

Attention is directed to the provisions in §§ 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the CONTRACTOR or any subcontractor under him.

§ 1777.5, as amended, requires the CONTRACTOR or subcontractor employing tradesmen in any apprenticeable occupation to apply to the joint apprenticeship committee nearest the site of the public works project and which administers the apprenticeship program in that trade for a certificate of approval. The certificate will also fix the ratio of apprentices to journeymen that will be used in the performance of the contract. The ratio of apprentices to journeymen in such cases shall not be less than one to five except:

a. When unemployment in the area of coverage by the joint apprenticeship committee has exceeded an average of 15 percent in the 90 days prior to the request for certificate, or

b. When the number of apprentices in training in the area exceeds a ratio of one to five, or

c. When the trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis statewide or locally, or

d. When the CONTRACTOR provides evidence that he employs registered apprentices on all of his contracts on an annual average of not less than one apprentice to eight journeymen.

The CONTRACTOR is required to make contributions to funds established for the administration of apprenticeship programs if he employs registered apprentices or journeymen in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions.

The CONTRACTOR and subcontractors under him shall comply with the requirements of §§ 1777.5 and 1777.6 in the employment of apprentices.
Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

7. **LEGAL HOURS OF WORK:** Eight (8) hours of labor shall constitute a legal day's work for all workmen employed in the execution of this contract, and the CONTRACTOR and any subcontractor under him shall comply with and be governed by the laws of the State of California having to do with working hours set forth in Division 2, Part 7, Chapter 1, Article 3 of the Labor Code of the State of California as amended.

The CONTRACTOR shall forfeit, as a penalty to CITY, twenty-five dollars ($25.00) for each laborer, workman, or mechanic employed in the execution of the contract, by him or any subcontractor under him, upon any of the work hereinbefore mentioned, for each calendar day during which said laborer, workman, or mechanic is required or permitted to labor more than eight (8) hours in violation of said Labor Code.

8. **TRAVEL AND SUBSISTENCE PAY:** CONTRACTOR agrees to pay travel and subsistence pay to each workman needed to execute the work required by this contract as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Labor Code § 1773.8.

9. **CONTRACTOR'S LIABILITY:** The City of Upland and its respective officers, agents and employees shall not be answerable or accountable in any manner for any loss or damage that may happen to the project or any part thereof, or for any of the materials or other things used or employed in performing the project; or for injury or damage to any person or persons, either workmen, employees of the CONTRACTOR or his subcontractors or the public, whatsoever arising out of or in connection with the performance of the Project. The CONTRACTOR shall be responsible for any damage or injury to any person or property resulting from defects or obstructions or from any cause whatsoever, except the sole negligence or willful misconduct of CITY, or its employees, servants, or independent contractors who are directly responsible to CITY during the progress of the Project or at any time before its completion and final acceptance.

The CONTRACTOR will indemnify CITY against and will hold and save CITY, its officers, officials, employees and volunteers harmless from any and all actions, claims, demands, losses, damages to persons or property, penalties, obligations, or liabilities including attorneys' fees and expert witness expenses that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organization arising out of or in connection with the work, operation, or activities of the CONTRACTOR, his agents, employees, subcontractors, or invitees provided for herein, whether or not there is concurrent passive or active negligence on the part of CITY, but excluding such actions, claims, damages to persons or property, penalties, obligations, or liabilities arising from the sole negligence or willful misconduct of CITY, its employees, servants, or independent contractors who are directly responsible to CITY, and in connection therewith:

a. The CONTRACTOR will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations, or liabilities and will pay all costs and expenses, including attorneys' fees incurred in connection therewith.
b. The CONTRACTOR will promptly pay any judgment or award rendered against the CONTRACTOR or CITY covering such claims, damages, penalties, obligations, and liabilities arising out of or in connection with such work, operations, or activities of the CONTRACTOR hereunder or reasonable settlement in lieu of judgment or award, and the CONTRACTOR agrees to save and hold the CITY harmless therefrom.

c. In the event CITY is made a party to any action or proceeding filed or prosecuted against the CONTRACTOR for damages or other claims arising out of or in connection with the project, operation, or activities of the CONTRACTOR hereunder, the CONTRACTOR agrees to pay to CITY any and all costs and expenses incurred by CITY in such action or proceeding together with reasonable attorneys' fees.

Any money due to the CONTRACTOR under and by virtue of this Agreement as shall be considered necessary by CITY may be retained by CITY until disposition has been made of such actions or claims for damage as aforesaid.

10. DEFAULT BY CONTRACTOR: In addition to any other remedy provided by law, the City may require CONTRACTOR to obtain a bond in the amount determined by the City for completion of the Project.

11. INDEPENDENT CONTRACTOR:

a. CONTRACTOR is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of CONTRACTOR shall at all times be under CONTRACTOR's exclusive direction and control. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of CONTRACTOR or any of CONTRACTOR's officers, employees, or agents except as set forth in this Agreement. CONTRACTOR shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City. CONTRACTOR shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

b. No employee benefits shall be available to CONTRACTOR in connection with the performance of this Agreement. Except for the fees paid to CONTRACTOR as provided in the Agreement, City shall not pay salaries, wages, or other compensation to CONTRACTOR for performing services hereunder for City. City shall not be liable for compensation or indemnification to CONTRACTOR for injury or sickness arising out of performing services hereunder.

c. PERS Eligibility Indemnification: In the event that CONTRACTOR or any employee, agent, or subcontractor of CONTRACTOR providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, CONTRACTOR shall indemnify, defend,
and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of CONTRACTOR or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, CONTRACTOR and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

12. NONDISCRIMINATION: No discrimination shall be made in the employment of persons upon public works because of the race, color, sex, sexual preference, sexual orientation, or religion of such persons, and every contractor for public works violating this section is subject to all the penalties imposed for a violation of Division 2, Part 7, Chapter 1 of the Labor Code in accordance with the provisions of § 1735 of said Code.

13. INELIGIBLE SUBCONTRACTORS: The CONTRACTOR shall be prohibited from performing work on this project with a subcontractor who is ineligible to perform on the project pursuant to §§ 1777.1 and 1777.7 of the Labor Code.

14. CONTRACT PRICE AND PAYMENT: CITY shall pay to the CONTRACTOR a not to exceed amount of $158,475.00 for furnishing the labor, equipment, material and doing the prescribed work as set forth in accordance with Contractor’s Proposal dated September 15, 2017.

15. WAIVER: The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

16. CONSTRUCTION: The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

17. COSTS: Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.
18. **ATTORNEYS' FEES:** In the event that any action or proceeding is brought by either party to enforce any term or provision of this Agreement, the prevailing party shall recover its reasonable attorneys' fees and costs incurred with respect thereto.

19. **RELEASE OF INFORMATION:**

a. All information gained by CONTRACTOR in performance of this Agreement shall be considered confidential and shall not be released by CONTRACTOR without City's prior written authorization. CONTRACTOR, its officers, employees, agents or subcontractors, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided CONTRACTOR gives City notice of such court order or subpoena.

b. CONTRACTOR shall promptly notify City should CONTRACTOR, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent CONTRACTOR and/or be present at any deposition, hearing or similar proceeding. CONTRACTOR agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by CONTRACTOR. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

20. **NOTICES.** Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (I) personal service, (II) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (III) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

**To City:**

City of Upland  
Mailing Address:  
P.O. Box 460  
Upland, California 91785  
460 North Euclid Avenue  
Upland, California 91785  
Attention: City Manager

**To CONTRACTOR:**

TriCounty Pump Company  
241 South Arrowhead  
San Bernardino, CA 92408
(909) 888-7706  
Attention: Dennis Skinner,

Additionally, CONTRACTOR shall provide an emergency phone number to the City where its point of contact may be reached at any time by City in the event of an emergency.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed with all the formalities required by law on the respective dates set forth opposite their signatures.

State of California  
Contractor's License No. 744742

11-20-2017  
Date

Contractor's  
Business Phone 909.888.7706

Emergency Phone at which Contractor can be reached at any time 909-327-8457

Tri County Pump Co  
241 South Arrowhead  
San Bernardino, CA 92408  
By: [Signature]  
Title: Account Manager

CITY OF UPLAND,  
A Municipal Corporation

By: ____________________________  
Mayor

By: ____________________________  
City Clerk

Approved as to form:

City Attorney
September 15, 2017

City of Upland
1370 North Benson Ave.
Upland, CA 91786

Attention: Mr. John Robles

Subject: Well 15

In Response to your request for quotation, Tri County Pump Company is pleased to offer the following for your consideration. Please bear in mind that prior to removing, disassembly and inspection, it is impossible to give you a firm price quotation. An exact price quotation will be provided once the pump is pulled, disassembled and inspected. The following estimate is for removing Well 15 pump and motor, transporting to shop, disassembly and inspection. Perform video log.

Estimated Field Labor:
Travel to and from jobsite; Remove equipment and Transport to TCP $9,300.00
Travel to and from jobsite; Install equipment and perform start up $12,400.00

Estimated Shop Labor:
Teardown and Inspect Equipment $1,000.00
Clean, Assemble and Prep Pump Equipment for Install $1,000.00

Estimated Materials:
1 - 10" SS Cone Strainer $650.00
1 - 14 RJLC 11 Stage Bowl $20,960.00
4 - 12" x 20' Suction Pipe $2,440.00
4 - 10" x 20' Suction Pipe $1,920.00
35 - 12" x 3" x 1 15/16" x 5' Column, Tube and Shaft Assembly $46,725.00
1 - 1-15/16" x 126" 416 SS Head Shaft $1,330.00
1 - Nut and Key $160.00
720 Ft. 1/4" SS Airline with Gauge $2,150.00
15 - 3" x 12" Black Widow Spiders $300.00
1-1-15/16" Rebuilt Packing Box $450.00
1 Lot: Miscellaneous Materials: Gasket, Tape, Bolts, Oil, Split Bolts $500.00
1 Lot: Freight $500.00

Estimated Labor $23,700.00
Estimated Material $78,085.00
Sales Tax 8.00% $6,246.80
Total Estimate $108,331.80

We appreciate this opportunity to be of service and look forward to working with you. We trust that this estimate will suffice for your needs, and should any additional information be required, please do not hesitate to contact us.

This estimate is valid for thirty (30) days from the above date, and subject to review thereafter.
Sincerely,

Dennis Skinner

Quote Number: 090315-DS

Use PO # ___________________ Signed ___________________ Date: ___________________

Please fax this authorization to 909 888-3653 or email dennis@tricountypump.net
September 15, 2017

City of Upland  
1370 North Benson Ave.  
Upland, CA 91786

Attention: Mr. John Robles

Subject: Well 15

In Response to your request for quotation, Tri County Pump Company is pleased to offer the following for your consideration.

Please bear in mind that prior to removing the pump equipment and performing a video it is impossible to give you a firm price quotation. An exact price quotation will be provided after video. The following estimate is for the following:

**Estimated Field Labor:**
- Travel to and from jobsite; Brush and bail per hour estimated 40 hours.
  - $305.00
- Travel to and from jobsite; Dual swab and airlift per hour estimated 80 hours.
  - $305.00
- Travel to and from jobsite; Install and remove test pump per hour.
  - $420.00
- Travel to and from jobsite; Test pump per hour.
  - $285.00
- Travel to and from jobsite; Sonar-Jet.
  - $8,000.00

**Estimated Shop Labor:**
- Prep and Load Equipment
  - $4,500.00

**Estimated Materials:**
- Brush Rental
  - $750.00
- Swab Rental
  - $750.00
- Chemicals
  - $30,000.00
- Compressor and Tank Rental
  - $3,000.00
- Test Pump and VFD Rental
  - $4,000.00

**Estimated Labor:**
- $13,815.00

**Estimated Material:**
- $38,500.00

**Sales Tax 7.75%:**
- $2,983.75

**Total Estimate:**
- $55,298.75

We appreciate this opportunity to be of service and look forward to working with you. We trust that this estimate will suffice for your needs, and should any additional information be required, please do not hesitate to contact us.

This estimate is valid for thirty (30) days from the above date, and subject to review thereafter.
Sincerely,  

Dennis Skinner

Quote Number: 090315-DS

Use PO # __________________ Signed _______________ Date: _______________

Please fax this authorization to 909 888-3653 or email dennis@tricountypump.net
CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFER NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Silverstone Insurance Services
Jetton & Assoc Ins Svcs Inc
P.O. Box 1200 (Lc #0290329)
Rancho Cucamonga, CA 91729-1200
Brent Jetton, AAI, CIC

INSURED
Tri County Pump Company, Inc.
241 S Arrowhead Ave
San Bernardino, CA 92408

CONTACT
NAME: Brent Jetton, AAI, CIC
PHONE (AC #: 909-980-4211
FAX (AC #: 909-980-4785
TOTAL ADDRESS:

INSURER(S) AFFORDING COVERAGE
NAC #
INSURER A: Ohio Casualty Insurance Co. 24074
INSURER B: American Fire and Casualty Co. 24066
INSURER C: RSUI Indemnity Company 22314
INSURER D: Insurance Company of the West 27847

COVERAGES
CERTIFICATE NUMBER: BKO56249597

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

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<th>TYPE OF INSURANCE</th>
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<td>EXCESS LIABILITY</td>
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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Insurance Verification.
The City of Upland is named as an additional insured with respects to general liability if required by written contract, agreement or permit.

CERTIFICATE HOLDER
City of Upland
Upland Public Works
1370 N Benson Ave
Upland, CA 91786

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2010 ACORD CORPORATION. All rights reserved.
THIS ENDORSMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):

Blanket Additional Insured agreed

Location(s) Of Covered Operations

Any location(s) when You have agreed in a written contract, agreement or permit that person or organization be added as an additional insured.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
   1. Your acts or omissions; or
   2. The acts or omissions of those acting on your behalf;
   in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:
   1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
   2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:
   This Insurance does not apply to "bodily injury" or "property damage" occurring after:
   1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
   2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
C. With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)
Blanket Additional Insured agreed

Location And Description Of Completed Operations
Work described in writing in the contract, agreement or permit.

Location(s) at which You performed work described in written contract, agreement or permit.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. **Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance**:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.
STAFF REPORT

ITEM NO. 14.B.

DATE: December 11, 2017
TO: MAYOR AND CITY COUNCIL
FROM: MARTIN THOUVENELL, INTERIM CITY MANAGER
PREPARED BY: ROSEMARY HOERNING, PUBLIC WORKS DIRECTOR
BOB CRITCHFIELD, ENGINEERING MANAGER
SUBJECT: PROFESSIONAL SERVICES AGREEMENT WITH J. G. BAUTISTA CONSULTING FOR ENGINEERING CONSULTING SERVICES

RECOMMENDED ACTION

It is recommended that the City Council authorize the City Manager to execute a Professional Services Agreement with J. G. Bautista Consulting, in an amount not to exceed $75,000.

GOAL STATEMENT

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

BACKGROUND

The City utilizes professional consultant services for the design of Capital Improvement Projects involving street, facility, and utility improvements. These consulting services are necessary to augment limited city staff and enhance project delivery.

J. G. Bautista Consulting has over 30 years of professional experience in project design, inspection, and construction management for municipal facilities. Some of their past clients include the cities of Upland, Downey, and the Central Basin Municipal Water District. J.G. Bautista Consulting has provided professional consulting services for the City of Upland in a satisfactory manner. There are several capital projects in process such as 9th Street, 13th Street, and 3rd Avenue. The use of outside services will allow these projects to be implemented by Summer 2018.
ISSUES/ANALYSIS

The Public Works Department's Engineering Division requires engineering services to support the City's budgeted capital improvement program and to respond to situations that require immediate attention. The use of consultants benefits the Department by providing flexibility to meet fluctuations in workload and frees staff to manage multiple projects at once.

The execution of the attached Professional Services Agreement with J.G. Bautista Consulting will provide professional consultant services for a period through December 31, 2018, with an option to extend the agreement for two additional option periods of one year apiece, subject to mutual agreement.

FISCAL IMPACTS

The agreement is for a not-to-exceed amount of $75,000. Sufficient funds are available in the adopted FY 2017-18 budget and expenditures will be paid out of the CIP program. No work will be performed in excess of budgeted authority, and there will be no impact to the General fund.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

Prof. Services Agreement
AGREEMENT
FOR PROFESSIONAL CONSULTANT SERVICES

THIS AGREEMENT is made and effective as of January 1, 2018, between the City of Upland, a municipal corporation ("City") and J G Bautista Consulting ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM. This Agreement shall commence on January 1, 2018, and shall remain and continue in effect for a period of 1 year and terminate on December 31, 2018, unless sooner terminated pursuant to the provisions of this Agreement. In addition this Agreement may be extended for two additional option periods of one year apiece subject to mutual agreement.

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

3. PERFORMANCE. Consultant represents that it has that degree of knowledge and experience and holds all necessary licenses to practice and perform the services herein contemplated and shall at all times faithfully, competently and to the complete satisfaction of the City, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. PREVAILING WAGES. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City Council has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Contract from the Director of the Department of Industrial Relations. Copies may be obtained from the California Department of Industrial Relations’ Internet web site at http://www.dir.ca.gov. Consultant shall provide a copy of prevailing wage rates to any staff or sub-contractor hired, and shall pay the adopted prevailing wage rates as a minimum. Consultant shall comply with the provisions of Sections 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. Pursuant to the provisions of 1775 of the Labor Code, Consultant shall forfeit to the City, as a penalty, the sum of $25.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this contract, by him or by any subcontractor under him, in violation of the provisions of the Contract.

5. PAYMENT.

a. The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, Payment Rates and Schedule, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed $75,000 (seventy five thousand dollars and zero cents) for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

b. Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City
Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

The City Manager may approve additional work up to ten percent (10%) of the amount of the Agreement or fifty thousand dollars ($50,000.00). In no event shall the total sum of the agreement (basic agreement amount and additional work) exceed fifty thousand dollars ($50,000.00). Any additional work in excess of this amount shall be approved by the City Council.

c. Consultant will submit invoices monthly for actual services performed. Invoices shall be submitted between the first and fifteenth business day of each month, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of consultant's fees it shall give written notice to Consultant within 30 days of receipt of a invoice of any disputed fees set forth on the invoice.

6. **SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE.**

   a. The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the consultant at least ten (10) days' prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

   b. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 4.

7. **DEFAULT OF CONSULTANT.**

   a. The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

   b. If the City Manager or his delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, it shall serve the Consultant with written notice of the default. The Consultant shall have (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. **OWNERSHIP OF DOCUMENTS.**

   a. Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be
maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts there from as necessary, and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

b. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the work, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files containing data generated for the work, Consultant shall make available to the City, upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

c. With respect to the design of public improvements, the Consultant shall not be liable for any injuries or property damage resulting from the reuse of the design at a location other than that specified in Exhibit A without the written consent of the Consultant.

9. INDEMNIFICATION.

a. Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

b. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

10. INSURANCE REQUIREMENTS. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

a. Minimum Scope of Insurance. Coverage shall be at least as broad as:

(1) Insurance Services Office Commercial General Liability form
No. CG 00 01 11 85 or 88.

(2) Insurance Services Office Business Auto Coverage form CA 00 01 06 92 covering Automobile Liability, code 1 (any auto). If the Consultant owns no automobiles, a non-owned auto endorsement to the General Liability policy described above is acceptable.

(3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. If the Consultant has no employees while performing under this Agreement, worker's compensation insurance is not required, but Consultant shall execute a declaration that it has no employees.

(4) Professional Liability Insurance shall be written on a policy form providing professional liability for the Consultant's profession.

b. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

(1) General Liability: One million dollars ($1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

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

(3) Worker's Compensation as required by the State of California; Employer's Liability: One million dollars ($1,000,000) per accident for bodily injury or disease.

(4) Professional Liability coverage: Two million ($2,000,000) per claim and in aggregate.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City Manager. At the option of the City Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

d. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(1) The City, its officers, officials, employees and volunteers are to be covered as insured's as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.
(2) For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

(3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

(4) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(5) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

(6) Additional Insured – All policies, except for Worker's Compensation and Professional Liability policies, shall contain endorsements naming the City of Upland and their officers, employees, agents, and volunteers as additional insured parties with respect to liabilities arising out to the performance of Work hereunder. The additional insured endorsements shall also be primary and non-contributory.

(7) Waiver of Subrogation Rights - CONSULTANT shall require the carriers of Commercial General Liability, Automobile Liability and Worker's Compensation to waive all rights of subrogation against the City of Upland, and its officers, employees, agents and volunteers. Such insurance coverage provided shall not prohibit CONSULTANT's employees or agents from waiving the right of subrogation prior to a loss or claim. CONSULTANT hereby waives all rights of subrogation against the City of Upland.

e. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VIII, and admitted and licensed to do business in the State of California, unless otherwise acceptable to the City. Self insurance shall not be considered to comply with these insurance requirements.

f. Verification of Coverage. Consultant shall furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City before work commences. As an alternative to the City's forms, the Consultant's insurer may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.
11. **INDEPENDENT CONTRACTOR.**

   a. Consultant is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

   b. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

   c. **PERS Eligibility Indemnification:** In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

   Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

12. **LEGAL RESPONSIBILITIES.** The Consultant shall keep itself informed of all local, State and Federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. Consultant is responsible for compliance with the Patient Protection and Affordable Care Act (2010), and City shall not be obligated to provide any health care coverage to Consultant. The Consultant shall at all times observe and comply with all such ordinances, laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this section.

13. **RELEASE OF INFORMATION.**

   a. All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents or subcontractors, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.
b. Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, City’s right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

14. NOTICES. Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (I) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To City: City of Upland
      Mailing Address: P.O. Box 460
                  Upland, California 91785
                  460 North Euclid Avenue
                  Upland, California 91785
                  Attention: City Manager

To Consultant: J G Bautista Consulting
                  19425 Braes River Drive
                  Walnut, CA 91789
                  (626) 913-4410
                  Attention: Jim G. Bautista, P.E.

15. ASSIGNMENT. The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Upon termination of this Agreement, Consultant’s sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Consultant.

16. LICENSES. At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

17. GOVERNING LAW. The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Upland. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court’s judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.
18. **PROHIBITED INTEREST.** No officer, or employee of the City of Upland shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, the Consultant, or Consultant's sub-contractors for this project, during his/her tenure or for one year thereafter. The Consultant hereby warrants and represents to the City that no officer or employee of the City of Upland has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the Consultant or Consultant's sub-contractors on this project. Consultant further agrees to notify the City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement.

19. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

20. **AUTHORITY TO EXECUTE THIS AGREEMENT.** The person or persons executing this Agreement on behalf of Consultant warrants and represents that he or she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

21. **SEVERABILITY.** If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

22. **WAIVER.** The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

23. **CONSTRUCTION.** The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

24. **COSTS.** Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

25. **RESPONSIBILITY FOR ERRORS.** Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the
matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

26. **ATTORNEYS’ FEES.** In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

**IN WITNESS WHEREOF,** the parties hereto have caused this Agreement to be executed the day and year first above written.

**CITY OF UPLAND**

Martin Thouvenell, Interim City Manager

**CONSULTANT**

By: [Signature]
Name: Jaime G. Bautista
Title: Sole Proprietor

By: [Signature]
Name: [Name]
Title: [Title]
EXHIBIT A

TASKS TO BE PERFORMED

The specific elements (scope of work) of this service include:

1. Review project plans, estimates, and specifications for public works projects;
2. Prepare plans utilizing AutoCad program;
3. Perform project design, prepare cost estimates, specifications, bid documents, and advertise projects for bidding;
4. Perform field survey for design and construction purposes;
5. Conduct inspection, contract administration, and other construction related work;
6. Prepare Change Orders and other reports;
7. Meet with Contractors and Consultants when necessary;
8. Performs other engineering services the City of Upland may require in a timely and professional manner, and in accordance with good Engineering practices.
EXHIBIT B
PAYMENT RATES AND SCHEDULE

<table>
<thead>
<tr>
<th>Engineering Services</th>
<th>$75.00 Per Hour</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mileage Expense (use of personal car for field work)</td>
<td>Prevailing Federal Mileage Rate</td>
</tr>
</tbody>
</table>

J G Bautista Consulting to submit monthly invoices to the City of Upland, together with time sheets or statements which indicates work completed and hours of services rendered.
RECOMMENDED ACTION

It is recommended that the City Council adopt a Resolution amending the compensation and benefit plan for Executive Management employees.

GOAL STATEMENT

The proposed action supports the City’s goal to compensate its employees in a fair and equitable manner for their effective service.

BACKGROUND

The City Council adopted memorandums of understanding with all City bargaining units in 2015 and 2016. Each bargaining unit received adjustments to the cafeteria plan for health care benefits. The intention at the time was to extend the adjustment to the cafeteria contribution across all employee units. The only group that was not adjusted was the executive employees. The proposed adjustment aligns the executive management cafeteria contribution with the same benefit received by the mid-management group.

ISSUES/ANALYSIS

The City contributes a set monthly contribution to a cafeteria plan for each employee that can be used for healthcare, dental, and vision benefits. This benefit is negotiated with each employee bargaining unit and varies slightly among each bargaining unit. The executive employees (department heads) do not negotiate a memorandum of understanding; however,
there is an existing Executive Management Benefits and Compensation Plan that lists the benefits that are provided to all executive employees.

The current cafeteria plan contribution is $846 per month. That amount has not been adjusted since prior to 2007. The current benefit for mid-management employees is $1,112.50. It is proposed to adjust the executive employees cafeteria contribution by $266.50 so that the benefit for executive and mid-management is the same.

**FISCAL IMPACTS**

There are four employees who will be impacted by this adjustment during this fiscal year. For the remaining six months of the fiscal year, the total impact to the City is less than $7,000. Staff believes the increase can be absorbed in each department’s current budget and no additional appropriation is needed at this time.

**ALTERNATIVES**

Provide alternative direction to staff.

**ATTACHMENTS:**

Resolution
Executive Management Employees Compensation and Benefit Plan
Intent of the Parties and Findings

(i) It is the policy of the City of Upland to compensate its employees in a fair and equitable manner for their effective service;

(ii) In order to provide consistency between recently negotiated employee agreements, it is necessary to amend the Executive employees' compensation and benefits plan;

(iii) The health insurance cafeteria plan benefit will be provided to executive employees at the same rate as provided to the mid-management employees.

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

Section 1. Article 6 of the Executive Management employees Compensation and Benefit Plan shall be amended as follows with a full and complete copy of the amended agreement attached hereto and incorporated herein:

Employees in this unit will receive $1,112.50 per month for the purchase of health insurance benefits through the City’s Cafeteria Plan. The health insurance options under the City’s Cafeteria Plan include medical insurance, dental insurance, and vision insurance. Members may also purchase savings bonds with any remaining Cafeteria Plan Funds or contribute to the City’s deferred compensation plan.

An employee may elect not to be covered by the City’s Health Insurance if an employee provides proof of health insurance coverage from another source. The City may require proof of alternative coverage at any time.

Section 2. Certification. The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED and ADOPTED this 11th day of December, 2017.

Debbie Stone, Mayor

I, Keri Johnson, Deputy 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 December, 2017, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAINED:

ATTEST: Keri Johnson, Deputy City Clerk
THE CITY OF UPLAND

EXECUTIVE MANAGEMENT EMPLOYEES COMPENSATION AND BENEFIT PLAN

Updated **February 11, 2013** **December 11, 2017**
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THE CITY OF UPLAND
EXECUTIVE MANAGEMENT EMPLOYEES

Compensation and Benefit Plan

ARTICLE 1 – PURPOSE

Executive Management employees are not represented by an employee organization. The Executive Management positions are considered to serve at the will and pleasure of the City Manager.

This compensation and benefit plan document is intended as a comprehensive document to define and describe the forms and amounts of compensation and benefits for Executive Management Employees. However, the terms and conditions of employment for the Executive Management Employees may also be addressed in individual employment contracts. If an individual’s employment contract agreement is in conflict with this document, then the provision of the agreement will supersede the provisions of this document.

ARTICLE 2 – MANAGEMENT RIGHTS

The rights of the CITY include, but are not limited to the exclusive right to:

Determine the mission of its constituent departments, commissions and boards; Set standards of service; Determine the procedure and standards for employment and promotion; Direct its employees; Relieve its employees from duty because of lack of work or for other lawful reasons; Maintain efficiency of government operations; Determine the methods, means and personnel by which government operations are to be conducted; Determine the content of job classifications; Take all necessary actions to carry out its mission in emergencies; Exercise complete control and discretion over its organization and the technology of performing its work; To discharge, suspend, demote, reprimand, withhold salary increases or otherwise discipline employees for cause; To establish employee performance standards, including, but not limited to, quality and quantity standards and to require compliance.

The City reserves the right to contract out any work it deems necessary in the interest of efficiency, economy, improved work product, or emergency.

Notwithstanding anything to the contrary in this section, in any other provision of this chapter of the Upland Municipal Code, or in any other presently existing ordinance, resolution, agreement, rule, policy, practice or other city enactment of any type or nature, all present and future department heads shall be deemed and are designated as at-will employees who each serve at the pleasure of the city manager, and accordingly the city manager may reduce the salary of, suspend, demote or discharge any department head,
without prior notice and without cause. No department head shall have any administrative right of due process in connection with any reduction in salary, suspension, demotion or discharge, and no department head shall have any right of appeal to the board of review or the city council. The city manager’s decision as regards the employment status of a department head shall be final and absolute. No department head shall have the right or authority to undertake any of the rights or powers specified in Upland Municipal Code Sections 2.36.140, 2.36.150, 2.36.160 and 2.36.170. (Ord. 1790 § 2, 2005; prior code § 2350.13)

ARTICLE 3 – COMPENSATION

1. The Executive Management salary Range Table (Appendix B) is established to provide the minimum and maximum monthly salary levels for Executive Management positions.

2. The City Management is responsible for determination of each individual employee’s salary rate within the assigned salary range. Such determination will be based on job performance and or other competitive and economic factors.

ARTICLE 4 - RETIREMENT BENEFITS

The City of Upland provides its Executive Management Employees with membership in the California Public Employees Retirement System (CalPERS):

Non-Safety: 2.5% @ 55 retirement formula; The City pays 7% of the 8% employee contribution and the employee pays the remaining 1%. In addition, the employee pays 2.4% of salary (pre-tax) towards the employer contribution rate.

Currently the non safety executive employee pays 1% of the employee share of PERS. Effective July 1, 2013, the employee will pay an addition 7% which is a total of 8% of the employee share of PERS and the City will pick up the 2.4% employer’s cost sharing contribution.

Police Chief/Fire Chief: 3% @ 55 retirement formula; The City pays 9% of salary (pre-tax), and the employee pays 5.8% towards the Employer Contribution rate. Effective July 1, 2013, the employee will pay 9% towards the employee contribution and the City will pick up the 5.8% employer’s cost sharing contribution.

The City contracts with CalPERS for the Single Highest Year Option for all employees who are not defined as “new members” pursuant to the Pension Reform Act of 2013 and the 1959 Survivor Benefit, 3rd level for all members of the bargaining unit. There is an employee cost of $2.00 per month for the 1959 Survivor Benefit.
The agreement between the City and CalPERS allows for the buy-back of time served by the employee in the Military as defined under Government Code Section 21024.

Pension Reform Act of 2013:

1) The parties agree that the provisions of AB 340 (The California Pension Reform Act of 2013) went into effect on January 1, 2013. In addition, if there is any other clean up or other retirement legislation which goes into effect during this MOU and if there are provisions of that legislation which, by law automatically goes into effect, it shall do so. Either party may request to negotiate over the impact of such subsequent legislation.

2) Two Tier Retirement: Pursuant to the Act, for “new members” (as defined by the Act) who are employees hired after January 1, 2013, they will be hired pursuant to the 2% @ 62 retirement formula (non-safety) and 2.7% @ 55.

3) For “new members” (as defined by the Act) who are employees hired after January 1, 2013, final compensation will be based on the highest annual average compensation earnable during the three consecutive years of employment immediately preceding the effective date of his or her retirement.

ARTICLE 5 – EMPLOYER PAID MEMBER CONTRIBUTIONS (EPMC)

The City will report the Employer Paid Member Contribution of 7% (non-safety) and 9% (safety) and as compensation for CalPERS retirement purposes. Effective July 1, 2013, the City will stop paying and reporting the EMPC for all executives.

ARTICLE 6 – HEALTH INSURANCE – CAFETERIA PLAN

Employees in this unit will receive $846,901,112.50 per month for the purchase of health insurance benefits through the City’s Cafeteria Plan. The health insurance options under the City’s Cafeteria Plan include medical insurance, dental insurance and vision insurance. Members may also purchase savings bonds with any remaining Cafeteria Plan Funds or contribute to the City’s deferred compensation plan. Additionally, members may deposit the money into an E-trade account.

An employee may elect not to be covered by the City’s Health Insurance if an employee provides proof of health insurance coverage from another source. The City may require proof of alternative coverage at any time.
ARTICLE 7 – RETIREE HEALTH INSURANCE REIMBURSEMENT

The City will provide retiree medical insurance reimbursement in accordance with the following schedule for employees who have health insurance and are paying a premium which exceeds these amounts. An additional $45 per month allowance is provided for a spouse if the spouse is covered under the employee’s insurance. Retirees who are participating in one of the CalPERS health insurance plans will have the PERS administrative fee deducted from their reimbursement. This benefit was eliminated for employees hired after October 1, 2014.

<table>
<thead>
<tr>
<th>Years of Service</th>
<th>Monthly City Contribution</th>
<th>Yearly City Contribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 - 14 years</td>
<td>$72.57 per month</td>
<td></td>
</tr>
<tr>
<td>15 - 19 years</td>
<td>$96.81 per month</td>
<td></td>
</tr>
<tr>
<td>20 - 24 years</td>
<td>$121.05 per month</td>
<td></td>
</tr>
<tr>
<td>25 +</td>
<td>$145.14 per month</td>
<td></td>
</tr>
</tbody>
</table>

ARTICLE 8 – RETIREE HEALTH SAVINGS ACCOUNTS

Retirement Health Savings (RHS) accounts will be established through ICMA which will be payable to the employee only upon service or disability retirement with the City of Upland. City contributions to the RHS accounts will be based upon years of service in accordance with the following schedule:

<table>
<thead>
<tr>
<th>Years of Service</th>
<th>Monthly City Contribution</th>
<th>Yearly City Contribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 to 9.99</td>
<td>$12.50</td>
<td>$150.00</td>
</tr>
<tr>
<td>10 to 14.99</td>
<td>$25.00</td>
<td>$300.00</td>
</tr>
<tr>
<td>15 to 19.99</td>
<td>$50.00</td>
<td>$600.00</td>
</tr>
<tr>
<td>20 to 24.99</td>
<td>$75.00</td>
<td>$900.00</td>
</tr>
<tr>
<td>25 +</td>
<td>$100.00</td>
<td>$1,200.00</td>
</tr>
</tbody>
</table>

This benefit was eliminated for employees hired after October 1, 2014.

ARTICLE 9 – LIFE INSURANCE

The City provides employees in this unit with group life insurance in an amount equal to one times (1x) their annual salary.

ARTICLE 10 – LONG TERM DISABILITY INSURANCE

The City assumes the full premium cost for the employee in the City designated long-term disability program. This benefit will pay 66 2/3% of base salary to a maximum of $5000 per month after 60 days (or use of all sick leave, whichever is later) to qualified members of this unit.
ARTICLE 11 – DEFERRED COMPENSATION

The City contributes nine percent (9%) of base monthly salary to the City’s deferred compensation plan on behalf of each employee in the unit. This amount may also be used toward the employee’s cafeteria options as defined in Article 7, Health Insurance – Cafeteria Plan.

Effective July 1, 2012, the deferred compensation amount was reduced by 3.6% for Non-Safety and 3.2% for Police Chief/Fire Chief to go towards the CalPERS retirement.

Effective July 1, 2013, the deferred compensation amount will restored to 9% for non-safety and safety executive employees.

ARTICLE 12 – EDUCATION INCENTIVE

Employees hired after July 1, 1981 will receive a one-time payment of the percentage of total annual base salary at time job related degree is awarded combined with years of service in accordance with the following schedule:

<table>
<thead>
<tr>
<th>Degree with Years</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>PhD with 2 years</td>
<td>10%</td>
</tr>
<tr>
<td>JD with 2 years</td>
<td>10%</td>
</tr>
</tbody>
</table>

ARTICLE 13 – LONGEVITY PAY

Employees with twenty (20) years or more of continuous service will receive a two and one half percent (2.5%) increase in base salary.

ARTICLE 14 – PREVENTATIVE HEALTH BENEFIT

Employees may be reimbursed up to $225 annually for the purchase of items, classes, memberships or programs which contribute to physical fitness. This reimbursement shall be made in June of each year. Items which will be considered acceptable for reimbursement are defined in the City’s policy on Preventive Health Benefits.

ARTICLE 15 – UNIFORM ALLOWANCE

The Police Chief and Fire Chief shall receive an allowance in the amount of $250.00 per year after completion of 12 months of employment. A uniform will be provided at time of appointment.
The purpose of the allowance is to provide uniform cleaning or replacement expenses. This allowance will be paid the first pay period in December.

**ARTICLE 16 – VEHICLE ALLOWANCE**

The Police Chief and Fire Chief receive a City vehicle to take home. All other executive management employees receive $350.00/ month.

**ARTICLE 17 – HOLIDAYS**

The City of Upland observes the following holidays, established by Resolution:

<table>
<thead>
<tr>
<th>Holiday</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Year’s Day</td>
<td>(January 1)</td>
</tr>
<tr>
<td>Martin Luther King Day</td>
<td>(Third Monday in January)</td>
</tr>
<tr>
<td>President’s Day</td>
<td>(Third Monday in February)</td>
</tr>
<tr>
<td>Memorial Day</td>
<td>(Last Monday in May)</td>
</tr>
<tr>
<td>Independence Day</td>
<td>(July 4)</td>
</tr>
<tr>
<td>Labor Day</td>
<td>(First Monday in September)</td>
</tr>
<tr>
<td>Thanksgiving Day</td>
<td>(Fourth Thursday in November)</td>
</tr>
<tr>
<td>Friday after Thanksgiving Day</td>
<td>(The Day After the Fourth Thursday in November)</td>
</tr>
<tr>
<td>Christmas Day</td>
<td>(December 25)</td>
</tr>
</tbody>
</table>

All holidays shall be 10 hours unless otherwise noted.

If the holiday falls on a Friday or Saturday, Thursday shall be designated as the holiday and if the holiday falls on Sunday, Monday shall be designated as the holiday.

In order to be paid for a recognized City holiday (the days on which the public offices of the City of Upland will be closed) employees must be in a paid status both the day before and the day after the holiday. For example, if a holiday fell on a Monday, and the employee was on a 4/10 work schedule with Fridays off, the employee would be required to be in a paid status on the Thursday before the holiday and the Tuesday following the holiday.

**ARTICLE 18 – FLOATING HOLIDAYS**

Employees in the unit shall receive forty (40) hours of Floating Holiday annually. Floating holiday hours must be used during the calendar year or they will be removed from the books on December 31 of each year.

**ARTICLE 19 – EXECUTIVE LEAVE**
Employees in the unit shall receive eighty (80) hours of executive leave annually. This leave must be used within the calendar year, or it will be removed from the books as of December 31 of each year.

ARTICLE 20 – SICK LEAVE

Employees in the unit earn sick leave at the rate of eight hours per month, up to a maximum accrual of 1250 hours. Notification of need for such leave must comply with the City’s Administrative Policy on Sick Leave.

ARTICLE 21 – SICK LEAVE ACCRUAL PAYMENT UPON RETIREMENT

Upon service or disability retirement under the PERS retirement plan, employees may elect one of the following options for payment of unused sick leave:

a. At the time of service or disability retirement, one half (50%) of accrued sick leave may be cashed out at the current hourly rate, up to a maximum of 625 hours

b. Retiring employees may use one half (50%) of accrued sick leave as Personal Leave just prior to retirement, up to a maximum of 625 hours.

ARTICLE 22 – VACATION

Vacation shall accrue based on the following schedule:

<table>
<thead>
<tr>
<th>Years of service</th>
<th>Hours per year</th>
</tr>
</thead>
<tbody>
<tr>
<td>01 – 02 Years</td>
<td>80 Hours per year</td>
</tr>
<tr>
<td>03 – 05 Years</td>
<td>96 Hours per year</td>
</tr>
<tr>
<td>06 – 10 Years</td>
<td>128 Hours per year</td>
</tr>
<tr>
<td>11 – 16 Years</td>
<td>136 Hours per year</td>
</tr>
<tr>
<td>17 + Years</td>
<td>One additional day (10 hours) per year, up to a maximum of 176 hours per year</td>
</tr>
</tbody>
</table>

All employees may accrue vacation up to a maximum of three (3) years of entitlement.

Police Chief/Fire Chief:

Vacation shall accrue for Non-Safety employees based on the following schedule:

<table>
<thead>
<tr>
<th>Years of service</th>
<th>Hours per year</th>
</tr>
</thead>
<tbody>
<tr>
<td>01 – 02 Years</td>
<td>96 Hours per year</td>
</tr>
<tr>
<td>03 – 05 Years</td>
<td>120 Hours per year</td>
</tr>
<tr>
<td>06 – 16 Years</td>
<td>152 Hours per year</td>
</tr>
</tbody>
</table>
All employees may accrue vacation up to a maximum of three (3) years of entitlement.

**ARTICLE 23 – VACATION BUYBACK**

In December of every year, Executive employees may be paid cash in lieu of unused vacation, sick leave, and/or executive leave for up to 80 hours.

Furthermore, an additional 40 hours of vacation can be cashed out in June of each year.

**ARTICLE 24 – BEREAVEMENT LEAVE**

Effective July 1, 2010, employees may take up to 30 hours annually (January 1 though December 31) with pay in the event of a death of the following: mother, father, grandfather, grandmother, brother, sister, spouse, child, grandchild, and employee spouse’s father, mother, grandfather, grandmother, brother, sister and any relative who has resided with the employee for at least six months. Adoptive relatives and step relatives shall count the same as relatives by birth. Notification of need for such leave must comply with the City’s Administrative Policy on Sick Leave.

The City will consider a request for bereavement leave for the death of a member’s aunt and uncle on a case by case basis.

Executive Management may also take up to four hours per year to attend funeral services.

**ARTICLE 25 – SAVINGS CLAUSE**

Should any provision of this agreement or the application of such provision be rendered or declared invalid by any court action or by reason of any existing or subsequently enacted legislation, the City and Union shall meet and confer immediately upon what constitutes an equivalent benefit to that which was determined to be unlawful. Such equivalent benefit will be implemented retroactive to the date the old benefit ceased. The remaining parts or portions of the Agreement shall remain in full force and effect.