

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF UPLAND AND
UPLAND ENHANCEMENT FOUNDATION**

This Memorandum of Understanding (“MOU”) is made and entered into this 11th day of March, 2024 by and between the City of Upland, a municipal corporation (“City”) and Upland Enhancement Foundation (“Foundation”). City and Foundation are sometimes referred to herein individually as “Party”, and collectively as “Parties”.

RECITALS

WHEREAS, City is the owner of real property including baseball fields located on and around 1299 San Bernardino Road and 526 E 8th Street (the “Properties”). The Properties are more particularly shown in Exhibit “A”, attached hereto and incorporated herein by this reference.

WHEREAS, Foundation desires to focus on enhancements throughout the City of Upland parks and facilities.

WHEREAS, Foundation President (“President”) is a longstanding accomplished community member with an extensive background in youth sports.

WHEREAS, the President has for the last forty years coached youth baseball, managed Upland National Little League, the primary user of Properties. and project managed baseball field improvements.

WHEREAS, Foundation is determined to expeditiously enhance park and recreation facilities that serve the youth of Upland.

WHEREAS, on January 25, 2024, Foundation entered into an MOU with the City to remove, regrade and replace the infield grass at 1299 San Bernardino Road with the City contributing \$20,000.

WHEREAS, City desires to implement an improvement project on the Properties (the “Project”). The Project is more particularly described in Exhibit “B”, attached hereto and incorporated herein by this reference.

WHEREAS, Foundation has offered to implement the Project in return for City providing funding for the Project.

WHEREAS, it is the intent of the Parties to enter into this MOU to establish and coordinate the responsibilities of the Parties with respect to the Project, as further set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, it is mutually understood and agreed by City and Foundation as follows:

TERMS

1. Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated into this MOU as though fully set forth herein.

2. Term. This MOU shall be effective as of the date first set forth above, and shall continue in effect until December 31, 2025, unless earlier terminated (“Term”).

3. Agreement to Cooperate. The Parties agree to mutually cooperate in order to help ensure that the Project is successfully completed with minimum impact to the public.

4. Obligations of Foundation.

(a) Foundation shall be responsible for providing all services to complete the Project, as identified in Exhibit “B”, or as reasonably necessary for Project completion. Such services include, but are not limited to, completion of final design plans, construction management, and inspections of the Project until the Project is complete.

(b) Foundation shall be responsible for the process of selecting contractors in compliance with all applicable local, state and federal laws.

(c) Foundation shall be responsible for obtaining all applicable environmental clearances and permits necessary to complete the Project. This includes the implementation of all Mitigation Measures required within the Mitigation Monitoring and Reporting Program adopted June 10, 2021 with the Memorial Park Master Plan, including but not limited to, the Nesting Bird Survey and Construction Noise Limits

(d) City’s total contribution towards the Project will be \$270,000.00 (“City Total Contribution”). Foundation will be responsible for any cost above the City Total Contribution.

(e) Foundation agrees to contribute in-kind labor towards the Project valued at \$100,000 (“Foundation Contribution”).

(f) Foundation acknowledges and agrees that, unless otherwise provided pursuant to a written amendment to this MOU, City’s financial contribution to the Project under this MOU shall not exceed the City Total Contribution and that the City Total Contribution shall only be used for the Project.

(g) Foundation shall provide City an opportunity to review and approve all design documents for the Project prior to finalization of such design document for the Project. Additionally, Foundation shall also provide City an opportunity to review and approve any changes to such design documents due any necessary change orders occurring after commencement of work for the Project.

(h) Foundation shall provide City an opportunity to inspect the Project work during construction.

(i) Foundation shall obtain or shall require the Contractor to obtain all required permits and approvals for all Project work.

(j) As between City and Foundation, Foundation shall be solely responsible for construction inspection of the Project work. Foundation shall allow City staff access to the Project site, upon reasonable notice, to perform observation of any Project improvements. City inspectors shall communicate any construction deficiencies during construction, including a final punch list, to Foundation for completion.

(k) Foundation shall solely be responsible and liable for the operation, maintenance and use of the Project as well as use of the Properties, at no cost or expense to City, except as outlined by this MOU.

(l) Foundation shall provide a final accounting to City within forty-five (45) days after Project Completion.

(m) Foundation shall refund any unused portion of the City Total Contribution to City within sixty (60) days after Project Completion.

(n) Foundation shall retain all records related to the Project and this MOU ("Records") for a period of three (3) years following Project Completion. The Records shall be available for inspection by City upon request.

(o) For the period during which Foundation or Contractor controls the Project job site, Foundation shall require that the Contractor provide, for the entire period of construction, insurance consistent with Foundation's standard requirements. Foundation shall require that City be included as an additional insured under such policies. Foundation shall require that City be included as an indemnified party under the indemnification provision included in Foundation's construction contract.

5. Obligations of City.

(a) City Donation to Foundation for the Project. City shall deposit funds with Foundation for Project costs to be incurred under this MOU in an amount not to exceed \$270,000 for the sole purpose of carrying out the Project.

(b) City shall timely review design plans for the Project, and provide any approvals or comments within thirty (30) days of receipt of the plans. If City fails to provide any comments or its approval within said time period, Foundation shall provide notice to the City Manager that the design plans shall be deemed approved by Foundation if no comments are received within an additional 15 days.

(c) City shall deposit City's Total Contribution within thirty (30) days of execution of this MOU.

(d) City may provide a City oversight engineer or other City staff to oversee the Project work during plan preparation and construction, at its own cost.

(e) City shall inspect the Project upon written notice of completion of the work by Foundation to City, and identify any punch list work within fifteen (15) days.

6. Ongoing Use of Properties after Project Completion.

(a) Schedule of Use. City will continue the allocation of Properties pursuant to the City Council-approved Athletic Facilities Policy and Procedures.

7. Dispute Resolution. Unless otherwise specified herein, the Parties shall submit any unresolved dispute to the City's Representative and the Foundation's Representative for negotiation. The City's Representative and the Foundation's Representative shall undertake good faith attempts to resolve said dispute, claim, or controversy within ten (10) calendar days after the receipt of written notice from the Party alleging that a dispute, claim or controversy exists. The Parties additionally agree to cooperate with the other Party in scheduling negotiation sessions. However, if said matter is not resolved within thirty (30) calendar days after conducting the first negotiating session, either Party may, but is not required to, request that the matter be submitted to further dispute resolution procedures, as may be agreed upon by the Parties.

8. Legal Action. If a matter is not resolved within thirty (30) calendar days after the first negotiating session between the City's Representative and the Foundation's Representative, unless otherwise agreed upon in writing by the Parties, either Party may proceed with any other remedy available in law or in equity.

9. Indemnification.

(a) Foundation shall indemnify, defend and hold City, its directors, officials, officers, employees, agents, consultants and contractors free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to any negligent acts, omissions or breach of law, or willful misconduct of Foundation, its officials, officers, employees, agents, consultants or contractors in the performance of Foundation's obligations under this MOU, including the payment of all reasonable attorneys' fees.

(b) The indemnification provisions set forth in this Section 9 shall survive any expiration or termination of this MOU.

10. Force Majeure. The failure of performance by either Party (except for payment obligations) hereunder shall not be deemed to be a default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, railroad, or suppliers; acts of the other Party; acts or failure to act of any other public or governmental agency or entity (other than that acts or failure to act of the Parties); or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform or relief from default. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other

party within thirty (30) days of the commencement of the cause. Times of performance under this MOU may also be extended in writing by mutual agreement between the Parties.

11. Amendments. This MOU may be amended at any time by the mutual consent of the Parties by an instrument in writing.

12. Assignment of MOU. Neither Party may assign or transfer its respective rights or obligations under this MOU without the express written consent of the other Party. Any purported assignment or transfer by one Party without the express written consent of the other Party shall be null and void and of no force or effect.

13. Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of either Party shall be deemed to waive or render unnecessary such Party's consent to or approval of any subsequent act of the other Party. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this MOU.

14. Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this MOU shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this MOU, which shall be interpreted to carry out the intent of the parties hereunder.

15. Termination. Prior to the commencement of construction of the Project, both City and Foundation shall have the right at any time, to terminate this MOU, with or without cause, by giving thirty (30) calendar days written notice to the other party, specifying the date of termination. Following the commencement of construction of the Project, this MOU may only be terminated by City for cause, after providing Foundation notice of such cause, and reasonable opportunity to cure. In the event that this MOU is terminated prior to completion of the Project, Foundation shall return any unspent City Total Contribution funds, after all costs incurred prior to the date of termination are deducted, to City and shall provide a full accounting, in a form and with information required by City, of all City Total Contribution funds spent and unspent by Foundation in connection with this MOU and the Project within 45 days of such termination. This full accounting shall include such other information that may be reasonably requested by City.

16. Notice. Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:
City of Upland
460 N. Euclid Avenue
Upland, CA 91786
Attn: City Manager

FOUNDATION:
Upland Enhancement Foundation
2303 N 4th Ave
Upland, CA 91784-1352
Attn: Ralph Cavallo

And shall be effective upon receipt thereof.

17. Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this MOU, shall survive any such expiration or termination.

18. Third Party Beneficiaries. There are no third-party beneficiaries to this MOU.

19. Entire Agreement. This MOU contains the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior negotiations, agreements or understandings.

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN CITY OF UPLAND
AND UPLAND ENHANCEMENT FOUNDATION**

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

CITY OF UPLAND

UPLAND ENHANCEMENT FOUNDATION

By: _____
Michael Blay
City Manager

By: _____
Its: President

Printed Name: Ralph Cavallo

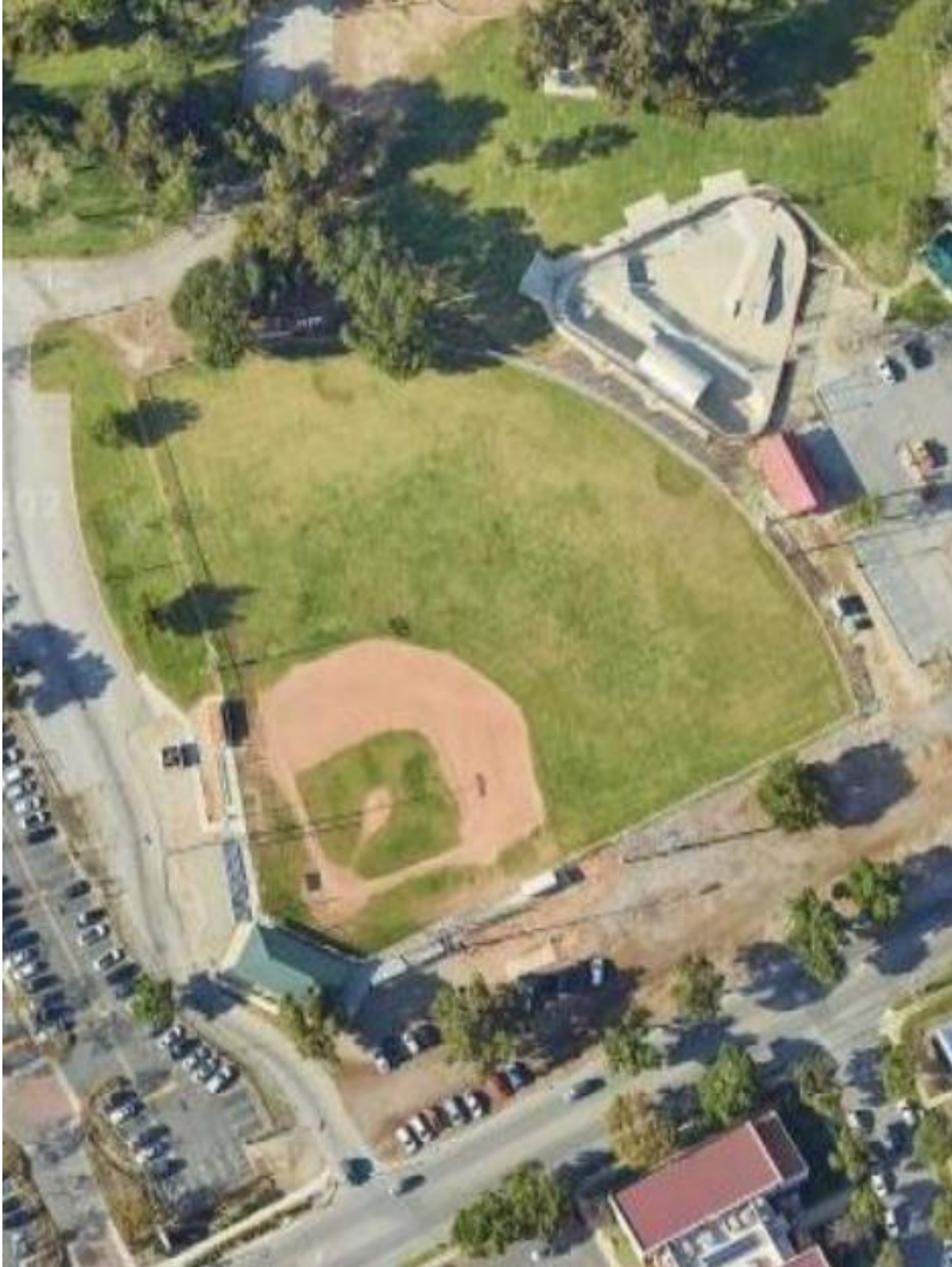
ATTEST:

By: _____
Keri Johnson
City Clerk

By: _____
Its: Vice President

Printed Name: Yolanda Tuosto

EXHIBIT A
IMAGES OF PROPERTIES



Memorial Park South Field - 1299 San Bernardino Road



Olivedale Park Field – 526 E 8th Street

EXHIBIT B

PROJECT DESCRIPTION

Memorial Park South Field:

- Complete an enclosure of Memorial South Field for safety and security, including:
 - Replace existing pilasters south-east of the snack bar with new 8' pilasters
 - Replacement of existing wrought iron fencing with 8' high wrought iron fencing
 - Install additional wrought iron fencing to the north and east of the snack bar including two push-bar egress gates and a wrought iron access gate on the south-east portion of existing wrought iron fencing
 - Replace existing outfield fencing and replace with 1" sq 9-gauge zinc coated chain link fence
 - Replace 4 existing 10' wide gates with same fencing
- Replace all 10' chain link fencing in the infield (~325' in length) with 2" 6-gauge chain link fencing
- Installation of 230' feet of 1" side fencing (8' high) with dugout shade on 1st and 3rd base lines
- Construction of 26' wide, 70' long, and 12' high batting cage outside the field on 1st base line
- Pouring a 5" concrete slab (~ 5,500 sq ft) behind the first base bleachers
- Installation of approximately 300' of 0-2' high split face block retaining wall to frame in concrete areas behind the bleacher seating along the 1st and 3rd base lines
- Installation of 8' high 1" 9-gauge zinc coated chain link fencing surrounding the concrete and batting cage on the 1st base side
- Installation of 8' wide, 70' long, and 8' high 1" 9-gauge zinc coated chain link fencing forming a bullpen outside the field fence on the 3rd base side
- Installation of shade cover over existing bleachers
- Replacement purchase and installation of existing backstop netting
- Installation of a concrete driveway at the field work entrance
- Grading the infield
- Installation of angel mix brick dust and
- Installation of bases with base pegs

Olivedale Park Field:

- Complete enclosure of Olivedale Park Field, including:
 - Installation of 8' high wrought iron fencing from dugout to dugout
 - Installation of an 8' wide sliding gate next to the snack bar
 - Installation of a 3' wide access gate next to the north dugout
 - Installation of 2 pushbar egress gates west of the 3rd base side leading to the parking lot
- Replacement purchase and installation of existing backstop netting
- Purchase and installation of dugout shade covers for both dugouts